

TRUE NORTH MANUFACTURING SERVICES CORP. WORKERS ASSOCIATION (TNMSCWA) AND ITS MEMBERS ASSISTED BY LCP, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TRUST INTERNATIONAL ...

Ponente: DACUDAO, J.

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DACUDAO, J.:

Challenged in this special civil action for certiorari as tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction, are: (a) The Resolution[1] dated July 29, 2005 of the National Labor Relations Commission (NLRC), Second Division, in NLRC CA No. 041067-04, which affirmed in toto the Decision[2] of Labor Arbiter Reynaldo V. Abdon in NLRC Case Nos. RAB-III-03-5481-03, RAB-III-03-5544-03, and RAB-III-04-5602-03; and (b) The public respondent's Resolution,[3] dated November 24, 2005, denying the petitioners' motion for reconsideration thereon.

The antecedents leading to the filing of this petition, are set forth in the judgment of Labor Arbiter Reynaldo V. Abdon, as follows:

“Before this Office are complaints for illegal dismissal and unfair labor practice, with prayers for regularization and reinstatement, as well as claims for backwages, moral/exemplary damages and attorney’s fees.

“These are consolidated cases involving three (3) complaints filed by the True North Manufacturing Services Corporation Workers’ Association (Union, for brevity) on behalf of fifty-seven (57) of its members against Trust International Paper Corporation (TIPCO, for brevity) and its president, George Chua; and True North Manufacturing Services Corporation (TNMSC, for brevity) and its president, Elon Ting.

“In a nutshell, the union claims that individual complainants are, and should be considered as, regular employees of TNMSC and/or TIPCO. TNMSC, on the other hand, claims that individual complainants were formerly its project employees. TIPCO, for its part, argues that the individual complainants are not its employees but those of TNMSC, which it engaged to undertake improvement projects and rehabilitation works for its manufacturing plant.

“In their Position Paper, complainants allege that TNMSC is a company engaged in the business of providing labor and maintenance services to TIPCO, which is a paper manufacturer. They added that some of the individual complainants were initially hired by the former Masipag Services Corporation, some directly hired by TIPCO while others were directly hired by TNMSC. Throughout their employment, they were allegedly assigned at the maintenance department of TIPCO as welders, millwrights, electrician, instrument technicians, and helpers. Later, they were allegedly gathered as one under the supervision of True North with the same terms and conditions of employment.

“Complainants further alleged that they worked six (6) days a week and rendered overtime work when needed. They received their salaries from Bernard Castro, TIPCO Accountant and Pay Master of TNMSC. Despite this, they claimed that they were never accorded the status of regular employees, who were entitled to a higher pay

and greater benefits. On account of this discrimination, they decided to organize themselves into a union. Right after the issuance of a certificate of registration by the Department of Labor and Employment (Annex 'A' of complainants' Position Paper), they sent a letter to TNMSC informing it of the organization of the Union (Annex 'C' of complainants' Position Paper); Thereafter, complainants allege that the union was busted through the illegal dismissal of all the officers and members of the union. Thus, they were constrained to institute this action.

"On the other hand, TNMSC alleges that it is engaged in the business of providing technical and maintenance services to various clients. In rendering such service, TNMSC allegedly engaged a pool of employees on a project basis. Sample employment contracts were attached to TNMSC's Position Paper. For a time, there was a steady requirement for workers possessing the skills held by individual complainants. However, sometime in 1999, as a result of the unfavorable economic climate, TNMSC's business began to suffer reverses on account of a steady decrease in clients. Based on its audited financial statements for the years 1999, 2000 and 2001 (Exhibits '4', '5' and '6' of TNMSC's Position Paper), TNMSC incurred losses of P3,208,406.00, P14,158,774.00 and P17,977,075.00, respectively. The financial statements likewise showed that it had already incurred a capital deficiency on account of such continuous losses.

