

TEMIC AUTOMOTIVE PHILIPPINES, INC., PETITIONER, VS. TEMIC AUTOMOTIVE PHILIPPINES, INC. EMPLOYEES UNION-FFW, RESPONDENT.

G.R. No. 186965. December 23, 2009

Ponente: BRION, J.

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BRION, J.:

We resolve the present petition for review on certiorari[1] filed by Temic Automotive Philippines Inc. (petitioner) to challenge the decision[2] and resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99029.[4]

The Antecedents

The petitioner is a corporation engaged in the manufacture of electronic brake systems and comfort body electronics for automotive vehicles. Respondent Temic Automotive Philippines, Inc. Employees Union-FFW (union) is the exclusive bargaining agent of the petitioner's rank-and-file employees. On May 6, 2005, the petitioner and the union executed a collective bargaining agreement (CBA) for the period January 1, 2005 to December 31, 2009.

The petitioner is composed of several departments, one of which is the warehouse department consisting of two warehouses - the electronic braking system and the comfort body electronics. These warehouses are further divided into four sections - receiving section, raw materials warehouse section, indirect warehouse section and finished goods section. The union members are regular rank-and-file employees working in these sections as clerks, material handlers, system encoders and general clerks. Their functions are interrelated and include: receiving and recording of incoming deliveries, raw materials and spare parts; checking and booking-in deliveries, raw materials and spare parts with the use of the petitioner's system application processing; generating bar codes and sticking these on boxes and automotive parts; and issuing or releasing spare parts and materials as may be needed at the production area, and piling them up by means of the company's equipment (forklift or jacklift).

By practice established since 1998, the petitioner contracts out some of the work in the warehouse department, specifically those in the receiving and finished goods sections, to three independent service providers or forwarders (forwarders), namely: Diversified Cargo Services, Inc. (Diversified), Airfreight 2100 (Airfreight) and Kuehne & Nagel, Inc. (KNI). These forwarders also have their own employees who hold the positions of clerk, material handler, system encoder and general clerk. The regular employees of the petitioner and those of the forwarders share the same work area and use the same equipment, tools and computers all belonging to the petitioner.

This outsourcing arrangement gave rise to a union grievance on the issue of the scope and coverage of the collective bargaining unit, specifically to the question of "whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the bargaining unit." [5] The union thus demanded that the forwarders' employees be absorbed into the petitioner's regular employee force and be given positions within the bargaining unit. The petitioner, on the other hand, on the

premise that the contracting arrangement with the forwarders is a valid exercise of its management prerogative, posited that the union's position is a violation of its management prerogative to determine who to hire and what to contract out, and that the regular rank-and-file employees and their forwarders' employees serving as its clerks, material handlers, system encoders and general clerks do not have the same functions as regular company employees.

The union and the petitioner failed to resolve the dispute at the grievance machinery level, thus necessitating recourse to voluntary arbitration. The parties chose Atty. Roberto A. Padilla as their voluntary arbitrator. Their voluntary arbitration submission agreement delineated the issues to be resolved as follows:

- Whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto; and
- Whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit.[6]

To support its position, the union submitted in evidence a copy of the complete manpower complement of the petitioner's warehouse department as of January 3, 2007[7] showing that there were at the time 19 regular company employees and 26 forwarder employees. It also presented the affidavits[8] of Edgardo P. Usog, Antonio A. Muzones, Endrico B. Dumolong, Salvador R. Vargas and Harley J. Noval, regular employees of the petitioner, who deposed that they and the forwarders' employees assigned at the warehouse department were performing the same functions. The union also presented the affidavits of Ramil V. Barit[9] (Barit), Jonathan G. Prevendido[10] (Prevendido) and Eduardo H. Enano[11] (Enano), employees of forwarder KNI, who described their work at the warehouse department.

In its submission,[12] the petitioner invoked the exercise of its management prerogative and its authority under this prerogative to contract out to independent service providers the forwarding, packing, loading of raw materials and/or finished goods and all support and ancillary services (such as clerical activities) for greater economy and efficiency in its operations. It argued that in *Meralco v. Quisumbing*[13] this Court explicitly recognized that the contracting out of work is an employer proprietary right in the exercise of its inherent management prerogative.

