SUPREME COURT
FIRST DIVISION

CAURDANETAAN PIECE WORKERS UNION, represented by JUANITO P. COSTALES, JR. in his capacity as Union President,
***Petitioner*,**

-versus-

G.R. No. 113542
February 24, 1998

UNDERSECRETARY BIENVENIDO E. LAGUESMA and CORFARM GRAINS, INC.,
***Respondents*.**
x----------x

CAURDANETAAN PIECE WORKERS ASSOCIATION as represented by JUANITO P. COSTALES, JR., president,
***Petitioner*,**

-versus-

G.R. No. 114911
February 24, 1998

NATIONAL LABOR RELATIONS COMMISSION, CORFARM GRAINS, INC. and/or TEODY C. RAPISORA and HERMINIO RABANG,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

The Court reiterates some fundamental labor doctrines: (1) this Court may review factual determinations where the findings of the med-arbiter conflict with those of the undersecretary of labor; (2) an employer-employee relationship may be established by substantial evidence; (3) procedural due process is satisfied by the grant of an opportunity to be heard and an actual adversarial-type trial is not required; (4) the NLRC commits grave abuse of discretion when it remands a case to the labor arbiter in spite of ample pieces of evidence on record which are sufficient to decide the case directly; and (5) where illegal dismissal is proven, the workers are entitled to back wages and other similar benefits without deductions or conditions.

Statement of the Case

These doctrines are used by the Court in resolving these Consolidated Petitions for Certiorari under Rule 65, challenging the Resolutions of Undersecretary Bienvenido Laguesma and the National Labor Relations Commission.

First Case

In GR. No. 113542, hereafter referred to as the First Case, Petitioner Caurdanetaan Piece Workers Union/Association (CPWU) prays for the nullification and reversal of Undersecretary Laguesma's Order dated January 4, 1994 in OS-MA-A-8-119-93 (RO100-9207-RU-001), which granted Respondent Corfarm's motion for reconsideration and dismissed petitioner's prayer for certification election. The dispositive portion of the assailed Order reads as follows:[1]

> "WHEREFORE, the questioned Order is hereby set aside and a new one issued dismissing the petition for certification election for lack of merit."

In his earlier Order dated September 7, 1993, Laguesma affirmed Med-Arbiter Sinamar E. Limos' order of March 18, 1993 which disposed as follows:[2]

> "IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the above-entitled petition is hereby granted. Consequently, the motion to dismiss filed by Corfarm Grains, Inc. is denied.
>
> Let a certification election be conducted among the rank-and-file employees of Corfarm Grains, Inc., within ten (10) days from receipt hereof, with the following choices:
>
> 1. Caurdanetaan Piece Workers Union;
>
> 2. No Union
>
> A pre-election conference is hereby set on March 29, 1993 at 2:00 o' clock in the afternoon at the DOLE, Dagupan District Office, Mayombo District, Dagupan City to thresh out the mechanics of the Certification Election. Employer Corfarm Grains, Inc. is hereby directed to present its employment records for the period covering January to June 1992 evidencing payment of salaries of its employees.
>
> Let the parties be notified accordingly."

Aggrieved by Respondent Laguesma's subsequent Order dated January 27, 1994[3] denying its motion for reconsideration, petitioner filed this recourse before this Court.

Second Case

In GR. No. 114911, hereafter referred to as the Second Case, petitioner assails the Resolution promulgated on February 16, 1994 in NLRC CA No. L-001109[4] by the National Labor Relations Commission (Respondent NLRC),[5] the dispositive portion of which reads:[6]

"WHEREFORE, the Decision of the Labor Arbiter dated 14 September 1993 is hereby SET ASIDE. Let the records of the case be REMANDED to the Arbitration Branch of origin for immediate appropriate proceedings."

The labor arbiter's decision that was reversed by Respondent NLRC disposed as follows:[7]

"WHEREFORE, judgment is hereby rendered as follows:

1. Declaring individual complainants' dismissal illegal;

2. Declaring respondent guilty of unfair labor practice;

3. Ordering respondent to pay the 92[8 & 8a] complainants the following:

    a) 13th month pay limited to three years in the amount of P4,788.00 each;

    b) service incentive leave pay in the amount of P855.00 each for three years;

    c) underpaid wages covering the period June 1989 to June 1992 which amount to P47,040.00 each;

    d) backwages reckoned from June 1992, the date of dismissal, to September 1993, the date of promulgation of the decision or a period of 14 months, in the amount of P22,344.00 each;

    e) refund of P12.00/day deduction limited to three years which amounts to P12,096 each; and

    f) to pay the complainants P1,000.00 each as damages.

4. To reinstate the complainants to their former positions immediately.

All other claims are hereby dismissed for lack of merit."

In a Resolution promulgated on March 28, 1994, Respondent NLRC denied petitioner's motion for reconsideration.[9]

The Facts

In his Consolidated Memorandum, the solicitor general recited the following pertinent facts, which we find amply supported by the records:[10]

> "Petitioner union has ninety-two (92) members who worked as 'cargador' at the warehouse and ricemills of private respondent referring to Respondent Corfarm at Umingan, Pangasinan since 1982. As cargadores, they loaded, unloaded and piled sacks of palay from the warehouse to the cargo trucks and those brought by cargo trucks for delivery to different places. They were paid by private respondent on a piece rate basis. When private respondent denied some benefits to these cargadores, the latter organized petitioner union. Upon learning of its formation, private respondent barred its members from working with them and replaced them with non-members of the union sometime in the middle of 1992.
>
> On July 9, 1992, petitioner filed a petition for certification election before the Regional Office No. I of the Department of Labor and Employment, San Fernando, La Union docketed as RO100-9207-RU-001.
>
> While this petition for certification election was pending, petitioner also filed on November 16, 1992, a complaint for illegal dismissal, unfair labor practice, refund of illegal deductions, payment of wage differentials, various pecuniary benefits provided by laws, damages, legal interest, reinstatement and attorney's fees, against private respondent before the Regional Arbitration Branch No. 1 of Dagupan City, docketed as NLRC RAB Case No. 01-117-0184-92.

On November 24, 1992, Labor Arbiter Ricardo Olairez in NLRC Case No. Sub-Rab 01-117-0184-92, directed the parties to submit position paper on or before December 14, 1992, and to appear for hearing on the said date. Only the complainant petitioner submitted its position paper on December 3, 1992.

Likewise in the scheduled hearing on December 14, 1992, private respondent did not appear[;] thus Labor Arbiter Olairez allowed the president of petitioner union Juanito Costales to testify and present its evidence ex-parte.

On December 16 1992, another notice was sent to the parties to appear on the January 7, 1993 hearing by Labor Arbiter Emiliano de Asis.

Before the scheduled hearing on January 7, 1993, complainant petitioner filed a motion to amend complaint and to admit amended complaint. It also filed the following:

1. Affidavit of Juanito Costales, Jr., dated November 24, 1992;

2. Joint affidavit of Ricardo Aban, Armando Casing, Benjamin Corpuz, Danny Margadejas, Fidel Fortunato, Henry de los Reyes, Anthony de Luna, Warlito Arguilles, Dominador Aguda, Marcelino Cayuda, Jr., Jaime Costales and Juanito Mendenilla dated December 30, 1992;

3. Joint affidavit of Juanito Costales and Armando Casing dated January 7, 1993; and

4. Affidavit signed by individual union members.

On March 18, 1993, Med-Arbiter Sinamar E. Limos issued an Order granting the petition for certification election earlier filed.

