



# Public Sector Labor-Management Council

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## KAPISANAN NG MGA KAWANI NG KOREO SA PILIPINAS (KKKP)

Re: Election of New Set of Officers

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### PSLMC Resolution No. 03, s. 2009

This has reference to the conducted election of new officers of the Kapisanan ng Mga Kawani ng Koreo sa Pilipinas (KKKP) on March 31, 2007 at the Lotus Garden Hotel, Malate, Manila, which was led by Edmundo I. Estavillo, General Secretary of the KKKP. The new set of officers are the following union members: Antonio E. Fidelso, President; Hadji Nasser Lalanto, Vice President (Internal); Policarpio Sangalang, Vice President (External), Edmundo I. Estavillo, General Secretary; Obed Maalihan, Deputy General Secretary; Sheila Pontacaña, Assistant Secretary; Mary Ann Medenilla, Treasurer; Necita B. Alcedo, Assistant Treasurer; Noemi Vergara, Auditor; Eufemia Simora; Darwin Punzal, PRO; and Amalia Silvino.

After the conduct of the said election in the aforementioned date, the same was assailed by Tirso N. Paglicawan, Jr., President of the KKKP, through a petition wherein the ground of filing the same is that he is the President of the said union by virtue of his election during the National Convention of the KKKP on May 8, 2005 for a term of three (3) years which is from May 8, 2005 to May 8, 2008.

In the said petition, Paglicawan requested the Civil Service Commission-Personnel Relations Office (CSC-PRO) to issue an Order declaring the said election of the new set of officers as null and void for lack of legal basis and that the new set of officers shall cease and desist from exercising their duties and functions as the same warrants Usurpation of Authority. Further, he requested the CSC-PRO to restore and maintain the "status quo ante" among the ranks of the officers of the KKKP until the election is held during the National Convention on May 8, 2008 and to impose proper sanctions upon Estavillo, et al., for their active participation in the said farcical election.

On August 14, 2007, the CSC-PRO issued an Order requesting Estavillo to submit his comment within ten (10) calendar days upon receipt of the same. On September 10, 2007, Estavillo requested for an extension to file his comment for thirty (30) days. On the same date, the request of Estavillo for an extension of the submission of his comment has been granted by the CSC-PRO.

On October 25, 2007, Estavillo submitted his comment. In the said comment, he represented that Paglicawan was not elected as President of the KKKP but was only appointed to the said position. The said contention is contradictory to the claim of Paglicawan that he was elected to the said position. Thus, it can be gleaned that the representation of Estavillo is far different from that of the representation of Paglicawan. As such, to adduce evidence anent the collision of the statements of

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both parties, the CSC-PRO in its letter dated November 26, 2007 requested from the Department of Labor and Employment-Bureau of Labor Relations (DOLE-BLR), copies of any submitted resolution/certification from the COMELEC of the KKKP or any documents (reportorial requirements) pertaining thereto, to validate the contradictory representations of Paglicawan and Estavillo.

Meanwhile, prior to the submission of Estavillo of his comment, the CSC-PRO received a comment dated September 10, 2007 from Eufemia S. Simora, Auditor of the KKKP who was likewise elected as Auditor of the assailed March 31, 2007 election. In her comment, Simora attested that the said election held at the Lotus Garden Hotel, Malate, Manila, is farcical, hence, void ab initio.


On the part of the DOLE-BLR, on December 4, 2007, Director Rebecca C. Chato of the said office informed the CSC-PRO that the KKKP has not submitted any documents such as financial reports, list of officers, minutes of election or an updated constitution and by-laws. In its stead, the said office submitted a ratified constitution and by-laws dated September 11, 1988 of the aforesaid employees' organization.

Confronted with the issue on whether Paglicawan was appointed and/or elected as President of KKKP, the CSC-PRO in its letter December 21, 2007, requested from Paglicawan a copy of an authentic resolution/certification from the KKKP's COMELEC that will ascertain his representation. In addition thereto, a copy of the Constitution and By-Laws of the KKKP was also requested.

