

**TIPC-Monitoring Body
Resolution No. 13, Series of 2012.**

**CASE OF AFP SAVINGS AND LOAN
ASSOCIATION, INC. (AFPSLAI)**

CALLING THE ATTENTION OF THE ARMED FORCES OF THE PHILIPPINES RELATIVE TO THEIR COMMITMENT TO UPHOLD WORKERS' RIGHTS AND REQUESTING THE PRESIDENT OF THE PHILIPPINES, AS COMMANDER-IN-CHIEF, TO EXERCISE HIS EXECUTIVE POWERS TO FACILITATE THE RESOLUTION OF THE CASE.

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RESOLUTION

WHEREAS, on 20 January 2010, the National Tripartite Industrial Peace Council (NTIPC) approved TIPC Resolution No. 1, series of 2010, constituting the National TIPC as the High Level Tripartite Monitoring Body on the Application of International Labor Standards, in particular ILO Convention on Freedom of Association and Protection on the Right to Organize (No. 87), that shall: (1) facilitate "out of the box solution" to long-standing CFA cases; (2) monitor and report progress on active CFA cases; and (3) facilitate gathering of relevant information on complaints and evaluate and recommend appropriate action/s;

WHEREAS, the Executive Board of the AFPSLAI Employees' Association (AEA), in its letter dated 13 February 2012, requested the intervention/assistance of the NTIPC-High Level Monitoring Body on the alleged anti-union practices of the Armed Forces and Police Savings and Loan Association, Inc. (AFPSLAI);

WHEREAS, AEA narrates that on 6 October 2009, by reason of Collective Bargaining Agent (CBA) deadlock negotiation, AEA filed a notice of strike with the National Conciliation and Mediation Board – National Capital Region (NCMB-NCR) and held two (2) lunchtime pickets;

WHEREAS, AEA claims that although a CBA has been concluded in November 2009, AFPSLAI management nevertheless filed an illegal strike case against AEA officers before the Regional Arbitration Branch of National Labor Relations Commission – National Capital Region (NLRC-NCR) docketed as NLRC NCR Case No. 11-15310-09;

WHEREAS, on 25 August 2010, the Labor Arbiter Raymund M. Celino issued a decision declaring that since joint or coordinated activities of employees may be forbidden or restricted by law or contract, the "off hour picketing" held by the union is considered a strike based on the "no strike, no lockout" provision of the 2009 CBA Negotiations between AFPSLAI and AEA. The Labor Arbiter further ruled that since there was violation of Article

XVII of the CBA relating to “No Strike and No Lockout” clause, the union officers are deemed to have lost their employment;

WHEREAS, AEA filed an appeal docketed as NLRC LAC No. 10-002487-10 and was raffled to the 3rd Division of the National Labor Relations Commission (NLRC), which set aside the decision of the Labor Arbiter on 30 November 2010. The NLRC 3rd Division ruled that the picketing held by the union is a permissible concerted activity during a labor dispute as it was not accompanied by violence, intimidation, restraint or coercion to prevent work from being performed at the establishment and there was no obstruction to the free use of the employer’s property;

WHEREAS, AFPSLAI management filed a Motion for Reconsideration with a Motion for Inhibition directed against the 3rd Division of the NLRC. The said Division favorably acted on the Motion for Inhibition hence the raffling of the case to the 4th Division of the NLRC, which subsequently set aside the ruling of the 3rd Division on 30 June 2011, stating that the “off-hour picketing” is considered a strike in violation of the CBA and Ground Rules for the CBA Negotiations.