Meanwhile, Labor Arbiter Rolando D. Gambito in the illegal dismissal case issued the May 20, 1993 Order, the dispositive portion of which reads:

> 'WHEREFORE, respondents are hereby ordered to submit their position paper, together with their documentary evidence, if any, within Ten (10) days from receipt of the order, otherwise we will be constrained to resolve this case based on available evidence on record.'

On September 7, 1993, public respondent Laguesma issued a Resolution denying the appeal filed by private respondent against the order of Med-Arbiter Limos granting the petition for certification election.

Acting on said denial, private respondent filed a motion for reconsideration which was granted in an Order dated January 4, 1994 by public respondent Laguesma dismissing the petition for certification election for lack of employer-employee relationship.

Petitioner in turn filed a motion for reconsideration of the January 4, 1994, Order but it was denied by public respondent Laguesma in his January 27, 1994 Order which reaffirmed the dismissal of petition for certification election.

Thus, the union filed its first petition for certiorari assailing the Orders of January 4 and 27, 1994 of public respondent Laguesma dismissing the petition for certification election. The said petition is captioned as 'Caurdanetaan Piece Workers Union, petitioner, vs. Hon. Bienvenido Laguesma, et al., respondents,' docketed as G.R. No. 113542 and raffled to the Second Division of this Honorable Court."

On September 14, 1993, Labor Arbiter Rolando D. Gambito issued his decision finding the dismissal of petitioner's members illegal. On appeal by both parties, Respondent NLRC — as earlier stated — set aside the appealed decision and remanded the case to the labor arbiter for further proceedings. Petitioner's motion for reconsideration was later denied.

The solicitor general, who was supposed to represent both public respondents, joined petitioner and filed a "Manifestation and Motion (In Lieu of Comment)" dated July 25, 1994, praying that the petition in the First Case "be granted and that judgment be rendered annulling"[11] the assailed Orders of Respondent Laguesma. The Republic's counsel likewise filed another "Manifestation and Motion (In Lieu of Comment)" dated October 4, 1994 in the Second Case, praying that "judgment be rendered annulling the resolution of Public Respondent NLRC dated February 16, 1994 and March 28, 1994 and order[ing] public respondent to proceed with the case instead of remanding the same to the labor arbiter of origin."[12]

In a Resolution dated March 29, 1995,[13] this Court ordered the consolidation of the two cases.[14]

Public Respondents' Rulings

In the First Case

Public Respondent Laguesma premised the dismissal of the petition for certification election on the absence of an employer-employee relationship between petitioner's members and private respondent. Professing reliance on the control test in determining employer-employee relationship, his Order dated January 4, 1994[15] explained:

> "It is settled in this jurisdiction that the most important factor in determining the existence of employer-employee relationship is the control test or the question of whether or not the supposed employer exercises control over the means and methods by which the work is to be done. In the instant case, it is not disputed that movant does not exercise any degree of control over how the loading or unloading of cavans of palays to or from the trucks, to or from the rice mills. Movant's only concern is that said cavans of palay are loaded/unloaded. Absent therefore, the power to control not only the end to be achieved but also the means to be used in reaching such end, no employer-employee relationship could be said to have been established. We also noted that some of petitioner's members including its president, Juanito Costales, Jr., admitted in

separate sworn statements that they offer and actually perform loading and unloading work for various rice mills in Pangasinan and that the performance of said work depends on the availability of work in said mills. They also categorically stated that there is no employer-employee relationship between petitioner and movant. To our mind, said declarations being made against interest deserve much evidentiary weight. Considering therefore, the foregoing, we have no alternative but to dismiss the petition for lack of employer-employee relationship."

In the Second Case

On the other hand, Respondent NLRC ordered the remand of the case to the arbitration branch for further proceedings because "the issues at hand need further threshing out." Stressing the principle that allegations must be proved by "competent and credible evidence," it held:[16]

> "There is no question that under the Rules of the Commission, complaints may be resolved on the basis of the Position Papers submitted by the parties and that the parties may be deemed to have waived their right to present evidence after they have been given an opportunity to do so. These procedural rules, however should be read in conjunction with the time-honored principle that allegations must be proved and established by competent and credible evidence. In other words, mere allegations would not suffice despite the absence of evidence to the contrary.
>
> In subject case, complainants-appellants' allegations that they are laborers of respondents-appellants receiving P45.00 per day's work of eight hours (p. 2, Amended Position Paper dated December 14, 1992, p. 31 Records; p. 2 Amended Complaint dated 16 December 1992, p. 70, Records) appears to be in conflict with their earlier assertions that they are paid on the basis of the number of cavans of palay moved, piled, hauled and unloaded from trucks or haulers multiplied by P0.12 per sack or cavan.' And for the day's earning 'respondents used to be obliged to pay P57.00 per day's earning — ' (p. 2, Position Paper dated 24 November 1992; p. 17, Records).

Similarly attached to the records is a narrative report of the DOLE inspector where it was mentioned that Juanito Costales, Jr., is the owner of Carcado Contracting Services and is not an employee of Corefarm [sic] Grains (Narrative Report dated August 4, 1992, p. 10 Records).

Another reason why subject case should be remanded to the Labor Arbiter below is the fact that the personality of complainant union has been raised in issue before the proper forum and adverse decision on the matter will definitely affect the whole proceedings.

Furthermore, records show that an Amended Complaint was filed on December 23, 1992. This amended complaint made no mention of the affidavits of Juanito Costales, Jr. and the 92 other workers which documents were filed in January 1993. Likewise, the amended complaint contains but a general statement that the 92 workers of Corefarm [sic] Grains have been employed since 1982 which was adopted by the Labor Arbiter below in his decision notwithstanding the fact that a number of these workers started working with respondent after 1982. Some of whom worked with the company in 1990 (Joint Affidavit dated 7 January 1993, pp. 96-98, Records). Notwithstanding this fact, the Labor Arbiter in the decision under consideration allowed refund of alleged deduction for a period of three years. In the same manner, payment of salary differential was also granted.

Indeed the issues at hand need further threshing out. Under the Rules, the Labor Arbiter is authorized to thresh out issues (sec. 4, Rule V). As it is, we are not convinced by the conclusions of the Labor Arbiter.

The ends of justice would better be served if all parties are granted further opportunity to ventilate their respective positions."

The Issues

In its Consolidated Memorandum dated September 19, 1995 filed before us, petitioner raises the following "grounds" in support of its petition:[17]

> "1. Grave abuse of discretion or acting in excess of jurisdiction, which is equivalent to lack of jurisdiction on the part of public respondent in setting aside the labor arbiter's decision and in remanding this case to the office of origin for further proceedings is not necessary when in fact the mandatory requirements of due process have been observed by the labor arbiter in rendering decision on the case;
>
> 2. Remand of the case to office of origin for further proceedings on matters already passed upon properly by the labor arbiter is contrary to the rule of speedy labor justice and the [sic] social justice and to afford protection to labor policy of the Philippine Constitution, which is a command that should not be disregarded by the courts in resolving labor cases; and
>
> 3. Remand of the case to the labor arbiter would only prolong social unrest and the suffering of injurious effects of illegal dismissal by the 92 illegally dismissed workers; hence, said remand of the case without justification constitutes an oppressive act committed by public respondent."

