SUPREME COURT
THIRD DIVISION

FELIX VILLA, ALIBANGBANG, IRENEO; ALIBANGBANG, EFREN; ABELLANOSA ELDIE; AGARAO, SOFRONIO; ALIFANTA, JOSE; ALQUIZA, LORENZO; ALVIOLA, HERMOQUITO; AMONDINA, NOE; ANGOT, ISIDRO; ANDRADA, CATALINO; ARUTA, ROBERTO; AVILES, ZALDY; APAON, CESAR; ARTAJO, EDWIN, ALCOPRA, ANTONIO, JR.; BALASE, PABLITO; BANCALE, NEMESIO, BARICOG, GAUDENCIO; BACULIO, CIPRIANO; BATION, DOMINGO; BAYER, FELYBERT; BENELAYO, JOVENCIO BERIGONDO, MARIANO; BEGORNIA, ELIZAR; BUTASLAC, APOLINAR; BONCALES, DIOLLE; BASTATAS, ROSENDO BLASABAS, BONIFACIO; BALDESCO, OLYMPIO; BARICUATRO, DELFIN; BARBON, BEN; BENDONG, BERNARDO; BUTON, ROQUE; CAHAYAG, RODRIGO; CAHAYAG, REMEGIO; CALDERON, DANILO; CANOY, ERLITO; CABUS, ZENAS; CAPIN, JUANITO; CIMENI, ALBERTO; CELOSIA, MONTANO; CANILLO, TITO; COLOYAN, CARLOS; CUTAD, ALIPIO; CAPOTE, LIBRENDO; COLALJO, EDGARDO; CABILUNA, ELIAS; CABILI, ARTHURO; COMA, ROGELIO; CASAS, RODRIGO; COLLAMAR,

ROSALIM; CABALLERO, ORLANDO; CARCELLAR, ANTONIO; DEGOMA, DEOCADIO; DAGUISONAN, ROMEO; DE LA CRUZ, VICENTE; DELIMA, SEGUNDO; EDAYAN, ROSITO; ELMEDULAN, RUDY; FLORES, RELENDIO; FLORES, CRESENCIANO; FLORES, GREGORIO; FLORES, ROMUALDO; FUENTES, RODULFO; FORMENTERA, ELEUTERIO; GALUPO, ELMER; GARBAN, FLORENCIO; GUZMAN, REYNALDO; GORDO, CEFERINO; GENON, ESTEBAN; GADIA, NERIO; HERNANDO, BERNARDINO; JAPITAN, DANIEL; JUMAWAN, ROLANDO; LAGLARIO, ELPIDIO; LAURINO, GENEROSO; LAPUZ, TEODOLO; LILA, NORBERTO; LLABAN, BONIFACIO; LUMEN ROMEO; LISUNDRA, JOSE; MACAPAS, ELIZALDE; MANLIGUEZ, SAMSON; MANCIO, ROBERTO; MALINAO, CARLITO, MALAYA, SIMPLICIO; MANUGAS, NARCISO, MASIADA, EFREN; NARCISO, ELIAS; NUEVA, JUSTINIANO; OBIDO, ANELOMIO; OLIVEROS, FRANCISCO; OCAY, FIDEL; OLADO, JONATHAN; ONG, CARLITO; PAHUYO, HENRY; PAYPA, EDUARDO; PEREW-PEREW, ANTONIO; PERMITES, BOBBY; PACAÑA, CRISTITUTO; PONGON, RUBEN; PATOY, MANUEL; POGALES, ROBERTO; PARAGAMAC, MIGUEL; PARDILLO, ENGRACIO; PARAN, BENITO; RELLEN RONNIE; RENTUZA, ALFREDO; REBUTAZO INOCENCIO; RUEDAS, SIEGFREDO; ROBLE, ERLITO; RAMIREZ, CESAR; RAMAYRAT, ROBERTO; RAZO,

WILLIE; RIVA, LEOPOLDITO; REYSOMA, BENNY; SANCHEZ ROMULO; SANCHEZ, MANUELITO; SARDUAL, CAYETANO; SIQUELLO, EDRIE; SALIG, MAGDALINO; SIENES, GILBERT; SARA, NICANOR; SIACOR, LUCIO; SIMPROTA, CRISPIN; TABEROS, VIRGILIO; TARDO, ALEX; TAMPOG, ALEJANDRE; TAMPARONG, FRANCISCO; TAMPARONG, PRIMO; TINOY, JESUS; UMBAY, NOEL; UMBAY, RONILO; VACALARES, ALVIN; VELUS, CRISPIN; VERANO, MANOLO; VILLARINO, FLORENCIO; VERGARA, JOSE; VILLAPLAZA, MARCELO; GALORIO, RUBEN; DAYGAM, RUDENCIO; GELLICA, APOLLO; SARUSAL, FELIX; CAPUYAN, RUPERTO; VILLAMOR, PEDRITO; ALLAS, AQULINO, JR.; GARBAN, DIOSCORO; DELIMA, DIOSDADO; OBIDO, ELISER (All members of NSCWA with Felix Villa as president, representing Petitioners),

***Petitioners*,**

-versus-

G.R. No. 117043
January 14, 1998

NATIONAL LABOR RELATIONS COMMISSION, Fifth Division and NATIONAL STEEL CORPORATION,

***Respondents*.**

x----------x

D E C I S I O N

ROMERO, *J.*:

This Petition for *Certiorari* seeks a ruling on the issue of whether or not workers contracted as project employees may be considered as regular employees on account of their performance of duties inherent in the business of the employer.

