



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

ANGELINA VILLANUEVA,  
*Petitioner,*

G.R. No. 209516

Present:

GESMUNDO, C.J.,  
*Chairperson,*  
HERNANDO,  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, JJ.

- versus -

HONORABLE COURT OF  
APPEALS, NINTH DIVISION,  
NATIONAL LABOR  
RELATIONS COMMISSION,  
FIRST DIVISION,  
UNIVERSITY OF THE EAST,  
and the Members of the Board of  
Trustees of the University of the  
East, namely: Chairman P.O.  
DOMINGO, (deceased) and now  
replaced by LUCIO TAN, JAIME  
J. BAUTISTA, DAVID O. CHUA,  
JOSEFINA CORTES,  
CORAZON DELA PAZ, P.  
SIERVO DIZON, CARMELITA  
MATEO, ANDRES NARVASA,  
JOSE NGAW, CORNELIO  
PERALTA, WILSON YOUNG  
and DR. ESTER GARCIA,  
*Respondents.*

Promulgated:

JAN 17 2023

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**DECISION**

**HERNANDO, J.:**

This resolves the Petition for *Certiorari*<sup>1</sup> assailing the May 31, 2013 Decision<sup>2</sup> and the August 30, 2013 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 117993, denying petitioner Angelina Villanueva's Petition<sup>4</sup> for *certiorari* and Motion for Reconsideration,<sup>5</sup> respectively. The appellate court ruled that the National Labor Relations Commission (NLRC) did not commit grave abuse of discretion in ruling that petitioner was not entitled to her requested retirement differential pay.<sup>6</sup>

**Antecedents**

In 1970, petitioner, a lawyer and a certified public accountant, was employed by private respondent University of the East (UE) as a regular full-time faculty member in the College of Business Administration. After 23 years of service, she optionally retired in 1993.<sup>7</sup>

Immediately following her optional retirement, petitioner was appointed as College Secretary in the College of Law of the same university, and later on as Associate Dean. During her tenure as College Secretary and Associate Dean, petitioner also served as a part-time lecturer in the College of Law, engaged on a semester-to-semester basis, and with a maximum teaching load of 12 units per semester.<sup>8</sup> In her contracts as part-time lecturer, it was stipulated that she was not entitled to the benefits available to regular faculty members, including retirement gratuity, pursuant to the Collective Bargaining Agreement (CBA) between UE and the UE Faculty Association.<sup>9</sup>

In 2005, petitioner compulsorily retired as Associate Dean after reaching 65 years of age. Accordingly, she sought for the payment of her retirement benefits, which the university computed on the basis of the current hourly rate of a faculty member in the College of Business Administration with a teaching load of 24 units—*i.e.*, PHP 224.51. The computation yielded a total amount of PHP627,279.79, which petitioner duly received. However, as she was unsatisfied with use of the PHP 224.51 rate, petitioner sought for a re-

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<sup>1</sup> *Rollo*, pp. 3-26.

<sup>2</sup> *Id.* at 133-139. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Mario V. Lopez (now a Member of this Court).

<sup>3</sup> *Id.* at 148-149. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Mario V. Lopez (now a Member of this Court).

<sup>4</sup> *Id.* at 84-98.

<sup>5</sup> *Id.* at 140-147.

<sup>6</sup> *Id.* at 138.

<sup>7</sup> *Id.* at 134.

<sup>8</sup> *Id.*

<sup>9</sup> *Records*, pp. 61-84.

