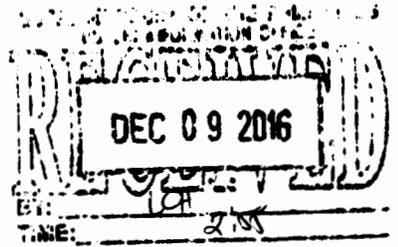




Republic of the Philippines  
 Supreme Court  
 Manila



FIRST DIVISION

ISIDRO QUEBRAL, ALBERTO  
 ESQUILLO, RENANTE  
 SALINSAN, JEROME  
 MACANDOG, EDGARDO  
 GAYORGOR, JIM ROBERT  
 PERFECTO, NOEL  
 PERFECTO, DENNIS  
 PAGAYON, and HERCULANO  
 MACANDOG,

Petitioners,

G.R. No. 221897

Present:

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

- versus -

ANGBUS CONSTRUCTION,  
 INC. and ANGELO  
 BUSTAMANTE,

Respondents.

Promulgated:

NOV 07 2016

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated July 27, 2015 and the Resolution<sup>3</sup> dated November 2, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 138885, which annulled and set aside the Decision<sup>4</sup> dated December 26, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR Case Nos. 07-10288-12, 07-10636-12, 07-10708-12, and 07-10992-12, declaring that petitioners

<sup>1</sup> Rollo, pp. 3-21.

<sup>2</sup> Id. at 63-76. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Socorro B. Inting concurring.

<sup>3</sup> Id. at 77-79.

<sup>4</sup> Id. at 32-42. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro concurring.

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Isidro Quebral, Alberto Esquillo, Renante Salinsan, Jerome Macandog, Edgardo Gayorgor, Jim Robert Perfecto, Noel Perfecto, Dennis Pagayon, and Herculano Macandog (petitioners) are regular employees of respondent Angbus Construction, Inc. (Angbus) and were illegally dismissed from employment.

### The Facts

Petitioners alleged that Angbus employed them as construction workers on various dates from 2008 to 2011. They claimed to be regular employees since they were engaged to perform tasks which are necessary and desirable to the usual business of Angbus, and that they have rendered services to the latter's construction business for several years already.<sup>5</sup> They were, however, summarily dismissed from work on June 28, 2012 and July 14, 2012 without any just or authorized cause and due process. Thus, they filed consolidated cases for illegal dismissal with prayer for reinstatement and payment of full backwages, salary differential, ECOLA, 13<sup>th</sup> month pay, service incentive leave pay, overtime and holiday pay, including moral and exemplary damages as well as attorney's fees.<sup>6</sup>

For their part, respondents maintained that petitioners were first employed by Angelfe Management and Consultancy (Angelfe) for a one-time project only. Two or three years after the completion of the Angelfe project, they were then hired by Angbus, which is a separate and distinct business entity from the former. Thus, petitioners were hired only for two project employment contracts – one each with Angelfe and Angbus. Respondents further stated that a long period of time between the first project employment and the other intervened, which meant that petitioners were not re-hired repeatedly and continuously.<sup>7</sup>

However, respondents failed to present petitioners' employment contracts, payrolls, and job application documents either at Angelfe or Angbus. They averred that these documents were completely damaged by the flood caused by the "*habagat*" on August 6 to 12, 2012, as evinced by a Certification issued by the Chairman of Barangay Rosario, Pasig City, (Brgy. Rosario Certification) where Angelfe and later, Angbus purportedly held offices.<sup>8</sup>

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<sup>5</sup> Id. at 34.

<sup>6</sup> Id.

<sup>7</sup> Id. at 35.

<sup>8</sup> Id.