"TNMSC further alleges that TIPCO, its largest client, also began to suffer from the unfavorable business climate. In a letter dated December 2, 2002, Willy Chua, TIPCO's Resident Manager, informed TNMSC that it was terminating its contract with the latter (Exhibit '7' of TNMSC's Position Paper). TNMSC asked for a reconsideration of TIPCO's decision (Exhibit '8' of TNMSC's Position Paper). In response thereto, TIPCO extended the effectivity of its contract with TNMSC, but decided to finally terminate the said contract effective March 5, 1993. This development further reduced the projects being undertaken by TNMSC. Thus, the contracts of project employees that expired were no longer renewed. They were given notices of the conclusion of their contracts (Exhibits '10-series' of TNMSC's Position Paper). The termination of the TIPCO contract likewise compelled TNMSC to discharge its other project employees. Accordingly, the instant complaints were filed.

"For its part, TIPCO alleges that it is engaged in the business of manufacturing various paper products. Considering the fact that it had no technical expertise and equipment, it decided to engage TNMSC to undertake improvement projects and rehabilitation works for its manufacturing plant in Mabalacat, Pampanga. TIPCO and TNMSC entered into an Independent Services Retainership Agreement (Annex '1' of TIPCO's Position Paper). Under the said contract, TNMSC would undertake monthly rehabilitation works for various paper machines, the de-inking plant and TIPCO's Environmental Management Department. In consideration thereof, TIPCO undertook to pay TNMSC a lump sum fee of One Million Pesos (P1,000,000.00).

"Pursuant to the contract, TNMSC assigned its workers to TIPCO to perform the contracted works. Complainants were among the TNMSC workers assigned to TIPCO. These workers were selected, hired and trained by TNMSC. The latter also paid the wages of its employees and had the sole power to discipline and/or dismiss them. TNMSC likewise employed its own means and/or methods to achieve the desired results as TIPCO allegedly reserved only the right to assess the quality of the work performed by TNMSC. The latter had complete control and supervision over its own employees.

"However, TIPCO added that due to business losses resulting from tight financial and business conditions, it was constrained to terminate its contract with TNMSC. Thus, complainants ceased reporting at TIPCO's premises.

"On various dates in March and April 2003, the three (3) complaints were filed with this Office. Considering that the said complaints involved exactly the same facts, issues and substantially the same parties, the complaints were thus consolidated. Earnest efforts by this Office to broker an amicable settlement between the parties proved unsuccessful. Accordingly, the parties were directed to file their respective pleadings and evidence in support of their respective claims.[4]

On July 8, 2004, Labor Arbiter Reynaldo V. Abdon gave judgment,[5] disposing of the controversy, thus:

“WHEREFORE, premises considered, judgment is hereby rendered as follows:

“a. APPROVING the Quitclaims and consequently dismissing the complaints of individual complainants, Nestor S. Leanillo, Orlando C. Aranas, Edgar B. Dungca, Joel L. Gabionza, Pedro E. Sindy, Severino S. Castillon, Jr., Angelo E. Garcia and Darrel P. Malig, Sr. with prejudice; and

“b. DISMISSING the consolidated complaints for lack of merit and/or lack of jurisdiction;

“c. AWARDING financial assistance to individual complainants, except for those who have already settled their claims, of one-half month’s pay for every year of service. In relation thereto, TNMSC is hereby DIRECTED to pay individual complainants of the said financial assistance.

“SO ORDERED.

“City of San Fernando, Pampanga, July 8, 2004.

“(SGD.) REYNALDO V. ABDON

“Labor Arbiter”[6]

The Labor Arbiter found that:

“xxx, [t]he issues that must be resolved in these cases are as follows:

“1. Whether or not complainants were regular employees of respondents TNMSC and/or TIPCO;

“2. Whether or not complainants were illegally dismissed; and,

“3. Whether or not respondents were guilty of unfair labor practice.