The forwarders, the petitioners alleged, are all highly reputable freight forwarding companies providing total logistics services such as customs brokerage that includes the preparation and processing of import and export documentation, cargo handling, transport (air, land or sea), delivery and trucking; and they have substantial capital and are fully equipped with the technical knowledge, facilities, equipment, materials, tools and manpower to service the company's forwarding, packing and loading requirements. Additionally, the petitioner argued that the union is not in a position to question its business judgment, for even their CBA expressly recognizes its prerogative to have exclusive control of the management of all functions and facilities in the company, including the exclusive right to plan or control operations and introduce new or improved systems, procedures and methods.

The petitioner maintained that the services rendered by the forwarders' employees are not the same as the functions undertaken by regular rank-and-file employees covered by the bargaining unit; therefore, the union's demand that the forwarders' employees be assimilated as regular company employees and absorbed by the collective bargaining unit has no basis; what the union asks constitutes an unlawful interference in the company's prerogative to choose who to hire as employees. It pointed out that the union could not, and never did, assert that the contracting-out of work to the service providers was in violation of the CBA or prohibited by law.

The petitioner explained that its regular employees' clerical and material handling tasks are not identical with those done by the service providers; the clerical work rendered by the contractors are recording and documentation tasks ancillary to or supportive of the contracted services of forwarding, packing and loading; on

the other hand, the company employees assigned as general clerks prepare inventory reports relating to its shipments in general to ensure that the recording of inventory is consistent with the company's general system; company employees assigned as material handlers essentially assist in counter-checking and reporting activities to ensure that the contractors' services comply with company standards.

The petitioner submitted in evidence the affidavits of Antonio Gregorio[14] (Gregorio), its warehouse manager, and Ma. Maja Bawar[15] (Bawar), its section head.

The Voluntary Arbitration Decision

In his decision of May 1, 2007,[16] the voluntary arbitrator defined forwarding as a universally accepted and normal business practice or activity, and ruled that the company validly contracted out its forwarding services. The voluntary arbitrator observed that exporters, in utilizing forwarders as travel agents of cargo, mitigate the confusion and delays associated with international trade logistics; the company need not deal with many of the details involved in the export of goods; and given the years of experience and constant attention to detail provided by the forwarders, it may be a good investment for the company. He found that the outsourcing of forwarding work is expressly allowed by the rules implementing the Labor Code.[17]

At the same time, however, the voluntary arbitrator found that the petitioner went beyond the limits of the legally allowable contracting out because the forwarders' employees encroached upon the functions of the petitioner's regular rank-and-file workers. He opined that the forwarders' personnel serving as clerks, material handlers, system encoders and general clerks perform "functions [that] are being performed by regular rank-and-file employees covered by the bargaining unit." He also noted that the forwarders' employees perform their jobs in the company warehouse together with the petitioner's employees, use the same company tools and equipment and work under the same company supervisors - indicators that the petitioner exercises supervision and control over all the employees in the warehouse department. For these reasons, he declared the forwarders' employees serving as clerks, material handlers, system encoders and general clerks to be "employees of the company who are entitled to all the rights and privileges of regular employees of the company including security of tenure." [18]

The petitioner sought relief from the CA through a petition for review under Rule 43 of the Rules of Court invoking questions of facts and law.[19] It specifically questioned the ruling that the company did not validly contract out the services performed by the forwarders' clerks, material handlers, system encoders and general clerks, and claimed that the voluntary arbitrator acted in excess of his authority when he ruled that they should be considered regular employees of the company.

