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MANUAL OF PROCEDURES IN THE SETTLEMENT AND DISPOSITION OF CONCILIATION AND PREVENTIVE MEDIATION CASES

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Pursuant to the mandate of the National Conciliation and Mediation Board under Executive Order No. 126, as amended by Executive Order No. 251, 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 Preventive Mediation Cases is 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's 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 the attainment of industrial peace and prosperity, productivity and national development.

Rule III
Definition of Terms
SECTION 1. Definition of Terms —

- Bargaining Deadlock — refers to a situation in a collective bargaining negotiations wherein parties have not reached a mutually acceptable settlement.

- Bureau of Labor Relations — means the Bureau of Labor Relations and/or the Labor Relations Division in the Regional Office of the Department of Labor and Employment.

- Collective Bargaining Agreement — refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit.

- Conciliation-Mediation — refers to the process of dispute management conducted by a Conciliator-Mediator, with the end in view of facilitating amicable settlement of the labor dispute.

- Conciliator-Mediator — is an officer of the Board whose principle 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.

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- Executive Director IV — refers to the head of the National Conciliation and Mediation Board.

- Employer — includes any person acting in the interest of an employer directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as an employer.

- Employee — includes any person in the employ of a particular employer. The term shall not be limited to the employees of a particular employer, unless the Code so explicitly states. It shall include any individual whose work has ceased as a result or in connection with any current labor dispute or because of unfair labor practice if he has not obtained any other substantially equivalent and regular employment.

- 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.

- Grievance Procedures — refer to the procedures for the adjustment and resolution of grievances arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies.

- Improved Offer Balloting — refers to a referendum by secret balloting by the members of the Union on the improved offer of the employer.

- Inter-Union Disputes — refer to any conflict between and among legitimate labor organizations involving questions of representation for purposes of collective bargaining. It also includes all other conflicts which legitimate labor organizations may have against each other based on any violations of their rights as labor organizations.

- Intra-Union Disputes — refer to any conflict between and among union members, and includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including cases arising from chartering or affiliation of labor organizations or from any violation of the rights and conditions of union membership provided for in the Code.

- Labor or Industrial 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 whether or not the disputants stand in the proximate relationship of employers and employees.

- Labor Standards Laws — refer to the minimum terms and conditions of employment set by law under the Labor Code of the Philippines, as amended and other related laws.

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

- Lockout Vote — refers to the secret balloting undertaken by the members of the Board of Directors of a corporation or association or of the partners in a partnership to determine whether or not to declare a lockout in a meeting called for the purpose.

- Med-Arbiter — is an officer in the Regional Office or in the Bureau authorized to hear, conciliate, mediate and decide representation cases, or to assist in the disposition of intra or inter-union disputes.

- National Conciliation and Mediation Board — NCMB, or the Board, for short, means the National Conciliation and Mediation Board established under Executive Order No. 126.

- National Labor Relations Commission — NLRC, for short, refers to the National Labor Relations Commission or any of its divisions or any of its Regional Arbitration Branches.

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- Notice of Lockout — refers to the notification filed by an employer with the appropriate NCMB regional branches informing the latter of its intention to lockout.

- 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.

- 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.

- 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 NCMB.

- Reduced Offer Balloting — refers to a referendum conducted by the Board of Directors or Trustees or the Partners of a corporation or a partnership on the reduced offer of the union.

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

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

- Strike — means any temporary stoppage of work by the concerted action of employees as a result of a labor or industrial dispute.

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

- 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.

- 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.

- Union — also known as legitimate labor organization, is any association or organization of employees which exists in whole or in part for the purpose of collective bargaining or for dealing with employers concerning terms and conditions of employment, duly registered with the Department. The term includes a local/chapter directly chartered by a federation or national union which has been duly reported to the Department in accordance with Rule VI Section 2 of Book V of the Labor Code.

- Voluntary Arbitrator — any person accredited by the NCMB 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 NCMB, pursuant to a selection procedure agreed upon in the collective bargaining agreement.

Rule IV
Conduct and Decorum
SECTION 1. Conduct — The Conciliator-Mediator shall conduct itself with dignity and respect and to maintain a life of unblemished reputation and integrity. He shall maintain at all times impartiality and independence of judgment.

SECTION 2. Decorum — The Conciliator-Mediator shall at all time appear properly dressed.