“It is important to mention that while this case was being evaluated, this Office received welcome information that several individual complainants entered into an amicable settlement with TNMSC and thus executed Quitclaims on various dates before this Office. Those who executed the Quitclaims are the following:

“NAME DATE

“1. Nestor S. Leanillo July 11, 2003

“2. Orlando C. Aranas Aug. 06, 2003

“3. Edgar B. Dungca Sept. 9, 2003

“4. Joel L. Gabionza Sept. 9, 2003

“5. Pedro E. Sindy Sept. 9, 2003

“6. Severino S. Castillon, Jr. Sept. 16, 2003

“7. Angelo E. Garcia Sept. 16, 2003

“8. Darrel P. Malig, Sr. Oct. 15, 2003

“Considering that the Quitclaims were voluntarily executed before this Office and involved reasonable amounts, the same are hereby approved. The complaints of the foregoing individual complainants are hereby dismissed with prejudice.

“Going to the merits of the case, in establishing the parties’ respective rights and obligations under the above-narrated facts, this Office must first make a determination as regards the nature and relationship of the

parties.

“Complainants claim that they are, and should be considered as, regular employees of TNMSC and TIPCO. Respondents, however, contend that complainants were project employees of TNMSC, which is an independent contractor providing technical and maintenance services to TIPCO.

“The crucial issue that must first be determined is the individual complainants’ true and lawful employer. Indeed, they cannot possibly be employed by two (2) corporations at the same time unless there are compelling grounds to pierce the corporate veil. In this case, complainants have not prayed for, nor have they presented any evidence, for the piercing of such corporate fiction. They argue, however, that on account of the regularity of their functions, they should be considered as regular employees of TIPCO.

“It is clear that the relationship between TIPCO and TNMSC is essentially a contracting arrangement governed by Department Order No. 18-02, Series of 2002. In this regard, the law specifically recognizes the validity of contracting or sub-contracting arrangements [Section 1, D.O. No. 18-02]. Contracting or sub-contracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or sub-contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. [Section 4(a), D.O. No. 18-02].

“The law, however, expressly prohibits labor-only contracting. Article 106 of the Labor Code provides that there is labor-only contracting where 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 the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer.

“Section 5 of D.O. 18 more precisely defines labor-only contracting as an arrangement where the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

“i)The contractor or sub-contractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or sub-contractor are performing activities which are directly related to the main business of the principal; or

“ii) the contractor does not exercise the right of control over the performance of the work of the contractual employee.

“Applying the foregoing principles to the instant case, this Office is convinced, and so rules, that the contracting arrangement between TIPCO and TNMSC is valid and legal. It does not constitute labor-only contracting. In the first place TNMSC was engaged to provide a specific job, work or service within a predetermined period. In short, TNMSC was not engaged merely to provide manpower to TIPCO. Moreover, the fact that TNMSC possesses substantial capital and investment in tools and equipment cannot be denied. It has a subscribed capital of P2,500,000.00, as stated in its Articles of Incorporation (Annex ‘6’ of TIPCO’s Position Paper). Certainly, this is considered as a substantial investment. [Neri v. NLRC, G.R. Nos. 97008-97009, July 23, 1993]. As regards the investment in tools and equipment, the Balance Sheet of TNMSC (Exhibit ‘5’ of TNMSC’s Position Paper) reveals that it had tools and equipment with a substantial net value of P27,815,120.00 as of the end of the year 2000. Complainants’ argument that the financial statements bear no signatures and are, therefore, fabricated is unmeritorious given the fact that such statements bear the stamp, and has undergone the scrutiny, of the Bureau of Internal Revenue.

“Furthermore, we find that the work contracted out by TIPCO to TNMSC is not directly related to the main business of the former. Neither is it necessary or desirable to the usual business of TIPCO. The parties are all in agreement that TIPCO is an enterprise engaged in the business of manufacturing paper products. Therefore,

the maintenance of its manufacturing machines and equipment and the rehabilitation and improvement of existing infrastructure cannot be deemed directly related or necessary and indispensable to the manufacture of paper products. In fact, this Office will venture to take judicial notice of the fact that the maintenance of manufacturing machines, which are highly technical in nature, is sub-contracted by most companies to highly specialized repair and maintenance firms. Similarly, the rehabilitation and improvement of infrastructure are logically out-sourced to construction and/or maintenance corporations.