The CA Decision

In its decision of October 28, 2008,[20] the CA fully affirmed the voluntary arbitrator's decision and dismissed the petition for lack of merit. The discussion essentially focused on three points. First, that decisions of voluntary arbitrators on matters of fact and law, acting within the scope of their authority, are conclusive and constitute *res adjudicata* on the theory that the parties agreed that the voluntary arbitrator's decision shall be final. Second, that the petitioner has the right to enter into the forwarding agreements, but these agreements should be limited to forwarding services; the petitioner failed to present clear and convincing proof of the delineation of functions and duties between company and forwarder employees engaged as clerks, material handlers, system encoders and general clerks; thus, they should be considered regular company employees. Third, on the extent of the voluntary arbitrator's authority, the CA acknowledged that the arbitrator can only decide questions agreed upon and submitted by the parties, but maintained that the arbitrator also has the power to rule on consequential issues that would finally settle the dispute. On this basis, the CA justified the ruling on the employment status of the forwarders' clerks, material handlers, system encoders and general clerks as a necessary consequence that ties up

the loose ends of the submitted issues for a final settlement of the dispute.

The CA denied the petitioner's motion for reconsideration, giving way to the present petition.

The Petition

The petition questions as a preliminary issue the CA ruling that decisions of voluntary arbitrators are conclusive and constitute *res adjudicata* on the facts and law ruled upon.

Expectedly, it cites as error the voluntary arbitrator's and the CA's rulings that: (a) the forwarders' employees undertaking the functions of clerks, material handlers, system encoders and general clerks exercise the functions of regular company employees and are subject to the company's control; and (b) the functions of the forwarders' employees are beyond the limits of what the law allows for a forwarding agreement.

The petitioner reiterates that there are distinctions between the work of the forwarders' employees and that of the regular company employees. The receiving, unloading, recording or documenting of materials the forwarders' employees undertake form part of the contracted forwarding services. The similarity of these activities to those performed by the company's regular employees does not necessarily lead to the conclusion that the forwarders' employees should be absorbed by the company as its regular employees. No proof was ever presented by the union that the company exercised supervision and control over the forwarders' employees. The contracted services and even the work performed by the regular employees in the warehouse department are also not usually necessary and desirable in the manufacture of automotive electronics which is the company's main business. It adds that as held in *Philippine Global Communications, Inc. v. De Vera*,^[21] management can contract out even services that are usually necessary or desirable in the employer's business.

On the issue of jurisdiction, the petitioner argues that the voluntary arbitrator neither had jurisdiction nor basis to declare the forwarders' personnel as regular employees of the company because the matter was not among the issues submitted by the parties for arbitration; in voluntary arbitration, it is the parties' submission of the issues that confers jurisdiction on the voluntary arbitrator. The petitioner finally argues that the forwarders and their employees were not parties to the voluntary arbitration case and thus cannot be bound by the voluntary arbitrator's decision.

The Case for the Union

In its comment,^[22] the union takes exception to the petitioner's position that the contracting out of services involving forwarding and ancillary activities is a valid exercise of management prerogative. It posits that the exercise of management prerogative is not an absolute right, but is subject to the limitation provided for by law, contract, existing practice, as well as the general principles of justice and fair play. It submits that both the law and the parties' CBA prohibit the petitioner from contracting out to forwarders the functions of regular employees, especially when the contracting out will amount to a violation of the employees' security of tenure, of the CBA provision on the coverage of the bargaining unit, or of the law on regular employment.

The union disputes the petitioner's claim that there is a distinction between the work being performed by the regular employees and that of the forwarders' employees. It insists that the functions being assigned, delegated to and performed by employees of the forwarders are also those assigned, delegated to and being performed by the regular rank-and-file employees covered by the bargaining unit.

On the jurisdictional issue, the union submits that while the submitted issue is "whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the

bargaining unit," the ruling of the voluntary arbitrator was a necessary consequence of his finding that the forwarders' employees were performing functions similar to those being performed by the regular employees of the petitioner. It maintains that it is within the power of the voluntary arbitrator to rule on the issue since it is inherently connected to, or a consequence of, the main issues resolved in the case.

The Court's Ruling

We find the petition meritorious.

Underlying Jurisdictional Issues

As submitted by the parties, the first issue is "whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto." However, the forwarders, with whom the petitioner had written contracts for these services, were never made parties (and could not have been parties to the voluntary arbitration except with their consent) so that the various forwarders' agreements could not have been validly impugned through voluntary arbitration and declared invalid as against the forwarders.

