SELECTED SUPREME COURT DECISIONS ON CONTRACTING

En Banc
[G.R. No. L-8967. May 31, 1956.]
ANASTACIO VIAÑA, petitioner, vs. ALEJO AL-LAGADAN and FILOMENA PIGA.

DECISION

CONCEPCION, J.

"In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct — although the latter is the most important element (35 Am. Jur. 445)."

En Banc
G.R. No. L-19124, November 18, 1967

INVESTMENT PLANNING CORPORATION OF THE PHILIPPINES, *petitioner-appellant*, vs. SOCIAL SECURITY SYSTEM, *respondent-appellee*.

DECISION

MAKALINTAL, J. P.:

xxx. "These representatives are in reality commission agents. The uncontradicted testimony of petitioner's lone witness, who was its assistant sales director, is that these agents are recruited and trained by him particularly for the job of selling "Filipinas Mutual Fund" shares, made to undergo a test after such training and, if successful, are given license to practice by the Securities and Exchange Commission. They then execute an agreement with petitioner with respect to the sale of FMF shares to the general public. Among the features of said agreement which respondent Commission considered pertinent to the issue are: (a) an agent is paid compensation for services in the form of commission; (b) in the event of death or resignation he or his legal representative shall be paid the balance of the commission corresponding to him; (c) he is subject to a set of rules and regulations governing the performance of his duties under the agreement; (d) he is required to put up a performance bond; and (e) his services may be terminated for certain causes. At the same time the Commission found from the evidence and so stated in its resolution that the agents "are not required to report (for work) at any time; they do not have to devote their time exclusively to or work solely for petitioner; the time and the effort they spend in their work depend entirely upon their own will and initiative; they are not required to account for their time

nor submit a record of their activities; they shoulder their own selling expenses as well as transportation; and they are paid their commission based on a certain percentage of their sales." The record also reveals that the commission earned by an agent on his sales is directly deducted by him from the amount he receives from the investor and turns over to the company the amount invested after such deduction is made. The majority of the agents are regularly employed elsewhere – either in the government or in private enterprises."

xxx.

"We are convinced from the facts that the work of petitioner's agents or registered representatives more nearly approximates that of an independent contractor than that of an employee. The latter is paid for the labor he performs, that is, for the acts of which such labor consists; the former is paid for the result thereof. This Court has recognized the distinction in Chartered Bank: et. al. vs. Constantino, 56 Phil. 717, where it said: "On this point, the distinguished commentator Manresa in referring to Article 1588 of the (Spanish) Civil Code has the following to say . . . . .

"The code does not begin by giving a general idea of the subject matter, but by fixing its two distinguishing characteristics."

"But such an idea was not absolutely necessary because the difference between the lease of work by contract or for a fixed price and the lease of services of hired servants or laborers is sufficiently clear. In the latter, the direct object of the contract is the lessor's labor; the acts in which such labor consists, performed for the benefit of the lessee, are taken into account immediately. In work done by contract or for a fixed price, the lessor's labor is indeed an important, a most important factor, but it is not the direct object of the contract, nor is it immediately taken into account. The object which the parties consider, which they bear in mind in order to determine the cause of the contract, and upon which they really give their consent, is not the labor but its result, the complete and finished work, the aggregate of the lessor's acts embodied in something material, which is the useful object of the contract. . ." (Manresa Commentarios al Codigo Civil, Vol. X, 3d ed., pp. 774-775)."

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"The specific question of when there is "employer-employee relationship" for purposes of the Social Security Act has not yet been settled in this jurisdiction by any decision of this Court. But in other connections wherein the term is used the test that has been generally applied is the so-called control test, that is, whether the "employer" controls or has reserved the right to control the "employee" not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished."

xxx.

" "While it is not necessary to explore the full effect of this enactment in the determination of the existence of employer-employee relationships arising in the future, we think it can fairly be said that the intent of Congress was to say that in determining in a given case whether under the Social Security Act such a relationship exists, the common-law elements of such a relationship, as recognized and applied by the courts generally at the time of the passage of the Act, were the standard to be used …"

"Under the common-law principles as to tests of the independent contractor relationship discussed in Master and Servant, and applicable in determining coverage under the Social Security Act and related taxing provisions, the significant factor in determining the relationship of the parties is the presence or absence of a supervisory power to control the method and detail of performance of the service, and the degree to which the principal ma intervene to exercise such control, the presence of such power of control being indicative of an employment relationship and the absence of such power being indicative of the relationship of independent contractor. In other words, the test of existence of the relationship of independent contractor, which relationship is not taxable under the Social Security Act and related provisions, is whether the one who is claimed to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer except as to the result of the work." (81 C.J.S., Sec. 5, pp. 24-25); See also Millard's, Inc. vs. United States, 146 F. Supp. 385; Schmidt vs. Ewing, 108 F. Supp. 505; Rambin vs. Ewing, 106 F. Supp. 268."

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" " . . . A long line of decisions holds that commissions sales representatives are not employees within the coverage of the Social Security Act. The underlying circumstances of the relationship between the sales representatives and company often vary widely from case to case, but commission sales representatives have uniformly been held to be outside the Social Security Act."

"Considering the similarity between the definition of "employee" in the Federal Social Security Act (U.S.) as amended and its definitions in our own Social Security Act, and considering further that the local statute is admittedly patterned after that of the United States, the decisions of American courts on the matter before us may well be accorded persuasive force.

"The logic of the situation indeed dictates that where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find that the relationship of employer and employee exists.

"We have examined the contract form between petitioner and its registered representatives and founding nothing therein which would indicate that the latter are under the control of the former in respect of the means and methods they employ in the

performance of their work. The fact that for certain specified causes the relationship may be terminated (e.g. failure to meet the annual quota of sales, inability to make any sales production during a six-month period, conduct detrimental to petitioner, etc.) does not mean, that, such control exists, for the causes of termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees."

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First Division
G.R. No. 97008-09. July 23, 1993.

VIRGNIA G. NERI and JOSE CABELIN, *petitioners*, vs. NATIONAL LABOR RELATIONS COMMISSION, FAR EAST BANK & TRUST COMPANY (FEBTC) and BUILDING CARE CORPORATION, *respondents*.
R.L. Salcedo & Improso Law Office, for petitioners
Bengzon, Zarraga, Narciso, Cudala, Pecson, Bengzon & Jimenez for Building Care Corp.
Bautista, Picazo, Buyco, Tan & Fider for respondent FEBTC.

