

**LEYTE GEOTHERMAL POWER PROGRESSIVE EMPLOYEES UNION
– ALU – TUCP, PETITIONER, VS. PHILIPPINE NATIONAL
OIL COMPANY – ENERGY DEVELOPMENT CORPORATION,
RESPONDENT.**

G.R. No. 170351. March 30, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Under review is the Decision[1] dated June 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 65760, which dismissed the petition for certiorari filed by petitioner Leyte Geothermal Power Progressive Employees Union - ALU?TUCP (petitioner Union) to annul and set aside the decision[2] dated December 10, 1999 of the National Labor Relations Commission (NLRC) in -----NLRC Certified Case No. V-02-99.

The facts, fairly summarized by the CA, follow.

[Respondent Philippine National Oil Corporation]-Energy Development Corporation [PNOC-EDC] is a government-owned and controlled corporation engaged in exploration, development, utilization, generation and distribution of energy resources like geothermal energy.

Petitioner is a legitimate labor organization, duly registered with the Department of Labor and Employment (DOLE) Regional Office No. VIII, Tacloban City.

Among [respondent's] geothermal projects is the Leyte Geothermal Power Project located at the Greater Tongonan Geothermal Reservation in Leyte. The said Project is composed of the Tongonan 1 Geothermal Project (T1GP) and the Leyte Geothermal Production Field Project (LGPF) which provide the power and electricity needed not only in the provinces and cities of Central and Eastern Visayas (Region VII and VIII), but also in the island of Luzon as well. Thus, the [respondent] hired and employed hundreds of employees on a contractual basis, whereby, their employment was only good up to the completion or termination of the project and would automatically expire upon the completion of such project.

Majority of the employees hired by [respondent] in its Leyte Geothermal Power Projects had become members of petitioner. In view of that circumstance, the petitioner demands from the [respondent] for recognition of it as the collective bargaining agent of said employees and for a CBA negotiation with it. However, the [respondent] did not heed such demands of the petitioner. Sometime in 1998 when the project was about to be completed, the [respondent] proceeded to serve Notices of Termination of Employment upon the employees who are members of the petitioner.

On December 28, 1998, the petitioner filed a Notice of Strike with DOLE against the [respondent] on the ground of purported commission by the latter of unfair labor practice for "refusal to bargain collectively, union busting and mass termination." On the same day, the petitioner declared a strike and staged such strike.

To avert any work stoppage, then Secretary of Labor Bienvenido E. Laguesma intervened and issued the Order, dated January 4, 1999, certifying the labor dispute to the NLRC for compulsory arbitration.

Accordingly, all the striking workers were directed to return to work within twelve (12) hours from receipt of the Order and for the [respondent] to accept them back under the same terms and conditions of employment prior to the strike. Further, the parties were directed to cease and desist from committing any act that would exacerbate the situation.

However, despite earnest efforts on the part of the Secretary of Labor and Employment to settle the dispute amicably, the petitioner remained adamant and unreasonable in its position, causing the failure of the negotiation towards a peaceful compromise. In effect, the petitioner did not abide by [the] assumption order issued by the Secretary of Labor.

Consequently, on January 15, 1999, the [respondent] filed a Complaint for Strike Illegality, Declaration of Loss of Employment and Damages at the NLRC-RAB VIII in Tacloban City and at the same time, filed a Petition for Cancellation of Petitioner's Certificate of Registration with DOLE, Regional Office No. VIII. The two cases were later on consolidated pursuant to the New NLRC Rules of Procedure. The consolidated case was docketed as NLRC Certified Case No. V-02-99 (NCMB-RAB VIII-NS-12-0190-98; RAB Case No. VIII-1-0019-99). The said certified case was indorsed to the NLRC 4th Division in Cebu City on June 21, 1999 for the proper disposition thereof.[3]

In due course, the NLRC 4th Division rendered a decision in favor of respondent, to wit:

WHEREFORE, based on the foregoing premises, judgment is hereby rendered as follows:

- Declaring the officers and members of [petitioner] Union as project employees;
- Declaring the termination of their employment by reason of the completion of the project, or a phase or portion thereof, to which they were assigned, as valid and legal;
- Declaring the strike staged and conducted by [petitioner] Union through its officers and members on December 28, 1998 to January 6, 1999 as illegal for failure to comply with the mandatory requirements of the law on strike[;]
- Declaring all the officers and members of the board of [petitioner] Union who instigated and spearheaded the illegal strike to have lost their employment[;]
- Dismissing the claim of [petitioner] Union against PNOC-EDC for unfair labor practice for lack of merit[;]
- Dismissing both parties' claims against each other for violation of the Assumption Order dated January 4, 1999 for lack of factual basis[;]
- Dismissing all other claims for lack of merit.[4]

Petitioner Union filed a motion for reconsideration of the NLRC decision, which was subsequently denied. Posthaste, petitioner Union filed a petition for certiorari before the CA, alleging grave abuse of discretion in the decision of the NLRC. As previously adverted to, the CA dismissed the petition for certiorari, thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the Petition. The assailed Decision dated December 10, 1999 of the NLRC 4th Division in NLRC Certified Case No. V-02-99 (NCMB-RAB VIII-NS-12-0190-98; RAB Case No. VIII-1-0019-99) and its Order dated March 30, 2001 are hereby AFFIRMED.

