

**PAG-ASA STEEL WORKS, INC., PETITIONER, VS. SIXTH DIVISION AND
PAG-ASA STEEL WORKERS UNION (PSWU), RESPONDENT.***G.R. NO. 166647. March 31, 2006*

Ponente: CALLEJO, SR., J.

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This is a Petition for Review on Certiorari of the Decision [1] of the Court of Appeals (CA) in CA-G.R. SP No. 65171 ordering Pag-Asa Steel Works, Inc. to pay the members of Pag-Asa Steel Workers Union (Union) the wage increase prescribed under Wage Order No. NCR-08. Also assailed in this petition is the CA Resolution denying the corporation's motion for reconsideration.

Petitioner Pag-Asa Steel Works, Inc. is a corporation duly organized and existing under Philippine laws and is engaged in the manufacture of steel bars and wire rods. Pag-Asa Steel Workers Union is the duly authorized bargaining agent of the rank-and-file employees of petitioner.

On January 8, 1998, the Regional Tripartite Wages and Productivity Board (Wage Board) of the National Capital Region (NCR) issued Wage Order No. NCR-06. [2] It provided for an increase of P13.00 per day in the salaries of employees receiving the minimum wage, and a consequent increase in the minimum wage rate to P198.00 per day. Petitioner and the Union negotiated on how to go about the wage adjustments. Petitioner forwarded a letter [3] dated March 10, 1998 to the Union with the list of the salary adjustments of the rank-and-file employees after the implementation of Wage Order No. NCR-06, and the notation that said "adjustments [were] in accordance with the formula [they] have discussed and [were] designed so as no distortion shall result from the implementation of Wage Order No. NCR-06."

NAME DATE REGULAR PRESENT RATE ADJUST EFF 2/6/98 NEW
RATE

1. PEPINO EMMANUEL 08.01.97 191.00 13.00 204.00

2. SEVANDRA RODOLFO 01.17.98 192.00 13.00 205.00

3. BERNABE ALFREDO 10.24.97 200.00 13.00 213.00

4. UMBAL ADOLFO 08.18.97 215.00 12.00 227.00

5. AQUINO JONAS 08.25.97 215.00 12.00 227.00
6. AGCAOILI JAIME 01.08.98 220.00 11.00
231.00
7. BERMEJO JIMMY JR. 04.01.97 221.00 11.00 232.00
8. EDRADAN ELDEMAR P. 04.17.97 221.00 11.00 232.00
9. REBOTON RONILO 05.14.97 221.00 11.00 232.00
10. TABAOG ALBERT 04.10.97 221.00 11.00 232.00
11. SALEN EDILBERTO 02.10.97 221.00 11.00 232.00
13. PAEZ REYNALDO 02.27.97. 235.00 11.00 246.00
14. HERNANDEZ ALFREDO 03.23.96 246.00 10.00 256.00
15. BANIA LUIS JR. 12.08.95 246.00 10.00 256.00
16. MAGBOO VICTOR 05.25.96 246.00 10.00 256.00
17. NINORA BONIFACIO 03.22.96 246.00 10.00 256.00
18. ALANCADO RODERICK 11.10.95 246.00 10.00 256.00
19. PUTONG PASCUAL 06.23.96 246.00 10.00 256.00
20. PAR EULOGIO JR. 08.16.95 246.00 10.00 256.00
21. SALON FONDADOR 11.16.95
246.00 10.00 256.00
22. RODA GEORGE 10.11.95 246.00 10.00 256.00
23. RIOJA JOSEPH 12.28.95 246.00 10.00 256.00
24. RAYMUNDO ANTONIO 06.05.96 246.00 10.00 256.00
25. BUGTAI ROBERTO 04.10.96 246.00 10.00 256.00
26. RELATO RAMON 07.07.96 265.00 10.00 275.00
27. REGACHUELO DENNIS 11.30.95 265.00 10.00 275.00

28. ORNOPIA REYNALDO 08.09.94 268.00 10.00 278.00
29. PULPULAAN JAIME 01.18.96 275.00 10.00 285.00
30. PANLAAN FERDINAND 01.18.96 275.00 10.00 285.00
31. BAGASBAS EULOGIO JR. 01.18.96 275.00 10.00 285.00
32. ALEJANDRO OLIVER 12.03.95 275.00 10.00 285.00
33. PRIELA DANILO 11.30.95 280.00 10.00 290.00
34. NOBELJAS EDGAR 07.10.95 283.00 10.00 293.00
35. SAJOT RONNIE 10.02.93 288.00 10.00 298.00
36. WHITING JOEL 09.30.93 288.00 10.00 298.00
37. SURINGA FRANKLIN 12.19.93 288.00 10.00 298.00
38. SIBOL MICHAEL 12.11.93 288.00 10.00 298.00
39. SOLO JOSE 02.20.94 288.00 10.00 298.00
40. TIZON JOEL 12.23.93 288.00 10.00 298.00
41. SABATIN GILBERT 04.19.94 288.00 10.00 298.00
42. REYES RONALDO 04.14.94 288.00 10.00 298.00
43. AMANIA WILFREDO 01.06.94 288.00 10.00 298.00
44. QUIDATO ARISTON 12.12.93 288.00 10.00 298.00
45. LAROGA CLAUDIO JR. 10.13.93 288.00 10.00 298.00
46. MORALES LUIS 09.30.93 288.00 10.00 298.00
47. ANTOLO DANILO 12.26.93 288.00 10.00 298.00
48. EXMUNDO HERCULES 05.13.94 288.00 10.00 298.00
49. AMPER VALENTINO 08.02.93 288.00 10.00 298.00
50. BAYO-ANG ALDEN JR. 07.14.93 288.00 10.00 298.00