Simply put, the issues are as follows:

1. Whether Respondent Laguesma acted with grave abuse of discretion in ordering the dismissal of the petition for certification election.

2. Whether Respondent NLRC acted with grave abuse of discretion in remanding the illegal dismissal case to the labor arbiter for further proceedings.

The present controversy hinges on whether an employer-employee relationship between the CPWU members and Respondent Corfarm has been established by substantial evidence.

The Court's Ruling

The two petitions are meritorious.

Main Issue : Employer-Employee Relationship

First Case : Certification Election

Petitioner contends that Respondent Laguesma committed grave abuse of discretion in dismissing the petition for certification election by relying on private respondent's bare allegation, in its motion for reconsideration, of lack of employer-employee relationship.[18] According to petitioner, Respondent Laguesma cannot reverse his Decision in the absence of a concomitant change in his factual findings.[19] Petitioner insists that all its members were employees of private respondent, viz.:[20]

> "The 92 workers, who are all union members of petitioner herein, have been rendering actual manual services as 'cargadores' in the warehouse and rice mills of private respondent, performing activities usually related to or desirable by [sic] the business or trade of private respondent who is engaged in the buy and sell of palay as well as warehousing of said commodity and milling the same for sale to customers in the form of milled rice. The 92 workers have performed their activities for the last ten (10) years prior to their having been illegally dismissed from employment on June 18, 1992 or thereabouts."

Petitioner adds that many of its members received Christmas bonuses from private respondent.[21]

On the other hand, Respondent Corfarm describes the contentions of petitioner as off-tangent, if not irrelevant. —

> First, the authority of the DOLE Secretary to decide appeals in representation cases is undeniable (see e.g., Sections 9 and 10 of Rule V, Book V, of the Implementing Rules and Regulations of the Labor Code; also Art. 259, appeal from certification election orders, labor code). Second, petitioner completely misses the point that the granting and denial of a motion for reconsideration involves the exercise of discretion. As submitted by the Public Respondent in its Comment, 'among the ends to which a Motion for Reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to law or the evidence.'" (Emphasis found in the original).

Corfarm insists that the challenged Order of Respondent Laguesma dated January 4, 1994 rests on "solid findings of fact" which should be accorded respect and finality.[22] It attacks the petitioner's allegation — that it has "92" workers who worked as "cargador" at its warehouses — as "gratuitous and not supported by any evidence because as late as this time of day in the litigation of this case, who exactly are those 92 workers cannot be known from the records."[23] (Emphasis in original).

Private respondent further argues that RJL Martinez Fishing Corp. vs. NLRC,[24] cited by the solicitor general, has a factual situation different from the case at bar. "Waiting time," unlike that in RJL Martinez Fishing Corp., does not obtain here.[25] Likewise allegedly inapplicable are the rulings in Villavilla vs. Court of Appeals[26] and in Brotherhood Labor Unity Movement vs. Zamora.[27]

Respondent Corfarm denies that it had the power of control, rationalizing that petitioner's members "were 'street-hired' workers engaged from time to time to do loading and unloading work; there was no superintendent-in-chargeto give orders; and there were no gate passes issued, nor tools, equipment and paraphernalia issued by Corfarm for loading/unloading."[28] It attributes error to the solicitor general's reliance on Article 280[29] of the Labor Code. Citing Brent School, Inc. vs. Zamora,[30] private respondent asserts that a literal application of such article will result in "absurdity," where petitioner's members will be regular employees not only of respondents but also of several other rice mills, where they were allegedly also under

service. Finally, Corfarm submits that the OSG's position is negated by the fact that "petitioner's members contracted for loading and unloading services with respondent company when such work was available and when they felt like it."[31]

We rule for petitioners. Section 5, Rule 133 of the Rules of Court mandates that in cases filed before administrative or quasi-judicial bodies, like the Department of Labor, a fact may be established by substantial evidence, i.e. "that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion."[32] Also fundamental is the rule granting not only respect but even finality to factual findings of the Department of Labor, if supported by substantial evidence. Such findings are binding upon this Court, unless petitioner is able to show that the secretary of labor (or the undersecretary acting in his place) has arbitrarily disregarded or misapprehended evidence before him to such an extent as to compel a contrary conclusion if such evidence were properly appreciated. This is rooted in the principle that this Court is not a trier of facts, and that the determinations made by administrative bodies on matters falling within their respective fields of specialization or expertise are accorded respect.[33] Also well-settled is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the labor authorities shall be accorded not only respect but even finality when supported by substantial evidence.[34] Finally, in certiorari proceedings under Rule 65, this Court does not, as a rule, evaluate the sufficiency of evidence upon which the labor officials based their determinations. The inquiry is essentially limited to whether they acted without or in excess of jurisdiction or with grave abuse of discretion.[35] However, this doctrine is not absolute. Where the labor officer's findings are contrary to those of the med-arbiter, the Court — in the exercise of its equity jurisdiction — may wade into and reevaluate such findings,[36] which we now embark on in this case.[37]

To determine the existence of an employer-employee relation, this Court has consistently applied the "four-fold" test which has the following elements: (1) the power to hire, (2) the payment of wages, (3) the power to dismiss, and (4) the power to control — the last being the most important element.[38]

Our examination of the case records indubitably shows the presence of an employer-employee relationship. Relying on the evidence adduced by the petitioners, Respondent Laguesma himself affirmed the presence of such connection. Thus, in his Order dated September 7, 1993, he astutely held:[39]

> "Anent the first issue, we find the annexes submitted by the respondent company not enough to prove that herein petitioner is indeed an independent contractor. The existence of an independent contractor relationship is generally established by the following criteria. The contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision over the workers; payment of the contractor's workers; the control and the supervision over the workers; the control of the premises; the duty to supply the premises, tools, appliances, materials and laborers, and the. mode, manner and terms of payment. [Brotherhood Labor Unity Movement of the Philippines vs. Zamora, 147 SCRA 49 (198) (sic)].
>
> None of the above criteria exists in the case at bar. The absence of a written contract which specifies the performance of a specified piece of work, the nature and extent of the work and the term and duration of the relationship between herein petitioner and respondent company belies the latters [sic] allegation that the former is indeed and [sic] independent contractor.
>
> Also, respondent failed to show by clear and convincing proof that herein respondent has the substantial capital or investment to qualify as an independent contractor under the law. The premises, tools, equipments [sic] and paraphernalia are all supplied by respondent company. It is only the manpower or labor force which the alleged contractor supplies, suggesting the existence of a 'labor only' contracting scheme which is prohibited by law. Further, if herein petitioner is indeed an independent contractor, it should have offered its services to other companies and not to work [sic] exclusively for the

> respondent company. It is therefore, clear that the alleged J.P. Costales, Jr. Cargador Services cannot be considered as an independent contractor as defined by law."

