

[DOLE DEPARTMENT ORDER NO. 10, S. 1997, May 30, 1997]

AMENDING THE RULES IMPLEMENTING BOOKS III AND VI OF THE LABOR CODE AS AMENDED

ARTICLE I. There is hereby issued a new Rule implementing Articles 106 to 109 of Book III of the Labor Code, to be known as Rule VIII-A, Book III of the Implementing Rules, as follows:

"Rule VIII-A

"SECTION 1. Guiding principles. This Rule is being issued in recognition of the following guiding principles:

- (a) Contracting and subcontracting arrangements are expressly allowed by law, but may be subject to regulations consistent with the promotion of employment, protection of workers welfare, and enhancement of industrial peace and the rights of workers to self-organization and collective bargaining; for this reason, labor-only contracting as defined herein shall be prohibited.
- (b) Contractors and subcontractors, as well as their employees, are entitled to all the rights and privileges, and are subject to all the duties and responsibilities which the Labor Code as amended, attaches to every employee-employer relationship;
- (c) Flexibility for the purpose of increasing efficiency and streamlining operations is essential for every business to grow in an atmosphere of free competition; however, any form of flexibility intended to circumvent or evade workers' rights shall in no case be countenanced; and,
- (d) The establishment of an effective labor market information system is indispensable in the formulation of policies, strategies and programs for human resource development supportive of and responsive to the needs of workers and enterprises.

"SECTION 2. Coverage. This Rule shall apply to all parties of contracting and subcontracting arrangements where employee-employer relationship exists.

"SECTION 3. Parties. A contracting or subcontracting arrangement involves a trilateral relationship under which there is a contract for a specific job, service, or work between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Therefore, the parties to a contracting or subcontracting arrangement shall be the principal, the contractor or subcontractor, and the workers engaged by the latter. The principal and the contractor or subcontractor may be a natural or juridical person.

"SECTION 4. Definition of Terms. As used in this Rule, the following shall mean"

- (a) "Principal" refers to any employer who puts out or farms out a job, service or work to a contractor or subcontractor, whether or not the arrangement is covered by a written contract.
- (b) "Contractor or subcontractor" refers to any person or entity engaged in a legitimate contracting or subcontracting arrangement as defined in paragraph (d) hereof.
- (c) "Contractual employee" includes one employed by a contractor or subcontractor to perform or complete a job, work or service pursuant to an arrangement between the latter and a principal as defined in paragraph (d) hereof. The term excludes employees of the contractor or subcontractor engaged to perform a job, work or service not within the scope of the contract between the latter and a principal.
- (d) "Contracting" or subcontracting" refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal as hereinafter qualified.

Subject to the provisions of Sections 6, 7 and 8 of this Rule, contracting or subcontracting shall be legitimate if the following circumstances concur:

- i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
 - ii) The contractor or subcontractor has substantial capital or investment; and
 - iii) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.
- (e) "Substantial capital or investment" refers to the adequacy of resources actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. It may refer to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, uniforms, protective gear, or safety devices actually used in the performance of the job, work or service contracted out. It likewise includes operating costs, administrative costs such as training and overhead costs, and such expenses as are necessary to enable the contractor or subcontractor to exercise control, supervision or direction over its employees in all aspects of performing or

completing the job, service or work contracted out. The phrase, however, excludes all capital and investment the contractor or subcontractor may have which are not actually and directly used in the conduct of its business, or any gratuitous assistance, financial or otherwise, it may have received from the principal.

(f) "Labor-only contracting" prohibited under this Rule is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and

ii) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

(g) "In-house agency" refers to a contractor or subcontractor engaged in the supply of labor which:

i) Is owned, managed or controlled by the principal; and

ii) Operates solely for the principal owning, managing, or controlling it.

(h) "Bureau" refers to the Bureau of Local Employment of the Department of Labor and Employment. Regional Office refers to the offices of the Department established in each of the regions.

