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25 May 2011

Hon. Emil Ong
Chairperson
Committee on Labor and Employment
House of Representatives
Batasan Complex,
Quezon City

Re: CTUHR Position Paper on PAL Outsourcing and Retrenchment

Dear Chairperson Ong,

Thank you very much for inviting the Center for Trade Union and Human Rights (CTUHR) to participate in the committee hearing on the deliberation on measures seeking to inquire on issues involving the Philippine Airlines and its employees.

It was unfortunate that I had prior commitments and thus unable to attend. However, we would very much like to participate in whatever deliberation or decision making process that the members of honourable committee will be holding and thus, we are submitting the attached position paper. Our sincerest apology for the delay of this submission, and we are appealing for consideration

The predicament of PAL employees impacts not only on the workers' of the country's flag carrier but all other workers who have been affected by increasing trend of outsourcing and flexibilization in the country.

We trust and pray that points and arguments contained herein will merit the committee's consideration.

Sincerely yours,

Daisy S. Arago
Executive Director

POSITION PAPER

of Center for Trade Union and Human Rights

ON THE PHILIPPINE AIRLINES' (PAL) PLAN TO OUTSOURCE ITS FUNCTIONS AND RETRENCH 2,600 OF ITS EMPLOYEES AND SUBSEQUENT DECISION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT'S (DOLE) UPHOLDING THE PLAN

The Center for Trade Union and Human Rights brings to the consideration of this honorable committee two major concerns: 1) why DOLE's decision upholding PAL's outsourcing plan need to be reversed and 2) how outsourcing could be detrimental to workers rights and welfare in the long run, 3) review of policy and practice of selling government corporations to private sector under the pretext of achieving efficiency, competitiveness and profitability

I. The PAL's outsourcing plan and DOLE's decision upholding the plan as a management prerogative will adversely affect workers and the trade union organizations in the country, thus need to be reversed.

1.1 It will deprive the 2,600 regular workers who have served the company well for many years their employment and right to security of tenure.

The Philippine Constitution guarantees the workers' right to security of tenure. Article 13 Section 3 specifically reads:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. ***They shall be entitled to security of tenure***, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.” (*emphasis supplied*)

The right to security of tenure is a basic human right as enshrined in the Universal Declaration of Human Rights (UDHR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) for which the Philippines is a signatory.

The workers and the unions (PALEA, FASAP) supported by major trade union centers in the country have consistently opposed the plan even with the so-called economic package for the affected workers brokered by the Department of Labor and Employment. The opposition and protests have not without bases and CTUHR adds its voice in opposing the plan for it directly violates the workers' rights.

PAL is not loosing despite its claims. It was the same claim that it used in 1998 to retrench workers (cabin crews and flight attendants) and freeze the collective bargaining agreement for 10years –a move that was assailed by the public for being unconstitutional and later PAL was declared by the court in 2007 as GUILTY of illegal dismissal and was ordered to reinstate all 1,400 dismissed employees. ¹.

At the time, while claiming losses and retrenching workers, PAL had increased its flights instead of reducing it, as originally invoked as reasons for retrenchment. At the same time, it started hiring casual employees. Today in order to justify the mass dismissals of regular workers PAL is again crying losses while starting the outsourcing process of some of its key functions. Like in the years previous, it is not difficult to see that the move is discriminatory and calculated to rid the company of its regular workers who had spent half of their lives in the company and to replace them with relatively low-paid contract workers.

CTUHR agrees with the workers that the plan will not only deprive them of their jobs but will definitely deprive them of their locally and internationally accepted rights to security of tenure.

What is more worrisome than the PAL plan itself however, is the DOLE decision (October 29,2010) to uphold the company’s plan of outsourcing as a just, humane and lawful exercise of its management prerogative to reorganize the corporate structure for the purposes of viability of its operations, subject to the entitlement of affected employees to transition guarantees and benefits.” Even with the benefits recommendations, DOLE boldly displays both an utter disregard to workers’ constitutionally guaranteed right to security of tenure and crystal clear bias for businesses and capital. DOLE decision deprives the workers of government protection in face of capital abuses and exploitation.

The retrenchment plan will cause the the lay-offs of PAL employees in three of its ground departments namely in-flight catering, airport services and call center reservation,

1.2 DOLE’s decision sets a dangerous precedent that will widely open the floodgate for already intensified work flexibilization and massive retrenchment engendered by outsourcing and reorganizing corporate structure, all in the name of “management prerogative”

¹ G.R. No. 178083- FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), vs PHILIPPINE AIRLINES, INC., PATRIA CHIONG and COURT OF APPEALS,

Massive contractualization and work flexibilization is a serious and deepening problem for the labor sector not only the Philippines but in the whole world. Ever since the Philippines became party to the World Trade Organization in 1995, contractual and flexible work became more and more rampant in almost all industries. As a result, the workers right to job security, economic benefits and right to form unions have been severely jeopardized.