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computation. She argued that the pay should be based on the hourly rate of a regular faculty member at the College of Law with the same teaching load of 24 units—*i.e.*, PHP 532.35. If petitioner's computation would be followed, she would be entitled to a retirement differential pay of PHP 1,016,610.84.<sup>10</sup>

After some time, UE denied petitioner's request, citing its benevolent "One Retirement Policy" embodied in Board Resolution No. 75-8-86.<sup>11</sup> The board resolution allows faculty members who have optionally retired but are later on appointed to administrative positions to receive higher retirement benefits by reckoning their length of service from their first engagement as faculty members up to their tenure as administrative officials.<sup>12</sup> Under the board resolution, retirement pay of covered employees shall be computed either "on the basis of teaching" or "on the basis of the service as an administrative official," at the rate obtaining on the time of retirement, whichever would yield the higher retirement benefits.<sup>13</sup>

According to the university, since the use of the current rate of a faculty member in the College of Business Administration would yield higher benefits compared to that of an Associate Dean (petitioner's regular position at the time of her retirement), the former rate should be used in the computation of petitioner's retirement pay. The rate of a regular faculty member in the College of Law cannot be used, since petitioner's engagement as such was merely contractual and on a per semester basis following university rules, and because it is impossible for petitioner to hold two regular *plantilla* positions at the same time.<sup>14</sup>

Unsatisfied, petitioner filed a Complaint,<sup>15</sup> arguing (1) that her rate as a faculty member in the College of Law should be used as basis in computing her retirement pay because she is considered a regular faculty member in the College of Law based on the four-fold test and based on the Court's ruling in *St. Theresita's Academy v. National Labor Relations Commission*<sup>16</sup> (*St. Theresita's Academy*); (2) that the use of her rate as Associate Dean contravenes Board Resolution No. 75-8-86 which provides that retirement pay shall be in accordance with the faculty benefits prevailing at the time of retirement; and (3) that UE acted in bad faith in requiring her to retire from the College of Business Administration and in delaying the resolution of her claim for differential retirement benefits.<sup>17</sup>

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<sup>10</sup> *Rollo*, p. 134.

<sup>11</sup> Records, pp. 32-33.

<sup>12</sup> *Rollo*, p. 150.

<sup>13</sup> *Id.*

<sup>14</sup> Records, pp. 32-33.

<sup>15</sup> *Id.* at 4-9.

<sup>16</sup> 289 Phil. 629 (1992).

<sup>17</sup> Records, pp. 6-8.

### Ruling of the Labor Arbiter

The Labor Arbiter ruled in favor of petitioner and ordered UE to pay her differential pay, *viz.*:

WHEREFORE, premises considered, judgment is rendered declaring the computation of complainant's retirement benefits to be incorrect and in violation of the pertinent University retirement policy (Board Resolution No. 75-8-86). Concomitantly, respondents are ordered to pay complainant differential retirement benefit in the amount of ONE MILLION SIXTEEN THOUSAND SIX HUNDRED TEN & 84/100 PESOS (P1,016,610.84) plus interest of Twelve Percent (12%) per annum from June 16, 2005 until fully paid.

Moreover, respondents are ordered to pay complainant moral and exemplary damages of TWO HUNDRED THOUSAND PESOS (P200,000.00) and attorney's fees equivalent to TEN PERCENT (10%) of the total judgment award.

SO ORDERED.<sup>18</sup>

The arbiter held that petitioner is entitled to differential pay because computing her retirement benefits on the basis of teaching in the College of Law would yield higher benefits than computing on the basis of her service as an administrative official; because under the board resolution, retirement benefits shall be computed in accordance with the faculty benefits obtaining at the time of retirement and here, petitioner held a faculty member position in the College of Law at the time of her retirement; because in *St. Theresita's Academy*, the Court held that re-employed retirees acquire permanency by law on the very first day of their engagement; and because under the Labor Code,<sup>19</sup> petitioner is already considered a regular faculty member in the College of Law because she was engaged to perform activities which are usually necessary or desirable in the usual business of UE.<sup>20</sup>

Thus, UE's appeal.<sup>21</sup>

### Ruling of the National Labor Relations Commission

The NLRC reversed the ruling of the arbiter and dismissed the Complaint,<sup>22</sup> *viz.*:

<sup>18</sup> *Rollo*, pp. 39-40. Penned by Labor Arbiter Madjayran H. Ajan.

