

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Region VII, Central Visayas

WAGE ORDER NO. ROVII-08
ESTABLISHING NEW MINIMUM WAGE RATES

WHEREAS, on August 25, 2000, the Trade Union of the Philippines and Allied Services (TUPAS-LACC), thru its Regional Director, filed in this office a petition asking for a seventy five and 50/100 pesos (P 75.50) increase in the minimum wage for the Region;

WHEREAS, on September 26, 2000, the Associated Labor Union (ALU-TUCP), thru its area vice-president for the Visayas, filed before this office a separate petition asking for a seventy-five and 50/100 pesos (P 75.50) across-the-board increase in the minimum wage for the Region;

WHEREAS, on October 10, 2000, a joint petition filed by different independent labor groups, thru their respective officers, filed before this office a Petition asking for a ninety-eight (P 98.00) across-the-board increase in the minimum wage and to be given in full to all workers in this Region;

WHEREAS, in response thereto and after the publication of the notice of public hearing on said petitions, the Board subsequently conducted public hearings on October 6, 9 and 11, 2000 in Dumaguete City, Tagbilaran City and Cebu City, respectively;

WHEREAS, the Board recognizes the need to adjust the minimum wage of workers to alleviate the impact brought about by various economic reversals;

Now, Therefore by virtue of the power and authority vested under Republic Act No. 6727, otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board, Region VII, hereby issues this Wage Order:

Section 1. AMOUNT AND EFFECTIVITY OF INCREASE. Upon the effectivity of this Order, the daily minimum wage rates for all the workers and employees in the private sector shall be increased by Fifteen Pesos (P 15.00) per day for all categories in all sectors and areas to be effective as follows:

- i. Five Pesos (P 5.00) after fifteen (15) days from publication of this order;
- ii. Five Pesos (P 5.00) effective June 1, 2001; and
- iii. Five Pesos (P 5.00) effective December 1, 2001.

Section 2. UNIFORM WAGE RATE PER AREA CLASSIFICATION. a) In consonance with the wage simplification program mandated under Wage Order No. ROVII-06 and the implementation of the third tranche of Five Pesos (P5.00) on January 1, 2001 pursuant to Section 1, item iii, of Wage Order No. ROVII-07, the prescribed minimum wage after full implementation of this order for each area classification shall be as follows:

<u>Area Classification</u>	<u>Non-Agricultural Sector</u>	<u>Agricultural Sector</u>
Class A	195.00	180.00
Class B	185.00	170.00
Class C	175.00	160.00
Class D	165.00	150.00

b) The adjustments mandated pursuant to Wage Order No. ROVII-06 for April 1, 2001 and October 1, 2001 as a result of the wage simplification program as well as the implementation of the third tranche of Five Pesos (P5.00) pursuant to Wage Order No. ROVII-07 on January 1, 2001 shall be on top of the adjustment provided under Section 1 hereof.

c) The wages of workers and employees, whose rates are less than the prescribed minimum wage as of January 1, 2002 pursuant to Section 2(a) hereof, shall be adjusted on a staggered basis within a period of not more than two (2) years beginning April 1, 2002 to October 1, 2003.

d) All future increases in the minimum wage mandated by the Board within the two-year transition period shall be on top of all adjustments made pursuant to this Order.

Section 3. APPLICATION TO SUGAR INDUSTRY. The prescribed minimum wage rates upon full implementation of this order for the sugar industry, regardless of location shall be as follows:

Agriculture (Sugar) P 145.00
Sugar Mills 160.00

The wages of workers and employees whose rates as of January 1, 2002 are less than the prescribed minimum wages for sugar industry shall be adjusted on staggered basis.

Section 4. COVERAGE. The adjustments prescribed under this Order shall apply to all workers and employees whether agricultural or non-agricultural entitled to the same in the private sector. Not covered from the provision of this order are household or domestic helpers and persons employed in the personal service of another, including family drivers.

