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The PALEA struggle against outsourcing and contractualization in the airline industry in the Philippines

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The Palea struggle against outsourcing and contractualization in the airline industry in the Philippines

Ramon A. Certeza

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THE PALEA STRUGGLE AGAINST OUTSOURCING AND CONTRACTUALIZATION IN THE AIRLINE INDUSTRY IN THE PHILIPPINES

Ramon A. Certeza

This case study is part of the Global Labour University research project on the role of trade unions in curbing precarious informal employment. The project was implemented in 2014 and included 10 case studies from nine countries. The project's integrative report "From 'precarious informal employment' to 'protected employment': The 'positive transitioning effect' of trade unions", which is co-authored by Melisa R. Serrano and Edlira Xhafa, can be found at: http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.42.pdf

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ABSTRACT

The paper tells the story of the drawn-out struggle of the Philippine Airlines Employees Association (PALEA) to reverse the trend of outsourcing in the Philippine Airlines (PAL). It highlights the fight-back strategies adopted by PALEA in its attempt to stop the contractualization of labour in the airline industry.

Through a combination of traditional and innovative strategies, including a well-planned and coordinated national campaign that involved different sectors of Philippines society, trade unions from other countries, and international trade union support organizations, PALEA was able to achieve initial victories. Nonetheless, the company continues its practice of outsourcing with detrimental effects on workers' job security.

The PALEA struggle provides inspiration and valuable lessons that, despite an uphill battle against a giant airline company, workers' determination to fight for their rights can provide a strong resistance against corporate power.



TABLE OF CONTENTS

INTRODUCTION.....	1
1. NON-STANDARD EMPLOYMENT IN THE PHILIPPINES: AN OVERVIEW.....	2
2. THE INCIDENCE OF NON-STANDARD EMPLOYMENT IN THE PHILIPPINES.....	3
3. THE LEGAL AND REGULATORY FRAMEWORK ON NON-STANDARD EMPLOYMENT.....	4
4. PAL’S MOVE TOWARDS OUTSOURCING AND ‘CONTRACTUALIZATION’.....	6
5. PALEA’S LONG, UPHILL LEGAL BATTLE AGAINST OUTSOURCING AT PAL.....	10
6. PALEA’S FIGHT-BACK STRATEGIES AGAINST OUTSOURCING AND ‘CONTRACTUALIZATION’.....	13
6.1 Combining traditional and modern strategies.....	13
6.2 Organizing and rallying national and global solidarity.....	14
6.3 Using social media in the campaign.....	15
6.4 Building alliances with and gaining support from other groups.....	15
7. FACILITATING AND CONSTRAINING FACTORS IN PALEA’S FIGHT AGAINST OUTSOURCING.....	16
8. INITIAL OUTCOMES.....	17
9. LESSONS AND INSIGHTS.....	19
REFERENCES.....	21
LIST OF TABLES	
Table 1: Employee Distribution by Department and Units.....	7

INTRODUCTION

The Philippine government's liberalization policy with regard to the domestic and international civil aviation industry, enacted through the passage of Executive Order 219 in 1995, and coupled with an absence of complementary policies such as industrial and competition policy, has a detrimental effect not only on the airline industry but also on aviation workers. The landmark civil aviation reform provides an opening for new players in the airline industry, to which the Philippine Airlines (PAL), the lone flag carrier for two decades before the reform was instituted, was envisioned to respond by delivering efficient services and providing greater competition (Austria, 2001).

However, competing by improving its services and cost-efficiency is far from what the privatized PAL had in mind. The airline had been operating in the red for years due to failing to maximize its potential in the unregulated sector and maintaining its monopoly status, and in response to the reform, PAL decided instead to cut back its regular workforce.

In 2010, more than 2,000 regular workers and union members were about to lose their jobs as PAL management announced its outsourcing scheme designed to lay off regular workers and re-hire those who are willing, albeit under contractual employment status via a third-party contractor.

The intense campaign waged by the Philippine Airlines Employees Association (PALEA) served as a starting point in contesting corporate restructuring designed to shift the regular standard employment status of its workers to non-standard contractual status in the name of competition. This scheme would effectively informalize the already formal and regular standard employment status of PAL workers.

This kind of scheme is not new, and is still happening around the country in various forms and intensities, and in every sector of the economy. For the past decades, informality has grown in numbers even in the formal sector.

This article documents and analyzes the on-going struggle of PALEA against outsourcing and 'contractualization'—the repeated hiring of workers on short-term contracts—to evade their regularization, in the airline industry in the Philippines.

1. NON-STANDARD EMPLOYMENT IN THE PHILIPPINES: AN OVERVIEW

The Labor Code of the Philippines recognizes several categories of workers, but the general distinction is between regular and non-regular workers. Two features define regular employment in the country—first, the nature of the work performed, and second, the duration of employment. One is considered a regular worker if one performs activities that are necessary and desirable in the usual business or trade of the employer, or if one has had a total of at least a year's service, whether such service was continuously rendered or not. An employee can therefore be considered 'regular' based on either or both of these parameters (Serrano, 2014)

Informal employment, meanwhile, comprises the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households (ICLS, 2003). Informal employment includes the following types of jobs:

- own-account workers employed in their own informal sector enterprises;
- employers employed in their own informal sector enterprises;
- contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- members of informal producers' cooperatives;
- employees holding informal jobs in formal sector enterprises, informal sector enterprises, or as paid domestic workers employed by households;
- own-account workers engaged in the production of goods exclusively for own final use by their household, if considered employed.