<sup>19</sup> Presidential Decree No. 442, entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE." Approved: May 1, 1974.

<sup>20</sup> *Rollo*, pp. 34-39.

<sup>21</sup> *Id.* at 41-57.

<sup>22</sup> Records, pp. 4-9.

**WHEREFORE**, the labor arbiter's decision is SET ASIDE and the complaint is dismissed for lack of merit.

SO ORDERED.<sup>23</sup>

The NLRC held that after petitioner's retirement as a regular faculty member in the College of Business Administration, her administrative position as College Secretary and later on as Associate Dean in the College of Law became her main connection to the university; that her full-time *plantilla* position precluded her from holding another *plantilla* position; that petitioner's teaching assignment in the College of Law was contractual, part-time, and on a semester-to-semester basis only; that her teaching work was rendered after office hours and limited to a load of 12 units only; that petitioner's work as part-time lecturer was not shown to be part and parcel of her regular functions as Associate Dean in the College of Law; and that petitioner would receive a higher pay if the rate of a current faculty member in the College of Business Administration would be used, as compared to that of an Associate Dean.<sup>24</sup>

Petitioner filed a Motion for Reconsideration<sup>25</sup> but this was denied by the Commission.<sup>26</sup>

Hence, her Petition<sup>27</sup> before the CA.

### **Ruling of the Court of Appeals**

The appellate court sustained the NLRC, *viz.*:

**WHEREFORE**, premises considered, this Petition for Certiorari is **DISMISSED**. Consequently, the assailed Resolutions **STAND**.

SO ORDERED.<sup>28</sup>

The CA held that under Board Resolution No. 75-8-86, petitioner's retirement pay was correctly based on the current hourly rate of a faculty member in the College of Business Administration because basing it on such rate would yield higher benefits than basing it on that of an administrative official or Associate Dean; that petitioner's retirement pay cannot be based on her rate as lecturer in the College of Law since the same was merely contractual

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<sup>23</sup> *Rollo*, p. 81. Penned by Commissioner Romeo L. Go and concurred in by Commissioner Perlita B. Velasco. Presiding Commissioner Gerardo C. Nograles took no part.

<sup>24</sup> *Id.* at 79-81.

<sup>25</sup> *Records*, pp. 449-461.

<sup>26</sup> *Rollo*, pp. 82-83. Penned by Commissioner Romeo L. Go and concurred in by Commissioner Perlita B. Velasco. Presiding Commissioner Gerardo C. Nograles took no part

<sup>27</sup> *Id.* at 84-98.

<sup>28</sup> *Id.* at 138.

and on a semester-to-semester basis; and that consequently, the NLRC did not commit grave abuse of discretion in dismissing the Complaint.<sup>29</sup>

Petitioner once again filed a Motion for Reconsideration<sup>30</sup> but this was denied by the appellate court.<sup>31</sup>

Thus, this Petition for *Certiorari*<sup>32</sup> under Rule 65 of the Rules of Court.

### Issue

Did the appellate court err in sustaining the NLRC?

### Our Ruling

The Petition should be dismissed.

### On procedural matters

It is basic that the special civil action of *certiorari* is a remedy available only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. When appeal is available, the action will not prosper even if the ascribed error is lack or excess of jurisdiction or grave abuse of discretion.<sup>33</sup>

Here, petitioner resorted to *certiorari* by alleging that the appellate court acted in grave abuse of discretion in rendering the assailed Decision. Yet, a plain, speedy, and adequate remedy was available to her for purposes of challenging the disposition of the CA, *i.e.*, through a petition for review on *certiorari* under Rule 45 of the Rules of Court, *viz.*:

Section 1. *Filing with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

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<sup>29</sup> Id. at 137-138.

<sup>30</sup> Id. at 140-147.

<sup>31</sup> Id. at 148-149.

<sup>32</sup> Id. at 3-26.