Section 5. BASIS OF MINIMUM WAGE. The minimum wage rates prescribed under this Order shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

Section 6. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, "takay" or task basis, shall be entitled to receive the prescribed minimum wage increase per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 7. WAGES OF SPECIAL GROUPS OF WORKERS. Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable minimum wage rates prescribed in this Order.

All recognized learnership and apprenticeship agreements entered into before the effectivity of this Order shall be considered automatically modified insofar as their wage clauses are concerned to reflect the new prescribed wage rates.

Section 8. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. The increase in minimum wage rates prescribed under this Order shall fully apply to all workers and employees in private educational institutions effective school year 2001 – 2002.

Section 9. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principals or clients of the construction/service contractors, and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed increase or new minimum wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

Section 10. EXEMPTIONS. The following may be exempted from the applicability of this Order upon application with and as determined by the Board in accordance with the applicable rules and regulations:

1. Retail/Service establishments regularly employing not more than ten (10) workers;
 2. Distressed establishments as defined in the NWPC Guidelines No. 01, series of 1996;
- and
1. Private educational institutions receiving Tuition Fee Supplement (TFS) pursuant to Section 5 paragraph 1(a) of RA 6728.

Section 11. EFFECT OF APPLICATION FOR EXEMPTION. An application for exemption duly filed shall have the effect of deferring any action on any complaint for non-compliance with the Order until resolution of the application by the Regional Board.

In case the application for exemption is not approved, covered employees/workers of the applicant-establishment shall be paid the mandated wage increase under this Order plus one (1) percent simple interest per month retroactive from its effectivity.

Section 12. APPEAL TO THE COMMISSION. Any party aggrieved by this Wage Order may file a verified appeal with the Commission through the Board within ten (10) calendar days from the publication of this Order.

Section 13. EFFECT OF FILING OF APPEAL. The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding increase to employees affected by the Order in the event such Order is affirmed.

Section 14. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the increases in the wage rates under this Order results in distortion of the wage structure within an establishment, the same shall be corrected in accordance with the procedure provided for under Art. 124 of the Labor Code as amended.

Section 15. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with this Order shall be filed with the Regional Office of the Department of Labor and Employment (DOLE) and shall be the subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to criminal prosecution, which may be undertaken against those who fail to comply.

Section 16. NON-DIMINUTION OF BENEFITS. Nothing in this Order shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders and/or under any contract or agreement between the workers and employers.

Section 17. PENAL PROVISION. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay the prescribed wage increase/allowance/rates in accordance with this Order shall be subject to the penal provisions under RA 6727, as amended by RA 8188.

Section 18. PROHIBITION AGAINST INJUNCTION. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Board.

Section 19. FREEDOM TO BARGAIN. This Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages with their respective employers.

Section 20. REPORTING REQUIREMENT. Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not

later than January 31, 2001 and every year thereafter in accordance with the form prescribed by the Commission.

Section 21. REPEALING CLAUSE. All laws, orders, issuances, rules and regulations, or parts thereof inconsistent with the provision of this Wage Order are hereby repealed, amended or modified accordingly.

Section 22. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

Section 23. IMPLEMENTING RULES. The Board shall prepare the necessary rules to implement this Order subject to approval of the Secretary of Labor and Employment.

Section 24. EFFECTIVITY. This Order takes effect fifteen (15) days after its complete publication from the newspaper of regional circulation.

CEBU CITY, PHILIPPINES, October 24, 2000.

APPROVED:

HIDELITO S. PASCUAL
Member, Employer's Representative

Dissenting (See Opinion)
MARIANITO B. VENTURA
Member, Labor Representative

EDGAR L. GODINEZ
Member, Employer's Representative

Dissenting (See Opinion)
CELSO C. REALES
Member, Labor Representative

ROMEO C. ESCANDOR
Vice Chairperson

ASTERIA C. CABERTE
Vice Chairperson

MELENCIO Q. BALANAG
Chairperson

DISSENTING OPINION

I dissent not only on the P15.00 increase granted but also on the manner of implementing said increase on a staggered basis.

