eCodal - Omnibus Rules

Note: For workers whose rest days fall on Sundays, the number of rest days in a year is reduced from 52 to 51 days, the last Sunday of August being a regular holiday under Executive Order No. 201. For purposes of computation, said holiday, although still a rest day for them, is included in the ten regular holidays. For workers whose rest days do not fall on Sundays, the number of rest days is 52 days, as there are 52 weeks in a year.

Nothing herein shall be considered as authorizing the reduction of benefits granted under existing agreements or employer practices/policies.

SECTION 7. *Basis of Minimum Wages Rates*. — The statutory minimum wage rules prescribed under the Act shall be for the normal working hours, which shall not exceed eight hours work a day.

SECTION 8. *Creditable Wage Increase***. —**

a) No wage increase shall be credited as compliance with the increases prescribed under the Act unless expressly provided under collective bargaining agreements; and, such wage increase was granted not earlier than April 1, 1989 but not later than July 1, 1989. Where the wage increase granted is less than the prescribed increase under the Act, the employer shall pay the difference.

b) Anniversary wage increase provided in collective agreements, merit wage increase, and those resulting from the regularization or promotion of employees shall not be credited as compliance thereto.

SECTION 9. *Workers Paid by Results***. —**

a) All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the applicable statutory minimum wage rates prescribed under the Act for the normal working hours which shall not exceed eight hours work a day, or a proportion thereof for work of less than the normal working hours.

The adjusted minimum wage rates for workers paid by results shall be computed in accordance with the following steps:

1) Amount of increase in AMW - Previous AMW x 100 = % Increase;

2) Existing rate/piece x % increase = increase in rate/piece;

3) Existing rate/piece + increase in rate/piece = Adjusted rate/piece.

Where AMW is the applicable minimum wage rate.

b) The wage rates of workers who are paid by results shall continue to be established in accordance with Article 101 of the Labor Code,as amended and its implementing regulations.

SECTION 10. *Wages of Special Groups of Workers*. — Wages of apprentices, learners and handicapped workers shall in no case be less than 75 percent of the applicable statutory minimum wage rates.

All recognized learnership and apprenticeship agreements entered into before July 1, 1989 shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the increases prescribed under the Act.

SECTION 11. *Application to Contractors*. — In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed wage increases shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

SECTION 12. *Application to Private Educational Institution*. — Private educational institutions which increased tuition fees beginning school year 1989-1990 shall comply with the P25.00 per day wage increase prescribed under the Act effective as follows:

a) In cases where the tuition fee increase was effected before the effectivity of the Act, the wage increase shall take effect only July 1, 1989.

b) In cases where the tuition fee increase was effected on or after the effectivity of the Act, the wage increase shall take effect not later than the date the school actually increased tuition but in the latter case, such wage increase may not be made retroactive in July 1, 1989.

Beginning school year 1990-1991, all schools shall implement the wage increase regardless of whether or not they have actually increased tuition fees.

SECTION 13. *Mobile and Branch Workers*. — The statutory minimum wage rates of workers, who by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

The minimum wage rates of workers working in branches or agencies of establishments in or outside the National Capital Region shall be those applicable in the place where they are stationed.

SECTION 14. *Transfer of Personnel*. — The transfer of personnel to areas outside the National Capital Region shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers prior to such transfer. The workers transferred to the National Capital Region shall be entitled to the minimum wage rate applicable therein.

SECTION 15. *Exemptions*. —

a) The following establishments may be exempted from compliance with the wage increase prescribed under the Act:

1) Retail/Service establishments regularly employing not more than 10 workers upon application with and as determined by the appropriate Board in accordance with applicable guidelines to be issued by the Commission.

2) New business enterprises that may be established outside the National Capital Region and export processing zones from July 1, 1989 to June 30, 1993, whose operation or investments need initial assistance may be exempted for not more than three years from the start of operations, subject to guidelines to be issued by the Secretary in consultation with the Department of Trade and Industry and the Department of Agriculture.

New business enterprises in Region III (Central Luzon) and Region IV (Southern Tagalog) may be exempted for two years only from start of operations, except those that may be established in the provinces of Palawan, Oriental Mindoro, Occidental Mindoro, Marinduque, Romblon, Quezon and Aurora, which may also be exempted for not more than three years from the start of operations.

b) Whenever an application for exemption has been duly filed with the appropriate office in the Department/Board, action by the Regional Office of the Department on any complaints for alleged non-compliance with the Act shall be deferred pending resolution of the applicant for exemption.

c) In the event that the application for exemption is not granted, the workers and employees shall receive the appropriate compensation due them as provided for under the Act plus interest of one percent per month retroactive to July 1, 1989 or the start of operations whichever is applicable.

SECTION 16. *Effects on Existing Wage Structure*. — Where the application of the wage increase prescribed herein results in distortions in the wage structure within an establishment which gives rise to a dispute therein, such dispute shall first be settled voluntarily between the parties. In the event of a deadlock, such dispute shall be finally resolved through compulsory arbitration by the regional arbitration branch of the National Labor Relations Commission (NLRC) having jurisdiction over the workplace.

The NLRC shall conduct continuous hearings and decide any dispute arising from wage distortions within twenty calendar days from the time said dispute is formally submitted to it for arbitration. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the increases in the wage rates prescribed under the Act.

Any issue involving wage distortion shall not be a ground for a strike/lockout.

SECTION 17. *Complaints for Non-Compliance*. — Complaints for non-compliance with the wage increases prescribed under the Act shall be filed with the Regional Offices of the

Department having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of theLabor Code,as amended.

SECTION 18. *Conduct of inspection by the Department*. — The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage rates and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company shall accompany the inspector.

The worker's representative shall have the right to submit his own findings to the Department and to testify on the same if he does not concur with the findings of the labor inspector.

SECTION 19. *Payment of Wages*. — Upon written petition of the majority of the workers and employees concerned, all private establishments, companies, businesses and other entities with at least twenty workers and located within one kilometer radius to a commercial, savings or rural bank, shall pay the wages and other benefits of their workers through any of said banks, within the period and in the manner and form prescribed under the Labor Code as amended.

SECTION 20. *Duty of Bank*. — Whenever applicable and upon request of concerned worker or union, the bank through which wages and other benefits are paid issue a certification of the record of payment of said wages and benefits of a particular worker or workers for a particular payroll period.

CHAPTER II The National Wages and Productivity Commission and Regional Tripartite Wages and Productivity Boards

SECTION 1. *Commission*. — The National Wages and Productivity Commission created under the Act shall hold office in the National Capital Region. The Commission shall be attached to the Department for policy and program coordination.

SECTION 2. *Powers and Functions of the Commission*. — The Commission shall have the following powers and functions:

a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;

b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;

c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels;

d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Board to determine if these are in accordance with prescribed guidelines and national development plans;

e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;

f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;

g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;

h) To call, from time to time, a national tripartite conference of representatives of government, workers and employers for the consideration of measures to promote wage rationalization and productivity; and

i) To exercise such powers and functions as may be necessary to implement this Act.

SECTION 3. *Composition of the Commission*. — The Commission shall be composed of the Secretary as ex-officio Chairman, the Director General of the National Economic and Development Authority (NEDA) as *ex-officio* Vice-Chairman and two members each from workers and employers sectors who shall be appointed by the President for a term of five years upon recommendation of the Secretary. The recommendees shall be selected from the lists of nominees submitted by the workers' and employers' sectors. The Executive Director of the Commission Secretariat shall be also a member of the Commission.

The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees' Compensation Commission.

SECTION 4. *Commission Secretariat*. — The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two Deputy Directors who shall be appointed by the President upon recommendation of the Secretary.

The Executive Director shall have the rank of a Department Assistant Secretary, while the Deputy Directors that of a Bureau Director. The Executive Director and Deputy Directors shall receive the corresponding salary, benefits and other emoluments of the positions.

SECTION 5. *Regional Tripartite Wages and Productivity Boards*. — The Regional Wages and Productivity Boards created under the Act in all regions, including autonomous regions as may be established by law, shall hold offices in areas where the Regional Offices of the Department are located.

SECTION 6. *Powers and Functions of the Boards*. — The Boards shall have the following powers and functions:

a) To develop plans, programs and projects relative to wages, incomes and productivity improvement for their respective regions;

b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;

c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same;

d) To coordinate with the other Boards as may be necessary to attain the policy and intention of the Labor Code;

e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and

f) To exercise such other powers and functions as may be necessary to carry out their mandate under the Labor Code.

Implementation of the plans, programs and projects of the Boards shall be through the respective Regional Offices of the Department, provided, however, that the Boards shall have technical supervision over the Regional Office of the Department with respect to the implementation of these plans, programs and projects.

SECTION 7. *Compositions of the Boards*. — Each Board shall be composed of the Regional Director of the Department as Chairman, the Regional Directors of the National Economic and Development Authority (NEDA) and Department of Trade and Industry (DTI) as Vice-Chairmen and two members each of workers and employers sectors who shall be appointed by the President for a term of five years upon the recommendation of the Secretary. The recommendees shall be selected from the list of nominees submitted by the workers and employers sectors.

Each Board shall be assisted by a Secretariat.

SECTION 8. *Authority to Organize and Appoint Personnel*. — The Chairman of the Commission shall organize such units and appoint the necessary personnel of the Commission and Board Secretaries, subject to pertinent laws, rules and regulations.

CHAPTER III Minimum Wage Determination

SECTION 1. *Regional Minimum Wages*. — The minimum wage rates for agricultural and non-agricultural workers and employees in every region shall be those prescribed by the Boards which shall in no case be lower than the statutory minimum wage rates. These

wage rates may include wages by industry, province or locality as may be deemed necessary by the Boards.

SECTION 2. *Standards/Criteria for Minimum Wage Fixing*. — The regional minimum wages to be established by the Boards shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the workers within the framework of the national economic and social development programs. In the determination of regional minimum wages, the Boards, shall, among other relevant factors, consider the following:

a) The demand for living wages;

b) Wage adjustment vis-a-vis the consumer price index;

c) The cost of living and changes or increases therein;

d) The needs of workers and their families;

e) The need to induce industries to invest in countryside;

f) Improvements in standards of living;

g) The prevailing wage levels;

h) Fair return of the capital invested and capacity to pay of employers;

i) Effects on employment generation and family income; and

j) The equitable distribution of income and wealth along the imperatives of economic and social development.

SECTION 3. *Wage Order*. — Whenever conditions in the region so warrant, the Board shall investigate and study all pertinent facts; and, based on standards and criteria prescribed herein, shall determine whether a Wage Order should be issued.

In the performance of its wage determining functions, the Board shall conduct public hearings and consultations giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties.

SECTION 4. *Effectivity of Wage Order*. — Any Wage Order issued by the Board shall take effect 15 days after its complete publication in at least one newspaper of general circulation in the region.

SECTION 5. *Appeal to the Commission*. — Any party aggrieved by the Wage Order issued by the Board may file an appeal with the Commission within ten calendar days from the publication of the Order. The Commission shall decide the appeal within sixty calendar days from the date of filing.

SECTION 6. *Effect of Appeal*. — The filing of the appeal shall not suspend the effectivity of the Wage Order unless the person appealing such order files with the Commission an undertaking with a surety or sureties in such amount as may be fixed by the Commission.

SECTION 7. *Wage Distortions*. — Where the application of any wage increase resulting from a Wage Order issued by any Board results in distortions in the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions using the grievance procedure under their collective bargaining agreement. If it remains unresolved, it shall be decided through voluntary arbitration ten calendar days from the time the dispute was referred for voluntary arbitration, unless otherwise agreed by the parties in writing.

Where there are no collective agreements or recognized labor unions, the employer and workers shall endeavor to correct the wage distortion. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten calendar days of conciliation, it shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). The NLRC shall conduct continuous hearings and decide the dispute within twenty calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any wage increase prescribed pursuant to the provisions of law or Wage Order.

SECTION 8. *Non-Diminution of Benefits*. — Nothing in the Act and in these Rules shall be construed to reduce any existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and employers.

SECTION 9. *Prohibition Against Injunction*. — No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or Boards.

SECTION 10. *Penal Provisions*. — Any person, corporation trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with the Act shall be punished by a fine not exceeding P25,000 and/or imprisonment of not less than one year nor more than two years: *Provided,* that any person convicted under the Act shall not be entitled to the benefits provided for under the Probation Law.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice-president, chief executive officer, general manager, managing director or partner.

SECTION 11. *Registration/Reporting Requirement*. — Any person, company, corporation, partnership or any other entity engaged in business shall submit annually a verified

itemized listing of their labor component to the appropriate Board and the National Statistics Office not later than January 31 of each year, starting on January 31, 1990 in accordance with the form to be prescribed by the Commission. The listing shall specify the names, salaries and wages of their workers and employees below the managerial level including learners, apprentices and disabled/handicapped workers.

CHAPTER IV Transitory Provisions

SECTION 1. *Abolition of the National Wages Council and the National Productivity Commission*. — The National Wages Council created under Executive Order No. 614 and the National Productivity Commission created under Executive Order No. 615 are abolished. All properties, records, equipment, buildings, facilities, and other assets, liabilities and appropriations of and belonging to the abovementioned offices, as well as other matters pending herein, shall be transferred to the Commission. All personnel of the above abolished offices shall continue to function in a hold-over capacity and shall be preferentially considered for appointments to or placements in the Commission/Boards.

Any official or employee separated from the service as a result of the abolition of offices pursuant to the Act shall be entitled to appropriate separation pay of one month salary for every year of service and/or retirement and other benefits accruing to them under existing laws. In lieu thereof, at the option of the employee, he shall be preferentially considered for employment in the government or in any of its subdivisions, instrumentalities, or agencies, including government owned or controlled corporations and their subsidiaries.

SECTION 2. *Interim Processing of Applications for Exemption and Submission of Reports*. — Pending the operationalization of the Commission and Boards, the National Wages Council shall, in the interim, receive and process applications for exemption subject to guidelines to be issued by the Secretary, in accordance with Section 11 of the Act.

Reports of establishments on their labor component, including wages and salaries of their workers prescribed under the Act, shall be submitted to the National Wages Council through the Regional Offices of the Department.

SECTION 3. *Funding Requirement*. — The funds necessary to carry out the provisions of the Act shall be taken from the Compensation and Organization Adjustment Fund, the Contingent Fund, and other savings under Republic Act No. 6688, otherwise known as the General Appropriations Act of 1989, or from any unappropriated funds of the National Treasury; *Provided*, that the funding requirements necessary to implement the Act shall be included in the annual General Appropriations Act for the succeeding years.

SECTION 4. *Repealing Clause*. — All laws, orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of the Act and this Rules are hereby repealed, amended or modified accordingly. If any provision or part of the Act and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the

remainder of the Act and these Rules or the application of such provision or part thereof to other persons or circumstance shall not be affected thereby.

SECTION 5. *Effectivity*. — These rules shall take effect on July 1, 1989.

RULE VIII Payment of Wages

SECTION 1. *Manner of wage payment*. — As a general rule, wages shall be paid in legal tender and the use of tokens, promissory notes, vouchers, coupons, or any other form alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee.

SECTION 2. *Payment by check*. — Payment of wages by bank checks, postal checks or money orders is allowed where such manner of wage payment is customary on the date of the effectivity of the Code, where it is so stipulated in a collective agreement, or where all of the following conditions are met:

(a) There is a bank or other facility for encashment within a radius of one (1) kilometer from the workplace;

(b) The employer or any of his agents or representatives does not receive any pecuniary benefit directly or indirectly from the arrangement;

(c) The employees are given reasonable time during banking hours to withdraw their wages from the bank which time shall be considered as compensable hours worked if done during working hours; and

(d) The payment by check is with the written consent of the employees concerned if there is no collective agreement authorizing the payment of wages by bank checks.

SECTION 3. *Time of payment*. — (a) Wages shall be paid not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days, unless payment cannot be made with such regularity due to *force majeure* or circumstances beyond the employer's control in which case the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased.

(b) In case of payment of wages by results involving work which cannot be finished in two (2) weeks, payment shall be made at intervals not exceeding sixteen days in proportion to the amount of work completed. Final settlement shall be made immediately upon completion of the work.

SECTION 4. *Place of payment*. — As a general rule, the place of payment shall be at or near the place of undertaking. Payment in a place other than the work place shall be permissible only under the following circumstances:

(a) When payment cannot be effected at or near the place of work by reason of the deterioration of peace and order conditions, or by reason of actual or impending

emergencies caused by fire, flood, epidemic or other calamity rendering payment thereat impossible;

(b) When the employer provides free transportation to the employees back and forth; and

(c) Under any other analogous circumstances; Provided, That the time spent by the employees in collecting their wages shall be considered as compensable hours worked;

(d) No employer shall pay his employees in any bar, night or day club, drinking establishment, massage clinic, dance hall, or other similar places or in places where games are played with stakes of money or things representing money except in the case of persons employed in said places.

SECTION 5. *Direct payment of wages*. — Payment of wages shall be made direct to the employee entitled thereto except in the following cases:

(a) Where the employer is authorized in writing by the employee to pay his wages to a member of his family;

(b) Where payment to another person of any part of the employee's wages is authorized by existing law, including payments for the insurance premiums of the employee and union dues where the right to check-off has been recognized by the employer in accordance with a collective agreement or authorized in writing by the individual employees concerned; or

(c) In case of death of the employee as provided in the succeeding Section.

SECTION 6. *Wages of deceased employee*. — The payment of the wages of a deceased employee shall be made to his heirs without the necessity of intestate proceedings. When the heirs are of age, they shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs to the exclusion of all other persons. In case any of the heirs is a minor, such affidavit shall be executed in his behalf by his natural guardian or next of kin. Upon presentation of the affidavit to the employer, he shall make payment to the heirs as representative of the Secretary of Labor and Employment.

SECTION 7. *Civil liability of employer and contractors*. — Every employer or indirect employer shall be jointly and severally liable with his contractor or sub-contractor for the unpaid wages of the employees of the latter. Such employer or indirect employer may require the contractor or sub-contractor to furnish a bond equal to the cost of labor under contract on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

SECTION 8. *Job Contracting*. — There is job contracting permissible under the Code if the following conditions are met:

(a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and

method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

SECTION 9. *Labor-only contracting*. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Rule, the Secretary of Labor and Employment shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

SECTION 10. *Payment of wages in case of bankruptcy*. — Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer's business shall be given first preference and shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

SECTION 11. *Attorney's fees*. — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10 percent of the amount awarded. The fees may be deducted from the total amount due the winning party.

SECTION 12. *Non-interference in disposal of wages*. — No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages and no employer shall in any manner oblige any of his employees to patronize any store or avail of the services offered by any person.

SECTION 13. *Wages deduction*. — Deductions from the wages of the employees may be made by the employer in any of the following cases:

(a) When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself.

(b) When the deductions are with the written authorization of the employees for payment to the third person and the employer agrees to do so;*Provided*, That the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction.

SECTION 14. *Deduction for loss or damage*. — Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions:

(a) That the employee concerned is clearly shown to be responsible for the loss or damage;

(b) That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c) That the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and

(d) That the deduction from the wages of the employee does not exceed 20 percent of the employee's wages in a week.

RULE IX Wage Studies and Determination

SECTION 1. *Definition of terms*. — (a) "Industry" shall mean any identifiable group of productive units or enterprises, whether operated for profit or not, engaged in similar or allied economic activities in which individuals are gainfully employed.

(b) A "branch" of an industry is a work, product or service grouping thereof which can be considered a distinct division for wage-fixing purposes.

(c) "Substantial number" shall mean such an appreciable number of employees in an industry as, in the Commission's opinion, considering all relevant facts, may require action under Art. 121 of the Code to effectuate the purposes of wage determination, regardless of the proportion of such employees to the total number of employees in the industry.

SECTION 2. *Wage studies*. — The National Wages Council shall conduct a continuing study of wage rates and other economic conditions in all industries, agricultural and non-agricultural. The results of such study shall be periodically disseminated to the government, labor and management sectors for their information and guidance.

SECTION 3. *Wages recommendation*. — If after such study, the Commission is of the opinion that a substantial number of employees in any given industry or branch thereof are receiving wages, which although complying with the minimum provided by law, are less than sufficient to maintain them in health, efficiency and general well-being, taking into account, among others, the peculiar circumstances of the industry and its geographical location, the Commission shall, with the approval of the Secretary of Labor and Employment, proceed to determine whether a wage recommendation should be issued.

SECTION 4. *Criteria for wage fixing*. — (a) In addition to the criteria established by Art. 123 of the Code for minimum wage fixing, the Commission shall consider, among other factors, social services and benefits given free to workers and the possible effect of a given increase in the minimum wage on prices, money supply, employment, labor mobility and productivity, labor organization efficacy, domestic and foreign trade, and other relevant indicators of social and economic development.

(b) Where a fair return to capital invested cannot be reasonably determined, or where the industry concerned is not operated for profit, its capacity to pay, taking into account all resources available to it, shall be considered.

SECTION 5. *Quorum*. — Three (3) members of the Commission, including its Chairman, shall constitute a quorum to transact the Commission's business.

SECTION 6. *Commission actions, number of votes required*. — The votes of at least three (3) members of the Commission shall be necessary to effect any decision or recommendation it is authorized to issue under the Code and this rule: *Provided*, That in the internal regulation and direction of the functions of the Commission's staff including the conduct of administrative processes and the maintenance of proper liaison and coordination with other organizations, the Chairman shall not need the consent of the Commission or any member thereof.

SECTION 7. *Outside assistance*. — The Commission may call upon the assistance and cooperation of any government agency or official, and may invite any private person or organization to furnish information in connection with industry studies and wage fixing hearings or in aid of the Commission's deliberations.

SECTION 8. *Schedule of hearings and notices*. — The Commission shall prepare a schedule of hearings for the reception of evidence necessary for wage fixing in an industry, including a list of witnesses that it will invite and the date, time and place of the hearings. A notice thereof to all sectors of the industry shall be given in the most expeditious manner. It may have prior consultations with labor and management leaders in the industry for the above purpose.

SECTION 9. *Unsolicited testimony*. — Persons who offer to testify before the Commission shall be heard only after the Commission is satisfied, upon brief preliminary examination,

that they are in possession of facts relevant to the subject of inquiry. The Chairman, or in other cases, the person conducting the hearing, shall revise the schedule of hearings whenever necessary to achieve logical sequence of testimony.

SECTION 10. *Compulsory processes*. — Recourse to compulsory processes under the Revised Administrative Code to ensure the attendance of witnesses and/or the production of relevant documentary evidence shall be used only on occasions of extreme importance and after other means shall have failed, subject to the approval of the Secretary of Labor and Employment.

SECTION 11. *Hearings*; *where, by whom conducted*. — Commission hearings may be conducted by the Commission *en banc*, or, when authorized by the Commission, by any member or hearing officer designated by the Chairman. The hearings may be held wherever the industry or branches thereof are situated; otherwise they shall be held in the Greater Manila Area. The hearings shall be open to the public.

SECTION 12. *Hearings before single member or hearing officer*. — Hearings conducted by a duly authorized member or hearing officer shall be considered as hearings before the Commission. The records of such hearings shall be submitted to the Commission as soon as they are completed, indicating the time and place of the hearings and the appearances thereat, together with a brief statement of the findings and recommendations of the member or hearing officer concerned.

SECTION 13. *Testimony under oath*. — The testimony of all witnesses shall be made under oath or affirmation and shall be taken down and transcribed by a duly appointed stenographic reporter.

SECTION 14. *Non-applicability of technical rules*. — The technical rules of evidence applied by the courts in proceedings at law or equity shall not strictly apply in any proceedings conducted before the Commission.

SECTION 15. *Stipulation of fact*. — Stipulations of fact may be admitted with respect to any matter at issue in the proceedings.

SECTION 16. *Documentary evidence*. — Written evidence submitted to the Commission or any member or hearing officer shall be properly marked to facilitate identification.

SECTION 17. *Submission of industry-report*. — Within sixty (60) working days from the date of the first hearing, the Commission shall submit to the Secretary of Labor and Employment an "Industry Report" which shall relate in brief the operations that led thereto, the basic findings of economic facts about the industry and the recommendations made on the basis thereof.

SECTION 18. *Action by the Secretary of Labor and Employment*. — Within thirty (30) working days after the submission of the "Industry Report," the Secretary of Labor and Employment shall either reject or approve the recommendation of the Commission in

accordance with Art. 122 of the Code. If he approves the recommendation, he shall issue a Wage Order adopting the same, subject to the approval of the President of the Philippines, prescribing the minimum wage or wages for the industry concerned.

SECTION 19. *Wage Order*. — The Wage Order shall specify the industry or branch to which the minimum wages prescribed therein shall apply; Provided, That no definite rates shall be prescribed for specific job titles in the industry.

SECTION 20. *Varying minimum wages*. — To justify different minimum wages for different localities, the economic and other conditions found in a particular locality must not only be more or less uniform therein but also different from those prevailing in other localities.

SECTION 21. *Publication of Wage Order*. — Only such portions of a Wage Order shall be published as shall effectively give notice to all interested parties that such an Order has been issued, the industry affected, the minimum wages prescribed and the date of its effectivity.

SECTION 22. *Effectivity*. — A Wage Order shall become effective after fifteen (15) days from its publication as provided in Article 124 of the Code.

SECTION 23. *Internal rules of the Commission*. — Subject to the approval of the Secretary of Labor and Employment, the National Wages Council may issue rules and regulations governing its internal procedure.

RULE X Administration and Enforcement

SECTION 1. *Visitorial power*. — The Secretary of Labor and Employment or his duly authorized representatives, including Labor Regulations Officers or Industrial Safety Engineers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and right to copy therefrom, to question any employee, and to investigate any fact, condition or matter relevant to the enforcement of any provision of the Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

SECTION 2. *Enforcement power*. — (a) The Regional Director in cases where employer relations shall exist, shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of the Code and other labor legislations based on the findings of the Labor Regulation Officers or Industrial Safety Engineers (Labor Standard and Welfare Officer) and made in the course of inspection, and to issue writs of execution to the appropriate authority of the enforcement of his order. In line with the provisions of Article 128 in relation to Articles 289 and 290 of the Labor Code as amended in cases, however, where the employer contests the findings of the Labor Standards and Welfare Officers and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection,

the Regional Director concerned shall indorse the case to the appropriate arbitration branch of the National Labor Relations Commission for adjudication.

(b) The Regional Director shall give the employer fifteen (15) days within which to comply with his order before issuing a writ of execution. Copy of such order or writ of execution shall immediately be furnished the Secretary of Labor and Employment.

SECTION 3. *Enforcement power on health and safety of workers*. — (a) The Regional Director may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law, safety order or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

(b) Within 24 hours from issuance of the order of stoppage or suspension, a hearing shall be conducted to determine whether the order for the stoppage of work or suspension of operation shall be lifted or not. The proceedings shall be terminated within seventy-two (72) hours and a copy of such order or resolution shall be immediately furnished the Secretary of Labor and Employment. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

SECTION 4. *Power to review*. — (a) The Secretary of Labor and Employment, at his own initiative or upon request of the employer and/or employee, may review the order of the Regional Director. The order of the Regional Director shall be immediately final and executory unless stayed by the Secretary of Labor and Employment upon posting by the employer of a reasonable cash or surety bond as fixed by the Regional Director.

(b) In aid of his power of review, the Secretary of Labor and Employment may direct the Bureau of Working Conditions to evaluate the findings or orders of the Regional Director. The decision of the Secretary of Labor and Employment shall be final and executory.

SECTION 5. *Interference and injunctions prohibited*. — It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the exercise of the enforcement power of the Secretary of Labor and Employment, Regional Director or their duly authorized representatives pursuant to the authority granted by the Code and its implementing rules and regulations, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with the Code. In addition to the penalties provided for by the Labor Code, any government employees found guilty of violation or abuse of authority, shall be subject to the provisions of Presidential Decree No. 6.

SECTION 6. *Payrolls*. — (a) Every employer shall pay his employees by means of a payroll wherein the following information and data shall be individually shown:

(1) Length of time to be paid;

(2) The rate of pay per month, week, day or hour piece, etc.;

(3) The amount due for regular work;

(4) The amount due for overtime work;

(5) Deductions made from the wages of the employees; and

(6) Amount actually paid.

(b) Every employee in the payroll shall sign or place his thumbmark, as the case may be, at the end of the line opposite his name where a blank space shall be provided for the purpose. His signature shall be made in ink, or his thumbmark placed with the use of the regular stamping ink and pad.

SECTION 7. *Time records*. — Every employer shall keep an individual time record of all his employees bearing the signature or thumbmark of the employee concerned for each daily entry therein by means of any of the following methods:

(a) Through the use of bundy clock by means of which an employee can punch in his individual card the time of arrival and departure from work;

(b) Through the employment of a timekeeper whose duty is to time in and out every employee in a record book; and

(c) By furnishing the employees individually with a daily time record form in which they can note the time of their respective arrival and departure from work.

SECTION 8. *Entries in the filing of time records*. — All entries in time books and daily time records shall be accomplished in ink. All filled-up bundy clock cards, timekeeper's books and daily time record forms shall be kept on file in chronological order by the employer in or about the premises where the employee is employed, and open to inspection and verification by the Department of Labor and Employment as provided in this Rule.

SECTION 9. *Time records of executives*. — Managerial employees, officers or members of the managerial staff, as well as non-agricultural field personnel, need not be required to keep individual time records, provided that a record of their daily attendance is kept and maintained by the employer.

SECTION 10. *Records of workers paid by results*. — Where the employees are paid on piece, *pakiao, takay*, task, commission or other non-time basis, the employer shall keep production records showing their daily output, gross earnings and the actual number of working hours spent by the employees on the job, bearing the signature or thumbmark of the employee concerned. Where, however, the minimum output rates of non-time workers have been fixed by the Department of Labor and Employment or through certified collective agreements, or are in compliance with the standards prescribed in Section 8, Rule VII of this Book, the employer may dispense with the keeping of time records, except

the daily production records showing their output or the work accomplished and gross earnings.

SECTION 11. *Place of records*. — All employment records of the employees shall be kept and maintained by the employer in or about the premises of the work place. The premises of a work-place shall be understood to mean the main or branch office of the establishment, if any, depending upon where the employees are regularly assigned. The keeping of the employee's records in another place is prohibited.

SECTION 12. *Preservation of records*. — All employment records required to be kept and maintained by employers shall be preserved for at least three (3) years from the date of the last entry in the records.

SECTION 13. *False reporting*. — It shall be unlawful for any employer or any person to make any false statement, report or record on matters required to be kept or maintained pursuant to the provisions of this Rule.

SECTION 14. *Working scholars*. — There is no employer-employee relationship between students on one hand, and schools, colleges or universities on the other, where there is written agreement between them under which the former agree to work for the latter in exchange for the privilege to study free of charge, provided the students are given real opportunities, including such facilities as may be reasonable and necessary to finish their chosen courses under such agreement.

SECTION 15. *Resident physicians in training*. — There is employer-employee relationship between resident physicians and the training hospital unless:

(1) There is a training agreement between them; and

(2) The training program is duly accredited or approved by the appropriate government agency.

Nothing herein shall sanction the diminution or withdrawal of any existing allowances, benefits and facilities being enjoyed by training resident physicians at the time of the effectivity of this Rule.

RULE XI Adjudicatory Powers

SECTION 1. *Recovery of wages, simple money claims and other benefits*. — (a) The Regional Director or any duly authorized Hearing Officer of the Department of Labor and Employment shall have the power through summary proceedings and after due notice to hear and decide any complaint involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person, employed in domestic or household service or househelper arising from employer-employee relations; *Provided*, that such complaint does not include a claim for reinstatement and; *Provided,*

further, that the aggregate money claims of each employee or househelper does not exceed five thousand pesos (P5,000.00), inclusive of legal interest.

(b) When the claims of two or more claimants, each not exceeding five thousand pesos (P5,000.00), arising out of or involving the same cause of action and against the same respondent, are subject of separate complaints, the complaints may, upon motion or either party, be consolidated into one for purposes of the hearing and reception of evidence.

(c) When the evidence shows that the claim amounts to more than five thousand pesos (P5,000.00), the Regional Director or Hearing Officer shall advise the complainant to amend the complaint if the latter so desires and file the same with the appropriate regional branch of the National Labor Relations Commission.

SECTION 2. The complaint shall be in writing, under oath and shall substantially comply with the form prescribed by the Department. Within two (2) working days from receipt of the complaint, the Regional Director or Hearing Officer shall serve a copy of the complaint and all pertinent documents to the respondents who may, within five (5) calendar days, file an answer thereto.

SECTION 3. Any sum recovered on behalf of an employee or househelper pursuant to this Rule shall be held in a special deposit account by, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director, directly to the employee or househelper concerned or to his heirs, successors or assigns. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers:*Provided, however*, that thirty (30) calendar days before any sum is turned over to the fund, a notice of entitlement shall be posted conspicuously in at least two (2) public places in the locality where he is last known to have resided.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interests, found owing to any employee or househelper.

SECTION 4. Any decision or resolution of the Regional Director or any of the duly authorized Hearing Officers of the Department of Labor and Employment may be appealed on the same grounds and following the procedure for perfecting an appeal provided in Article 223 of the Labor Code,within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from submission of the last pleading required or allowed under its rules.

RULE XII Employment of Women and Minors

SECTION 1. *General statement on coverage*. — This Rule shall apply to all employers, whether operating for profit or not, including educational, religious and charitable institutions, except to the Government and to government-owned or controlled corporations and to employers of household helpers and persons in their personal service insofar as such workers are concerned.

SECTION 2. *Employable age*. — Children below fifteen (15) years of age may be allowed to work under the direct responsibility of their parents or guardians in any non-hazardous undertaking where the work will not in any way interfere with their schooling. In such cases, the children shall not be considered as employees of the employers or their parents or guardians.

SECTION 3. *Eligibility for employment*. — Any person of either sex, between 15 and 18 years of age, may be employed in any non-hazardous work. No employer shall discriminate against such person in regard to terms and conditions of employment on account of his age.

For purposes of this Rule, a non-hazardous work or undertaking shall mean any work or activity in which the employee is not exposed to any risk which constitutes an imminent danger to his safety and health. The Secretary of Labor and Employment shall from time to time publish a list of hazardous work and activities in which persons 18 years of age and below cannot be employed.

SECTION 4. *Status of women workers in certain work places*. — Any woman who is permitted or suffered to work with or without compensation, in any night club, cocktail lounge, beer house, massage clinic, bar or similar establishments, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishments for purposes of labor and social legislation. No employer shall discriminate against such employees or in any manner reduce whatever benefits they are now enjoying by reason of the provisions of this Section.

SECTION 5. *Night work of women employees*. — Any woman employed in any industrial undertaking may be allowed to work beyond 10:00 o'clock at night, or beyond 12:00 o'clock midnight in the case of women employees of commercial or non-industrial enterprises, in any of the following cases:

(a) In cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquakes, epidemic or other disaster or calamity, to prevent loss of life or property or in cases of *force majeure* or imminent danger to public safety;

(b) In case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;

(c) Where the work is necessary to prevent serious loss of perishable goods;

(d) Where the woman employee holds a responsible position of a managerial or technical nature, or where the woman employee has been engaged to provide health and welfare services;

(e) Where the nature of the work requires the manual skill and dexterity of women and the same cannot be performed with equal efficiency by male workers or where the employment of women is the established practice in the enterprises concerned on the date these Rules become effective; and

(f) Where the women employees are immediate members of the family operating the establishment or undertaking.

The Secretary of Labor and Employment shall from time to time determine cases analogous to the foregoing for purposes of this Section.

SECTION 6. *Agricultural work*. — No woman, regardless of age, shall be permitted or suffered to work, with or without compensation, in any agricultural undertaking at night time unless she is given a rest period of not less than nine (9) consecutive hours, subject to the provisions of Section 5 of this Rule.

SECTION 7. *Maternity leave benefits*. — Every employer shall grant to a pregnant woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months immediately preceding the expected date of delivery, or the complete abortion or miscarriage, maternity leave of at least two (2) weeks before and four (4) weeks after the delivery, miscarriage or abortion, with full pay based on her regular or average weekly wages.

SECTION 8. *Accreditation of leave credits*. — Where the pregnant woman employee fails to avail of the two-week pre-delivery leave, or any portion thereof, the same shall be added to her post-delivery leave with pay.

SECTION 9. *Payment of extended maternity leave*. — When so requested by the woman employee, the extension of her maternity leave beyond the four-week post-delivery leave shall be paid by the employer from her unused vacation and/or sick leave credits, if any, or allowed without pay in the absence of such leave credits, where the extended leave is due to illness medically certified to arise out of her pregnancy, delivery, complete abortion or miscarriage which renders her unfit for work.

SECTION 10. *Limitation on leave benefits*. — The maternity benefits provided herein shall be paid by an employer only for the first four (4) deliveries, miscarriages, and/or complete abortions of the employee from March 13, 1973, regardless of the number of employees and deliveries, complete abortions or miscarriages the woman employee had before said date. For purposes of determining the entitlement of a woman employee to the maternity leave benefits as delimited herein, the total number of her deliveries, complete abortions, or miscarriages after said date shall be considered regardless of the identity or number of

employers she has had at the time of such determination, provided that she enjoyed the minimum benefits therefor as provided in these regulations.

SECTION 11. *Family planning services*. — Employers who habitually employ more than two hundred (200) workers in any locality shall provide free family-planning services to their employees and their spouses which shall include but not limited to, the application or use of contraceptives.

Subject to the approval of the Secretary of Labor and Employment, the Bureau of Women and Young Workers shall, within thirty (30) days from the effective date of these Rules, prescribe the minimum requirements of family planning services to be given by employers to their employees.

SECTION 12. *Relation to agreements*. — Nothing herein shall prevent the employer and his employees or their representatives from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreements, and voluntary employer practices.

SECTION 13. *Prohibited acts*. — It shall be unlawful for any employer:

(a) To discharge any woman employed by him for the purpose of preventing such woman from enjoying the maternity leave, facilities and other benefits provided under the Code;

(b) To discharge such woman employee on account of her pregnancy, or while on leave or in confinement due to her pregnancy;

(c) To discharge or refuse the admission of such woman upon returning to her work for fear that she may be pregnant;

(d) To discharge any woman or child or any other employee for having filed a complaint or having testified or being about to testify under the Code; and

(e) To require as a condition for a continuation of employment that a woman employee shall not get married or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

SECTION 14. *Facilities for woman employees*. — Subject to the approval of the Secretary of Labor and Employment, the Bureau of Women and Young Workers shall, within thirty (30) days from the effective date of these Rules, determine in an appropriate issuance the work situations for which the facilities enumerated in Article 131 of the Code shall be provided, as well as the appropriate minimum age and other standards for retirement or termination of employment in special occupations in which women are employed.

RULE XIII Employment of Househelpers

SECTION 1. *General statement on coverage*. — (a) The provisions of this Rule shall apply to all househelpers whether employed on full or part-time basis.

(b) The term "househelper" as used herein is synonymous to the term "domestic servant" and shall refer to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family.

SECTION 2. *Method of payment not determinant*. — The provisions of this Rule shall apply irrespective of the method of payment of wages agreed upon by the employer and househelper, whether it be hourly, daily, weekly, or monthly, or by piece or output basis.

SECTION 3. *Children of househelpers*. — The children and relatives of a househelper who live under the employer's roof and who share the accommodations provided for the househelpers by the employer shall not be deemed as househelpers if they are not otherwise engaged as such and are not required to perform any substantial household work.

SECTION 4. *Employment contract*. — The initial contract for household service shall not last for more than two (2) years. However, such contract may be renewed from year to year.

SECTION 5. *Minimum monthly wage*. — The minimum compensation of househelpers shall not be less than the following rates:

a) Eight Hundred pesos (P800.00) a month for househelpers in Manila, Quezon, Pasay and Caloocan cities and in the municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Parañaque, Las Piñas, Pasig, Marikina, Valenzuela, Taguig, and Pateros in Metro Manila and in highly urbanized cities. A "highly urbanized city" is one declared as such by the President pursuant to Sections 452 and 453 of the Local Government Code (RA 7160) and having met the plebiscite requirement making the city independent of the province where it is geographically located.

b) Six hundred fifty pesos (P650.00) a month for those in other chartered cities and first class municipalities. "Other chartered cities" refer to the cities other than Manila, Pasay, Quezon, and Caloocan cities and the highly urbanized cities. A "first class municipality" is one determined as such by the Department of Finance after meeting the income and other requirements to qualify as such municipality.

c) Five Hundred Fifty Pesos (P550.00) a month for those in other municipalities.

Househelpers who are receiving at least One Thousand Pesos (P1,000.00) a month shall be covered by the Social Security System in accordance with its guidelines.

(as amended by Department Order No. 1-94, [January 5, 1994])

SECTION 6. *Equivalent daily rate*. — The equivalent minimum daily wage rate of househelpers shall be determined by multiplying the applicable minimum monthly rate by twelve (12) months divided by three hundred sixty five (365) days. *(as amended by Department Order No. 1-94, [January 5, 1994])*

SECTION 7. *Payment by results*. — Where the method of payment of wages agreed upon by the employer and the househelper is by piece or output basis, the piece or output rates shall be such as will assure the househelper of the minimum monthly or the equivalent daily rate as provided in this issuance.

SECTION 8. *Minimum cash wage*. — The minimum wage rates prescribed under this Rule shall be basic cash wages which shall be paid to the househelpers in addition to lodging, food and medical attendance.

SECTION 9. *Time and manner of payment*. — Wages shall be paid directly to the househelper to whom they are due at least once a month. No deductions therefrom shall be made by the employer unless authorized by the househelper himself or by existing laws.

SECTION 10. *Assignment to non-household work*. — No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural and non-agricultural workers.

SECTION 11. *Opportunity for education*. — If the househelper is under the age of eighteen (18) years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.

SECTION 12. *Treatment of househelpers*. — The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be inflicted upon the househelper.

SECTION 13. *Board, lodging and medical attendance*. — The employer shall furnish the househelper free suitable and sanitary living quarters as well as adequate food and medical attendance.

SECTION 14. *Indemnity for unjust termination of service*. — If the period for household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

SECTION 15. *Employment certification*. — Upon the severance of the household service relationship, the househelper may demand from the employer a written statement of the

nature and duration of the service and his or her efficiency and conduct as househelper.

SECTION 16. *Funeral expenses*. — In case of death of the househelper, the employer shall bear the funeral expenses commensurate to the standards of life of the deceased.

SECTION 17. *Disposition of the househelper's body*. — Unless so desired by the househelper or by his or her guardian with court approval, the transfer or use of the body of the deceased househelper for purposes other than burial is prohibited. When so authorized by the househelper, the transfer, use and disposition of the body shall be in accordance with the provisions of Republic Act No. 349.

SECTION 18. *Employment records*. — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper which the latter shall authenticate by signature or thumbmark upon request of the employer.

SECTION 19. *Prohibited reduction of pay*. — When the compensation of the househelper before the promulgation of these regulations is higher than that prescribed in the Code and in this issuance, the same shall not be reduced or diminished by the employer on or after said date.

SECTION 20. *Relation to other laws and agreements*. — Nothing in this Rule shall deprive a househelper of the right to seek higher wages, shorter working hours and better working conditions than those prescribed herein, nor justify an employer in reducing any benefit or privilege granted to the househelper under existing laws, agreements or voluntary employer practices with terms more favorable to the househelpers than those prescribed in this Rule.

RULE XIV Employment of Homeworkers

(as amended by Department Order No. 005-92, [February 4, 1992])

SECTION 1. *General statement on coverage*. — This Rule shall apply to any person who performs industrial homework for an employer, contractor or sub-contractor.

SECTION 2. *Definitions*. — As used in this Rule, the following terms shall have the meanings indicated hereunder:

(a) "*Industrial Homework*" is a system of production under which work for an employer or contractor is carried out by a homework at his/her home. Materials may or may not be furnished by the employer or contractor.

It differs from regular factory production principally in that, it is a decentralized form of production where there is ordinarily very little supervision or regulation of methods of work.

(b) "*Industrial Homeworker*" means a worker who is engaged in industrial homework.

(c) "*Home*" means any room, house, apartment or other premises used regularly, in whole or in part, as dwelling place, except those situated within the premises or compound of an employer, contractor or subcontractor and the work performed therein is under the active or personal supervision by or for the latter.

(d) "*Employer*" means any natural or artificial person who, for his own account or benefit, or on behalf of any person residing outside the Philippines, directly or indirectly, or through any employee, agent, contractor, subcontractor, or any other person:

(1) delivers or causes to be delivered any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his direction; or

(2) sells any goods, articles or materials for the purpose of having such goods or articles processed in or about a home and then repurchases them himself or through another after such processing.

(e) "*Contractor*" or "*subcontractor*" means any person who, for the account or benefit of an employer, delivers or causes to be delivered to a homeworker goods or articles to be processed in or about his home and thereafter to be returned, disposed of or distributed in accordance with the direction of the employer.

(f) "*Processing*" means manufacturing, fabricating, finishing, repairing, altering, packing, wrapping or handling in any way connected with the production or preparation of an article or material.

(g) "*Cooperative*" is an association registered under the Cooperative Code of the Philippines.

(h) "*Department*" means the Department of Labor and Employment.

SECTION 3. *Self-Organization*. — Homeworkers shall have the right to form, join or assist organizations of their own choosing, in accordance with law.

SECTION 4. *Registration of Homeworkers' Organization*. — Any applicant homeworker organization or association shall acquire legal personality, and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty-five Pesos (P55.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the homeworkers organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;

(c) The names of all its members comprising at least 20 percent of all the workers in the bargaining unit where it seeks to operate, if applicable;

(d) If the applicant has been in existence for one or more years, copies of its annual financial reports; and

(e) Four copies of the constitution and by-laws of the applicant organization, the minutes of its adoption or ratification and the list of members who participated in it.

SECTION 5. *Registration of Employer, Contractor and Subcontractor*. — The Department shall, as soon as possible, conduct consultation meetings with government agencies requiring registration of employers and determine if the data being supplied by the registration forms of such agencies are the same as or similar those needed by the Department in the implementation of this regulations. If the registration forms of other agencies do not provide the data needed by DOLE, it shall inquire into the possibility of adopting a common registration form with other agencies that will provide the data needed by all the agencies concerned.

SECTION 6. *Payment for homework*. — Immediately upon receipt of the finished goods or articles, the employer shall pay the homeworker or the contractor or subcontractor, as the case may be, for the work performed less corresponding homeworkers' share of SSS, MEDICARE and ECC premium contributions which shall be remitted by the contractor/subcontractor or employer to the SSS with the employers' share. However, where payment is made to a contractor or subcontractor, the homeworker shall likewise be paid immediately after the goods or articles have been collected from the workers.

SECTION 7. *Standard rates*. — At the initiative of the Department or upon petition of any interested party, the Secretary of Labor and Employment or his authorized representative shall establish the standard output rate or standard minimum rate in appropriate orders for the particular work or processing to be performed by the homeworkers.

The standard output rates or piece rates shall be determined through any of the following procedures:

(a) time and motion studies;

(b) an individual/collective agreement between the employer and its workers as approved by the Secretary or his authorized representative;

(c) consultation with representatives of employers and workers organizations in a tripartite conference called by the Secretary.

The time and motion studies shall be undertaken by the Regional Office having jurisdiction over the location of the premise/s used regularly by the homeworker/s. However, where the job operation or activity is being likewise performed by regular factory workers at the factory or premises if the employer, the time and motion studies shall be conducted by the Regional Office having jurisdiction over the location of the main undertaking or business of the employer. Piece rates established through time and motion studies conducted at the factory or main undertaking of the employer shall be applicable to the homeworkers

performing the same job activity. The standard piece rate shall be issued by the Regional Office within one month after a request has been made at said office.

Upon request of the Regional Office, the Bureau of Working Conditions shall provide assistance in the conduct of such studies.

Non-compliance with the established standard rates can be the subject of complaint which shall be filed at the Regional Office.

SECTION 8. *Deductions*. — No employer, contractor, or subcontractor shall make any deduction from the homeworker's earnings for the value of materials which have been lost, destroyed, soiled or otherwise damaged unless the following conditions are met:

(a) the homeworker concerned is clearly shown to be responsible for the loss or damage;

(b) the homeworker is given reasonable opportunity to show cause why deductions should not be made;

(c) the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and

(d) the deduction is made at such rate that the amount deducted does not exceed 20% of the homeworker's earnings in a week.

SECTION 9. *Conditions for payment of work*.

(a) The employer may require the homeworker to redo the work which has been improperly executed without having to pay the stipulated rate again.

(b) An employer, contractor, or subcontractor need not pay the homeworker for any work which has been done on goods and articles which have been returned for reasons attributable to the fault of the homeworker.

SECTION 10. *Enforcement Power*. — The Regional Director shall have the power to order and administer compliance with the provisions of the law and regulations affecting the terms and conditions of employment of homeworkers and shall have the jurisdiction in cases involving violations of this Rule.

Complaints for violations of labor standards and the terms and conditions of employment involving money claims of homeworkers in an amount of not more than P5,000 per homeworker shall be heard and decided by the Regional Director. He shall have the power to order and administer; after due notice and hearing, compliance with the provisions of this Rule.

In cases where the findings of the Regional Office show that the money claims due a homeworker exceed P5,000, the same shall be endorsed to the appropriate Regional Arbitration Branch of the National Labor Relations Commission.

Non-compliance with the order issued by the Regional Director can be the subject of prosecution in accordance with the penal provisions of the Labor Code.

In cases of disagreement between the homeworker and the employer, contractor, or subcontractor on a matter falling under this Rule, either party may refer the case to the Regional Office having jurisdiction over the workplace of the homeworker. The Regional Office shall decide the case within ten (10) working days from receipt of the case. Its decision shall be final and executory.

SECTION 11. *Duties of employer, contractor and subcontractor*. — Whenever an employer shall contract with another for the performance of the employer's work, it shall be the duty of such employer to provide in such contract that the employees or homeworkers of the contractor and the latter's subcontractor shall be paid in accordance with the provisions of this Rule. In the event that such contractor or subcontractor fails to pay the wages or earnings of his employees or homeworkers as specified in this Rule, such employer shall be jointly and severally liable with the contractor or subcontractor to the workers of the latter, to the extent that such work is performed under such contract, in the same manner as if the employees or homeworkers were directly engaged by the employer. The employer, contractor or subcontractor shall assist the homeworkers in the maintenance of basic safe and healthful working conditions at the homeworkers' place of work.

SECTION 12. *Employment of Minor as Homeworkers*. — The provisions governing the employment of minors under this Code as well as the provisions on working children under the Child and Youth Welfare Code shall govern the employment of minors as homeworkers.

SECTION 13. *Prohibitions for homework*. — No homework shall be performed on the following: (1) explosives, fireworks and articles of like character; (2) drugs and poisons; and (3) other articles, the processing of which requires exposure to toxic substances.

SECTION 14. *Assistance to Registered Homeworkers' Organizations, Employers, Contractors and Subcontractors*. — The Regional Office shall provide technical assistance to registered homeworkers' organizations, employers, contractors and subcontractors relative to the following:

(a) Information on wages and other benefits;

(b) Conduct of time and motion studies to ensure fair and reasonable output rates;

(c) Skills training;

(d) Maintenance of safe and healthful conditions at the workplace.

(e) Information on entitlement to social security and employees compensation benefits;

(f) Facilitation of loans with government and non-government financial institutions; and

(g) Information on availment of housing programs under PAG-IBIG.

SECTION 15. *Effect on other regulations*. — This Department Order shall be known as Rule XIV, Book III of the Rules Implementing the Labor Code entitled Employment of Homeworkers and shall not be construed as authorizing the withdrawal or reduction of any existing benefit of homeworkers provided under any law, order, agreement, and employer practice or policy.

SECTION 16. *Effectivity*. — This Rule shall take effect fifteen (15) days after publication of its adoption in two (2) newspapers of general circulation.

RULE XV Employment of Night Workers

(as created by Rules Implementing Republic Act No. 10151, DOLE Department Order No. 119-12, [January 20, 2012])

SECTION 1. *Coverage*. — This Rule shall apply to all persons who shall be employed or permitted or suffered to work at night, except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation.

SECTION 2. *Definition*. — As used herein, "night worker" means any employed person whose work covers the period from 10 o'clock in the evening to 6 o'clock the following morning provided that the worker performs no less than seven (7) consecutive hours of work.

SECTION 3. *Health Assessment*. — At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

(a) Before taking up an assignment as a night worker;

(b) At regular intervals during such an assignment;

(c) If they experience health problems during such an assignment.

With the exception of a finding of unfitness for night work, the findings of such assessments shall be confidential and shall not be used to their detriment, subject however to applicable company policies.

SECTION 4. *Mandatory Facilities*. — Mandatory facilities shall be made available for workers performing night work which include the following:

(a) Suitable first-aid and emergency facilities as provided for under Rule 1960 (Occupational Health Services) of the Occupational Safety and Health Standards (OSHS);

(b) Lactation station in required companies pursuant to Republic Act No. 10028 (The Expanded Breastfeeding Promotion Act of 2009);

(c) Separate toilet facilities for men and women;

(d) Facility for eating with potable drinking water; and

(e) Facilities for transportation and/or properly ventilated temporary sleeping or resting quarters, separate for male and female workers, shall be provided except where any of the following circumstances is present:

i. Where there is an existing company guideline, practice or policy, collective bargaining agreement (CBA) or any similar agreement between management and workers providing for an equivalent or superior benefit; or

ii. Where the start or end of the night work does not fall within 12 midnight to 5 o'clock in the morning; or

iii. Where the workplace is located in an area that is accessible twenty-four (24) hours to public transportation;

iv. Where the number of employees does not exceed a specified number as may be provided for by the Secretary of Labor and Employment in subsequent issuances.

SECTION 5. *Transfer.* — Night workers who are certified by competent physician, as unfit to render night work, due to health reasons, shall be transferred to a job for which they are fit to work whenever practicable. The transfer of the employee must be to a similar or equivalent position and in good faith.

If such transfer is not practicable or the workers are unable to render night work for a continuous period of not less than six (6) months upon the certification of a competent public health authority, these workers shall be granted the same company benefits as other workers who are unable to work due to illness.

A night worker certified as temporarily unfit for night work for a period of less than six (6) months shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons.

SECTION 6. *Alternative Measures to Night Work for Pregnant and Nursing Employees.* — Employers shall ensure that measures shall be undertaken to provide an alternative to night work for pregnant and nursing employees who would otherwise be called upon to perform such work. Such measures may include the transfer to day work, where it is possible, as well as the provision of social security benefits or an extension of maternity leave.

(a) *Transfer to day work.* — As far as practicable, pregnant or nursing employees shall be assigned to day work, before and after childbirth for a period of at least sixteen (16) weeks which shall be divided between the time before and after childbirth.

Medical certificate issued by competent physician (*i.e.*, Obstetrician/Gynecologist, Pediatrician, etc.) is necessary for the grant of:

i. additional periods of assignment to day work during pregnancy or after childbirth other than the period mentioned in the foregoing paragraph, provided that the length of additional period should not be more than four (4) weeks or for a longer period as may be agreed upon by the employer and the worker;

ii. extension of maternity leave; and

iii. clearance to render night work.

(b) *Provision of social security benefits.* — Social security benefits, such as paid maternity leave shall be provided to women workers in accordance with the provisions of Republic Act No. 8282 (Social Security Act of 1997) and other existing company policy or collective bargaining agreement.

(c) *Extension of maternity leave.* — Where transfer to day work is not possible, a woman employee may be allowed to extend, as recommended by a competent physician, her maternity leave without pay or using earned leave credits of the worker, if any.

SECTION 7. *Non-diminution of Maternity Leave Benefits Under Existing Laws.* — Nothing in this Rule shall be construed to authorize diminution or reduction of the protection and benefits connected with maternity leave under existing law.

SECTION 8. *Protection Against Dismissal and Loss of Benefits Attached to Employment Status, Seniority and Access to Promotion.* — Where no alternative work can be provided to a woman employee who is not in a position to render night work, she shall be allowed to go on leave or on extended maternity leave, using her earned leave credits.

A woman employee shall not be dismissed for reasons of pregnancy, childbirth and childcare responsibilities as defined under this Rule. She shall not lose the benefits regarding her employment status, seniority, and access to promotion which may attach to her regular night work position.

SECTION 9. *Compensation.* — The night workers' compensation shall include but not be limited to working time, pay and benefits under the Labor Code, as amended and under existing laws, such as service incentive leave, rest day, night differential pay, 13th month pay, and other benefits as provided for by law, company policy or CBA.

SECTION 10. *Night Work Schedules.* — The employer shall at its own initiative, consult the recognized workers' representatives or union in the establishment on the details of the night work schedules. SCHIcT

In establishments employing night workers, consultation shall take place regularly and appropriate changes of work schedule shall be agreed upon before it is implemented.

SECTION 11. *Penalties*. — Any violation of this Rule shall be punishable with a fine of not less than Thirty Thousand Pesos (P30,000.00) nor more than Fifty Thousand Pesos (P50,000.00) or imprisonment of not less than six (6) months or both, at the discretion of the court. If the offense is committed by a corporation, trust, firm, partnership or association or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association, or entity.

SECTION 12. *Separability Clause*.— If any provision or portion of this Rule shall be declared unconstitutional or invalid, the remaining portions or provisions hereof shall continue to be in full force and effect.

SECTION 13. *Effectivity*. — This Rule shall take effect 15 days after the date of its complete publication in two national newspapers of general circulation.

(Rules Implementing Republic Act No. 10151, DOLE Department Order No. 119-12, [January 20, 2012])

BOOK FOUR Health, Safety and Welfare Benefits

RULE I Medical and Dental Services

SECTION 1. *Coverage*. — This Rule shall apply to all employers, whether operating for profit or not, including the Government and any of its political subdivisions and government-owned or controlled corporations, which employs in any workplace one or more workers.

The development and enforcement of dental standards shall continue to be under the responsibility of the Bureau of Dental Health Services of the Department of Health.

SECTION 2. *Definitions*. — As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

(a) "First-aid treatment" means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected, before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for an injury or illness.

(b) "Work place" means the office, premises or work site where the workers are habitually employed and shall include the office or place where the workers who have no fixed or definite work site regularly report for assignment in the course of their employment.

(c) "First-aider" means any person trained and duly certified as qualified to administer first aid by the Philippine National Red Cross or by any other organization accredited by the former.

SECTION 3. *Medicines and facilities*. — Every employer shall keep in or about his work place the first-aid medicines, equipment and facilities that shall be prescribed by the Department of Labor and Employment within 5 days from the issuance of these regulations. The list of medicines, equipment and facilities may be revised from time to time by the Bureau of Working Conditions, subject to the approval of the Secretary of Labor and Employment.

SECTION 4. *Emergency medical and dental services*. — Any employer covered by this Rule shall provide his employees medical and dental services and facilities in the following cases and manner:

(a) When the number of workers is from 10 to 50 in a work place, the services of a graduate first-aider shall be provided who may be one of the workers in the work place and who has immediate access to the first-aid medicines prescribed in Section 3 of this Rule.

(b) Where the number of workers exceeds 50 but not more than 200, the services of a full-time registered nurse shall be provided. However, if the work place is non-hazardous, the services of a full-time first-aider may be provided if a nurse is not available.

(c) Where the number of workers in a work place exceeds 200 but not more than 300, the services of a full-time registered nurse, a part-time physician and a part-time dentist, and an emergency clinic shall be provided, regardless of the nature of the undertaking therein. The physician and dentist engaged for such work place shall stay in the premises for at least two (2) hours a day; *Provided*, However, that where the establishment has more than one (1) work shift a day, the required two-hour stay shall be devoted to the work shift which has the biggest number of workers and they shall, in addition to the requirements of this Rule, be subject to call at any time during the other work shifts to attend to emergency cases.

(d) Where the number of workers in a hazardous work place exceeds 300, the services of a full-time nurse, a full-time physician, a full-time dentist, a dental clinic and an infirmary or emergency hospital with one-bed capacity for every 100 workers shall be provided. The physician and dentist shall stay in the premises of the work place for at least eight (8) hours a day; *Provided*, However, that where the work place has more than one (1) work shift a day, they shall be at work place during the work shift which has the biggest number of workers and they shall be subject to call at anytime during the other work shifts to attend to emergency cases. Where the undertaking in such a work place is non-hazardous in nature, the employer may engage the services of a part-time physician and a part-time dentist who shall have the same responsibilities as those provided in sub-section (c) of this Section, and shall engage the services of a full-time registered nurse.

(e) In all work places where there are more than one (1) work shift in a day, the employer shall, in addition to the requirements of this Rule, provide the services of a full-time first-aider for each workshift.

SECTION 5. *Emergency hospital*. — An employer need not put up an emergency hospital or dental clinic in the work place as required in these regulations where there is a hospital or dental clinic which is not more than five (5) kilometers away from the work place if situated in any urban area or which can be reached by motor vehicle in twenty-five (25) minutes of travel, if situated in a rural area and the employer has facilities readily available for transporting a worker to the hospital or clinic in case of emergency: *Provided*, That the employer shall enter into a written contract with the hospital or dental clinic for the use thereof in the treatment of workers in case of emergency.

SECTION 6. *Training and qualifications of medical and dental personnel*. — The health personnel required to be hired by an employer pursuant to the Code and these Rules shall have the following minimum qualifications:

(a) A first-aider must be able to read and write and must have completed a course in first-aid duly certified by the National Red Cross or any other organization accredited by the same.

(b) A nurse must have passed the examination given by the Board of Examiners and duly licensed to practice nursing in the Philippines and preferably with at least fifty (50) hours of training in occupational nursing conducted by the Department of Health, the Institute of Public Health of the University of the Philippines or by any organization accredited by the former.

(c) A physician, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for physicians, is licensed to practice medicine in the Philippines, and is preferably a graduate of a training course in occupational medicine conducted by the Bureau of Working Conditions, the Institute of Public Health of the University of the Philippines or any organization duly accredited by the former.

(d) A dentist, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for dentists, is licensed to practice dentistry in the Philippines, and preferably has completed a training course in occupational dentistry conducted by the Bureau of Dental Health Services of the Department of Health or any organization duly accredited by the former.

SECTION 7. *Opportunity for training*. — Nurses, physicians, and dentists employed by covered employers on the date the Code becomes effective and who do not possess the special training qualifications provided in this Rule may attend the respective training courses pertinent to their field of specialization. The Bureau of Working Conditions shall initiate the organization and carrying out of appropriate training programs for nurses, physicians and dentists in coordination with the government agencies or private organizations referred to in the preceding Section.

SECTION 8. *Hazardous work places*. — The Bureau of Working Conditions, shall, with the approval of the Secretary of Labor and Employment, issue from time to time a detailed list

of hazardous work places for purposes of this Rule, in addition to the following:

(a) Where the nature of the work exposes the workers to dangerous environmental elements, contaminations or work conditions including ionizing radiations, chemicals, fire, flammable substances, noxious components and the like.

(b) Where the workers are engaged in construction work, logging, fire-fighting, mining, quarrying, blasting, stevedoring, dock work, deep-sea fishing and mechanized farming.

(c) Where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products.

(d) Where the workers use or are exposed to heavy or power-driven machinery or equipment.

(e) Where the workers use or are exposed to power-driven tools.

SECTION 9. *Health program*. — The physician engaged by an employer pursuant to this Rule shall, in addition to providing medical services to the workers in cases of emergency, perform among others, the following duties:

(a) Conduct pre-employment medical examination, free of charge, for the proper selection and placement of workers;

(b) Conduct free of charge annual physical examination of the workers;

(c) Collaborate closely with the safety and technical personnel of the establishment to assure selection and placement of workers from the standpoint of physical, mental, physiological and psychological suitability, including investigation of accidents where the probable causes are exposure to occupational health hazards; and

(d) Develop and implement a comprehensive occupational health program for the employees of the establishment. A report shall be submitted annually to the Bureau of Working Conditions describing the program established and the implementation thereof.

SECTION 10. *Medical and dental records*. — (a) The employer shall furnish the Bureau of Working Conditions with copies of all contracts of employment of medical personnel and contracts with hospitals or clinics as provided in Section 5 of this Rule.

(b) The employer shall maintain a record of all medical examinations, treatments and medical activities undertaken.

(c) The employer shall submit reports in such form, and containing such information, as the Bureau of Working Conditions may require from time to time.

RULE II Occupational Health and Safety

SECTION 1. *General statement on coverage*. — (a) This Rule shall apply to all establishments, workplaces, and other undertakings, including agricultural enterprises, whether operated for profit or not, except to: (1) those engaged in land, sea and air transportation: *Provided*, That their dry docks, garages, hangars, maintenance and repair shops and offices shall be covered by this Rule and (2) residential places exclusively devoted to dwelling purposes.

(b) Except as otherwise provided herein, all establishments, workplaces and undertakings located in all chartered cities as well as ordinary municipalities shall be subject to the jurisdiction of the Department of Labor and Employment in respect to the administration and enforcement of safety and health standards.

(c) Chartered cities may be allowed to assume responsibility for technical safety inspection by the Secretary of Labor and Employment upon compliance with such standards and guidelines as he may promulgate. As used herein, technical safety inspection includes inspection for purposes of safety determination of boilers, pressure vessels, internal combustion engines, elevators (passenger and freight), dumbwaiters, escalators, and electrical installation in all workplaces.

SECTION 2. *General occupational health and safety standards*. — Every employer covered by this Rule shall keep and maintain his workplace free from work hazards that are causing or likely to cause physical harm to the workers or damages to property. Subject to the approval of the Secretary of Labor and Employment, the Bureau of Working Conditions shall, from time to time, issue guidelines for compliance with general occupational health and safety standards.

SECTION 3. *Occupational Health and Safety Code; effectivity of existing standards*. — (a) Within six (6) months from the date of effectivity of this Rule, the Bureau of Working Conditions shall prepare and adopt an Occupational Health and Safety Code, subject to the approval of the Secretary of Labor and Employment.

(b) Until the final adoption and approval of an Occupational Health and Safety Code as provided herein, existing safety orders issued by the Department of Labor and Employment shall remain effective and enforceable and shall apply in full force and effect to all employers covered by this Rule.

SECTION 4. *Work condition not covered by standards*. — Any specific standards applicable to a condition, practice, means, method, operation or process shall also apply to other similar work situations for which no specific standards have been established.

SECTION 5. *Training of personnel in safety and health*. — Every employer shall take steps to train a sufficient number of his supervisors or technical personnel in occupational safety and health. An employer may observe the following guidelines in the training of his personnel:

(a) In every non-hazardous establishment or workplace having from fifty (50) to four hundred (400) workers each shift, at least one of the supervisors or technical personnel shall be trained in occupational health and safety and shall be assigned as part-time safety man. Such safety man shall be the secretary of the safety committee.

(b) In every non-hazardous establishment or workplace having over four hundred (400) workers per shift, at least two of its supervisors shall be trained and a full-time safety man shall be provided.

(c) In every hazardous establishment or workplace having from twenty (20) to two hundred (200) workers each shift, at least one of it supervisors or technical man shall be trained who shall work as part-time safety man. He shall be appointed as secretary of the safety committee therein.

(d) In every hazardous establishment or workplace having over two hundred (200) workers each shift, at least two of its supervisors or technical personnel shall be trained and one of them shall be appointed full-time safety man and secretary of the safety committee therein.

(e) The employment of a full-time safety man not be required where the employer enters into a written contract with a qualified consulting organization which shall develop and carry out his safety and health activities; *Provided*, That the consultant shall conduct plant visits at least four (4) hours a week and is subject to call anytime to conduct accident investigations and is available during scheduled inspections or surveys by the Secretary of Labor and Employment or his authorized representatives.

The provisions of this Section shall be made mandatory upon orders of the Secretary of Labor and Employment as soon as he is satisfied that adequate facilities on training in occupational safety and health are available in the Department of Labor and Employment and other public or private entities duly accredited by the Secretary of Labor and Employment.

SECTION 6. *General duties of workers*. — (a) Every worker shall cooperate with the employer in carrying out the provisions of this Rule. He shall report to his supervisors any work hazard that he may discover in his workplace, without prejudice to the right of the worker to report the matter to the Regional Office concerned.

(b) Every worker shall make proper use of all safeguards and safety devices furnished in accordance with the provisions of this Rule for his protection and the protection of others and shall follow all instructions made by the employer in compliance with the provisions of this Rule.

SECTION 7. *Duties of other persons*. — Any person, including builders or contractors, who visits, builds, innovates or installs devices in establishments or workplaces shall comply with the provisions of this Rule and all regulations issued by the employer in compliance

with the provisions of this Rule and other subsequent issuances of the Secretary of Labor and Employment.

SECTION 8. *Administration and enforcement*. — (a) Every employer shall give to the Secretary of Labor and Employment or his duly authorized representative access to its premises and records at any time of the day and night when there is work being undertaken therein for the purpose of determining compliance with the provisions of this Rule.

(b) Every establishment or workplace shall be inspected at least once a year to determine compliance with the provisions of this Rule. Special inspection visits, however, may be authorized by the Regional Office to investigate accidents, conduct surveys requested by the Bureau of Working Conditions, follow-up inspection, recommendations or to conduct investigations or inspections upon request of an employer, worker or a labor union in the establishment.

SECTION 9. *Research*. — (a) The Bureau of Working Conditions, on the basis of experiments, studies, and any other information available to it, shall develop criteria dealing with toxic materials and other harmful substances and conditions which will establish safe exposure levels for various periods of employment. Such studies and researches may be requested by the Secretary of Labor and Employment through grants, contracts or as priority projects in the programs of nationally recognized research organizations.

(b) The Bureau of Working Conditions shall conduct continuing studies and surveys of workplaces to study new problems in occupational safety and health including those created by new technology as well as the motivational and behavioral factors involved therein. The employer shall provide all the necessary assistance and facilities to carry out these activities.

SECTION 10. *Training*. — (a) The Bureau of Working Conditions shall conduct continuing programs to increase the competence of occupational health and safety personnel and to keep them informed of the latest trends, practices and technology in accidental prevention.

(b) The Bureau of Working Conditions shall conduct continuing programs of safety personnel in all establishments or workplaces, and for this purpose every employer shall in accordance with Section 7 hereof take such steps as may be necessary for the participation in such programs of at least two of his supervisors or technical personnel for every two hundred (200) workers per shift; *Provided*, That in establishments with less than two hundred (200) workers, at least one shall be assigned to participate in the training program.

(c) The training may be conducted by the Bureau or any other organization or group of persons accredited by the Secretary of Labor and Employment.

(d) Every training program shall include information on the importance and proper use of adequate safety and health equipment, and government policies and programs in occupational health and safety.

BOOK FIVE Labor Relations

(as amended by

DOLE Order No. 40-03, [February 17, 2003])

RULE I Definition of Terms

SECTION 1. *Definition of Terms***. —**

1. "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. ***(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])***

2. "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.

3. "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.

4. "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.

5. "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.

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

7. "Bureau" refers to the Bureau of Labor Relations.

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

9. "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.

10. "*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. *(as amended by DOLE Order No. 40-B-03, [February 16, 2004])*

11. "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.

12. "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.

13. "Consolidation" refers to the creation or formation of a new union arising from the unification of two or more unions.

14. "Deregistration of Agreement" refers to the legal process leading to the revocation of CBA registration.

15. "Department" refers to the Department of Labor and Employment.

16. "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.

17. "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.

18. "Eligible Voter" refers to a voter belonging to the appropriate bargaining unit that is the subject of a petition for certification election.

19. "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.

20. "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.

21. "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.

22. "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.

23. "Improved Offer Balloting" refers to a referendum by secret ballot involving union members on the improved offer of the employer on or before the 30th day of a strike.

24. "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.

25. "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.

26. "Interlocutory Order" refers to any order that does not ultimately resolve the main issue/s in a dispute.

27. "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.

28. "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.

29. "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.

30. "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.

31. "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.

32. "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.

33. "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.

34. "Lockout" refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute.

35. "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.

36. "Med-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.

37. "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.

38. "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.

39. "Organized Establishment" refers to an enterprise where there exists a recognized or certified sole and exclusive bargaining agent.

40. "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.

41. "Rank-and-File Employee" refers to an employee whose functions are neither managerial nor supervisory in nature.

42. "Regional Director" refers to the Head of the Regional Office.

43. "Regional Office" refers to the office of the Department of Labor and Employment at the administrative regional level.

44. "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.

45. "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.

46. "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. *(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])*

47. "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.

48. "Secretary" refers to the Head of the Department.

49. "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. *(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])*

50. "Strike" refers to any temporary stoppage of work by the concerted action of employees as a result of a labor or industrial dispute.

51. "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.

52. "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.

53. "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.

54. "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.

55. "Union" refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.

56. "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.

57. "Voluntary Recognition" refers to the process by which a legitimate labor union is recognized by the employer as the exclusive bargaining representative or agent in a bargaining unit, reported with the Regional Office in accordance with Rule VII, Section 2 of these Rules.

58. "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 sale 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. *(as amended by Department Order No. 40-C-05, [March 7, 2005])*

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. Sdiact

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. Tsidah

The Genuiness 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. *(as amended by DOLE Order No. 40-B-03, 40-F-03-08, [October 30, 2008])*

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. HTScEI

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. cemBNC

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. *(as amended by DOLE Department Order No. 40-D-05, [September 13, 2005])*

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. *(as amended by DOLE Department Order No. 40-D-05, [September 13, 2005])*

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 associations to submit to the Regional Office or the Bureau which issued its certificate of registration or certificate of creation of chartered local, 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.

(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])

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 voluntary recognition 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 *Voluntary Recognition*~~ *(repealed by DOLE Department Order No. 040-I-15, [September 7, 2015])*

RULE VII Request for Sole and Exclusive Bargaining Agent (SEBA) Certification

(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])

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 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 Organization.* — 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 med-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 DOLE Department Order No. 040-I-15, [September 7, 2015])*

Any employee has the right to intervene for the protection of his individual right. *(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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.

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. *(as amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

SECTION 3. *When to File*. — A petition for certification election may be filed anytime, except:

(a) when a fact of voluntary recognition 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 Med-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 250 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 recognized or certified bargaining agent has been registered in accordance with Article 231 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 files 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 previously recognized voluntarily or 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 voluntary recognition 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.

(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])

SECTION 5. *Raffle of the Case*. — Upon the filing of the petition, the Regional Director or any of his/her duly authorized representative upon receipt of the petition shall immediately assign it by raffle to a mediator-arbiter. the raffle shall be done in the presence of the petitioner if the latter so desires. *(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. *(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

Within three (3) days from receipt of the petition, the Med-Arbiter shall cause the service of notice for preliminary conference upon the employer and incumbent bargaining agent in the subject bargaining unit directing them to appear before him/her on a date, time and place specified. A copy of the notice of preliminary conference and petition for certification election shall be posted in at least two conspicuous places in the establishment.

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. *(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])*

SECTION 8. *Forced Intervenor*. — The incumbent bargaining agent shall automatically be one of the choices in the certification election as forced intervenor. *(7a)* oNHPCc

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 Med-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 Med-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. *(8a)*

SECTION 10. *Preliminary Conference*; *Hearing*. — The Med-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. *(9a)*

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.

To afford an individual employee-voter an informed choice where a local/chapter is the petitioning union, the local/chapter shall secure its certificate of creation at least five working days before the date of the consent election. *(10a) (as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

SECTION 12. *Number of Hearings*; *Pleadings*. — If the contending unions fail to agree to a consent election during the preliminary conference, the Med-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 Med-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 Med-Arbiter in the same order or decision granting or denying the petition. *(11a)*

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 Med-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. *(12a)*

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) to afford an individual employee-voter an informed choice where a local/chapter is one of the contending unions, a directive to an unregistered local/chapter or a federation/national union representing an unregistered local/chapter to personally submit to the election officer its certificate of creation at least five working days before the actual conduct of the certification election.

non-submission of this requirement as certified by the election officer shall disqualify the local/chapter from participating in the certification election; and

(f) a directive to 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 issuance of the order. *(13a)*

(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])

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 voluntary recognition, 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 250 of the labor code within the one-year period referred to in section 15.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. *(14a)*

(as amended by ***DOLE Order No. 40-F-03-08, [October 30, 2008])***

SECTION 16. *Prohibited Ground for the Denial/Suspension 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. *(15a) (as created by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. (*15a,16a*) *(as renumbered and amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. (*16a,17a*) *(as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015]****)***

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. (*17a,18a)* cTECHI

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. (*18a,19a)*

SECTION 21. *Finality of Order/Decision*. — Where no appeal is filed within the ten-day period, the Med-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. *(19a,20a)*

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. *(20a,21a)*

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 Med-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. *(21a,22a)*

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. (*22a,23a*)

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-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. (*23a,24a*)

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. (*24a,25a*)

SECTION 27. *Non-availability of Med-Arbiter*. — Where there is no Med-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 Med-Arbiter from any of the Regional Offices or from the Bureau. (*25a,26a*)

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. *(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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. *(1a)*

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 and the employer, which shall be scheduled within ten (10) 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. *(2a) (as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

The pre-election conference shall set the mechanics for the election and shall determine, among others, the following:

(a) date, time and place of the election, which shall not be later than forty-five (45) days from the date of the first pre-election conference, and shall be on a regular working day and within the employer's premises, unless circumstances require otherwise;

(b) list of eligible and challenged voters;

(c) number and location of polling places or booths and the number of ballots to be prepared with appropriate translations, if necessary;

(d) name of watchers or representatives and their alternates for each of the parties during election;

(e) mechanics and guidelines of the election.

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. *(3a) (as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. *(4a)*

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 shall be eligible to vote. *(as amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*. 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 10 and 11 of this Rule. *(5a)*

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 and time of the election;

(b) names of all contending unions;

(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. *(6a) (as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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 and the employer, 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. *(7a) (as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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 refuses or fails to sign the ballots waives its right to do so and the election officer shall enter the fact of refusal or failure and the reason therefor in the records of the case. *(8a) (as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

SECTION 10. *Casting of Votes*. — The voter must 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. *(9a) (as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

~~SECTION 10. *Challenging of Votes*~~. — *(as deleted by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. (*11a,10a*) *(as renumbered and amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. (*12a,11a*)

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 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 Med-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. (*13a,12a*) *(as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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 Med-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. (*14a,13a*)

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. *(15a,14a) (as renumbered and amended by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. *(16a,15a) (as renumbered and amended by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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. *(17a,16a)*

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. *(as created by DOLE Department Order No. 040-I-15, [September 7, 2015])*

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. *(18a,17a)*

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. *(19a,18a)*

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 Med-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 Med-Arbiter shall declare such fact in the order. *(20a,19a)*

SECTION 22. *Appeal; finality of decision* — The decision of the Med-Arbiter 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 Med-Arbiter shall enter this fact into the records of the case. *(21a,20a)*

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. *(22a,21a)*

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. *(23a,22a)*

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. *(24a,23a)*

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. *(25a,24a) (Sections 21-25 created by DOLE Order No. 40-E-05, [November 30, 2006])*

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 propio* 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 20, 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.

*(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008] and DOLE Department Order No. 040-I-15, [September 7, 2015])*H

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. *(3a)*

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 2 (should be 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. *(4a)*

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 Med-Arbiter 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. *(5a)*

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); aTEADI

(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. *(6a)*

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

Med-Arbiter or Hearing Officer assigned to the case by means of a raffle. Where there is only one Med-Arbiter or Hearing Officer in the region, the raffle shall be dispensed with and the complaint or petition shall be assigned to him/her. *(7a)*

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 Med-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 Med-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 Med-Arbiter or Hearing Officer on the scheduled preliminary conference. *(8a)*

SECTION 8. *Conduct of Preliminary Conference*. — The Med-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 Med-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 Med-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. *(9a)*

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

Where the Med-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 Med-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. *(10a)*

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 Med-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. *(11a)*

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. *(12a)*

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. *(13a)*

SECTION 13. *Decision*. — The Bureau and the Med-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. *(14a)*

SECTION 14. *Release of Decision*. — The notice of decision shall be signed by the Records Officer in the Bureau and by the Med-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. *(15a)*

SECTION 15. *Appeal*. — The decision of the Med-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. *(16a)*

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. *(17a)*

SECTION 17. *Finality of Decision*. — Where no appeal is filed within the ten-day period, the Bureau and Regional Director or Med-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. *(18a)*

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. *(19a)*

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 Med-Arbiter 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. *(20a)*DAaIHT

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. *(21a)*

SECTION 21. *Execution of Decision*. — The decision of the Med-Arbiter 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. *(22a)*

SECTION 22. *Transmittal of Records to the Regional Office/Bureau*. — 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 Bureau or Regional Office of origin for implementation. The implementation of the decision shall not be stayed unless restrained by the appropriate court. *(23a)*

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 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; cEISAD

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 Med-Arbiter, 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 274*. — 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 274 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 274 shall be filed with the Bureau. Such request or complaint, in the absence of allegations pertaining to a violation of Article 241, 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 241*. — Any complaint or petition with allegations of mishandling, misappropriation or non-accounting of funds in violation of Article 241 shall be treated as an intra-union dispute. It shall be heard and resolved by the Med-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 Med-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 Med-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 Med-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 Med-Arbiter. The decision shall be released in the same manner prescribed in Section 15, Rule XI.

When warranted, the Med-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 Med-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 16, 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 DOLE Order No. 40-F-03-08, [October 30, 2008])*H

SECTION 2. *Who May File*. — Any party-in-interest may commence a petition for cancellation of registration, except in actions involving violations of Article 241, 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.