### **The LA Ruling**

In a Decision<sup>9</sup> dated March 27, 2013, the Labor Arbiter (LA) found that petitioners were not illegally dismissed. The LA observed that despite the non-submission of the project employment contracts between the parties (which were completely damaged by flood as stated in the Brgy. Rosario Certification), there was still sufficient basis to support respondents' claim that petitioners were hired for specific projects with specific durations by two different companies, *i.e.*, Angbus and Angelfe. In this relation, the LA gave credence to the Establishment Employment Reports submitted to the Department of Labor and Employment (DOLE Reports) which showed that the cause for petitioners' termination was project completion. Finally, the LA pointed out that the hiring of petitioners for a definite period for a certain phase of a project was an industry practice in the construction business.<sup>10</sup>

Separately, however, the LA ordered Angbus and Angelfe to pay petitioners their salary differentials and claims for 13<sup>th</sup> month pay and holiday pay as these liabilities were admitted by them. Meanwhile, individual respondent Angelo Bustamante, Jr. (Bustamante) was relieved of any liability for want of basis.<sup>11</sup>

Aggrieved, petitioners filed an appeal to the NLRC.

### **The NLRC Ruling**

In a Decision<sup>12</sup> dated December 26, 2013, the NLRC reversed the LA's ruling and declared that petitioners were regular employees who were illegally dismissed on June 14, 2012; hence, they are entitled to reinstatement and full backwages, including their other monetary claims.

The NLRC stressed that respondents had control over the company records but failed to present the project employment contracts signed by the workers to rebut petitioners' claim that they were regular employees. The Brgy. Rosario Certification attempting to justify the contracts' non-submission was not given credence as respondents' business address was in Quezon City and not in Rosario, Pasig. Instead, the NLRC observed that a certification from the barangay captain of the place where their business address is located should have been presented.<sup>13</sup>

Moreover, the NLRC noted that Angbus hired all the petitioners almost at the same time in 2012, giving the impression that these workers

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<sup>9</sup> Id. at 25-30. Penned by LA Romelita N. Rioflorido.

<sup>10</sup> Id. at 28-29.

<sup>11</sup> Id. at 29-30.

<sup>12</sup> Id. at 32-42.

<sup>13</sup> Id. at 38-39.

were continuously hired in one project after another and that their employment, first with Angelfe and then with Angbus, was uninterrupted. The NLRC did not give any credence to the allegation that Angbus and Angelfe were separate and distinct companies considering that they maintained the same business address, are owned by the same owner, and are engaged in the same construction business, where petitioners were continuously employed. Neither did the NLRC give merit to the DOLE Reports as these were not submitted within 30 days prior to the displacement of the workers.<sup>14</sup>

In a Resolution<sup>15</sup> dated December 29, 2014, the NLRC denied the motion for reconsideration filed by Angbus and Bustamante. On the allegation that petitioners' appeal was filed out of time, the NLRC pointed out that the dates appearing on the mailing envelope on record and on the registry receipt show that the appeal memorandum was mailed on May 20, 2013, which was the last day of the reglementary period. It gave credence to the certification of Postmaster Larry S. Laureta (Laureta's certification), the custodian of records at the Philippine Overseas Employment Administration (POEA) Post Office at the time the mail matter was posted, that confirmed the said mailing date.<sup>16</sup>

On the merits, the NLRC still refused to give weight to the Brgy. Rosario Certification. It added that although the project site is in Pasig City, the employer is required to keep employment records in its main office, not in the temporary project site or extension office. It also upheld the finding that petitioners were regular employees in view of Angbus' failure to substantiate its claim that they were project employees. In examining the entries in the DOLE Reports, the NLRC deduced that the real reason for petitioners' termination from work is retrenchment and not project completion. Thus, Angbus should have filed a notice of retrenchment to the DOLE thirty (30) days prior to the employees' actual termination in observance of procedural due process, failing in which amounted to illegal dismissal.<sup>17</sup>

Dissatisfied, respondents elevated their case to the CA on *certiorari*.

### **The CA Ruling**

In a Decision<sup>18</sup> dated July 27, 2015, the CA held that the NLRC gravely abused its discretion when it: (a) gave due course to petitioners'

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<sup>14</sup> Id. at 39-40.

<sup>15</sup> Id. at 53-62. Last page of the Resolution missing.

<sup>16</sup> Id. at 55-59.

<sup>17</sup> Id. at 59-62.

<sup>18</sup> Id. at 63-76. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Socorro B. Inting, concurring.

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appeal even though it was filed out of time; and (b) ruled that petitioners were regular employees of Angbus.