Rule V
Strike, Lockout, Preventive Mediation Notices and Appearance
SECTION 1. Grounds for Strike and Lockout — A strike or lockout may be declared in cases of:

- deadlock in collective bargaining negotiations; and

- unfair labor practice.

SECTION 2. Notices of Strike and Lockout — Any strike or lockout must be properly covered by a notice of strike or lockout using the Board's prescribed Form No. 01 (See Annex 1[*]).

SECTION 3. Contents of Notice — The notice shall state, among others, the names and addresses of the employer and the union involved, the nature of the industry to which the employer belongs, the number of union members and of the workers in the bargaining unit, and such other relevant data as may facilitate the settlement of the dispute, such as a brief statement or enumeration of all pending labor disputes involving the same parties.

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

Any notice which does not conform with the requirements herein and of 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 4. Who may file a notice, or declare a strike or lockout, or request for preventive mediation assistance — Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlock and unfair labor practices. The employer may file a notice or declare lockout or request for preventive mediation assistance in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may file a notice, request for preventive mediation assistance or declare a strike but only on grounds of unfair labor practices.

SECTION 5. Where to file notice or request — A notice of strike or lockout or request for preventive mediation assistance shall be filed with the appropriate NCMB regional branch or any of its extension offices having jurisdiction over the workplace of the union members.

- If the notice of strike or lockout or request for preventive mediation assistance is filed in other regions which has no jurisdiction over the workplace of the union members, the same shall be indorsed to the Regional Branch which has jurisdiction over the workplace. In this instance, the date of filing of the notice of strike or lockout or request for preventive mediation assistance shall be reckoned from the date the Regional Branch which has jurisdiction over the workplace has received the said notice or request.

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

SECTION 6. Cooling-off and Strike Ban Periods and Exception — In cases of bargaining deadlock, the cooling-off period is thirty (30) calendar days while in cases of unfair labor practice, the cooling-off period is fifteen (15) calendar days. However, in case of unfair labor practice involving the dismissal from employment of duly elected 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. In all

cases, the seven (7) calendar day strike or lockout ban period shall be observed after the results of the strike or lockout vote have been submitted to the appropriate NCMB Regional Branch.

SECTION 7. Service of copy of notice — The party filing the notice shall serve the other party or parties with a copy or copies of the notice which may be served through personal service or by registered mail.

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

SECTION 8. Representations — The parties may personally appear in their own behalf or by duly authorized representatives. In the latter case, the representative or lawyer must be duly authorized to appear with binding effects in writing.

SECTION 9. 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 or client's claim.

Rule VI
Action on Cases
SECTION 1. Assignment of Cases — The Regional Branch Director of the NCMB shall be responsible for the assignment of cases to Conciliator-Mediators immediately upon filing of the same, taking into consideration, among others but not limited to the (1) gravity of the issues; (2) personalities of the parties involved; (3) nature of the industry; (4) number of workers involved; (5) rapport between the Conciliator-Mediators and the parties; and (6) industry expertise of the Conciliator-Mediator.

SECTION 2. Initial Preparations — The Conciliator-Mediator, prior to the initial conference shall prepare for the case by gathering information about the parties involved in the dispute and by studying previous labor disputes involving the same parties.

SECTION 3. Conciliation Conferences —

- Notice of Conferences — The Conciliator-Mediator, shall send notice of conference to parties concerned within twenty-four (24) hours upon receipt of the notice of strike or lockout assigned to him for conciliation thru the fastest means of communication available like; telephone, telefax, telegram or messengerial services, etc.

- Schedule of Conferences — Initial conference with the parties by the Conciliator-Mediator should be held as early as possible preferably within 48 hours from receipt of the assignment for conciliation, taking into consideration the location of the parties involved and the seriousness of the labor dispute based on his initial assessment.

Resetting conferences should be done at reasonable intervals either by agreement of the parties or upon the initiative of the Conciliator-Mediator. Scheduling should be under the control of the Conciliator Mediator assigned to handle the case to avoid protracted conciliation proceedings.

- Attendance at Conferences — In case of failure of the party-filer of the Notice of Strike/Lockout to attend scheduled conciliation conference for two (2) consecutive instances after due notice, the Conciliator-Mediator thru the Regional Branch Director, may drop the case from the business calendar of the regional branch having jurisdiction over the dispute and parties concerned should be so informed in writing about the action taken.

