SUPREME COURT
FIRST DIVISION

MANILA ELECTRIC COMPANY,
***Petitioner*,**

-versus-

G.R. No. 127598
January 27, 1999

THE HONORABLE SECRETARY OF LABOR LEONARDO QUISUMBING AND MERALCO EMPLOYEES AND WORKERS ASSOCIATION (MEWA),
***Respondents*.**
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D E C I S I O N

(RESOLUTION dated February 22, 2000)
(RESOLUTION dated August 1, 2000)

MARTINEZ, *J.*:

In this Petition for *Certiorari*, the Manila Electric Company (MERALCO) seeks to annul the orders of the Secretary of Labor dated August 19, 1996 and December 28, 1996, wherein the Secretary required MERALCO and its rank and file union — the Meralco Workers Association (MEWA) — to execute a collective bargaining agreement (CBA) for the remainder of the parties' 1992-1997 CBA cycle, and to incorporate in this new CBA the Secretary's dispositions on the disputed economic and non-economic issues.

MEWA is the duly recognized labor organization of the rank-and-file employees of MERALCO.

On September 7, 1995, MEWA informed MERALCO of its intention to re-negotiate the terms and conditions of their existing 1992-1997 Collective Bargaining Agreement (CBA) covering the remaining period of two years starting from December 1, 1995 to November 30, 1997.[1] MERALCO signified its willingness to re-negotiate through its letter dated October 17, 1995[2] and formed a CBA negotiating panel for the purpose. On November 10, 1995, MEWA submitted its proposal[3] to MERALCO, which, in turn, presented a counter-proposal. Thereafter, collective bargaining negotiations proceeded. However, despite the series of meetings between the negotiating panels of MERALCO and MEWA, the parties failed to arrive at "terms and conditions acceptable to both of them."

On April 23, 1996, MEWA filed a Notice of Strike with the National Capital Region Branch of the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE) which was docketed as NCMB-NCR-NS-04-152-96, on the grounds of bargaining deadlock and unfair labor practices. The NCMB then conducted a series of conciliation meetings but the parties failed to reach an amicable settlement. Faced with the imminence of a strike, MERALCO on May 2, 1996, filed an Urgent Petition[4] with the Department of Labor and Employment which was docketed as OS-AJ No. 0503196 praying that the Secretary assume jurisdiction over the labor dispute and to enjoin the striking employees to go back to work.

The Labor Secretary granted the petition through its Order[5] of May 8, 1996, the dispositive portion of which reads:

> "WHEREFORE, premises considered, this Office now assumes jurisdiction over the labor dispute obtaining between the parties pursuant to Article 263(g) of the Labor Code. Accordingly, the parties are here enjoined from committing any act that may exacerbate the situation. To speed up the resolution of the dispute, the parties are also directed to submit their respective Position Papers within ten (10) days from receipt.

'Undersecretary Jose M. Espanol, Jr. is deputized to conduct conciliation conferences between the parties to bridge their differences and eventually hammer out a solution that is mutually acceptable. He shall be assisted by the Legal Service.

SO ORDERED."

Thereafter, the parties submitted their respective memoranda and on August 19, 1996, the Secretary resolved the labor dispute through an Order,[6]containing the following awards:

"ECONOMIC DEMANDS

Wage increase – P 2,300.00 for the first year covering the period from December 1, 1995 to November 30, 1996

P2,200.00 for the second year covering the period December 1, 1996 to November 30, 1997.

Red Circle Rate (RCR) Allowance — all RCR allowances (promotional increases that go beyond the maximum range of a job classification salary) shall be integrated into the basic salary of employees effective December 1, 1995.

Longevity Allowance — the integration of the longevity allowance into the basic wage is denied; the present policy is maintained.

Longevity Increase — the present longevity bonus is maintained but the bonus shall be incorporated into the new CBA.

Sick Leave — MEWA's demand for upgrading is denied; the company's present policy is maintained. However, those who have not used the sick leave benefit during a particular year shall be entitled to a one-day sick leave incentive.

Sick leave reserve — the present reserve of 25 days shall be reduced to 15 days; the employee has the option either to convert the excess of 10 days to cash or let it remain as long as he wants. In case he opts to let

it remain, he may later on convert it into cash at his retirement or separation.

Vacation Leave — MEWA's demand for upgrading denied & the company's present policy is maintained which must be incorporated into the new CBA but scheduled vacation leave may be rounded off to one full day at a time in case of a benefit involving a fraction of a day.

Union Leave — of MEWA's officers, directors or stewards assigned to perform union duties or legitimate union activity is increased from 30 to 40 Mondays per month.

Maternity, Paternity and Funeral leaves — the existing policy is to be maintained and must be incorporated in the new CBA unless a new law granting paternity leave benefit is enacted which is superior to what the company has already granted.

Birthday Leave — union's demand is granted. If birthday falls on the employee's rest day or on a non-working holiday, the worker shall be entitled to go on leave with pay on the next working day.

Group Hospitalization & Surgical Insurance Plan (GHSIP) and Health Maintenance Plan (HMP) — present policy is maintained insofar as the cost sharing is concerned — 70% for the Company and 30% for MEWA.

Health Maintenance Plan (HMP) for dependents — subsidized dependents increased from three to five dependents.

Longevity Bonus — is increased from P140.00 to P200.00 for every year of service to be received by the employee after serving the Company for 5 years.

Christmas Bonus and Special Christmas Grant — MEWA's demand of one month salary as Christmas Bonus and two month's salary as Special Christmas Grant is granted and to be incorporated in the new CBA.

Midyear Bonus — one month's pay to be included in the CBA.

Anniversary Bonus — union's demand is denied.

Christmas Gift Certificate — company has the discretion as to whether it will give it to its employees.

Retirement Benefits:

a. Full retirement-present policy is maintained;

b. one cavan of rice per month is granted to retirees;

c. special retirement leave and allowance-present policy is maintained;

d. HMP coverage for retirees — HMP coverage is granted to retirees who have not reached the age of 70, with MERALCO subsidizing 100% of the monthly premium; those over 70 are entitled to not more than 30 days of hospitalization at the J.F. Cotton Hospital with the company shouldering the entire cost.

e. HMP coverage for retiree's dependents is denied

f. Monthly pension of P3,000.00 for each retiree is denied.

g. Death benefit for retiree's beneficiaries is denied.

Optional retirement — union's demand is denied; present policy is maintained; employee is eligible for optional retirement if he has rendered at least 18 years of service.

Dental, Medical and Hospitalization Benefits — grant of all the allowable medical, surgical, dental and annual physical examination benefits, including free medicine whenever the same is not available at the JFCH.

Resignation benefits — union's demand is denied.

Night work — union demand is denied but present policy must be incorporated in CBA.

Shortswing — work in another shift within the same day shall be considered as the employee's work for the following day and the employee shall be given additional four (4) hours straight time and the applicable excess time premium if he works beyond 8 hours in the other shift.

High Voltage allowance — is increased from P45.00 to P55.00 to be given to any employee authorized by the Safety Division to perform work on or near energized bare lines & bus including stockman drivers & crane operators and other crew members on ground.

High Pole Allowance — is increased from P30.00 to P40.00 to be given to those authorized to climb poles up to at least 60 ft. from the ground. Members of the team including stockman drivers, crane operators and other crew members on the ground, are entitled to this benefit.

Towing Allowance — where stockmen drive tow trailers with long poles and equipment on board, they shall be entitled to a towing allowance of P20.00 whether they perform the job on regular shift or on overtime.

Employee's Cooperative — a loan of P3 M seed money is granted to the proposed establishment of a cooperative, payable in twenty (20) years starting one year from the start of operations.

Holdup Allowance — the union demand is denied; the present policy shall be maintained.

Meal and Lodging Allowance — shall be increased effective December 1, 1995 as follows:

Breakfast	from	P25.00	to	P35.00
Lunch	from	P35.00	to	P45.00
Dinner	from	P35.00	to	P45.00
Lodging	from	P135.00	to	P180.00 a night in all MERALCO franchise areas

Payroll Treatment for Accident while on Duty — an employee shall be paid his salary and allowance if any is due plus average excess time for the past 12 months from the time of the accident up to the time of full recovery and placing of the employee back to normal duty or an allowance of P2,000.00, whichever is higher.

