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SALIGAN Batas

More Questions Arise with the New Service Charge Rules

On February 1, 2024, the Department of Labor and Employment (DOLE) issued Department Order (DO) No. 242-24 or the Revised Implementing Rules and Regulations (IRR) of RA No. 11360, the Service Charge Law. The new DO superseded the previous IRR of RA No. 11360 and expanded the coverage of service charge distribution to contractual employees.

Prior to the passage of the Service Charge Law, Article 96 of the Labor Code fixed the distribution of service charges collected in hotels, restaurants, and similar establishments at the rate of 85% for covered employees and 15% for the management. Under the Service Charge Law passed in 2019, the management's share was removed, and all service charges would be "distributed completely and equally among the covered workers except managerial employees." The law also provided that it shall "not be construed to diminish existing benefits under present laws, company policies, and collective bargaining agreements."

To implement this, DOLE issued DO No. 206-19, which defined covered employees as "all employees, except managerial employees as defined herein, under the direct employ of the covered establishment, regardless of their positions, designations or employment status, and irrespective of the method by which their wages are paid." While the definition covered both regular and non-regular employees (e.g. probationary, casual, and seasonal employees), it excluded workers who were not directly employed by the establishment collecting service charges (e.g. contractual employees from manpower agencies). This appeared to be a deviation from the language of the law, which specifically used the term "workers" instead of employees. In Philippine labor law, the term "workers" is broader than the term "employees," because although the latter requires the existence of an employer-employee relationship, the former does not.

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The DO also provided that "[a]ll service charges actually collected by covered establishments shall be distributed completely and equally, based on actual hours or days of work or service rendered, among the covered employees, including those already receiving the benefit of sharing in the service charges." Based on this, only service charges that were actually paid to the establishment would be distributed and the distribution would be based on actual work hours or work days rendered by each employee. Moreover, the DO added the clause "including those already receiving the benefit of sharing in the service charges," which does not appear anywhere in the provisions of the law.

In the years that followed the issuance of DO No. 206-19, questions arose as to its proper interpretation and implementation. Some establishments interpreted the DO to mean that managerial employees who previously received shares in the service charges should still receive such shares despite their explicit exclusion under the law. This interpretation became the subject of controversies in labor-management councils, collective bargaining, and even voluntary arbitration. Notably, the DO did not expressly adopt the non-diminution clause of the Service Charge Law. Some also raised questions on the exclusion of contractual employees, as contractualization of work remained rampant in many industries like that of hotels and restaurants. With their exclusion, contractualized workers would not only be deprived of full enjoyment of their right to security of tenure but also of significant amounts of monetary benefits. In many hotels and industries, service charges constitute large portions of the employees' pay, in some cases reaching more than double their basic wages.

Perhaps in an attempt to address this, DOLE repealed DO No. 206-19 and replaced it with DO No. 242-24 earlier this year. The new DO now defines covered employees as "all employees, except managerial employees as defined herein, regardless of their position, designations, or employment status, and irrespective of the method by which their wages are paid," abandoning the qualification that the employees must be directly employed by the covered establishment. According to DOLE Secretary Bienvenido Laguesma, the intent is to cover "agency workers" or contractual employees in the distribution of service charges.[1] Meanwhile, the new DO also removed the clause "including those already receiving the benefit of sharing in the service charges" and added a non-diminution clause similar to that in the Service Charge Law.

While its intent to include contractual employees in the service charge distribution is laudable in principle, DO No. 242-24 is bound to raise more questions on its interpretation and implementation. For one, the new DO did not clarify exactly how shares in the service charges would be paid to contractual employees. Should the covered establishment release the shares to their agency, together with the service fees regularly paid to it, or directly to the contractual employees? There are foreseeable pros and cons in either method. For another, would all employees working within the premises of the establishment now be entitled to shares in the service charges? What about employees of concessionaires in hotels like wellness clinics and souvenir shops? Where should the line be drawn?