WHEREAS, the 4th Division likewise held that being one of those included in the definition of the “No Strike and No Lockout Clause” in the CBA, such off-hour picketing is considered an illegal strike and that the union officers, having knowingly participated in an illegal strike, can be deemed to have lost their employment status and benefits with AFPSLAI;

WHEREAS, AEA filed a Motion for Reconsideration with a Motion for Inhibition for the ponente to recuse himself from further participating in the resolution of the case;

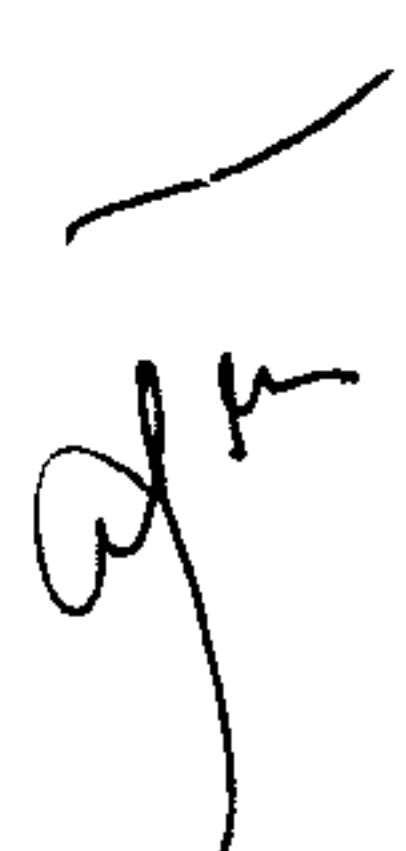
WHEREAS, relying on the ruling of the 4th Division of the NLRC, AFPSLAI management terminated the union officers on 29 July 2011 even in the absence of entry of judgment and writ of execution, prompting AEA to file a notice of strike for acts of unfair labor practice (ULP);

WHEREAS, the notice of strike was assumed by the Secretary of Labor on 22 August 2011 and the case was certified to the NLRC, docketed as NLRC-LCC-09-008-11 / NCMB-NCR-NS-08-057-11, for consolidation with the pending case before the Commission. The Secretary of Labor further ordered immediate reinstatement of the AEA officers, either physically or via payroll;

WHEREAS, AFPSLAI, in defiance of the order of the Secretary of Labor, stopped the payroll reinstatement of the of the union officers last October 2011;

WHEREAS, on 28 September 2011, the 4th Division of the NLRC promulgated a Resolution granting the Motion for Reconsideration filed by the union and ordering AFPSLAI management to reinstate the dismissed union officers;

WHEREAS, AFPSLAI management assailed the 28 September 2011 Resolution before the Court of Appeals through a petition for certiorari under Rule 65 of the Rules of Civil



Procedures with application for a temporary restraining order (TRO). AFPSLAI averred that the 4th Division of the NLRC acted with grave abuse of discretion in reversing and overruling the 30 June 2011 Resolution which was already final and executory;

WHEREAS, on 03 October 2011, the 4th Division of the NLRC issued an Order directing both parties to file their respective Position Papers on the certified case as the Commission is of the view that the two cases do not involve common questions of law or fact and therefore, consolidation cannot be done¹;

WHEREAS, on 05 December 2011, the Court of Appeals issued a Resolution with a TRO citing that in consideration of the fact that the 30 June 2011 Resolution is already considered final and executory at the time the 4th Division of the NLRC reversed the same, the AFPSLAI management has the right to be fully heard on the issue of jurisdiction before the execution of the disputed Resolution may be allowed;

WHEREAS, in its Resolution promulgated on 12 January 2012 relative to the Motion for Inhibition filed by AFPSLAI Management, the 4th Division of the NLRC ruled that the said Motion has been rendered moot and academic considering that both parties already had their share of motion for reconsideration filed, and such motion to inhibit the whole Fourth Division is proscribed under Section 7, Rule VII of the 2011 NLRC Rules of Procedure². In the same Resolution, the Division expressed deference to the TRO issued by the Court of Appeals and refrained from implementing its 28 September 2011 Resolution;