Respondent National Steel Corporation (NSC), one of the biggest modern steel mills in Southeast Asia, produces hot rolled products, cold rolled products, tinplates and billets. These products are in turn transformed by downstream industries into truss assemblies, farm implements, pipe structures, shipbuilding and repairing materials, automotive structures and machine parts, GI roof sheets or galvanized iron, drums, nails, fasteners and wires.[1]

The NSC embarked on a Five-Year Expansion Program (FYEP) the first phase of which consisted of the following projects with the corresponding timetable:

> "A. Major Projects
>
> 1. Billet Shop 1983-1985
>
> 2. 5-Stand Tandem Mill, Pickling line Revamp, Batch Annealing Furnaces and other Cold Mill Peripherals Projects 1984-1988
>
> 3. Hot Mill Revamp 1984-1987
>
> B. Major Preparatory, Support and Post-Implementation Activities 1982-1988
>
> 1. Site Development
>
> 2. Engineering and Planning
>
> 3. Relocation/upgrading of Offices, drainages, fences and other facilities

4. Administrative, clerical warehousing and logistics support.

5. Other support activities."

The second phase of the FYEP was set for 1987 to 1993.[2]

One of the major projects of the NSC was the billet steelmaking plant. According to the NSC's brochure,[3] the plant's product is the steel billet, "a semi-finished form of steel used as raw materials by steel rerolling mills producing steel bars and wire rods." To produce the billets, the plant would initially use 100% scrap as its raw materials. Eventually, NSC would "build a Direct Reduced Iron (DRI) plant in line with its expansion program and integration program." Upon the availability of DRI, "the raw materials feed mix will eventually be 20 per cent scrap and 80 per cent DRI."

In line with its program to use 100% scrap, the NSC ventured into a shipbreaking operation. Under this operation, ships/vessels at sea would be cut up into large chunks and brought to land to be cut further into smaller sizes. However, due to scarcity of vessels/ships for salvaging, the higher costs of operation and the unsuitability of raw materials, this experimental project was stopped after four or five ships had been chopped. When the project was completely phased out in November 1986, the laborers hired for said project[4] were terminated.

Prior to the phasing out of the project, the NSC had been beset by labor problems. On May 2, 1986 the National Steel Corporation Employees Association Southern Philippines Federation of Labor (NSCEA-SPFL) filed a notice of strike. It charged the NSC with unfair labor practices consisting of (a) wage discrimination, (b) interference with the employees' right to self-organization, (c) nonregularization of contractual employees, (d) illegal termination of employees, (e) nonpayment of wage/benefit differentials, and (f) nonrecognition of NSCEA-SPFL as the sole bargaining representative of the company.[5] The then Ministry of Labor and Employment exercising jurisdiction over the case, issued a return-to-work Order[6] dated June 17, 1986:

In due course, on August 4, 1986, then Labor Minister Augusto S. Sanchez rendered a decision that held, in pant, as follows:

> "We have carefully examined the voluminous documents presented by NSCEA-SPFL and we find nothing therein to support the union's contention that as to the nature of employment, its members should be regularized. Masons, carpenters, laborers, electricians and painters cannot, by the nature of their job, be considered as regular employees of the company under Article 281. The cutters, riggers and those assigned at the other divisions are, as clearly indicated in annexes 'C' to 'C-70' of the union's Position Paper, contractual employees. The short periods by which the contractual employees were hired as shown in the mentioned Annexes clearly indicate the intent of the company to hire them on a per project basis. We are not unmindful that some of these employees were hired to work on several projects. This does not make them regular employees. Applying the law, however, contractual employees who have rendered at least one (1) year of service, whether continuous or project shall be considered as regular contractual employee with respect to the activity where such contractual employee has been assigned. For security of tenure, these contractual employees cannot be removed nor terminated without just cause so long as the particular activity to which he has been assigned to work still exists. There is nothing in the record which will show that a contractual employee has worked for a period of one (1) year, continuous or broken, on a particular single project. Note may be taken of the fact that some employees have been assigned to different projects or undertakings but Article 281 nonetheless does recognize them as regular contractual employees. To finally settle this issue and in view of the incompleteness of the documents presented before us, the company is hereby directed to submit to this Office the entire pertinent records in its possession for the sole purpose of determining the regular contractual employees, if any, using as basis Article 281 of the New Labor Code regarding their length of service." (Emphasis supplied.)[7]

Accordingly, Minister Sanchez disposed of the case as follows:

"VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered:

(1) finding the expiration of the contracts of contractual employees prior to May 13, 1986 to be in consonance with the law;

(2) directing the Company to submit the entire pertinent record in its possession to determine who are regular contractual employees within forty eight (48) hours from receipt hereof;

(3) directing the parties to await, before resorting to any concerted activity, the resolution of the NASEWA vs. SIMLA case pending before the NATIONAL LABOR RELATIONS COMMISSION;