In response thereto, the association submitted a copy of their CBL and the CSC-PRO noticed that the date of ratification was on October 25, 1992. The records of the case show that there are two (2) KKKP's Constitution and By-Laws, one ratified on September 11, 1988 and the other one, ratified on October 25, 1992. Be that as it may, inasmuch as the CBL submitted by the association is the recent one, then it was used as the basis in the preparation of this Resolution.

On January 28, 2008, Paglicawan responded to our query of December 21, 2007 wherein he represented that Estavillo is the founder of KKKP and has been its President since its creation on July 21, 1975 and at the time of its registration with the DOLE-BLR and the CSC on June 29, 1989. Estavillo relinquished his position as President of the KKKP only on May 8, 2005. This means that he served as president for twenty-nine (29) years, seven (7) months and seventeen (17) days after the founding of the KKKP on June 29, 1989. However, despite his retirement from the government service on November 15, 2004, he still serves as the association's General Secretary. Accordingly, it is our submission that the consecutive incumbencies of Estavillo as President from July 21, 1975 to May 8, 2005 and General Secretary from May 8, 2005 up to the present date of the KKKP, runs-counter with the CBL of the union which disallows the positions of President, General Secretary, National Treasurer and National Assistant Treasurer to occupy two (2) continuous terms by one and the same officers.

Moreover, in the same letter, Paglicawan further represented that he cannot submit the certification/resolution from the KKKP anent his election as President and the union's Constitution and By-Laws since it was allegedly kept by Estavillo. As such, it is physically impossible for him to comply with the December 21, 2007 request of the CSC-PRO.



The case at bar has been submitted to the Council in its 1<sup>st</sup> Quarter Meeting on May 7, 2008 for its deliberation. During the deliberation, the designated alternates from the Department of Labor and Employment (DOLE-BLR) and the Department of Justice (DOJ) requested the Council to defer the deliberation of the case on reason that they wanted to review further the said case. These requests have been granted by the Council, hence, the deferment of the deliberation of the petition of Paglicawan.

In the course of the deferment of the instant case, Paglicawan filed another petition dated May 22, 2008, before the Council for the nullification of the conducted election of officers on May 10, 2008 of the KKKP. The CSC-PRO in its letter dated July 1, 2008, informed Paglicawan that his first petition for nullification of the conducted election of officers on March 31, 2007, has been submitted to the Council for deliberation in its 1<sup>st</sup> Quarter Meeting on May 7, 2008. The CSC-PRO further informed Paglicawan that it is primordial to resolve his first petition for the abrogation of the conducted election on March 31, 2007, before resolving his second petition for dissolution on the conducted election of officers on May 10, 2008, in order not to confound issues within the periphery of the two (2) petitions.

Thereafter, Paglicawan filed a motion for consolidation dated July 23, 2008, wherein he asserted that coalition of both petitions is better and easier to save time and effort on the deliberation of the said case. Hence, the consolidation of the two (2) petitions in this Resolution.

In order not to infract the principle of the due process of law, the CSC-PRO in its Order dated September 12, 2008, directed Estavillo, et. al., to submit their comments and other documents pertaining to the case at bar within ten (10) calendar days from receipt thereof.

On October 2, 2008, the CSC-PRO received the said comment with motion to dismiss on reason that Paglicawan is allegedly guilty of forum shopping, want of legal personality and that the instant petition lacks the 30% signatures of the union members for it to prosper.

The issues of the case are as follows:

1. Whether Estavillo has the legal personality to remain as member of the KKKP and as its elected General Secretary by virtue of his retirement from the government service on November 15, 2004;
2. Whether Paglicawan is an appointed and/or elected President of the KKKP in the absence of proof of certification/resolution from the KKKP's COMELEC;
3. Whether the election of the new set of officers of the KKKP conducted on March 31, 2007 at the Lotus Garden Hotel, Malate, Manila, was indeed premature, therefore, farcical; and
4. Whether the second election of officers held on May 10, 2008, is likewise valid.

