SUPREME COURT
EN BANC

NATIONAL FEDERATION OF SUGAR WORKERS (NFSW),
***Petitioner*,**

-versus-

G.R. No. L-59743
May 31, 1982

ETHELWOLDO R. OVEJERA, CENTRAL AZUCARERA DE LA CARLOTA (CAC), COL. ROGELIO DEINLA, as Provincial Commander, 331 1st P.C. Command, Negros Occidental,
***Respondents*.**
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D E C I S I O N

PLANA, *J.*:

SEPARATE OPINIONS:

FERNANDO, C.J., concurring:
MELENCIO-HERRERA, J., concurring:
ABAD SANTOS, J., concurring:
BARREDO, J., concurring:

This is a petition for prohibition seeking to annul the decision dated February 20, 1982 of Labor Arbiter Ethelwoldo R. Ovejera of the

National Labor Relations Commission (NLRC) with station at the Regional Arbitration Branch No. VI-A, Bacolod City, which, among others, declared illegal the ongoing strike of the National Federation of Sugar Workers (NFSW) at the Central Azucarera de la Carlota (CAC), and to restrain the implementation thereof.

I. FACTS —

1. NFSW has been the bargaining agent of CAC rank and file employees (about 1200 of more than 2000 personnel) and has concluded with CAC a collective bargaining agreement effective February 16, 1981 — February 15, 1984. Under Art. VII, Sec. 5 of the said CBA —

   > "Bonuses — The parties also agree to maintain the present practice on the grant of Christmas bonus, milling bonus, and amelioration bonus to the extent as the latter is required by law."

The Christmas and milling bonuses amount to 1-1/2 months' salary.

2. On November 28, 1981, NFSW struck allegedly to compel the payment of the 13th month pay under PD 851, in addition to the Christmas, milling and amelioration bonuses being enjoyed by CAC workers.

3. To settle the strike, a compromise agreement was concluded between CAC and NFSW on November 30, 1981. Under paragraph 4 thereof —

   > "The parties agree to abide by the final decision of the Supreme Court in any case involving the 13th Month Pay Law if it is clearly held that the employer is liable to pay a 13th month pay separate and distinct from the bonuses already given."

4. As of November 30, 1981, G.R. No. 51254 (Marcopper Mining Corp. vs. Blas Ople and Amado Inciong, Minister and Deputy Minister of Labor, respectively, and Marcopper Employees Labor Union, Petition for *Certiorari* and Prohibition) was still pending in the Supreme Court. The Petition had been dismissed on June 11,

1981 on the vote of seven Justices.[1] A motion for reconsideration thereafter filed was denied in a resolution dated December 15, 1981, with only five Justices voting for denial. (3 dissented; 2 reserved their votes: 4 did not take part.)

On December 18, 1981 — the decision of June 11, 1981 having become final and executory — entry of judgment was made.

5. After the Marcopper decision had become final, NFSW renewed its demand that CAC give the 13th month pay. CAC refused.

6. On January 22, 1982, NFSW filed with the Ministry of Labor and Employment (MOLE) Regional Office in Bacolod City a notice to strike based on non-payment of the 13th month pay. Six days after, NFSW struck.

7. One day after the commencement of the strike, or on January 29, 1982, a report of the strike-vote was filed by NFSW with MOLE.

8. On February 8, 1982, CAC filed a petition (R.A.B. Case No. 0110-82) with the Regional Arbitration Branch VI-A, MOLE, at Bacolod City to declare the strike illegal, principally for being violative of Batas Pambansa Blg. 130, that is, the strike was declared before the expiration of the 15-day cooling-off period for unfair labor practice (ULP) strikes, and the strike was staged before the lapse of seven days from the submission to MOLE of the result of the strike-vote.

9. After the submission of position papers and hearing, Labor Arbiter Ovejera declared the NFSW strike illegal. The dispositive part of his decision dated February 20, 1982 reads:

> "Wherefore, premises considered, judgment is hereby rendered:
>
> "1. Declaring the strike commenced by NFSW on January 28, 1982, illegal;
>
> "2. Directing the Central to resume operations immediately upon receipt hereof;

"3. Directing the Central to accept back to work all employees appearing in its payroll as of January 28, 1982 except those covered by the February 1, 1982 memorandum on preventive suspension but without prejudice to the said employees' instituting appropriate actions before this Ministry relative to whatever causes of action they may have obtained proceeding from said memorandum;

"4. Directing the Central to pay effective from the date of resumption of operations the salaries of those to be placed on preventive suspension as per February 1, 1982 memorandum during their period of preventive suspension; and

"5. Directing, in view of the finding that the subject strike is illegal, NFSW, its officers, members, as well as sympathizers to immediately desist from committing acts that may impair or impede the milling operations of the Central.

"The law enforcement authorities are hereby requested to assist in the peaceful enforcement and implementation of this Decision.

"SO ORDERED."

10. On February 26, 1982, the NFSW — by passing the NLRC — filed the instant Petition for prohibition alleging that Labor Arbiter Ovejera, CAC and the PC Provincial Commander of Negros Occidental were threatening to immediately enforce the February 20, 1982 decision which would violate fundamental rights of the petitioner, and praying that —

"WHEREFORE, on the foregoing considerations, it is prayed of the Honorable Court that on the Petition for Preliminary Injunction, an order, after hearing, issue:

"1. Restraining implementation or enforcement of the Decision of February 20, 1982;

"2. Enjoining respondents to refrain from the threatened acts violative of the rights of strikers and peaceful picketers;

"3. Requiring maintenance of the status quo as of February 20, 1982, until further orders of the Court;

and on the Main Petition, judgment be rendered after hearing:

"1. Declaring the Decision of February 20, 1982 null and void;

"2. Making the preliminary injunction permanent;

"3. Awarding such other relief as may be just in the premises."

11. Hearing was held, after which the parties submitted their memoranda. No restraining order was issued.

II. ISSUES —

The parties have raised a number of issues, including some procedural points. However, considering their relative importance and the impact of their resolution on ongoing labor disputes in a number of industry sectors, we have decided — in the interest of expediency and dispatch — to brush aside non-substantial items and reduce the remaining issues to but two fundamental ones:

1. Whether the strike declared by NFSW is illegal, the resolution of which mainly depends on the mandatory or directory character of the cooling-off period and the 7-day strike ban after report to MOLE of the result of a strike vote, as prescribed in the Labor Code.

