

PUBLIC VERSION



International Labor Rights Forum
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Post-Hearing Brief
Petition of Dole Packaged Foods, LLC.
Accepted Case # 2008-08 and 2008-09
HTS Subheadings 2009.41.20 and 2009.49.20

November 3, 2008

ATTN:
Marideth Sandler
Chairperson, GSP Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW, Room 514
Washington, DC 20508

Over a year ago, the ILRF came before this Committee to request a review to determine if the Government of the Republic of the Philippines (GRP) should remain eligible for GSP benefits because of its concerted anti-union efforts against trade unions affiliated with the Kilusang Mayo Uno (KMU) conducted by the Armed Forces of the Philippines (AFP) and other executive branch agencies of the GRP.¹ Little has changed in one year, and the workers for Dole Food's companies in Mindanao are no exception. Filipino workers who have elected Amado Kadena, and other KMU-affiliated unions across the Philippines, are being denied their full rights to freedom of association and to bargain collectively.² The Philippine government and Dole Philippines (Dole) are engaging in systematic anti-union activities in and around Dole's private special economic zone in Polomolok, Mindanao where they are intimidating workers, maligning the union membership, and undermining the union's ability to represent Dole's workforce.

We request that the TPSC defer granting Dole Foods additional GSP benefits until:

- (1) The Armed Forces of the Philippines ceases its anti-union operations at the Dole's facilities in the Philippines and at other corporations across the Philippines, and implement the recommendations of the UN Special Rapporteur and the ILO Committee on Freedom of Association. (See Country Practice Petition).

¹ See ILRF, Philippines: Country Practice Petition (ILRF GSP Petition)(filed before the TPSC on June 22, 2007).

² See International Labor Organization Conventions 87 and 98.

PUBLIC VERSION

- (2) Dole ceases acting in concert with the Armed Forces of the Philippines by facilitating anti-union “symposiums” conducted by the AFP and Dole employees.
- (3) Dole drops the criminal libel charges against Mr. Oscar Serohijos and reinstates him to his position in the company.
- (4) The outstanding labor disputes from the last Collective Bargaining Agreement negotiation between the union and Dole are resolved.
- (5) Dole commits to hiring full-time workers in lieu of contract labor when expanding operations in the Philippines.

We request that the Committee hold open its review of Dole’s petition and reconsider it again next year. A one year deferment on the decision will have no long-term impact on Dole’s operations, but will promote equitable, sustainable economic development for the people of Mindanao.

I. The USTR has the mandate to ensure that “internationally recognized workers’ rights” are being respected when deciding a product petition.

Dole has requested the USTR to take action to expand product eligibility for the GSP program by requesting that the USTR add pineapple juice to the list of eligible products. When the GSP program was amended in 1984 to include protections for internationally recognized workers’ rights, Congress specifically intended these standards would apply with respect consideration of product petitions. In particular, the USTR has the authority “limit the application of the duty-free treatment” accorded to a product under §2463, which governs the product petition process, and is instructed to “consider the factors set forth in §2461 and §2462(c).”³ §2462(c) instructs the Committee must consider “whether or not such country has taken or is taking steps to afford workers in that country (including in any designated zone in that country) internationally recognized workers’ rights.”⁴

§2461 instructs the Committee to examine “the effect such action [ie. expanding GSP benefits] will have on furthering the economic development of developing countries through the expansion of their exports.”⁵ As envisioned by Congress, the purpose of the GSP program is to “promote the notion that trade . . . is a more effective . . . way of promoting broad-based sustained economic development.”⁶ Internationally recognized workers rights, particularly the right to form unions and bargain collectively to achieve higher wages and better working conditions, is “essential for workers in developing countries to attain decent living standards and to overcome hunger and poverty” and “an important means of ensuring that the broadest sectors of the population . . . benefit from the GSP program.”⁷ Therefore, internationally recognized workers’ rights are a core consideration when determining the impact of GSP benefits on economic development.

³ See 19 USC §2463(c)(1)

⁴ See 19 USC §§2463(c)(1), 2462(c)(7).

⁵ See 19 USC §2461(1).

⁶ See General Systems of Preferences Renewal Act of 1984, P.L. 98-573, 98 Stat. 3019

⁷ See House Report No. 98-1090, 1984 U.S.S.C.A.N. at 5111.

PUBLIC VERSION

II. The GRP is implementing authoritarian measures against workers and lawyers affiliated with the AK-NAFLU-KMU to deprive them of their right to freedom of association.

The GRP and Dole testified that granting GSP benefits to Dole would promote their vision of economic development. As we noted in our Philippines Country Petition, though, these economic development policies include authoritarian, and at times draconian, anti-union measures where union leaders and organizers are killed, abducted, tortured, harassed, arrested, and placed under surveillance, often at the height of labor disputes stemming from CBA negotiations or organizing campaigns.⁸ The GRP justifies its authoritarian actions by arguing that the KMU and other civil society organizations are terrorist organizations whose members are seeking to overthrow the government.⁹

The GRP supports its allegation by asserting that the KMU's former Secretary General Crispin Beltran, who was also a former Philippine Congressman for the Anakpawis party until his death earlier this year, was a member of the NPA.¹⁰ The Government had charged Rep. Beltran with rebellion in 2006.¹¹ However, the Philippine Supreme Court dismissed the charges and accused the government of abusing the legal system to achieve political goals.¹²

The government also argues that the KMU is a terrorist organization because its mission is to hinder the growth of the economy or engage in actions otherwise adversely affecting the economy.¹³ Major Medel Aguilar of the AFP's 5th Civil Relations Group, who is assigned to the Dole facilities, describes his mission as protecting "free enterprises as mandated by the president's policy of foreign investment and resource development" from KMU-affiliated unions, who he argues is trying to bring down the entire Philippine economy.¹⁴ Maj. Aguilar justifies his actions by arguing that the KMU is trying to increase poverty because "if there is no poverty, the insurgency would be irrelevant."¹⁵

The KMU's mission and legal responsibility is to zealously represent its members' interests. Like all other trade unions, workers choose to join the KMU because they want a brighter economic future that includes sharing more equitably in the benefits of economic development. Sometimes, the economic interests of Filipino workers are in direct conflict with the interests of corporate management, investors and the government.

⁸ See ILRF GSP Petition.

⁹ See United Nations, General Assembly. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston*. November 2007. Available at www.extrajudicialexecutions.org.

¹⁰ See ILRF, Post-hearing Brief re Philippines Country Practice Petition. (filed before the USTR on October 19, 2007).

¹¹ See ILRF GSP Petition.

¹² See *Beltran v. People of the Philippines*, G.R. No. 175013, June 1, 2007 (dismissing charges of rebellion against Rep. Crispin Beltran brought by the GRP.)

¹³ Id. See also Presidential Proclamation 1017, February 24, 2006. ("Whereas, this series of actions is hurting the Philippine state – by obstructing governance including hindering growth of the economy . . . Whereas, the actions are adversely affecting the economy.")

¹⁴ Brad Miller, *Philippines: State Forces Shield Corporations from Leftists*, Global Information Network, March 13, 2008.

¹⁵ Id.

PUBLIC VERSION

When this occurs, though, workers have guaranteed rights, including the freedom of association, the right to strike, and other internationally recognized workers' rights, to help them defend themselves from the combined political and economic power of the state and the corporations. The right to freedom of association provides workers with a basic set of tools that they need to be able to fairly bargain for the economic well-being of their families and communities. If the KMU's mission was to ruin the economy, then Filipino workers wouldn't choose to join the KMU.

A. Dole and the Armed Forces of the Philippines have collaborated on anti-union propaganda programs in Mindanao.

The GRP has enlisted the aid of many corporations to undermine these rights, and to combat the KMU.¹⁶ Dole is no exception. According to Lt. Col. Ricardo Santiago of the AFP's 27th Infantry Battalion, Dole has been "infiltrated by" the KMU, which he alleges is a "front" for the New Peoples' Army. Lt. Col. Santiago is referring to the workers' democratically elected union, AK-NAFLU-KMU, or Amado Kadena. Amado Kadena is a member of the legally registered National Federation of Labor Unions (NAFLU). First elected by the workers in 2001, Amado Kadena was recently re-elected by full-time workforce at Dole by a wide margin for the third time consecutive election.

In Polomolok, Mindanao, Dole and the AFP have been collaborating to operate anti-union propaganda programs directed by Major Aguilar and the 27th Infantry Battalion.¹⁷ On at least four different occasions, the AFP and Dole have jointly conducted, or coordinated, anti-union campaigns and "symposiums" during work hours alleging that union members are "terrorists."

1. September 2007: AFP/Dole "Symposium" in Polomolok

According to [***], who are both employees at Dole Polomolok Cannery, they were approached by their team leader [***], who told them to attend a four hour "Public Awareness Symposium" on Saturday morning, September 8, 2007 at the SADOK Restaurant in Polomolok. [***] informed [***] that Dole management had called for the symposium in support to the AFP's "campaign to end terrorism."

On the day of the symposium, workers from Dole's different departments arrived at the restaurant and had to register their names on two computerized bond papers. [***], the team leader, and another Dole employee assisted in the registration process to "ensure that our group attended the said activity."¹⁸

¹⁶ See ILO. Committee on the Freedom of Association, *Interim Report Case No. 2528: Complaint against the Government of the Philippines presented by the Kilusang Mayo Uno Labor Center*. GB.299/4/1, June 2007.

¹⁷ See Affidavits of [*** taken March 2008]. Both are employees of Dole Philippines. A copy of the affidavits are available from AK-NAFLU-KMU. The ILRF can make a copy available for the Committee upon request.

¹⁸ See [***] affidavit.

PUBLIC VERSION

Maj. Medel Aguilar along with one other person in active military service and two people who identified themselves former union leaders from Davao, North Cotabato, presented lectures and showed a video where they repeatedly pronounced that the AK-NAFLU-KMU were communist rebels. The AFP stated, “If you support KMU, the result will be destruction, trouble and rebellion, if you support management, the result will be prosperity.”

Maj. Aguilar, though, has made it absolutely clear during that meeting that the AFP is accusing every Amado Kadena member of being a member of the New People’s Army because of their affiliation. When one of Dole’s employees asked Maj. Aguilar “why don’t you arrest them (referring to the Amado Kadena union officers) instead of assailing them that they are NPA’s?”, Major Aguilar responded that they cannot arrest them because they don’t carry firearms, or apparently have any other evidence to back their allegations.¹⁹ Workers reported to the union that they were intimidated and afraid after facing these accusations in a closed door meeting run by the AFP.²⁰

2. January 2008: AFP/Dole “Symposium” in Polomolok

This past January, [***], was told by his superintendent at work, [***], to attend a similar Public Awareness Symposium at the Barangay Hall, Barangay Cannery, Polomolok South Cotabato.

On the day of the symposium, when [***] work gang came to work, [****] informed them that their work gang would not be working that day. [***] then instructed him and at least four other gang members that if they wanted to get paid for that day’s work, “it is better to attend to the symposium.”²¹ Just like the September “symposium”, the participants, who came from Dole’s different departments, were required to register and were assisted by Dole employees.

The “symposium” was directed by three active members of the AFP who were armed with .45 caliber pistols on their waist, and the employees had to watch a video presentation that accused the Amado Kadena union of being communists and rebels. One of the resource person added in his talk that the “Kanang unyon NPA, trabahante mo, pero NPA pud mo.” [translation: The union is NPA. You’re the worker, but you are also an NPA.]

The speaker accused the KMU of seeking to destabilize companies, and told the employees “kung unsay mando sa management sundon kay diri man ta nagakuha ug pamugas.” [translation: Whatever the management commands, follow it because this is where we get our rice from.]

3. February 2008: AFP/Dole “Symposium” in Polomolok

¹⁹ See [***] affidavit.

²⁰ See [***] affidavit.

²¹ See Affidavit of [***] taken March 2008. [***] is an employee at Dole.

PUBLIC VERSION

On, February 23, 2008, Dole and the AFP conducted another symposium. According to [****],²² Dole had scheduled a company seminar for that Saturday. When [****] arrived are required for the company seminar, his superior notified the employees that the company seminar was cancelled and he was ordered by his team leader, [***], to attend an AFP Public Awareness Symposium at the Barangay Hall in Barangay Cannery, Polomolok South Cotabato.

When [***] arrived at the Barangay Hall with Dole employees from different departments, Dole administrative employees helped him register his name on an unmarked piece of paper. Then, the workers were introduced to two members of the AFP's 27th IB who showed the workers a video that repeatedly pronounced that Amado Kadena were communist rebels and that the KMU is a "training ground for the NPA."²³

The AFP's lecture also included allegations that the union was misappropriating union dues, or Estafa, implying that the dues are being used to fund the NPA. The AFP also accused the AK-NAFLU-KMU of storing guns at the back of its union office. The lecture then concluded by declare that "the AK is an NPA, therefore the workers also are NPA".

4. October 2007: AFP Operations around Dole-Stanfilco and Davao Integrated Transport.

Current military operations at the Polomolok facility are not unique. Already, Major Aguilar and the 27th IB are directing anti-union efforts aimed at a different KMU affiliate that was negotiating a CBA with another Dole subsidiary in Mindanao. On October 9, 2007, the KMU-affiliated workers were in the middle of CBA negotiations with Dole's subsidiary companies, Davao Integrated Transport Facilities, Inc (DITFI), when the company suddenly shut its operations and the jobs were contracted out.

