

**DEPARTMENT ORDER NO. 40-03  
(As amended by A-I)**

**AMENDING THE IMPLEMENTING RULES OF BOOK V  
OF THE LABOR CODE OF THE PHILIPPINES**

**ARTICLE I. The Rules Implementing Book V of the Labor Code are hereby amended to read as follows:**

**RULE I**

**DEFINITION OF TERMS**

**Section 1. Definition of Terms.**

(a) "Abstention" refers to a blank or unfilled ballot validly cast by an eligible voter. It is not considered as a negative vote. However, it shall be considered in the counting for purposes of determining a valid election.

(b) "Affiliate" refers to an independent union affiliated with a federation, national union or a chartered local which was subsequently granted independent registration but did not disaffiliate from its federation, reported to the Regional Office and the Bureau in accordance with Rule III, Sections 6 and 7 of these Rules.

(c) "Appeal" refers to the elevation by an aggrieved party to an agency vested with appellate authority of any decision, resolution or order disposing the principal issues of a case rendered by an agency vested with original jurisdiction to resolve such case, undertaken by filing a memorandum of appeal.

(d) "Audit Examiner" refers to an officer of the Bureau or Labor Relations Division of the Regional Office authorized to conduct an audit or examination of the books of accounts, including all funds, assets and other accountabilities of a legitimate labor organization and workers' association.

(e) "Bargaining Unit" refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

(f) "Board" refers to the National Conciliation and Mediation Board established under Executive Order No. 126.

(g) "Bureau" refers to the Bureau of Labor Relations.

(h) "Cancellation Proceedings" refer to the legal process leading to the revocation of the legitimate status of a union or workers' association.

(i) "Certification Election" or "Consent Election" refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the Department, while a consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department.

(j) "Chartered Local" refers to a labor organization in the private sector operating at the enterprise level that acquired legal personality through registration with the Regional Office in accordance with Rule III, Section 2-E of these Rules.

(k)“Collective Bargaining Agreement” or “CBA” refers to the contract between a legitimate labor union and the employer concerning wages, hours of work, and all other terms and conditions of employment in a bargaining unit.

(l)“Conciliator Mediator” refers to an officer of the Board whose principal function is to assist in the settlement and disposition of labor-management disputes through conciliation and preventive mediation, including the promotion and encouragement of voluntary approaches to labor disputes prevention and settlement.

(m)“Consolidation” refers to the creation or formation of a new union arising from the unification of two or more unions.

(n)“Deregistration of Agreement” refers to the legal process leading to the revocation of CBA registration.

(o)“Department” refers to the Department of Labor and Employment.

(p)“Election Officer” refers to an officer of the Bureau or Labor Relations Division in the Regional Office authorized to conduct certification elections, election of union officers and other forms of elections and referenda in accordance with Rule XII, Sections 2-5 of these Rules.

(q)“Election Proceedings” refer to the period during a certification election, consent or run-off election and election of union officers, starting from the opening to the closing of the polls, including the counting, tabulation and consolidation of votes, but excluding the period for the final determination of the challenged votes and the canvass thereof.

(r)“Eligible Voter” refers to a voter belonging to the appropriate bargaining unit that is the subject of a petition for certification election.

(s)“Employee” refers to any person working for an employer. It includes one whose work has ceased in connection with any current labor dispute or because of any unfair labor practice and one who has been dismissed from work but the legality of the dismissal is being contested in a forum of appropriate jurisdiction.

(t)“Employer” refers to any person or entity who employs the services of others, one for whom employees work and who pays their wages or salaries. An employer includes any person directly or indirectly acting in the interest of an employer. It shall also refer to the enterprise where a labor organization operates or seeks to operate.

(u)“Exclusive Bargaining Representative” refers to a legitimate labor union duly recognized or certified as the sole and exclusive bargaining representative or agent of all the employees in a bargaining unit.

(v)“Grievance” refers to any question by either the employer or the union regarding the interpretation or implementation of any provision of the collective bargaining agreement or interpretation or enforcement of company personnel policies.

(w)“Improved Offer Balloting” refers to a referendum by secret ballot involving union members on the improved offer of the employer on or before the 30<sup>th</sup> day of a strike.

(x) “Independent Union” refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code and Rule III, Section 2-A of these Rules.

(y)“Inter-Union Dispute” refers to any conflict between and among legitimate labor unions involving representation questions for purposes of collective bargaining or to any other conflict or dispute between legitimate labor unions.

(z)“Interlocutory Order” refers to any order that does not ultimately resolve the main issue/s in a dispute.

(aa)“Interpleader” refers to a proceeding brought by a party against two or more parties with conflicting claims, compelling the claimants to litigate between and among themselves their respective rights to the claim, thereby relieving the party so filing from suits they may otherwise bring against it.

(bb)“Intervention” refers to a proceeding whereby a person, labor organization or entity not a party to a case but may be affected by a decision therein, formally moves to make himself/herself/itself a party thereto.

(cc)“Intra-Union Dispute” refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union’s constitution and by-laws, or disputes arising from chartering or affiliation of union.

(dd)“Labor Organization” refers to any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.

(ee)“Labor Relations Division” refers to the (1) Labor Organization and CBA Registration Unit and (2) Med-Arbitration Unit in the Regional Office. The Labor Organization and CBA Registration Unit is in charge of processing the applications for registration of independent unions, chartered locals, workers associations and collective bargaining agreements, maintaining said records and all other reports and incidents pertaining to labor organizations and workers’ associations. The Med-Arbitration Unit conducts hearings and decides certification election or representation cases, inter/intra-union and other related labor relations disputes.

(ff)“Legitimate Labor Organization” refers to any labor organization in the private sector registered or reported with the Department in accordance with Rules III and IV of these Rules.

(gg)“Legitimate Workers’ Association” refers to an association of workers organized for mutual aid and protection of its members or for any legitimate purpose other than collective bargaining registered with the Department in accordance with Rule III, Sections 2-C and 2-D of these Rules.

(hh)“Lockout” refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute.

(ii)“Managerial Employee” refers to an employee who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees.

(jj)“Mediator-Arbiter” refers to an officer in the Regional Office or in the Bureau authorized to hear and decide representation cases, inter/intra-union disputes and other related labor relations disputes, except cancellation of union registration cases.

(kk)“Merger” refers to a process where a labor organization absorbs another resulting in the cessation of the absorbed labor organization’s existence, and the continued existence of the absorbing labor organization.

(ll)“National Union” or “Federation” refers to a group of legitimate labor unions in a private establishment organized for collective bargaining or for dealing with employers concerning terms and conditions of employment for their member unions or for participating in the formulation of social and employment policies, standards and programs, registered with the Bureau in accordance with Rule III, Section 2-B of these Rules.

(mm)“Organized Establishment” refers to an enterprise where there exists a recognized or certified sole and exclusive bargaining agent.

(nn)“Preventive Mediation Cases” refer to labor disputes which are the subject of a formal or informal request for conciliation and mediation assistance sought by either or both parties or upon the initiative of the Board.

(oo)“Rank-and-File Employee” refers to an employee whose functions are neither managerial nor supervisory in nature.

(pp)“Regional Director” refers to the Head of the Regional Office.

(qq)“Regional Office” refers to the office of the Department of Labor and Employment at the administrative regional level.

(rr)“Registration” refers to the process of determining whether the application for registration of a union or workers’ association and collective bargaining agreement complies with the documentary requirements for registration prescribed in Rules III, IV, and XVII of these Rules.

(ss)“Related Labor Relations Dispute” refers to any conflict between a labor union and the employer or any individual, entity or group that is not a labor union or workers’ association.

(tt) “Re-run Election” refers to an election conducted to break a tie between contending unions, including between “no union” and one of the unions. It shall likewise refer to an election conducted after a failure of election has been declared by the election officer and/or affirmed by the mediator-arbiter.

(uu)“Run-off Election” refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

(vv)“Secretary” refers to the Head of the Department.

(ww). “Spoiled Ballot” refers to a ballot that is torn, defaced, or contains markings which can lead another to clearly identify the voter who casts such vote.

(xx)“Strike” refers to any temporary stoppage of work by the concerted action of employees as a result of a labor or industrial dispute.

(yy)“Strike Area” refers to the establishment, warehouses, depots, plants or offices, including the sites or premises used as run-away shops of the employer, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance.

zz)“Strike Vote Balloting” refers to the secret balloting undertaken by the members of the union in the bargaining unit concerned to determine whether or not to declare a strike in meetings or referenda called for that purpose.

(aaa)“Supervisory Employee” refers to an employee who, in the interest of the employer, effectively recommends managerial actions and the exercise of such authority is not merely routinary or clerical but requires the use of independent judgment.

(bbb)“Term of Office” refers to the fixed period of five (5) years during which the duly elected officers of a labor organization discharge the functions of their office, unless a shorter period is stipulated in the organization’s constitution and by-laws.

(ccc)“Union” refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.

(ddd)“Voluntary Arbitrator” refers to any person accredited by the Board as such, or any person named or designated in the collective bargaining agreement by the parties to act as their voluntary arbitrator, or one chosen by the parties, with or without the assistance of the Board, pursuant to a selection procedure agreed upon in the collective bargaining agreement.

(eee)“Workers’ Association” refers to an association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

## RULE II

### COVERAGE OF THE RIGHT TO SELF-ORGANIZATION

**Section 1. Policy.** – It is the policy of the State to promote the free and responsible exercise of the right to self-organization through the establishment of a simplified mechanism for the speedy registration of labor unions and workers associations, determination of representation status and resolution of inter/intra-union and other related labor relations disputes. Only legitimate or registered labor unions shall have the right to represent their members for collective bargaining and other purposes. Workers’ associations shall have the right to represent their members for purposes other than collective bargaining.

**Section 2. Who may join labor unions and workers’ associations.** – All persons employed in commercial, industrial and agricultural enterprises, including employees of government owned or controlled corporations without original charters established under the Corporation Code, as well as employees of religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor unions for purposes of collective bargaining: provided, however, that supervisory employees shall not be eligible for membership in a labor union of the rank-and-file employees but may form, join or assist separate labor unions of their own. Managerial employees shall not be eligible to form, join or assist any labor unions for purposes of collective bargaining.

Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs, or which has ratified either ILO Convention No. 87 and ILO Convention No. 98.

For purposes of this section, any employee, whether employed for a definite period or not, shall beginning on the first day of his/her service, be eligible for membership in any labor organization.

All other workers, including ambulant, intermittent and other workers, the self-employed, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection and other legitimate purposes except collective bargaining.”

### **RULE III**

#### **REGISTRATION OF LABOR ORGANIZATIONS**

**Section 1. Where to file.** – Applications for registration of independent labor unions, chartered locals, workers’ associations shall be filed with the Regional Office where the applicant principally operates. It shall be processed by the Labor Relations Division at the Regional Office in accordance with Sections 2-A, 2-C, and 2-E of this Rule.

Applications for registration of federations, national unions or workers’ associations operating in more than one region shall be filed with the Bureau or the Regional Offices, but shall be processed by the Bureau in accordance with Sections 2-B and 2-D of this Rule.

**Section 2. Requirements for application.** – A. The application for registration of an independent labor union shall be accompanied by the following documents:

- 1) the name of the applicant labor union, its principal address, the name of its officers and their respective addresses, approximate number of employees in the bargaining unit where it seeks to operate, with a statement that it is not reported as a chartered local of any federation or national union;
- 2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
- 3) the name of all its members comprising at least 20% of the employees in the bargaining unit;
- 4) the annual financial reports if the applicant has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 5) the applicant’s constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting. In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s).

B. The application for registration of federations and national unions shall be accompanied by the following documents:

- 1) a statement indicating the name of the applicant labor union, its principal address, the name of its officers and their respective addresses;
- 2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);

- 3) the annual financial reports if the applicant union has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 4) the applicant union's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting(s). In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s);
- 5) the resolution of affiliation of at least ten (10) legitimate labor organizations, whether independent unions or chartered locals, each of which must be a duly certified or recognized bargaining agent in the establishment where it seeks to operate; and
- 6) the name and addresses of the companies where the affiliates operate and the list of all the members in each company involved.

Labor organizations operating within an identified industry may also apply for registration as a federation or national union within the specified industry by submitting to the Bureau the same set of documents.

C. The application for registration of a workers' association shall be accompanied by the following documents:

- 1) the name of the applicant association, its principal address, the name of its officers and their respective addresses;
- 2) the minutes of the organizational meeting(s) and the list of members who participated therein;
- 3) the financial reports of the applicant association if it has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 4) the applicant's constitution and by-laws to which must be attached the names of ratifying members, the minutes of adoption or ratification of the constitution and by-laws and the date when ratification was made, unless ratification was done in the organizational meeting(s), in which case such fact shall be reflected in the minutes of the organizational meeting(s).

D. Application for registration of a workers' association operating in more than one region shall be accompanied, in addition to the requirements in the preceding subsection, by a resolution of membership of each member association, duly approved by its board of directors.

E. "A duly-registered federation or national union may directly create a local/chapter by issuing a charter certificate indicating the establishment of the local/chapter. The local/chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

The local/chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

- (a) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
- (b) The chapter's constitution and by-laws provided, that where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The genuineness and due execution of the supporting requirements shall be certified under oath by the Secretary or Treasurer of the local/chapter and attested to by its President.” (

**Section 3. Notice of change of name of labor organizations; Where to file.** – The notice for change of name of a registered labor organization shall be filed with the Bureau or the Regional Office where the concerned labor organization's certificate of registration or certificate of creation of a chartered local was issued.