2. Whether under Presidential Decree 851 (13th Month Pay Law), CAC is obliged to give its workers a 13th month salary

in addition to Christmas, milling and amelioration bonuses, the aggregate of which admittedly exceeds by far the disputed 13th month pay. (See petitioner's memorandum of April 12, 1982, p. 2; CAC memorandum of April 2, 1982, pp. 3-4.) Resolution of this issue requires an examination of the thrusts and application of PD 851.

III. DISCUSSION —

1. Articles 264 and 265 of the Labor Code, insofar as pertinent, read:

ART. 264. Strikes, picketing and lockouts. —

"(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike with the Ministry (of Labor and Employment) at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be shortened to fifteen (15) days;

x x x

"(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

"(f) A decision to declare a strike must be approved by at least two-thirds (2/3) of the total union membership in the bargaining unit concerned by secret ballots in meetings or referenda. A decision to declare a lockout must be approved by at least two-thirds (2/3) of the board of directors of the employer corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration

> of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry, may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union of the employer shall furnish the Ministry the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period herein provided." (Emphasis supplied)
>
> "ART. 265. Prohibited activities. — It shall be unlawful for any labor organization or employer to declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.
>
> "It shall likewise be unlawful to declare a strike or lockout after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the some grounds for the strike or lockout." (Emphasis supplied.)

(a) Language of the law. — The foregoing provisions hardly leave any room for doubt that the cooling-off period in Art. 264(c) and the 7-day strike ban after the strike-vote report prescribed in Art. 264(f) were meant to be, and should be deemed, mandatory.

When the law says "the labor union may strike" should the dispute "remain unsettled until the lapse of the requisite number of days (cooling-off period) from the mandatory filing of the notice," the unmistakable implication is that the union may not strike before the lapse of the cooling-off period. Similarly, the mandatory character of the 7-day strike ban after the report on the strike-vote is manifest in the provision that "in every case," the union shall furnish the MOLE with the results of the voting

"at least seven (7) days before the intended strike, subject to the (prescribed) cooling-off period." It must be stressed that the requirements of cooling-off period and 7-day strike ban must both be complied with, although the labor union may take a strike vote and report the same within the statutory cooling-off period.

If only the filing of the strike notice and the strike-vote report would be deemed mandatory, but not the waiting periods so specifically and emphatically prescribed by law, the purposes (hereafter discussed) for which the filing of the strike notice and strike-vote report is required would not be achieved, as when a strike is declared immediately after a strike notice is served, or when — as in the instant case — the strike-vote report is filed with MOLE after the strike had actually commenced. Such interpretation of the law ought not and cannot be countenanced. It would indeed be self-defeating for the law to imperatively require the filing on a strike notice and strike-vote report without at the same time making the prescribed waiting periods mandatory.

(b) Purposes of strike notice and strike-vote report. — In requiring a strike notice and a cooling-off period, the avowed intent of the law is to provide an opportunity for mediation and conciliation. It thus directs the MOLE "to exert all efforts at mediation and conciliation to effect a voluntary settlement" during the cooling-off period. As applied to the CAC-NFSW dispute regarding the 13th month pay, MOLE intervention could have possibly induced CAC to provisionally give the 13th month pay in order to avert great business loss arising from the project strike, without prejudice to the subsequent resolution of the legal dispute by competent authorities; or mediation conciliation could have convinced NFSW to at least postpone the intended strike so as to avoid great waste and loss to the sugar central, the sugar planters and the sugar workers themselves, if the strike would coincide with the milling season.

So, too, the 7-day strike-vote report is not without a purpose. As pointed out by the Solicitor General —

> "Many disastrous strikes have been staged in the past based merely on the insistence of minority groups within the union. The submission of the report gives assurance that a strike vote has been taken and that, if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late." (Answer of public respondents, pp. 17-18.)
>
> "If the purpose of the required strike notice and strike-vote report are to be achieved, the periods prescribed for their attainment must, as aforesaid, be deemed mandatory.
>
> "When a fair interpretation of the statute, which directs acts or proceedings to be done in a certain way, shows the legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite conditions must exist prior to the exercise of power or must be performed before certain other powers can be exercised, the statute must be regarded as mandatory. So it has been held that, when a statute is founded on public policy [such as the policy to encourage voluntary settlement of disputes without resorting to strikes], those to whom it applies should not be permitted to waive its provisions. (82 C.J.S. 873-874. Bracketed words supplied.)

(c) Waiting period after strike notice and strike-vote report, valid regulation of right to strike. — To quote Justice Jackson in International Union vs. Wisconsin Employment Relations Board, 336 U.S. 245, at 259 —

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining."

The cooling-off period and the 7-day strike ban after the filing of a strike-vote report, as prescribed in Art. 264 of the Labor Code, are reasonable restrictions and their imposition is essential to

attain the legitimate policy objectives embodied in the law. We hold that they constitute a valid exercise of the police power of the state.

(d) State policy on amicable settlement of criminal liability. — Petitioner contends that since the non-compliance (with PD 851) imputed to CAC is an unfair labor practice which is an offense against the state, the cooling-off period provided in the Labor Code would not apply, as it does not apply to ULP strikes. It is argued that mediation or conciliation in order to settle a criminal offense is not allowed.

In the first place, it is at best unclear whether the refusal of CAC to give a 13th month pay to NFSW constitutes a criminal act. Under Sec. 9 of the Rules and regulations Implementing Presidential Decree No. 851 —

> "Non-payment of the thirteenth-month pay provided by the Decree and these rules shall be treated as money claims cases and shall be processed in accordance with the Rules Implementing the Labor Code of the Philippines and the Rules of the National Labor Relations Commission."

Secondly, the possible dispute settlement, either permanent or temporary, could very well be along legally permissible lines, as indicated in (b) above or assume the form of measures designed to abort the intended strike, rather than compromise criminal liability, if any. Finally, amicable settlement of criminal liability is not inexorably forbidden by law. Such settlement is valid when the law itself clearly authorizes it. In the case of a dispute on the payment of the 13th month pay, we are not prepared to say that its voluntary settlement is not authorized by the terms of Art. 264(e) of the Labor Code, which makes it the duty of the MOLE to exert all efforts at mediation and conciliation to effect a voluntary settlement of labor disputes.