On the timeliness of the appeal's filing, the CA ascribed no evidentiary value to Registry Receipt No. 2468 (registry receipt) due to the lack of an authenticating affidavit by the person who mailed it. Petitioners presented the registry receipt to prove that they filed their memorandum of appeal together with the appeal fee on the last day of the reglementary period on May 20, 2013. The CA refused to give weight to Laureta's certification that the document covered by the registry return was indeed mailed at the POEA Post Office on the said date. In so ruling, the CA explained that Laureta's certification was issued without authority because it was issued only on February 17, 2014 when Laureta was no longer assigned at the POEA Office. Thus, the NLRC erred in considering the registry receipt as conclusive proof of petitioners' timely filing of their appeal.<sup>19</sup>

On the substantive aspect, the CA reinstated the LA's finding that petitioners were project employees, noting that the absence of a project employment contract does not automatically confer regular status to the employees. It also observed that the Brgy. Rosario Certification adequately explained the non-submission of the employment contracts, and that the DOLE Reports showed petitioners' status as project employees. Likewise, the CA pointed out that the NLRC erred in treating Angelfe and Angbus as one and the same entity just because the two companies have the same business address, the same owner, and were engaged in the same construction business. Consequently, it ordered respondents to return to petitioners whatever amount the former has received by virtue of the NLRC Decision.<sup>20</sup>

Petitioners filed a motion for reconsideration, which was, however, denied in a Resolution<sup>21</sup> dated November 2, 2015; hence, this petition.

### **The Issue Before the Court**

The core issue for the Court's resolution is whether the CA erred in (a) holding that petitioners' appeal before the NLRC was filed out of time and (b) declaring petitioners as project employees of Angbus and consequently, holding their dismissal to be valid.

### **The Court's Ruling**

The petition is meritorious.

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<sup>19</sup> Id. at 69-71.

<sup>20</sup> Id. at 71-75.

<sup>21</sup> Id. at 77-79.

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.<sup>22</sup>

Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>23</sup>

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence,<sup>24</sup> which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.<sup>25</sup> Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.<sup>26</sup>

Viewed from these lenses, the Court finds that the NLRC's Decision in this case was supported by substantial evidence and is consistent with law and jurisprudence as to the issues raised in the petition. Hence, the CA incorrectly held that the NLRC gravely abused its discretion in giving due course to petitioners' appeal filed before it and in declaring that the petitioners were regular employees of Angbus. Accordingly, the NLRC's ruling must be reinstated.

On the procedural aspect, the Court notes that the issue of the timeliness of the filing of the appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.<sup>27</sup> Thus, it is generally not covered by a Rule 45 review. In this case, however, the conflicting findings of the CA and the NLRC on this matter pave the way for the Court to review this factual issue even in a Rule 45 review.<sup>28</sup>

<sup>22</sup> *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

<sup>23</sup> *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 641.

<sup>24</sup> *Id.* at 641.

<sup>25</sup> Section 5, Rule 133 of the Rules of Court.

<sup>26</sup> *Fuji Television Network, Inc. v. Espiritu*, G.R. No. 204944-45, December 3, 2014, 744 SCRA 31, 63, citing the Dissenting Opinion of Associate Justice Arturo D. Brion in *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 549 (2013).

<sup>27</sup> *Eureka Personnel & Management Services, Inc. v. Valencia*, 610 Phil. 444, 452 (2009).

<sup>28</sup> *Raza v. Daikoku Electronics Phils, Inc.*, G.R. No. 188464, July 29, 2015, 764 SCRA 132, 150.

In this case, the CA held that the NLRC should not have given due course to petitioners' appeal for being filed out of time. Although both the registry receipt and the date stamped on the envelope showed that the date of posting was May 20, 2013 or the last day of the reglementary period, the CA was not convinced that the appeal was actually mailed on that date at the POEA Post Office. The CA held that petitioners should have submitted, together with the registry receipt, an authenticating affidavit of the person who mailed the memorandum of appeal. It also refused to give credence to Laureta's certification on the ground that it was issued without authority, having been issued only on February 17, 2014 when Laureta was no longer assigned at the POEA Post Office. It therefore concluded that the NLRC erred in considering the registry receipt as conclusive proof that May 20, 2013 is the date of filing the appeal.

