

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

**In re: Wage Order No. NCR-10**

**Trade Union Congress of the Philippines (TUCP)**  
**Petitioner**

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**A P P E A L**

Petitioner Trade Union Congress of the Philippines (TUCP) most respectfully appeals Wage Order No. NCR-10 issued by the National Capital Region Regional Tripartite Wages and Productivity Board (NCR RTWPB).

The appeal is based on several factors, to wit:

1. That the order granting a P20.00 increase in emergency cost of living allowance is not reflective of current economic realities and is nowhere near the fulfillment of the prescribed guidelines of R.A. 6727
2. That the Board committed a grave abuse of discretion when it provided for a number of exemptions

1. Discussion

Republic Act 6727, known as the Wage Rationalization Act, in pursuance of the policy of the State to rationalize the fixing of minimum wages and to promote productivity improvement and gain-sharing measures to ensure a decent standard of

living for workers and their families and to guarantee the rights of labor to its just share in the fruits of production, has created and empowered the Regional Wages and Productivity Boards (RTWPBs) to determine and fix minimum wage rates applicable to the region.

Since its inception in June 1989, the National Capital Region Regional Tripartite Wages and Productivity Boards (NCR RTWPB), upon the petitions filed mostly by the Trade Union Congress of the Philippines (TUCP), has issued nine wage orders. The increases were ordered via increases in minimum wage rates and/or through the provision of emergency cost of living allowance (ECOLA).

#### *Provisions of Wage Order No. 10*

On April 19, 2004, the TUCP petitioned the NCR RTWPB to grant a daily increase of P75.00 for all workers in the National Capital Region (NCR) across-the-board. The petition among others cited the increase in Consumer Price Index (CPI) and the demand of workers for their fair share in the region's economic growth, among others, as basis for the petition.

On May 28, 2004, the NCR RTWPB, acting on the petition filed by the TUCP and citing the results of its studies, consultations, and deliberations, issued Wage Order No. NCR-10, providing for an increase of P20 in emergency costs of living allowance (ECOLA).

Wage Order No. NCR-10 covers all private sector workers and employees in the NCR receiving P250 up to P290.

The Order also provided for a number of exemptions, particularly in the Section 8 of the said Wage Order.

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

- 1. Distressed establishments;*
- 2. Establishments facing potential losses;*
- 3. Retail/Service establishments employing not more than ten (10)workers; and*
- 4. Establishments whose total assets including those arising form loans but exclusive of the land on which the particular business entity’s office, plant and equipment are situated, are not more than P3 million*

## **DISCUSSION**

### **1. Wage Order No. NCR-10 does not conform to guidelines in prescribing minimum wages**

The petitioner asserts that the P20 increase in emergency cost of living allowance (ECOLA) is nowhere near the mandate of R.A. 6727, otherwise known as the Wage Rationalization Act of 1989.

In clothing the RTWPB’s with the power to prescribe and adjust minimum wages, R.A. 6727 clearly set the standards and criteria for minimum wage fixing. Section 2 of the Law states ...” .....*In the determination of regional minimum wages, the Boards shall, among other relevant factors, consider the following;*

- (a) the demand for living wages;*
- (b) wage adjustment vis-a-vis the consumer price index*
- (c) the cost of living and changes or increase therein*
- (d) the needs of workers and their families*
- (e) the need to induce industries to invest in the countryside*
- (f) improvement 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*
- (j) the equitable distribution of income and wealth along the imperatives of economic and social development*

The petitioner believes that NCR RTWPB in issuing Wage Order No. NCR-10 miserably failed to recognize the totality of the criteria outlined by R.A. 6727 in its determination of the wage order and has in fact not followed the prescribed guidelines provided by law.

The criterion is consistent with the mandate of the Constitution for the protection of labor. While it speaks of the need to ensure a fair and decent return of capital and reference to capacity of employers to pay, in totality the criteria set by R.A. 6727 gives more weight to need to ensure decent standards of living for workers and their families.

In this breadth, the P20 ECOLA in its face is assailable on many accounts. Foremost, it does not bring the current minimum wage rates at par with the Constitutional mandate for living wages nor does it conform to the spirit of R.A. 6727 which is to ensure a decent standard of living for the workers and their families and to ensure their fair share in the fruits of production.

While the petitioner believes that the mandate for “living wages” that the Constitution speaks of can only be achieved over time, it also holds the opinion that instruments of the State should conscientiously work towards its attainment expeditiously and in consideration for the basic needs of workers and their families in relation to current economic realities.