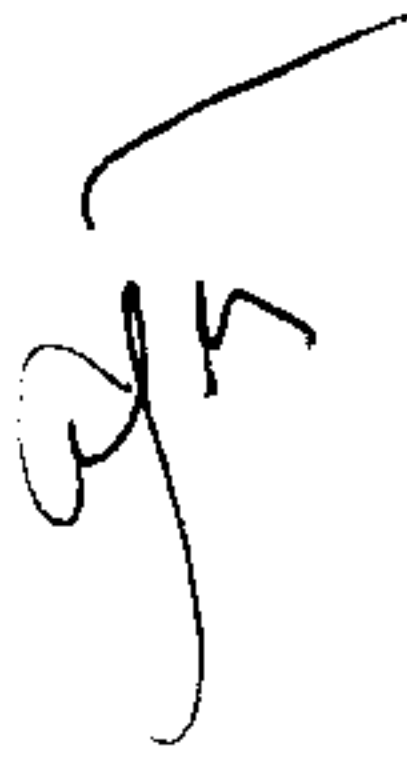
WHEREAS, with regard to the case certified by the Secretary of Labor pursuant to Article 263 (g) of the Labor Code, the 4th Division promulgated a Decision on 31 January 2012 ordering the actual reinstatement of the fifteen (15) union officers. The Commission likewise held that although the TRO issued by the Court of Appeals enjoins the implementation of the Commission's Resolution in NLRC LAC No. 10-002487-10 / NLRC NCR Case No. 11-15310-09 (Petition to Declare Illegal the Strike/Picket Conducted on 26 and 27 October 2009), the TRO does not embrace within its ambit the certified case;

WHEREAS, on 9 February 2012, the Court of Appeals issued a Resolution with a Writ of Preliminary Injunction stating that the circumstances which prompted the issuance of the

¹ "While the case pending before this Commission and the labor dispute certified by the Secretary of Labor involve the same parties or interests, the causes of action as well as the matters which precipitated the said cases are distinct. In NLRC NCR Case No. 11-15310-09 filed by AFPSLAI against its Union Officers, the complainant's cause of action arose from the picketing conducted by the Union on 26 October 2009 or during the cooling-off period.

On the other hand, the Petition to assume jurisdiction in the certified case was filed in anticipation of an impending strike or any work stoppage in view of the Notice of Strike filed by the Union and the result of the strike vote which according to the aforementioned Order of the Secretary of Labor "showed that majority of its members voted to support the conduct of a strike." In the same Order, it was indicated that the Notice of Strike "was filed on account of unfair labor practice, particularly union busting illegal dismissal of all union officers."

² "No motion to inhibit the entire Division of the Commission shall be entertained. However, any Commissioner may inhibit himself from the consideration and resolution of any case or matter before the Division and shall so state in writing the legal or justifiable grounds therefore. xxxx"



TRO still subsist, thus the continuing need to preserve the status quo pending resolution of the case;

WHEREAS, the rank-and-file employees of AFPSLAI, in their letter dated 15 February 2012, expressed confusion as to status of AEA and its leadership, as well as the legitimacy of the terminated employees to act as union officers;

WHEREAS, the Executive Board of AEA prays for: 1) Reinstatement of the AEA officers by virtue of the 31 January 2012 Decision of the 4th Division of the NLRC; 2) AEA officers be allowed to enter the premises of AFPSLAI for them to perform their union duties effectively; 3) Order be issued to the management to cease and desist from doing things that will exacerbate the already volatile labor relations within AFPSLAI; and 4) Order be issued to AFPSLAI management to renegotiate the existing CBA with the duly constituted officers of the AEA;

WHEREAS, the NTIPC-Monitoring Body points out that in the absence of the competence/authority to issue such Orders, the Body may only exercise persuasion in order for the case to be resolved immediately;

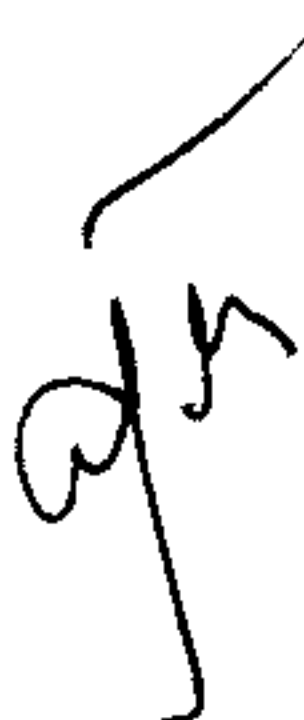
WHEREAS, the NTIPC-Monitoring Body expresses its disappointment as to how this particular case has been handled, noting that the 3rd and 4th Division of the NLRC have different treatment of the 2011 NLRC Rules of Procedures when they acted differently on the Motion for Inhibition filed before them by the AFPSLAI management and the AEA, respectively, prompting the reversal of a Division's Resolution by another Division;