(4) ordering the Company subject to existing policies and CBA limitations, to give priority and preference to its contractual employees in the hiring of new personnel for project works, such as shipbreaking, masonry, plumbing, etc. and in present and future vacancies in its regular workforce, and finally,

(5) requesting the Company to grant to its present contractual employees a wage increase of 15% of their basic salary effective July 1, 1986."[8]

The denial of their motion for reconsideration of that decision prompted the workers to file with this Court a petition for *certiorari* docketed as G.R. No. 76948 (National Steel Corporation Employees Association-Southern Philippines Federation of Labor (NSCEA-SPFL) vs. Minister of Labor). On November 14, 1988, this Court issued a Resolution stating as follows:

"G.R. No. 76948 (National Steel Corporation Employees Association — Southern Philippines Federation of Labor (NSCEA-SPFL) vs. Minister of Labor, et al). — The Court considered the petition, the comments thereon of the public and

> private respondents, the petitioner's reply, and the rejoinder thereto of the public and private respondents.
>
> After deliberating on the issues' raised and the arguments invoked by the parties in their respective pleadings, the Court AFFIRMED the order of the public respondent dated June 17, 1986, assuming jurisdiction of the labor dispute, upon a showing that the petitioner (sic) was engaged in a pioneer enterprise affected with public interest and involving its 5,000 employees and their dependents, and more so since both parties had manifested their concurrence with the intervention of the Department of Labor in settlement of the said dispute.
>
> It appearing, however, that there are a number of factual questions that have to be threshed out, such as whether or not the petitioner has defied the return-to-work order or the private respondent has locked out the returning workers and especially, whether or not the contractual workers have become regular employees because of their length of service and the nature of the work they perform, and considering particularly that in the challenged Decision of August 4, 1986, the Secretary of Labor 'directed the Company to submit the entire pertinent records to determine who are regular contractual employees,' indicating that his own determination of this question in the said Order was at best only preliminary and not based on a comprehensive study of the said 'entire pertinent records,' the Court Resolved to SET ASIDE the said Order of August 4, 1986, and to REMAND the case to the National Labor Relations Commission for a formal hearing on the factual issues raised in the petition, including the status of the employees, with a view to the eventual resolution of such issues and the settlement of all the aspects of the dispute between the petitioner and the private respondent."[9]

The NLRC accordingly heard the case as regards the factual issues pointed out by this Court. Because it took quite a while before the NLRC could decide the case, members of the National Steel Corporation Workers Association (NSCWA) staged a hunger strike.[10] On March 26, 1992, the Fifth Division of the NLRC in Cagayan de Oro City promulgated a Decision[11] with the following findings of fact:

> "After a careful and painstaking review and examination of the voluminous records of this case, We have come up with the well discerned view that the greater majority of the individual complainants in this case are 'contractual' or 'casual employees.' By the very nature of their employment or job, they cannot be considered as regular employees of respondent company by virtue of Article 280 (formerly 281) of the Labor Code, as amended, excepting the few who are either made to work or perform functions along or side by side with the regular employees, such as those assigned at the Billeting Mill or production line departments, or made to perform ground maintenance jobs as well as those performing administrative and finance support services who may seemingly deserve to be regularized.
>
> It is well established by the evidence on record that at the time of the strike in May 1986, the expansion program (FYEP) of respondent company was in full blast. This therefore accounted for approximately 1,750 casual or contractual workers at the time which at present had dwindled to about one-third (1/3) of its original size. Practically, all these workers, at one time or another worked with respondent company. As evidently shown by the documents and evidence on record, the expansion program of the company consists of numerous projects, which by themselves and taken independently of each other, are validly and legally sustainable as separate projects. (See Vols. 26 and 27, List of Contractual Workers, supra).

This Commission during the ocular inspection at the company plant premises on February 21, 1992 was able to ascertain additional material facts. Thus, carpentry works are, remarkably (sic) different from masonry and which activities are component phases in the expansion program in the construction of new buildings for new or additional machineries (sic), offices and other structures. Upon completion of particular civil works, these are followed by machine installations, requiring technicians and engineers and the employment of electricians to install the electrical facilities. As administrative support services, checkers, timekeepers and consulting engineers are likewise hired during the mechanical

installation stage. Additional temporary personnel are hired for the dry-run operations of the machines. The latter are usually given preference in recruitment of regular personnel.

Thus, by the very nature of the various activities involved, every undertaking is divided into phases or projects, the completion of each could be said to be independent from the other, although interrelated. Admittedly, the temporary skilled personnel initially hired are also given priority in the hiring of new employees or as replacements for vacated positions. Ostensibly, this is an exclusive management prerogative we cannot question.

Significantly, the Commission has sent advance notice of its plant visitation to the parties, through their respective counsels, with an open-ended invitation for them to join the plant tour. This message was relayed in advance through the Sub-Regional Arbitration Branch XII, Iligan City, for transmittal to the parties concerned. Atty. Gregorio Pizarro of SPFL asked to be excused in view of a prior engagement. He, however, sent word that he will catch up with the inspecting team if he has time, Atty. Isaac Ll. Dandasan was promptly present at the Sub-Arbitration Branch XII Office. But for unknown reasons, he did not join the inspecting party. Preparatory to the physical overview of the plant premises, the inspecting team was first briefed by key personnel of NSC on the various phases of the steel making operations.