To agree on a common consensus on such an increase would be a great disservice and treachery to the labor sector which I represent. Atty. Celso Reales and I voted against the amount of increase but sheer superiority of the number of votes cast by the 2 management representatives plus the votes of the representatives from NEDA and DTI overwhelmed our 2 votes.

I therefore sign the wage order with this dissenting opinion accepting defeat "with head bloody but unbowed".

Cebu City, Philippines. October 23, 2000.

MR. MARIANTO B. VENTURA
LABOR SECTOR REPRESENTATIVE

DISSENTING OPINION

I have dissented consistently the loss of labor against management in all wage adjustment in the region. Again, in this wage increase let it be understood that my signature is not a compromise neither yielding to pressures but comity and procedures. This amount is never a living wage to sustain labor's demand to live decently. Unless the system is corrected it is very unfortunate that the Wage Board will continue to deny the needs of labor.

(Sgd) CELSO C. REALES
Labor Representative

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Region VII, Central Visayas

RULES IMPLEMENTING WAGE ORDER NO. ROVII-08

Pursuant to Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing and Section 23 of Wage Order No. ROVII-08, the following rules are hereby issued for guidance and compliance by all concerned.

Rule I – General Provisions

Section 1. Title. This Rules shall be known as the "Rules Implementing Wage Order No. ROVII-08".

Section 2. Definition of Terms. As used in this rules:

- a. "ORDER" means Wage Order No. ROVII-08;
- b. "COMMISSION" refers to the National Wages and Productivity Commission;
- c. "BOARD" means the Regional Tripartite Wages and Productivity Board Regional Office No. 7;
- d. "DEPARTMENT" means the Department of Labor and Employment;
- e. "REGION VII" is the geographic area in Central Visayas covering the provinces of Cebu, Bohol, Negros Oriental and Siquijor and its component cities;
- f. "RETAIL ESTABLISHMENT" refers to one primarily engaged in the sale of goods to end-users for personal or household use.

A retail establishment that regularly engages in wholesale activities loses its retail character;

- g. "SERVICES ESTABLISHMENT" refers to one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such;
- h. "COTTAGE/HANDICRAFT ESTABLISHMENTS" is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship whose capitalization does not exceed P1,500,000.00 pursuant to SMED Council Resolution No. 3, Series of 1995;
- i. "AGRICULTURE" refers to farming in all its branches and among others, include the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural and horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products;
- j. "PLANTATION AGRICULTURAL ENTERPRISES" is one engaged in agriculture with an area of more than twenty-four (24) hectares in a locality or which employs at least twenty (20) workers. Any other agricultural enterprise shall be considered as "NON-PLANTATION AGRICULTURAL ENTERPRISE";