After reviewing the evidence on record, the Court disagrees with the CA that the appeal was not timely filed.

Section 3, Rule 13 of the Rules of Court provides that where pleadings are filed by registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing. Based on this provision, the date of filing is determinable from two sources: (1) from the post office stamp on the envelope or (2) from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings.<sup>29</sup>

The Court previously ruled that if the date stamped on one is earlier than the other, the former may be accepted as the date of filing.<sup>30</sup> This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented.<sup>31</sup> When the photocopy of a registry receipt bears an earlier date but is not authenticated, the Court held that the later date stamped on the envelope shall be considered as the date of filing.<sup>32</sup>

In the present case, the petitioners submitted these pieces of evidence to show the timeliness of their appeal: (a) the registry receipt; (b) a copy of the envelope that contained the memorandum of appeal and appeal fee; and (c) Laureta's certification. As the CA noted, all three documents indicate May 20, 2013 as the date of mailing at the POEA Post Office in Mandaluyong City. Considering that there is no variance in the dates stated on these documents, there is no reason for the Court to mark another date as the date of mailing.

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<sup>29</sup> *Government Service Insurance System v. NLRC*, 649 Phil. 538, 546 (2010), citing *San Miguel Corporation v. NLRC*, 259 Phil. 765, 769 (1989).

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

Laureta's certification corroborates the date of filing specified in the registry receipt and on the envelope. The Court recognizes that, ideally, the incumbent postmaster in the POEA Post Office should be the one to certify the date of mailing based on the post office records, considering that he or she is the person duly authorized to do so. Nevertheless, the Court finds that Laureta's certification as the postmaster at the time of mailing, together with the pieces of evidence earlier mentioned, constitutes substantial compliance with the authentication requirement.

On the substantive aspect, Article 295<sup>33</sup> of the Labor Code,<sup>34</sup> as amended, distinguishes a project employee from a regular employee, to wit:

Art. 295 [280]. *Regular and casual employment.*—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

x x x x (Emphasis and underscoring supplied)

A project-based employee is assigned to a project which begins and ends at determined or determinable times.<sup>35</sup> Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as project-based employees may be lawfully terminated at the completion of the project.<sup>36</sup>

To safeguard the rights of workers against the arbitrary use of the word "project" to preclude them from attaining regular status, jurisprudence provides that employers claiming that their workers are project-based employees have the burden to prove that these two requisites concur: (a) the employees were assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time they were engaged for such project.<sup>37</sup>

<sup>33</sup> Formerly Article 280. As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011.

<sup>34</sup> Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (May 1, 1974).

<sup>35</sup> *Gadia v. Sykes Asia, Inc.*, supra note 23, citing *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 734 SCRA 270, 278.

<sup>36</sup> Id. at 278-279.

<sup>37</sup> Id. at 279.

In this case, Angbus failed to discharge this burden. Notably, Angbus did not state the specific project or undertaking assigned to petitioners. As to the second requisite, not only was Angbus unable to produce petitioners' employment contracts, it also failed to present other evidence to show that it informed petitioners of the duration and scope of their work.

The Court previously ruled that although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement.<sup>38</sup> When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees.<sup>39</sup> Absent such proof, it is presumed that they are regular employees, thus, can only be dismissed for just or authorized causes upon compliance with procedural due process.<sup>40</sup>

The Court agrees with the NLRC that the Brgy. Rosario Certification cannot be given credence as it was issued by the barangay captain in Rosario, Pasig City rather than in Quezon City.

Section 11, Rule X, Book III of the Omnibus Rules Implementing the Labor Code<sup>41</sup> (Rules) requires the employer to keep all employment records in the main or branch office where the employees are assigned. It also prohibits the keeping of employees' records elsewhere. In the present case, Angbus has consistently declared in its pleadings, in its General Information Sheet, and the DOLE Reports that its main office is located at 16 Pratt Street, Filinvest 2, Batasan Hills, Quezon City. As aptly ruled by the NLRC, the extension office in the project site in Brgy. Rosario, Pasig City is not a branch office contemplated by the Rules where employees' records may be kept but merely a temporary office. Hence, the Brgy. Rosario Certification, stating that petitioners' employment records were destroyed by flood, does not justify the non-presentation of the employment contracts. Besides, Angbus could still have presented other evidence to prove project employment but it did not do so, relying on the convenient excuse that the documents were destroyed by flood.<sup>42</sup>

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<sup>38</sup> *Dacuital v. L.M. Camus Engineering Corporation*, 644 Phil. 158, 171 (2010).

