

REPUBLIC OF THE PHILIPPINES
Department of Labor and Employment
National Wages and Productivity Commission
Manila

**IN RE: PETITION FOR P80 ACROSS-THE-BOARD
INCREASE IN THE DAILY MINIMUM WAGE OF
WORKERS IN THE NATIONAL CAPITAL REGION**

**TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP),
Petitioner – Appellant/Movant**

**MOTION FOR RECONSIDERATION
AND/OR MEMORANDUM OF APPEAL**

Petitioner Trade Union Congress of the Philippines (TUCP) respectfully files this Motion for Reconsideration and/or Memorandum of Appeal with this Honorable Commission, assailing Wage Order No. NCR-14 dated 16 May 2008 issued by the National Capital Region Tripartite Wages and Productivity Board (NCR TWPB) granting a P20 increase in minimum wages for non-agricultural workers in the NCR consisting of P15 basic wage and P5 Cost of Living Allowance.

TIMELINESS OF THE MOTION AND/OR APPEAL

NCR Wage Order No. 14 was published on May 30, 2008 and, therefore, this Motion and/or Appeal is filed within the ten-day reglamentary period provided for in Article 123 of Republic Act (RA) No. 6727.

**GROUND IN SUPPORT OF THE MOTION
FOR RECONSIDERATION AND/OR APPEAL**

Appellant is assailing Wage Order No. 14 on the following grounds.

1. THE NCR TWPB COMMITTED GRAVE ABUSE OF DISCRETION BECAUSE, IN ISSUING WAGE ORDER NO. 14 PROVIDING FOR A WAGE INCREASE OF ONLY P20 PER DAY IN THE MINIMUM WAGE OF NON-AGRICULTURAL WORKERS, IT GROSSLY DISREGARDED THE VERY SPIRIT AND INTENT OF RA 6727 WHICH EXPRESSLY MANDATES THAT, IN FIXING MINIMUM WAGES, THE BOARD SHALL ENSURE DECENT STANDARD OF LIVING NECESSARY FOR THE HEALTH, EFFICIENCY AND GENERAL WELL-BEING OF EMPLOYEES.
2. THE WAGE ORDER IS CONTRARY TO LAW.

ARGUMENTS

RA 6727 clearly defines the rationale for the creation of the Regional Tripartite Wages and Productivity Boards (RTWPBs). Section 2 of RA 6727 declared as the policy of the State to rationalize the fixing of minimum wages and to promote productivity-improvement and gain-sharing measures to ensure, among others, **decent standard of living** for the workers and their families.

RA 6727 further defines this mandate by prescribing the guidelines to be followed by the RTWPBs in fixing minimum wages.

1. Wage Order 14 does not conform with the concept of “living wage”

Petitioner contends that the Wage Order No. NCR-14 granting a P20 increase in minimum wages is grossly inadequate and does not conform with the criteria set by RA 6727.

Petitioner wishes to emphasize in this Memorandum Appeal/Motion of Reconsideration that the NCR TWPB failed to appreciate and put appropriate weight to the first criteria in minimum wage setting – **the demand for living wages**.

To illustrate, hereunder is the pertinent provision of RA 6727:

“Article 124. Standards/ Criteria for Minimum Wage Fixing.—The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency, and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

- (a) The demand for living wages;**
- (b) Wage adjustment vis-à-vis the consumer price index
- (c) The Cost of living and changes or increases therein;
- (d) The needs of workers and their families
- (e) The need to induce industries to invest in the countryside
- (f) Improvements in standards of living
- (g) The prevailing wage levels
- (h) Fair return of capital invested and capacity to pay of employers
- (i) Effects on employment generation and family income; and
- (j) The equitable distribution of income and wealth along imperatives of economic and social development

It cannot be clearer. The NCR Wage Order No. 14 clearly falls short of said criteria, particularly the standards on living wages.

The framers of the RA 6727 brought to heart that, among other things, minimum wages should be set to ensure that all working men and women are given their right to a decent return of their eight hours of work and that it shall enable them to afford a certain level of living standards.

This is the spirit and intent of the Constitutional mandate for living wages.

In 1997, the NWPC together with the National Statistics and Coordination Board (NSCB) defined and/or measured living wages as the amount of family income needed to provide for a family's food and non-food expenditures with sufficient allowance of savings/investments for social security so as to enable the family to live and maintain a decent standard of human existence beyond mere subsistence level, taking into account all of the family's physiological, social and other needs.

