The Supreme Court and the Atypical Workforce

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"To everything, there is a season."
-Pete Seeger, Book of Ecclesiastes
(lyrics adaptation)

I. INTRODUCTION: PROTECTING THE UNPROTECTED

On 20 May 2003, the Secretary of Labor and Employment issued a Labor Advisory on Rules Governing Book VI (Post Employment) of the Labor Code. In this issuance, the Secretary clarified that the amendatory rules on Book V embodied in Department Order No. 40-03 meant to supersede Department Order No. 9-97 (D.O. No. 9) only insofar as the rules and regulations pertaining to labor relations were concerned. Sec. Patricia A. Sto. Tomas emphasized that "Rule XXIII of D.O. No. 9 on Termination of Employment continues to have legal force and effect."

When Rule XXIII took effect on 21 June 1997, it laid down basic principles on regular,[1] probationary,[2] project[3] and contractual employment.[4]

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It also established a rudimentary termination procedure based on just or authorized causes,[5] as well as the right of a worker to contest the legality of a dismissal.[6] There are also provisions on reinstatement pending hearing,[7] certification of employment, [8] report of dismissal, [9] and preventive suspension.[10]

While the provisions of Rule XXIII of D.O. 9 implement Book VI of the Labor Code, these are by no means the only rules governing the law on post employment. Since D.O. No. 9 only sought to supersede previous policy issues inconsistent with its salient provisions, certain aspects of the

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This study was presented in the DOLE Institute for Labor Studies (ILS) Second Quarter Roundtable Research Conference on June 30, 2004. The author is grateful for the valuable input of BLR Med-Arbiter Rebecca Chato in the sub-chapter on fixed term employment, and the assistance of Med-Arbiter Sherwin Lopez, Lyn Anselmo, Aisa Patajo, Jay Castro, Paolo Patajo, and Office of the Director Staff (Tess, Dyna, Melo, Juliet, and Lito).

Cite as 50 ATENEO L.J. 294 (2005).

1. Department of Labor and Employment, Implementing Rules of Book V, Rule XXIII, § 1(a).
2. *Id.* § 1(b).
3. *Id.* § 1(c).
4. *Id.*
5. *Id.* § 2.
6. *Id.* § 3.
7. *Id.* § 5.
8. *Id.* § 6.
9. *Id.* § 7.
10. *Id.* § 8-9.

1989 rules on terminations of employment remain effective. Specific rules on reinstatement,[11] casual employment, probationary employment in relation to learnership and apprenticeship,[12] disease as a ground for dismissal,[13] and termination pay[14] are still in force.

For the guidance of social partners, there is a need to consolidate the two documents (1989 rules and Rule XXIII) governing Book VI of the Labor Code. But beyond matters of form and convenience, the Author posits the view that the substantive aspects of the rules on security of tenure need to be reviewed as well.

Since the Labor Code was enacted in 1974, the rules implementing Book VI have largely confined themselves to matters on termination of employment. The duty to enlighten the public on the classification of workers based on security of tenure (CWST) under Article 280 and 281 of the Labor Code had been entrusted to the Supreme Court and its power to review dismissal cases filed before the National Labor Relations Commission (NLRC).

The imperative to embody rules on CWST mirrors reality. Regular forms of employment have been transcended; the labor market is fertile ground for atypical forms dubbed by Macaraya as representing *unprotected workers.*[15] The traditional concept of regular employment defined as work undertaken by those whose functions are "usually necessary or desirable in the usual trade and business of the employer"[16] has given way to more flexible or *atypical* work arrangements utilized by domestic industries to cope with globalization.[17]

In our legal jurisdiction two flexible forms of employment are expressly recognized by Article 280 of the Labor Code, namely project and seasonal employment. A third form, fixed term employment was derived by the Supreme Court from the legal precepts surrounding Article 280 and 281.

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11. Department of Labor and Employment, Implementing Rules of Book VI, Rule I, § 4.
12. *Id.* § 6.
13. *Id.* § 8.
14. *Id.* § 9-10.
15. Bach M. Macaraya, *The Labor Code and the Unprotected Workers*, PHILIPPINE INDUSTRIAL RELATIONS FOR THE 21ST CENTURY: EMERGING ISSUES, CHALLENGES AND STRATEGIES 224 (2000).
16. 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, Presidential Decree No. 442 (1974) [LABOR CODE OF THE PHILIPPINES].
17. Macaraya, *supra* note 15, at 224-225.

Indeed, with Articles 280 and 281 as its firm foundation, the Supreme Court has not hesitated to lay down the parameters for these flexible forms of employment, thereby protecting the *unprotected*.

This article traverses the body of jurisprudence on project, seasonal, and fixed term employment. Part I is a statement of the constitutional and statutory policy upholding the right to security of tenure. Part II is a presentation of the legal framework on CWST. Part III is an analysis of Supreme Court rulings on project, seasonal, and fixed term employment. Part IV enumerates recommendations on how the rules on Book VI may be enhanced by the harvest of Supreme Court rulings. Thereafter, the Author will conclude with the exhortation to craft rules on CWST that will delineate the parameters of recognized forms of atypical employment in the Labor Code.

This article covers Supreme Court decisions on project, seasonal, and fixed term employment from 1901 to 2004. Cases on project, seasonal, and fixed term employment involving government and overseas Filipino workers, while significant, shall not form part of the study.

II. SECURITY OF TENURE

The 1987 Constitution mandates the State to guarantee the entitlement of workers to security of tenure.[18] Commissioner Ambrosio B. Padilla introduced an amendment to the proposed text so that the guarantee of job security would be qualified by the phrase "as may be provided by law." But with strong objections from Commissioners Vicente B. Foz and Fr. Joaquin G. Bernas, the proposed inclusion was defeated.[19]

Security of tenure refers to the right not to be removed from one's job without valid cause and procedure.[20] Azucena has emphasized that security of tenure is not limited to regular employees,[21] although the first sentence of the provision in the Labor Code entitled Security of Tenure reads: "[i]n cases of regular employment the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title (on Termination of Employment)."[22] The just causes for termination are located in Article 282, while the authorized causes are found in Articles 283 and 284.

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18. PHIL. CONST. art. XIII, § 3.

19. JOAQUIN G. BERNAS, S.J., THE INTENT OF THE 1986 CONSTITUTIONAL WRITERS 923 (1995).

20. 2 CESARIO A. AZUCENA, JR., THE LABOR CODE OF THE PHILIPPINES: WITH COMMENTS AND CASES 923 (1995).

21. *Id.*

22. LABOR CODE OF THE PHILIPPINES, art. 279.

Under the Labor Code, the concept of *security of tenure* is located in Book VI, which pertains to Post Employment. This circumstance conjures a scenario when employer-employee relations have been terminated or are about to be terminated, and all that is left to be determined is whether such an act of job deprivation shall be within the metes and bounds of law.

The classification of workers based on security of tenure determines the extent of job security for each form of typical or atypical employment.

III. THE CWST FRAMEWORK

A. Articles 280 and 281

Based on the express provisions of Articles 280 and 281, the classification of Filipino workers based on security of tenure encompasses five types of employment, namely, regular, probationary, casual, project and seasonal.[23]

1. Regular and Casual Employees

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23. *Id.* arts. 280-81, which provides in full:

> Article 280. *Regular and casual employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements 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 service to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.
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> Article 281. *Probationary employment.* — Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

A regular employee is one who: (a) has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (b) has rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which the person is employed and such employment continues while such activity exists; and (c) has been allowed to work after a probationary period.