Throughout the CBA negotiation process, the 27th IB had been deployed to the company's premises to monitor union activity and the movement of the union's leaders. The union representing DITFI workers had been complaining that "[the military] have been doing the rounds ... in Panabo and Davao, going house to house and to other companies, warning workers against [NAMADITFI] and KMU. They call [NAMADITFI and KMU union workers] communists, recruiters for the New People's Army, and tail [NAMADITFI and KMU union workers] to and from work." When the company suddenly shut its doors, Maj. Aguilar was the first to publicly accuse the KMU of being responsible for the "termination of the contract between Dole-Stanfilco and its trucking and hauling service provider DITFI [a subsidiary of Dole-Stanfilco] which has left about 270 employees out of work."²⁴

B. The GRP has arrested Remigio Saladero, attorney for Amado-Kadena.

²² See Affidavit of [****] taken March 2008.

²³ Id.

²⁴ See ILRF, Post-hearing Brief re Philippines Country Practice Petition. (filed before the USTR on October 19, 2007).

PUBLIC VERSION

On October 23, 2008, just four days after the ILRF presented testimony before this Committee describing a Philippine military campaign against the KMU-affiliates at Dole, the GRP arrested Attorney Remigio Saladero, who is an attorney for Amado Kadena, on two-year old murder charges. According the Human Rights Watch,

Philippine police arrested Saladero on October 23, 2008, at his law office in Antipolo City, in Rizal province, his attorney said. The police showed a 2006 arrest warrant for a case of multiple murder and attempted murder in Oriental Mindoro province that bore the name – Remegio Saladero alias Ka Patrick – and a different address. They also confiscated Saladero’s computer hard drive, laptop and mobile phone.²⁵

After his arrest, Atty. Saladero was interrogated for six hours outside the presence of his legal counsel in contravention of his legal rights.

Atty. Saladero is the board chairman of the Pro-Labor Legal Assistance Center (PLACE) and chief legal counsel for the KMU. PLACE and Atty. Saladero represent workers at Hacienda Luisita, Nestle Philippines, Chong Won, Dole Philippines, International Wiring Systems, and Solidarity of Cavite Workers union, whose union leaders have been murdered or subject to government harassments, either by the military or private security forces.²⁶

1. Atty. Saladero’s arrest appears to be politically motivated.

Atty. Saladero’s arrest has raised serious concerns among human rights and lawyers groups. Human Rights Watch stated that the charges against Atty. Saladero appear to be politically motivated, stating:

“Suddenly arresting a well-established activist lawyer for a two-year-old multiple murder case in another province should set off alarm bells. This smacks of harassment, pure and simple.”²⁷

The Philippine Supreme Court, UN Special Rapporteur, Amnesty International, Human Rights Watch, and many other organizations are raising concerns that the GRP is pursuing abusive prosecutions in its campaign against Anakpawis, the KMU, and other alleged “front” organizations.²⁸ The Supreme Court of the Philippines openly questioned

²⁵ See Human Rights Watch, Philippines: Free Labor Rights Lawyer, Continuing harassment of leftist activists. October 29, 2008. (HRW Report). Available at www.hrw.org.

²⁶ For a full discussion of these cases, please see ILRF Country Practice Petition on the Philippines.

²⁷ See HRW Report.

²⁸ United Nations. Press Release. *UN Special Rapporteur Calls for Changes to the Philippines’ Human Security Act.*, 12 March 2007. Available at www.unhcr.ch. See also Coronel, “The Philippines in 2006,” 176; AI, Report 2007 (London: AI, 2007), <http://thereport.amnesty.org/eng/Regions/Asia-Pacific/Philippines>;

PUBLIC VERSION

the partisan political motives of the Secretary of Justice and the federal prosecutors in arresting and charging Rep. Crispin Beltran, representative of the Anakpawis party-list and former Secretary General of the KMU, with rebellion. In *Beltran v. People of the Philippines*, G.R. No. 175013, June 1, 2007, the court chastised the Secretary of Justice and the federal prosecutors for the “obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors.”²⁹ The Court felt the need to send a warning to the GRP that:

[P]rosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public’s perception of the impartiality of the prosecutor be enhanced.³⁰

In a different case, the Philippine Supreme Court warned the GRP that its counter-insurgency policies will lead to abuse and oppression on the part of the police or military against KMU.³¹

2. The GRP has been harassing Atty. Saladero and his colleagues at PLACE for the past two years.

Atty. Saladero arrest is an escalation of the GRP’s recent efforts to curtail his ability to represent his clients and practice law, leaving his clients without adequate legal representation.

On October 5, 2006, in the midst of the strikes at Chong Won and Nestle Philippines, the AFP placed Atty. Saladero and his colleagues at PLACE under surveillance. A few days later, PLACE attorneys observed “suspicious-looking men” near their offices PLACE. Feeling threatened by the AFP surveillance, PLACE staff members had to vacate their offices for several weeks, and missed several hearings as a result of their well-founded fears of persecution. PLACE filed a compliant with the Commission on Human Rights seeking help. However, when the Commission scheduled a hearing on December 19, 2006, the AFP refused to file an answer and did not participate in the hearing. The AFP has not yet agreed to participate in a hearing.

In October 2007, PLACE staff observed that their offices were again under 24 hour surveillance by unidentified men. Atty. Saladero was serving as legal counsel for the KMU and the Center for Trade Union and Human Rights (CTUHR) in their legal efforts

American Bar Association (ABA) Asia Law Initiative, *Judicial Reform Index for the Philippines* (Washington, DC: ABA, March 2006), 23, available at http://www.abanet.org/rol/publications/philippines_jri_2006.pdf.

²⁹ See *Beltran v. People of the Philippines*, G.R. No. 175013, June 1, 2007. (dismissing charges of rebellion against Rep. Crispin Beltran brought by the GRP.)

³⁰ *Id.*

³¹ See *Prof. Randolph David, et. al. vs. Gloria Macapagal Arroyo*, G.R. No. 171396, May 3, 2006.

PUBLIC VERSION

questioning the constitutionality of the recently enacted the Human Security Act of 2007. He and his colleagues are also responsible for filing the KMU's complaint to the ILO Committee on Freedom of Association and requesting an ILO high-level mission to the Philippines to investigate the killings, disappearances, and military harassment of KMU members.

In August 2008, the Philippine prosecutor's office named Atty. Saladero a "person of interest" in the burning of a cell tower allegedly by the New Peoples Army (NPA). In September 2008, the GRP charged him with conspiracy to commit rebellion for allegedly participating in the arson. Saladero was charged along with 26 other civil society leaders representing legal organizations in Southern Tagalog.

C. GRP and Dole have worked together to weaken Amado-Kadena while Dole management and the union were negotiating a new CBA.

To protect Dole's interests from the alleged "terrorist" activities of the workers' democratically elected union, the GRP has utilized all the tools it has at its disposal to combat Amado-Kadena and weaken the workers' at Dole by undercutting their ability to bargain for better wages and benefits from Dole.

In March 2006, the Dole's workers overwhelmingly elected Amado Kadena for the second consecutive election to negotiate a CBA with Dole. In April 2006, the union began negotiating with Dole management. In July 2006, as discussed the ILRF's Pre-hearing Brief, Dole charged union secretary [***] with criminal libel for statements he made at a union rally about Dole's pollution.³²

In August 2006, after the negotiations between Management and the union had broken down, 96% of Dole workers voted in favor of filing a notice of strike with the Department of Labor and Employment.³³ The Secretary of Labor then assumed jurisdiction over the labor dispute by designating Dole as an industry "vital to the national interest."³⁴ Because the government assumed jurisdiction, Dole workers were prohibited from going on strike and ordered to remain at work. As a result, the Philippine government deprived the workers of what little bargaining power they had left to negotiate for better pay and benefits from Dole.

Into early 2007, Dole management and the union continued negotiating. Because the negotiations had been drawn out for over six months, the union negotiators eventually ran out of company leave time. The negotiators requested that Dole advance them additional

³² See ILRF Pre-hearing Brief re. Dole Foods Petition.

³³ See Memorandum, From Wilfrido P. Santos who is Conciliator-Mediator for the National Conciliation and Mediation Board to Hon. Reynaldo R. Ubaldo, Executive Director of IV for the Department of Labor and Employment sent on July 26, 2008. (NCMB Decision).

³⁴ See ILRF GSP Petition for a full discussion of assumption of jurisdiction. The GRP employs standards for assuming jurisdiction that are in violation of internationally recognized workers' rights, as determined by the ILO. The Secretary of Labor employs an extremely broad definition of industries it deems "indispensible to the national interest," designating industries outside the "essential services" as vital to the growth of the economy.

PUBLIC VERSION

union leave time to so that they could complete the negotiations, but Dole refused telling the workers to use their vacation leave instead. When the union negotiators protested and continued to attend the negotiating sessions with management, Dole charged 21 members of the negotiating panel with being absent without leave from their full-time position with the company, and fired two of the union officers.³⁵ The rest were suspended from their job.

The union filed for preventative mediation with a conciliator-mediator to protest the unfair labor practice of firing two of the negotiators. However, management has opted to send only personnel who are unauthorized to settle the outstanding disputes. In July 2008, the conciliator-mediator noted in a memo to the Regional Department of Labor and Employment:³⁶

“Middle management is blocking all information coming from the union and they don’t give the right information to Mr. Kevin Davis.

Mr. Robert Buranday [a company official] and company are using workers who are against the union to file cases against the union president before the local court for Estafa, and using management resources to produce the leaflets.

Mr. Robert Buranday and company refused to follow the agreed procedure on grievance under the CBA.

Mr. Robert Buranday and company are using the military and community to harass the union.”

On October 8, 2007, after over 1 ½ years of negotiation, and in the face of AFP anti-union “symposiums”, charges of criminal libel and corruption, the firing of several union leaders, and the use of anti-union leaflets at the workplace, Amado Kadena agreed to a 5-year CBA with Dole on condition that the economic provisions of the CBA will be renegotiated in February 2009. The Union has submitted its current proposal for the renegotiation to Dole management, and are waiting for the negotiations to begin this November.

III. Conclusion

Trade unions are important partners in achieving long-term, equitable development. Strong, democratic labor organizations are vital for promoting democratic change; improving labor laws, relations, policies and practices; expanding the social dialogue to encourage basic protections from the government; promoting sustainable development; and, of primary importance in the Philippine context, promoting good governance and combating corruption.

³⁵ See NCMB Decision.

³⁶ Id.

PUBLIC VERSION

From an economic perspective, there is a strong correlation between the protection of core labor standards, including the right to freedom of association, and strong economic growth.³⁷ Strong labor organizations play a key role in ensuring that the gains from global trade are shared across a broad spectrum of society, which promotes expansion of domestic markets and sustained economic development. Also, strong labor organizations play a key role in increasing domestic savings and investment and lessening the reliance on outside capital and keeping capital gains within a country.

Recognizing the vital role that labor unions play in ensuring long-term, sustainable, and equitable development, and the GSP's program's emphasis on protecting workers' rights, the ILRF requests that the Committee defer a decision on Dole's petition for one year in order to ensure that workers' rights are being protected at Dole's operations in Mindanao and that the GRP's ends the anti-union campaign currently being conducted by the Armed Forces of the Philippines.

RESPONSE TO HEARING QUESTIONS

PHILIPPINES: ADD PINEAPPLE JUICE – NOT CONCENTRATED

During the hearing, you mentioned some type of certification that is renewed yearly through audits. Could you elaborate on what is actually being certified and what the certification process entails?

The ILRF does not know if SA 8000 has been made aware of the anti-union campaign jointly operated by the Dole and the AFP that is currently underway. We will be raising this matter with SAI directly, and will update the Committee as to any actions taken by SAI. We know that SAI's auditor did not meet with the non-management representative, who is Mr. Jose Teruel, the president of the union, during the last audit because Mr. Teruel was engaged in contentious contract negotiations with management. Because SAI auditors failed to meet with Mr. Teruel, SAI found Dole to be in "minor non-compliance" with SAI standards. We are not aware of why SAI auditors were unable to meet with Mr. Teruel, and SAI did not described the efforts it undertook to meet with Mr. Teruel, as is the auditor's responsibility. Sadly, Dole management was quick to blame Mr. Teruel, though, stating in a letter that it was Mr. Teruel's responsibility to take "appropriate corrective measures (ie. meet with arrange a meeting with SAI.)"

Since Dole's position defending its labor rights practices rests solely on the auditing done by one SAI contractor, we request that Dole be required to submit a copy of the full results of its SA 8000 audit for public filing at the USTR so that all parties can assess the scope of the audit. Also, we request a full explanation as to the rights and responsibilities

³⁷ See Organisation for Economic Co-operation and Development. (1996) *Trade, Employment and Labour Standards: A Study of Core Workers Rights and International Trade*. Paris: OECD. See also, Kucera, David. (2001) *The Effects of Core Workers Rights on Labour Costs and Foreign Direct Investment: Evaluating the "Conventional Wisdom"*. Geneva: International Institute for Labour Studies.; Dølvik, Jon Erik and Liv Tørres. (2002) *Globalisation, Work, and Labour Standards*. Oslo: Fafo Institute for Applied Social Science.

PUBLIC VERSION

of the union when SAI is conducting an audit, and why SAI was unable to meet with union officials.

