FIFTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

SENATE
OFFICE OF THE SECRETARY
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10 JUL -7 A9 :20

S E N A T E

Senate Bill No. 529 RECEIVED BY:

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The evolution of mechanisms designed to resolve industrial and labor disputes from the Court of Industrial Relations established under CA No. 103 (1936) to the current system under the Labor Code (P.D. No. 442 as amended) has resulted in a web of intricate and often overlapping jurisdictions which is continuously plagued by perceptions of inefficiency, ineffectiveness and corruption. The present proposal argues in favor of a holistic and comprehensive approach to the problems besetting our industrial and labor dispute resolution system. In essence, the following are the key issues which the proposed new system of industrial and labor dispute resolution addresses:

1. As the system of resolving industrial and labor disputes developed, we observe a gradual shift from court-situated adjudication to the introduction of mediation and voluntary arbitration as means to bring the outcome of industrial and labor disputes closer to the desires and needs of the parties involved. And yet, as it stands, industrial and labor disputes are still resolved by compulsory arbitration either at the National Labor Relations Commission (NLRC), by the Secretary of Labor and Employment, and even by the inappropriately named system of voluntary arbitration. Methods of alternative dispute resolution (ADR) remain footnotes to the whole dispute resolution process, particularly as they are given merely a token significance at the labor arbiter's level. This, notwithstanding that industrial and labor disputes are arguably the most fertile ground in which ADR may bear fruit.

Hence, even if ADR is more thought out and emphasized in agencies such as the National Conciliation and Mediation Board (NCMB), ADR remains at the fringes of the Philippine industrial and labor dispute resolution system. **Hence, there is a need to bring ADR processes into the forefront of and embed it at the core of the State mechanism designed to address industrial and labor disputes. Corollarily, there is a need to formulate and implement ADR processes intelligently and comprehensively, thus maximizing its benefits to the stakeholders in particular and to the State in particular.**

2. Through the introduction of piecemeal amendments to the industrial and labor dispute resolution process, our current system is now characterized by multiple venues, a large bureaucracy and often confusing rules regarding jurisdiction and procedure. The Department of Labor and Employment classifies labor disputes into disputes between:

1.) the employer and its employees or employee's organizations'
2.) two associations of employees; and

3.) members of employees' organizations
Further, the Department categorizes these disputes into three:

- **Labor Standard Disputes** include non-payment or under-payment of wages and wage-related benefits and violations of health and safety standards.

- **Labor Relations Dispute** include employee discipline or dismissals, unfair labor practices, disputes arising from the right of unions to represent employees for purposes of bargaining, bargaining deadlocks, strikes and lockouts, contract administration, and personnel policy disputes.

- **Welfare and Social Legislations Disputes** refer to claims arising from failure of the employer to comply with its social and welfare obligations under the law, such as remittance of SSS premiums and ECC contributions, or failure to pay social benefits including maternity pay, medicare and disability compensation.

Persons intending to file a claim regarding any of the issues above must sort through a virtual maze of agencies to which she may be directed. According to the Department:

- Labor Standards Disputes, including simple money claims not exceeding P5,000.00, which arises out of employee-employer relations are referred to the Regional Office (RO) of the DOLE.

- Labor Relations Disputes, particularly illegal dismissals with or without claim for reinstatement, unfair labor practices, strikes and lockouts and claims of damages are referred to the labor Arbiter in the Regional Arbitration Branches of NLRC.

- Union Representation are referred to the Med-Arbiter of the DOLERO

- Intra-Union Disputes and Cancellation of Union Registration are referred to the DOLE-RO or the Bureau of Labor Relations.

- Bargaining Deadlocks Needing Conciliation and Mediation are referred to the Regional Branches of NCMB.

- CBA Administration Disputes Involving Personnel Policies are referred to the Grievance Machinery at the establishment, if any, then with the regional branches of the NCMB.

- Social Legislation Disputes are referred to the Regional Branches of the ECC or the SSS.

It is observed that the multiplicity of venue which marks our current system is not by design nor was intentional **in** any way. On the contrary, the intricate system we have is the result of a lack of design and need of a well considered plan. In essence, we have failed to ask why we have such a system and more basic, can we not have a single entry point for all industrial and labor disputes? **Hence, there is a need to rethink the current system of resolving industrial and labor disputes in order to promote simplicity and minimize the bureaucracy which needs to support it.** This will address the pervading confusion in jurisdictions of the present system. **There is a need to create a system where stakeholders can take their issues to a single agency which**

has the requisite expertise to address the distinct dynamics and characteristics of industrial and labor disputes.