In his subsequent order, Respondent Laguesma inexplicably reversed his above ruling and held that there was no employer-employee relationship on the ground that Respondent Corfarm exercised no power of control over the alleged employees.

It may be asked, why the sudden change of mind on the part of Respondent Laguesma? No additional pieces of evidence were adduced and no existing ones were identified by Laguesma to support such strange reversal. The unblemished fact is that private respondent was the recruiter and employer of petitioner's members.

Shoppers Gain Supermart vs. NLRC[40] provides the standard to determine whether a worker is an independent contractor:

> "The applicable law is not Article 280 of the Labor Code which is cited by petitioners, but Art. 106, which provides:
>
> > 'Art. 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.
> >
> > x x x
>
> 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.' (Emphasis supplied)

> In accordance with the above provision, petitioner corporation is deemed the direct employer of the private respondents and thus liable for all benefits to which such workers are entitled, like wages, separation benefits and so forth. There is no denying the fact that private respondents' work as merchandisers, cashiers, baggers, check-out personnel, sales ladies, warehousemen and so forth were directly related, necessary and vital to the day-to-day operations of the supermarket; their jobs involved normal and regular functions in the ordinary business of the petitioner corporation. Given the nature of their functions and responsibilities, it is improbable that petitioner did not exercise direct control over their work. Moreover, there is no evidence — as in fact, petitioners do not even allege — that aside from supplying the manpower, the labor agencies have 'substantial capital or investment in the form of tools, equipment, machineries, work premises, among others.'"

It is undeniable that petitioner's members worked as cargadores for private respondent. They loaded, unloaded and piled sacks of palay from the warehouses to the cargo trucks and from the cargo trucks to the buyers. This work is directly related, necessary and vital to the operations of Corfarm. Moreover, Corfarm did not even allege, much less prove, that petitioner's members have "substantial capital or investment in the form of tools, equipment, machineries, and work premises, among others." Furthermore, said respondent did not contradict petitioner's allegation that it paid wages directly to these workers without the intervention of any third-party independent contractor. It also wielded the power of dismissal over petitioners; in fact, its exercise of this power was the progenitor of the Second Case. Clearly, the workers are not independent contractors.

Applying Article 280[41] of the Labor Code, we hold that the CPWU members were regular employees of private respondent. Their tasks were essential in the usual business of private respondent.

As we have ruled in an earlier case, the question of whether an employer-employee relationship exists in a certain situation has bedevilled the courts. Businessmen, with the aid of lawyers, have tried to avoid or sidestep such relationship, because that juridical

vinculum engenders obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.[42] All too familiarly, Respondent Corfarm sought refuge from these obligations. However, the records of this case clearly support the existence of the juridical vinculum.

RJL Martinez Fishing Corporation,[43] cited by the solicitor general, is relevant because petitioner's members were also made to wait for "loading and unloading" of cavans of palay to and from the storage areas and to and from the milling areas.[44] This waiting time does not denigrate the regular employment of petitioner's members. As ruled in that case:[45]

> "Besides, the continuity of employment is not the determining factor, but rather whether the work of the laborer is part of the regular business or occupation of the employer. (fn: Article 281, Labor Code, as amended; Philippine Fishing Boat Officers and Engineers Union vs. Court of Industrial Relations, 112 SCRA 159 (1982). We are thus in accord with the findings of respondent NLRC in this regard.
>
> Although it may be that private respondents alternated their employment on different vessels when they were not assigned to petitioner's boats, that did not affect their employee status. The evidence also establishes that petitioners had a fleet of fishing vessels with about 65 ship captains, and as private respondents contended, when they finished with one vessel they were instructed to wait for the next. As respondent NLRC had found:
>
> > We further find that the employer-employee relationship between the parties herein is not co-terminus with each loading and unloading job. As earlier shown, respondents are engaged in the business of fishing. For this purpose, they have a fleet of fishing vessels. Under this situation, respondents' activity of catching fish is a continuous process and could hardly be considered as seasonal in nature. So that the activities performed by herein complainants, i.e. unloading the catch of tuna fish from respondents' vessels and then loading the same to

> refrigerated vans, are necessary or desirable in the business of respondents. This circumstance makes the employment of complainants a regular one, in the sense that it does not depend on any specific project or seasonal activity." (fn: NLRC Decision, p. 94, Rollo.)

Alleged Admission of Lack of Employer-Employee Relationship

Respondent Corfarm argues that "some of petitioner's members including its president, Juanito P. Costales, Jr., admitted that they work for various rice mills in Pangasinan and that there is no employer-employee relations between them and private respondents." It adds that the solicitor general, by arguing that there was an employer-employee relationship, attempts to "substitute his judgment with that of public respondent undersecretary who found such admissions against self-interest on the part of petitioner's members.[46]

These arguments are negligible. The alleged admissions cannot be taken against petitioner's cause. First, the contents of the admissions are highly suspect. The records reveal that the "admissions" of Juanito Costales, Jr.,[47] Carlito Costales[48] and Juanito Medenilla[49] were in the form of affidavits[50] of adhesion which were identical in content, differentiated only by the typewritten names and the signatures of the workers. Second, only three of the workers executed such affidavits. Clearly, the admissions in such affidavits cannot work against petitioner union's cause. Such pro forma and identical affidavits do not prove lack of employer-employee relationship against all members of petitioner. Third, the employer-employee relationship is clearly proven by substantial evidence. Corfarm sorely failed to show that petitioner's members were independent contractors. We rule that no particular form of proof is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship. If only documentary evidence would be required to demonstrate that relationship, no scheming employer would ever be brought before the bar of justice.[51] Fourth, and in any event, the alleged admissions of the three workers that they worked with other rice mills do not work against them. Assuming arguendo that they did work with other rice

mills, this was required by the imperative of meeting their basic needs.[52]

The employer-employee relationship having been duly established, the holding of a certification election necessarily follows. It bears stressing that there should be no unnecessary obstacle to the holding of such election,[53] for it is a statutory policy that should not be circumvented.[54] We have held that, in the absence of a legal impediment, the holding of a certification election is the most democratic method of determining the employees' choice of their bargaining representative. It is the best means to settle controversies and disputes involving union representation. Indeed, it is the keystone of industrial democracy.[55]

Second Case : Illegal Dismissal

Petitioner assails the NLRC for setting aside the labor arbiter's decision and remanding the case for further proceedings. Petitioner argues that the order of remand "will only prolong the agony of the 92 union members and their families for living or existing without jobs and earnings to give them support." Further, petitioner contends:[56]

> "The Labor Arbiter had rendered a decision (Annex 'D', Petition) on September 14, 1993 in favor of petitioner based on the available records of the case after giving more than ample opportunities to private respondents herein to submit their position paper and other pleadings alleging their evidences [sic] against the causes of action of petitioner alleged in the complaint for illegal dismissal, unfair labor practice, non-payment of various benefits granted by existing laws during their employment, illegal deductions or diminution of their underpaid daily wages, non-payment of wage increases and other causes of action pleaded by the complainant or herein petitioner.
>
> In short, Labor Arbiter Rolando Gambito rendered his decision based on the records of the case including evidence available on record and after observing due process of law."