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Anent the first issue, it is shown in the records that Estavillo remains to be an officer (General Secretary) of the KKKP despite of his retirement from the government service on November 15, 2004. The Civil Service Commission had on many occasions repeatedly cited **Memorandum Circular No. 28, s. 1991** on the effect of retirement and stated in this wise:

*"The CSC in its Resolution No. 91-769 dated July 2, 1991 adopted the policy that government officials and employees who compulsorily retire under Section 11 (b) of P.D. 1146, otherwise known as the 'Revised Government Service Act of 1977' are deemed separated from the government service at the close of office or working hours on their sixty-fifth (65<sup>th</sup>) birthday. (Underscoring supplied)*

Moreover, the law as to eligibility for membership to employees' association is clearly stated in **Section 2, Rule II (Coverage of the Right to Organize) of the Amended Implementing Rules and Regulations (IRR) of Executive Order No. 180**, pertinent provision is quoted hereunder:

*"Section 2. Who may join employees' organizations in the public sector.-**Employees** in agencies of the national government and their regional offices, attached agencies x x x can form, join, or assist employees' organizations x x x.*

*"Eligibility for membership in any employees' organization shall commence on the first day of the **employees'** service."*

The aforequoted laws are explicit that the umbilical cord connecting the agency and the employee is effectively truncated upon retirement. As far as the law is concerned, Estavillo is considered as a private person after his retirement from the government service on November 15, 2004. By parity of reason, all official and ancillary relations that spring from being an employee are deemed severed following the legal maxim that the spring cannot be higher than its source.

Our finding is fortified by **Section 1(t), Rule 1 (Definition of Terms) of the Amended Rules and Regulations (IRR) of Executive Order No. 180**, which defines government employee, to wit:

*"(t) 'Employee refers to any person working for an agency. It includes one whose work has ceased in connection with any current employee-management dispute or unfair labor practice or whose dismissal from the service has not attained finality."*

To repeat, Estavillo's severance from employment is by virtue of his retirement from the government service on November 15, 2004. What is peculiar in the submitted CBL of the KKKP which was ratified on October 25, 1992, is that it allows members of the said union to remain as members even after retirement and/or resignation.

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**Section 1(b), Article IV (Membership)** of the said CBL clearly provides the said circumstance as follows:

*"Section 1. Members.- Subject to the requirements hereinafter provided and the procedures that will be promulgated by the National Council, the members of the Union shall be the following:*

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*"(b) Any member of the Union who has retired or voluntarily resigned from the Philippine Postal Corporation shall still be a member provided, that he/she complied with all the requirements within thirty (30) days before the effectivity of either retirement or resignation and he/she shall notify the National Council in writing of his/her desire to continue his/her membership otherwise, his/her membership shall be terminated;*

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Premised from the foregoing, it is apparent that Estavillo, upon his retirement on November 15, 2004 could remain as a member of the KKKP and even more, be an incumbent of the General Secretary position.

We must stress, that Section 1 (b), Article IV of the KKKP's CBL runs-counter to the provision of CSC Memorandum Circular No. 28, s. 1991, and the provisions of Executive Order No. 180 which provide explicit and contrary view on the matter.

Executive Order No. 180 speaks of memberships of unions in the public sector wherein it declared that membership to the association only pertains to government employees as a condition sine qua non. Such condition cannot and could never be complied with by Estavillo after his retirement, save only in case where he can show proof to the contrary. Such being the case, then there is a legal impediment to his membership with the KKKP and consequently his being incumbent as the General Secretary in the said union.

Our contention finds refuge on generally accepted principle that since Executive Order No. 180 was promulgated by then President Corazon C. Aquino by virtue of an executive power vested upon her pursuant to Section 1, Article VII of the 1987 Philippine Constitution, the same shall prevail over the ratified CBL of the KKKP. Needless to say, that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer **(1987 Constitution, Cruz A. Isagani, 1995 Edition, p.12).**

In the same vein, the promulgation of CSC Memorandum Circular No. 28, s. 1991 is one of the virtues of the rule making power vested by the Administrative Code of 1987 to the CSC.

Hence, the abovestated provisions, shall prevail over the provision of Section 1(b), Rule IV of the ratified CBL of the KKKP which is a product of consensual agreements among private parties allowing Estavillo to remain a member and as an officer of the KKKP (General Secretary) notwithstanding his retirement from the government service on November 15, 2004. 