Brian Campbell (ILRF)

- 1. Can you describe the Comprehensive Agriculture Reform Program (CARP) in greater detail, specifically touching on how, as discussed in your submission, those who received land were legally prevented from controlling it, how they were obliged to form labor cooperatives and how those cooperatives were controlled by rich landlords?**

As noted in our oral testimony, the ILRF is not an expert on the myriad programs available under CARP. Though our comments discussed certain aspects of CARP that we believe will not promote broad-based, sustainable development, our primary concern in regards to extending benefits to Dole stem from the anti-union efforts currently underway at Dole's facilities as described in our submissions to the Committee.

At this time, we are unable to synthesize the voluminous data available on the implementation of CARP and on the use of agricultural contracts by multinational corporations to expand production in Mindanao. Our efforts preparing our Post-hearing brief and the responses to the Committee questions were interrupted by the arrest of the union's attorney, Remigio Saladero, as discussed above. We request that the committee provide the ILRF more time to prepare a more full response to the questions regarding CARP and the development of agricultural and labor cooperatives.

In the meantime, please find below a list of invaluable resources that describe in detail CARP, cooperative development, contract farming, and the prominent role multi-national corporations such as Dole have played in expanding agricultural production in Mindanao.

Ballesteros, Marife and Felino Cortez. (2008). *CARP Institutional Assessment in a Post-2008 Transition Scenario: Implications for Land Administration and Management*. Discussion Paper Series No. 2008-07. Philippine Institute for Development Studies.

Bello, Walden, Herbert Docena, Marissa De Guzman, Mary Lou Malig. (2006). The Political Economy of Permanent Crisis in the Philippines. *Chapter 2: Agrarian Reform: The Promise and the Reality*. ZED Books.

Borras, Saturnino and Jennifer Franco. (2005) *Struggles for Land and Livelihood: Redistributive Reform in Agribusiness Plantations in the Philippines*. *Critical Asian Studies*, 37:3, pp. 331 – 361.

Borras, Saturnino. (2005) *Can Redistributive Reform Be Achieved via Market-Based Voluntary Land Transfer Schemes? Evidence and Lessons from the Philippines*. *Journal of Development Studies*, Vol. 41, No. 1, pp. 90 – 134.

PUBLIC VERSION

Borras, Saturnino. (2008). *Foreign Aid and CARP Extension*. Philippine Daily Inquirer, 5 July 2008.

Digal, Larry. (2007). *Agricultural Contracts in Mindanao: the Case of Bananas and Pineapple*. Philippine Institute for Development Studies. Discussion Paper Series No. 2007-24.

Flores-Obanil, Carmina B. and Mary Ann Manahan. *Leaseback Arrangements: Reversing Agrarian Reform Gains in the Philippines*. LRAM (8 Feb. 2007) 4

Fuwa, Nobuhiko, *Politics and Economics of Land Reform in the Philippines: A Survey*. Background paper prepared for a World Bank Study, *Dynamism of Rural Sector Growth: Policy Lessons from East Asian Countries*. May 2000.

Ofreneo, Rene E., *The Leaseback Mode of Agrarian Reform: Strengths, Weaknesses, and Options*. September 2000.

Vellema, Sietze. (1999). *Agribusiness Control in Philippine Farm Contracting: From Formality to Intervention*. Wageningen University. International Journal of Sociology of Agriculture and Food 8: 95.

At this time, CARP has not yet been extended. Several proposals are under review in the Philippines House of Representatives.

2. Your brief mentions a 2006 Filipino Supreme Court ruling on Dole Philippines' use of contract labor. Can you elaborate on this ruling, including how it was reached and the group of people you believe it was meant to affect?

In November 2006, the Supreme Court ruled in *Dole Philippines, Inc. v. Medel Esteva*, G.R. No. 161115, (Phil. S. Ct. 2006) that the CAMPCO, which is the Cannery Multi-Purpose Cooperative, was a labor-only contracting cooperative. As a result, the court ruled that the members of CAMPCO must be treated as full-time employees of Dole, which would mean that they could join the union.

The full impact of this ruling is not yet known since it is not clear whether Dole or CAMPCO have abided by the court's order. The court ordered Dole to immediately rehire the worker/plaintiffs as full-time employees and assign them to their former position without loss of seniority rights and other benefits and to pay over 10 years of back wages.

The importance of this ruling cannot be understated, though. Dole acquires labor for its plantation and processing facilities in four different ways.

1. Full-time employment: These employees are hired full-time to work harvesting pineapples on Dole's leased land, and also work in Dole's processing facilities. There

PUBLIC VERSION

workers are members of the union, Amado Kadena, and their salary and benefits are determined through a collective contract negotiation between the union and Dole. As Dole has noted, full-time employees are able to bargain for their wages, and, as a result, receive higher compensation for the same work than contract workers. Currently, there are nearly 5000, full-time employees.

2. Labor cooperatives, which are similar to employment agencies in the US, currently supply Dole with 8,000 workers who engage in the same work as the full-time employees. Dole pays the cooperatives directly in exchange for personnel while officers from the cooperatives pay the workers or “members”. Cooperatives deduct a portion of monthly wages (PhP 100) from their member workers for capital build up. Cooperative members are paid according to the pakyawan production quota system and are not paid for any overtime work. Because cooperative workers are not full-time employees, they are not allowed to unionize, negotiate a collective contract, or receive the benefits of a collective contract.

3. Dole also hires 6,000 contract laborers. These workers perform duties similar to the workers from the labor cooperatives and the full-time employees. The difference is that Dole directly hires these workers and categorizes them as casual workers, apprentices, trainees, part-timers and relievers in order to allow the company to adjust its labor supply according to its production demands. These workers are also paid under the pakyawan quota system and are denied the right to unionize.

4. Dole hires 1,000 project employees for specific tasks or projects. These workers are essentially contract laborers as described above. In its testimony before the Committee, Dole testified that they would hire 2000 more contract workers as a result of the expanded GSP benefits, and opined that expanded advertising and marketing may allow them to offer some of these contract workers full-time positions.

After the *Esteva* decision, Dole is on notice and is required to cease using labor from labor-only cooperatives such as CAMPCO, Adventurers’s Multi-purpose Cooperative, Human Resource Multi-purpose Cooperative, and others. Workers from the multi-purpose cooperatives must be retained as full-time workers and be eligible for union membership.

Its important to note, here, that CAMPCO management sided with Dole in the litigation because its business model of contracting out labor, though deemed illegal, has been highly profitable for many members of the cooperative at the expense of many workers.

For a detailed discussion of labor contracting, please see *Dole Philippines, Inc. v. Medel Esteva*, G.R. No. 161115, Philippine Supreme Court, November 30, 2006 which we have appended at the end of the questions.

3. Your petition portrays a troubling picture of Dole’s labor practices in the Philippines. What are your sources for these allegations? And what steps would Dole Packaged Foods need to take in order to address these concerns?

PUBLIC VERSION

ILRF partners conducted field research in the provinces of Sultan Kudarat, South Cotabato and Sarangani between June 2006 and June 2007. Primary data-gathering included surveys, interviews, and focus group discussions with key informants such as union leaders, company officers, community leaders, government officials, plantation growers, land owners, and children. 91 individuals were interviewed. We supplemented our field research with an extensive literature review.

4. What role does ILRF see for the Government of the Republic of the Philippines to correct the problems it notes in its public comment regarding Dole Packaged Foods LLC?

Please refer to our recommendations in our Post-hearing Brief at pg. 1.

5. How are Cooperatives organized and how do they decide to whom they will lease their land?
a) **As a follow up, can individual cooperative members choose not to participate in a lease and keep their holding for their own purposes?**

Please see Response to Question 1.

6. This case is about adding Pineapple juice from all GSP beneficiaries. Do you have similar concerns about labor practices of other pineapple producers in other GSP beneficiaries or even Del Monte's operations elsewhere in the Philippines?

Yes. We have similar concerns but have not yet had the opportunity to investigate other producers in the Philippines, Thailand or Indonesia. In our research, we have identified common labor problems that occur in pineapple production in the Philippines and Costa Rica, which leads us to believe that these same problems may occur in other parts of the Philippines, Thailand and Indonesia.

7. Since you claim that the Government of Philippines has alleged that the trade unions are "fronts" for terrorist organizations, can you provide any information to refute those allegations?

Please see our Post-hearing Brief at pg. 3 – 4, *supra*, for a full discussion.

The GRP has been intentionally blurring the lines between one illegal organization currently engaged in an insurgency and legitimate, legal organizations comprised of and supported by millions Filipino industrial workers, farmers, and religious congregations.

One way the GRP blurs the lines between legal organizations and illegal insurgents is by using the "New Peoples Army" and the "Communist Party of the Philippines" interchangeably when referring to armed insurgents. The New Peoples Army is a designated terrorist organization that has been engaged in a 40 year insurgency. The

PUBLIC VERSION

Communist Party of the Philippines is a legal political in the Philippines, and Filipinos can freely join the CPP if they wish, and that right is protected by law.

- 8. Your brief summarizes what the ILRF sees as Dole’s failure to provide internationally recognized worker rights to its Filipino employees. From a legal perspective, why should the Trade Policy Staff Committee consider the information in your brief with regard to Dole’s petition, when worker rights are not specifically mentioned as a consideration for product additions under GSP?**

Internationally recognized workers’ rights are specifically mentioned as a consideration for product additions under the GSP. Please see our Post-hearing brief, Section I, at pg. 2.

- 9. Can you provide the subcommittee with all the publications (or websites through which they can be reached) you list in the footnotes of your brief?**

Due to the amount of documents cited in our briefs, and our limited resources, we can forward a hard copy of any documents that are not available by internet upon request by the Committee. For those available by internet, we have included full internet cites in the footnotes so that they may be easily retrieved.

- 10. Why is the use of contract workers by Dole not a right held by the company?**

Labor contracting is not a right held by corporations, but rather is a privilege should the Philippine Secretary of Labor wish to provide it to them. However, Philippine labor laws clearly envision that, even if a corporation has a right to use labor contracting, a corporation’s rights are subject to the rights of workers.

Article 106 of the Philippine Labor Code states:

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting . . .

There is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the forms of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. In such cases, the person or the 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.

PUBLIC VERSION

The GSP Committee is instructed to examine the impact of extending GSP to the economic development in our partner countries. The use of contract workers by Dole is an issue related to the economic development of Mindanao. For the purposes of this petition, the ILRF is also arguing that Dole's practice of using contract labor will not lead to long-term, sustainable, and equitable economic development, which is a factor to be considered under the GSP statute.

Dole is evading its employer responsibilities to its contract workers and should not have been replacing regular workers with unregulated contract labor. Dole has systematically shed over half of its regular workers by coercing employees into "voluntary resignation" and has thus, shed its legal responsibilities to its regular workers. 77% of workers that contribute to Dole Philippines' pineapple operations no longer have the basic rights to unionize and receive social benefits under the law. Dole's labor practices have strategically undermined the rights of its regular workers and its contract workers alike to enjoy the freedom of association.

Further, as noted by the Philippine Institute for Development Studies, while agricultural contracting by Dole and other agribusiness in Mindanao may lead to some overall economic efficiencies, "there are a number of fundamental issues that arise from this scheme. These are the issues of equity and sustainability." See Digal, Larry. *Agricultural Contracts in Mindanao: The Case of Banana and Pineapple*. Philippine Institute of Development Studies, Discussion Paper Series No. 2007-24. (December 2007), pg. 1.

11. Given the apparent cost advantage involved in hiring contract workers, why in your opinion does a third of Dole Philippines' staff consist of regular workers?

In the past, Dole hired many workers directly. These workers were able to form a union to protect their employment status as full-time workers. Recently, Dole has been moving away from hiring full time workers. Without a union, it is not clear whether Dole would even employ regular, full-time employees.

12. Are lease payments to individual cooperative members dependent upon the amount of land they possess or on other factors as well?

Please see response to Question 1.

13. During the hearing, you mentioned both large landholders and multinational corporations; are the two one and the same for the purposes of your petition?

No. Our comments concerning Dole's petition are intended to cover a broad range of business practices employed by Dole to produce its pineapples. Some of these practices include large landholders who are not Dole, but work closely with Dole.

14. During the hearing, you mentioned the DARBCI as a cooperative that was forced to lease back its land to Dole after the CARP went into effect. Were

PUBLIC VERSION

any other cooperatives forced to lease back their land to Dole, under the CARP and if so, why have they not solicited the ILRF's assistance as the DARBCI apparently did?

The ILRF does not represent DARBCI, and we do not claim to speak on behalf of the entire membership of DARBCI. DARBCI is an extremely factional organization. For more, please see Ofreneo, Rene E., *The Leaseback Mode of Agrarian Reform: Strengths, Weaknesses, and Options*. September 2000.

15. Why were only certain cooperatives forced to lease back their land to Dole as part of CARP implementation in 1988?

Please see our Response to Question 1.

16. During the hearing, you mentioned that a wide range of social groups (labor, religious, others) are charged by the Government of the Philippines with being fronts for terrorist organizations. Are labor groups in particular being singled out with respect to such allegations?

Yes. Please see the ILRF's Philippines: Country Practice Petition, filed before the TPSC on June 22, 2007.

17. Your brief mentions a pending libel case against a Mr. Serohijos; are you aware of any other such pending libel cases brought by Dole against union leaders in the Philippines?

No.

18. During the hearing, you mentioned illegal labor cooperatives, but did not elaborate. This point was unclear; could you please discuss it further?

Please see our response to Question 2.

19. How exactly do elites come to control cooperatives? Is control a function of being the largest landholder within a cooperative or is there more to it than that?

Please see our response to Question 1.