The primary standard in determining 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 connection can be determined by the *nature of the work* performed and its relation to the scheme of the particular business or trade in its entirety.[24]

The definition of regular employment was not in the original version of the Labor Code in 1974.[25] It was introduced in Presidential Decree No. 850,[26] issued by President Marcos more than a year after the Labor Code (P.D. No. 442). A subsequent issuance by then Labor Minister Blas F. Ople explained that any work that is not usually necessary or desirable to the main business of the employer is casual work.[27]

Minister Ople further explained that the concepts of regular and casual employment introduced by P.O. 850 were "designed to put an end to casual employment in regular jobs which has been abused by many employers to prevent so-called casuals from enjoying the benefits of regular employees or to prevent casuals from joining unions."[28] He emphasized that "[t]his new concept should be strictly enforced to give meaning to the constitutional guarantee of employment tenure."[29]

Casual employees become regular employees one (1) year after they are employed by the company. The law does not require that the employees be issued a regular appointment or must first be formally declared as such before s/he can acquire regular status.[30] Allowing a casual worker to work beyond the one-year period is the legal barometer to determine whether an activity is necessary or desirable in an employer's usual business or trade. Even if the performance is not continuous or merely intermittent, the law deems the

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24. De Leon v. National Labor Relations Commission, 176 SCRA 615 (1989).

25. *See* LABOR CODE OF THE PHILIPPINES, arts. 319 & 320 (provisions on CWTS).

26. Amending Certain Articles of P.D. No. 442 Entitled "Labor Code of the Philippines," Presidential DecreeNo. 850 § 33 (1975). Arts. 319-320 became Arts. 270-271, which eventually became Art. 280-281 with the provisions under Batas Pambansa Blg. 130 (1981).

27. Policy Instruction No. 12 (1976).

28. *Id.*

29. *Id.*

30. Conti v. NLRC, 271 SCRA 114, 123 (1997).

repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.[31]

2. Probationary Employees

Legally speaking, regular employment attaches to an employee on the first day of service in an activity that is usually necessary or desirable in the usual business or trade of the employer. To afford employers the opportunity to test the capability and competency of a supposed regular worker, the law allows a probationary arrangement whereby an employer may dismiss an employee upon failure to qualify in accordance with reasonable standards set forth at the time of engagement.

An employer has the right to choose who will be hired and who will be denied employment. It is within the exercise of the right to select his/her employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him/her permanently.[32] The important obligation of an employer in this regard is to inform the prospective employee of the reasonable standards to hurdle at the time of engagement.

The six-month period in Article 281 is not mandatory, and may be extended when the employer wants to afford an employee a second chance to make good after having failed in the first instance.[33] The employer is also not precluded from terminating probationary employment due to justifiable causes.[34]

3. Project and Seasonal Employees

Project employees are those workers hired: (a) for a specific project or undertaking; and (b) the completion or termination of such project has been determined at the time of the engagement of the employee. Seasonal employees, on the other hand, are those whose work or service is seasonal in nature and the employment is for the duration of the season.

Like regular employees, project employees also enjoy security of tenure, and cannot be dismissed before completion of the project or a phase thereof,

31. Baguio Country Club v. NLRC, 206 SCRA 643, 650 (1992).

32. International Catholic Migration Commission v. NLRC, 169 SCRA 606, 614 (1989).

33. Mariwasa Manufacturing Inc. v. Leogardo, 169 SCRA 465, 470 (1989).

34. *International Catholic Migration Commission*, 169 SCRA at 614-5 (1989).

except for lawful cause.[35] Since seasonal employees are similar to project employees,[36] it follows that seasonal employees also cannot be terminated except for lawful cause before the end of the season.

B. Fixed Term Employment

Fixed term employees refer to those engaged for a period of time within which to perform work.[37] The duties of these employees consist of activities usually necessary or desirable in the usual business of the employer. So while a regular employee may be terminated on the basis of just or authorized cause, fixed term employees can be terminated on the basis of the expiration of the agreed period. In contrast to project and seasonal employees, fixed term employees do not necessarily work on a specific project or undertaking, or during a particular season.

The concept of fixed term employment is *not expressly mentioned* in the Labor Code. The original version of P.D. No. 442 in 1974 (not to mention the old Termination Pay Law)[38] contained a provision on "employment without a fixed period,"[39] implying the validity of employment *with* such a fixed period. But this provision was deleted with the advent of P.D. No. 850, which established the dichotomy between regular and casual employment and seemingly negated the practice of fixed term employment.

In 1990, the Supreme Court promulgated its landmark ruling in *Brent School v. Zamora,*[40] where it officially confirmed that fixed term employment is alive and kicking in our jurisdiction. The case involved an athletic director of Brent School who had a five-year contract of employment. He protested the termination of his contract after the five-year period, claiming his services were necessary and desirable in the usual business of his employer.

In deciding on whether the termination of the athletic director was valid, Mr. Justice Narvasa was initially taken aback by the "obscuration of the principle of the licitness of term employment"[41] in the Labor Code. But he

35. De Ocampo v. NLRC, 186 SCRA 360, 366-367 (1990); Archbuild Masters and Construction Inc. v. NLRC, 251 SCRA 483, 491 (1995); Kiamco v. NLRC, 309 SCRA 424, 434 (1999).

36. *See* Mercado v. NLRC, 201 SCRA 332, 341 (1991).

37. *See* St. Teresa's School of Novaliches v. NLRC, 289 SCRA 110, 115 (1998).

38. An Act to Provide for the Manner of Terminating Employment without a Definite Period in a Commercial, Industrial, or Agricultural Establishment or Enterprise, Republic Act No. 1052 (1954).

39. LABOR CODE OF THE PHILIPPINES, art. 319.

40. Brent School v. Zamora, 181 SCRA 702 (1990).

41. *Id.* at 709.

was intrigued by the phrase in Section 33 of P.D. No. 850 that introduced the concept of regular employment located in Article 280, i.e."[t]he provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties..." Justice Narvasa looked into the accepted practice of fixed or definite periods in contracts under the Civil Code, which imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object.[42] He concluded that, as a general proposition, employment contracts with a specific date of termination freely entered into by the parties are valid under the Labor Code.[43] In correlating this reality with the first phrase of Article 280, Justice Narvasa explained:

> [a]s it is evident from even only the three examples already given that Article 280 of the Labor Code, under a narrow and literal interpretation, not only fails to exhaust the gamut of employment contracts to which the lack of a fixed period would be an anomaly, but would also appear to restrict, without reasonable distinctions, the right of an employee to freely stipulate with his employer the duration of his engagement. It logically follows that such a literal interpretation should be eschewed or avoided. The law must be given a reasonable interpretation, to preclude absurdity in its application. Outlawing the whole concept of term employment and subverting to boot the principle of freedom of contract to remedy the evil of employers using it as a means to prevent their employees from obtaining security of tenure is like cutting off the nose to spite the face or, more relevantly, curing a headache by lopping off the head.[44]

Hence, Justice Narvasa declared that the phrase introducing Article 280 should be "construed to refer to the substantive evil that the Code itself has singled out agreements entered into precisely to circumvent security of tenure."[45] He further held that:

> It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.[46]

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42. *Id.* at 714.

43. *Id.* Justice Narvasa cited examples of valid fixed term employment for overseas workers, for high-ranking positions in educational institutions, and for company executives.

44. *Id.* at 715.

45. *Id.* at 716.

46. *Id.*

With the proclaimed legal consistency between Article 280 and fixed term employment the Brent School athletic director's contract was declared valid, rendering his suit dismissible.

C. Security of Tenure in Different Forms of Employment

The following table will be useful in ascertaining the degree of security of tenure in each form of employment under Articles 280 and 281 and *Brent School v. Zamora:*

TABLE I – MEASURING JOB SECURITY

FORM OF EMPLOYMENT	REASONS FOR DISMISSAL/ EXTENT OF JOB SECURITY
REGULAR	Just or Authorized Causes
PROBATIONARY	(a) Just or Authorized Causes (b) Failure to Hurdle Reasonable Standards
PROJECT	(a) Just or Authorized Causes (b) Completion of Project
SEASONAL	(a) Just or Authorized Causes (b) End of Season
FIXED TERM	(a) Just or Authorized Causes (b) Expiration of Period
CASUAL	No reason required, unless engaged for fixed term

While regular employees clearly enjoy the highest degree of security of tenure, the fact remains that other kinds of employees are also entitled to a certain degree of protection.