The Commission through interviews and interactions with well-informed sources during the plant visitation gathered more insights on the operations of respondent NSC. There are those among the casual workers hired by respondent who were/are made to perform functions which are seemingly regular. Respondent, however, argued in its pleadings that these casuals performed services only for the expansion program or as substitute for those who are absent or on official leave or as additional hands to cope up with an abrupt or predetermined business peak."[12]

The NLRC found that the shipbreaking operation was phased out in November 1986 prior to the termination of the first phase of the FYEP in 1987. It concluded that such operation was only a "development project." It also found that in compliance with the

directive of the August 4, 1986 decision of Minister Sanchez to give priority to contractual employees in hiring new personnel for project works, the NSC re-engaged the services of "'most casual workers." To the NLRC, the employer's choice of persons to hire is a management prerogative that is beyond its competence to question.[13]

Opining that the majority of the complainant workers are "regular contractual employees" pursuant to Art. 280 of the Labor Code, the NLRC said:

> "The test in determining regularity or employment is the nature of the functions performed which should be 'usually necessary or desirable in the usual business or trade of the employer.' Even if the services rendered are necessary or desirable but they do not pertain to the usual business or trade of the employer, activity still falls short of being considered regular employment under the law. It therefore follows that the activity performed is a casual one. In order for an employment to be categorized as 'regular', the law distinctively requires that the functions and services performed should be 'common and constant' and an every day activity. Stated otherwise, the law mandates that the functions to be carried out must be 'customary' to the trade or business of the employer.
>
> This rule is, however, subject to exemptions. Where an employment or activity despite being usually necessary or desirable has been fixed for a specific protect or undertaking the completion of which has been 'pre-determined' at the time of engagement or where the services to be performed is seasonal in nature, the same is still considered 'casual' or 'temporary' in nature."[14] (Emphasis supplied.)

The NLRC further held that casual or temporary employees are not entitled to benefits enjoyed by regular employees "other than the 'parity' on the security of tenure clause, in that the traditional peculiarities and contrast between the two (2) groups of employees are inherently preserved." However, the NLRC deferred resolution on the issue of who among the workers concerned "may qualify or deserve to be regularized in view of the nature of their functions," to

provide the panties ample opportunity to be heard in appropriate proceedings. It disposed of the case as follows:

> "WHEREFORE, PREMISES CONSIDERED, Judgment is Hereby decreed, in addition to the foregoing dispositions, adopting and sustaining the findings and conclusions of former Minister of Labor and Employment August S. Sanchez in his August 4, 1986 Decision for being substantially supported by the facts and evidence as well as the applicable law and jurisprudence on the matter, subject to. modification consistent with this disposition.
>
> ACCORDINGLY, the following orders and directives are issued, to wit:
>
> (1) That the termination of the employment contract of the contractual workers prior to May 13, 1986 concerted action of workers is held valid and legal;
>
> (2) That the employment status of the greater majority of the casual and temporary workers, who have been hired or rehired for specific project works or phases thereof are considered regular for the duration of the period or project they were hired or engaged and the cessation of the activities to which they have been engaged automatically terminates employer-employee relations;
>
> (3) That the right of all workers whether contractual or regular to form or set up a labor association or organization being a Constitutional mandate is hereby declared recognized; and that their right to join, assist or affiliate with any labor organization or association of their choice is likewise recognized subject to existing rules, policies and the CBA stipulations in the particular bargaining unit or units they are presently or may be employed in the future, as the case may be;

(4) That the final and ultimate determination on who among the contractual workers may or may not qualify or deserve to be regularized or extended regular employment status will be the subject of further proceedings pursuant to the foregoing resolution;

(5) That with respect to the casual or contractual workers who were laid off prior to the May 13, 1986 strike and have not been rehired or reemployed, they are hereby granted financial assistance and respondent corporation is hereby directed to pay the same, equivalent to five (5) months salary each, based on their latest salary as of the time of their separation;

(6) That respondent National Steel Corporation, through its management and corporate officers, is strongly urged to grant the wage increase of 15% percent as demanded in the Order of August 4, 1986 of then Labor Minister Augusto S. Sanchez; and

(7) That respondent National Steel Corporation is further ordered and directed, subject to existing policies or CBA limitations, to give priority and preference to its contractual workers, with first priority to those who may be regularized, if any, in the hiring of new personnel, both for project works or existing regular positions and in the filling up of present and future vacancies in the regular work force.

The Honorable Labor Arbiters Alex A. Muyco and Henry F. Te are hereby deputized to jointly and/or alternately conduct post-arbitration proceedings for purposes of carrying out the foregoing directives. The Fiscal Examiner of this Commission or, in her default, that of the Arbitration Branch is directed to compute the monetary awards in favor of the beneficiaries as herein decreed.

SO ORDERED."

