

PHILIPPINE NATIONAL BANK, PETITIONER, VS. PHILIPPINE NATIONAL BANK EMPLOYEES ASSOCIATION (PEMA) AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-30279. July 30, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by the Philippine National Bank from the decision of the trial court of the Court of Industrial Relations in Case No. IPA-53 dated August 5, 1967 and affirmed en banc by said court on January 15, 1968.

This case started on January 28, 1965 in consequence of the certification of the President of the Philippines of an industrial dispute between the Philippine National Bank Employees Association (PEMA, for short), on the one hand, and the Philippine National Bank (PNB, for short), on the other, which arose from no more than the alleged failure of the PNB to comply with its commitment of organizing a Committee on Personnel Affairs to take charge of screening and deliberating on the promotion of employees covered by the collective bargaining agreement then in force between the said parties. On January 28, 1965, the Industrial Court issued an order aimed at settling the dispute temporarily between the parties, which was certified by the President. Pertinent portions of the order read thus:

"x x x x x x x

"1. That in order to settle the strike and for the employees to return to work immediately starting January 29, 1965, the Committee on Personnel Affairs is hereby created to start functioning on February 1, 1965;

"x x x x x

"f. That in return for this concession, an injunction against future strikes or lockouts shall be issued by the Court to last for a period of six months but which shall terminate even before that period should all disputes of the parties be already resolved;" (Page 84, Record.)

According to the very decision now on appeal, "on May 22, 1965, petitioner (private respondent herein) filed another pleading submitting to this Court for determination certain matters which it claims cannot be resolved by the parties, which are as follows:

'First Cause of Action

'a. In a Resolution No. 1162 dated September 16, 1957, the Respondent's Board of Directors approved a revision of the computation of overtime pay retroactive as of July 1, 1954, and authorized a recomputation of the regular one-hour and extra overtime already rendered by all officers and employees of the Respondent Bank.

'The details of the benefits involved in said Resolution are contained in a Memorandum of the Respondent Bank dated September 18, 1957 .

'b. Since the grant of the benefits in question, the employees of the Respondent, represented by the petitioner, have always considered them to be a part of their salaries and/or fringe benefits; nevertheless, the Respondent, in 1963, without just cause, withdrew said benefits and in spite of repeated demands refused, and still refuses to reinstate the same up to the present.

'Second Cause of Action

'c. After the promulgation of the Decision in *National Waterworks and Sewerage Authority vs. NAWASA Consolidated Unions, et al.*, G. R. No. L-18938, Aug. 31, 1964, the Petitioner has repeatedly requested Respondent that the cost of living allowance and longevity pay be taken into account in the computation of overtime pay, effective as of the grant of said benefits on January 1, 1958, in accordance with the ruling in said Decision of the Supreme Court.

'd. Until now Respondent has not taken any concrete steps toward the payment of the differential overtime and nighttime pays arising from the cost of living allowance and longevity pay.

'x x x x x'.

Respondent in its answer of June 7, 1965 took exception to this mentioned petition on several grounds, namely, (1) the said alleged causes of action were not disputes existing between the parties, (2) the same are mere money claims and therefore not within this Court's jurisdiction, and (3) that the parties have not so stipulated under the collective bargaining agreement between them, or the same is premature as the pertinent collective bargaining agreement has not yet expired." (Pp. 84-86, Record).[1]

Resolving the issues of jurisdiction and prematurity thus raised by PNB, the court held:

"As to the first ground, it is well to note that this Court in its Order of January 28, 1965 has enjoined the parties not to strike or lockout for a period of six (6) months starting from said date. In a very definite sense the labor disputes between the parties have been given a specific period for the settlement of their differences. The fact that thereafter the question of the manner of payment of overtime pay is being put in issue, appears to indicate that this was a part of the labor dispute. If we are to consider that this question, particularly the second cause of action, has in fact existed as early as 1958, shows the necessity of resolving the same now. And the same would indeed be an existing issue considering that the present certification came only in 1965.

"It is further to be noted that the presidential certification has not limited specific areas of the labor dispute embraced within the said certification. It speaks of the existence of a labor dispute between the parties and of a strike declared by the PEMA, for which the Court has been requested to take immediate steps in the exercise of its powers under the law.

"Even on the assumption that the present issue is not one embraced by the presidential certification or it is an issue presented by one party on a cause arising subsequent to the certification, the same would still be subject to the jurisdiction of this Court. In '*Apo Cement Workers Union versus Cebu Portland Cement*', Case No. 11-IPA (G.R. No. L-12451, July 10, 1957), the Court en banc (where this Sala has taken an opposite view) upheld its jurisdiction under the circumstances just enumerated. It would seem that this question has been further settled by our Supreme Court in '*National Waterworks & Sewerage Authority vs. NAWASA Consolidated Unions, et. al.*' (supra), which we quote in part:

'x x x x x

'4. Petitioner's claim that the issue of overtime compensation not having been raised in the original case but merely dragged into it by intervenors, respondent Court cannot take cognizance thereof under Section 1, Rule 13 of the Rules of Court.

'x x x x x

'x x x The fact that the question of overtime payment is not included in the principal case in the sense that it is not one of the items of dispute certified to by the President is of no moment, for it comes within the sound discretion of the Court of Industrial Relations. Moreover, in labor disputes technicalities of procedure should as much as possible be avoided not only in the interest of labor but to avoid multiplicity of action. This claim has no merit.

'x x x x x'.

"As to the objection posed that the issues are mere money claims, there appears to be no ground for the same. In the first place, although the same involves a claim for additional compensation it is also a part of the labor dispute existing between the parties and subject to the compulsory arbitration powers of the Court, pursuant to Section 10 of Rep. Act No. 875. In the second place, on the basis of the so-called PRISCO doctrine (G.R. No. L-13806, May 23, 1960), there is an existing and current employer-employee relationship between the respondent and the members of petitioner union, for whom the additional overtime compensation is claimed.

"With respect to ground three of the answer on which objection is based, on C. A. 444, as amended, Section 6 thereof, provides as follows:

'Any agreement or contract between the employer and the laborer or employee contrary to the provisions of this Act shall be null and void ab initio'.

"The instant action is partially subject to the provisions of Commonwealth Act 444, as amended. Even if, the parties have stipulated to the extent that overtime will not be paid, the same will not be binding. More so under the present circumstances, where the only question is the correctness of the computation of the overtime payments.