3. The speed (or lack thereof) by which industrial and labor disputes are resolved is a function of the efficiency of our dispute resolution mechanism. Currently, simple labor cases may take five to seven years to go through the present system from the plant level to the Supreme Court and to execution. **Hence, there is a need to expedite the manner by which industrial and labor disputes are resolved. Opportunities for delay and hence, corruption, should be minimized and appeals, while necessary, should be limited to petitions for certiorari before the Supreme Court. Needless to say, the matter of delay could also be addressed by a system of mediation designed to reduce the number of claims reaching arbitration.**

For these reasons, a new system of resolving industrial and labor disputes is proposed. Building on concepts already in place, the proposed scheme is characterized by the following changes:

1. Single entry. All industrial and labor disputes are to be brought to a single agency, the newly created National Mediation and Arbitration Board (NMAB).

2. Mediation as the backbone. All claims brought to the NMAB shall be subject to mediation efforts conducted by persons hired and trained specifically for that purpose. This is a great departure from the present system where mediation is perfunctorily performed by arbiters and even untrained assistants. Mediation proceedings are, as they should be, kept confidential. This is a far cry from the present system where mediation is entrusted to the person who is subsequently to decide the same case. Only where mediation fails to help the parties reach an agreeable settlement are claims brought before arbitration.

3. Professional Arbitration. Arbitrators should be familiar with employer - employee issues though they need not be lawyers. Arbitrators shall be accredited and named in a list kept by the Department of Labor and Employment. A selection process allows parties to entrust their cases to arbitrators who have shown competence and probity over time.

4. Direct recourse to the Supreme Court. Arbitral Awards shall be final and executory except by petition for certiorari before the Supreme Court. While each of the above features is in itself a big step forward beyond the Present system, the strength of the present proposal lies in the integration of all these features into a single and united whole, with each part designed to complement the others as well as the sum.

Hence, the support of this bill is earnestly sought.

JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
TO ENHANCE THE PHILIPPINE INDUSTRIAL AND LABOR DISPUTE SETTLEMENT SYSTEM AND FOR THAT PURPOSE, AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442 OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. ***Short Title.*** This Act shall be known as the **INDUSTRIAL AND LABOR DISPUTE SETTLEMENT ACT of 2010.**

SEC. 2. ***Declaration of Policy.*** Article 211 of the Labor Code shall be repealed and replaced as follows:

Article 211. Declaration of Policy. A. It is the policy of the State:

(a) To promote and emphasize the primacy of free collective bargaining and negotiations AND THE USE OF ALTERNATIVE MODES OF DISPUTE RESOLUTION, INCLUDING MEDIATION, as modes of settling industrial or labor disputes;

(b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;

(c) To foster the free and voluntary organization of a strong and united labor movement;

(d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;

e) To provide an adequate administrative machinery for the expeditious settlement of industrial and labor disputes;

f) To ensure a stable but dynamic and just industrial peace; and

g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

SEC. 3. *Definitions.* Article 212 of the Labor Code shall be repealed and replaced as follows:

Chapter II
DEFINITIONS

Article 212. Definitions.

a) "Alternative Dispute Resolution" and "ADR refer to any process or procedure used to resolve a dispute or controversy other than by adjudication of a judge of a court or tribunal in which a neutral third party participates to assist in the resolution *of* issues, which includes arbitration, mediation, early neutral evaluation, mini-trial, or any combination thereof.

b) "Arbitral Award" means any final decision by an arbitrator in resolving the issue in an industrial or labor controversy.

c) "Arbitration" means a voluntary dispute resolution process in which one or three arbitrators, appointed in accordance with this Code, resolve an industrial or labor dispute, consistent with the Code, by rendering an award.

d) "Arbitrator" refers to the person chosen according to this Code to render an award in an appropriate industrial or labor dispute.

e) "Bargaining representative" means a legitimate labor organization the members of which may or may not be employed by the employer.

f) "Bureau" means the Bureau of Labor Relations and/or the Labor Relations Divisions in the regional offices.

g) "Board" refers to the National Mediation and Arbitration Board.

h) "Claimant" or "Complainant" refers to any party who files a claim with the Board in accordance with the Code.

i) "Contempt" refers to either direct or indirect contempt and, as used in this Act, may call for the suppletory application of the pertinent provisions of the Rules of Court.