- Parties with Manila-based representatives — For companies and unions having offices in Manila where authority or approval on managerial decisions come from, the Conciliator-Mediator assigned to handle the case through his Director should seek the assistance of the Central Office officials to facilitate and ensure attendance of the duly

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authorized representatives, if necessary, at conferences at the regional/provincial level.

SECTION 4. Identification of Issues — The Conciliator-Mediator, during the initial meeting, shall 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-Mediator to clarify with the parties the specific acts of unfair labor practice which were alleged to have been committed.

SECTION 5. Action on strikeable issues —

a. Notice of Strike Involving Unfair Labor Practice — In case of unfair labor practice, the Conciliator-Mediator shall take into account the fifteen (15) calendar day cooling off period and the seven (7) calendar day strike ban period and shall schedule conciliation conferences and exert best efforts to settle the dispute. When the cooling off period is about to lapse and parties have already conducted their strike/lockout vote balloting, he shall conduct marathon conciliation conferences to possibly settle the dispute.

The Conciliator-Mediator should be aware that the fifteen (15) calendar day cooling-off period is not applicable if the act complained of involves the dismissal of duly elected union officers which constitutes union busting. However, he must consider that the mandatory strike-ban period of 7 calendar days should be observed and he shall immediately schedule and conduct marathon conciliation conferences to possibly settle the dispute as early as possible.

For other ULP cases alleging flagrant and/or malicious violations of the economic provisions of the CBA, the Conciliator-Mediator 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.

b. Notice of Strike Involving Deadlock in Collective Bargaining Negotiations — In case of collective bargaining deadlock, the Conciliator-Mediator shall take into account the thirty (30) calendar day cooling-off period and the 7 calendar day strike ban period and shall conduct conciliation conferences and exert best efforts to settle the dispute. When the cooling off period is about to lapse and parties have already conducted their strike/lockout vote balloting, he shall conduct marathon conciliation conferences to possibly settle the dispute.

SECTION 6. Action on Non-strikeable issues — A strike or lockout notice anchored on grounds involving (1) inter-union or intra-union disputes (2) violation of labor standard laws (3) pending cases at the DOLE Regional Offices, BLR, NLRC and its appropriate Regional Branches, NWPC and its Regional Wage Boards, Office of the Secretary, Voluntary Arbitrator, Court of Appeals and the Supreme Court (4) execution and enforcement of final orders, decisions, resolutions or awards of no. (3) above shall be considered not duly filed and the party so filing shall be notified of such finding in writing by the Regional Branch Director. On his part, the Conciliator-Mediator shall convince the party concerned to voluntarily withdraw the notice without prejudice to further conciliation proceedings. Otherwise, he shall recommend to the Regional Branch Director that the notice be treated as a preventive mediation case.

a. Notice of Strike/Lockout Involving Inter-Union and Intra-Union Disputes — On issues involving question of representation and/or intra-union disputes, the Conciliator-Mediator 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 Bureau of Labor Relations or Office of the Secretary. If such case is indeed pending, the Conciliator-Mediator, through the Regional Branch Director, shall promptly advise the concerned office of the existence of the notice of strike to enable them to act on the case at the earliest time possible. The Conciliator-Mediator shall monitor and report to his Regional Branch Director the development/progress of the case.

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If, after verifying that no such case is pending and the union is a legitimate labor organization, the Conciliator-Mediator shall exert diligent efforts to enable the parties to settle the issue through direct certification or consent election. If settlement is reached, the Conciliator-Mediator, through the Regional Branch Director, shall immediately furnish the concerned DOLE Regional Director a copy of the agreement for the latter's guidance and appropriate action. If no agreement is reached, he shall advise the party concerned to file the necessary petition with the appropriate body.

b. Notice of Strike/Lockout Involving Violation of Labor Standards Laws — When the issue/s involve the violation of the labor standard laws, and the parties opt not to continue with the conciliation, the Conciliator-Mediators, through the Regional Branch Director, shall immediately refer to the case to the concerned DOLE Regional Office.

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

i. Disputes arising from the interpretation or implementation of a collective bargaining agreement or from the interpretation or enforcement of company personnel policies shall be referred to the grievance machinery as provided for under Art. 261 of the Labor Code, as amended by R.A. 6715 and Department Order No. 9, series of 1997 by the Conciliator-Mediator assigned to handle the dispute.

ii. Disputes arising from wage distortion resulting from the implementation of wage orders shall be resolved through the grievance procedure under the parties' collective bargaining agreement and, if its remains unresolved, through voluntary arbitration. In cases where there are no collective agreements or recognized labor unions and the dispute is brought before the Board, the assigned Conciliator-Mediator shall exert his efforts to settle the same. If it remains unresolved after ten (10) calendar days of conciliation, the Conciliator-Mediator shall advice the parties that the same shall be referred to the appropriate branch of the NLRC.