"While the Court notes that the first cause of action has become moot and academic in view of the compliance by respondent, hence there is no further need to resolve the same (t.s.n., pp. 5-7, August 16, 1965), the settlement of said first cause of action further strengthens the view that the second cause of action is indeed an existing dispute between the parties. Both causes of action involve overtime questions. Both stem from dates well beyond and before the presidential certification of the present proceedings. If respondent has been fit to take steps to expedite and resolve, without court intervention, the first cause of action, it cannot deny the existence of the second cause of action as the first and second appear to be interrelated matters." (Pp. 86-89, Record)

And We agree that the foregoing holding is well taken. It would be more worthwhile to proceed to the basic issues immediately than to add anything more of Our own discourse to the sufficiently based disposition of the court a quo of the above-mentioned preliminary questions.

After discussing the pros and cons on the issue involved in the second cause of action as to whether or not the cost-of-living allowance otherwise denominated as equity pay and longevity pay granted by the bank, the first beginning January 1, 1958 and the latter effective July 1, 1961, should be included in the computation of overtime pay, the court granted the demands of PEMA, except the additional rate of work for night pay, and rendered the following judgment:

"WHEREFORE, in view of the foregoing, this Court hereby promulgates the following:

"1. The respondent Philippine National Bank is hereby required to pay overtime and nighttime rates to its employees from January 28, 1962; and such overtime compensation shall be based on the sum total of the employee's basic salary or wage plus cost of living allowance and longevity pay under the following schedule:

'a. Overtime services rendered shall be paid at the rate of time and one-third, but overtime work performed between 6:00 P.M. and 6:00 A.M. shall be paid at the rate of 150% or 50% beyond the regular rate;

'b. The rate for work performed in the night shift, or during the period from 6:00 P.M. to 6:00 A.M. shall be compensated at the rate of 150% or 50% beyond the regular rate, provided the work performed involved a definite night shift and not merely a continuation by way of overtime of the regular and established hours of the respondent Bank.

"2. The Chief of the Examining Division of the Court or any of his duly designated representatives is hereby ordered to compute the overtime rates due each employee of the respondent Bank from January 28, 1962, in accordance with the above determination; and to complete the same within a period of sixty (60) days from receipt of this Order. However, considering that the Philippine National Bank is a government depository, and renders and performs functions distinct and unique; and, while it may be a banking institution, its relationship with other government agencies and the public is such that it has no basis for comparison with other banking institutions organized under the corporation law or special charter. To require it to pay immediately the liability after the exact amount shall have been determined by the Court Examiner and duly approved by the Court, as in other cases, would work undue hardship to the whole government machinery, not to mention the outstanding foreign liabilities and outside commitments, if any. Moreover, the records show that this case was initiated long before the taking over of the incumbent bank officials.

"Accordingly, the Court feels that the payment shall be subject to the negotiations by the parties as to time, amount, and duration.

"The Court may intervene in said negotiations for the purpose of settling once and for all this case to maintain industrial peace pursuant to Section 13 of Commonwealth Act 103, as amended, if desired, however by the parties.

"After all, this is not an unfair labor practice case.

"SO ORDERED." (Pp. 98-100, Record.)

In connection with the above decision, two interesting points appear at once to be of determinative relevance:

The first is that in upholding its jurisdiction to take cognizance of the demand in question about cost-of-living allowance and longevity pay, the Industrial Court carefully noted that it was not resolving a petition for declaratory relief in the light of the decision of this Court in *NAWASA vs. NAWASA Consolidated Unions*, G.R. No. L-18938, August 31, 1964, 11 SCRA 766. Thus the decision under review states:

"Incidentally, the present action is not one for declaratory relief as to the applicability of a judicial decision to the herein parties. A careful perusal of the pleadings indicates that what is being sought is the payment of differential overtime and nighttime pay based on existing law and jurisprudence. The cause of action is not anchored on any decision of any court but on provisions of the law which have been in effect at the time of the occurrence of the cause of the action in relation to a labor dispute. Hence, this is not a petition for declaratory relief." (Pp. 94-95, Record.)

The second refers to a subsequent decision of the same Industrial Court in *Shell Oil Workers Union vs. Shell Co., et al.*, Case No. 2410-V and *Shell & Affiliates Supervisors Union vs. Shell Company of the Philippines, et al.*, Case No. 2411-V, in which the court made an explanatory discourse of its understanding of the *NAWASA* ruling, *supra*, and on that basis rejected the claim of the workers. In brief, it held that (1) *NAWASA* does not apply where the collective bargaining agreement does not provide for the method of computation of overtime pay herein insisted upon by private respondent *PEMA* and (2) the fact-situation in the *Shell* cases differed from that of *NAWASA*, since the sole and definite ratio decidendi in *NAWASA* was merely that inasmuch as Republic Act 1880 merely fixed a 40-hour 5-day work for all workers, laborers and employees including government-owned corporations like *NAWASA*, the weekly pay of *NAWASA* workers working more than five days a week should remain intact; with overtime pay in excess of eight hours work and 25% additional compensation on Sundays.

There was no pronouncement at all therein regarding the basis of the computation of overtime pay in regard to bonuses and other fringe benefits.

For being commendably lucid and comprehensive, We deem it justified to quote from that Shell decision:

"The main issue:

"The Unions appear to have read the NAWASA case very broadly. They would want it held that in view of the said ruling of the Supreme Court, employers and employees must, even in the face of existing bargaining contracts providing otherwise, determine the daily and hourly rates of employees in this manner: Add to basic pay all the money value of all fringe benefits agreed upon or already received by the workers individually and overtime pay shall be computed thus –

"Basic yearly Rate plus Value of all Fringe Benefits divided by number of days worked during the year equals daily wage; Daily wage divided by 8 equals hourly rate. Hourly rate plus premium rate equals hourly overtime rate.

"The NAWASA case must be viewed to determine whether it is that broad. NAWASA case must be understood in its setting. The words used by the Supreme Court in its reasoning should not be dis-engaged from the fact-situation with which it was confronted and the specific question which it was there required to decide. Above all, care should be taken not to lose sight of the truth that the facts obtaining, the issue settled, and the law applied in the said case, and these, though extractable from the records thereof as material in the resolution herein, were, as they are, primarily declarative of the rights and liabilities of the parties involved therein.