DECISION

Bellosillo, J p:

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"Respondent BBC need not prove that it made investments in the form of tools, equipment, machineries, work premises, among others, because it had established that it has sufficient capitalization. The Labor Arbiter and the NLRC both determined that BBC had a capital stock of P1 million fully subscribed and paid for. 7 BCC is therefore a highly capitalized venture and cannot be deemed engaged in "labor-only" contracting.

"It is well-settled that there is "labor-only" contracting where: (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and, (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.

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"Based on the foregoing, BCC cannot be considered a "labor-only" contractor because it has substantial capital. While there may be no evidence that it has investment in the form of tools, equipment, machineries, work premises, among others, it is enough that it has substantial capital, as was established before the Labor Arbiter as well as the NLRC. In other words, the law does not require both substantial capital and

investment in the form of tools, equipment, machineries, etc. This is clear from the use of conjunction "or." If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used. But, having established that it has substantial capital, it was no longer necessary for BCC to further adduce evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for it to refute petitioners' contention that the activities they perform are directly related to the principal business of respondent bank.

"Be that as it may, the Court has already taken judicial notice of the general practice adopted in several government and private institutions and industries of hiring independent contractors to perform special services. These services range from janitorial, security, and even technical or other specific services such as those directly related to the principal business of the employer, nevertheless, they are not necessary in the conduct of the principal business of the employer."

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xxx. "Building Care Corporation is a big firm which services, among others, a university, an international bank, a big local bank, a hospital center, government agencies, etc. It is a qualified independent contractor. The public respondent correctly ruled against petitioner's contentions … (emphasis supplied).

"Even assuming ex argumenti that petitioners were performing activities directly related to the principal business of the bank, under the "right of control" test they must still be considered employees of BCC. In the case of petitioner Neri, it is admitted that FEBTC issued a job description which detailed her functions as a radio/telex operator. However, a cursory reading of the job description shows that what was sought to be controlled by FEBTC was actually the end-result of the task, e.g., that the daily incoming and outgoing telegraphic transfer of funds received and relayed by her, respectively, tallies with that of the register. The guidelines were laid down merely to ensure that the desired end-result was achieved. It did not, however, tell Neri how the radio/telex machine should be operated."xxx.

xxx. "The record is replete with evidence disclosing that BCC maintained supervision and control over petitioners through its Housekeeping and Special Services Division: petitioners reported for work wearing the prescribed uniform of BCC; leaves of absence were filed directly with BCC; and salaries were drawn only from BCC.

"As a matter of fact, Neri even secured a certification from BCC on 16 May 1986 that she was employed by the latter."

xxx.

"More importantly, under the terms and conditions of the contract, it was BCC alone which had the power to reassign petitioners; Their deployment to FEBTC was not

subject to the bank's acceptance. Cabelin was promoted to messenger because the FEBTC branch manager promised BCC that two (2) additional janitors would be hired from the company if the promotion was to be effected. Furthermore, BCC was to be paid in lump sum unlike in the situation in Philippine Bank of Communications where the contractor, CESI, was to be paid at a daily rate on a per person basis. And the contract therein stipulated that the CESI was merely to provide manpower that would render temporary services. In the case at bar, Neri and Cabelin were to perform specific special services. Consequently, petitioners cannot be held to be employees of FEBTC as BCC "carries an independent business" and undertakes the performance of its contract with various clients according to its "own manner method, free from the control and supervision" of its principals in al matters "except as to the results thereof." "

FIRST DIVISION
[G.R. No. 124055, June 8, 2000.]

ROLANDO E. ESCARIO, NESTOR ANDRES, CESAR AMPER, LORETO BALDEMOR, EDUARDO BOLONIA, ROMEO E. BOLONIA, ANICETO CADESIM, JOEL CATAPANG, NESTRO DELA CRUZ, EDUARDO DUNGO ESCARIO REY, ELIZALDE ESTASIO, CAROLINO M. FABIAN, RENATO JANER, EMER B. LIQUIGAN, ALEJANDRO MABAWAD, FERNANDO M. MAGTIBAY, DOMINADOR B. MALLILLIN, NOEL B. MANILA, VIRGIO A. MANIO, ROMEO M. MENDOZA, TIMOTEO NOTARION, FREDERICK RAMOS, JOSEPH REYES, JESSIE SEVILLA, NOEL STO. DOMINGO, DODJIE TAJONERA, JOSELITO TIONLOC, ARNEL UMALI, MAURLIE C. VIBAR, ROLANDO ZALDUA, RODOLFO TUAZON, TEODORO LUGADA, MAURING MANUEL, MARCIANO VERGARA, JR., ARMANDO IBASCO, CAYETANO IBASCO, LEONILO MEDINA, JOSELITO ODO, MELCHOR BUELA, GOMER GOMEZ, HENRY PONCE, RAMON ORTIZ, JR., ANTONIO MUARES, JR., MARIO DIZER, REYNANTE PEJO, ARNALDO RAFAEL, NELSON BERUELA, AUGUSTO RAMOS, RODOLFO VALENTIN, ANTONIO CACAM, VERNON VELASQUEZ, NORMAN VALLO, ALEJANDRO ORTIZ, ROSANO VALLO, ANDREW ESPINOSA, EDGAR CABARDO, FIDELES REYES, EDGARDO FRANCISCO, FERNANDO VILLARUEL, LEOPOLDO OLEGARIO, OSCAR SORIANO, GARY RELOS, DANTE IRANZO, RONALDO BACOLOR, RONALD ESGUERA, VICTOR ALVAREZ, JOSE MARCELO, DANTE ESTRELLADO, MELQUIADES ANGELES, GREGORIO TALABONG, ALBERT BALAO, ALBERT CANLAS, CAMILO VELASCO, PONTINO CHRISTOPHER, WELFREDO RAMOS, REYNALDO RODRIGUEZ, RAZ GARIZALDE, MIGUEL TUAZON, ROBERTO SANTOS, AND RICARDO MORTEL., ***petitioners vs.*** **NATIONAL LABOR RELATIONS COMMISSION, CALIFORNIA MANUFACTURING CO., INC. AND DONNA LOUISE ADVERTISING AND MARKETING ASSOCIATES INCORPORATED,** ***respondents*****.**

DECISION

KAPUNAN, J. p:

xxx.

"Petitioners' reliance on the Tabas case is misplaced. In said case, we ruled that therein contractor Livi Manpower Services was a mere placement agency and had simply supplied herein petitioner with the manpower necessary to carry out the company's merchandising activity. We, however, further stated that:

"It would have been different, be believe, had Livi been discretely a promotions firm, and that California had hired it to perform the latter's merchandising activities. For then, Livi would have been truly the employer of its employees and California its client….

