

**Tripartite Industrial Peace Council
and Tripartite Executive Committee Labor Sector**

JOINT RESOLUTION NO. 03
Series of 2013

***“Calling on the Office of the Solicitor General to Make Manifestation before the
Supreme Court on the Dusit Case”***

WHEREAS, the State recognizes labor as a primary social economic force hence, it endeavors to protect the rights of workers and promote their welfare;

WHEREAS, the promotion and protection of the rights of workers are vital in achieving inclusive growth through decent work;

WHEREAS, it is the policy of the State to adopt the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations;

WHEREAS, the Philippine Government is a signatory to the eight (8) ILO Core Conventions:

- a) The rights to form or join trade unions and workers' organizations of one's choosing and without distinction whatsoever and the promotion of the rights to organize and the right to free collective bargaining with management (C87 on Freedom of Association and Protection of the Right to Organize; C98 on Collective Bargaining)
- b) Freedom from forced and bonded labor, involuntary servitude, slavery or slave-like conditions at work (C29 on Forced Labor; C105 on Abolition of Forced Labor)
- c) Freedom from discrimination at work, including getting equal pay for work of equal value (C100 on Equal Remuneration; C111 on Discrimination [Employment and Occupation])
- d) Elimination of the worst forms of child labor (C138 on Minimum Age for Employment; C182 on Worst Forms of Child Labor)

WHEREAS, one of the issues and challenges faced by workers in the Philippines in the enjoyment of these fundamental rights, particularly with respect to freedom of association and collective bargaining, is the need to strengthen compliance with these constitutionally protected rights as reports or complaints of violations thereof are starting to have repercussions to the country's compliance to international commitments;

WHEREAS, a specific example is the complaint brought before the ILO involving Dusit Hotel Nikko docketed as ILO Case No. 2716, where the termination of 90 NUWHRAIN-Dusit Hotel Nikko Chapter officers and members who shaved or

cropped their hair was by the Second Division of the Supreme Court in the consolidated cases *National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAIN-APL-IUF) Dusit Hotel Nikko Chapter versus The Honorable Court of Appeals (Former Eight Division), et. al.*, docketed as G.R. No. 163942, and *NUWHRAIN-Dusit Hotel Nikko Chapter versus Secretary of Labor and Employment and Philippine Hoteliers, Inc.*, docketed as G.R. No. 166295, promulgated on 11 November 2008;

WHEREAS, settled jurisprudence enunciated by the Supreme Court either en banc or in a division states that:

- a) That a strike could only be launched by work stoppage or work slowdown – both only through the acts of the workers themselves.
- b) Peaceful protest actions that do not constitute work stoppage, such as wearing of armbands, are protected acts under the constitutional right to freedom of expression.

WHEREAS, the Decision of the 2nd Division in the aforementioned case expanded the legal definition of strike to include peaceful modes of speech or expression which is a blatant violation of Article 8 (2) of ILO Convention No. 87;

WHEREAS, in its 358th Report, the ILO's Committee on Freedom of Association noted that equating a mere expression of discontent, peacefully and lawfully exercised with strike per se results in a violation of freedom of association and expression. Considering that the Court's judgment is contrary to the principles of freedom of association, the Committee requests the Government, within the context of the exploratory talks, to review with the hotel management and the dismissed workers concerned the feasibility of their reinstatement;

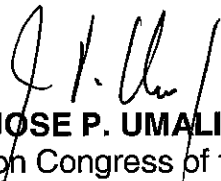
WHEREAS, the Decision of the Second Division is now being used as basis of Court decisions in similar labor cases;

WHEREAS, the Constitution provides that only the Court En Banc can reverse or modify doctrines of law enunciated by the Court either in a division or en banc;

NOW THEREFORE, BE IT RESOLVED, AS WE HEREBY RESOLVE, that we, the National Tripartite Industrial Peace Council (NTIPC), reconstituted through Executive Order No. 49, series of 1998, as amended, and duly constituted as the High Level Tripartite Monitoring Body on the Application of International Labor Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organize pursuant to TIPC Resolution No. 1, series of 2010, calls on the Office of the Solicitor General, as the people's tribune or advocate, to make the necessary intervention for the Supreme Court to take cognizance of the ILO recommendation and review En Banc the Decision of the Second Division.

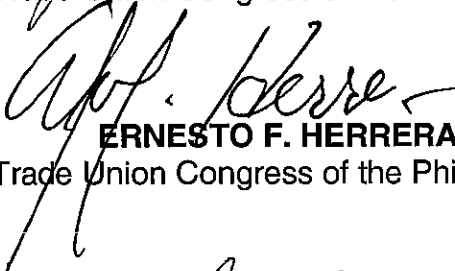
APPROVED this 9th day of May 2013, at Occupational Safety and Health Center, Diliman, Quezon City.



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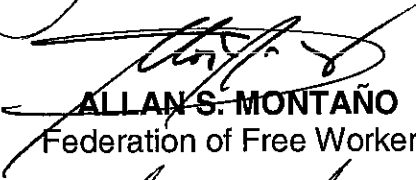

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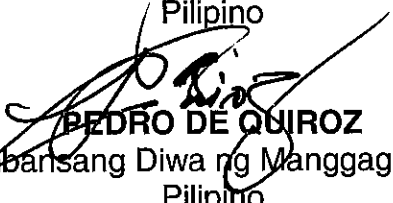

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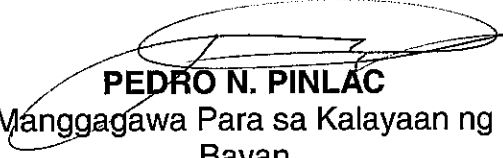

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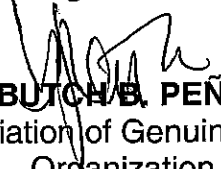

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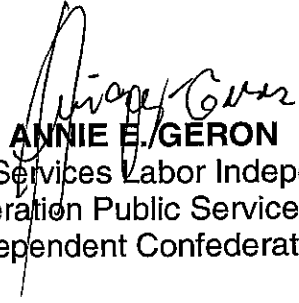

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