(e) NFSW strike is illegal. — The NFSW declared the strike six (6) days after filing a strike notice, i.e., before the lapse of the mandatory cooling-off period. It also failed to file with the MOLE

before launching the strike a report on the strike-vote, when it should have filed such report "at least seven (7) days before the intended strike." Under the circumstances, we are perforce constrained to conclude that the strike staged by petitioner is not in conformity with law. This conclusion makes it unnecessary for us to determine whether the pendency of an arbitration case against CAC on the same issue of payment of 13th month pay [R.A.B. No. 512-81, Regional Arbitration Branch No. VI-A, NLRC, Bacolod City, in which the National Congress of Unions in the Sugar Industry of the Philippines (NACUSIP) and a number of CAC workers are the complainants, with NFSW as Intervenor seeking the dismissal of the arbitration case as regards unnamed CAC rank and file employees] has rendered illegal the above strike under Art. 265 of the Labor Code which provides:

> "It shall likewise be unlawful to declare a strike or lockout after assumption of jurisdiction by the President or the Minister, or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout." (Emphasis supplied.)

(2) The Second Issue. — At bottom, the NFSW strike arose from a dispute on the meaning and application of PD 851, with NFSW claiming entitlement to a 13th month pay on top of bonuses given by CAC to its workers, as against the diametrically opposite stance of CAC. Since the strike was just an offshoot of the said dispute, a simple decision on the legality or illegality of the strike would not spell the end of the NFSW-CAC labor dispute. And considering further that there are other disputes and strikes — actual and impending — involving the interpretation and application of PD 851, it is important for this Court to definitively resolve the problem: whether under PD 851, CAC is obliged to give its workers a 13th month salary in addition to Christmas, milling and amelioration bonuses stipulated in a collective bargaining agreement amounting to more than a month's pay.

Keenly sensitive to the needs of the workingmen, yet mindful of the mounting production cost that are the woe of capital which provides employment to labor, President Ferdinand E. Marcos

issued Presidential Decree No. 851 on 16 December 1975. Thereunder, "all employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of their employment, a 13th month pay not later than December 24 of every year." Exempted from the obligation however are:

> "Employers already paying their employees a 13th month pay or its equivalent." (Section 2.)

The evident intention of the law, as revealed by the law itself, was to grant an additional income in the form of a 13th month pay to employees not already receiving the same. Otherwise put, the intention was to grant some relief — not to all workers — but only to the unfortunate ones not actually paid a 13th month salary or what amounts to it, by whatever name called; but it was not envisioned that a double burden would be imposed on the employer already paying his employees a 13th month pay or its equivalent — whether out of pure generosity or on the basis of a binding agreement and, in the latter case, regardless of the conditional character of the grant (such as making the payment dependent on profit), so long as there is actual payment. Otherwise, what was conceived to be a 13th month salary would in effect become a 14th or possibly 15th month pay.

This view is justified by the law itself which makes no distinction in the grant of exemption: "Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree." (P.D. 851.)

The Rules Implementing P.D. 851 issued by MOLE immediately after the adoption of said law reinforce this stand. (Under Section 3(e) thereof —

> "The term 'its equivalent' shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary

> benefits. Where an employer pays less than 1/12th of the employee's basic salary, the employer shall pay the difference." (Italics supplied.)

Having been issued by the agency charged with the implementation of PD 851 as its contemporaneous interpretation of the law, the quoted rule should be accorded great weight.

Pragmatic considerations also weigh heavily in favor of crediting both voluntary and contractual bonuses for the purpose of determining liability for the 13th month pay. To require employers (already giving their employees a 13th month salary or its equivalent) to give a second 13th month pay would be unfair and productive of undesirable results. To the employer who had acceded and is already bound to give bonuses to his employees, the additional burden of a 13th month pay would amount to a penalty for his munificence or liberality. The probable reaction of one so circumstanced would be to withdraw the bonuses or resist further voluntary grants for fear that if and when a law is passed giving the same benefits, his prior concessions might not be given due credit; and this negative attitude would have an adverse impact on the employees.

In the case at bar, the NFSW-CAC collective bargaining agreement provides for the grant to CAC workers of Christmas bonus, milling bonus and amelioration bonus, the aggregate of which is very much more than a worker's monthly pay. When a dispute arose last year as to whether CAC workers receiving the stipulated bonuses would additionally be entitled to a 13th month pay, NFSW and CAC concluded a compromise agreement by which they —

> "Agree(d) to abide by the final decision of the Supreme Court in any case involving the 13th Month Pay Law if it is clearly held that the employer is liable to pay a 13th month pay separate and distinct from the bonuses already given."

When this agreement was forged on November 30, 1981, the original decision dismissing the petition in the aforecited Marcopper case had already been promulgated by this Court. On the votes of only 7

Justices, including the distinguished Chief Justice, the petition of Marcopper Mining Corp. seeking to annul the decision of Labor Deputy Minister Amado Inciong granting a 13th month pay to Marcopper employees (in addition to mid-year and Christmas bonuses under a CBA) had been dismissed. But a motion for reconsideration filed by Marcopper was pending as of November 30, 1981. In December 1981, the original decision was affirmed when this Court finally denied the motion for reconsideration. But the resolution of denial was supported by the votes of only 5 Justices. The Marcopper decision is therefore a Court decision but without the necessary eight votes to be doctrinal. This being so, it cannot be said that the Marcopper decision "clearly held" that "the employer is liable to pay a 13th month pay separate and distinct from the bonuses already given," within the meaning of the NFSW-CAC compromise agreement. At any rate, in view of the rulings made herein, NFSW cannot insist on its claim that its members are entitled to a 13th month pay in addition to the bonuses already paid by CAC.

WHEREFORE, the Petition is dismissed for lack of merit. No costs.

SO ORDERED.

Aquino, Guerrero, Escolin, Vasquez, Relova and Gutierrez, *JJ.*, concur.
Teehankee, *J.*, concurs in the result.
Makasiar, *J.*, concurs in the separate opinion of qualified concurrence as to the illegality of the strike and of dissent as to the interpretation of Presidential Decree No. 851 submitted by the Chief Justice.
Concepcion, *J.*, is on leave.

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[1] 105 SCRA 75.

> ART. 264. Strikes, picketing and lockouts. — . . .
> "(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike with the Ministry (of Labor and Employment) at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be shortened to fifteen
> (15) days;
>
> x x x

"(e) During the cooling-off period, it shall be duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.
"(f) A decision to declare a strike must be approved by at least two-thirds (2/3) of the total union membership in the bargaining unit concerned by secret ballots in meetings in meetings or referenda. A decision to declare a lockout must be approved by at least two-thirds (2/3) of the board of directors of the employer corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry, may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union of the employer shall furnish the Ministry the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period herein provided." (Emphasis supplied.)