"In other words, CMC can validly farm out its merchandising activities to a legitimate independent contractor.

"There is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

(a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment machineries, work premises, among others; and
(b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.

"In contrast, there is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work or service is to be performed or completed within or outside the premises of the principal. In this arrangement the following conditions must concur:

(a) The contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the result thereof; and

(b) The contractor has substantial capital or investment in the form of tools, equipment, machineries (sic), work premises, and other materials which are necessary in the conduct of his business.

"In the recent case of Alexander Vinoya vs. NLRC et al., this Court ruled that in order to be considered an independent contractor it is not enough to show substantial

capitalization or investment in the form of tools, equipment, machinery and work premises. In addition, the following factors need to be considered: (a) whether the contractor is carrying on an independent business; (b) the nature and extent of work; (c) the skill required; (d) the term and duration of the relationship; (e) the right to assign the performance of specified pieces of work; (f) the control and supervision of the workers; (g) the power of the employer with respect to the hiring, firing and payment of workers of the contractor; (h) the control of the premises; (i) the duty to supply premises, tools, appliances, materials, and labor; and (j) the mode, manner and terms of payment.

"Based on the foregoing criterion, we find that D.L. Admark is legitimate independent contractor.

"Among the circumstances that tend to establish the status of D.L. Admark as a legitimate job contractor are:

1. The SEC registration certificate of D.L. Admark states that it is a firm engaged in promotional, advertising, marketing and merchandising activities.
2. The service contract between CMC and D.L. Admark clearly provides that the agreement is for the supply of sales promoting merchandising services rather than one of manpower placement.
3. D.L. Admark was actually engaged in several activities, such as advertising, publication, promotions, marketing and merchandising. It had several merchandising contracts with companies like Purefoods, Corona Supply, Nabisco Biscuits, and Licron. It was likewise engaged in the publication business as evidenced by its magazine the "Phenonmenon."
4. It has its own capital assets to carry out its promotion business. It then had current assets amounting to P6 million and is therefore a highly capitalized venture. It had an authorized capital stock of P500,000.00 . It owned several motor vehicles and other tools materials and equipment to ser vice its clients. It paid rentals of P30,020 for the office space it occupied.

"Moreover, by applying the four-fold test used in determining employer-employee relationship, the status of D.L. Admark as the true employer of petitioners is further established. The elements of this test are (1) the selection and engagement of employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.

"As regards the first element, petitioners themselves admitted that they were selected and hired by D.L. Admark.

"As to the second element, the NLRC noted D.L. Admark was able to present in evidence the payroll of petitioners, sample SSS contribution forms filed and submitted by D.L. Admark to the SSS, an the application for employment by R. de los Reyes, all tending to show that D.L. Admark was paying for the petitioners' salaries. In contrast, petitioners did not submit an iota of evidence that it was CMC who paid for their salaries. The fact that the agreement between CMC and D.L. Admark contains the billing rate and

cost breakdown of payment for core merchandisers and coordinators does not in any way establish that it was CMC who was paying for their salaries. As correctly pointed out by both CMC 16 and the Office of the Solicitor General, such cost breakdown is a standard content of service contracts designed to insure that under the contract, employees of the job contractor will receive benefits mandated by law.

"Neither did the petitioners prove the existence of the third element. Again petitioners admitted that it was D.L. Admark who terminated their employment.

"To prove the fourth and most important element of control, petitioners presented the memoranda of CMC's sales and promotions manager. The Labor Arbiter found that these memos "indubitably show that the complaints were under the supervision and control of the CMC people." However, as correctly pointed out by the NLRC, a careful scrutiny of the documents adverted to, will reveal that nothing therein would remotely suggest that CMC was supervising and controlling the work of the petitioners: … The memorandum (Exhibits "B") were addressed to the store or grocery owners telling them about the forthcoming sales promotions of CMS products. While in one of the memorandums a statement is made that "our merchandisers and demonstrators will be assigned to pack the premium with your stocks in the shelves…, yet it does not necessarily mean to refer to the complainants, as they claim, since CMC has also regular merchandisers and demonstrators. It would be different if in the memorandums were sent or given to the complainants and their duties or roles in the said sales campaign are therein defined. It is also noted that in one of the memorandums it was addressed to: "All regular merchandisers/ demonstrators."… we are not convinced that the documents sufficiently prove employer-employee relationship between complainants and respondents CMC.

"The Office of the Solicitor General, likewise notes that the documents fail to show anything that would remotely suggest control and supervision exercised by CMC, over petitioners on the matter on how they should perform their work. The memoranda were addressed either to the store owners or "regular" merchandisers and demonstrators of CMC.

"Thus petitioners, who files a complaint for regularization against respondent CMC, thereby, conceding that they are not regular employees of the latter, cannot validly claim to be ones referred to in said memos.

"Having proven the existence of an employer-employee relationship between D.L. Admark and petitioners, it is no longer relevant to determine whether the activities performed by the latter are necessary or desirable to the usual business or trade of CMC."

xxx

FIRST DIVISION
[G.R. No. 101539, September 4, 1992]

CECILE DE OCAMPO, WILFREDO SAN PEDRO, REYNALDO DOVICAR, BIEN MEDINA, CESAR ABRIOL, ARTEMIO CASTRO, LARRY ALCANTARA, MICHAEL NOCUM, JESUS DEO, JR., PUBLEO DARAG, EDUARDO BINO, EDUARDO VELES, ERVIN DAVID, PROSTACIO PEREZ, NOEL VICTOR, TIMOTEO MIJARES, ALEX RAMOS, REYNALDO CRUZ, MODESTO MAMESIA, DOMINGO SILARDE, RENATO PUERTAS, RENE VILLANUEVA, MARCELO DELA CRUZ and HERNANDO LEGASPI, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and BALIWAG MAHOGANY CORPORATION, *respondents*.

DECISION

MEDIALDIA, J. p:

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"Turning to the legality of the termination of three (3) of the individual petitioners, petitioners content that the company acted in bad faith when it terminated the services of the three mechanics because the positions held by them were not at all abolished but merely given to Gemac Machineries.

"On the contrary, the company stresses that when it contracted the services of Gemac Machineries for the maintenance and repair of its industrial machinery, it only adopted a cost-saving and cost-consciousness program in order to improve production efficiency.

"We sustain respondent Commission's finding that petitioners' dismissal was justified by redundancy due to superfluity and hence legal.