The second submitted issue is "whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit." While this submission is couched in general terms, the issue as discussed by the parties is limited to the forwarders' employees undertaking services as clerks, material handlers, system encoders and general clerks, which functions are allegedly the same functions undertaken by regular rank-and-file company employees covered by the bargaining unit. Either way, however, the issue poses jurisdictional problems as the forwarders' employees are not parties to the case and the union has no authority to speak for them.

From this perspective, the voluntary arbitration submission covers matters affecting third parties who are not parties to the voluntary arbitration and over whom the voluntary arbitrator has no jurisdiction; thus, the voluntary arbitration ruling cannot bind them.[23] While they may voluntarily join the voluntary arbitration process as parties, no such voluntary submission appears in the record and we cannot presume that one exists. Thus, the voluntary arbitration process and ruling can only be recognized as valid between its immediate parties as a case arising from their collective bargaining agreement. This limited scope, of course, poses no problem as the forwarders and their employees are not indispensable parties and the case is not mooted by their absence. Our ruling will fully bind the immediate parties and shall fully apply to, and clarify the terms of, their relationship, particularly the interpretation and enforcement of the CBA provisions pertinent to the arbitrated issues.

Validity of the Contracting Out

The voluntary arbitration decision itself established, without objection from the parties, the description of the work of forwarding as a basic premise for its ruling. We similarly find the description acceptable and thus adopt it as our own starting point in considering the nature of the service contracted out when the petitioner entered into its forwarding agreements with Diversified, Airfreight and KNI. To quote the voluntary arbitration decision:

As forwarders they act as travel agents for cargo. They specialize in arranging transport and completing required shipping documentation of respondent's company's finished products. They provide custom crating and packing designed for specific needs of respondent company. These freight forwarders are actually acting as agents for the company in moving cargo to an overseas destination. These agents are familiar with the import rules and regulations, the methods of shipping, and the documents related to foreign trade. They recommend the packing methods that will protect the merchandise during transit. Freight forwarders can also reserve for the company the necessary space on a vessel, aircraft, train or truck.

They also prepare the bill of lading and any special required documentation. Freight forwarders can also make arrangement with customs brokers overseas that the goods comply with customs export documentation regulations. They have the expertise that allows them to prepare and process the documentation and perform related activities pertaining to international shipments. As an analogy, freight forwarders have been called travel agents for freight.[24]

Significantly, both the voluntary arbitrator and the CA recognized that the petitioner was within its right in entering the forwarding agreements with the forwarders as an exercise of its management prerogative. The petitioner's declared objective for the arrangement is to achieve greater economy and efficiency in its operations - a universally accepted business objective and standard that the union has never questioned. In *Meralco v. Quisumbing*,[25] we joined this universal recognition of outsourcing as a legitimate activity when we held that a company can determine in its best judgment whether it should contract out a part of its work for as long as the employer is motivated by good faith; the contracting is not for purposes of circumventing the law; and does not involve or be the result of malicious or arbitrary action.

While the voluntary arbitrator and the CA saw nothing irregular in the contracting out as a whole, they held otherwise for the ancillary or support services involving clerical work, materials handling and documentation. They held these to be the same as the workplace activities undertaken by regular company rank-and-file employees covered by the bargaining unit who work under company control; hence, they concluded that the forwarders' employees should be considered as regular company employees.