**Section 4. Requirements for notice of change of name.** – The notice for change of name of a labor organization shall be accompanied by the following documents:

- (a) proof of approval or ratification of change of name; and
- (b) the amended constitution and by-laws.

**Section 5. Certificate of Registration/Certificate of Creation of Chartered Local for change of name.** – The certificate of registration and the certificate of creation of a chartered local issued to the labor organization for change of name shall bear the same registration number as the original certificate issued in its favor and shall indicate the following: (a) the new name of the labor organization; (b) its former name; (c) its office or business address; and (d) the date when the labor organization acquired legitimate personality as stated in its original certificate of registration/certificate of creation of chartered local.

**Section 6. Report of affiliation with federations or national unions; Where to file.** – The report of affiliation of an independently registered labor union with a federation or national union shall be filed with the Regional Office that issued its certificate of registration.

**Section 7. Requirements of affiliation.** – The report of affiliation of independently registered labor unions with a federation or national union shall be accompanied by the following documents:

- (a) resolution of the labor union's board of directors approving the affiliation;
- (b) minutes of the general membership meeting approving the affiliation;
- (c) the total number of members comprising the labor union and the names of members who approved the affiliation;
- (d) the certificate of affiliation issued by the federation in favor of the independently registered labor union; and
- (e) written notice to the employer concerned if the affiliating union is the incumbent bargaining agent.

**Section 8. Notice of Merger/Consolidation of labor organizations; Where to file.** – Notice of merger or consolidation of independent labor unions, chartered locals and workers'



associations shall be filed with and recorded by the Regional Office that issued the certificate of registration/certificate of creation of chartered local of either the merging or consolidating labor organization. Notice of merger or consolidation of federations or national unions shall be filed with and recorded by the Bureau.

**Section 9. Requirements of notice of merger.** – The notice of merger of labor organizations shall be accompanied by the following documents:

- (a) the minutes of merger convention or general membership meeting(s) of all the merging labor organizations, with the list of their respective members who approved the same; and
- (b) the amended constitution and by-laws and minutes of its ratification, unless ratification transpired in the merger convention, which fact shall be indicated accordingly.

**Section 10. Certificate of Registration.** – The certificate of registration issued to merged labor organizations shall bear the registration number of one of the merging labor organizations as agreed upon by the parties to the merger.

The certificate of registration shall indicate the following: (a) the new name of the merged labor organization; (b) the fact that it is a merger of two or more labor organizations; (c) the name of the labor organizations that were merged; (d) its office or business address; and (e) the date when each of the merging labor organizations acquired legitimate personality as stated in their respective original certificate of registration.

**Section 11. Requirements of notice of consolidation.** – The notice of consolidation of labor organizations shall be accompanied by the following documents:

- (a) the minutes of consolidation convention of all the consolidating labor organizations, with the list of their respective members who approved the same; and
- (b) the amended constitution and by-laws, minutes of its ratification transpired in the consolidation convention or in the same general membership meeting(s), which fact shall be indicated accordingly.

**Section 12. Certificate of Registration.** – The certificate of registration issued to a consolidated labor organization shall bear the registration number of one of the consolidating labor organizations as agreed upon by the parties to the consolidation.

The certificate of registration shall indicate the following (a) the new name of the consolidated labor organization; (b) the fact that it is a consolidation of two or more labor organizations; (c) the name of the labor organizations that were consolidated; (d) its office or business address; and (e) the date when each of the consolidating labor organizations acquired legitimate personality as stated in their respective original certificates of registration.

## RULE IV

### PROVISIONS COMMON TO THE REGISTRATION OF LABOR ORGANIZATIONS AND WORKERS ASSOCIATION

**Section 1. Attestation requirements.** – The application for registration of labor unions and workers' associations, notice for change of name, merger, consolidation and affiliation including all the accompanying documents, shall be certified under oath by its Secretary or Treasurer, as the case may be, and attested to by its President.

**Section 2. Payment of registration fee.** – A labor union and workers' association shall be issued a certificate of registration upon payment of the prescribed registration fee.

**Section 3. Accompanying documents.** – One (1) original copy and two (2) duplicate copies of all documents accompanying the application or notice shall be submitted to the Regional Office or the Bureau.

**Section 4. Action on the application/notice.** – The Regional Office or the Bureau, as the case may be, shall act on all applications for registration or notice of change of name, affiliation, merger and consolidation within one (1) day from receipt thereof, either by: (a) approving the application and issuing the certificate of registration/acknowledging the notice/report; or (b) denying the application/notice for failure of the applicant to comply with the requirements for registration/notice.”

**Section 5. Denial of Application/Return of Notice.** – Where the documents supporting the application for registration/notice of change of name, affiliation, merger and consolidation are incomplete or do not contain the required certification and attestation, the Regional Office or the Bureau shall, within one (1) day from receipt of the application/notice, notify the applicant/labor organization concerned in writing of the necessary requirements and to complete the same within-thirty (30) days from receipt of notice. Where the applicant/labor organization concerned fails to complete the requirements within the time prescribed, the application for registration shall be denied, or the notice of change of name, affiliation, merger and consolidation returned, without prejudice to filing a new application or notice.”

**Section 6. Form of Denial of Application/Return of Notice; Appeal.** – The notice of the Regional Office or the Bureau denying the application for registration/returning the notice of change of name, affiliation, merger or consolidation shall be in writing stating in clear terms the reasons for the denial or return. The denial may be appealed to the Bureau if denial is made by the Regional Office or to the Secretary if denial is made by the Bureau, within ten (10) days from receipt of such notice, on the ground of grave abuse of discretion or violation of these Rules.

**Section 7. Procedure on appeal.** – The memorandum of appeal shall be filed with the Regional Office or the Bureau that issued the denial/return of notice. The memorandum of appeal together with the complete records of the application for registration/notice of change of name, affiliation, merger or consolidation, shall be transmitted by the Regional Office to the Bureau or by the Bureau to the Office of the Secretary, within twenty-four (24) hours from receipt of the memorandum of appeal.

The Bureau or the Office of the Secretary shall decide the appeal within twenty (20) days from receipt of the records of the case.

**Section 8. Effect of registration.** – The labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local.

Such legal personality may be questioned only through an independent petition for cancellation of union registration in accordance with Rule XIV of these Rules, and not by way of collateral attack in petition for certification election proceedings under Rule VIII.

**Section 9. Effect of change of name.** – The change of name of a labor organization shall not affect its legal personality. All the rights and obligations of a labor organization under its old name shall continue to be exercised by the labor organization under its new name.

**Section 10. Effect of merger or consolidation.** – Where there is a merger of labor organizations, the legal existence of the absorbed labor organization(s) ceases, while the legal existence of the absorbing labor organization subsists. All the rights, interests and obligations of the absorbed labor organizations are transferred to the absorbing organization.

Where there is consolidation, the legal existence of the consolidating labor organizations shall cease and a new labor organization is created. The newly created labor organization shall acquire all the rights, interests and obligations of the consolidating labor organizations.

## **RULE V**

### **REPORTING REQUIREMENTS OF LABOR UNIONS AND WORKERS ASSOCIATIONS**

**Section 1. Reporting requirements.** – It shall be the duty of every legitimate labor unions and workers' association to submit to the Regional Office or the Bureau which issued its certificate of registration or certificate of creation of local/chapter, as the case may be, two (2) copies of each of the following documents:

- (a) its constitution and by-laws or amendments thereto, the minutes of adoption or ratification and the list of members who took part therein, within thirty (30) days from its adoption or ratification;
- (b) its list of elected and appointed officers and agents entrusted with the handling of union funds, the minutes of election of officers, and the list of voters, within thirty (30) days from the date of election or appointment;
- (c) its annual financial report within thirty (30) days after the close of every fiscal year; and
- (d) its list of members at least once a year or whenever required by the Bureau.

The fiscal year of a labor organization shall coincide with the calendar year unless a different period is provided in its constitution and by-laws.

## **RULE VI**

### **DETERMINATION OF REPRESENTATION STATUS**

**Section 1. Policy.** – It is the policy of the State to promote free trade unionism through expeditious procedures governing the choice of an exclusive bargaining agent. The

determination of such exclusive bargaining agent is a non-litigious proceeding and, as far as practicable, shall be free from technicalities of law and procedure, provided only that in every case, the exclusive bargaining agent enjoys the majority support of all the employees in the bargaining unit.

**Section 2. Determination of representation status; modes.** – The determination of an exclusive bargaining agent shall be through request for sole and exclusive bargaining agent (SEBA) certification in cases where there is only one legitimate labor organization operating within the bargaining unit, or through certification, run-off or consent election as provided in these Rules.

## RULE VII

### REQUEST FOR SOLE AND EXCLUSIVE BARGAINING AGENT (SEBA) CERTIFICATION

**Section 1. Where to file.** – Any legitimate labor organization may file a request for SEBA certification in the Regional Office which issued its certificate of registration or certificate of creation of chartered local.

**Section 2. Requirements for Request of SEBA Certification.** – The request for certification shall indicate:

- a. the name and address of the requesting legitimate labor organization;
- b. the name and address of the company where it operates;
- c. the bargaining unit sought to be represented;
- d. the approximate number of employees in the bargaining unit; and
- e. the statement of the existence/non-existence of other labor organization/CBA.

The certificate of registration as duly certified by the President of the requesting union or certificate of creation of chartered local as duly certified by the President of the federation of the local shall be attached to the request.

**Section 3. Action on the request.** – Within one (1) day from the submission of the request, the Regional Director shall:

- a. determine whether the request is compliant with the preceding section and whether the bargaining unit sought to be represented is organized or not; and
- b. request a copy of the payroll for purposes of SEBA certification pursuant to Section 4 of this Rule.

If he/she finds it deficient, he/she shall advise the requesting union or local to comply within ten (10) days from notice. Failure to comply within the prescribed period shall be deemed withdrawal of the request for SEBA certification.

**Section 4. Request for certification in unorganized establishment with only one (1) legitimate labor organization; Validation proceedings.** - If the Regional Director finds the establishment unorganized with only one legitimate labor organization, he/she shall call a conference within five (5) work days for the submission of the following:

- a. the names of employees in the covered bargaining unit who signify their support for the certification, provided that said employees comprise at least majority of the number of employees in the covered bargaining unit; and
- b. certification under oath by the President of the requesting union or local that all documents submitted are true and correct based on his/her personal knowledge.

The submission shall be presumed to be true and correct unless contested under oath by any member of the bargaining unit during the validation conference. For this purpose, the employer or any representative of the employer shall not be deemed a party-in-interest but only as a by-stander to the process of certification.

If the requesting union or local fails to complete the requirements for SEBA certification during the conference, the request for SEBA certification shall be referred to the Election Officer for the conduct of certification election pursuant to Rule IX of this Rules.

**Section 4.1. Action on the submission.** - If the Regional Director finds the requirements complete, he/she shall issue during the conference a certification as sole and exclusive bargaining agent enjoying the rights and privileges of an exclusive bargaining agent of all the employees in the covered bargaining unit.

The Regional Director shall cause the posting of the SEBA certification for fifteen (15) consecutive days in at least two (2) conspicuous places in the establishment or covered bargaining unit.

**Section 4.2. Effect of certification.** – Upon the issuance of the certification as sole and exclusive bargaining agent, the certified union or local shall enjoy all the rights and privileges of an exclusive bargaining agent of all the employees in the covered bargaining unit.

The certification shall bar the filing of a petition for certification election by any labor organization for a period of one (1) year from the date of its issuance. Upon expiration of this one-year period, any legitimate labor organization may file a petition for certification election in the same bargaining unit represented by the certified labor organization, unless a collective bargaining agreement between the employer and the certified labor organization was executed and registered with the Regional Office in accordance with Rule XVII of this Rules.

**Section 5. Request for certification in unorganized establishment with more than one (1) legitimate labor organizations.** - If the Regional Director finds the establishment unorganized with more than one legitimate labor organization, he/she shall refer the same to the Election Officer for the conduct of certification election.

The certification election shall be conducted in accordance with Rule IX of this Rules.

**Section 6. Request for certification in organized establishment.** - If the Regional Director finds the establishment organized, he/she shall refer the same to the mediator-arbiter for the determination of the propriety of conducting a certification election in accordance with Rules VIII and IX of this Rules.

## RULE VIII

### CERTIFICATION ELECTION

**Section 1. Who may file.** – Any legitimate labor organization, including a national union or federation that has issued a charter certificate to its local/chapter or the local/chapter itself, may file a petition for certification election.

A national union or federation filing a petition in behalf of its local/chapter shall not be required to disclose the names of the local/chapter's officers and members, but shall attach to the petition the charter certificate it issued to its local/chapter.