IV. SURVEY OF JURISPRUDENCE ON PROJECT, SEASONAL, AND FIXED TERM EMPLOYMENT

A. Project Employment

1. The Principal Test

The landmark in project employment jurisprudence is *ALU-TUCP v. National Labor Relations Commission.*[47] This case involved the Five-Year Expansion Programs (FAYEP I and II) of the National Steel Corporation,

47. ALU-TUCP v. NLRC, 234 SCRA 678 (1994).

which pertained to construction of buildings, performance of civil and electrical works, installation of machinery and equipment, and the commissioning of such machinery. A number of employees working with the project were separated from service, and sued for unfair labor practice, regularization, and monetary benefits.

The complainants mainly anchored their action on the fact that their work was necessary and desirable to NSC's business, which was the production and marketing of steel products. Also, complainants argued that they worked in FAYEP I and II for a minimum period of six years.

Prior to *ALU-TUCP v. NLRC,* a line of cases gave the impression that project activity pertaining to an employer's usual business or trade, as well as longstanding service, amounted to regular employment.[48] But Mr. Justice Feliciano, speaking for the Court *en banc,* laid down the cardinal rules on project employment. He established that the principal test for determining whether particular employees are properly characterized as *project employees* as distinguished from *regular employees* is whether or not the *project employees* were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project.[49]

In identifying the "specific project or undertaking," he maintained that *project* could refer "to one or the other of at least two (2) distinguishable types of activities, to wit:

> Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times... The term 'project' could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.[50]

Justice Feliciano considered complainants' work at FAYEP I and II as falling within the second kind of project, considering NSC was not in the business of constructing buildings and installing plant machinery for the general business community. There was nothing in the records to show that

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48. Caramol v. NLRC, 225 SCRA 582 (1993); De Jesus v. Philippine National Construction Corp., 195 SCRA 468 (1991); Magante v. NLRC, 185 SCRA 21 (1990); Sandoval Shipyards v. NLRC, 136 SCRA 674 (1985); Fegurin v. NLRC, 120 SCRA 910 (1983); Ochoco v. NLRC, 120 SCRA 775 (1983).

49. *ALU-TUCP*, 234 SCRA at 685.

50. *Id.* at 685-6 (emphasis supplied).

they were hired for operating or maintaining previously installed steel-making machinery, or for selling finished steel projects.

Since complainants were assigned to particular component projects in FAYEP, which were distinguishable from the regular or ordinary business of NSC, they were considered as project employees. Two other cases involving FAYEP workers, namely *Palomares v. NLRC*[51] and *Villa v. NLRC*[52] affirmed the finding of project employment in *ALU-TUCP v. NLRC*.

2. Duration of Project Employment

Three years after *ALU-TUCP,* the Court had occasion to interpret the term *duration (and scope)* of a project or undertaking. In *Violeta v. NLRC,*[53] the Court was confronted with a purported project employment contract that reads as follows:

> Your herein Appointments will be co-terminus with the need of (state item of work) as it will necessitate personnel in such number and duration contingent upon the progress accomplishment from time to time. The company shall determine the personnel and the number as work progresses.[54]

The purported project employees worked for a sister company (CDCP) of their employer (Dasmariñas Industrial and Steelworkers Corporation), spanning a period of 11 years. Understanding that the predetermination of the duration is important in resolving whether one is a project employee, Mr. Justice Regalado proceeded to define duration as follows:

> [A] length of existence; *duration*. A point of time marking a termination as of a cause or an activity; an end, a limit, a bound; conclusion; termination. A series of years, months or days in which something is completed. A time of definite length or the period from one fixed date to another fixed date.[55]

Adhering to a previous ruling in *De Jesus vs. Philippine National Construction Corp.,*[56] the Court through Justice Regalado ruled in this wise:

> Following the rule on precedents, we once again hold that the respective employments of the present petitioners is not subject to a term but rather to a condition, that is, "progress accomplishment." As we have stated in *De Jesus,* it cannot be said that their employment had been pre-determined because, firstly, the duration of their work is "contingent upon the progress

51. Palomares v. NLRC, 277 SCRA 439 (1997).

52. Villa v. NLRC, 284 SCRA 105 (1998).

53. Violeta v. NLRC, 280 SCRA 520 (1997).

54. *Id.* at 530.

55. *Id.* at 529.

56. De Jesus v. Philippines National Construction Corp., 195 SCRA 468 (1991).

> accomplishment" and, secondly, the contract gives private respondent the liberty to "determine the personnel and the number as the work progresses." It is ineluctably not definite so as to exempt private respondent from the strictures and effects of Article 280.[57]

Justice Regalado maintained that "[i]t is not enough that an employee is hired for a specific project or phase of work."[58] There should be a "*clear agreement* on the completion or termination of the project at the time the employee is engaged if the objective of Article 280 is to be achieved."[59] Considering the latter requirement was not observed, the supposed project employees should be considered as regular employees.[60]

3. Proof of the Pudding

To hurdle the tests established by Justice Feliciano in *ALU-TUCP* and Justice Regalado in *Violeta,* an employer claiming to have hired project employees should evidence the following:

> (a) existence of a specific project or undertaking distinguishable from regular or ordinary business;
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> (b) duration or scope of the specific project; and
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> (c) such duration or scope was specified to the employees at the time of engagement amounting to a *clear agreement* on the completion or termination of the project or a phase thereof.

Allegations of project employment are not enough. "The proof of the pudding is in the eating," as one adage goes. There must be sufficient documentary evidence to establish the three major components of project employment.

In proving the existence of a specific project, for instance, the Court in *Cosmos Bottling Corp. v.* NLRC[61] ruled that a project involving the installation of annex plant machines undertaken by a soft drinks manufacturer involved the first kind of *project* described by Justice Feliciano in *ALU-TUCP,* i.e., involving a job or undertaking that is within the regular or usual business of the company.[62] Mr. Justice Kapunan also noted the *appreciable gaps* between the periods of time that the project employee was hired and re-hired. Justice Kapunan explained "[c]ertainly, the lengthy gaps

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57. *Violeta*, 280 SCRA at 531.

58. *Id.* at 532.

59. *Id.* (emphasis supplied).

60. *Id.*

61. Cosmos Bottling Corp., v. NLRC, 255 SCRA 358 (1996).

62. *Id.* at 365.

between his employments, together with the fact that his services were contracted for specific undertakings, convincingly show that the services of private respondent were terminated upon completion of a particular project and were sought only when another one was undertaken."[63] The same appreciable gaps were also established in *Fernandez v. NLRC.*[64]

Also, so-called *project-to-project* employment, while theoretically valid as long as specific undertakings with specific duration are established, may amount to regular employment if successive contracts of employment are entered into covering a long period of time, especially if the subject employee performed essentially one line of work, as in *Samson v. NLRC*[65] (28 years), *Caramol v. NLRC*[66] (13 years), and the two *PNCC v. NLRC*[67] cases (13 and 24 years). In *Abad v. NLRC,*[68] the Court through Mr. Justice Mendoza noted that the workers were hired in different capacities during different periods of employment, rendering the rulings in the aforecited cases inapplicable.[69]

In *Salinas v. NLRC,*[70] the period of service in a successive employment scenario was reduced to 5 years. The Court in this case applied the *Brent School* formula. The same approach was applied in *E. Ganzon Inc. v.* NLRC.[71] The underlying conclusion is that the absence of projects in these cases vitiated the consent of supposedly regular employees.

In *Tomas Lao Construction v. NLRC,*[72] the Court through Mr. Justice Bellosillo held that length of time, although not a controlling test for project employment, can be a strong factor in determining whether the employee was hired for a specific undertaking or was in fact tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer.[73]

It is also not enough to establish a valid initial contract of project employment for it is possible to upgrade an employee from project to regular

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63. *Id.* at 366.

64. Fernandez v. NLRC, 230 SCRA 460 (1994).

65. Samson v. NLRC, 253 SCRA 112 (1996).

66. Caramol v. NLRC, 225 SCRA 582 (1993).

67. Philippine National Construction Corp., v. NLRC, 174 SCRA 191 (1989); 215 SCRA 204 (1992).

68. Abad v. NLRC, 286 SCRA 355 (1998).

69. *Id.* at 366.