Our own examination of the agreement shows that the forwarding arrangement complies with the requirements of Article 106[26] of the Labor Code and its implementing rules.[27] To reiterate, no evidence or argument questions the company's basic objective of achieving "greater economy and efficiency of operations." This, to our mind, goes a long way to negate the presence of bad faith. The forwarding arrangement has been in place since 1998 and no evidence has been presented showing that any regular employee has been dismissed or displaced by the forwarders' employees since then. No evidence likewise stands before us showing that the outsourcing has resulted in a reduction of work hours or the splitting of the bargaining unit - effects that under the implementing rules of Article 106 of the Labor Code can make a contracting arrangement illegal. The other requirements of Article 106, on the other hand, are simply not material to the present petition. Thus, on the whole, we see no evidence or argument effectively showing that the outsourcing of the forwarding activities violate our labor laws, regulations, and the parties' CBA, specifically that it interfered with, restrained or coerced employees in the exercise of their rights to self-organization as provided in Section 6, par. (f) of the implementing rules. The only exception, of course, is what the union now submits as a voluntary arbitration issue - i.e., the failure to recognize certain forwarder employees as regular company employees and the effect of this failure on the CBA's scope of coverage - which issue we fully discuss below.

The job of forwarding, as we earlier described, consists not only of a single activity but of several services that complement one another and can best be viewed as one whole process involving a package of services. These services include packing, loading, materials handling and support clerical activities, all of which are directed at the transport of company goods, usually to foreign destinations.

It is in the appreciation of these forwarder services as one whole package of inter-related services that we discern a basic misunderstanding that results in the error of equating the functions of the forwarders' employees with those of regular rank-and-file employees of the company. A clerical job, for example, may similarly involve typing and paper pushing activities and may be done on the same company products that the forwarders' employees and company employees may work on, but these similarities do not necessarily mean that all these employees work for the company. The regular company employees, to be sure, work for the company under its

supervision and control, but forwarder employees work for the forwarder in the forwarder's own operation that is itself a contracted work from the company. The company controls its employees in the means, method and results of their work, in the same manner that the forwarder controls its own employees in the means, manner and results of their work. Complications and confusion result because the company at the same time controls the forwarder in the results of the latter's work, without controlling however the means and manner of the forwarder employees' work. This interaction is best exemplified by the adduced evidence, particularly the affidavits of petitioner's warehouse manager Gregorio[28] and Section Head Bawar[29] discussed below.

From the perspective of the union in the present case, we note that the forwarding agreements were already in place when the current CBA was signed.[30] In this sense, the union accepted the forwarding arrangement, albeit implicitly, when it signed the CBA with the company. Thereby, the union agreed, again implicitly by its silence and acceptance, that jobs related to the contracted forwarding activities are not regular company activities and are not to be undertaken by regular employees falling within the scope of the bargaining unit but by the forwarders' employees. Thus, the skills requirements and job content between forwarders' jobs and bargaining unit jobs may be the same, and they may even work on the same company products, but their work for different purposes and for different entities completely distinguish and separate forwarder and company employees from one another. A clerical job, therefore, if undertaken by a forwarders' employee in support of forwarding activities, is not a CBA-covered undertaking or a regular company activity.

The best evidence supporting this conclusion can be found in the CBA itself, Article 1, Sections 1, 2, 3 and 4 (VII) of which provide:

Section 1. Recognition and Bargaining Unit. - Upon the union's representation and showing of continued majority status among the employees covered by the bargaining unit as already appropriately constituted, the company recognizes the union as the sole and exclusive collective bargaining representative of all its regular rank-and-file employees, except those excluded from the bargaining unit as hereinafter enumerated in Sections 2 and 3 of this Article, for purposes of collective bargaining in respect to their rates of pay and other terms and condition of employment for the duration of this Agreement.

Section 2. Exclusions. The following employment categories are expressly excluded from the bargaining unit and from the scope of this Agreement: executives, managers, supervisors and those employees exercising any of the attributes of a managerial employee; Accounting Department, Controlling Department, Human Resources Department and IT Department employees, department secretaries, the drivers and personnel assigned to the Office of the General Manager and the Office of the Commercial Affairs and Treasury, probationary, temporary and casual employees, security guards, and other categories of employees declared by law to be eligible for union membership.

Section 3. Additional Exclusions. Employees within the bargaining unit heretofore defined, who are promoted or transferred to an excluded employment category as herein before enumerated, shall automatically be considered as resigned and/or disqualified from membership in the UNION and automatically removed from the bargaining unit.