“Even applying the four (4) indices of the existence of an employer-employee relationship, the foregoing findings are well-grounded. These elements are: (1) the selection and engagement of the workers; (2) power of dismissal; (3) the payment of wages by whatever means; and (4) the power to control the worker’s conduct, with the latter assuming primacy in the overall consideration. [Jo vs. National Labor Relations Commission, 324 SCRA 437]. The records show that complainants were directly hired and engaged by TNMSC, as shown by their contracts of employment (Exhibits ‘1-Series’, ‘2-Series’ and ‘3-Series’ of TNMSC’s Position Paper). Complainants’ allegation that some of them were directly hired by TIPCO cannot be given merit for they failed to submit evidence to prove the same. In the same manner, complainants’ allegation that they received their salaries through Bernard Castro who is allegedly TIPCO’s accountant and TNMSC’s Pay Master is incredulous. Of course, the best evidence to prove such allegation would be a payslip showing Mr. Castro’s purported dual role. However, no such evidence was ever presented.

“In the matter of the power to dismiss, there is no question that TNMSC possessed, and in fact exercised, such power. It was TNMSC which issued the letter announcing complainants’ separation from service. Finally, as regards the power of control, there is no dispute among the parties about complainants’ functions and duties. They involve functions related to the maintenance of manufacturing machines and/or improvement and rehabilitation of existing infrastructure. There can be no dispute that these are not part of the competencies of TIPCO’s officers or supervisors who are trained specifically for the manufacture of paper products. Therefore, TIPCO could not have possibly controlled the manner by which individual complainants performed their technical functions. More importantly, complainants did not even attempt to argue or prove that TIPCO controlled and supervised the manner, means and methods by which they performed such functions.

“Complainant’s allegation that the contract between TIPCO and TNMSC is fabricated is unsubstantiated and fails to sway this Office. It is a settled doctrine that he who impugns the validity, authenticity and due execution of a contract has the burden to prove the same. In the absence of such proof, contracts enjoy the presumption of regularity. Indeed, ‘(b)asic and well established is the rule that the party alleging has the burden of substantiating his allegation by preponderance of evidence and any declaration or assertion not so substantiated is, at best, a self-serving statement or declaration, which is inadmissible in evidence for being hearsay.’ [Victory Liner, Inc. vs. Court of Appeals, 293 SCRA 378 (1998)].

“The allegation that Bruno Ambida was concurrently the HRD Manager of both TIPCO and TNMSC as shown by memoranda on the letterheads of both companies showing Mr. Amida’s signature (Annexes ‘A-1’, ‘A-2’ and ‘A-3’ of complainants’ Reply) was belied by an Affidavit from TIPCO’s Sheila May Alzaga (Annex ‘1’ of TIPCO’s Rejoinder). TIPCO denied the authenticity and due execution of the said memoranda written on its letterhead (Annexes ‘A-1’ and ‘A-3’ of complainants’ Reply) since the same were dated March 15, 1997. However, Ms. Alzaga, who was in charge of handling all documents from all TIPCO departments until December 1997, swore that until October 14, 1997, TIPCO’s HRD Manager was Alejandro E. Dy Reyes and not Mr. Ambida. A couple of memoranda were presented showing that Dy Reyes was indeed TIPCO’s HRD Manager at that time (Annexes ‘2’ and ‘3’ of TIPCO’s Rejoinder). Therefore, complainants have the burden of evidence to prove that the memoranda of Mr. Ambida written on TIPCO’s letterhead are authentic.

“Given the foregoing, it is clear that there is no employer-employee relationship between individual complainants and TIPCO. Such employment relationship, however, exists between the former and TNMSC. This Office, therefore, does not have jurisdiction over TIPCO in the absence of such an employment relationship. The question that begs to be answered relates to the kind and nature of such employment

relationship.