"We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirement of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions maybe the outcome of a number of factors, such as overhiring or workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business. (Wiltshire File Co., Inc. v. National Labor Relations Commission, G.R. No. 83349, February 7, 1991, 193 SCRA 665, 672).

"The reduction of the number of workers in a company made necessary by the introduction of the services of Gemac Machineries in the maintenance and repair of its industrial machinery is justified. There can be no question as to the right of the company to contract the services of Gemac Machineries to replace the services rendered by the terminated mechanics with a view to effecting more economic and efficient methods of production.

"In the same case, we ruled that "(t)he characterization of (petitioners') services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgement on the part of (private respondent) company. The wisdom or soundness of such characterization or decision was not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown."" xxx

"In contracting the services of Gemac Machineries, as part of the company's cost-saving program, the services rendered by the mechanics became redundant and superfluous, and therefore, properly terminable. The company merely exercised its business judgement or management prerogative. And in the absence of any proof that the management abused its discretion or acted in a malicious or arbitrary manner, the court will not interfere with the exercise of such prerogative."

xxx

FIRST DIVISION
G. R. No. L-66598. December 19, 1986.

PHILIPPINE BANK OF COMMUNICATIONS, petitioner, vs. THE NATIONAL LABOR RELATIONS COMMISSION, HONORABLE ARBITER TEODORICO L. DOGELIO, and RICARDO ORPIADA, respondents.
Marcelino Lontok, Jr. for respondents.

DECISION

FELICIANO, J p:

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"In the present case, Orpiada was not previously selected by the bank. Rather, Orpiada was assigned to work in the bank by CESI. Orpiada could not have found his way to the bank's offices had he not been hired by CESI and later assigned to work in the bank's offices. The selection of Orpiada by CESI was, however, subject to the acceptance of the bank and the bank did accept him. As will be seen shortly, CESI had hired Orpiada from the outside world precisely for the purpose of assigning or seconding him to the bank.

"With respect to the payment of Orpiada's wages, the bank remitted to CESI amounts corresponding to the "daily service rate" of Orpiada and the others similarly assigned by CESI to the bank, and CESI paid to Orpiada and the others the wages pertaining to them. It is not clear from the record whether the amounts remitted to CESI included some factor for CESI's fees, it seems safe to assume that CESI had required some amount in excess of the wages paid by CESI to Orpiada and the others to cover its own overhead expenses and provide some contribution to profit. The bank alleged that

Orpiada did not appear in its payroll and this allegation was not denied by Orpiada. Indeed, the Labor Arbiter in Case No R04-184-76B found that Orpiada was listed in the payroll of CESI, with CESI deducting amounts representing his Medicare and Social Security System premiums. A copy of the CESI payroll was presented, strangely enough, by Orpiada himself to Regional Office No. IV.

"In respect of the power of dismissal, we note that the bank requested CESI to withdraw Orpiada's assignment and that CEDI did, in fact, withdraw such assignment . Upon such withdrawal from his assignment with the bank, Orpiada was also terminated by CESI. Indeed, it appears clear that Orpiada was hired by CESI specifically for assignment with the bank and that upon his withdrawal from such assignment upon request of the bank, Orpiada's employment with CESI was also severed, until some other client of CESI showed up in the horizon to which Orpiada could once more be assigned."

xxx.

"Turning to the power of control Orpiada's conduct, it should be noted immediately that Orpiada performed his functions within the bank's premises, and not within the office premises of CESI. As such, Orpiada must have been subject to at least the same control and supervision that the bank exercises over any other persons physically within its premises and rendering services to or for the bank, in other words, any employee or staff member of the bank. It seems unreasonable to suppose that the bank would have allowed Orpiada and the other persons assigned to the bank by CESI to remain within the bank's premises and there render services to the bank, without subjecting them to a substantial measure of control and supervision, whether in respect of the manner in which they discharged their functions, or in respect of the end results of their functions or activities, or both.

xxx. "The second ("payment of wages") and third ("power of dismissal") factors suggest that the relevant relationship was that subsisting between CESI and Orpiada, a relationship conceded by CESI to be one between employer and employee. Upon the other hand, the first ("selection and engagement") and fourth ("control of employee's conduct") factors indicate that some direct relationship did exist between Orpiada and the bank and that such relationship may be assimilated to employment." xxx.

xxx.

"Under the general rule set out in the first and second paragraph of Article 106, an employer who enters into a contract with a contractor for the performance of work for the employer, does not thereby create an employer-employee relationship between himself and the employees of the contractor. Thus, the employees of the contractor remain the contractor's employees and his alone. Nevertheless, when a contractor fails to pay the wages of his employees in accordance with the Labor Code, the employer who contracted out the job to the contractor becomes jointly and severally liable with his contractor to the employees of the latter "to the extent of the work performed under the contract" as if such employer were the employer of the contractor's employees. The law itself, in other words, establishes an employer-employee relationship between the employer and the job

contractor's employees for a limited purpose, i.e., in order to ensure that the latter get paid the wages due to them.

"A similar situation obtains where there is "labor only" contracting. The "labor-only" contractor –i.e. "the person or intermediary"- is considered "merely as an agent of the employer." The employer is made by the statute responsible to the employees of the "labor-only" contractor as if such employees had been directly employed by the employer. Thus, where "labor-only contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the "labor-only" contractor, this time for a comprehensive purpose: "employer for purposes of this Code, to present any violation or circumvention of any provision of this Code." The law in effect holds both the employer and the "labor-only" contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code."

xxx.

"We are unable to agree with the bank and CESI on this score. The definition of "labor-only" contracting in Rule VIII, Book III of the Implementing Rules must be read in conjunction with the definition of job contracting given in Section 8 of the same Rules.

"The undertaking given by CESI in favor of the bank was not the performance of a specific job – for instance, the carriage and delivery of documents and parcels to the addresses thereof. There appear to be many companies today which perform this discrete service, companies with their own personnel who pick up documents and packages from the offices of a client or customer, and who deliver such materials utilizing their delivery vans or motorcycles to the addresses. In the present case, the undertaking of CESI was to provide its client – the bank – with a certain number of persons able to carry out the work of messengers. Such undertaking of CESI was complied with when the requisite number of persons were assigned or seconded to the petitioner bank. Orpiada utilized the premises and office equipment of the bank and not those of CESI. Messengerial work - the delivery of documents to designated persons whether within or without bank premises – is of course directly related to the day-to-day operations of the bank. Section 9(2) quoated above does not require for its applicability that the petitioner must be engaged in the delivery of items as a distinct and separate line of business.