WHEREAS, the NTIPC-Monitoring Body notes that the management of AFPSLAI, which is alleged of committing anti-union practices in violation of the right to freedom of association, is composed of active and retired Officers from the Armed Forces of the Philippines;

NOW THEREFORE, BE IT RESOLVED, AS WE HEREBY RESOLVE, that pursuant to the *DOLE-Labor-AFP Manifesto of Commitment towards a Joint and Collective Effort to Promote and Protect Workers' Rights*, the NTIPC-Monitoring Body calls the attention of the **Armed Forces of the Philippines (AFP)**, reminding them of their commitment to uphold workers' rights which include the right to freedom of association, and encourages them to take necessary actions to resolve this case immediately.

RESOLVED FURTHER, to call on the NLRC to execute and enforce its Decision dated 31 January 2012 ordering the actual reinstatement of the fifteen (15) AEA officers considering that the TRO is not on the certified case (NLRC-LCC-09-008-11 / NCMB-NCR-NS-08-057-11).


RESOLVED FURTHER, to recommend to the DOLE Secretary as the TIPC-MB Chairperson, to direct the DOLE-National Capital Region RTIPC to immediately create a Tripartite Team to conciliate-mediate for the resolution of the labor dispute between AFPSLAI management and AFPSLAI Employees' Association.

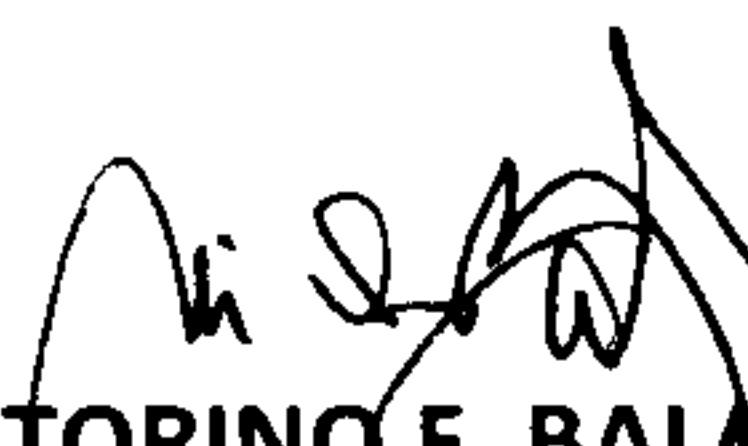



RESOLVED FINALLY, that the NTIPC-Monitoring Body request **President Benigno S. Aquino III**, as the Commander-in-Chief, to exercise his executive powers to facilitate the resolution of the case.


APPROVED this 17th day of April 2012, at The Bayleaf, Intramuros, Manila, Philippines.