51. BASCONES NELSON 02.26.94 288.00 10.00 298.00

52. DECENA LAURO 09.18.93 288.00 10.00 298.00

53. CHUA MARLONITO 10.20.93 288.00 10.00 298.00

54. CATACUTAN JUNE 03.02.94 288.00 10.00 298.00

55.DE LOS SANTOS REYNALDO 12.23.93 288.00 10.00 298.00

56. REYES EFREN 10.23.93 288.00 10.00 298.00

57. CAGOMOC DANILO 01.13.94 298.00 10.00 298.00

58. DOROL ERWIN 09.16.93 298.00 10.00 298.00

59. CURAMBAO TIRSO 09.23.93 298.00 10.00 298.00

60. VENTURA FERDINAND 09.20.94 292.00 10.00 302.00

61. ALBANO JESUS 01.06.94 297.00 10.00 307.00

62. CALLEJA JOSEPH 05.10.93 303.00 10.00 313.00

63. PEREZ DANILO 03.01.93 303.00 10.00 313.00

64. BATOY ERNIE 06.15.93
305.00 10.00 315.00

65. SAMPAGA EDGARDO 06.07.93 307.00 10.00 317.00

66. SOLON ROBINSON 05.10.94 315.00 10.00 325.00

67. ELEDA FULGENIO 06.07.93 322.00 10.00 332.00

68. CASCARA RODRIGO 06.07.93 322.00 10.00 332.00

69. ROMANOS ARNULFO 06.07.93 322.00 10.00 332.00

70. LUMANSOC MARIANO 06.07.93 322.00
10.00 332.00

71. RAMOS GRACIANO 06.07.93 322.00
10.00 332.00

72. MAZON NESTOR 07.24.90 330.00 10.00 340.00

73. BRIN LUCENIO 07.26.90 330.00 10.00 340.00

74. SE FREDIE 03.25.90 340.00 10.00 350.00

75. RONCALES DIOSDADO 04.30.90 340.00 10.00 350.00

76. DISCAYA EDILBERTO 09.06.89 340.00 10.00 350.00

77. SUAREZ LUISTO 06.10.92 347.00 10.00 357.00

78. CASTRO PEDRO 10.30.92 348.00 10.00 358.00

79. CLAVECILLA AMBROSIO 09.09.88 351.00 10.00 361.00

80. YSON ROMEO 09.11.88 351.00 10.00 361.00

81. JUMAWAN URBANO JR. 12.20.87 354.00 10.00 364.00

82. MARASIGAN GRACIANO 05.20.88 354.00 10.00 364.00

83. MAGLENTE ROLANDO 09.03.87 354.00 10.00 364.00

84. NEBRIA CALIX 02.25.88 354.00 10.00 364.00

85. BARBIN DANIEL 09.03.87 354.00 10.00 364.00

86. CAMAING CARLITO 12.22.87 354.00 10.00 364.00

87. BUBAN JONATHAN 10.22.87 354.00 10.00 364.00

88. GUEVARRA ARNOLD 10.04.87 354.00 10.00 364.00

89. MALAPO MARCOS JR.
08.04.87 354.00 10.00 364.00

90. ZUNIEGA CARLOS 02.19.88 354.00 10.00 364.00

91. SABORNIDO JULITO 12.20.87 354.00 10.00 364.00

92. DALUYO LOTERIO 04.02.88 354.00 10.00 364.00

93. AGUILLON GRACIANO 05.27.87 369.00 10.00 369.00

94. CRISTY EMETERIO 04.06.87 359.50
10.00 369.50

95. FULGUERAS DOMINGO 01.25.87 362.00 10.00 372.00

96. ZIPAGAN NELSON 02.07.84 370.00 10.00 380.00

97. LAURIO JESUS

06.01.82 371.00 10.00 381.00

98. ACASIO PEDRO 11.21.79 372.00 10.00 382.00

99. MACALISANG EPIFANIO 02.01.88 372.00 10.00 382.00

100. OFILAN ANTONIO 03.12.79 374.50 10.00 384.50

101. SEVANDRA ALFREDO 05.02.69 374.50 10.00 384.50

102. VILLAMER JOEY 11.04.81 374.50 10.00 384.50

103. GRIPON GIL 01.17.76 374.75 10.00 384.75

104. CARLON HERMINIGILDO, JR. 04.17.87 375.00 10.00 385.00

105. MANLABAO HEROHITO 04.14.81 375.00 10.00 385.00

106. VILLANUEVA DOMINGO 12.01.77 375.50 10.00 385.50

107. APITAN NAZARIO 09.04.79 376.00 10.00 386.00

108. SALAMEDA EDUARDO 02.13.79 377.00 10.00 387.00

109. ARNALDO LOPE 05.02.69 378.50 10.00 388.50

110. SURIGAO HERNANDO 12.29.79 379.00 10.00 389.00

111. DE LA CRUZ CHARLIE 07.14.76 379.00 10.00 389.00

112. ROSAURO JUAN 07.15.76 379.50 10.00 389.50

113. HILOTIN ARLEN 10.10.77 383.00 10.00 393.00[4]

On September 23, 1999, petitioner and the Union entered into a Collective Bargaining Agreement (CBA), effective July 1, 1999 until July 1, 2004. Section 1, Article VI (Salaries and Wage) of said CBA provides:

Section 1. WAGE ADJUSTMENT - The COMPANY agrees to grant all the workers, who are already regular and covered by this AGREEMENT at the effectivity of this AGREEMENT, a general wage increase as follows:

July 1, 1999 P15.00 per day per employee

July 1, 2000 P25.00 per day per employee

July 1, 2001 P30.00 per day per employee

The aforesaid wage increase shall be implemented across the board. Any Wage Order to be implemented by the Regional Tripartite Wage and Productivity Board shall be in addition to the wage increase adverted to above. However, if no wage increase is given by the Wage Board within six (6) months from the signing of this AGREEMENT, the Management is willing to give the following increases, to wit:

July 1, 1999 P20.00 per day per employee

July 1, 2000 P25.00 per day per employee

July 1, 2001 P30.00 per day per employee

The difference of the first year adjustment to retroact to July 1, 1999.

The across-the-board wage increase for the 4th and 5th year of this AGREEMENT shall be subject for a re-opening or renegotiation as provided for by Republic Act No. 6715. [5]

For the first year of the CBA's effectivity, the salaries of Union members were increased as follows:

NAME WAGE NAME

WAGE

1. Pedro Acasio

P427.00 53. Nestor Mazon

P385.00

2. Roderick Alancado 301.00 54. Luis Morales

343.00

3. Jesus Albano 352.00 55. Calix Nebria

409.00

4. Oliver Alejandro 330.00 56. Bonifacio Ninora Jr. 301.00

5. Welfredo Amania 343.00 57. Edgar Noblejas 338.00

6. Valentino Amper 343.00 58. Antonio Ofilan 429.50

7. Danilo Antolo 343.00 59. Reynaldo Ornopia 323.00

8. Nazario Apitan 431.00 60. Reynaldo Paez 291.00

9. Jonas Aquino 272.00 61. Ferdinand Panlaan 330.00

10. Eulogio Bagasbas, Jr. 330.00 62. Eulogio Par Jr. 301.00

11. Luis Bania, Jr. 301.00 63. Marvin Peco 223.00

12. Daniel Barbin 409.00 64. Emmanuel Pepino 249.00

13. Nelson Bascones 343.00 65. Danilo Perez 358.00

14. Alden Bayo-ang, Jr. 343.00 66. Jaime Pulpulaan 330.00

15. Jimmy Bermejo 277.00 67. Ariston Quidato 343.00

16. Alfredo Bernabe 258.00 68. Graciano Ramos Jr. 377.00

17. Lucenio Brin 385.00 69. Antonio Raymundo 301.00

18. Jonathan Buban 409.00 70. Ronilo Reboton 277.00
19. Roberto Bugtai 301.00 71. Ramon Relato 320.00
20. Danilo Cagomoc 343.00 72. Efren Reyes 343.00
21. Joseph Calleja 358.00 73. Ronaldo Reyes 343.00
22. Carlito Camaing 409.00 74. Joseph Rioja 301.00
23. Hermenigildo Carlon, Jr. 430.00
75. George Roda 301.00
24. June Catacutan 343.00 76. Diosdado Roncales 395.00
25. Marlonito Chua 343.00 77. Gilbert Sabatin 343.00
26. Ambrocio Clavecilla 406.00 78. Julito Sabornido 409.00
27. Emeterio Cristy 414.50 79. Ronnie Sajot 343.00
28. Tirso Curambao 343.00 80. Eduardo Salameda 432.00
29. Loterio Daluyo 409.00 81. Edilberto Salen 277.00
30. Lauro Decena 343.00 82. Fundador Salon 301.00
31. Charlie dela Cruz 434.00 83. Edgar Sampaga 362.00
32. Raynaldo delos Santos 343.00 84. Freddie Se 395.00
33. Edilberto Discaya 395.00 85. Rodolfo Sevandra 250.00
34. Erwin Dorol 343.00 86. Jose Solo 343.00
35. Eldemar Edradan 277.00 87. Robinson Solon 370.00
36. Fulgencio Eleda 377.00 88. Luisito Suarez 402.00
37. Hercules Exmundo 343.00 89. Jeriel Suico 223.00
38. Domingo Fulgueras 417.00 90. Hernando Surigao 434.00
39. Federico Garcia 277.00 91. Franklin Suringa 343.00
40. Gil Gripon 429.75 92. Albert Tabaog 277.00
41. Arnold Guevarra 409.00 93. Joel Tizon 343.00
42. Arlen Hilotin 438.00 94. Alfredo Umbal 272.00
43. Urbano Jumawan, Jr. 409.00 95. Ferdinand Ventura 347.00
44. Ronilo Lacandoze 265.00 96. Joey Villamer 429.50
45. Claudio Laroga, Jr. 343.00 97. Domingo Villanueva 430.50
46. Jesus Laurio 426.00 98. Joel Whiting 343.00
47. Mariano Lumansoc 377.00 99. Romeo Yson 406.00