Section 4. Definitions - x x x

VII. A regular employee is one who having satisfactorily undergone the probationary period of employment and passed the company's full requirement for regular employees, such as, but not limited to physical fitness, proficiency, acceptable conduct and good moral character, received an appointment as a regular employee duly signed by the authorized official of the COMPANY.

[Emphasis supplied.]

When these CBA provisions were put in place, the forwarding agreements had been in place so that the

forwarders' employees were never considered as company employees who would be part of the bargaining unit. To be precise, the forwarders' employees and their positions were not part of the appropriate bargaining unit "as already constituted." In fact, even now, the union implicitly recognizes forwarding as a whole as a legitimate non-company activity by simply claiming as part of their unit the forwarders' employees undertaking allied support activities.

At this point, the union cannot simply turn around and claim through voluntary arbitration the contrary position that some forwarder employees should be regular employees and should be part of its bargaining unit because they undertake regular company functions. What the union wants is a function of negotiations, or perhaps an appropriate action before the National Labor Relations Commission impleading the proper parties, but not a voluntary arbitration that does not implead the affected parties. The union must not forget, too, that before the inclusion of the forwarders' employees in the bargaining unit can be considered, these employees must first be proven to be regular company employees. As already mentioned, the union does not even have the personality to make this claim for these forwarders' employees. This is the impenetrable wall that the union cannot, for now, pass through using the voluntary arbitration proceedings now before us on appeal.

Significantly, the evidence presented does not also prove the union's point that forwarder employees undertake company rather than the forwarders' activities. We say this mindful that forwarding includes a whole range of activities that may duplicate company activities in terms of the exact character and content of the job done and even of the skills required, but cannot be legitimately labeled as company activities because they properly pertain to forwarding that the company has contracted out.

The union's own evidence, in fact, speaks against the point the union wishes to prove. Specifically, the affidavits of forwarder KNI employees Barit, Prevendido, and Enano, submitted in evidence by the union, confirm that the work they were doing was predominantly related to forwarding or the shipment or transport of the petitioner's finished goods to overseas destinations, particularly to Germany and the United States of America (USA).

Barit[31] deposed that on August 2, 2004 he started working at the petitioner's CBE finished goods area as an employee of forwarder Emery Transnational Air Cargo Group; on the same date, he was absorbed by KNI and was assigned the same task of a loader; his actual work involved: making of inventories of CBE finished products in the warehouse; double checking of the finished products he inventoried and those received by the other personnel of KNI; securing from his superior the delivery note and print-out indicating the model and the quantity of products to be exported to Germany; and preparing the loading form and then referring it to his co-workers from the forwarders who gather the goods to be transported to Germany based on the model and quantity needed; with the use of the computer, printing the airway bill which serves as cargo ticket for the airline and posted on every box of finished products before loading on the van of goods bound for Germany; preparing the gate pass for the van. He explained that other products to be shipped to the USA, via sea transport, are picked up by the other forwarders and brought to their warehouse in Parañaque.

Prevendido,[32] also a loader, stated that his actual work involved loading into the container van finished CBE products bound for Germany; when there is a build up for the E.K. Express (Emirates Airlines), he is sent by the petitioner to the airlines to load the finished products and check if they are in good condition; although the inspection and checking of loaded finished products should be done by a company supervisor or clerk, he is asked to do them because he is already there in the area; he also conducts an inventory of finished goods in the finished goods area, prepares loading form schedule and generates the airway bill and is asked by his supervisor to call up KNI for the airway bill number.

Enano,[33] for his part, stated that on November 11, 1998, he was absorbed by KNI after initially working in

1996 for a janitorial service agency which had a contract with the petitioner, he was also a loader and assigned at the finished goods section in the warehouse department; his actual work involved preparing the gate pass for finished products of the petitioner to be released; loading the finished products on the truck and calling up KNI (Air Freight Department) to check on the volume of the petitioner's products for export; making inventories of the remaining finished products and doing other tasks related to the export of the petitioner's products, which he claimed are supposed to be done by the company's finished goods supervisor; and monitoring of KNI's trucking sub-contractor who handled the transport component of KNI's arrangement with the petitioner.