To support his opposition against the remand of the case, petitioner recites the chronological events of the case, viz.:[57]

> "In the case at bar, private respondents were notified earlier in the latter part of 1992 regarding the pendency of the complaint for illegal dismissal, unfair labor practice, damages, etc., but said respondents did not appear during the initial hearing of the case before Labor Arbiter Ricardo Olairez, then the Arbiter handling the case. The case was re-set for hearing at some other dates. On April 22, 1993, Atty. Alfonso C. Bince, Jr. appeared as counsel for respondents at Dagupan City. Atty. Bince committed to the Labor Arbiter that the former will file the position paper for his clients (Corfarm Grains, Inc., et al.) within ten (10) days from April 22, 1993, but still private respondents' Position Paper was not filed.
>
> On May 20, 1993, Labor Arbiter Rolando Gambito, who took over the case for illegal dismissal, etc. filed by petitioner, issued an order to private respondents directing the latter (respondents) to submit their Position Paper together with THEIR DOCUMENTARY EXHIBITS, if any, within 10 days from receipt of the order. Still, private respondents' counsel failed to submit private respondent's Position Paper relative to the petitioner's complaint for illegal dismissal, unfair labor practice, etc. which is involved in G.R. No. 114911 pending action by this Honorable Court.
>
> Thus, the Labor Arbiter rendered his decision on the case in favor of petitioner and/or the 92 illegally dismissed workers based on the position paper filed by the latter and available records of the case." (Emphasis in original).

On the other hand, Respondent Corfarm submits that the labor arbiter's decision should be set aside not only for "lack of competent and credible evidence" but also for lack of "procedural due process." Corfarm further contends that in spite of the pendency of its motions to cross-examine petitioner's witnesses and to suspend proceedings, the labor arbiter ordered the submission of its position paper and documentary evidence within ten (10) days.[58] Respondent Corfarm insists:[59]

> "Indeed, although proceedings before a Labor Arbiter are supposed to be non-litigious and the technicalities in the courts of law need not be strictly applied, the proceedings should nevertheless be 'subject to the requirements of due process' as provided in Section 7, Rule 7 of the NLRC Rules of Procedure." (See also Phil. Telegraph and Telephone Corp. vs. NLRC, 183 SCRA 451).

We agree with petitioner. Private respondent was not denied procedural due process, and the labor arbiter's decision was based on competent, credible and substantial evidence.

Procedural Due Process Observed

Private respondent had been duly informed of the pendency of the illegal dismissal case, but it chose not to participate therein without any known justifiable cause. The labor arbiter sent notices of hearing or arbitration to the parties, requiring them to submit position papers at 1:30 p.m. on November 14, 1992.[60] Respondent Corfarm did not attend the hearing. According to Respondent NLRC, there was no proof that Respondent Corfarm received such notice. In any case, petitioner filed a Motion to Admit Amended Complaint on December 23, 1992. Again, another notice for hearing or arbitration on January 7, 1993 was sent to the parties.[61] This was received by petitioner's counsel as evidenced by the registry return receipt duly signed by private respondent's counsel, Atty. Alfonso Bince, Jr. It was only on January 28, 1993, however, that Atty. Bince entered his appearance as counsel for Respondent Corfarm.[62] On May 10, 1993, Corfarm was again given a new period of ten (10) days within which to submit its position paper and documentary evidence; "otherwise, the labor arbiter will be constrained to resolve this case based on available evidence on record."[63] As evidenced by a registry return receipt, a copy of said directive was received by respondent's counsel on May 25, 1993. Still and all, Corfarm failed to file its position paper. Clearly, private respondent was given an opportunity to present its evidence, but it failed or refused to avail itself of this opportunity without any legal reason. Due process is not violated where a person is given the opportunity to be heard, but chooses not to give his side of the case.[64]

Labor Arbiter's Decision Based on Credible, Competent and Substantial Evidence

Contrary to the conclusions of the NLRC and the arguments of private respondent, the findings of the labor arbiter on the question of illegal dismissal were based on credible, competent and substantial evidence.

It is to be borne in mind that proceedings before labor agencies merely require the parties to submit their respective affidavits and position papers. Adversarial trial is addressed to the sound discretion of the labor arbiter. To establish a cause of action, only substantial evidence is necessary; i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[65] As ruled in Manalo vs. Roldan-Confesor:[66]

> "Clear and convincing proof is 'more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases' (fn: Black's Law Dictionary, 5th Ed., p. 227, citing Fred C. Walker Agency, Inc. vs. Lucas, 215 Va. 535, 211 S.E. 2d 88, 92) while substantial evidence 'consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance' (fn: Ibid., p. 1281, citing Marker vs. Finch, D.C. Del., 322 F. Supp. 905, 910) Consequently, in the hierarchy of evidentiary values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order."

Evidence to determine the validity of petitioner's claims, which the labor arbiter relied upon, was available to Respondent NLRC. These pieces of evidence are in the case records, as aptly pointed out by the solicitor general:[67]

> "Regarding the quoted second sentence of public respondent NLRC's Resolution that allegations must be proved and established by competent evidence, and that mere allegations would not suffice despite the absence of evidence to the

> contrary, suffice it to say that there is ample evidence on record to support the Labor Arbiter's decision, to wit: 1) Narrative report of DOLE inspector Crisanto Rey Dingle noting some violation of underpayment of minimum wage and underpayment of 13th month pay (page 10, record); 2) affidavit of union officers and individual union members, stating their various claims (page 80-195, Record). Despite such evidence and an opportunity afforded to private respondent to present its evidence and position paper as borne out by the notice of hearing issued by Labor Arbiter Olairez dated November 14, 1992, with advice to the parties to submit their position paper (p. 14 Record) and the Order issued by Labor Arbiter Gambito dated May 20, 1993; requiring private respondents to submit their position paper, together with their documentary evidence (p. 247, record), private respondent failed to submit its position paper and countervailing evidence which should have met squarely the allegations and evidence adduced by the petitioner. Thus, in the absence of private respondent's position paper and countervailing evidence, the Labor Arbiter cannot be faulted in deciding the case based on the available evidence on record."

It must be stressed that labor laws mandate the speedy administration of justice, with least attention to technicalities but without sacrificing the fundamental requisites of due process. In this light, the NLRC, like the labor arbiter, is authorized to decide cases based on the position papers and other documents submitted, without resorting to the technical rules of evidence.[68] Verily, Respondent NLRC noted several documentary evidence sufficient to arrive at a just decision. Indeed, the evidence on record clearly supports the conclusion of the labor arbiter that the petitioners were employees of respondent, and that they were illegally dismissed.[69]

The NLRC points to conflicts and inconsistencies in the evidence on record. We are not convinced. These alleged inconsistencies are too flimsy and too tenuous to preclude a just decision. The finding that Juanito Costales, Jr. was an employee of respondent was allegedly inconsistent with his admission that he was the "owner of Carcado Contracting Services." As earlier observed, the inconsistency is irrelevant. Juan Costales, Jr. was an employee of Corfarm. Owning this alleged outfit is not inconsistent with such employment. The

NLRC also questioned the amount of the employees' compensation. In one instance, the workers stated that they were "receiving P45.00 per day's work of eight hours." In another, they claimed that they were paid P0.12 per sack or cavan. These allegedly differ from their allegation that "Corfarm used to be obliged to pay P57.00 per day's earning." The alleged inconsistencies are more apparent than real. Records reveal that the P57 was the promised compensation; however, there was an unauthorized deduction of P12; thus, the amount of P45 per day.[70] The claim of "P0.12 per sack or cavan" is the basic computation of how workers or haulers earn their wage for the day.[71] In any event, the alleged inconsistencies do not affect or diminish the established fact that petitioner's members were regular employees who were illegally dismissed.