- k. "DISTRESSED ESTABLISHMENT" refers to an establishment which meets the criteria enumerated in Section 3A of NWPC Guidelines On Exemption series of 1996 and Rule III, Section 5(b) hereof;
- l. "CAPITAL" means paid-up capital at the end of last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnership and single proprietorship;
- m. "FULL ACCOUNTING PERIOD" refers to a period of twelve (12) months or one (1) year of business operations;
- n. "DEFICIT" refers to the negative balance of the retained earnings account of a corporation. Retained earnings represent the cumulative balance of periodic earnings, dividend distributions, prior period adjustments and other capital adjustments;
- o. "STOCK CORPORATION" refers to one organized for profit and issues shares of stock to its members;
- p. "NON-STOCK/NON-PROFIT ORGNIZATION" refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members;
- q. "PARTNERSHIP" refers to an association of two (2) or more persons who bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves or for the exercise of a profession;
- r. "SINGLE PROPRIETORSHIP" refers to a business unit owned and controlled by only one (1) person;
- s. "COOPERATIVE" refers to a duly registered association of persons who voluntarily join together to form a business enterprise which they themselves own, control and patronize and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose;
- t. "QUASI-BANKS" refer to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Banko Sentral ng Pilipinas;
- u. "PRESCRIBED MINIMUM WAGE" is the level of minimum wage that should be established and/or attained by an industry category within a specific geographic classification upon full implementation of the wage simplification program under Wage Order No. ROVII-06, the third tranche of Five Pesos (P5.00) on January 1, 2001 under Wage Order No. ROVII-07 and upon full implementation of Wage Order No. ROVII-08;
- v. "WAGE SIMPLIFICATION PROGRAM" is the scheme adopted under Wage Order No. ROVII-06 mandating certain establishments whose wage levels are below the prescribed minimum wage to make further adjustments on its minimum wage until such time that it has leveled off the prescribed minimum wage rates but not later than year 2003;
- w. "TUITION FEE SUPPLEMENT" is the financial assistance provided by the government for students enrolled in private high schools charging less than one thousand five hundred pesos (P1,500.00) per year or such an amount in subsequent years as may be determined from time to time by the State Assistance Council.
- x. "CLASS A" comprises the cities of Cebu, Mandaue, Lapulapu and Danao and the municipalities of Talisay, Minglanilla, Naga, San Fernando, Carcar, Consolacion, Liloan, Compostela and Cordova or (expanded Metro Cebu);
- y. "CLASS B" comprises the city of Toledo and the rest of the municipalities in the province of Cebu except the municipalities in the islands of Bantayan and Camotes;
- z. "CLASS C" are the cities and municipalities in the provinces of Bohol and Negros Oriental;
- aa. "CLASS D" are the municipalities in the province of Siquijor and municipalities in the islands of Bantayan and Camotes.

Rule II – Wage Increase

Section 1. Amount and Effectivity of Increase. The daily minimum wage rates for all covered workers and employees in the private sector shall be increased by Fifteen Pesos (P 15.00) per day to be given in the following manner:

- i. Five Pesos (P 5.00) effective November 10, 2000;
- ii. Five Pesos (P 5.00) effective June 1, 2001; and
- iii. Five Pesos (P 5.00) effective December 1, 2001

Section 2. Coverage. The wage increase prescribed in the order shall apply to all covered private sector workers and employees in the Region whether agricultural or non-agricultural, regardless of their position, designation, or status and irrespective of the method by which their wages are paid, except household or domestic helpers and workers employed in the personal service of another, including family drivers.

Section 3. Prescribed Minimum Wage. In consonance with the wage simplification program mandated under Wage Order No. ROVII-06 and the implementation of the third tranche of Five Pesos (P5.00) under Wage Order No. ROVII-07, the prescribed minimum wage in the region after full implementation of this Order for each area classification shall be as follows:

<u>Area Classification</u>	<u>Non-Agricultural Sector</u>	<u>Agricultural Sector</u>
Class A	195.00	180.00
Class B	185.00	170.00
Class C	175.00	160.00
Class D	165.00	150.00

Section 4. Daily Minimum Wage Rates. a) The wages of workers and employees whose rates are less than the prescribed minimum wage as of January 1, 2002 pursuant to Section 2 (a) of the Order and Rule II Section 3 hereof, shall be adjusted on a staggered basis within a period of not more two (2) years beginning April 1, 2002 to October 1, 2003 and in a manner prescribed by subsequent Tables 1-9. b) All adjustments mandated by virtue of the wage simplification program under Wage Order No. ROVII-06 for April 1, 2001 and October 1, 2001 shall also be implemented in a manner, likewise prescribed by subsequent Tables 1-9.

TABLE 1: CLASS A - For the cities of Cebu, Mandaue and Lapulapu

TABLE 2: CLASS A - For the municipalities of Talisay, Minglanilla, Naga, Consolacion, Liloan, Compostela and Cordova

TABLE 3: CLASS A - For the city of Danao

TABLE 4: CLASS A - For the city of Toledo

TABLE 5: CLASS B - For the municipalities of Carcar and San Fernando

TABLE 6: CLASS B - For the rest of the municipalities in the province of Cebu except the municipalities in the Islands of Bantayan and Camotes.

