



# NATIONAL CONCILIATION AND MEDIATION BOARD



## MANUAL OF PROCEDURES FOR CONCILIATION AND PREVENTIVE MEDIATION CASES



# TABLE OF CONTENTS

Background		1
Rule I	Title and Construction	1
Rule II	Seal of NCMB	1
Rule III	Definition of Terms	2
Rule IV	Strike, Lockout, Preventive Mediation Notices and Appearance	6
Rule V	Grounds and Issues	9
Rule VI	Strike or Lockout Vote and Improved/ Reduced Offer Balloting	12
Rule VII	Final Agreement	13
Rule VIII	Modes of Disposition	14
Rule IX	Reporting Requirements	15
Rule X	Regional Inter-Agency Coordination and Monitoring Committee	15
Rule XI	Assumption of Jurisdiction	17
Annex "A"	NCMB Organizational Chart	18
Annex "B"	NCMB Directory	19

# **The Revised National Conciliation and Mediation Board Manual of Procedures for Conciliation and Preventive Mediation Cases**

## **2017 Edition**

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 278-280 of the Labor Code, as amended by RA 6715, the herein Revised National Conciliation and Mediation Board Manual of Procedures for Conciliation and Preventive Mediation Cases is hereby adopted and promulgated.

### **Rule I Title and Construction**

**Section 1. Title.** This Manual shall be known as the Revised National Conciliation and Mediation Board Manual of Procedures for Conciliation and Preventive Mediation Cases.

**Section 2. Construction.** This Revised National Conciliation and Mediation Board 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.

**Section 3. Coverage –** This Manual shall cover Preventive Mediation, Notice of Strike/Lockout, Actual Strike/Lockout cases handling.

### **RULE II Seal of NCMB**

**Section 1. Seal.** The seal represents national unity of the Filipino people in general and the social partners in particular, in the attainment of industrial peace and prosperity, productivity and national development.

### **RULE III**

#### **Definition of Terms**

1. **Branch Director**— refers to the head of a regional branch of the NCMB.
2. **Bureau of Labor Relations (BLR)** - refers to the bureau in the Department of Labor and Employment which handles appealed cases from decisions of Mediator-Arbiters on intra/inter-union disputes. It is also the bureau which handles the processing and registration of national unions and federations.
3. **Collective Bargaining Agreement (CBA)** — 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, including mandatory provisions for grievances and arbitration machineries.
4. **Conciliation** - is a mild form of intervention by a neutral third party, the Conciliator-Mediator, who relying on his persuasive expertise, takes an active role in assisting parties by trying to keep disputants talking, facilitating other procedural niceties, carrying messages back and forth between the parties, and generally being a good fellow who tries to keep things calm and forward-looking in a tense situation.
5. **Conciliation-Mediation Case** — refers to a request for preventive mediation, notice of strike or lockout and actual strike or lockout.
6. **Conciliator-Mediator** – refers to an official of the National Conciliation and Mediation Board (NCMB) whose principal function is to settle and dispose of potential and actual labor disputes through preventive mediation and conciliation including the promotion of voluntary approaches to labor disputes prevention and settlement.
7. **Deputy Executive Director** — refers to the official who assists the Executive Director of the NCMB in performing the functions of the Board.
8. **Department of Labor and Employment (DOLE)** - the national government agency mandated to formulate policies, implement

programs and serve as the policy-coordinating arm of the Executive Branch in the field of labor and employment.

9. **Executive Director** — refers to the head of the NCMB.
10. **Executive Labor Arbiter (ELA)** – refers to the head of a Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC).
11. **Grievance Machinery** — refers to the internal rules of procedures established by the parties in their collective bargaining agreement with voluntary arbitration as the terminal step, which are intended to resolve all issues arising from the implementation and interpretation of their collective agreement and the company personnel policies or company rules and regulations.
12. **Improved Offer Balloting** — refers to a referendum by secret balloting conducted by the NCMB on the improved offer of the employer.
13. **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.
14. **Inter-Union Dispute/Representation Dispute** — refers to a case involving 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 employees in the appropriate bargaining unit of the company, firm or establishment.
15. **Joint DOLE-PNP-PEZA Guidelines** - refers to the guidelines prescribed to govern the official conduct of all members of the Philippine National Police (PNP), Economic Zone Police and security guards, company security guards and similar personnel during labor disputes, including the necessary coordination with other concerned relevant government agencies.

