

PHILIPPINE APPAREL WORKERS UNION, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE APPAREL, INC., RESPONDENTS.

G.R. No. L-50320. July 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for certiorari to review the decision dated September 1, 1978 of respondent Commission which sustained the position of respondent employer and dismissed the case for lack of merit.

It appears from the records that the petitioner, in anticipation of the expiration of their 1973-1976 collective bargaining agreement on July 31, 1976, and as an initial step for its renewal, submitted to the respondent company a set of bargaining proposals dated June 2, 1976. Negotiations were held thereafter between the parties; but because of an impasse, the complainant (petitioner herein) filed on September 15, 1976 a complaint with the Department of Labor praying that the parties therein be assisted in concluding a collective agreement. Notwithstanding the complaint, the parties nevertheless continued their negotiations.

On September 3, 1977, the private respondent and petitioner concluded and signed a collective bargaining agreement which, among other things, provided for a 3-stage wage increase for all rank and file employees. The terms of the agreement on wage increase, which were retroactive to April 1, 1977, follow:

“(a) Effective April 1, 1977, EIGHTY CENTAVO [P0.80] will be added to the basic daily wages of all said employees.

“(b) Effective April 1, 1978, FIFTY CENTAVOS [P0.50] will be added to the basic daily wages of all said employees.

“(c) Effective April 1, 1979, FIFTY CENTAVOS [P0.50] will be added to the basic daily wages of all said employees.”

Meanwhile, on April 21, 1977, P.D. 1123 was enacted to take effect on May 1, 1977 providing for an increase by P60.00 in the living allowance ordained by P.D. 525. This increase was implemented effective May 1, 1977 by the respondent company, as shown by Memorandum No. 6-77 of the respondent company's General Manager to all employees dated April 23, 1977 (p. 12, rec.).

The controversy arose when the petitioner union sought the implementation of the negotiated wage increase of P0.80 as provided for in the collective bargaining agreement. The respondent company alleges that it has opted to consider the P0.80 daily wage increase (roughly P22 per month) as partial compliance with the requirements of said decree, so that it is obliged to pay only the balance of P38 per month. In effect, the payment of the additional P60 covers both the requirements of the decree and the negotiated wage increase of P0.80 daily. Respondent company asserts that since there was already a meeting of the minds between the parties as early as April 2, 1977 about the wage increases which were made retroactive to April 1, 1977, it fell well within the exemption provided

for in the Rules Implementing P.D. 112, as follows:

"Section 1. Coverage. - These rules shall apply to all employers except the following:

XX XX XX

"(k) Those that have granted in addition to the allowance under P.D. 525, at least P60.00 monthly wage increase on or after January 1, 1977, provided that those who paid less than this amount shall pay the difference."

On the other hand, petitioner maintains that the living allowance under P.D. 1123 (originally P.D. 525) is distinct and separate from the negotiated wage increase of P0.80 daily [pp. 6 & 96, rec.]. In fact, it adds, when the CBA was signed by the parties on September 3, 1977, the respondent company was fully aware of the effectivity of P.D. 1123 and had already been paying the increased allowance provided therein [p. 94, rec.]. Hence, the respondent company acted in bad faith when it refused to pay the negotiated wage increase in violation of the collective bargaining agreement and the respondent company is guilty of unfair labor practice, pursuant to the following provisions of the Labor Code:

"Article 248. Unfair Labor Practices of Employers. -- It shall be unfair labor practice for an employer:

XX XX XX

"(J) To violate a collective bargaining agreement."

On February 13, 1978, the petitioner filed a complaint dated February 10, 1978 for unfair labor practice and violation of the CBA against the respondent company [pp. 13-16, rec.]. On May 30, 1978, an Order [p. 18, rec.] was issued by Labor Arbiter Conrado B. Maglaya, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, and by authority of Article 263 of the Labor Code as amended, let this case be, as it is hereby, DISMISSED and the same is referred to the parties or disputants for them to resolve their disputes, grievances or matters arising from the implementation, application or interpretation of their Collective Bargaining Agreement in accordance with the Machinery established in the CBA."

From this order, both parties appealed to the respondent Commission.

Petitioner filed its appeal on June 28, 1978 [pp. 31-34, rec.] assailing the order of Labor Arbiter Maglaya as contrary to law and the evidence adduced during the hearing, which constitutes grave abuse of discretion amounting to lack of jurisdiction. It avers that the matter had already been taken up on grievance but the respondent company refused to implement the P0.80 wage increase under the CBA, and that it further refuses to submit to voluntary arbitration. Hence, it prays for the setting aside of the Labor Arbiter's Order and for the parties to submit to voluntary arbitration as provided for in their CBA and the provisions of the Labor Code.

On the other hand, respondent company filed on July 5, 1978 a partial appeal [pp. 19-27, rec.], accepting the dismissal of the complaint but assailing that portion of the Labor Arbiter's Order declaring the subject matter as grievable and therefore threshable under the parties' CBA. Its prayer was for affirmance of the dismissal, reversal of the referral to the parties for threshing out under their CBA, and for a declaration that it has not committed an unfair labor practice nor violated the CBA.

