

DSWD OPINION NO. 26 S. 2024**MEMORANDUM**

FOR : DIRECTOR JENNIFER M. RIZO
Human Resource Management and Development Service and
Head Secretariat

FROM : THE ASSISTANT SECRETARY FOR GENERAL
ADMINISTRATION AND SUPPORT SERVICES GROUP AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : LEGAL GUIDANCE AND OPINION ON THE ARISING
CONCERNS ON THE PROPOSED COLLECTIVE
NEGOTIATION AGREEMENT

DATE : 08 MARCH 2024

This refers to your MEMORANDUM dated 28 February 2024 which was received by the Legal Service on 1 March 2024, requesting for legal guidance and opinion on the arising concerns on the proposed Collective Negotiation Agreement (CNA) for CY 2024-2028.

As a background, the 6TH CNA between the Management and Association was signed on 28 September 2020, with effectivity from 29 September 2020 to 28 September 2023, and was registered with the Civil Service Commission (CSC) on 05 February 2021. The same was made effective from 29 September 2020 to 28 September 2023. This is in accordance with Public Sector-Labor Management Council (PSLMC) Resolution No. 2, series of 1991 (s.1991), wherein, it states that CNAs shall in no case have a lifetime of more than three (3) years.

Before the expiration of the 6th CNA, negotiations for the CNA CY 2024 were conducted but the Management and Association still failed to have a consensus. Thus, by virtue of PSLMC Resolution No. 1, Series of 2014, the 6th CNA was extended for another six months, to wit:

"WHEREOF, the Council RESOLVES, as it hereby RESOLVED, that the automatic renewal clause in a Collective Negotiation Agreement shall not bar the negotiating parties to earnestly enter into an agreement for the renegotiation/renewal of a CAN. All rights, privileges and benefits under the previous CAN shall be enjoyed by the rank-and-file employees pending negotiations for the renewal of the CAN and until conclusion of a final agreement within six (6) months from its expiration"

It should be noted, however, that PSLMC Resolution No. 1, Series 2014 was amended upon issuance of PSLMC Resolution No. 1, Series 2022 on 13 May 2022, specifically on the following:

"x x x

- 1) CNAs in all agencies shall have a lifetime of four (4) years; and

- 2) All CNAs, regardless of the presence of an “automatic renewal clause” provision may be granted an extension of a maximum of one (1) year after its expiration, provided the employees’ organization has shown proof of an earnest effort to renegotiate with the management within sixty (60) calendar days prior to its expiration

Notwithstanding the foregoing, the parties may negotiate a supplemental agreement or a new CNA during its lifetime.

x x x" (Emphasis Supplied)

PSLMC No. 1, s. 2022 changed the duration of CNAs from three (3) years to four (4) years and extended the period for renegotiation after its expiration from six (6) months to one (1) year. PSLMC No. 1, s. 2022 was promulgated on 13 May 2022, thus, is applicable to the 6th CNA with respect to the renegotiation period of one (1) year from expiration date.

Applying the foregoing, the 6th CNA may be granted a renegotiation period up to one (1) year from 28 September 2023. The Management and the Association may enter into an agreement for the renegotiation/renewal of the 6th CNA until 28 September 2024. As of this date until 28 September 2024, the employees are still entitled to enjoy their benefits under the existing CNA, notwithstanding the pendency of renegotiation for the renewal of the CNA between the Management and Association

This is in compliance with the Constitutional mandate on the protection of workforce rights and welfare. thus, Section 18 of Article II of the 1987 Constitution states that “*The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote welfare*”, therefore, the Association, as the Collective Negotiating Agent, may continue to negotiate terms for a new CNA which shall protect the rights and promote the welfare of its members or of the employees.

Should the parties fail to come into an accord upon the expiration of the one-year renegotiation period under PSLM Resolution No. 1, Series 2022, the entitlement of benefits under the 6th CNA shall cease for lack of valid CNA to support the grant of CNA incentives. To reiterate, Department of Budget and Management (DBM) Budget Circular No. 2023-1 Item 4.1.1 (a), in relation to PSLMC Resolution No. 9, series of 2023 (s.2023), provides that the existence of a valid and subsisting CNA is **required for the grant of CNA incentives**, thus:

"x x x

4.1.1 Existence of a CNA

- (a) There should be a valid and subsisting CNA executed between the representatives of the management and the employees’ organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of a department, line, bureau, attached agency, Constitutional Office, SUC, GOCC, LWD, or LGU.

In accordance with PSLMC Resolution No. 9, s. 2023, the registration by the employees’ organization of its CNA with the SCS shall be a condition

precedent for the grant of the CNA Incentive. For this purpose, a Certificate of Registration shall be secured from the CSC

x x x"

The absence of a valid and registered CNA shall affect the Association's role as the sole and exclusive Collective Negotiating Agent of the rank-and-file employees. PSLMC Resolution No. 9, s. 2023 mentions the effects of registration of CNAs, thus:

"Whereas, the effects of registration of CNAs are as follows:

1. No petition questioning the majority status of the incumbent sole and exclusive negotiating agent (SENA) shall be entertained (Section 6, Rule XIII of the IRR of EO No. 180);
2. No petition for certification election shall be entertained by the Department of Labor and Employment-Bureau of Labor Relations (DOLE-BLR) except during the 60-day freedom period (Section 6, Rule XIII of the IRR of EO No. 180); and
3. The Council will not take cognizance of any complaint or petition arising or relating to an unregistered CNA (PSLMC Resolution No. 7, s. 2017)."

In view of the foregoing, after the expiration of the extension granted under PSLMC Resolution No. 1, s. 2022 (28 September 2024) and exhaustion of available opportunity to negotiate, a petition questioning the majority status of the Association, as well as a petition for certification election, may be entertained.

Should a deadlock happen between the Management and the Association, the Management Negotiating Panel and/or the Association Negotiating Panel may submit the dispute with the PSLMC pursuant to Section 4, Rule XIX on Jurisdiction of the Amended Rules and Regulations of Executive Order No. 180, thus:

"Original and exclusive jurisdiction of the Council – The Council shall have original and exclusive jurisdiction over the following:


x x x

- (b) **Disputes which arise in collective negotiations or when there is a deadlock resulting therefrom"**

x x x"

For your consideration.

Thank you.



ATTY. GINA V. WENCESLAO

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