Secondly, the cost of living in the Philippines particularly in the National Capital Region has increased more than the 7% granted under the wage order, particularly since the last adjustment in minimum wages in the region.

*Increases in transportation, utilities, and prices of basic commodities*

To illustrate;

Transportation costs have increased by as much as 30% in the most recent period. The Land Transportation Franchise and Regulatory Board (LTFRB) recently issued an order increasing transport fares by an average of P1.50. The increase in transport fares instigates an upward movement effect on the prices of goods and services. While it is perhaps difficult to ascertain the actual impact of the transport hike on the prices of manufactured goods, it is very easy to determine its impact on the daily expenses of working families. It should be noted that the increases not only impinge on transport expense of one member of the family but the rest of its members. The 30% jump in transport fares cuts a painful portion into the daily earnings of a worker.

In addition, any increase on transportation will result in additional increases in the prices of commodities, particularly vegetables, poultry, meat, fruits, and other produce emanating from the provinces.

Based on our studies, prices of goods sold in the regular market fluctuate from 10% to 15% as a result of increases in transport.

#### Cost of utilities

Expenses on water, electricity, and cooking gas have also gone up tremendously. For households in Metro Manila, serviced by the two water concessionaires, water rates have increased by P15.40 per cubic meter since 2001.

On the other hand the cost of LPG has increase by P70 per 11k/g tank during the same period.

Electricity rates have gone up several times since 2001. Workers incomes have been terribly affected with the passage of the EPIRA Law. The incorporation of the Power Purchase Agreement (PPA) and the subsequent unbundling of power charges in monthly bills more than doubled electricity rates.

For example, in 2001, the average charge was P3.40 per kilowatt hour. Now, 2004, the basic charge per kilowatt hour is P5.80 on the average. A family of five consumes anywhere between 100 to 150 kilowatt hours per month.

Evidently, the first to be hit by the EPIRA Law are the workers and their families whose incomes did not benefit from any single adjustment since the last wage order was issued in October 2001.

All of these taken together constitute a big leap in the utility expenses of an average working family and thus should be given immediate reprieve.

In the backdrop of these increases, the P20 ECOLA is a mere drop in the bucket, so to speak.

Workers, especially those who are not under the protection of trade unions and collective bargaining agreements, and whose incomes barely afford them their basic needs, have no other recourse but to seek relief from the regional tripartite wages and productivity boards. When the wage boards fail them, the NWPC should take action.

The petitioner maintains that the Wage Order No. NCR-10 issued by NCR RTWPB is nowhere near the prescribed guidelines under R.A. 6727.

**2. That the Board committed a grave abuse of discretion when it provided for a number of exemptions**

This Honorable Board in the same wage order granted exemptions to so-called establishments facing potential losses and to those whose total assets are not more than P3 million as stated in Section 8 item 4 of the Wage Order. The petitioner seeks a reverse of this ruling.

The petitioner maintains that such exemptions will result in widespread and wholesale exemptions that will render the wage order useless or at the very least with very little effect.

Given the current mood of business and manifestations of weaknesses in the overall frame of the national economy, establishments, big or small, profitable or otherwise, all establishments will claim that they are potentially distressed.

Any establishment can claim that because of depressed profit margins, the fluctuating rates peso-to-dollar exchange rate, concerns on peace and order, and the downgrading of corporate targets as convenient excuse for escaping the wage order.

Documents and justifications can be produced overnight, accounting methods can picture an establishment to be distressed, while these may be contrary to the truth.

Section 3 of NWPC Guidelines No. 01, Series of 1996 clearly specifies the criteria for exemption of establishments. It even enumerates which establishments can be considered as *applicants* for exemption, these are:

- a) Distressed Establishments*
- b) New Business Enterprises*
- c) Retail//Service Establishments Regularly Employing Not More Than Ten (10) Workers*
- d) Establishments Adversely Affected by Natural Calamities*

All the above categories are accompanied by specific requirements and are required to submit various documents.

Nowhere in the R.A. 6727 nor in the Guidelines issued by the NWPC can we find a category ascribed as *Establishments Facing Potential Losses*. It is as clear as day that the NCR RTWPB mandated a new category and thus constituted a violation of the Guidelines issued by this Honorable Commission.

It is only right and just that this Commission reverses this provision of Wage Order No. NCR-10.



Petitioner also seeks a correction of item 4 of Section 8 of Wage Order No. NCR-10. Again, the NCR RTWPB committed a grave error in offering wholesale exemptions to the so-called micro enterprises.

The spirit of the minimum wage law is to set a floor level mechanism that provides every worker protection. The minimum wage law is by all means an attempt to ensure that each and every worker is assured of not only a just and fair return of the fruits of his or her labor but more importantly the assurance that such wages can buy the most basic of requirements to live.

