
NWPC LAW GAZETTE

NWPC Case No. W.O. 12-003

2. CONFORMITY WITH THE LAW

NWPC Case No. W. O. 12-003

27 June 2012

IN RE: APPEAL ON WAGE ORDER NO. NCR-17

TRADE UNION CONGRESS OF THE PHILIPPINES, Appellant.

NWPC Case No. W. O. 12-004

IN RE: APPEAL ON WAGE ORDER NO. NCR-17

EMPLOYERS CONFEDERATION OF THE PHILIPPINES,
Appellant.

Wage Order; Appeal; Wage Order No. NCR-17 Conforms With The Criteria On Minimum Wage Fixing. - The Commission is convinced that Wage Order No. NCR-17 did not disregard the spirit and criteria of R.A. 6727. In fact, the increase was in conformity with the criteria under Article 124 of the Labor Code as amended by R.A. 6727. The integration into the basic wage of the P22.00 COLA under previous Wage Order No. NCR-16 and the grant of new P30.00 per day COLA was reasonable, not inadequate and not excessive. The increase granted was arrived at only after the Board made a factual determination on the amount of wage increase based on series of public consultations and hearings participated by the different sectors and the review and study of prevailing economic conditions in the NCR.

Same; Same; No Grave Abuse Of Discretion. - The Board did not commit any abuse of discretion when it issued the assailed Wage Order. The Board conducted sectoral consultations and public hearing. Based on the results of the consultations/hearing

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and the study of the socio-economic indicators in the region, the Board issued the Wage Order and caused its publication in a newspaper of general circulation. Hence, as we see it, the Board followed the substantive and procedural requirements in issuing Wage Order No. NCR-17, as set forth in R.A. 6727, the Commission's Amended Rules of Procedure on Minimum Wage Fixing and the Amended Rules on Exemption. We stress that unless the Commission finds arbitrariness and/or whimsical exercise of the power of the Board, its factual determination in the issuance of wage orders, including the amount and form of wage increase, is generally accorded respect. Well-embedded is the jurisprudence that factual findings of quasi-judicial bodies in the exercise of their quasi-judicial duties are accorded not only with respect but also with finality if such findings are supported by substantial evidence (*Villareal v. CA*, 219 SCRA 219). It is only upon clear showing of grave abuse of discretion and disregard of the NWPC Amended Rules of Procedure on Minimum Wage Fixing and the Rules on Exemption that such factual determinations may be altered or modified. Moreover, the Labor and Employers' Sectors are both represented in all the Regional Tripartite Wages and Productivity Boards including the NCR Board to protect their own sectors' interest.

Same; Same; Authority To Grant Across-The-Board Wage Increase. - The Board has no authority to grant across-the-board wage increase. In *Metropolitan Bank & Trust Co. v NWPC*, G.R. No. 144322, 6 February 2007, the Supreme Court declared as void Wage Order No. RO2-03 with respect to its application to the employees receiving more than the prevailing minimum wage rate at the time of its passage. It held that the RTWPB did not determine or fix the minimum wage rate by the floor wage method or the salary ceiling-method in issuing the wage order. Instead, it granted an across-the-board wage increase of P15.00 to all employees and workers of Region 2. In doing so, the RTWPB exceeded its

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authority by extending the coverage of Wage Order to wage earners receiving more than the prevailing minimum wage rate, without a denominated salary ceiling.

Same; Same; Inclusion Of ETA As Exemptible Category. – In the inclusion of ETA as exemptible category in W.O. No. NCR-17, the Commission finds no contrariety of Wage Order No. NCR-17 to law and the Rules on Exemption in view of the following reasons: First, Wage Order No. NCR-17 was submitted for review and affirmed by the Commission on 25 May 2012. Second, the exemptible category of ETA is not a new category, the same having been included since W.O. Nos. NCR-10, 11, 12, 13, 14, 15, and 16 which were already passed upon and affirmed by the Commission. In fact, in the decisions dated 27 June 2008 (W.O. No. NCR-14) and 19 September 2007 (W.O. No. NCR-13) on the appeals of TUCP, the Commission declared this exemptible category as not a new category, the same having been considered and affirmed in the previous wage orders. Third, the exemption under the Wage Order is different from the non-coverage of micro business establishments provided under R.A. 9178 (Barangay Micro Business Enterprises Law). The exemption is only for one year whereas R.A. 9178 expressly removes BMBE registered enterprises with certificates of authority from the coverage of the minimum wage law for two (2) years subject to renewals. The establishments referred to under the Wage Order No. NCR-17 are those not registered as BMBEs. Fourth, the exemption under Wage Order No. NCR 17 is not automatic as the applicants have to apply and submit the required documents, and Fifth, the Board submitted to the Commission a justification for the exemption of ETA to provide relief to small establishments from competitive pressure and allow them to expand and create more jobs or preserve existing ones. Out of 210,574 total business establishments in the region, 99.4% are Micro, Small and Medium Enterprises (MSMEs) and employ 54.73% of the formal labor force in the region.