The National Steel Corporation Workers Association (NSCWA), a break-away group from the NSCEA-SPFL composed of 204 workers, filed a motion for reconsideration of the NLRC Decision,[15] assailing the same for its incompleteness and failure to resolve the case with finality. Atty. Rex Fernandez filed this motion on April 6, 1992 simultaneously with a notification of revocation of the power of Atty. Dandasan as counsel of the group of 204 workers. 16 Atty. Dandasan, counsel of record, filed another motion for reconsideration in behalf of the 204 complainant-workers except ten (10) of them who had revoked his authority as counsel.

On July 6, 1992, the NLRC issued a Resolution denying the motions for reconsideration thus:

> "WHEREFORE, premises considered, the following orders are issued:
>
> 1. The motions for reconsideration filed by counsels Fernandez and Dandasan are Denied for lack of merit;
>
> 2. The comment/manifestation of Atty. Dandasan is noted and the same is threshed out during the continuance of the hearing on the remaining issue of regularization;
>
> 3. Complainants Fe Fabiliar, Marielyd Armecin, Elizabeth Jungao and Elma Dy, are directed through counsel Antonio Amarga, to file a verified manifestation with the Commission, copy furnished the petitioner and respondent and, with proof of service thereof, for their comments preparatory to the disposition of said incidents;
>
> 4. The comment/manifestation of petitioner, through counsel, is noted with qualification;
>
> 5. Paragraph 5 of the dispositive orders of the March 26, 1992 decision of the Commission is clarified and the same shall refer to those hired under the FYEP

program of respondent NSC, laid off prior to May 13, 1986 and not rehired thereafter;

6. The manifestation of respondent NSC that it has already complied with paragraphs 6 and 7 of the dispositive orders of the March 26, 1986 decision is both noted and considered as proof of compliance thereof; and

7. The contractuals to be considered for regularization shall basically be based on the tentative list drawn up by the Commission but not necessarily limited thereto and subject to the guidelines specified on paragraph 2 of the order of March 27, 1992 which was promulgated on March 31, 1992.

Let the continuance of the hearing on the remaining unresolved issue be immediately scheduled by the Hearing Officers deputized for the purpose. No further motion for reconsideration on this resolution will be entertained.

SO ORDERED."[17]

Thereafter, Atty. Fernandez filed a motion praying for the inclusion of 204 complainant-workers who were members of the NSCWA, the group which broke away from the NSCEA-SPFL, in the list of employees whose employment status should be determined.[18] These workers alleged that their contract of employment "does not tell the real story" about their employment because, such contract, having been prepared by the management, is actually a contract of adhesion which should be construed against the management. Pressed by financial necessities, these workers agreed to these contracts even though some of them specified employment for only five or six months. They asserted that the brochure handed out by the management belied the latter's contention that shipbreaking was only a developmental project. That project was phased out for no other reason than "mismanagement" or "shortsightedness of its conceivers."[19]

The NSCWA also filed a motion to declare the 204 complainant-workers as regular employees. It asserted that, except for the packers, those workers were employed at the billet steelmaking plant under different positions and departments. These departments, however, were the general plant facilities, the steel fabrication shop, the shipbreaking operations and the raw material operations which were all engaged in the "common and constant and everyday" activities in the customary trade or business of the NSC.[20]

The post arbitration proceedings were marred by apparent efforts of both parties to becloud the issue of regularization of employees. According to the NLRC, the NSCWA tried to have its members' claims decided separately and ahead of those of other workers. Counsel of NSCWA, Atty. Fernandez, also sought the inhibition of Commissioner Musib M. Buat who, in truth, had already given way to Commissioner Leon G. Gonzaga, Jr. with respect to the study of the case and preparation of the pertinent resolution. Other incidental matters cropped up like the motion for inhibition filed by Labor Arbiter Alex A. Muyco. In the end, only the NSCWA and the NSC filed their respective memoranda. Atty. Gregorio A. Pizarro, counsel of the NSCEA-SPFL, and Atty. Isaac Dandasan, counsel of 72 of the 204 splinter group NSCEA, did not submit memoranda.[21]

On April 14, 1994, the NLRC rendered a Resolution ruling that the project employees are not regular employees within the purview of Art. 280 of the Labor Code. Focusing on the shipbreaking operation which petitioners contend was a customary activity of the NSC, the NLRC found that:

> "The shipbreaking operation, although not part of the major programs designated under FYEP I and FYEP II (Vol. 39, p. 154, TSN, supra), was envisioned to be a component of the billet shop, a totally new installation. Respondent NSC then ventured into shipbreaking in a developmental way (Vol. 39, pp. 20-23, TSN, supra), hired inexperienced labor under a contract (Vol. 39, p. 80, TSN, supra). And finding that after chopping 4 or 5 ships, there were no more supply of ships, respondent had to put a stop to its shipbreaking operations, and instead, bought hot breakative iron (HBI) from Malaysia (Vol. 39, pp. 81, 84-85, TSN, supra) and scrap materials from the local scrap dealers, to

be used by or be fed to the billet shop (Vol. 39, pp. 26-27, TSN, supra).

