

**B. APPEALS ON EXEMPTION**

**1. JURISDICTION OF NWPC TO GRANT EXEMPTION ON APPEAL IF WAGE ORDER HAS NO EXEMPTION PROVISION**

**NWPC Case No. E-11-001**

17 January 2011

**IN RE: PETITION FOR EXEMPTION FROM WAGE ORDER NO. RB-XI-16**

**GILLAMAC'S MARKETING, INC., Petitioner – Appellant.**

*Wage Order; Application for Exemption; There is No Automatic Exemption from Wage Order.* – The grant of exemption from the application/implementation of wage orders is not automatic but requires the presence of express provision in Wage Orders allowing an exemption from compliance with the mandated wage increase granted in the Wage Orders. In this case, Wage Order No. RB XI-16 issued by the Board and affirmed by the Commission on 4 August 2010, does not allow the filing of exemption from compliance therewith (Section 11), Therefore, the Board was merely applying the provisions of Wage Order No. RB XI-16 when it did not grant exemption to Petitioner-Appellant.

*Same; Same; Authority to Grant/Provide Exemption.* – The Commission has no jurisdiction to grant exemption from compliance with a Wage Order if said Wage Order does not provide for exemption. Jurisdiction over a subject matter is conferred by law and not by the parties action or conduct. (Felicitas M. Machado and Marcelino P. Machado vs. Ricardo L. Gatdula, Commission on the Settlement of Land Problems, and Irineo S. Paz, Sheriff IV, Office of the Provincial Sheriff, San Pedro, Laguna, G.R. No.

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156287, February 16, 2010 citing *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 [1986]). Pursuant to Republic Act No. 6727 including the Rules on Minimum Wage Fixing and Rules on Exemption issued by the Commission, the power of whether or not to provide an exemption from compliance with the prescribed minimum wage rates is vested exclusively with the Board. Likewise, the authority to process and act on application for exemption is within the original and exclusive jurisdiction of the Board.

*Same; Same; Doctrine of Primary Jurisdiction Does Not Warrant the Commission to Arrogate Upon Itself the Authority to Resolve the Case.* – In a Decision dated 19 December 2005 in a similar case (NWPC Case No. E-05-007, Five Star Savings and Credit Development Cooperative-Tacloban Branch, Appellant), the Commission stressed that the authority to process and act on application for exemption is within the original and exclusive jurisdiction of the Board. The doctrine of primary jurisdiction does not warrant this Commission, even in the exercise of its appellate authority, to arrogate upon itself the authority to resolve the case, the jurisdiction over which, as had been stressed earlier is originally and exclusively lodged with the Board.

*Same; Same; The Grant of Exemption on Appeal, in the Absence of an Exemption Provision, Will Constitute and Ultra Vires Act.* – In the absence of an exemption provision in Wage Order No. RB XI-16, the grant of exemption on appeal to Petitioner-Appellant will constitute an ultra vires act. As held by the Supreme Court in *Pirovano vs. Dela Rama*, 96 Phil. 360, the powers of a corporation are limited to those expressly given it by law and those implied or necessary arising from the nature of the

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powers and rights so expressly given. If a corporation acts outside of the scope of its articles of incorporation, it is acting ultra vires.

*Same; Same; Violation of Substantive Due Process.* – Substantive due process will be violated since the Commission will have no basis to support the grant of exemption.

### **FACTS:**

The RTWPB XI issued Wage Order No. RB-XI-16 granting a P21.00 daily wage increase to all minimum wage workers and employees in the private sector in the region. Section 11 of the wage order provided that no exemption from compliance therewith shall be allowed except those excluded from the coverage of said wage order as provided for under Section 4 thereof, to wit: a. Household or domestic helpers; b. Family drivers; c. Persons employed in the personal services of another; d. Workers in registered Barangay Micro Business Enterprises.

Petitioner-Appellant filed an exemption application from Wage Order No. RB-XI-16 but the Board did not give due course to the application for the reason that it had no legal basis to grant the exemption, there being no exemption provision in Wage Order No. RB XI-16.

### **ISSUES:**

1. Whether or not the Board erred in not giving due course to the petitioner-appellant's exemption application.
2. Whether or not the Commission can grant exemption to Petitioner-Appellant Gillamac's Marketing, Inc. using as basis the amended Rules of Exemption even if Wage Order No. RB XI-16 has no exemption provision.

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### **HELD:**

The Board did not err in not giving due course to the Petitioner-Appellant's exemption application for lack of legal basis. The grant of exemption from the application/implementation of wage order is not automatic but requires the presence of express provision in Wage Orders allowing an exemption from compliance with the mandated wage increase granted in the Wage Orders. In this case, Wage Order No. RB XI-16 issued by the Board and affirmed by the Commission on 4 August 2010, does not allow the filing of exemption from compliance therewith (Section 11). Therefore, the Board was merely applying the provisions of Wage Order No. RB XI-16 when it did not grant exemption to Petitioner-Appellant.

The Commission emphasized that in the absence of exemption provision in a Wage Order, it cannot grant exemption to Petitioner-Appellant for the following reasons:

1. The Commission has no jurisdiction to grant exemption from compliance with a Wage Order if said Wage Order does not provide for exemption. Jurisdiction over a subject matter is conferred by law and not by the parties action or conduct. (*Felicitas M. Machado and Marcelino P. Machado vs. Ricardo L. Gatdula, Commission on the Settlement of Land Problems, and Irineo S. Paz, Sheriff IV, Office of the Provincial Sheriff, San Pedro, Laguna, G.R. No. 156287, February 16, 2010 citing Spouses Vargas v. Spouses Caminas, G.R. Nos. 12, 2008, 554 SCRA 305, 317; Metromedia Times Corporation v. Pastorin, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; Dy v. National Labor Relations Commission, 229 Phil. 234, 242 [1986]*). Pursuant to Republic Act No. 6727 including the Rules on Minimum Wage Fixing and Rules on Exemption issued by the Commission, the power of whether or not to provide an

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In the absence of an exemption provision in Wage Order No. RB XI-16, the grant of exemption on appeal to Petitioner-Appellant will constitute an ultra vires act. As held by the Supreme Court in *Pirovano vs. Dela Rama*, 96 Phil. 360, the powers of a corporation are limited to those expressly given it by law and those implied or necessary arising from the nature of the powers and rights so expressly given. If a corporation acts outside of the scope of its articles of incorporation, it is acting ultra vires.

2. Substantive due process will be violated since the Commission will have no basis to support the grant of exemption.

Appeal dismissed for lack of merit.

*Trasmonte (Chairperson-Designate), Paderanga (Vice-Chairperson), Bagtas (Commissioner), and Lagunzad III (NWPC Executive Director) voted to dismiss the appeal.*

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*Diwa, Floro, Rondain (Commissioners), dissented.*

**In a resolution dated 25 March 2011, the Commission also DENIED the motion for reconsideration of Gillamac's Marketing, Inc. for lack of merit there being no new and cogent issue adduced by the latter. Decision of the Commission dated 17 January 2011 was affirmed.**

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