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Same; Same; Jurisdiction To Fix Minimum Wages For Workers Of BMBEs. - The Board has no jurisdiction to fix minimum wages for workers of BMBEs as the latter are exempt from minimum wage law pursuant to Section 8 of R.A. 9178, quoted as follows: "The BMBEs shall be exempt from the coverage of the Minimum Wage Law: Provided, That all employees covered under this Act shall be entitled to the same benefits given to any regular employee such as social security and healthcare benefits." Even DOLE Department Order No. 45-03 (Guidelines for the Implementation of Section 8 of R.A. 9178) issued on 15 May 2003 by the then DOLE Secretary Patricia A. Sto. Tomas and the NWPC Guidelines No. 01, Series of 2003 (Guidelines on the Issuance of Wage Advisories for Barangay Micro Business Enterprises) issued on 20 October 2003 by the Commission also reiterated the exemption of duly registered BMBEs from coverage of the minimum wage.

Same; Same; R.A. 9178 Being The Later Law Prevails Over R.A 6727. - R.A. 6727 (The Wage Rationalization Act) took effect on 1 July 1989. It empowers the different Regional Tripartite Wages and Productivity Boards to fix and determine the minimum wage rates of private sector workers in their respective regions. R. A. 9178 (The Barangay Micro Business Enterprises [BMBEs] Act of 2002) took effect on 4 December 2002. It exempts the BMBEs from the coverage of minimum wage law. Hence, R. A. 9178 being the later law prevails over R. A. 6727. In *Herman v. Radio Corp. of the Philippines*, 50 Phil. 490 [1927], the Supreme Court had ruled that whenever two statutes of different dates and of contrary tenor are of equal theoretical application to a particular case, the statute of later date must prevail, being a latter expression of legislative will. In *Pacis v. Averia*, G.R. No. 22526, Nov. 29, 1966, 18 SCRA 907; *Lopez v. Commissioner of Customs*, G.R. No. 28235, Jan. 30, 1971, 37 SCRA 327; *Libares v. Executive*

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Secretary, G.R. No. 21505, Oct. 24, 1963, 9 SCRA 261; David v. COMELEC, 81 SCAD 482, 271 SCRA 90 [1997], citing Agpalo, Statutory Construction, 1990 ed., p. 294, it also declared that as between two laws on the same subject matter, which are irreconcilably inconsistent, that which is passed later prevails, since it is the latest expression of legislative will.

Same; Same; Ultra Vires Act Principle: In Maria Clara Pirovana, et al. v. Dela Rama Steamship Co., G.R. No. L-5377, December 1954, the Court declared that an ultra vires act is one outside the scope of the power conferred by the legislature, and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority or particular officers or agents. Wage Order No. NCR-17 being an administrative issuance and subordinate in character than a law can not amend, diminish or enhance the law it implements. Thus, in Boie-Takeda Chemicals, Inc. De la Serna, 46 SCAD 690, 228 SCRA 329,340 [1993], the Supreme Court ruled that an administrative agency cannot amend an act of Congress. In Conte v. COA, 76 SCAD 16, 264 SCRA 19 and Victorias Milling Co., Inc. vs. Social Security Commission, 114 Phil. 555, the Supreme Court ruled that administrative issuances must not override but must remain consistent and in harmony with the law they seek to apply and implement. A rule or regulation which restricts or enlarges a statute is invalid. In Metropolitan Bank & Trust Company, Inc. vs. NWPC, G.R. No. 144322, February 6, 2007; Executive Secretary vs. Southwing Heavy Industries, Inc., G.R. Nos. 164171, 164172 and 168741, February 20, 2006, 48 SCRA 673-699, it enunciated that when the application of an administrative issuance modifies existing laws or exceeds the intended scope, as in this case, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable. Likewise, in Republic Flour Mills, Inc. v. Commissioner of