In formal enterprises, workers on informal employment arrangements—also referred to as non-regular workers—are workers who are hired on a non-permanent status and thus are without security of tenure, and are excluded from receiving non-wage benefits. In the Philippines, these workers are categorized as follows (PSA, 2012):

- Probationary Workers - workers on trial period, during which the employer determines their fitness to qualify for regular employment based on reasonable standards made known to them at the time of engagement;
- Casual Workers - workers whose work is not usually necessary and desirable to the usual business or trade of the employer. Their employment is not for a specific undertaking or seasonal in nature;
- Contractual/Project-based Workers - workers whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement. Agency-hired workers are excluded.

- Seasonal Workers - workers whose employment, specifically its timing and duration, is significantly influenced by seasonal factors; and
- Apprentices/Learners - workers who are covered by written apprenticeship/learnership agreements with individual employers or any of the entities, with duly recognized programs. Apprentices without compensation are excluded.

Non-standard employment in the Philippines is also referred to colloquially as '*endo*' (i.e., end of contract) or '*555*', referring to workers who work on a contract of no longer than five months before he or she is fired and then rehired again for another five-month contract and so on. This puts workers at a disadvantage as it diminishes their chances of being employed regularly.

For unions, non-standard employment falls under the category of precarious work wherein workers in atypical and non-regular jobs are commonly employed by companies in an attempt to replace their full-time workforces with temporary, part-time, agency and on-call workers.

2. THE INCIDENCE OF NON-STANDARD EMPLOYMENT IN THE PHILIPPINES

According to the Bureau of Labor and Employment Statistics (BLES, 2012), non-regular workers in establishments with at least 20 workers numbered at 1.149 million as of the payroll period June 30, 2012. This group of workers represents less than a third (30.5%) of the total establishment workforce of 3.769 million.

Contractual or project-based workers were the largest sub-group of non-regular workers. They represent more than one-half (52.3% or 600,764) of the total non-regular employment. Probationary workers ranked second at 22.7 percent (260,260), followed by casual workers at 17.6 percent (202,472). Seasonal workers and apprentices/learners were the less conspicuous forms of non-regular employment—their combined share against the total non-regular employment was less than 10 percent (7.4% or 85,068). Unfortunately, gender disaggregated data is not yet available; however, women are more visible in this type of employment.

In terms of sectoral distribution and type of non-regular employment the PSA 2012 Statistics on Non-Regular Workers revealed the following:

- Establishments engaged in administrative and support service activities were the biggest employers of non-regular workers at 299,089 (26%) of the total non-regular employment. The business process outsourcing (BPO) industry, including call centers and related activities, posted the second biggest proportion at 39 percent of non-regular workers of the industry's total workforce. Workers employed were mainly contractual/project-based workers (67% or 199,990) and probationary workers (25% or 73,455).

- The manufacturing industry ranked a close second at 274,014 (24%), which represents 29.7 percent of the total industry workforce. The categories of workers employed in this sub-sector were mostly contractual/project-based workers (42.2% or 115,704) and casual workers (29.3% or 80,179). Nearly 70 percent (20,136) of apprentices/learners across all industries were engaged in manufacturing.
- The construction industry placed third in terms of its share of the total non-regular workers at 133,582 (11.6%). It stood out as the industry with the biggest proportion (71.4%) of non-regular workers in its workforce—the bulk of which (89% or 118,558) were hired as contractual or project-based workers.
- The wholesale and retail trade industry posted the fourth largest number of non-regular workers at 109,005 (9.5%). Casual workers accounted for the biggest proportion (35% or 38,371), followed by contractual/project-based workers (25% or 27,450) and probationary workers (24% or 25,685). Wholesale and retail trade is also the second biggest employer of seasonal workers at 16,206 (29%), next to agriculture, forestry and fisheries, 21,813 (39%).
- The industries with the lowest proportion of non-regular workers were financial and insurance activities at 13,133 (7.6%); electricity, gas, steam and air conditioning supply, 5,978 (8%); human health and social work activities, 15,222 (13%); and 10.4 percent of the estimated 23,723 establishments in 2010 resorted to outsourcing or contracting out jobs and services outside their premises.

3. THE LEGAL AND REGULATORY FRAMEWORK ON NON-STANDARD EMPLOYMENT

The Philippine Labor Code governs the work relationship between an employer and his/her employees. The Code covers all workers in the formal sector, including the non-regular workers. Thus, non-regular workers should also enjoy rights and benefits including but not limited to (DOLE, 2011):

- (a) Safe and healthful working conditions;
- (b) Labor standards such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay as may be provided in the Service Agreement or under the Labor Code;
- (c) Retirement benefits under the Social Security System (SSS) or retirement plans of the contractor, if there is any;
- (d) Social security and welfare benefits;

(e) Self-organization, collective bargaining and peaceful concerted activities; and

(f) Security of tenure.

Department Order No. 18-A, s. 2011, issued by the Department of Labor and Employment (DOLE), provides clear-cut policies on the contracting and subcontracting provisions under the Labor Code. It legitimizes subcontracting with specific guidelines, including a capitalization requirement for subcontractors of three million pesos, capacity to pay the wages and benefits of workers, prohibition on subcontractor/s' engaging in certain activities, and observation of the rights of workers. This department order was primarily conceived as an improvement from the previous order; it included strict regulations on contracting and sub-contracting arrangements, and a clearly stated prohibition on labor-only contracting.