1 Ferdinand Patinio, New rules on Service Charge Law out, Philippine News Agency, February 3, 2024, available at https://www.pna.gov.ph/articles/1218204

Extending work benefits to contractualized workers is important, but we must not miss the forest for the trees. If we want to solve the problem of contractualization, we need policies that will effectively curb its prevalence and ensure regular and decent jobs for all. Deprivation of security of tenure and workers' benefits is the effect and contractualization is the cause, not the other way around.

Another question is whether DO No. 242-24 now excludes all managerial employees from receiving shares in the service charges. The new DO does not squarely address this question. Instead, it appears to have deferred to the language of the law by removing the clause added by the old DO and incorporating the law's non-diminution clause. One might interpret this to mean that at least some managerial employees should still be included in the service charge distribution. Another interpretation would exclude them from the distribution but require their employer to pay them counterpart amounts similar to those received by other employees as service charge shares. Indeed, this would reconcile the non-diminution clause with the exclusionary clause for managerial employees.

These questions are bound to be asked with the new service charge rules. Some of them have already been raised at the establishment level and in collective bargaining. If not an amendatory DO, a labor advisory clarifying these matters might serve the sector well and prevent costly litigation. #

Navigating Labor Relations in Electric Cooperatives: NEA's Policy Revisions

On October 5, 2023, the National Electrification Administration (NEA) issued Memorandum No. 2023-052, which significantly amended Memorandum No. 2014-003 regarding collective bargaining agreements within electric cooperatives. The primary aim of this new policy is to ensure alignment with the Supreme Court decisions in Cooperative Rural Bank vs. Ferer-Calleja (G.R. No. 77951, 26 September 1988) and Batangas Electric Cooperative Labor Union vs. Young (G.R. 62386, 70880, 74560, 9 November 1988). Additionally, it seeks to rationalize the dispensation of benefits and allowances through Collective Bargaining Agreements (CBAs) for all employees of unionized electric cooperatives.

Memorandum No. 2023-052 introduces updated guidelines for electric cooperative CBAs. Notably, the NEA stipulates that only employees of electric cooperatives who are neither members nor co-owners of such cooperatives possess the right to organize, bargain collectively, negotiate, and participate in labor organizations. Conversely, employees who are also members of the cooperative are prohibited from joining or becoming members of the cooperative's labor unions.

Additionally, Memorandum No. 2023-052 delineates

specific regulations concerning the economic provisions of CBAs:

1. Salaries and retirement benefits for employees are excluded from the bargaining agreement and are subject to NEA's guidelines, evaluation, and explicit approval. Similarly, all benefits outlined in existing NEA memoranda are no longer open to negotiation.

2. All economic and non-economic provisions, including the disbursement of monetary benefits stipulated in the CBA, must be incorporated into the electric cooperative's cash operating budget. These disbursements are contingent upon fund availability and compliance with accounting, auditing rules, and NEA's financial parameters, ensuring the non-impairment of monthly working capital requirements and adherence to policies on electric cooperatives' categorization.

3. Disbursement or release of all prevailing economic benefits under the CBA requires NEA's prior review, evaluation, and explicit approval by the electric cooperative. This approval process is based on Key Performance Parameters and the cooperative's fund availability to uphold its financial sustainability.

The critical question arises: Does Memorandum No. 2023-052 run counter to the Philippines' obligations under international conventions?

SALIGAN contends that Memorandum No. 2023-052 fails to adhere to the Philippines' obligations under ILO Conventions Nos. 87 and 98, which guarantee workers' rights to freedom of association and protection of the right to organize and engage in collective bargaining. These rights are constitutionally guaranteed.

Moreover, the memorandum undermines employees' bargaining power, as any agreement reached remains subject to NEA approval. This curtails the independence and autonomy of electric cooperatives in determining employee benefits, including perks and retirement plans, as they require NEA sanction.

