

Republic of the Philippines  
**DEPARTMENT OF LABOR AND EMPLOYMENT**  
Intramuros, Manila

**OPERATIONAL GUIDELINES**  
**of Department Order No. 40-G-03, Series of 2010**

**These Operational Guidelines are issued to further implement Articles 263, 264 and 265 of the Labor Code, through Department Order No. 40-G-03 issued on 29 March 2010, pertaining to disputes likely to cause a strike or lockout in an industry indispensable to the national interest.**

Section 1. *Assumption of jurisdiction and certification authority of the Secretary of Labor and Employment.* Pursuant to Article 263 (g), when a labor dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the National Labor Relations Commission (NLRC) for compulsory arbitration.

Section 2. *Exercise of assumption of jurisdiction or certification authority under Article 263 (g).* For a valid exercise of the assumption of jurisdiction authority, any of the following conditions must be present:

- a. Both parties have requested the Secretary of Labor and Employment to assume jurisdiction over the labor dispute; or
- b. After a conference called by the Office of the Secretary of Labor and Employment on the propriety of the issuance of the Assumption or Certification Order, *motu proprio* or upon a request or petition by either party to the labor dispute. In the said conference, the parties shall also be encouraged to amicably settle the dispute.

Section 3. *Effect of assumption of jurisdiction or certification of dispute.*

- a. If a strike or lockout has not taken place, the parties are enjoined to conduct any untoward action that may lead to a strike or lockout.
- b. If a strike or lockout has already taken place, all striking and locked out workers shall, within twenty-four (24) hours from receipt of an Assumption or Certification Order, immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike.

c. At any point in time, the parties are not prevented from submitting the dispute to Voluntary Arbitration with the Secretary of Labor and Employment or his/her duly authorized representative as Voluntary Arbitrator or Panel of Voluntary Arbitrators.

*Section 4. Minimum operational service for hospitals, clinics, or medical institutions.*

a. The striking union or employer involved in the lockout is obliged to maintain an effective skeletal force during the strike or lockout. The movement of the skeletal force shall be unhampered and unrestricted.

b. The striking union or employer involved in the lockout shall ensure proper and adequate protection of the life and health of patients particularly in emergency cases.

*Section 5. Coordinative Measures.*

a. Before the filing of a notice of strike or lockout – When a labor dispute arises, and such a dispute is likely to cause a strike or lockout in an industry indispensable to the national interest, the following shall be undertaken:

(1) The Regional Coordinating Council (RCC), through the Regional Director, shall take the lead and explore all remedies and avenues deemed necessary and feasible to peacefully settle the dispute. This includes coordination with government agencies outside the DOLE, such as the Philippine Economic Zone Authority (PEZA), when appropriate, or through the Inter-agency Coordinating and Monitoring Committee (ICMC) referred to in Section 8.

(2) The Regional Tripartite Industrial Peace Council (RTIPC), concerned Industrial Tripartite Councils (ITCs), and National Tripartite Industrial Peace Council (NTIPC) may be accessed to explore all avenues for peaceful settlement of the dispute.

(3) Relevant agencies shall immediately facilitate the settlement or decision of pending issues or cases that may contribute to the settlement of the case. These agencies shall include the Regional Offices (labor standards and med-arbitration cases), the NLRCs, Bureau of Labor Relations (BLR), and the National Conciliation and Mediation Board (NCMB).

(4) Plant level mechanisms on labor-management cooperation, employee grievances and harmonious workplace relations may be utilized.

(5) Preventive mediation and Single Entry Approach (SENA) channels may be accessed.

b. After the filing of a notice of strike or lockout – Once a notice of strike or lockout is filed before the NCMB, the following shall be undertaken:

(1) The NCMB Conciliator-Mediator, with the assistance of the Regional Branch Director, shall maximize the cooling-off periods of 15 days for unfair labor practice/s and 30 days in the case of collective bargaining deadlock.