70. Salinas v. NLRC, 319 SCRA 54 (1999).

71. E. Ganzon Inc. v. NLRC, 321 SCRA 434 (1999).

72. Tomas Lao Construction v. NLRC, 278 SCRA 716 (1997).

73. *Id.* at 726-7.

status after a project is completed, and the employee is allowed to work in a non-project scenario. In *Capitol Industrial Construction Groups v. NLRC,* [74] the Court through Mme. Justice Griño-Aquino found that the alleged project employees worked for the construction company long after their supposed projects had finished, which converted their status from project to regular.[75] The same circumstance of non-project employment after project completion happened in *Philippine National Construction Corp. v. NLRC.*[76]

In *Mamansag v. NLRC,*[77] Mr. Justice Nocon, speaking for the Court, observed that the contracts of employment with Consumer Pulse Inc., a market research group, showed that field interviewers were hired for a specific project and the completion or termination of said project was determined at the start of their employment. These field interviewers gathered data on consumer products of its clients. Justice Nocon noted that "[t]o require a market research and survey firm to indefinitely maintain in its payroll petitioners, despite the absence of contracted projects, would be counterproductive and lead to the bankruptcy of said firm.[78]

In *Raycor Aircontrol Systems v. NLRC,* [79] Mr. Justice Panganiban admonished the employer for failure to present substantial evidence to prove its claim that air conditioning system installers are project employees. At the outset he noted that the contracts of so-called project employment contracts covered only an insignificant portion of the duration of employment. More importantly, the employer could have presented copies of its contracts with clients, to show the time, duration and scope of past installation projects. The data in these contracts could then have been correlated to the data which could be found in employers payroll records for the past three years or so, to show that the employees worked intermittently as and when they were assigned to said projects, and that their compensation had been computed on the basis of such work.[80] The employer's failure to submit substantial evidence was unforgivable, according to Justice Panganiban, considering the complainants for illegal dismissal already admitted that the company was engaged only in the installation of air conditioning systems. The Court held that:

> [s]ince such a line of business would obviously be highly (if not wholly) dependent on the availability of buildings or projects requiring such installation services, which factor no businessman, no matter how savvy, can

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74. Capitol Industrial Construction Groups v. NLRC, 221 SCRA 469 (1993).

75. *Id.* at 472-3.

76. Philippine National Construction Corp. v. NLRC, 215 SCRA 204 (1992).

77. Mamansag v. NLRC, 218 SCRA 722 (1992).

78. *Id.* at 726.

79. Raycor Aircontrol Systems v. NLRC, 261 SCRA 589 (1996).

80. *Id.* at 608-9.

> accurately forecast from year to year, it can be easily surmised that petitioner, aware that its revenues and income would be unpredictable, would always try to keep its overhead costs to a minimum, and would naturally want to engage workers on a per-project or per building basis only, retaining very few employees (if any) on its permanent payroll. To our mind, it appears rather unlikely that petitioner would keep private respondents - all fifteen of them -continuously on its permanent payroll for, say, ten or twelve years, knowing fully well that there would be periods (of uncertain duration) when no project can be had... Even if petitioner may have been able to afford such overhead costs, it certainly does not make business sense for it or anyone else to do so, and is in every sense contrary to human nature, not to mention common business practice. On this score alone, we believe that petitioner could have made out a strong case. *Which is why we have difficulty understanding its failure to present convincing evidence on this point, it being doctrinal that in illegal dismissal cases, the employer always has the burden of proof.*[81]

The well-entrenched burden of proof on the part of the employer to establish project employment should be cause for legal and documentary preparation (due diligence, complete staff work as some may call it) by human relations and legal personnel. Justice Panganiban also noted that the notices of termination were signed *"sans* any legal advice or awareness of the implications of such a move."[82] He observed that the notices of termination offered a vague excuse (usually "due to our present status") for the dismissal of the employees. After all, in *Philippine School of Business Administration-Manila v. NLRC,*[83] the Court through Mr. Justice Bellosillo proclaimed that the absence of a project is not one of the just or authorized causes for termination of employment under the Labor Code.[84] Such incomplete evidence on the part of an employer claiming project employment "have the net effect of casting doubt upon and clouding the real nature of the (workers') employment status. And (the Court) is mandated by law to resolve doubts in favor of labor."[85]

In *Uy v. NLRC,*[86] the Court through Mr. Justice Puno likewise faulted the employer for failing to submit any document, in particular the employment contracts and records that would show the dates of hiring and termination in relation to the particular construction project or the phases in

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81. *Id.* at 609-10 (emphasis supplied).

82. *Id.* at 612.

83. Philippine School of Business Administration-Manila v. NLRC, 261 SCRA 189 (1996).

84. *Id.* at 194.

85. *Id.*

86. Uy v. NLRC, 261 SCRA 505 (1996).

which the employees were employed.[87] The same lack of evidence was noted by the Court in *Brahm Industries v. NLRC*[88] and *Southern Cotabato Development and Construction Inc. v. NLRC*.[89] In the latter case, the Court through then Associate Justice Davide noted that "[t]he best evidence would have been the service contract of each complainant and the schedule of completion of the various phases of the construction project, which should have been in petitioners' possession."[90] The Court upheld the weight and credibility of complaining employees who submitted affidavits to prove their regular employment, even if they were not presented during trial before the labor arbiter.[91]

Also in *Raycor,*[92] Justice Panganiban noted that some documents presented in evidence were prepared by non-lawyers, considering ordinary business activities are performed in the normal course without anticipation nor foreknowledge of litigation. But with the way the Court ruled in *Raycor,* it may just as well be the case that ordinary businesses engaged in project employment must be prepared in terms of documentation, as well as appreciating the legal ramifications of their employment arrangements.

In *Magcalas v. NLRC,*[93] the Court, once again through Mr. Justice Panganiban, observed that the employer failed to present evidence to show the termination of the employment contracts at the end of each project.[94] Suffice it to state that the affidavit of the employer is not enough.[95]

In *Guinnux Interiors, Inc. v. NLRC,*[96] the Court, through Mme. Justice Romero, ruled for regular employment of alleged project workers, in the face of the failure to prove that they were informed of the duration and scope of the undertaking. Neither was there proof that the period of engagement was specified, "other than the self-serving contention of (the employer that

87. *Id.* at 513.

88. Brahm Industries v. NLRC, 280 SCRA 828 (1997).

89. Southern Cotabato Development Construction Inc. v. NLRC, 280 SCRA 853 (1997).

90. *Id.* at 867.

91. *Id.* at 868. Bordeos v. NLRC, 262 SCRA 424 (1996) ([t]he Court considered the employees' admission that they worked in projects as conclusive, without presentation of written work orders on the part of the company to the employees' legitimate contractor-employer.).

92. Raycor Aircontrol Systems v. NLRC, 261 SCRA 589 (1996).

93. Magcalas v. NLRC, 269 SCRA 453 (1997).

94. *Id.* at 467.

95. Nagusara v. NLRC, 290 SCRA 245, 254 (1998).

96. Guinnux Interiors, Inc. v. NLRC, 272 SCRA 689 (1997).

the workers) should have known that their employment status was coterminous with the project."[97]

On the other hand, a distinct project or undertaking was established by the employer in *San Miguel Corporation v. NLRC,*[98] a case that involved the repair of glass furnaces for a packaging and manufacturing business. Through Mr. Justice Quisumbing, the Court found that undertakings where the worker was hired primarily as helper or bricklayer have specified goals and purposes. These activities were identifiably separate from the usual business operations of the employer, which was glass manufacturing.[99]

The employer's evidence likewise passed judicial scrutiny in *Association of Trade Unions v. Abella,*[100] where contracts of employment proved that the workers were hired for and informed in advance about specific projects, and that their employment was coterminous with the completion of the project for which they had been hired. The contracts also expressly provided that the workers' tenure of employment depended on the duration of any phase of the project or the completion of the awarded government construction projects in any of their planned phases. Finally, the necessary reports of termination of project workers were submitted to the DOLE regional office.[101]

A sense of irony should not escape the usually prudent Philippine investor—in preserving its prerogative to undertake an *atypical* work arrangement covered by Article 280 (such as project employment), one must exercise the kind of traditional diligence necessary to defend itself from traditional legal actions.