20. During the hearing, independent growers and cooperatives were mentioned numerous times. Is the main difference between these two groups that independent growers own their land outright and were likely unaffected by the CARP, while cooperatives are groups of peasants that received land through the CARP, but were forced to use that land as a group?
a. If this is incorrect, please clarify.

PUBLIC VERSION

The ILRF does not understand Dole's or the GRP's definition of independent farmers, and we are unclear whether those "independent farmers" also use hired contract labor in order to meet the needs of Dole.

According to the academic literature available, Dole is a vertically integrated company. Even when it contracts with "independent farms", it maintains tight control over the process for growing, and, at times, the management of labor, which makes the farmers' independence in name only. For a good discussion of Dole's vertically integrated supply chain, please see:

Digal, Larry. (2007). *Agricultural Contracts in Mindanao: the Case of Banana and Pineapple*. *Philippine Institute for Development Studies*. Discussion Paper Series No. 2007-24.

Vellema, Sietze. (1999). *Agribusiness Control in Philippine Farm Contracting: From Formality to Intervention*. Wageningen University. *International Journal of Sociology of Agriculture and Food* 8: 95.

PUBLIC VERSION

FIRST DIVISION

[G.R. No. 161115, November 30, 2006]

DOLE PHILIPPINES, INC., PETITIONER, VS. MEDEL ESTEVA, HENRY SILVA, GILBERT CABILAO, LORENZO GAQUIT, DANIEL PABLO, EDWIN CAMILO, BENJAMIN SAKILAN, RICHARD PENUELA, ARMANDO PORRAS, EDUARDO FALDAS, NILO DONDOYANO, MIGUEL DIAZ, ROMEL BAJO, ARTEMIO TENERIFE, EDDIE LINAO, JERRY LIGTAS, SAMUEL RAVAL, WILFREDO BLANDO, LORENZO MONTERO, JR., JAIME TESIPAO, GEORGE DERAL, ERNESTO ISRAEL, JR., AGAPITO ESTOLOGA, JOVITO DAGUIO, ARSENIO LEONCIO, MARLON BLANDO, JOSE OTELO CASPILLO, ARNOLD LIZADA, JERRY DEYPALUBOS, STEVEN MADULA, ROGELIO CABULAO, JR., ALVIN COMPOC, EUGENIO BRITANA, RONNIE GUELOS, EMMANUEL JIMENA, GERMAN JAVA, JESUS MEJICA, JOEL INVENTADO, DOMINGO JABULGO, RAMIL ENAD, RAYMUNDO YAMON, RITCHIE MELENDRES, JACQUEL ORGE, RAMON BARCELONA, ERWIN ESPIA, NESTOR DELIDELI, JR., ALLAN GANE, ROMEO PORRAS, RITCHIE BOCO, JOSELITO ACEBES, DANNY TORRES, JIMMY NAVARRO, RALPH PEREZ, SONNY SESE, RONALD RODRIQUES, ROBERTO ALLANEC, ERNIE GIGANTANA, NELSON SAMSON, REDANTE DAVILA, EDDIE BUSLIG, ALLAN PINEDA, JESUS BELGERA, VICENTE LABISTE, CARMENCITA FELISILDA, GEORGE DERLA, RUBEN TORMON, NEIL TAJALE, ORLANDO ESPENILLA, RITCHEL MANEJAR, JOEL QUINTANA, ERWIN ALDE, JOEL CATALAN, ELMER TIZON, ALLAN ESPADA, EUGENE BRETANA, RAMIL ENAD, RENE INGALLA, STEVEN MADULLA, RANDY REBUTAZO, NEIL BAGATILLA, ARSENIO LEONCIO, ROLANDO VILLEGAS AND JUSLIUS TESIPAO, HEREIN REPRESENTED BY MEDEL ESTEVA, AUTHORIZED REPRESENTATIVE, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Civil Procedure seeking the reversal of the Decision,^[1] dated 20 May 2002, and the Amended Decision,^[2] dated 27 November 2003, both rendered by the Court of Appeals in CA-G.R. SP No. 63405, which declared herein petitioner Dole Philippines, Inc. as the employer of herein respondents, Medel Esteva and 86 others; found petitioner guilty of illegal dismissal; and ordered petitioner to reinstate respondents to their former positions and to pay the latter backwages.

The antecedent facts of the case are recounted as follows:

Petitioner is a corporation duly organized and existing in accordance with Philippine laws, engaged principally in the production and processing of pineapple for the export market.^[3] Its plantation is located in Polomolok, South Cotabato.^[4]

PUBLIC VERSION

Respondents are members of the Cannery Multi-Purpose Cooperative (CAMPCO). CAMPCO was organized in accordance with Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines, and duly-registered with the Cooperative Development Authority (CDA) on 6 January 1993.^[5] Members of CAMPCO live in communities surrounding petitioner's plantation and are relatives of petitioner's employees.

On 17 August 1993, petitioner and CAMPCO entered into a Service Contract.^[6] The Service Contract referred to petitioner as "the Company," while CAMPCO was "the Contractor." Relevant portions thereof read as follows â€“

1. That the amount of this contract shall be or shall not exceed TWO HUNDRED TWENTY THOUSAND ONLY (P220,000.00) PESOS, terms and conditions of payment shall be on a per job basis as specified in the attached schedule of rates; the CONTRACTOR shall perform the following services for the COMPANY;
 - 1.1 Assist the COMPANY in its daily operations;
 - 1.2 Perform odd jobs as may be assigned.

2. That both parties shall observe the following terms and conditions as stipulated, to wit:
 - 2.1 CONTRACTOR must carry on an independent legitimate business, and must comply with all the pertinent laws of the government both local and national;
 - 2.2 CONTRACTOR must provide all hand tools and equipment necessary in the performance of their work.

However, the COMPANY may allow the use of its fixed equipment as a casual facility in the performance of the contract;
 - 2.3 CONTRACTOR must comply with the attached scope of work, specifications, and GMP and safety practices of the company;
 - 2.4 CONTRACTOR must undertake the contract work under the following manner:
 - a. on his own account;

 - b. under his own responsibility;

 - c. according to his manner and method, free from the control and direction of the company in

all matters connected with the performance of the work except as to the result thereof;

3. CONTRACTOR must pay the prescribed minimum wage, remit SSS/MEDICARE premiums to proper government agencies, and submit copies of payroll and proof of SSS/MEDICARE remittances to the COMPANY;
4. This contract shall be for a specific period of Six (6) months from July 1 to December 31, 1993; x x x.

Pursuant to the foregoing Service Contract, CAMPCO members rendered services to petitioner. The number of CAMPCO members that report for work and the type of service they performed depended on the needs of petitioner at any given time. Although the Service Contract specifically stated that it shall only be for a period of six months, *i.e.*, from 1 July to 31 December 1993, the parties had apparently extended or renewed the same for the succeeding years without executing another written contract. It was under these circumstances that respondents came to work for petitioner.

Investigation by DOLE

Concomitantly, the Sangguniang Bayan of Polomolok, South Cotabato, passed Resolution No. 64, on 5 May 1993, addressed to then Secretary Ma. Nieves R. Confessor of the Department of Labor and Employment (DOLE), calling her attention to the worsening working conditions of the petitioner's workers and the organization of contractual workers into several cooperatives to replace the individual labor-only contractors that used to supply workers to the petitioner. Acting on the said Resolution, the DOLE Regional Office No. XI in Davao City organized a Task Force that conducted an investigation into the alleged labor-only contracting activities of the cooperatives in Polomolok.^[7]

On 24 May 1993, the Senior Legal Officer of petitioner wrote a letter addressed to Director Henry M. Parel of DOLE Regional Office No. XI, supposedly to correct the misinformation that petitioner was involved in labor-only contracting, whether with a cooperative or any private contractor. He further stated in the letter that petitioner was not hiring cooperative members to replace the regular workers who were separated from service due to redundancy; that the cooperatives were formed by the immediate dependents and relatives of the permanent workers of petitioner; that these cooperatives were registered with the CDA; and that these cooperatives were authorized by their respective constitutions and by-laws to engage in the job contracting business.^[8]

The Task Force submitted a report on 3 June 1993 identifying six cooperatives that were engaged in labor-only contracting, one of which was CAMPCO. The DOLE Regional Office No. XI held a conference on 18 August 1993 wherein the representatives of the cooperatives named by the Task Force were given the opportunity to explain the nature of their activities in relation to petitioner. Subsequently, the cooperatives were required to submit their position papers and other supporting documents, which they did on 30 August 1993. Petitioner likewise submitted its position paper on 15 September 1993.^[9]

On 19 October 1993, Director Parel of DOLE Regional Office No. XI issued an Order^[10] in which he made the following findings â€

Records submitted to this Office show that the six (6) aforementioned cooperatives are all duly registered with the Cooperative Development Authority (CDA). These cooperatives were also found engaging in different activities with DOLE PHILIPPINES, INC. a company engaged in the production of pineapple and export of pineapple products. Incidentally, some of these cooperatives were also found engaging in activities which are directly related to the principal business or operations of the company. This is true in the case of the THREE (3) Cooperatives, namely; Adventurer's Multi Purpose Cooperative, Human Resource Multi Purpose Cooperative and Cannery Multi Purpose Cooperative.

From the foregoing findings and evaluation of the activities of Adventurer's Multi Purpose Cooperative, Human Resource Multi Purpose Cooperative and Cannery Multi Purpose Cooperative, this Office finds and so holds that they are engaging in Labor Only Contracting Activities as defined under Section 9, Rule VIII, Book III of the rules implementing the Labor Code of the Philippines, as amended which we quote:

"Section 9 Labor Only Contracting â€ a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operation of the employer to which workers are habitually employed.

b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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."

WHEREFORE, premises considered, ADVENTURER'S MULTI PURPOSE COOPERATIVE, HUMAN RESOURCE MULTI PURPOSE COOPERATIVE and CANNERY MULTI PURPOSE COOPERATIVE are hereby declared to be engaged in labor only contracting which is a prohibited activity. The same cooperatives are therefore ordered to cease and desist from further engaging in such activities.

The three (3) other cooperatives, namely Polomolok Skilled Workers Multi Purpose Cooperative, Unified Engineering and Manpower Service Multi Purpose Cooperative and Tibud sa Katibawasan Multi Purpose Cooperative whose activities may not be directly related to the principal business of DOLE Philippines, Inc are also advised not to engage in labor only contracting with the company.

All the six cooperatives involved appealed the afore-quoted Order to the Office of the DOLE Secretary, raising the sole issue that DOLE Regional Director Director Parel committed serious error of law in directing the cooperatives to cease and desist from engaging in labor-only contracting. On 15 September 1994, DOLE Undersecretary Cresencio B. Trajano, by the authority of the DOLE Secretary, issued an Order^[11] dismissing the appeal on the basis of the following ratiocination â€

The appeal is devoid of merit.

PUBLIC VERSION

The Regional Director has jurisdiction to issue a cease and desist order as provided by Art. 106 of the Labor Code, as amended, to wit:

"Art. 106. Contractor or subcontractor. x x x

x x x x

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

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the forms of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. In such cases, the person or the 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."

in relation to Article 128(b) of the Labor Code, as amended by Republic Act No. 7730, which reads:

"Art. 128. Visitorial and Enforcement Power.

b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proof which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from."

The records reveal that in the course of the inspection of the premises of Dolefil, it was found out that the activities of the members of the [cooperatives] are necessary and desirable in the principal business of the former; and that they do not have the necessary investment in the form of tools and equipments. It is worthy to note that the cooperatives did not deny that they do not have enough capital in the form of tools and equipment. Under the circumstances, it could not be denied that the [cooperatives] are considered as labor-only contractors in relation to the business operation of DOLEFIL, INC.

Thus, Section 9, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code, provides that:
"Sec. 9. Labor-only contracting. " (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as a contractor shall be considered merely as an agent or intermediary 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.

x x x x"

Violation of the afore-quoted provision is considered a labor standards violation and thus, within the visitorial and enforcement powers of the Secretary of Labor and Employment (Art. 128).

The Regional Director's authority to issue a cease and desist order emanates from Rule I, Section 3 of the Rules on Disposition of Labor Standard Cases in the Regional Offices, to wit:

"Section 3. Authorized representative of the Secretary of Labor and Employment. " The Regional Directors shall be the duly authorized representatives of the Secretary of Labor and Employment in the administration and enforcement of the labor standards within their respective territorial jurisdiction."

The power granted under Article 106 of the Labor Code to the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code is delegated to the Regional Directors by virtue of the above-quoted provision.

The reason why "labor-only" contracting is prohibited under the Labor Code is that it encourages circumvention of the provisions of the Labor Code on the workers' right to security of tenure and to self-organization.

WHEREFORE, the respondents' Appeal is hereby DISMISSED for lack of merit. The Order of the Regional Director, Regional Office No. XI, Davao City, is AFFIRMED.

After the motion for reconsideration of the foregoing Order was denied, no further motion was filed by the parties, and the Order, dated 15 September 1994, of DOLE Undersecretary Trajano became final and executory. A Writ of Execution^[12] was issued by DOLE Regional Office No. XI only on 27 July 1999, years after the issuance of the order subject of the writ. The DOLE Regional Office No. XI was informed that CAMPCO and two other cooperatives "continued to operate at DOLE Philippines, Inc. despite the cease and desist Order" it had issued. It therefore commanded the Sheriff to proceed to the premises of CAMPCO and the two other cooperatives and implement its Order dated 19 October 1993.

