
PRIMER ON STRIKE, PICKETING AND LOCKOUT

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FOREWORD TO THE SECOND EDITION

The continued awareness of both the labor and management sectors of the intricacies of strikes, pickets and lockouts encourages us to pursue with this second edition. We are indeed inspired by the continuing decline of the number of work stoppages initiated by labor organizations over the years.

As your experiences in the conciliation and mediation of labor disputes widen, the statutory requirements of strikes, pickets and lockouts have often surfaced as gray areas over which parties have different interpretations.

In particular, this edition seeks to clarify the observance of the cooling-off periods and the strike ban as supported by the Supreme Court decisions.

It is hoped that the dissemination of this handy material would further enhance the knowledge of our partners in the private sector and share our commitment to create an atmosphere conducive to industrial peace.

(SGD.) ROSALINDA D. BALDOZ
Acting Executive Director
December 1995.

FOREWORD

The presentation in digest form of the legal framework of labor relations governing strikes and lockouts begins with a description of its nature and dynamics.

After plowing through the maze of legislation and pertinent jurisprudence, this PRIMER treats, in a direct and concise manner, the parameters of strikes and lockouts. This comes with the wealth of NCMB experience in conciliation and mediation of labor disputes.

Presented in question-and-answer form, it is hoped that this Primer would not only serve as handy reference material but would also prove to be valuable assistance to our labor and management

constituents as well as labor law students, practitioners and advocates.

(SGD.) BUENAVENTURA C. MAGSALIN
Executive Director IV
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PRIMER ON STRIKE, PICKETING AND LOCKOUT
First Edition, 1991

1. WHAT IS STRIKE, PICKETING AND LOCKOUT?

A. 1. STRIKE — means any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labor dispute. (Art. 212 (o), Labor Code, as amended by Sec. 4, R.A. 6715.)

2. PEACEFUL PICKETING — the right of workers during strikes consisting of the marching to and from before the premises of an establishment involved in a labor dispute, generally accompanied by the carrying and display of signs, placards or banners with statements relating to the dispute. (GUIDELINES GOVERNING LABOR RELATIONS, October 19, 1987)

3. LOCKOUT — means the temporary refusal of an employer to furnish work as a result of and industrial or labor dispute. (Article 212 (p) Labor Code, as amended by Section 4, R.A. 6715).

2. WHAT ARE THE DIFFERENT FORMS OF STRIKES?

A. 1. LEGAL STRIKE — one called for a valid purpose and conducted through means allowed by law.

2. ILLEGAL STRIKE — one staged for a purpose not recognized by law, or if for a valid purpose, conducted through means not sanctioned by law.

3. ECONOMIC STRIKE — one staged by workers to force wage or other economic concessions from the employer which he is not required by law to grant (Consolidated Labor Association of the Phil. vs. Marsman and Company, 11 SCRA 589)
 4. ULP STRIKE — one called to protest against the employer's acts of unfair practice enumerated in Article 248 of the Labor Code, as amended, including gross violation of the collective bargaining agreement (CBA) and union busting.
 5. SLOW DOWN STRIKE — one staged without the workers quitting their work but by merely slackening or by reducing their normal work output.
 6. WILD-CAT STRIKE — one declared and staged without filing the required notice of strike and without the majority approval of the recognized bargaining agent.
 7. SIT DOWN STRIKE — one where the workers stop working but do not leave their place of work.
3. WHAT IS AN INDUSTRIAL DISPUTE?
 - A. An industrial or labor dispute includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment regardless of whatever the disputants stand in the proximate relation of employer and employee. (Article 212 (1) Labor Code, as amended by Section 4, R.A. 6715)
 4. WHAT IS THE NATURE OF THE RIGHT TO STRIKE AND LOCKOUT?
 - A. The right to strike is a constitutional and legal right of the workers as the employees have the inherent and statutory right to lockout, all within the context of labor relations and collective bargaining. It is means of last resort and presupposes that the duty to bargain in good faith has been fulfilled and other

voluntary modes of dispute settlement have been tried and exhausted. (Guidelines Governing Labor Relations).

5. WHO MAY DECLARE A STRIKE OR LOCKOUT?

A. Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlock and unfair labor practice. Likewise, 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 the ground of unfair labor practice (Section 2, Rule XIII Book V, Omnibus Rules Implementing The Labor Code, as amended).

6. WHAT ARE THE REQUISITES OF A LAWFUL STRIKE/LOCKOUT?

A. The requirements for a valid strike or lockout are as follows:

1. It must be based on a valid and factual ground;
2. A strike or lockout NOTICE shall be filed with the National Conciliation and Mediation Board (NCMB) at least 15 days before the intended date of the strike or lockout if the issues raised are unfair labor practices, or at least 30 days before the intended date thereof if the issue involves bargaining deadlock.

In cases of 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 15-day cooling-off period shall not apply and the union may take action immediately after vote is conducted and the result thereof submitted to the Department of Labor and Employment.

3. A strike must be approved by a majority vote of the members of the Union and a lockout must be approved by a majority vote of the members 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.

4. A strike or lockout VOTE shall be reported to the NCMB-DOLE Regional Branch at least 7 days before the intended strike or lockout subject to the cooling-off period.

In the event the result of the strike/lockout ballot is filed within the cooling-off period, the 7-day requirement shall be counted from the day following the expiration of the cooling-off period. (NSFW vs. Ovejera, G.R. No. 549743, May 31, 1982)

In case of dismissal from employment of union officers which may constitute union busting, the time requirement for the filing of the Notice of Strike shall be dispensed with but the strike vote requirement, being mandatory in character, shall “in every case” be complied with.

5. The dispute must not be the subject of an assumption of jurisdiction by the President or the Secretary of Labor and Employment, a certification for compulsory arbitration, or submission to compulsory or voluntary arbitration nor a subject of a pending case involving the same grounds for the strike or lockout.