Housing and Equity Assistance Loan — is increased to P60,000.00; those who have already availed of the privilege shall be allowed to get the difference.

Benefits for Collectors:

a. Company shall reduce proportionately the quota and monthly average product level (MAPL) in terms of equivalent bill assignment when an employee is on sick leave and paid vacation leave.

b. When required to work on Saturdays, Sundays and holidays, an employee shall receive P60.00 lunch allowance and applicable transportation allowance as determined by the Company and shall also receive an additional compensation to one day fixed portion in addition to lunch and transportation allowance.

c. The collector shall be entitled to an incentive pay of P25.00 for every delinquent account disconnected.

d. When a collector voluntarily performs other work on regular shift or overtime, he shall be entitled to remuneration based on his computed hourly compensation and the reimbursement of actually incurred transportation expenses.

e. Collectors shall be provided with bobcat belt bags every year

f. Collector's cash bond shall be deposited under his capital contribution to MESALA.

g. Collectors quota and MAPL shall be proportionately reduced during typhoons, floods, earthquakes and other similar force

majeure events when it is impossible for a collector to perform collection work.

Political Demands:

a. Scope of the collective bargaining unit — the collective bargaining unit shall be composed of all regular rank-and-file employees hired by the company in all its offices and operative centers throughout its franchise area and those it may employ by reason of expansion, reorganization or as a result of operational exigencies.

b. Union recognition and security —

   i. The union shall be recognized by the Company as sole and exclusive bargaining representative of the rank-and-file employees included in the bargaining unit. The Company shall agree to meet only with Union officers and its authorized representatives on all matters involving the Union and all issues arising from the implementation and interpretation of the new CBA.

   ii. The union shall meet with the newly regularized employees for a period not to exceed four (4) hours, on company time, to acquaint the new regular employees of the rights, duties and benefits of Union membership.

   iii. The right of all rank-and-file employees to join the union shall be recognized in accordance with the maintenance of membership principle as a form of union security.

c. Transfer of assignment and job security —

   i. No transfer of an employee from one position to another shall be made if motivated by considerations of sex, race, creed, political and religious belief, seniority or union activity.

ii. If the transfer is due to the reorganization or decentralization, the distance from the employee's residence shall be considered unless the transfer is accepted by the employee. If the transfer is extremely necessary, the transfer shall be made within the offices in the same district.

iii. Personnel hired through agencies or contractors to perform the work done by covered employees shall not exceed one month. If extension is necessary, the union shall be informed. But the Company shall not permanently contract out regular or permanent positions that are necessary in the normal operation of the Company.

d. Check off Union Dues — where the union increases its dues as approved by the Board of Directors, the Company shall check off such increase from the salaries of union members after the union submits check off authorizations signed by majority of the members. The Company shall honor only those individual authorizations signed by the majority of the union members and collectively submitted by the union to the Company's Salary Administration.

e. Payroll Reinstatement — shall be in accordance with Article 223, p. 3 of the Labor Code.

f. Union Representation in Committees — the union is allowed to participate in policy formulation and in the decision-making process on matters affecting their rights and welfare, particularly in the Uniform Committee, the Safety Committee and other committees that may be formed in the future.

Signing Bonus — P4,000.00 per member of the bargaining unit for the conclusion of the CBA.

Existing benefits already granted by the Company but which are not expressly or impliedly repealed in the new agreement shall remain

subsisting and shall be included in the new agreement to be signed by the parties effective December 1, 1995.

On August 30, 1996, MERALCO filed a motion for reconsideration[7] alleging that the Secretary of Labor committed grave abuse of discretion amounting to lack or excess of jurisdiction:

1. in awarding to MEWA a package that would cost at least P1.142 billion, a package that is grossly excessive and exorbitant, would not be affordable to MERALCO and would imperil its viability as a public utility affected with national interest.

2. in ordering the grant of a P4,500 00 wage increase, as well as a new and improved fringe benefits, under the remaining two (2) years of the CBA for the rank-and-file employees.

3. in ordering the 'incorporation into the CBA of all existing employee benefits, on the one hand, and those that MERALCO has unilaterally granted to its employees by virtue of voluntary company policy or practice, on the other hand.'

4. in granting certain 'political demands' presented by the union.

5. in ordering the CBA to be 'effective December 1995' instead of August 19, 1996 when he resolved the dispute.

MERALCO filed a supplement to the motion for reconsideration on September 18, 1995, alleging that the Secretary of Labor did not properly appreciate the effect of the awarded wages and benefits on MERALCO's financial viability.

MEWA likewise filed a motion asking the Secretary of Labor to reconsider its Order on the wage increase, leaves, decentralized filing of paternity and maternity leaves, bonuses, retirement benefits, optional retirement, medical, dental and hospitalization benefits, short swing and payroll treatment. On its political demands, MEWA asked the Secretary to rule on its proposal to institute a Code of

Discipline for its members and the union's representation in the administration of the Pension Fund.

On December 28, 1996, the Secretary issued an Order[8] resolving the parties' separate motions, the modifications of the August 19, 1996 Order being highlighted hereunder:

1) **Effectivity of Agreement — December 1, 1995 to November 30, 1997.**

Economic Demands:

2) Wage Increase:
   First year — P2,200.00 per month;
   Second year — P2,200.00 per month.

3) Integration of Red Circle Rate (RCR) and Longevity Allowance into Basic Salary — the RCR allowance shall be integrated into the basic salary of employees as of August 19, 1996 (the date of the disputed Order).

4) Longevity Bonus — P170 per year of service starting from 10 years of continuous service.

5) Vacation Leave — The status quo shall be maintained as to the number of vacation leave but employees' scheduled vacation may be taken one day at a time in the manner that this has been provided in the supervisory CBA.

6) Sick Leave Reserve — is reduced to 15 days, with any excess payable at the end of the year. The employee has the option to avail of this cash conversion or to accumulate his sick leave credits up to 25 days for conversion to cash at retirement or separation from the service.

7) Birthday Leave — the grant of a day off when an employee's birthday falls on a non-working day is deleted.

8) Retirement Benefits for Retirees — The benefits granted shall be effective on August 19, 1996, the date of the disputed

order up to November 30, 1997, which is the date the CBA expires and shall apply to those who are members of the bargaining unit at the time the award is made.

One sack of rice per quarter of the year shall be given to those retiring between August 19, 1996 and November 30, 1997.

On HMP Coverage for Retirees — The parties 'maintain the status quo, that is, with the Company complying with the present arrangement and the obligations to retirees as is.'

9) Medical, Dental and Hospitalization Benefits — The cost of medicine unavailable at the J.F. Cotton Hospital shall be in accordance with MERALCO's Memorandum dated September 14, 1976.

10) GHSIP and HMP for Dependents — The number of dependents to be subsidized shall be reduced from 5 to 4 provided that their premiums are proportionately increased.

11) Employees' Cooperative — The original award of P3 million pesos as seed money for the proposed Cooperative is reduced to P1.5 million pesos.

12) Shortswing — the original award is deleted.

13) Payroll Treatment for Accident on Duty — Company ordered to continue its present practice on payroll treatment for accident on duty without need to pay the excess time the Union demanded.

Political Demands:

14) Scope of the collective bargaining unit — The bargaining unit shall be composed of all rank and file employees hired by the Company in accordance with the original Order.

15) Union recognition and security — The incorporation of a closed shop form of union security in the CBA; the

Company is prohibited from entertaining individuals or groups of individuals only on matters that are exclusively within the domain of the union; the Company shall furnish the Union with a complete list of newly regularized employees within a week from regularization so that the Union can meet these employees on the Union's and the employee's own time.

16) Transfer of assignment and job security — Transfer is a prerogative of the Company but the transfer must be for a valid business reason, made in good faith and must be reasonably exercised. The CBA shall provide that 'No transfer of an employee from one position to another, without the employee's written consent, shall be made if motivated by considerations of sex, race, creed, political and religious belief, age or union activity.

17) Contracting Out — The Company has the prerogative to contract out services provided that this move is based on valid business reasons in accordance with law, is made in good faith, is reasonably exercised and, provided further that if the contracting out involves more than six months, the Union must be consulted before its implementation.

