

## EN BANC

[ G.R. No. 202275, July 17, 2018 ]

**THE PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES (PBOAP), THE SOUTHERN LUZON BUS OPERATORS ASSOCIATION, INC. (SO-LUBOA), THE INTER CITY BUS OPERATORS ASSOCIATION (INTERBOA), AND THE CITY OF SAN JOSE DEL MONTE BUS OPERATORS ASSOCIATION (CSJDMBOA), PETITIONERS, V. DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB), RESPONDENTS.**

### DECISION

**LEONEN, J.:**

Government created policy based on the finding that the boundary payment scheme that has since determined the take-home pay of bus drivers and conductors has been proven inadequate in providing our public utility bus drivers and conductors a decent and living wage. It decided that this was the best approach to ensure that they get the economic and social welfare benefits that they deserve. This Court will not stand in its way. Policy questions are not what this Court decides.

This resolves an original action for certiorari and prohibition, assailing the constitutionality of the following:

First, the Department of Labor and Employment (DOLE) Department Order No. 118-12, otherwise known as the Rules and Regulations Governing the Employment and Working Conditions of Drivers and Conductors in the Public Utility Bus Transport Industry;

Second, all the implementing guidelines issued pursuant to Department Order No. 118-12, including the National Wages and Productivity Commission's Guidelines No. 1, series of 2012, otherwise known as the Operational Guidelines on Department Order No. 118-12; and

Finally, the Land Transportation Franchising and Regulatory Board (LTFRB) Memorandum Circular No. 2012-001, the subject of which is the Labor Standards Compliance Certificate.

Petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., Inter City Bus Operators Association, and City of San Jose Del Monte Bus Operators Association (collectively, petitioners) argue that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate the constitutional rights of public utility bus operators to due process of law, equal protection of the laws, and non-impairment of obligation of contracts.

The facts of the case are as follows:

To ensure road safety and address the risk-taking behavior of bus drivers as its declared objective, the LTFRB issued Memorandum Circular No. 2012-001<sup>[1]</sup> on January 4, 2012, requiring "all Public Utility Bus (PUB) operators ... to secure Labor Standards Compliance Certificates" under pain of revocation of their existing certificates of public convenience or denial of an application for a new certificate. Memorandum Circular No. 2012-001 more particularly provides:

MEMORANDUM CIRCULAR  
NUMBER 2012-001

**SUBJECT: LABOR STANDARDS COMPLIANCE CERTIFICATE**

This Memorandum Circular covers all Public Utility Bus (PUB) Operators and is being issued to ensure road safety through linking of labor standards compliance with franchise regulation.

It is based on a DOLE rapid survey of bus drivers/conductors and operators on the working conditions and compensation schemes in the bus transport sector. The survey results, as validated in a series of focus group discussions with bus operators, drivers, government regulating agencies and experts from the academe in the fields of engineering and traffic psychology, indicate that the risk[-]taking behavior of drivers is associated with the lack of proper training on motor skills, safety and on traffic rules and regulations; poor health due to long work hours and exposure to health hazards and; lack of income security under a purely commission-based compensation scheme. The industry players also cited problems with the enforcement of traffic rules and regulations as well as the franchising and licensing systems.

To strictly enforce this Memorandum Circular, the Board, thru the [Department of Transportation and Communication], shall strengthen cooperation and coordination with the Department of Labor and Employment.

**Labor Standards Compliance Certificate**

To ensure compliance with the established standards for employment and the Board's policies on the promotion of road safety, all Public Utility Bus (PUB) operators are required to secure Labor Standards Compliance Certificates from the Department of Labor and Employment (DOLE).

The Certificate shall indicate compliance by the PUB operators with all relevant legislations on wages, labor standards, terms and conditions of employment, and such mandatory benefits as may now or in the future be provided under Philippine Labor Laws; Provided that –

**Compensation Scheme**

The compensation scheme set or approved by the DOLE shall cover the PUB drivers and conductors and shall adopt a part-fixed-part-performance[-]based compensation system. The fixed component shall at no time be lower than the applicable minimum wage in the region. The performance[-]based component shall be based on the net income of the operator or bus company and on employee safety records such as that in

regard to involvement in road accidents, commission of traffic violations, and observance of the elementary courtesies of the road.

All PUB drivers and conductors shall be entitled to other mandatory compensation such as but not limited to overtime, night shift differential, rest day, holiday, birthday, and service incentive leave pays.

### **Hours of Work**

The number of working hours and rest periods of the drivers and conductors shall be determined taking into consideration the existing conditions, peculiarities and requirements of the transport industry.

### **Benefits**

All PUB drivers and conductors shall likewise be entitled to retirement benefits and to all mandatory social security benefits such as membership in the SSS, Philhealth and Pag-Ibig as specified by law.

### **Right to Self Organization**

The right of the drivers and conductors to organize themselves to advance their interests and welfare shall be encouraged. It shall not in any way be abridged or diminished by way of any agreement or contract entered into in complying with this issuance or in obtaining the Labor Standards Compliance Certificate.