Why Respondent NLRC refused to rule directly on the appeal escapes us. The remand of a case or an issue to the labor arbiter for further proceedings is unnecessary, considering that the NLRC was in a position to resolve the dispute based on the records before it and particularly where the ends of justice would be served thereby.[72] Remanding the case would needlessly delay the resolution of the case which has been pending since 1992.[73] As already observed, the evidence on record clearly supports the findings of the labor arbiter.

Pursuant to the doctrine that this Court has a duty to settle, whenever possible, the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation, we now resolve all issues.[74]

It is axiomatic that in illegal dismissal cases, the employer always has the burden of proof,[75] and his failure to discharge this duty results in a finding that the dismissal was unjustified.[76] Having defaulted from filing its position paper, Respondent Corfarm is deemed to have waived its right to present evidence and counter the allegations of petitioner's members.

In the same light, we sustain the labor arbiter's holding in respect of unfair labor practice.[77] As ruled by Labor Arbiter Rolando D. Gambito:[78]

> "The last issue: Instead of sitting down with the individual complainants or the union officers to discuss their demands, respondents resorted to mass lay-off of all the members of the union and replaced them with outsiders. This is clearly a case of union busting which Art. 248 of the Labor Code prohibits. Art. 248 provides that 'It shall be unlawful for an employer to commit any of the following unfair labor practice (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization; (b) x x x (c) To contract out service or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization.'"

In view of recent jurisprudence,[79] we are correcting some items in the labor arbiter's decision. The thirteenth month pay awarded should be computed for each year of service from the time each employee was hired up to the date of his actual reinstatement. The same computation applies to the award of the service incentive leave[80] and underpaid wages. Each employee is to be paid the remaining underpaid wages from the date of his or her hiring in accordance with the then prevailing wage legislations. Likewise, a refund of P12 shall be computed for each day of service of each employee, to be reckoned from the date such employee was hired. The damages awarded should be sustained because the employer acted in bad faith.[81] Backwages are to be computed from the date of dismissal up to the date of actual reinstatement without any deductions or conditions. This is in consonance with Fernandez, et al. vs. National Labor Relations Commission:[82]

> "Accordingly, the award to petitioners of backwages for three years should be modified in accordance with Article 279 of the Labor Code, as amended by R.A. 6715, by giving them full backwages without conditions and limitations, the dismissals having occurred after the effectivity of the amendatory law on March 21, 1989. Thus, the Court held in Bustamante:
>
> > 'The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer

adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal."'

WHEREFORE, both petitions are **GRANTED**. In G.R. No. 113542, Respondent Laguesma's Orders dated January 4, 1994 and January 27, 1994 are **REVERSED** and **SET ASIDE**; whereas his Order dated September 7, 1993 is **REINSTATED**. In G.R. No. 114911, Respondent NLRC's Resolutions promulgated on February 16, 1994 and March 28, 1994 are likewise **REVERSED AND SET ASIDE**. The Labor Arbiter's decision dated September 14, 1993 is reinstated with **MODIFICATIONS** as set out in this Decision. Respondent NLRC is **ORDERED** to **COMPUTE** the monetary benefits awarded in accordance with this Decision and to submit its compliance thereon within thirty days from notice of this Decision.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Quisumbing, *JJ.*, concur.

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[1] Rollo of G. R. No. 113542, p. 35.
[2] Ibid, p. 47; Order in RO100-9207-RU-001, p. 7.
[3] Rollo, pp. 37-38. The text reads:
"WHEREFORE, the motion for reconsideration is hereby denied for lack of merit and the Order dated 04 January 1994, STANDS.
No further motion of similar nature shall hereinafter be entertained."
[4] Appealed from SUB-RAB-01-11-7-0184-92.
[5] Third Division composed of Presiding Comm. Lourdes C. Javier, ponente; and Comm. Ireneo B. Bernardo and Joaquin A. Tanodra, concurring.
[6] Rollo of G.R. No. 114911, p. 59; Resolution, p. 12.
[7] Rollo of G.R No. 114911, pp. 48-49; Resolution, pp. 1-2.
[8] The Records of NLRC Case No. SUB-RAB-01-11-7-0184-92 reveal from the Joint Affidavit sworn to by petitioner's members that there are really 95 members (pp. 96-97):

[8a]

	NAME	DATE OF EMPLOYMENT
1.	ABAN, Ricardo	November 15, 1983
2.	ABAN, Rogelio	September 9, 1979
3.	ABUAN, Renato	January 5, 1988
4.	ABUAN Ernesto	January 6, 1988

5.	AGUDIA, Carlito	August 3, 1977
6.	ACCUAR, Remegio	April 10, 1992
7.	ARQUINES, Warlito	January 10, 1978
8.	ARQUINES, Edgardo	May 5, 1990
9.	ARQUINES, Jimmy	January 5, 1987
10.	AGUDIA, Dominador	August 24, 1980
11.	BAYBAYAN, Leopoldo	March 9, 1985
12.	BAYACA, Virgilio	January 15, 1987
13.	BEJOSANO, Orlando	February 20, 1988
14.	BENITEZ, Roger	January 20, 1987
15.	BENITEZ, Felix	April 4, 1990
16.	BENITEZ, Noel	January 5, 1990
17.	BUGAOAN, Rogelio	January 3, 1988
18.	BUGAOAN, Ernesto	March 5, 1989
19.	BUGAOAN, Dominador	January 12, 1988
20.	BIACO, Elmer	April 5, 1991
21.	COSTALES, Juanito P. Jr.	October 8, 1982
22.	COSTALES, Armando	January 20, 1977
23.	COSTALES, Rolly	February 2, 1982
24.	COSTALES, Nestor	March 18, 1983
25.	BUGAOAN, Rodrigo	January 3, 1988
26.	COSTALES, Herminio	April 5, 1990
27.	COSTALES, Carlito	October 14, 1976
28.	COSTALES, Reynaldo	October 9, 1982
29.	COSTALES, Pedro	November 12, 1984
30.	COSTALES, Jaime	November 4, 1981
31.	COSTALES, Willy	July 15, 1982
32.	CASUGA, Marcelino, Jr.	November 15, 1991
33.	CASUGA, Marcelo	January 2, 1990
34.	CASING, Armando	May 15, 1978
35.	CASING, Dominador, Jr.	November 15, 1985
36.	CASING, Carlos	January 3, 1987
37.	CASEM, Silverio	November 8, 1988
38.	CASTRO, Oscar	August 7, 1980
39.	CELIS, Benjamin	January 7, 1988
40.	CELIS, Arturo	January 10, 1980
41.	CELIS, Rolando	August 15, 1991
42.	CORPUZ, Benjamin	April 7, 1984
43.	CORPUZ, Diosdado	January 20, 1986
44.	CORPUZ, Eugene	April 5, 1990
45.	CRUZ, Nemesio	March 13, 1989
46.	DIOCALES, Juan, Jr.	October 20, 1977
47.	ESPIRITU, Goody	May 2, 1992
48.	EUGENIO, Carlos	February 8, 1986
49.	EUGENIO, Eddie	March 15, 1988
50.	FRONDA, Virgilio	August 10, 1989
51.	GALVEZ, Carlito	November 5, 1985