Labor-only contracting, as defined under Article 106 of the Labor Code, is a contracting arrangement wherein “the person supplying workers to an employer does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities, which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely an agent of the employer, who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him”. In the said issuance, three parties are involved—the principal, the subcontractor, and the employees. An employee under the Department Order 18-A, whether deployed or assigned as a reliever, seasonal, week-ender, temporary or promo jobber, is entitled to all rights of an employee as indicated in the Labor Code, such as safe and healthy working conditions, service incentive leaves, rest days, overtime and holidays pays, 13th month and separation pays, social security and welfare benefits, security of tenure, and the right to self-organization, collective bargaining and peaceful concerted activities. The department order also carried a provision obligating a user enterprise to provide the duly-recognized union a copy of its service agreement and the employment contract of the contractor's employees.

On 16 March 2017, the Labour Secretary issued a new administrative regulation, Department Order 174 which replaced Department Order 18-A. This new regulation came in the heels of sustained campaigns and protest actions organized by trade unions, notably PALEA, to put a stop to ‘contractualization’. The new regulation sets stricter guidelines on contracting and subcontracting, particularly the use of temporary agency work. The new regulation also increased the capital requirement of agencies (from 3 million to five million pesos), reduced the validity of the certificate of registration of contractors (from three years to four years), and increased the registration fee of contractors (from 25,000 to 100,000 pesos). The new regulation reiterates most of the prohibited practices enumerated in Department Order 18-A and adds other prohibited practices.

4. PAL'S MOVE TOWARDS OUTSOURCING AND 'CONTRACTUALIZATION'

The Philippine Airlines (PAL) is the pioneering airline in the country and considered one of the oldest airlines in Asia. It was incorporated in 1941 by a group of businessmen led by top Filipino industrialist Andres Soriano. For more than five decades, ownership of the airline swung back and forth between private to government to private. Public holding at PAL started back in 1941 when the Philippine government invested in the airline, paving the way for its nationalization. Then after a series of ownership changes, PAL was re-acquired once again by the government in 1977, when the Government Service Insurance System (GSIS) acquired 92 percent of PAL shares from its majority private owner, Benigno Toda. PAL was eventually privatized in 1992 when it was purchased by the group of Antonio "Tonyboy" Cojuangco. The group embarked on a re-fleeting program, which led to internal corporate squabbling, with the Lucio Tan group eventually emerging as the majority stockholder sometime in 1994. PAL later became a prize catch for Filipino-Chinese business tycoon Lucio Tan in 1995 when he became its Chairman and CEO,¹ earning him the moniker "El Capitan" for his knack for navigating his business through rough seas and tough times.

PAL is the national carrier of the Philippines, with hubs at the Ninoy Aquino International Airport in Manila and the Mactan-Cebu International Airport. The airline operates a network of services within the Philippines as well throughout Asia, North America, Australia, and the Pacific. Currently, PAL flies only to London at the London Heathrow Airport (LHR), its sole European destination. The commercial airlines serving as its main competition in the domestic market are Tiger Air-Cebu Pacific, Air Asia, and South East Asian Airlines.

The employees in PAL have a long history of unionization, beginning in 1946 when the Philippine Airlines Employees Association (PALEA) was formed. PALEA membership initially covered all regular ground personnel at PAL, composed of airport crew, catering, cargo, reservation, ticketing, finance, human resource and support groups. Thereafter successive increases in membership ensued, attributed partly to the passage of Republic Act 875 in 1953, thus protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining, in accordance with state policy.² PALEA then managed to negotiate for a closed-shop union provision in their CBA that required union membership to all regular workers PALEA successfully introduced organizational reforms such as affiliation to the Trade Union Congress of the Philippines (TUCP) and to the International Transport Workers Federation (ITF). There were two other

¹ PAL Milestones. Available at: <http://www.philippineairlines.com/about-pal/milestones/> [Accessed 8 January 2015].

² Republic Act No. 875 (Act to Promote Industrial Peace and for Other Purposes) is a law that encourages and protects the exercise of the employees of their right to self-organization for the purpose of collective bargaining as a means to promote fair industrial disputes. This law was repealed with the passage of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines.

unions at PAL: the Flight Attendants and Stewards Association of the Philippines (FASAP), and the Airline Pilots Association of the Philippines (ALPAP). The former managed to survive internal battles with the management, but the latter union was effectively busted when most of their 600 members were terminated in a strike held in 1998.³

By October 2011, PAL employed over 7,000 workers spread across its five main departments (Table 1).

Table 1: Employee Distribution by Department and Units

	Total
Office of the Chairman & CEO	10
Office of the Deputy CEO	3
Total	13
Office of the President & COO	
Office of the President & COO	8
Office of the SVP-Gen Counsel/Corporate Secretary	3
Legal Affairs	14
Human Resources	205
Safety, Security & Environment	40
Corporate Communications	6
Corporate Audit	28
Information Systems	249
Airworthiness Management	17
Total	572
Commercial Group	
CEVP – Commercial Group	1
Market Research and Development	2
Sales (reservation, call center)	1,186
Revenue Management	59
Planning	9
External Affairs	15
Corporate E-Business	15
Advertising & Promotions	8
Marketing Support	83
Total	1,378
Finance Group	
OSVP –Finance & CFO	5
Risk & Insurance Management	6
Financial Services	274
Treasury	215
Corporate Finance	5
Fuel Management	48
Corporate Logistics & Services	195
Finance Automation Support Team	20
Total	768

³ Liden and Reyes (1998).