TABLE 7: CLASS C - For all the cities in the provinces of Bohol and Negros Oriental and the municipalities of Sibulan, Manjuyod and Tanjay

TABLE 8: CLASS C - For the rest of the municipalities in the provinces of Bohol and Negros Oriental.

TABLE 9: CLASS D - For the municipalities in the province of Siquijor and the municipalities in the islands of Bantayan and Camotes

c) All future increases in the minimum wage mandated by the Board within the two-year period (2002-2003), shall be on top of all adjustments made pursuant to this Order.

Section 5. Application to Sugar Industry. a) The prescribed minimum wage rates upon full implementation for agriculture sector regardless of location shall be as follows:

Agriculture (Sugar) P 145.00

Sugar Mills 160.00

b) All workers and employees whose rates as of January 1, 2002 are less than the prescribed minimum wage rates pursuant to Section 3 of the Order and Rule II Section 5(a) hereof shall be adjusted on a staggered basis in a manner prescribed by the above preceding Tables.

Section 6. Basis of Minimum Wage Rates. The minimum wage rates prescribed herein shall be for the normal working hours, which shall not exceed eight (8) hours work per day.

Section 7. Application to Private Educational Institutions. a) The wage increase prescribed under the Order shall apply to all covered workers and employees in private educational institutions.

b) The wage increase prescribed for private educational institutions pursuant to this Order shall take effect during the opening of school year 2001 – 2002.

Section 8. Application to Contractors. In the case of contracts for construction projects and for security, janitorial services, the prescribed wage increases shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

Section 9. Workers Paid by Results. a) All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the applicable minimum wage rates prescribed under the Order for the normal working hours which shall not exceed eight (8) hours work a day, or a proportion thereof for work of less than the normal working hours. b) The adjusted minimum wage rates for workers paid by results shall be computed in accordance with the following steps:

1. Amount of increase in AMW*

$$\frac{\text{-----} \times 100}{\text{Previous AMW}} = \text{Percent increase;}$$

2. Existing rate/piece X Percent increase = Increase in rate/piece;

3. Existing rate/piece + Increase in rate/piece = Adjusted rate/piece

* Where AMW is the applicable minimum wage rate.

c) The wage rates of workers who are paid by results shall continue to be established in accordance with Article 101 of the Labor Code, as amended and its implementing rules and regulations.

Section 10. Wages of Special Groups of Workers. a) Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable minimum wage rates prescribed in the Order.

b) All recognized learnership and apprenticeship agreements entered into before the effectivity of the Order shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the adjustments prescribed under the Order.

Section 11. Suggested Formula in Determining the Equivalent Monthly Regional Minimum Wage Rates. Without prejudice to existing company practices, agreements or policies, the following formula may be used as guides in determining the equivalent monthly minimum wage rates:

a. For those who are required to work everyday including Sundays or rest days, special days and regular holidays:

$$\begin{array}{l} \text{Equivalent} \\ \text{Monthly Rate} \\ \text{(EMR)} \end{array} = \frac{\text{Applicable Daily Wage Rate (ADR) X 391.50 days}}{12}$$

Where 391.50 days:

302 days = Ordinary working days

18 days = 9 regular holidays x 200%

2.6 days = 1 regular holiday falling on last Sunday of
August X 200% + (30% of 200%)

66.30 days = 51 rest days X 130%

2.60 days = 2 special days X 130%

391.50 days = Total equivalent number of days

b. For those who do not work but are considered paid on rest days, special days and regular holidays:

$$EMR = \frac{ADR \times 365 \text{ days}}{12}$$

Where 365 days:

302 days = Ordinary working days

51 days = Rest days

10 days = Regular Holidays

2 days = Special days

365 days = Total equivalent number of days

c. For those who do not work and are not considered paid on Sundays or rest days:

$$EMR = \frac{ADR \times 314.6 \text{ days}}{12}$$

Where 314.6 days:

302 days = Ordinary working days

10 days = Regular Holidays

2.6 days = 2 Special days (if worked) X 130%

314.6 days = Total equivalent number of days

d. For those who do not work and are not considered paid on Saturdays and Sundays or rest days:

$$EMR = \frac{ADR \times 262.6 \text{ days}}{12}$$

Where 262.6 days:

250 days = Ordinary working days

10 days = Regular Holidays

2.6 days = 2 Special days (if worked) X 130%

262.6 days = Total equivalent number of days

Note: For workers whose rest days fall on Sundays, the number of rest days in a year is reduced from 52 to 51 days, the last Sunday of August being regular holiday under Executive Order No. 203. For purposes of computation, said holiday, although still a rest day for them, is included in the ten regular holidays.