When requested to bargain collectively in a bargaining unit where no registered collective bargaining agreement exists, an employer may file a petition for certification election with the Regional Office.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature: and (2) submitting the list of employees during the pre-election conference should the Mediator-Arbiter act favorably on the petition. However, manifestation of facts that would aid the Mediator-Arbiter in expeditiously resolving the petition such as existence of a contract-bar, one year bar or deadlock bar may be considered. The contract-bar rule shall apply in any of the following: (1) when there exists an unexpired registered CBA; or (2) when there is no challenge on the representation status of the incumbent union during the freedom period. (as amended by D.O. 40-F-08 and further amended by D.O. 40-I-15)

**Section 2. Where to file.** – A petition for certification election shall be filed with the Regional Office which issued the petitioning union's certificate of registration or certificate of creation of chartered local.

At the option of the petitioner, a petition for certification election and its supporting documents may also be filed online. (as amended by D.O. 40-I-15)

The petition shall be heard and resolved by the Mediator-Arbiter.

Where two (2) or more petitions involving the same bargaining unit are filed in one (1) Regional Office, the same shall be automatically consolidated with the Mediator-Arbiter who first acquired jurisdiction. Where the petitions are filed in different Regional Offices, the Regional Office in which the petition was first filed shall exclude all others; in which case, the latter shall indorse the petition to the former for consolidation.

**Section 3. When to file.** – A petition for certification election may be filed anytime, except:

- (a) when a SEBA certification has been entered or a valid certification, consent or run-off election has been conducted within the bargaining unit within one (1) year prior to the filing of the petition for certification election. Where an appeal has been filed from the Order of the Mediator-Arbiter certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal has become final and executory;
- (b) when the duly certified union has commenced and sustained negotiations in good faith with the employer in accordance with Article 261 (renumbered) of the Labor Code within the one year period referred to in the immediately preceding paragraph;

- (c) when a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout;
- (d) when a collective bargaining agreement between the employer and a duly certified bargaining agent has been registered in accordance with Article 237(renumbered) of the Labor Code. Where such collective bargaining agreement is registered, the petition may be filed only within sixty (60) days prior to its expiry.

**Section 4. Form and contents of petition.** – The petition shall be in writing, verified under oath by the president of petitioning labor organization. Where a federation or national union files a petition in behalf of its local or affiliate, the petition shall be verified under oath by the president or duly authorized representative of the federation or national union. In case the employer filed the petition, the owner, president or any corporate officer, who is authorized by the board of directors, shall verify the petition. The petition shall contain the following:

- (a) the name of petitioner, its address, and affiliation if appropriate, the date and number of its certificate of registration. If the petition is filed by a federation or national union, the national president or his/her duly authorized representative shall certify under oath as to the existence of its local/chapter in the establishment and attaching thereto the charter certificate or a certified true copy thereof. If the petition is filed by a local/chapter it shall attach its charter certificate or a certified true copy thereof;
- (b) the name, address and nature of employer's business;
- (c) the description of the bargaining unit;
- (d) the approximate number of employees in the bargaining unit;
- (e) the names and addresses of other legitimate labor unions in the bargaining unit;
- (f) a statement indicating any of the following circumstances:
  - 1) that the bargaining unit is unorganized or that there is no registered collective bargaining agreement covering the employees in the bargaining unit;
  - 2) if there exists a duly registered collective bargaining agreement, that the petition is filed within the sixty-day freedom period of such agreement; or
  - 3) if another union had been certified in a valid certification, consent or run-off election, that the petition is filed outside the one-year period from date of recording of such SEBA certification or conduct of certification or run-off election and no appeal is pending thereon.
- (g) in an organized establishment, the signature of at least twenty-five percent (25%) of all employees in the appropriate bargaining unit shall be attached to the petition at the time of its filing; and
- (h) other relevant facts.

**Section 5. Raffle of the case.** – The Regional Director or his/her duly authorized representative upon receipt of the petition shall immediately assign it by raffle to a Mediator-Arbitrator. The raffle shall be done in the presence of the petitioner if the latter so desires.

**Section 6. Notice of preliminary conference.** – The petition shall immediately be transmitted to the assigned Mediator-Arbiter who shall immediately prepare and serve a notice of preliminary conference to be held within ten (10) working days from the Mediator-Arbiter's receipt of the petition.

The service of the petition to the employer and of the notice of preliminary conference to the petitioner and the incumbent bargaining agent (if any) shall be made within three (3) working days from the Mediator-Arbiter's receipt of the petition. The service may be made by personal service, by registered mail or by courier service.

A copy of the petition and of the notice of preliminary conference shall be posted within the same three (3) day period in at least two conspicuous places in the establishment. In multiple-location workplaces, the posting shall be made in at least two conspicuous places in every location.

**Section 7. Posting.** - The Regional Director or his/her authorized DOLE personnel, and/or the petitioner shall be responsible for the posting of the notice of petition for certification election.

**Section 8. Forced Intervenor.** – The incumbent bargaining agent shall automatically be one of the choices in the certification election as forced intervenor.

**Section 9. Motion for Intervention.** – When a petition for certification election was filed in an organized establishment, any legitimate labor union other than the incumbent bargaining agent operating within the bargaining unit may file a motion for intervention with the Mediator-Arbiter during the freedom period of the collective bargaining agreement. The form and contents of the motion shall be the same as that of a petition for certification election.

In an unorganized establishment, the motion shall be filed at any time prior to the decision of the Mediator-Arbiter. The form and contents of the motion shall likewise be the same as that of a petition for certification election. The motion for intervention shall be resolved in the same decision issued in the petition for certification election.

**Section 10. Preliminary conference; Hearing.** – The Mediator-Arbiter shall conduct a preliminary conference and hearing within ten (10) days from receipt of the petition to determine the following:

- (a) the bargaining unit to be represented;
- (b) contending labor unions;
- (c) possibility of a consent election;
- (d) existence of any of the bars to certification election under Section 3 of this Rule; and
- (e) such other matters as may be relevant for the final disposition of the case.

**Section 11. Consent election; Agreement.** – The contending unions may agree to the holding of an election, in which case it shall be called a consent election. The Mediator-Arbiter shall forthwith call for the consent election, reflecting the parties' agreement and the call in the minutes of the conference.



The Mediator-Arbiter shall, immediately forward the records of the petition to the Regional Director or his/her authorized representative for the determination of the Election Officer who shall be chosen by raffle in the presence of representatives of the contending unions, if they so desire.

The first pre-election conference shall be scheduled within ten (10) days from the date of the consent election agreement. Subsequent conferences may be called to expedite and facilitate the holding of the consent election.

**Section 12. Number of hearings; Pleadings.** – If the contending unions fail to agree to a consent election during the preliminary conference, the Mediator-Arbiter may conduct as many hearings as he/she may deem necessary, but in no case shall the conduct thereof exceed fifteen (15) days from the date of the scheduled preliminary conference/hearing, after which time the petition shall be considered submitted for decision. The Mediator-Arbiter shall have control of the proceedings. Postponements or continuances shall be discouraged.

Within the same 15-day period within which the petition is heard, the contending labor unions may file such pleadings as they may deem necessary for the immediate resolution of the petition. Extensions of time shall not be entertained. All motions shall be resolved by the Mediator-Arbiter in the same order or decision granting or denying the petition.

**Section 13. Failure to appear despite notice.** – The failure of any party to appear in the hearing(s) when notified or to file its pleadings shall be deemed a waiver of its right to be heard. The Mediator-Arbiter, however, when agreed upon by the parties for meritorious reasons may allow the cancellation of scheduled hearing(s). The cancellation of any scheduled hearing(s) shall not be used as a basis for extending the 15-day period within which to terminate the same.

**Section 14. Order/Decision on the petition.** – Within ten (10) days from the date of the last hearing, the Mediator-Arbiter shall formally issue a ruling granting or denying the petition, except in organized establishments where the grant of the petition can only be made after the lapse of the freedom period.

The ruling for the conduct of a certification election shall state the following:

- (a) the name of the employer or establishment;
- (b) a description of the bargaining unit;
- (c) a statement that none of the grounds for dismissal enumerated in the succeeding paragraph exists;
- (d) the names of the contending labor unions which shall appear in the following order: the petitioner unions in the order of the date of filing of their respective petitions; the forced-intervenor; and “no union”;
- (e) a directive upon the employer and the contending union(s) to submit within ten (10) days from receipt of the order, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three (3) months prior to the filing of the petition.

**Section 15. Denial of the petition; Grounds.** – The Mediator-Arbiter may dismiss the petition on any of the following grounds:

- (a) the petitioning union or national union/federation is not listed in the Department's registry of legitimate labor unions or that its registration certificate has been cancelled with finality in accordance with Rule XIV of these Rules;
- (b) failure of a local/chapter or national union/federation to submit a duly issued charter certificate upon filing of the petition for certification election;
- (c) filing the petition before or after the freedom period of a duly registered collective bargaining agreement; provided that the sixty-day period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement;
- (d) filing of a petition within one (1) year from the date of recording of the SEBA certification , or within the same period from a valid certification, consent or run-off election where no appeal on the results of the certification, consent or run-off election is pending;
- (e) where a duly certified union has commenced and sustained negotiations with the employer in accordance with Article 261 (renumbered) of the Labor Code within the one-year period referred to in Section 14.d of this Rule, or where there exists a bargaining deadlock which has been submitted to conciliation or arbitration or has become the subject of a valid notice of strike or lockout where an incumbent or certified bargaining agent is a party;
- (f) in an organized establishment, the failure to submit the twenty-five percent (25%) signature requirement to support the filing of the petition for certification election;
- (g) non-appearance of the petitioner for two (2) consecutive scheduled conferences before the Mediator-Arbiter despite due notice; and
- (h) absence of employer-employee relationship between all the members of the petitioning union and the establishment where the proposed bargaining unit is sought to be represented.

**Section 16. Prohibited ground for the denial of the petition.** – The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said unions.

**Section 17. Ancillary Issues.** – All issues pertaining to the existence of employer-employee relationship raised before the Mediator-Arbiter during the hearing(s) and in the pleadings shall be resolved in the same order or decision granting or denying the petition for certification election.

All issues pertaining to the validity of the petitioning union's certificate of registration or its legal personality as a labor organization, validity of registration and execution of collective bargaining agreements shall be heard and resolved by the Regional Director in an independent petition for cancellation of its registration and not by the Mediator-Arbiter in the petition for certification election, unless the petitioning union is not listed in the Department's roster of legitimate labor organizations, or an existing collective bargaining agreement is not registered with the Department.

**Section 18. Release of Order/Decision within Ten (10) Days from the Last Hearing.** – The Mediator-Arbiter shall release his/her Order or Decision granting or denying the petition personally to the parties within ten (10) days from the last hearing, copy furnished the employer

**Section 19. Appeal.** – The Order granting the conduct of a certification election in an unorganized establishment shall not be subject to appeal. Any issue arising therefrom may be raised by means of protest on the conduct and results of the certification election.

The order granting the conduct of a certification election in an organized establishment and the decision dismissing or denying the petition, whether in an organized or unorganized establishment, may be appealed to the Office of the Secretary within ten (10) days from receipt thereof.

The appeal shall be verified under oath and shall consist of a memorandum of appeal, specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence.

**Section 20. Where to file appeal.** – The memorandum of appeal shall be filed in the Regional Office where the petition originated, copy furnished the contending unions and the employer, as the case may be. Within twenty-four (24) hours from receipt of the appeal, the Regional Director shall cause the transmittal thereof together with the entire records of the case to the Office of the Secretary.

**Section 21. Finality of Order/Decision.** – Where no appeal is filed within the ten (10) day period, the Mediator-Arbiter shall enter the finality of the Order/Decision in the records of the case and cause the transmittal of the records of the petition to the Regional Director.

**Section 22. Period to Reply.** – A reply to the appeal may be filed by any party to the petition within ten (10) days from receipt of the memorandum of appeal. The reply shall be filed directly with the Office of the Secretary.

**Section 23. Decision of the Secretary.** – The Secretary shall have fifteen (15) days from receipt of the entire records of the petition within which to decide the appeal. The filing of the memorandum of appeal from the Order or Decision of the Mediator-Arbiter stays the holding of any certification election.

The decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the decision shall be entertained.

**Section 24. Transmittal of records to the Regional Office.** – Within forty-eight (48) hours from notice of receipt of decision by the parties and finality of the decision, the entire records of the case shall be remanded to the Regional Office of origin for implementation. Implementation of the decision shall not be stayed unless restrained by the appropriate court.

**Section 25. Effects of consent election.** – Where a petition for certification election had been filed, and upon the intercession of the Med-Arbiter, the parties agree to hold a consent election, the results thereof shall constitute a bar to the holding of a certification election for one (1) year from the holding of such consent election. Where an appeal has been filed from the results of the consent election, the running of the one (1) year period shall be suspended until the decision on appeal has become final and executory.

Where no petition for certification election was filed but the parties themselves agreed to hold a consent election with the intercession of the Regional Office, the results thereof shall constitute a bar to another petition for certification election

**Section 26. Effects of early agreements.** – The representation case shall not be adversely affected by a collective bargaining agreement registered before or during the last sixty (60) days of a subsisting agreement or during the pendency of the representation case.

**Section 27. Non-availability of Mediator-Arbiter.** – Where there is no Mediator-Arbiter available in the Regional Office by reason of vacancy, prolonged absence, or excessive workload as determined by the Regional Director, he/she shall transmit the entire records of the case to the Bureau, which shall within forty-eight (48) hours from receipt assign the case to any Mediator-Arbiter from any of the Regional Offices or from the Bureau.