52.	GALVEZ, Dominador	March 14, 1983 .
53.	GALVEZ, Renato	March 14, 1985
54.	GABATIN, Rodolfo	March 15, 1986:
55.	GUZMAN, Romy de	June 20, 1991
56.	GUZMAN, Carlos de	January 4, 1986
57.	GAGOTE, Ronnie	May 2, 1992
58.	GUARINO, Ireneo, Jr.	January 3, 1991
59.	JOSE, Samuel	January 3, 1991
60.	LADIA, Honorato	May 10, 1992
61.	LADIA, Eugenio	January 15, 1991
62.	LAURETA, Warlito	January 3, 1988
63.	LAURETA, Roberto	January 3, 1988
64.	LICOS, Roland	May 2, 1992
65.	LUNA, Anthony de	October 28, 1982
66.	LUNA, Avelino de	September 7, 1977
67.	MACABIO, Nacano	March 1, 1992
68.	MACABIO, Humano	October 20, 1978
69.	MALLARI, Rogelio	May 2, 1992
70.	MARCADEJAS, Rodrigo	January 3, 1987
71.	MARCADEJAS, Danilo	January 23, 1988
72.	MENDENILLA, Juanito	January 5, 1988
73.	MOLINA, Rodolfo	January 5 1988
74.	OCAMPO, Rogelio	October 10, 1978
75.	OCAMPO, Arsenio	April 5, 1982
76.	PACETIS, Julio	July 20, 1989
77.	PALANG, Romeo	March 15, 1984
78.	PADILLA, Gerry	January 2, 1990
79.	PARIAOAN, Cesar	March 5, 1978
80.	PASION, Asterio	May 10, 1991
81.	RAMOS, Danilo	January 3, 1992
82.	REYES, Henry de los	June 5, 1988
88.	SALUDO, Eddie	January 25, 1989
89	SERIOZA, Noel	January 5, 1990
90.	TAMAYO, Leovigildo	December 10, 1991
91,	VALDEZ, Vic	October 28, 1988
92.	VALDEZ, Ruben	March 19, 1987
93.	VALENZUELA, Federico	August 19, 1983
94.	VALENZUELA, Marlo	April 5, 1989
95.	VENTURA, Benjamin, Jr.	January 3, 1987

[9] Rollo of G.R. No. 114911, p. 62; Resolution, p. 1.
[10] Rollo of G.R No. 113542, pp. 250-254; Consolidated Memorandum, pp. 26.
[11] Rollo of G.R. No. 113542, p. 133.
[12] Rollo of G.R. No. 114911, p. 180.
[13] Rollo of G.R. No. 113542, p. 233.
[14] The case was deemed submitted for resolution on September 23, 1996, when the Court received petitioner's Manifestation of Compliance dated September 13, 1996, pursuant to the Resolution of the Court dated August

19, 1996. The same Resolution directed private respondent to comment on petitioner's ex parte motion, but due to private respondent's failure to do so, it is deemed to have waived the right to do so.

[15] Rollo of G.R. No. 113542, pp. 34-35; Order, pp. 2-3.

[16] Rollo of G.R. No. 114911, pp. 56-57; Resolution, pp. 9-10.

[17] Rollo of G.R. No. 113542, pp. 292-293; Consolidated Memorandum for Petitioners, pp. 12-13; original text in upper case.

[18] Rollo of G.R .No. 113542, pp. 20-21; Petition, pp. 14-15.

[19] Ibid., p. 22; Petition, p. 16.

[20] Ibid, p. 27; Petition, p. 27.

[21] Ibid., p. 24; Petition, p. 18.

[22] Ibid., pp. 332-333; Respondent Corfarm's Consolidated Memorandum, pp. 19-20.

[23] Ibid, pp. 337-338; Respondent Corfarm's Consolidated Memorandum, pp. 24-25.

[24] 127 SCRA 454, January 31, 1984.

[25] Rollo of G.R. 113542, pp. 338-339; Respondent Corfarm Consolidated Memorandum, pp. 25-26.

[26] 212 SCRA 488, August 11, 1992.

[27] 147 SCRA 49, January 7, 1987.

[28] Rollo of G.R. No. 113542, pp. 339-343; Respondent Corfarm's Consolidated Memorandum, pp. 26-30.

[29] "Article 280. Regular and casual employment. — The provisions of written agreements 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 services 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 activity exists."

[30] 181 SCRA 702, February 5, 1990.

[31] Rollo of G.R. No. 113542, pp. 344-346; Respondent's Corfarm Consolidated Memorandum, pp. 31-33.

[32] Interorient Maritime Enterprises, Inc., et al., vs. National Labor Relations Commission, et al., G.R. No. 115497, September 16, 1996, citing Rase vs. National Labor Relations Commission, 237 SCRA 523, October 7, 1994, Atlas Consolidated Mining and Development Corp. vs. Factoran, 154 SCRA 49, 54, September 15, 1987; Ang Tibay vs. Court of Industrial Relations, 69 Phil. 635, 642; Police Commission vs. Lood, 127 SCRA 762, February 24, 1984; Klaveness Maritime Agency, Inc. vs. Palmos, 232 SCRA 448, May 20,

1994; Zarate vs. Hon. Norma C. Olegario, et al., G.R. No. 90655, October 7, 1996.

[33] Palomado vs. National Labor Relations Commission, 257 SCRA 680, June 28, 1996.

[34] AFP Mutual Benefit Association, Inc. vs. National Labor Relations Commission, et al., G.R. No. 102199, January 28, 1997 citing North Davao Mining Corporations vs. National Labor Relations Commission, 254 SCRA 721, 731, March 13, 1996; Great Pacific Life Assurance Corporation vs. National Labor Relations Commission, 187 SCRA 694, 660, February 4, 1994; Inter-Orient Maritime Enterprises, Inc. vs. National Labor Relations Commission, 235 SCRA 268, 277, August 11, 1994.

[35] Ilocos Sur Electric Cooperative, Inc. vs. National Labor Relations Commission, 241 SCRA 36, 50, February 1, 1995; Busmente, Jr. vs. National Labor Relations Commission, 195 SCRA 710, April 8, 1991; Aguilar vs. Tan, 31 SCRA 205, January 30, 1970; Pacis vs. Averia, 18 SCRA 907, November 29, 1966.

[36] See Raycor Aircontrol Systems, Inc. vs. National Labor Relations Commission, G.R. No. 114290, September 9, 1996.

[37] Cf. Hilario Magcalas, et al. vs. National Labor Relations Commission, et al., G.R. No. 100333, March 13, 1997.