The shipbreaking operation being a developmental program (Vol. 28, p. 24, supra), had long been phased out due to non-viability. Since the employees assigned therein are project employees (Mercado vs. NLRC, 201 SCRA 332), those dismissed are therefore not entitled to reinstatement (Phil. Jai Alai and Amusement Corn. vs. Calve 126 SCRA 299). To require at this juncture, the reactivation or reopening of the shipbreaking program or experiment, would result to ignorance, grave abuse of discretion and/or interference in management business, judgment and prerogatives."[22]

The NLRC noted that, considering the immensity of the operations of the NSC, it was understandable that project employees would work alongside regular employees. However, such a situation did not imply that "a contract worker hired under the FYEP or peakload or as a temporary replacement of a regular employee who is on leave of absence," would be converted into a regular employee.[23] Hence, the NLRC resolved as follows:

"WHEREFORE, the decision dated March 26, 1992 is Affirmed with modifications consistent with the foregoing discussions.

It is henceforth decreed, that:

1. The claim for regularization by complainants whose names appear in Tables 'A', 'C' and 'E', are dismissed for being moot and academic;

2. Complainants listed in Table 'B' are directed to pursue the appropriate remedies in the already decided cases entitled 'NASEWA vs. SIMLA and NSC";

3. The consolidated pending appealed cases of the original complainants listed in Table 'F' which involve different and/or new causes of action, are excluded from this disposition, for same shall be resolved separately; and

4. The remaining majority of complainants as appearing in Tables 'D' and 'G' are considered and declared as contractual, seasonal and/or project employees and shall be granted separation pay or financial assistance as may be applicable consistent with the finding on pages 14 and 15 of the herein Resolution.

SO ORDERED."[24]

The NSCEA-SPFL, including the NSCWA, filed through Atty. Fernandez, a motion for the reconsideration of the April 14, 1994 Resolution. Shorn of allegations on who is to be blamed for the delay in the resolution of the case, the movant workers mainly averred that the NLRC merely accepted the allegations of the NSC. These allegations, however, are belied by the contents of its brochure and the actual plant lay-out showing that the workers were made to work in line departments and not in the expansion program projects. Obviously referring to the provision of Art. 280 of the Labor Code, the movants asserted that the word "notwithstanding" in the phrase of said provision of law stating that "(t)he provisions of written agreements to the contrary notwithstanding and regardless of the oral agreement of the parties," implies that the contracts they had entered into were not valid.[25]

That motion for reconsideration was supplemented by another pleading. Citing Beta Electric Corporation vs. NLRC,[26] the movants alleged that repeated renewal of contracts, such as in this case where renewal would be made even before the expiration of the last contract, circumvents the law and therefore is not determinative of whether or not a worker is a regular worker.[27]

On August 5, 1994, the NLRC issued a Resolution denying the motion for reconsideration. Reiterating its finding that the shipbreaking operation was a developmental project that had long been phased out due to non-viability, the NLRC said:

> "Records show that respondent NSC undertook major projects, special projects and other major preparatory support and post implementation activities designated as FYEP I (1982 to 1988)

and FYEP II (1989 to 1994). These expansion programs involved area or land operation, construction of buildings, installation of equipment, dry-run of machineries and acceptance. With the participation and support of the different department of respondent NSC, contractual or project workers were hired, in addition to the fifteen (15) other private contractors. Since complainants' services are needed only when there are tasks to be performed, complainants therefore cannot be considered regular employees but may be categorized 'regular contractual employees'.

The hiring of complainants on contract or project basis, although interpreted by them to be in circumvention of the law, is valid and legal. It is an undisputed fact that more than 2,000 contract workers were employed, when FYEP I started. As the projects were completed, respondent NSC therefore, had all the reasons to reduce its contractual workforce. It would be unwise and unjust if government will require respondent NSC to employ and pay complainants wages even if there are no major/special project works to be done. Neither could We impose upon respondent NSC to continue with planned FYEP III, so complainants can be given the much needed jobs, for that would also be tantamount to encroachment on management prerogatives."

Consequently, on September 23, 1994, the petitioners, led by Felix Villa, filed the instant petition for *certiorari* through Atty. Fernandez. They offer for resolution the following issues:

"WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT committed grave abuse of discretion when it ignored the brochure of the Billet Steel Plant issued by the private respondent in finding that those of the petitioners who were working under the shipbreaking project were not regular employees as the shipbreaking was a developmental project.

WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT committed grave abuse of discretion when it found petitioners not regular employees contrary to the basic guidelines which the Honorable Public Respondents set?

> WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT committed grave abuse of discretion when IT did not comply with the order of this Honorable Court to pass upon the question of whether or not the petitioners has (sic) defied the return-to-work order or the private respondent has locked out the returning workers?
>
> WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT committed grave abuse of discretion when it included in the list of complainants in the SIMLA case one IRENEO ALIBANGBANG in Table 'B' of the April 14, 1994 resolution?
>
> WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT committed grave abuse of discretion when it considered MOOT and ACADEMIC the claims of those who died during the proceedings?
>
> WHETHER OR NOT PETITIONERS herein are regular employees of private respondent and should be reinstated with backwages?"[28]

We resolve to deny the petition.

The 52-page petition discusses not only said issues but also individual cases of petitioners representing a particular job, to drive home the point that they are regular employees of the NSC. A good number of pages of the petition are devoted to the travails of representatives of winch operators, riggers, cable splicers, packers, utility men, laborers, carpenters, electricians, scrap cutters, masons, painters, millwrights or plant mechanics, welder-fabricators, pipe-fitters, erectors and steel men.