Respondent's Complaint before the NLRC

Respondents started working for petitioner at various times in the years 1993 and 1994, by virtue of the

Service Contract executed between CAMPCO and petitioner. All of the respondents had already rendered more than one year of service to petitioner. While some of the respondents were still working for petitioner, others were put on "stay home status" on varying dates in the years 1994, 1995, and 1996 and were no longer furnished with work thereafter. Together, respondents filed a Complaint,^[13] on 19 December 1996, with the National Labor Relations Commission (NLRC), for illegal dismissal, regularization, wage differentials, damages and attorney's fees.

In their Position Paper,^[14] respondents reiterated and expounded on the allegations they previously made in their Complaint.

Sometime in 1993 and 1994, [herein petitioner] Dolefil engaged the services of the [herein respondents] through Cannery Multi-purpose Cooperative. A cooperative which was organized through the initiative of Dolefil in order to fill in the vacuum created as a result of the dismissal of the regular employees of Dolefil sometime in 1990 to 1993.

The [respondents] were assigned at the Industrial Department of respondent Dolefil. All tools, implements and machineries used in performing their task such as: *can processing attendant, feeder of canned pineapple at pineapple processing, nata de coco processing attendant, fruit cocktail processing attendant, and etc.* were provided by Dolefil. The cooperative does not have substantial capital and does not provide the [respondents] with the necessary tools to effectively perform their assigned task as the same are being provided by Dolefil.

The training and instructions received by the [respondents] were provided by Dolefil. Before any of the [respondents] will be allowed to work, he has to undergo and pass the training prescribed by Dolefil. As a matter of fact, the trainers are employees of Dolefil.

The [respondents] perform their assigned task inside the premises of Dolefil. At the job site, they were given specific task and assignment by Dolefil's supervisors assigned to supervise the works and efficiency of the complainants. Just like the regular employees of Dolefil, [respondents] were subjected to the same rules and regulations observe [sic] inside company premises and to some extent the rules applied to the [respondents] by the company through its officers are even stricter.

The functions performed by the [respondents] are the same functions discharged by the regular employees of Dolefil. In fact, at the job site, the [respondents] were mixed with the regular workers of Dolefil. There is no difference in so far as the job performed by the regular workers of Dolefil and that of the [respondents].

Some of the [respondents] were deprived of their employment under the scheme of "stay home status" where they were advised to literally stay home and wait for further instruction to report anew for work. However, they remained in this condition for more than six months. Hence, they were constructively or illegally dismissed.

Respondents thus argued that they should be considered regular employees of petitioner given that: (1) they were performing jobs that were usually necessary and desirable in the usual business of petitioner; (2) petitioner exercised control over respondents, not only as to the results, but also as to the manner by which they performed their assigned tasks; and (3) CAMPCO, a labor-only contractor, was merely a conduit of

PUBLIC VERSION

petitioner. As regular employees of petitioner, respondents asserted that they were entitled to security of tenure and those placed on "stay home status" for more than six months had been constructively and illegally dismissed. Respondents further claimed entitlement to wage differential, moral damages, and attorney's fees.

In their Supplemental Position Paper,^[15] respondents presented, in support of their Complaint, the Orders of DOLE Regional Director Parel, dated 19 October 1993, and DOLE Undersecretary Trajano, dated 15 September 1994, finding that CAMPCO was a labor-only contractor and directing CAMPCO to cease and desist from any further labor-only contracting activities.

Petitioner, in its Position Paper^[16] filed before the NLRC, denied that respondents were its employees.

Petitioner explained that it found the need to engage external services to augment its regular workforce, which was affected by peaks in operation, work backlogs, absenteeism, and excessive leaves. It used to engage the services of individual workers for definite periods specified in their employment contracts and never exceeding one year. However, such an arrangement became the subject of a labor case,^[17] in which petitioner was accused of preventing the regularization of such workers. The Labor Arbiter who heard the case, rendered his Decision^[18] on 24 June 1994 declaring that these workers fell squarely within the concept of seasonal workers as envisaged by Article 280 of the Labor Code, as amended, who were hired by petitioner in good faith and in consonance with sound business practice; and consequently, dismissing the complaint against petitioner. The NLRC, in its Resolution,^[19] dated 14 March 1995, affirmed *in toto* the Labor Arbiter's Decision and further found that the workers were validly and legally engaged by petitioner for "term employment," wherein the parties agreed to a fixed period of employment, knowingly and voluntarily, without any force, duress or improper pressure being brought to bear upon the employees and absent any other circumstance vitiating their consent. The said NLRC Resolution became final and executory on 18 June 1996. Despite the favorable ruling of both the Labor Arbiter and the NLRC, petitioner decided to discontinue such employment arrangement. Yet, the problem of petitioner as to shortage of workforce due to the peaks in operation, work backlogs, absenteeism, and excessive leaves, persisted. Petitioner then found a solution in the engagement of cooperatives such as CAMPCO to provide the necessary additional services.

Petitioner contended that respondents were owners-members of CAMPCO; that CAMPCO was a duly-organized and registered cooperative which had already grown into a multi-million enterprise; that CAMPCO was engaged in legitimate job-contracting with its own owners-members rendering the contract work; that under the express terms and conditions of the Service Contract executed between petitioner (the principal) and CAMPCO (the contractor), the latter shall undertake the contract work on its own account, under its own responsibility, and according to its own manner and method free from the control and direction of the petitioner in all matters connected with the performance of the work, except as to the result thereof; and since CAMPCO held itself out to petitioner as a legitimate job contractor, respondents, as owners-members of CAMPCO, were estopped from denying or refuting the same.

Petitioner further averred that Department Order No. 10, amending the rules implementing Books III and VI of the Labor Code, as amended, promulgated by the DOLE on 30 May 1997, explicitly recognized the

PUBLIC VERSION

arrangement between petitioner and CAMPCO as permissible contracting and subcontracting, to wit "Section 6. *Permissible contracting and subcontracting.*" Subject to the conditions set forth in Section 3(d) and (e) and Section 5 hereof, the principal may engage the services of a contractor or subcontractor for the performance of any of the following;

- (a) Works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services, provided that the normal production capacity or regular workforce of the principal cannot reasonably cope with such demands;
- (b) Works or services temporarily or occasionally needed by the principal for undertakings requiring expert or highly technical personnel to improve the management or operations of an enterprise;
- (c) Services temporarily needed for the introduction or promotion of new products, only for the duration of the introductory or promotional period;
- (d) Works or services not directly related or not integral to the main business or operation of the principal, including casual work, janitorial, security, landscaping, and messengerial services, and work not related to manufacturing processes in manufacturing establishments;
- (e) Services involving the public display of manufacturer's products which does not involve the act of selling or issuance of receipts or invoices;
- (f) Specialized works involving the use of some particular, unusual, or peculiar skills, expertise, tools or equipment the performance of which is beyond the competence of the regular workforce or production capacity of the principal; and
- (g) Unless a reliever system is in place among the regular workforce, substitute services for absent regular employees, provided that the period of service shall be coextensive with the period of absence and the same is made clear to the substitute employee at the time of engagement. The phrase "absent regular employees" includes those who are serving suspensions or other disciplinary measures not amounting to termination of employment meted out by the principal, but excludes those on strike where all the formal requisites for the legality of the strike have been prima facie complied with based on the records filed with the National Conciliation and Mediation Board.

According to petitioner, the services rendered by CAMPCO constituted permissible job contracting under the afore-quoted paragraphs (a), (c), and (g), Section 6 of DOLE Department Order No. 10, series of 1997.

After the parties had submitted their respective Position Papers, the Labor Arbiter promulgated its Decision^[20] on 11 June 1999, ruling entirely in favor of petitioner, ratiocinating thus "After judicious review of the facts, narrated and supporting documents adduced by both parties, the undersigned finds [and] holds that CAMPCO is not engaged in labor-only contracting.

Had it not been for the issuance of Department Order No. 10 that took effect on June 22, 1997 which in the contemplation of Law is much later compared to the Order promulgated by the Undersecretary Cresencio

Trajano of Department of [L]abor and Employment, the undersigned could safely declared [sic] otherwise. However, owing to the principle observed and followed in legal practice that the later law or jurisprudence controls, the reliance to Secretary Trajano's order is overturned.

Labor-only contracting as amended by Department [O]rder No. 10 is defined in this wise:

"Labor-only contracting is prohibited under this Rule is an arrangement where the contractor or subcontractor merely recruits, supplied [sic] or places workers to perform a job, work or service for a principal, and the following elements are present:

i) The contractor or sub-contractor does not have substantial capital or investment to actually perform the job, work, or service under its own account & responsibility, and

ii) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal."

Verification of the records reveals that per Annexes "J" and "K" of [herein petitioner DolePhil's] position paper, which are the yearly audited Financial Statement and Balance Sheet of CAMPCO shows [sic] that it has more than substantial capital or investment in order to qualify as a legitimate job contractor.

We likewise recognize the validity of the contract entered into and between CAMPCO and [petitioner] for the former to assists [sic] the latter in its operations and in the performance of odd jobs ‘such as the augmentation of regular manning particularly during peaks in operation, work back logs, absenteeism and excessive leave availment of respondent's regular employees. The rule is well-settled that labor laws discourage interference with an employer's judgment in the conduct of his business. Even as the law is sollicitors [sic] of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied (*Yuco Chemical Industries vs. Ministry of [L]abor*, GR No. 75656, May 28, 1990).

CAMPCO being engaged in legitimate contracting, cannot therefore declared [sic] as guilty of labor-only contracting which [herein respondents] want us to believe.

The second issue is likewise answered in the negative. The reason is plain and simple[,] section 12 of Department [O]rder No. 10 states:

"Section 12. Employee-employer relationship. Except in cases provided for in Section 13, 14, 15 & 17, the contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Code."

The Resolution of NLRC 5th division, promulgated on March 14, 1 1995 [sic] categorically declares:

"Judging from the very nature of the terms and conditions of their hiring, the Commission finds the complainants to have been engaged to perform work, although necessary or desirable to the business of respondent company, for a definite period or what is community called TERM EMPLOYMENT. It is clear from the evidence and record that the nature of the business and operation of respondent company has its peaks and valleys and therefore, it is not difficult to discern, inclement weather, or high availment by regular workers of earned leave credits, additional workers categorized as casuals, or temporary, are needed

to meet the exigencies." (Underlining in the original)

The validity of fixed-period employment has been consistently upheld by the Supreme [C]ourt in a long line of cases, the leading case of which is *Brent School, Inc. vs. Zamora & Alegre*, GR No. 48494, February 5, 1990. Thus at the end of the contract the employer-employee relationship is terminated. It behooves upon us to rule that herein complainants cannot be declared regular rank and file employees of the [petitioner] company.

Anent the third issue, [respondents] dismally failed to provide us the exact figures needed for the computation of their wage differentials. To simply alleged [sic] that one is underpaid of his wages is not enough. No bill of particulars was submitted. Moreover, the Order of RTWPB Region XI, Davao City dated February 21, 1996 exempts [petitioner] company from complying Wage Order No. 04 [sic] in so far as such exemption applies only to workers who are not covered by the Collective Bargaining Agreement, for the period January 1 to December 31, 1995,. [sic] In so far as [respondents] were not privies to the CBA, they were the workers referred to by RTWPB's Order. [H]ence, [respondents'] claims for wage differentials are hereby dismissed for lack of factual basis.

We find no further necessity in delving into the issues raised by [respondents] regarding moral damages and attorney's fees for being moot and academic because of the findings that CAMPCO does not engaged [sic] in labor-only contracting and that [respondents] cannot be declared as regular employees of [petitioner].

WHEREFORE, premises considered, judgment is hereby rendered in the above-entitled case, dismissing the complaint for lack of merit.

Respondents appealed the Labor Arbiter's Decision to the NLRC, reiterating their position that they should be recognized as regular employees of the petitioner since CAMPCO was a mere labor-only contractor, as already declared in the previous Orders of DOLE Regional Director Parel, dated 19 October 1993, and DOLE Undersecretary Trajano, dated 15 September 1994, which already became final and executory. The NLRC, in its Resolution,^[21] dated 29 February 2000, dismissed the appeal and affirmed the Labor Arbiter's Decision, reasoning as follows â€

We find no merit in the appeal.

The concept of conclusiveness of judgment under the principle of "res judicata" means that where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is identity of parties, but there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined and not as to matters merely involved therein (*Viray, etc. vs. Marinas, et al.*, 49 SCRA 44). There is no denying that the order of the Department of Labor and Employment, Regional Office No. XI in case No. RI100-9310-RI-355, which the complainants perceive to have sealed the status of CAMPCO as labor-only contractor, proceeded from the visitorial and enforcement power of the Department Secretary under Article 128 of the Labor Code. Acting on reports that the cooperatives, including CAMPCO, that operated and offered services at [herein petitioner] company were engaging in labor-only contracting activities, that Office conducted a routinary inspection over the records of said cooperatives and consequently, found the latter to be engaging in labor-only contracting activities. This being so, [petitioner] company was not a real party-in-interest in said case,

but the cooperatives concerned. Therefore, there is no identity of parties between said case and the present case which means that the afore-said ruling of the DOLE is not binding and conclusive upon [petitioner] company.

It is not correct, however, to say, as the Labor Arbiter did, that the afore-said ruling of the Department of Labor and Employment has been overturned by Department Order No. 10. It is a basic principle that "once a judgment becomes final it cannot be disturbed, except for clerical errors or when supervening events render its execution impossible or unjust" (*Sampaguita Garmens [sic] Corp. vs. NLRC*, G. R. No. 102406, June 7, 1994). Verily, the subsequent issuance of Department Order No. 10 cannot be construed as supervening event that would render the execution of said judgment impossible or unjust. Department Order No. 10 refers to the ramification of some provisions of the Rules Implementing Articles 106 and 109 of the Labor Code, without substantially changing the definition of "labor-only" or "job" contracting.