LABOR SECTOR


DANIEL L. EDRALIN
Alliance of Progressive Labor


VICTORINO F. BALAIS
Trade Union Congress of the Philippines



JOSUA T. MATA
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ZOILO V. DELA CRUZ, JR.
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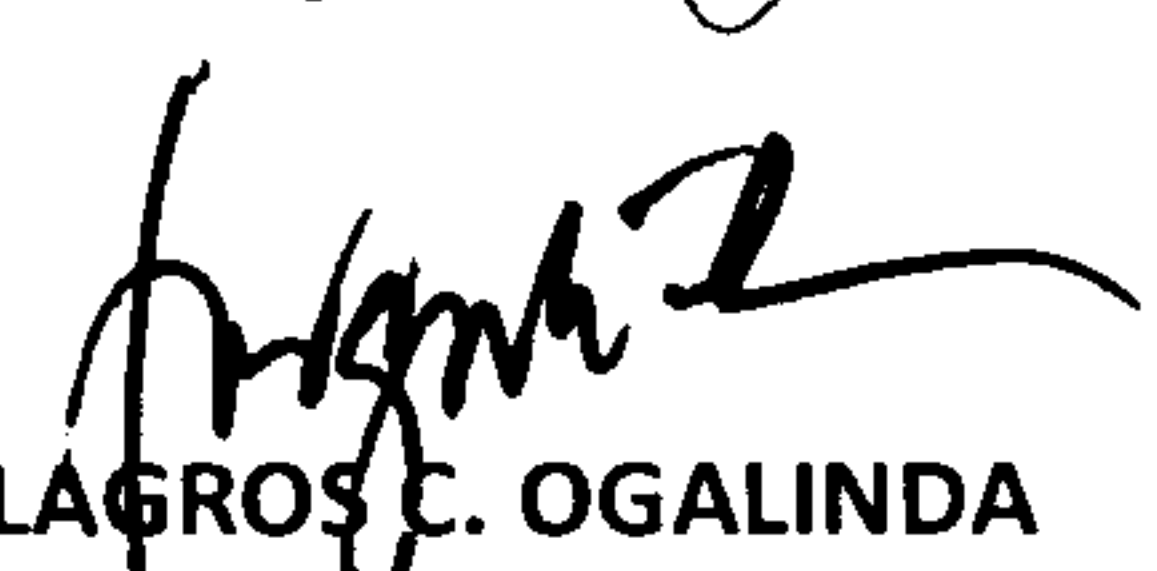

ANGELITO P. CALDERON
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Trade Union Congress of the Philippines


JOSE SONNY G. MATULA
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ESPERANZA S. OCAMPO
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DAVID L. DIWA
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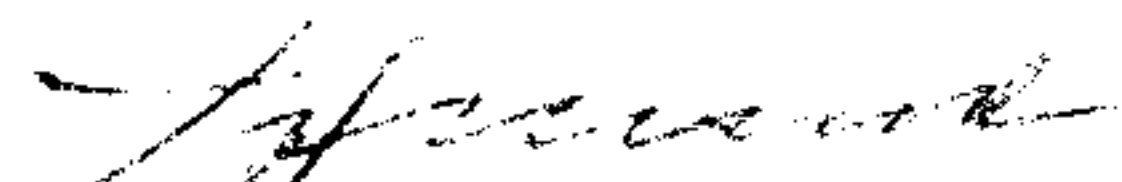

GERARD R. SENO
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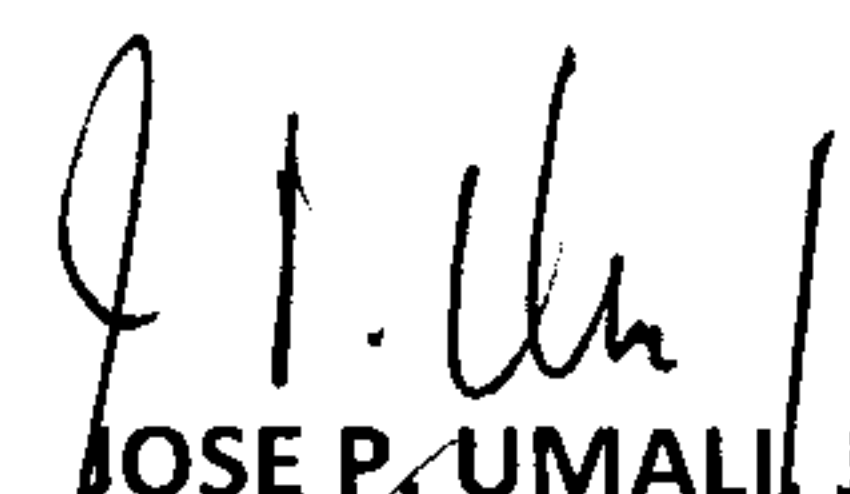