"Succinctly put, CESI is not a parcel delivery company: as its name indicates, it is a recruitment and placement corporation placing bodies, as it were, in different client companies for longer or shorter periods of time." xxx

xxx.

"The bank urged that the letter agreement entered into with CESI was designed to enable the bank to obtain the temporary services of people necessary to enable the bank to cope with peak loads, to replace temporary workers who were out on vacation or sick

leave, and to handle specialized work. There is, of course, nothing illegal about hiring persons to carry out "a specific project or undertaking the completion or termination of which [was] determined at the time of the engagement of [the] employee, or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season" (Article 281, Labor Code). The letter agreement itself, however, merely required CESI to furnish the bank with eleven (11) messengers for "a contract period from January 19, 1976 —." The eleven (11) messengers were thus supposed to render "temporary" services for an indefinite or unstated period of time. Ricardo Orpiada himself was assigned to the bank's offices from 25 June 1975 and rendered services to the bank until sometime in October 1976, or a period of about sixteen months. Under the Labor Code, however, any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee (Article 281, Second paragraph). Assuming, therefore, that Orpiada could properly be regarded as a casual (as distinguished from a regular) employee of the bank, he became entitled to be regarded as a regular employee of the bank as soon as he had completed one year of service to the bank. Employers may not terminate the service of a regular employee except for a just cause or when authorized under the Labor Code (Article 280, Labor Code). It is not difficult to see that to uphold the contractual arrangement between the bank and CESI would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees and to enable them to keep their employees indefinitely on a temporary or casual status, thus to deny them security of tenure in their jobs. Article 106 of the Labor Code is precisely designed to prevent such a result.

"We hold that, in the circumstances of this case, CESI was engaged in "labor-only" contracting vis-à-vis the petitioner bank and in respect of Ricardo Orpiada, and that consequently, the petitioner bank is liable to Orpiada as if Orpiada had been directly employed not only by CESI but also by the bank." xxx

THIRD DIVISION
[G.R. No. 149011, June 28, 2005]

SAN MIGUEL CORPORATION, *petitioner, vs*. PROSPERO A. ABALLA, BONNY J. ABARING, EDWIN M. ADLA-ON, ALVIN C. ALCALDE, CELANIO D. ARROLLADO, EDDIE A. ARROLLADO, REYNALDO T. ASONG, RENE A. ASPERA, JOEL D. BALATERIA, JOSEPH D. BALALTERIA, JOSE JOLLEN BALLADOS, WILFREDO B. BASAS, EDWIN E. BEATINGO, SONNY V. BERONDO, CHRISTOPHER D. BRIONES, MARLON D. BRIONES, JOEL C. BOOC, ENRIQUE CABALIDA, DIOSCORO R. CAHINOD, ERNESTO P. CAHINOD, RENANTE S. CAHINOD, RUDERICK R. CALIXTON, RONILO C. CALVEZ, PANCHO CAÑETE, JUNNY CASTEL, JUDY S. CELESTE, ROMEO CHUA, DANILO COBRA, ARMANDO C. DEDOYCO, JOEY R. DELA CRUZ, JOHN D. DELFIN, FENELITO P. DEON, ARNEL C. DE PEDRO, ORLANDO DERDER, CLIFFORD A. DESPI, RAMIE A. DESPI, SR., VICTOR A. DESPI, ROLANDO L. DINGLE, ANTONIO D. DOLORFINO, LARRY DUMA-OP, NOEL DUMOL, CHITO L. DUNGOG, RODERICK C. DUQUEZA, ROMMEL

ESTREBOR, RIC E. GALPO, MANSUETO GILLE, MAXIMO L. HILA-US, GERARDO J. JIMENEZ, ROBERTO Y. HOFILEÑA, VICENTE INDENCIO, JONATHAN T. INVENTOR, PETER PAUL T. INVENTOR, JOEBERT G. LAGARTO, RENATO LAMINA, ALVIN LAS POBRES, ALBERT LAS POBRES, LEONARD LEMONCHITO, JERRY LIM, JOSE COLLY S. LUCERO, ROBERTO E. MARTIL, HERNANDO MATILLANO, VICENTE M. MATILLANO, TANNY C. MENDOZA, WILLIAM P. NAVARRO, WILSON P. NAVARRO, LEO A. OLVIDO, ROBERTO G. OTERO, BIENVENIDO C. PAROCHILIN, REYNALDO C. PAROCHILIN, RICKY PALANOG, BERNIE O. PILLO, ALBERTO O. PILLO, JOE-MARIE S. PUGNA, EDWIN G. RIBON, RAUL A. RUBIO, HENRY S. SAMILLANO, EDGAR SANTIAGO, ROLAND B. SANTILLANA, ROLDAN V. SAYAM, JOSEPH S. SAYSON, RENE SUARNABA, ELMAR TABLIGAN, JERRY D. TALITE, OSCAR TALITE, WINIFREDO TALITE, CAMILO N. TEMPOROSA, JOSE TEMPOROSA, RANDY TINGALA, TRISTAN A. TINGSON, ROGELIO TOMESA, DIONISE A. TORMIS, ADELINO C. VIYO, and JOSE JOFER C. VIYO and the COURT OF APPEALS, *respondents*.

DECISION

CARPIO-MORALES, *J:*

xxx

"SMC argues that Sunflower could not have been issued a certificate of registration as a cooperative if it had no substantial capital.

"While indeed Sunflower was issued Certificate of Registration No. ILO-875 on February 10, 1991 by the Cooperative Development Authority, this merely shows that it had at least P2,000.00 in paid-up share capital as mandated by Section 5 of Article 14 of Republic Act No. 6938, otherwise known as the Cooperative Code, which amount cannot be considered substantial capitalization.

"What appears is that Sunflower does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises and other materials to qualify it as a independent contractor.

"On the other hand, it is gathered that the lot, building, machineries and all other working tools utilized by private respondents in carrying out their tasks were owned and provided by SMC."

xxx

"Furthermore, Sunflower did not carry on a independent business or undertake the performance of its service contract according to its own manner and method, free

from the control and supervision of its principal, SMC, its apparent role having been merely to recruit persons to work for SMC.

"Thus, it is gathered from the evidence adduced by private respondents before the labor arbiter that their daily time records were signed by SMC supervisors Ike Puentebella, Joemel Haro, Joemari Raca, Erwin Tumonong, Edison Arguello, and Stephen Palabrica, which fact shows that SMS exercised the power of control and supervision over its employees. And control of the premises in which private respondents worked was by SMC. These tend to disprove the independence of the contractor.