Well-settled is the rule that to qualify as an independent job contractor, one has either substantial capital "or" investment in the form of tools, equipment and machineries necessary to carry out his business (see *Virginia Neri, et al. vs. NLRC, et al.*, G.R. Nos. 97008-89, July 23, 1993). CAMPCO has admittedly a paid-up capital of P4,562,470.25 and this is more than enough to qualify it as an independent job contractor, as aptly held by the Labor Arbiter.

WHEREFORE, the appeal is DISMISSED for lack of merit and the appealed decision is AFFIRMED.
Petition for Certiorari with the Court of Appeals

Refusing to concede defeat, respondents filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the revised Rules of Civil Procedure, asserting that the NLRC acted without or in excess of its jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction when, in its Resolution, dated 29 February 2000, it (1) ruled that CAMPCO was a bona fide independent job contractor with substantial capital, notwithstanding the fact that at the time of its organization and registration with CDA, it only had a paid-up capital of P6,600.00; and (2) refused to apply the doctrine of *res judicata* against petitioner. The Court of Appeals, in its Decision,^[22] dated 20 May 2002, granted due course to respondents' Petition, and set aside the assailed NLRC Decision. Pertinent portions of the Court of Appeals Decision are reproduced below â€

In the case at bench, it was established during the proceedings before the [NLRC] that CAMPCO has a substantial capital. However, having a substantial capital does not per se qualify CAMPCO as a job contractor. In order to be considered an independent contractor it is not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises. The conjunction "and," in defining what a job contractor is, means that aside from having a substantial capital or investment in the form of tools, equipment, machineries, work premise, and other materials which are necessary in the conduct of his business, the contractor must be able to prove that it also carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof. [Herein petitioner DolePhil] has failed to prove, except for the substantial capital requirement, that CAMPCO has met the other requirements. It was not established that CAMPCO is engaged or carries on an independent business.

PUBLIC VERSION

In the performance of the respective tasks of workers deployed by CAMPCO with [petitioner], it was not established that CAMPCO undertook the contract of work it entered with [petitioner] under its own account and its own responsibility. It is [petitioner] who provides the procedures to be followed by the workers in the performance of their assigned work. The workers deployed by CAMPCO to [petitioner] performed activities which are directly related to the principal business or operations of the employer in which workers are habitually employed since [petitioner] admitted that these workers were engaged to perform the job of other regular employees who cannot report for work.

Moreover, [NLRC] likewise gravely erred in not giving weight to the Order dated 19 October 1993 issued by the Office of the Secretary of the Department of Labor and Employment, through Undersecretary Cresencio Trajano, which affirmed the findings of the Department of Labor and Employment Regional Office, Region XI, Davao City that Cannery Multi-Purpose Cooperative is one of the cooperatives engaged in labor-only contracting activities.

In the exercise of the visitatorial and enforcement power of the Department of Labor and Employment, an investigation was conducted among the cooperatives organized and existing in Polomolok, South Cotabato, relative to labor-only contracting activities. One of the cooperatives investigated was Cannery Multi-Purpose Cooperative. After the investigation, the Department of Labor and Employment, Regional Office No. XI, Davao City, through its Regional Director, issued the Order dated 19 October 1993, stating: "WHEREFORE, premises considered, ADVENTURER'S MULTI PURPOSE COOPERATIVE, HUMAN RESOURCE MULTI PURPOSE SKILLED COOPERATIVE and CANNERY MULTI PURPOSE COOPERATIVE are hereby declared to be engaged in labor only contracting which is a prohibited activity. The same cooperatives are therefore ordered to cease and desist from further engaging in such activities.

X X X X

SO ORDERED."

Cannery Multi Purpose Cooperative, together with the other cooperatives declared as engaged in labor-only contracting activity, appeal the above-findings to the Secretary of the Department of Labor and Employment. Their appeal was dismissed for lack of merit as follows:: [sic]

X X X X

[NLRC] held that CAMPCO, being not a real party-in interest in the above-case, the said ruling is not binding and conclusive upon [petitioner]. This Court, however, finds the contrary.

CAMPCO was one of the cooperatives investigated by the Department of Labor and Employment, Regional Office No. XI, Davao City, pursuant to Article 128 of the Labor Code. It was one of the appellants before the Secretary of the Department of Labor questioning the decision of the Regional Director of DOLE, Regional Office No. XI, Davao City. This Court noted that in the proceedings therein, and as mentioned in the decision rendered by Undersecretary Cresencio B. Trajano of the Department of Labor and Employment, Manila, regarding the cooperatives' appeal thereto, the parties therein, including Cannery Multi-Purpose Cooperative, submitted to the said office their position papers and Articles of

PUBLIC VERSION

Cooperatives and Certification of Registrations [sic] on 30 August 1993. This is a clear indicia that CAMPCO participated in the proceedings therein. [NLRC], therefore, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it held that CAMPCO was never a party to the said case.

[Petitioner] invokes Section 6 of Department Order No. 10, series of 1997, issued by the Department of Labor and Employment which took effect on 22 June 1997. The said section identified the circumstances which are permissible job contracting, to wit:

x x x x

[Petitioner's] main contention is based on the decisions rendered by the labor arbiter and [NLRC] which are both anchored on Department Order No. 10 issued by the Department of Labor and Employment. The said department order provided for several flexible working relations between a principal, a contractor or subcontractor and the workers recruited by the latter and deployed to the former. In the case at bench, [petitioner] posits that the engagement of [petitioner] of the workers deployed by CAMPCO was pursuant to D.O. No. 10, Series of 1997.

However, on 8 May 2001, the Department of Labor and Employment issued Department Order No. 3, series of 2001, revoking Department Order No. 10, series of 1997. The said department order took effect on 29 May 2001.

x x x x

Under Department Order No. 3, series of 2001, some contracting and outsourcing arrangements are no longer legitimate modes of employment relation. Having revoked Department Order No. 10, series of 1997, [petitioner] can no longer support its argument by relying on the revoked department order.

Considering that [CAMPCO] is not a job contractor, but one engaged in labor-only contracting, CAMPCO serves only as an agent of [petitioner] pursuant to par. (b) of Sec. 9, Rule VIII, Book III of the Implementing Rules and Regulations of the Labor Code, stating,

x x x x

However, the Court cannot declare that [herein respondents] are regular employees of [petitioner]. x x x

x x x x

In the case at bench, although [respondents] were engaged to perform activities which are usually necessary or desirable in the usual business or trade of private respondent, it is apparent, however, that their services were engaged by [petitioner] only for a definite period. [Petitioner's] nature of business and operation has its peaks. In order to meet the demands during peak seasons they necessarily have to engage the services of workers to work only for a particular season. In the case of [respondents], when they were deployed by CAMPCO with [petitioner] and were assigned by the latter at its cannery department, they were aware that

PUBLIC VERSION

they will be working only for a certain duration, and this was made known to them at the time they were employed, and they agreed to the same.

X X X X

The non-rehiring of some of the petitioners who were allegedly put on a "floating status" is an indication that their services were no longer needed. They attained their "floating status" only after they have finished their contract of employment, or after the duration of the season that they were employed. The decision of [petitioner] in not rehiring them means that their services were no longer needed due to the end of the season for which they were hired. And this Court reiterates that at the time they were deployed to [petitioner's] cannery division, they knew that the services they have to render or the work they will perform are seasonal in nature and consequently their employment is only for the duration of the season.

ACCORDINGLY, in view of the foregoing, the instant petition for certiorari is hereby *GRANTED DUE COURSE*. The decision dated 29 February 2000 and Resolution dated 19 December 2000 rendered by [NLRC] are hereby *SET ASIDE*. In place thereof, it is hereby rendered that:

1. Cannery Multi-Purpose Cooperative is a labor-only contractor as defined under the Labor Code of the Philippines and its implementing rules and regulations; and that
2. DOLE Philippines Incorporated is merely an agent or intermediary of Cannery Multi-Purpose Cooperative.

All other claims of [respondents] are hereby *DENIED* for lack of basis.

Both petitioner and respondents filed their respective Motions for Reconsideration of the foregoing Decision, dated 20 May 2002, prompting the Court of Appeals to promulgate an Amended Decision on 27 November 2003, in which it ruled in this wise:

This court examined again the documentary evidence submitted by the [herein petitioner] and we rule not to disturb our findings in our Decision dated May 20, 2002. It is our opinion that there was no competent evidence submitted that would show that CAMPCO is engaged to perform a specific and special job or service which is one of the strong indicators that an entity is an independent contractor. The articles of cooperation and by-laws of CAMPCO do not show that it is engaged in performing a specific and special job or service. What is clear is that it is a multi-purpose cooperative organized under RA No. 6938, nothing more, nothing less.

As can be gleaned from the contract that CAMPCO entered into with the [petitioner], the undertaking of CAMPCO is to provide [petitioner] with workforce by assisting the company in its daily operations and perform odd jobs as may be assigned. It is our opinion that CAMPCO merely acted as recruitment agency for [petitioner]. CAMPCO by supplying manpower only, clearly conducted itself as "labor-only" contractor. As can be gleaned from the service contract, the work performed by the [herein respondents] are directly related to the main business of the [petitioner]. Clearly, the requisites of "labor-only" contracting are present in the case at bench.

In view of the above ruling, we find it unnecessary to discuss whether the Order of Undersecretary Trajano finding that CAMPCO is a "labor-only" contractor is a determining factor or constitutes res judicata in the case at bench. Our findings that CAMPCO is a "labor-only" contractor is based on the evidence presented vis-à-vis the rulings of the Supreme Court on the matter.

Since, the argument that the [petitioner] is the real employer of the [respondents], the next question that must be answered is "what is the nature of the employment of the petitioners?"

x x x x

The afore-quoted [Article 280 of the Labor Code, as amended] provides for two kinds of employment, namely: (1) regular (2) casual. In our Decision, we ruled that the [respondents] while performing work necessary and desirable to the business of the [petitioner] are seasonal employees as their services were engaged by the [petitioner] for a definite period or only during peak season.

In the most recent case of *Hacienda Fatima v. National Federation of Sugarcane Workers Food and General Trade*, the Supreme Court ruled that for employees to be excluded from those classified as regular employees, it is not enough that they perform work or services that are seasonal in nature. They must have also been employed only for the duration of one season. It is undisputed that the [respondents'] services were engaged by the [petitioner] since 1993 and 1994. The instant complaint was filed in 1996 when the [respondents] were placed on floating status. Evidently, [petitioner] employed the [respondents] for more than one season. Therefore, the general rule on regular employment is applicable. The herein petitioners who performed their jobs in the workplace of the [petitioner] every season for several years, are considered the latter's regular employees for having performed works necessary and desirable to the business of the [petitioner]. The [petitioner's] eventual refusal to use their services—even if they were ready, able and willing to perform their usual duties whenever these were available—and hiring other workers to perform the tasks originally assigned to [respondents] amounted to illegal dismissal of the latter. We thus, correct our earlier ruling that the herein petitioners are seasonal workers. They are regular employees within the contemplation of Article 280 of the Labor Code and thus cannot be dismissed except for just or authorized cause. The Labor Code provides that when there is a finding of illegal dismissal, the effect is that the employee dismissed shall be reinstated to his former position without loss of seniority rights with backwages from the date of his dismissal up to his actual reinstatement.

This court however, finds no basis for the award of damages and attorney's fees in favor of the petitioners.

WHEREFORE, the Decision dated May 20, 2002 rendered by this Court is hereby **AMENDED** as follows:

- 1) [Petitioner] DOLE PHILIPPINES is hereby declared the employer of the [respondents].
- 2) [Petitioner] DOLE PHILIPPINES is hereby declared guilty of illegal dismissal and ordered to immediately reinstate the [respondents] to their former position without loss of seniority rights and other benefits, and to pay each of the [respondents] backwages from the date of the filing of illegal dismissal on

December 19, 1996 up to actual reinstatement, the same to be computed by the labor arbiter.

3) The claims for damages and attorney's fees are hereby denied for lack of merit.

No costs.^[23]

The Petition at Bar

Aggrieved by the Decision, dated 20 May 2002, and the Amended Decision, dated 27 November 2003, of the Court of Appeals, petitioner filed the instant Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Civil Procedure, in which it made the following assignment of errors â€œ

I.

THE COURT OF APPEALS HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT MADE ITS OWN FACTUAL FINDINGS AND DISREGARDED THE UNIFORM AND CONSISTENT FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC, WHICH MUST BE ACCORDED GREAT WEIGHT, RESPECT AND EVEN FINALITY. IN SO DOING THE COURT OF APPEALS EXCEEDED ITS AUTHORITY ON CERTIORARI UNDER *RULE 65* OF THE RULES OF COURT.

II.

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE CONSTITUTION, LAW, APPLICABLE RULES AND REGULATIONS AND DECISIONS OF THE SUPREME COURT IN NOT HOLDING THAT *DEPARTMENT ORDER NO. 10, SERIES OF 1997* IS THE APPLICABLE REGULATION IN THIS CASE. IN GIVING RETROACTIVE APPLICATION TO *DEPARTMENT ORDER NO. 3, SERIES OF 2001*, THE COURT OF APPEALS VIOLATED THE CONSTITUTIONAL PROVISION AGAINST IMPAIRMENT OF CONTRACTS AND DEPRIVED PETITIONER OF THE DUE PROCESS OF THE LAW.