On September 1, 1978, the respondent Commission (Second Division) promulgated its decision, setting aside the order appealed from and entering a new one dismissing the case for obvious lack of merit. The dismissal is predicated on the opinion [p. 45, rec.] of the Undersecretary of Labor when he said:

XX XX XX

"If as you said, management and labor had agreed on April 2, 1977 to grant an amount of P22.00 (roughly) per

month to its employees retroactive to April 1, 1977, then the exemption is squarely in point, notwithstanding that the CBA was signed in May or June. This must be so for reason that on April 2, 1977, there was already the meeting of the minds of the parties and for legal purposes, the contract was already perfected as of said date."

Said the respondent Commission:

"We fully subscribe to this view. It needs no further elaboration to demonstrate that by the facts and the terms of the law, the respondent has to pay each of the employees concerned a total of P60.00 monthly for it to satisfy payment of both the wage increase and the allowance.

"In resume, we find the refusal of the respondent to submit to voluntary arbitration to be validly grounded and, therefore, not constitutive of unfair labor practice. We further find to be untenable the complainant's claim for full payment of both the P0.80 daily wage increase under the CBA and the P60 allowance under P.D. 1123" [pp. 45-46, rec.].

Petitioner then filed its motion for reconsideration but the NLRC en banc dismissed the same in its resolution of February 8, 1979 [pp. 48-54, rec.], pursuant to Section 7, Rule II of the Rules and Regulations Implementing P.D. No. 1391, which became effective on September 15, 1978 and provides thus --

"Sec. 7. Decisions of the Commissions. There shall henceforth be no appeal from such decisions to the Minister of Labor except as provided in P.D. 1367 and its implementing rules concerning appeals to the Prime Minister, and the decisions of the Commission en banc or any of its Decisions shall be final and executory."

Hence, the instant petition.

Petitioner maintains that private respondent violated the CBA and committed an ULP when it refused to pay the negotiated wage increase of P0.80 daily effective April 1, 1977, to the employees within the bargaining unit. Private respondents, however, contend that there was no violation of the CBA and that its application of the negotiated wage increase as partial compliance with P.D. 1123 is well within the provisions of the latter.

A perusal of the CBA shows that it was made and entered into on the 3rd day of September, 1977 by and between the parties herein (p1. see p. 1 of Annex "B" at p. 7 of NLRC rec.) although the first year of its increase was retroactive to April 1, 1977. At the time it was perfected and signed by the parties, P.D. 1123 was already in force and effect. A sample pay advice [p. 11 - insert, rec.] and the Memorandum No. 6-77 dated April 23, 1977 [p. 12, rec.] signed by the General Manager of respondent company show that the said P.D. was implemented by respondent company on May 1, 1977.

On the other hand, there is nothing in the records to indicate that the negotiated wage increases were granted or paid before May, 1977. Hence, it cannot be said that the respondent Company falls within the exceptions provided for in paragraph (k) of the rules implementing P.D. 1123. At the time the said P.D. took effect, there was neither a perfected contract nor an actual payment of the said increase. There was therefore no grant of said increases as yet, despite the contrary opinion expressed in the letter of Undersecretary of Labor Amado G. Inciong.

The said letter dated May 13, 1977 [p. 33, NLRC rec.] of Undersecretary Inciong is based on a wrong premise and misrepresentation on the part of respondent company. It was alleged in the letter of respondent company that the wage increases were "agreed upon by the company and the bargaining union on April 2, 1977 in recognition of the imperative need for employees to cope up with inflation brought about by, among others, another increase in oil price" [p. 31, NLRC rec.]. It was not, however stated that at the time the said letter was written, negotiations were still being held "on other unresolved economic and non-economic bargaining items and it was only on September 3, 1977 when they reached agreement thereon" [p1. see p. 7 of private respondent's Memorandum, p.

107, rec.].

There was therefore no binding contract between the parties before September 3, 1977. For "if any essential item is left open for future consideration, there is no binding contract, and an agreement to reach an agreement imposes no obligation on the parties thereto" [17 Am. Jur., 2d 362].

Such being the case, and without actual payment of the agreed P0.80 wage increase, there could have been no "grant" of wage increases within the contemplation of paragraph K, Section 1 of the Rules implementing P.D. 1123 to place the respondent company within the purview of the exemption provided for in the said rules.

Consequently, its refusal to implement the P0.80 wage increase for the first year of the CBA constitutes a violation thereof and makes the respondent company guilty of unfair labor practice.

The respondent company is also guilty of bad faith when it signed the CBA on September 3, 1977 without in any way letting the petitioner union know that it was going to apply part of the allowances being paid under P.D. 1123 to the wage increases provided for in the CBA. Between the time of the implementation of P.D. 1123 on May 1, 1977 and the signing of the CBA on September 3, 1977, nothing was said between the parties about the wage increase despite the fact that negotiations were still going on between the parties. The exchange of letters between the respondent company and Labor Undersecretary Inciong appears to have been concealed from the union. According to the respondent Commission, "the wage increase (however) was not immediately implemented because Mr. Alfred Flug who was to bring home funds was still in the United States" [p. 40, rec.]. It was only upon arrival from the U.S.A. on January 19, 1978 of Robert Flug, son of said Alfred Flug, that the union had an inkling that the company will not pay the negotiated wage increase. At this point the CBA was already perfected and signed by the parties, so that its terms and stipulations have the force of law between them.