"SECTION 5. Term or duration of contractual employment. Subject to the provisions of sections 6, 7 and 8 hereof, the term or duration of contractual employment shall be coextensive with the term or duration of the contract between the principal and contractor or subcontractor. However, where the contract is divisible into phases such that substantially different skills are required for each phase, the term or duration of the contractual employment may be made coextensive with each phase.

For the purposes of this Rule, the phrase "substantially different skills" refer to those skills the acquisition of which requires knowledge or training.

"SECTION 6. Permissible contracting or subcontracting. Subject to the conditions set forth in Section 3 (d) and (e) and Section 5 hereof, the principal may engage the services of a contractor or subcontractor for the performance of any of the following:

(a) Works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services, provided that the normal production

capacity or regular workforce of the principal cannot reasonably cope with such demands;

(b) Works or services temporarily or occasionally needed by the principal for undertakings requiring expert or highly technical personnel to improve the management or operations of an enterprise;

(c) Services temporarily needed for the introduction or promotion of new products, only for the duration of the introductory or promotional period;

(d) Works or services not directly related or not integral to the main business or operation of the principal, including casual work, janitorial, security, landscaping, and messengerial services, and work not related to manufacturing processes in manufacturing establishments;

(e) Services involving the public display of manufacturers' products which does not involve the act of selling or issuance of receipt or invoices;

(f) Specialized works involving the use of some particular, unusual or peculiar skills, expertise, tools or equipment the performance of which is beyond the competence of the regular workforce or production capacity of the principal; and

(g) Unless a reliever system is in place among the regular workforce, substitute services for absent regular regular employees, provided, that the period of service shall be coextensive with the period of absence and the same is made clear to the substitute employee at the time of engagement. The phrase "absent regular employees" includes those who are serving suspensions or other disciplinary measures not amounting to termination of employment meted out by the principal, but excludes those on strike where all the formal requisites for the legality of the strike have been prima facie complied with based on the records filed with the National Conciliation and Mediation Board.

"SECTION 7. Prohibitions. The following are hereby declared prohibited for being contrary to law or public policy:

(a) Labor-only contracting;

(b) Contracting out of work will either displace employees of the principal from their jobs or reduce their regular work hours;

(c) Contracting out of work with a "cabo" as defined in Section 1 (ii), Rule I, Book V of these Rules;

(d) Taking undue advantage of the economic situation or lack of bargaining strength of the contractual employee, or undermining his security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:

i) In addition to his assigned functions, requiring the contractual employee to perform functions which are currently being performed by the regular employees of the principal or of the contractor or subcontractor;

ii) Requiring him to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or subcontractor from any liability as to payment of future claims; and

iii) Requiring him to sign a contract fixing the period of employment to a term shorter than the term of the contract between the principal and the contractor or subcontractor, unless the latter contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement;

(e) Contracting out of a job, work or service through an in-house agency as defined herein;

(f) Contracting out of a job, work or service directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent; and

(g) Contracting out of job, work or service when not justified by the exigencies of the business and the same results in the reduction or splitting of the bargaining unit.

"SECTION 8. Unfair Labor Practice. Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization shall be unlawful and shall constitute unfair labor practice.

"SECTION 9. Contract between contractor or subcontractor and contractual employee. Notwithstanding oral or written stipulations to the contrary, the contract between the contractor or subcontractor and the contractual employee shall include the following terms and conditions:

(a) The specific description of the job, work or service to be performed by the contractual employee;

(b) The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual contractual employee; and

(c) The term or duration of employment, which shall be coextensive with the contract between the principal and contractor or subcontractor, or with the specific phase for which the contractual employee is engaged, as the case may be.

The contractor or subcontractor shall inform the contractual employee of the foregoing terms and conditions on or before the first day of his employment.

"SECTION 10. Duty to produce copy of contract. The contractor or subcontractor shall submit a copy of its contract with the principal to the Regional Office of the Department of Labor and Employment (DOLE). It shall be accompanied by a statement of the number of employees covered by the contract and, where appropriate, a description of the phases of the contract and the number of