

[DOLE DEPARTMENT ORDER NO. 40-03, February 17, 2003]

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

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

**RULE I
DEFINITION OF TERMS**

SECTION 1. Definition of Terms. —

- (a) **"Affiliate"** refers to an independent union affiliated with a federation, national union or a chartered local which was subsequently granted independent registration but did not disaffiliate from its federation, reported to the Regional Office and the Bureau in accordance with Rule III, Sections 6 and 7 of these Rules.
- (b) **"Appeal"** refers to the elevation by an aggrieved party to an agency vested with appellate authority of any decision, resolution or order disposing the principal issues of a case rendered by an agency vested with original jurisdiction, undertaken by filing a memorandum of appeal.
- (c) **"Audit Examiner"** refers to an officer of the Bureau or Labor Relations Division of the Regional Office authorized to conduct an audit or examination of the books of accounts, including all funds, assets and other accountabilities of a legitimate labor organization and workers' association.
- (d) **"Bargaining Unit"** refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.
- (e) **"Board"** refers to the National Conciliation and Mediation Board established under Executive Order No. 126.
- (f) **"Bureau"** refers to the Bureau of Labor Relations.
- (g) **"Cancellation Proceedings"** refer to the legal process leading to the revocation of the legitimate status of a union or workers' association.
- (h) **"Certification Election"** or **"Consent Election"** refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the Department, while a consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department.
- (i) **"Chartered Local"** refers to a labor organization in the private sector

operating at the enterprise level that acquired legal personality through the issuance of a charter certificate by a duly registered federation or national union, and reported to the Regional Office in accordance with Rule III, Section 2-E of these Rules.

- (j) "**Collective Bargaining Agreement**" or "**CBA**" refers to the contract between a legitimate labor union and the employer concerning wages, hours of work, and all other terms and conditions of employment in a bargaining unit.
- (k) "**Conciliator Mediator**" refers to an officer of the Board whose principal function is to assist in the settlement and disposition of labor-management disputes through conciliation and preventive mediation, including the promotion and encouragement of voluntary approaches to labor disputes prevention and settlement.
- (l) "**Consolidation**" refers to the creation or formation of a new union arising from the unification of two or more unions.
- (m) "**Deregistration of Agreement**" refers to the legal process leading to the revocation of CBA registration.
- (n) "**Department**" refers to the Department of Labor and Employment.
- (o) "**Election Officer**" refers to an officer of the Bureau or Labor Relations Division in the Regional Office authorized to conduct certification elections, election of union officers and other forms of elections and referenda in accordance with Rule XII, Sections 2-5 of these Rules.
- (p) "**Election Proceedings**" refer to the period during a certification election, consent or run-off election and election of union officers, starting from the opening to the closing of the polls, including the counting, tabulation and consolidation of votes, but excluding the period for the final determination of the challenged votes and the canvass thereof.
- (q) "**Eligible Voter**" refers to a voter belonging to the appropriate bargaining unit that is the subject of a petition for certification election.
- (r) "**Employee**" refers to any person working for an employer. It includes one whose work has ceased in connection with any current labor dispute or because of any unfair labor practice and one who has been dismissed from work but the legality of the dismissal is being contested in a forum of appropriate jurisdiction.
- (s) "**Employer**" refers to any person or entity who employs the services of others, one for whom employees work and who pays their wages or salaries. An employer includes any person directly or indirectly acting in the interest of an employer. It shall also refer to the enterprise where a labor organization operates or seeks to operate.
- (t) "**Exclusive Bargaining Representative**" refers to a legitimate labor union duly recognized or certified as the sole and exclusive bargaining representative or agent of all the employees in a bargaining unit.
- (u) "**Grievance**" refers to any question by either the employer or the union regarding the interpretation or implementation of any provision of the collective bargaining agreement or interpretation or enforcement of company personnel policies.
- (v) "**Improved Offer Balloting**" refers to a referendum by secret ballot involving union members on the improved offer of the employer on or before the 30th day of a strike.