III.

THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN GIVING WEIGHT TO THE ORDER DATED 19 OCTOBER 1993 ISSUED BY THE OFFICE OF SECRETARY OF LABOR, WHICH AFFIRMED THE FINDINGS OF THE DOLE REGIONAL OFFICE (REGION XI, DAVAO CITY) THAT CAMPCO IS ONE OF THE COOPERATIVES ENGAGED IN LABOR-ONLY CONTRACTING ACTIVITIES.

IV.

THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN NOT RULING THAT RESPONDENTS, BY ACTIVELY REPRESENTING THEMSELVES AND WARRANTING THAT THEY ARE ENGAGED IN LEGITIMATE JOB CONTRACTING, ARE BARRED BY THE EQUITABLE PRINCIPLE OF

ESTOPPEL FROM ASSERTING THAT THEY ARE REGULAR EMPLOYEES OF PETITIONER.

V.

THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT CAMPCO IS ENGAGED IN THE PROHIBITED ACT OF "*LABOR-ONLY CONTRACTING*" DESPITE THERE BEING SUBSTANTIAL EVIDENCE TO THE CONTRARY.

VI.

THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT PETITIONER IS THE EMPLOYER OF RESPONDENTS AND THAT PETITIONER IS GUILTY OF ILLEGAL DISMISSAL.^[24]

This Court's Ruling

I

Anent the first assignment of error, petitioner argues that judicial review under Rule 65 of the revised Rules of Civil Procedure is limited only to issues concerning want or excess or jurisdiction or grave abuse of discretion. The special civil action for *certiorari* is a remedy designed to correct errors of jurisdiction and not mere errors of judgment. It is the contention of petitioner that the NLRC properly assumed jurisdiction over the parties and subject matter of the instant case. The errors assigned by the respondents in their Petition for *Certiorari* before the Court of Appeals do not pertain to the jurisdiction of the NLRC; they are rather errors of judgment supposedly committed by the the NLRC, in its Resolution, dated 29 February 2000, and are thus not the proper subject of a petition for *certiorari*. Petitioner also posits that the Petition for *Certiorari* filed by respondents with the Court of Appeals raised questions of fact that would necessitate a review by the appellate court of the evidence presented by the parties before the Labor Arbiter and the NLRC, and that questions of fact are not a fit subject for a special civil action for *certiorari*.

It has long been settled in the landmark case of *St. Martin Funeral Home v. NLRC*,^[25] that the mode for judicial review over decisions of the NLRC is by a petition for *certiorari* under Rule 65 of the revised Rules of Civil Procedure. The different modes of appeal, namely, writ of error (Rule 41), petition for review (Rules 42 and 43), and petition for review on *certiorari* (Rule 45), cannot be availed of because there is no provision on appellate review of NLRC decisions in the Labor Code, as amended.^[26] Although the same case recognizes that both the Court of Appeals and the Supreme Court have original jurisdiction over such petitions, it has chosen to impose the strict observance of the hierarchy of courts. Hence, a petition for *certiorari* of a decision or resolution of the NLRC should first be filed with the Court of Appeals; direct resort to the Supreme Court shall not be allowed unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify an availment of a remedy within and calling for the exercise by the Supreme Court of its primary jurisdiction.

The extent of judicial review by *certiorari* of decisions or resolutions of the NLRC, as exercised previously

by the Supreme Court and, now, by the Court of Appeals, is described in *Zarate v. Olegario*,^[27] thus â€œ The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for *certiorari* under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.

The Court of Appeals, therefore, can grant the Petition for *Certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy; and the Court of Appeals can not make this determination without looking into the evidence presented by the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.

As this Court elucidated in *Garcia v. National Labor Relations Commission*^[28] --

[I]n *Ong v. People*, we ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in *Gutib v. Court of Appeals*, we emphasized thus:

[I]t has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.

And in another case of recent vintage, we further held:

In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.

In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied

by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.

II

The second assignment of error delves into the significance and application to the case at bar of the two department orders issued by DOLE. Department Order No. 10, series of 1997, amended the implementing rules of Books III and VI of the Labor Code, as amended. Under this particular DOLE department order, the arrangement between petitioner and CAMPCO would qualify as permissible contracting. Department Order No. 3, series of 2001, revoked Department Order No. 10, series of 1997, and reiterated the prohibition on labor-only contracting.

Attention is called to the fact that the acts complained of by the respondents occurred well before the issuance of the two DOLE department orders in 1997 and 2001. The Service Contract between DOLE and CAMPCO was executed on 17 August 1993. Respondents started working for petitioner sometime in 1993 and 1994. While some of them continued to work for petitioner, at least until the filing of the Complaint, others were put on "stay home status" at various times in 1994, 1995, and 1996. Respondents filed their Complaint with the NLRC on 19 December 1996.

A basic rule observed in this jurisdiction is that no statute, decree, ordinance, rule or regulation shall be given retrospective effect unless explicitly stated.^[29] Since there is no provision at all in the DOLE department orders that expressly allowed their retroactive application, then the general rule should be followed, and the said orders should be applied only prospectively.

Which now brings this Court to the question as to what was the prevailing rule on labor-only contracting from 1993 to 1996, the period when the occurrences subject of the Complaint before the NLRC took place.

Article 106 of the Labor Code, as amended, permits legitimate job contracting, but prohibits labor-only contracting. The said provision reads â€

ART. 106. Contractor or subcontractor. â€ Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

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

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

Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

To implement the foregoing provision of the Labor Code, as amended, Sections 8 and 9, Rule VIII, Book III of the implementing rules, in force since 1976 and prior to their amendment by DOLE Department Order No. 10, series of 1997, provided as follows â€

Sec. 8. *Job contracting.* â€ There is job contracting permissible under the Code if the following conditions are met;

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. *Labor-only contracting.* â€ (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers. Since these statutory and regulatory provisions were the ones in force during the years in question, then it was in consideration of the same that DOLE Regional Director Parel and DOLE Underssecretary Trajano issued their Orders on 19 September 1993 and 15 September 1994, respectively, both finding that CAMPCO was engaged in labor-only contracting. Petitioner, in its third assignment of error, questions the weight that the Court of Appeals gave these orders in its Decision, dated 20 May 2002, and Amended

Decision, dated 27 November 2003.

III

The Orders of DOLE Regional Director Parel, dated 19 September 1993, and of DOLE Undersecretary Trajano, dated 15 September 1994, were issued pursuant to the visitorial and enforcement power conferred by the Labor Code, as amended, on the DOLE Secretary and his duly authorized representatives, to wit â€“ ART. 128. Visitorial and enforcement power. â€“ (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (Emphasis supplied.)

Before Regional Director Parel issued his Order, dated 19 September 1993, a Task Force investigated the operations of cooperatives in Polomolok, South Cotabato, and submitted a report identifying six cooperatives that were engaged in labor-only contracting, one of which was CAMPCO. In a conference before the DOLE Regional Office, the cooperatives named by the Task Force were given the opportunity to explain the nature of their activities in relation to petitioner; and, the cooperatives, as well as petitioner, submitted to the DOLE Regional Office their position papers and other supporting documents to refute the findings of the Task Force. It was only after these procedural steps did Regional Director Parel issued his Order finding that three cooperatives, including CAMPCO, were indeed engaged in labor-only contracting and were directed to cease and desist from further engaging in such activities. On appeal, DOLE Undersecretary Trajano, by authority of the DOLE Secretary, affirmed Regional Director Parel's Order. Upon denial of the Motion for Reconsideration filed by the cooperatives, and no further appeal taken therefrom, the Order of DOLE Undersecretary Trajano, dated 15 September 1994, became final and executory.

Petitioner avers that the foregoing Orders of the authorized representatives of the DOLE Secretary do not constitute *res judicata* in the case filed before the NLRC. This Court, however, believes otherwise and finds that the final and executory Orders of the DOLE Secretary or his authorized representatives should bind the NLRC.

It is obvious that the visitorial and enforcement power granted to the DOLE Secretary is in the nature of a quasi-judicial power. Quasi-judicial power has been described by this Court in the following manner: ‘Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. **It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.** The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, **where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.** In carrying out their quasi-judicial functions the administrative officers or bodies are **required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.** Since rights of specific persons are affected it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.’^[30] (Emphasis supplied.)

The DOLE Secretary, under Article 106 of the Labor Code, as amended, exercise quasi-judicial power, at least, to the extent necessary to determine violations of labor standards provisions of the Code and other labor legislation. He can issue compliance orders and writs of execution for the enforcement of his orders. As evidence of the importance and binding effect of the compliance orders of the DOLE Secretary, Article 128 of the Labor Code, as amended, further provides: ‘ART. 128. Visitorial and enforcement power.’

x x x x

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

The Orders of DOLE Regional Director Parel, dated 19 September 1993, and of DOLE Undersecretary Trajano, dated 15 September 1994, consistently found that CAMPCO was engaging in labor-only contracting. Such finding constitutes *res judicata* in the case filed by the respondents with the NLRC.

It is well-established in this jurisdiction that the decisions and orders of administrative agencies, rendered pursuant to their quasi-judicial authority, have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*. The rule of *res judicata*, which forbids the reopening of a matter once judicially determined by competent authority, applies as well to the judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers. The orderly administration of justice requires

that the judgments or resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules and regulations, so as to write *finis* to disputes once and for all. This is a fundamental principle in the Philippine justice system, without which there would be no end to litigations.^[31]

Res judicata has dual aspects, "bar by prior judgment" and "conclusiveness of judgment." This Court has previously clarified the difference between the two â€

Section 49, Rule 39 of the Revised Rules of Court lays down the dual aspects of *res judicata* in actions in personam. to wit:

"Effect of judgment. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x x

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Section 49(b) enunciates the first concept of *res judicata* known as "bar by prior judgment," whereas, Section 49(c) is referred to as "conclusiveness of judgment."

There is "bar by former judgment" when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. But where between the first case wherein Judgment is rendered and the second case wherein such judgment is invoked, there is only identity of parties but there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed "conclusiveness of judgment."

The second concept of *res judicata*, conclusiveness of judgment, is the one applicable to the case at bar.

The same parties who participated in the proceedings before the DOLE Regional Office are the same parties involved in the case filed before the NLRC. CAMPCO, on behalf of its members, attended the conference before the DOLE Regional Office; submitted its position paper; filed an appeal with the DOLE Secretary of the Order of DOLE Regional Director Parel; and moved for reconsideration of the subsequent Order of DOLE Undersecretary Trajano. Petitioner, although not expressly named as a respondent in the DOLE investigation, was a necessary party thereto, considering that CAMPCO was rendering services to petitioner solely. Moreover, petitioner participated in the proceedings before the DOLE Regional Office,

intervening in the matter through a letter sent by its Senior Legal Officer, dated 24 May 1993, and submitting its own position paper.

While the causes of action in the proceedings before the DOLE and the NLRC differ, they are, in fact, very closely related. The DOLE Regional Office conducted an investigation to determine whether CAMPCO was violating labor laws, particularly, those on labor-only contracting. Subsequently, it ruled that CAMPCO was indeed engaging in labor-only contracting activities, and thereafter ordered to cease and desist from doing so. Respondents came before the NLRC alleging illegal dismissal by the petitioner of those respondents who were put on "stay home status," and seeking regularization of respondents who were still working for petitioner. The basis of their claims against petitioner rests on the argument that CAMPCO was a labor-only contractor and, thus, merely an agent or intermediary of petitioner, who should be considered as respondents' real employer. The matter of whether CAMPCO was a labor-only contractor was already settled and determined in the DOLE proceedings, which should be conclusive and binding upon the NLRC. What were left for the determination of the NLRC were the issues on whether there was illegal dismissal and whether respondents should be regularized.

This Court also notes that CAMPCO and DOLE still continued with their Service Contract despite the explicit cease and desist orders rendered by authorized DOLE officials. There is no other way to look at it except that CAMPCO and DOLE acted in complete defiance and disregard of the visitatorial and enforcement power of the DOLE Secretary and his authorized representatives under Article 128 of the Labor Code, as amended. For the NLRC to ignore the findings of DOLE Regional Director Parel and DOLE Undersecretary Trajano is an unmistakable and serious undermining of the DOLE officials' authority.

IV

In petitioner's fourth assignment of error, it points out that the Court of Appeals erred in not holding respondents estopped from asserting that they were regular employees of petitioner since respondents, as owners-members of CAMPCO, actively represented themselves and warranted that they were engaged in legitimate job contracting.

This Court cannot sustain petitioner's argument.

It is true that CAMPCO is a cooperative composed of its members, including respondents. Nonetheless, it cannot be denied that a cooperative, as soon as it is registered with the CDA, attains a juridical personality of its own,^[32] separate and distinct from its members; much in the same way that a corporation has a juridical personality separate and distinct from its stockholders, known as the doctrine of corporate fiction. The protection afforded by this doctrine is not absolute, but the exception thereto which necessitates the piercing of the corporate veil can only be made under specified circumstances. In *Traders Royal Bank v. Court of Appeals*,^[33] this Court ruled that "â€" Petitioner cannot put up the excuse of piercing the veil of corporate entity, as this is merely an equitable remedy, and maybe awarded only in cases when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime or where a corporation is a mere alter ego or business conduit

of a person.