BENJAMIN C. ALAR
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JESUS B. VILLAMOR
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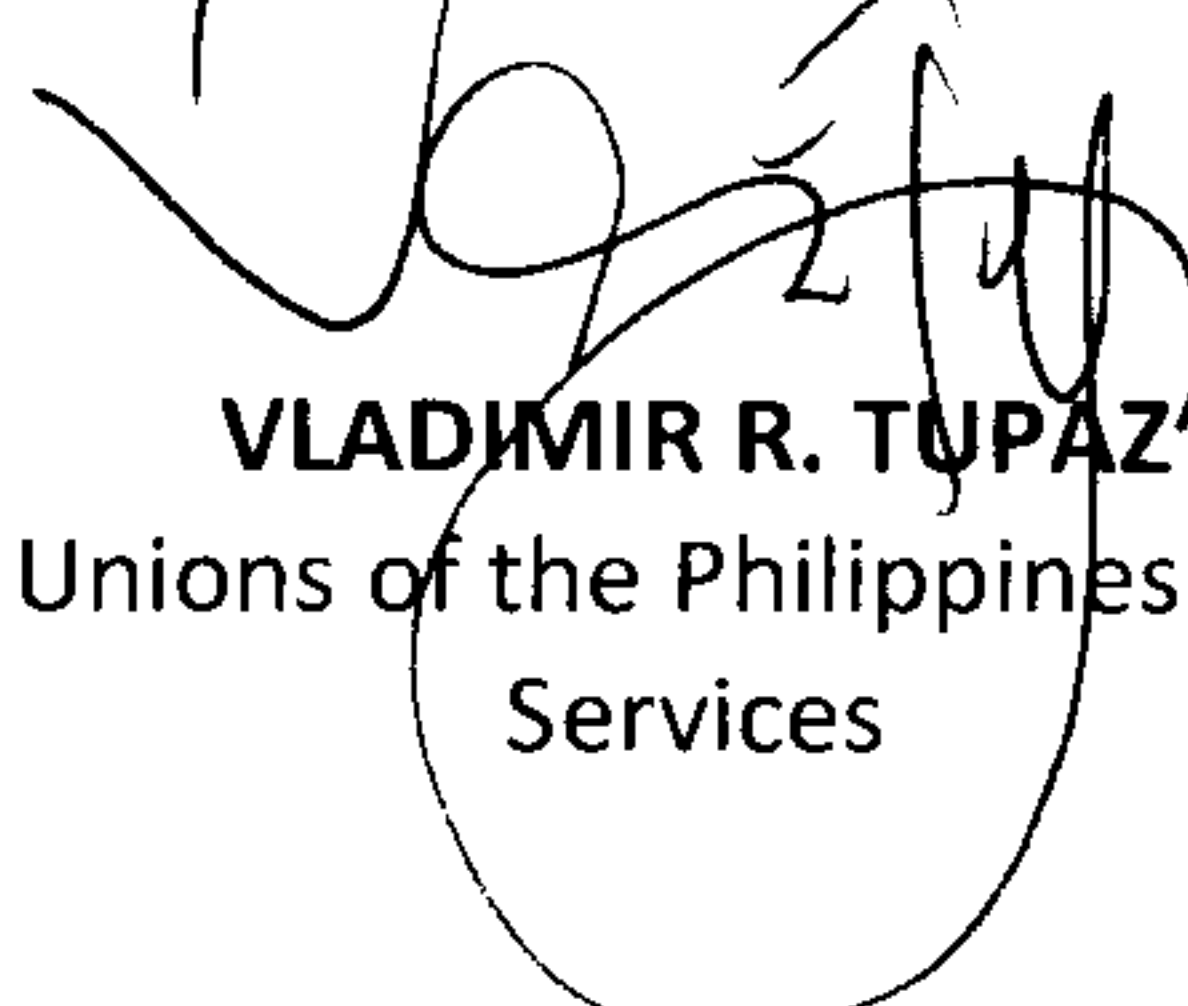