## **RULE IX**

### **CONDUCT OF CERTIFICATION ELECTION**

**Section 1. Employer as by-stander.** - Subject to the provisions of Paragraph 3, Section 1 of Rule VIII, the principle of the employer as by-stander shall be strictly observed throughout the conduct of certification election. The employer shall not harass, intimidate, threat or coerce employees before, during and after elections.

**Section 2. Raffle of the case.** – Within twenty-four (24) hours from receipt of the notice of entry of final judgment granting the conduct of a certification election, the Regional Director shall cause the raffle of the case to an Election Officer who shall have control of the pre-election conference and election proceedings.

**Section 3. Pre-election conference.** – Within twenty-four (24) hours from receipt of the assignment for the conduct of a certification election, the Election Officer shall cause the issuance of notice of pre-election conference upon the contending unions, which shall be scheduled within ten (10) calendar days from receipt of the assignment. The employer shall be required to submit the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit at the time of the filing of the petition.

**Section 4. Waiver of right to be heard.** – Failure of any party to appear during the pre-election conference despite notice shall be considered as a waiver of its right to be present and to question or object to any of the agreements reached in the pre-election conference. However, this shall not deprive the non-appearing party of the right to be furnished notices of and to attend subsequent pre-election conferences. (as amended by D.O. 40-F-08)

**Section 5. Minutes of pre-election conference.** – The Election Officer shall keep the minutes of matters raised and agreed upon during the pre-election conference. The parties shall acknowledge the completeness and correctness of the entries in the minutes by affixing their signatures thereon. Where any of the parties refuse to sign the minutes, the Election Officer shall note such fact in the minutes, including the reason for refusal to sign the same. In all cases, the parties shall be furnished a copy of the minutes.

The pre-election conference shall be completed within thirty (30) days from the date of the first hearing.

**Section 6. Qualification of voters; inclusion-exclusion.** – All employees who are members of the appropriate bargaining unit three (3) months prior to the filing of the

petition/request for SEBA certification shall be eligible to vote. An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the Order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.

In case of disagreement over the voters' list or over the eligibility of voters, all contested voters shall be allowed to vote. But their votes shall be segregated and sealed in individual envelopes in accordance with Sections 11 and 12 of this Rule.

**Section 7. Posting of notices.** – The Election Officer and/or authorized DOLE personnel shall cause the posting of notice of election at least ten (10) days before the actual date of the election in two (2) most conspicuous places in the company premises. The notice shall contain:

- a. The date, time and venue/s of the election, which is preferably within the establishment;
- b. Names of all contending unions; and
- c. The description of the bargaining unit and the list of eligible and challenged voters.

The posting of the list of employees comprising the bargaining unit shall be done by the DOLE personnel.

The posting of the notice of election, the information required to be included therein and the duration of posting cannot be waived by the contending unions or the employer.

**Section 8. Secrecy and Sanctity of the Ballot.** – To ensure secrecy of the ballot, the Election Officer, together with the authorized representatives of the contending unions, shall before the start of the actual voting, inspect the polling place, the ballot boxes and the polling booths.

No device that could record or identify the voter or otherwise undermine the secrecy and sanctity of the ballot shall be allowed within the premises, except those devices brought in by the Election Officer. Any other device found within the premises shall be confiscated by the Election Officer and returned to its owner after the conduct of the certification election.

**Section 9. Preparation of ballots.** - The Election Officer shall prepare the ballots in English and Filipino or the local dialect. The number of ballots should correspond to the number of voters in the bargaining unit plus a reasonable number of extra ballots for contingencies. All ballots shall be signed at the back by the Election Officer and an authorized representative each of the contending unions. A party who refuse or fails to sign the ballots waives its right to do so and the Election Officer shall enter the fact of refusal and the reason therefor in the records of the case.

**Section 10. Casting of votes.** The voter must put put a cross ( x ) or check ( ✓ ) mark in the square opposite the name of the union of his choice or “No Union” if he/she does not want to be represented by any union.

If the voter inadvertently spoils a ballot, he/she shall return it to the Election Officer who shall destroy it and give him/her another ballot.

Any member of the bargaining unit who is unintentionally omitted in the master list of voters may be allowed to vote if both parties agree, otherwise, he/she will be allowed to vote but the ballot is segregated.

**Section 11. Procedure in the challenge of votes.** – The ballot of the voter who has been properly challenged during the pre-election conferences, shall be placed in an envelope which shall be sealed by the Election Officer in the presence of the voter and the representatives of the contending unions. The Election Officer shall indicate on the envelope the voter's name, the union challenging the voter, and the ground for the challenge. The sealed envelope shall then be signed by the Election Officer and the representatives of the contending unions. The Election Officer shall note all challenges in the minutes of the election proceedings and shall have custody of all envelopes containing the challenged votes. The envelopes shall be opened and the question of eligibility shall be passed upon by the Mediator-Arbiter only if the number of segregated votes will materially alter the results of the election.

**Section 12. On-the-spot questions.** – The Election Officer shall rule on any question relating to and raised during the conduct of the election. In no case, however, shall the election officer rule on any of the grounds for challenge specified in the immediately preceding section.

**Section 13. Protest; When Perfected.** – Any party-in-interest may file a protest based on the conduct or mechanics of the election. Such protests shall be recorded in the minutes of the election proceedings. Protests not so raised immediately after the last ballot cast are deemed waived.

General reservation to file a protest shall be prohibited. The protesting party shall specify the grounds for protest.

The protesting party must formalize its protest with the Mediator-Arbiter, with specific grounds, arguments and evidence, within five (5) days after the close of the election proceedings. If not recorded in the minutes and formalized within the prescribed period, the protest shall be deemed dropped.

**Section 14. Canvassing of votes.** – The votes shall be counted and tabulated by the Election Officer in the presence of the representatives of the contending unions. Upon completion of the canvass, the Election Officer shall give each representative a copy of the minutes of the election proceedings and results of the election. The ballots and the tally sheets shall be sealed in an envelope and signed by the Election Officer and the representatives of the contending unions and transmitted to the Mediator-Arbiter, together with the minutes and results of the election, within twenty-four (24) hours from the completion of the canvass.

Where the election is conducted in more than one region, consolidation of results shall be made within fifteen (15) days from the conduct thereof.

**Section 15. Conduct of election and canvass of votes.** – The election precincts shall open and close on the date and time agreed upon during the pre-election conference. The opening and canvass of votes shall proceed immediately after the precincts have closed. Failure of the representative/s of the contending unions to appear during the election proceedings and canvass of votes shall be considered a waiver of the right to be present and to question the conduct thereof.

**Section 16. Certification of Collective Bargaining Agent.** – The union which obtained a majority of the valid votes cast shall be certified as the sole and exclusive bargaining

agent of all the employees in the appropriate bargaining unit within five (5) days from the day of the election, provided no protest is recorded in the minutes of the election.

When the winning choice is a local chapter without a certificate of creation of chartered local, such local chapter shall submit its DOLE-issued certificate of creation within five (5) days from the conclusion of election.

**Section 17. Failure of election.** – Where the number of votes cast in a certification or consent election is less than the majority of the number of eligible voters and there are no material challenged votes, the Election Officer shall declare a failure of election in the minutes of the election proceedings.

**Section 18. Re-run election.** – When a certification, consent or run-off election results to a tie between the two (2) choices, the Election Officer shall immediately notify the parties of a re-run election. The Election Officer shall cause the posting of the notice of re-run election within five (5) days from the certification, consent or run-off election. The re-run election shall be conducted within ten (10) days after the posting of notice.

The choice receiving the highest votes cast during the re-run election shall be declared the winner and shall be certified accordingly.

**Section 19. Effect of failure of election.** – A failure of election shall not bar the filing of a motion for the immediate holding of another certification or consent election within six (6) months from date of declaration of failure of election.

**Section 20. Action on the motion.** – Within twenty-four (24) hours from receipt of the motion, the Election Officer shall immediately schedule the conduct of another certification or consent election within fifteen (15) days from receipt of the motion and cause the posting of the notice of certification election at least ten (10) days prior to the scheduled date of election in two (2) most conspicuous places in the establishment. The same guidelines and list of voters shall be used in the election.

**Section 21. Proclamation and certification of the result of the election.** – Within twenty-four (24) hours from final canvass of votes, there being a valid election, the Election Officer shall transmit the records of the case to the Mediator-Arbiter who shall, within the same period from receipt of the minutes and results of election, issue an Order proclaiming the results of the election and certifying the union which obtained a majority of the valid votes cast as the sole and exclusive bargaining agent in the subject bargaining unit, under any of the following conditions:

- (a) no protest was filed or, even if one was filed, the same was not perfected within the five-day period for perfection of the protest;
- (b) no challenge or eligibility issue was raised or, even if one was raised, the resolution of the same will not materially change the results of the elections.

The winning union shall have the rights, privileges and obligations of a duly certified collective bargaining agent from the time the certification is issued.

Where majority of the valid votes cast results in “No Union” obtaining the majority, the Mediator-Arbiter shall declare such fact in the order.

**Section 22. Appeal; Finality of decision.** – The decisions of the Mediator-Arbitrator may be appealed to the Secretary within ten (10) days from receipt by the parties of a copy thereof.

The appeal shall be under oath and shall consist of a memorandum of appeal, specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence.

Where no appeal is filed within the ten-day period, the order/decision shall become final and executory and the Mediator-Arbitrator shall enter this fact into the records of the case.

**Section 23. Where to file appeal.** – The memorandum of appeal shall be filed in the Regional Office where the petition originated, copy furnished the contending unions and the employer, as the case may be. Within twenty-four (24) hours from receipt of the appeal, the Regional Director shall cause the transmittal thereof together with the entire records of the case to the Office of the Secretary.

**Section 24. Period to Reply.** – A reply to the appeal may be filed by any party to the petition within ten (10) days from receipt of the memorandum of appeal. The reply shall be filed directly with the Office of the Secretary.

**Section 25. Decision of the Secretary.** – The Secretary shall have fifteen (15) days from receipt of the entire records of the petition within which to decide the appeal.

The decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the decision shall be entertained.

**Section 26. Transmittal of records to the Regional Office.** – Within forty-eight (48) hours from notice of receipt of decision by the parties and finality of the decision, the entire records of the case shall be remanded to the Regional Office of origin for implementation. Implementation of the decision shall not be stayed unless restrained by the appropriate court.

## **RULE X**

### **RUN-OFF ELECTIONS**

**Section 1. When proper.** – When an election which provides for three (3) or more choices results in none of the contending unions receiving a majority of the valid votes cast, and there are no objections or challenges which if sustained can materially alter the results, the Election Officer shall motu proprio conduct a run-off election within ten (10) days from the close of the election proceedings between the labor unions receiving the two highest number of votes; provided, that the total number of votes for all contending unions is at least fifty (50%) percent of the number of votes cast.

“No Union” shall not be a choice in the run-off election.

Notice of run-off elections shall be posted by the Election Officer at least five (5) days before the actual date of run-off election.

**Section 2. Qualification of voters.** – The same voters’ list used in the certification election shall be used in the run-off election. The ballots in the run-off election shall provide as choices the unions receiving the highest and second highest number of the votes cast. The



labor union receiving the greater number of valid votes cast shall be certified as the winner, subject to Section 21, Rule IX.

## RULE XI

### INTER/INTRA-UNION DISPUTES AND OTHER RELATED LABOR RELATIONS DISPUTES

**Section 1. Coverage.** - Inter/intra-union disputes shall include:

- a. Cancellation of registration of a labor organization filed by its members or by another labor organization;
- b. Conduct of election of union and workers' association officers/nullification of election of union and workers' association officers;
- c. Audit/accounts examination of union or workers' association funds;
- d. Deregistration of collective bargaining agreements;
- e. Validity/invalidity of union affiliation or disaffiliation;
- f. Validity/invalidity of acceptance/non-acceptance for union membership;
- g. Validity/invalidity of impeachment/expulsion of union and workers' association officers and members;
- h. Validity/invalidity of the SEBA certification;
- i. Opposition to application for union and CBA registration;
- j. Violations of or disagreements over any provision in a union or workers' association constitution and by-laws;
- k. Disagreements over chartering or registration of labor organizations and collective bargaining agreements;
- l. Violations of the rights and conditions of union or workers' association membership;
- m. Violations of the rights of legitimate labor organizations, except interpretation of collective bargaining agreements; and
- n. Such other disputes or conflicts involving the rights to self-organization, union membership and collective bargaining –
  1. Between and among legitimate labor organizations; or
  2. Between and among members of a union or workers' association.

B. Other labor relations disputes, not otherwise covered by Article 224 (renumbered) of the Labor Code, shall include:

(a) any conflict between:

- 1) a labor union and the employer, or
- 2) a labor union and a group that is not a labor organization; or
- 3) a labor union and an individual who is not a member of such union;

(b) cancellation of registration of unions and workers associations filed by individual/s other than its members, or group that is not a labor organization; and

(c) a petition for interpleader involving labor relations.

**Section 2. Effects of the filing: Pendency of inter/intra-union and other related labor relations disputes.** – The rights, relationships and obligations of the parties litigants against each other and other parties-in-interest prior to the institution of the petition shall continue to remain during the pendency of the petition and until the date of finality of the decision rendered therein. Thereafter, the rights, relationships and obligations of the parties

litigants against each other and other parties-in-interest shall be governed by the decision so ordered.