"Recourse to the records of the NAWASA case shows that the fact-situation, as far as can be materially connected with the instant case, is as follows:

"In view of the enactment of Rep. Act 1880, providing that the legal hours of work for government employees, (including those in government-owned or controlled corporations) shall be eight (8) hours a day for five (5) days a week or forty (40) hours a week, its implementation by NAWASA was disputed by the Union. The workers affected were those who, for a period of three (3) months prior to or immediately preceding the implementation of Rep. Act 1880, were working seven (7) days a week and were continuously receiving 25% Sunday differential pay. The manner of computing or determining the daily rate of monthly salaried employees.

"And the Supreme Court, specifically laid out the issue to be decided, as it did decide, in the NAWASA, as follows:

"7. and 8. How is a daily wage of a weekly employee computed in the light of Republic Act 1880?" (G.R. L-18938)

"Resolving the above issue, it was held:

'According to petitioner, the daily wage should be computed exclusively on the basic wage without including the automatic increase of 25% corresponding to the Sunday differential. To include said Sunday differential would be to increase the basic pay which is not contemplated by said Act. Respondent court disagrees with this manner of computation. It holds that Republic Act 1880 requires that the basic weekly wage and the basic monthly salary should not be diminished notwithstanding the reduction in the number of working days a week. If the automatic increase corresponding to the salary differential should not be included there would be a diminution of the weekly wage of the laborer concerned. Of course, this should only benefit those who have been working seven days a week and had been regularly receiving 25% additional compensation for Sunday work before the effectivity of the Act.'

"It is thus necessary to analyze the Court's rationale in the said NAWASA case, 'in the light of Rep. Act 1880', and the 'specific corollaries' discussed preparatory to arriving at a final conclusion on the main issue. What was required to be done, by way of implementing R. A. 1880? The statute directs that working hours and days of government employees (including those of government owned controlled proprietary corporations) shall be reduced to five days - forty hours a week. But, the same law carried the specific proviso, designed to guard against diminution of salaries or earnings of affected employees. The Supreme Court itself clearly spelled this out in the following language: 'It is evident that Republic Act 1880 does not intend to raise the wages of the employees over what they are actually receiving. Rather, its purpose is to limit the working days in a week to five days, or to 40 hours without however permitting any reduction in the weekly or daily wage of the compensation which was previously received. x x x.'

"If the object of the law was to keep intact, (not either to increase it or decrease it) it is but natural that the Court should concern itself, as it did, with the corollary, what is the weekly wage of worker who, prior to R. A. 1880, had been working seven (7) days a week and regularly receiving differential payments for work on Sundays or at night? It seems clear that the Court was only concerned in implementing correctly R.A. 1880 by ensuring that in diminishing the working days and hours of workers in one week, no diminution should result in the worker's weekly or daily wage. And, the conclusion reached by the Supreme Court was to affirm or recognize the correctness of the action taken by the industrial court including such differential pay in computing the weekly wages of these employees and laborers who worked seven days a week and were continuously receiving 25% Sunday differential for a period of three months immediately preceding the implementation of R.A. 1880.' Nothing was said about adding the money value of some other bonuses or allowances or money value of other fringe benefits, received outside the week or at some other periods. That was not within the scope of the issue before the Court. In fact, the limited application of the decision is ex-pressed in the decision itself. The resolution of this particular issue was for the benefit of only a segment of the NAWASA employees. Said the Court 'Of course, this should only benefit those who have been working seven days a week and had been regularly receiving 25% additional compensation for Sunday work before the effectivity of the Act.'

"Unions make capital of the following pronouncement of the Supreme Court in the NAWASA case:

'It has been held that for purposes of computing overtime compensation a regular wage includes all payments which the parties have agreed shall be received during the work week, including piece-work wages, differential payments for working at undesirable times, such as at night or on Sundays and holidays, and the cost of board and lodging customarily furnished the employee (Walling v. Yangerman-Reynolds Hardwood Co., 325 U.S. 419; Walling v. Harischfeger Corp. 325 U.S. 427). The 'Regular rate' of pay also ordinarily includes incentive bonus or profit-sharing payments made in addition to the normal basic pay (56 C.J.S., pp. 704-705), and it was also held that the higher rate for night, Sunday and holiday work is just as much a regular rate as the lower rate for daytime work. The higher rate is merely an inducement to accept employment at times which are not at desirable form a workman's standpoint (International L. Ass'n. v. National Terminals Corp. C.C. Wise 50 F. Supp. 26, affirmed C.C.A. Carunao v. National Terminals Corp. 139 F. 2d 853).'

But this paragraph in the decision appears to have been used and cited by the Court to sustain the action of the court a quo: that it was correct to Include the 25% Sunday premium for the purpose of setting the weekly wage of specified workers whose weekly earnings before the passage of R.A. 1880 would be diminished, if said premium pay regularly received for three months were not included. It is significant that the citations therein used by the Supreme Court are excerpts from American decisions whose legislation on overtime is at variance with the law in this jurisdiction in this respect: the U.S. legislation considers work in excess of forty hours a week as overtime; whereas, what is generally considered overtime in the Philippines is work in excess of the regular 8-hours a day. It is understandably material to refer to precedents in the U.S. for purposes of computing weekly wages under a 40-hour a week rule, since the particular issue involved in NAWASA is the conversion of prior weekly regular

earnings into daily rates without allowing diminution or addition.

"No rule of universal application to other cases may, therefore, be justifiably extracted from the NAWASA case. Let it be enough that in arriving at just solution and correct application of R.A. 1880, an inference was drawn from other decisions that a regular wage includes payments 'agreed by the parties to be received during the week.' But to use this analogy in another fact-situation would unmitigatingly stretch its value as basis for legal reasoning, for analogies are not perfect and can bring a collapse if stretched far beyond their logical and reasoned efficacy. Neither would it be far to ascribe to the Supreme Court's citation of foreign jurisprudence, which was used for purposes of analogy, the force of statute law, for this would be the consequence if it were allowed to be used as authority for all fact-situations, even if different from the NAWASA case. This, because courts do not legislate. All they do is apply the law.

"The above discussions impel the objective analyst to reject the proposition that the NAWASA decision is all embracing and can be used with the authority of a statute's effects on existing contracts.

"It appears that the answer to dispute lies, not in the text of the NAWASA case but in the terms and conditions and practice in the implementation of, the agreement, an area which makes resolution of the issue dependent on the relation of the terms and conditions of the contract to the phraseology and purpose of the Eight-Hour Labor Law (Act 444).