- (w) **"Independent Union"** refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code and Rule III, Section 2-A of these Rules.
- (x) **"Inter-Union Dispute"** refers to any conflict between and among legitimate labor unions involving representation questions for purposes of collective bargaining or to any other conflict or dispute between legitimate labor unions.
- (y) **"Interlocutory Order"** refers to any order that does not ultimately resolve the main issue/s in a dispute.
- (z) **"Interpleader"** refers to a proceeding brought by a party against two or more parties with conflicting claims, compelling the claimants to litigate between and among themselves their respective rights to the claim, thereby relieving the party so filing from suits they may otherwise bring against it.
- (aa) **"Intervention"** refers to a proceeding whereby a person, labor organization or entity not a party to a case but may be affected by a decision therein, formally moves to make himself/herself/itself a party thereto.
- (bb) **"Intra-Union Dispute"** refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or affiliation of union.
- (cc) **"Labor Organization"** refers to any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.
- (dd) **"Labor Relations Division"** refers to the (1) Labor Organization and CBA Registration Unit and (2) Med-Arbitration Unit in the Regional Office. The Labor Organization and CBA Registration Unit is in charge of processing the applications for registration of independent unions, chartered locals, workers associations and collective bargaining agreements, maintaining said records and all other reports and incidents pertaining to labor organizations and workers' associations. The Med-Arbitration Unit conducts hearings and decides certification election or representation cases, inter/intra-union and other related labor relations disputes.
- (ee) **"Legitimate Labor Organization"** refers to any labor organization in the private sector registered or reported with the Department in accordance with Rules III and IV of these Rules.
- (ff) **"Legitimate Workers' Association"** refers to an association of workers organized for mutual aid and protection of its members or for any legitimate purpose other than collective bargaining registered with the Department in accordance with Rule III, Sections 2-C and 2-D of these Rules.
- (gg) **"Lockout"** refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute.
- (hh) **"Managerial Employee"** refers to an employee who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.
- (ii) **"Med-Arbiter"** refers to an officer in the Regional Office or in the

Bureau authorized to hear and decide representation cases, inter/intra-union disputes and other related labor relations disputes, except cancellation of union registration cases.

- (jj) "**Merger**" refers to a process where a labor organization absorbs another resulting in the cessation of the absorbed labor organization's existence, and the continued existence of the absorbing labor organization.
- (kk) "**National Union**" or "**Federation**" refers to a group of legitimate labor unions in a private establishment organized for collective bargaining or for dealing with employers concerning terms and conditions of employment for their member unions or for participating in the formulation of social and employment policies, standards and programs, registered with the Bureau in accordance with Rule III, Section 2-B of these Rules.
- (ll) "**Organized Establishment**" refers to an enterprise where there exists a recognized or certified sole and exclusive bargaining agent.
- (mm) "**Preventive Mediation Cases**" refer to labor disputes which are the subject of a formal or informal request for conciliation and mediation assistance sought by either or both parties or upon the initiative of the Board.
- (nn) "**Rank-and-File Employee**" refers to an employee whose functions are neither managerial nor supervisory in nature.
- (oo) "**Regional Director**" refers to the Head of the Regional Office.
- (pp) "**Regional Office**" refers to the office of the Department of Labor and Employment at the administrative regional level.
- (qq) "**Registration**" refers to the process of determining whether the application for registration of a union or workers' association and collective bargaining agreement complies with the documentary requirements for registration prescribed in Rules III, IV, and XVII of these Rules.
- (rr) "**Related Labor Relations Dispute**" refers to any conflict between a labor union and the employer or any individual, entity or group that is not a labor union or workers' association.
- (ss) "**Run-off Election**" refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.
- (tt) "**Secretary**" refers to the Head of the Department.
- (uu) "**Strike**" refers to any temporary stoppage of work by the concerted action of employees as a result of a labor or industrial dispute.
- (vv) "**Strike Area**" refers to the establishment, warehouses, depots, plants or offices, including the sites or premises used as run-away shops of the employer, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance.
- (ww) "**Strike Vote Balloting**" refers to the secret balloting undertaken by the members of the union in the bargaining unit concerned to determine whether or not to declare a strike in meetings or referenda called for that purpose.
- (xx) "**Supervisory Employee**" refers to an employee who, in the interest

of the employer, effectively recommends managerial actions and the exercise of such authority is not merely routinary or clerical but requires the use of independent judgment.

- (yy) "**Term of Office**" refers to the fixed period of five (5) years during which the duly elected officers of a labor organization discharge the functions of their office, unless a shorter period is stipulated in the organization's constitution and by-laws.
- (zz) "**Union**" refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.
- (aaa) "**Voluntary Arbitrator**" refers to any person accredited by the Board as such, or any person named or designated in the collective bargaining agreement by the parties to act as their voluntary arbitrator, or one chosen by the parties, with or without the assistance of the Board, pursuant to a selection procedure agreed upon in the collective bargaining agreement.
- (bbb) "**Voluntary Recognition**" refers to the process by which a legitimate labor union is recognized by the employer as the exclusive bargaining representative or agent in a bargaining unit, reported with the Regional Office in accordance with Rule VII, Section 2 of these Rules.
- (ccc) "**Workers' Association**" refers to an association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

RULE II

COVERAGE OF THE RIGHT TO SELF-ORGANIZATION

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

SECTION 2. Who may join labor unions and workers' associations. — All persons employed in commercial, industrial and agricultural enterprises, including employees of government owned or controlled corporations without original charters established under the Corporation Code, as well as employees of religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor unions for purposes of collective bargaining: provided, however, that supervisory employees shall not be eligible for membership in a labor union of the rank-and-file employees but may form, join or assist separate labor unions of their own. Managerial employees shall not be eligible to form, join or assist any labor unions for purposes of collective bargaining. Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

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