The essential nature of the outsourced services is not substantially altered by the claim of the three KNI employees that they occasionally do work that pertains to the company's finished goods supervisor or a company employee such as the inspection of goods to be shipped and inventory of finished goods. This was clarified by petitioner's warehouse manager Gregorio[34] and Section Head Bawar[35] in their respective affidavits. They explained that the three KNI employees do not conduct inventory of finished goods; rather, as part of the contract, KNI personnel have to count the boxes of finished products they load into the trucks to ensure that the quantity corresponds with the entries made in the loading form; included in the contracted service is the preparation of transport documents like the airway bill; the airway bill is prepared in the office and a KNI employee calls for the airway bill number, a sticker label is then printed; and that the use of the company forklift is necessary for the loading of the finished goods into the truck.

Thus, even on the evidentiary side, the union's case must fail.

In light of these conclusions, we see no need to dwell on the issue of the voluntary arbitrator's authority to rule on issues not expressly submitted but which arise as a consequence of the voluntary arbitrator's findings on the submitted issues.

WHEREFORE, premises considered, we hereby NULLIFY and SET ASIDE the assailed Court of Appeals Decision in CA-G.R. SP No. 99029 dated October 28, 2008, together with the Voluntary Arbitrator's Decision of May 1, 2007 declaring the employees of forwarders Diversified Cargo Services, Inc., Airfreight 2100 and Kuehne & Nagel, Inc., presently designated and functioning as clerks, material handlers, system or data encoders and general clerks, to be regular company employees. No costs.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, Del Castillo, and Abad, JJ., concur.

[1] Filed pursuant to Rule 45 of the Rules of Court; Rollo, pp. 25-53.

[2] Dated October 28, 2008; penned by Associate Justice Isaias Dicdican with Associate Justice Juan Q. Enriquez and Associate Justice Marlene Gonzales-Sison, concurring; id. at 8-19.

[3] Dated February 25, 2009, id. at 21-22.

[4] *Temic Automotive Philippines, Inc. v. Temic Automotive Phils., Inc. Employees Union-FFW*.

[5] Rollo, pp. 77 and 237.

[6] Id. at 241.

[7] Id. at 80.

[8] Id. at 91-95.

[9] Id. at 96-97.

[10] Id. at 98-99.

[11] Id. at 100-101.

[12] Id. at 105-115.

[13] G.R. No. 127598, January 27, 1999, 302 SCRA 173.

[14] Rollo, pp. 180-184.

[15] Id. at 211-216.

[16] Id. at 237.

[17] DOLE Department Order No. 18-02 (2002), Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

[18] Rollo, p. 250.

[19] Id. at 251-271.

[20] Supra note 2.

[21] G.R. No. 157214, June 7, 2005, 459 SCRA 260.

[22] Rollo, pp. 356-367.

[23] Stanfilco Employees Agrarian Reform Beneficiaries Multi-Purpose Cooperative v. Dole Philippines, Inc. (Stanfilco Division), G.R. No. 154048, November 27, 2009.

[24] Rollo, p. 241.

[25] Supra note 13.

[26] Article 106. Contractor or Subcontractor.

Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

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 persons are performing activities which are directly related to the principal business

of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[27] Supra note 17.

Sections 1 and 6 (a) of Department Order No. 18-02 state:

Section 1. Guiding principles. - Contracting or subcontracting arrangements are expressly allowed by law and are subject to regulation for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization, and collective bargaining. Labor-only contracting as defined herein shall be prohibited.

x x x x

Section 6. Prohibitions. - Notwithstanding Section 5 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

(a) Contracting out of a job, work or service when not done in good faith and not justified by the exigencies of the business and the same results in the termination of regular employees and reduction of work hours or reduction or splitting of the bargaining unit;

[28] Supra note 14.

[29] Supra note 15.

[30] Rollo, pp. 29 and 40.

[31] Supra note 9.

[32] Supra note 10.

[33] Supra note 11.

[34] Supra note 14.

[35] Supra note 15.

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