Nothing herein shall be interpreted to mean as precluding the PUB operators and the drivers or conductors from entering into collective bargaining agreements granting them more rights, privileges and benefits.

Company policies and practices, and collective bargaining agreements existing on effectivity of this issuance which grant more rights, privileges, and benefits to the drivers and conductors than herein provided shall continue to be in effect and shall not be diminished by virtue hereof or any subsequent policies or agreements.

The exercise of the right to self-organization shall in no way adversely affect public safety and convenience.

### **Effectivity**

Failure on the part of the PUB operators to secure and submit to the Board by July 30, 2012 the required Labor Standards Certificates shall be a ground for the immediate cancellation or revocation of their franchises/[Certificates of Public Convenience].

No application for new [Certificates of Public Convenience] or renewal of existing [Certificates of Public Convenience] shall thereafter be granted by the Board without the required Certificates.

This Memorandum Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation. Let three (3) copies hereof be filed with the UP [L]aw Center pursuant to Presidential Memorandum Circular No. 11, dated 9 October 1992.

SO ORDERED.

Five (5) days later or on January 9, 2012, the DOLE issued Department Order No. 118-12, elaborating on the part-fixed-part-performance-based compensation system referred to in the LTFRB Memorandum Circular No. 2012-001.<sup>[2]</sup> Department Order No. 118-12, among others, provides for the rule for computing the fixed and the performance-based component of a public utility bus driver's or conductor's wage. Relevant portions of Department Order No. 118-12 provide:

**DEPARTMENT ORDER NO. 118-12**

Series of 2012

**RULES AND REGULATIONS GOVERNING THE EMPLOYMENT  
AND WORKING CONDITIONS OF DRIVERS AND  
CONDUCTORS IN THE PUBLIC UTILITY BUS TRANSPORT  
INDUSTRY**

Pursuant to the provision of Article 5 of the Labor Code of the Philippines, as amended, the following rules and regulations are hereby issued to ensure the protection and welfare of drivers and conductors employed in the public utility bus transport industry:

. . . .

**RULE II  
TERMS AND CONDITIONS OF EMPLOYMENT**

**SECTION 1. *Employment Agreement for Drivers and Conductors.***

— There shall be an agreement in writing between the public utility bus owner/operator and the public utility bus driver and/or conductor, which shall include the following terms:

- a) Driver['s] or conductor's full name, date of birth or age, address, civil status, and SSS ID no.;
- b) Public Utility Bus owner's/operator's name and address;
- c) Place where and date when the employment agreement is entered into;
- d) Amount of the driver's or conductor's fixed wage and formula used for calculating the performance[-]based compensation in accordance with Rule III (Compensation), as provided hereunder;
- e) Hours of work;
- f) Wages and wage-related benefits such as overtime pay, holiday pay, premium pay, 13th month pay and leaves;
- g) Social security and welfare benefits;
- h) Separation and retirement benefits; and

- i) Other benefits under existing laws.

The public utility bus owner/operator shall provide the public utility bus driver/conductor the signed and notarized original copy of the agreement.

**SECTION 2. Minimum Benefits.** — The public utility bus drivers and conductors are entitled to the following benefits:

- a) Wages for all actual work during the normal work hours and days shall not be lower than the applicable minimum wage rates. Wages shall be paid at least once every two weeks or twice a month at intervals not exceeding 16 days;
- b) Twelve (12) Regular Holidays with pay pursuant to Republic Act 9849 (*An Act Declaring The Tenth Day of Zhul Hijja, The Twelfth Month of The Islamic Calendar, A National Holiday For The Observance of Eidul Adha, Further Amending For The Purpose Section 26, Chapter 7, Book I of Executive Order No. 292, Otherwise Known As The Administrative Code of 1987, As Amended*). The driver/conductor shall be paid holiday pay of 100% of the minimum wage even if he/she does not report for work, provided he/she is present or is on leave of absence with pay on the workday immediately preceding the holiday. If the driver/conductor is required to work on said holiday, he/she shall be paid 200% of the minimum wage;
- c) Rest day of twenty-four (24) consecutive hours for every six (6) consecutive working days. If the driver/conductor is required to work on a rest day, he/she shall be paid an additional premium pay of 30% of the basic wage. If the driver/conductor is required to work on special days under Republic Act No. 9849, he/she shall also be paid an additional premium pay of 30% of the basic wage. Whenever work is performed on a rest day, which happens to be also a special day, he/she is entitled to an additional 50% of the basic wage;
- d) Overtime pay equivalent to at least 25% of the basic wage on ordinary days and 30% on regular holidays, special days and rest days for work beyond eight (8) hours per day;
- e) Night shift pay of an additional 10% of the basic wage for work between 10:00 pm and 6:00 am of the following day;
- f) Paid service incentive leave of five (5) days for every year of service;
- g) 13<sup>th</sup> month pay pursuant to Presidential Decree No. 851, as amended, which entitles the employee to receive an amount equivalent to 1/12 of the total basic salary earned within the calendar year, not later than 24 December of each year;
- h) Paid maternity leave of sixty (60) days for normal delivery or