"More. Private respondents had been working in the aqua processing plant inside the SMC compound alongside regular SMC shrimp processing workers performing identical jobs under the same SMS supervisors. This circumstance is another indicium of the existence of a labor-only contractorship.

"And as private respondents alleged in their Joint Affidavit which did not escape the observation of the CA, no showing to the contrary having been proffered by SMC, Sunflower did not cater to clients other than SMC, and with the closure of SMC's Bacolod Shrimp Processing Plant, Sunflower likewise ceased to exist. This Court's ruling in *San Miguel Corporaton v. MAERC Integrated Services, Inc*. is thus instructive."

xxx

"All the foregoing considerations affirm by more than substantial evidence the existence of an employer-employee relationship between SMC and private respondents."

xxx

"The law of course provides for two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.

"As for those of private respondents who were engaged in janitorial and messengerial tasks, they fall under the second category and are thus entitled to differential pay and benefits extended to other SMC regular employees from the day immediately following their first year of service."

xxx

THIRD DIVISION
[G.R. No. 81314, May 18, 1989.]

EAGLE SECURITY AGENCY, INC., *petitioner, vs.* NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER EDUARDO G. MAGNO,RODOLFO DEQUINA, AVELINO M. NARVAEZ, JACULO J. JOREME, ROLANDO N. VALENCIA, CLODUALDO N. ANGRA, JOSE SAMONTE, RUEL A. LAGASTOS, PRISCILO MALDO, JR., R.C. DELA CRUZ, JOSE AJEDA, JOSE ANASTACIO, LAURO ROBERTO, ISMAEL SALACATA, ULDARICO CAMU, JESUS CARILLO, and DIORITO BRAGA, *respondents.*

[G.R. No. 81447, May 18, 1989.]
PHILIPPINE TUBERCULOSIS SOCIETY, INC., *petitioner, vs.* NATIONAL LABOR RELATIONS COMMISSION, EAGLE SECURITY AGENCY, INC., RODOLFO V. DEQUINA, AVELINO M. NARVAEZ, JACULO J. JEROME, ROLANDO N. VALENCIA, CLODUALDO M. ANGRA, JOE SAMONTE, RUEL A. LAGASTOS, PRESCILO MALDO, JR., R.C. DELA CRUZ, JOSE AJEDA, HILARIO V. LLANES, NAPOLEON SAPOLE, WILLIAM ESTOSANE and AMANTE SOBRETODO, *respondents*.

DECISION

CORTES, J p :

xxx

"This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage [Article 99, Labor Code]. The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their wages should the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers' performance of any work, task, job or project, thus giving the workers ample protection as mandated by the 1987 Constitution [See Article II Sec. 18 and Article XIII Sec. 3].

"In the case at bar, it is beyond dispute that the security guards are the employees of EAGLE [See Article VII Sec. 2 of the Contract for Security Services; G.R. No. 81447, Rollo, p. 34]. That they were assigned to guard the premises of PTSI pursuant to the latter's contract with EAGLE and that neither of these two entities paid their wage and allowance increases under the subject wage orders are also admitted [See Labor Arbiter's Decision, p. 2' G.R. No. 81447, Rollo, p. 76]. Thus, the application of the aforecited provisions of the Labor code on joint and several liability of the principal and contractor is appropriate [See Del Rosario & Sons Logging Enterprises, Inc. v. NLRC, G.R. No. 64204, May 31, 1985, 136 SCRA 669].

"The solidary liability of PTSI and EAGLE, however, does not preclude the right of reimbursement from his co-debtor by the one who paid [See Article 1217, Civil Code].

It is with respect to this right of reimbursement that petitioners can find support in the aforecited contractual stipulation and Wage Order provision.

"The Wage Orders are explicit that payment of the increases are "to be borne" by the principal or client. "To be borne", however, does not mean that the principal, PTSI in this case would directly pay the security guards the wage and allowance increases because there is no privity of contract between them. The security guards' contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked to, among others, with the payment of their wages [See Article VII Sec. 3 of the Contract for Security Services, supra and Bautista v. Inciong, G.R. No 52824, March 16, 1988, 158 SCRA 665].

"On the other hand, these existed a contractual agreement between PTSI and EAGLE wherein the former availed of the security services provided by the latter. In return, the security agency collects from its client payment for its security services. This payment covers the wages for the security guards and also expenses for the supervision and training, the guards' bonds, firearms with ammunitions, uniforms and other equipments, accessories, tools, materials and supplies necessary for the maintenance of a security force.

"Premises considered, the security guards' immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Orders made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. What the Wage Orders require, therefore, is the amendment of the contract as to the consideration to cover the service contractor's payment of the increases mandated. In the end, therefore, ultimate liability for the payment of the increase rests with the principal.

"In view of the foregoing, the security guards should claim the amount of the increases from EAGLE. Under the Labor Code, in case the agency fails to pay them the amounts claimed, PTSI should be held solidarily liable with EAGLE [Articles 106, 107 and 109]. Should EAGLE pay, it can claim an adjustment from PTSI for an increase in consideration to cover the increases payable to the security guards.

"However, in the instant case, the contract for security services had already expired without being amended consonant with the Wage Orders. It is also apparent from a reading of a record that EAGLE does not now demand from PTSI any adjustment in the contract price and its main concern is freeing itself from liability. Given these peculiar circumstances, if PTSI pays the security guards, it cannot claim reimbursement from EAGLE. But in case it is EAGLE that pays them, the latter can claim reimbursement from PTSI in lieu of an adjustment, considering that the contract, had expired and had not been renewed.

"PTSI also alleges that it is exempt from payment under the subject Wage Orders because it is a public sector employer while the Wage Orders cover only employers and employees in the private sector [G.R. No. 81447, Petition, p. 9; Rollo, p. 10]. This is unmeritorious. The definition of a public sector employer relied upon by PTSI is relevant only for purposes of coverage under the Employees' Compensation. Moreover, the Labor Code provides that as used in Book Three, Title II on Wages, the term "employer" includes "the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions . . ." [Article 87 (b), Labor Code.]"

xxx.

FIRST DIVISION
G.R. No. 86010, October 3, 1989

LEOPOLDO GUARIN AND ONE HUNDRED TWENTY (120) OTHERS, petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION, LIPERCON SERVICES, INC. and/or NOVELTY PHILIPPINES, INC., respondents
Banzuela, Flores, Miralles, Raneses, Sy, Taquio and Associates for petitioners.
Corazon R. Paulino for respondent LSI
Ponce Enrile, Cayetano, Reyes & Manalastas for Novelty Philippines, Inc.