7. WHAT ARE THE VALID GROUNDS FOR DECLARING A STRIKE OR LOCKOUT?

A. The law recognizes 2 grounds for the valid exercise of the right to strike or lockout, namely:

1. Collective Bargaining Deadlock (CBD) and/or

2. Unfair Labor Practice (ULP).

8. MAY A UNION FILE A NOTICE OF STRIKE OR THE EMPLOYER FILE A NOTICE OF LOCKOUT IF THE LABOR DISPUTE IS BASED ON A GROUND OTHER THAN ULP AND CBD?

A. No. The union/employer may not file a notice based on grounds other than ULP and CBD. 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 and no strike or lockout may be declared on grounds involving inter-union and internal union disputes or on issues brought to voluntary or compulsory arbitration including legislated wage orders and labor standard cases.

However, if improvidently filed and it appears on the face of the notice that the issues raised are non-strikeable or the real issues discovered during conciliation proceedings are not proper subjects of a Notice of Strike or Lockout, the NCMB Regional Branch shall dismiss motu proprio the notice without prejudice to further conciliation, or upon the request of either or both parties, in which case, the Notice of Strike or Lockout is treated as a Preventive Mediation Case. (See Definition of Preventive Mediation Case under Appendix 3, Definition of Terms).

9. WHAT ARE THE CONTENTS OF A NOTICE OF STRIKE OR LOCKOUT?

A. 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.

10. WHAT IS THE ROLE OF THE NCMB IN CASE A NOTICE OF STRIKE OR LOCKOUT IS FILED?

A. Upon receipt of a valid notice of strike or lockout, the NCMB, through its Conciliator-Mediators, shall call the parties to a conference the soonest possible time in order to actively assist them to explore all possibilities for amicable settlement. To this end, the Conciliator-Mediator may suggest/offer proposals as an alternative avenue for the resolution of their disagreement/conflict which may not necessarily bind the parties. In the event of failure in conciliation/mediation the parties shall be encouraged to submit their dispute for voluntary arbitration.

11. WHAT IS THE LEGAL IMPLICATION IF THE CONTENT-REQUIREMENT OF THE NOTICE OF STRIKE OR LOCKOUT HAS NOT BEEN COMPLIED WITH?

A. Any notice which does not conform with the foregoing requirements shall be deemed as not having been filed.

12. WHAT IS THE PURPOSE OF THE STRIKE VOTE?

A. To ensure that the decision to strike broadly rests with the majority of the Union members in general and not with a mere minority, at the same time, discourage wildcat strikes, union bossism and even corruption.

13. WHAT IS THE PURPOSE OF THE STRIKE VOTE REPORT?

A. To ensure that a strike vote was indeed taken and in the event that the report is false, to afford the members an opportunity to take the appropriate remedy before it is too late.

14. WHAT IS THE PURPOSE OF THE TIME REQUIREMENT IN THE NOTICE OF STRIKE/LOCKOUT?

A. The 15 and 30 days requirement is known as the Cooling-Off Period designed to afford parties the opportunity to amicably resolve the dispute with the assistance of the NCMB Conciliator/Mediator. Should the dispute remain unsettled until the lapse of the required number of days from the mandatory filing of the notice, the labor union may strike or the employer may commence a lockout after having complied with the 7-day requirement for the filing of the strike or lockout vote, as the case may be.

15. WHAT IS THE CORRECT INTERPRETATION OF THE REQUIREMENT TO OBSERVE THE COOLING-OFF PERIODS AND THE STRIKE BAN?

A. The prescribed cooling-off period and the 7-day strike ban after submission of report of strike vote are mandatory. The observance of both periods must be complied with, although a labor union may take a strike vote and report the same within the statutory cooling-off period. The avowed intent of the law is to provide an opportunity for mediation and conciliation. The waiting period, on the other hand, is intended to provide opportunity for the members of the union or the management to take the appropriate remedy in case the strike or lockout vote report is false or inaccurate. Moreover, the cooling-off and 7-day strike ban provisions of law are reasonable and valid restrictions on the right to strike and these restrictions constitute a valid exercise of police power of the State. If only the filing of the strike notice and the strike-vote report would be deemed mandatory, but not the waiting periods so specifically and emphatically prescribed by law, the purposes for which the filing of the strike notice and strike vote report is required

cannot be achieved. The submission of the report gives assurance that a strike vote has been taken and that, if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late. (National Federation of Sugar Workers vs. Ovejera, 114 SCRA 354)

The seven (7) days waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.

The need for assurance that majority of the union members support the strike cannot be gainsaid. Strike is usually the last weapon of labor to compel capital to concede to its bargaining demands or to defend itself against unfair labor of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their labors. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare.

Thus, our laws require the decision to strike to be the consensus of the majority for while the majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures the union it will go to war against management with the strength derived from unity and hence, with better chance to succeed. (Lapanday Workers Union, Tomas N. Basco vs. NLRC and Lapanday Agricultural Development Corporation, G.R. Nos. 95494-97, 7 September 1995)

16. WHAT ARE THE PROHIBITED ACTS AND PRACTICES?

A. 1. Declaring a strike or lockout on grounds involving inter-union and intra-union disputes or on issues brought to voluntary or compulsory arbitration.

2. Declaring a strike or lockout without first having bargained collectively or without first having filed the required notice or without the necessary strike or lockout vote first having been obtained and reported to the Regional Branch of the NCMB.
3. Declaring a strike or lockout in defiance of a cease-and-desist order, or an order for the striking employees to return to work and for the employer to accept the workers after assumption of jurisdiction by the President or Secretary of Labor and Employment, or after certification or submission of the dispute to compulsory or voluntary arbitration, or during the pendency of a case involving the authorized grounds for the strike or lockout.
4. Obstructing, impeding or with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any labor controversy or in the exercise of their right to self-organization or collective bargaining, or aiding or abetting such obstruction or interference.
5. Employing any strike breaker or being employed as a strike-breaker.
6. No public official or employee, including officers and personnel of the Armed Forces of the Philippines, of the Philippine National Police, or any armed person shall —
 - a. 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
 - b. work in place of strikers.