SEPARATE OPINIONS

FERNANDO, C.J., concurring:

Concurring with qualifications on the questions of the legality of the strike and dissenting on the interpretation to be accorded Presidential Decree No. 851 on the thirteenth-month additional pay:

There is at the outset due acknowledgment on my part of the high quality of craftsmanship in the opinion of the Court penned by Justice Efren Plana. It is distinguished by its lucidity. There is the imprint of inevitability in the conclusion reached based on the basic premise that underlies it. So it should be if the decisive consideration is the language used both of the applicable provisions of the Labor Code, Article 264 (c), (e), and (f) and Article 265, as well as of Presidential Decree No. 851. In that sense, the decision of the Court can stand the test of scrutiny based on sheer logic.

That for me would not suffice. Such an approach, to my mind, is quite limited. The standard that should govern is the one supplied by the

Constitution. That is the clear implication of constitutionalism. Anything less would deprive it of its quality as the fundamental law. It is my submission, therefore, that statutes, codes, decrees, administrative rules, municipal ordinances and any other jural norms must be construed in the light of and in accordance with the Constitution. There is this explicit affirmation in the recently decided case of De la Llana vs. Alba sustaining the validity of Batas Pambansa Blg. 129 reorganizing the judiciary: "The principle that the Constitution enters into and forms part of every act to avoid any unconstitutional taint must be applied. Nuñez vs. Sandiganbayan, promulgated last January, has this relevant excerpt: 'It is true that the other Sections of the Decree could have been so worded as to avoid any constitutional objection. As of now, however, no ruling is called for. The view is given expression in the concurring and dissenting opinion of Justice Makasiar that in such a case to save the Decree from the dire fate of invalidity, they must be construed in such a way as to preclude any possible erosion on the powers vested in this Court by the Constitution. That is a proposition too plain to be contested. It commends itself for approval.'"[1]

1. It may not be amiss to start with the dissenting portion of this separate opinion. It is worthwhile to recall the decision in Marcopper Mining Corporation vs. Hon. Blas Ople.[2] It came from a unanimous Court. It is true that only seven Justices signed the opinion, two of the members of this Tribunal, who participated in the deliberation, Justices Teehankee and Melencio-Herrera having reserved their votes. Justice Concepcion Jr. was on leave. It is accurate, therefore, to state that Marcopper as stated in Justice Plana's opinion, is not doctrinal in character, the necessary eight votes not having been obtained. It is a plurality as distinguished from a majority opinion. It is quite apparent, however, that there was not a single dissenting vote. There was subsequently a motion for reconsideration. This Court duly weighed the arguments for and against the merit of the unanimous opinion rendered. The resolution denying the motion for reconsideration was not issued until December 15, 1981 on which occasion three Justices dissented.[3] In the brief resolution denying the option for reconsideration, with five Justices adhering to their original stand[4] it was set forth that such denial was based: "primarily [on] the reason that the arguments advanced had been duly considered

and found insufficient to call for a decision other than that promulgated on June 11, 1981, which stands unreversed and unmodified. This is a case involving the social justice concept, which, as pointed out in Carillo vs. Allied Workers Association of the Philippines involves 'the effectiveness of the community's effort to assist the economically under-privileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves.' In an earlier decision, Del Rosario vs. De los Santos, it was categorically stated that the social justice principle 'is the translation into reality of its significance as popularized by the late President Magsaysay: He who has less in life should have more in law.'"[5] In his dissent, Justice Fernandez took issue on the interpretation of social justice by relying on the well-known opinion of Justice Laurel in Calalang vs. Williams[6] and concluded: "It is as much to the benefit of labor that the petitioner be accorded social justice. For if the mining companies, like the petitioner, can no longer operate, all the laborers employed by aid company shall be laid-off."[7] To reinforce such a conclusion, it was further stated: "The decision in this case is far reaching. It affects all employers similarly situated as the petitioner. The natural reaction of employers similarly situated as the petitioner will be to withdraw gratuities that they have been giving employees voluntarily. In the long run, the laborers will suffer. In the higher interest of all concerned the contention of the petitioner that the mid-year bonus and Christmas bonus that it is giving to the laborers shall be applied to the 13th month pay should be sustained."[8] Such pragmatic consideration is likewise evident in the opinion of the Court in this case. It is quite obvious from the above resolution of denial that the approach based on the Constitution, compelling in its character set forth in the opinion of the Court of June 11, 1981, is the one followed by the members of this Court either adhering to or departing from the previous unanimous conclusion reached. The main reliance to repeat, is on the social justice provision[9] as reinforced by the protection to labor provision.[10] As noted, such concepts were enshrined in the 1930 Constitution.[11] The opinion pursued the matter further: "Even then, there was a realization of their importance in vitalizing a regime of liberty not just as immunity from government restraint but as the assumption by the State of an obligation to assure a life of dignity for all, especially the poor and the needy. The expanded

social justice and protection to labor provisions of the present Constitution lend added emphasis to the concern for social and economic rights. That was so under the 1935 Constitution. Such an approach is even more valid now. As a matter of fact, in the first case after the applicability of the 1973 constitution where social and economic rights were involved, this Court in Alfanta vs. Noe, through Justice Antonio, stated: 'In the environment of a new social order We can do no less. Thus, under the new Constitution, property ownership has been impressed with a social function. This implies that the owner has the obligation to use his property not only to benefit himself but society as well. Hence, it provides under Section 6 of Article II thereof, that in the promotion of social justice, the State "shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits." The Constitution also ensures that the worker shall have a just and living wage which should assure for himself and his family an existence worthy of human dignity and give him opportunity for a better life.' Such a sentiment finds expression in subsequent opinions."[12]