A collective bargaining agreement is the law between the parties (Kapisanan ng mga Manggagawa sa La Suerte-FOITAF vs. Noriel, 77 SCRA 414). In the construction or interpretation of such a contract, the primary purpose and guideline and indeed the very foundation of all the rules for such construction or interpretation is the intention of the parties (17 Am. Jur. 2d., 631).

What was the intention of the parties relative to the wage increases? A cursory reading of the CBA indicates that the benefits provided therein are not exclusive of other benefits, as may be gleaned from the provisions of its Section 4, Article XIV [p. 42 of the CBA at p. 6, NLRC rec.], which speaks of "any other benefits or privileges which are not expressly provided in this Agreement, even if now accorded or hereafter accorded to the employees and workers, shall be deemed purely acts of grace x x x."

Likewise, in the accompanying Memorandum of Understanding [pp. 82-83, NLRC rec.] dated September 3, 1977, the parties have agreed as follows:

"1. As long as it does not contravene the law and its implementing rules and regulations the COMPANY agrees to effect a uniform and indiscriminate wage increase in the salaries of its employees within the bargaining unit represented by the UNION regardless of their position and pay rates, in the event that the government shall direct another increase(s) in the statutory minimum wage fixed under P.D. 928 within the period of three years from the signing of this instrument. The uniform increase contemplated in this instrument will be equivalent to the amount of the statutory wage increase or adjustment."

The bases of the dissent of Madame Justice Herrera are that:

I. The P0.80 per day increase was already granted as early as April 2, 1977 when the company agreed to give wage increases to its employees effective April 1, 1977. Hence, such grant should be credited against the emergency cost of living allowance (ECOLA) provided for by P.D. 1123.

II. The Department's (Labor) view on the matter of exemptions from P.D. 1123 should be given weight since it was not interpreting or construing a statute but explaining the extent of its own rule.

III. It is inequitable that an employer who has granted increases in pay to his employees on a given day is further ordered to give additional increases one, two or three days thereafter.

IV. Social justice requires that the broader requirements of a stable economy should be taken into account in resolving conflicts between labor and management.

I

There is no controversy that the first year's wage increase under the CBA was supposed to retroact to April 1, 1977. There is likewise no question that had the company paid the eighty centavos daily increase in April 1977, the conclusion would have been unquestionable that such negotiated wage increase (NWI) should be credited against the emergency cost of living allowance (ECOLA) under P.D. 1123.

The question arose because, first, there was no such payment either before or after the effectivity of P.D. 1123 on May 1, 1977; and second, because there was no binding contract to speak of on May 1, 1977.

It is conceded that the word "grant" in its broader sense may include "to agree or assent to; to allow to be fulfilled; to accord; to bestow or confer; and is synonymous with 'concede' which means to agree on the idea of bestowal or acknowledgment especially of a right or privilege" (*Woods vs. Reilly*, 211 S.W. 2d 591, 597). Such being the case, the "grant" could be said to have been made at the time of the agreement, although there may not have been payment as yet.

But the question is, when was the inception or actual birth of the agreement? The company contends that it was on April 2, 1977, whereas the Union alleges that it was only on September 3, 1977, the date of the CBA.

Paragraph 1 of the CBA reads:

"This agreement, made and entered into this 3rd day of September 1977 x x" (p. 7, NLRC rec.).

On the other hand, there is nothing in the record to indicate that the P0.80 wage increase was indeed agreed upon on April 2, 1977. Aside from the self-serving statements of the company in its various communications (pp. 121, 125 and 128, rec.) and pleadings (pp. 73 and 102, rec.), the only other reference to said date is found on the second paragraph of page 1 of the Memorandum of Understanding dated September 3, 1977 (p. 82, NLRC rec.) which, however, does not mention anything about the 80-centavo increase effective April 1, 1977. In fact, the said paragraph speaks of the company's commitment to effect uniform and indiscriminate wage increases among its employees within the bargaining unit represented by the union in the event that the government shall, within a period of three (3) years from execution hereof, direct additional increases in the statutory minimum wage fixed under P.D. 928. In other words, what was agreed upon on April 2, 1977, was a conditional increase contingent upon the government's increasing of the statutory minimum wage then prevailing. Is it not possible that the company's decision to give the P0.80 daily increase effective April 1, 1977 was influenced by the knowledge that it could be absorbed by the additional ECOLA provided for by P.D. 1123, and that such decision was definitely made after receipt of the letter dated July 15, 1977 of then Undersecretary Inciong (p. 130, rec.)?

In any case, the company admits that after April 1977 there were "negotiations on other unresolved economic and non-economic bargaining items and it was only on September 3, 1977 when they reached agreement thereon" (p. 107, rec.).

This brings us to no other conclusion that the agreement was born only on September 3, 1977:

"Mere preliminary negotiations as to the terms of an agreement do not constitute a contract. A complete contract is effected generally only by an agreement as to all the terms which the parties intend to introduce into the contract, and where such is the intention of the parties, by the execution of a formal written instrument embodying those terms" (17 C.J.S. 390).

"Where preliminary negotiations are consummated by a written contract, or an oral agreement is evidenced by a subsequent agreed memorandum in writing, the writing supersedes all previous understandings and the intent of the parties must be ascertained therefrom. xx xx" (17 C.J.S. 750).