SECTION 7. Final Agreement — Extra care must be taken in drafting the Agreement in order to minimize doubtful or vague interpretation that might result further disagreement or worsening of the problem. The Conciliator-Mediator must see to it that the agreement must be clear and concise and must contain all points of the parties' understanding.

b. Monitoring of the Agreement — The conclusion of an agreement does not terminate the responsibility of the Conciliator-Mediator over the case. He must monitor the smooth implementation and faithful compliance therewith to ensure that the parties have normalized their relationship.

SECTION 8. Actual Strikes or Lockouts

a. Verification of Actual Strike or Lockout and Wildcat Strike — In a case of an actual strike or lockout, the Conciliator-Mediator assigned to the case shall as much as possible, proceed to the strike area to verify the following, among others:

- the impact of the strike/lockout on the operations of the company i.e. whether the operations of the company is paralyzed, etc.

- ascertain the number of workers participating in the strike and the situation at the strike area.

Thereafter, the Conciliator-mediator shall immediately submit a report to his Regional Branch Director.

In case of wildcat strikes, the Conciliator-Mediator assigned to handle the case aside from verifying the information stated above shall also find out the issues and the parties involved.

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b. Conduct of Conciliation — Immediately after the occurrence of a strike or lockout, or from the knowledge of the same, the Conciliator-Mediator handling the case shall call the parties to a conference within twenty-four (24) hours. As far as necessary, marathon proceedings shall be undertaken and efforts shall exerted towards the voluntary return to work of the striking workers and their unconditional acceptance by the employer struck against.

If the actual strike/lockout has not been disposed after a reasonable period from occurrence, the Conciliator-Mediator in consultation with his Regional Branch Director may seek the assistance of the Central Office in the disposition of the same. The Central Office officials, in coordination with the concerned Branch shall schedule and conduct meetings together with the Conciliator-Mediator handling the case until its final settlement/disposition.

SECTION 9. Submission of Reports — The Conciliator-Mediator shall submit status reports to his Regional Branch Director to enable the latter to take such action as may be necessary.

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 or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the members 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. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken.

SECTION 2. Strike/Lockout Balloting — All requests for the conduct of the balloting must be filed with the Regional Branch of the NCMB at least twenty-four (24)hours before the date of voting together with a copy of the notice of meeting called by the union for the purpose of holding a strike or lockout balloting. The Regional Branch of the NCMB may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting.

SECTION 3. Improved Offer — In case of a strike, the regional branch of the Board shall, at its own initiative or upon request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of the strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon readmit them upon signing of the agreement.

SECTION 4. Reduced Offer — in case of a lockout, the Board shall also administer 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 of 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 where assistance of the Board is sought by the parties, the personnel tasked to render assistance should ensure that the mechanics are understood by the parties and impress upon the parties that the strike vote or improved or reduced offer balloting is not in the nature of certification election wherein the usual legal procedures shall be applied.

In cases of improved/reduced offer balloting, assigned personnel should ensure that issues to be voted upon a properly spelled-out in the ballot prepared for the purpose.

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Rule VIII
Reporting Requirements
SECTION 1. Submission of Reports — All Regional branches must regularly submit the necessary reports to the NCMB Central Office through the Regional Branch Director utilizing the form prescribed for the purpose.

The required reports are as follows:

- Daily Report on Strikes

- Daily Report on Impending Strike Cases

- Weekly Report on Cases Handled together with a copy of all Notices of Strike/Lockout Filed (Form 01)

- Weekly Report on Closures, Retrenchments and Lay-offs of Establishments Involved in Conciliation-Mediation Cases

- Weekly Report on Cases Involving Inter/Intra-Union Disputes

- Monthly Summary of Cases Disposed

Conciliators shall also submit a special report on actual strikes and incidence related thereto immediately upon their occurrence and once a settlement is reached.

Adopted: 16 Nov. 1998

(SGD.) BUENAVENTURA C. MAGSALIN
Executive Director IV

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[*] Annex not filed with ONAR.

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