16. **Labor Arbiter** – refers to an official of the NLRC who hears and decides labor disputes.
17. **Labor or Industrial Dispute** — refers to any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating the fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relationship of employer and employee
18. **Labor Standards Laws** — refer to the minimum terms and conditions of employment set by law under Book III of the Labor Code of the Philippines, as amended.
19. **Labor Union** — refers to an organization of employees in a company, firm or establishment, duly registered with the DOLE.
20. **Lockout** — refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute.
21. **Lockout Vote** — refers to the majority vote of the members of the Board of Directors/Trustees of the corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for that purpose.
22. **Mediation** - is a mild intervention by a neutral third party, the Conciliator-Mediator, who advises the parties or offers solutions or alternatives to the problems with the end in view of assisting them towards voluntarily reaching their own mutually acceptable settlement of the dispute.
23. **National Conciliation and Mediation Board (NCMB)** - refers to the agency attached to DOLE principally in-charge of the settlement of labor disputes through conciliation, mediation, and promotion of voluntary approaches to labor dispute prevention and settlement.
24. **National Labor Relations Commission (NLRC)** - refers to the agency attached to DOLE tasked to decide labor cases through compulsory arbitration.

25. **Notice of Lockout** — refers to the notification filed by an employer with the appropriate Regional Branch informing the latter of its intention to temporarily cease its operation due to alleged commission by a registered labor union of unfair labor practice act/s or a deadlock in collective bargaining negotiations.
26. **Notice of Strike** — refers to the notification filed by a registered labor union with the appropriate Regional Branch informing the latter of its intention to go on strike due to alleged commission by the employer of unfair labor practice act/s or a deadlock in collective bargaining negotiations.
27. **Picketing** — refers to the right of workers to march to and fro before an establishment involved in a labor dispute generally accompanied by the carrying and displaying of signs, placards, and banners intended to inform the public about the dispute.
28. **Preventive Mediation Case** — refers to the potential labor dispute subject for conciliation and mediation assistance sought by either or both parties or upon the initiative of the NCMB to avoid the occurrence of actual labor dispute.
29. **Reduced Offer Balloting** — refers to a referendum by secret balloting conducted by the Regional Branch on the reduced offer of the union.
30. **Regional Director** — refers to the head of the Regional Office of the DOLE.
31. **Regional Inter-Agency Coordinating And Monitoring Committee (RICMC)** – refers to the inter-agency body that ensures the full and effective application of the operational guidelines on inter-agency coordination and monitoring of labor disputes.
32. **Strike** — refers to any temporary stoppage of work in an establishment by the concerted action of its employees as a result of an industrial or labor dispute.



33. **Strike Vote** - refers to the vote of the union members on a pending notice of strike, obtained by secret ballot in a meeting called for that purpose.
34. **Supervision** — refers to the oversight role of the Regional Branch of the Board to ensure the free, voluntary, secrecy, and sanctity of the balloting process during the conduct of a strike vote or lockout.
35. **Unfair Labor Practice Acts (ULP)** - refer to acts committed either by employers or labor organizations as enumerated under Articles 259 and 260 of the Labor Code, as amended.
36. **Voluntary Arbitration** – a mode of settling labor management disputes by which the parties select a competent, trained and impartial person who shall decide on the merits of the case and whose decision is final, executory and binding.
37. **Voluntary Arbitrator** — any person accredited by the Board as such, or any person named or designated in the collective bargaining agreement by the parties, or one chosen, with or without the assistance of the NCMB, pursuant to a selection procedure agreed upon in the collective bargaining agreement or during the conciliation conference who shall hear and decide on the merits of a voluntary arbitration case.
38. **Workplace** – refers to the physical location where the workers/union members regularly perform their duties.

#### **RULE IV**

#### **Strike, Lockout, Preventive Mediation, Notices and Appearance**

**Section 1. Prescribed Form.** — All requests for preventive mediation, notice of strike, lockout cases shall be in the Board's FM-DOLE-NCMB-01.01(A) (See Annex 1).

**Section 2. Contents of Form.** — The form shall contain, among other information:

- a. the names, contact number/s, email and office addresses of the employer and the union involved;

- b. the nature of the industry to which the employer belongs;
- c. name, signature, and position of filer;
- d. total employment, number of union members, and workers involved, all segregated to male or female;
- e. effectivity of old/existing CBA;
- f. proof of service to the other party, in case of notice of strike/lockout (NS/L)
- g. unresolved issue/s;
- h. pending labor disputes involving either party;
- i. efforts taken at the plant level; and
- j. other relevant data that may facilitate the settlement of the dispute.