There can be no other prescription or definition for the Constitutional provision of living wages than what was described in the preceding paragraph. And there can be no better judge or authority in ascertaining the concept of living wages than the NSCB which is under the National Statistics Office, the government agency in charge of collating, analyses, and interpretation of economic data, including wages.

To date, the NSCB reports that the basic family of six needs P871 a day to enable the household to catch up with the level of living wages. The P382 minimum wage set by Wage Order No. 14 does not even approach the living wage requirement understood by this Honorable Commission. It is not even half of the requirements of a family of six.

Even assuming that there were two minimum wage earners in a family of six in Metro Manila earning a combined income of P764 a day, the combined earnings fall short of living wages by P107.

Petitioner does not suggest to this Honorable Commission that the NCR TWPB grants an increase that will bring minimum wages to P871 a day. It proposes only that the minimum wage rates in the region should at least be at par with the increasing cost of living. Petitioner supports the principle that minimum wage rates, as emphasized in RA 6727, should be as "nearly adequate as is economically feasible to maintain the minimum standards of living."

The petitioner had proposed to increase minimum wages in NCR by P80.00, to bring the minimum wage level to P442. This rate does not bring the purchasing power of workers at par with increasing cost of living, nor does this secure the Constitutional mandate for living wages. It is an initiative only to recoup the purchasing power lost due to spiraling prices of commodities and utilities.

This Honorable Commission has popularized the concept of living wages through a formula it identified together with the NCSB. In fact, this Honorable Commission regularly publishes its findings in bulletins in its official website, nwpc-dole.gov.org.ph. Certainly, this Honorable Commission cannot and should not set aside its own findings.

Petitioner behooves this Honorable Commission to abide by the standard set by the NCR RTWPB (and other RTWPBs), and which this very same Commission has affirmed in a number of rounds of Wage Orders, of granting at least an amount sufficient to recover the purchasing power of wages lost starting from the latest Wage

Order PLUS an amount sufficient to cover some anticipated increase in prices in the coming months. The NCR RTWPB has set this standard, and given the intensity of price increases now taking place, it should have granted an increase higher than it has.

Petitioner asks this Honorable Commission to modify NCR Wage Order No. 14 to reflect this standard.

2. Section 8 of NCR Wage Order No.14 does not comply with the law, the Rules, and NWPC's own Guidelines.

Petitioner also calls upon this Honorable Commission to strike out Section 8 of NCR Wage Order No. 14.

The NCR RTWPB went beyond its mandate, and, in fact, issued a defective wage order when it granted wholesale exemptions to certain and even new sectors.

Among those given wholesale exemption are establishments with total assets of not more than three (3) million and micro and small indigenous exporters as certified by the Export Development Council. This is contrary to law, the Rules, and NWPC's Guidelines.

Section 8 of NCR Wage Order No. 14:

Section 8. Exemptions. Upon application with and as determined by the Board, based on documentation and other requirements in accordance with applicable rules and regulations issued by the Commission, the following may be exempted from the applicability of this Order:

1. Distressed Establishments
2. Establishments whose total assets, including those arising from loans, but exclusive of the land on which the particular business entity's office, plant and equipment are situated, are not more than three (3) million pesos (P3,000,000.00);
3. Retail/Service Establishments Employing not more than ten (10) workers;
4. Establishments adversely affected by natural calamities; and
5. Micro and small indigenous exporters as certified by the Export Development Council.

Petitioner assails Numbers 2 and 5 of Section 8 of NCR Wage Order No 14 for being contrary to RA 6727, and its implementing Rules, and the Guidelines for Exemption promulgated by this Honorable Commission on June 25, 2007.

Section 2 in particular of NWPC Guidelines No. 02, Series of 2007, limits exemptions to the following:

1. Distressed establishments
2. New business enterprises (NBEs)
3. Retail/Service establishments employing not more than ten (10) workers
4. Establishments adversely affected by natural calamities

The category “establishments whose total assets, including those arising from loans, but exclusive of the land on which the particular entity’s office, plant and equipment are situated, are not more than three (3) million pesos (P3,000,000.00” -- does not appear in the Guidelines, and, therefore, their exemption is illegal and contrary to the Guidelines of this Honorable Commission.