Nothing herein shall be interpreted to prevent the aforementioned officials, employees or peace officers from taking any measure necessary to maintain peace and order and/or to protect life and property.

7. Stationary picket and the use of means like placing of objects to constitute permanent blockade or to effectively close points of entry or exit in company premises.
 8. Any act of violence, coercion or intimidation by any picketer.
 9. The obstruction of the free ingress to or egress from the employer's premises for lawful purposes.
 10. Obstruction of public thoroughfares while engaged in picketing.
17. WHAT ARE THE LEGAL IMPLICATIONS FOR NON-COMPLIANCE WITH THE REQUIREMENTS FOR A VALID STRIKE OR LOCKOUT?

A. The requirements for a valid strike or lockout are mandatory in character and non-compliance therewith is sufficient ground to declare the strike or lockout illegal.

If a strike is declared illegal, the employer may be authorized to terminate the employment of union officials who knowingly participated in the illegal strike and/or any worker or union officer who knowingly participated in the commission of other illegal acts during the strike.

In case the lockout is declared illegal, any worker whose employment has been terminated as a consequence thereof may be entitled to re-instatement including payment of full backwages and other benefits.

18. WHEN A DISPUTE SUBJECT OF A NOTICE OF STRIKE IS FORTHWITH TREATED AS A PREVENTIVE MEDIATION CASE, MAY THE UNION LATER ON STAGE A STRIKE ON ACCOUNT OF THE SAME DISPUTE?

A. No. Once the dispute has been converted into a preventive mediation case, the notice of strike is deemed dropped from the dockets as if no notice of strike has been filed. Since there is no

more notice of strike to speak about, any strike subsequently staged by the Union is deemed not to have complied with the requirements of a valid strike. The same rule applies in the case of lockout by an employer, (PAL vs. Sec. of Labor).

19. WHO HAS THE DUTY TO DECLARE THAT THE NOTICE OF STRIKE/LOCKOUT HAS BEEN CONVERTED INTO A PREVENTIVE MEDIATION CASE?

A. Upon the recommendation of the Conciliator/Mediator handling the labor dispute, the Director of the Regional Branch of the NCMB which has jurisdiction over the labor dispute has the duty to declare and inform the parties that the issues raised or the actual issues involved are not proper subjects of a Notice of Strike or Lockout and that the Notice of Strike or Lockout has been converted into a Preventive Mediation Case without prejudice to further conciliation or upon the request of either or both parties.

20. MAY A LABOR DISPUTE, SUBJECT OF A NOTICE OF STRIKE OR LOCKOUT, MATURE INTO A VOLUNTARY ARBITRATION CASE?

A. Yes. By mutual agreement, the parties may decide to bring the matter for resolution before an accredited voluntary arbitrator of their own choice, in which case the Notice is deemed automatically withdrawn and dropped from the dockets.

21. WHEN MAY A STRIKE OR LOCKOUT BE DECLARED ILLEGAL?

A. A strike or lockout may be declared illegal if any of the requirements for a valid strike or lockout is not complied with.

It may also be declared illegal if it is based on non-strikeable issues or if the issues involved are already the subject of arbitration.

During a strike or lockout, when either of the parties commit prohibited acts or practices, the strike or lockout may be declared illegal.

22. WHO HAS JURISDICTION TO DETERMINE THE LEGALITY OF STRIKE AND LOCKOUT?

A. In general, the Labor Arbiter in the appropriate Arbitration Branch of the National Labor Relations Commission has the power to determine questions involving the legality or illegality of a strike or lockout upon the filing of a proper complaint and after due hearing.

Where the matter of legality or illegality of strike is raised in the dispute over which the Secretary assumed jurisdiction or in disputes certified by the Secretary to the Commission for compulsory arbitration, the same may be resolved by the Secretary or the Commission, respectively. (International Pharmaceuticals, Inc. vs. Secretary of Labor and Associated Labor Union, G.R. No. 92981-83, January 9, 1992.)

23. MAY A VOLUNTARY ARBITRATOR DETERMINE THE LEGALITY OF A STRIKE?

A. If the issue is voluntarily and jointly submitted by the parties to voluntary arbitration, the question may be resolved by the voluntary arbitrator or panel of voluntary arbitrators.

24. CAN ANY PERSON PERFORMING ANY OF THE PROHIBITED ACTIVITIES MENTIONED IN THE PROCEEDING PARAGRAPH BE CHARGED BEFORE THE COURT?

A. Yes. They may be charged before the appropriate civil and criminal court.

25. WHAT IS THE PENALTY IMPOSABLE?

A. Any person violating any of the provisions of Article 265 of the Labor Code (performing any of the above prohibited activities) shall be punished by a fine of not exceeding P500.00

and/or imprisonment for not less than one (1) day nor more than six (6) months.

If the person so convicted is a foreigner, he shall be subjected to immediate and summary deportation and will be permanently barred from re-entering the country without the special permission of the President.

If the act is at the same time a violation of the Revised Penal Code (RPC), a prosecution under the Labor Code will preclude prosecution for the same act under the RPC or vice-versa.

26. IS AN EMPLOYEE WHO PARTICIPATES IN A LAWFUL STRIKE DEEMED TO HAVE ABANDONED HIS EMPLOYMENT?

A. No. An employee who goes on strike is not deemed to have abandoned his employment but is merely exercising his right to self-organization precisely to protect his rights as an employee and/or to obtain better working conditions.

27. IS PARTICIPATION BY AN EMPLOYEE IN STRIKE SUFFICIENT GROUND FOR AN EMPLOYER TO TERMINATE HIS EMPLOYMENT?

A. No. The mere participation of a worker in lawful strike shall not constitute sufficient ground for the termination of his employment even if a replacement has been hired by the employer during such lawful strike. However, any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

28. ARE THE STRIKERS ENTITLED TO PAYMENT OF WAGES DURING THE PERIOD OF A LAWFUL STRIKE?

A. As a general rule, striking employees are not entitled to the payment of wages for unworked days during the period of the strike pursuant to the principle of “No work-No pay”.