2. It thus becomes apparent, therefore, why predicated on what for me is the significance of the social justice and the protection to labor mandates of the Constitution, I cannot, with due respect, concur with my brethren. The stand taken by this Court, I submit, cannot be justified by the hitherto hospitable scope accorded such provisions. It is to the credit of this Administration that even during the period of crisis government, the social and economic rights were fully implemented. As a matter of fact, some critics, not fully informed of the actual state of affairs, would predicate their assessment of its accomplishments in this sphere on their inaccurate and unsympathetic appraisal of how much success had been achieved. It is a matter of pride for the Philippines that as far back as her 1935 Constitution, provisions assuring liberty in its positive sense, enabling her citizens to live a life of humanity and dignity, were already incorporated. The social and economic rights found therein antedated by thirteen years the Universal Declaration of Human Rights. When it is considered that, as pointed out in the opinion of Justice Antonio in Alfanta, rendered in the first year of the present Constitution, the social justice principle now lends itself to the equitable diffusion of property

ownership and profits, it becomes difficult for me to justify why any lurking ambiguity in Presidential Decree No. 851 could be construed against the rights of labor. This Court is not acting unjustly if it promotes social justice. This Court is not acting unjustly if it protects labor. This Court is just being true to its mission of fealty to the Constitution. Under the concept of separation of powers, while the political branches enact the laws and thereafter enforce them, any question as to their interpretation, justiciable in character, is for the courts, ultimately this Tribunal, to decide. That is its sworn duty. It cannot be recreant to such a trust. Its role, therefore, is far from passive. It may be said further that if the object of statutory construction is in the well-known language of Learned Hand "proliferation of purpose," there is warrant for the view that I espouse. That is to attain its basic objective, namely, to cope with the ravages of inflation. Moreover, the Decree only benefits the low-salaried employees. There is thus ample warrant for a more liberal approach. It only remains to be added that there was in Marcopper not only a recognition of the administrative determination by the Minister of Labor as well as the then Deputy Minister of Labor but also an acceptance of the ably-written memorandum of Solicitor General Mendoza. Hence, to repeat, my inability to concur on this point with my brethren whose views, as I stated earlier, are deserving of the fullest respect.

3. There is, however — and it must be so recognized — an obstacle to the approach above followed. There is an agreement both on the part of management and labor in this case quoted in the main opinion to this effect, "to abide by the final decision of the Supreme Court in any case involving the 13th Month Pay Law if it is clearly held that the employer is liable to pay a 13th month pay separate and distinct from the bonuses already given." Such an obstacle, on further reflection, is not, for me, insurmountable. The only case then within the contemplation of the parties is Marcopper. With the unanimous opinion rendered and a subsequent denial of a motion for reconsideration, it would appear that while it lacked doctrinal force, this Court "clearly held" that there is liability on the part of the employer to pay a 13-month pay separate and distinct from the bonuses already given. Perhaps the parties, especially labor, could have been more accurate and more

precise. It take comfort from the view expressed by Justice Cardozo in Wood vs. Duff-Gordon:[13] "The law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal. It takes a broader view today. A promise may be lacking, and yet the whole writing may be 'instinct with an obligation,' imperfectly expressed."[14]

4. Now as to the qualified concurrence. Based on the codal provisions the finding of the illegality of strike is warranted. That for me does not fully resolve the questions raised by such a declaration. From my reading of the opinion of the Court, it does not go as far as defining the consequences of such illegal strike. Again the approach I propose to follow is premised on the two basic mandates of social justice and protection to labor, for while they are obligations imposed on the government by the fundamental law, compulsory arbitration as a result of which there could be a finding of illegality is worded in permissive not in mandatory language. It would be, for me, a departure from principles to which this Court has long remained committed, if thereby loss of employment, even loss of seniority rights or other privileges is ultimately incurred. That is still an open question. The decision has not touched on that basic aspect of this litigation. The issue is not foreclosed. It seems fitting that this brief concurrence and dissent should end with a relevant excerpt from Free Telephone Workers Union vs. The Minister of Labor:[15] "It must be stressed anew, however, that the power of compulsory arbitration, while allowable under the Constitution and quite understandable in labor disputes affected with a national interest, to be free from the taint of unconstitutionality, must be exercised in accordance with the constitutional mandate of protection to labor. The arbiter then is called upon to take due care that in the decision to be reached, there is no violation of 'the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.' It is of course manifest that there is such unconstitutional application if a law 'fair on its face and impartial in appearance [is] applied and administered by public authority with an evil eye and an unequal hand.' It does not even have to go that far. An instance of unconstitutional application would be discernible if what is ordained by the fundamental law, the protection of labor, is ignored or disregarded."[16]

I am authorized to state that Justice Makasiar joins me in this separate opinion.

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[1] De La Llana, G. R. No. 57883, was promulgated on March 12, 1982 and Nuñez vs. Sandiganbayan G. R. Nos. 50581-50617, was promulgated on January 30, 1982.
[2] G. R. No. 51254 promulgated on June 11, 1981 is reported in 105 SCRA 75.
[3] Justice Fernandez, concurred in by Justices Concepcion Jr. and Guerrero. At that time, of the fourteen Justices, Justices Teehankee and Barredo reserved their votes and Justices Melencio-Herrera, Ericta, Plana and Escolin took no part.
[4] Fernando, C.J., Makasiar, Aquino, Abad Santos and de Castro, JJ.
[5] Resolution dated December 15, 1981, 1.
[6] 70 Phil. 726 (1940).
[7] Resolution dated December 15, 1981, 3.
[8] Ibid.
[9] According to Article II, Sec. 6 of the present Constitution: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."
[10] According to Article II, Sec. 9 of the present Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The state shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."
[11] According to Article II, Sec. 5 of the 1935 Constitution: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." According to Article XIV, Sec. 6 of the 1935 Constitution: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relation between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."
[12] 105 SCRA 75, 84-85. Alfanta vs. Noe, L-32362, promulgated on September 19, 1973 is reported in 53 SCRA 76. That portion of the opinion cited appears in page 85. La Mallorca vs. Workmen's Compensation Commission, L-29315, promulgated on November 28, 1969, a decision under the 1935 Constitution is reported in 30 SCRA 613. Seven other opinions were cited starting from Chavez vs. Zobel, L-25009, January 17, 1974, 55 SCRA 26; Herald Delivery Carriers Union vs. Herald Publications, L-29966, February 28, 1974, 55 SCRA 713: Philippine Air Lines Inc. vs. Philippine Airlines

Employees Association, L-24626, June 28, 1974, 57 SCRA 489; Almira vs. B. F. Goodrich Philippines Inc., L-34974, July 25, 1974, 58 SCRA 120: Radio Communications of the Philippines vs. Philippine Communications Workers Federation, L-37662, August 30, 1974, 58 SCRA 762; Firestone Employees Asso. vs. Firestone Tire and Rubber Co. of the Philippines, L-37952, December 10, 1974, 61 SCRA 338 to E. Lim and Sons Manufacturing Co. vs. Court of Industrial Relations, L-39117, September 25, 1975, 67 SCRA 124.

[13] 222 Wy. 88, 118 NE 214 (1917).

[14] Ibid, 214.