In case of bargaining deadlock, the proposals and counter-proposals of the parties, as far as practicable, shall be attached to the notice.

In case of unfair labor practice, the acts complained of and the efforts taken to resolve the dispute amicably, as far as practicable, shall be stated or attached to the notice.

**Section 3. Who may file a request for Preventive Mediation, Notice of Strike or Lockout.** — the following may file a request for preventive mediation, notice of strike or lockout:

- a. The president or any authorized representative of a certified or duly recognized bargaining representative in cases of bargaining deadlocks and unfair labor practices.
- b. In the absence of a certified or duly recognized bargaining representative, the president or any authorized representative of a legitimate labor organization in the establishment on grounds of unfair labor practice.
- c. The employer or any authorized representative in cases of bargaining deadlocks and unfair labor practices.

**Section 4. Where to file.** — A request for preventive mediation, notice of strike or lockout shall be filed through personal service or by registered mail/private couriers with the Regional Branch having jurisdiction over the workplace of the union members.

**Section 5. Service of notice.** — The party filing the notice shall serve the other party/ies with a copy/ies of the notice either through personal service or by registered mail/private couriers.

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

Any notice which does not conform with the procedural requirements of this and 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 6. Action on the Notice of Strike/Lockout** – Upon receipt of the notice with proof of service to the other party, the Regional Branch shall determine whether the submitted notice was completely and properly filled up, otherwise, the filer shall be informed and be required to complete the notice of strike/lockout form.

**Section 7. Cooling-off period and exception.** — In cases of bargaining deadlocks, the cooling-off period is thirty (30) days, while, in cases of unfair labor practices, the period is fifteen (15) days. However, in case of unfair labor practice involving the 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 the strike vote is conducted and the results thereof submitted to the Regional Branch of the Board, subject to the 7-day strike ban period.

The cooling-off period shall be reckoned from the date of receipt of the notice by the Regional Branch. In determining the period, the first day shall be excluded and the last day included.

**Section 8. Appearance.** — The parties shall personally appear during conferences.

**Section 9. Representative/s.** — The authorized representative/s of the parties must have the authority to bind the principal or his/her client or enter into an agreement with the other party.

## **RULE V**

### **Grounds and Issues**

**Section 1. Grounds for Strike and Lockout.** — A strike or lockout may be declared in cases of:

- a. deadlock in collective bargaining;
- b. unfair labor practice/s; and
- c. flagrant and/or malicious refusal to comply with the economic provisions of the collective bargaining agreement.

**Section 2. Identification of Issues.** — The Conciliator-Mediator assigned to a notice of strike shall, during the initial joint or separate meeting, properly identify and validate 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 ascertain with the parties the specific acts of unfair labor practice which were alleged to have been committed. He/she shall exert all efforts to enable the parties to settle the dispute amicably.

Only issues raised in the NS/L and validated during the initial conference shall be the subject of the NS/L. However, by agreement of parties, other issues not raised in the NS/L or during the initial conference may be discussed and deemed included as subject/s of the NS/L.

**Section 3. Action on Strikeable Issues.** — The Conciliator-Mediator shall take into account the applicable cooling-off period. He/she shall immediately schedule and conduct marathon conciliation conference/s to settle the dispute.

Though the determination as to whether the alleged violation/s of the economic provision/s of the CBA is/are flagrant and/or malicious is basically lodged in another forum, the Conciliator-Mediator shall proceed to extend conciliation/mediation services to the parties or advise the parties to use

other voluntary modes of dispute settlement such as voluntary arbitration or preventive mediation.

**Section 4. Action on Non-Strikeable Issues.** —the conciliator-mediator shall earnestly convince the party concerned to treat the notice of strike as preventive mediation or voluntarily withdraw the notice without prejudice to further conciliation in instances where the notice is anchored on any of the following grounds:

- a. Inter-union or intra-union dispute;
- b. Issues already brought to voluntary or compulsory arbitration;
- c. Mere violation of the collective bargaining agreement involving political provisions; or
- d. Labor standard violations.

The foregoing issue/s may be referred to the appropriate dole office or agency having jurisdiction over the issue/s.

On issues involving questions of representation, 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-Arbitrer at the Regional Office or on appeal with the Office of the Secretary. If such case is indeed pending, the Conciliator-Mediator, through the Branch Director H, shall promptly advise the DOLE Regional office or Office of the Secretary of the existence of the notice of strike filed before the Branch.