As to the second issue on the incumbency of Paglicawan as President of KKKP, the veracity of the same can be seen in the records of the case. Estavillo himself admitted in his October 10, 2007 comment that Paglicawan is the duly elected President of the KKKP but had to be replaced on the ground that the latter is a non-performing asset of the union. The veracity that Paglicawan was indeed the President of the KKKP was further bolstered by the various sworn affidavits of the employees of the PHILPOST, acknowledgement letters of the employees of the organizational unit, and the formal induction of Paglicawan on May 8, 2005 into that position by Director Eiichi Ito of the Union Network International Asia Pacific Regional Office.

Regarding the third issue involving the election of the new set of officers of the KKKP that took place on March 31, 2007 at the Lotus Garden Hotel, Malate, Manila, its invalidity can be gleaned from the CBL of the KKKP, specifically in **Section 1, Article XI (Tenure and Manner of Election of Officers) of the ratified CBL on October 25, 1992 of the KKKP**, which reads:

*"Section 1. Terms of Office of the President, General Secretary and the National Council - The President, the General Secretary and the members of the National Council shall have a term of three (3) years or until their successors are duly elected and qualified. The President, the General Secretary and twenty-one (21) Directors of the National Council shall continue serving a term of three (3) years unless they declare to withdraw, resign, be incapacitated, be dismissed under Article XV of this Constitution and By-Laws or lose in an election at the National Convention held every three (3) years."*

Corollary thereto, **Sections 1, 2 and 3, Article XIII of the KKKP's CBL dated October 25, 1992** speak of Impeachment and Recall as a mode of removing an officer prior to the expiration of their terms fashioned in this manner and quoted hereunder:

#### **"ARTICLE XIII**

##### **"Impeachment and Recall**

*"Section 1. Votes Requirement-The President, the General Secretary and any members of the National Council may be impeached by two-thirds (2/3) of the votes of all Union members complying with the requirements of due process as may be laid down by the National Council.*

*"Section 2. Recall- The President, the General Secretary and any members of the National Council may be recalled by majority vote of the Convention in a special meeting called for the purpose.*

*"Section 3. Grounds for Impeachment and Recall- The following shall be the grounds for impeachment and recall:*

- "(a) Gross and habitual negligence in the performance of duties and functions;*

"(b) *Commission of acts seriously inimical to the interest of the Union;*

"(c) *Culpable and gross violation of this Constitution and By-Laws.*"

Premised from the aforequoted provisions, there are only two (2) modes to remove the President, General Secretary and any member of the National Council, these are through impeachment or recall and the grounds therefore are properly laid down. Excluded therefrom, is the conduct of a special election with the end view of ousting the incumbent aforestated officials.

Be that as it may, we must emphasize that there is nothing in the records which shows that impeachment proceedings have been duly observed before the ouster of Paglicawan from his position as President of the KKKP. The principle of due process is likewise wanting in the instant case. Due process has been embodied in the abovequoted provisions of the CBL of the KKKP. The spirit of due process has been properly laid down in the ruling of the Supreme Court in the case of **Padilla vs. Sto. Tomas, 243 SCRA 155**, wherein the High Court ruled as follows:

*"x x x due process simply means the opportunity to explain one's side or the opportunity to seek reconsideration of the action or ruling complained of."*

Hence, the act of Estavillo in leading for a special election on March 31, 2007 which ousted Paglicawan from his Presidency is beyond the parameter of the KKKP's CBL.

As to the fourth issue, the said election of officers of the KKKP that has been held on May 10, 2008, the Council finds the same null and void.

The comment that has been submitted citing that Paglicawan is guilty of forum-shopping, has no legal personality to file the said petition and the lack of the 30% signatures from the members of union for the petition to prosper, these contentions are bereft of merit.

The principle of forum-shopping is not attaining in the case at bar on the very ground that the two (2) petitions for nullifications pertains to two (2) elections conducted on March 31, 2007 and May 10, 2008. The factual circumstances of the two (2) elections are separate and distinct from each other. The former was done in order to oust Paglicawan from his position as President of the KKKP. While the latter was conducted on the basis of the conviction of Estavillo, et. al., that the term of office of the President of the KKKP had already expired on May 8, 2008.