While NEA aims to enhance collaboration with electric cooperatives to improve electrification programs, the potential impact on workers' rights cannot be ignored. Denying employees the opportunity to organize and bargain collectively may disrupt the balance between regulatory oversight and labor rights. A re-evaluation of the policy is warranted to ensure alignment with constitutional principles and international obligations.

Ultimately, the government must prioritize workers' fundamental rights while pursuing its electrification objectives. Adequate evaluation of international treaties, engagement with stakeholders, and a commitment to upholding labor protections are essential in safeguarding workers' rights as enshrined in the 1987 Constitution. #

The SEBA Certification Process

In the framework of Philippine labor relations, establishing a Sole and Exclusive Bargaining Agent (SEBA) is crucial for ensuring workers' rights to self-organization and collective bargaining. Governed by constitutional mandates, the Labor Code of the Philippines and issuances by the Department of Labor and Employment (DOLE), the SEBA certification process is essential for both labor organizations and employers.

This article aims to provide clarity and guidance on the SEBA certification process, drawing from pertinent legal provisions and recent amendments issued by the DOLE.

The 1987 Constitution assures the rights of workers to self-organization, to form unions, associations, or societies for purposes not contrary to law. The exercise of these rights by the workers or employees serves as one of the bases for the conduct of collective bargaining agreements (CBAs) with the employer.

A CBA is a negotiated contract between a duly recognized or certified exclusive bargaining agent of workers and their employer, concerning wages, hours of work, and all other terms and conditions of employment in the bargaining unit, including mandatory provisions for grievances and arbitration mechanisms. The bargaining agent representing the workers or employees must have been established as the Sole and Exclusive Bargaining Agent (SEBA) under the modes provided by the law.

SEBA is a crucial entity empowered to negotiate on behalf of all employees within a collective bargaining unit (CBU). Various modes exist for determining the SEBA, including certification elections and requests for SEBA certification. These mechanisms ensure the democratic selection of the bargaining representative, thus upholding the workers' right to self-organization and collective bargaining as enshrined in the Philippine Constitution.

Under the provisions of the Labor Code, SEBA may be determined through any of the following modes:

1. Request for SEBA certification;
2. Certification election;
3. Consent election;
4. Run-off election; and Re-run election.[1]

The recent amendments introduced by DOLE through Department Order No. 40-J, series of 2022, have refined the SEBA certification process.[2] Legitimate labor organizations now have the avenue to file requests for SEBA certification directly with the Regional Office, streamlining the initial stages of the process. Clear requirements have been outlined, including the submission of essential details such as the bargaining unit sought to be represented and the number of employees therein. Additionally, stringent timelines have been imposed to expedite the certification process, ensuring swift resolution and clarity for all parties involved.

Any legitimate labor organization may file a Request in the DOLE Regional Office which issued the certificate of registration or certificate of creation of chartered local, as the case may be (Book V, Rule VII, Sec 1 IRR of Labor Code). The request should indicate the following:

- The name and address of the requesting legitimate labor organization;

1 Retrieved from https://www.alburolaw.com/modes-of-determining-the-sole-and-exclusive-bargaining-agent-seba/ on April 8, 2024.
2 Retrieved from https://www.ocamposuralvo.com/2022/04/13/dole-amends-requirements-for-seba-certification/ on April 8, 2024.

- The name and address of the company where it operates;
- The bargaining unit sought to be represented;
- The approximate number of employees in the bargaining unit; and
- The statement on the existence or non-existence of other labor organizations or CBAs.[3]

There are three (3) scenarios involving a request for SEBA Certification under the Rules governing the Labor Code:

1. Request for certification in an unorganized establishment with only one (1) legitimate union. No certification election is required in this case unless the requesting union fails to complete the requirements for SEBA certification.

2. Request for certification in an unorganized establishment with more than one (1) legitimate labor organization.

3. Request for certification in an organized establishment.[4]

This process ensures that all employees' rights to self-organization and collective bargaining are safeguarded, with clear and streamlined procedures for the certification of SEBAs to represent them in negotiations with their employer.