j) "Company union" means any labor organization whose formation, function or administration has been assisted by any act defined as unfair labor practice by this Code.

k) "Council" refers to the Tripartite Industrial Peace Council under Executive Order No. 49 series of 1998, and Executive Order No. 97, series of 1999.

l) "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 employer.

m) "Employee" includes any person in the employ of an 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 of or in connection with any current industrial or labor dispute or because of any unfair labor practice.

n) "Industrial and labor dispute" includes any controversy or matter concerning terms and 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 the disputants stand in the proximate relation of employer and employee.

o) "Internal union dispute" 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 any violation of the rights and conditions of union membership provided for in this Code.

p) "Labor organization" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.

q) "Legitimate labor organization" means any labor organization duly registered with the Department of Labor and Employment, and includes any branch or local thereof.

r) "Lockout" means any temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.

s) "Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within an of the above definitions are considered rank-and-file employees for purposes of this Book.

t) "Mediation" refers to the process defined by the Code in which a mediator, selected according to the Code, facilitates communication and negotiation, and assist parties in reaching a voluntary agreement regarding an industrial or labor dispute.

u) "Mediators" refers to a person who conducts mediation.

v) "Respondent" refers to any party against whom a claim has been filed in accordance with this Code.

w) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or industrial and labor.

x) "Strike area" means the establishment, warehouses, depots, plants or offices, including the sites or premises used as runaway shops, of the employer struck against, as 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.

y) "Strike-breaker" means any person who obstructs, impedes, or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining.

z) "Unfair labor practice" means any unfair labor practice as expressly defined by the Code.

SEC. 4. *Dispute, Resolution System.* Article 213 of the Labor Code shall be repealed and replaced as follows:

Title II
RESOLUTION OF INDUSTRIAL AND LABOR DISPUTES

Article 213. A. The National Mediation and Arbitration Board. There shall be a National Mediation and Arbitration Board which shall be attached to, administered, and supervised by the Department of Labor and Employment, composed of an Executive Director and four (4) Deputy Executive Directors. The Executive Director shall exercise supervision over all personnel of the Board, including mediators and arbitrators. The Board shall also be composed of as many mediators, sheriffs, and staff members as shall be necessary for its effective operations.

The Board shall have its main office in Metropolitan Manila and shall establish as many branches as there are administrative regions in the country, with as many mediators for each branch as shall be necessary for their effective operations. Each branch of the Board shall be headed by an Executive Mediator who shall be appointed by the Executive Director.

B. The Executive Director and Deputy Directors. The Executive Director shall be appointed by the President for a term of three (3) years upon recommendation of the Secretary of Labor and Employment. Workers' groups represented in the Tripartite Industrial Peace Council shall submit a list of six (6) names to the President who shall choose two persons from the list to serve as Deputy Executive Directors of the Board. Likewise, employers' groups represented in the Tripartite Industrial Peace Council shall submit a list of six (6) names to the President who shall choose two persons from the list to serve as Deputy Executive Directors of the Board. Each Deputy Executive Director shall serve for a term of three (3) years.

The Executive Director shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits, including retirement, to that of a Justice of the Court of Appeals. Each Deputy Executive Director shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits, including retirement, to that of an Assistant Secretary of the Department of Labor and Employment. In no case, however, shall the provision of this article result in the diminution of existing salaries, allowances and benefits of the aforementioned officials.

C. Mediators. Each Mediator shall be appointed by the Secretary of Labor and Employment, provided that the Secretary shall ensure that at least thirty percent (30%) of all mediators females and provided further, that each mediator should:

1) have at least five (5) years of experience in handling industrial or labor matters; and

2) have at least one hundred twenty (120) hours of relevant training on alternative dispute resolution given by an institution accredited by the Board or by the Office for Alternative Dispute Resolution created under Republic Act No. 9285;

3) after being appointed, undergo regular training on alternative dispute resolution given by an accredited institution of the Board or by the Office for Alternative Dispute Resolution created under Republic Act No. 9285.

Mediators shall hold office during good behavior until they reach 65 years of age or unless sooner removed for violation of their duties under law or rules or become incapacitated to discharge the duties of their office.

The Secretary of Labor and Employment shall formulate and issue a Code of Conduct for Mediators in Industrial and Labor Disputes which shall provide for the standard of conduct expected of all Mediators of the Board in discharging their duties. Violation of said Code of Conduct shall be ground to dismiss a Mediator from office.