Costs against the Petitioner.[5]

Hence, this appeal by certiorari filed by petitioner Union, positing the following questions of law:

1. MAY THE HONORABLE COURT OF APPEALS SUSTAIN THE "PROJECT CONTRACTS" THAT ARE DESIGNED TO DENY AND DEPRIVE THE EMPLOYEES' THEIR RIGHT TO SECURITY OF

TENURE BY MAKING IT APPEAR THAT THEY ARE MERE PROJECT EMPLOYEES?

2. WHEN THERE ARE NO INTERVALS IN THE EMPLOYEES' CONTRACT, SUCH THAT THE SO-CALLED UNDERTAKING WAS CONTINUOUS, ARE THE EMPLOYEES PROPERLY TREATED AS PROJECT EMPLOYEES?

3. MAY THE HONORABLE COURT OF APPEALS IGNORE THE FIRM'S OWN ESTIMATE OF JOB COMPLETION, PROVING THAT THERE IS STILL 56.25% CIVIL/STRUCTURAL WORK TO BE ACCOMPLISHED, AND RULE THAT THE EMPLOYEES WERE DISMISSED FOR COMPLETION [OF] THE "PROJECT?"

4. MAY A FIRM HIDE UNDER THE SPURIOUS CLOAK OF "PROJECT COMPLETION" TO DISMISS EN MASSE THE EMPLOYEES WHO HAVE ORGANIZED AMONG THEMSELVES A LEGITIMATE LABOR ORGANIZATION TO PROTECT THEIR RIGHTS?

5. WHEN THERE IS NO STOPPAGE OF WORK, MAY A PROTEST ACTIVITY BE CONSIDERED AS A STRIKE CONTRARY TO ITS CONCEPTUAL DEFINITION UNDER ARTICLE 212 (O) OF THE LABOR CODE OF THE PHILIPPINES?

6. WHEN THE DISMISSAL IS AIMED AT RIDDING THE COMPANY OF MEMBERS OF THE UNION, IS THIS UNION BUSTING?[6]

Stripped of rhetoric, the issues for our resolution are:

- Whether the officers and members of petitioner Union are project employees of respondent; and
- Whether the officers and members of petitioner Union engaged in an illegal strike.

On the first issue, petitioner Union contends that its officers and members performed activities that were usually necessary and desirable to respondent's usual business. In fact, petitioner Union reiterates that its officers and members were assigned to the Construction Department of respondent as carpenters and masons, and to other jobs pursuant to civil works, which are usually necessary and desirable to the department. Petitioner Union likewise points out that there was no interval in the employment contract of its officers and members, who were all employees of respondent, which lack of interval, for petitioner Union, "manifests that the `undertaking' is usually necessary and desirable to the usual trade or business of the employer."

We cannot subscribe to the view taken by petitioner Union.

The distinction between a regular and a project employment is provided in Article 280, paragraph 1, of the Labor Code:

ART. 280. Regular and Casual Employment.-- 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 or 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.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.[7]

The foregoing contemplates four (4) kinds of employees: (a) regular employees or those who have been "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; (b) project employees or those "whose 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"; (c) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season;^[8] and (d) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind-- a fixed-term employee.^[9]

Article 280 of the Labor Code, as worded, establishes that the nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to "afford full protection to labor."^[10] Thus, labor contracts are placed on a higher plane than ordinary contracts; these are imbued with public interest and therefore subject to the police power of the State.^[11]

However, notwithstanding the foregoing iterations, project employment contracts which fix the employment for a specific project or undertaking remain valid under the law:

x x x By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may not expect to be employed continuously beyond the completion of the project. It is of judicial notice that project employees engaged for manual services or those for special skills like those of carpenters or masons, are, as a rule, unschooled. However, this fact alone is not a valid reason for bestowing special treatment on them or for invalidating a contract of employment. Project employment contracts are not lopsided agreements in favor of only one party thereto. The employer's interest is equally important as that of the employee[s'] for theirs is the interest that propels economic activity. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts do not, of necessity, prejudice the employee. Neither is the employee left helpless by a prejudicial employment contract. After all, under the law, the interest of the worker is paramount.^[12]