DECISION

GRIÑO-AQUINO, J p:

xxx.

"It is clear from the foregoing definitions that under the "Contract of Services" between Lipercon and Novelty, Lipercon was a "labor-only" contractor, hence, only an agent of Novelty to procure workers for the latter, the real employer."

xxx

"The law casts the burden on the contractor to prove that he/it has substantial capital, investments, tools, etc. The petitioners, on the other hand, need not prove the negative fact that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.

"The jobs assigned to the petitioners as mechanics, janitors, gardeners, firemen and grasscutters were directly related to the business of Novelty as a garment manufacturer. In the case of Philippine Bank of Communication vs. NLRC, 146 SCRA 347, we ruled that the work of a messenger is directly related to a bank's operations. In its Comment, Novelty contends that the services which are directly related to manufacturing garments are sewing, textile cutting, designs, dying, quality control,

personnel administration, accounting, finance, customs, delivery and similar other activities; and that allegedly, "[i]t is only by stretching the imagination that one may conclude that the services of janitors, janitresses, firemen, grasscutters, mechanics and helpers are directly related to the business of manufacturing garments." (p.78, Rollo). Not so, for the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines functioning properly, and firemen to look out for fires, are directly related to the daily operations of a garment factory. That fact is confirmed by Novelty's rehiring the workers or renewing the contract with Lipercon every year from 1983 to 1986, a period of three (3) years.

As Lipercon was a "labor-only" contractor, the workers it supplied Novelty became regular employees of the latter.

xxx

THIRD DIVISION
G. R. No. 119121, August 14, 1998.

NATIONAL POWER CORPORATION, petitioner, vs. COURT OF APPEALS, Fifteenth Division and PHESCO INCORPORATED, respondents.

DECISION

ROMERO, J p:

xxx

"Job (independent) contracting is present if the following conditions are met: (a) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and (b) the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business. Absent these requisites, what exists is a "labor-only" contract under which the person acting as contractor is considered merely a an agent or intermediary of the principal who is responsible to the workers in the same manner and to the same extent as if they had been direct employed by him. Taking into consideration the above distinction and the provisions of the "Memorandum of Understanding" entered into by PHESCO and NPC, were are convinced that PHESCO was engaged in "labor-only" contracting.

"It must be noted that under the Memorandum, NPC had mandate to approved the"critical path network and rate of expenditure to be undertaken by PHESCO were subject to confirmation by NPC. Then too, it cannot be ignored that if PHESCO enters into any sub-contract or lease, again NPC's concurrence is needed. Another

consideration is that even in the procurement of tools and equipment that will be used by PHESCO, NPC's favorable recommendation is still necessary before these tools and equipment can be purchased. Notably, it is NPC that will provide the money or funding that will be used by PHESCO to undertake the project. Furthermore, it must be emphasized that the project being undertaken by PHESCO, i.e., construction of power energy facilities, is related to NPC's principal business of power generation. In sum, NPC's control over PHESCO in matters concerning the performance of the latter's work is evident. It is enough that NPC has the right to wield such power to be considered as the employer.

"Under this factual milieu, there is no doubt that PHESCO was engaged in "labor-only" contracting vis-à-vis NPC and as such, it is considered merely an agent of the latter, In labor-only contracting, an employer-employee relationship between the principal employer and the employees of the "labor-only" contractor is created. Accordingly, the principal employer is responsible to the employees of the "labor-only" contractor as if such employees had been directly employed by the principal employer. Since PHESCO is only a "labor-only" contractor, the workers it supplied to NPC, including the driver of the ill-fated truck, should be considered as employees of NPC. After all, it is axiomatic that any person (the principal employer) who enters into an agreement with a job contractor, either for the performance of a specified work or for the supply of manpower, assumes responsibility over the employees of the latter."

xxx

"Given the above considerations, it is apparent that Article 2180 of the Civil Code and not the Labor Code will determine the liability of NPC in a civil suit for damages instituted by an injured person for any negligent act of the employees of the "labor-only" contractor. This is consistent with the ruling that a finding that an employer-employee relationship existed between the owner (principal contractor) and the "labor-only" contractor, including the latter's workers."

xxx

"In this regard, NPC's liability is direct, primary and solidary with PHESCO and the driver. Of course, NPC, if the judgment for damages is satisfied by it, shall have recourse against PHESCO and the driver who committed the negligence which gave rise to the action.

"Finally, NPC, even if it truly believed that it was not the employer of the driver, could still have disclaimed any liability had it raised the defense of due diligence in the selection or supervision of PHESCO and Ilumba."

xxx

FIRST DIVISION

G. R. No. 92777-78, March 13, 1991

ISAGANI ECAL, CRISOLOGO ECAL, NELSON BUENAOBRA, NARDING BANDOGELIO, WILMER ECHAGUE, ROGELIO CASTILLO, ALFREDO FERNANDO, OLIGARIO BIGATA, ROBERTO FERRER AND HONESTO TANAEL, represented by ISAGAI ECAL, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), JIMMY MATCHUKA AND HI-LINE TIMBER, INC. , respondents.
Armando A. San Antonio for petitioners.
Chicote, Abad & Macaisip Law Offices for private respondents.

DECISION

GANCAYCO, J p:

xxx

"To determine whether thee exists an employer-employee relationship, the four-way test should be applied, namely: (1) selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct – the last being the most important element."

xxx

"As to the matter of control, it would seem that petitioners were mostly left on their own to devise the most expeditious was of segregating lumber materials as to sizes and of loading and unloading the same in the chamber for drying. However, their task is performed within the work premises of Hi-Line, specifically at its Kiln Drying Section, so it cannot be said that no amount of control and supervision is exerted upon them by the company through their foremen, private respondent Matchuka and Clemente S. Sales. Moreover, the very nature of the task performed by petitioners requires very limited supervision as there are only so many ways of segregating lumber according to their sizes and of loading and unloading them in the dryer so that all that the company has to do is to check on the results of their work."

xxx

"Under the provisions of Article 106, paragraphs 1 and 2, an employer who enters into a contract with a contractor for the performance of work for the employer does not thereby establish an employer-employee relationship between himself and the employees of the contractor. The law itself, however, creates such a relationship when a contractor fails to pay the wages of his employees in accordance with the Labor Code, and only for this limited purpose, i.e. to ensure that the latter will be paid the wages due them."