4. Construction Industry Nuances

Project employment in the construction industry used to be governed by Policy Instruction No. 20, issued by then Minister Ople in 1976. The issuance provides guidelines to stabilize employer-employee relations in the industry. In terms of establishing project employment, the most pertinent stipulation is the termination report requirement.[102] In cases such as *Ochoco u.*

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97. *Id.* at 693.

98. San Miguel Corporation v. NLRC, 297 SCRA 277 (1998).

99 . *Id.* at 285.

100. Association of Trade Unions v. Abella, 323 SCRA 50 (2000).

101. *Id.* at 62.

102. The relevant portion (fourth paragraph) reads: "Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a

NLRC,[103] *Philippine National Construction Corp. v. NLRC,*[104] *Magante v. NLRC,*[105] *Caramol v. NLRC,*[106] and *Aurora Land Projects Corp. v. NLRC,*[107] the Court held that the failure to report project employee terminations established regular employment arrangements.

On 1 April 1993, the Guidelines Governing the Employment of Workers in the Construction Industry, embodied in Department Order No. 19, were issued. D.O. No. 19 expressly superseded Policy Instruction No. 20. In *Samson v. NLRC,*[108] the Court, through Mr. Justice Regalado, held that the notice of termination requirement was retained under Section 6.1 of D.O. 19. Under the said issuance, termination reports shall be submitted to the DOLE regional office. Failure to report the termination of an employee under D.O. 19 was not an indicator of project employment, which meant that the employer was vulnerable to doubts favoring regular employment.[109]

5. Work Pools

Policy Instruction No. 20 offered a clarification on the status of employees in a work pool, or a group of idle employees from where a company draws its manpower requirements. The said issuance reads:

> Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.

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clearance from the Secretary of Labor in connection with such termination. *What is required of the company is a report to the nearest Public Employment Office for statistical purposes.*" (emphasis supplied).

103. Ochoco v. NLRC, 120 SCRA 774, 777 (1983).

104. Philippine National Construction Corp. v. NLRC, 174 SCRA 191, 193-4 (1989); 215 SCRA 204, 211 (1992).

105. Magante v. NLRC, 185 SCRA 21, 28 (1990).

106. Caramol v. NLRC, 225 SCRA 582, 588-9 (1993).

107. Aurora Land Projects Corp. v. NLRC, 266 SCRA 48, 64 (1997).

108. Samson v. NLRC, 253 SCRA 112 (1996).

109. Audion Electric Co., Inc. v. NLRC, 308 SCRA 340, 350-1 (1999) ([i]n this case the employer presented an unverified position paper merely stating that the private respondent (employee) has no cause to complain since the employment contract signed by said employee was co-terminus with the project. The Court through Mme. Justice Gonzaga-Reyes observed "petitioner failed to present such employment contract for a specific contract signed by private respondent that would show that his employment with the petitioner was for the duration of a particular project.").

> However, if the workers in the work pool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof.

In *Raycor Air Control Systems v. NLRC,*[110] Justice Panganiban noted that project employees may or may not be members of a work pool, which means that the employer may or may not have formed a work pool at all.[111] Hence, members of a work pool could be either project or regular employees.[112]

In *Tomas Lao Construction v. NLRC,* [113] the Court held that "[a] work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project."[114] This situation was likened to the circumstances of a regular seasonal worker,[115] whereby in cases of project completion there is a foreseeable suspension of work. The employment relation is not severed, but merely suspended. The employees are, strictly speaking, not separated from service but merely on leave of absence without pay until they are reemployed. But in this case, the suspension period was not significant because the employees were continuously hired and re-hired within the Lao Group of Companies.

In *Maraguinot v.* NLRC,[116] the Court, through Mr. Justice Davide, applied the *Tomas Lao* ruling to the motion picture industry. This case involved members of film crew who were repeatedly hired by Viva Films through a labor-only contractor. Justice Davide outlined two requisites before a work pool member may acquire the status of a regular employee: (a) continuous rehiring even after cessation of a project; and (b) performing tasks that are vital, necessary, and indispensable to the usual business or trade of the employer.[117] Justice Davide was quick to add that applying the principle of

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110. Raycor Aircontrol Systems v. NLRC, 261 SCRA 589 (1996).

111. *Id* .at 602.

112. *Id.*

113. *Id.*

114. *Id.*

115. A concept first introduced by the Court in Manila Hotel v. Court of Industrial Relations, 9 SCRA 184 (1963). The *foreseeable suspension of work* ruling was invoked in C-E Construction Corporation v. NLRC, 409 SCRA 329 (2003), where the Court through Mr. Justice Panganiban held that an employee whose termination was not reported pursuant to Policy Instruction No. 20 was in a regular work arrangement. In this regard, the argument that employment ceased upon completion of so-called projects was deemed untenable.

116. Maraguinot v. NLRC, 284 SCRA 539 (1998).

117. *Id.* at 556.

regular seasonal workers as in *Tomas Lao,* regular employees who are in a work pool are subject to the *no work, no pay* principle.[118]

The *Maraguinot* requisites were applied four months later to a clerk in an engineering consultancy firm in *Cebu Engineering and Development Company v. NLRC,*[119] and to a data encoder in *Imbuido v. NLRC.*[120]

The following table indicates a four-tiered framework to illustrate the legal effect of a work pool in relation to regular employees and randomly selected (no work pool) project employees:

TABLE 2 - WORK POOL TIERS

REGULARS
WORKPOOL (MARAGUINOT)
WORK POOL (NON-MARAGUINOT)
RANDOM (PROJECT)

6. Separation Pay

In *Salazar v. NLRC,*[121] the Court held that a project employee has no legal right to separation pay, pursuant to Department Order No. 19 (1993).[122] But in *Philippine National Construction Corp. v.* NLRC,[123] the Court held that "[i]n the interpretation of an employer's (voluntary) program providing for separation benefits, all doubts should be construed in favor of labor."[124]

It goes without saying that payment of separation pay to an illegally dismissed project employee is required only if reinstatement is not possible. The burden of proving that an illegally dismissed employee is not entitled to reinstatement rests on the employer, being the party in possession of necessary documents to show that the project had already been terminated.[125]

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118. *Id.* at 561.

119. Cebu Engineering and Development Company v. NLRC, 289 SCRA 425 (1998).

120. Imbuido v. NLRC, 329 SCRA 357 (2000).

121. Salazar v. NLRC, 256 SCRA 273 (1996).

122. *Id.* at 290.

123. Philippine National Construction Corp. v. NLRC, 277 SCRA 91 (1997).

124. *Id.* at 104.

125. Kiamco v. NLRC, 309 SCRA 424, 438 (1999).

7. Backwages

The backwages for a project employee terminated prior to project completion shall be computed from the time he or she was dismissed up to the completion of the project or phases thereof.[126] For a worker treated as a regular employee, the Court, through Mr. Justice Buena, upheld the *no work, no pay* policy in between *projects*, to wit:

> Complying with the principles of "suspension of work" and "no work, no pay" between the end of one project and the start of a new one, in computing petitioner's backwages, the amounts corresponding to what could have been earned during the periods from the date petitioner was dismissed until her reinstatement when private respondent was not undertaking any project, should be deducted.[127]

The recognition of idle periods *in between projects* even in cases of project *cum* regular employment echoes the concept of regular seasonal employment, [128] which closely resembles a situation where regular employment in a work pool is established.[129]

B. Seasonal Employment

The practice of seasonal employment has always been accepted in our jurisdiction. During the effectivity of the old Termination Pay Law, seasonal employment in sugar plantations, and the employment of extra workers during peak periods when there is substantial increase in business demands, were generally known as employment with a definite period.[130] The early Supreme Court decisions on seasonal employment dealt with a plant level agreement on separation benefits for sugar workers[131] and treatment of temporary and seasonal stevedores as a separate bargaining unit.[132]

1. Regular Seasonal Employment

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126. Southern Cotabato v. NLRC, 280 SCRA 853, 868 (1997).