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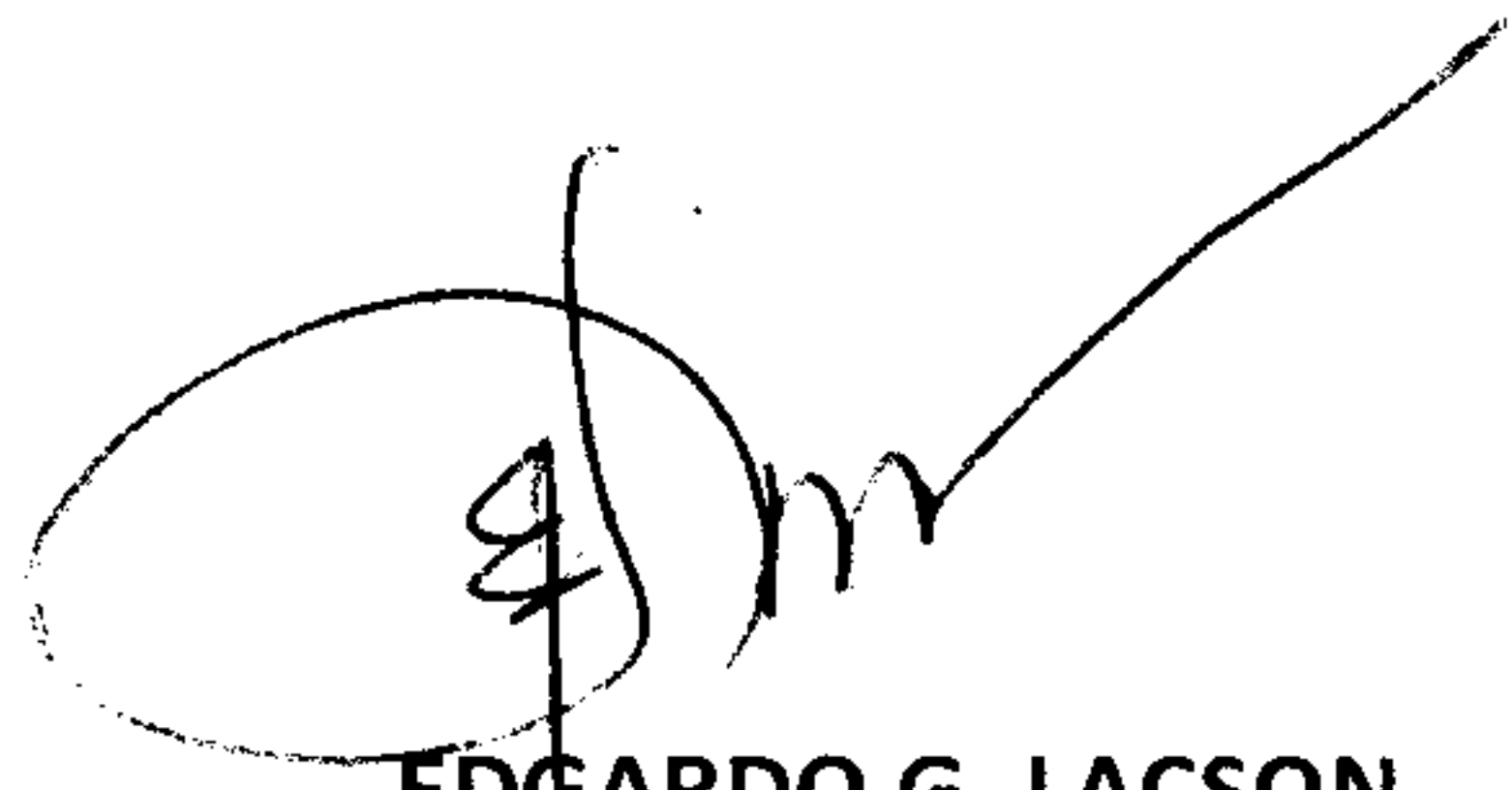

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National Union of Bank Employees


GREGORIO C. DEL PRADO
Alliance of Independent Hotels and Restaurant
Workers Union



VLADIMIR R. TUPAZ
Trade Unions of the Philippines and Allied
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Employers Confederation of the Philippines

EDUARDO T. RONDAIN
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RENE E. CRISTOBAL
Employers Confederation of the Philippines


ANTON L. SAYO
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GOVERNMENT SECTOR



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