Understanding the modes of determining SEBA is crucial for both labor organizations and employers alike. Whether through requests for certification or certification elections, the goal remains the same: to ascertain the legitimate representative of the employees within a CBU. Various scenarios, such as organized and unorganized establishments, necessitate different approaches, each designed to uphold the principles of fairness and democratic representation.

In navigating the SEBA certification process, adherence to legal provisions and procedural requirements is paramount. By recognizing the importance of collective bargaining and the role of SEBA, both workers and employers can foster constructive dialogue, negotiate mutually beneficial agreements, and ultimately contribute to a more equitable and productive work environment. As we navigate the challenges posed by the pandemic and beyond, the establishment of robust collective bargaining mechanisms remains essential in safeguarding the rights and interests of all stakeholders involved in the labor sector.

Breaking Barriers: Women Leading the Charge in Philippine Unionism

When one envisions union leaders in the Philippines, the typical image conjured is that of a group of men brandishing placards in the fight for their rights. This image, however, reflects the entrenched patriarchal norms that have long dominated Philippine society. In the midst of this landscape, it's both inspiring and refreshing to witness a paradigm shift, with women taking the helm and flourishing as union leaders. One such union challenging the status quo is the Tenpoint Manufacturing Corporation Employees Union (TMCEU), situated in General Santos City, which has been spearheading a different approach to dealing, negotiating, and engaging with management over the past few years.

3 Id.
4 Retrieved from https://www.ocamposuralvo.com/2022/04/13/dole-amends-requirements-for-seba-certification/ from April 8, 2024.



Regular meeting of the union members and officers of TMCEU.

Tenpoint Manufacturing Corporation, based in Gen. Santos, South Cotabato, Philippines, specializes in exporting tuna products and engaging in food production. The majority of TMCEU union members hold positions crucial to tuna processing and food production. These roles encompass tasks such as processing, including the meticulous washing and cutting of tuna, ensuring rigorous quality control standards, operating machinery as manufacturing operators, maintaining equipment as skilled maintenance technicians, overseeing packaging and distribution logistics, and managing various administrative functions. Together, these dedicated employees play a pivotal role in the company's operations and the consistent production of superior-quality tuna products.

In an illuminating online interview conducted on April 1, 2024, key officers of TMCEU shared their insights. Cheryl Paghid, serving as the union President, along with Irish Mae Amadeo, the union Treasurer, and Angelie Varona and Aljun Estrera, both Board of Trustees members, shed light on their experiences as paralegals trained by SALIGAN, who concurrently hold leadership positions within TMCEU. Christian Licatan, the union Sergeant at Arms, also contributed to the discussion.

A pivotal takeaway from their paralegal training (PLT), which they seamlessly integrated into their union practices, was the recognition of the special leave for women mandated by the Magna Carta of Women (Republic Act 9710). This legislation stipulates that female employees are entitled to a two-month special leave with full pay following surgery necessitated by gynecological disorders. Remarkably, prior to their PLT, this provision had eluded their awareness. Now, thanks to their efforts, more than 10 women within their company, including supervisory staff, have availed themselves of this crucial

Moreover, TMCEU has been at the forefront of advocating for the rights of agency and contractual employees. Through their relentless efforts, they have initiated processes to transition at least 20 former agency or contractual workers into regular employment status, with a projected completion date of July of this year.

The strides made by TMCEU under the leadership of these adept and empowered women signify a departure from the traditional narrative of unionism in the Philippines. Their proactive approach not only challenges gender stereotypes but also underscores the transformative potential of inclusive leadership. As they continue to pave the way for equitable practices within their union and beyond, they serve as beacons of empowerment, inspiring a new generation of leaders to effect meaningful change in the realm of labor rights and social justice. #

SALIGAN
SENTRO NG ALTERNATIBONG LINGAP PANLEGAL

(+63)(2)4266001 LOC. 4858-4860

WWW.SALIGAN.ORG

SALIGAN@SALIGAN.ORG

/SALIGAN.ALAC