Operations Group	
OSVP – Operations Group	32
Airport Services	1,968
Aircraft Engineering	72
Catering Services	433
Cabin Services	1,646
Flight Operations	606
Total	4,757
GRAND TOTAL	7,475

Troubled operations, outsourcing and labour disputes

PAL operations have had its ups and downs caused by internal and external factors that affected their employees. On June 15, 1998, PAL retrenched 5,000 of its employees, including more than 1,400 flight attendants and stewards, allegedly to reduce costs and alleviate the financial downturn in the airline industry caused by the Asian financial crisis of 1998. The PALEA members who were retrenched availed of the Voluntary Separation Program (VSP), a union-management scheme with an improved separation package, while the flight attendants and stewards fought a legal battle through court process. In September 1998, PAL suspended operations as the Asian financial crisis took its toll, pulling out most routes and drastically reducing its fleet.

The dispute between the Philippine Airlines and PALEA started in the middle of 2009 when the airline announced its intention to outsource several departments and units to a third party, citing record losses in the company. The affected departments and units were IT/Human Resources, Benefits, Legal, Medical, Catering, Reservations, Ticket Offices, and Revenue Accounting, as well as those considered core airline services such as Airport Services, including Ground Equipment Services, Passenger Services, Ramp Services, Cargo Services, Station Control, and Central Baggage. The intended outsourcing plan would retrench almost 3,000 regular rank-and-file employees of the airline. At the same time, PAL offered an Early Retirement Program (ERP) to its managerial employees and administrative personnel. The same early retirement program was being offered on an optional/voluntary basis to its rank-and-file employees. PAL enticed its employees to avail of this program by offering significant packages such as a 125-percent retirement package, travel benefits among others. Nonetheless, PALEA strongly manifested its opposition to the ERP as the union saw this move by the PAL management as a new mechanism meant to weaken and eventually bust the union. This attempt by the management was carried out via the tactic of removing the regular employees who are union members and replacing them with outsourced and temporary workers. This management scheme was fiercely resisted by PALEA ever since it was initially announced by PAL in 2009.

The PALEA has known struggle and hard sacrifice since 1998, when its collective bargaining negotiation was suspended. The moratorium in collective bargaining negotiations stemmed from a planned rehabilitation of the airline. However, even before the resumption of the negotiations after ten years of moratorium, PAL

management announced its outsourcing plan⁴ This outsourcing scheme, according to PALEA president Gerry Rivera, is a fire-and-rehire scam designed to cut down the wages and benefits won by the union in the past, and to remove regular employees, which would lead to the death of the union. This triggered a reverse transition from a formal employment to an informal standard employment in a precarious and vulnerable work relationship. In an interview, Rivera went further by providing examples of how this scheme would work against the interests of its regular employees: “A PAL senior reservations agent formerly receiving Php22,400 in salaries and allowances will only get Php10,000 once transferred to SPI Global, while a master mechanic who received a salary of Php28,000, upon transfer to third-party contractor Sky Logistics, will only be given Php11,111.50.”

Rivera pointed out that the transition of PAL’s regular employees to a contractual status would undermine their working conditions. As contractual hires, he said, “workers will be paid lower salaries but will be working longer hours. They will be working eight hours per day for six days a week, compared to 7.5 hours per day for five days a week. PAL regular employees with 20 or 30 years of work experience will be turned into probationary employees for six months when they transfer to a service provider; hence, they have no assurance of job security.”

Indeed, at the start of the outsourcing program in 2011, more than 2,600 employees were retrenched. The outsourcing of the airport services department to Sky Logistics affected more or less 2,000 employees, while the outsourcing of catering services to Sky Kitchen and Fourth Dimension affected more than 400 employees, 200 of whom were of administrative and managerial position. Most of the affected employees were forced to accept being retrenched by PAL and were subsequently hired by a third-party contractor. Retrenched employees were offered a 125-percent separation pay, travel benefits and one-year medical assistance. Ironically, according to the union, the third-party contractors are somehow linked with PAL. For instance, PAL officers are also corporate officers of those contractors, and have a direct or indirect relationship with the airline management.⁵

⁴ PALEA. n.d. “PALEA’s Trailblazer fight against outsourcing”, Briefing paper.

⁵ Interview with PALEA Vice-President Alnem Pretencio, 26 July 2015.

5. PALEA'S LONG, UPHILL LEGAL BATTLE AGAINST OUTSOURCING AT PAL

The formal announcement made by the PAL president on April 2010 sealed the complete closure of several company departments and the eventual abolition of all affected regular positions by the succeeding month. PAL management announced that more than 2,600 regular employees were about to be terminated. This announcement prompted the union to take action.

On April 23, 2010, then Secretary of Labor Marianito Roque issued an assumption of jurisdiction order⁶ in a case previously filed by former PALEA officers on the issue of union busting. The assumption order barred the union from taking further action. However, on April 26 to 27, 2010, PAL management promptly issued notices of termination to all affected employees.

A series of mediation and conciliation hearings were called for by the labor department to find an alternative solution to the massive retrenchment of PAL employees.

On June 15 2010, another decision adverse to the PALEA was rendered by the labor department, upholding the legality of the PAL outsourcing scheme as a pure, valid exercise of its management prerogative.

The following week on June 22, around 300 PALEA members conducted a two-hour-long protest rally in front of the Department of Labor and Employment office, condemning the decision of the then Acting Secretary as a biased and railroaded decision that was made without taking into account the arguments of the union. The following day, determined PALEA members numbering around 600 stormed the residence of the President of the Philippines to air their sentiments on the way the labor department mishandled their case, and demanded the following items: (i) presidential intervention in the PAL-PALEA dispute; (ii) cleansing of corrupt officials in the Department of Labor and Employment; and (iii) reform of the policy regarding contractual employment.