D. Arbitrators. Arbitrators shall not be permanently employed by the Board and shall render service and receive compensation only in case of actual arbitration of an industrial or labor dispute. Arbitrators may be called upon by the Board to arbitrate an industrial or labor dispute provided that they are listed in the Department's official list of Arbitrators. For this purpose, the Board shall maintain a list of accredited arbitrators which shall be reviewed annually by the Board.

In addition to procedures and requirements determined by the Secretary, accreditation shall ensure that arbitrators are persons of distinction in whom employers, employees, employees' groups and the government can have confidence. Arbitrators should have at least five (5) years of experience in handling industrial or labor matters. They shall have no personal or financial interest in the results of the proceedings in which they are appointed and shall have no relation to the underlying dispute or to the patties or their counsel that may create an appearance of bias.

The Secretary of Labor and Employment shall formulate and issue a Code of Conduct for Arbitrators in Industrial and Labor Disputes which shall provide for the standard of conduct expected of all Arbitrators of the Board in discharging their duties. Violation of the Code of Conduct for Arbitrators, including failure to issue an award within the mandatory period, shall constitute sufficient ground to revoke his accreditation as an arbitrator. The Code shall identify that conduct which may be grounds to remove and replace an arbitrator from a particular dispute which he has already accepted to arbitrate.

E. Staff. The Secretary of Labor and Employment shall, in consultation with the Executive Director, appoint the staff and employees of the Board and its regional branches, including sherrifs, as the needs of the service may require, subject to the civil service law, rules, and regulations, provided that the Secretary shall ensure that at least thirty percent (30%) of the staff so appointed shall be female.

The Secretary shall formulate and issue a Code of Conduct for sheriffs and staff in Industrial and Labor Disputes which shall provide for the standard of conduct expected of all sheriffs and staff of the Board in discharging their duties.

SEC. 5. *Functions and Powers of the Board.* Article 214 of the Labor Code shall be repealed and replaced as follows:

ART. 214. Functions and Powers of the Board. - The Board shall have the power and authority:

(a) To promulgate rules and regulations governing the mediation and arbitration of disputes before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code;

(b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and others as may be material to the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Code;

(c) In arbitration, to proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, and in mediation and arbitration, to conduct investigation for the determination of a question, matter or controversy within its jurisdiction, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity whether in substance or in form, and give all such directions as it may deem necessary or expedient in the determination of the dispute before it; and

(d) To hold any person in contempt directly or indirectly and impose appropriate penalties therefor in accordance with law and the Rules of Court.

(e) In appropriate cases and according to this Code, to enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any industrial or labor dispute.

(f) At any time during working hours, conduct an ocular inspection on any establishment, building, ship, or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer, or any person, as the case may be, for any information or data concerning any matter or question relative to the object of the investigation.

SEC. 6. *Jurisdiction.* Article 215 of the Labor Code shall be repealed and replaced as follows:

Article 215 . Claims cognizable by the Board. The Board shall have original and exclusive jurisdiction to mediate and arbitrate all industrial or labor disputes including the following:

1. Claims involving wages, rates of pay, hours of work and other terms and conditions of employment;

2. Claims for any sum of money, regardless of amount;

3. Claims of illegal or ineffectual termination or suspension;

4. Claims for actual, moral, exemplary and other forms of damages, as well as interest, attorney's fees, and costs of litigation arising from employee-employee relations;

5. Claims under Section 10 of Republic Act No. 8042;

6. Claims of legitimate labor organizations against other labor organizations;

7. Claims against labor organizations made by their members or other interested parties;

8. Claims arising from bargaining deadlock;

9. Claims of unfair labor practice;

10. Claims arising from any violation of Article 264 of this Code, including claims
involving the legality of strikes and lockouts;

11. Claims of any violation of a collective bargaining agreement including those arising from the interpretation or implementation of the collective bargaining agreement;

12. Claims arising from the interpretation, implementation, or enforcement of company personnel policies or similar rules, including disputes which are not resolved even after going through the appropriate grievance procedure;

13. Any other claims arising from an employer-employee relationship;

14. Claims involving injunction and temporary restraining orders arising from the disputes enumerated herein.

No dispute, claim, complaint, or petition, including those for restraining orders or injunctive relief, arising out of, related to, or involving the above disputes shall be heard or decided by any other court or tribunal, except by the Supreme Court which may give due course to a petition for certiorari involving an arbitral award.