Section 8 of RA 9178 otherwise known as the Barangay Micro Business Enterprises Act (BMBEs) expressed the intention of Congress (which delegated its wage-fixing power to the RTWPBs) to exempt from coverage of minimum wages only those enterprises which have prior registration with local government units.

The RTWPBs and this Honorable Commission cannot go beyond the parameters set by Congress.

Furthermore, Section 8 of NCR Wage Order No. 14 provides for the exemption of an entirely new sector, the “micro and small indigenous exporters as certified by the Export Development Council”.

Again, this category of establishments is not among those enumerated in NWPC Guidelines No. 02, Series of 2007.

Although the amended Guidelines on exemption allow any Board to include other exemptible categories outside of the abovementioned list, such inclusions would require, quoting the last paragraph of Section 2 of NWPC Guidelines No. 02, Series of 2007:

“Any Board may seek the inclusion of other exemptible categories outside of the abovementioned list, subject to the (a) *submission of a strong justification for the proposed category; and (b) prior review and approval of the Commission*”.

These two important requirements have not been complied with by the Board in the issuance of this Wage Order.

The justification provided by the NCR RTWPB can not, under any circumstances, be considered “strong justification”. The inclusion of such category under previous Wage Orders does not, in itself, consist “strong justification”. The 2007 Guidelines for exemption provided a new process for inclusion of additional exemptible categories, and this NCR RTWPB has not done satisfactorily.

The additional categories also did not go through the “prior review and approval of the Commission”. The letter and intent of this requirement, as exposed in long deliberations on the Guidelines, is clear. NCR RTWPB DID NOT submit the proposed new categories to the “prior review and approval of the Commission”, thus rendering the inclusion of these categories, which are not in the list of exemptible categories prescribed in the Guidelines, null and void.

The NCR RTWPB went beyond its mandate and has, in fact, violated RA 6727 and its implementing rules and regulations, and its Guidelines on exemption in including this categories in Section 8 in NCR Wage Order No. 14.

Petitioner calls upon this Honorable Commission to declare illegal said provisions of Section 8 of NCR Wage Order No. 14.

Finally, petitioner calls upon this Honorable Commission to exercise its mandate and consider the recent findings of the DOLE's Bureau of Labor Statistics (BLS) that 23% or nearly 7.6 million employed workers including those from the NCR are "overemployed", for the most part, earning wages less than enough for the needs of their families.

P R A Y E R

WHEREFORE, premises considered, petitioner movant/appellant respectfully prays that NCR Wage Order No. 14 be reconsidered and/or set aside and a new wage order be issued increasing the minimum wage in the NCR by P80 per day across-the-board to conform to the mandate and spirit of RA 6727.

In addition, petitioner also prays that Sections 2 and 8 of NCR Wage Order No. 14 be stricken out for being contrary to law, the Rules and the NWPC Guidelines on exemption.

The petitioner prays for such other relief deemed just and equitable under the circumstances.

Quezon City for Manila, Philippines, 05 June 2008.

DEMOCRITO T. MENDOZA

VERIFICATION/ AFFIDAVIT OF NON – FORUM SHOPPING

I, **DEMOCRITO T. MENDOZA**, Filipino, of legal age, married with office address at TUCP – PGEA Compound, Maharlika Avenue corner Masaya Street, Dliman, Quezon City, after having duly sworn into accordance with law, do hereby depose and state:

1. That I am the President of the Trade Union Congress of the Philippines, petitioner in the above-entitled case;

2. That I caused the preparation of the foregoing Motion for Reconsideration/ Memorandum of Appeal;

3. That the allegation stated therein are true and correct of my own personal knowledge; and

4. That there is no pending case of similar nature filed by petitioner in any Court, quasi-judicial body, or any agency of the government pertaining to the same subject matter, cause, issues and/or facts.

IN WITNESS HEREOF, I hereby affixed my signature this 05 June 2008 at Quezon City, Philippines.

DEMOCRITO T. MENDOZA

SUBSCRIBED AND SWORN to before me this 5th of June 2008 at Quezon City, Philippines; affiant exhibiting to me his Community Tax Certificate with No. 08236821 issued on January 13, 2007 at Cebu City.

Doc No. ____;
Page No. ____;
Book No. ____;
Series of 2008