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Customs, G.R. No. 28464, May 31, 1971, 39 SCRA 269; Commissioner of Internal Revenue v. Limpan Investment Corp., G.R. No. 28571, July 31, 1970, 34 SCRA 148 [1970]; Quijano v. DBP, G.R. 26419, Oct. 16, 1970, 35 SCRA 270; Ramos v. CA, G.R. No. 53766, Oct. 30, 1981, 108 SCRA 728, the Supreme Court declared that a statute, being the will of the legislature, should be applied in exactly the way the legislature has expressed itself clearly in the law. The clear, unambiguous and unequivocal language of a statute precludes the court from construing it and gives it no discretion but to apply the law. Moreover, in *Pascual v. Pascual-Bautista*, 207 SCRA 561 [1992]; *Fagel Tabin Agricultural Corp. v. Jacinto*, 203 SCRA 189 [1991]; *People v. Amigo*, 67 SCAD 28, 252 SCRA 43 [1996], it held that it is an elementary rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. The courts may not speculate as to the probable intent of the legislature apart from the words. When the law is clear, it is not susceptible of interpretation. It must be applied regardless of who may be affected, even if it may be harsh or onerous.

Same; Same; Motion for Reconsideration; Reasons For Rationalizing Wages. - In *ECOP vs. NWPC* (G.R. No. 96169, September 24, 1991), the Court declared that precisely, Republic Act No. 6727 was intended to rationalize wages, first, by providing for full-time boards to police wages round-the-clock, and second, by giving the boards enough powers to achieve this objective. The Court is of the opinion that Congress meant the boards to be creative in resolving the annual question of wages without labor and management knocking on the legislature's door at every turn. The fact of the matter is that the Act sought a "thinking" group of men and women bound by statutory standards.

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Same; Same; Same; Use Of The "Floor Wage" Method Of Adjusting Minimum Wage. - The current regional minimum wage system is still being used together with the criteria of wage fixing under Article 124 of the Labor Code. The substantial and procedural requirements of due process are still being observed. The "floor-wage" methodology in adjusting minimum wages is the method generally being utilized by the different Boards. As explained by the Court in the cases of Metropolitan Bank and Trust Company, Inc. vs. NWPC (G.R. NO. 144322, February 6, 2007) and ECOP vs. NWPC (G.R. No. 96169, September 24, 1991) the "floor-wage" method of adjusting minimum wage involves the fixing of a determinate amount to be added to the prevailing statutory minimum wage rates.

Same; Same; Same; Amount Of Wage Increase Granted Under WO No. NCR-17; Inclusion Of COLA In The Computation Of Mandatory Contribution And Wage Related Benefits. - The amount of wage increase granted under WO No. NCR-17 was only P30.00 per day given in the form of COLA. The integration into the basic wage of the P22.00 COLA under W.O. No. NCR-16 cannot be considered a new increase because the same is already being received by workers prior to the issuance of W.O. No. NCR-17. Even as a COLA, it already forms part of the computation of mandatory contributions to the Social Security System (Section 18 in relation to Section 8(f), RA 1161 as amended by RA 8282); and Pag-ibig (Section 7 in relation to Section 4(b), RA 9679). COLA is likewise included in the computation of wage-related benefits such as payment of separation pay (Planters Products, Inc. vs. NLRC, G.R. No. 78524, January 20, 1989; Millares vs. NLRC, G.R. No. 122827, March 29, 1999); leaves (Globe Mackay Cable and Radio Corp. vs. NLRC, 163 SCRA 71); and regular holiday pay (Labor Advisory dated 7 July 2011 issued by the DOLE Secretary).

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FACTS:

TUCP filed with the Board on 16 March 2012, a petition for P90.00 across-the-board wage increase. In its resolution, the Board declared absence of a supervening condition in NCR.