However, claims within the exclusive jurisdiction of the Employee's Compensation Commission (ECC) or the Social Security System (SSS) are excluded from the coverage of this Article. Likewise, registration of labor organizations and proceedings to determine majority representation among employees shall continue to be filed with the appropriate Regional Office and shall not be within the jurisdiction of the Board as herein defined.

SEC. 7. *Mediation.* Article 216 of the Labor Code shall be repealed and replaced as follows:

Article 216. A. Immediate referral to Mediation. All disputes filed with the Board shall immediately be referred to a mediator who shall mediate between the parties for a period not exceeding sixty (60) calendar days from the date of the initial conference without extension. After a claim is filed, the Board shall set the case for preliminary conference and a notice to the parties thereof shall be sent not later than five (5) days after referral to a mediator.

The mediator shall be chosen by the Board upon considering the nature and complexity of the claims as well as the preferences of the parties, if known. One (1) mediator will be appointed unless the Board determines otherwise.

In all disputes, no person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias. Upon receipt of such information, the Board shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the Board will appoint another mediator. The Board is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

Process of Mediation.

1. **Representation.** Any patty may be represented by a person of the party's choice. The names and addresses of such persons shall be communicated by the respective parties in writing to all parties and to the Board.

2. **Date, Time, and Place of Mediation.** The mediator shall fix the date and the time of each mediation session. The mediation shall be held at the appropriate regional office of the Board, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

3. **Identification of Matters in Dispute.** The mediator shall exercise complete control over all mediation proceedings in pursuit of a just, adequate, and speedy agreement between the parties. During the first hearing, the mediator shall identify the issues involved and the respective opinions of the parties thereto. The parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. For this purpose, the mediator may issue subpoenas *duces tecum* and subpoenas *ad testificandum* to require the production of necessary documents, property, or persons and may cite persons in violation of such orders in contempt.

4. **Authority of Mediator.** The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree,. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator may seek the agreement of the parties to resort to various methods of ADR including the following:

Open Door Policy – Employees are encouraged to meet with their immediate supervisor or manager to discuss problems arising out of the workplace environment. In this case, the mediator may request the presence of any person necessary to the resolution of the dispute.

Ombuds A neutral third party (either from within or outside the company) is designated to confidentially investigate and propose settlement of employment complaints brought by employees. In this case, the mediator may engage a

neutral third party to investigate the claims and render a non-binding finding thereon.

Internal Mediation: A process for resolving disputes in which a neutral third person from within the company, helps the disputing parties negotiate a mutually acceptable settlement. For this purpose, the mediator may request employees and/or managers from within the same company to help mediate the dispute.

Peer Review. A panel of employees (or employees and managers) works together to resolve employment complaints. In this regard, mediators may request employees and/or managers from other companies to investigate the dispute and render non-binding findings thereon.

Mediators shall endeavour to involve employees and managers who are from the same or similar industry. In all cases, mediators shall take all necessary steps to preserve the confidentiality of the dispute. Employees are encouraged to meet with their

The mediator is authorized to end the mediation upon the execution of a settlement agreement by the parties which shall be duly attested by the mediator. Any settlement reached by the parties duly attested by the mediator shall be immediately binding between the parties and may be enforced and executed as provided according to Article 221.

The mediator is authorized to end the mediation by a written declaration of a party or parties to the effect that the mediation proceedings are terminated or whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

5. Privacy. Mediation sessions are private. The parties and their representatives may attend mediation sessions but other persons may attend only with the permission of the parties and with the consent of the mediator.

6. Confidentiality. Mediation proceedings shall be considered confidential and information obtained therein shall not be published or disclosed to third parties except (i) with the consent of the parties, or (ii) when necessary in cases where the dispute is referred to arbitration or where resort to the Supreme Court under Article 220.

The confidentiality of the proceedings shall include communications to or from the mediator and all records, reports, or other documents received by a mediator while serving in that capacity. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

Any violation of the confidentiality of the proceedings shall be subject to the following sanctions:

1) Without prejudice to the following paragraph, administrative action or proceeding to be conducted by the Board, with proper notice and hearing, for inhibition or prohibition from appearing as mediator, arbitrator, counsel or representative for any party in any case before the Board for a period to be determined by the Board;

2) if the violator is a professional, administrative/disciplinary action before the appropriate authority, including the Supreme Court and Professional Regulation Commission (PRC), at the instance of any party or of the Board.