18) Check off of union dues –

In any increase of union dues or contributions for mandatory activities, the union must submit to the Company a copy of its board resolution increasing the union dues or authorizing such contributions;

If a board resolution is submitted, the Company shall deduct union dues from all union members after a majority of the union members have submitted their individual written authorizations. Only those check-off authorizations submitted by the union shall be honored by the Company.

With respect to special assessments, attorney's fees, negotiation fees or any other extraordinary fees, individual

authorizations shall be necessary before the company may so deduct the same.

19) Union Representation in Committees — The union is granted representation in the Safety Committee, the Uniform Committee and other committees of a similar nature and purpose involving personnel welfare, rights and benefits as well as duties.

Dissatisfied, petitioner filed this petition contending that the Secretary of Labor gravely abused his discretion:

1) in awarding wage increases of P2,200.00 for 1996 and P2,200 for 1997;

2) in awarding the following economic benefits:

   a. Two months Christmas bonus;

   b. Rice Subsidy and retirement benefits for retirees;

   c. Loan for the employees' cooperative;

   d. Social benefits such as GHSIP and HMP for dependents, employees' cooperative and housing equity assistance loan;

   e. Signing bonus;

   f. Integration of the Red Circle Rate Allowance;

   g. Sick leave reserve of 15 days;

   h. The 40-day union leave;

   i. High pole/high voltage and towing allowance; and

   j. Benefits for collectors;

3) in expanding the scope of the bargaining unit to all regular rank and file employees hired by the company in all its offices and operating centers and those it may employ by reason of expansion, reorganization or as a result of operational exigencies;

4) in ordering for a closed shop when his original order for a maintenance of membership arrangement was not questioned by the parties;

5) in ordering that Meralco should consult the union before any contracting out for more than six months;

6) in decreeing that the union be allowed to have representation in policy and decision making into matters affecting "personnel welfare, rights and benefits as well as duties;"

7) in ruling for the inclusion of all terms and conditions of employment in the collective bargaining agreement; and

8) in exercising discretion in determining the retroactivity of the CBA;

Both MEWA and the Solicitor General, on behalf of the Secretary of Labor, filed their comments to the petition. While the case was also set for oral argument on Feb. 10, 1997, this hearing was cancelled due to MERALCO not having received the comment of the opposing parties. The parties were instead required to submit written memoranda, which they did. Subsequently, both petitioner and private respondent MEWA also filed replies to the opposing parties' Memoranda, all of which We took into account in the resolution of this case.

The union disputes the allegation of MERALCO that the Secretary abused his discretion in issuing the assailed orders arguing that he acted within the scope of the powers granted him by law and by the Constitution. The union contends that any judicial review is limited to an examination of the Secretary's decision-making/discretion — exercising process to determine if this process was attended by some capricious or whimsical act that constitutes "grave abuse"; in the

absence of such abuse, his findings — considering that he has both jurisdiction and expertise to make them — are valid.

The union's position is anchored on two premises:

First, no reviewable abuse of discretion could have attended the Secretary's arbitral award because the Secretary complied with constitutional norms in rendering the disputed award. The union posits that the yardstick for comparison and for the determination of the validity of the Secretary's actions should be the specific standards laid down by the Constitution itself. To the union, these standards include the State policy on the promotion of workers' welfare, 9 the principle of distributive justice,[10] the right of the State to regulate the use of property,[11] the obligation of the State to protect workers, both organized and unorganized, and insure their enjoyment of "humane conditions of work" and a "living wage," and the right of labor to a just share in the fruits of production.[12]

Second, no reversible abuse of discretion attended the Secretary's decision because the Secretary took all the relevant evidence into account, judiciously weighed them, and rendered a decision based on the facts and law. Also, the arbitral award should not be reversed given the Secretary's expertise in his field and the general rule that findings of fact based on such expertise is generally binding on this Court.

To put matters in proper perspective, we go back to basic principles. The Secretary of Labor's statutory power under Art. 263 (g) of the Labor Code to assume jurisdiction over a labor dispute in an industry indispensable to the national interest, and, to render an award on compulsory arbitration, does not exempt the exercise of this power from the judicial review that Sec. 1, Art. 8 of the Constitution mandates. This constitutional provision states:

> "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

Under this constitutional mandate, every legal power of the Secretary of Labor under the Labor Code, or, for that matter, any act of the Executive, that is attended by grave abuse of discretion is subject to review by this Court in an appropriate proceeding. To be sure, the existence of an executive power alone — whether granted by statute or by the Constitution — cannot exempt the executive action from judicial oversight, interference or reversal when grave abuse of discretion is, or is alleged to be, present. This is particularly true when constitutional norms are cited as the applicable yardsticks since this Court is the final interpreter of the meaning and intent of the Constitution.[13]

The extent of judicial review over the Secretary of Labor's arbitral award is not limited to a determination of grave abuse in the manner of the secretary's exercise of his statutory powers. This Court is entitled to, and must — in the exercise of its judicial power — review the substance of the Secretary's award when grave abuse of discretion is alleged to exist in the award, i.e., in the appreciation of and the conclusions the Secretary drew from the evidence presented.

The natural and ever present limitation on the Secretary's acts is, of course, the Constitution. And we recognize that indeed the constitutional provisions the union cited are State policies on labor and social justice that can serve as standards in assessing the validity of a Secretary of Labor's actions. However, we note that these provisions do not provide clear, precise and objective standards of conduct that lend themselves to easy application. We likewise recognize that the Constitution is not a lopsided document that only recognizes the interests of the working man; it too protects the interests of the property owner and employer as well.[14]

For these reasons — and more importantly because a ruling on the breadth and scope of the suggested constitutional yardsticks is not absolutely necessary in the disposition of this case — we shall not use these yardsticks in accordance with the time-honored practice of avoiding constitutional interpretations when a decision can be reached using non-constitutional standards. We have repeatedly held that one of the essential requisites for a successful judicial inquiry

into constitutional questions is that the resolution of the constitutional question must be necessary in deciding the case.[15]

In this case we believe that the more appropriate and available standard — and one does not require a constitutional interpretation — is simply the standard of reasonableness. In layman's terms, reasonableness implies the absence of arbitrariness;[16] in legal parlance, this translates into the exercise of proper discretion and to the observance of due process. Thus, the question we have to answer in deciding this case is whether the Secretary's actions have been reasonable in light of the parties positions and the evidence they presented.

MEWA's second premise — i.e., that the Secretary duly considered the evidence presented — is the main issue that we shall discuss at length below. Additionally, MEWA implied that we should take great care before reading an abuse of discretion on the part of the Secretary because of his expertise on labor issues and because his findings of fact deserve the highest respect from this Court.

This Court has recognized the Secretary of Labor's distinct expertise in the study and settlement of labor disputes falling under his power of compulsory arbitration.[17] It is also well-settled that factual findings of labor administrative officials, if supported by substantial evidence, are entitled not only to great respect but even to finality.[18] We, therefore, have no difficulty in accepting the union's caveat on how to handle a Secretary of Labor's arbitral award.

But at the same time, we also recognize the possibility that abuse of discretion may attend the exercise of the Secretary's arbitral functions; his findings in an arbitration case are usually based on position papers and their supporting documents (as they are in the present case), and not on the thorough examination of the parties' contending claims that may be present in a court trial and in the face-to-face adversarial process that better insures the proper presentation and appreciation of evidence.[19] There may also be grave abuse of discretion where the board, tribunal or officer exercising judicial function fails to consider evidence adduced by the parties.[20] Given the parties' positions on the justiciability of the issues before us, the question we have to answer is one that goes into the substance of the

Secretary's disputed orders: Did the Secretary properly consider and appreciate the evidence presented before him?

We find, based on our consideration of the parties' positions and the evidence on record, that the Secretary of Labor disregarded and misappreciated evidence, particularly with respect to the wage award. The Secretary of Labor apparently also acted arbitrarily and even whimsically in considering a number of legal points; even the Solicitor General himself considered that the Secretary gravely abused his discretion on at least three major points: (a) on the signing bonus issue; (b) on the inclusion of confidential employees in the rank and file bargaining unit, and (c) in mandating a union security "closed-shop" regime in the bargaining unit.