However, this does not preclude the parties from entering into an agreement to the contrary.

On the other hand, when strikers abandon the strike and apply for reinstatement despite the existence of valid grounds but the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, the strikers, who refuse to accept the new conditions and are consequently refused reinstatement, are entitled to the losses of pay they may have suffered by reason of the employer's discriminatory acts from the time they were refused reinstatement.

29. MAY A STRIKE/LOCKOUT BE ENJOINED/PREVENTED BY LEGAL PROCESS?

A. As a general rule, strikes and lockouts validly declared enjoy the protection of law and cannot be enjoined unless illegal acts are committed or threatened to be committed in the course of such strikes or lockouts. Ordinarily, the law vests in the NLRC the authority to issue injunctions to restrain the commission of illegal acts during strikes and pickets.

In national interest cases, the certification or assumption of jurisdiction by the Secretary of Labor over the dispute under Article 263 (g) of the Labor Code, as amended, has the effect of automatically enjoining the intended strike or lockout whether or not a corresponding return to work order has been issued. The workers shall immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions of employment prevailing before the strike.

30. WHAT IS THE EXTENT OF THE POWER OF THE PRESIDENT OR THE SECRETARY OF LABOR AND EMPLOYMENT TO ISSUE ASSUMPTION AND CERTIFICATION ORDERS?

A. The power to issue assumption and certification orders is an extraordinary authority strictly limited to national interest cases and granted to the President or to the Secretary of Labor,

“which can justifiably rest on his own consideration of the exigency of the situation in relation to the national interest.”

Pursuant to the provisions of Article 263 (g) of the Labor Code, as amended, the Secretary of Labor is vested with the discretionary power to decide not only the question of whether to assume jurisdiction over a given labor dispute or certify the same to the NLRC, but also the determination of the industry indispensable to national interest.

The President of the Philippines shall not be precluded from intervening at any time and assuming jurisdiction over any labor dispute involving industries indispensable to national interest in order to settle or terminate the same.

Under Article 277 (b) of the Labor Code, as amended, the Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in the implementation of a mass lay-off.

31. WHEN A DISPUTE IS ASSUMED BY THE PRESIDENT OR THE SECRETARY OF LABOR, OR CERTIFIED TO THE NLRC FOR COMPULSORY ARBITRATION, MAY A STRIKE OR LOCKOUT BE VALIDLY DECLARED ON ACCOUNT OF THE SAME DISPUTE?

A. No. The assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout.

32. WHAT IS THE NATURE OF THE RETURN-TO-WORK ORDER?

A. The return-to-work-order is a valid statutory part and parcel of the assumption and certification orders given the predictable prejudice the strike could cause not only to the parties but more especially to the national interest. Stated

otherwise, the assumption of jurisdiction and the certification to the NLRC has the effect of automatically enjoining the strike or lockout, whether actual or intended, even if the same has not been categorically stated or does not appear in the assumption or certification order. It is not a matter of option or voluntariness but of obligation. It must be discharged as a duty even against the worker's will. The worker must return to his job together with his co-workers so that the operation of the company can be resumed and it can continue serving the public and promoting its interest. It is executory in character and shall be strictly complied with by the parties even during the pendency of any petition questioning their validity precisely to maintain the status quo while the determination is being made. (Union of Filipro Employees vs. Nestle Philippines, Inc., GR No. 88710-13, December 19, 1990).

33. WHAT ARE THE LEGAL CONSEQUENCES IN CASES OF DEFIANCE OF THE RETURN-TO-WORK ORDER BY THE EMPLOYER AND BY THE EMPLOYEES?

A. In case of non-compliance with the return-to-work order in connection with the certification or assumption of jurisdiction by the Secretary of Labor, the employees concerned may be subjected to immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of back-wages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The Secretary of Labor may cite the defiant party in contempt pursuant to the power vested in him under the provisions of the Labor Code.

34. CAN THE PHILIPPINE NATIONAL POLICE (PNP) BE DEPUTIZED TO ENFORCE ORDERS FROM THE DEPARTMENT OF LABOR?

A. Yes. The Secretary of Labor and Employment, the National Labor Relations Commission (NLRC) or any Labor

Arbiter may deputize the PNP to enforce any of its order, award or decision.

35. IN CASE THE PNP IS DEPUTIZED TO ENFORCE ORDERS FROM THE DEPARTMENT OF LABOR, WHAT WILL BE ITS ROLE?

A. In such a case, the role of the PNP is merely to assist the sheriff or the appropriate DOLE Officers in enforcing the decision, award or order. It shall maintain peace and order and public safety in the area where the decision, award or order is to be enforced. It shall also give security to the officers enforcing the decision, award or order. (Please see also Article 264 (d), Article 266 of the Labor Code as amended, and guidelines for the conduct of PNP During Strikes, Lockouts and Labor Disputes in General, Oct. 22, 1987).

36. WHAT IS A STRIKE AREA?

A. A strike area includes: (a) the establishment of the employer struck against including run-away shops, factories or warehouses and other premises where members of the bargaining unit carry out the operations and business of the employer, and (b) the area immediately before points of entrance and exit of establishment struck against.

37. IS THE INGRESS AND EGRESS OF THE ESTABLISHMENT PART OF THE STRIKE AREA?

A. No. Since it is not part of the strike area the same could not be blocked or picketed.

38. WHO IS A STRIKE-BREAKER?

A. A strike-breaker means any person who obstructs, impedes or interferes with by force, violence, coercion, threats or intimidation any peaceful picket by employees during any labor controversy.