SEC. 8. *Referral to Arbitration.* Article 217 of the Labor Code shall be repealed and replaced as follows:

Article 217. Referral to Arbitration. In case of failure of mediation, the mediator shall accomplish a report to this effect and automatically refer the case to Arbitration, except if all parties express in writing their refusal to arbitrate. In case any of the parties fail or refuse to participate in the mediation, the participating parties can choose to declare a failure of mediation, in which case such participating parties can decide either to refuse or proceed to arbitration.

For purposes of this Title, there is a failure of mediation in any of the following cases:

(1) Where parties fail to reach an amicable settlement after the lapse of sixty (60) calendar days from the date of the initial mediation conference;

(2) Regardless of paragraph (l), where any party necessary to reach a complete settlement of the claim fails or refuses to participate in the mediation; or

(3) Regardless of paragraph (l), where the mediator reaches the conclusion that the parties will not reach an amicable settlement or that further efforts at mediation are no longer worthwhile.

In all cases, there may be a failure of mediation with regard only some or not all of the claims brought to mediation. In this case, failure of mediation may be declared only with regard the unresolved claims.

SEC. 9. *Arbitration.* Article 218 of the Labor Code shall be repealed and replaced as follows:

Article 218. A. Start of Arbitration. Arbitration is deemed commenced from the time that the Board issues a report declaring a failure of mediation, except in cases where all parties or, in appropriate cases, participating parties decide not to proceed to arbitration.

B. Number of Arbitrators. The parties may agree on the number of arbitrators which shall be one (1) or three (3). If the parties cannot agree on the number of arbitrators or in case any party fails or refuses to participate in the proceedings, the Board shall consider the nature and complexity of the case in determining whether to assign one or three arbitrators to the dispute.

C. Selection of Arbitrator.

1. Arbitrator of Choice. If there is to be only one (1) arbitrator, the person freely chosen by all the parties shall arbitrate the claims, provided that such person remains in good standing in the Department's official list of arbitrators. If the claim is to be referred to three (3) arbitrators, the claimant shall name one (1) arbitrator and the respondent shall name one (1) arbitrator. The third arbitrator who shall serve as the Chairperson shall be chosen according to the procedure

pertaining to no arbitrator of choice. All three (3) arbitrators should remain in good standing in the Department's official list of arbitrators.

2. *No Arbitrator of Choice,* If the parties cannot agree on an Arbitrator within five (5) days after the mediator determines a failure of mediation, the Board shall send to the parties a list of not less than nine (9) names of arbitrators in good standing in the Department's official list of arbitrators. Each name shall be accompanied by a brief statement of their respective qualifications and experience and their business or professional connections. The list shall be accompanied by a summons from the Board to appear at a meeting at which the parties shall be given an opportunity to select one (1) arbitrator of choice. In cases where a temporary or permanent injunction is prayed for, the Board shall immediately call the parties to a meeting at which the parties shall be given an opportunity to select three (3) arbitrators of choice.

At that meeting, if the parties still cannot identify a common choice, each party shall proceed to select the arbitrator in the following manner:

1) The claimant shall strike out one name from the list.
2) Then, the respondent shall strike out one name from the list.
3) The process is repeated until only one name is left in the list.
4) Such remaining person shall be the appointed Arbitrator of the claim.

Any party who has been duly summoned to the meeting for the selection of arbitrators but fails to attend the meeting for any reason shall be bound by the choice of arbitrator made during that meeting.

3. *Multiple Claimants with Common Claims.* If there are more than one claimant but with similar or common claims, the claimants must choose one person among them to represent them in determining the arbitrator. For this purpose, the claimants may choose to be represented by counsel.

4. *Multip/e Respondents.* In case there is more than one respondent against whom common claims are made, they must choose a person among them who will represent them in determining the arbitrator.

D. Acceptance of Appointment. The Arbitrator shall, before entering upon the duties of the office, sign a Statement which shall be filed with the Board and a copy thereof provided to each party. The statement shall include a sworn acceptance by the arbitrator of the particular case assigned to him and an oath to decide it according to the Constitution and the law.

E. Challenge of Arbitrators. (1) No later than ten (10) days after the identification of the arbitrator, all parties may jointly challenge the arbitrator by communicating their challenge to the Board in writing. Upon receipt of a joint challenge, the Board shall replace the arbitrator and a new one chosen in accordance with Article 218.