In the case at bar, the records reveal that the officers and the members of petitioner Union signed employment contracts indicating the specific project or phase of work for which they were hired, with a fixed period of employment. The NLRC correctly disposed of this issue:

A deeper examination also shows that [the individual members of petitioner Union] indeed signed and accepted the [employment contracts] freely and voluntarily. No evidence was presented by [petitioner] Union to prove improper pressure or undue influence when they entered, perfected and consummated [the employment] contracts. In fact, it was clearly established in the course of the trial of this case, as explained by no less than the President of [petitioner] Union, that the contracts of employment were read, comprehended, and voluntarily accepted by them. x x x.

x x x x

As clearly shown by [petitioner] Union's own admission, both parties had executed the contracts freely and voluntarily without force, duress or acts tending to vitiate the worker[s'] consent. Thus, we see no reason not to honor and give effect to the terms and conditions stipulated therein. x x x.^[13]

Thus, we are hard pressed to find cause to disturb the findings of the NLRC which are supported by substantial evidence.

It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.^[14] Rule 133, Section 5

defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[15] We may take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the Labor Arbiter or the NLRC are inconsistent with those of the CA.[16]

In the case at bar, both the NLRC and the CA were one in the conclusion that the officers and the members of petitioner Union were project employees. Nonetheless, petitioner Union insists that they were regular employees since they performed work which was usually necessary or desirable to the usual business or trade of the Construction Department of respondent.

The landmark case of *ALU-TUCP v. NLRC*[17] instructs on the two (2) categories of project employees:

It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. x x x. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, 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.

In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more [distinct] identifiable construction projects: e.g., a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.

The term "project" could also refer to, secondly, a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.[18]

Plainly, the litmus test to determine whether an individual is a project employee lies in setting a fixed period of employment involving a specific undertaking which completion or termination has been determined at the time of the particular employee's engagement.

In this case, as previously adverted to, the officers and the members of petitioner Union were specifically hired as project employees for respondent's Leyte Geothermal Power Project located at the Greater Tongonan Geothermal

Reservation in Leyte. Consequently, upon the completion of the project or substantial phase thereof, the officers and the members of petitioner Union could be validly terminated.

Petitioner Union is adamant, however, that the lack of interval in the employment contracts of its officer and members negates the latter's status

as mere project employees. For petitioner Union, the lack of interval further drives home its point that its officers and members are regular employees who performed work which was usually necessary or desirable to the usual business or trade of respondent.

We are not persuaded.

Petitioner Union's members' employment for more than a year does equate to their regular employment with respondent. In this regard, *Mercado, Sr. v. NLRC*[19] illuminates:

The first paragraph [of Article 280 of the Labor Code] answers the question of who are regular employees. It states that, regardless of any written or oral agreement to the contrary, an employee is deemed regular where he is engaged in necessary or desirable activities in the usual business or trade of the employer, except for project employees.

A project employee has been defined to be one whose 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, as in the present case.

The second paragraph of Art. 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso, in said second paragraph, deems as regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.

Petitioners, in effect, contend that the proviso in the second paragraph of Art. 280 is applicable to their case and that the Labor Arbiter should have considered them regular by virtue of said proviso. The contention is without merit.

The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows. Thus, it has been held that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof. The only exception to this rule is where the clear legislative intent is to restrain or qualify not only the phrase immediately preceding it (the proviso) but also earlier provisions of the statute or even the statute itself as a whole.

Policy Instruction No. 12 of the Department of Labor and Employment discloses that the concept of regular and casual employees was designed to put an end to casual employment in regular jobs, which has been abused by many employers to prevent so - called casuals from enjoying the benefits of regular employees or to prevent casuals from joining unions. The same instructions show that the proviso in the second paragraph of Art. 280 was not designed to stifle small-scale businesses nor to oppress agricultural land owners to further the interests of laborers, whether agricultural or industrial. What it seeks to eliminate are abuses of employers against their employees and not, as petitioners would have us believe, to prevent small-scale businesses from engaging in legitimate methods to realize profit. Hence, the proviso is applicable only to the employees who are deemed "casuals" but not to the "project" employees nor the regular employees treated in paragraph one of Art. 280.

Clearly, therefore, petitioners being project employees, or, to use the correct term, seasonal employees, their employment legally ends upon completion of the project or the [end of the] season. The termination of their employment cannot and should not constitute an illegal dismissal.

Considering our holding that the officers and the members of petitioner Union were project employees, its claim of union busting is likewise dismissed.

On the second issue, petitioner Union contends that there was no stoppage of work; hence, they did not strike. Euphemistically, petitioner Union avers that it "only engaged in picketing,"[20] and maintains that "without any work stoppage, [its officers and members] only engaged in xxx protest activity."