After conducting public consultations with the different sectors and a public hearing, the Board issued on 17 May 2012 Wage Order No. NCR-17 providing for the integration into the basic wage of the P22.00 per day COLA under W.O. No. NCR-16 and a new P30.00 per day COLA to be given to minimum wage workers in two tranches: P20.00 upon effectivity (3 June 2012) and P10.00 on November 1, 2012.

TUCP filed the first appeal on 23 May 2012 alleging grave abuse of discretion and the Wage Order was contrary to law. TUCP filed another appeal on 29 May 2012 on the ground of grave and reversible error in failing to grant the P90.00 across-the-board prayed for.

On 25 May 2012, ECOP filed a Motion for Reconsideration/Appeal on the grounds that the Board committed grave abuse of discretion in granting an excessively unjustified increase in minimum wage rates which was confiscatory and therefore contrary to law and policy; that it committed an ultra vires act when it prescribed in Section 2 of the Wage Order that duly registered BMBEs should pay their workers not lower than the region's poverty threshold of P259.36 per day for a family of five as of 2011, subject to the condition that should there be a change in the poverty threshold as determined by the National Statistics Office (NSO), the same shall be applicable; R.A. No. 9178 not only exempts BMBEs from coverage of the minimum wage law but also penalizes with criminal sanctions violation of its provisions; and that Wage Order No. NCR-17 violated Section 3.A.1 of the NWPC

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Guidelines No. 1, series of 2003 (Guidelines on the Issuance of Wage Advisories for BMBEs).

The Board submitted its comments on the appeals.

ISSUES:

1. Whether or not Wage Order No. NCR-17 granting P30.00 increase grossly disregarded the spirit, criteria of R.A. 6727.
2. Whether or not the Board committed grave abuse of discretion in issuing Wage Order No. NCR-17.
3. Whether or not an across-the-board wage increase is valid.
4. Whether or not Wage Order No. NCR-15 is contrary to law on the matter of the exemptible category of Establishments with Total Assets of P3 Million or below (ETA) and the fixing of minimum wages of BMBE workers.

HELD:

The appeal of TUCP denied for lack of merit.

The appeal of ECOP partially granted.

First Issue

Wage Order No. NCR-17 did not disregard the spirit and criteria of R.A. 6727. In fact, the increase was in conformity with the criteria under Article 124 of the Labor Code as amended by R.A. 6727. The integration into the basic wage of the P22.00 COLA under previous Wage Order No. NCR-16 and the grant of new P30.00 per day COLA was reasonable, not inadequate and not excessive. The increase granted was arrived at only after the Board

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made a factual determination on the amount of wage increase based on series of public consultations and hearings participated by the different sectors and the review and study of prevailing economic conditions in the NCR.

Based on the National Statistics Office (NSO) data, the daily poverty threshold for a family of five (5) was P259.3 for 2011. The result of the Board's study of the socio economic indicators in the NCR showed that the amount needed to restore the purchasing power using the April 2012 consumer price index was only 9.88. However, the Board considered not only the overall inflation for 2012 but also the price increases of some expenditure items (food, non-food, and utilities) for the period from May 2011 to April 2012 including the recent tuition fee and power rates increases. Accordingly, the P30.00 per day COLA compensated the erosion rate caused by inflation and restored the lost purchasing power of the workers due to increase in prices of basic and prime commodities and other services/utilities. Thus, the Board merely performed its delicate task of balancing the interests of both labor and capital within the framework of the national economic and social development program, which is precisely what the law envisioned when it expressly included the various standards/criteria for minimum wage fixing under the law.

Second Issue

The Board did not commit any abuse of discretion when it issued the assailed Wage Order. The Board conducted sectoral consultations and public hearing. Based on the results of the consultations/hearing and the study of the socio-economic indicators in the region, the Board issued the Wage Order and caused its publication in a newspaper of general circulation. Hence, as we see it, the Board followed the substantive and procedural requirements in issuing Wage Order No. NCR-17, as set forth in

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R.A. 6727, the Commission's Amended Rules of Procedure on Minimum Wage Fixing and the Amended Rules on Exemption.

We stress that unless the Commission finds arbitrariness and/or whimsical exercise of the power of the Board, its factual determination in the issuance of wage orders, including the amount and form of wage increase, is generally accorded respect. Well-embedded is the jurisprudence that factual findings of quasi-judicial bodies in the exercise of their quasi-judicial duties are accorded not only with respect but also with finality if such findings are supported by substantial evidence (*Villareal v. CA*, 219 SCRA 219). It is only upon clear showing of grave abuse of discretion and disregard of the NWPC Amended Rules of Procedure on Minimum Wage Fixing and the Rules on Exemption that such factual determinations may be altered or modified.