<sup>33</sup> *Penon v. Commission on Elections Constituted as the National Board of Canvassers for Senators and Party-List Representatives*, G.R. No. 211636, September 28, 2021. Citations omitted.

Petitioner's counsel explained that the resort to *certiorari* was made in view of the lack of time to file the appeal, in turn caused by the "volume and pressure of work in his law firm, without the assistance of his associate, who went on an indefinite leave x x x."<sup>34</sup> However, such circumstance does not belong to the exceptions to the rule, which are (1) when public welfare and the advancement of public policy dictates, (2) when the broader interest of justice so requires, (3) when the writs issued are void, and (4) when the questioned order amounts to an oppressive exercise of judicial authority.<sup>35</sup>

As it is settled that a party cannot substitute the special civil action of *certiorari* for the lost remedy of ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies,<sup>36</sup> the Petition deserves to be dismissed.

### On substantive matters

Even if the Court disregards petitioner's procedural lapse, the Petition would still fail on the merits. Board Resolution No. 75-8-86 is clear on how the retirement pay of an optionally retired faculty member who was subsequently appointed to an administrative position, should be computed, *viz.*:

That for purposes of determining eligibility for retirement of **faculty members who are subsequently appointed to administrative positions, either with, or without teaching with pay**, length of service shall be taken as the total number of years of service they have actually rendered both as faculty member and administrative official, provided that the minimum requirement of 10 years of service shall have been met; and, provided, further, that **the retirement benefits shall be computed separately, one on the basis of the teaching and the other on the basis of the service as administrative official, in accordance with the scale of retirement benefits obtaining at the time of retirement**, [to] be computed on the basis of full-load or part-time teaching, [*i.e.*,] as if the faculty member continued on full-load or part-time teaching up to the end of the service on the basis of his [or her] rate and in accordance with the faculty benefits obtaining at the time of retirement, **whichever is higher**; [w]here an administrative official resigns from his [or her] position to assume full-time teaching, the retirement benefits shall be computed separately, one on the basis of the teaching and the other on the basis of the service as administrative official, in accordance with the scale of retirement benefits obtaining at the time of retirement, provided that the condition on the minimum requirement of 10 years of total service and the continuity of the last two (2) years of the teaching service must be satisfied.<sup>37</sup> (Emphasis supplied)

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<sup>34</sup> *Rollo*, p. 190.

<sup>35</sup> *Butuan Development Corp. v. Court of Appeals (21st Division)*, 808 Phil. 443, 452 (2017), citing *Tanenglian v. Lorenzo*, 573 Phil. 472, 488 (2008).

<sup>36</sup> *Id.* at 451, citing *Spouses Leynes v. Court of Appeals*, 655 Phil. 25, 43 (2011).

<sup>37</sup> *Rollo*, p. 150.

Based on the provision, retirement pay shall be computed either “on the basis of teaching” or “on the basis of the service as an administrative official,” at the rate obtaining at the time of retirement, whichever would yield the higher retirement benefits. Read with the preceding and succeeding clauses, “on the basis of teaching” clearly refers to the employee’s position as a faculty member before his or her appointment to the subsequent administrative post. Hence, under the provision, petitioner’s pay could only be based on two rates: *first*, on the rate of a faculty member in the College of Business Administration prevailing at the time of petitioner’s retirement, and *second*, on the rate of an Associate Dean in the College of Law also prevailing at the time of petitioner’s retirement.

Since the prevailing rate of a faculty member in the College of Business Administration would yield a higher retirement pay, UE correctly used such rate. Petitioner’s pay cannot be based on the rate of a regular College of Law faculty member because the board resolution is clear and unambiguous.