APPENDIX 1

DOLE - NCMB FORM NO. 01 (AS REVISED)	UNION/EMPLOYER NOTICE/REPORT ON STRIKE/ LOCKOUT/PM	Republic of the Philippines DEPARTMENT OF LABOR & EMPLOYMENT NATIONAL CONCILIATION & MEDIATION BOARD	CASE NO.
Indicate whether report is: Notice of Strike <input type="checkbox"/> Notice of Lockout <input type="checkbox"/> Actual Strike <input type="checkbox"/> Actual Lockout <input type="checkbox"/> Preventive Mediation <input type="checkbox"/>		Date Filed	Date Actual Strike/Lockout Declared
DATA ON ESTABLISHMENT AND UNION INVOLVED			
ESTABLISHMENT	ADDRESS	TEL. NO.	
OWNER/MANAGER/PRESIDENT	NATIONALITY OF MAJORITY OWNERSHIP	NATURE OF BUSINESS/ECONOMIC ACTIVITY/PRODUCTIVITY	
TOTAL EMPLOYMENT	NORMAL WORK WEEK DAYS PER WEEK ____ SHIFT PER DAY ____ HOURS PER SHIFT ____		
UNION INVOLVED	ADDRESS	TEL. NO.	
UNION OR AUTHORIZED REPRESENTATIVE	REGISTRATION NO.	TEL. NO.	
ADDRESS:			
COLLECTIVE BARGAINING AGENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	NO. OF WORKERS IN THE BARGAINING UNIT	UNION MEMBERS	OLD/EXISTING CBA PERIOD
			NO. OF CBAs CONCLUDED W/CO.
OTHER BARGAINING UNITS IN THE ESTABLISHMENT AND THEIR BARGAINING AGENTS			
DATA ON STRIKE/LOCKOUT			
NO. OF WORKERS INVOLVED/PARTICIPATING (in impending or actual strike/lockout)			
ISSUES INVOLVED			
I. BARGAINING DEADLOCK (CBA Period for negotiation)		II. UNFAIR LABOR PRACTICE	
EFFORTS TAKEN AT PLANT LEVEL TO RESOLVE THE DISPUTE			
PENDING LABOR DISPUTES INVOLVING EITHER OR BOTH PARTIES (Indicate all labor disputes pending with the DOLE and the Supreme Court and also those submitted to voluntary arbitrators)			
<u>CASE TITLE/NO.</u>	<u>ISSUES INVOLVED</u>	<u>OFFICE/OFFICER HANDLING THE CASE</u>	
DOCUMENTS ATTACHED			
<input type="checkbox"/> Proposal of Union	<input type="checkbox"/> Proposal of Employer	<input type="checkbox"/> Proof of a Request for a Conference to settle the Dispute	<input type="checkbox"/> Proof of Strike Lockout Vote
		<input type="checkbox"/> other Documents (Specify)	
Printed name and Signature	Information of Filer	Information on NCMB Assisting Officer	
Position			
Date Accomplished			
NOTE: NOTICES OF STRIKE/LOCKOUT SHALL NOT BE ACCEPTED BY NCMB WITHOUT PROOF OF SERVICE TO THE PARTY			
_____ PRINTED NAME AND SIGNATURE	_____ POSITION	_____ DATE & TIME RECEIVED	

APPENDIX 2

DEFINITION OF TERMS

1. 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.

2. **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.
3. **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.
4. **BARGAINING DEADLOCK** — failure to agree on the terms and conditions of the Collective Bargaining Agreement between the management and the union.
5. **UNFAIR LABOR PRACTICE** — ULP, for short, are those acts committed either by employers or labor organizations as enumerated under Article 248 and 249 of the Labor Code, as amended.
6. **PREVENTIVE MEDIATION CASE** — refers to the potential or brewing labor dispute which is the subject of a formal or informal request for conciliation and mediation assistance sought by either or both parties in order to remedy, contain or prevent its degeneration into a full blown dispute through amicable settlement.
7. **INTRA-UNION DISPUTE** — refers to a case 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.
8. **INTER-UNION DISPUTE** — refers to cases involving a 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 a company, firm or establishment.
9. **VOLUNTARY ARBITRATION** — a third party settlement of a labor dispute involving the mutual consent by the representative of the company and the labor union involved in a labor dispute to submit their case for arbitration.

APPENDIX 3

RELATED CONSTITUTIONAL AND STATUTORY PROVISIONS

I. RELATED CONSTITUTIONAL PROVISIONS

Sec. 18 Article II. — The State affirms labor as a prime social economic force. It shall protect the right of workers and promote their welfare.

Sec. 3 Article XIII. — The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work and a living wage. They shall participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between the workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable return on investments, and to expansion and growth.

II. PROVISIONS FROM THE LABOR CODE

Art. 211. Declaration of Policy. —

A. It is the policy of the State:

- a. To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
 - b. To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and developments;
 - c. To foster the free and voluntary organization of a strong and united labor movements;
 - d. To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
 - e. To provide an adequate administrative machinery for the expeditious settlement of labor or industrial dispute;
 - f. To ensure a stable but dynamic and just industrial peace; and
 - g. To ensure the participation of workers in decision and policy making processes affecting their rights, duties and welfare.
- B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreement freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

Art. 248. Unfair Labor Practices of Employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice:

- a. To interfere with restrain or coerce employees in the exercise of their right to self-organization;
- b. To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

- c. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
- d. To initiate, dominate, assist or otherwise interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
- e. To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Art. 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;
- f. To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
- g. To violate the duty to bargain collectively as prescribed by this Code;
- h. To pay negotiation or attorneys fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
- i. To violate a collective bargaining agreement.

The provision of the preceding paragraph notwithstanding, only the officers and agents of corporation, association or partnership who have actually participated in, authorized or ratified unfair labor practice shall be held criminally liable.