DOLE's decision allowing retrenchment as a result of outsourcing in order to make PAL's operations more "viable" if not more profitable has given another legal weapon for capitalists to follow suit. It must be noted that even with the absence of such precedence, companies had been testing and continue to test the limits of the law by effecting retrenchments under the guise of financial crisis and corporate restructuring. This is alarming as CTUHR study in economic zones in CALABARZON for instance, 3 out of 5 workers are in flexible type of employment arrangements. This employment has eroded wages and benefits. For example, contractual workers are paid 17-43% lower than their counterpart regular workers but work much longer.

1.3. The impending retrenchment is also tantamount to union busting, as it will virtually eradicate the ground crew union in PAL.

Seventy percent of union membership (PALEA) and 60 percent of union leaderships will be directly hit by retrenchment. This will seriously violate the workers rights to freedom of association as it will not only weaken but eliminate the union in the company. The outsourced departments are also said to employ or re-employ previous workers but on a contractual basis. This alone reinforces suspicions that company is really aiming at eliminating the regular workers and the union who had unceasingly fought hard to protect the welfare of PAL employees. Contractual workers are practically not allowed to join unions, lest they risk losing their jobs.

2) On the issue of Sec. Baldoz assuming jurisdiction over PAL Employee's Association's (PALEA) and Flight Attendants and Stewards Association of the Philippines' (FASAP) notice of strike (NOS),

CTUHR maintains its position that Assumption of Jurisdiction power of the Secretary of Labor (Art 263g of the Labor Code) directly violates the workers rights to freedom of association which include the right to strike, thus call for its repeal.

The workers right to freedom of association, including the right to collectively bargain and to strike is guaranteed by the 1987 Philippine Constitution. It is also guaranteed under ILO Conventions 87 and 98, to which the Philippines is a signatory. The President Aquino administration labour and employment policy and program agenda reiterates its government commitment to making the laws and practices compliant to ILO conventions and other international standards.

Sec Rosalinda Baldoz decision to assume jurisdiction over PALEA's and FASAP's notices of strikes contravenes these rights and commitment and bodes ill in strengthening the unions bargaining position with the PAL management.

Sec. Baldoz reasoned out that aside from PAL being a strategic industry, a strike at the country's flag carrier will be detrimental to the country's image thus a prompting her assume jurisdiction over the notices of strikes filed by FASAP and PALEA.

Image over public and workers' interest is absolutely a weak argument to stop a unions' right to strike. Thus, without mentioning previous and more arbitrary arguments DOLE Secretaries had invoked to justify AJ orders, the AJ clause in the Labor Code need to be repealed as it gives blanket authority to the Secretary of Labor (*in the opinion of*) to effectively curtail the rights of the workers to launch strike, if in his/her opinion the enterprise concerned is indispensable to the national interest. Who could question an opinion of an individual?

3) The predicament of PAL employees is a wake-up call how easy for the government to sacrifice the security and welfare of the workers, that is bound to protect -- in favour of businesses

In times of crisis, real or imagined, or capitalists' fiscal position is "in danger" and profits dwindling, workers get the axe first. In decision that will affect the economy such as the ending the possibility of strike at PAL for instance, the workers' security and welfare are not factored in. At least to strike a balance between the rights of the people and the interest of businesses, the State are expected to favour those who have less in life, by having more in law, and failure to do so may render any 'economic development policy and program' meaningless.

In PAL's case, CTUHR reiterates that the government through DOLE decision upholding retrenchment as legitimate management prerogative has failed in this obligation.

In addition, and which is also CTUHR number three issue it wants to raise is the need to review of privatization policy that government had relentlessly pursued and pursuing.

The privatization of PAL is a case in point. The airline, the oldest in Asia and the country's flag carrier was privatized under the pretext that private sector could better manage it and could ensure efficiency and profitability. PAL has proven this premise wrong. In mid-1990s, PAL's financial position hit a snag and government spent millions to bail it out through the airline rehabilitation program. More than 10 years later, PAL kept crying losses and risk of non-viability. Whether or not there is truth in PAL's allegations of losses, what is clear here is that workers, the public and to certain extent the government become hostage of managements whims and caprices, and can even count on public funds to finance its interests, when need arises.

Thus, PAL's case should prompt the government to rethink its policy framework of privatization, PAL only shows that handing over of public utilities or corporations to private entities often results to losses on the government side and the general public.

Eof

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