If, after verifying that no such case is pending before the DOLE regional office or the Office of the Secretary and the Conciliator-Mediator is fully convinced that the requesting union is duly registered with the DOLE, he/she shall advise the parties to file the necessary petition with the appropriate body.

**SECTION 5. Conversion of Notice Strike/Lockout to Preventive Mediation** — in converting a notice of strike or lockout to a preventive mediation case the following guidelines shall be observed:

- a. Clearly determine whether the issue/s raised is/are valid ground/s for NS/L;

- b. If conversion is warranted, a written recommendation from the Conciliator-Mediator handling the case is required, after due consultation with the Branch Director;
- c. The written recommendation must be formally endorsed to the Branch Director for approval;
- d. The conversion shall be done before the cooling-off period expires;
- e. Parties concerned must be formally notified of the action taken by the Regional Branch through a letter signed by the Conciliator-Mediator handling the case and approved by the Branch Director;
- f. The notice shall be dropped from the dockets and to be renumbered as a preventive mediation case; and
- g. A conference shall be immediately set by the concerned Conciliator-Mediator.

However, in cases where unresolved grievances are raised, the same shall be processed in accordance with section 6 of this Rule.

**Section 6. Action on Notices Involving Issue/s Cognizable by Grievance Machinery, Voluntary Arbitration or the National Labor Relations Commission.** - When it appears that the issues raised in the notice of strike or lockout are proper subjects of the grievance machinery, hence, not strikeable, the conciliator-mediator shall exert effort to convince the filer to withdraw the case and take them up instead in the grievance machinery/voluntary arbitration or compulsory arbitration. If the latter agrees, it shall be drawn up in the agreement that the resolution of the issues shall be referred to the grievance machinery, including the use of voluntary arbitration otherwise, the Conciliator-Mediator shall indicate in the minutes the refusal by the filer to withdraw and the basis for said position.

The Conciliator-Mediator shall exert earnest efforts to convince the parties to suspend cooling-off period.

## **Rule VI**

### **Strike or Lockout 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 board of directors/trustees of the employer corporation or association or the partners in a partnership obtained in a meeting called for the purpose.

**Section 2. Initiative or Request.** — The regional branch of the Board may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. All requests for the conduct of the strike/lockout balloting must be filed with the concerned regional branch of the Board at least twenty - four (24) hours before the date of voting.

The exercise of supervision over the strike vote balloting may include the following:

- a. Counter-checking of voters in the list of union members;
- b. Checking and signing of ballots to ensure that no markings would be used to identify the voter;
- c. Checking of voting paraphernalia like ballot box and tally sheets;
- d. Ensuring that the balloting is peaceful and orderly; and
- e. Addressing issues and concerns raised during the balloting.

The results of the strike voting should be submitted at the regional branch at least seven (7) days before the intended strike or lockout, subject to the cooling-off period.

**Section 3. Strike or Lockout Ban Period** - The strike ban period shall be counted seven (7) days from receipt of the results of strike/lockout vote. In determining the period, the first day shall be excluded and the last day included. Before the expiration of the strike/lockout ban period, the

conciliator-mediator may encourage the parties to conduct improved or reduced offer balloting.

**Section 4. Improved Offer.** — In case of an imminent strike, the regional branch of the Board may, at its own initiative or upon the request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer. In case of an actual strike, the balloting may be conducted on or before the 30<sup>th</sup> 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 re-admit them upon the signing of the agreement.

**Section 5. Reduced Offer.** — In case of an imminent lockout, the regional branch of the Board may conduct a referendum by secret balloting on the reduced offer of the union. In case of an actual lockout, the balloting may be conducted on or before the 30<sup>th</sup> day of the lockout. When at least a majority of the members of the Board of Directors or Trustees or the partners holding the controlling interest in the case of partnership vote to accept the reduced offer, the workers shall immediately return to work and the employer shall there upon readmit them upon the signing of the agreement.

**Section 6. Mechanics.** — In all instances, the Conciliator-Mediator shall conduct a pre-conference before the secret balloting, to thresh out the mechanics and to impress upon the parties that strike vote, or improved or reduced offer balloting is not in the nature of certification election wherein the usual legal procedures shall be applied.

## **Rule VII Final Agreement**

**Preparation of the Agreement.** — Extra care must be taken in drafting the Agreement in order to prevent doubtful or vague interpretation. The Conciliator-Mediator must see to it that the agreement is clear and concise and must contain all points of the parties' terms of settlement.