48. Victor Magboo 301.00 100. Carlos Zuniega 409.00
49. Rolando Maglente 409.00 101. Nelson Zipagan 425.00
50. Marcos Malapo Jr. 409.00 102. Michael Sibol 343.00
51. Herohito Manlabao 430.00 103. Renante Tangian 223.00
52. Graciano Marasigan 409.00 104. Rodrigo Cascara 377.00[6]

On October 14, 1999, Wage Order No. NCR-07 [7] was issued, and on October 26, 1999, its Implementing Rules and Regulations. It provided for a P25.50 per day increase in the salary of employees receiving the minimum wage and increased the minimum wage to P223.50 per day. Petitioner paid the P25.50 per day increase to all of its rank-and-file employees.

On July 1, 2000, the rank-and-file employees were granted the second year increase provided in the CBA in the amount of P25.00 per day. [8]

On November 1, 2000, Wage Order No. NCR-08 [9] took effect. Section 1 thereof provides:

Section 1. Upon the effectivity of this Wage Order, private sector workers and employees in the National Capital Region receiving the prescribed daily minimum wage rate of P223.50 shall receive an increase of TWENTY SIX PESOS and FIFTY CENTAVOS (P26.50) per day, thereby setting the new minimum wage rate in the National Capital Region at TWO HUNDRED FIFTY PESOS (P250.00) per day. [10]

Then Union president Lucenio Brin requested petitioner to implement the increase under Wage Order No. NCR-08 in favor of the company's rank-and-file employees. Petitioner rejected the request, claiming that since none of the employees were receiving a daily salary rate lower than P250.00 and there was no wage distortion, it was not obliged to grant the wage increase.

The Union elevated the matter to the National Conciliation and Mediation Board. When the parties failed to settle, they agreed to refer the case to voluntary arbitration. In the Submission Agreement, the parties agreed that the sole issue is "[w]hether or not the management is obliged to grant wage increase under Wage Order No. NCR #8 as a matter of practice," [11] and that the award of the Voluntary Arbitrator (VA) shall be final and binding.[12]

In its Position Paper, the Union alleged that it has been the company's practice to grant a wage increase under a government-issued wage order, aside from the yearly wage increases in the CBA. It averred that petitioner paid the salary increases provided under the previous wage orders in full (aside from the yearly CBA increases), regardless of whether there was a resulting wage distortion, or whether Union members' salaries were above the minimum wage rate. Wage Order No. NCR-06, where rank-and-file employees were given different wage increases ranging from P10.00 to P13.00, was an exception since the adjustments were the result of the formula agreed upon by the Union and the employer after negotiations. The Union averred that all of their CBAs with petitioner had a "collateral agreement" where petitioner was mandated to pay the equivalent of the wage orders across-the-board, or at least to negotiate how much will be paid. It pointed out that an established practice cannot be discontinued without running afoul of Article 100 of the Labor Code on non-diminution of benefits. [13]

For its part, petitioner alleged that there is no such company practice and that it complied with the previous wage orders (Wage Order Nos. NCR-01-05) because some of its employees were receiving wages below the minimum prescribed under said orders. As for Wage Order No. NCR-07, petitioner alleged that its compliance was in accordance with its verbal commitment to the Union during the CBA negotiations that it would implement any

wage order issued in 1999. Petitioner further averred that it applied the wage distortion formula prescribed under Wage Order Nos. NCR-06 and NCR-07 because an actual distortion occurred as a result of their implementation. It asserted that at present, all its employees enjoy regular status and that none receives a daily wage lower than the P250.00 minimum wage rate prescribed under Wage Order No. NCR-08. [14]

In reply to the Union's position paper, petitioner contended that the full implementation of the previous wage orders did not give rise to a company practice as it was not given to the workers within the bargaining unit on a silver platter, but only per request of the Union and after a series of negotiations. In fact, during CBA negotiations, it steadfastly rejected the following proposal of the Union's counsel, Atty. Florente Yambot, to include an across-the-board implementation of the wage orders: [15]

x x x To supplement the above wage increases, the parties agree that additional wage increases equal to the wage orders shall be paid across-the-board whenever the Regional Tripartite Wage and Productivity Board issues wage orders. It is understood that these additional wage increases will be paid not as wage orders but as agreed additional salary increases using the wage orders merely as a device to fix or determine how much the additional wage increases shall be paid. [16]

The Union, however, insisted that there was such a company practice. It pointed out that despite the fact that all the employees were already receiving salaries above the minimum wage, the CBA still provided for the payment of a wage increase using wage orders as the yardstick. It claimed that the parties intended that petitioner-employer would pay the additional increases apart from those in the CBA. [17] The Union further asserted that the CBA did not include all the agreements of the parties; hence, to determine the true intention of the parties, parol evidence should be resorted to. Thus, Atty. Yambot's version of the wage adjustment provision should be considered. [18]

On June 6, 2001, the VA rendered judgment in favor of the company and ordered the case dismissed. [19] It held that there was no company practice of granting a wage order increase to employees across-the-board, and that there is no provision in the CBA that would oblige petitioner to grant the wage increase under Wage Order No. NCR—08 across-the-board. [20]

The Union filed a petition for review with the CA under Rule 43 of the Rules of Court. It defined the issue for resolution as follows:

