

Call for Relationship Reform

A winning entry in the SWEAP Essay Writing Contest by:

JEDDAH MARIE O. JAVIER

DPEO – NUEVA ECIJA

SOCIAL WELFARE ASSISTANT – MOA

“Improve working conditions, render to labor what is justly due to labor, and thereby give people security, comfort and leisure. Then believe me, they will educate themselves; they will create a larger, saner, higher civilization than this.” This pretty much sums up what the government needs to understand about labor issues in the Philippines, particularly ones that affect workers without security of tenure, and Mikhail Bakunin, a Russian social anarchist, could not have said it better.

My mother started working at the age of 19 and stayed with the same company for more than 20 years. She even had a ring with 25 years engraved on it, in honor of her service to the company. Her monthly salary put us through school, she gets to spend time with us in the province (she works in Manila) because of paid vacation leaves and the company paid medical expenses is one less worry for someone who has three kids to support. No, my mother does not hold a managerial position, but she enjoys the same benefits as any other worker. Given these terms, who would not want to start seeking employment after graduation, right? But times are different now because the benefits one can be entitled to as a worker depends on whether you are bound by a contract or by a Memorandum of Agreement. With the unemployment rate constantly on the rise, being hired and getting paid regardless of status, is all that matters, right? Wrong. Contractual workers still want to have security of tenure despite being able to enjoy all the perks of being part of whoever hired them. More important than the bonuses and paid leaves, they are recognized as part of the

institutions they are working for. A worker who enters into a Memorandum of Agreement, on the other hand, has to sign a paper which includes a "No Employer- Employee Relationship" clause.

Based on an article in lilkuya.com, even in the absence of an actual contract, an employer-employee relationship can still be established through a four- fold test, which includes the selection and engagement of the employee, the payment of wages, the power of dismissal and the employer's power to control the employee on the means and methods by which the work is accomplished. Relevant and competent evidence such as Identification Cards, Appointment Letters, Payrolls, Organization Charts, Personnel List and Social Security Registration may be considered to establish such a relationship. With the test being used in Philippine courts, those who drafted the MOA for workers like us, are well aware that the clause can be contested. However, they are also very much aware that those they hired are less likely to read in full the terms of their engagement, which means they can deny the workers what is due them. And even if they read the contract in full, it is not in the nature of the Filipino worker to question his potential source of income. The Identification Card with Employee Number issued to every MOA worker of the DSWD is already proof that an employer- employee relationship exists.

According to the same article, in order to determine the presence or absence of an employer employee relationship, a control test has to be done. Under this test, the relationship is said to exist where the person for whom the services are performed reserves the right to control not only the end result but also the manner and means utilized to achieve the same. Every month, MOA workers in the Pantawid Program are required to submit a monthly action plan and a travel order subject to the approval of the director for operations. Expenses incurred on travels made which were not included in

the approved order will not be honored for reimbursement.

Being aware of the No Employer- Employee Relationship clause, I once asked my immediate supervisor if I can just work at home since I will only be encoding. The documents I will be submitting will be proof of a day's work. As expected, she said no, since we are required to report to our area of assignment to be considered present for that day, as per terms set by the DSWD. With that said, it is obvious who has control over how the task of a worker bound by a MOA should be carried out. Lawsuits arising from this clause are not due to infractions in the completion of tasks but due to sudden termination of the service provider/ worker. Employer to whom the Employee has no relationship, more often than not also has full control of the termination process. A worker who has lost confidence in the entity he/ she is giving services to cannot just declare that he/ she has had enough and do not report to work the following day. All hell will break loose as the egos of the powers that be gets trampled on by a worker to whom they do not have a relationship with. Workers simply do not call the shots, especially in a culture that still believes in not biting the hand of the one that feeds, even if the food happens to be poisoned.

Before the 1989 amendment to the Labor Code, workers' unions were very much alive. My mother was an active union member she would participate in actions denouncing labor injustice in the company she works for. Dialogues between labor union leaders and company heads would be lengthy but in the end an agreement would be reached and the employees go back to work because their side was heard. With the advent of contractual labor, including those JO/MOA and COS employment status, the unions slowly disappeared giving the upper hand to the people who holds the payroll, the voice of the working class suppressed for fear of losing their jobs. The employer's refusal to recognize its relationship with its MOA- bound worker can be detrimental to the quality of the latter's work. Without the

employer seeing you as an equal, a partner, you would always feel that your work will only be credited to your employer. Others will be quick to say why not use that clause to your own advantage by being excellent at your job and eventually be noticed by your employer. Doing this would take away your natural passion for whatever you are doing. Trying too hard to make a good impression can sometimes be disastrous for it can often lead to situations that go beyond the boundaries of ethical behavior.

Given my obvious disdain for the clause in question, why am I still working for the department, bound by the same MOA for the past three years? After asking when my status will change in 2016 and only got be patient, we are working on it, I have recommended you already, oops there were new guidelines, we have to wait again, I decided to let it lie for a while. I am not giving up, but the frustration can sometimes just suck the energy out of you. You vent to people you thought would understand your frustration only to end up being ostracized for speaking your truth. I will let the activist in me rest for a bit and watch in silence how things will pan out. The No Employer- Employee Relationship clause can easily be ignored by those only seeking to get paid for a day's work.

However, it would be wise to keep the premise of this piece in mind. Man's desire for learning in order to better himself is influenced by how people around him value what he does. A worker who gets paid what is due him, will be inspired to do better. But doing better would not mean being a slave to work. The security that he will not lose his job will afford him the luxury of taking time out for himself and enjoy being with his family. With terms and working conditions that would benefit both the worker and the employer, labor disputes will be avoided, resulting in increased productivity that would mean more profit for the company. And the increase of profit would afford the company to give workers the wage they deserve. If the whole cycle is repeated, it will eventually become the

norm. Over reaching? Probably, but it is possible, especially if politicking does not get into the picture. A simple clause cannot be taken as it is because a lot of factors can come into play. True reforms in labor that would not dictate wages and benefits based employment status needs to be done soon.

The only way for reforms to happen is for workers to stand their ground in their call to end contractual labor and to stand their ground to call for better terms for MOA, COS and JO workers. Mikhail Bakunin's social anarchy ideology was triggered by the widespread labor injustices during his time. The Philippines has weathered labor issues for years but has labor leaders have chosen the lesser radical means of making their voices heard and that is still how things needs to be done as worker call for reform.