In the light of the foregoing, there was therefore no "grant" of the wage increase as of May 1, 1977 to enable the company to avail of the exemption under P.D. 1123.

II

It is also conceded that the Department of Labor had the right to construe the word "grant" as used in its rules implementing P.D. 1123, and its explanation regarding the exemptions to P.D. 1123 should be given weight. However, when it is based on misrepresentations as to the existence of an agreement between the parties, the same cannot be applied. At any rate, the opinion of then Undersecretary Inciong about the matter is based on the wrong premise that there was already an agreement ("If as you said management and labor agreed on April 2, 1977 x x x", p. 33, NLRC rec.). There is no such agreement perfected on April 2, 1977.

There is no distinction between interpretation and explaining the extent and scope of the law; because where one explains the intent and scope of a statute, he is interpreting it.

The construction or explanation of then Undersecretary Inciong is not only wrong as it was purely based on a misapprehension of facts, but also unlaw-ful because it goes beyond the scope of the law as hereinafter demonstrated.

III

The CBA entered into between the parties on September 3, 1977 created certain obligations between the parties which they are bound to keep without being "ordered" to do so. The principle of equity need not even come in, for "unless fraud, mistake or the like is set up, a court will not disturb contract rights as evidenced by a writing which purports to express the intention or will of the parties. x x x" (27 Am. Jur. 594).

A cursory reading of the CBA dated September 3, 1977 reveals the following intentions of the parties:

- a. That the wage increases thereunder should be staggered for a 3-year period retroactive to April 1, 1977 (see page 2 of Private Respondent's Memorandum, p. 102, rec.); and
- b. That such wage increases are exclusive of any statutory increase in the minimum wage, obliging the company to effect a uniform and indiscriminate wage increase equivalent to the increase or adjustment in the minimum wage that may be decreed within a period of three years from the signing of the instrument on September 3, 1977 (see par. 1 of the Memorandum of Understanding, p. 83, NLRC rec.).

The staggered wage increase will not be achieved if the same were to be absorbed by the P60-increase in the ECOLA. For a computation of the NWI under the CBA will approximately amount to the following:

First year ----- P0.80 daily or approximately P22/mo.

Second year --- .50 daily or approximately 13.75/mo.

Third year ----- .50 daily or approximately 13.75/mo.

Monthly total for 3 years P49.50

Thus, it will be seen that because the resultant total in the monthly-wage increase over the 3-year period under the CBA is less than P60.00, the same will always be covered by the ECOLA, and there will be no occasion for a staggered increase during the period other than what the law may provide -- which is not the intention of the parties.

It is submitted that had the parties intended that to be the end, they should have incorporated the same in their CBA or in their Memorandum of Understanding.

It is also apparent that the crediting of the NWI in the ECOLA was an afterthought on the part of the company. If not, then the company was in bad faith when it did not mention its plan to credit the NWI to the ECOLA during the negotiations prior to the signing of the CBA on September 3, 1977, as soon as it received the opinion of then Under-Secretary Inciong in his letter of July 13, 1977 (p. 130, rec.).

IV

It is submitted that the principle of social justice will be better served by upholding the protection to labor policy guaranteed by the Constitution.

The Honorable Chief Justice Enrique M. Fernando, in explaining the concept of social justice, wrote:

"What is thus stressed is that a fundamental principle as social justice, identified as it is with the broad scope of the police power, has an even more basic role to play in aiding those whose lives are spent in toil, with destitution an ever-present threat, to attain a certain degree of economic well-being. Precisely, through the social justice coupled with the protection to labor provisions, the government is enabled to pursue an active and militant policy to give reality and substance to the proclaimed aspiration of a better life and more decent living conditions for all. It is in that spirit that in 1969, in *Del Rosario vs. Delos Santos* (L-20586, March 21, 1969, 22 SCRA 1196), reference was made to what the social justice concept signifies in the realistic language of the late President Magsaysay: 'He who has less in life should have more in law.' After tracing the course of decisions which spoke uniformly to the effect that the tenancy legislation, now on the statute books, is not vitiated by constitutional infirmity, the *Del Rosario* opinion made clear why it is easily understandable 'from the enactment of the Constitution with its avowed concern for those who have less in life, [that] the constitutionality of such legislation has been repeatedly upheld.' What is sought to be accomplished by the above fundamental principle is to assure the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without succor and support, they might not, unaided, be able to secure justice for themselves" (Fernando, Enrique M., *Constitution of the Philippines*, pp. 80-81 [1974]).

More than elusive justice, survival is the daily problem of the worker and his family. The employer is not faced with such a problem. More often than not, the employer dissipates part of his income or profit in pleasures of the flesh and gambling aside from luxuries, fabulous parties and conspicuous consumption.

The stability of the economy does not depend on the employer alone, but on government economic policies concerning productivity in all areas and not only in the clothing or textile industries. There is not even an intimation that the company is losing. It is the living wage of the workers which is the basis of a stable economy. If the company cannot pay a living wage, it has no business operating at the expense of the lives of its workers from the very start.

The preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of the profits of the corporation. When the State is engaged in a life-and-death struggle, like war or rebellion, it is the citizen worker who fights in defense of the State and for the preservation of the existence of corporations and

businesses within its territorial confines. When the life of the State is threatened from within and without, it is the citizen, not the corporation or business enterprise, that mans the weapons of war and march into battle.