Sensing that their petition with the Office of the President will come into naught, the PALEA embarked on massive lobbying and network-building among different sectors to gather support for their campaign.

Political lobbying is also important in raising the ante of the campaign to decision-makers and law-makers as well. One of the most remarkable lobbying campaigns PALEA did was when they successfully convinced the Trade Union Congress Party (TUCP) Representative Raymond Democrito Mendoza to deliver a privileged speech on the PALEA case to the Congress on August 9, 2010, triggering interest in the House of Representatives to conduct further deliberations on the case. Indeed, on the next day, PALEA was invited to a hearing

⁶ Assumption of Jurisdiction is a power vested to the Secretary of Labor to assume jurisdiction in a labor dispute that will cause or likely to cause a strike or lockout in an industry indispensable to national interest.

by the House Committee on Labor, which was attended by 14 congressmen. The interest of the legislators in the issue of PALEA and the subsequent call for a congressional inquiry opened a new arena of struggle for workers on the broad issue of 'contractualization', paving the way for the introduction of the security of tenure bill.

Despite all this lobbying work at Congress, PALEA still suffered a major blow at the level of the labor department when in its motion for reconsideration was again denied. Thus, a few days after the notice of order from the labor department had been received by the union, PALEA abruptly filed a notice of strike on the grounds of mass termination of union officers amounting to union busting and interference with, restraint and coercion of employees in their exercise of their right to self-organization.

On November 12, 2010, the PALEA sought remedy with the Office of the President, and filed a petition for presidential intervention in the labor dispute at PAL. The intention was for the country's President to intervene in the dispute, and assume direct jurisdiction over the said dispute involving an industry that is indispensable to national interest.

The subsequent meetings called for by the Office of the President sent out a message that PALEA was seeking solidarity among trade unions in the country. Hence, in support of PALEA's cause, big labor groups staged a national day of action for the protection of regular jobs, and as a protest against contractual employment, on November 25, 2010, at the heart of the financial district of Makati. However, despite the union's call to reconsider its decision to pursue with its outsourcing plan, the airline management continued to convince union members to simply abide by the DOLE decision. Left with no choice, the union proceeded to continue with the legal process in holding a valid strike. On December 7, a strike vote was conducted, and 86 percent of the votes affirmed the strike.

The impending transmittal of the strike vote results prompted the Office of the President to issue an assumption order mandating both PAL management and the union to desist from undertaking any action that might aggravate the situation. This was a temporary victory for the union, as it put on hold the decision of the labor department to pursue with the outsourcing plan. This order also prompted both sides to further present their respective arguments before the Office of the President.

In February 2011, a conciliation meeting was held upon the order of the Office of the President. During this meeting, the PAL management admitted for the first time that the airline's financial condition was not the main reason for its outsourcing program. It justified the program as being undertaken due to the global trend in the airline industry, and that their program was within the scope of their management prerogative. Furthermore, the PAL management insisted that they would not pursue with the collective bargaining negotiations with the union until such time the outsourcing program has been implemented.

Following the management's outright refusal to bargain, the union board of directors passed a resolution authorizing the union president to file another notice of strike to protest the unfair labor practice, as the management's refusal to bargain was a violation of existing law.

At a conciliation hearing called by the National Conciliation and Mediation Board (NCMB), the PAL management still obstinately maintained its position that the impending collective bargaining negotiation be held in abeyance pending the resolution of the issue of outsourcing in the Office of the President. However, the union also stood firm on its position that the issue of negotiation is separate and distinct from the outsourcing program.

Hence, in a conference on March 14, 2011, the management heeded to the call of the union and manifested its willingness to resume the collective bargaining process. Sensing that this might be a tactical move by the management to buy time and wait for the Office of the President to decide on the matter of outsourcing, the union insisted that until the management submitted its counter-proposal, the issue pending in the office of the NCMB would remain unresolved. On March 25, the union submitted the results of the strike vote to the labor department, and waited through the seven-day period to commence on the strike. On the very same day, the Office of the President issued an order in relation to the petition for presidential intervention filed by the union on the matter of outsourcing program of PAL. The decision affirmed the previous decision of the labor department, only modifying it with an increased offer of gratuity pay.

As asked, PAL management provided a copy of their collective bargaining counter-proposal to the union. However, this was with a reiteration that the counter-proposal shall cover only the rank-and-file employees within the bargaining unit that will be left behind after the spin-off/outsourcing of the affected departments. This clearly manifested that the PAL management intended to exclude the core employees in the collective bargaining agreement. Another major blow to the union was when an adverse decision came from the Office of the President denying the union's motion for reconsideration, claiming that PALEA did not raise any new issue in their motion. This prompted the union to file a petition with the Supreme Court, arguing that the Office of the President committed a grave abuse of discretion in disregarding the evidence of PALEA as presented.

PALEA's legal battle ended up at the office of the National Labor Relations Commission (NLRC) for compulsory arbitration with regard to the collective bargaining issues. On the other hand, while the union waited for a final decision at the Supreme Court on the decision of the Office of the President, the PAL management, undeterred, issued notices of termination to all affected employees.

Accordingly, the petition for certiorari filed by PALEA with the Supreme Court in 2013 was subsequently withdrawn by both parties as a condition after the Settlement Agreement was concluded.