[15] G. R. No. 58184, October 30, 1981, 108 SCRA 757.

[16] Ibid, 773.

BARREDO, J., concurring:

At this stage of my tenure in the Supreme Court which is to end in about four months from now, I feel it is but fitting and proper that I make my position clear and unmistakable in regard to certain principles that have to be applied to this labor case now before Us. Few perhaps may have noticed it, but the fact is that in most cases of this nature I have endeavored my very best to fully abide by the part that pertains to the judiciary in the social justice and protection to labor clauses of the Constitution, not alone because I consider it as an obligation imposed by the fundamental law of the land but by natural inclination, perhaps because I began to work as a common worker at the age of thirteen, and I cannot in any sense be considered as a capitalist or management-inclined just because I happen to have joined, within the legal bounds of the position I occupy, some business ventures with the more affluent members of my family and with some good and faithful old time friends. I need not say that I am pro-labor; I only wish to deny most vehemently that I am anti-labor.

Having been one of the seven members of the Court who cosigned with our learned Chief Justice the Marcopper "decision" and later on reserved my vote when a motion for reconsideration thereof was filed for me to concur now by merely cosigning the brilliant opinion of our distinguished colleague, Mr. Justice Plana, is to my mind short of what all concerned might expect from me. For me to merely vote in

support of the judgment herein without any explanation of my peculiar situation does not satisfy my conscience, not to mention that I owe such explanation to those who would all probably be raising their eyebrows since they must come to feel they could depend on me to always vote in favor of labor.

The Supreme Court is a court of law and of equity at the same time but, understandably, equity comes in only when law is inadequate to afford the parties concerned the essence of justice, fairness and square dealing. It is to this basic tenet that I am bound by my oath of office before God and our people. Having this ideal in mind, the paramount thought that should dominate my actuations is complete and absolute impartiality in the best light God has given me. Hence, when the aid of the Court is sought on legal grounds, We can resort to equity only when there is no law that can be properly applied. My view of the instant case is that it is one of law, not of equity. It is on this fundamental basis that I have ventured to write this concurrence.

Looking back at my concurrence in Marcopper, and guided by the observations in the main opinion herein, as to the doctrinal value of Our decision therein, I have come to the realization, after mature deliberation, that the conclusion reached in the opinion of the Chief Justice may not always be consistent with the evident intent and purpose of Section 2 of P.D. No. 851 which, indeed, unequivocally provides that "(E)mployers already paying their employees a 13th month pay or its equivalent are not covered by this decree", albeit it does not clarify what it means by the "equivalent" of the 13th month pay. Such being the case, nothing can be more proper than for everyone to abide by or at least give due respect to the meaning thereof as has been officially expressed by the usual executive authority called upon to implement the same, none other than the Ministry of Labor (MOLE, for short), unless, of course, the understanding of MOLE appears to be manifestly and palpably erroneous and completely alien to the evident intent of the decree. And Section 3(e) of the Rules Implementing P.D. 851 issued by MOLE reads thus:

> "The term 'its equivalent' as used in paragraph (c) hereof shall include Christmas bonus, midyear bonus, profit-sharing payments and other cash bonuses amounting to not less than

> 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employee's basic salary, the employer shall pay the difference."

Petitioner National Federation of Sugar, Workers (NFSW, for short) is now before Us with the plea that because in its agreement with respondent Central Azucarera de la Carlota (CAC, for short) of November 30, 1981 to the effect that:

> "The parties agree to abide by the final decision of the Supreme Court in any case involving the 13th Month Pay Law if it is clearly held that the employer is liable to pay a 13th month pay separate and distinct from the bonuses already given." (Par. 4)

and because this Court dismissed, in legal effect, for lack of necessary votes, the petition in the Marcopper case seeking the setting aside of Deputy Minister Inciong's decision which considered the midyear and Christmas bonuses being given to the Marcopper workers as not the equivalent of the 13th month pay enjoined by P.D. 851, We should now order CAC to pay NFSW members in the same way as stated in the opinion of the Chief Justice in the Marcopper case.

At first glance, such a pause does appear tenable and plausible. But looking deeper at the precise wording of the November 30, 1981 agreement between NFSW and CAC abovequoted, the proposition in the main opinion herein that what must be deemed contemplated in said agreement is that the final decision of the Supreme Court therein referred to must be one wherein it would be "clearly held that the employer is liable to pay 13th month pay separate and distinct from the bonuses already given", compels concurrence on my part. I find said agreement to be definitely worded. There is no room at all for doubt as to the meaning thereof. And tested in the light of such unambiguous terminology of the said agreement, the Marcopper opinion signed by only seven members of this Court, cannot, under the Constitution and prevailing binding legal norms, unfortunately, have doctrinal worth and cannot be considered as stare decisis. Hence, it cannot be said to be the "definite" decision of the Supreme Court the parties (CAC and NFSW) had in mind. Accordingly, it is my

considered opinion that NFSW's plea in this case is premature and rather off tangent.

I am not unmindful of the possibility or even probability that labor may argue that in signing the November 30. 1981 agreement, NFSW little cared, for it was not fully informed about what doctrinal and what is not doctrinal signify in law. Labor may argue that it is enough that Marcopper workers got their 13th month pay in addition to their bonuses by virtue of the denial by this Supreme Court of Marcopper Company's appeal to US, and NFSW members should not be left getting less. And it would only be rational to expect labor to invoke in support of their plea no less than the social justice and protection to labor provisions of the Constitution.

As I have said at the outset, I am about to leave this Court. Nothing could warm my heart and lift my spirit more than to part with the noble thought that during my tenure of fourteen years in this Supreme Court, I have given labor the most that it has been within my power to give. But again I must emphasize that what is constitutionally ordained, and by that I mean also by God and by our country and people, is for me to jealously guard that the scales of justice are in perfect balance. No fondness for any sector of society, no love for any man or woman, no adherence to any political party, no feeling for any relative or friend nor religious consideration or belief should ever induce me to allow it to tilt in the slightest degree in favor of anyone.