The filing or pendency of any inter/intra-union dispute and other related labor relations dispute is not a prejudicial question to any petition for certification election and shall not be a ground for the dismissal of a petition for certification election or suspension of proceedings for certification election.

**Section 3. Who may file.** – Any legitimate labor organization or member(s) thereof specially concerned may file a complaint or petition involving disputes or issues enumerated in Section 1 hereof. Any party-in-interest may file a complaint or petition involving disputes or issues enumerated in Section 1.B hereof

Where the issue involves the entire membership of the labor organization, the complaint or petition shall be supported by at least thirty percent (30%) of its members.

**Section 4. Where to file.** – Complaints or petitions involving labor unions with independent registrations, chartered locals, workers' associations, its officers or members shall be filed with the Regional Office that issued its certificate of registration or certificate of creation of chartered local. Complaints involving federations, national unions, industry unions, its officers or member organizations shall be filed with the Bureau.

Petitions for cancellation of registration of labor unions with independent registration, chartered locals and workers association and petitions for deregistration of collective bargaining agreements shall be resolved by the Regional Director. He/She may appoint a Hearing Officer from the Labor Relations Division.

Other inter/intra-union disputes and related labor relations disputes shall be heard and resolved by the Mediator-Arbitrator in the Regional Office.

Complaints or petitions involving federations, national or industry unions, trade union centers and their chartered locals, affiliates or member organizations shall be filed either with the Regional Office or the Bureau. The complaint or petition shall be heard and resolved by the Bureau.

When two or more petitions involving the same parties and the same causes of action are filed, the same shall be automatically consolidated.

**Section 5. Formal requirements of the complaint or petition.** The complaint or petition shall be in writing, verified under oath and shall, among others, contain the following:

- (a) name, address and other personal circumstances of the complainant(s) or petitioner(s);
- (b) name, address and other personal circumstances of the respondent(s) or person(s) charged;
- (c) nature of the complaint or petition;
- (d) facts and circumstances surrounding the complaint or petition;
- (e) cause(s) of action or specific violation(s) committed;
- (f) a statement that the administrative remedies provided for in the constitution and by-laws have been exhausted or such remedies are not readily available to the

complainant(s) or petitioner(s) through no fault of his/her/their own, or compliance with such administrative remedies does not apply to complainant(s) or petitioner(s);

- (g) relief(s) prayed for;
- (h) certificate of non-forum shopping; and
- (i) other relevant matters.

**Section 6. Raffle of the case.** –Upon the filing of the complaint or petition, the Regional Director or any of his/her authorized representative in the Regional Office and the Docket Section of the Bureau shall allow the party filing the complaint or petition to determine the Mediator-Arbiter or Hearing Officer assigned to the case by means of a raffle. Where there is only one Mediator-Arbiter or Hearing Officer in the Region, the raffle shall be dispensed with and the complaint or petition shall be assigned to him/her.

**Section 7. Notice of preliminary conference.** – Immediately after the raffle of the case or receipt of the complaint or petition, the same shall be transmitted to the Mediator-Arbiter or Hearing Officer, as the case may be, who shall in the same instance prepare the notice for preliminary conference and cause the service thereof upon the party filing the petition. The preliminary conference shall be scheduled within ten (10) days from receipt of the complaint or petition.

Within three (3) days from receipt of the complaint or petition, the Mediator-Arbiter or Hearing Officer, as the case may be, shall cause the service of summons upon the respondent(s) named therein, directing him/her to file his/her answer/comment on the complaint or petition on or before the scheduled preliminary conference and to appear before the Mediator-Arbiter or Hearing Officer on the scheduled preliminary conference.

**Section 8. Conduct of preliminary conference.** – The Mediator-Arbiter or Hearing Officer, as the case may be, shall conduct a preliminary conference and hearing within ten (10) days from receipt of the complaint or petition. He/She shall exert every effort to effect an amicable settlement of the dispute.

Where the parties agree to settle amicably, their agreements shall be specified in the minutes of the conference and a decision based on compromise shall be issued by the Mediator-Arbiter or the Regional Director, as the case may be, within five (5) days from the date of the mandatory conference.

Where no amicable settlement is reached, the Mediator-Arbiter or Hearing Officer, as the case may be, shall proceed with the stipulation of facts, limitation or definition of the issues, clarificatory questioning and submission of laws and jurisprudence relied upon in support of each other's claims and defenses.

**Section 9. Conduct of Hearing(s).** – The Mediator-Arbiter or Hearing Officer, as the case may be, shall determine whether to call further hearing(s) on the complaint or petition.

Where the Mediator-Arbiter or Hearing Officer, as the case may be, decides to conduct further hearing(s), he/she shall require the parties to submit the affidavits of their witnesses and such documentary evidence material to prove each other's claims and defenses. The hearing(s) shall be limited to clarificatory questions by the Mediator-Arbiter or Hearing Officer and must be completed within twenty-five (25) days from the date of preliminary conference.

The complaint or petition shall be considered submitted for decision after the date of the last hearing or upon expiration of twenty-five (25) days from date of preliminary conference, whichever comes first.

**Section 10. Affirmation of testimonial evidence.** – Any affidavit submitted by a party to prove his/her claims or defenses shall be re-affirmed by the presentation of the affiant before the Mediator-Arbiter or Hearing Officer, as the case may be. Any affidavit submitted without the re-affirmation of the affiant during a scheduled hearing shall not be admitted in evidence, except when the party against whom the affidavit is being offered admits all allegations therein and waives the examination of the affiant.

**Section 11. Filing of pleadings.** – The parties may file his/her pleadings, including their respective position papers, within the twenty-five (25) day period prescribed for the conduct of hearing(s). No other pleading shall be considered or entertained after the case is considered submitted for decision.

**Section 12. Hearing and resolution of the complaint or petition in the Bureau.** – The Bureau shall observe the same process and have the same period within which to hear and resolve the complaints or petitions filed before it.

**Section 13. Decision.** – The Bureau and the Mediator-Arbiter or Regional Director, as the case may be, shall have twenty (20) days from the date of the last hearing within which to decide the complaint or petition. The decision shall state the facts, findings, conclusion, and reliefs granted.

**Section 14. Release of Decision.** – The notice of decision shall be signed by the Records Officer in the Bureau and by the Mediator-Arbiter or Hearing Officer in the Regional Office. Within twenty (20) days from date of last hearing, the decision shall be released to the parties personally on a date and time agreed upon during the last hearing.

**Section 15. Appeal.** – The decision of the Mediator-Arbiter and Regional Director may be appealed to the Bureau by any of the parties within ten (10) days from receipt thereof, copy furnished the opposing party. The decision of the Bureau Director in the exercise of his/her original jurisdiction may be appealed to the Office of the Secretary by any party within the same period, copy furnished the opposing party.

The appeal shall be verified under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant, with supporting arguments and evidence.

**Section 16. Where to file appeal.** – The memorandum of appeal shall be filed in the Regional Office or Bureau where the complaint or petition originated. Within twenty-four (24) hours from receipt of the memorandum of appeal, the Bureau or Regional Director shall cause the transmittal thereof together with the entire records of the case to the Office of the Secretary or the Bureau, as the case may be.

**Section 17. Finality of Decision.** – Where no appeal is filed within the ten-day period, the Bureau and Regional Director or Mediator-Arbiter, as the case may be, shall enter the finality of the decision in the records of the case and cause the immediate implementation thereof.

**Section 18. Period to reply.** – A reply to the appeal may be filed by any party to the complaint or petition within ten (10) days from receipt of the memorandum of appeal. The reply shall be filed directly with the Bureau or the Office of the Secretary, as the case may be.

**Section 19. Decision of the Bureau/Office of the Secretary.** – The Bureau Director or the Secretary, as the case may be, shall have twenty (20) days from receipt of the entire records of the case within which to decide the appeal. The filing of the memorandum of appeal from the decision of the Mediator-Arbitrator or Regional Director and Bureau Director stays the implementation of the assailed decision.

The Bureau or Office of the Secretary may call the parties to a clarificatory hearing in aid of its appellate jurisdiction.

**Section 20. Finality of Decision of Bureau/Office of the Secretary.** – The decision of the Bureau or the Office of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties, unless a motion for its reconsideration is filed by any party therein within the same period. Only one (1) motion for reconsideration of the decision of the Bureau or the Office of the Secretary in the exercise of their appellate jurisdiction shall be allowed.

**Section 21. Execution of decision.** – The decision of the Mediator-Arbitrator and Regional Director shall automatically be stayed pending appeal with the Bureau. The decision of the Bureau in the exercise of its appellate jurisdiction shall be immediately executory upon issuance of entry of final judgment.

The decision of the Bureau in the exercise of its original jurisdiction shall automatically be stayed pending appeal with the Office of the Secretary. The decision of the Office of the Secretary shall be immediately executory upon issuance of entry of final judgment.

**Section 22. Transmittal of records to the Regional Office/Bureau.** – Within forty-eight (48) hours from the notice of receipt of decision by the parties and finality of the decision, the entire records of the case shall be remanded to the Bureau or Regional Office of origin for implementation. The implementation of the decision shall not be stayed unless restrained by the appropriate court.

## **RULE XII**

### **ELECTION OF OFFICERS OF LABOR UNIONS AND WORKERS ASSOCIATIONS**

**Section 1. Conduct of election of union officers; Procedure in the absence of provisions in the constitution and by-laws.** – In the absence of any agreement among the members or any provision in the constitution and by-laws of a labor union or workers' association, the following guidelines may be adopted in the election of officers.

- (a) within sixty (60) days before the expiration of the term of the incumbent officers, the president of the labor organization shall constitute a committee on election to be composed of at least three (3) members who are not running for any position in the election, provided that if there are identifiable parties within the labor organization, each party shall have equal representation in the committee;

- (b) upon constitution, the members shall elect the chairman of the committee from among themselves, and in case of disagreement, the president shall designate the chairman;
- (c) within ten (10) days from its constitution, the committee shall, among others, exercise the following powers and duties:
  - 1) set the date, time and venue of the election;
  - 2) prescribe the rules on the qualification and eligibility of candidates and voters;
  - 3) prepare and post the voters' list and the list of qualified candidates;
  - 4) accredit the authorized representatives of the contending parties;
  - 5) supervise the actual conduct of the election and canvass the votes to ensure the sanctity of the ballot;
  - 6) keep minutes of the proceedings;
  - 7) be the final arbiter of all election protests;
  - 8) proclaim the winners; and
  - 9) prescribe such other rules as may facilitate the orderly conduct of election.

**Section 2. Dispute over conduct of election of officers.** – Where the terms of the officers of a labor organization have expired and its officers failed or neglected to do so call for an election of new officers, or where the labor organization's constitution and by-laws do not provide for the manner by which the said election can be called or conducted and the intervention of the Department is necessary, at least thirty percent (30%) of the members of the labor organization may file a petition for the conduct of election of their officers with the Regional Office that issued its certificate of registration or certificate of creation of chartered local.

In the case of federations, national or industry unions and trade union centers, the petition shall be filed with the Bureau or the Regional Office but shall be heard and resolved by the Bureau.

This Rule shall also apply where a conduct of election of officers is an alternative relief or necessary consequence of a petition for nullification of election of officers, impeachment/expulsion of officers, or such other petitions.

**Section 3. Formal requirements and proceedings.** – The formal requirements, processes and periods of disposition of this petition stated in Rule XI shall be followed in the determination of the merits of the petition and appeal.

**Section 4. Pre-election conference and conduct of election.** – The appointment of an election officer and the procedures and periods in the conduct of the pre-election conference and election proceedings prescribed in Rule IX shall also apply in the conduct of a pre-election conference and election of officers in any labor organization.

**Section 5. Applicability of the provisions of the labor organization's constitution and by-laws.** – Where the conduct of election of officers is ordered by the Mediator-Arbitrator, the Bureau or Office of the Secretary, the rules and regulations governing the filing of candidacies and conduct of election under the constitution and by-laws of the labor organization may be applied in the implementation of the decision, or new and additional rules may be adopted as agreed upon by the parties.

The entire proceedings shall be presided by the Election Officer from the Labor Relations Division of the Regional Office or the Bureau. He/She shall act as the COMELEC

referred to in the labor organization's constitution and by-laws and obligate himself/herself to comply with his/her mandate under the decision to be implemented and the constitution and by-laws.

## RULE XIII

### ADMINISTRATION OF TRADE UNION FUNDS AND ACTIONS ARISING THEREFROM

**Section 1. Right of union to collect dues and agency fees.** – The incumbent bargaining agent shall continue to be entitled to check-off and collect dues and agency fees despite the pendency of a representation case, other inter/intra-union disputes or related labor relations disputes.

**Section 2. Visitorial power under Article 289(renumbered)** – The Regional or Bureau Director may inquire into the financial activities of any legitimate labor organization and examine their books of accounts and other records to determine compliance with the law and the organization's constitution and by-laws. Such examination shall be made upon the filing of a request or complaint for the conduct of an accounts examination by any member of the labor organization, supported by the written consent of at least twenty (20%) percent of its total membership.