For workers whose rest days do not fall on Sundays, the number of rest days is 52 days, as there are 52 weeks in a year.

Section 12. Mobile and Branch Workers. a) The statutory minimum wage rates of workers, who by nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.
b) The minimum wage rates of workers working in branches or agencies of establishments within the Region shall be those applicable in the place where they are stationed.

Section 13. Transfer of Personnel. The transfer of personnel to areas outside the Region shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers prior to such transfer. The workers transferred to the other Regions with higher wage rates shall be entitled to the minimum wage rate applicable therein.

Section 14 Appeal to the Commission. Any party aggrieved by the Wage Order may file an appeal with the Commission within ten (10) calendar days from the publication of the Order. The Commission shall decide the appeal within sixty (60) calendar days from the date of filing. The appeal shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support of the appeal.

Section 15. Effect of Appeal. The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment to employees affected by the Order of the corresponding increase, in the event such Order is affirmed.

Rule III – Exemptions

Section 1. Workers Not Covered By The Order. Household or domestic helpers and persons employed in the personal service of another including family drivers are not covered from the provisions of this order.

Section 2. Establishments That May Be Exempted. a) Upon application with and as determined by the Board, in accordance with the applicable rules and regulations issued by the Commission, the following may be exempted from the applicability of this Order:

- i. Retail/Service establishment employing not more than ten (10) workers;
- ii. Distressed establishments as defined by NWPC Guidelines No. 01, series of 1996; and
- iii. Educational institutions receiving tuition fee subsidies pursuant to Section 5 paragraph 1(a) of Republic Act No. 6728 as amended.

Section 3. Application For Exemption. a) Within seventy-five (75) days from the date of publication of this Rules, an application for exemption shall be filed with the Board in three (3) typewritten copies by the owner/manager or duly authorized representative of an establishment in person or by registered mail. The date of mailing shall be deemed as the date of filing. Required documents submitted beyond the seventy-five (75) day period shall not be allowed pursuant to NWPC Resolution No. 01, series of 1999.

b) All applications for exemptions should be under oath and must be supported by a proof of notice to the Union President/contracting party (in case the establishment is organized) or a copy of the circular giving general notice to all the workers (if there is no union) that an application for exemption from compliance with the Order has been filed with the Board. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

Section 4. Supporting Documents. a) In addition to Section 3 hereof, and in accordance with NWPC Guidelines on Exemption, the following supporting documents shall be submitted with the application:

- 1) For retail/service establishments employing not more than ten (10) workers:
 - i. Affidavit from the employer stating the principal economic activity and the number of workers employed in the establishment
 - ii. Business permit for the current year from the appropriate government agency.

2) For distressed establishments:

- i. Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods preceding the effectivity of the order filed with and stamped "received" by the appropriate government agency.
- ii. Audited interim quarterly financial statements (together with the Auditor's opinion and the notes thereto) for the period immediately preceding the effectivity of the Order.

3) For educational institutions:

- i. Certification from Department of Education Culture and Sports (DECS) that applicant is receiving tuition fee supplement (TFS).

b) In case an application for exemption is filed with incomplete supporting documents, the applicant shall be notified and shall be given ten (10) days to complete the documents required, otherwise the application shall be dismissed. Extension of filing and submission of documents after the seventy-five (75) day period shall not be allowed pursuant to NWPC Resolution No. 01 series of 1999.

c) An applicant may be required to submit additional documents in support of its application, whenever the Board deems it necessary.