(2) In instances where there is a possibility of settlement, the parties may agree to extend the period of time beyond the lapse of the cooling-off period.

c. Once the strike or lockout vote results are submitted – Once the strike or lockout vote results are submitted to the NCMB, the following measures shall be undertaken:

(1) Upon submission of the strike or lockout vote results to the NCMB, the Office of the Secretary through the Undersecretary for Labor Relations shall immediately be notified through written memorandum and text messaging.

(2) The NCMB Executive Director shall exhaust all available means to settle the dispute for the entire duration of the strike ban. On the 3<sup>rd</sup> or 4<sup>th</sup> day of the strike ban period, a last ditch effort to effect settlement shall be undertaken. If no settlement is reached and a strike or lockout is imminent, the case shall be coordinated with the Office of the Secretary through the Undersecretary for Labor Relations for the conduct of mandatory conferences.

(3) Mandatory conferences at the Office of the Secretary level, either *motu proprio* or upon a request or petition by either party to the dispute, shall: (a) determine the propriety to assume jurisdiction over or certify a labor dispute likely to cause a strike or lockout in an industry indispensable to the national interest; and (b) provide a venue to conciliate and mediate the dispute.

(4) When a labor dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of

Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the NLRC for compulsory arbitration, when any of the following conditions under Section 2 are present.

(5) In instances where there is a possibility of settlement, the parties may agree to extend the period of time beyond the strike ban period.

Section 6. *Period of disposition and finality.* a. The decisions of the Secretary, the NLRC, Voluntary Arbitrator, or Panel of Voluntary Arbitrators shall be rendered within thirty (30) calendar days from submission of the case for resolution. For this purpose, the NLRC, Voluntary Arbitrator, or Panel of Voluntary Arbitrators shall report every case submitted for resolution to the Office of the Secretary, within twenty-four (24) hours from submission of the case for resolution.

b. All decisions by the NLRC, Voluntary Arbitrator, or Panel of Voluntary Arbitrators and the implementation of such decisions shall be reported to the Office of the Secretary within five (5) days from date of the decision or its implementation.

c. Such decisions shall be final and executory ten (10) days after receipt thereof by the parties.

Section 7. *When an actual strike or lockout occurs.* In addition to the above-stated measures, the following shall be undertaken when a potential or actual strike or lockout occurs:

a. Heightened coordination between the Office of the Secretary and the National Conciliation and Mediation Board shall be made during the actual strike or lockout;

b. The Undersecretary for Labor Relations shall oversee monitoring and heightened coordination efforts, including the mobilization of the Inter-Agency Coordinating and Monitoring Committee.

c. In the premises of the strike area and picket line, public officials and employees including the officers and personnel of the Armed forces of the Philippines or the Philippine National Police, armed persons, private security guards and similar personnel in the private security agency shall be prohibited to bring in, introduce or escort in any manner any individual who seeks to replace the strikers in entering or leaving the premises of a strike area or workplace of the strikers. The police force shall keep out of the picket lines, except in the following circumstances:

(1) When actual violence or other criminal acts occur; and

(2) When the Secretary of Labor and Employment or the ICMC seek a PNP peace-keeping team to maintain peace and order or enforce the law and legal order pursuant to the provision of the Joint DOLE-DILG-PEZA Guidelines in the conduct of PNP personnel, economic police and security guards, company security guards and similar personnel during labor disputes.

Section 8. *DOLE Inter-Agency Coordinating and Monitoring Committee.* The Office of the Secretary may set up an Inter-agency Coordinating and Monitoring Committee (ICMC) at the national and local levels, composed of the DOLE, NCMB, NLRC and, where feasible, PEZA/Ecozone, RTIPC/ITC representatives, the local government unit and the PNP, whenever there is a potential or actual strike or lockout to ensure coordination between and among concerned agencies, and maintain an open line of communication with the representatives of management and the union or workers to ensure observance of laws and regulations.

