

[BLR Department Order No. 40-I-15, September 07, 2015]

FURTHER AMENDING DEPARTMENT ORDER NO. 40, SERIES OF 2003, AMENDING THE IMPLEMENTING RULES AND REGULATIONS OF BOOK V OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

*Adopted: 07 September 2015
Date Filed: 21 September 2015*

SECTION 1. - Pursuant to Article 5 of the Labor Code, as amended, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order 40, Series of 2003 is hereby amended as follows:

SECTION 2. - Section 1 of Rule I is hereby amended adding "Abstention", "Re-run Election" and "Spoiled Ballots" in the Definition of Terms, to be re-alphabetized and read as follows:

**RULE I
DEFINITION OF TERMS**

Section 1. Definition of Terms

- a. **"ABSTENTION"** REFERS TO A BLANK OR UNFILLED BALLOT VALIDLY CAST BY AN ELIGIBLE VOTER. IT IS NOT CONSIDERED AS A NEGATIVE VOTE. HOWEVER, IT SHALL BE CONSIDERED A VALID VOTE FOR PURPOSES OF DETERMINING A VALID ELECTION.
- tt. **"RE-RUN ELECTION"** REFERS TO AN ELECTION CONDUCTED TO BREAK A TIE BETWEEN CONTENDING UNIONS, INCLUDING BETWEEN "NO UNION" AND ONE OF THE UNIONS. IT SHALL LIKEWISE REFER TO AN ELECTION CONDUCTED AFTER A FAILURE OF ELECTION HAS BEEN DECLARED BY THE ELECTION OFFICER AND/OR AFFIRMED BY THE MEDIATOR-ARBITER.
- ww. **"SPOILED BALLOT"** REFERS TO A BALLOT THAT IS TORN, DEFACED, OR CONTAINS MARKINGS WHICH CAN LEAD ANOTHER TO CLEARLY IDENTIFY THE VOTER WHO CASTS SUCH VOTE.

SECTION 3. - Rule VII, Voluntary Recognition, is hereby repealed and replaced by new provision entitled, "REQUEST FOR SOLE AND EXCLUSIVE

BARGAINING AGENT (SEBA) CERTIFICATION”, to read as follows:

RULE VII
REQUEST FOR SOLE AND EXCLUSIVE BARGAINING AGENT (SEBA)
CERTIFICATION

SECTION 1. WHERE TO FILE. – ANY LEGITIMATE LABOR ORGANIZATION MAY FILE A REQUEST FOR SEBA CERTIFICATION IN THE REGIONAL OFFICE WHICH ISSUED ITS CERTIFICATE OF REGISTRATION OR CERTIFICATE OF CREATION OF CHARTERED LOCAL.

SECTION 2. REQUIREMENTS FOR REQUEST OF SEBA CERTIFICATION. – THE REQUEST FOR CERTIFICATION SHALL INDICATE:

- a. THE NAME AND ADDRESS OF THE REQUESTING LEGITIMATE LABOR ORGANIZATION;
- b. THE NAME AND ADDRESS OF THE COMPANY WHERE IT OPERATES;
- c. THE BARGAINING UNIT SOUGHT TO BE REPRESENTED;
- d. THE APPROXIMATE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT; AND
- e. THE STATEMENT OF THE EXISTENCE/NON-EXISTENCE OF OTHER LABOR ORGANIZATION/CBA.

THE CERTIFICATE OF REGISTRATION AS DULY CERTIFIED BY THE PRESIDENT OF THE REQUESTING UNION OR CERTIFICATE OF CREATION OF CHARTERED LOCAL AS DULY CERTIFIED BY THE PRESIDENT OF THE FEDERATION OF THE LOCAL SHALL BE ATTACHED TO THE REQUEST.

SECTION 3. ACTION ON THE REQUEST. – WITHIN ONE (1) DAY FROM THE SUBMISSION OF THE REQUEST, THE REGIONAL DIRECTOR SHALL:

- a. DETERMINE WHETHER THE REQUEST IS COMPLIANT WITH THE PRECEDING SECTION AND WHETHER THE BARGAINING UNIT SOUGHT TO BE REPRESENTED IS ORGANIZED OR NOT; AND
- b. REQUEST A COPY OF THE PAYROLL FOR PURPOSES OF SEBA CERTIFICATION PURSUANT TO SECTION 4 OF THIS RULE.