6. PALEA'S FIGHT-BACK STRATEGIES AGAINST OUTSOURCING AND 'CONTRACTUALIZATION'

At the beginning of the PAL management's vicious attack on workers' rights, the union quickly launched a campaign against the impending massive retrenchment and 'contractualization' of PAL's workforce. The campaign was framed around the narrative of the injustice and exploitative conditions suffered not only by PALEA employees but by most Filipino workers as well. Thus, the banner issue of PALEA is encapsulated in the slogan "*Ang laban ng PALEA ay laban ng lahat*" or "the fight of PALEA is everyone's fight," which revolved around the issue of contractualization. This strategy stemmed from the idea that the fight against contractualization should be broad-based and inclusive so as to earn the support of workers and their organizations regardless of affiliation and political inclination, with the intention to involve community associations, network and allies in order to strengthen the union's hand in their labor dispute. The union members' awareness on the issue is an important element of the struggle. PALEA member Edita Pancrudo said in an interview that "as a loyal and dedicated worker of PAL, what the company did to us (outsourcing) is [that] they robbed us of our dignity as workers. Our struggle will bring back our morale as our fight against outsourcing is not only for us but for the future generations of workers." She added: "There is no dignity in contractual work."

6.1 Combining traditional and modern strategies

According to PALEA Vice-President Alnem Pretencio, ALEA's campaign strategy combined the traditional methods of labor struggle and modern methods of organizing solidarity. PALEA's experience challenged the pessimistic view that old-school tactics do not work in the modern age of globalization. "Action at the point of production and the picket line, which we tagged as the 'people's camp,' proved crucial in our struggle," he said in an interview. In the past, traditional workplace action manifested only as motions aimed at paralyzing production such as workers' strikes and blockades, which sometimes resulted in violence and death. "Now we do not intend to change those tactics but to complement them, raising awareness not only among our members but among the general public as well," Alnem added.

The "people's camp" not only served as point of struggle for their members, it also became a school, drawing students from prestigious universities and institutions, who came to visit, observe and learn from the PALEA's struggle. Indeed, even for their members, regular teach-ins and seminars conducted at the camp provided a resource for continuing education and enhanced their skills in trade union work. Some of the training and seminars conducted at the picket line were on Basic Trade Unionism, paralegal skills training, and in-depth discussions of social issues, among others. These activities intensified the commitment of

members to sustain their struggle and keep their morale high. One officer commented that “at the onset of the strike, I already talked to my family and expressed my firm decision and determination to keep fighting. My family’s full support as well as the officers and members resoluteness to stay on at the camp was one critical element in our solidarity.”⁷

The “people’s camp” was also a place for the consolidation of the union’s members, said Alnem. “Whenever their morale was low and their financial needs were pressing, the camp served as an inspirational place for members.”

6.2 Organizing and rallying national and global solidarity

The International Transport Workers Federation (ITF), with which the PALEA is affiliated at the global level, has been running an active campaign since 2010 to support the PALEA’s struggle. Since the beginning of their campaign, alliance work and building solidarity are two of the many strategies the union employed to create a mass base of support at the local, national and global level. The workers’ unrelenting resolve to remain steadfast and united in their struggle is attributed to the overwhelming support of the international organization. The campaign received a boost when the ITF Asia-Pacific civil aviation section decided to carry out a day of action in support of PALEA.⁸

The action, dubbed as the ‘Global Day of Action Against Outsourcing,’ coincided with the anniversary of PALEA’s protest in 2011, which was marked by the cancellation of all Philippine Airline flights on September 27 and thereafter. According to Gerry Rivera, the local and international support was extremely effective in gaining the attention of a greater audience not only to highlight the demands of PALEA, but to strongly emphasize the issue of contractualization as well. The idea behind the Global Day of Action in the aviation sector was to bring attention to the fact that the issue of outsourcing and contractualization in the sector is already a global phenomenon.

Rivera stressed: “If airline workers take industrial action on the same day, in a coordinated way, all over the world, the struggle against job outsourcing will be stronger and more effective.” Indeed, unions in the civil aviation sector across the globe, including the Turkish civil aviation union Hava-Is, Qantas unions, Lufthansa flight attendants’ union UFO, Canadian airline workers’ union CAW-TCA, Air India unions, UNITE-HERE in the USA and the Australia Asia Worker Links, participated in the September 2012 action. Actions happened across four continents, including picketing and leafleting at Melbourne with a call for a boycott of PAL; a rally at Seoul, Korea; a rally at the cargo terminal in India; a picket at the San Francisco airport in US initiated by the International Association of Machinists and Aerospace Workers; a picket at the Philippine embassy in Japan; leafleting in Hong Kong initiated by the Filipino community; and a solidarity letter from the French union of airbus industry workers addressed to their management.

⁷ Interview with Manny Gan, 10 May 2015.

⁸ ITF Aviation Blog. 2012. “Action day for Filipino aviation workers”, Blog, 26 September. Available at: <http://www.itfaviation.org/action-day-for-filipino-aviation-workers/>.

In the Philippines, the global day of action was marked by a protest rally in Mendiola at the heart of Manila, organized by PALEA with the support of the broad labor coalition Nagkaisa!. Simultaneous mobilizations were also held at the PALEA picket line near the Mactan International Airport in Cebu, and in Davao.