127. Imbuido v. NLRC, 329 SCRA 357, 367 (2000).

128. As discussed in the succeeding sub-chapter.

129. Maraguinot v. NLRC, 284 SCRA 539 (1998).

130. I JEREMIAS U. MONTEMAYOR, LABOR, AGRARIAN AND SOCIAL LEGISLATION 502 (1967). Dean Montemayor cited two opinions of the Secretary of Labor dated 15 June 1960 and 29 June 1966.

131. Pasumil Workers Union v. Pampanga Sugar Mills, 91 Phil 701 (1952).

132. Democratic Labor Association v. Cebu Stevedoring Company, 103 Phil 1103 (1958). he ruling in this case was affirmed in Belyca Corporation v. Ferrer-Calleja, 168 SCRA 184 (1988).

In *Manila Hotel Company v. Court of Industrial Relations,*[133] the Court through Mr. Justice Bautista Angelo held that where employees are called to work in Pines Hotel from time to time, mainly during summer, said employees shall be deemed regular employees. The case involved money claims by these summer workers before the Court of Industrial Relations. On appeal, the employer raised the matter of jurisdiction, because 22 of the complainants were not its employees. Considering the petition was filed during the off-season, Justice Bautista Angelo asserted these employees were never separated in the first place:

> Their status is that of regular seasonal employees who are called to work from time to time, mostly during summer season. The nature of their relationship with the hotel is such that during off-season they are temporarily laid off but during summer season they are re-employed, or when their services may be needed. They are not strictly speaking separated from the service but are merely considered as on leave of absence without pay until they are re-employed. Their employment relationship is never severed but only suspended. *As* such, these employees can be considered as in the regular employment of the hotel.[134]

This concept of *regular seasonal employment* was applied in *Industrial-Commercial-Agricultural Workers' Organization v. Court of Industrial Relations.*[135] The case involved the implementation of a closed shop arrangement to *new* seasonal workers. Mr. Justice J.B.L. Reyes concluded that the seasonal workers of Central Azucarera de Filar, based on the *Manila Hotel* ruling, were not *new* in the sense that the workers were regular seasonal employees who had reasonable expectation of employment after the off-season. Observing what Justice Reyes called *"a* rule more in accord with justice and equity"[136] the Court declared the discharge of the workers by virtue of the closed shop agreement as illegal.

On motion for reconsideration, Central Azucarera de Filar argued that the seasonal character of milling activities necessarily implies that the employment of the workers ceased after each season. Justice J.B.L. Reyes disagreed in this wise:

> The cessation of the Central's milling activities at the end of the season is certainly not permanent or definitive; it is a foreseeable suspension of work, and both Central and laborers have reason to expect that such activities will be resumed, as they are in fact resumed, when sugar cane ripe for milling is again available. There is, therefore, merely a temporary cessation of the manufacturing process due to passing shortage of raw material that by itself

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133. Manila Hotel Company v. Court of Industrial Relations, 9 SCRA 184 (1963).

134. *Id.* at 186.

135. Industrial-Commercial-Agricultural Workers' Organization v. Court of Industrial Relations, 16 SCRA 562 (1966).

136. *Id.* at 566 (emphasis supplied).

> alone is not sufficient, in the absence of other justified reasons, to sever the employment or labor relationship between the parties, since the shortage is not permanent.[137]

Justice Reyes added that many members of the union have labored for the Central and have been reengaged for many seasons without interruption. Also, he noted that the office and sales force of the Central were maintained during the off-season. He likewise downplayed the fact that the laborers were free to seek other employment during the temporary lay-off. This "should not mean starvation for the employees and their families."[138] Needless to state, no compensation is expected or demanded during the seasonal layoff.[139]

Manila Hotel was also reiterated in *Visayan Stevedore Transportation Company v. Court of Industrial Relations*.[140] The Manila Hotel ruling does not apply when a company operates on a year-round basis. In *Tacloban Sagkahan Rice and Corn Mills Co. v. NLRC*,[141] the Court, through Mr. Justice Paras, held that while the harvest of *palay* is seasonal, big rice mills continue to operate and do business throughout the year even if there are only two or three harvest seasons within the year. It is common practice among farmers and rice dealers to store their *palay* and have the same milled as the need arises. Thus, Justice Paras concluded, "milling operations have no letup."[142] Hence, considering the number of years of service by the workers, the Court declared that they attained the status of regular employees under Article 280.

Two recent cases have strengthened the *Manila Hotel* ruling on regular seasonal employment, namely *Philippine Tobacco Flue-Curing & Redrying Corp v. NLRC*[143] and *Abasolo v. NLRC*.[144]

In *Philippine Tobacco Flue-Curing,* the Court, through Mr. Justice Panganiban, nullified the dismissal of seasonal tobacco processing plant workers at the start of the 1994 season. The dismissed workers could not have been separated from service during off-season, invoking the *Manila Hotel* ruling. There was also an interesting argument posed by the company, i.e., the possibility that Article 280 of the Labor Code (as introduced by P.D. No.

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137. *Id.* at 567.

138. *Id.* at 568.

139. *Id.*

140. Visayan Stevedore Transportation Company v. Court of Industrial Relations, 19 SCRA 426 (1967).

141. Tacloban Sagkahan Rice and Corn Mills Co. v. NLRC, 183 SCRA 425 (1990).

142. *Id.* at 430.

143. Philippines Tobacco Flue-Curing & Redrying Corp. v. NLRC, 300 SCRA 37 (1998).

144. Abasolo v. NLRC, 346 SCRA 293 (2000).

850) [145] may have overturned the 1963 concept of regular seasonal employment. The Court disagreed with the argument and asserted that the *Manila Hotel* doctrine was not in clear conflict with Article 280. Justice Panganiban also cited cases of purported seasonal workers who were declared regular employees by the Court[146]

In *Abasolo,* the Court, through Mr. Justice De Leon, addressed the issue of payment of separation pay to workers in a tobacco redrying plant owned by La Union Tobacco Redrying Corporation (LUTORCO), which operates from March to August or September of every year. The employment of the workers was abruptly interrupted when Tabacalera took over the company's operations. LUTORCO denied liability for payment of separation pay, pointing out that the claimants were seasonal workers who were required to reapply every year to determine who among them shall be given work for the season. In considering the workers as regular seasonal employees, Justice De Leon stated:

> In the case at bar, while it may appear that the work of petitioners is seasonal, inasmuch as petitioners have served the company for many years, some for over 20 years, performing services necessary and indispensable to LUTORCO's business, serve as badges of regular employment. Moreover, the fact that petitioners do not work continuously for one whole year but only for the duration of the tobacco season does not detract from considering them in regular employment since in a litany of cases this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during off-season are not separated fiom service in said period, but are merely considered on leave until re-employed.[147]

It can be gleaned from the *Philippine Tobacco Flue-Curing* and *Abasolo* cases that those qualified to become *regular seasonal employees* are those who have worked with the company for long periods of time—three to thirty-nine years in *Philippine Tobacco Flue-Curing* and twenty years in *Abasolo*.

2. The Mercado Ruling

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145. The company erroneously alleged that Article 280 in its present form was in the original version of the Labor Code in 1974.

146. Justice Panganiban cited Tacloban Sagkahan Rice and Corn Mills Co. v. NLRC, 183 SCRA 425 (1990), Bacolod-Murcia Milling Co. Inc. v. NLRC, 204 SCRA 155 and Gaco v. NLRC, 230 SCRA 46 (1994). *Tacloban Sagkahan* may have been misapplied, considering it involved year-round rice milling operations. But the work in *Bacolod-Murcia* and *Gaco* involved seasonal sugar and tobacco operations.

147. *Abasolo,* 346 SCRA at 305.