The principal issue in the present petition is whether or not the wage increase of P26.50 under Wage Order No. NCR-08 must be paid to the union members as a matter of practice and whether or not parol evidence can be resorted to in proving or explaining or elucidating the existence of a collateral agreement/company practice for the payment of the wage increase under the wage order despite that the employees were already receiving wages way above the minimum wage of P250.00/day as prescribed by Wage Order No. NCR-08 and irrespective of whether wage distortion exists. [21]

On September 23, 2004, the CA rendered judgment in favor of the Union and reversed that of the VA. The fallo of the decision reads:

WHEREFORE, the assailed Decision dated June 6, 2001 of public respondent Voluntary Arbitrator is REVERSED and SET ASIDE. Private respondent Pag-Asa Steel Works, Inc. is ordered to pay the members of the petitioner union the P26.50 daily wage by applying the wage increase prescribed under Wage Order No. NCR-08. Costs against private respondent.

SO ORDERED.[22]

The CA stressed that the CBA constitutes the law between the employer and the Union. It held that the CBA is plain and clear, and leaves no doubt as to the intention of the parties, that is, to grant a wage increase that may be ordered by the Wage Board in addition to the CBA-mandated salary increases regardless of whether the

employees are already receiving wages way above the minimum wage. The appellate court further held that the employer has no valid reason not to implement the wage increase mandated by Wage Order No. NCR-08 because prior thereto, it had been paying the wage increase provided for in the CBA even though the employees concerned were already receiving wages way above the applicable minimum wage.[23] Petitioner filed a motion for reconsideration which the CA denied for lack of merit on January 11, 2005.[24]

Petitioner then filed the instant petition in which it raises the following issues:

I. WHETHER THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT FINDING THAT THE INCREASES PROVIDED FOR UNDER WAGE ORDER NO. 8 CANNOT BE DEMANDED AS A MATTER OF RIGHT BY THE RESPONDENT UNDER THE 1999 CBA, in that:

a) Issue not averred in the complaint nor raised during the trial cannot be raised for the first time on appeal; and

b) The Rules of Statutory Construction, in relation to Article 1370 and 1374 of the New Civil Code, as well as Section 11 of the Rules of Court, requires that contract must be read in its entirety and the various stipulations in a contract must be read together to give effect to all.

II. WHETHER THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT FINDING THAT THE INCREASES PROVIDED FOR UNDER WAGE ORDER NO. 8 CANNOT BE DEMANDED BY THE RESPONDENT UNION AS A MATTER OF PRACTICE. [25]

Petitioner points out that the only issue agreed upon during the voluntary arbitration proceedings was whether or not the company was obliged to grant the wage increase under Wage Order No. NCR-08 as a matter of practice. It posits that the respondent did not anchor its claim for such wage increase on the CBA but on an alleged company practice of granting the increase pursuant to a wage order. According to petitioner, respondent Union changed its theory on appeal when it claimed before the CA that the CBA is ambiguous. [26] Petitioner contends that respondent Union was precluded from raising this issue as it was not raised during the voluntary arbitration. It insists that an issue cannot be raised for the first time on appeal. [27]

Petitioner further argues that there is no ambiguity in the CBA. It avers that Section 1, Article VI of the CBA should be read in its entirety. [28] From the said provision, it is clear that the CBA contemplated only the implementation of a wage order issued within six months from the execution of the CBA, and not every wage order issued during its effectivity. Hence, petitioner complied with Wage Order No. NCR-07 which was issued 28 days from the execution of the CBA. Petitioner emphasizes that this was implemented not because it was a matter of practice but because it was agreed upon in the CBA. [28] It alleges that respondent Union in fact realized that it could not invoke the provisions of the CBA to enforce Wage Order No. NCR-08, which is why it agreed to limit the issue for voluntary arbitration to whether respondent Union is entitled to the wage increase as a matter of practice. The fact that the "Yambot proposals" were left out in the final document simply means that the parties never agreed to them. [30]

In any case, petitioner avers that respondent Union is not entitled to the wage increase provided under Wage Order No. NCR-08 as a matter of practice. There is no company practice of granting a wage-order-mandated increase in addition to the CBA-mandated wage increase. It points out that, as admitted by respondent Union, the previous wage orders were not automatically implemented and were made applicable only after negotiations. Petitioner argues that the previous wage orders were implemented because at that time, some employees were receiving salaries below the minimum wage and the resulting wage distortion had to be remedied. [31]

For its part, respondent Union avers that the provision "[a]ny Wage Order to be implemented by the Regional

Tripartite Wage and Productivity Board shall be in addition to the wage increase adverted to above" referred to a company practice of paying a wage increase whenever the government issues a wage order even if the employees' salaries were above the minimum wage and there is no resulting wage distortion. According to respondent, the CBA contemplated all the salary increases that may be mandated by wage orders to be issued in the future. Since the wage order was only a device to determine exactly how much and when the increase would be given, these increases are, in effect, CBA-mandated and not wage order increases. [32] Respondent further avers that the ambiguity in the wage adjustment provision of the CBA can be clarified by resorting to parol evidence, that is, Atty. Yambot's version of said provision. [33]

The petition is meritorious. We rule that petitioner is not obliged to grant the wage increase under Wage Order No. NCR-08 either by virtue of the CBA, or as a matter of company practice.

On the procedural issue, well-settled is the rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal. [34] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule. [35]

We agree with petitioner's contention that the issue on the ambiguity of the CBA and its failure to express the true intention of the parties has not been expressly raised before the voluntary arbitration proceedings. The parties specifically confined the issue for resolution by the VA to whether or not the petitioner is obliged to grant an increase to its employees as a matter of practice. Respondent did not anchor its claim for an across-the-board wage increase under Wage Order No. NCR-08 on the CBA. However, we note that it raised before the CA two issues, namely:

x x x whether or not the wage increase of P26.50 under Wage Order No. NCR-08 must be paid to the union members as a matter of practice and whether or not parol evidence can be resorted to in proving or explaining or elucidating the existence of a collateral agreement/company practice for the payment of the wage increase under the wage order despite that the employees were already receiving wages way above the minimum wage of P250.00/day as prescribed by Wage Order No. NCR-08 and irrespective of whether wage distortion exists. [36]

Petitioner, in its Comment on the petition, delved into these issues and elaborated on its contentions. By so doing, it thereby agreed for the CA to take cognizance of such issues as defined by respondent (petitioner therein). Moreover, a perusal of the records shows that the issue of whether or not the CBA is ambiguous and does not reflect the true agreement of the parties was, in fact, raised before the voluntary arbitration proceedings. Despite the submission agreement confining the issue to whether petitioner was obliged to grant an increase pursuant to Wage Order No. NCR-08 as a matter of practice, respondent Union nevertheless raised the same issues in its pleadings. In its Position Paper, it asserted that the CBA consistently contained a collateral agreement to pay the equivalent of the wage orders across-the-board; in its Reply, it claimed that such provision clearly provided that petitioner would pay the additional increases apart from the CBA and that the wage order serves only as a measure of said increase. These assertions indicate that respondent Union also relied on the CBA to support its claim for the wage increase.

Central to the substantial issue is Article VI, Section I, of the CBA of the parties, dated September 23, 1999, viz:

SALARIES AND WAGE

Section 1. WAGE ADJUSTMENT — The COMPANY agrees to grant to all workers who are already regular and covered by this AGREEMENT at the effectivity of this AGREEMENT a general wage increase as follows:

July 1, 1999 P15.00 per day per employee

July 1, 2000 P25.00 per day per employee

July 1, 2001 P 30.00 per day per employee

The aforesaid wage increase shall be implemented across the board. Any Wage Order to be implemented by the Regional Tripartite Wage and Productivity Board shall be in addition to the wage increase adverted to above. However, if no wage increase is given by the Wage Board within six (6) months from the signing of this AGREEMENT, the Management is willing to give the following increases, to wit:

July 1, 1999 P 20.00 per day per employee

July 1, 2000 P 25.00 per day per employee

July 1, 2001 P 30.00 per day per employee

The difference of the first year adjustment to retroact to July 1, 1999.

The across-the-board wage increase for the 4th and 5th year of this AGREEMENT shall be subject for a reopening or renegotiation as provided for by Republic Act No. 6715. [37]

On the other hand, Wage Order No. NCR-08 specifically provides that only those in the private sector in the NCR receiving the prescribed daily minimum wage rate of P223.00 per day would receive an increase of P26.50 a day, thereby setting the new minimum wage rate in said region to P250.00 per day. There is no dispute that, when the order was issued, the lowest paid employee of petitioner was receiving a wage higher than P250.00 a day. As such, its employees had no right to demand for an increase under said order. As correctly ruled by the VA:

We now come to the core of this case. Is [petitioner] under an obligation to grant wage increase to its workers under W.O. No. NCR-08 as a matter of practice? It is submitted that employers (unless exempt) in Metro Manila (including the [petitioner]) are mandated to implement the said wage order but limited to those entitled thereto. There is no legal basis to implement the same across-the-board. A perusal of the record shows that the lowest paid employee before the implementation of Wage Order #8 is P250.00/day and none was receiving below P223.50 minimum. This could only mean that the union can no longer demand for any wage distortion adjustment. Neither could they insist for an adjustment of P26.50 increase under Wage Order #8. The provision of wage order #8 and its implementing rules are very clear as to who are entitled to the P26.50/day increase, i.e., "private sector workers and employees in the National Capital Region receiving the prescribed daily minimum wage rate of P223.50 shall receive an increase of Twenty-Six Pesos and Fifty Centavos (P26.50) per day," and since the lowest paid is P250.00/day the company is not obliged to adjust the wages of the workers.

With the above narration of facts and with the union not having effectively controverted the same, we find no merit to the complainant's assertion of such a company practice in the grant of wage order increase applied across-the-board. The fact that it was shown the increases granted under the Wage Orders were obtained thru request and negotiations because of the existence of wage distortion and not as company practice as what the union would want.

Neither do we find merit in the argument that under the CBA, such increase should be implemented across-the-board. The provision in the CBA that "Any Wage Order to be implemented by the Regional Tripartite Wage and Productivity Board shall be in addition to the wage increase adverted above" cannot be interpreted in support of an across-the-board increase. If such were the intentions of this provision, then the company could have simply accepted the original demand of the union for such across-the-board implementation, as set forth in their original proposal (Annex "2" union['s] counsel proposal). The fact that the company rejected this proposal can only mean that it was never its intention to agree, to such across-the-board implementation. Thus, the union will have to be contented with the increase of P30.00 under the CBA which is due on July 31, 2001 barely a month from now.[38]

The error of the CA lies in its considering only the CBA in interpreting the wage adjustment provision, without

taking into account Wage Order No. NCR-08, and the fact that the members of respondent Union were already receiving salaries higher than P250.00 a day when it was issued. The CBA cannot be considered independently of the wage order which respondent Union relied on for its claim.

Wage Order No. NCR-08 clearly states that only those employees receiving salaries below the prescribed minimum wage are entitled to the wage increase provided therein, and not all employees across-the-board as respondent Union would want petitioner to do. Considering therefore that none of the members of respondent Union are receiving salaries below the P250.00 minimum wage, petitioner is not obliged to grant the wage increase to them.

The ruling of the Court in *Capitol Wireless, Inc. v. Bate* [39] is instructive on how to construe a CBA vis-à-vis a wage order. In that case, the company and the Union signed a CBA with a similar provision: "[s]hould there be any government mandated wage increases and/or allowances, the same shall be over and above the benefits herein granted." [40] Thereafter, the Wage Board of the NCR issued several wage orders providing for an across-the-board increase in the minimum wage of all employees in the private sector. The company implemented the wage increases only to those employees covered by the wage orders - those receiving not more than the minimum wage. The Union protested, contending that, pursuant to said provision, any and all government-mandated increases in salaries and allowance should be granted to all employees across-the-board. The Court held as follows:

x x x The wage orders did not grant across-the-board increases to all employees in the National Capital Region but limited such increases only to those already receiving wage rates not more than P125.00 per day under Wage Order Nos. NCR-01 and NCR-01-A and P142.00 per day under Wage Order No. NCR-02. Since the wage orders specified who among the employees are entitled to the statutory wage increases, then the increases applied only to those mentioned therein. The provisions of the CBA should be read in harmony with the wage orders, whose benefits should be given only to those employees covered thereby. (Emphasis added)[41]

In this case, as gleaned from the pleadings of the parties, respondent Union relied on a collateral agreement between it and petitioner, an agreement extrinsic of the CBA based on an alleged established practice of the latter as employer. The VA rejected this claim:

Complainant Pag-Asa Steel Workers Union additionally advances the arguments that "there exist a collateral agreement to pay the equivalent of wage orders across the board or at least to negotiate how much will be paid" and that "parol evidence is now applicable to show or explain what the unclear provisions of the CBA means regarding wage adjustment." The respondent cites Article XXVII of the CBA in effect, as follows: "The parties acknowledged that during the negotiation which resulted in this AGREEMENT, each had the unlimited right & opportunity to make demands, claims and proposals of every kind and nature with respect to any subject or matter not removed by law from the Collective Bargaining and the understanding and agreements arrived at by the parties after the exercise of that right & opportunity are set forth in this AGREEMENT. Therefore, the COMPANY and the UNION, for the life of this AGREEMENT, agrees that neither party shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this AGREEMENT, and furthermore, that each party voluntarily & unqualifiedly waives such right even though such subject may not have been within the knowledge or contemplation of either or both of the parties at the time they signed this AGREEMENT."

From the said CBA provision and upon an appreciation of the entire CBA, we find it to have more than amply covered all aspects of the collective bargaining. To allow alleged collateral agreements or parol/oral agreements would be violative of the CBA provision afore-quoted. [42]

We agree with petitioner's contention that the rule excluding parol evidence to vary or contradict a written

agreement, does not extend so far as to preclude the admission of extrinsic evidence, to show prior or contemporaneous collateral agreements between the parties. Such evidence may be received regardless of whether or not the written agreement contains reference to such collateral agreement. [43] As the Court ruled in *United Kimberly-Clark Employees Union, et al. v. Kimberly-Clark Philippines, Inc.* [44]

A CBA is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. It covers the whole employment relationship and prescribes the rights and duties of the parties. It is a system of industrial self-government with the grievance machinery at the very heart of the system. The parties solve their problems by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.

If the terms of a CBA are clear and have no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. However, if, in a CBA, the parties stipulate that the hirees must be presumed of employment qualification standards but fail to state such qualification standards in said CBA, the VA may resort to evidence extrinsic of the CBA to determine the full agreement intended by the parties. When a CBA may be expected to speak on a matter, but does not, its sentence imports ambiguity on that subject. The VA is not merely to rely on the cold and cryptic words on the face of the CBA but is mandated to discover the intention of the parties. Recognizing the inability of the parties to anticipate or address all future problems, gaps may be left to be filled in by reference to the practices of the industry, and the step which is equally a part of the CBA although not expressed in it. In order to ascertain the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. The VA may also consider and rely upon negotiating and contractual history of the parties, evidence of past practices interpreting ambiguous provisions. The VA has to examine such practices to determine the scope of their agreement, as where the provision of the CBA has been loosely formulated. Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it. [45]

However, just like any other fact, habits, customs, usage or patterns of conduct must be proved. Thus was the ruling of the Court in *Bank of Commerce v. Manalo, et al.* [46]

Habit, custom, usage or pattern of conduct must be proved like any other facts. Courts must contend with the caveat that, before they admit evidence of usage, of habit or pattern of conduct, the offering party must establish the degree of specificity and frequency of uniform response that ensures more than a mere tendency to act in a given manner but rather, conduct that is semi-automatic in nature. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit. The examples offered in evidence to prove habit, or pattern of evidence must be numerous enough to base on inference of systematic conduct. Mere similarity of contracts does not present the kind of sufficiently similar circumstances to outweigh the danger of prejudice and confusion.

In determining whether the examples are numerous enough, and sufficiently regular, the key criteria are adequacy of sampling and uniformity of response. After all, habit means a course of behavior of a person regularly represented in like circumstances. It is only when examples offered to establish pattern of conduct or habit are numerous enough to lose an inference of systematic conduct that examples are admissible. The key criteria are adequacy of sampling and uniformity of response or ratio of reaction to situations.

We have reviewed the records meticulously and find no evidence to prove that the grant of a wage-order-mandated increase to all the employees regardless of their salary rates on an agreement collateral to the CBA had ripened into company practice before the effectivity of Wage Order No. NCR-08. Respondent Union failed to adduce proof on the salaries of the employees prior to the issuance of each wage order to establish its allegation that, even if the employees were receiving salaries above the minimum wage and there was no wage distortion, they were still granted salary increase. Only the following lists of salaries of respondent Union's

members were presented in evidence: (1) before Wage Order No. NCR-06 was issued; (2) after Wage Order No. NCR-06 was implemented; (3) after the grant of the first year increase under the CBA; (4) after Wage Order No. NCR-07 was implemented; and (5) after the second year increase in the CBA was implemented.

The list of the employees' salaries before Wage Order No. NCR-06 was implemented belie respondent Union's claim that the wage-order-mandated increases were given to employees despite the fact that they were receiving salaries above the minimum wage. This list proves that some employees were in fact receiving salaries below the P198.00 minimum wage rate prescribed by the wage order — two rank-and-file employees in particular. As petitioner explains, a wage distortion occurred as a result of granting the increase to those employees who were receiving salaries below the prescribed minimum wage. The wage distortion necessitated the upward adjustment of the salaries of the other employees and not because it was a matter of company practice or usage. The situation of the employees before Wage Order No. NCR-08, however, was different. Not one of the members of respondent Union was then receiving less than P250.00 per day, the minimum wage requirement in said wage order.

The only instance when petitioner admittedly implemented a wage order despite the fact that the employees were not receiving salaries below the minimum wage was under Wage Order No. NCR-07. Petitioner, however, explains that it did so because it was agreed upon in the CBA that should a wage increase be ordered within six months from its signing, petitioner would give the increase to the employees in addition to the CBA-mandated increases. Respondent's isolated act could hardly be classified as a "company practice" or company usage that may be considered an enforceable obligation.

Moreover, to ripen into a company practice that is demandable as a matter of right, the giving of the increase should not be by reason of a strict legal or contractual obligation, but by reason of an act of liberality on the part of the employer. Hence, even if the company continuously grants a wage increase as mandated by a wage order or pursuant to a CBA, the same would not automatically ripen into a company practice. In this case, petitioner granted the increase under Wage Order No. NCR-07 on its belief that it was obliged to do so under the CBA.

WHEREFORE, premises considered, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 65171 and Resolution dated January 11, 2005 are REVERSED and SET ASIDE. The Decision of the Voluntary Arbitrator is REINSTATED. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis (retired) and Jose L. Sabio, Jr., concurring; rollo, pp. 282-290.

[2] Rollo, pp. 388-390.

[3] Id. at 124.

[4] Id. at 125-127.

[5] Id. at 103.

[6] Id. at 161.

[7] Id. at 347-351.

[8] Id. at 164-166.

[9] Id. at 368-372.

- [10] Id. at 368.
- [11] Id. at 339.
- [12] Id.
- [13] CA rollo, pp. 41-45.
- [14] Rollo, p. 130.
- [15] Id. at 192.
- [16] Id. at 196.
- [17] Id. at 186-188.
- [18] Id. at 200-202.
- [19] Id. at 78-87.
- [20] Id. at 84-87.
- [21] CA rollo, p. 14
- [22] Rollo, p. 289.
- [23] Id. at 287-288.
- [24] Id. at 53.
- [25] Id. at 23.
- [26] Id. at 25-27.
- [27] Id. at 39-40.
- [28] Id. at 27.
- [28] Id. at 32-33.
- [30] Id. at 36-37.
- [31] Id. at 41-45.
- [32] Id. at 437.
- [33] Id. at 440.
- [34] Labor Congress of the Philippines v. NLRC, 354 Phil. 481, 490 (1998).
- [35] Del Rosario v. Bonga, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 108.
- [36] CA rollo, p. 14.
- [37] Id. at 93.
- [38] Rollo, pp. 83-84.
- [39] 316 Phil. 355 (1995).
- [40] Emphasis added.

[41] Capitol Wireless, Inc. v. Bate, *supra*, at 359.

[42] Rollo, pp. 84-85.

[43] Land Settlement and Development Corporation v. Garcia Plantation Co., Inc., 117 Phil. 761, 765 (1963).

[44] G.R. No. 162957, March 6, 2006.

[45] *Id.*

[46] G.R. No. 158149, February 9, 2006.

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