The concept of social justice has been variously explained in previous decisions of this Court. In Talisay Silay, penned by this writer, We went as far as to hold that when it comes to labor-management relationship, the social justice principle is more pervasive and imperious than police power. It is indeed consecrated as one of the most valued principles of national policy in the Constitution. (Sec. 6, Art. II) So also is protection to labor. (Sec. 9, Id.) I am of the firm conviction, however, that these constitutional injunctions are primarily directed to and are responsibilities of the policy-determining departments of the government. In the enforcement of said principles, the role of the judiciary is to a certain degree less active. The courts are supposed to be called upon only to strike down any act or actuation, of anyone violative thereof, and, of course, in

case of doubt in any given situation, to resolve the same in favor of labor. Verily, neither the Supreme Court nor any other court is enjoined to favor labor merely for labor's sake, even as the judiciary is duty bound never to place labor at a disadvantage, for that would not be only unconstitutional but inhuman, contrary to the Universal Declaration of Human Rights and unpardonably degrading to the dignity of man who has been precisely created in the image of God. At bottom, the ideal in social justice is precisely to maintain the forces of all the economic segments of society in undisturbed and undisturbable equilibrium, as otherwise there would be no justice for anyone of them at all.

In the case at bar, I do not feel at liberty to disregard what the parties have freely agreed upon, assuming, as I must, that in entering into such agreement both parties were fully aware of their legal rights and responsibilities. In this connection, I take particular note of the fact that if CAC is a big financially well conditioned concern, NFSW is not just one ignorant laborer or group of laborers, but a federation with leaders and lawyers of adequate if not expert knowledge-ability in regard to their rights and other relevant matters affecting labor. I am satisfied that there is here no occasion to apply the Civil Code rule regarding vigilance whenever there is inequality in the situations of the parties to an agreement or transaction.

In conclusion, I concur fully in the main opinion of Justice Plana as regards both issues of illegality of the strike here in question and the non-applicability hereto of whatever has been said in Marcopper. I have added the above remarks only to make myself clear on labor-management issues before I leave this Court, lest there be no other appropriate occasion for me to do so.

ABAD SANTOS, J., concurring:

I concur but lest I be accused of inconsistency because in Marcopper Mining Corporation vs. Ople, et al., No. 51254, June 11, 1981, 105

SCRA 75, I voted to dismiss the petition for lack of merit and as a result Marcopper had to give the 13th month pay provided in P.D. No. 851 even as its employees under the CBA had mid-year and end-of-year bonuses, I have to state that Marcopper and La Carlota have different factual situations as follows:

1. In Marcopper, the CBA clearly stated that the company was obligated to "grant mid-year and end-of-year bonuses to employees following years in which it had profitable operations." Thus the payment of the bonuses was contingent upon the realization of profits. If there were no profits, there were to be no bonuses. Accordingly, it was fair and proper to conclude that Marcopper had not shown that it was already paying its employees the 13th-month pay or its equivalent as provided in Sec. 2 of P.D. No. 851. However, in the instant case of La Carlota the obligation of the employer to pay bonuses is not contingent on the realization of profits. The CBA stipulates that the "parties also agree to maintain the present practice on the grant of Christmas bonus, milling bonus, and amelioration bonus to the extent as the latter is required by law." It can thus be said that La Carlota is already paying the equivalent of the 13th-month pay.

2. In Marcopper, the company's liability for the 13th-month pay was determined by no less than the Deputy Minister of Labor, Amado G. Inciong. I have always given much weight to the determination of officers who are tasked with implementing legislation because their expertise qualifies them in making authoritative decisions. In the present case of La Carlota, there has been no determination that the employees are entitled to the 13th-month pay. In fact, a negative conclusion can be implied from the declaration of Labor Arbiter Ovejera that the labor union's strike against La Carlota was illegal.

De Castro, *J.*, concurs.

MELENCIO-HERRERA, J., concurring:

A. The question of law involved in this Petition for Prohibition with Preliminary Injunction is based on the following relevant facts which are indicated in the record:

1. Prior to December 16, 1975, Central Azucarera de la Carlota (LA CARLOTA, for short), which operates a sugar mill in La Carlota, Negros Occidental, may be deemed as paying to its employees milling bonus, amelioration bonus, and Christmas bonus equal at least to a months' salary.

2. PD 851, effective on the aforementioned date of December 16, 1975, required employers to pay their employees a 13th month pay, provided the employer was not already paying the said 13th month pay or its equivalent.

3. On December 22, 1975, the then Department of Labor promulgated a regulation stating that "Christmas bonus" is an equivalent of the 13th month pay.

4. From 1975 to 1981, LA CARLOTA was not paying 13th month pay on the assumption that the "Christmas bonus" it was paying was an "equivalent" of the 13th month pay. The employees of LA CARLOTA and their labor unions had not protested the non-payment of the 13th month pay in addition to the Christmas bonus.

5. On June 11, 1981, this Court promulgated its Decision in the "Marcopper" case, which involved a relationship between the " 13th month pay" and the "Christmas bonus" being paid by an employer. A Motion for reconsideration of the Decision was subsequently filed in said case, which was denied only on December 15, 1981.

6. In the meantime, on November 29, 1981, the National Federation of Sugar Workers (NFSW), as the labor union representing the majority of employees at LA CARLOTA, staged a strike because LA CARLOTA had refused to pay

the 13th month pay in addition to Christmas bonus. The strike lasted one day as, on November 30, 1981, LA CARLOTA and NFSW entered into a settlement agreement, paragraph 4 whereof provided as follows:

> "4. The parties agree to abide by the final decision of the Supreme Court in any case involving the 13th Month Pay Law if it is clearly held that the employer is liable to pay a 13th Month Pay separate and distinct from the bonuses already given;"

7. On January 28, 1982, NFSW declared a strike on the ground that, despite the finality of the Marcopper Decision, LA CARLOTA had refused to grant 13th month pay to its employees, in addition to Christmas bonus, as agreed upon in the settlement agreement of November 30, 1981.

B. The legal controversy in the matter may be explained as follows:

1. NFSW filed a notice of strike on January 22, 1982, claiming that the contemplated strike was based on an unfair labor practice, and that it could declare the strike even before the expiration of fifteen (15) days thereafter. The unfair labor practice relied upon was management's alleged renegation of the November 30, 1981 agreement, considering that the finality of the Marcopper Decision had "clearly held that the employer is liable to pay a 13th month pay separate and distinct from "the Christmas bonus".

2. On the other hand, LA CARLOTA took the position that the strike was not a ULP strike but an economic strike subject to a cooling period of thirty (30) days with its attendant requirements.

3. It is clear that the controversy between NFSW and LA CARLOTA substantially hinges on the question of whether or not the Marcopper Decision has clearly held that a Christmas bonus, in whatsoever form, should not deter the employer's obligation to the payment of the 13th month pay.

