

SECOND DIVISION

[G.R. No. 122932, June 17, 1997]

JOY BROTHERS, INC., PETITIONER, VS. NATIONAL WAGES AND PRODUCTIVITY COMMISSION, RESPONDENT.

R E S O L U T I O N

ROMERO, J.:

The instant petition for *certiorari* requires an interpretation of the exemption provisions pertinent to Wage Order No. NCR-03 and a determination of whether or not petitioner corporation falls within the exemption for distressed establishments. The assailed Decision is that of the National Wages and Productivity Commission promulgated August 29, 1995 in NWPC Case No. E-95-065, "In Re: Application for Exemption from Wage Order No. NCR-03, Joy Brothers Inc., Applicant, Joy Brothers Inc. Monthly Employees Chapter, Oppositor."

Wage Order No. NCR-03, providing for a twenty-seven peso wage increase for all private sector workers and employees in the National Capital Region receiving one hundred fifty-four pesos (P154.00) and below daily, was approved November 29, 1993.^[1] On February 14, 1994, petitioner applied for exemption from said wage order on the ground that it was a distressed establishment.

On June 7, 1994, the Regional Tripartite Wages and Productivity Board (hereinafter referred to as the Board) denied petitioner's application for exemption after holding that the corporation accumulated profits amounting to P38,381.80 for the period under review.^[2] Petitioner's motion for reconsideration was likewise denied by the Wages and Productivity Board on January 5, 1995.^[3]

On appeal to the National Wages and Productivity Commission, (the NWPC or respondent Commission) petitioner was again denied relief. In its Decision dated August 29, 1995 the Commission held that "a careful evaluation of the financial statements and other pertinent documents submitted on record revealed that the appellant registered accumulated profits of P38,381.80 for the years ending 31 December 1991 and 1992 and interim period January to September 1993."^[4] Consequently, the earlier Orders of the Board were affirmed.

Hence, this petition for *certiorari* where an exemption as a distressed establishment is insisted upon. More specifically, petitioner contends that the interim period to be reckoned with is from January 1, 1993 to December 15, 1993 and not merely up to September 30, 1993 as held by respondent Commission. Significantly, the period up to December 31, 1993 will reflect losses in petitioner corporation's books, but not if the covered interim period is only up to September 30, 1993.

Under Section 5 of Wage Order No. NCR-03, distressed firms, as defined in the

NWPC Revised Guidelines on Exemption may be exempted from the provisions of the Order upon application with and due determination of the Board.^[5] NWPC Guidelines No. 01, Series of 1992, providing for the Revised Guidelines on Exemption indicate the criteria to qualify for exemption as follows:

“3. For Distressed Establishments:

a. In the case of a stock corporation, partnership, single proprietorship, non-stock, non-profit organization or cooperative engaged in a business activity or charging fees for its services -

a.1 When accumulated losses for the last 2 full accounting periods and interim period, if any, immediately preceding the effectivity of the Order have impaired by at least 25 percent the:

- Paid-up capital at the end of the last full accounting period preceding the effectivity of the Order, in the case of corporations:

- Total invested capital at the beginning of the last full accounting period preceding the effectivity of the Order in the case of partnerships and single proprietorships.

a.1.1 Establishments operating for less than two (2) years may be granted exemption when accumulated losses for said period have impaired by at least 25% the paid-up capital or total invested capital, as the case may be.”^[6]

Section 8, paragraph A, of the Rules Implementing Wage Order No. NCR-03 provides that exemption from compliance with the wage increase may be granted to distressed establishments whose paid-up capital has been impaired by at least twenty-five percent (25%) or which registers capital deficiency or negative net worth.

The last two full accounting periods here are 1991 and 1992, for which years petitioner incurred net profits of P53,607.00 and P60,188.00, respectively.^[7] If, as petitioner maintains, the unaudited financial figures for the entire 1993 (up to December 31, 1993) are taken into consideration, all of a sudden petitioner incurs a net loss of P5,260,273.00. Said loss impairs its paid-up capital for the year 1993 (P15,142,531.00) by 34% or more than the 25% required by the exemption provisions aforequoted. However, respondent Commission and the Board held that using September 30, 1993 as the cut-off date for the interim period, petitioner even realizes a profit amounting to P38,381.80.

Since Wage Order No. NCR-03 was published on December 1, 1993 and thus became effective on December 16, 1993,^[8] the coverage of the interim period for the year 1993 is the time frame at issue herein. Petitioner suggests that since the wage order took effect on December 16, 1993, the interim period referred to by the implementing rules ends on December 15, 1993.^[9] Initially, however, petitioner contended that said interim period ends on December 31, 1993.^[10] Petitioner adds that “interim period” has been misinterpreted to mean “partial accounting period,” i.e. from January 1, 1993 to September 30, 1993.

The Revised Guidelines on Exemption further provides that the following documents