To invoke the nebulous term "stable economy" to justify rejection of the claims of the workers as against the assets of the employer, is to regard human life as more expendable than corporate capital. There is nothing in the Constitution that expressly guarantees the viability of business enterprises much less assuring them of profits.

V

Moreover, it must be pointed out that the Secretary of Labor has exceeded his authority when he included paragraph (k) in Section 1 of the Rules Implementing P.D. 1123.

Section 1 of said decree spells out the scope of its benefits, as follows:

"Section 1. In the Private Sector. - In the private sector, an across-the-board increase of sixty pesos (P60.00) in emergency allowance as provided in P.D. 525 shall be paid by all employers to their employees effective 1 May 1977. Accordingly, the monthly emergency allowance under P.D. 525 is hereby amended as follows:

"a) For workers being paid P50.00 -- P110

"b) For workers being paid P30.00 -- 90

"c) For workers being paid P15.00 -- 75."

To implement the same, the then Secretary of Labor was authorized in Section 4 of the same decree to issue appropriate rules and regulations. Such authority is quoted hereunder:

"Sec. 4. The Secretary of Labor and the Commissioner of the Budget shall issue appropriate rules and regulations to implement this Decree for their respective sectors. Under such rules and regulations, distressed employers whether public or private may be exempted while in such condition in the interest of development and employment."

By virtue of such rule-making authority, the Secretary of Labor issued on May 1, 1977 a set of rules which exempts not only distressed employers (see paragraph 1, Section 1 as well as Sections 6, 7, 8 and 9 of said rules) but also "those who have granted in addition to the allowance under P.D. 525, at least P60.00 monthly wage increase on or after January 1, 1977, provided that those who paid less than this amount shall pay the difference (see paragraph k of said rules).

Clearly, the inclusion of paragraph k contravenes the statutory authority granted to the Secretary of Labor, and the same is therefore void, as ruled by this Court in a long line of cases, among which are:

1. Teozon vs. Members of the Board of Administrators, PVA (33 SCRA 585, 588-589):

"The recognition of the power of administrative officials to promulgate rules in the administration of the statute, necessarily limited to what is provided for in the legislative enactment, may be found in the early case of *United States vs. Barrios* decided in 1908. Then came in a 1914 decision, *United States vs. Tupasi Molina* (29 Phil. 119) delineation of the scope of such competence. Thus: 'Of course the regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. So long, however, as the regulations relate solely to carrying into effect the provisions of the law, they are valid.' In 1936, in *People vs. Santos*, this Court expressed its disapproval of an administrative order that would amount to an excess of the regulatory power vested in an administrative official. We reaffirmed such a doctrine in a 1951 decision, where we again made clear that where an administrative order betrays inconsistency or repugnancy to the provisions of the Act, 'the mandate of the Act must prevail and must be

followed.' Justice Barrera, speaking for the Court in *Victorias Milling Inc. vs. Social Security Commission*, citing Parker as well as Davis did tersely sum up the matter thus: 'A rule is binding on the Courts so long as the procedure fixed for its promulgation is followed and its scope is within the statutory authority granted by the legislature, even if the courts are not in agreement with the policy stated therein or its innate wisdom x xx. On the other hand, administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means.'

"It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. Necessarily, it is bound to observe the constitutional mandate. There must be strict compliance with the legislative enactment. Its terms must be followed. The statute requires adherence to, not departure from its provisions. No deviation is allowable. In the terse language of the present Chief Justice, an administrative agency 'cannot amend an act of Congress.' Respondents can be sustained, therefore, only if it could be shown that the rules and regulations promulgated by them were in accordance with what the Veterans Bill of Rights provides" (underlining supplied).

2. *Santos vs. Hon. Estenzo, et al.* (109 Phil. 419):

"It is of elementary knowledge that an act of Congress cannot be amended by a rule promulgated by the Workmen's Compensation Commission."

3. *Hilado vs. Collector of Internal Revenue* (100 Phil. 295):

"It seems too clear for serious argument that an administrative officer cannot change a law enacted by Congress. A regulation that is merely an interpretation of the statute when once determined to have been erroneous becomes a nullity."

4. *Sy Man vs. Jacinto & Fabros* (93 Phil. 1093):

"x x x We also find and hold that the memorandum order of the Insular collector of Customs of August 18, 1947, is void and of no effect, not only because it has not been duly approved by the Department Head and fully published as required by Section 551 of the Revised Administrative Code but also because it is inconsistent with law. x x x" (underlining supplied).

5. *Olsen & Co., Inc. vs. Aldanese and Trinidad* (43 Phil. 259):

"The important question here involved is the construction of Sections 6, 7 and 11 of Act No. 2613 of the Philippine Legislature, and Section 9 of the 'Tobacco Inspection Regulations,' promulgated by Administrative Order No. 35. It must be conceded that the authority of the Collector of Internal Revenue to make any rules and regulations must be founded upon some legislature act, and that they must follow and be within the scope and purview of the act."

In the light of the foregoing, paragraph (k) of the Rules Implementing P.D. 1123 must be declared void. Consequently, the argument about crediting the NWI against the ECOLA has no more leg to stand on and must perforce fall.

It is also obvious that the negotiated wage increases provided for in the CBA are intended to be distinct and separate from any other benefit or privilege that may be forthcoming to the workers.