<sup>39</sup> *Id.* at 171.

<sup>40</sup> *Id.* at 171-172.

<sup>41</sup> SECTION 11. *Place of records.* – All employment records of the employees shall be kept and maintained by the employer in or about the premises of the work place. The premises of a work-place shall be understood to mean the main or branch office of the establishment, if any, depending upon where the employees are regularly assigned. The keeping of the employee's records in another place is prohibited. (Emphases supplied)

<sup>42</sup> See *Liganza v. RBL Shipyard Corporation*, 535 Phil. 662, 670 (2006).

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The Court further observes that the CA placed unwarranted emphasis on the DOLE Reports or termination reports submitted by Angbus as basis to rule that petitioners were project employees.

Section 2.2 of Department Order No. 19, Series of 1993, entitled “Guidelines Governing the Employment of Workers in the Construction Industry,” issued by the DOLE, provides that:

**2.2 Indicators of project employment.** – Either one or more of the following circumstances, among others, **may be considered as indicators that an employee is a project employee.**

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees’ terminations/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (Emphases supplied)

Based on the foregoing, it is clear that the submission of the termination report to the DOLE “may be considered” only as an indicator of project employment. By the provision’s tenor, the submission of this report, by and of itself, is therefore not conclusive to confirm the status of the terminated employees as project employees, especially in this case where there is a glaring absence of evidence to prove that petitioners were assigned to carry out a specific project or undertaking, and that they were informed of the duration and scope of their supposed project engagement, which are, in fact, attendant to the first two (2) indicators of project employment in the same DOLE issuance above-cited.

All told, since Angbus failed to discharge its burden to prove that petitioners were project employees, the NLRC correctly ruled that they should be considered as regular employees. Thus, the termination of

petitioners' employment should have been for a just or authorized cause, the lack of which, as in this case, amounts to illegal dismissal.

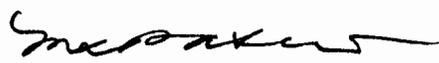
As a final point, it may not be amiss to state that petitioners' entitlement to their monetary claims, such as salary differentials, thirteenth month pay, and holiday pay,<sup>43</sup> was not contested further by the parties. Neither did they question the NLRC's computation of the monetary awards due to petitioners. Hence, the Court finds no reason to disturb it.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated July 27, 2015 and the Resolution dated November 2, 2015 of the Court of Appeals in CA-G.R. SP No. 138885 are hereby **REVERSED** and **SET ASIDE**. The Decision dated December 26, 2013 and the Resolution dated December 29, 2014 of the National Labor Relations Commission in NLRC Case Nos. 07-10288-12, 07-10636-12, 07-10708-12 and 07-10992-12 are **REINSTATED**.

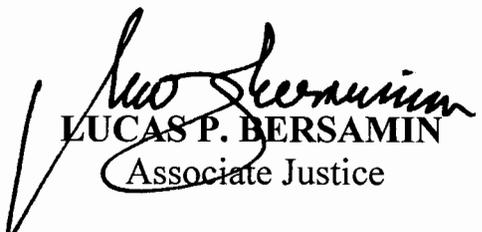
**SO ORDERED.**

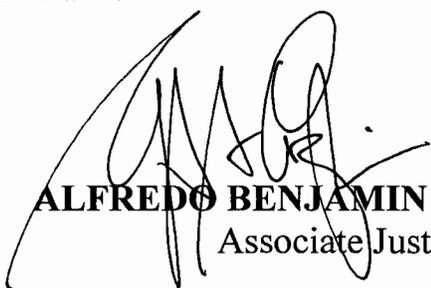
  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice  
 Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

<sup>43</sup> Rollo, pp. 35-36.

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice