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**NCMB MANUAL OF PROCEDURES
FOR CONCILIATION AND
PREVENTIVE MEDIATION CASES**

Pursuant to the mandate of the National Conciliation and Mediation Board under Executive Order No. 126, as amended by Executive Order No. 152, and in order to implement Articles 263-265 of the Labor Code, as amended by RA 6715, the herein Manual of Procedures in the settlement and disposition of conciliation and mediation cases in hereby adopted and promulgated.

RULE I

Title and Construction

SECTION 1. Title. This Manual of Procedures in the settlement and disposition of conciliation and preventive mediation cases shall be known as the National Conciliation and Mediation Board Manual of Procedures for Conciliation and Preventive Mediation Cases.

SECTION 2. Construction. This Manual of Procedures for Conciliation and Preventive Mediation Cases shall be liberally construed to carry out the objectives of the Labor Code of the Philippines, as amended, to promote conciliation and mediation as a preferred mode of dispute settlement and as an integral component of the collective bargaining process.

RULE II

Seal of the NCMB

SECTION 1. Seal. The seal represents national unity of the Filipino people in general and the social partners in particular, in the

attainment of industrial peace and prosperity, productivity and national development.

RULE III **Definition of Terms**

SECTION 1. Definition of Terms

1. Bureau of Labor Relations — BLR, for short, refers to the agency in the Department of Labor and Employment which handles appealed cases from decisions of Med-Arbiters on intra-union disputes. It is also the agency which handles the processing and registration of national union and federations.
2. Collective Bargaining Agreement — the negotiated contract between a duly certified or recognized exclusive bargaining agent of rank and file or supervisory employees and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit, including mandatory provisions for grievance and arbitration machineries.
3. Conciliation Case — refers to actual existing labor dispute subject of a notice of strike or lockout and cases of actual strike or lockout.
4. Conciliator-Mediator — official of the NCMB whose principal function is to settle and dispose potential and actual labor disputes through conciliation and preventive mediation including the promotion and encouragement of voluntary approaches to labor disputes prevention and settlement.
5. Deputy Executive Director — refers to the official who assists the Executive Director of the NCMB in performing the functions of the Board.
6. Executive Director — refers to the head of the National Conciliation and Mediation Board.
7. Grievance Procedures — refer to the internal rules of procedures established by the parties in their collective bargaining

agreement with voluntary arbitration as the terminal step, which are intended to resolve all issues arising from the implementation and interpretation of their collective agreement.

8. Intra-Union Disputes — refer to cases involving the control, supervision and management of the internal affairs of a duly registered labor union such as those relating to specific violations of the union's constitution and by-laws.

9. Inter-Union Disputes/Representation Disputes — refer to cases involving petition for certification election and direct certification filed by a duly registered labor organization which is seeking to be recognized as the sole and exclusive bargaining agent of the rank and file employees in the appropriate bargaining unit of company, firm or establishment.

10. Labor and Employment Officer — LEO, for short, as used in this Manual, refers to an official of the NCMB who assists directly or indirectly the Conciliator/Mediator and other NCMB officials in the performance of their official functions.

11. Labor or Industrial Dispute — includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating the fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relationship of employer and employee.

12. Labor Standards laws — refer to the minimum terms and conditions of employment set by law under Book III of the Labor Code of the Philippines, as amended.

13. Labor Union — is an organization of employees in a company, firm or establishment, duly registered with the Department of Labor and Employment.

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

15. National Conciliation and Mediation Board — or NCMB, for short, refers to the agency attached to the Department of Labor and Employment principally in-charge of the settlement of labor disputes through conciliation, mediation and of the promotion of voluntary approaches to labor dispute prevention and settlement.

16. National Labor Relations Commission — NLRC, for short, refers to the agency attached to the Department of Labor and Employment in-charge of deciding labor cases through compulsory arbitration.

17. Notice of Lockout — refers to the notification filed by an employer with the appropriate NCMB regional branches informing the latter of its intention to temporarily cease its operation because of alleged commission by a duly registered labor union of unfair labor practice acts or because of a deadlock in collective bargaining negotiations.

18. Notice of Strike — refers to the notification filed by a duly registered labor union with the appropriate NCMB regional branches informing the latter of its intention to go on strike because of alleged commission by the employer of unfair labor practice act/s or because of a deadlock in collective bargaining negotiations.

19. Picketing — is the right of workers to peacefully march to and fro before an establishment involved in a labor dispute generally accompanied by the carrying and display of signs, placards and banners intended to inform the public about the dispute.

20. Preventive Mediation Cases — refer to the potential 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 NCMB to avoid the occurrence of actual labor disputes.

21. Regional Director — refers to the head of the Regional Office of the Department of Labor and Employment.

21. Director II — refers to the head of a Regional Branch of the National Conciliation and Mediation Board.

23. Executive Labor Arbiter — ELA, for short, refers to the head of a Regional Branch of the National Labor Relations Commission.

24. Strike — refers to any temporary stoppage of work in an establishment by the concerted action of its employee as a result of an industrial or labor dispute.

25. Strike Area — means the establishment, warehouses, depots, plants or office, including the sites or premises used as run-away shops of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to an exit from said establishment.

26. Unfair Labor Practice Acts — ULP, for short, are those acts committed either by employers or labor organizations as enumerated under Articles 248 and 249 of the Labor Code, as amended.

27. Voluntary Arbitrator — 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, with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the collective bargaining agreement, or any official that may be authorized by the Secretary of Labor and Employment to act voluntary arbitrator upon the written request and agreement of the parties to a labor dispute.

28. Deputized Hearing Officer — any NCMB official deputized or assigned by the Secretary of Labor and Employment to conduct hearings, received position papers and evidence from the parties on a labor dispute assumed by the Secretary pursuant to Article 263(g) of the Labor Code, as amended.

29. Supervision — it means the participation of the regional branch of the Board in the secret balloting process participated in by the total union members in the bargaining unit concerned to declare a strike in order to determine the majority vote. (Sec. 44. Rule XIII, Rules and Regulations Implementing R.A., No. 6715).

30. Lockout Vote — refers to the majority vote of the member of the Board of Directors of the corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for that purpose.

31. Improved Offer Balloting — refers to a referendum but secret balloting on the improved offer of the employer on or before the 30th day of the strike conducted by the National Conciliation & Mediation Board in an effort to settle a strike.

32. Improved Offer Balloting — refers to a referendum by secret balloting on the reduced offer of the union on or before the 30th day of the lockout conducted by the National Conciliation and Mediation Board in case of lockout.

RULE IV

Strike, Lockout, Preventive Mediation Notices and Appearance

SECTION 1. Form of Notice. — All notice of strike, lockout and preventive mediation cases shall use the Board's prescribed Form No. 1, (See Annex 1) which shall be as follows:

SECTION 2. 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 case 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.

Any notice which does not conform with the requirements of this and the foregoing sections shall be deemed as not having been filed and the party concerned shall be so informed by the regional branch of the Board.

SECTION 3. Who may file a notice or declare a strike or lockout or request preventive mediation. — Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlocks and unfair labor practices. The employer may file a notice or declare lockout or request for preventive mediation in the same cases. In the absence of certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may file a notice, request preventive mediation or declare a strike but only on grounds of unfair labor practice.

SECTION 4. Where to file notice or request. — A notice of strike or lockout or request for preventive mediation shall be filed with the regional branch having jurisdiction over the workplace of the union members.

a) Where two or more regional branches have jurisdiction over the workplace, the Branch that shall first received the notice shall acquire jurisdiction over the dispute to the exclusion of the other/s.

b) By written agreement of both parties the venue of the dispute shall be deemed waived.

SECTION 5. Cooling-off period and exception. — In cases of bargaining deadlocks, the cooling-off period in thirty (30) days, while, in cases of unfair labor practices, the period shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of union officers 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 regional branch of the Board. In cases where the notice of strike is sent by the union by registered mail the beginning

of the cooling-off period shall be the date of receipt by the employer of such notice.

SECTION 6. Service of copy of notice or request. — The party filing the notice or request shall serve the other party or parties with a copy or copies of the notice or request which may be served through personal service or by registered mail; provided, that where a party is represented by counsel or authorized representative, service shall be made on the latter. Service by registered mail is complete upon receipt by the addressee or his agent.

The complete name and office address or any change in the address of counsel/representative shall be made of record and the other party should be properly informed.

SECTION 7. Representatives. — The parties may personally appear in their own behalf or by representatives. In the latter case, the representative or lawyer must be duly authorized to appear with binding effects in writing.

SECTION 8. Authority to Bind Party. — The lawyer or authorized representative of parties must have the authority in writing to bind their principal or client or enter into a compromise agreement with the other party in full or partial discharge of a principal's client's claim.

RULE V

Grounds and Issues

SECTION 1. Grounds for Strike and Lockout. — A strike or lockout may be declared in cases of a.) deadlock in collective bargaining, b.) unfair labor practice and c.) flagrant and/or malicious refusal to comply with the economic provisions of the collective bargaining agreement.

SECTION 2. Action on Strikeable Issues. — The Conciliator shall take into account that the fifteen-day cooling-off period is not applicable if the act complained of involves the dismissal of duly elected union officers which constitutes union busting. He shall immediately schedule and conduct marathon conciliation conference

to settle the dispute as early as possible because the union may take immediate action after the strike vote. The Conciliator or his authorized representative may supervise the conduct of the strike vote and receive the result thereof.

The determination as to whether the alleged violation/s of the economic provisions of the CBA are flagrant and/or malicious is basically lodged in another forum. This notwithstanding, the Conciliator shall proceed to extend conciliation/mediation services to the parties or counsel the parties to use other voluntary modes of dispute settlement such as voluntary arbitration or preventive mediation.

SECTION 3. Action on Non-Strikeable Issues. — A strike or lockout notice anchored on ground involving 1.) inter-union and intra-union disputes, or 2.) on issues already brought to voluntary or compulsory arbitration, or 3.) mere violation of the collective bargaining agreement involving political provisions may be considered not duly filed and the party so filing may be notified of such finding either orally or in writing by the Director II. On his part, the Conciliator shall convince the party concerned to voluntarily withdraw the notice without prejudice to further conciliation proceeding. Otherwise, he shall recommend to the Director II that the notice be treated as a preventive mediation case.

When the issue/s involve the violation of the labor standard laws, and the parties opt not to continue with the conciliation, the Conciliator, through the Director II, shall immediately refer the case to the concerned Regional Director.

On issues involving questions of representation, the Conciliator shall ascertain whether there is a petition for certification election, or direct certification, involving the parties which may be pending either before the Med-Arbiter at the Regional Office or on appeal with the Office of the Secretary. If such case is indeed pending, the Conciliator, through the Director II, shall promptly advise the Regional Director/Office of the Secretary of the existence of the notice of strike to enable them to act on the case at the earliest time possible. The Conciliator shall exert best efforts to monitor and report to his Director II the development/progress of the case.

If, after verifying that no such case is pending, the Conciliator is fully convinced that the petitioning union is duly registered with the Department of Labor and Employment, he shall exert diligent efforts to enable the parties to settle the issue through voluntary recognition or consent election. If settlement is reached, the Conciliator, through the Director II, shall immediately furnish the concerned Regional Director a copy of the agreement for the latter's guidance and appropriate action. If no consent was given, he shall advise the party concerned to file the necessary petition with the appropriate body.

SECTION 4. Notice Converted to Preventive Mediation. — When a notice of strike or lockout has been converted into a preventive mediation case, the following guidelines must be followed:

1. Clearly determine whether the issue/s raised in the notice of strike is/are strikeable or not.
2. If conversion is warranted, a written recommendation from the Conciliator-Mediator handling the case is required, after a close consultation with the Regional Branch Director.
3. The written recommendation must be formally endorsed to the Regional Branch Director II for approval.
4. The conversion must be done before the cooling-off period expires or before the union conducts its strike balloting.
5. Parties concerned must be formally notified of the action taken by the Regional Branch through a letter signed by the Conciliator-Mediator handling the case and approval by the Director II.
6. The notice shall be dropped from the docket of notices of strike/lockouts and to be renumbered as a preventive mediation case and a conference is set on a specific date/s.

However, in cases where unresolved grievances are raised in notices of strikes and lockouts being handled by Conciliator-Mediators or in complaints filed before Labor Arbiters, said unresolved grievances should immediately be referred to the Voluntary Arbitrator mutually

accepted by the parties from the list of NCMB Accredited Voluntary Arbitrators for appropriate action.

SECTION 5. Identification of Issues. — The Conciliator assigned to a notice of strike shall, during the initial joint or separate meeting, properly identify and specify the real issues raised in the notice. When the notice carries several charges of unfair labor practice, it shall be the duty of the Conciliator to clarify with the parties the specific acts of unfair labor practice which were alleged to have been committed.

SECTION 6. Action on Notices Involving Issue/s Cognizable by Grievance Machinery, Voluntary Arbitration or the National Labor Relations Commission.

a) When it appears that the issues raised in the notice are proper subjects of the grievance machinery, hence, not strikeable, the Conciliator, after a reasonable number of conferences shall, through the Director II, refer the resolution of the issues to the grievance machinery, including the use of voluntary arbitration as provided for in the CBA, and as matter of policy under Department Order No. 7, Series of 1987, dated May 7, 1987.

b) Disputes arising from questions of interpretation or implementation of the Agreement and company personnel policies shall be referred to the grievance machinery as provided for under R.A. by the Conciliator assigned to handle the dispute.

c) Disputes arising from the wage distortion resulting from the wage order issued by the Regional Wage and Productivity Board shall be referred to the appropriate regional branch of the NLRC if not settled within ten (10) calendar days of conciliation.

d) In case the parties agreed to suspend the running of the cooling-off period, the Conciliator should convince them to limit the period of suspension to 45 calendar days after which it shall have the effect of having been dropped from the business calendar of the office.

RULE VI
Reporting and Verification of Actual Strike or Lockout

SECTION 1. Verification of Actual Strike or Lockout. — The Conciliator, in case of actual strike or lockout, shall verify whether or not the requirements for valid strikes/lockouts have been complied with, to wit:

1. Whether the issues raised are valid grounds of notice of strike/lockout, i.e. bargaining deadlock, unfair labor practices and flagrant and/or malicious violations of the economic provisions of the collective bargaining agreement.
2. Whether the cooling-off period was complied with, i.e. 15 days for unfair labor practice and 30 days for bargaining deadlock.
3. Whether the majority-strike/lockout vote was validly complied with and the result thereof reported to the Regional Branch of the Board.

SECTION 2. The results of the verification shall exclusively be for internal use only by the Board and shall have no the evidentiary purpose whatsoever.

RULE VII
Strike Vote and Improved/Reduced Offer Balloting

SECTION 1. 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 of 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 in a meeting called for the purpose.

SECTION 2. Initiative or Request. — The Regional Branch of the Board may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. All requests for the conduct of the strike balloting must be filed with the Regional Branch of the Board at least 3 days before the date of voting. The

Conciliator concerned shall require the parties to furnish the regional branch of the Board the notice of meetings referred to in the preceding paragraph at least three (3) days 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.

SECTION 3. Improved Offer. — When at least a majority of the union members vote to accept the improved offer, the striking workers shall be notified by the Conciliator so that they can immediately return to work and for the employer to readmit them upon the signing of the agreement.

SECTION 4. Reduced Offer. — In case of a lockout, the Board shall also conduct a referendum by secret ballot 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 a 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 5. Nature of Mechanics. — In all instances, the Conciliator shall conduct a pre-conference before the secret balloting to thresh out the mechanics and to impress upon the parties that strike vote/or improved offer balloting is not in the nature of certification election wherein the usual legal procedures shall be applied.

RULE VIII

Final Agreement

SECTION 1. Preparation of the Agreement. — Extra care must be taken in drafting the Agreement in order to minimize doubtful or vague interpretation that might result to further disagreement or worsening of the problem. The Conciliator must see to it that the agreement must be clear and concise and must contain all points of the parties' understanding.

SECTION 2. Implementation and Compliance. — The conclusion of an agreement does not per se terminate the responsibility of the

Conciliator over the case. He must monitor the implementation and compliance therewith to ensure that the parties have indeed normalized their relationship.

RULE IX
Reporting Requirements

SECTION 1. Submission of Reports. — All Conciliators must regularly submit the necessary progress reports to the NCMB Central Office through the Directors II for cases of labor standard laws or wage distortions, copy furnished the Regional Director or Executive Labor Arbiter concerned, utilizing, the form prescribed for the purpose (Form 02 [see Annex 2]). The Final Conciliator's Report shall be submitted to the Office of the NCMB Executive Director IV utilizing the outline prescribed by the Board (Form 03 [see Annex 3]).

January 31, 1992

(SGD.) BUENAVENTURA C. MAGSALIN
Executive Director IV