PALEA exerted efforts to establish its position alongside its natural ally, the labor sector, as a source of associational power. PALEA marked its impact in the history in the labor movement as one of the founders of a broad labor coalition in the country called Nagkaisa! (United). Nagkaisa! was born out of a desperate need for a strong and unified labor front to confront the long-standing issues affecting the working people. According to Edsil Bacalso, secretariat for Nagkaisa!, the many cases of labor exploitation and attacks on workers' rights by capitalists, including the contractualization issue brought forward by PALEA, served as part of the unifying agenda for the founders of the coalition. Nagkaisa! comprised 47 labor federations and national center from different political persuasions and ideologies, claiming 85 percent of the organized labors within the umbrella of the coalition. In its first International Labor Day celebration, the PALEA case was one of the thematic issues highlighted during the rally.

6.3 Using social media in the campaign

PALEA pioneered the use of new forms of organizing in their campaign, and this is with the use of social media as a means of communicating with and spreading information to its members and the general public. The officers used Facebook to maintain contact with their members, to exchange ideas, call for action, and solicit support. In communicating with other workers across the globe in the same industry, the union utilized new communication tools such as Skype, which proved to be invaluable in coordinating important events like the Global Day of Action against outsourcing in the aviation industry.

6.4 Building alliances with and gaining support from other groups

PALEA, in its long history of existence, has been traditionally linked with other groups and allied with other sectors as a source of power. The determination of PAL employees to deepen their understanding of the broader issue of labor and social policy was a key factor in its link with the broad, Church-based alliance of congregations and labor organizations, the Church-Labor Conference (CLC). The participation of PALEA in the alliance proved to be useful in keeping the morale of its employees high during its struggle, while at the same time the alliance with the church was also instrumental in delivering the message of PALEA to public audiences and authorities. Regular masses were celebrated by a Catholic priest at the picket line, and spiritual sessions were also conducted.

At the early stages of the PALEA strike in 2011, the CLC immediately declared its full support and backing to the PALEA struggle through the issuance of a strongly worded statement of support lambasting the decision of the labor department and the Office of the President in upholding the decision favoring the PAL-

planned outsourcing and retrenchment.⁹ In October 2013, with the intervention of its church allies, a letter prepared by PALEA indicating the issues surrounding their struggle was handed over by Fr. Edwin “Edu” A. Gariguez of the Catholic Bishops Conference of the Philippines-National Secretariat for Social Action (CBCP-NASSA) to no less than His Holiness Pope Francis in the Vatican.

7. FACILITATING AND CONSTRAINING FACTORS IN PALEA’S FIGHT AGAINST OUTSOURCING

Solidarity support among local and international union networks, as well as with other like-minded organizations, is one of the key elements in the success of PALEA’s campaign against outsourcing and broad contestation against ‘contractualization’.

The support and facilitation of the International Labor Rights Forum (ILRF), a US-based advocacy organization, for PALEA to have representation before the United States Trade Representative (USTR) Subcommittee on Generalized System of Preferences helped pressure the government to exert every effort to look for common ground where PAL and its union could come to an agreeable compromise. The testimony before this body provided an opportunity for the union to bring the larger issue of the state of labor rights and present their case, exemplifying the extent of workers’ rights violations in the country. The GSP hearing was deemed important to the government, as what was at stake was the country’s trade benefits accorded by the US government, as one condition was that the Philippines shall respect core labor rights and standards.

Meanwhile, a change of ownership took place in PAL. The union perceived that the change of PAL ownership from Lucio Tan to San Miguel Corporation head Ramon Ang in 2012 positively contributed to the forging of the settlement agreement that ended the long standing dispute between the management and union.

One could say that the legal cases filed both by management and the union turned out to be a double-edged sword, both facilitating and constraining PALEA’s initiative to reverse the course toward PAL’s wholesale outsourcing plan. On the one hand, the cases benefited the union to put pressure on the management to justify its outsourcing plan. On the other hand, the union was dragged into a long legal battle against a resources-capable company.

⁹ Philippine Human Rights Advocates. 2011. Statement of support to the Philippine Airline Employees Union (PALEA). Available at: <http://www.philippinehumanrights.org/news/statements/138-statement-of-support-to-philippine-airline-employees-union-palea>.

8. INITIAL OUTCOMES

After a protracted legal battle and the day-to-day suffering of the union members at the picket line, the dispute finally ended when both PAL and PALEA arrived at a settlement agreement in November 2013.

PALEA was very much aware that Ramon Ang, the CEO and Chairman of PAL, had a lot of tricks up his sleeve after taking over airline operations from the previous management. Ang was equally determined to bring the flag carrier to its previous heights in Asia and make it profitable again. The union also knew that PAL was embarking on a multi-million-dollar re-fleeting program, and that was where the union found its leverage in its global campaign, enabling it to make a dent in the proposed program. “Whether this ambitious re-fleeting program will push through or not, PALEA will keep an eye on it. We want to take this as an opportunity to mobilize the support of our counterpart airline unions in other countries to block the deal unless workers’ rights are being respected,” said Pretencio. Indeed, the union was in constant communication with counterpart unions globally to monitor the progress of the deal, and was ready to launch a boycott campaign.

In November 2013, after almost three years of struggle, PALEA struck a settlement agreement with the company, which they considered a sweet victory for the remaining workers in the picket line. The settlement agreement was an offshoot of the case filed with the Supreme Court stating that, as a condition in concluding the terms under the agreement, both parties should come up with a joint resolution withdrawing the issues filed at the court. Although it was far from the new collective bargaining that the union aimed for, the agreement provided enough breathing space for the union to avoid a protracted legal battle and to recalibrate their strategies. The agreement stipulated the following: The rehiring as regular workers of some 600 union members who were retrenched in 2011; for those members who accepted their separation from PAL, the granting of an improved separation package of 200 percent per year of service and 150,000 pesos in gratuity pay; for employees who will be re-hired to maintain their employment status with PAL under the same terms and conditions; and for the union to maintain its recognition rights. With these outcomes, the union officers immediately prepared for collective bargaining negotiation.