Art. 249 Unfair Labor Practices of Labor Organizations. —

It shall be unlawful for a labor organization, its officers, agents or representative to commit any of the following unfair labor practices:

- a. To restrain or coerce employees in the exercise of their right to self-organization: Provided, that labor organization shall have the right to prescribe own rules with respect to the acquisition or retention of membership;
- b. To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied to or terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;
- c. To violate the duty or refuse to bargain collectively with the employer, provided it is the representative of the employees;
- d. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed including the demand for a fee for union negotiations;
- e. To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or
- f. To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Art. 263. Strikes, Picketing and Lockouts:

a. It is the policy of the State to encourage free trade unionism and free collective bargaining;

b. Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organization to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes;

c. In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of 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 15-day cooling-off period shall not apply and the union may take action immediately;

d. The notice must be in accordance with such implementing rules and regulations as the Secretary of Labor and Employment may promulgate;

e. During the cooling-off period, it shall be the duty of the Department to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice the labor union may declare a lockout;

f. 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 that purpose. A decision to declare a lockout must be approved by the majority 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. The decision shall be valid for the duration of the disputes based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided;

g. When, in his opinion, there exists a labor dispute causing or 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 Commission (National Labor Relations Commissions) for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under same terms and condition prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such order as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such 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 insure the proper and adequate protection of the life of its patients,

most especially emergency cases, for the duration of the strike or lockout.

In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty-four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

h. The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

APPENDIX 4

GUIDELINES GOVERNING LABOR RELATIONS

In line with the program to promote industrial peace as an essential requirement to achieve national economic and social programs, the following guidelines shall be observed in the conduct and disposition of labor disputes by all concerned.

Right to Strike or Lockout

1. The right to strike is a constitutional and legal right of the workers as employers have the right to lockout, all within the context of labor relations and collective bargaining. Subject to the enactment by Congress of amendments or a new law on labor relations, the provisions of existing laws shall govern the exercise of those rights.

Legal Requirements

2. The exercise of the right to strike or lockout shall be subject to the following requirements:

a. a strike or lockout shall be filed with the labor department at least 15 days if the issues raised are unfair labor practice or at least 30 days if the issue involved bargaining deadlock;

b. the strike or lockout shall be supported by a majority vote of the members of the union or the members of the board of directors of corporations or associations or partnership, obtained by secret ballot in a meeting called for the purpose; and

c. strike or lockout vote shall be reported to the labor department at least 7 days before the intended strike or lockout.

3. In case of 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 15-day cooling-off period shall not apply and the union may take action immediately.

4. The requirements for valid strike or lockout are mandatory in character and non-compliance therewith is sufficient ground to declare the strike or lockout illegal, upon filing of a proper petition and after due hearing with the appropriate Arbitration Branch of the National Labor Relations Commission.

Valid Grounds for Strike or Lockout

5. The law recognizes two grounds for the valid exercise of the right to strike or lockout, namely:

- a. unfair labor practice
- b. bargaining deadlock

Inter-union and intra-union disputes and violation of labor standards laws are not valid grounds for strike or lockout. The law provides for med-arbitration procedures in the disposition of inter and intra-union disputes and labor enforcement in the case of labor standards violation.

6. In order to be valid, the notice of strike or lockout on grounds of unfair labor practice, shall state the specific acts complained of. In case of bargaining deadlock, the notice must specify the unresolved issues and must show proof that the parties have exhausted all efforts to resolve the deadlock.

7. If on the face of the notice, the issues raised are non-strikeable, the Regional Office shall dismiss motu-proprio the notice without prejudice to conciliation upon request of either or both parties.

CONCILIATION

8. Upon receipt of a valid notice of strike or lockout, it shall be the duty of labor conciliators to call the parties to a conference immediately within a period not exceeding 48 hours. Notices of conference to the parties shall be done through the fastest available means of communication such as telephones and telegrams.

9. During the initial conference, it shall be the duty of the conciliator to see to it that the issues raised in the notice are properly identified.

If the issue involves alleged unfair labor practice, the conciliator should clarify with the parties the specific acts of unfair labor practice. If the acts complained of involved dismissal of duly elected union officers which may constitute union busting and where the existence of the union is threatened, the conciliator shall conduct

marathon conferences and exert efforts to help the parties settle the issue.

10. If the unfair labor practice acts complained of involves alleged violation of CBA and questions of interpretation or implementation of the agreement, the Conciliator shall encourage the parties to respect the provisions of the collective bargaining agreement and to avail of the established grievance machinery including voluntary arbitration. If the parties decide to designate the conciliator as voluntary arbitrator, his or her acceptance of such designation shall be subject to Department Order No. 10, Series of 1987.

11. In cases of bargaining deadlocks, the conciliator shall conduct marathon or series of conferences to enable the parties to reach an agreement before the expiration of the 30-day cooling-off period.

12. If the issue involves alleged violation of labor standards, the conciliator shall immediately assign a labor inspector to act on the reported violation and to submit a report of his findings within 24 hours, copy furnished the conciliator concerned. The labor inspector and the Regional director shall effect immediate compliance by the employer with the labor standards violated.

13. If the issue involves inter-union disputes, the conciliator shall exert all efforts to enable the parties to settle the issue either through voluntary recognition or consent election. Otherwise, the conciliator shall immediately inform the Regional Director or BLR Director, as the case may be, in order that a Med-Arbiter can be directed to resolve the case within a period of five (5) days.

14. It shall be the duty of the Conciliator to record in the minutes every point of agreement as well as the unresolved issues. Referrals of representation cases and labor standards violations, including those that are grievable under the CBA, shall be duly noted in the minutes of the conference. The conciliator shall actively monitor the progress and developments on these cases with concerned labor officials.

PICKETING

15. During strikes, workers enjoy the right to peaceful picketing which is the marching to and from before the premises of an establishment involved in a labor dispute, generally accompanied by the carrying and display of signs, placards or banners with statements relating to the dispute.

16. The right to peaceful picketing shall be exercised by the workers with due respect for the rights of others. No person engaged in picketing shall commit an act of violence, coercion or intimidation. Stationary picket, the use of means like placing of objects to constitute permanent blockade or to effectively close points of entry or exit in company premises are prohibited law.

INJUNCTIONS

17. No court or entity shall enjoin any picketing, strike or lockout except as provided in Article 218 and 263 of the Labor Code, as amended. The National Labor Relations Commission proper shall have the power to issue temporary injunctions but only after due notice and hearing and in accordance with its rules. It may also issue restraining orders to appropriate cases subject as a general rule to the requirements of due notice and hearing.