Besides, in the contracts petitioner signed as part-time College of Law lecturer, she expressly agreed that she will not be entitled to the benefits availing to regular faculty members, including retirement gratuity, pursuant to the CBA between UE and the UE Faculty Association, *viz.*:

It is clearly understood that Atty. Villanueva shall not be entitled to **benefits available to regular faculty members** under the Collective Bargaining Agreement between the UNIVERSITY and the UE FACULTY ASSOCIATION such as but not limited to **retirement gratuity**, vacation, sick and sabbatical leaves, fellowships, research grants, group insurance, school privileges, hospitalization, and others.<sup>38</sup> (Emphasis supplied)

Hence, when petitioner agreed to be a part-time lecturer, she knew that her position as such would not entitle her to retirement benefits in accordance with the CBA, as it is her full-time Associate Dean *plantilla* item that entitles her to the same. Absent any showing that petitioner involuntarily signed all 25 contracts, or that the contracts are invalid, they should be upheld.

### **On the applicability of *St. Theresita’s Academy***

Petitioner insists that her retirement pay should be based on her rate as lecturer in the College of Law because she is already considered a regular faculty member pursuant to *St. Theresita’s Academy*, which holds that rehired

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<sup>38</sup> Records, pp. 61-68. See also pp. 69-84, where it was uniformly stated in the contracts that “it is clearly understood that Atty. Villanueva shall not be entitled to benefits available to regular faculty members under the Collective Bargaining Agreement between the UNIVERSITY and the UE FACULTY ASSOCIATION such as but not limited to retirement gratuity x x x.”

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employees acquire a regular status upon rehiring. However, *St. Theresito's Academy* is not applicable because it involves substantially different facts. In *St. Theresito's Academy*, the complainant was rehired as a faculty member, which is her previous post, while here, petitioner was rehired not as a faculty member but as an administrative official. Unlike the complainant in *St. Theresito's Academy*, petitioner here is claiming to have held two regular *plantilla* positions upon rehiring, *i.e.*, as a regular faculty member and as an Associate Dean. As observed by UE, petitioner cannot hold both positions at the exact same time.<sup>39</sup>

In any case, it is unfair for petitioner to insist on the payment of retirement pay equivalent to that availing to a regular College of Law faculty member with a teaching load of 24 units. The records show that petitioner's teaching load had a maximum of 12 units only, in accordance with the university policy that if administrative officials were given teaching loads, the same cannot exceed 12 units<sup>40</sup> and their teaching engagement shall be merely contractual and on a semester-to-semester basis only.<sup>41</sup> Petitioner's argument that her service as Associate Dean more than makes up for the deficit does not persuade considering that she was already compensated for such service.

#### **On petitioner's invocation of the Labor Code**

Petitioner argues that if UE's computation would be upheld, her pay would be less than what she would have received if the Labor Code provisions on retirement pay were applied.<sup>42</sup> However, petitioner based her Labor Code computation not only on her salary as Associate Dean, but also on her honorarium as part-time lecturer<sup>43</sup>—even though her contracts expressly provided that her position as part-time lecturer would not entitle her to retirement gratuity.<sup>44</sup> Again, petitioner never claimed involuntariness in her repeated act of signing all 25 contracts, and neither had she assailed the validity of the same. Hence, the contracts should be given effect.

Further, as explained by UE, without the university's One Retirement Policy, petitioner's retirement pay would ordinarily be based on her rate as an Associate Dean only, considering that she had already optionally retired as a faculty member (and presumably received retirement pay therefor). In this way, the One Retirement Policy actually benefits petitioner by basing her pay on the

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<sup>39</sup> *Rollo*, p. 171.

<sup>40</sup> Records, pp. 21-23.

<sup>41</sup> *Id.* at 29-30.

<sup>42</sup> *Rollo*, p. 14.

<sup>43</sup> *Id.*

<sup>44</sup> Records, pp. 61-84.

prevailing rate of a regular College of Business Administration faculty member because this would yield a higher retirement pay, even though she had long severed her employment as such.<sup>45</sup>

### **On the applicability of the One Retirement Policy**

Petitioner disputes the application of the One Retirement Policy on the ground that it should apply only in case of a faculty member subsequently appointed to an administrative position in the same, not different, college.<sup>46</sup> However, it is a well-known rule in statutory construction that where the law does not distinguish, neither should the Court.<sup>47</sup> As petitioner failed to adduce any sufficient reason to justify the distinction, the policy should be applied to all faculty members who have retired but were subsequently appointed to administrative positions, regardless of which college they were subsequently assigned.