“Complainants argued that they rendered continuous service, entitling them to regular employment status. On the other hand, TNMSC contended that individual complainants were engaged for a specific period or undertaking the completion of which was determined at the time of their engagement. Therefore, it concluded that the individual complainants are project employees.

“In the first place, complainants have miserably failed to produce any evidence to prove their alleged length of service. There is no evidence to prove that such service has been continuous and uninterrupted. On the other hand, TNMSC has presented contracts of employment showing intermittent engagements for specified periods.

“In project employment, the primary indicia which characterizes a ‘project employee’ is whether or not the employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time of the employee’s engagement. This finds support in Article 280 of the Labor Code.

‘The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary and desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been 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. xxx’

“The individual contracts of employment appended to TNMSC’s Position Paper categorically show that individual complainants were fully aware of the nature and duration of their engagement. Accordingly, this Office finds, and so holds, that the individual complainants were project employees of TNMSC.

xxx xxx xxx

“Even assuming that the individual complainants rendered years of service to TNMSC, the same does not necessarily transform their status to regular employees since length of service is not the ultimate indicator that would make a project employee regular. Thus, in the case of *Palomares v. NLRC*, 277 SCRA 439, the Supreme Court stated:

‘Since its work depends on the availability of such contracts or projects, necessarily the employment of its workforce is not permanent but co-terminous with the projects to which they are assigned and from whose payrolls they are paid. It would be extremely burdensome for their employer to retain them as permanent employees and pay them wages even if there are no projects to work on. The fact that petitioners worked for NSC under different project employment contracts for several years cannot be made a basis to consider them as regular employees, for they remain project employees regardless of the number of projects in which they have worked.

‘Even if, as admitted by the parties, petitioners were repeatedly and successively re-hired on the basis of a contract of employment for more than one year, they cannot be considered regularized. Length of service is not the controlling determinant of the employment tenure of a project employee.’

“Based on the foregoing, complainants’ claim for regularization is without merit. The expiration of their project employment contract automatically terminated their employment. As regards those whose contracts were cut short by the termination of TNMSC’s contract with TIPCO, their separation from service was likewise valid since their tenure was co-terminous with the project. Considering that the TIPCO contract was terminated, the employment contracts of all project employees who were assigned therein were likewise terminated.

“Finally, complainants’ accusation of unfair labor practice is unfounded. Complainants allege that respondents engaged in union-busting by dismissing all union officers and members. However, the fact that union officers and

members were dismissed does not ipso facto mean that the employer is guilty of unfair labor practice. Indeed, only if the evidence proves that the dismissal was done to interfere with or restrain the employees in the exercise of their right to self-organization can such action be deemed as unfair labor practice.

“In this case, the evidence shows that the termination of employment of all project employees of the TNMSC was not without legal and justifiable basis. Moreover, it affected all project employees regardless of whether or not they are union members. In fact, it may not be said that TNMSC actually dismissed individual complainants because their separation from service was the result of the expiration of their project employment contracts.

“TNMSC cannot be compelled to continue employing workers when it cannot provide any more jobs. Certainly, it cannot be compelled to continue employing projects when there are no available projects where they can be assigned. TNMSC’s failure to provide work for individual complainants cannot be deemed as an unfair labor practice simply because the lack of available projects is a matter entirely beyond its control. In fact, the lack of viable projects have clearly affected the profitability of TNMSC since, based on its audited financial statements, it had been consistently incurring tremendous losses resulting in a net capital deficiency. In other words, it is insolvent. Obviously, TNMSC could not have feigned such tremendous losses and loss of clientele to bust the union simply because the union did not yet exist when the losses started. Complainants allegation that TNMSC showed a modest profit in the first quarter of 2000 does not mean that it did not incur a loss for that year. The audited financial statements are conclusive proof of TNMSC’s financial position.

“However, this Office likewise cannot totally discount individual complainants’ years of service to TNMSC. Out of compassionate justice to aid them and their respective families as they try to find other sources of livelihood, this Office finds that individual complainants, except for those who have already settled their claims, are entitled to financial assistance, as a form of equitable relief, of one-half month’s pay for every year of service.