Moreover, the Labor and Employers' Sectors are both represented in all the Regional Tripartite Wages and Productivity Boards including the NCR Board to protect their own sectors' interest.

Third Issue

The Board has no authority to grant across-the-board wage increase. In *Metropolitan Bank & Trust Co. v NWPC*, G.R. No. 144322, 6 February 2007, the Supreme Court declared as void Wage Order No. RO2-03 with respect to its application to the employees receiving more than the prevailing minimum wage rate at the time of its passage. It held that the RTWPB did not determine or fix the minimum wage rate by the floor wage method or the salary ceiling-method in issuing the wage order. Instead, it granted an across-the-board wage increase of P15.00 to all employees and workers of Region 2. In doing so, the RTWPB exceeded its authority by extending the coverage of Wage Order to wage earners

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receiving more than the prevailing minimum wage rate, without a denominated salary ceiling.

Fourth Issue

Regarding the inclusion of ETA as exemptible category, the Commission finds no contrariety of Wage Order No. NCR-17 to law and the Rules on Exemption in view of the following reasons: First, Wage Order No. NCR-17 was submitted for review and affirmed by the Commission on 25 May 2012. Second, the exemptible category of ETA is not a new category, the same having been included since W.O. Nos. NCR-10, 11, 12, 13, 14, 15, and 16 which were already passed upon and affirmed by the Commission. In fact, in the decisions dated 27 June 2008 (W.O. No. NCR-14) and 19 September 2007 (W.O. No. NCR-13) on the appeals of TUCP, the Commission declared this exemptible category as not a new category, the same having been considered and affirmed in the previous wage orders. Third, the exemption under the Wage Order is different from the non-coverage of micro business establishments provided under R.A. 9178 (Barangay Micro Business Enterprises Law). The exemption is only for one year whereas R.A. 9178 expressly removes BMBE registered enterprises with certificates of authority from the coverage of the minimum wage law for two (2) years subject to renewals. The establishments referred to under the Wage Order No. NCR-17 are those not registered as BMBEs. Fourth, the exemption under Wage Order No. NCR 17 is not automatic as the applicants have to apply and submit the required documents, and Fifth, the Board submitted to the Commission a justification for the exemption of ETA to provide relief to small establishments from competitive pressure and allow them to expand and create more jobs or preserve existing ones. Out of 210,574 total business establishments in the region, 99.4% are Micro, Small and Medium Enterprises (MSMEs) and employ 54.73% of the formal labor force in the region.

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On the setting of minimum wage for duly registered BMBE workers, Wage Order No. NCR-17 contravened R.A. 9178. The Board has no jurisdiction to fix minimum wages for workers of BMBEs as the latter are exempt from minimum wage law pursuant to Section 8 of R.A. 9178, quoted as follows: “The BMBEs shall be exempt from the coverage of the Minimum Wage Law: Provided, That all employees covered under this Act shall be entitled to the same benefits given to any regular employee such as social security and healthcare benefits.”

Even DOLE Department Order No. 45-03 (Guidelines for the Implementation of Section 8 of R.A. 9178) issued on 15 May 2003 by the then DOLE Secretary Patricia A. Sto. Tomas and the NWPC Guidelines No. 01, Series of 2003 (Guidelines on the Issuance of Wage Advisories for Barangay Micro Business Enterprises) issued on 20 October 2003 by the Commission also reiterated the exemption of duly registered BMBEs from coverage of the minimum wage.

As held by the Supreme Court in *Angelito Magno v. People of the Philippines, et. al.* G.R. No. 171542, April 6, 2011 citing *Felicitas M. Machado, et al. v. Ricardo L. Gatdula, et al.*, jurisdiction over a subject matter is conferred by law and not by the parties’ action or conduct. Likewise in *Angelito Magno v. People of the Philippines, Et. Al.* G.R. No. 171542, April 6, 2011 citing *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559, citing *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 [1986], the Supreme Court ruled that there is no rule in procedural law as basic as the precept that jurisdiction is conferred by law.