We begin with a discussion on the wages issue. The focal point in the consideration of the wage award is the projected net income for 1996 which became the basis for the 1996 wage award, which in turn — by extrapolation — became the basis for the (2nd Year) 1997 award. MERALCO projected that the net operating income for 1996 was 14.7% above the 1999 level or a total net operating income of 4.171 Billion, while the union placed the 1996 net operating income at 5.795 Billion.

MERALCO based its projection on the increase of the income for the first 6 months of 1996 over the same period in 1995. The union, on the other hand, projected that the 1996 income would increase by 29% to 35% because the "consumption of electric power is at its highest during the last two quarters with the advent of the Yuletide season." The union likewise relied heavily on a newspaper report citing an estimate by an all Asia capital financial analyst that the net operating income would amount to 5.795 Billion.[21]

Based essentially on these considerations, the Secretary made the following computations and ordered his disputed wage award:

Projected net operating income for 1996	5,795,000,000
Less: Principals and interests	1,426,571,703
Dividends at 1995 rate	1,636,949,000
Net Amount left with the Company	2,729,479,297
Add: Tax credit equivalent to	

35% of labor cost	231,804,940
Company's net operating income	2,961,284,237
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"For 1997, the projected income is P7,613,612 which can easily absorb the incremental increase of P2,200 per month or a total of P4,500 during the last year of the CBA period.

x x x

"An overriding aim is to estimate the amount that is left with the Company after the awarded wages and benefits and the company's customary obligations are paid. This amount can be the source of an item not found in the above computations but which the Company must provide for, that is — the amount the company can use for expansion.

"Considering the expansion plans stated in the Company's Supplement that calls for capital expenditures of 6 billion, 6.263 billion and 5.802 billion for 1996, 1997 and 1998 respectively, We conclude that our original award of P2,300 per month for the first year and P2,200 for the second year will still leave much by way of retained income that can be used for expansion."[22] (Emphasis ours.)

We find after considering the records that the Secretary gravely abused his discretion in making this wage award because he disregarded evidence on record. Where he considered MERALCO's evidence at all, he apparently misappreciated this evidence in favor of claims that do not have evidentiary support. To our mind, the MERALCO projection had every reason to be reliable because it was based on actual and undisputed figures for the first six months of 1996.[23] On the other hand, the union projection was based on a speculation of Yuletide consumption that the union failed to substantiate. In fact, as against the union's unsubstantiated Yuletide consumption claim, MERALCO adduced evidence in the form of historical consumption data showing that a lengthy consumption does not tend to rise during the Christmas period.[24] Additionally, the All-Asia Capital Report was nothing more than a newspaper report that did not show any specific breakdown or computations. While the

union claimed that its cited figure is based on MERALCO's 10-year income stream,[25] no data or computation of this 10-year stream appear in the record.

While the Secretary is not expected to accept the company-offered figures wholesale in determining a wage award, we find it a grave abuse of discretion to completely disregard data that is based on actual and undisputed record of financial performance in favor of the third-hand and unfounded claims the Secretary eventually relied upon. At the very least, the Secretary should have properly justified his disregard of the company figures. The Secretary should have also reasonably insured that the figure that served as the starting point for his computation had some substantial basis.

Both parties extensively discussed the factors that the decision maker should consider in making a wage award. While We do not seek to enumerate in this decision the factors that should affect wage determination, we must emphasize that a collective bargaining dispute such as this one requires due consideration and proper balancing of the interests of the parties to the dispute and of those who might be affected by the dispute. To our mind, the best way in approaching this task holistically is to consider the available objective facts, including, where applicable, factors such as the bargaining history of the company, the trends and amounts of arbitrated and agreed wage awards and the company's previous CBAs, and industry trends in general. As a rule, affordability or capacity to pay should be taken into account but cannot be the sole yardstick in determining the wage award, especially in a public utility like MERALCO. In considering a public utility, the decision maker must always take into account the "public interest" aspects of the case; MERALCO's income and the amount of money available for operating expenses — including labor costs — are subject to State regulation. We must also keep in mind that high operating costs will certainly and eventually be passed on to the consuming public as MERALCO has bluntly warned in its pleadings.

We take note of the "middle ground" approach employed by the Secretary in this case which we do not necessarily find to be the best method of resolving a wage dispute. Merely finding the midway point between the demands of the company and the union, and "splitting

the difference" is a simplistic solution that fails to recognize that the parties may already be at the limits of the wage levels they can afford. It may lead to the danger too that neither of the parties will engage in principled bargaining; the company may keep its position artificially low while the union presents an artificially high position, on the fear that a "Solomonic" solution cannot be avoided. Thus, rather than encourage agreement, a "middle ground approach" instead promotes a "play safe" attitude that leads to more deadlocks than to successfully negotiated CBAs.

After considering the various factors the parties cited, we believe that the interests of both labor and management are best served by a wage increase of P1,900.00 per month for the first year and another P1,900.00 per month for the second year of the two-year CBA term. Our reason for this is that these increases sufficiently protects the interest of the worker as they are roughly 15% of the monthly average salary of P11,600.00.[26] They likewise sufficiently consider the employer's costs and its overall wage structure, while at the same time, being within the range that will not disrupt the wage trends in Philippine industries.

The record shows that MERALCO, throughout its long years of existence, was never remiss in its obligation towards its employees. In fact, as a manifestation of its strong commitment to the promotion of the welfare and well-being of its employees, it has consistently improved their compensation package. For instance, MERALCO has granted salary increases[27] through the collective bargaining agreement the amount of which since 1980 for both rank-and-file and supervisory employees were as follows:

AMOUNT OF CBA INCREASES DIFFERENCE

CBA COVERAGE	RANK-AND-FILE	SUPERVISORY	AMOUNT	PERCENT
1980	230.00	342.50	112.50	48.91%
1981	210.00	322.50	112.50	53.57
1982	200.00	312.50	112.50	56.25
TOTAL	640.00	977.50	337.50	52.73
	=====	=====	=====	=====
1983	320.00	432.50	112.50	35.16
1984	350.00	462.50	112.50	32.14

1985	370.00	482.50	112.50	30.41
TOTAL	1,040.00	1,377.50	337.50	32.45
	======	======	=====	====
1986	860.00	972.50	112.50	13.08
1987	640.00	752.50	112.50	17.58
1988	600.00	712.50	112.50	18.75
TOTAL	2,100.00	2,437.50	337.50	16.07
	======	======	=====	====
1989	1,100.00	1,212.50	112.50	10.23
1990	1,200.00	1,312.50	112.50	9.38
1991	1,300.00	1,412.50	112.50	8.65
TOTAL	3,600.00	3,937.50	337.50	9.38
	======	======	=====	====
1992	1,400.00	1,742.50	342.50	24.46
1993	1,350.00	1,682.50	332.50	24.63
1994	1,150.00	1,442.50	292.50	25.43
TOTAL	3,900.00	4,867.50	967.50	24.81
	======	======	=====	====

Based on the above-quoted table, specifically under the column "RANK-AND FILE," it is easily discernible that the total wage increase of P3,800.00 for 1996 to 1997 which we are granting in the instant case is significantly higher than the total increases given in 1992 to 1994, or a span of three (3) years, which is only P3,900.00 a month. Thus, the Secretary's grant of P2,200.00 monthly wage increase in the assailed order is unreasonably high a burden for MERALCO to shoulder.

We now go to the economic issues.

1. CHRISTMAS BONUS

MERALCO questions the Secretary's award of "Christmas bonuses" on the ground that what it had given its employees were special bonuses to mark or celebrate "special occasions," such as when the Asia Money Magazine recognized MERALCO as the "best managed company in Asia." These grants were given on or about Christmas time, and the timing of the grant apparently led the Secretary to the conclusion that what were given were Christmas bonuses given by

way of a "company practice" on top of the legally required 13th month pay.