“Finally, as regards the claims against individual respondents Chua and Ting, a perusal of complainants’ pleadings will show that no allegation whatsoever was made as regards individual respondents’ liability, personal or otherwise, to justify their inclusion as respondents.[7]

Aggrieved, therein complainants (herein petitioners) appealed[8] to the public respondent NLRC.

But in its Resolution[9] of July 29, 2005, the NLRC, through its Second Division, dismissed the appeal, and affirmed in toto the decision of the Labor Arbiter, thus:

“After a thorough consideration of the arguments raised by the complainants-appellants, We find the appeal not impressed with merit.

“Firstly, despite the grounds relied upon in this appeal, the arguments discussed by herein complainant-appellants which were focused solely on the alleged errors of the Labor Arbiter a quo in the above-preceding points, they failed to rebut nor introduce adduce new and substantial evidence to support the allegations thereto contained. On the other hand, respondents-appellees, as contained in their Opposition to the appeal filed by complainants-appellees, maintain that the decision directing the dismissal of the latter is valid and lawful primarily because they are project employees, the completion of which had been determined at the time of their engagement and during the termination of employees, xxx. Further, they emphasize that the dismissal of complainants were the product or an exercise of management prerogative but definitely not to restrain the right of self-organization of the complainants.

“Secondly, except with the use of unfair labor practice, complainants-appellants failed to raise as an issue and even failed to argue matters regarding the nature and status of employment of complainant-appellants, although part of their cause of action is regularization. In short they failed to prove such cause of action before the Labor Arbiter a quo, hence can no longer be argued for the first time on appeal. Besides, it was held that

‘The matter of evaluating the merits and demerits of the case as long as the decision is supported by facts and the evidences is left to the sound discretion of the Labor Arbiter.’ (Metropolitan Bank and Trust Co. vs. NLRC et.al. GR# 109667, August 16, 1994, First Division, Kapunan, J.) Further, ‘When confronted with factual matters, the Labor Arbiter has the discretion which party deserves credence on the basis of the evidence on record. (Galmart Industries, Phils. Inc. vs. Leogardo, 155 SCRA 403, 409).

“Considering therefore that the aforesaid findings were found to have been in accordance with the evidence as presented by the parties and in relation to existing laws and jurisprudence, We opted to sustain the same.

“WHEREFORE, premises considered, this appeal instituted by the complainant-appellant is hereby DISMISSED for lack of merit. Consequently, the findings and conclusions in the assailed Decision are hereby AFFIRMED en toto.

“SO ORDERED.

“Quezon City, Philippines.

“(SGD.) RAUL T. AQUINO

“Presiding Commissioner

“I CONCUR:

“(SGD.) VICTORIANO R. CALAYCAY

“Commissioner

“(ON LEAVE)

“ANGELITA A. GACUTAN

“Commissioner”[10]

The petitioners moved for reconsideration[11] of this Resolution, but their motion was by the public respondent thumbed down for lack of merit in its Resolution[12] of November 24, 2005.

Unfazed, the petitioners instituted this petition, which is anchored upon the following grounds:

I. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT THERE WAS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE INDIVIDUAL PETITIONERS AND TIPCO.

II. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING THAT THE INDIVIDUAL PETITIONERS WERE PROJECT EMPLOYEES OF TNMSC.

III. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT HOLDING THAT THE INDIVIDUAL PETITIONERS WERE DISMISSED FROM THEIR JOB BECAUSE THEY ORGANIZED OR FORMED THEIR LABOR UNION.

IV. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT HOLDING THAT THE INDIVIDUAL PETITIONERS ARE ENTITLED TO REINSTATEMENT WITH FULL BACKWAGES FROM THE DATE OF THEIR DISMISSAL UP TO THE TIME OF THEIR ACTUAL REINSTATEMENT, DAMAGES AND ATTORNEY’S FEES.[13]

The petitioners insist that they were employees of TIPCO, not of TNMSC. They also contend that the contractual relationship between TIPCO and TNMSC was a labor-only contracting arrangement, considering that TNMSC

has no substantial capital of its own. They further assert that they were dismissed from their employment because they organized themselves into a labor union.