However, as of mid-year of 2015, despite PALEA’s submission of a proposal and continued communication requesting for the commencement of the negotiation, PAL has not made any move or response to the effect that they also intend to negotiate. This aroused suspicions that turning over full ownership and management to the camp of Lucio Tan will take back once again the gains achieved in the previous Ang management. The union believes that the Lucio Tan group’s anti-union corporate policy will be reinstated when they once again take over PAL management in September 2014. Rivera remarked: “The tortuous implementation of the settlement agreement is a reflection of the continuing policy the Tan management put in place in 2011. They implemented almost all

the provisions in the settlement agreement with the Ang management, except the actual re-employment of the 600 retrenched workers.”

PALEA’s struggle contributed to the crafting of new policy measures by the labor department to further the regulations on contracting and sub-contracting arrangements through the issuance of Department Order 18-A in November 2011. This has come as a result of a series of dialogues and representations by PALEA, together with other labor groups, to the labor department at the outset of the PAL outsourcing program. The regulation is an attempt by the labor department to improve the previous regulations defining legitimacy of a contracting and sub-contracting arrangement, as well as the prohibitions of labor-only contracting emerging from the PALEA case. When asked about the contribution of PALEA’s struggle to the issuance of the new department order, then DOLE Undersecretary Rebecca Chato affirmed that all labor disputes were related to the violation of existing laws on contracting and outsourcing, and the PALEA case in particular contributed to the policy review on subcontracting and contracting, leading to the eventual issuance of Department Order 18-A¹⁰, which, as discussed earlier, was replaced by Department Order 174 in March 2017.

PALEA still considers the department order limited. As Rivera explained, the decision from the labor department upholding PAL’s management’s prerogative to outsource part of its core activities effectively legitimizes the company’s outsourcing program that in the first place should be under the boundary of the regulation on contracting and subcontracting arrangement. For PALEA, this is quite ironic. Nonetheless, although the department order still has loopholes, it provides stiff guidelines for how legitimate contracting and subcontracting will be carried out, and further provides effective recognition of contractual workers’ rights.

PALEA is committed to carry on the fight for the improvement of the regulation on contracting and subcontracting through its continued support and advocacy, together with the Nagkaisa!, for the passage of the bill on the right to security of tenure. PALEA asserts that a critical mass is starting to build up as a result of their struggle, and this can already be seen in the increasing number of conflicts and industrial actions arising as workers grow bold enough to fight against ‘contractualization’. Rivera maintained that it might be difficult to push for reform in the legislative arena, considering that lawmakers are obviously dominated by capitalists, but the workers have nothing to lose now but their chains of oppression. He noted further that with the current government treating the security of tenure bill as a non-priority bill, it might have little chance of passing in the current Congress. “But this will not weaken our resolve to push for this important bill for the workers. Given the different versions of the bill, workers should understand that its passage will greatly benefit them. Unions should not be divided in pushing for the bill that gives protection for the right of workers to regular employment,” Rivera said.

¹⁰ Initial email correspondence by the author with DOLE Undersecretary Rebecca Chato dated 31 July 2015.

9. LESSONS AND INSIGHTS

This case study particularly shows the propensity of corporate power to unilaterally restructure or reorganize its workforce, blindly obeying the logic of business viability without taking into account the rules, regulations and existing agreements with the union. This business strategy is typical and similar to other corporations, and can be seen in any sector that pursues organizational flexibility in adapting to changing market forces by reducing the regular workforce and converting its previously held core functions into subcontracted functions. This corporate restructuring practically creates disposable workers in an organization, externalizing a workforce that includes several kinds of non-standard employment relations (Kalleberg, 2003, p. 155) with no security of tenure and fewer benefits.

The struggle of the union began back in 1998 when the airline management announced a 10-year moratorium on collective negotiation. The 2010 outsourcing plan served as a starting point for the union's move to solidify its forces and identify points and forms of resistance to counter management's deliberate attack on union rights. PALEA's broadening of articulation of workplace issues into a working class issue led to considerable support from a wider base of society to include the community, students, church, and domestic and international unions alike. This broad-based support contributed to the attainment of some of PALEA's successes to date.

The availability of institutional spaces and channels through the union's linkages with political parties, with the support of a broad coalition of labor, offered PALEA opportunities to present their issue in the legislative arena, bringing attention to the worsening effect of informality of the workforce in the country.

The union successfully utilized a mixture of traditional and modern forms of actions in their struggle, such as sustaining their place of resistance with the establishment of the picket line or the "people's camp", resulting in its transformation into an educational center where allied organizations and network of allies, local and international, converged to share ideas and pledge support for the union.

The multi-form of actions that PALEA employed to put pressure on PAL include the following:

- Broader articulation of a workplace issue;
- Solidarity and support from local and global networks;
- Mobilization and campaign pressure;
- Use of social media and generation of media mileage and exposure;
- Political lobbying; and
- Representation and social dialogue.

The use of these multi-forms of actions was particularly effective in the PALEA struggle. Although legal actions were also utilized, this proved to be of minimal impact in the campaign as it would take a long time to resolve the case, given the current legal processes.

Although the union gained its initial victory in the reinstatement of its remaining members, the union should not be complacent in their fight against 'contractualization'. As Rivera stressed: "We need to maintain our foothold in this struggle, as what we are fighting for is a fight for all workers. PALEA's victory is a victory for all workers!"

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