The petitioner while recognizing provisions of RA 9178, also known as the Barangay Micro Business Enterprises Act of 2002, granting exemptions to establishments with capitalization of less than P3 million, believes that the NCR RTWPB should have been more circumspect in issuing such wholesale exemption.

The petitioner asserts that while some provisions of law may ascribe such exemptions, it should not be applied so that it defeats the rationale for minimum wage increases in the first place.

Petitioner maintains that before any establishment is granted such exemption, it should first be made to subscribe to the requirements of law. The BMBEs Act of 2002 speaks of the need for enterprises to officially register with the City or Municipal Treasurer's Office. This is a most basic requirement.

Wage Order NCR-10 does not speak of this requirement. Petitioner is concerned that any and all establishments claiming to have assets below P 3 million, even without the elementary requirement of registration as a BMBE under R.A. 9178, can seek exemptions before the NCR RTWPB.

Congress never deigned exempting all micro enterprises under 9178; only those registered under R.A. 9178.

Petitioner urges this Honorable Commission to equitably address this potential malfeasance. Item 4 of Section of NCR-Wage Order No. NCR-10 went beyond the law and should be struck down.

As part of the prayer of this appeal, petitioner wishes to point to this Honorable Commission a glaring fact demonstrated in the following table:

<b>MINIMUM WAGES IN NCR</b>			
Year	Amount increased	Minimum Wage	% increase granted
1995	P20	145	16%
1996	20	165	13%
1997	20	185	12%
1998	13	198	7%
1999	25.5	223.5	12%
2000	26.50	250	11%
2001	30	280	12%
2002	None	280	None
2003	None	280	None
2004	20	300	7%

The NCR RTWPB granted eight minimum wage adjustments since 1994 to 2001, either through adjustments in minimum wages or through emergency cost of living allowance. While far from the constitutionally mandated level of “living wages”, the increases were relatively substantial, ranging anywhere from 11% to 16%. The increases more importantly were annual.

The NCR RTWPB, however, in 2002 and 2003 despite overwhelming increases in the prices of commodities and services did not grant any wage adjustment. True, there was an absence of a petition from any trade union. However, by law the RTWPBs are empowered to grant wage increases *moto proprio*. Labor, including those represented by the TUCP, pointedly did not ask for any adjustment in consideration of the economic difficulties during that period, expecting that after a year or two, the RTWPBs may grant a substantial increase in wages.

In April 19, 2004, acting on the nationwide call for adjustment in wages, the petitioner, earnestly petitioned the NCR RTWPB to rescue workers and their families from skyrocketing prices.

Here now comes Wage Order NCR-10 with its measly P20 increase in ECOLA and its self-defeating exemptions.

The order comes miserably far from addressing the needs of workers and their families, increasing wages by a measly 7% but is also fraught with questionable and unjustifiable exemptions.

Petitioner, in behalf of all workers in the National Capital Region, comes to this Honorable Commission appealing for a reconsideration of the P20 increase in ECOLA granted by the NCR RTWPB. The amount is not reflective of current economic realities

in the region. It does not address the needs of workers nor does it restore the lost purchasing power of workers. We assert that the NCR RTWPB could have done more to protect workers and their families by granting a more substantial increase.

**Wherefore, in consideration of the said premises, we pray that this Honorable Commission reverse the decision of NCR RTWPB under Wage Order NCR-10 granting a P20 ECOLA and questionable exemptions and instead grant a P75.00 wage increase across-the-board.**

**Furthermore, we ask that this Honorable Commission strike out the exemptions granted to Potentially Distressed Establishments as potentially contradictory to the spirit of granting wage increases and those Establishments with Capitalization of P3 million and below who fail to officially register with City and Municipal Treasurers.**

July 7, 2004, Quezon City, Philippines

**DEMOCRITO T. MENDOZA  
President, Trade Union Congress  
of the Philippines (TUCP)  
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Masaya cor. Maharlika Sts.  
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VERIFICATION

I, DEMOCRITO T. MENDOZA, Filipino, of legal age, after having been duly sworn according to law, hereby depose and say, that I am the President of the Trade Union Congress of the Philippines; I have caused the preparation of the foregoing appeal; I know the contents thereof to be true and correct of my own personal knowledge.

**DEMOCRITO T. MENDOZA**

Subscribed and sworn to before me this 7<sup>th</sup> day of July 2004, at Quezon City, Philippines affiants exhibiting to me his CTC 02865259 issued on January 7, 2004 at Cebu City

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