**Section 2. Implementation and Compliance.** — The conclusion of an agreement does not per se terminate the responsibility of the Conciliator-Mediator over the case. He/she must monitor the implementation and compliance therewith.



## RULE VIII Modes of Disposition

**SECTION 1. All conciliation cases shall be disposed of in accordance with the following modes of disposition:**

- a. **Settled Case (SC)** – refers to cases, whether preventive mediation, NS/L or AS/L where:
  - 1. Parties have identified and agreed to terms of settlement to resolve their labor dispute/s;
  - 2. Parties have agreed to submit the issue/s to voluntary arbitration; or
  - 3. Parties have agreed to refer back the issue/s to LMC or GM; or
  - 4. Parties have agreed to refer the issue/s to compulsory arbitration; or
  - 5. The filer withdrew the case; or
  - 6. When the filer failed to appear for 2 consecutive conferences for lack of interest.
  
- b. **Treated as Preventive Mediation (TPM)** – refers to cases where parties to a NS/L or actual strike or lockout agreed to discuss the issue/s through preventive mediation for possible settlement or the conversion by the Branch Director of non-strikeable issue/s.
  
- c. **Materialized to Notice of Strike or Lockout (MNS/L)** – refers to the preventive mediation case which was withdrawn by the filer and filed as NS/L within the same day.
  
- d. **Assumption of Jurisdiction (AJ)** – refers to a NS/L or actual strike or lockout cases assumed by the DOLE Secretary pursuant to law.

- e. **Certified for Compulsory Arbitration (CCA)** – refers to NS/L or actual strike or lockout cases certified by the DOLE Secretary to NLRC pursuant to law.
- f. **Actual Strike or Lockout (AS/L)** – refers to NS/L cases that matured into an actual strike or lockout.
- g. **Technical Assistance (TA)** – refers to the NS/L or AS/L cases involving companies that have ceased operation.
- h. **Dropped** – refers to NS/L or AS/L cases with issues which have been brought before a competent office/court/agency.

In AS/L where the strike was lifted but the issue/s remain unresolved, the same shall be subject of continuing discussions under the preventive mediation framework.

## **Rule IX Reporting Requirements**

**Section 1. Submission of Reports.** — All Conciliator-Mediators must regularly submit the necessary reports to the NCMB Executive Director IV through the Branch Directors.

## **RULE X Regional Inter-Agency Coordination and Monitoring Committee**

**Section 1. Regional Industry Inter-Agency Coordination And Monitoring Committee (RICMC).** – The RICMC shall act as the oversight committee that addresses the peace and order concerns in areas with ongoing labor disputes.

In the exercise of his/her sound judgement, the Conciliator-Mediator, through the Branch Director, may request for the convening of the RICMC to take an active role in the settlement of the labor dispute.

The RICMC shall take the lead in preserving jobs and exploring all remedies/avenues necessary and feasible to peacefully settle a potential or actual strike, picket, lock-out, or any labor dispute.

The RICMC shall also identify issues and recommend possible solutions and options to disputing parties through the Conciliator-Mediator; maintain open communication lines with the workers and management representatives through special dialogue and exhaustive conciliation-mediation, with NCMB as lead agency; and facilitate a tripartite social accord to govern the conduct of all parties involved in a labor dispute pursuant to Section 7 of the Joint DOLE-PNP-PEZA Guidelines.

**Section 2. Composition of the RICMC.** – Members of the RICMC shall be the following:

A. Core Members:

1. DOLE Regional Office;
2. National Labor Relations Commission (NLRC);
3. National Conciliation and Mediation Board (NCMB);
4. Philippine National Police (PNP);
5. Armed Forces Of The Philippines (AFP); and
6. Regional Tripartite Wages and Productivity Board (RTWPB).

B. Other Members – the following may likewise be invited to facilitate settlement of the dispute:

1. Philippine Overseas Employment Administration (POEA);
2. Overseas Workers Welfare Administration (OWWA);
3. Occupational Safety And Health Center (OSHC);
4. Employees Compensation Commission (ECC);
5. Philippine Economic Zone Authority (PEZA);
6. Concerned national line agency (i.e., DOH, DTI, DOTC, ETC.);

7. Employer association where the establishment is a member;
8. Philippine Association of Detective & Protective Agency Operators (PADPAO); and
9. Local Government Units (LGU).