[38] AFP Mutual Benefit Association, Inc., vs. National Labor Relations Commission, G.R. No. 102199, January 28, 1997 citing Insular Life Assistance Co., Ltd. vs. NLRC, 179 SCRA 459, 464, November 15, 1989; Rhoune-Poulenc Agrochemicals Philippines, Inc. vs. NLRC, 217 SCRA 249, 255, January 19, 1993; and Villuga vs. NLRC, 225 SCRA 537, 546, August 23, 1993; Villavilla vs. Court of Appeals, 212 SCRA 488, August 11, 1992.

[39] Rollo of G.R. No. 113542, pp. 52-53.

[40] 259 SCRA 411, 419-420, July 26, 1996, per Panganiban, J.; See also Philippine Bank of Communications vs. NLRC, 146 SCRA 347, December 19, 1986; Ecal vs. NLRC, 195 SCRA 224, March 13, 1991.

[41] "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 services to be performed is seasonal in nature and the employment is for the duration of the season.

x x x

[42] Mafinco Trading Corporation vs. Ople, 70 SCRA 139, 159, March 25, 1976.

[43] Per Melencio-Herrera, J.

[44] Rollo of G.R. No. 113542, p. 342; Respondent's Consolidated Memorandum, p. 29.

[45] at pp. 460-461.

[46] Rollo of G.R. No. 113542, p. 337; Private Respondent's Consolidated Memorandum, p. 24.
[47] Records of OS-A-8-119-93, p. 138.
[48] Records of OS-A-8-119-93, p. 139.
[49] Records of OS-A-8-119-93, p. 140.
[50] Photocopies only.
[51] Opulencia Ice Plant and Storage vs. NLRC, 228 SCRA 473, 478, December 15, 1993.
[52] Industrial-Commercial-Agricultural Worker's Organization vs. Court of Industrial Relations, et al., Resolution on Motion for Reconsideration, 16 SCRA 562, 568, March 31, 1966.
[53] See Warren Manufacturing Workers Union vs. Bureau of Labor Relations, 159 SCRA 387, March 30, 1988; General Textiles Allied Workers Association vs. Director of Bureau of Labor Relations, 84 SCRA 430, July 31, 1978; Philippine Association of Free Labor Unions (PAFLU) vs. Bureau of Labor Relations, 69 SCRA 132, January 27, 1976.
[54] Belyca Corporation vs. Ferrer-Calleja, 168 SCRA 184, November 29, 1988; Philippine Airlines Employees' Association (PALEA) vs. Ferrer-Calleja, 162 SCRA 426, June 22, 1988; George and Peter Lines, Inc. vs. Associated Labor Unions (ALU), 134 SCRA 82, January 17, 1985.
[55] Trade Unions of the Philippines vs. Laguesma, 233 SCRA 565, June 30, 1994.
[56] Rollo of G.R. No. 113542, p. 300; Petitioner's Memorandum, p. 20.
[57] Rollo of G.R. No. 113542, pp. 300-301; Petitioner's Memorandum, pp. 20-21.
[58] Rollo of G.R. No. 113542, pp. 328-330; Respondent's Consolidated Memorandum, pp. 15-17.
[59] Rollo of G.R. No. 113542, pp. 330-331; pp. 17-18.
[60] Records of NLRC Case No. SUB-RAB 01-11-7-0184-92, p 15.
[61] Id., p. 42.
[62] Id., p. 197.
[63] Id., p. 247.
[64] Philippine Savings Bank vs. NLRC, 261 SCRA 409, September 4, 1996.
[65] Santos vs. Court of Appeals, 229 SCRA 524, January 27, 1994, per Romero, J.
[66] 215 SCRA 808, November 19, 1992, per Bellosillo, J.
[67] Rollo of G.R No. 113542, pp. 266-267; solicitor general's Consolidated Memorandum, pp. 18-19.
[68] Domasig vs. National Labor Relations Commission, 261 SCRA 779, 781, 787, September 16, 1996 citing cases of Sigma Personnel Services vs. NLRC, 224 SCRA 181 (1993) and Cagampan, et al. vs. NLRC, et al., 195 SCRA 533 (1991).
[69] See citation under public respondent's ruling on G.R. No. 114911; Rollo of G.R. No. 114911, pp. 57-58; February 16, 1994 Resolution, pp. 10-12.
[70] The allegations read (NLRC Case No. SUB-RAB 01-11-7-0184-92, p. 31):
"Hence, union members or workers engaged to work were informed that their compensation would be P57.00 per day upon start of their

employment. However, P12.00 out of the P57.00 supposed earnings or daily wage of each worker is withheld by individual respondents from each worker's compensation during their employment (beginning employment until illegally dismissed on June 18, 1992 when individual respondents got wind of the formation or organization of a labor union into what is now known as the Caurdanetaan Piece Workers Union). Only P45.00, out of the P57.00 supposed daily wage of each worker was actually paid to each worker."

[71] Rollo of G.R. No. 114911, p. 72; Labor Arbiter's Decision, p. 5.

[72] See Heirs of Crisanta Y. Gabriel-Almoradie vs. Court of Appeals, 229 SCRA 15, 29, January 4, 1994; Escudero vs. Dulay, 158 SCRA 69, February 23, 1988; Roman Catholic Archbishop of Manila vs. Court of Appeals, 198 SCRA 300, June 19, 1991.

[73] To reiterate, Petitioner filed a petition for certification election on July 9, 1992 and an illegal dismissal case on November 16, 1992.

[74] Aspi vs. Court of Appeals, 236 SCRA 94, September 1, 1994; Hydro Resources Constructors Corp. vs. Court of Appeals, 204 SCRA 309, November 29, 1991; De Leon vs. Court of Appeals, 205 SCRA 612, January 30, 1992.

[75] Raycor Aircontrol Systems, Inc. vs. NLRC, 261 SCRA 589, September 9, 1996 citing Golden Donuts, Inc. vs. NLRC, 230 SCRA 153, February 21, 1994, and Mapalo vs. NLRC, 233 SCRA 266, June 17, 1994.

[76] Uy vs. National Labor Relations Commission, 261 SCRA 505, September 6, 1996.

[77] The following uniform allegations of petitioner's members are undisputed (Records of (NLRC Case No. SUB-RAB 01-11-7-0184-92, pp. 102-195):

"5. That since June 18, 1992 up to the present, my co-workers and I were prevented by armed men from entering the premises of our employer at Caurdanetaan, Umingan, Pangasinan on account of the formation and organization of our labor union known as the Caurdanetaan Piece Workers Union, which is duly registered with the Department of Labor and Employment; that no just, legal and valid cause exists for our employer to prevent us (workers) from performing our work since June 18, 1992 up to the present inasmuch as we are regular workers of our employer and for not paying various pecuniary benefits legally due and payable to us during employment;"

[78] Rollo of G.R. No. 114911, p. 76.

[79] Bustamante vs. National Labor Relations Commission, (Resolution), 265 SCRA 61, November 28, 1996, per Padilla, J.

[80] Fernandez, et al. vs. National Labor Relations Commission, G.R. No. 105892, January 28, 1998, per Panganiban, J.

[81] Bernardo vs. National Labor Relations Commission, 255 SCRA. 108, 121, March 15, 1996.

[82] Supra. See also Bustamante vs. NLRC, supra.