Piercing the veil of corporate entity requires the court to see through the protective shroud which exempts its stockholders from liabilities that ordinarily, they could be subject to, or distinguishes one corporation from a seemingly separate one, were it not for the existing corporate fiction. But to do this, the court must be sure that the corporate fiction was misused, to such an extent that injustice, fraud, or crime was committed upon another, disregarding, thus, his, her, or its rights. It is the corporate entity which the law aims to protect by this doctrine.

Using the above-mentioned guidelines, is petitioner entitled to a piercing of the "cooperative identity" of CAMPCO? This Court thinks not.

It bears to emphasize that the piercing of the corporate veil is an equitable remedy, and among the maxims of equity are: (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. Hence, a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair, dishonest, fraudulent, or deceitful as to the controversy in issue.^[34]

Petitioner does not come before this Court with clean hands. It is not an innocent party in this controversy.

Petitioner itself admitted that it encouraged and even helped the establishment of CAMPCO and the other cooperatives in Polomolok, South Cotabato. These cooperatives were established precisely to render services to petitioner. It is highly implausible that the petitioner was lured into entering into the Service Contract with CAMPCO in 1993 on the latter's misrepresentation and false warranty that it was an independent job contractor. Even if it is conceded that petitioner was indeed defrauded into believing that CAMPCO was an independent contractor, then the DOLE proceedings should have placed it on guard. Remember that petitioner participated in the proceedings before the DOLE Regional Office, it cannot now claim ignorance thereof. Furthermore, even after the issuance of the cease and desist order on CAMPCO, petitioner still continued with its prohibited service arrangement with the said cooperative. If petitioner was truly defrauded by CAMPCO and its members into believing that the cooperative was an independent job contractor, the more logical recourse of petitioner was to have the Service Contract voided in the light of the explicit findings of the DOLE officials that CAMPCO was engaging in labor-only contracting. Instead, petitioner still carried on its Service Contract with CAMPCO for several more years thereafter.

V

As previously discussed, the finding of the duly authorized representatives of the DOLE Secretary that CAMPCO was a labor-only contractor is already conclusive. This Court cannot deviate from said finding.

This Court, though, still notes that even an independent review of the evidence on record, in consideration of the proper labor statutes and regulations, would result in the same conclusion: that CAMPCO was engaged in prohibited activities of labor-only contracting.

The existence of an independent and permissible contractor relationship is generally established by the following criteria: whether or not 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 of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises tools, appliances, materials and labor; and the mode, manner and terms of payment.^[35]

While there is present in the relationship of petitioner and CAMPCO some factors suggestive of an independent contractor relationship (*i.e.*, CAMPCO chose who among its members should be sent to work for petitioner; petitioner paid CAMPCO the wages of the members, plus a percentage thereof as administrative charge; CAMPCO paid the wages of the members who rendered service to petitioner), many other factors are present which would indicate a labor-only contracting arrangement between petitioner and CAMPCO.^[36]

First, although petitioner touts the multi-million pesos assets of CAMPCO, it does well to remember that such were amassed in the years following its establishment. In 1993, when CAMPCO was established and the Service Contract between petitioner and CAMPCO was entered into, CAMPCO only had P6,600.00 paid-up capital, which could hardly be considered substantial.^[37] It only managed to increase its capitalization and assets in the succeeding years by continually and defiantly engaging in what had been declared by authorized DOLE officials as labor-only contracting.

Second, CAMPCO did not carry out an independent business from petitioner. It was precisely established to render services to petitioner to augment its workforce during peak seasons. Petitioner was its only client. Even as CAMPCO had its own office and office equipment, these were mainly used for administrative purposes; the tools, machineries, and equipment actually used by CAMPCO members when rendering services to the petitioner belonged to the latter.

Third, petitioner exercised control over the CAMPCO members, including respondents. Petitioner attempts to refute control by alleging the presence of a CAMPCO supervisor in the work premises. Yet, the mere presence within the premises of a supervisor from the cooperative did not necessarily mean that CAMPCO had control over its members. Section 8(1), Rule VIII, Book III of the implementing rules of the Labor Code, as amended, required for permissible job contracting that the contractor undertakes the contract work on his account, under his own responsibility, according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof. As alleged by the respondents, and un rebutted by petitioner, CAMPCO members, before working for the petitioner, had to undergo instructions and pass the training provided by petitioner's personnel. It was petitioner who determined and prepared the work assignments of the CAMPCO members. CAMPCO members worked within petitioner's plantation and processing plants alongside regular employees performing identical jobs, a circumstance recognized as an *indicium* of a labor-only contractorship.^[38]

Fourth, CAMPCO was not engaged to perform a specific and special job or service. In the Service Contract of 1993, CAMPCO agreed to assist petitioner in its daily operations, and perform odd jobs as may be assigned. CAMPCO complied with this venture by assigning members to petitioner. Apart from that, no

other particular job, work or service was required from CAMPCO, and it is apparent, with such an arrangement, that CAMPCO merely acted as a recruitment agency for petitioner. Since the undertaking of CAMPCO did not involve the performance of a specific job, but rather the supply of manpower only, CAMPCO clearly conducted itself as a labor-only contractor.^[39]

Lastly, CAMPCO members, including respondents, performed activities directly related to the principal business of petitioner. They worked as can processing attendant, feeder of canned pineapple and pineapple processing, nata de coco processing attendant, fruit cocktail processing attendant, and etc., functions which were, not only directly related, but were very vital to petitioner's business of production and processing of pineapple products for export.

The findings enumerated in the preceding paragraphs only support what DOLE Regional Director Parel and DOLE Undersecretary Trajano had long before conclusively established, that CAMPCO was a mere labor-only contractor.

VI

The declaration that CAMPCO is indeed engaged in the prohibited activities of labor-only contracting, then consequently, an employer-employee relationship is deemed to exist between petitioner and respondents, since CAMPCO shall be considered as a mere agent or intermediary of petitioner.

Since respondents are now recognized as employees of petitioner, this Court is tasked to determine the nature of their employment. In consideration of all the attendant circumstances in this case, this Court concludes that respondents are regular employees of petitioner.

Article 280 of the Labor Code, as amended, reads â€

ART. 280. Regular and Casual Employment. â€ The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary and desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of 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 its 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.

This Court expounded on the afore-quoted provision, thus â€

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its

relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if her performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of the activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.^[40]

In the instant Petition, petitioner is engaged in the manufacture and production of pineapple products for export. Respondents rendered services as processing attendant, feeder of canned pineapple and pineapple processing, nata de coco processing attendant, fruit cocktail processing attendant, and etc., functions they performed alongside regular employees of the petitioner. There is no doubt that the activities performed by respondents are necessary or desirable to the usual business of petitioner.

Petitioner likewise want this Court to believe that respondents' employment was dependent on the peaks in operation, work backlogs, absenteeism, and excessive leaves. However, bearing in mind that respondents all claimed to have worked for petitioner for over a year, a claim which petitioner failed to rebut, then respondent's continued employment clearly demonstrates the continuing necessity and indispensability of respondents' employment to the business of petitioner.

Neither can this Court apply herein the ruling of the NLRC in the previous case involving petitioner and the individual workers they used to hire before the advent of the cooperatives, to the effect that the employment of these individual workers were not regular, but rather, were valid "term employments," wherein the employer and employee knowingly and voluntarily agreed to employment for only a limited or specified period of time. The difference between that case and the one presently before this Court is that the members of CAMPCO, including respondents, were not informed, at the time of their engagement, that their employment shall only be for a limited or specified period of time. There is absence of proof that the respondents were aware and had knowingly and voluntarily agreed to such term employment. Petitioner did not enter into individual contracts with the CAMPCO members, but executed a Service Contract with CAMPCO alone. Although the Service Contract of 1993 stated that it shall be for a specific period, from 1 July to 31 December 1993, petitioner and CAMPCO continued the service arrangement beyond 1993. Since there was no written renewal of the Service Contract,^[41] there was no further indication that the engagement by petitioner of the services of CAMPCO members was for another definite or specified period only.

Respondents, as regular employees of petitioner, are entitled to security of tenure. They could only be removed based on just and authorized causes as provided for in the Labor Code, as amended, and after they are accorded procedural due process. Therefore, petitioner's acts of placing some of the respondents on "stay home status" and not giving them work assignments for more than six months were already tantamount to constructive and illegal dismissal.^[42]

In summary, this Court finds that CAMPCO was a labor-only contractor and, thus, petitioner is the real employer of the respondents, with CAMPCO acting only as the agent or intermediary of petitioner. Due to the nature of their work and length of their service, respondents should be considered as regular employees of petitioner. Petitioner constructively dismissed a number of the respondents by placing them on "stay home status" for over six months, and was therefore guilty of illegal dismissal. Petitioner must accord respondents the status of regular employees, and reinstate the respondents who it constructively and

illegally dismissed, to their previous positions, without loss of seniority rights and other benefits, and pay these respondents' backwages from the date of filing of the Complaint with the NLRC on 19 December 1996 up to actual reinstatement.

WHEREFORE, in view of the foregoing, the instant Petition is **DENIED** and the Amended Decision, dated 27 November 2003, rendered by the Court of Appeals in CA-G.R. SP No. 63405 is **AFFIRMED**.

Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

^[1] Penned by Associate Justice Perlita J. Tria-Tirona, with Associate Justices Buenaventura J. Guerrero and Rodrigo V. Cosico, concurring; *rollo*, pp. 87-99.

^[2] *Id.* at 101-115.

^[3] NLRC Records, Vol. 1, p. 159.

^[4] *Id.* at 64.

^[5] *Rollo*, p. 227.

^[6] *Id.* at 273-274.

^[7] NLRC Records, Vol. 1, pp. 352, 357-358.

^[8] *Id.* at 358-359.

^[9] *Id.* at 352-354, 358-361.

^[10] *Id.* at 352-355.

^[11] *Id.* at 356-367.

^[12] NLRC Records, Vol. 1, pp. 29-30.

^[13] Docketed as Case No. RAB-XI-12-50364-96, entitled *Medel Esteva v. Dole Philippines, Inc.*, *Id.* at 1-5.

^[14] *Id.* at 64-66.

[15] Id. at 349-350.

[16] Id. at 159-198.

[17] Docketed as Case No. RAB-11-04-50147-91, entitled *Pawis ng Makabayang Obrero-National Federation of Labor (PAMAO-NFL), for and in behalf of the dismissed members/workers within the bargaining unit v. Dole Philippines, Inc., and Thomas W. Oliver*.

[18] Penned by Labor Arbiter Amado M. Solamo, NLRC Records, Vol. 1, pp. 211-236.

[19] Penned by Commissioner Leon G. Gonzaga, Jr., with Presiding Commissioner Mulib M. Buat and Commissioner Oscar N. Abella, concurring; id. at 238-259.

[20] Penned by Labor Arbiter Noel Augusto S. Magbanua; id. at 368-382.

[21] Penned by Commissioner Leon G. Gonzaga, Jr., with Presiding Commissioner Salic B. Dumarpa and Commissioner Oscar N. Abella, concurring, NLRC Records, Vol. 2, pp. 226-230.

[22] Supra note 1.

[23] *Rollo*, pp. 110-114.

[24] Id. at 33-35.

[25] 356 Phil. 811, 816 (1998); See also *Philippine National Bank v. Cabansag*, G.R. No. 157010, 21 June 2005, 460 SCRA 514, 524.

[26] Noted in Footnote 17 of the case *St. Martin Funeral Home v. National Labor Relations Commission*, supra.

[27] 331 Phil. 278, 287-288 (1996).

[28] G.R. No. 147427, 7 February 2005, 450 SCRA 535, 548-549.

[29] *Dueñas v. Santos Subdivision Homeowners Association*, G.R. No. 149417, 4 June 2004, 431 SCRA 76; *Republic of the Philippines v. Sandiganbayan*, 355 Phil. 181 (1998); *Co v. Court of Appeals*, G.R. No. 100776, 28 October 1993, 227 SCRA 444.

[30] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1018-1019 (1996).

[31] *Hon. Fortich v. Hon. Corona*, 352 Phil. 460 (1998); *Ipekjian Merchandising Co., Inc. v. Court of Tax Appeals*, 118 Phil. 915 (1963); *Brillantes v. Castro*, 99 Phil. 497 (1956).

[32] Section 4(7) of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines.

[33] 336 Phil. 15, 28 (1997).

[34] *Pilapil v. Hon. Garchitorena*, 359 Phil. 674 (1998).

[35] *"Brotherhood" Labor Unity Movement of the Philippines v. Zamora*, G.R. No. L-48645, 7 January 1987, 147 SCRA 49.

[36] *Broadway Motors, Inc. v. National Labor Relations Commission*, G.R. No. L-78382, 14 December 1987, 156 SCRA 522.

[37] This Court did not even consider as substantial P75,000.00 paid-in capital (*Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 475-476 [2000]) and P62,500.00 paid-in capital (*Manila Water Company, Inc. v. Pena*, G.R. No. 158255, 8 July 2004, 434 SCRA 53).

[38] *San Miguel Corporation v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 425.

[39] *Vinoya v. National Labor Relations Commission*, supra note 36.

[40] *De Leon v. National Labor Relations Commission*, G.R. No. 70705, 21 August 1989, 176 SCRA 615, 621.

[41] In 1997, petitioner and CAMPCO renewed their Service Contract. It should be noted, however, that by the time this second agreement was executed, DOLE Department Order No. 10, series of 1997, was already in force.

[42] *Pulp and Paper, Inc. v. National Labor Relations Commission*, 344 Phil. 821, 833 (1997).