(2) No later than ten (10) days after the arbitrator has been identified, any party may challenge the arbitrator by communicating his challenge to the Board in writing. Such challenge should be based on the grounds for disqualification specified under the Code of Conduct for Arbitrators formulated by the Secretary. Within ten (10) days of receiving the challenge, the Board shall replace the arbitrator or communicate the challenge to the other parties. Any of the other parties may oppose the challenge by written opposition addressed to the Board within ten (10) days from receipt of the communication regarding the challenge. It

shall be absolutely mandatory for the Board to decide on the challenge within twenty five (25) days after receiving the challenge.

This decision shall be interlocutory and not appealable. If the retained, the arbitrator shall proceed with arbitration proceedings. If the arbitrator is arbitrator is replaced, the parties shall choose another arbitrator according to Article 218. In every case, any party may exercise the privilege of challenge only once, provided that for this purpose, multiple parties shall be considered as one party.

SEC. 10. *Arbitration Procedure.* Article 219 of the Labor Code shall be repealed and replaced as follows:

Article 219. Procedure of Arbitration.

A. Disclosure. At the first hearing, the arbitrator shall disclose all information that might be relevant to preserving neutrality, including but not limited to service as an arbitrator in any past or pending case involving any of the parties and/or their representatives. The arbitrator shall also disclose how long he will take to decide the case at hand subject to the limitations as to time under Article 220.

B. Determinations. At the first hearing, the arbitrator shall exert all efforts to explore and resolve matters that will expedite the arbitration proceedings. In particular, the arbitrator must determine the following:

1. the issues to be arbitrated;
2. the date, time, place and estimated duration of the successive hearings;
3. the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
4. the stipulations and declarations regarding facts, exhibits, witnesses and other issues;
5. the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
6. the need for a stenographic record;
7. the form of the award;
8. the allocation of attorney's fees and costs;
9. any other issues relating to the subject or conduct of the arbitration;

C. Technical rules not binding on proceedings. - The arbitrator shall exercise complete control over all arbitration proceedings to ensure a speedy, adequate, and just disposition of the disputes and cases submitted to him for resolution. In any proceeding before the Board and any of its arbitrators, the rules of evidence prevailing in courts of law or equity shall not be controlling and arbitrators shall, consistent with due process and the provisions of this Article, use every and all reasonable means to ascertain the facts in each case speedily and with utmost neutrality.

Unless all parties expressly agree in writing to do otherwise, the arbitrator shall require simultaneous submission of position papers to which shall be attached the affidavits of the parties' respective witnesses as well as such relevant documents which they shall identify to support their respective declarations. Thereafter, the parties shall be allowed to submit their respective replies accompanied by affidavits containing rebuttal testimony and supporting documents.

In all cases, the affidavits submitted by the parties shall constitute the direct testimonies of the persons who executed the same. All affiants may be subjected to cross-examination, redirect, or re-cross examination by the arbitrator *motu proprio* or by any appropriate party upon motion. The affidavit of any affiant who fails to testify shall not be considered as competent evidence for the party presenting the affidavit. However, the adverse party may utilize the same for any admissible purpose.

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. The arbitrator shall have the authority to issue subpoenas *duces tecum* and subpoenas *ad testificandum* to require the production of documents, evidence, or persons to give testimony relevant to the dispute. He shall also have the authority to administer oaths to witnesses.

All parties to the dispute must attend the arbitration proceedings on pain of contempt. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the arbitrator.

D. Discovery. Throughout the proceedings, the arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration and applying suppletorily the pertinent provisions of the Rules of court.

E. Inspection or Investigation. An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall advise the parties thereof. The arbitrator shall set the date and time of the inspection and shall notifv the parties accordingly. Any party who so desires may be present during the inspection or investigation. In the event that one or all parties are not present during the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

SEC. 11. *Award.* Article 220 of the Labor Code shall be repealed and replaced as follows:

Article 220. Award. Unless the parties expressly agree otherwise in writing, it shall be mandatory for the arbitrator to render an award within ninety (90) calendar days from the date of his acceptance of the arbitration. Failure on the part of the arbitrator to issue an award or decision within the stipulated period shall constitute sufficient ground to revoke his accreditation as an arbitrator. The award or decision of the arbitrator shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and may only be brought before the Supreme Court through a special civil action for certiorari. The arbitrator shall entertain no motion for reconsideration or appeal.