Petitioners assert that the contract each of them executed with the NSC "does not mean anything." The contracts were prepared by the management which, no doubt, "stands on a higher footing" than the petitioners whose need for employment "comes from vital and even desperate necessity." Under the "forceful intimidation of urgent need," an individual worker could not have agreed to the contract

freely and voluntarily; that there was actually a "vice of consent." That these contracts have no impart whatsoever is shown by the fact that petitioners who were rehired after May 13, 1986 were given gate passes instead of contracts.[29] Moreover, the job designation in a contract was not reflective of the actually work an employee was doing. Add to this is the fact that the employment of most of the petitioners was terminated through a memorandum of a certain Ferraren who, after calling their attention to a cutting off of oxygen supply incident, promised them reemployment after twenty days. That promise was never realized.[30]

In truth, petitioners would have the Court look into the factual issue of whether or not project employees were utilized by the NSC in its mainstream business of producing steel products. This is obviously outside the ambit of this Court's jurisdiction. This Court relies on the factual findings of labor administrative tribunals like the NLRC which have acquired expertise because their jurisdiction is confined to specific matters. Findings of such tribunals, if supported by substantial evidence, are generally accorded not only respect but, at times, finality.[31] That general rule, however, admits of an exception where it is clear that a palpable and demonstrable mistake, that needs rectification, has been committed by the quasi-administrative tribunal.[32]

In its Decision and Resolutions, the NLRC adamantly held that petitioners were contractual project employees who are not entitled to regularization under Art. 280 of the Labor Code. NLRC's factual finding that petitioners are project employees must be dealt with in the light of pertinent provisions of law and jurisprudential pronouncements on project employees.

The Labor Code provides for project employees under Art. 280 on casual and regular employees as follows:

> "ART. 280. Regular and Casual Employees. — The provision 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.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists." (Emphasis supplied.)

This provision of law conceives of three kinds of employees: (a) regular employees or those who have been "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer;' (b) project employees or those "whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season," and (c) casual employees or those who are neither regular nor project employees.

Under this law, the nature of the employment is determined by the factors set by law, regardless of any contract expressing otherwise. The supremacy of the law over contracts is explained by the fact that labor contracts are not ordinary contracts; these are imbued with public interest and therefore are subject to the police power of the State.[33] Thus, the Civil Code provides:

> "ART. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining. strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."

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

A project employment terminates as soon as the project is completed. Thus, an employer is allowed by law to reduce the work force into a number suited for the remaining work to be done upon the completion or proximate accomplishment of the project.[34] However, the law requires that, upon completion of the project, the employer must present proof of termination of the services of the project employees at the nearest public employment office. This is specially provided for as regards construction workers obviously to obviate indiscriminate termination of employment in derogation of the workers' right to security of tenure. After the termination of the project, an employer may wind up its operations only to complete the project. In such a case, the remaining employees do not necessarily lose their status as project employees. However, if the employees' services are extended long after the supposed project had been completed, the employees are removed from the scope of project employees and they shall be considered regular employees.[35]

The fact that the NSC hired project employees for its FYEP I and II has been deliberated upon by this Court in ALU-TUCP vs. NLRC.[36] The individual petitioners involved in that case were engineers, assistant engineers, a chairman, a utility man, a warehouseman, a survey aide, a surveying party head and a machine operator.[37] The

NLRC ruled that they were project employees under the NSC's FYEP I and II who could not enjoy the same benefits accorded to regular employees. The Court distinguished in that case "project employees" from "regular employees" as follows:

> "The basic issue is thus whether or not petitioners are properly characterized as 'project employees' rather than 'regular employees' of NSC This issue relates, of course, to an important consequence: the services of project employees are co-terminus with the project and may be terminated upon the end or completion of the project for which they were hired. Regular employees, in contrast, are legally entitled to remain in the service of their employer until that service is terminated by one or another of the recognized modes of termination of service under the Labor Code."[38]

The Court then distinguished two kinds of projects which a business or industry may undertake. First, "a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company." The example given is a construction company that may undertake two or more "projects" at the same time in different places. Second, a project may refer to "a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times." Classifying the NSC's "project" as of the second type, the Court said:

> "NSC undertook the ambitious Five Year Expansion Program I and II with the ultimate end in view of expanding the volume and increasing the kinds of products that it may offer for sale to the public. The Five Year Expansion Program had a number of component projects: e.g., (a) the setting up of a 'Cold Rolling Mill Expansion Project'; (b) the establishment of a 'Billet Steelmaking Plant' (BSP); (c) the acquisition and installation of a 'Five Stand TDM'; and (d) the 'Cold Mill Peripherals Project.' Instead of contracting out to an outside or independent contractor the tasks of constructing the buildings with related

> civil and electrical works that would house the new machinery and equipment, the installation of the newly acquired mill or plant machinery and equipment and the commissioning of such machinery and equipment, NSC opted to execute and carry out its Five Year Expansion Projects 'in house,' as it were, by administration. The carrying out of the Five Year Expansion Program (or more precisely, each of its component projects) constitutes a distinct undertaking identifiable from the ordinary business and activity of NSC. Each component project, of course, begins and ends at specified times, which had already been determined by the time petitioners were engaged. We also note that NSC did the work here involved — the construction of buildings and civil and electrical works, installation of machinery and equipment and the commissioning of such machinery — only for itself. Private respondent NSC was not in the business of constructing buildings and installing plant machinery for the general business community, i.e., for unrelated, third party, corporations. NSC did not hold itself out to the public as a construction company or as an engineering corporation."