The Secretary in granting the two-month bonus, considered the following factual finding, to wit:

> "We note that each of the grant mentioned in the commonly adopted table of grants has a special description. Christmas bonuses were given in 1988 and 1989. However, the amounts of bonuses given differed. In 1988, it was P1,500. In 1989, it was ½ month salary. The use of "Christmas bonus" title stopped after 1989. In 1990, what was given was a "cash gift" of ½ month's salary. The grants thereafter bore different titles and were for varying amounts. Significantly, the Company explained the reason for the 1995 bonuses and this explanation was not substantially contradicted by the Union.
>
> "What comes out from all these is that while the Company has consistently given some amount by way of bonuses since 1988, these awards were not given uniformly as Christmas bonuses or special Christmas grants although they may have been given at or about Christmas time.
>
> "x x x
>
> "The Company is not therefore correct in its position that there is no established practice of giving Christmas bonuses that has ripened to the status of being a term and condition of employment. Regardless of its nomenclature and purpose, the act of giving this bonus in the spirit of Christmas has ripened into a Company practice."[28]

It is MERALCO's position that the Secretary erred when he recognized that there was an "established practice" of giving a two-month Christmas bonus based on the fact that bonuses were given on or about Christmas time. It points out that the "established practice" attributed to MERALCO was neither for a considerable period of time nor identical in either amount or purpose. The purpose and title of the grants were never the same except for the Christmas bonuses of 1988 and 1989, and were not in the same amounts.

We do not agree.

As a rule, a bonus is not a demandable and enforceable obligation;[29] it may nevertheless be granted on equitable considerations[30] as when the giving of such bonus has been the company's long and regular practice.[31] To be considered a "regular practice," the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate.[32] Thus we have ruled in National Sugar Refineries Corporation vs. NLRC:[33]

> "The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof."

In the case at bar, the record shows that MERALCO, aside from complying with the regular 13th month bonus, has further been giving its employees an additional Christmas bonus at the tail-end of the year since 1988. While the special bonuses differed in amount and bore different titles, it can not be denied that these were given voluntarily and continuously on or about Christmas time. The considerable length of time MERALCO has been giving the special grants to its employees indicates a unilateral and voluntary act on its part, to continue giving said benefits knowing that such act was not required by law.

Indeed, a company practice favorable to the employees has been established and the payments made by MERALCO pursuant thereto ripened into benefits enjoyed by the employees. Consequently, the giving of the special bonus can no longer be withdrawn by the company as this would amount to a diminution of the employee's existing benefits.[34]

We can not, however, affirm the Secretary's award of a two-month special Christmas bonus to the employees since there was no recognized company practice of giving a two-month special grant. The two-month special bonus was given only in 1995 in recognition of the employees' prompt and efficient response during the calamities.

Instead, a one-month special bonus, We believe, is sufficient, this being merely a generous act on the part of MERALCO.

2. RICE SUBSIDY and RETIREMENT BENEFITS for RETIREES

It appears that the Secretary of Labor originally ordered the increase of the retirement pay, rice subsidy and medical benefits of MERALCO retirees. This ruling was reconsidered based on the position that retirees are no longer employees of the company and therefore are no longer bargaining members who can benefit from a compulsory arbitration award. The Secretary, however, ruled that all members of the bargaining unit who retire between August 19, 1996 and November 30, 1997 (i.e., the term of the disputed CBA under the Secretary's disputed orders) are entitled to receive an additional rice subsidy.

The question squarely brought in this petition is whether the Secretary can issue an order that binds the retirement fund. The company alleges that a separate and independent trust fund is the source of retirement benefits for MERALCO retirees, while the union maintains that MERALCO controls these funds and may therefore be compelled to improve this benefit in an arbitral award.

The issue requires a finding of fact on the legal personality of the retirement fund. In the absence of any evidence on record indicating the nature of the retirement fund's legal personality, we rule that the issue should be remanded to the Secretary for reception of evidence as whether or not the MERALCO retirement fund is a separate and independent trust fund. The existence of a separate and independent juridical entity which controls an irrevocable retirement trust fund means that these retirement funds are beyond the scope of collective bargaining: they are administered by an entity not a party to the collective bargaining and the funds may not be touched without the trustee's conformity.

On the other hand, MERALCO control over these funds means that MERALCO may be compelled in the compulsory arbitration of a CBA deadlock where it is the employer, to improve retirement benefits

since retirement is a term or condition of employment that is a mandatory subject of bargaining.

3. EMPLOYEES' COOPERATIVE

The Secretary's disputed ruling requires MERALCO to provide the employees covered by the bargaining unit with a loan of 1.5 Million as seed money for the employees formation of a cooperative under the Cooperative Law, R.A. 6938. We see nothing in this law — whether expressed or implied — that requires employers to provide funds, by loan or otherwise, that employees can use to form a cooperative. The formation of a cooperative is a purely voluntary act under this law, and no party in any context or relationship is required by law to set up a cooperative or to provide the funds therefor. In the absence of such legal requirement, the Secretary has no basis to order the grant of a 1.5 million loan to MERALCO employees for the formation of a cooperative. Furthermore, we do not see the formation of an employees cooperative, in the absence of an agreement by the collective bargaining parties that this is a bargainable term or condition of employment, to be a term or condition of employment that can be imposed on the parties on compulsory arbitration.

4. GHSIP, HMP BENEFITS FOR DEPENDENTS and HOUSING EQUITY LOAN

MERALCO contends that it is not bound to bargain on these benefits because these do not relate to "wages, hours of work and other terms and conditions of employment" hence, the denial of these demands cannot result in a bargaining impasse.

The GHSIP, HMP benefits for dependents and the housing equity loan have been the subject of bargaining and arbitral awards in the past. We do not see any reason why MERALCO should not now bargain on these benefits. Thus, we agree with the Secretary's ruling:

> "Additionally and more importantly, GHSIP and HMP, aside from being contributory plans, have been the subject of previous rulings from this Office as bargainable matters. At this point, we cannot do any less and must recognize that GHSIP and HMP are matters where the union can demand and

> negotiate for improvements within the framework of the collective bargaining system."[35]

Moreover, MERALCO have long been extending these benefits to the employees and their dependents that they now become part of the terms and conditions of employment. In fact, MERALCO even pledged to continue giving these benefits. Hence, these benefits should be incorporated in the new CBA.

With regard to the increase of the housing equity grant, we find P60,000.00 reasonable considering the prevailing economic crisis.

5. SIGNING BONUS

On the signing bonus issue, we agree with the positions commonly taken by MERALCO and by the Office of the Solicitor General that the signing bonus is a grant motivated by the goodwill generated when a CBA is successfully negotiated and signed between the employer and the union. In the present case, this goodwill does not exist. In the words of the Solicitor General:

> "When negotiations for the last two years of the 1992-1997 CBA broke down and the parties sought the assistance of the NCMB, but which failed to reconcile their differences, and when petitioner MERALCO bluntly invoked the jurisdiction of the Secretary of Labor in the resolution of the labor dispute, whatever goodwill existed between petitioner MERALCO and respondent union disappeared."[36]

In contractual terms, a signing bonus is justified by and is the consideration paid for the goodwill that existed in the negotiations that culminated in the signing of a CBA. Without the goodwill, the payment of a signing bonus cannot be justified and any order for such payment, to our mind, constitutes grave abuse of discretion. This is more so where the signing bonus is in the not insignificant total amount of P16 Million.

6. RED-CIRCLE-RATE ALLOWANCE

An RCR allowance is an amount, not included in the basic salary, that is granted by the company to an employee who is promoted to a higher position grade but whose actual basic salary at the time of the promotion already exceeds the maximum salary for the position to which he or she is promoted. As an allowance, it applies only to specific individuals whose salary levels are unique with respect to their new and higher positions. It is for these reasons that MERALCO prays that it be allowed to maintain the RCR allowance as a separate benefit and not be integrated in the basic salary.

The integration of the RCR allowance in the basic salary of the employees had consistently been raised in the past CBAs (1989 and 1992) and in those cases, the Secretary decreed the integration of the RCR allowance in the basic salary. We do not see any reason why it should not be included in the present CBA. In fact, in the 1995 CBA between MERALCO and the supervisory union (FLAMES), the integration of the RCR allowance was recognized. Thus, Sec. 4 of the CBA provides:

> "All Red-Circle-Rate Allowance as of December 1, 1995 shall be integrated in the basic salary of the covered employees who as of such date are receiving such allowance. Thereafter, the company rules on RCR allowance shall continue to be observed/applied."[37]

For purposes of uniformity, we affirm the Secretary's order on the integration of the RCR allowance in the basic salary of the employees.

7. SICK LEAVE RESERVE OF 15 DAYS

MERALCO assails the Secretary's reduction of the sick leave reserve benefit from 25 days to 15 days, contending that the sick leave reserve of 15 days has reached the lowest safe level that should be maintained to give employees sufficient buffer in the event they fall ill.

We find no compelling reason to deviate from the Secretary's ruling that the sick leave reserve is reduced to 15 days, with any excess convertible to cash at the end of the year. The employee has the

option to avail of this cash conversion or to accumulate his sick leave credits up to 25 days for conversion to cash at his retirement or separation from the service. This arrangement is, in fact, beneficial to MERALCO. The latter admits that "the diminution of this reserve does not seriously affect MERALCO because whatever is in reserve are sick leave credits that are payable to the employee upon separation from service. In fact, it may be to MERALCO's financial interest to pay these leave credits now under present salary levels than pay them at future higher salary levels."[38]

8. 40-DAY UNION LEAVE

MERALCO objects to the demanded increase in union leave because the union leave granted to the union is already substantial. It argues that the union has not demonstrated any real need for additional union leave.

The thirty (30) days union leave granted by the Secretary, to our mind, constitute sufficient time within which the union can carry out its union activities such as but not limited to the election of union officers, selection or election of appropriate bargaining agents, conduct referendum on union matters and other union-related matters in furtherance of union objectives. Furthermore, the union already enjoys a special union leave with pay for union authorized representatives to attend work education seminars, meetings, conventions and conferences where union representation is required or necessary, and Paid-Time-off for union officers, stewards and representatives for purpose of handling or processing grievances.

9. HIGH VOLTAGE,/HIGH POLE/TOWING ALLOWANCE

MERALCO argues that there is no justification for the increase of these allowances. The personnel concerned will not receive any additional risk during the life of the current CBA that would justify the increase demanded by the union. In the absence of such risk, then these personnel deserve only the same salary increase that all other members of the bargaining unit will get as a result of the disputed CBA. MERALCO likewise assails the grant of the high voltage/high pole allowance to members of the team who are not exposed to the high voltage/high pole risks. The risks that justify the higher salary

and the added allowance are personal to those who are exposed to those risks. They are not granted to a team because some members of the team are not exposed to the given risks.

The increase in the high-voltage allowance (from P45.00 to P55.00), high-pole allowance (from P30.00 to P40.00), and towing allowance is justified considering the heavy risk the employees concerned are exposed to. The high-voltage allowance is granted to an employee who is authorized by the company to actually perform work on or near energized bare lines and bus, while the high-pole allowance is given to those authorized to climb poles on a height of at least 60 feet from the ground to work thereat. The towing allowance, on the other hand, is granted to the stockman drivers who tow trailers with long poles and equipment on board. Based on the nature of the job of these concerned employees, it is imperative to give them these additional allowances for taking additional risks. These increases are not even commensurate to the danger the employees concerned are subjected to. Besides, no increase has been given by the company since 1992.[39]

We do not, however, subscribe to the Secretary's order granting these allowances to the members of the team who are not exposed to the given risks. The reason is obvious- no risk, no pay. To award them the said allowances would be manifestly unfair for the company and even to those who are exposed to the risks, as well as to the other members of the bargaining unit who do not receive the said allowances.

10. BENEFITS FOR COLLECTORS

MERALCO opposes the Secretary's grant of benefits for collectors on the ground that this is grossly unreasonable both in scope and on the premise it is founded.

We have considered the arguments of the opposing parties regarding these benefits and find the Secretary's ruling on the (a) lunch allowance; (b) disconnection fee for delinquent accounts; (c) voluntary performance of other work at the instance of the Company; (d) bobcat belt bags; and (e) reduction of quota and MAPL during typhoons and other force majeure events, reasonable considering the risks taken by the company personnel involved, the nature of the employees' functions and responsibilities and the prevailing standard

of living. We do not however subscribe to the Secretary's award on the following:

(a) Reduction of quota and MAPL when the collector is on sick leave because the previous CBA has already provided for a reduction of this demand. There is no need to further reduce this.

(b) Deposit of cash bond at MESALA because this is no longer necessary in view of the fact that collectors are no longer required to post a bond.

We shall now resolve the non-economic issues.

1. SCOPE OF THE BARGAINING UNIT

The Secretary's ruling on this issue states that:

> "a. Scope of the collective bargaining unit. The union is demanding that the collective bargaining unit shall be composed of all regular rank and file employees hired by the company in all its offices and operating centers through its franchise and those it may employ by reason of expansion, reorganization or as a result of operational exigencies. The law is that only managerial employees are excluded from any collective bargaining unit and supervisors are now allowed to form their own union (Art. 254 of the Labor Code as amended by R.A. 6715). We grant the union demand."

Both MERALCO and the Office of the Solicitor General dispute this ruling because it disregards the rule We have established on the exclusion of confidential employees from the rank and file bargaining unit.

In Pier 8 Arrastre vs. Confesor and General Maritime and Stevedores Union,[40] we ruled that:

> "Put another way, the confidential employee does not share in the same "community of interests" that might otherwise make

him eligible to join his rank and file co-workers, precisely because of a conflict in those interests."

Thus, in Metrolab Industries vs. Roldan-Confesor,[41] We ruled:

"that the Secretary's order should exclude the confidential employees from the regular rank and file employees qualified to become members of the MEWA bargaining unit."

From the foregoing disquisition, it is clear that employees holding a confidential position are prohibited from joining the union of the rank and file employees.

2. ISSUE OF UNION SECURITY

The Secretary in his Order of August 19, 1996,[42] ruled that:

"b. Union recognition and security. — The Union is proposing that it be recognized by the Company as sole and exclusive bargaining representative of the rank and file employees included in the bargaining unit for the purpose of collective bargaining regarding rates of pay, wages, hours of work and other terms and conditions of employment. For this reason, the Company shall agree to meet only with the Union officers and its authorized representatives on all matters involving the Union as an organization and all issues arising from the implementation and interpretation of the new CBA. Towards this end, the Company shall not entertain any individual or group of individuals on matters within the exclusive domain of the Union.

Additionally, the Union is demanding that the right of all rank and file employees to join the Union shall be recognized by the Company. Accordingly, all rank and file employees shall join the Union.

x x x

> These demands are fairly reasonable. We grant the same in accordance with the maintenance of membership principle as a form of union security."

The Secretary reconsidered this portion of his original order when he said in his December 28, 1996 order that:

> "When we decreed that all rank and file employees shall join the Union, we were actually decreeing the incorporation of a closed shop form of union security in the CBA between the parties. In Ferrer vs. NLRC, 224 SCRA 410, the Supreme Court ruled that a CBA provision for a closed shop is a valid form of union security and is not a restriction on the right or freedom of association guaranteed by the Constitution, citing Lirag vs. Blanco, 109 SCRA 87."

MERALCO objected to this ruling on the grounds that: (a) it was never questioned by the parties; (b) there is no evidence presented that would justify the restriction on employee's union membership; and (c) the Secretary cannot rule on the union security demand because this is not a mandatory subject for collective bargaining agreement.

We agree with MERALCO's contention.

An examination of the records of the case shows that the union did not ask for a closed shop security regime; the Secretary in the first instance expressly stated that a maintenance of membership clause should govern; neither MERALCO nor MEWA raised the issue of union security in their respective motions for reconsideration of the Secretary's first disputed order; and that despite the parties clear acceptance of the Secretary's first ruling, the Secretary motu proprio reconsidered his maintenance of membership ruling in favor of the more stringent union shop regime.

Under these circumstances, it is indubitably clear that the Secretary gravely abused his discretion when he ordered a union shop in his order of December 28, 1996. The distinctions between a maintenance of membership regime from a closed shop and their consequences in

the relationship between the union and the company are well established and need no further elaboration.

Consequently, We rule that the maintenance of membership regime should govern at MERALCO in accordance with the Secretary's order of August 19, 1996 which neither party disputed.

3. THE CONTRACTING OUT ISSUE

This issue is limited to the validity of the requirement that the union be consulted before the implementation of any contracting out that would last for 6 months or more. Proceeding from our ruling in San Miguel Employees Union-PTGWO vs. Bersamira,[43] (where we recognized that contracting out of work is a proprietary right of the employer in the exercise of an inherent management prerogative) the issue we see is whether the Secretary's consultation requirement is reasonable or unduly restrictive of the company's management prerogative. We note that the Secretary himself has considered that management should not be hampered in the operations of its business when he said that:

> "We feel that the limitations imposed by the union advocates are too specific and may not be applicable to the situations that the company and the union may face in the future. To our mind, the greater risk with this type of limitation is that it will tend to curtail rather than allow the business growth that the company and the union must aspire for. Hence, we are for the general limitations we have stated above because they will allow a calibrated response to specific future situations the company and the union may face."[44]

Additionally, We recognize that contracting out is not unlimited; rather, it is a prerogative that management enjoys subject to well-defined legal limitations. As we have previously held, the company can determine in its best business judgment whether it should contract out the performance of some of its work for as long as the employer is motivated by good faith, and the contracting out must not have been resorted to circumvent the law or must not have been the result of malicious or arbitrary action.[45] The Labor Code and its implementing rules also contain specific rules governing contracting

out (Department of Labor Order No. 10, May 30, 1997, Sections. 1-25).

Given these realities, we recognize that a balance already exists in the parties' relationship with respect to contracting out; MERALCO has its legally defined and protected management prerogatives while workers are guaranteed their own protection through specific labor provisions and the recognition of limits to the exercise of management prerogatives. From these premises, we can only conclude that the Secretary's added requirement only introduces an imbalance in the parties' collective bargaining relationship on a matter that the law already sufficiently regulates. Hence, we rule that the Secretary's added requirement, being unreasonable, restrictive and potentially disruptive should be struck down.

4. UNION REPRESENTATION IN COMMITTEES

As regards this issue, We quote with approval the holding of the Secretary in his Order of December 28, 1996, to wit:

> "We see no convincing reason to modify our original Order on union representation in committees. It reiterates what the Article 211 (A)(g) of the Labor Code provides: "To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare. 'Denying this opportunity to the Union is to lay the claim that only management has the monopoly of ideas that may improve management strategies in enhancing the Company's growth. What every company should remember is that there might be one among the Union members who may offer productive and viable ideas on expanding the Company's business horizons. The Union's participation in such committees might just be the opportune time for dormant ideas to come forward. So, the Company must welcome this development (see also PAL vs. NLRC, et al., G.R. 85985, August 13, 1995). It must be understood, however, that the committees referred to here are the Safety Committee, the Uniform Committee and other committees of a similar nature and purpose involving personnel welfare, rights and benefits as well as duties."

We do not find merit in MERALCO's contention that the above-quoted ruling of the Secretary is an intrusion into the management prerogatives of MERALCO. It is worthwhile to note that all the Union demands and what the Secretary's order granted is that the Union be allowed to participate in policy formulation and decision-making process on matters affecting the Union members' rights, duties and welfare as required in Article 211 (A) (g) of the Labor Code. And this can only be done when the Union is allowed to have representatives in the Safety Committee, Uniform Committee and other committees of a similar nature. Certainly, such participation by the Union in the said committees is not in the nature of a co-management control of the business of MERALCO. What is granted by the Secretary is participation and representation. Thus, there is no impairment of management prerogatives.

5. INCLUSION OF ALL TERMS AND CONDITIONS IN THE CBA

MERALCO also decries the Secretary's ruling in both the assailed Orders that —

> "All other benefits being enjoyed by the Company's employees but which are not expressly or impliedly repealed in this new agreement shall remain subsisting and shall likewise be included in the new collective bargaining agreement to be signed by the parties effective December 1, 1995."[46]

claiming that the above-quoted ruling intruded into the employer's freedom to contract by ordering the inclusion in the new CBA all other benefits presently enjoyed by the employees even if they are not incorporated in the new CBA. This matter of inclusion, MERALCO argues, was never discussed and agreed upon in the negotiations; nor presented as issues before the Secretary; nor were part of the previous CBA's between the parties.

We agree with MERALCO.

The Secretary acted in excess of the discretion allowed him by law when he ordered the inclusion of benefits, terms and conditions that the law and the parties did not intend to be reflected in their CBA.

To avoid the possible problems that the disputed orders may bring, we are constrained to rule that only the terms and conditions already existing in the current CBA and was granted by the Secretary (subject to the modifications decreed in this decision) should be incorporated in the CBA, and that the Secretary's dispute orders should accordingly be modified.

6. RETROACTIVITY OF THE CBA

Finally, MERALCO also assails the Secretary's order that the effectivity of the new CBA shall retroact to December 1, 1995, the date of the commencement of the last two years of the effectivity of the existing CBA. This retroactive date, MERALCO argues, is contrary to the ruling of this Court in Pier 8 Arrastre and Stevedoring Services, Inc. vs. Roldan-Confessor[47] which mandates that the effective date of the new CBA should be the date the Secretary of Labor has resolved the labor dispute.

On the other hand, MEWA supports the ruling of the Secretary on the theory that he has plenary power and discretion to fix the date of effectivity of his arbitral award citing our ruling in St. Lukes Medical Center, Inc. vs. Torres.[48] MEWA also contends that if the arbitral award takes effect on the date of the Secretary Labor's ruling on the parties' motion for reconsideration (i.e., on December 28, 1996), an anomaly situation will result when CBA would be more than the 5-year term mandated by Article 253-A of the Labor Code.

However, neither party took into account the factors necessary for a proper resolution of this aspect. Pier 8, for instance, does not involve a mid-term negotiation similar to this case, while St. Lukes does not take the "hold over" principle into account, i.e., the rule that although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into.[49]

Article 253-A serves as the guide in determining when the effectivity of the CBA at bar is to take effect. It provides that the representation aspect of the CBA is to be for a term of 5 years, while:

> "All other provisions of the Collective Bargaining Agreement shall be re-negotiated not later than 3 years after its execution. Any agreement on such other provision of the Collective Bargaining Agreement entered into within 6 months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement shall retroact to the day immediately following such date. If such agreement is entered into beyond 6 months, the parties shall agree on the duration of the effectivity thereof."

Under these terms, it is clear that the 5-year term requirement is specific to the representation aspect. What the law additionally requires is that a CBA must be re-negotiated within 3 years "after its execution." It is in this re-negotiation that gives rise to the present CBA deadlock.

If no agreement is reached within 6 months from the expiry date of the 3 years that follow the CBA execution, the law expressly gives the parties — not anybody else — the discretion to fix the effectivity of the agreement.

Significantly, the law does not specifically cover the situation where 6 months have elapsed but no agreement has been reached with respect to effectivity. In this eventuality, we hold that any provision of law should then apply for the law abhors a vacuum.[50]

One such provision is the principle of hold over, i.e., that in the absence of a new CBA, the parties must maintain the status quo and must continue in full force and effect the terms and conditions of the existing agreement until a new agreement is reached.[51] In this manner, the law prevents the existence of a gap in the relationship between the collective bargaining parties. Another legal principle that should apply is that in the absence of an agreement between the parties, then, an arbitrated CBA takes on the nature of any judicial or quasi-judicial award; it operates and may be executed only respectively unless there are legal justifications for its retroactive application.

Consequently, we find no sufficient legal ground on the other justification for the retroactive application of the disputed CBA, and

therefore hold that the CBA should be effective for a term of 2 years counted from December 28, 1996 (the date of the Secretary of Labor's disputed order on the parties' motion for reconsideration) up to December 27, 1999.

WHEREFORE, the petition is granted and the orders of public respondent Secretary of Labor dated August 19, 1996 and December 28, 1996 are set aside to the extent set forth above. The parties are directed to execute a Collective Bargaining Agreement incorporating the terms and conditions contained in the unaffected portions of the Secretary of Labor's orders of August 19, 1996 and December 28, 1996, and the modifications set forth above. The retirement fund issue is remanded to the Secretary of Labor for reception of evidence and determination of the legal personality of the MERALCO retirement fund.

SO ORDERED.

Davide, Jr., *C.J.*, Melo, Kapunan and Pardo, *JJ.*, concur.

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[1] Annex "A" of Petition, Rollo, p. 93.
[2] Annex "B" of Petition, Rollo, p. 94.
[3] Annex "5" of MEWA's Comment, Rollo, pp. 852-879:

1. Wage increase — 1995 — P4,000.00/month
   1996 — P3,000.00/month
2. Integration of RCR and longevity allowances into the basic salary.
3. Longevity increase in the amount of P30.00 a year.
4. Sick leave upgraded from 21 to 31 days depending on length of service and sick leave reserve reduced to 15 days.
5. Vacation leave — 24 days minimum — 32 days maximum.
6. Union leave with pay for 50 Mondays per month.
7. Maternity Leave — 70 days-normal delivery
   90 days — caesarian
   Paternity leave — 10 days — normal
   14 days — caesarian
   8 days — miscarriage.
8. Funeral leave — 12 days — 6 days.
9. Birthday leave — falls on regular working day — leave with pay/regular day off — entitled next working day — non-working holiday — next working day.

10. Group hospitalization and surgical insurance plan (GHSIP) and health and maintenance plan (HMP) for dependents.
11. Longevity bonus.
12. Christmas bonus — equivalent to one month's salary & allowance and special Christmas grant — (incorporated in the CBA) equivalent to two months' pay to be given in the middle of November and second week of December.
13. Mid-year bonus — incorporated in the CBA.
14. Anniversary bonus — P6,000.00/1st year, P8,000.00 2nd year.
15. Christmas Gift Certificate
16. Retirement
17. Dental, medical and hospitalization benefits
18. Resignation benefit — for employees who served for at least 7 years.
19. Night work — 50% of employees basic salary.
20. Shortswing — an employee after resting for not more than 8 hours is required to work in another shift is considered employees' work for the following day and given additional 4 hours straight time.
21. High voltage/high pole allowance for P45.00 to P75.00.
22. Employees' Cooperative — to provide the seed money of P3,000,000.00.
23. Hold-up allowance — pay P5,000.00 value of personal belonging taken from accountable officer.
24. Fieldmen's rubber shoes
25. Uniforms
26. Calamity leave
27. Danger exposure allowance
28. Meal and lodging allowance breakfast — P40.00
    Lunch — P60.00
    Dinner — P60.00
    Lodging — P200/night
29. Payroll treatment for accident while on duty
30. Housing equity assistance loan — increased to P60,000.00
31. Female employee's uniforms, and
32. Benefits for collectors.

The Union's political demands consist of:

1. The scope of the collective bargaining unit — all regular rank and file hired by the company in all its offices.
    1. Union recognition and security — all rank & file employees to join the union
    2. Allow union to meet with the newly regularized employees for a period not exceeding 4 hours — excused for work.
    3. Transfer of assignment and job security
    4. Check-off of union dues

5. Payroll reinstatement
6. Union representation in committees
7. Signing bonus of P7,000.00.

[4] Annex "G" of Petition, Rollo, pp. 120-122.
[5] Annex "H" of Petition, Rollo, pp. 124-125.
[6] Annex "M", Rollo, pp. 319-340.
[7] Annex "N" of Petition, Rollo, pp. 341-394.
[8] Annex "V" of Petition, Rollo, pp. 661-715.
[9] Section 18, Article 2 of the 1987 Constitution.
[10] Section 6, Article 12, Id.
[11] Section 1, Article 13, Id.
[12] Section 3, Article 12 and Section 3[3], Article 15 of the 1987 Constitution.
[13] Phil. Scout Veteran Security vs. NLRC, 262 SCRA 112 [1996], citing Insular Bank of Asia and America Employees Union (IBAAEU) vs. Inciong, 132 SCRA 663 [1984]; Endencia vs. David, 93 Phil. 696 [1953].
[14] Section 3, pars. 3 & 4, Article 13 of the 1987 Constitution.
[15] Garcia vs. Exec. Secretary, 204 SCRA 516 [1991]; Dumlao vs. Comelec, 95 SCRA 390 [1980]; Assoc. of Small Landowners of the Phil. vs. Secretary of Agrarian Reform, 175 SCRA 343 [1989].
[16] Taxicab Operators of Metro Manila, Inc. vs. Board of Transportation, 117 SCRA 597 [1982].
[17] Pier 8 Arrastre and Stevedoring Services, Inc. vs. Roldan-Confesor, 241 SCRA 295 [1995].
[18] American Home Assurance Company vs. NLRC, 259 SCRA 280 [1996]; Lopez Sugar Corp. vs. Federation of Free Workers, et al., 189 SCRA 179 [1990].
[19] PAL vs. Confesor, 231 SCRA 41 [1994].
[20] PAL vs. Confesor, Id.; Caltex Filipino Managers Supervisors vs. CIR. 44 SCRA 350 [1972]; Labor ng Pagkakaisa sa Peter-Paul vs. CIR, 96 Phil. 63 [1954].
[21] See Annex "B" of the Union's Rejoinder to Company's Opposition to Union's Motion for Reconsideration. Rollo, p. 1521.
[22] Annex "V" of Petition, Rollo, p. 694.
[23] Annex "S" of Petition, Rollo, p. 596.
[24] Annex "W" of Petition, Rollo, p. 716.
[25] A formula used by the Court in determining the reasonableness of the wages award in PAL vs. Confesor, supra.
[26] Annex "I", Rollo, p. 133:
"The MERALCO rank and file employee receives a monthly average salary of P11,601 as against the median salary of P9,620 monthly and the weighted average salary of P9,729 monthly prevailing in the community. This means that Meralco's average monthly salary rate for its rank and file employees is 20.60 percent higher than the median salary and 19.24 percent higher than the weighted average salary enjoyed by other rank and file employees within the community.
[27] Annex "K", Rollo, p. 221.
[28] Annex "V" of Petition, Rollo, pp. 700-701.

[29] Azucena, The Labor Code, Vol. I, 1996 Ed., p. 314.
[30] Philippine Education Co., Inc. vs Court of Industrial Relations, 92 SCRA 381 [1979].
[31] Liberation Steamship Co., Inc. vs. CIR, 23 Phil. 1105 [1968]; National Development Co. vs. CIR, 23 Phil. 1106; Heacock Co. vs. NLU, 95 Phil. 553; NWSA vs NWSA Consolidated Labor Union, 21 SCRA 203 [1967].
[32] Globe Mackay Cable and Radio Corporation vs. NLRC, 163 SCRA 71 [1988].
[33] 220 SCRA 463 [1993].
[34] Article 100 of the Labor Code; Davao Fruits Corporation vs. Associate Labor Union, 225 SCRA 567 [1993].
[35] Annex "V" of Petition, Rollo, p. 704.
[36] See Rollo, p. 1786.
[37] Annex "E" of the Union's Rejoinder to Company's Opposition to Union's Motion for Reconsideration, Rollo, p. 1525.
[38] MERALCO's Memorandum, Rollo, p. 1721.
[39] MEWA's Memorandum, p. 37.
[40] 214 SCRA 295 [1995] citing Golden Farms, Inc. vs. Calleja, 175 SCRA 471 [1989]; Philips Industrial Development, Inc. vs. NLRC, 210 SCRA 348 [1992]; National Association of Trade Unions-Republic Planters Bank Supervisors Chapter vs. Hon. Ruben Torres, 239 SCRA 546 [1994].
[41] 254 SCRA 182.
[42] Annex "M" of Petition, Rollo, p. 338.
[43] 186 SCRA 496 [1990].
[44] Annex "V" of Petition, Rollo, pp. 713-714.
[45] De Ocampo vs. NLRC, 213 SCRA 652 [1992].
[46] Annex "M" of Petition, Rollo, p. 340.
[47] 241 SCRA 294, 307 [1995].
[48] 223 SCRA 779 [1993].
[49] Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179 [1990].
[50] Duldulao vs. Ramos, 91 Phil. 2611; Rivera vs. Court of Appeals, 176 SCRA 169 [1989].
[51] National Congress of Unions in the Sugar Industry vs. Ferrer-Calleja, 205 SCRA 478 [1995].