The petition is bereft of merit.

The pivotal and crucial issue in this petition is whether the petitioners were employees of TIPCO or TNMSC. The resolution of this issue, however, initially boils down to a determination of the true status of TNMSC, i.e., whether it is an independent job contractor or a “labor-only” contractor.

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.[14]

In a labor contract, 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:

(1) The contractor carries on an 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 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.[15]

Given the above criteria, we find that TNMSC is an independent job contractor, NOT a “labor-only” contractor.

Among the circumstances that tend to establish the status of TNMSC as an independent job contractor are:

a. TNMSC is principally engaged in the business of providing its clients technical and maintenance services, and not one of manpower placement;[16]

b. TNMSC carries on an independent business and undertakes the contract work on its own account. In the performance of its contract work with TIPCO, it employed its own means and/or methods to achieve the desired results, as TIPCO reserved only the right to assess the quality of the work it had performed;[17]

c. The Independent Services Retainership Agreement between the TNMSC and TIPCO provides that TNMSC would undertake monthly rehabilitation works for TIPCO's various paper machines, de-inking plant and Environmental Management Department;[18]

d. TNMSC has substantial capitalization and investment in tools and equipment. As stated in its Articles of Incorporation, it has a subscribed capital of P2,500,000.00.[19] And, as shown by its Balance Sheets, as of the end of year 2000, it has tools and equipment with a substantial net value of P27,815,120.00.[20]

Furthermore, as correctly observed by the Labor Arbiter, by applying the “four-fold test” used in determining employer-employee relationship, the status of TNMSC as the true employer of the petitioners is further established. The elements of this test are: (1) The power to hire, (2) The payment of wages, (3) The power to dismiss, and (4) The power to control the employee's conduct – the last being the most important element.[21]

Anent the first element, the records showed that the petitioners herein were first selected and hired by TNMSC before they were assigned to work in the premises of TIPCO as millwrights, helpers, electricians, and welders.[22] With respect to the payment of wages, it was TNMSC who paid for the petitioners' wages.[23] As to

the third element, it was TNMSC who exercised the power of dismissal over the petitioners. As borne out by the records, it was TNMSC who issued letters to the petitioners informing them of the termination of their services by reason of the completion/termination of the project.[24]

Turning to the fourth and most important element (control), it cannot be gainsaid or doubted that the power to control the petitioners' conduct as employees or workers (viz., the manner they performed their duties), remained with TNMSC. For, as aptly observed by the Labor Arbiter, "there is no dispute among the parties about the complainants' functions and duties. They involve functions related to the maintenance of manufacturing machines and/or improvement and rehabilitation of existing infrastructure. There can be no dispute that these are not part of the competencies of TIPCO's officers or supervisors who are trained specifically for the manufacture of paper products. Therefore, TIPCO could not have possibly controlled the manner by which individual complainants performed their technical functions."[25]

Likewise, we concur with the ruling of the Labor Arbiter, as affirmed by the NLRC, that the petitioners were "project employees" rather than regular employees of TNMSC.

The principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.[26] Project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.[27]

In the case at bench, the records revealed the petitioners were hired for a "specific project or undertaking," even as the completion or termination thereof had been determined at the time of their hiring.[28] Indeed, in the case of one of the petitioners (Ricardo D. Fernandez), the welcome letter[29] to him by TNMSC reads:

"Dear Ricardo:

"We welcome you to the Company as WELDER. You will (be) responsible for REVISION OF DRAIN LINE of PDF # 1 to # 4 @ PM3-MWC # 28868 under Mechanical Project Services (MPS) at True North Manufacturing Services Corp. (TNMSC) from the period of February 03, 2003 to March 05, 2003.