C. The proceedings in the case below were as follows:

1. On February 4, 1982, LA CARLOTA filed a petition to declare the strike of January 28, 1982 as illegal in R. A. B. Case No. 110-82 of the Regional Arbitration Branch No. VI-A of the National Labor Commission in Bacolod City (the CASE BELOW).

2. After relatively protracted hearings, respondent Labor Arbiter rendered a Decision declaring illegal the strike of January 28, 1982. That is the Decision assailed by NFSW in this instance claiming it to be null and void.

D. Reference to a collateral proceeding may be made at this juncture:

1. It appears that, in LA CARLOTA, there is another labor union under the name of National Congress of Unions in the Sugar Industry in the Philippines (NACUSIP).

2. On July 30, 1981, NACUSIP filed a complaint in FSD Case No. 1192-81 before R. A. B. No. VI-A in Bacolod City praying that an Order be issued directing LA CARLOTA to pay 13th month pay to its employees from the effective date of PD 851 (the COLLATERAL PROCEEDING).

3. On December 4, 1981, NFSW filed a notice to intervene in the COLLATERAL PROCEEDING.

4. On January 26, 1982, a Decision was rendered in the COLLATERAL PROCEEDING which, in part, said:

> "On the contrary, what this Labor Arbiter is aware of, with which he can take notice, is the policy declaration of the Honorable Minister of Labor and Employment contained in a telegram addressed to Asst. Director Dante G. Ardivilla, Bacolod District Office, this Ministry, and disseminated for the information of this Branch which states, among

> other things, that where bonuses in CBAs are not contingent on realization of profit as in the Marcopper case, the decision (of the Supreme Court, re: Marcopper case), does not apply, and cases thereon should be resolved under the provisions of PD 851 and its implementing rules."

5. On February 15, 1982, NFSW filed a Motion for Reconsideration of the Decision.

Upon the foregoing exposition, there is justification for an outright dismissal of the Petition for Prohibition for the simple reason that the strike of January 28, 1982 may not be considered a ULP strike. When the strike was declared, it could not be validly claimed that there was already a final decision made by this Court which "clearly held that the employer is liable to pay a 13th month pay separate and distinct from" the Christmas bonus being paid by LA CARLOTA. However, since the Marcopper Decision has engendered controversies in labor-management relations in several industrial/commercial firms, the Court has resolved to rule on the merits of the substantial question between LA CARLOTA and NFSW for the public benefit with a clarification of the Marcopper judgment.

I agree with the proposition taken by the Ministry of Labor and Employment that Christmas bonus, not contingent on realization of profit as in the Marcoper case, is the equivalent of the 13th month pay. In regards to the juxtaposition of the terms "13th month pay" and "Christmas bonus" in an amount not less than a month's salary, the following may be explained:

> "Within recent time, it has been usual for an industrial or commercial firm, which has had a successful year, to grant a bonus to its employees generally denominated before as year-end bonus. A firm usually knows whether or not it has had a successful year by the middle of December. In case of profitability, payment of the year-end bonus does not have to await the end of the year, but it is often times given some days before New Year, generally about Christmas day. Before long, the year-end bonus became also known as Christmas bonus, following the change of the Christmas gift-giving day from

> January 6th to December 25th. Thus, it has been stated: "a less formal use of the bonus concept, which is designed to reward workers for a successful business year, is the annual or Christmas bonus" (3 Ency. Brit., 918).

Although the original concept of a year-end bonus or Christmas bonus, was that it depended on a successful year, the bonus, in many instances, has been developed into an obligatory payment as part of wages and not related to profitability of operations. As part of wages, they are subject to CBA negotiation. That has been the general trend in the United States and in our country.

> "But where so-called gifts are so tied to the remuneration which employees receive for their work that they are in fact a part of it, they are in reality wages within the meaning of the Act.
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> x x x
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> In a number of cases an employer has been held required to bargain concerning bonuses, including regularly given Christmas bonuses." (48 Am Jur. 2d., p. 455).

Moreover, once a Christmas bonus becomes institutionalized, it has to be non-discriminatory. "An employer violates 29 USC (Sec.) 158(a) (3) where, to discourage union membership, he ceases giving a Christmas bonus to all employees and gives the bonus only to office and supervisory employees after unionization of his production and maintenance employees." (48 Am Jur 2d., p. 420).

The Christmas bonus, as it clearly denotes, has a literal religious connection, "Christmas" being a term within the Christian religion. Considering that the Christmas bonus has become obligatory and non-discriminatory in many jurisdictions, a tendency arose to disassociate that bonus from its religious connotation. Some countries, with non-christian or "liberal" christian segments, have opted to make the year-end or Christmas bonus obligatory, and they called it the 13th month pay. It is, perhaps, having our Moslem brothers in mind that the Government had decided to set up in our country the obligatory payment of the 13th month pay. Thereby, the orthodox non-christian employee is not subjected to "discrimination"

due to his inability to accept the Christmas bonus because of strict allegiance to this own faith. It should, therefore, be apparent that "christmas bonus" and "13th month pay" should be equated one with the other.

PD 851 does not contain a provision for rules and regulations to be promulgated by the Department of Labor for implementation of the Decree. Notwithstanding, on December 22, 1975, the Department of Labor issued "Rules and Regulations Implementing Presidential Decree 851", with the following relevant provision:

> "The term 'its equivalent' as used in paragraph (c) hereof shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employees basic salary, the employer shall pay the difference."

When administrative rules and regulations are not properly "delegated", they cannot have the force and effect of law. It has been stated that:

> "Administrative rules and regulations. As discussed in Public Administrative Bodies and Procedure (Sec.) 108, rules and regulations duly promulgated and adopted in pursuance of properly delegated authority have the force and effect of law where they are legislative in character, but rules and regulations which are merely executive or administrative views as to the meaning and construction of the statute are not controlling on the courts, and cannot alter or extend the plain meaning of a statute, although they are entitled to great weight where the statute is ambiguous." (82 C.J.S., pp. 770, 771).

Although the rule defining the term "equivalent" as used in PD 851 does not have the force and effect of law, it can and should be considered as an administrative view entitled to great weight as it is an interpretation of "equivalent" made by the administrative agency which has the duty to enforce the Decree.

In the light of the foregoing views, I concur with the dismissal of the Petition for Prohibition with the express statements that LA CARLOTA's Christmas bonus and other bonuses exempts it from giving 13th month pay to its employees, and that the strike of January 28, 1982 was not a ULP strike and should be considered illegal even if NFSW had complied with all statutory requirements for the strike.