(as amended by DOLE Order No. 40-F-03-08, [October 30, 2008])

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. *(as created by DOLE Order No. 40-F-03-08, [October 30, 2008])*

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. *(4a)* ***(as renumbered and amended by DOLE Order No. 40-F-03-08, [October 30, 2008])***

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 created by DOLE Order No. 40-F-03-08, [October 30, 2008])*

RULE XV Registry of Labor Organizations and Collective Bargaining Agreements

(as retitled and amended by DOLE Order No. 40-F-03-08, [October 30, 2008])

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: STHDAc

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 voluntarily recognized or 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 recognized or 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 recognized or 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. AcIaST

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 or establishments 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 or employers 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 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 DOLE Department Order No. 40-D-05, [September 13, 2005])*

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-day period immediately preceding the expiry date of such five-year term shall be entertained by the Department.

The five-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-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. TEDAHI

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. CTAIHc

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 R.A. 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 241, 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. IAETSC

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 of strike 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 of submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds or the strike or lockout. *(as amended by Department Order No. 40-A-03, [March 12, 2003])*

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. CcAESI

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-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 30th 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. DTaAHS

SECTION 14. *Injunctions*. — No court or entity shall enjoin any picketing, strike or lockout, except as provided in Articles 218 and 263 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*. — 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 of 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/her duly authorized representative as Voluntary Arbitrator or to a duly accredited Voluntary Arbitrator or to a panel of Voluntary Arbitrators. *(as created by DOLE Department Order No. 40-G-03-10, [March 29, 2010] and amended by DOLE Department Order No. 040-H-13, [October 21, 2013])*

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 stations;

d. air traffic control; and

e. such other industries as may be recommended by the National Tripartite Industrial Peace Council (TIPC). *(as created by DOLE Department Order No. 040-H-13, [October 21, 2013])*

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 or 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. *(16a) (as created by DOLE Department Order No. 40-G-03-10, [March 29, 2010], renumbered and amended by DOLE Department Order No. 040-H-13, [October 21, 2013])*

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 may be.

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 executory ten (10) calendar days after receipt thereof by the parties. *(17a) (as created by DOLE Department Order No. 40-G-03-10, [March 29, 2010], renumbered and amended by DOLE Department Order No. 040-H-13, [October 21, 2013])*

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 employee, 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 replace 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 picketlines 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-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel During Labor Disputes. *(18a) (as created by DOLE Department Order No. 40-G-03-10, [March 29, 2010], renumbered and amended by DOLE Department Order No. 040-H-13, [October 21, 2013])*

SECTION 20. *Criminal Prosecution*. — The regular courts shall have jurisdiction over any criminal action under Article 272 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. *(15a,19a) (as renumbered and amended by DOLE Department Order No. 40-G-03-10, [March 29, 2010], DOLE Department Order No. 040-H-13, [October 21, 2013])*

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 Med-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 248 (e) 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.

(as amended by DOLE Order No. 40-03, [February 17, 2003])

BOOK SIX Post-Employment

RULE I Termination of Employment and Retirement

SECTION 1. *Coverage*. — This rule shall apply to all establishments and undertakings whether operated for profit or not, including educational, medical, charitable and religious institutions and organizations in cases of regular employment, with the exception of the government and its political subdivisions including government-owned and/or -controlled corporations.

~~SECTION 2. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for just cause as provided in the Labor Code or when authorized by existing laws.~~ *(as repealed by DOLE Department Order No. 147-15, [September 7, 2015])*

SECTION 3. *Reinstatement*. — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to back wages from the time his compensation was withheld from him up to the time of his reinstatement.

SECTION 4. *Reinstatement to Former Position*. — (a) An employee who is separated from work without just cause shall be reinstated to his former position, unless such position no longer exists at the time of his reinstatement, in which case he shall be given a substantially equivalent position in the same establishment without loss of seniority rights.

(b) In case the establishment where the employee is to be reinstated has closed or ceased operations or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent to at least one-month salary or to one-month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year.

SECTION 5. *Regular and casual employment*. — (a) The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be considered to be regular employment for purposes of Book VI of the Labor Code where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or

termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

(b) Employment shall be deemed as casual in nature if it is not covered by the preceding paragraph; *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

(c) An employee who is allowed to work after a probationary period shall be considered a regular employee.

SECTION 6. *Probationary employment*. — (a) Where the work for which an employee has been engaged is learnable or apprenticeable in accordance with the standards prescribed by the Department of Labor, the probationary employment period of the employee shall be limited to the authorized learnership or apprenticeship period, whichever is applicable.

(b) Where the work is neither learnable nor apprenticeable, the probationary employment period shall not exceed six (6) months reckoned from the date the employee actually started working.

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause or when authorized by existing laws, or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

(d) In all cases involving employees engaged on probationary basis, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement.

~~SECTION 7. *Termination of employment by employer*.~~

~~SECTION 8. *Disease as a ground for dismissal*.~~

~~SECTION 9. *Termination pay*.~~

~~SECTION 10. *Basis of termination pay*.~~

~~SECTION 11. *Termination of employment by employee.* (as repealed by DOLE Department Order No. 147-15, [September 7, 2015])~~

SECTION 12. *Suspension of relationship*. — The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or undertaking of the employer for a period not exceeding six (6) months, unless the suspension is for the purpose of defeating the rights of the employees under the Code, and in case of mandatory fulfillment by the employee of a military or civic duty. The payment of wages of

the employee as well as the grant of other benefits and privileges while he is on a military or civic duty shall be subject to special laws and decrees and to the applicable individual or collective bargaining agreement and voluntary employer practice or policy.

SECTION 13. *Retirement*. — In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

SECTION 14. *Retirement benefits*. — (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent to at least one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

(c) This Section shall apply where the employee retires at the age of sixty (60) years or older.

RULE I-A Application of Just and Authorized Causes of Termination

(as created by DOLE Department Order No. 147-15, [September 7, 2015])

SECTION 1. *Guiding Principles*. — The workers' right to security of tenure is guaranteed under the Philippine Constitution and other laws and regulations. No employee shall be terminated from work except for just or authorized cause and upon observance of due process.

SECTION 2. *Coverage*.— This Rules shall apply to all parties of work arrangements where employer-employee relationship exists. It shall also apply to all parties of legitimate contracting/subcontracting arrangements with existing employer-employee relationships.

SECTION 3. *Employer-Employee Relationship*.— To ascertain the existence of an employer-employee relationship, the four-fold test shall apply, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test,

an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means used to achieve that end. **1**

SECTION 4. *Definition of Terms*.— The following terms as used in this Rules, shall mean:

(a) "*Authorized Causes*" refer to those instances enumerated under Articles 298 [Closure of Establishment and Reduction of Personnel] and 299 [Disease as a Ground for Termination] of the Labor Code, as amended. These are causes brought by the necessity and exigencies of business, changing economic conditions and illness of the employee. **2**

(b) "*Just Causes*" refer to those instances enumerated under Article 297 [Termination by Employer] of the Labor Code, as amended. These are causes directly attributable to the fault or negligence of the employee. 3 CAIHTE

(c) "*Closure or Cessation of Business*" refers to the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. **4**

(d) "*Commission of a Crime or Offense*" refers to an offense by the employee against the person of his/her employer or any member of his/her family or his/her duly authorized representative. **5**

(e) "*Contractor*" refers to any person or entity, including cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement. **6**

(f) "*Contractor's Employee*" refers to one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal.

It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, *i.e.,* administrative staff.

(g) "*Employee*" refers to any person in the employ of an employer. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice. **7**

(h) "*Employer*" refers to any person acting in the interest of an employer, directly or indirectly. 8 It shall include corporation, partnership, sole proprietorship and cooperative.

(i) "*Fraud*" refers to any act, omission, or concealment which involves a breach of legal duty, trust or confidence justly reposed, and is injurious to another. **9**

(j) "*Gross Neglect*" refers to the absence of that diligence that an ordinary prudent man would use in his/her own affairs. **10**

(k) "*Habitual Neglect*" refers to repeated failure to perform one's duties over a period of time, depending upon the circumstances. **11**

(l) "*Insubordination*" refers to the refusal to obey some order, which a superior is entitled to give and have obeyed. It is a willful or intentional disregard of the lawful and reasonable instructions of the employer. **12**

(m) "*Installation of Labor-saving Devices*" refers to the reduction of the number of workers in any workplace made necessary by the introduction of labor-saving machinery or devices. **13**

(n) "*Loss of Confidence*" refers to a condition arising from fraud or willful breach of trust by employee of the trust reposed in him/her by his/her employer or his/her duly authorized representative. There are two (2) classes of positions of trust. The first class consists of managerial employees, or those vested with the power to lay down management policies; and the second class consists of cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. **14**

(o) "*Misconduct*" refers to the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment. **15**

(p) "*Principal*" refers to any employer, whether a person or entity including government agencies and government owned and controlled corporation, who/which puts out or farms out a job, service or work to a contractor.

(q) "*Redundancy*" refers to the condition when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise or superfluous. **16**

(r) "*Retrenchment*" refers to the economic ground for dismissing employees and is resorted to primarily to avoid or minimize business losses. **17**

SECTION 5. *Due Process of Termination of Employment*. — In all cases of termination of employment, the standards of due process laid down in Article 299 (b) of the Labor Code, as amended, and settled jurisprudence on the matter, must be observed as follows:

5.1 *Termination of Employment Based on Just Causes*. As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:

(a) The *first written notice* should contain:

1. The specific causes or grounds for termination as provided for under Article 297 of the Labor Code, as amended, and company policies, if any;

2. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice; and

3. A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the complaint. 18 DETACa

(b) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 299 (b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. **19**

(c) After determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employee have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served personally to the employee or to the employee's last known address.

5.2 *Standards on Just Causes*.An employer may terminate an employee for any of the following grounds:

(a) *Serious Misconduct.* — To be a valid ground for termination, the following must be present: **20**

1. There must be misconduct;

2. The misconduct must be of such grave and aggravated character;

3. It must relate to the performance of the employee's duties; and

4. There must be showing that the employee becomes unfit to continue working for the employer.

(b) *Willful Disobedience or Insubordination.* — To be a valid ground for termination, the following must be present: **21**

1. There must be disobedience or insubordination;

2. The disobedience or insubordination must be willful or intentional characterized by a wrongful and perverse attitude;

3. The order violated must be reasonable, lawful, and made known to the employee; and

4. The order must pertain to the duties which he has been engaged to discharge.

(c) *Gross and Habitual Neglect of Duties.* — To be a valid ground for termination, the following must be present: **22**

1. There must be neglect of duty; and

2. The negligence must be both gross and habitual in character.

(d) *Fraud or Willful Breach of Trust* — To be a valid ground for termination, the following must be present: **23**

1. There must be an act, omission, or concealment;

2. The act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed;

3. It must be committed against the employer or his/her representative; and

4. It must be in connection with the employees' work.

(e) *Loss of Confidence* — To be a valid ground for termination, the following must be present: **24**

1. There must be an act, omission or concealment;

2. The act, omission or concealment justifies the loss of trust and confidence of the employer to the employee;

3. The employee concerned must be holding a position of trust and confidence;

4. The loss of trust and confidence should not be simulated;

5. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified; and

6. It must be genuine and not a mere afterthought to justify an earlier action taken in bad faith.

(f) *Commission of a Crime or Offense* — To be a valid ground for termination, the following must be present: **25**

1. There must be an act or omission punishable/prohibited by law; and

2. The act or omission was committed by the employee against the person of employer, any immediate member of his/her family, or his/her duly authorized representative.

(g) *Analogous Causes* — To be valid ground for termination, the following must be present:

1. There must be act or omission similar to those specified just causes; and

2. The act or omission must be voluntary and/or willful on the part of the employees.

No act or omission shall be considered as analogous cause unless expressly specified in the company rules and regulations or policies.

5.3 *Termination of Employment Based on Authorized Causes*. As defined in Articles 298 and 299 of the Labor Code, as amended, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment (DOLE) at least thirty days (30) before the effectivity of the termination, specifying the ground or grounds for termination.

5.4 *Standards on Authorized Causes*.An employer may terminate an employee for any of the following grounds:

(a) *Installation of Labor-saving Devices.* — To be a valid ground for termination, the following must be present: **26**

1. There must be introduction of machinery, equipment or other devices;

2. The introduction must be done in good faith;

3. The purpose for such introduction must be valid such as to save on cost, enhance efficiency and other justifiable economic reasons;

4. There is no other option available to the employer than the introduction of machinery, equipment or device and the consequent termination of employment of those affected thereby; and

5. There must be fair and reasonable criteria in selecting employees to be terminated.

(b) *Redundancy.* — To be a valid ground for termination, the following must be present: **27**

1. There must be superfluous positions or services of employees;

2. The positions or services are in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner;

3. There must be good faith in abolishing redundant positions;

4. There must be fair and reasonable criteria in selecting the employees to be terminated; 28 and

5. There must be an adequate proof of redundancy such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring. **29**

(c) *Retrenchment or Downsizing*. — To be a valid ground for termination, the following must be present: **30**

1. The retrenchment must be reasonably necessary and likely to prevent business losses;

2. The losses, if already incurred, are not merely *de minimis*,but substantial, serious, actual and real, or if only expected, are reasonably imminent;

3. The expected or actual losses must be proved by sufficient and convincing evidence; **31**

4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. There must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

(d) *Closure or Cessation of Operation*. — To be a valid ground for termination, the following must be present: **32**

1. There must be a decision to close or cease operation of the enterprise by the management;

2. The decision was made in good faith; and

3. There is no other option available to the employer except to close or cease operations.

(e) *Disease*. — To be a valid ground for termination, the following must be present:

1. The employee must be suffering from any disease;

2. The continued employment of the employee is prohibited by law or prejudicial to his/her health as well as to the health of his/her co-employees; and

3. There must be certification by a competent public health authority that the disease is incurable within a period of six (6) months even with proper medical treatment.