We are not convinced. Petitioner Union splits hairs.

To begin with, quite evident from the records is the undisputed fact that petitioner Union filed a Notice of Strike on December 28, 1998 with the Department of Labor and Employment, grounded on respondent's purported unfair labor practices, i.e., "refusal to bargain collectively, union busting and mass termination." On even date, petitioner Union declared and staged a strike.

Second, then Secretary of Labor, Bienvenido E. Laguesma, intervened and issued a Return-to-Work Order[21] dated January 4, 1999, certifying the labor dispute to the NLRC for compulsory arbitration. The Order narrates the facts leading to the labor dispute, to wit:

On 28 December 1998, [petitioner Union] filed a Notice of Strike against [respondent] citing unfair labor practices, specifically: refusal to bargain collectively, union busting and mass termination as the grounds [therefor]. On the same day, [petitioner] Union went on strike and took control over [respondent's] facilities of its Leyte Geothermal Project.

Attempts by the National Conciliation and Mediation Board -RBVIII to forge a mutually acceptable solution proved futile.

In the meantime, the strike continues with no settlement in sight placing in jeopardy the supply of much needed power supply in the Luzon and Visayas grids.

x x x x

The on-going strike threatens the availability of continuous electricity to these areas which is critical to day-to-day life, industry, commerce and trade. Without doubt, [respondent's] operations [are] indispensable to the national interest and falls (sic) within the purview of Article 263 (g) of the Labor Code, as amended, which warrants (sic) the intervention of this Office.

Third, petitioner Union itself, in its pleadings, used the word "strike."

Ultimately, petitioner Union's asseverations are belied by the factual findings of the NLRC, as affirmed by the CA:

The failure to comply with the mandatory requisites for the conduct of strike is both admitted and clearly shown on record. Hence, it is undisputed that no strike vote was conducted; likewise, the cooling-off period was not observed and that the 7-day strike ban after the submission of the strike vote was not complied with since there was no strike vote taken.

x x x x

The factual issue of whether a notice of strike was timely filed by [petitioner] Union was resolved by the evidence on record. The evidence revealed that [petitioner] Union struck even before it could file the required notice of strike. Once again, this relied on [petitioner] Union's proof. [Petitioner] Union[']s witness said:

Atty. Sinsuat: You stated that you struck on 28 December 1998 is that correct?

Witness : Early in the morning of December 1998.

x x x x

Atty. Sinsuat: And you went there to conduct the strike did you not?

Witness : Our plan then was to strike at noon of December 28 and the strikers will be positioned at their respective areas.[22]

Article 263 of the Labor Code enumerates the requisites for holding a strike:

Art. 263. Strikes, picketing, and lockouts. - (a) x x x.

x x x x.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Department of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Department to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

In fine, petitioner Union's bare contention that it did not hold a strike cannot trump the factual findings of the NLRC that petitioner Union indeed struck against respondent. In fact, and more importantly, petitioner Union failed to comply with the requirements set by law prior to holding a strike.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 65760 is AFFIRMED. Costs against petitioner Union.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring; rollo, pp. 37-47.

[2] Penned by Commissioner Amorito V. Cañete with Presiding Commissioner Irene E. Ceniza and Commissioner Bernabe S. Batuhan, concurring; *id.* at 105-124.

[3] *Supra*, note 1, at 38-40.

[4] *Supra* note 2, at 123-124.

[5] *Supra*, note 1, at 46.

[6] Petition of Petitioner; *rollo*, pp. 25-26.

[7] Emphasis supplied.

[8] See *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC*, 360 Phil. 218 (1998).

[9] *Asia World Recruitment Inc. v. NLRC*, 371 Phil. 745, 755-756 (1999); *Palomares v. NLRC*, (5[TH] Division), G.R. No. 120064, August 15, 1997, 277 SCRA 439, 447-449; *Brent School, Inc. v. Zamora*, 260 Phil. 747, 758-762 (1990).

[10] Article XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[11] See Articles 1700 and 1702 of the Civil Code; *Villa v. NLRC*, 348 Phil. 116, 140-141 (1998).

[12] *Villa v. NLRC*, *supra*, at 141.

[13] *Supra* note 2, at 110.

[14] *G & M (Phils.), Inc. v. Cruz*, 496 Phil. 119, 123-124 (2005).

[15] *PCL Shipping Philippines, Inc. v. NLRC*, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 54.

[16] *Id.*

[17] G.R. No. 109902, August 2, 1994, 234 SCRA 678, 684-686.

[18] Emphasis supplied.

[19] G.R. No. 79869, September 5, 1991, 201 SCRA 332, 341-343.

[20] Petitioner's Memorandum, *rollo*, p. 398.

[21] *Id.* at 194-195.

[22] Id. at 115-116.

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