

[J-26A-2019 and J-26B-2019] [MO:Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

TAWNY L. CHEVALIER AND ANDREW
HILLER, ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY
SITUATED,

Appellees

V.

GENERAL NUTRITION CENTERS, INC.
AND GENERAL NUTRITION
CORPORATION,

Appellants

TAWNY L. CHEVALIER AND ANDREW
HILLER, ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY
SITUATED,

Appellees

V.

GENERAL NUTRITION CENTERS, INC.,
AND GENERAL NUTRITION
CORPORATION,

Appellants

: No. 22 WAP 2018
:
:
: Appeal from the Order of the Superior
: Court entered December 22, 2017 at
: No. 1437 WDA 2016, affirming in part
: and reversing in part the Judgment of
: the Court of Common Pleas of
: Allegheny County entered December
: 29, 2016 at No. GD 13-017194 and
: remanding.

: ARGUED: April 10, 2019

: No. 23 WAP 2018
:
:
: Appeal from the Order of the Superior
: Court entered December 22, 2017 at
: No. 92 WDA 2017, affirming in part
: and reversing in part the Judgment of
: the Court of Common Pleas of
: Allegheny County entered December
: 29, 2016 at No. GD 13-017194 and
: remanding.

: ARGUED: April 10, 2019

CONCURRING OPINION

JUSTICE MUNDY

DECIDED: NOVEMBER 20, 2019

Subject to certain exceptions not relevant here, the Pennsylvania Minimum Wage Act (PMWA) requires, “[e]mploye[e]s shall be paid for overtime not less than one and one-half times the employe[e]’s regular rate as prescribed in regulations promulgated by the secretary[.]” 43 P.S. § 333.104(c). In this case, we granted allowance of appeal to consider whether an employer satisfies its obligation under the PMWA by compensating an employee at an additional one-half times the employee’s regular rate for all hours worked in excess of 40, in addition to the employee’s salary, when the regular rate “is determined by dividing the employee’s salary by all hours worked in a week[.]” *Chevalier v. General Nutrition Centers, Inc.*, 189 A.3d 386 (Pa. 2018).

The Majority points out that, at this stage, the parties agree with the Superior Court that the regular rate should be calculated by using the actual hours worked method. Maj. Op. at 23. Accordingly, for the purpose of this decision, we must assume that the “actual hours worked” formula is permissible under the PMWA. As the issue is not before this Court, I acknowledge that a future case may present the issue, and this Court may reach a contrary result.

In this case, the trial court astutely observed that under this paradigm of calculating an employee’s regular rate, “for each extra hour of overtime the employee works, the hourly rate declines.” Trial Court Op., 10/20/14, at 19. Given this calculation serves to diminish an employee’s earnings, I agree with the Majority and Justice Donohue that the use of the 1.5 multiplier best effectuates the stated intent of the PMWA to increase the wages of workers in this Commonwealth as a matter of statutory construction. See Majority Op. at 29-30; Concurring and Dissenting Op., Donohue, J. at 3; *accord* 1 Pa.C.S. § 1921 (a) (“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.”); 43 P.S. § 333.101 (Declaration of policy). Accordingly, I join the Majority’s analysis in that regard. However, I share Justice

Donohue's view to the extent that the silence by the Secretary on this question and the absence of a clarifying regulation is not evidence of the intent of the Department of Labor and Industry to apply the 1.5 multiplier.

For these reasons, I respectfully concur in the result reached by the Majority.