The respondent company must perforce pay both the benefits under P.D. 1123 and the CBA. Its refusal to pay the wage increase provided for in the latter constitutes a question that should have been settled before a voluntary arbitrator.

Moreover, in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer (*Insular Lumber Co. vs. CA*, 80 SCRA 28, citing Art. 1702, Civil Code of the Philippines).

Consequently, We find that the respondent Commission acted with grave abuse of discretion when it dismissed petitioner's case and upheld the private respondent's posture in the absence of substantial evidence in support thereof.

WHEREFORE, THE WRIT OF CERTIORARI IS HEREBY GRANTED, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY SET ASIDE, AND PRIVATE RESPONDENT IS HEREBY DIRECTED TO PAY, IN ADDITION TO THE INCREASED ALLOWANCE PROVIDED FOR IN P.D. 1123, THE NEGOTIATED WAGE INCREASE OF P0.80 DAILY EFFECTIVE APRIL 1, 1977 AS WELL AS ALL OTHER WAGE INCREASES EMBODIED IN THE COLLECTIVE BARGAINING AGREEMENT, TO ALL COVERED EMPLOYEES. COSTS AGAINST PRIVATE RESPONDENT.

THIS DECISION IS IMMEDIATELY EXECUTORY.

SO ORDERED.

Fernandez, Guerrero, and De Castro, JJ., concur.

Teehankee, J., (Chairman), concurs in a separate opinion.

Melencio-Herrera, J., dissents in a separate opinion.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

I vote to dismiss the Petition for Certiorari.

The facts of this case are as follows: Private respondent (the COMPANY, for short) is a corporation engaged in the garment industry with about 2,000 employees, whose bargaining representative is petitioner (the UNION for short). COMPANY and UNION had a 1973-1976 CBA, which expired on July 31, 1976. On June 2, 1976, the UNION submitted to the COMPANY proposals for the renewal of the CBA. Negotiations were thereafter held (p. 62, NLRC Record).

On April 2, 1977, COMPANY and UNION agreed, partially, that the employees would be given an across-the-board increase in regular wages of P0.80 per day retroactive to April 1st. This fact is confirmed by a Memorandum of Understanding of the parties (p. 82, NLRC Record). Because there were other unresolved issues, the new CBA was not signed until September 3, 1977.

In the meantime, PD 1123 was issued by the President on April 21, 1977 to take effect on May 1, 1977. The decree provided that employees then receiving P50 a month as Emergency Cost of Living Allowance (ECOLA) should be given an increase in the sum of P60.00 a month. The Decree further provided:

"SEC. 4. The Secretary of Labor and the Commissioner of the Budget shall issue appropriate rules and regulations to implement this Decree for their respective sectors. Under such rules and regulations, distressed employers whether public or private may be exempted while in such condition in the interest of development and employment."

The Secretary of Labor subsequently promulgated Rules and Regulations for the implementation of PD. 1123. Section 1(k) thereof provided that:

"Section 1 - Coverage ? These rules shall apply to all employers except the following:

x x x x

(k) Those that have granted, in addition to the allowance under PD 525, at least P60.00 monthly wage increase on or after January 1, 1977, provided that those who paid less than this amount shall pay the difference."

The meaning of the rule is that when an employer had "granted" increases to his employees after January 1, 1977, such increases shall be credited against the P60.00 ECOLA provided in PD 1123. Considering that the Secretary of Labor could exempt distressed employers from complying with PD 1123, it is believed that the regulation to debit the P60.00 ECOLA with wage increases granted to employees after January 1, 1977 was within the authority of the Secretary to make.

Giving credit to employers for increases granted to employees within a short period before an ECOLA becomes effective is a sound rule. It is inequitable that an employer, who has granted increases in pay to his employees on a given day, is further ordered to give additional increases one, two or three days thereafter. The arrangement or policy, was followed by the Secretary in regards to PD 1614 which became effective on April 1, 1979. Increases granted to employees after December 1, 1978 could be credited against the ECOLA provided in that Decree. The policy was expressly followed in PD 1634 which itself provided that the P60.00 ECOLA, effective September 1, 1979, could be lessened by the increases granted to employees on or after August 1, 1979. In PD 1678, the ECOLA which became effective February 20, 1980 was credited with increases in wages granted on or after February 8, 1980. In PD 1713, the ECOLA increase was effective on August 18, 1980, and it was credited with increases granted after July 1, 1980. In Wage Order No. 1, the ECOLA increase payable beginning March 22, 1981 was to be debited with voluntary increases given between January 1 to March 22, 1981.