Section 5. Criteria for Exemption. In order to determine whether an applicant establishment is qualified for exemption, the following criteria shall be used.

a) In the case of retail/service establishments, it must be:

1. engaged in retail sale of goods or services to end-users for personal or household use; and
2. regularly employing not more than ten (10) workers regardless of status.

b) In the case of distressed establishments:

1. For stock corporations/cooperatives, the deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the order amounts to twenty percent (20%) or more of the paid-up capital for the same period or registers a capital deficiency i.e., negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the order.
2. For single proprietorships/partnerships and operating for at least two (2) years, when the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the order amounts to twenty percent (20%) or more of the total invested capital at the beginning of the period under review, or registers capital deficiency i.e., negative net worth as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the order.

For single proprietorships/partnerships operating for less than two (2) years when the net accumulated losses for the period immediately preceding the effectivity of the order amounts to twenty percent (20%) or more of the total invested capital at the beginning of the period under review.

3. For non-stock/non-profit organizations operating for at least two (2) years, when the net accumulated losses for the last two (2) full accounting periods and interim period, if any, immediately preceding the effectivity of the order amounts to twenty percent (20%) or more of the fund balance/members' contribution at the beginning of the period under review or registers capital deficiency i.e., negative fund balance/members' contribution as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the order.

For non-stock/non-profit organizations operating for less than two (2) years when the net accumulated losses for the period immediately preceding the effectivity of the order amounts to twenty percent (20%) or more of the fund balance/members' contribution at the beginning of the period under review.

4. For banks and quasi-banks under receivership/liquidation when there is a certification from the Bangko Sentral ng Pilipinas that it is under receivership or liquidation as provided in Section 30 of RA7653 otherwise known as the New Central Bank Act.

Banks or quasi-banks under controllership/conservatorship may apply for exemption as a distressed establishment under Section 5.b. hereof.

c) In the case of private educational institutions, it must be receiving tuition fee supplement (TFS) from the Department of Education, Culture and Sports (DECS).

Section 6. Extent of Exemption. A full exemption of one (1) year shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section 5 hereof. However, a partial exemption of fifty percent (50%) with respect to the amount or period of exemption shall be granted only in the case of distressed establishments as follows:

- a. When the deficit as of the last full accounting period and interim period, if any, immediately preceding the effectivity of the Order amounts to less than twenty percent (20%) of the paid-up capital of the same period in the case of corporations/cooperatives;
- b. When the net accumulated losses for the period under review amounts to at least fifteen percent (15%) but less than twenty percent (20%) of the total invested capital at the beginning of the period under review for single proprietorships/partnerships;
- c. When the net accumulated losses for the period under review preceding the effectivity of the Order amounts to at least fifteen percent (15%) but less than twenty percent (20%) of the fund balance/members' contribution at the beginning of the period under review in the case of non-stock non-profit organizations.

Section 7. Effect Of Filing An Application For Exemption. Whenever an application for exemption has been filed with the Board, the Regional Office of the Department shall be notified. Action on any complaint for alleged non-compliance with the Order shall be deferred pending resolution of the said application.

Section 8. Effect of Disapproved Application. In the event that an application for exemption is not granted, the workers or employees of the applicant firm shall receive the appropriate compensation due them as provided for in the Order plus one percent (1%) interest per month retroactive the date of effectivity of the Order or tranche applied for.

Section 9. Motion For Reconsideration. a) An aggrieved party may file with the Board a motion for reconsideration of the decision on the application for exemption within ten (10) days from its receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the DOLE Regional Office.

b) No second motion for reconsideration shall be entertained in any case. The decision of the board shall be final and executory unless appealed to the Commission.

Section 10. Appeal. Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Board, in two (2) legible copies not later than ten (10) days from date of receipt of the decision. All appeals should be filed in a manner prescribed by the Commission based on any of the following grounds:

- a. Non-conformity with the prescribed guidelines and/or procedures of exemption;
- b. Prima facie evidence of grave abuse of discretion on the part of the Board; and

- c. Question of law.