**Section 3. Where to file.** – A request for examination of books of accounts of independent labor unions, chartered locals and workers associations pursuant to Article 289 shall be filed with the Regional Office that issued its certificate of registration or certificate of creation of chartered local.

A request for examination of books of accounts of federations or national unions and trade union centers pursuant to Article 289 (renumbered) shall be filed with the Bureau. Such request or complaint, in the absence of allegations pertaining to a violation of Article 250 (renumbered), shall not be treated as an intra-union dispute and the appointment of an Audit Examiner by the Regional or Bureau Director shall not be appealable.

**Section 4. Actions arising from Article 250 (renumbered).** – Any complaint or petition with allegations of mishandling, misappropriation or non-accounting of funds in violation of Article 250(renumbered) shall be treated as an intra-union dispute. It shall be heard and resolved by the Mediator-Arbiter pursuant to the provisions of Rule XI.

**Section 5. Prescription.** – The complaint or petition for audit or examination of funds and book of accounts shall prescribe within three (3) years from the date of submission of the annual financial report to the Department or from the date the same should have been submitted as required by law, whichever comes earlier.

**Section 6. Decision.** – A decision granting the conduct of audit shall include the appointment of the Audit Examiner and a directive upon him/her to submit his/her report and recommendations within ten (10) days from termination of audit. The decision granting the conduct of audit is interlocutory and shall not be appealable. The decision denying or dismissing the complaint or petition for audit may be appealed within ten (10) days from receipt thereof pursuant to the provisions prescribed in Rule XI.

**Section 7. Pre-audit conference.** – Within twenty-four (24) hours from receipt of the decision granting the conduct of audit, the Regional Director shall summon the parties to a pre-audit conference conducted by the Audit Examiner to determine and obtain the following:

- (a) sources of funds covered by the audit;
- (b) the banks and financial institutions where the labor organization maintains its account;
- (c) union books of accounts and financial statements;
- (d) disbursement vouchers with supporting receipts, invoices and other documents;
- (e) income and revenue receipts;
- (f) cash books;
- (g) minutes of general membership meeting and board meetings;
- (h) other relevant matters and documents.

The first pre-audit conference shall be scheduled within ten (10) days from receipt by the Audit Examiner of the decision granting the conduct of an audit.

**Section 8. Issuance of subpoena.** – The Regional Director may compel any party to appear or bring the required financial documents in a conference or hearing through the issuance of a subpoena ad testificandum or subpoena duces tecum. He/She may also require the employer concerned to issue certifications of union dues and other assessments remitted to the union during the period of audit.

**Section 9. Conduct of audit examination.** – Where book of accounts are submitted by the parties, the Audit Examiner shall:

- (a) examine the transactions reflected in the disbursement vouchers;
- (b) determine the validity of the supporting documents attached to the vouchers consistent with the union's constitution and by-laws, relevant resolutions of the union and the Labor Code;
- (c) trace recording and posting in the disbursement book;
- (d) record observations or findings of all financial transactions.

Where no book of accounts are maintained by the officers of the labor organization, the Audit Examiner shall:

- (a) examine the transactions reflected in the disbursement vouchers;
- (b) determine the validity of the supporting documents attached to the vouchers consistent with the labor organization's constitution and by-laws, relevant board resolutions, and the Labor Code;
- (c) prepare working papers or worksheet/s;
- (d) record and post all financial transactions reflected in the cash vouchers in the working papers or worksheet/s; and
- (e) record observations or findings of all financial transactions.

The Audit Examiner shall conduct an inventory of all physical assets acquired by the labor organization, if any, and on the basis of his/her findings prepare his/her audited financial report or statement reflecting the true and correct financial accounts and balances of the labor organization with relevant annexes attached.



**Section 10. Period of audit.** – The Audit Examiner shall have sixty (60) days from the date of first pre-audit conference within which to complete the conduct of audit, unless the volume of financial records, the period covered by the audit and other circumstances warrant the extension thereof. In such a case, the Audit Examiner shall notify the Mediator-Arbiter or the Bureau Director, as the case may be, of such fact at least ten (10) days before the expiration of the sixty (60) day period.

**Section 11. Audit Report.** – The Audit Examiner shall make a report of his/her findings to the parties involved and the same shall include the following:

- (a) name of the labor organization;
- (b) name of complainant(s) or petitioner(s) and respondent(s);
- (c) name of officers of the labor organization during the period covered by the audit report;
- (d) scope of the audit;
- (e) list of documents examined;
- (f) audit methods and procedures adopted; and
- (g) findings and recommendations.

**Section 12. Completion of audit.** – A copy of the audit report shall be forwarded by the Audit Examiner to the Mediator-Arbiter or the Bureau Director, as the case may be, within ten (10) days from termination of the audit, together with the entire records of the case and all documents relative to the conduct of the audit.

**Section 13. Decision after audit.** – The Mediator-Arbiter or the Bureau Director shall render a decision within twenty (20) days from receipt of the audit report. All issues raised by the parties during the conduct of the audit shall be resolved by the Mediator-Arbiter. The decision shall be released in the same manner prescribed in Section 14, Rule XI.

When warranted, the Mediator-Arbiter or Bureau Director shall order the restitution of union funds by the responsible officer(s) in the same decision.

**Section 14. Appeal.** – Appeal from the decision of the Mediator-Arbiter denying the conduct of audit and from the results of the audit may be filed by any of the parties with the Bureau. Decisions rendered by the Bureau after the conduct of audit in the exercise of its original jurisdiction may be appealed to the Office of the Secretary. Both shall be resolved in accordance with the provisions of Section 15, Rule XI.

**Section 15. Period of inquiry or examination.** – No complaint for inquiry or examination of the financial and book of accounts as well as other records of any legitimate labor organization shall be entertained during the sixty (60) day freedom period or within thirty (30) days immediately preceding the date of election of union officers. Any complaint or petition so filed shall be dismissed.

## RULE XIV

### CANCELLATION OF REGISTRATION OF LABOR ORGANIZATIONS

**Section 1. Cancellation of registration; Where to file.** – Subject to the requirements of notice and due process, the registration of any legitimate independent labor union, local/chapter and workers' association may be cancelled by the Regional Director upon the filing of a petition for cancellation of union registration, or application by the organization itself for voluntary dissolution.

The petition for cancellation or application for voluntary dissolution shall be filed in the Regional Office which issued its certificate of registration or creation.

In the case of federations, national or industry unions and trade union centers, the Bureau Director may cancel the registration upon the filing of a petition for cancellation or application for voluntary dissolution in the Bureau of Labor Relations. (as amended by D.O. 40-F-08)

**Section 2. Who may file.** – Any party-in-interest may commence a petition for cancellation of registration, except in actions involving violations of Article 250 (renumbered), which can only be commenced by members of the labor organization concerned.

**Section 3. Grounds for cancellation.** – Any of the following may constitute as ground/s for cancellation of registration of labor organizations:

- (a) misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, the list of members who took part in the ratification;
- (b) misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters; or
- (c) voluntary dissolution by the members.

**Section 4. Voluntary Cancellation of Registration: How Made.** - A legitimate labor organization may cancel its registration provided at least two thirds (2/3) of its general membership votes to dissolve the organization in a meeting duly called for that purpose and an application to cancel its registration is thereafter submitted by the board of the organization to the Regional/Bureau Director, as the case may be. The application shall be attested to by the president of the organization.

**Section 5. Action on the petition/application.** – The petition/application shall be acted upon by the Regional/Bureau Director, as the case may be. In case of a petition for cancellation of registration, the formal requirements, processes and periods of disposition stated in Rule XI shall be followed in the determination of the merits of the petition. (as amended by D.O. 40-F-08)

**Section 6. Prohibited grounds for cancellation of registration.** - The inclusion as union members of employees who are outside the bargaining unit shall not be a ground to cancel the union registration. The ineligible employees are automatically deemed removed from the list of membership of the union.

The affiliation of the rank-and-file and supervisory unions operating within the same establishment to the same federation or national union shall not be a ground to cancel the registration of either union. (as amended by D.O. 40-F-08)

## RULE XV

### REGISTRY OF LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING AGREEMENTS

**Section 1. National Registry.** – The Bureau shall be the national registry of labor organizations and collective bargaining agreements. As such it shall:

- (a) maintain a national registry;
- (b) within the month of March following the end of the calendar year, publish in the Department of Labor and Employment website the lists of labor organizations and federations which have complied with the reportorial requirements of Rule V and delinquent labor organizations;
- (c) publish a list of officers of labor organizations with criminal conviction by final judgment; and
- (d) verify the existence of a registered labor organization with no registered collective bargaining agreement and which has not been complying with the reportorial requirements for at least five years. The verification shall observe the following process:
  - 1) The Regional Office shall make a report of the labor organization's non-compliance and submit the same to the Bureau for verification. The Bureau shall send by registered mail with return card to the labor organization concerned, a notice for compliance indicating the documents it failed to submit and the corresponding period in which they were required, with notice to comply with the said reportorial requirements and to submit proof thereof to the Bureau within ten (10) days from receipt thereof.

Where no response is received by the Bureau within thirty (30) days from the service of the first notice, it shall send another notice for compliance, with warning that failure on its part to comply with the reportorial requirements within the time specified shall cause its publication as a non-existing labor organization in the DOLE website.

- 2) Where no response is received by the Bureau within thirty (30) days from service of the second notice, the Bureau shall publish the notice of non-existence of the labor organization/s in the DOLE website.
- 3) Where no response is received by the Bureau within thirty (30) days from date of publication, or where the Bureau has verified the dissolution of the labor organization, it shall delist the labor organization from the roster of legitimate labor organizations.

## RULE XVI

### COLLECTIVE BARGAINING

**Section 1. Policy.** – It is the policy of the State to promote and emphasize the primacy of free and responsible exercise of the right to self-organization and collective bargaining, either through single enterprise level negotiations or through the creation of a mechanism by which different employers and recognized or certified labor unions in their establishments bargain collectively.

**Section 2. Disclosure of information.** – In collective bargaining, the parties shall, at the request of either of them, make available such up-to-date financial information on the economic situation of the undertaking, which is normally submitted to relevant government agencies, as is material and necessary for meaningful negotiations. Where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made condition upon a commitment that it would be regarded as confidential to the extent required. The information to be made available may be agreed upon between the parties to collective bargaining.

**Section 3. When single enterprise bargaining available.** – Any certified labor union may demand negotiations with its employer for terms and conditions of work covering employees in the bargaining unit concerned.

**Section 4. Procedure in single enterprise bargaining.** – A certified labor union that desires to negotiate with its employer shall submit such intention in writing to the employer, together with its proposals for collective bargaining.

The certified labor union and its employer may adopt such procedures and processes they may deem appropriate and necessary for the early termination of their negotiations. They shall name their respective representatives to the negotiation, schedule the number and frequency of meetings, and agree on wages, benefits and other terms and conditions of work for all employees covered in the bargaining unit.

**Section 5. When multi-employer bargaining available.** – A legitimate labor union(s) and employers may agree in writing to come together for the purpose of collective bargaining, provided:

- (a) only legitimate labor unions who are incumbent exclusive bargaining agents may participate and negotiate in multi-employer bargaining;
- (b) only employers with counterpart legitimate labor unions who are incumbent bargaining agents may participate and negotiate in multi-employer bargaining; and
- (c) only those legitimate labor unions who pertain to employer units who consent to multi-employer bargaining may participate in multi-employer bargaining.

**Section 6. Procedure in multi-employer bargaining.** – Multi-employer bargaining may be initiated by the labor unions or by the employers.

- (a) Legitimate labor unions who desire to negotiate with their employers collectively shall execute a written agreement among themselves, which shall contain the following:
  - 1) the names of the labor unions who desire to avail of multi-employer bargaining;
  - 2) each labor union in the employer unit;
  - 3) the fact that each of the labor unions are the incumbent exclusive bargaining agents for their respective employer units;
  - 4) the duration of the collective bargaining agreements, if any, entered into by each labor union with their respective employers.

Legitimate labor unions who are members of the same registered federation, national, or industry union are exempt from execution of this written agreement.

- (b) The legitimate labor unions who desire to bargain with multi-employers shall send a written notice to this effect to each employer concerned. The written agreement stated in the preceding paragraph, or the certificates of registration of the federation, national, or industry union, shall accompany said notice.

Employers who agree to group themselves or use their existing associations to engage in multi-employer bargaining shall send a written notice to each of their counterpart legitimate labor unions indicating their desire to engage in multi-employer bargaining. Said notice shall indicate the following:

- 1) the names of the employers who desire to avail of multi-employer bargaining;
  - 2) their corresponding legitimate labor organizations;
  - 3) the fact that each corresponding legitimate union is any incumbent exclusive bargaining agent;
  - 4) the duration of the current collective bargaining agreement, if any, entered into by each employer with the counterpart legitimate labor union.
- (c) Each employer or concerned labor union shall express its willingness or refusal to participate in multi-employer bargaining in writing, addressed to its corresponding exclusive bargaining agent or employer. Negotiations may commence only with regard to respective employers and labor unions who consent to participate in multi-employer bargaining;
- (d) During the course of negotiations, consenting employers and the corresponding legitimate labor unions shall discuss and agree on the following:
- 1) the manner by which negotiations shall proceed;
  - 2) the scope and coverage of the negotiations and the agreement; and
  - 3) where appropriate, the effect of the negotiations on current agreements or conditions of employment among the parties.