On May 1, 1977, the COMPANY gave its employees the P60.00 ECOLA provided in PD 1123. On May 13, 1977, the COMPANY wrote to the Department of Labor asking if the wage increase of P0.80 a day agreed upon on April 2, 1977 between the COMPANY and the UNION, retroactively to April 1, 1977, could be credited against the ECOLA provided in PD 1123 (p. 31, NLRC Record). The reply of July 15, 1977 was in the affirmative, the Department stating:

"If as you said, management and labor had agreed on April 2, 1977 to grant an amount of P22.00 (roughly) per month to its employees retroactive to April 1, 1977, then the exemption is squarely in point, notwithstanding that the CBA was signed in May or June. This must be so for reason that on April 2, 1977, there was already the meeting of the minds of the parties and for legal purposes, the contract was already perfected as of said date." (underscoring supplied) (p. 33, NLRC Record)

After the new CBA was signed on September 3, 1977, the UNION raised the question of creditability of the April 1 increase of P0.80 a day to the May 1 ECOLA. The matter was taken up in grievance procedure, but on January 21, 1978, the COMPANY took the definite stand in favor of the creditability (p. 2, NLRC Record). Whereupon, the UNION filed a complaint with the Department of Labor against the COMPANY for unfair labor practice in regards to the creditability question, and asked that a voluntary arbitrator be agreed upon. On May 30, 1978, the Labor Arbiter dismissed the UNION's complaint, and said that the issue should be resolved through further

proceedings under the grievance machinery established in the CBA.

The decision of the Labor Arbiter was appealed to the National Labor Relations Commission (NLRC) which, on September 1, 1978, set aside the decision of the Labor Arbiter and dismissed the complaint of the UNION finding "to be untenable the complainant's claim for full payment of both the P0.80 daily wage increase under the CBA and the P60.00 allowance under PD 1123" (p. 46, Rollo). It is this Order of the NLRC which has been brought to this instance for review on Certiorari.

It should be relevant to cite the following statement in *Victorias Milling Company, Inc. vs. Social Security Commission* in 4 SCRA 627, 630:

"A rule is binding on the courts so long as the procedure fixed for its promulgation is followed and its scope is within the statutory authority granted by the legislature, even if the courts are not in agreement with the policy stated therein or its innate wisdom (Davis, op. cit., 195-197). On the other hand, administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means."

Section 1(k) of the Rules and Regulations for the implementation of PD 1123 is part of the "law" binding on Courts. If the P0.80 per day increase had actually been paid to the employees on April 1st, the conclusion should be unquestionable that such increase was deductible from the May 1st ECOLA. The problem in this case has arisen because that P0.80 increase, definitely promised on April 2nd to be given as of April 1st, was not given until it was absorbed by the ECOLA which began to be payable on May 1st. After the Department's reply to the COMPANY of July 15, 1977, the matter of the P0.80 per day increase became dormant until it was resuscitated with the execution of the CBA on September 3, 1977.

It will be seen that in the Department's letter to the COMPANY of July 15, 1977, it had construed the word "granted" in section 1 (k) as not necessarily requiring an accomplished fact. "The word grant is used therein in its broader meaning so as to be all embracing, and includes both the creation of the obligation and the actual extension, enjoyment of the wage increase." A definite agreement to increase within the time frame should already be deemed as a "granted" increase. The Oxford English Dictionary (Vol. IV) defines "grant" and "granted" as follows:

"Grant"-(grant), sb.1 Forms: see the vb. (f. the vb.) The action of granting; the thing granted. +1. a. Consent, permission. b. Promise. c. Admission, acknowledgement. Also, what is agreed to, promised, admitted, etc. Obs." (p. 355).

"Granted"-(gra.nted), pp1. a. (f. GRANT v. + -ED.) In senses of the vb. 1. Bestowed, allotted." (p. 356). (Underscoring supplied).

In *Woods v. Reilly*, Tex. Civ. App., 211 S.W. 2d 591, 597, it was said, in reference to "grant" and "granted", that:

"Grant" means to agree or assent to; to allow to be fulfilled; to accord; to bestow or confer; and is synonymous with 'concede' which means to agree in the idea of bestowal or acknowledgment, especially of a right or privilege."

"Granted" within provision of Teacher's Retirement Act defining 'retirement' as withdrawal from active service with a retirement allowance 'granted' under provisions of the Act, was not intended to mean 'immediately payable'."

One thing is for sure. The Department had the right to construe the word "granted", as used in Section 1(k). The construction it had adopted cannot be viewed as so wrong as to allow us to reverse it. The rule followed in this jurisdiction since *Madrigal vs. Rafferty* (38 Phil. 414 [1918]) is that great weight shall be given to the interpretation or construction given to a statute by the Government agency called upon to implement the statute.

In this case, the weight in favor of the Department of Labor should be greater, because the Department is not interpreting or construing a statute, but it had explained the extent of its own rule.

On the other hand, it is rather evident that the Department's construction of the word "granted" as used in Section 1(k), as well as the NLRC Order dis-missing the UNION's complaint, is reasonable. As previously explained, the objective of Section 1(k) is to give equitable treatment to employers who have granted "voluntary" increases to their employees on a given date. They should not be subjected to further "compulsory" increases one, two or three days thereafter. "Voluntary" increases which the employers had granted within a reasonable period previous to the effectivity of the "compulsory" increases should be credited against such "compulsory" increases. There can be no substantial difference between "voluntary" increases actually paid, and "voluntary" increases definitely agreed to be paid and which would have been actually paid were it not for its absorption by the "compulsory" increases. The rationale of Section 1(k) is applicable to both situations.

Lastly, it is well to remember that economic matters, such as wages, are imbued with public interest. The broader requirements for the maintenance of a stable economy should also be taken into account in resolving conflicts between labor and management.

It may be pertinent to recall herein Justice Laurel's classic definition of social justice, a fundamental principle enshrined in both the 1935 and the 1973 Constitutions:

"x x x Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about 'the greatest good to the greatest number'." (Calalang vs. Williams, 70 Phil. pp. 726, 734-735 (1940) (Emphasis supplied).

It is in view of the foregoing considerations that I vote for the dismissal of the Petition for Certiorari.

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SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur with the Court's judgment holding that contrary to respondents' stand, the P60. - ECOLA (emergency cost of living allowance) increase provided in P.D. 1123 issued on April 21, 1977 to take effect May 1, 1977 is not creditable to nor deductible from the negotiated wage increases (NWI) negotiated and agreed by the parties in their collective bargaining agreement (CBA) executed on September 3, 1977 (providing for staggered wage increases for the workers for the three year period of the CBA in the "munificent" total of P49. 50 per month,

much less than the P60. -ECOLA increase effective immediately, as follows: 80 centavos daily or approximately P22.00 increase per month for the 1st year, 50 centavos daily or around P13.75/month increase for the 2nd year and 50 centavos daily or around P13.75/month increase for the 3rd year.)

Even conceding that the parties had arrived at a partial agreement on April 2, 1977 that the employees would be given the 80-centavo daily wage increase retroactive to April 1st, 1977, still the memorandum of understanding dated September 3, 1977 as signed by the parties (pp. 82-83, NLRC record) clearly shows the intent of the parties that such negotiated staggered wage increases were exclusive of any statutory increase in the minimum wage and that the respondent employer obliged itself to effect a uniform and indiscriminate wage increase equivalent to the increase or adjustment in the minimum wage that may be decreed within a period of three years from the signing of the CBA on September 3, 1977.[1] The ECOLA is after all, in effect, another increase means of effecting an increase in the minimum wage.

The conduct of the parties before and after the signing on September 3, 1977 of the CBA bear out the parties' clear understanding and agreement that the P60. -ECOLA increase effective May 1, 1977 was not to be taken into account or to be deducted from the negotiated wage increases amounting to a total of P49.50 for the third year of the CBA. Reason and experience rebel against the contrary assertion. If after all, the negotiated wage increases in such a "munificent" total of P49. 50 for the third year of the CBA (and for a total of only P35.75/month for the 2nd year of the CBA) were to be charged against the P60. -ECOLA increase, the long negotiations for the staggered wage increases for the three-year duration of the CBA would be of no use or meaning, for the workers were already receiving the total P60. -increase from May 1, 1977, without need of the CBA.

The CBA then would work against instead of enhancing the very interests of the workers, as witness the posture taken by respondent employer some months after its execution that implementation of the CBA wage increases meant that the agreed P22./month wage increase won by the workers in the CBA was to be set off against the ECOLA so that it had to pay only a balance of P38./month for the ECOLA on the basis of the opinion it had unilaterally secured from the Undersecretary of Labor on July 15, 1977 that such wage increase had been "granted" by it on April 1, 1977 and could be deducted from the ECOLA as against the undisputed fact that it has not up to now paid a centavo of the agreed wage increase, even of P22./month for the 1st year of the CBA from September 3, 1977 it had supposedly granted since April 1, 1977 nor a centavo of the stipulated staggered increases for the last 2 years of the CBA. Thus, the 3-year period of the CBA expired last September 3, 1980 without the workers having received the negotiated wage increases stipulated in the CBA due to respondent employer's success so far in tying up the payment thereof by reason of the erroneous opinion of July 15, 1977 it had unilaterally secured from the Undersecretary of Labor.

It should be noted that beginning May 1, 1977, respondent employer commenced paying the workers the P60. -ECOLA increase without any qualification or condition that would tie it up or make deductible therefrom the wage increases that it was then negotiating with the workers. Even after it had unilaterally obtained on July 15, 1977 Undersecretary Inciong's favorable (to it) opinion, it never divulged nor apprised the workers thereof during the negotiations that they were still conducting. So, even if we were to be kind and not impute bad faith to the company and say that its non-disclosure of Undersecretary Inciong's opinion resulted in some ambiguity concerning the negotiated wage increases, this was attributable to itself alone and therefore must be resolved against it.

There is basis for the majority judgment's holding that the implementing rule of the then Secretary of Labor in crediting the NWI against the ECOLA is void for being in excess and contravention of the statutory authority which exempted only distressed employers from the ECOLA, but I do not deem it necessary to concur in such ruling due to my conclusions above stated that the parties clearly understood and intended that the P60. -ECOLA

increase which respondent-employer had been paying to the workers since May 1, 1977 would not be charged against the staggered NWI in the September 3, 1977 CBA which amounted to a "munificent" total of P49.50 for the three years of the CBA which expired last September 3, 1980 and which the workers have yet to be paid, due to the one-sided and oppressive stand adopted by respondent-employer.

[1] The pertinent provision of the Memorandum of Understanding, as reproduced in the judgment (at page 8) reads: "1. As long as it does not contravene the law and its implementing rules and regulations the COMPANY agrees to effect a uniform and indiscriminate wage increase in the salaries of its employees within the bargaining unit represented by the UNION regardless of their position and pay rates, in the event that the government shall direct another increase(s) in the statutory minimum wage fixed under P.D. 928 within the period of three years from the signing of this instrument. The uniform increase contemplated in this instrument will be equivalent to the amount of the statutory wage increase or adjustment.

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