We must stress that forum shopping will exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other (**Paradero vs. Abragan, 424 SCRA 155**). In another case, the Supreme Court ruled that the rationale against forum shopping is that a party should

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not be allowed to pursue simultaneous remedies in two different fora. x x x (**Wee vs. Galvez, 436 SCRA 96**). The rule of res judicata which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction (**Dulay vs. Minister of Natural Resources, 218 SCRA 562**).

From the foregoing rulings of the High Court, Paglicawan is not guilty of violating the doctrine of forum shopping.

As to the other argument that Paglicawan has no legal personality to file the petition, the Council also finds the same untenable. As shown in the records of the case, it is Paglicawan that has been prejudiced by the conduct of the two (2) elections sought by him before the Council to be nullified. The Council cannot find any other reasons except that Paglicawan was stripped of his elective position in the KKKP without resorting to the process of impeachment and recall procedures mandated in the CBL of the union.

As to the contention that the petition of Paglicawan lacks the 30% of signatures of the union members, it being an intra-union proceeding, holds no water.

It must be emphasized that such requirement is essential when the officers of the union failed to call for an election after the expiration of their terms of office. In the case at bar, this circumstance is inexistent, on the contrary the term of office of Mr. Paglicawan was truncated when Mr. Estavillo unceremoniously launched the assailed elections.

Lastly, the application of the principle of the exhaustion of administrative remedies is not attaining in the case at bar on reason that Estavillo is the authority who will hear and decide the said dispute, therefore, futile, is reasonable and just. While it may be true that the settlement of dispute shall be administered by Estavillo pursuant to Sections 1 and 2, Article XVII of the CBL dated October 25, 1992, it must be underscored that the underlying principle of exhaustion of administrative remedies requires among others, the cold neutrality of an impartial judge. Logic and reason dictates that such requirement, a basic tenet of due process cannot be attained in the instant case since Estavillo who is to judge the case is the subject of the petition.

**WHEREFORE**, it is hereby **RESOLVED** that Section 1 (b), Article IV of the KKKP's Constitution and By-Laws is null and void ab initio since it violate the CSC Memorandum Circular No. 28, s. 1991, Section 2, Rule II (Coverage of the Right to Organize) and Section 1 (t), Rule I (Definition of Terms) of the Amended Implementing Rules and Regulations (IRR) of Executive Order No. 180 defining government employment. Hence, the continued incumbency of Edmundo I. Estavillo as General Secretary of the KKKP is hereby mooted by the nullity of the aforestated provision by virtue of his retirement from the government service on November 15, 2004.

*[Signature]*

**RESOLVED** further that the elections held on March 31, 2007 at the Lotus Garden Hotel, Malate, Manila, and on May 10, 2008 at the Euro Hotel, Malate, Manila, respectively, are hereby declared **NULL** and **VOID**. Accordingly, the KKKP shall conduct a new election within thirty (30) days from receipt of this Resolution. Tirso N. Paglicawan, Jr., shall act as the interim President of the KKKP until a new President and set of officers have been duly elected and qualified.

**SO ORDERED.**

Quezon City, June 11, 2009

  
**RICARDO L. SALUDO**

Chairman, Civil Service Commission  
**CHAIRMAN**

  
**MARIANITO D. ROQUE**

Secretary, Department of Labor and Employment  
**VICE-CHAIRMAN**


  
**RAUL M. GONZALEZ**  
Secretary, Department of Justice  
**MEMBER**

  
**MARGARITO B. TEVES**  
Secretary, Department of Finance  
**MEMBER**

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**ROLANDO G. ANDAYA, JR.**  
Secretary, Department of Budget and Management  
**MEMBER**

Attested by:

  
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Director IV  
Personnel Relations Office  
Civil Service Commission  
**Chair, PSLMC Secretariat**

Dept. of Labor & Employment  
Office of the Secretary



Department of Justice  
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