**Section 7. Posting and registration of collective bargaining agreement.** – Two (2) signed copies of collective bargaining agreement reached through multi-employer bargaining shall be posted for at least five ( 5) days in two conspicuous areas in each workplace of the employer units concerned. Said collective bargaining agreement shall affect only those employees in the bargaining units who have ratified it.

The same collective bargaining agreement shall be registered with the Department in accordance with the following Rule.

## RULE XVII

### REGISTRATION OF COLLECTIVE BARGAINING AGREEMENTS

**Section 1. Where to file.** – Within thirty (30) days from execution of a collective bargaining agreement, the parties thereto shall submit two (2) duly signed copies of the agreement to the Regional Office which issued the certificate of registration/certificate of creation of chartered local of the labor union-party to the agreement. Where the certificate of creation of the concerned chartered local was issued by the Bureau, the agreement shall be filed with the Regional Office which has jurisdiction over the place where it principally operates.

Multi-employer collective bargaining agreements shall be filed with the Bureau.

**Section 2. Requirements for registration.** – The application for CBA registration shall be accompanied by the original and two (2) duplicate copies of the following documents which

must be certified under oath by the representative(s) of the employer(s) and labor union(s) concerned:

- (a) the collective bargaining agreement;
- (b) a statement that the collective bargaining agreement was posted in at least two (2) conspicuous places in the establishment/s concerned for at least five (5) days before its ratification; and
- (c) a statement that the collective bargaining agreement was ratified by the majority of the employees in the bargaining unit of the employer/s concerned.

No other document shall be required in the registration of collective bargaining agreements.

**Section 3. Payment of registration fee.** – The certificate of registration of collective bargaining agreement shall be issued by the Regional Office upon payment of the prescribed registration fee.

**Section 4. Action on the application.** – The Regional Office and the Bureau shall act on applications for registration of collective bargaining agreements within one day from receipt thereof, either by: (a) approving the application and issuing the certificate of registration; or (b) denying the application for failure of the applicant to comply with the requirements for registration.

Where the documents supporting the application are not complete or are not verified under oath, the Regional Office or the Bureau shall, within one (1) day from receipt of the application, notify the applicants in writing of the requirements needed to complete the application. Where the applicants fail to complete the requirements within ten (10) days from receipt of notice, the application shall be denied without prejudice.” (as amended by D.O. 40-D)

**Section 5. Denial of registration; grounds for appeal.** – The denial of registration shall be in writing, stating in clear terms the reasons therefor and served upon the applicant union and employer within twenty-four (24) hours from issuance. The denial by the Regional Office of the registration of single enterprise collective bargaining agreements may be appealed to the Bureau within ten (10) days from receipt of the notice of denial. The denial by the Bureau of the registration of multi-employer collective bargaining agreements may be appealed to the Office of the Secretary within the same period.

The memorandum of appeal shall be filed with the Regional Office or the Bureau, as the case may be. The same shall be transmitted, together with the entire records of the application, to the Bureau or the Office of the Secretary, as the case may be, within twenty-four (24) hours from receipt of the memorandum of appeal.

**Section 6. Period and manner of disposition of appeal.** – The Bureau and the Office of the Secretary shall resolve the appeal within the same period and in the same manner prescribed in Rule XI of these Rules.

**Section 7. Term of representation status; contract bar rule.** – The representation status of the incumbent exclusive bargaining agent which is a party to a duly registered collective bargaining agreement shall be for a term of five (5) years from the date of the effectivity of the collective bargaining agreement. No petition questioning the majority status of

the incumbent exclusive bargaining agent or petition for certification election filed outside of the sixty (60) day period immediately preceding the expiry date of such five (5) year term shall be entertained by the Department.

The five (5) year representation status acquired by an incumbent bargaining agent either through single enterprise collective bargaining or multi-employer bargaining shall not be affected by a subsequent collective bargaining agreement executed between the same bargaining agent and the employer during the same five (5) year period.

**Section 8. Re-negotiation of collective bargaining agreements.** – All provisions of a collective bargaining agreement, except the representation status of the incumbent bargaining agent shall, as a matter of right, be renegotiated not later than three (3) years after its execution.

The re-negotiated collective bargaining agreement shall be ratified and registered with the same Regional Office where the preceding agreement was registered. The same requirements and procedure in the registration of collective bargaining agreements prescribed in the preceding rules shall be applied.

## **RULE XVIII**

### **CENTRAL REGISTRY OF LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING AGREEMENTS**

**Section 1. Forms for registration.** – Consistent with the policy of the State to promote unionism, the Bureau shall devise or prescribe such forms as are necessary to facilitate the process of registration of labor organizations and collective bargaining agreements or of compliance with all documentary or reporting requirements prescribed in these Rules.

**Section 2. Transmittal of records; central registry.** – The Labor Relations Division of the Regional Offices shall, within forty-eight (48) hours from issuance of a certificate of creation of chartered locals or certificate of registration of labor organizations and collective bargaining, transmit to the Bureau a copy of such certificates accompanied by a copy of the documents supporting registration.

The Labor Relations Division of the Regional Office shall also transmit to the Bureau a copy of every final decision canceling or revoking the legitimate status of a labor organization or collective bargaining agreement, indicating therein the date when the decision became final.

In cases of chartering and affiliation or compliance with the reporting requirements under Rule V, the Regional Office shall transmit within two (2) days from receipt thereof the original set of documents to the Bureau, retaining one set of documents for its file.

## **RULE XIX**

## **GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION**

**Section 1. Establishment of grievance machinery.** – The parties to a collective bargaining agreement shall establish a machinery for the expeditious resolution of grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies. Unresolved grievances will be referred to voluntary arbitration and for this purpose, parties to a collective bargaining agreement shall name and designate in advance a voluntary arbitrator or panel of voluntary arbitrators, or include in the agreement a procedure for the selection of such voluntary arbitrator or panel of voluntary arbitrators, preferably from the listing of qualified voluntary arbitrators duly accredited by the Board.

In the absence of applicable provision in the collective bargaining agreement, a grievance committee shall be created within ten (10) days from signing of the collective bargaining agreement. The committee shall be composed of at least two (2) representatives each from the members of the bargaining unit and the employer, unless otherwise agreed upon by the parties. The representatives from among the members of the bargaining unit shall be designated by the union.

**Section 2. Procedure in handling grievances.** – In the absence of a specific provision in the collective bargaining agreement or existing company practice prescribing for the procedures in handling grievance, the following shall apply:

- (a) An employee shall present this grievance or complaint orally or in writing to the shop steward. Upon receipt thereof, the shop steward shall verify the facts and determine whether or not the grievance is valid.
- (b) If the grievance is valid, the shop steward shall immediately bring the complaint to the employee's immediate supervisor. The shop steward, the employee and his immediate supervisor shall exert efforts to settle the grievance at their level.
- (c) If no settlement is reached, the grievance shall be referred to the grievance committee which shall have ten (10) days to decide the case.

Where the issue involves or arises from the interpretation or implementation of a provision in the collective bargaining agreement, or from any order, memorandum, circular or assignment issued by the appropriate authority in the establishment, and such issue cannot be resolved at the level of the shop steward or the supervisor, the same may be referred immediately to the grievance committee.

**Section 3. Submission to voluntary arbitration.** – Where grievance remains unresolved, either party may serve notice upon the other of its decision to submit the issue to voluntary arbitration. The notice shall state the issue or issues to be arbitrated, copy thereof furnished the board or the voluntary arbitrator or panel of voluntary arbitrators named or designated in the collective bargaining agreement.

If the party upon whom the notice is served fails or refuses to respond favorably within seven (7) days from receipt thereof, the voluntary arbitrator or panel of voluntary arbitrators designated in the collective bargaining agreement shall commence voluntary arbitration proceedings. Where the collective bargaining agreement does not so designate, the board shall call the parties and appoint a voluntary arbitrator or panel of voluntary arbitrators, who shall thereafter commence arbitration proceedings in accordance with the proceeding paragraph.

In instances where parties fail to select a voluntary arbitrator or panel of voluntary arbitrators, the regional branch of the Board shall designate the voluntary arbitrator or panel of



voluntary arbitrators, as may be necessary, which shall have the same force and effect as if the parties have selected the arbitrator.

**Section 4. Jurisdiction of voluntary arbitrator or panel of voluntary arbitrators. -**

The voluntary arbitrator or panel of voluntary arbitrators shall have exclusive and original jurisdiction to hear and decide all grievances arising from the implementation or interpretation of the collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies which remain unresolved after exhaustion of the grievance procedure.

They shall also have exclusive and original jurisdiction, to hear and decide wage distortion issues arising from the application of any wage orders in organized establishments, as well as unresolved grievances arising from the interpretation and implementation of the productivity incentive programs under RA 6971.

The National Labor Relations Commission, its regional branches and Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the appropriate grievance machinery or voluntary arbitration provided in the collective bargaining agreement.

Upon agreement of the parties, any other labor dispute may be submitted to a voluntary arbitrator or panel of voluntary arbitrators. Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

**Section 5. Powers of voluntary arbitrator or panel of voluntary arbitrators. –** The voluntary arbitrator or panel of voluntary arbitrators shall have the power to hold hearings, receive evidence and take whatever action is necessary to resolve the issue/s subject of the dispute.

The voluntary arbitrator or panel of voluntary arbitrators may conciliate or mediate to aid the parties in reaching a voluntary settlement of the dispute.

**Section 6. Procedure. –** All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the voluntary arbitrator or panel of voluntary arbitrators. Hearing may be adjourned for cause or upon agreement by the parties.

Unless the parties agree otherwise, it shall be mandatory for the voluntary arbitrator or panel of voluntary arbitrators to render an award or decision within twenty (20) calendar days from the date of submission for resolution.

Failure on the part of the voluntary arbitrator to render a decision, resolution, order or award within the prescribed period, shall upon complaint of a party, be sufficient ground for the Board to discipline said voluntary arbitrator, pursuant to the guidelines issued by the Secretary. In cases that the recommended sanction is de-listing, it shall be unlawful for the voluntary arbitrator to refuse or fail to turn over to the board, for its further disposition, the records of the case within ten (10) calendar days from demand thereof.

**Section 7. Finality of Award/Decision. –** The decision, order, resolution or award of the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory after ten (10)

calendar days from receipt of the copy of the award or decision by the parties and it shall not be subject of a motion for reconsideration.

**Section 8. Execution of Award/Decision.** – Upon motion of any interested party, the voluntary arbitrator or panel of voluntary arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity for any reason of the voluntary arbitrator or panel of voluntary arbitrators who issued the award or decision, may issue a writ of execution requiring either the Sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

**Section 9. Cost of voluntary arbitration and voluntary arbitrator's fee.** – The parties to a collective bargaining agreement shall provide therein a proportionate sharing scheme on the cost of voluntary arbitration including the voluntary arbitrator's fee. The fixing of fee of voluntary arbitrators or panel of voluntary arbitrators, whether shouldered wholly by the parties or subsidized by the Special Voluntary Arbitration Fund, shall take into account the following factors:

- (a) Nature of the case;
- (b) Time consumed in hearing the case;
- (c) Professional standing of the voluntary arbitrator;
- (d) Capacity to pay of the parties; and
- (e) Fees provided for in the Revised Rules of Court.

Unless the parties agree otherwise, the cost of voluntary arbitration proceedings and voluntary arbitrator's fee shall be shared equally by the parties

Parties are encouraged to set aside funds to answer for the cost of voluntary arbitration proceedings including voluntary arbitrator's fee. In the event the said funds are not sufficient to cover such expenses, an amount by way of subsidy taken out of the Special Voluntary Arbitration fund may be availed of by either or both parties subject to the guidelines on voluntary arbitration to be issued by the Secretary.

**Section 10. Maintenance of case records by the Board.** – The Board shall maintain all records pertaining to a voluntary arbitration case. In all cases, the Board shall be furnished a copy of all pleadings and submitted to the voluntary arbitrator as well as the orders, awards and decisions issued by the voluntary arbitrator.

The records of a case shall be turned over by the voluntary arbitrator or panel of voluntary arbitrators to the concerned regional branch of the Board within ten (10) days upon satisfaction of the final arbitral award/order/decision.

## **RULE XX**

### **LABOR EDUCATION AND RESEARCH**

**Section 1. Labor education of workers and employees.** – The Department shall develop, promote and implement appropriate labor education and research programs on the rights and responsibilities of workers and employers.

It shall be the duty of every legitimate labor organization to implement a labor education program for its members on their rights and obligations as unionists and as employees.

**Section 2. Mandatory conduct of seminars.** – Subject to the provisions of Article 250, it shall be mandatory for every legitimate labor organization to conduct seminars and similar activities on existing labor laws, collective agreements, company rules and regulations and other relevant matters. The union seminars and similar activities may be conducted independently of or in cooperation with the Department and other labor education institutions.

**Section 3. Special fund for labor education and research.** – Every legitimate labor organization shall, for the above purpose, maintain a special fund for labor education and research. Existing strike funds may, in whole or in part, be transformed into labor education and research funds. The labor organization may also periodically assess and collect reasonable amounts from its members for such funds.