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R.A. 6727 (The Wage Rationalization Act) took effect on 1 July 1989. It empowers the different Regional Boards to fix and determine the minimum wage rates of private sector workers in their respective regions. R. A. 9178 (The Barangay Micro Business Enterprises [BMBEs] Act of 2002) took effect on 4 December 2002. It exempts the BMBEs from the coverage of minimum wage law. Hence, R. A. 9178 being the later law prevails over R. A. 6727. In *Herman v. Radio Corp. of the Philippines*, 50 Phil. 490 [1927], the Supreme Court had ruled that whenever two statutes of different dates and of contrary tenor are of equal theoretical application to a particular case, the statute of later date must prevail, being a latter expression of legislative will. In *Pacis v. Averia*, G.R. No. 22526, Nov. 29, 1966, 18 SCRA 907; *Lopez v. Commissioner of Customs*, G.R. No. 28235, Jan. 30, 1971, 37 SCRA 327; *Libares v. Executive secretary*, G.R. No. 21505, Oct. 24, 1963, 9 SCRA 261; *David v. COMELEC*, 81 SCAD 482, 271 SCRA 90 [1997], citing *Agpalo*, *Statutory Construction*, 1990 ed., p. 294, it also declared that as between two laws on the same subject matter, which are irreconcilably inconsistent, that which is passed later prevails, since it is the latest expression of legislative will.

The action of the Board in setting a minimum wage for duly registered BMBE workers constituted an *ultra vires* act. In *Maria Clara Pirovana, et al. v. Dela Rama Steamship Co.*, G.R. No. L-5377, December 1954, the Court declared that an *ultra vires* act is one outside the scope of the power conferred by the legislature, and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority or particular officers or agents. Wage Order No. NCR-17 being an administrative issuance and subordinate in character than a law can not amend, diminish or enhance the law it implements. Thus, in *Boie-Takeda Chemicals*,

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Inc. De la Serna, 46 SCAD 690, 228 SCRA 329,340 [1993], the Supreme Court ruled that an administrative agency cannot amend an act of Congress. In *Conte v. COA*, 76 SCAD 16, 264 SCRA 19 and *Victorias Milling Co., Inc. vs. Social Security Commission*, 114 Phil. 555, the Supreme Court ruled that administrative issuances must not override but must remain consistent and in harmony with the law they seek to apply and implement. A rule or regulation which restricts or enlarges a statute is invalid. In *Metropolitan Bank & Trust Company, Inc. vs. NWPC*, G.R. No. 144322, February 6, 2007; *Executive Secretary vs. Southwing Heavy Industries, Inc.*, G.R. Nos. 164171, 164172 and 168741, February 20, 2006, 48 SCRA 673-699, it enunciated that when the application of an administrative issuance modifies existing laws or exceeds the intended scope, as in this case, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable. Likewise, in *Republic Flour Mills, Inc. v. Commissioner of Customs*, G.R. No. 28464, May 31, 1971, 39 SCRA 269; *Commissioner of Internal Revenue v. Limpan Investment Corp.*, G.R. No. 28571, July 31, 1970, 34 SCRA 148 [1970]; *Quijano v. DBP*, G.R. 26419, Oct. 16, 1970, 35 SCRA 270; *Ramos v. CA*, G.R. No. 53766, Oct. 30, 1981, 108 SCRA 728, the Supreme Court declared that a statute, being the will of the legislature, should be applied in exactly the way the legislature has expressed itself clearly in the law. The clear, unambiguous and unequivocal language of a statute precludes the court from construing it and gives it no discretion but to apply the law. Moreover, in *Pascual v. Pascual-Bautista*, 207 SCRA 561 [1992]; *Fagel Tabin Agricultural Corp. v. Jacinto*, 203 SCRA 189 [1991]; *People v. Amigo*, 67 SCAD 28, 252 SCRA 43 [1996], it held that it is an elementary rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. The courts may not speculate as to the probable intent of the legislature apart from the words. When

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the law is clear, it is not susceptible of interpretation. It must be applied regardless of who may be affected, even if it may be harsh or onerous.

The appeals filed by the TUCP were DENIED for lack of merit. The appeal of ECOP was partially granted: DENIED on the issue of the amount of wage increase and GRANTED on the BMBE wage issue.