IF HE/SHE FINDS IT DEFICIENT, THE REGIONAL DIRECTOR SHALL ADVISE THE REQUESTING UNION OR LOCAL TO COMPLY WITHIN TEN (10) DAYS FROM NOTICE. FAILURE TO COMPLY WITHIN THE PRESCRIBED PERIOD SHALL BE DEEMED WITHDRAWAL OF THE REQUEST FOR SEBA CERTIFICATION.

SECTION 4. REQUEST FOR CERTIFICATION IN UNORGANIZED ESTABLISHMENT WITH ONLY ONE (1) LEGITIMATE LABOR ORGANIZATION; VALIDATION PROCEEDINGS. – IF THE REGIONAL

DIRECTOR FINDS THE ESTABLISHMENT UNORGANIZED WITH ONLY ONE LEGITIMATE LABOR ORGANIZATION, HE/SHE SHALL CALL A CONFERENCE WITHIN FIVE (5) WORK DAYS FOR THE SUBMISSION OF THE FOLLOWING:

- a. THE NAMES OF EMPLOYEES IN THE COVERED BARGAINING UNIT WHO SIGNIFY THEIR SUPPORT FOR THE CERTIFICATION, PROVIDED THAT SAID EMPLOYEES COMPRISE AT LEAST MAJORITY OF THE NUMBER OF EMPLOYEES IN THE COVERED BARGAINING UNIT; AND
- b. CERTIFICATION UNDER OATH BY THE PRESIDENT OF THE REQUESTING UNION OR LOCAL THAT ALL DOCUMENTS SUBMITTED ARE TRUE AND CORRECT BASED ON HIS/HER PERSONAL KNOWLEDGE.

THE SUBMISSION SHALL BE PRESUMED TO BE TRUE AND CORRECT UNLESS CONTESTED UNDER OATH BY ANY MEMBER OF THE BARGAINING UNIT DURING THE VALIDATION CONFERENCE. FOR THIS PURPOSE, THE EMPLOYER OR ANY REPRESENTATIVE OF THE EMPLOYER SHALL NOT BE DEEMED A PARTY-IN-INTEREST BUT ONLY AS A BY-STANDER TO THE PROCESS OF CERTIFICATION.

IF THE REQUESTING UNION OR LOCAL FAILS TO COMPLETE THE REQUIREMENTS FOR SEBA CERTIFICATION DURING THE CONFERENCE, THE REQUEST FOR SEBA CERTIFICATION SHALL BE REFERRED TO THE ELECTION OFFICER FOR THE CONDUCT OF ELECTION PURSUANT TO RULE IX OF THIS RULES.

SECTION 4.1. ACTION ON THE SUBMISSION. – IF THE REGIONAL DIRECTOR FINDS THE REQUIREMENTS COMPLETE, HE/SHE SHALL ISSUE DURING THE CONFERENCE A CERTIFICATION AS SOLE AND EXCLUSIVE BARGAINING AGENT ENJOYING THE RIGHTS AND PRIVILEGES OF AN EXCLUSIVE BARGAINING AGENT OF ALL THE EMPLOYEES IN THE COVERED BARGAINING UNIT.

THE REGIONAL DIRECTOR SHALL CAUSE THE POSTING OF THE SEBA CERTIFICATION FOR FIFTEEN (15) CONSECUTIVE DAYS IN AT LEAST TWO (2) CONSPICUOUS PLACES IN THE ESTABLISHMENT OR COVERED BARGAINING UNIT.

SECTION 4.2. EFFECT OF CERTIFICATION. – UPON THE ISSUANCE OF THE CERTIFICATION AS SOLE AND EXCLUSIVE BARGAINING AGENT, THE CERTIFIED UNION OR LOCAL SHALL ENJOY ALL THE RIGHTS AND PRIVILEGES OF AN EXCLUSIVE BARGAINING AGENT OF ALL THE EMPLOYEES IN THE COVERED BARGAINING UNIT.

THE CERTIFICATION SHALL BAR THE FILING OF A PETITION FOR CERTIFICATION ELECTION BY ANY LABOR ORGANIZATION FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ITS ISSUANCE. UPON EXPIRATION OF THIS ONE-YEAR PERIOD, ANY LEGITIMATE LABOR ORGANIZATION

MAY FILE A PETITION FOR CERTIFICATION ELECTION IN THE SAME BARGAINING UNIT REPRESENTED BY THE CERTIFIED LABOR ORGANIZATION, UNLESS A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE EMPLOYER AND THE CERTIFIED LABOR ORGANIZATION WAS EXECUTED AND REGISTERED WITH THE REGIONAL OFFICE IN ACCORDANCE WITH RULE XVII OF THIS RULES.