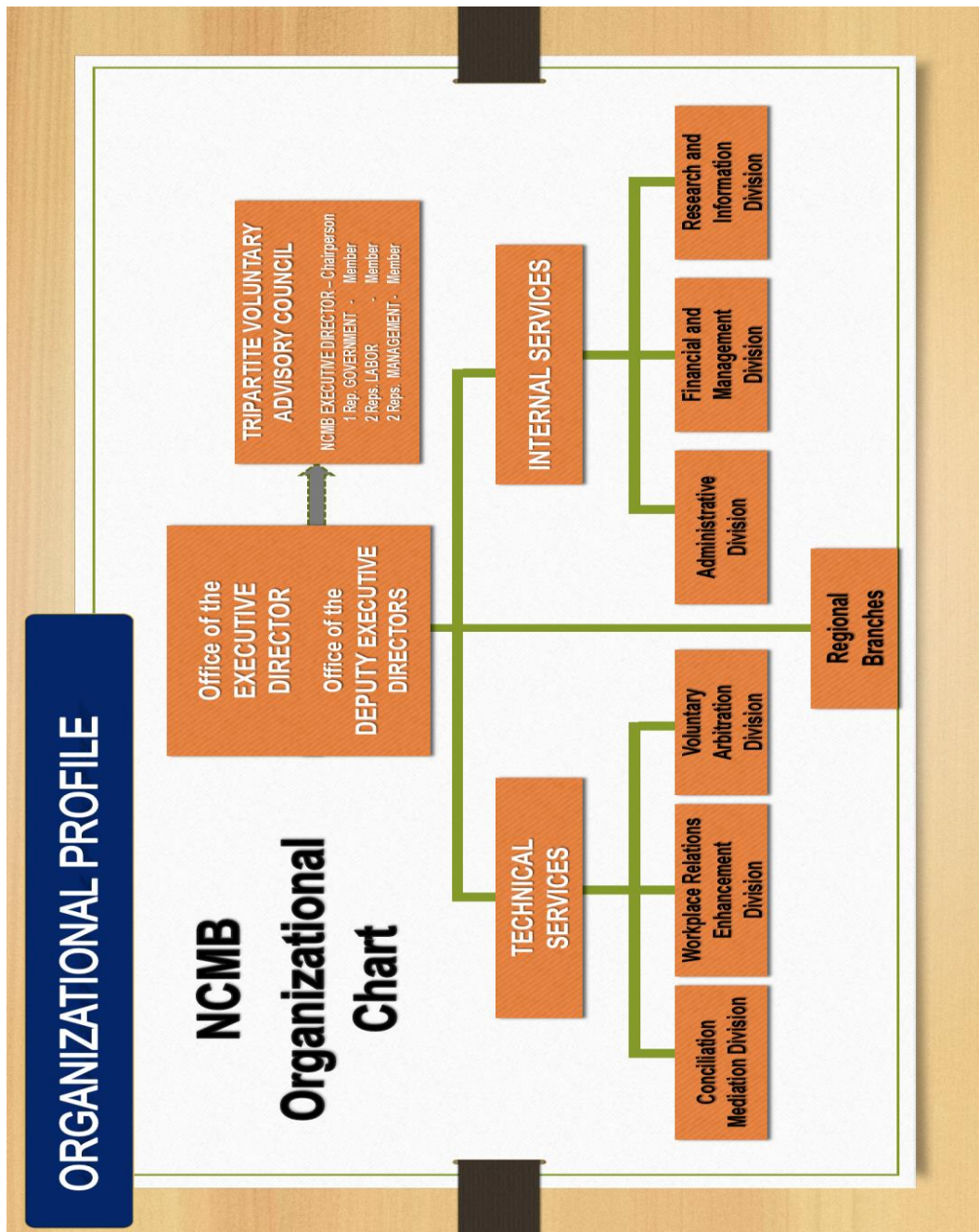
**RULE XI**  
**Assumption of Jurisdiction**

**Section 1. Assumption of Jurisdiction** – Assumption of Jurisdiction of labor dispute which causes or likely to cause a strike or lockout in an industry indispensable to the national interest will be subject to the rules enunciated in Department Order No. 40-H-13, series of 2013, or any other rules/laws on assumption of jurisdiction that may be issued.

15 December 2017

  
**SHIRLEY M. PASCUAL, CESO III**  
Executive Director IV

# Annex "A" - NCMB Organizational Chart



## **Annex “B” - Directory**

### **NCMB - CENTRAL OFFICE**

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