### **On the applicability of other university issuances**

Petitioner also argues that two university issuances, Board Resolution No. 84-2-4<sup>48</sup> and Academic Circular No. 6, series of 1996,<sup>49</sup> support her position that her pay should be based on the rate of a regular College of Law faculty member.<sup>50</sup> However, Board Resolution No. 84-2-4 only allows “management personnel who have been authorized to teach with pay outside their administrative working hours, the option to retire from teaching without prejudice to their continuing in their management positions x x x.”<sup>51</sup> It does not provide for computation of retirement pay. Hence, it is not applicable.

As to Academic Circular No. 6, series of 1996, while it recognizes that a faculty member appointed on a semester-to-semester may possibly retain or be given a regular faculty status “according to existing University policy,”<sup>52</sup> petitioner failed to point to such existing university policy. Unfortunately, the records indicate that she is not a regular College of Law faculty member.<sup>53</sup> Hence, her position cannot be sustained.

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<sup>45</sup> *Rollo*, p. 170.

<sup>46</sup> *Id.* at 15-17.

<sup>47</sup> See *Patricio v. Dario III*, 537 Phil. 595, 605 (2006).

<sup>48</sup> *Rollo*, p. 151.

<sup>49</sup> *Id.* at 152-153.

<sup>50</sup> *Id.* at 15-16.

<sup>51</sup> *Id.* at 151.

<sup>52</sup> *Id.* at 153.

<sup>53</sup> See records, pp. 61-84.

**On UE's failure to submit a surety bond that is effective until the final resolution of the case**

Petitioner finally insists that the NLRC acted in grave abuse of discretion in not dismissing UE's appeal despite its failure to submit a surety bond that is effective until the case is finally decided.<sup>54</sup> True, UE's bond provided for an effectivity of one year only<sup>55</sup> and thus, the NLRC should have ordinarily dismissed the appeal.<sup>56</sup> However, its discretion to resolve the case on the merits will not invalidate the ruling since the rules provide that the condition on the effectivity of the bond is deemed incorporated in the contract, viz.:

SECTION 6. *Bond.*— In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

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A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.<sup>57</sup> (Emphasis supplied)

Hence, regardless of the date of effectivity provided in the bond, under the rules, it is effective until the final resolution of the case.

In fine, UE's computation should be upheld because the university's One Retirement Policy is clear in providing how petitioner's retirement pay should be computed, and because petitioner failed to adduce substantial reason why the policy should not be applied in her case.

**WHEREFORE,** the Petition is **DISMISSED**. The May 31, 2013 Decision and the August 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 117993 are **AFFIRMED**.

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<sup>54</sup> *Rollo*, pp. 18-19.

<sup>55</sup> Records, pp. 286, 425.

<sup>56</sup> THE 2005 REVISED RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION, Rule VI, Sec. 6.

<sup>57</sup> THE 2005 REVISED RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION, Rule VI, Sec. 6.

**SO ORDERED.**



**RAMON PAUL L. HERNANDO**  
*Associate Justice*

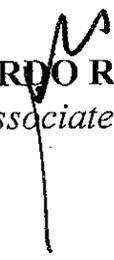
WE CONCUR:



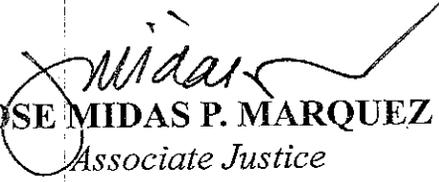
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*



**RODIL V. ZALAMEDA**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*



**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
ALEXANDER G. GESMUNDO  
*Chief Justice*