SEC. 12. *Execution.* Article **221** of the Labor Code shall be amended to read as follows:

Article 221. Execution. Settlement agreements or Arbitral awards resulting from mediation or arbitration proceedings in this Title may be enforced by any interested party by motion directed to the Board. Upon such motion, the Board, through the Executive Director or his authorized representative, may issue a writ of execution on a settlement agreement or arbitral award within five

(5) years from the date it was reached or becomes final and executory, requiring the sheriff or authorized person of the Board to execute the settlement agreement or arbitral award. In any case, it shall be the duty of the responsible officer to immediately furnish the counsels of record and the parties with copies of said settlement agreement or arbitral award. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

SEC. 13. ***Representation.*** Article 222 of the Labor Code shall be amended to read as follows:

Article 222. Representation. Parties should personally appear before the Board and any of its mediators or arbitrators provided that juridical persons may be represented by any person specially authorized in writing to do so proceeding before the Board or any of its mediators or arbitrators, non-lawyers shall be allowed to represent any party in the following cases:

1) he is representing himself;
2) he is representing a legitimate or registered corporation or belongs to a legitimate labor organization;
3) he is authorized under the student practice rule under Rule 138-A of the Rules of court.

Within one year from the effectivity of this Act, the Secretary shall formulate the rules regarding the partlcipation, representation, and appearance of paralegals in labor and industrial disputes, including the formulation of rules for the accreditation of such paralegals for these and other purposes.

SEC. 14. ***Injunctions.*** Article 223 of the Labor Code shall be repealed and replaced as follows:

Article 223. Injunctions. To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any industrial or labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party, a petition for injunction or petition for mandatory injunction may be filed with the Board and the same shall automatically be referred for arbitration to a panel of three (3) Arbitrators, chosen in accordance with Article 218, *Provided,* that no temporary or permanent injunction in any case involving or growing out of a industrial or labor dispute as defined in this Code shall be issued except upon a unanimous decision of the panel and only after the posting of the necessary bond and hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath and testimony in opposition thereto, if offered.

Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Board shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed, charged with the duty to protect complainant's property: provided, however, that if the party praying for a restraining order or injunction shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant3 property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Board in issuing a temporary injunction upon

hearing after notice and only after both parties are given ample opportunity to cross examine one another's witnesses. Such a temporary restraining order shall be effective for no longer than ten (10) days and shall become void at the expiration of said ten (10) days.

No such temporary restraining order or temporary injunction shall be issued except on condition that the petitioning party shall first file an undertaking with adequate security in an amount to be fixed by the Board sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Board.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the party seeking an injunction and the surety upon which an order may be rendered in the same suit or proceeding against said party and surety, upon a hearing to assess damages, of which hearing, the party seeking an injunction and surety shall have reasonable notice, the said party and surety submitting themselves to the jurisdiction of the Board for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity: provided, further, that the reception of evidence for the application of a writ of injunction may be delegated by the Board to any panel consisting of three (3) Arbitrators chosen according to Article 218 who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Board.

SEC. 15. *Grievance Machinery.* Article 260 of the Labor Code shall be amended as follows:

ART. 260. Grievance machinery and voluntary arbitration. - The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to THE BOARD FOR MEDIATION.

[For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.]

SEC. 16. ***Abolition of the National Labor Relations Commission and the National Conciliation and Mediation Board.*** The existing National Labor Relations Commission and National Conciliation and Mediation Board are hereby abolished. All unexpended funds, properties, equipment and records of the NLRC and NCMB, and such of its personnel as may be necessary, as determined by the Secretary of Labor and Employment, are hereby transferred to the Board and to its regional branches. Personnel not absorbed by or transferred to the Board shall enjoy benefits granted under existing laws.

SEC. 17. ***Disposition of Pending Cases.*** All cases pending before the NLRC on the date of effectivity of this code shall be transferred to and processed by the Board created under this law having cognizance of the same in accordance with the procedure laid down herein and its implementing rules and regulations.

SEC. 18. ***Personnel whose Services are Terminated.*** NLRC personnel whose services are terminated as a result of the implementation of this law shall enjoy the rights and protection provided under civil service law, rules and regulations.

SEC. 19. ***Separability Provisions.*** If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SEC. 20. ***Repealing Clause.*** Articles 223,224, 225, 226, 227, 233, 261, 262, 262-A and 262-8 of the Labor Code as amended are hereby expressly repealed. All other provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are hereby repealed.

SEC. 21. ***Effectivity.*** This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,