xxx

""….The 'labor-only' contractor – i.e. 'the person or intermediary' – is considered 'merely as an agent of the employer.' The employer is made by the statute responsible to the employees of the 'labor-only' contractor as if such employee had been directly employed by the employer. Thus, where 'labor-only' contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the 'labor-only' contractor, this time for a comprehensive purpose: 'employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code. 'The law in effect holds both the employer and the 'labor-only' contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code.""

xxx

"Applying the foregoing provisions, the Court finds petitioner Isagani Ecal to be a "labor-only" contractor, a mere supplier of manpower to Hi-Line. Isagani Ecal was only a poor laborer at the time of his resignation on February 4, 1987 who cannot even afford to have his daughter treated for malnutrition. He resigned and became a supplier of laborers for Hi-Line, because he saw an opportunity for him to earn more than what he was earning while still in the payroll of the company. At the same time, he continued working for the company as a laborer at the kiln drying section. He definitely does not have sufficient capital to invest in tools and machineries. Private respondents, however, claim that the business contracted by Ecal did not require the use of tools, equipment and machineries and the contracted task had to be executed in the premises of Hi-Line. Precisely, the job assigned to petitioners has to be executed within the work premises of Hi-Line where they use the machineries and equipment of the company for the drying of lumber materials. Even the company's personnel officer Elizabeth Natividad admitted that Ecal resigned in order to supply manpower to the company on a task basis. 10 By the very allegations of private respondents, it is quite clear that Isagani Ecal only supplies manpower to Hi-Line within the context of "labor-only" contracting as defined by law. There is also no question that the task performed by petitioners is directly related to the business of Hi-Line. Petitioners were assigned to sort out the lumber materials whether wet or fresh kiln as to sizes and to carry them from the stockpile to the dryer where they are loaded for drying after which they are unloaded. The work of petitioners is an integral part of the operation of the sawmill of Hi-Line without which production and company sales will suffer.

"A finding that Isagani Ecal is a 'labor-only' contractor is equivalent to a finding that an employer-employee relationship exists between the company and Ecal including the latter's "contract workers" herein petitioners, the relationship being such as provided by the law itself."

xxx

SECOND DIVISION
[G.R. No. 106108. February 23, 1995.]

CABALAN PASTULAN NEGRITO LABOR ASSOCIATION (CAPANELA) AND JOSE ALVIZ, SR., petitioners, vs. NATIONAL LABOR RELATINS COMMISSION and FERNANDO SANCHEZ, respondents.

DECISION

REGALADO, J p:

xxx

"A careful reevaluation of the documentary evidence of record belies the finding that CAPANELA, through its president and co-petitioner, Jose Alviz, Sr., wielded control as an employer over private respondent. It will be noted that in his affidavit dated March 4, 1995, 25 private respondent himself declared that through the intervention of CAPANELA, by way of its June 13, 1989 letter 26 to Lt. Mark s, Kistner, he was cleared of the charge of larceny of U.S. government property. Thereafter, in an endorsement dated July 11, 1989 from the Director of Security, U.S. Navy Public Works Center, the recommendation for his reinstatement and the release of his gate pass to the Base was addressed to the Director, Investigation Section, U.S. Facility Security Department via the Director of the Courts Administration Division.

"This is only goes to show that CAPANELA had in fact no control over the continued employment of its members working in the U.S. naval base. For, after conducting its own investigation, CAPANELA could only intervene in behalf of its members facing charges through a recommendatory action or request for favourable consideration. It could not, on its own authority, exonerate such members from the charges, much less effect their reinstatement without the approval of the Base authorities. Interestingly, in order to comply with the labor arbiter's decision of June 24, 1991, CAPANELA even had to write to the Resident Officer-in-Charge of the Facility Support Contracts at Subic Bay recommending the reinstatement of private respondent to his former position.

"Under their arrangement, CAPANELA, through its officers, could only impose disciplinary sanctions upon its members for infractions of its own rules and regulations, to the extent of ousting a member from the association when called for under the circumstances. Nonetheless, such termination of membership in the association, which could result in curtailment of the privilege of working at the Base inasmuch as employment therein was conditioned upon membership in CAPANELA, it not equivalent to the illegal dismissal from employment contemplated in our labor laws. Petitioners, not being the employer, obviously could not arrogate unto themselves an employer's prerogatives of hiring and firing workers.

xxx

"Prevailing case law enumerates the essential elements of an employer-employee relationship as : (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control with regard to the means and methods by which the work is to be accomplished, with the power of control being the most determinative factor.

xxx

"Neither can petitioners be deemed to have been engaged in permissible job contracting under the law, for failure to satisfy the following prescribed conditions:

1. The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with performance of the work except as to the results thereof; and
2. The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.

"In the present case, the setup was that CAPANELA was merely tasked with organizing the Negritos to facilitate the orderly administration of work made available to them at the base facilities, that is, sorting scraps for recycling. CAPANELA recorded the attendance of its members and submitted the same to the Base authorities for the determination of wages due them and the preparation of the payroll. Payment of wages was coursed through CAPANELA but the funds therefore came from the offers of the Base. Once inside the Base, control over the means and methods of work was exercised by the Base authorities. Accordingly, CAPANELA functioned as just an administrator of its Negrito members employed at the Base.

"From the legal standpoint, CAPANELA's activities may at most be considered akin to that of labor-only contracting, albeit of a special or peculiar type, wherein the CAPANELA, operating like a contractor, merely acted as an agent or intermidiatery of the employer."

xxx

"While is it not denied that an association or a labor organization or union can at times be an employer insofar as people hired by it to dispose or its business are concerned, the situation in this case is altogether different. A proper and necessary distinction should be made between the employees of CAPANELA who actually attended to its myriad functions as an association and its members who were employed in the jobsite inside the Base vis-à-vis CAPANELA's relative position as the employer of the former and a mere administrator with respect to the latter."

xxx

"In light of the circumstance of this case, the Solicitor General further suggests two ways of writing finis to dispute, i.e., to reconsider public respondent's resolution of February 28, 1992 and April 30, 1992 and reinstate petitioner's appeal to give the latter a chance to prove CAPANELA's insolvency or proverty, or to reverse the decision of the labor arbiter on the ground that there was no employer-employee relationship between petitioner CAPANELA and private respondent Sanchez. Harmonizing our evaluation of the facts of this case with the greater interests of social justice, and considering that the parties involved are those upon whose socio-economic status we prefaced this opinion , we opt for the latter."