18. Petitions for injunctions or restraining orders shall be handled or resolved with extreme care and caution. All efforts to conciliate or settle amicably the issues in the main dispute and those involved in petitions for injunctions shall be exhausted. Injunctions and restraining orders therefore may be issued only in case of extreme necessity based on legal grounds clearly established, after due consultations or hearing and when all efforts at conciliation are exhausted.

19. Injunction orders shall be enforced only to the extent necessary to correct violations of law and shall not prevent the workers from exercising the right to peaceful picketing. The right to ingress or egress may be exercised only for lawful purposes as may be indicated in the injunctive orders in line with established jurisprudence.

20. Injunction orders issued under Article 218 and 263 of the Labor Code, as amended, shall be served and enforced by appropriate

officials or employees of the National Labor Relations Commission or by such officials or employees of the Department of Labor and Employment who may be designated by the labor secretary.

21. The assistance of other civilian authorities like national, local or city officials may be sought, if necessary. Only under extreme circumstances shall the assistance of the PC/INP be enlisted and in such cases, the police authorities shall only serve on a supportive capacity to the labor department officials or employees. All efforts must be exerted in all cases to bring about voluntary and peaceful compliance with injunctive orders. PC/INP representatives shall be guided by duly promulgated guidelines.

RETURN TO WORK ORDERS

22. The power to issue assumption and certification orders is an extraordinary authority granted to the President or the Secretary of Labor, the exercise of which shall be strictly limited to the national interest cases.

23. The issuance of assumption or certification orders automatically enjoins the intended or impending strike or lockout and if one has already taken place, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike or lockout. Assumption and certification orders are executory in character and shall be strictly complied with by the parties even during the pendency of any petition questioning their validity.

24. In case of non-compliance with return-to-work orders, in connection with the certification and assumption of jurisdiction by the Secretary of Labor, the party concerned may be subjected to the sanctions provided by law. Employers who refuse to re-admit returning workers may be liable, upon filing of proper petition, for the payment of wages and other benefits from the date of actual refusal until the workers are re-admitted.

REMEDIES

25. A strike or lockout may be declared illegal if any of the requirements for a valid strike or lockout is not complied with or if declared based on non-strikeable issues, or when the issues involved are already the subject of arbitration. During a strike or lockout, either of the parties are additionally prohibited from committing illegal acts.

26. The employer or the union may file the proper petition to the appropriate Arbitration Branch of the NLRC to seek a declaration of the illegality of the strike or lockout subject to the provision of Article 263 (g). It shall be the duty of the Labor Arbiter concerned to act on the case immediately and dispose of the same subject only to the requirements of due process.

27. If a strike is declared to be illegal, the employer may be authorized to terminate the employment of union officials who knowingly participate in the illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during the strike or lockout.

28. In case of an illegal lockout, any worker whose employment has been terminated as a consequence thereof, shall be reinstated with payment of full backwages and other benefits.

DEPARTMENT ORDER NO. 7

29. Employers, workers and concerned labor department officials are enjoined to faithfully observe the principles contained in Department Order No. 7 issued on 7 May 1987 which were based on the agreement reached during the National Tripartite Conference held on April 10-11, 1987 in Tagaytay City.

19 October 1987.

(SGD.) FRANKLIN DRILON
Secretary of Labor and Employment

APPENDIX 5

Republic of the Philippines

**DEPARTMENT OF LABOR AND
EMPLOYMENT**

**NATIONAL POLICE
COMMISSION**

GUIDELINES IN THE CONDUCT OF PNP PERSONNEL, PRIVATE SECURITY GUARDS AND COMPANY GUARD FORCES DURING STRIKES, LOCKOUTS AND LABOR DISPUTES IN GENERAL

In order to promote public interest and safety, industrial peace and stability, and peace and order, the following guidelines are hereby prescribed to govern the official conduct of all members of the PHILIPPINE NATIONAL POLICE (PNP) during strikes, lockouts and labor disputes in general:

GENERAL POLICY

1. It is the essence of these guidelines that labor disputes are within the sole jurisdiction of the Department of Labor and Employment (DOLE) and/or through its appropriate agencies while matters involving peace and order, are under the exclusive jurisdiction of the National Police Commission (NAPOLCOM) through the Philippine National Police (PNP); but as labor disputes involving strikes and lockouts have peace and order implications, close coordination between the two departments is necessary.
2. The involvement of the PNP during strikes, lockouts and labor disputes in general shall be limited to the maintenance of peace and order, enforcement of laws and legal orders of duly constituted authorities.
3. Any request for police assistance issued by duly constituted authorities shall specify the acts to be performed or conducted by PNP personnel.
4. Whenever the assistance of the PNP is necessary, elements of the local police force should be called upon to render assistance. Such

request for assistance shall be addressed to the Regional Director; National Capital Regional Command (NCRC), or the City Director in the case of cities, or the Provincial Director in the case of provinces or cities not under a City Police Command. Unless directed by the President or personally by the Chairman of the National Police Commission upon consultation with the Secretary of Labor and Employment or when requested by the latter, personnel from the Armed Forces of the Philippines shall not intervene nor be utilized in any labor dispute.

5. Insofar as practicable, no officer of the law shall be allowed to render services in connection with a strike or lockout if there is question or complaint as regards his relationship by affinity or consanguinity to any official/leader of the parties in the controversy or if he has financial or pecuniary interest therein.

6. A peace keeping detail shall be established in a strike or lockout area when requested by DOLE or as the Regional Director, National Capital Regional Command, City Police Command/Provincial Director may deem necessary for the purpose of maintaining peace and order in the area.

7. Personnel detailed as peace keeping force in strike or lockout areas shall be in uniform, with proper nameplate at all times. They shall exercise maximum tolerance and shall observe courtesy and strict neutrality in their dealings with both parties to the controversy bearing in mind that the parties to the labor dispute are not their adversaries but their partners in the quest for industrial peace and human dignity. As much as possible, they shall not inflict any physical harm upon strikers and/or picketers or any person involved in the strike/lockout. When called for by the situation or when all other peaceful and non-violent means have been exhausted, law enforcers may employ, as a last resort only such force as may be necessary and reasonable to prevent or repel an aggression.