The ICMC may develop a tripartite social accord to govern the conduct of all parties involved in the labor disputes, which may contain the following:

- a. Enforcement of non-entry of scabs or individuals to replace strikers;
- b. Enforcement of free ingress to and egress from employer's premises;
- c. Where the company involved in a strike or lockout is located inside a mall, hotel or premises of a business enterprise, a decent and reasonable space for peaceful picketing and for strike/picket paraphernalia shall be designated. Such space shall be respected by the owner/s of the establishment, tenant/s, clients/customers and the security guards/personnel of the establishment/tenant/s;
- d. The strike/picket paraphernalia are safe from any undue destruction; and/or
- e. The duty/responsibility of the union to lift the picket/strike after a lawful order, and dismantle and remove the picket/strike paraphernalia from the area.

Section 9. *Request for PNP assistance.* Any request for PNP assistance made by DOLE and/or its appropriate agencies shall be in writing, specifying the acts to be performed or conducted by PNP and shall be addressed to the PNP Regional

Director or the City Police Director in the case of highly urbanized cities, or the Provincial Director in the case of municipalities and component cities.

Any request for PNP assistance by the parties to the labor dispute, including those within the economic zone, shall be in writing and shall be coursed through the DOLE and/or its appropriate agencies or through PEZA, where appropriate.

*Section 10. Coordination with the PNP peace-keeping team.* In case a PNP peace-keeping team is requested, the Office of the Secretary or ICMC shall closely coordinate with the team and ensure observance of the following:

- a. The PNP peace-keeping team shall stay at least 50-meter radius away from the picket/strike/lockout area. In case the 50-meter radius includes a public thoroughfare, traffic police shall ensure the free flow of traffic.
- b. In the exercise of their peace-keeping functions, members of the team shall at all times be in proper uniform, without lethal weapons and firearms, and with properly displayed nameplate. They shall:
  - (1) Exercise maximum tolerance and when called for by the situation or when all other peaceful and non-violent means have been exhausted, may employ as a last resort only such means as may be necessary and reasonable to prevent or repel an aggression;
  - (2) Observe courtesy and strict neutrality, bearing in mind that the parties to the labor dispute are not their adversaries but their partners in the quest for industrial peace and human dignity;
  - (3) Not deliberately inflict any physical harm upon strikers and/or picketers or any person involved in the strike /lockout; and
  - (4) Not fraternize with any of the parties involved in the controversy, and shall not accept any invitation from management personnel or union officials/personnel involved in the controversy.
  - (5) Ensure that the strike-bound area is a gun-free zone, to include civilians and police personnel.
  - (6) Respect the Constitutional guarantee on the right of the people to be secured from unreasonable searches and seizures, no search or arrest arising from labor dispute shall be made except through a valid


court warrant. The arresting officer shall notify the DOLE within twenty-four hours after the arrest was made.

Section 11. *Role of company security guards and similar personnel when strike/lockout occurs.* The Office of the Secretary or the NCMB shall reiterate observance by company security guards and similar personnel, during picket/ strike/lockout of the provisions of Sections 1, 2 and 3 of Rule XVIII of the 2003 Implementing Rules and Regulations of Republic Act No. 5487 or the "Private Security Agency Law", which form an integral part of this Operational Guidelines as Annex "A", and any violations shall be proceeded in accordance with the 2003 Implementing Rules and Regulations of Republic Act 5487, as amended, and PNP Memorandum-Circular 2008-001 or the "Revised Rules in the Investigation in the Administrative Cases Involving Security and Training Personnel, Security Agencies and Training Institutions", incorporated herein as Annexes "B" and "C".

Section 12. *Criminal prosecution.* The regular courts shall have jurisdiction over any criminal action under Article 272 of the Labor Code, as amended, subject to the required clearance from the DOLE on cases arising out of or related to a labor dispute pursuant to Department (then Ministry) of Justice Circular No. 15, series of 1982, and Circular No. 9, series of 1986.

Section 13. *Effectivity.* These Operational Guidelines shall take effect immediately upon publication in a newspaper of general circulation.

24 February 2011, Manila, Philippines.

  
ROSALINDA DIMAPILIS BALDOZ  
Secretary