Rule IV - Special Provisions

Section 1. Effect on Existing Wage Structure. Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their collective bargaining agreement, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, the voluntary arbitrator shall decide such dispute or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten (10) calendar days of conciliation, the same shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). The NLRC shall conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration. The pendency of a dispute rising from wage distortion shall not in any way delay the applicability of any increase prescribed in the Order.

Section 2. Complaints for Non-Compliance. Complaints for non-compliance with the Order shall be filed with the Regional Office of the Department having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

Section 3. Conduct of Inspection by the Department. The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage rates and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company will accompany the inspector. The workers' representative shall have the right to submit his own findings to the Department and to testify on the same if he does not concur with the findings of the labor inspector.

Section 4. Non-diminution of Benefits. Nothing in the Order and in this Rules shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and the employers.

Section 5. Penal Provision. a) Pursuant to the provisions of Section 12 of RA 6727, as amended by RA 8188, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay the prescribed increase in the Order shall be punished by a fine of not less than Twenty-five thousand pesos (P25,000.00) nor more than One hundred thousand pesos (P100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years or both such fine and imprisonment at the discretion of the court. Provided, that any person convicted under the Order shall not be entitled to the benefits provided for under the Probation Law.

b) Any entity who refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Order shall be punished in accordance with the provisions of Sec. 12, Art 127 of RA 6727 as amended by RA 8188, which provides as follows:

"The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees; *Provided*, That payment of indemnity shall not absolve the employer from the criminal liability imposed under this Act.

"If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner."

Section 6. Prohibition Against Injunction. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or Boards.

Section 7. Freedom to Bargain. The Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages and flexible working arrangements with their respective employers.

Section 8. Reporting Requirements. Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2001 and every year thereafter in accordance with the form prescribed by the Commission.

Section 9. Repealing Clause. All laws, orders, issuances, rules and regulations on wages, or parts thereof inconsistent with the provisions of the Wage Order and this Rules are hereby repealed, amended or modified accordingly.

Section 10. Separability Clause. If any provision or part of the Order and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Section 11 Effectivity of Rules. This rules shall take effect on November 10, 2000.

Done in the City of Cebu, Philippines, this 24th day of October 2000.

APPROVED.

HIDELITO S. PASCUAL
Member, Employer's Representative

Dissenting (See Opinion)
MARIANITO B. VENTURA
Member, Labor Representative

EDGAR L. GODINEZ
Member, Employer's Representative

Dissenting (See Opinion)
CELSO C. REALES
Member, Labor Representative

ROMEO C. ESCANDOR
Vice Chairperson

ASTERIA C. CABERTE
Vice Chairperson

MELENCIO Q. BALANAG
Chairperson

Approved this 14th Day of December 2000

(Sgd) HON. BIENVENIDO E. LAGUESMA
Secretary, Department of Labor and Employment
Chairman, National Wages and Productivity Commission

DISSENTING OPINION

I dissent not only on the P15.00 increase granted but also on the manner of implementing said increase on a staggered basis.

To agree on a common consensus on such an increase would be a great disservice and treachery to the labor sector which I represent. Atty. Celso Reales and I voted against the amount of increase but sheer superiority of the number of votes cast by the 2 management representatives plus the votes of the representatives from NEDA and DTI overwhelmed our 2 votes.

I therefore sign the wage order with this dissenting opinion accepting defeat "with head bloody but unbowed".

Cebu City, Philippines. October 23, 2000.

MR. MARIANITO B. VENTURA

LABOR SECTOR REPRESENTATIVE

DISSENTING OPINION

I have dissented consistently the loss of labor against management in all wage adjustment in the region. Again, in this wage increase let it be understood that my signature is not a compromise neither yielding to pressures but comity and procedures. This amount is never a living wage to sustain labor's demand to live decently. Unless the system is corrected it is very unfortunate that the Wage Board will continue to deny the needs of labor.

(Sgd) CELSO C. REALES

Labor Representative