"This project employment is temporary in nature for a duration of thirty one (31) days or until its completion/cancellation whichever comes first and essentially co-terminus with the projects/contracts of TNMSC with its clients. (Emphasis in the original)

"xxx."

Consequently, since their services are/were coterminous with the project, the petitioners were validly terminated by TNMSC upon the completion of the project for which they were hired.[30]

Finally, as regards the petitioners' claim of union-busting (i.e., they were dismissed from employment because they organized themselves into a labor union), suffice it to state that only if the evidence proves that the dismissal was calculated or designed to interfere with or restrain the employees from the exercise of their right to self-organization, can such action be deemed an unfair labor practice. No such evidence was presented by the petitioners in this case, however.

In sum, we find that the NLRC committed no grave abuse of discretion in issuing the challenged Resolutions in this case.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby is DENIED DUE COURSE, and consequently DISMISSED. The Resolutions dated July 29, 2005 and November 24, 2005 of

the National Labor Relations Commission are hereby AFFIRMED in toto. Without costs in this instance.

SO ORDERED.

Carandang, and Perlas-Bernabe, JJ., concur.

[1] Penned by Presiding Commissioner Raul T. Aquino with the concurrence of Commissioner Victoriano R. Calaycay; Commissioner Angelita A. Gacutan was on leave; Annex “A”, Petition; Rollo, pp. 40-48.

[2] Annex “I”, Petition; Id., pp. 200-221.

[3] Annex “B”, Petition; Id., pp. 49-50.

[4] Rollo, pp. 200-205; Emphasis ours.

[5] Supra, note 2.

[6] Id., pp. 220-221.

[7] Rollo, pp. 206-220; Underscoring supplied.

[8] Annex “J”, Petition; Id., pp. 222-231.

[9] Supra, note 1.

[10] Rollo, pp. 46-48.

[11] Annex “K”, Petition; Id., pp. 232-251.

[12] Supra, note 3.

[13] Rollo, pp. 281-282.

[14] Article 106 of the Labor Code, as amended; *Neri v. NLRC*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717; *Baguio v. NLRC*, G.R. Nos. 79004-08, October 4, 1991, 202 SCRA 465.

[15] *De los Santos v. NLRC*, G.R. No. 121327, December 20, 2001, 372 SCRA 723.

A contractor to be considered an independent job contractor need not have both substantial capital and investment in the form of tools, etc. It is enough that he has substantial capital. The law does not require both substantial capital and investment in the form of tools, etc. This is clear from the use of the conjunction “OR”. If the intention of the law was to require the contractor to prove that he has both the capital and the requisite investment, then the conjunction “AND” should have been used. (*Neri v. NLRC*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717)

[16] Rollo, pp. 70 & 148.

Under its Articles of Incorporation, TNMSC 's primary purpose is “to engage in, conduct , operate and carry on the business of providing services to manufacturing corporations, designing, processing, repairing, rebuilding, assembling, installing, exporting, importing, servicing, and/or reconditioning machinery and equipment, including its parts and accessories. (Rollo, p. 148)

[17] Rollo, pp. 135-136.

[18] Id., p. 140.

[19] Id., pp. 148-157.

- [20] *Id.*, p. 97.
- [21] *Sy v. Court of Appeals*, G.R. No. 142293, February 27, 2003, 398 SCRA 301.
- [22] *Rollo*, pp. 82-93.
- [23] *Id.*, pp. 134-135.
- [24] *Id.*, pp. 103-116.
- [25] See the Labor Arbiter's Decision , p. 13; *Rollo*, p. 212.
- [26] *Philex Mining Corporation v. NLRC*, G.R. No. 125132, August 10, 1999, 312 SCRA 119; *ALU-TUCP v. NLRC*, G.R. No. 109902, August 2, 1994, 234 SCRA 678.
- [27] *Philex Mining Corporation v. NLRC*, *supra*.
- [28] *Rollo*, pp. 82-93.
- [29] *Id.*, p. 89.
- [30] *Beta Electric Corporation v. NLRC*, G.R. No. 86408, February 15, 1990, 182 SCRA 384.

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