PEACE KEEPING DETAILS

8. The peace keeping detail shall not be stationed in the picket (or confrontation line) but should be stationed such that their presence may deter the commission of criminal acts or any untoward incident

from either side. The members of the peace keeping detail shall stay outside a 50 meter radius from the picket line, except, if the 50 meter radius includes a public thoroughfare, they may station themselves in such public thoroughfare for the purpose of insuring the free flow of traffic.

ARRESTS/SEARCHES AND SEIZURES

9. Arrests and searches in strike/lockout areas shall be effected only on the basis of an existing and valid Warrant of Arrest/Search and Seizure or in accordance with Section 5, Rule 113 of the Rules of Court. Whenever possible, union representatives (for laborers/workers) or management representatives (for management personnel) shall be requested to facilitate the service of the Warrant of Arrest/Search and Seizure Order.

10. Any person who, during the strike/lockout, violates any law, statute, ordinance or any provision of Batas Pambansa Blg. 880 or the Public Assembly Act may be arrested and charged accordingly in court.

11. Any person who obstructs the free and lawful ingress to and egress from the employer's premises in contemplation of Article 264, par. (e) of the Labor Code, as amended, or who obstructs public thoroughfares may be arrested and accordingly charged in court.

12. The DOLE shall immediately be informed by the PNP unit concerned in cases of violence in the picket line. When arrests are made pursuant to a warrant issued by competent authorities, the arresting officers shall coordinate with the Leaders/Representatives of the union and management, as the case may be, and also inform them of the arrest and the reason therefor.

SERVICE OF DOLE, COURT OR LAWFUL ORDERS/WRITS

13. The service of DOLE, court or other lawful order/writs is the primary concern of the DOLE representative, sheriff, representative of the government agency issuing the order respectively. Before service of the Order, the DOLE representative, sheriff or representative of the agency issuing the order shall coordinate and

dialogue with the leaders of the striking group and the representatives of management and shall inform them of the nature and content of the Order to be enforced including possible consequences of any defiance thereto. Whenever necessary, coordination with the local government units shall be made by the DOLE and the other concerned agencies issuing the Order to facilitate the service of Order and to prevent unnecessary intervention.

14. Orders enjoining any picketing, strike or lockout are enforceable strictly in accordance with Articles 218 and 263 of the Labor Code, as amended.

15. Any person who is not a laborer/worker of the company/business establishment on strike but has joined the striking laborers/workers in their picket or strike, shall be treated by the law enforcers in the same manner as the strikers/picketers. If such person's presence in the strike area obstructs the peaceful picketing, the law enforcers shall compel him to leave the area. The conduct of rallies and marches on issues not related to the labor dispute shall be dealt with in accordance with the provisions of Batas Pambansa 880.

ADMINISTRATIVE JURISDICTION

16. Except as provided in these guidelines the matter of determining whether a strike, picket or lockout is legal or not should be left to DOLE and its appropriate agencies. PNP elements are enjoined from interfering in a strike, picket or lockout, except as herein provided, for the sole reason that it is illegal.

17. Picketing as part of the freedom of expression during the strikes shall be respected provided it is peaceful. Shanties and structures set-up to effectively block lawful ingress and egress from company premises for legal purposes and the free passage in public thoroughfares shall be summarily demolished in accordance with Article 694 of the Civil Code of the Philippines.

18. No personal escort shall be provided to any of the parties to the controversy unless so directed by the competent authority. Whenever escorts are to be provided to any, the other party shall be informed accordingly. All escorts shall be in uniform at all times.

SOCIALIZING

19. During the pendency of a strike/lockout, the police and military personnel concerned are discouraged from socializing with any of the parties involved in the controversy. These personnel shall not, under any pretext, accept an invitation from management personnel or union officials/personnel involved in the controversy.

LIAISON

20. Liaison shall be established and maintained with the representatives of DOLE, management and the union in the strike/lockout area for the purpose of maintaining peace and order as well as to maintain a continuing peaceful dialogue between the parties to the strike/lockout. If possible, a monthly meeting between the representatives of the PNP, NAPOLCOM and the DOLE and concerned sectors shall be conducted to assess and monitor compliance with and implementation of the guidelines.

ADMINISTRATIVE ACTION

21. All complaints/reports leveled against any personnel of the PNP on the occasion of strike/lockout shall be processed and resolved in accordance with the PNP Administrative Disciplinary Machinery pursuant to Chapter III, paragraph (c) of Republic Act 6975. For DOLE personnel, the complaints shall be processed in accordance with the DOLE Manual on the Disposition of Administrative Cases. Whenever applicable, and if the evidence so warrants, appropriate disciplinary action shall be taken against the erring personnel.

ROLE OF SECURELY GUARDS

22. Conduct of security guards during strikes and lockouts shall be in accordance with Rule 18 of the Implementing Rules of Republic Act 5487

EFFECTIVITY

23. These guidelines shall take effect immediately.

Manila, 1996.

FOR THE DEPARTMENT OF LABOR
AND EMPLOYMENT

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REFERENCES

Executive Order No. 11

- Guidelines for the Conduct of PNP Personnel, Private Security Guards and Company Guard Forces During Strikes, Lockouts and Labor Disputes in General
- Guidelines Governing Labor Relations (19 October 1987)
- Labor Code of the Philippines, as amended (1994 Official Edition)
- Omnibus Rules Implementing the Labor Code, as amended
- Strikes and Lockouts (ILO Convention Output of ASEAN)

CASES

- Free Telephone Workers Union vs. Ministry of Labor and Employment (108 SCRA 757)
- PAL vs. Secretary of Labor and Employment (GR 88210, 23 January 1991)
- United CMC Textile Workers Union vs. Ople (120 SCRA 355)
- St. Scholastica's College vs. Hon. Ruben Torres (G.R. No. 100158, June 29, 1992)
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