In cases of installation of labor-saving devices, redundancy and retrenchment, the "Last-In, First-Out Rule" 33 shall apply except when an employee volunteers to be separated from employment.

5.5 *Payment of Separation Pay*.Separation pay shall be paid by the employer to an employee terminated due to installation of labor-saving devices, redundancy, retrenchment, closure or cessation of operations not due to serious business losses or financial reverses, and disease.

An employee terminated due to *installation of labor-saving devices* or *redundancy* shall be paid by the employer a separation pay equivalent to at least one (1) month pay or at least one (1) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year. ETHIDa

An employee terminated due to *retrenchment* shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee terminated due to *closure or cessation of business operation* not due to serious business losses shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year. Where closure is due to serious business losses or financial reverses, no separation pay is required.

An employee terminated due to *disease* shall be paid by the employer a separation pay equivalent to at least one (1) month salary or one-half (1/2) month salary for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee whose employment is terminated by reason of *just causes* is not entitled to separation pay except as expressly provided for in the company policy or Collective Bargaining Agreement (CBA).

SECTION 6. *Other Causes of Termination*.— In addition to Section 5, the employer may also terminate an employee based on reasonable and lawful grounds specified under its company policies.

An employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination. **34**

An employee shall not be terminated from work based on actual, perceived or suspected HIV status. **35**

An employee shall not be terminated on basis of actual, perceived or suspected Hepatitis B status. **36**

An employee who has or had Tuberculosis shall not be discriminated against. He/she shall be entitled to work for as long as he/she is certified by the company's accredited health provider as medically fit and shall be restored to work as soon as his/her illness is controlled. **37**

Sexual harassment 38 is considered a serious misconduct. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victim.

SECTION 7. *Causes of Termination Under the Collective Bargaining Agreement (CBA)*.— An employee may also be terminated based on the grounds provided for under the CBA.

SECTION 8. *Mandatory Conciliation-Mediation on Termination Disputes*. — All disputes arising out of termination of employment shall be subject to mandatory conciliation-mediation pursuant to Republic Act No. 10396 and its Implementing Rules and Regulations.

Request for assistance involving issues arising out of termination of employment based on just or authorized cause shall be lodged before the Single Entry Assistance Desk Officers (SEADOs) at the Regional/Provincial/Field Offices of DOLE or its attached agencies in the region pursuant to the Implementing Rules and Regulations of Republic Act No. 10396.

In case of settlement, the Desk Officer shall reduce the agreement into writing, have the parties understand the contents therefor, sign the same in his/her presence, and attest the document to be the true and voluntary act of the parties.

For organized establishments, all disputes shall undergo grievance machinery under the CBA. In case of failure to reach an agreement, the parties may refer the same to conciliation-mediation under the Single Entry Approach (SEnA) or agree to submit it for voluntary arbitration in accordance with Articles 274 and 275 of the Labor Code, as amended.

SECTION 9. *Settlement Agreement*.— Any settlement agreement reached by the parties before the Desk Officer shall be final and binding.

In case of failure to reach an agreement during the conciliation-mediation period, the request shall be referred to compulsory arbitration, or if both parties so agree, to voluntary arbitration.

SECTION 10. *Condition Precedent to Compulsory Arbitration*. — No Labor Arbiter shall take cognizance of the complaint for illegal dismissal unless there is a referral from the Desk Officer pursuant to the Implementing Rules and Regulations of Republic Act No. 10396.

SECTION 11. *Non-compliance with Settlement Agreement; Execution*. — In case of non-compliance by the employer or employee, the terms of the settlement agreement may be enforced by requesting the Desk Officer to refer the same to the proper Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC) for enforcement of the agreement pursuant to Rule V, Section 1 (i) of the 2005 Revised NLRC Rules, as amended. The same shall be docketed by the RAB as arbitration case for enforcement of the settlement agreement. The employee or employer may also disregard the settlement agreement and file an appropriate case before the appropriate forum.

RULE II Retirement Benefits

(as created by (Retirement Benefits for Employees in the Private Sector), [January 7, 1993])

SECTION 1. *General Statement on Coverage*. — This Rule shall apply to all employees in the private sector, regardless of their position, designation, or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641, which took effect on January 7, 1993.

SECTION 2. *Exemptions*. — This Rule shall not apply to the following employees:

2.1 Employees of the National Government and its political subdivisions, including Government-owned or controlled corporations, if they are covered by the Civil Service Law and its regulations.

2.2 Domestic helpers and persons in the personal service of another.Philippine *(as amended by Department Order No. 020-94, [May 31, 1994])*

2.3 Employees of retail, service and agricultural establishments or operations regularly employing not more than ten (10) employees. As used in this sub-section:

(a) "*Retail establishment*" is one principally engaged in the sale of goods to end-users for personal or household use. It shall lose its retail character qualified for exemption if it is engaged in both retail and wholesale of goods.

(b) "*Service establishment*" is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such.

(c) "*Agricultural establishment/operation*" refers to an employer which is engaged in agriculture. This term refers to all farming activities in all its branches and includes, among others, the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacture or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products.

SECTION 3. *Retirement Under CBA/Contract***. —**

3.1 Any employee may retire or be retired by his employer upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract, subject to the provisions of Section 5 hereof on the payment of retirement benefits.

3.2 In case of retirement under this Section, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements; *provided, however*, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided under this Rule; and *provided further* that if such benefits are less, the employer shall pay the difference between the amount due the employee under this Rule

and that provided under the collective bargaining agreement or other applicable employment contract.

3.3 Where both the employer and the employee contribute to a retirement fund in accordance with a collective bargaining agreement or other applicable employment contract, the employer's total contribution thereto shall not be less than the total retirement benefits to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the retirement benefits provided under this Rule, the employer shall pay the deficiency.

SECTION 4. *Optional/Compulsory Retirement*. —

4.1 *Optional Retirement* — In the absence of a retirement plan or other applicable agreement providing for retirement benefits of employees in an establishment, an employee may retire upon reaching the age of sixty (60) years or more if he has served for at least five (5) years in said establishment.

4.2 *Compulsory Retirement* — Where there is no such plan or agreement referred to in the immediately preceding sub-section, an employee shall be retired upon reaching the age of sixty-five (65) years.

4.3 Upon retirement of an employee, whether optional or compulsory, his services may be continued or extended on a case to case basis upon agreement of the employer and employee.

4.4 *Service Requirement* — The minimum length of service of at least five (5) years required for entitlement to retirement pay shall include authorized absences and vacations, regular holidays, and mandatory fulfillment of a military or civic duty.

SECTION 5. *Retirement Benefits*. —

5.1 In the absence of an applicable employment contract, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

5.2 *Components of One-half (1/2) Month Salary*. — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half month salary" shall include all of the following:

(a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living

allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees;

(b) The cash equivalent of five (5) days of service incentive leave;

(c) One-twelfth of the 13th month pay due the employee; and

(d) All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

5.3 *One-half Month Salary of Employees Who Are Paid by Results*. — For covered workers who are paid by results and do not have a fixed monthly rate, the basis for determination of the salary for fifteen days shall be their average daily salary (ADS), subject to the provisions of Rule VII-A, Book III of the rules implementing the Labor Code on the payment of wages of workers who are paid by results. The ADS is the average salary for the last twelve (12) months reckoned from the date of their retirement, divided by the number of actual working days in that particular period.

SECTION 6. *Exemption from Tax*. — The retirement pay provided in the Act may be exempted from tax if the requirements set by the Bureau of Internal Revenue under Sec. 2 (b), item (1) of Revenue Regulations No. 12-86 dated August 1, 1986 are met, to wit:

"Pensions, retirement and separation pay. — Pensions, retirement and separation pay constitute compensation subject to withholding tax, except the following:

(1) Retirement benefit received by officials and employees of private firms under a reasonable private benefit plan maintained by the employer, if the following requirements are met:

(i) The benefit plan must be approved by the Bureau of Internal Revenue;

(ii) The retiring official or employee must have been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of retirement; and

(iii) The retiring official or employee shall not have previously availed of the privilege under the retirement benefit plan of the same or another employer".

SECTION 7. *Penal Provision*. — It shall be unlawful for any person or entity to circumvent or render ineffective the provisions of the Act. Violations thereof shall be subject to the penal provisions provided under Article 288 of the Labor Code of the Philippines.

SECTION 8. *Relation to Agreements and Regulations*. — Nothing in this Rule shall justify an employer from withdrawing or reducing any benefits, supplements, or payments as provided in existing laws, individual or collective agreements, or employment practices or policies.

All rules and regulations, policy issuances, or orders contrary to or inconsistent with these rules are hereby repealed or modified accordingly.

SECTION 9. *Effectivity*. — This Rule took effect on January 7, 1993 when the Act went into force.

(Rule II, Book VI of the Rules Implementing the Labor Code (Retirement Benefits for Employees in the Private Sector), [January 7, 1993])

BOOK SEVEN Prescriptions, Transitory and Final Provisions

RULE I Venue of Actions

SECTION 1. *Money claims*. — All money claims and benefits arising from employer-employee relations, except claims for social security benefits, medicare and workmen's compensation, shall be filed with the Labor Relations Division of the regional office nearest the place where the cause of action accrued.

SECTION 2. *Unfair labor practices*. — All complaints for unfair labor practices shall be filed with the Labor Relations Division of the regional office nearest the place where the acts complained of were committed.

SECTION 3. *Workmen's compensation claims*. — (a) Claims for workmen's compensation accruing prior to January 1, 1975 shall be filed with the appropriate regional offices of the Department of Labor and Employment in accordance with the Rules of the Workmen's Compensation Commission;

(b) Claims for workmen's compensation arising or after January 1, 1975 shall be filed with the Social Security System for employees in the private sector and with the Government Service Insurance System for employees of the government, as the case may be, in accordance with such rules and regulations as the case may be, as may be laid down by the Employees' Compensation Commission.

RULE II Prescription of Actions

SECTION 1. *Money claims*. — All money claims and benefits arising from employer relations shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred.

SECTION 2. *Unfair labor practices*. — The complaints involving unfair labor practices shall be filed within one (1) year from the time the acts complained of were committed; otherwise, they shall be forever barred.

SECTION 3. *Workmen's compensation claims*. — Subject to the exceptions provided under the Code, all claim for workmen's compensation shall be filed within one (1) year from the

occurrence of injury or death; otherwise they shall be forever barred.

SECTION 4. *Claims accruing prior to effectivity of the Code*. — (a) All money claims and benefits arising from the employer-employee relations which accrued prior to the effectivity of the Code shall be filed within one (1) year from the date of the effectivity of the Code; otherwise, they shall be forever barred.

(b) All worker's compensation claims accruing prior to January 1, 1975 shall be filed not later than March 31, 1975, otherwise, they shall be forever barred.

SECTION 5. *Prescription of action on union funds*. — Any action involving the funds of the organization shall prescribe after three years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier.

RULE III Laws Repealed

SECTION 1. *Law repealed*. — Pursuant to the repealing clause of Article 303 of the Code, the following labor laws are deemed repealed by the Code:

(a) Act No. 1874, or the Employer's Liability Act.

(b) Act No. 2473.

(c) Act No. 2486, as amended, or the Recruitment for Overseas Employment Act.

(d) Act No. 2549.

(e) Act No. 3957, as amended, or the Private Employment Agency Act.

(f) Act No. 3428, as amended, or the Workmen's Compensation Act.

(g) Act No. 3959, or the Contractor's Bond Act.

(h) Commonwealth Act No. 103, as amended, or the Court of Industrial Relations Act.

(i) Commonwealth Act No. 104, as amended, or the Industrial Safety Act.

(j) Commonwealth Act No. 213.

(k) Commonwealth Act No. 303.

(l) Commonwealth Act No. 444, as amended, or the Eight Hour Labor Law.

(m) Republic Act No. 602, as amended, or the Minimum Wage Law, except Sections 3 and 7 thereof.

(n) Republic Act No. 679, as amended, or the Woman and Child Labor Law.

(o) Republic Act No. 761, as amended, or the National Employment Service Law.

(p) Republic Act No. 875, as amended, or the Industrial Peace Act.

(q) Republic Act No. 946, as amended, or the Blue Sunday Law.

(r) Republic Act No. 1052, as amended, or the Termination Pay Law.

(s) Republic Act No. 1054 or the Emergency Medical and Dental Treatment Law.

(t) Republic Act No. 1826, as amended, or the National Apprenticeship Act.

(u) Republic Act No. 2646.

(v) Republic Act No. 2714.

(w) Republic Act No. 5462, or the Manpower and Out-of-School Youth Development Act.

(x) Reorganization Plan No. 20-A.

All rules and regulations, policy instructions, orders and issuances implementing Presidential Decree No. 442 as amended, contrary to or inconsistent with these rules are hereby repealed or modified accordingly.

All other laws involving employer-employee relations, including the Sugar Act of 1952 (R.A. 809), are deemed not repealed.

RULE IV Date of Effectivity

SECTION 1. *Effectivity of these rules and regulations*. — (a) The provisions of these rules and regulations which were promulgated on January 19, 1975, shall continue to be in effect as of February 3, 1975, except the following:

1. Those relating to self-executing provisions of the Labor Code which become effective on November 1, 1974; and

2. Those implementing the pertinent provisions of Presidential Decree No. 850 further amending the Labor Code and incorporated as part of these rules and regulations, which shall take effect on March 2, 1976, unless they pertain to self-executing provisions of Presidential Decree No. 850, which took effect on December 16, 1975.

(b) Republic Act No. 6715 took effect on March 21, 1989, fifteen (15) days after the completion of its publication in two (2) newspapers of general circulation. The Rules implementing this Act shall take effect fifteen (15) days after the completion of their publication in two (2) newspapers of general circulation, except those which pertain to self-executing provisions of said Act.

Done in the City of Manila, this 27th day of May, 1989.

(Omnibus Rules Implementing the Labor Code, [May 27, 1989])