## **RULE XXI**

### **LABOR-MANAGEMENT AND OTHER COUNCILS**

**Section 1. Creation of labor-management and other councils.** – The Department shall promote the formation of labor-management councils in organized and unorganized establishments to enable the workers to participate in policy and decision-making processes in the establishment, insofar as said processes will directly affect their rights, benefits and welfare, except those which are covered by collective bargaining agreements or are traditional areas of bargaining.

The Department shall promote other labor-management cooperation schemes and, upon its own initiative or upon the request of both parties, may assist in the formulation and development of programs and projects on productivity, occupational safety and health, improvement of quality of work life, product quality improvement, and other similar scheme.

In line with the foregoing, the Department shall render, among others, the following services:

- (a) Conduct awareness campaigns;
- (b) Assist the parties in setting up labor-management structures, functions and procedures;
- (c) Provide process facilitators upon request of the parties; and
- (d) Monitor the activities of labor-management structures as may be necessary and conduct studies on best practices aimed at promoting harmonious labor-management relations.

**Section 2. Selection of representatives.** – In organized establishments, the workers' representatives to the council shall be nominated by the exclusive bargaining representative. In establishments where no legitimate labor organization exists, the workers representative shall be elected directly by the employees at large.

## **RULE XXII**

### **CONCILIATION, STRIKES AND LOCKOUTS**

**Section 1. Conciliation of labor-management disputes.** – The board may, upon request of either of both parties or upon its own initiative, provide conciliation-mediation services to labor disputes other than notices of strikes or lockouts. Conciliation cases which are not subjects of notices of strike or lockout shall be docketed as preventive mediation cases.

**Section 2. Privileged communication.** – Information and statements given in confidence at conciliation proceedings shall be treated as privileged communications. Conciliators and similar officials shall not testify in any court or body regarding any matter taken up at conciliation proceedings conducted by them.

**Section 3. Issuance of subpoena.** – The Board shall have the power to require the appearance of any parties at conciliation meetings.

**Section 4. Compromise Agreements.** – Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Board and its regional branches shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation, or coercion. Upon motion of any interested party, the Labor Arbiter in the region where the agreement was reached may issue a writ of execution requiring a sheriff of the Commission or the courts to enforce the terms of the agreement.

**Section 5. Grounds for strike or lockout.** – A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or without first having filed a notice or lockout or without the necessary strike or lockout vote having been obtained and reported to the Board. Neither will a strike be declared after assumption of jurisdiction by the Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout. (as amended by D.O. 40-A)

**Section 6. Who may declare a strike or lockout.** – Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices.

**Section 7. Notice of strike or lockout.** – In bargaining deadlocks, a notice of strike or lockout shall be filed with the regional branch of the Board at least thirty (30) days before the intended date thereof, a copy of said notice having been served on the other party concerned. In cases of unfair labor practice, the period of notice shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of any union officer duly elected in accordance with the union constitution and by-laws which may constitute union busting where the existence of the union is threatened, the fifteen (15) day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the appropriate regional branch of the Board.

**Section 8. Contents of notice.** – The notice shall state, among others, the names and addresses of the employer and the union involved, the nature of the industry to which the employer belongs, the number of union members and of the workers in the bargaining unit, and such other relevant data as may facilitate the settlement of the dispute, such as a brief statement or enumeration of all pending labor disputes involving the same parties.

In cases of bargaining deadlocks, the notice shall, as far as practicable, further state the unresolved issues in the bargaining negotiations and be accompanied by the written proposals of the union, the counter-proposals of the employer and the proof of a request for conference to settle the differences. In cases of unfair labor practices, the notice shall, as far as practicable, state the acts complained of and the efforts taken to resolve the dispute amicably.

In case a notice does not conform with the requirements of this and the foregoing section/s, the regional branch of the Board shall inform the concerned party of such fact.

**Section 9. Action on Notice.** – Upon receipt of the notice, the regional branch of the Board shall exert all efforts at mediation and conciliation to enable the parties to settle the dispute amicably. The regional branch of the Board may, upon agreement of the parties, treat a notice as a preventive mediation case. It shall also encourage the parties to submit the dispute to voluntary arbitration.

During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of the dispute. They are obliged, as part of their duty to bargain collectively in good faith and to participate fully and promptly in the conciliation meetings called by the regional branch of the Board.

A notice, upon agreement of the parties, may be referred to alternative modes of dispute resolution, including voluntary arbitration.

**Section 10. Strike or lockout vote.** – A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association, or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board and the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule.

**Section 11. Declaration of strike or lockout.** – Should the dispute remain unsettled after the lapse of the requisite number of days from the filing of the notice of strike or lockout and of the results of the election required in the preceding section, the labor union may strike or the employer may lock out its workers. The regional branch of the Board shall continue mediating and conciliating.

**Section 12. Improved offer balloting.** – In case of a strike, the regional branch of the Board shall, at its own initiative or upon the request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon re-admit them upon the signing of the agreement.

In case of a lockout, the regional branch of the Board shall also conduct a referendum by secret balloting on the reduced offer of the union on or before the 30<sup>th</sup> day of the lockout. When at least a majority of the board of directors or trustees or the partners holding the controlling interest in the case of partnership vote to accept the reduced offer, the workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

**Section 13. Peaceful picketing.** – Workers shall have the right to peaceful picketing. No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

No person shall obstruct, impede or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by workers during any labor controversy or in the exercise of the right to self-organization or collective bargaining or shall aid or abet such obstruction or interference. No employer shall use or employ any person to commit such acts nor shall any person be employed for such purpose.

**Section 14. Injunctions.** – No court or entity shall enjoin any picketing, strike or lockout, except as provided in Articles 225 and 278 (renumbered) of the Labor Code.

The Commission shall have the power to issue temporary restraining orders in such cases but only after due notice and hearing and in accordance with its rules. The reception of evidence for the application of a writ of injunction may be delegated by the Commission to any Labor Arbiter who shall submit his recommendations to the Commission for its consideration and resolution.

Any *ex parte* restraining order issued by the Commission, or its chairman or Vice-Chairman where the Commission is not in session and as prescribed by its rules, shall be valid for a period not exceeding twenty (20) days.

**Section 15. Assumption by the Secretary of Labor and Employment and Employment.** - 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 for compulsory arbitration, provided, that any of the following conditions is present:

1. Both parties have requested the Secretary of Labor and Employment to assume jurisdiction over the labor dispute; or
2. After a conference called by the Office of the Secretary of Labor and Employment on the propriety of its issuance, *motu proprio* or upon a request or petition by either parties to the labor dispute.

Such assumption shall have the effect of automatically enjoining an impending strike or lockout. If a strike/lockout has already taken place at the time of assumption, all striking or locked out employees and other employees subject of the notice or strike shall immediately return to work and the employer shall immediately resume operations and readmit all employees under the same terms and conditions prevailing before the strike or lockout.

Notwithstanding the foregoing, parties to the case may agree at any time to submit the dispute to the Secretary of Labor or his duly authorized representative as Voluntary Arbitrator or to a panel of Voluntary Arbitrators.

**Section 16. Industries Indispensable to the National Interest.** - For the guidance of the workers and employers in the filing of petition for assumption of jurisdiction, the following industries/services are hereby recognized as deemed indispensable to the national interest:

- a. Hospital Sector;
- b. Electric Power Industry;
- c. Water Supply Services, to exclude small water supply services such as Bottling and Refilling Refilling Stations;
- d. Air Traffic Control; and
- e. Such other industries as maybe recommended by the National Tripartite Industrial Peace Council (NTIPC).

**Section 17. Requirement for Minimum Operational Service.** - In labor disputes adversely affecting the continued operation of hospitals, clinics or medical institutions, it shall be the duty of the striking union of locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to ensure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout.

**Section 18. Decision on the assumed labor dispute; finality.** – Within five (5) days from the issuance of the assumption or certification order, a preliminary conference or hearing shall immediately be conducted by the Office of the Secretary of Labor and Employment, the NLRC or the Voluntary Arbitrator or Panel of Voluntary Arbitrators as the case maybe.

The decision of the Secretary of Labor and Employment, the NLRC or Voluntary Arbitrator or Panel of Voluntary Arbitrators shall be rendered within thirty (30) calendar days from submission of the case for resolution and shall be final and executor ten (10) calendar days after receipt thereof by the parties.

**Section 19. Prohibitions on law enforcement agencies or public officials/employees, armed persons, private security guards and similar personnel in the private security agency. Exception.** – No public official or employees, including officers and personnel of the Armed Forces of the Philippines or the Philippine National Police, or armed person, private security guards and similar personnel in the private security agency shall bring in, introduce or escort in any manner, any individual who seeks to replaces strikers in entering or leaving the premises of a strike area, or work in place of the strikers.

The Police Force shall keep out of the picket lines unless actual violence or other criminal acts occur therein.

But any public officer, the Secretary of Labor and Employment or the NLRC may seek the assistance of law enforcement agencies to maintain peace and order, protect life and property, and/or enforce the law and legal order pursuant to the provisions of the joint DOLE-DILG-PEZA guidelines in the conduct of PNP personnel, Economic Zone Police and Security Guards, Company Security Guards and similar personnel during labor disputes.

**Section 20. Criminal prosecution.** – The regular courts shall have jurisdiction over any criminal action under Article 287 (renumbered) of the Labor Code, as amended, but subject to the required clearance from the DOLE on cases arising out of or related to a labor dispute pursuant to the Ministry of Justice (now Department of Justice) Circular No. 15, Series of 1982, and Circular No. 9, series of 1986.

## RULE XXIII

### CONTEMPT

**Section 1. Direct contempt; Person guilty of misbehavior.** – A person guilty of misbehavior in the presence of or so near the Secretary, the Chairman or any member of the Commission, Bureau Director or any Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so may be summarily adjudged in direct contempt by said officials and punished by fines not exceeding five hundred pesos (P500.00) or imprisonment not exceeding five (5) days or both, if it be the Secretary, the Commission or members thereof, or a fine not exceeding one hundred pesos (P100.00) or imprisonment not exceeding one (1) day, or both, if it be the Bureau Director or Labor Arbiter.

The person adjudged in direct contempt by a Labor Arbiter may appeal to the Commission while the person adjudged in direct contempt by the Bureau Director may appeal to the Secretary. The execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond on condition that he will abide by and perform the judgment should the appeal be decided against him. The judgment of the Commission and the Secretary is immediately executory and inappealable.

**Section 2. Indirect contempt.** -- Indirect contempt shall be dealt with by the Secretary, Commission, Bureau Director or Labor Arbiter in the manner prescribed under Rule 71 of the Revised Rules of Court.

## RULE XXIV

### EXECUTION OF DECISIONS, AWARDS OR ORDERS

**Section 1. Execution of decisions, orders or awards.** (a) The Secretary or the Bureau or Regional Director, the Labor Arbiter, the Mediator-Arbiter or Voluntary Arbitrator may, upon his/her own initiative or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring the Sheriff or the duly deputized officer to execute or enforce their respective final decisions, orders and awards.

(b) The Secretary and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of the Labor Arbiters and voluntary arbitrators, including the imposition of administrative fines, which shall not be less than five hundred (P500.00) pesos nor more than ten thousand (P10,000.00) pesos.

(c) Alternatively, the Secretary, the Commission, any Labor Arbiter, the Regional Director or the Director of the Bureau of Labor Relations in appropriate cases may deputize the Philippine National Police or any law enforcement agencies in the enforcement of final awards, orders or decisions.



## RULE XXV

### GENERAL PROVISIONS

**Section 1. Incidental motions will not be given due course.** – In all proceedings at all levels, motions for dismissals or any other incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merits.

**Section 2. Non-intervention of outsiders in labor disputes.** – No person other than the interested parties, their counsels or representatives may intervene in labor disputes pending before the Regional Office, the Bureau, Labor Arbiters, the compulsory or voluntary arbitrators, the Commission, and the Secretary. Any violation of this provision will subject the outsider to the administrative fines and penalties provided for in the Code.

**Section 3. When complaint deemed filed.** – A complaint is deemed filed upon receipt thereof by the appropriate agency which has jurisdiction over the subject matter and over the parties.

**Section 4. Check-off from non-members.** – Pursuant to Article 259 (e) (renumbered) of the Code, the employer shall check-off from non-union members within a collective bargaining unit the same reasonable fee equivalent to the dues and other fees normally paid by union members without the need for individual check-off authorizations.

## RULE XXVI

### TRANSITORY PROVISIONS

**Section 1. Rules governing prior applications, petitions, complaints, cases.** – All applications, petitions, complaints, cases or incidents commenced or filed prior to the effectivity of these amendatory Rules shall be governed by the old rules as amended by Department Order No. 9, series of 1997.

**Section 2. Equity of the incumbent.** – Industry unions or trade union centers registered by virtue of the old rules as amended by Department Order No. 9, series of 1997, shall maintain their legitimate status, with all rights and obligations appurtenant thereto.

**ARTICLE II. All other rules, regulations, issuances, circulars and administrative orders inconsistent herewith are hereby superseded. If any part or provision of these Rules shall be held unconstitutional or invalid, other parts or provisions thereof which are not affected thereby shall continue to be in full force and effect.**

**ARTICLE III. The foregoing rules shall take effect two weeks after completion of publication in one (1) newspaper of general circulation.**

Manila, Philippines, 17 February 2003.

**PATRICIA A. STO. TOMAS**  
Secretary