The Board was directed to revise the mandatory provision on the BMBE minimum wage of Wage Order No. NCR-17.

Trasmonte (Chairperson Designate), Balisacan (Vice-Chairman), Lagunzad III (Member) voted to deny the appeals of TUCP. On appeal of ECOP: denied on the issue of the amount of wage increase and granted on the BMBE wage issue.

Floro; Rondain (Commissioners), W.O. No. NCR-17: 1. Sets wage increase too high as to constitute abuse of discretion 2. Provision on BMBEs ultra vires 3. ETA provision - OK

Bagtas (Commissioner), 1. Concur in the effect on the amount of COLA, 2. Reiterated the exemption of BMBEs without Certificate of Accreditation as ultra vires, 3. Concur with the position of NCR Regional Director and RTWPB on wage provision on BMBEs

Diwa (Commissioner), 1. Vote to grant appeal on BMBE, 2. Agree re: TUCP Mendoza Group, On amount - no abuse, On ETA - no abuse

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ON MOTION FOR RECONSIDERATION

FACTS:

ECOP filed on 20 July 2012 a partial motion for reconsideration, in so far as the amount of the wage increase under W.O. No. NCR-17 was concerned, anchored on the following assignment of errors:

1. The Commission erred in declaring that the wage increase granted by the NCR Wage Board (integration of P22.00 COLA + P30.00 / day) was reasonable and not excessive being in conformity with the criteria under Art. 124 of the Labor Code as amended by R. A. 6727.
2. The Commission erred in declaring that this was not the first time that RTWPB-NCR gave a P30.00 / day by citing Wage Order No. NCR-09 which also gave a P30.00 / day increase. The Commission failed to consider that the contested Wage Order not only granted a P30.00 / day increase but also provided for the integration of the P22.00 / day COLA under Wage Order No. NCR-16, which further increased total labor cost per day to nearly P35.00 a day.

In its joint discussion, ECOP alleged that: a) the Commission merely generalized that the disputed Wage Order was in conformity with the criteria of minimum wage setting under article 124 of the Labor Code without the benefit of analysis; b) the grant of the excessive wage increase and the integration of the P22.00 COLA was clearly not based on the standard of economic feasibility and its correlation with other socio-economic factors; c) the generalization of conformity made by the Commission was not only flawed and fallacious but violative of its own implementing policies (the concept of floor wage as the lowest wage in the region

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for the most vulnerable workers; the use of the most recent available regional poverty threshold estimates as a major reference data for determining the regional floor wage in tandem with the socio-economic indicators of the region in accordance with the criteria for minimum wage determination under Article 124 of the Labor Code; the policy thrust to continue the current system of regional minimum wage fixing along the safety net or floor wage approach); d) the wage increase granted in the disputed Wage Order was the highest ever as the integration of the P22.00 COLA, which was not factored in the findings of the Commission, resulted in additional labor cost of P4.84 using the methodology developed by the Bureau of Labor and Employment Statistics; e) there was no congruence between the safety net and floor wage concept and excessive wage increase as the new minimum wage plus the additional labor cost was much higher than the poverty threshold of P259.36 for the average family of 4.62 as well as the average basic wage of P452.08 as of July 2011 in the NCR; f) the other expenditure items mentioned as one of the bases for the wage increase were already integrated in the computation of the monthly Consumer Price Index (CPI) for May and June 2012 by the National Statistics Office; g) the inflation rate in the NCR in May and June 2012 even declined.

The Board filed its comments on the said motion of ECOP.

HELD:

MR was denied.

On the first alleged error, the issue had already been passed upon and resolved by the Commission in its assailed Decision. To reiterate, Wage Order No. NCR-17 did not disregard the criteria of minimum wage fixing including the economic feasibility under R.A. 6727. The P30.00 per day COLA was not excessive and arrived at only after the Board made a factual determination on the

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said amount based on the result of the consultations and public hearing participated by the different sectors and the review and study of prevailing economic conditions in the NCR (such as: inflation rate, consumer price index (CPI), minimum wage compliance, retrenchments, lay offs and closures, employment, unemployment rates, gross domestic product and other socio-economic indicators provided by DTI, NEDA and the Bureau of Labor Employment Statistics (BLES) of the Department of Labor and Employment. The Board followed the substantive and procedural requirements of due process in issuing Wage Order No. NCR-17.