One case appears to have negated the *Manila Hotel* doctrine of regular seasonal employment. *Mercado v. NLRC*[148] involved workers in rice and sugar lands engaged in all agricultural phases of work. They filed cases of illegal dismissal when they were refused work after no less than 7 years of service.[149] Justice Padilla affirmed the labor arbiter's finding that the workers were required to perform phases of agricultural work for a definite period of time, after which their services would be available to any other farm owner. He likewise noted that the case may have been triggered by the filing of a criminal complaint by the employer against a son of the one of the complainants.

Complainants also raised the matter of their length of service, and argued that service for more than one year pursuant to the second paragraph of Article 280 made them regular employees. Justice Padilla disagreed, and explained thus:

> The second paragraph of Art. 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso in said second paragraph, deems regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.
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> x x x
>
> The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows. Thus, it has been held that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof.[150]

Justice Padilla declared that the "proviso is applicable only to the employees who are deemed 'casuals' but not to the 'project' employees nor the regular employees treated in paragraph one of Art 280."[151] He likewise noted that the term "*project employees*" is synonymous to "*seasonal employees.*"[152]

The seeming disregard for periods of seasonal employment in *Mercado* was addressed in the *Philippine Tobacco Flue-Curing* and *Abasolo* cases, which gave considerable weight to the length of seasonal workers' service. In *Philippine Tobacco Flue-Curing,* Justice Panganiban distinguished the facts from *Mercado* and noted that the agricultural workers in the latter case were free to

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148. Mercado v. NLRC, 201 SCRA 332 (1991).

149. *Id.* at 334. Most of the complainants worked from 1960 to 1979, while two worked from 1972 to 1979, and one worked from 1949 to 1979.

150. *Mercado*, 201 SCRA at 342.

151. *Id.*

152. *Id.* at 342-3.

contract their services with other farm owners. He even added that the *ponente* in *Mercado* (Justice Padilla) concurred with the Court's ruling in *Gaco,* which awarded the seasonal employee separation pay for every year of service.[153] Justice De Leon took the same posture in *Abasolo,* and argued that *Mercado* workers were free to offer their services to others during off-season.[154]

These distinctions made by Justices Padilla and De Leon, however, are inconsistent with Justice J.B.L. Reyes's ruling on the motion for reconsideration in *Industrial-Commercial-Agricultural Workers' Organization v.* CIR,[155] where he explained that the period during which the employer is forced to suspend operations temporarily should not mean starvation for the employees and their families. A clarificatory decision from the Court should be forthcoming.

Mr. Justice Panganiban may have settled the issue in *Hacienda Fatima v. National federation of Sugarcane Workers-Food and General Trade,*[156] when he clarified that *Mercado* involved workers who "were required to perform phases of agricultural work for a definite period of time, after which their services would be available to any other farm owner."[157] Such individuals "were not hired regularly and repeatedly for the same phase/s of agricultural work, but on and off for any single phase thereof."[158] The distinction between seasonal workers in *Mercado* and regular workers in *Hacienda Fatima* was clearly drawn. But the difference between seasonal workers in *Mercado* and *Abasolo* or *Philippine Tobacco Flue-Curing* continues to be muddled, considering Justice Reyes's pronouncement on freedom to contract services in *Industrial-Commercial-Agricultural Workers' Organization v. CIR* .[159]

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153. Philippines Tobacco Flue-Curing & Redrying Corp. v. NLRC, 300 SCRA 37, 61-2 (1998).

154. Abasolo v. NLRC, 346 SCRA 293, 305 (2000).

155. Industrial-Commercial-Agricultural Workers' Organization v. Court of Industrial Relations, 16 SCRA 562 (1966) *cited in* Caurdanetaan Piece Workers Union v. Laguesma, 286 SCRA 401, 426 (1998) (The Court through Mr. Justice Panganiban ruled that the intermittent presence of rice mill workers did not negate the employer-employee relationship between them and the rice mill owner. Justice Panganiban stated that "the alleged admissions that they did work with other rice mills did not work against them. Assuming arguendo that they did work with other rice mills, this was required by the imperative meeting their basic needs.").

156. Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade, 396 SCRA 518 (2003).

157. *Id.* at 526.

158. *Id.*

159. Industrial-Commercial-Agricultural Workers' Organization v. Court of Industrial Relations, 16 SCRA 562 (1966).

In *Cinderella Marketing Corporation v. NLRC,*[160] the Court considered seasonal salesladies, wrappers, stockmen, and pressers as regular employees, because they were allowed to work beyond the peak September to January season.

3. Separation Pay

If there is a finding of illegal dismissal, and reinstatement is not possible, or in cases when dismissal is due to authorized cause, the Court in *Philippine Tobacco Flue-Curing* held that separation pay should be based on the number of years of actually-rendered service, provided they worked for at least six months during a given year. Hence, the computation of separation pay that pro-rates an employee's years of service was rejected.[161] But Justice Panganiban's formula may have accepted a situation when an employee's years of service could be proportionally determined, as when a season of work is less than six months a year.

C. Fixed Term Employment

In *Philippine National Oil Company-Energy Development Corporation v. NLRC,*[162] the Court outlined the requisites for valid fixed term employment as laid down in *Brent School v. Zamora,* to wit:

> (1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> (2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.[163]

1. An Intent to Evade

The first case decided by the Court under the *Brent School* regime was *Pakistan International Airlines Corporation v. Ople.*[164] Mr. Justice Feliciano observed:

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160. Cinderella Marketing Corporation v. NLRC, 291 SCRA 91 (1998).

161. Philippines Tobacco Flue-Curing &Re-drying Corp. v. NLRC, 300 SCRA 37, 63-4 (1998).

162. Philippine National Oil Company-Energy Development Corporation, 220 SCRA 695 (1993).

163. *Id.* at 699.

164. Pakistan International Airlines Corporation v. Ople, 190 SCRA 90 (1990).

> It is apparent from *Brent School* that the critical consideration is the presence or absence of a substantial indication that the period specified in an employment agreement was designed to circumvent the security of tenure of regular employees which is provided for in Articles 280 and 281 of the Labor Code. This indication must ordinarily rest upon some aspect of the agreement other than the mere specification of a fixed term of the employment agreement, or upon evidence *aliunde* of the intent to evade.[165]

The subject contract of employment stipulated that such an agreement was "for a period of three (3) years, but can be extended by the mutual consent of the parties."[166] In the succeeding paragraph, however, the employer "(reserved) the right to terminate this agreement at any time by giving the EMPLOYEE written notice in writing in advance one month before the intended termination or in lieu thereof, by paying the EMPLOYEE wages equivalent to one month's salary."[167] Justice Feliciano stressed that the net effect of the two stipulations was to render employment at the pleasure of the employer, which "(prevented) any security of tenure from accruing in favor of the (subject employees) *even during the limited period of three (3) years,* and thus to escape completely the thrust of Articles 280 and 281 of the Labor Code."[168]

In *Cielo v. NLRC,*[169] Mr. Justice Cruz was peeved about six-month contracts of employment and affidavits *cum* quitclaims forced upon truck drivers by a trucking firm. He noted that "the purpose behind these individual contracts was to evade the application of the labor laws by making it appear that the drivers of the trucking company were not its regular employees."[170] He added that the dubious arrangements enabled the company to terminate the services of the drivers without the inhibitions of the Labor Code. He also condemned the affidavit forms that amounted to waivers of statutory rights due regular employees of the trucking firm. Applying the analysis of Justice Narvasa in *Brent School,* Justice Cruz asserted that the opening clause in Article 280 indiscriminately and completely ruled

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165. *Id.* at 102.

166. *Id.* at 94.

167. *Id.*

168. *Id* at 102. Servidad v. NLRC, 305 SCRA 49 (1999) (The same ruling was held in this case which involved a fixed term contract with two periods. The first period for six months was terminable at the option of the employer, while the second period was also for six months but probationary in character. In both instances, the employer did not specify the criteria for the termination or retention of services of the worker. The Court ruled that such a wide leeway for the determination of the tenure of an employee during a one-year period of employment violates the right of the employee against unwarranted dismissal.).