"The more we read the NAWASA case, the more we are convinced that the overtime computation set therein cannot apply to the cases at bar. For to do so would lead to unjust results, inequities between and among the employees themselves and absurd situations. To apply the NAWASA computation would require a different formula for each and every employee, would require reference to and continued use of individual earnings in the past, thus multiplying the administrative difficulties of the Company. It would be cumbersome and tedious a process to compute overtime pay and this may again cause delays in payments, which in turn could lead to serious disputes. To apply this mode of computation would retard and stifle the growth of unions themselves as Companies would be irresistibly drawn into denying, new and additional fringe benefits, if not those already existing, for fear of bloating their overhead expenses through overtime which, by reason of being unfixed, becomes instead a veritable source of irritant in labor relations.

"One other reason why application of the NAWASA case should be rejected is that this Court is not prepared to accept that it can lay down a less cumbersome formula for a company-wide overtime pay other than that which is already provided in the collective bargaining agreement. Courts cannot make contracts for the parties themselves.

"Commonwealth Act 444 prescribes that overtime work shall be paid 'at the same rate as their regular wages or salary, plus at least twenty-five per centum additional' (Secs. 4 & 5). The law did not define what is a 'regular wage or salary'. What the law emphasized by way of repeated expression is that in addition to 'regular wage', there must be paid an additional 25% of that 'regular wage' to constitute overtime rate of pay. The parties were thus allowed to agree on what shall be mutually considered regular pay from or upon which a 25% premium shall be based and added to make up overtime compensation. This the parties did by agreeing and accepting for a very long period to a basic hourly rate to which a premium shall be added for purposes of overtime.

"Also significant is the fact that Commonwealth Act 444 merely sets a minimum, a least premium rate for purposes of overtime. In this case, the parties agreed to premium rates four (4) or even six (6) times than that fixed by the Act. Far from being against the law, therefore, the agreement provided for rates 'commensurate with the Company's reputation of being among the leading employers in the Philippines ' (Art. 1, Sec. 2, Coll. Barg. Agreement) at the same time that the Company is maintained in a competitive position in the market (Coll. Barg. Agreement, Ibid).

"Since the agreed rates are way above prevailing statutory wages and premiums, fixed by themselves bona fide through negotiations favored by law, there appears no compelling reason nor basis for declaring the same

illegal. A basic principle forming an important foundation of R.A. 875 is the encouragement given to parties to resort to peaceful settlement of industrial problems through collective bargaining. It behooves this Court, therefore, to help develop respect for those agreements which do not exhibit features of illegality. This is the only way to build confidence in the democratic process of collective bargaining. Parties cannot be permitted to avoid the implications and ramifications of the agreement.

"Although this Court has gone very far in resolving all doubts and in giving great weight to evidence and presumptions in favor of labor, it may not go as far as reconstruct the law to fit particular cases." (Pp. 174-181, Record)

Proof of the correctness of the aforequoted considerations, the appeal of the workers from the Industrial Court's decision did not prosper. Affirming the appealed decision, We held:

"The theory, therefore, of the petitioners is to the effect that, notwithstanding the terms and conditions of their existing collective bargaining agreement with respondent Shell Company, particularly Exhibit 'A-1' for the Petitioners and Exhibit '1-A' for the Respondent (which is Appendix 'B' of the Collective Bargaining Agreement of the parties), considering the ruling in the NAWASA case, a recomputation should be made of their basic wage by adding the money value of the fringe benefits enjoyed by them from whence the premium rates agreed upon shall be computed in order to arrive at the correct computation of their overtime compensation from the Company. On the other hand, respondent Shell Company maintains that the NAWASA case should not be utilized as the basis for the alteration of their mode of computing overtime rate of pay as set forth in their collective Bargaining Agreement. It insists that their collective bargaining agreement should be the law between them.

"After a careful and thorough re-examination of the NAWASA case, *supra*, and a minute examination of the facts and the evidence of the case now before Us, We rule that the NAWASA case is not in point and, therefore, is inapplicable to the case at bar.

"The ruling of this Court in the NAWASA case contemplates the regularity and continuity of the benefits enjoyed by the employees or workers (for at least three (3) months) as the condition precedent before such additional payments or benefits are taken into account. This is evident in the aforequoted ruling of this Court in the NAWASA case as well as in the herein below cited authorities, to wit:

'The 'regular rate' of pay on the basis of which overtime must be computed must reflect all payments which parties have agreed shall be received regularly during the work week, exclusive of overtime payments.' Walling v. Garlock Packing Co. C.C.A. N.Y., 159 F. 2d 44, 45. (Page 289, WORDS And PHRASES, Permanent Edition, Vol. 36A; Italics supplied); and

'As a general rule the words 'regular rate' mean the hourly rate actually paid for the normal, non-overtime work week, and an employee's, regular compensation is the compensation which regularly and actually reaches him, x x x x x.' (56 C.J.S. 704; Italics supplied).

"Even in the definition of wage under the Minimum Wage Law, the words 'customarily furnished' are used in referring to the additional payments or benefits, thus, -

""Wage' paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done or for services rendered or to be rendered, and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging or other facilities customarily furnished by the employer to the employee.' (Sec. 2(g), R.A. No. 602).

"Having been stipulated by the parties that 'x x x x x the Tin Factory Incentive Pay has ceased in view of the

closure of the factory in May 1966 the fringe benefits as described show that they are occasionally not regularly enjoyed and that not all employees are entitled to them', herein petitioners failed to meet the test laid down by this Court in the NAWASA case. Further, the collective bargaining agreement resorted to by the parties being in accordance with R.A. 875, with its provision on overtime pay far way beyond the premium rate provided for in Sections 4 and 5 of Commonwealth Act 444, the same should govern their relationship. Since this is their contract entered into by them pursuant to bargaining negotiations under existing laws, they are bound to respect it. It is the duty of this Court to see to it that contracts between parties, not tainted with infirmity or irregularity or illegality, be strictly complied with by the parties themselves. This is the only way by which unity and order can be properly attained in our society.

"It should be noted in passing that Commonwealth Act 444 prescribes only a minimum of at least 25% in addition to the regular wage or salary of an employee to constitute his overtime rate of pay, whereas, under Appendix 'B', (Exhs. 'A-1', Petitioners and '1-A', Respondent) of the Collective Bargaining Agreement of the parties, the premium rate of overtime pay is as high as 150% on regular working days up to 250% on Sundays and recognized national holidays." (Shell Oil Workers Union vs. Shell Company of the Philippines, G.R. No. L-30658-59, March 31, 1976, 70 SCRA, 242-243.)

In the instant case, on May 22, 1965 PEMA alleged in the court below the following cause of action as amended on June 7, 1965:

"Since the start of the giving of cost of living allowance and longevity pay and reiterated, after the promulgation of the Decision in National Waterworks and Sewerage Authority vs. NAWASA Consolidated Unions et al., G.R. No. L-18938, August 31, 1964, the petitioner has repeatedly requested respondent that the cost of living allowance and longevity pay be taken into account in the computation of overtime pay, effective as of the grant of said benefits on January 1, 1958, in accordance with the ruling in said Decision of the Supreme Court." (Page 14, PNB's Brief.)

To be sure, there could be some plausibility in PNB's pose regarding the jurisdiction of the Industrial Court over the above cause of action. But, as We have already stated, We agree with the broader view adopted by the court a quo on said point, and We find that it is in the best interests of all concerned that this almost 25-year dispute be settled once and for all without the need of going through other forums only for the matter to ultimately come back to this Court probably years later, taking particular note as We do, in this regard, of the cases cited on pages 9-10 of PEMA's original memo, as follows:

"Realizing its error before in not considering the present case a certified labor dispute, the Bank now concedes that the case at bar 'belongs to compulsory arbitration'. Hence, the lawful powers of the CIR over the same. However, the Bank says 'overtime differential is but a money claim, (and) respondent court does not have jurisdiction to take cognizance of the same'.

"But this is not a pure money claim (pp. 10-11, Opposition) because other factors are involved - certification by the President, the matter may likely cause a strike, the dispute concerns national interest and comes within the CIR's injunction against striking, and the employer-employee relationship between the Bank and the employees has not been severed. Besides, 'money claim' is embraced within the term 'compensation' and therefore falls squarely under the jurisdiction of the CIR in the exercise of its arbitration power (Sec. 4, CA 103; Please see also Republic vs. CIR, L-21303, Sept. 23/68; Makalintal, J., NWSA Case, L-26894-96, Feb. 28/69; Fernando, J.).

"What confers jurisdiction on the Industrial Court, says Justice J. B. L. Reyes, is not the form or manner of certification by the President, but the referral to said court of the industrial dispute between the employer and the employees. (Liberation Steamship vs. CIR, etc., L-25389 & 25390, June 27/68).

"In Phil. Postal Savings Bank, et al. vs. CIR, et al., L-24572, Dec. 20/67, this Honorable Court, speaking

through Chief Justice Concepcion, held that the certification of the issue 'as a dispute affecting an industry indispensable to the national interest' leaves 'no room for doubt on the juris-diction of the CIR to settle such dispute.'

Relatedly, however, it is to be noted that it is clear from the holding of the Industrial Court's decision We have earlier quoted, "the cause of action (here) is not on any decision of any court but on the provisions of the law which have been in effect at the time of the occurrence of the cause of action in relation to a labor dispute". Viewed from such perspective laid by the lower court itself, it can hardly be said that it indeed exercised purely its power of arbitration, which means laying down the terms and conditions that should govern the relationship between the employer and employees of an enterprise following its own appreciation of the relevant circumstances rather empirically. More accurately understood, the court in fact indulged in an interpretation of the applicable law, namely, CA 444, in the light of its own impression of the opinion of this Court in NAWASA and based its decision thereon.

Accordingly, upon the fact-situation of this case hereunder to be set forth, the fundamental question for Us to decide is whether or not the decision under appeal is in accordance with that law and the cited jurisprudence. In brief, as PEMA posits, is NAWASA four-square with this case? And even assuming, for a while, that in a sense what is before Us is an arbitration decision, private respondent itself admits in its above-mentioned memorandum that this Court is not without power and authority to determine whether or not such arbitration decision is against the law or jurisprudence or constitutes a grave abuse of discretion. Thus, in PEMA's memorandum, it makes the observation that "(F)urthermore, in the Shell cases, the unions are using the NAWASA decision as a source of right for recomputation, while in the PNB, the Union merely cites the NAWASA doctrine, not as a source of right, but as a legal authority or reference by both parties so the Union demand may be granted." (Motion to Dismiss, p. 3.)

Obviously, therefore, the polestar to which Our mental vision must be focused in order that We may arrive at a correct legal and equitable determination of this controversy and, in the process make NAWASA better understood as We believe it should be, is none other than Sections 3 and 4 of Com. Act No. 444, the Eight Hour Labor Law, which pertinently provide thus:

"SEC. 3. Work may be performed beyond eight hours a day in case of actual or impending emergencies caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity in order to prevent loss to life and property or imminent danger to public safety; or in case of urgent work to be performed on the machines, equipment, or installations in order to avoid a serious loss which the employer would otherwise suffer, or some other just cause of a similar nature; but in all such cases the laborers and employees shall be entitled to receive compensation for the overtime work performed at the same rate as their regular wages or salary, plus at least twenty-five per centum additional.

"In case of national emergency the Government is empowered to establish rules and regulations for the operation of the plants and factories and to determine the wages to be paid the laborers.

x x x x x x x x

"SEC. 4. No person, firm, or corporation, business establishment or place or center of labor shall compel an employee or laborer to work during Sundays and legal holidays, unless he is paid an additional sum of at least twenty-five per centum of his regular remuneration: Provided, however, that this prohibition shall not apply to public utilities performing some public service such as supplying gas, electricity, power, water, or providing means of transportation or communication."

The vital question is, what does "regular wage or salary" mean or connote in the light of the demand of PEMA?

In Our considered opinion, the answer to such question lies in the basic rationale of overtime pay. Why is a laborer or employee who works beyond the regular hours of work entitled to extra compensation called in this enlightened time, overtime pay? Verily, there can be no other reason than that he is made to work longer than what is commensurate with his agreed compensation for the statutorily fixed or voluntarily agreed hours of labor he is supposed to do. When he thus spends additional time to his work, the effect upon him is multi-faceted: he puts in more effort, physical and/or mental; he is delayed in going home to his family to enjoy the comforts thereof; he might have no time for relaxation, amusement or sports; he might miss important pre-arranged engagements; etc., etc. It is thus the additional work, labor or service employed and the adverse effects just mentioned of his longer stay in his place of work that justify and is the real reason for the extra compensation that he called overtime pay.

Overtime work is actually the lengthening of hours devoted to the interests of the employer and the requirements of his enterprise. It follows that the wage or salary to be received must likewise be increased, and more than that, a special additional amount must be added to serve either as encouragement or inducement or to make up for the things he loses which We have already referred to. And on this score, it must always be borne in mind that wage is indisputably intended as payment for work done or services rendered. Thus, in the definition of wage for purposes of the Minimum Wage Law, Republic Act No. 602, it is stated:

"Wage paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time task, piece, commission basis or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done or for services rendered or to be rendered and includes the fair and reasonable value as determined by the Secretary of Labor, of board, lodging or other facilities customarily furnished by the employer to the employee. 'Fair and reasonable value' shall not include a profit to the employer which reduces the wage received by the employee below the minimum wage applicable to the employee under this Act, nor shall any transaction between an employer or any person affiliated with the employer and the employee of the employer include any profit to the employer or affiliated person which reduces the employee's wage below the minimum wage applicable to the employee under this Act." (Italics supplied)." (Italics underlined)

As can be seen, wage under said law, in whatever means or form it is given to the worker, is "for work done or to be done or for services rendered or to be rendered" and logically "includes (only) the fair and reasonable value as determined by the Secretary of Labor, of board, lodging or other facilities customarily furnished by the employer to the employee".

Indeed, for the purpose of avoiding any misunderstanding or misinterpretation of the word "wage" used in the law and to differentiate it from "supplement", the Wage Administration Service to implement the Minimum Wage Law, defined the latter as:

"extra remuneration or benefits received by wage earners from their employers and include but are not restricted to pay for vacation and holidays not worked; paid sick leave or maternity leave; over-time rate in excess of what is required by law; pension, retirement, and death benefits; profit-sharing; family allowances; Christmas, war risk and cost-of-living bonuses; or other bonuses other than those paid as a reward for extra output or time spent on the job. (Italics ours)." (Italics underlined)

In these times when humane and dignified treatment of labor is steadily becoming universally an obsession of society, we, in our country, have reached a point in employer-employee relationship wherein employers themselves realize the indispensability of at least making the compensation of workers equal to the worth of their efforts as much as this case can be statistically determined. Thus, in order to meet the effects of uncertain economic conditions affecting adversely the living conditions of wage earners, employers, whenever the financial

conditions of the enterprise permit, grant them what has been called as cost-of-living allowance. In other words, instead of leaving the workers to assume the risks of or drift by themselves amidst the cross-currents of country-wide economic dislocation, employers try their best to help them tide over the hardships and difficulties of the situation. Sometimes, such allowances are voluntarily agreed upon in collective bargaining agreements. At other times, it is imposed by the government as in the instances of Presidential Decrees Nos. 525, 928, 1123, 1389, 1614, 1678, 1751 and 1790; Letters of Instructions No. 1056 and Wage Order No. 1. Notably, Presidential Decree No. 1751 increased the statutory minimum wage at all levels by P400 in addition to integrating the mandatory emergency living allowances under Presidential Decree No. 525 and Presidential Decree No. 1123 into the basic pay of all covered workers.

Going over these laws, one readily notices two distinctive features: First, it is evidently gratifying that the government, in keeping with the humanitarian trend of the times, always makes every effort to keep wages abreast with increased cost of living conditions, doing it as soon as the necessity for it arises. However, obviously, in order not to overdo things, except when otherwise provided, it spares from such obligation employers who by mutual agreement with (their workers are already paying what the corresponding law provides (See Sec. 4 of P.D. No. 525; Section 2 of P.D. No. 851 until P.D. 1684 abolished all exemptions under P.D. No. 525, P.D. No. 1123, P.D. No. 851 and P.D. No. 928 among distressed employers who even though given sufficient lapse of time to make the necessary adjustment have not done so.))[3]

In the case at bar, as already related earlier, the cost-of-living allowance began to be granted in 1958 and the longevity pay in 1961. In other words, they were granted by PNB upon realizing the difficult plight of its labor force in the face of the unusual inflationary situation in the economy of the country, which, however acute, was nevertheless expected to improve. There was thus evident an inherently contingent character in said allowances. They were not intended to be regular, much less permanent additional part of the compensation of the employees and workers. To such effect were the testimonies of the witnesses at the trial. For instance, Mr. Ladislao Yuzon declared:

"ATTORNEY GESMUNDO

Questioning

Q. Calling your attention to paragraph No. 1, entitled monthly living allowance, which has been marked as Exhibit 'A-1', will you kindly tell us the history of this benefit - monthly living allowance, why the same has been granted?

A. Well, in view of the increasing standard of living, we decided to demand from management in our set of demands.... included in our set of demands in 1957-1958 a monthly living allowance in addition to our basic salary. This benefit was agreed upon and granted to take effect as of January 1, 1958 . That was the first time it was enjoyed by the employees of the Philippine National Bank. It started on a lesser amount but year after year we have been demanding for increases on this living allowance until we have attained the present amount of P150.00 a month, starting with P40.00 when it was first granted. The same is still being enjoyed by the employees on a much higher amount. There were a few variations to that. (t.s.n., pp. 18-19, Hearing of August 16, 1965)

which testimony was affirmed by Mr. Panfilo Domingo, on cross-examination by counsel for the respondent, reading as follows:

"ATTORNEY GESMUNDO:

"Q. Do you recall Mr. Domingo, that in denying the cost of living allowance and longevity ay for incorporation with the basic salary, the reason given by the management was that as according to you, it will mean an added

cost and furthermore it will increase the contribution of the Philippine National Bank to the GSIS, is that correct?

"A. This is one of the reasons, of the objections for the inclusion of the living allowance and longevity pay to form part of the basic pay, I mean among others, because the basic reason why management would object is the cost of living allowance is temporary in nature, the philosophy behind the grant of this benefit. Nonetheless, it was the understanding if I recall right, that in the event that cost of living should go down, then there should be a corresponding decrease in the cost of living allowance being granted. I have to mention this because this is the fundamental philosophy in the grant of cost of living allowance." (Pp. 19-20, Record.)

Much less were they dependent on extra or special work done or service rendered by the corresponding recipient. Rather, they were based on the needs of their families as the conditions of the economy warranted. Such is the inexorable import of the pertinent provisions of the collective bargaining agreement:

"MONTHLY LIVING ALLOWANCE

"All employees of the Bank shall be granted a monthly living allowance of P140, plus P10 for each minor dependent child below 21 years of age, but in no case shall the total allowance exceed P200 or 25% of the monthly salary, whichever is higher, subject to the following conditions:

"a) That this new basic allowance shall be applicable to all employees, irrespective of their civil status;

"b) That a widow or widower shall also enjoy the basic allowance of P140 a month, plus the additional benefit of P10 for each minor dependent child but not to exceed P200 or 25% of basic salary whichever is higher.

"c) That in case the husband and wife are both employees in the Bank both shall enjoy this new basic monthly living allowance of P140 but only one of spouses shall be entitled to claim the additional benefit of P10 for each minor legitimate or acknowledged child." (Pp. 30-31, PNB's memo.)

So also with the longevity pay; manifestly, this was not based on the daily or monthly amount of work done or service rendered – it was more of a gratuity for their loyalty, or their having been in the bank's employment for considerable periods of time. Indeed, with particular reference to the longevity pay, the then existing collective bargaining contract expressly provided: "x x x That this benefit shall not form part of the basic salaries of the officers so affected."

PEMA may contend that the express exclusion of the longevity pay, means that the cost-of-living allowance was not intended to be excluded. Considering, however, the contingent nature of the allowances and their lack of relation to work done or service rendered, which in a sense may be otherwise in respect to longevity pay PEMA's contention is untenable. The rule of *exclusio unius, exclusio alterius* would not apply here, if only because in the very nature of the two benefits in question, considerations and conclusions as to one of them could be non-sequitur as to the other.

Withal, there is the indisputable significant fact that after 1958, everytime a collective bargaining agreement was being entered into, the union always demanded the integration of the cost-of-living allowances and longevity pay, and as many times, upon opposition of the bank, no stipulation to such effect has ever been included in any of said agreements. And the express exclusion of longevity pay was continued to be maintained.

On this point, the respondent court held that under its broad jurisdiction, it was within the ambit of its authority to provide for what the parties could not agree upon. We are not persuaded to view the matter that way. We are not convinced that the government, thru the Industrial Court, then, could impose upon the parties in an employer-employee conflict, terms and conditions which are inconsistent with the existing law and jurisprudence, particularly where the remedy is sought by the actors more on such legal basis and not purely on the court's

arbitration powers.

As pointed out earlier in this opinion, Our task here is two-fold: First, reviewing the decision under scrutiny as based on law and jurisprudence, the question is whether or not the rulings therein are correct. And second, reading such judgment as an arbitration decision, did the court a quo gravely abuse its discretion in holding, as it did, that cost-of-living allowance and longevity pay should be included in the computation of overtime pay?

In regard to the first question, We have already pointed out to start with, that as far as longevity pay is concerned, it is beyond question that the same cannot be included in the computation of overtime pay for the very simple reason that the contrary is expressly stipulated in the collective bargaining agreement and, as should be the case, it is settled that the terms and conditions of a collective bargaining agreement constitute the law between the parties. (*Mactan Workers Union vs. Aboitiz*, 45 SCRA 577. See also *Shell Oil Workers Union et al. vs. Shell Company of the Philippines*, supra.) The contention of PEMA that the express provision in the collective bargaining agreement that "this benefit (longevity pay) shall not form part of the basic salaries of the officers so affected" cannot imply the same idea insofar as the computation of the overtime pay is concerned defies the rules of logic and mathematics. If the basic pay cannot be deemed increased, how could the overtime pay be based on any increased amount at all?

However, the matter of the cost-of-living allowance has to be examined from another perspective, namely, that while PEMA had been always demanding for its integration into the basic pay, it never succeeded in getting the conformity of PNB thereto, and so, all collective bargaining agreements entered into periodically by the said parties did not provide therefor. And it would appear that PEMA took the non-agreement of the bank in good grace, for the record does not show that any remedial measure was ever taken by it in connection therewith. In other words, the parties seemed to be mutually satisfied that the matter could be better left for settlement on the bargaining table sooner or later, pursuant to the spirit of free bargaining underlying Republic Act 875, the Industrial Peace Act then in force. Or, as observed by PEMA in its memorandum, (page 23), the parties "agreed to let the question remain open – pending decision of authorities that would justify the demand of the Union." Indeed, on pages 23-24 of said memorandum, the following position of PEMA is stated thus:

"Thus the following proceeding took place at the Court a quo:

"ATTY. GESMUNDO:

That is our position, Your Honor, because apparently there was an understanding reached between the parties as to their having to wait for authorities and considering that the issue or one of the issues then involved in the NAWASA case pending in the CIR supports the stand of the union, that the principle enunciated in connection with that issue is applicable to this case.

x x x x x

"Q. Do we understand from you, Mister Yuson, that it was because of the management asking you for authorities in allowing the integration of the cost of living allowance with your basic salary and your failure to produce at the time such authorities that the union then did not bring any case to the Court?

"A. Well, in the first place, it is not really my idea to be bringing matters to the Court during my time but I would much prefer that we agree on the issue. Well, insofar as you said that the management was asking me, well, I would say that they were invoking (on) authorities that we can show in order to become as a basis for granting or for agreeing with us although we were aware of the existence of a pending case which is very closely similar to our demand, yet we decided to wait until this case should be decided by the Court so that we can avail of the decision to present to management as what they are asking for. (t.s.n., pp. 31-32, 35-36, Aug. 28, 1965.)"

Now, to complete proper understanding of the character of the controversy before Us, and lest it be felt by those concerned that We have overlooked a point precisely related to the matter touched in the above immediately preceding paragraph, it should be relevant to quote a portion of the "Stipulation of Facts" of the parties hereto:

"1. This particular demand was among those submitted by Petitioner-Union in the current collective bargaining negotiations to the Respondent Bank. However, since this case was already filed in court on May 22, 1965, the parties agreed not to include this particular demand in the discussion, leaving the matter to the discretion and final judicial determination of the courts of justice." (Page 81, Rec.)

In fine, what the parties commonly desire is for this Court to construe CA 444 in the light of NAWASA, considering the fact-situation of the instant case.

In this respect, it is Our considered opinion, after mature deliberation, that notwithstanding the portions of the NAWASA's opinion relied upon by PEMA, there is nothing in CA 444 that could justify its posture that cost-of-living allowance should be added to the regular wage in computing overtime pay.

After all, what was said in NAWASA that could be controlling here? True, it is there stated that "for purposes of computing overtime compensation, regular wage includes all payments which the parties have agreed shall be received during the work week, including - - differential payments for working at undesirable times, such as at night and the board and lodging customarily furnished the employee. x x x The 'regular rate' of pay also ordinarily includes incentive bonus or profit-sharing payments made in addition to the normal basic pay (56 C.J.S., pp. 704-705), and it was also held that the higher rate for night, Sunday and holiday work is just as much a regular rate as the lower rate for daytime work. The higher rate is merely an inducement to accept employment at times which are not as desirable from a workman's standpoint (International L. Ass'n vs. National Terminals Corp. C.C. Wise, 50 F. Supp. 26, affirmed C.C.A. Carbuano v. National Terminals Corp. 139 F. 2d 853)." (11 SCRA, p. 783)

But nowhere did NAWASA refer to extra, temporary and contingent compensation unrelated to work done or service rendered, which as explained earlier is the very nature of cost-of-living allowance. Withal, in strict sense, what We have just quoted from NAWASA was obiter dictum, since the only issue before the Court there was whether or not "in computing the daily wage, (whether) the additional compensation for Sunday should be included." (See No. 7 of Record)

In any event, as stressed by Us in the Shell cases, the basis of computation of overtime pay beyond that required by CA 444 must be the collective bargaining agreement,[4]for, to reiterate Our postulation therein and in Bisig ng Manggagawa, supra, it is not for the court to impose upon the parties anything beyond what they have agreed upon which is not tainted with illegality. On the other hand, where the parties fail to come to an agreement, on a matter not legally required, the court abuses its discretion when it obliges any of them to do more than what is legally obliged.

Doctrinally, We hold that, in the absence of any specific provision on the matter in a collective bargaining agreement, what are decisive in determining the basis for the computation of overtime pay are two very germane considerations, namely, (1) whether or not the additional pay is for extra work done or service rendered and (2) whether or not the same is intended to be permanent and regular, not contingent nor temporary and given only to remedy a situation which can change any time. We reiterate, overtime pay is for extra effort beyond that contemplated in the employment contract, hence when additional pay is given for any other purpose, it is illogical to include the same in the basis for the computation of overtime pay. This holding supersedes NAWASA.

Having arrived at the foregoing conclusions, We deem it unnecessary to discuss any of the other issues raised by the parties.

WHEREFORE, judgment is hereby rendered reversing the decision appealed from, without costs.

Guerrero, De Castro, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Aquino, J., see concurring opinion.

Teehankee and Makasiar, JJ., reserve their votes.

Melencio-Herrera, J., in the result.

Fernando, C.J., no part, as his son-in-law, Pedro Reyes III, is the bank representative to petitioner's office in Amsterdam .

Concepcion, Jr., and Abad Santos, JJ., no part.

[1] Actually, PNB did not take much time in granting the first demand in the interest of industrial peace. (T.s.n., p. 6, Session of August 16, 1965.)

[2] The same definition is given by the New Labor Code (Sec. 97 (f), Chapter 1, Title II; see also *Shell Oil Workers Union et al. vs. Shell Company of the Philippines*, *infra*.)

[3] Needless to say, in the absence of any showing the contrary, PNB must be presumed to have complied and continues to comply with all these decrees.

[4] As may be gleaned from what PEMA states on page 1 of its motion for reconsideration filed with the court below (p. 133 of the Record) the overtime pays provided in the collective bargaining agreement were time and one third or base pay plus 33 1/3% beyond regular hours work provided that if such overtime is performed between 6:00 p.m. and 6:00 a.m., it is plus 50%, whereas the law requires only an addition of 25%

CONCURRING OPINION

AQUINO, J.:

I concur in the result. This case involves the correctness of the holding of the Court of Industrial Relations that the Philippine National Bank should compute the overtime pay of its employees from January 28, 1962 on the basis of the sum total of the employee's basic salary or wage plus cost-of-living allowance (equity pay) and longevity pay.

The Industrial Court relied on the ruling that in computing the daily wage of employees and workers who worked seven days a week their 25% Sunday differential pay should be included. The computation should not be based exclusively on the basic wage (*National Waterworks and Sewerage Authority vs. NWSA Consolidated Unions*, 120 Phil. 736, 754). That ruling was rendered in connection with the computation of the worker's daily wage for purposes of the five-day, forty-hour week prescribed in Republic Act No. 1880.

That ruling was in turn based on the holding that for purposes of computing overtime pay a regular wage includes all payments received by the worker for work at night, Sundays and holidays and the cost of board and lodging customarily furnished the employees (*Walling vs. Harnischfeger Corp.*, 325 U. S. 427; *Walling vs. Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419).

There is also a ruling that the regular pay includes incentive bonus or profit-sharing payments made in addition to the normal basic pay (56 C.J.S. 704-705) and that the higher rate for night, Sunday and holiday work is just as much a regular rate as the lower rate for daytime work. The higher rate is merely an inducement to accept employment at times which are not as desirable from a workman's standpoint (*International L. Assn. vs. National*

Terminals Corp., 50 F. Supp. 26; Cabunac vs. National Terminals Corporation, 139 F. 2nd 853).

These rulings cannot be applied under the Eight-Hour Labor Law, Commonwealth Act No. 444, because sections 3 and 4 thereof provide that the overtime pay should be based on the "regular wages or salary" or "regular remuneration" of the laborers and employees.

Those terms should be sensibly interpreted. They should be given their ordinary meaning. Those terms do not include the cost-of-living allowance, longevity pay or other fringe benefits, which items constitute extra pay or additions to the regular or basic pay.

The rulings in American cases cited in the NWSA case are not controlling and should not be applied to this case. Our law makes the regular pay the basis for computing the overtime pay. The collective bargaining agreements between the PNB and the union provide that the longevity pay does not "form part of the basic salaries of the" employees involved.

In Shell Oil Workers Union vs. Shell Company of the Philippines, L-30658-59, March 31, 1976, 70 SCRA 238, this Court held that, notwithstanding the ruling in the NWSA case, the fringe benefits should not be added to the basic pay in computing the overtime pay.

I agree that the Industrial Court erred in including the cost-of-living allowance and the longevity pay as part of the employee's basic salary or wage on which the overtime pay should be based.

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