Article 124 of the Labor Code as amended by R.A. 6727 provides that the regional minimum wages to be established by the Regional Board shall be as nearly adequate as economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, **among other relevant factors**, consider the following:

- (a) The demand for living wages;
- (b) Wage adjustment vis-à-vis the consumer price index;
- (c) The cost of living and changes or increases therein;
- (d) The needs of workers and their families;
- (e) The need to induce industries to invest in the countryside;
- (f) Improvements in standards of living;
- (g) The prevailing wage levels;
- (h) Fair return of the capital invested and capacity to pay of employers;

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- (i) Effects on employment generation and family income; and
- (j) The equitable distribution of income and wealth along the imperatives of economic and social development.

In *ECOP vs. NWPC* (G.R. No. 96169, September 24, 1991), the Court declared that precisely, Republic Act No. 6727 was intended to rationalize wages, first, by providing for full-time boards to police wages round-the-clock, and second, by giving the boards enough powers to achieve this objective. The Court is of the opinion that Congress meant the boards to be creative in resolving the annual question of wages without labor and management knocking on the legislature's door at every turn. The fact of the matter is that the Act sought a "thinking" group of men and women bound by statutory standards.

The Commission did not violate its own implementing policies. The current regional minimum wage system is still being used together with the criteria of wage fixing under Article 124 of the Labor Code. The substantial and procedural requirements of due process are still being observed. The "floor-wage" methodology in adjusting minimum wages is the method generally being utilized by the different Boards. As explained by the Court in the cases of *Metropolitan Bank and Trust Company, Inc. vs. NWPC* (G.R. NO. 144322, February 6, 2007) and *ECOP vs. NWPC* (G.R. No. 96169, September 24, 1991) the "floor-wage" method of adjusting minimum wage involves the fixing of a determinate amount to be added to the prevailing statutory minimum wage rates.

Well-settled is the rule that factual findings of quasi-judicial bodies in the exercise of their quasi-judicial duties are accorded not only with respect but also with finality if such findings are supported by substantial evidence (*Villareal v. CA*, 219 SCRA 291). It is only upon clear showing of grave abuse of discretion and

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disregard of the NWPC Rules of Procedure on Minimum Wage Fixing that such factual determinations may be altered or modified.

The Board merely performed its delicate task of balancing the interests of both labor and capital within the framework of the national economic and social development program, which is precisely what the law envisioned when it expressly included the various standards/criteria for minimum wage fixing under the law.

On the second error, the amount of wage increase granted under WO No. NCR-17 was only P30.00 per day given in the form of COLA. The integration into the basic wage of the P22.00 COLA under W.O. No. NCR-16 cannot be considered a new increase because the same was already being received by workers prior to the issuance of W.O. No. NCR-17. Even as a COLA, it already forms part of the computation of mandatory contributions to the Social Security System (Section 18 in relation to Section 8(f), RA 1161 as amended by RA 8282); and Pag-ibig (Section 7 in relation to Section 4(b), RA 9679). COLA is likewise included in the computation of wage-related benefits such as payment of separation pay (*Planters Products, Inc. vs. NLRC*, G.R. No. 78524, January 20, 1989; *Millares vs. NLRC*, G.R. No. 122827, March 29, 1999); leaves (*Globe Mackay Cable and Radio Corp. vs. NLRC*, 163 SCRA 71); and regular holiday pay (Labor Advisory dated 7 July 2011 issued by the DOLE Secretary).

The Commission and the Board did not commit grave abuse of discretion. As held by the Supreme Court in *PAL v. Confessor*, 231 SCRA 41 [1994], there is grave abuse of discretion amounting to lack of jurisdiction where a board, tribunal or officer exercising judicial functions exercised its judgment in a capricious, whimsical, arbitrary or despotic manner, or failed to consider the evidence adduced by the parties. None of the said circumstances are present in the instant case.

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The MR filed by ECOP was DENIED for lack of merit. The Decision of the NWPC dated 28 June 2012 was AFFIRMED.

Trasmonte (Chairman Designate); Balisacan (Vice-Chairman); Bagtas, Diwa (Commissioners); Lagunzad III (NWPC Executive Director IV) voted to deny the MR.

Floro, Rondain (Commissioners) dissented.

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