The issue raised in this petition had already been settled in the recent case of Palomares vs. NLRC,[39] involving the same respondent and its workers engaged in FYEP I and II, wherein the Court stated thus:

> "The fact that petitioners were required to render services necessary or desirable in the operation of NSC's business for a specified duration did not in any way impair the validity of their contracts of employment which stipulated a fixed duration therefor."

Extant in the record are the findings of the NLRC that the petitioners in this case were utilized in operations other than billet making or other components of the FYEP I and II, such as shipbreaking. We are constrained to rule that while it is true that they performed other activities which were necessary or desirable in the usual business of the NSC and that the duration of their employment was for a period of more than one year, these factors did not make them regular employees in contemplation of Article 280 of the Labor Code, as amended. Thus, the fact that petitioners worked for NSC under

different project employment contracts for several years cannot be made a basis to consider them as regular employees, for they remain project employees regardless of the number of projects in which they have worked. Length of service is not the controlling determinant of the employment tenure of a project employee.[40] In the case of Mercado, Sr. vs. NLRC,[41] this Court ruled that the proviso in the second paragraph of Article 280, providing that an employee who has served for at least one year, shall be considered a regular employees, relates only to casual employees and not to project employees.

WHEREFORE, the instant Petition is **DISMISSED**. The Decision and Resolution of the National Labor Relations Commission dated April 14, 1994 and August 5, 1994, respectively are **AFFIRMED**. No costs.

SO ORDERED.

Narvasa, *C.J.*, Melo, Francisco and Panganiban, *JJ.*, concur.

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[1] Rollo, pp. 67-68.
[2] Ibid., pp. 469-470.
[3] Annex H to Petition, Rollo, p. 217.
[4] Rollo, pp. 437-439.
[5] Ibid., p. 69.
[6] Ibid., p. 364.
[7] Ibid., pp. 72-74.
[8] Ibid., pp. 75-76.
[9] Rollo of G.R. No. 76948, p. 220.
[10] Rollo, p. 6.
[11] Penned by Presiding commissioner Musib M. Buat and concurred in by Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr.
[12] NLRC Decision, pp. 17-20; Rollo, pp. 78-81.
[13] Ibid., pp. 20-22 & 81-83.
[14] Ibid., pp. 23-24 & 84-85.
[15] Rollo, p. 99.
[16] Signatories to the revocation of Atty. Dandasan's authority were Felix Villa, Gilbert Sienes, Henry Pabayo, Relendio Flores, Frankie Tamparong, Isidro Angot, Rodrigo Cahayag, Danilo Calderon and Alvin Vocalores (Rollo, p. 111).
[17] Rollo, pp. 129-131.
[18] Ibid., p. 132.
[19] Ibid., p. 144.

[20] Ibid., p. 151.
[21] Ibid., pp. 227-229.
[22] Ibid., pp. 243-245.
[23] Ibid., p. 247.
[24] Ibid., pp. 252-253.
[25] Ibid., pp. 333-337.
[26] G.R. No. 86408, February 15, 1990, 182 SCRA 384.
[27] Rollo, p. 338.
[28] Petition, pp. 12-13.
[29] Petition, p. 43.
[30] Ibid., pp. 45-46.
[31] Militante E. NLRC, 316 Phil. 441, 453(1995) citing Five J Taxi vs. NLRC, G.R. No. 111474, August 22, 1994, 235 SCRA 556.
[32] International School of Speech vs. NLRC, 312 Phil. 454, 462 (1995).
[33] The Conference of Maritime Manning Agencies, Inc. vs. POEA, 313 Phil. 592 (1995).
[34] Archbuild Masters and Construction, Inc. vs. NLRC, G.R. No. 108142, December 26, 1995, 251 SCRA 483, 489-490.
[35] Phesco, Inc. vs. NLRC, G.R. No. 104444-49, December 27, 1994, 239 SCRA 446, 449-450 citing Capitol Industrial Construction Groups vs. NLRC, G.R. No. 105359, April 22, 1993, 221 SCRA 469.
[36] G.R. No. 109902, August 2, 1994, 234 SCRA 678.
[37] One of the petitioners, a "mat. Expediter" was regularized.
[38] ALU-TUCP vs. NLRC, supra at p. 684 citing Beta Electric Corporation vs. NLRC, supra; Cartagenas vs. Romago Electric Co., Inc., G.R. No. 82973, September 15, 1989, 177 SCRA 637; Sandoval Shipyards, Inc. vs. NLRC, G.R. No. 65689, May 31, 1985, 136 SCRA 674 and Arts. 281-286, Labor Code, as amended.
[39] G.R. No. 120064, August 15, 1997.
[40] Supra.
[41] 201 SCRA 332 (1991).