SECTION 5. REQUEST FOR CERTIFICATION IN UNORGANIZED ESTABLISHMENT WITH MORE THAN ONE (1) LEGITIMATE LABOR ORGANIZATION. – IF THE REGIONAL DIRECTOR FINDS THE ESTABLISHMENT UNORGANIZED WITH MORE THAN ONE LEGITIMATE LABOR ORGANIZATION, HE/SHE SHALL REFER THE SAME TO THE ELECTION OFFICER FOR THE CONDUCT OF CERTIFICATION ELECTION.

THE CERTIFICATION ELECTION SHALL BE CONDUCTED IN ACCORDANCE WITH RULE IX OF THIS RULES.

SECTION 6. REQUEST FOR CERTIFICATION IN ORGANIZED ESTABLISHMENT. – IF THE REGIONAL DIRECTOR FINDS THE ESTABLISHMENT ORGANIZED, HE/SHE SHALL REFER THE SAME TO THE MEDIATOR-ARBITER FOR THE DETERMINATION OF THE PROPRIETY OF CONDUCTING A CERTIFICATION ELECTION IN ACCORDANCE WITH RULES VIII AND IX OF THIS RULES.

SECTION 4. - Section 1 of Rule VIII, as last amended by D.O. 40-F-03, is hereby further amended, to read as follows:

RULE VIII CERTIFICATION ELECTION

Section 1. Who May File. – Any legitimate labor organization, including a national union or federation that has issued a charter certificate to its local/chapter or the local/chapter itself, may file a petition for certification election.

A national union or federation filing a petition in behalf of its local/chapter shall not be required to disclose the names of the local/chapter's officers and members, but shall attach to the petition the charter certificate it issued to its local/chapter.

When requested to bargain collectively in a bargaining unit where no registered collective bargaining agreement exists, an employer may file a petition for certification election with the Regional Office.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings

shall be limited to: (1) being notified or informed of petitions of such nature: and (2) submitting the list of employees during the pre-election conference should the Mediator-Arbiter act favorably on the petition. HOWEVER, MANIFESTATION OF FACTS THAT WOULD AID THE MEDIATOR- ARBITER IN EXPEDITIOUSLY RESOLVING THE PETITION SUCH AS EXISTENCE OF A CONTRACT-BAR, ONE YEAR BAR OR DEADLOCK BAR MAY BE CONSIDERED. THE CONTRACT-BAR RULE SHALL APPLY IN ANY OF THE FOLLOWING: (1) WHEN THERE EXISTS AN UNEXPIRED REGISTERED CBA; OR (2) WHEN THERE IS NO CHALLENGE ON THE REPRESENTATION STATUS OF THE INCUMBENT UNION DURING THE FREEDOM PERIOD.

SECTION 5. - Section 2 of Rule VIII is hereby amended to read as follows:

Section 2. Where to File . – A petition for certification election shall be filed with the Regional Office which issued the petitioning union's certificate of registration or certificate of creation of chartered local.

AT THE OPTION OF THE PETITIONER, A PETITION FOR CERTIFICATION ELECTION AND ITS SUPPORTING DOCUMENTS MAY ALSO BE FILED ONLINE.

The petition shall be heard and resolved by the Mediator-Arbiter.

Where two (2) or more petitions involving the same bargaining unit are filed in one (1) Regional Office, the same shall be automatically consolidated with the Mediator-Arbiter who first acquired jurisdiction. Where the petitions are filed in different Regional Offices, the Regional Office in which the petition was first filed shall exclude all others; in which case, the latter shall indorse the petition to the former for consolidation.

SECTION 6. - A new provision is hereby inserted as Section 7, to read as follows:

Section 7. POSTING. – THE REGIONAL DIRECTOR OR HIS/HER AUTHORIZED DOLE PERSONNEL, AND/OR THE PETITIONER SHALL BE RESPONSIBLE FOR THE POSTING OF THE NOTICE OF PETITION FOR CERTIFICATION ELECTION.

SECTION 7. - Section 17, Release of Order/Decision within Ten (10) Days from the Last Hearing, is hereby renumbered as Section 18 and amended, to read as follows:

Section 18. Release of Order/Decision within Ten (10) Days from the Last Hearing. – The MEDIATOR-ARBITER shall release his/her order