169. Cielo v. NLRC, 193 SCRA 410 (1991).

170. *Id.* at 415.

out all written or oral agreements conflicting with the concept of regular employment.[171] He declared that the contracts and affidavits forced upon the truck drivers amounted to the substantive evil the Code has singled out, namely agreements entered into precisely to circumvent an employee's security of tenure.[172]

2. Academic Positions

After *Cielo* came *La Salette of Santiago, Inc. v. NLRC,*[173] where Mr. Justice Narvasa had the opportunity to run another academic post through the *Brent School* test. This case involved a tenured faculty member of La Salette College who was designated as principal of the high school within the La Salette system. Her two-year appointment as high school principal came after a number of appointments to various administrative positions. Upon expiration of her term, she was replaced. This prompted her to file an illegal dismissal case against the school. The Court dismissed the case, considering the subject employee should have been aware of the pattern in her employment relationship, particularly of the non-permanent character of her stints in administrative positions. There was no cause for her to believe that security of tenure could be obtained by her. Indeed, there was no showing that she was compelled to accept the administrative positions offered her, or that she was so situated as to be unable to express her own will on the matter. On the contrary, the evidence revealed that she felt herself free to assert her preferences in accepting offers of administrative assignments.[174]

3. Understanding the Circumstances of Employment

Brent School and *La Salette* may have given the impression that fixed term employment could only apply in cases of well-educated employees or academic positions. The case of *Philippine Village Hotel v. NLRC*[175] altered that impression. The case involved hotel employees who were terminated by virtue of the closure of Philippine Village Hotel in 1986. In 1989, the hotel decided to have dry run operations to ascertain the feasibility of resuming

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171. *Id.* at 416.

172. *Id.*

173. La Salette of Santiago, Inc. v. NLRC, 195 SCRA 80 (1991).

174. *Id.* at 90. St. Theresa's School of Novaliches Foundation v. NLRC, 289 SCRA 110 (1998) (the Court ruled that the contract of employment providing for a fixed term of nine (9) months governs the relationship of the school and the private teacher, and the stipulations therein not being contrary to law, morals, good customs, public order and public policy is valid, binding, and must be respected.).

175. Philippine Village Hotel v. NLRC, 230 SCRA 423 (1994).

business operations. It hired *casual* workers, including former hotel employees, and signed them to one-month employment contracts. Through Mr. Justice Nocon, the Court declared this fixed term arrangement valid, considering the workers voluntarily and knowingly agreed to be employed only for the one-month period, to wit:

> The fact that private respondents were required to render services usually necessary or desirable in the operation of petitioner's business for the duration of one (1) month dry-run operation does not in any way impair the validity of the contractual nature of private respondents' contracts of employment which specifically stipulated that the employment of the private respondents was only for one (1) month.[176]

Justice Nocon further declared that "the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the *day certain* agreed upon by the parties for the commencement and termination of their employment relationship, a *day certain* being understood to be that which must necessarily come, although it may not be known when."[177] There could have been no force, duress or improper pressure upon the workers considering the circumstances of the dry run and one-month period clearly stated in their contracts. No educational qualifications were necessary to understand this predicament.

In *Pantranco North Express, Inc. v. NLRC*,[178] the Court validated another fixed term arrangement, this time involving a bus driver who was given a one-month contract fifteen years after he was terminated by the company for just cause. The one-month contract also contained a stipulation that no employer-employee relationship existed between the driver and the company. Barely fifteen days into the contract, the driver met a vehicular mishap, and an administrative investigation revealed that he drove his bus onto another vehicle. This resulted in the termination of his contract. The driver filed a case for illegal dismissal.

The Court held that no employer-employee relationship attached to the one-month arrangement. Justice Regalado reasoned that the re-employment of the driver was merely an act of generosity on the part of the company. No force, duress or improper pressure was placed upon the driver, who earnestly pleaded to be given a second chance. Hence, the complaint for illegal dismissal was dismissed.

In *Pantranco,* the Court extended *Brent School's* reach by upholding not just the one-month duration of the contract, but also the stipulation on the

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176. *Id.* at 427.

177. *Id.*

178. Pantranco North Express, Inc. v. NLRC, 239 SCRA 272 (1994).

non-existence of an employer-employee relationship.[179] But just the same, the validity of a fixed term arrangement may involve a worker not as educated and lettered as the employees in *Brent School* and *La Salette*.

4. That Pernicious Arrangement

The validity of the common *five-month contract* was assailed in *Purefoods v. NLRC*.[180] As a result of this prevalent arrangement among cannery workers, the main bulk of the company workforce consisted of so-called *casual* employees. These *casuals* were hired for the duration of five months, after which their services were terminated and were replaced by other *casual* employees for the same five-month duration. There was no question that these *casual* workers performed work that was necessary and desirable in the company business.

The Court, through Mr. Justice Davide, held that the scheme was apparently designed to prevent *casual* workers from attaining the status of a regular employee.[181] The five-month arrangement was struck down for being contrary to public policy or morals. To uphold the contractual arrangement between the workers and the company would permit the latter to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employees' security of tenure.

In *Magsalin v. National Organization of Working Men (NOWM)*,[182] the Court, through Mr. Justice Vitug, observed that while *Brent School* upheld the legality of fixed term employment, it has done so with a stern admonition that where from the circumstances it is apparent that the period has been imposed to preclude acquisition of tenurial security by the employee, it should be struck down as being contrary to law, morals, good customs, public order, and public policy.[183] He assailed "[t]he pernicious practice of having employees, workers and laborers, engaged for a fixed period of few months, short of the normal six-month probationary period of employment and, thereafter, to be hired on a day-to-day basis, mocks the law."[184]

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179. One wonders if the Court will achieve the same result had the "four-fold" test to determine the existence of an employer-employee relationship been applied.

180. Purefoods v. NLRC, 283 SCRA 133 (1997).

181. *Id.* at 142.

182. Magsalin v. National Organization of Working Men (NOWM), 403 SCRA 199 (2003).

183. *Id.* at 205.

184. *Id.*

In *Romares v.* NLRC,[185] the Court invalidated the practice of placing a maintenance worker on two- to three-month employment contracts and repeatedly hiring him for a period of three and a half years. Mr. Justice Martinez called it a "convenient subterfuge utilized to prevent his regularization."[186]

The Court nullified the justification for engaging in fixed term arrangements in *Philips Semiconductors, Inc. v. Fadriquela.*[187] According to the company, it hired and renewed the employee's fixed term contract on an *as needed basis*, depending on the volume of business from clients and availability of basic materials; to augment or supplement its regular employment for the duration of peak loads to respond to cyclical demands. The Court, through Mr. Justice Callejo, observed that under this submission, any worker hired for fixed terms of months or years can never attain regular status. In a deposition, the company head of personnel services testified that fixed term workers were regularized after seventeen months of satisfactory service. Justice Callejo affirmed the Court of Appeals observation that the hiring of fixed term employees on an *as needed basis* and their regularization after 17 months regardless of cyclical demands were inconsistent. The Court concluded that the repeated fixed term arrangements signed by the subject employee were measures to prevent employees from attaining regular status.

In *Pangilinan v. General Milling Corporation,*[188] however, the Court, again through Justice Callejo, sustained a set of five-month contracts for *emergency workers* who were chicken dressers, packers, or helpers in a corporation engaged in the production and sale of livestock and poultry. Justice Callejo explained:

> While the petitioners' employment as chicken dressers is necessary and desirable in the usual business of respondent, they were employed on a mere temporary basis, since their employment was limited to a fixed period. As such, they cannot be said to be regular employees, but are merely "contractual employees." [189]

The Court did not distinguish the facts and ruling in this case with the findings in *Purefoods* and *Magsalin*. Suffice it to state that *Pangilinan v. General Milling Corporation* involved a company that employed hundreds of employees, some on a regular basis and others on a casual basis, as emergency workers. There was no indication whether casual employees constituted the main bulk of CMC's workforce. Also, it was not clear whether the *emergency workers* were re-hired after the expiration of their five-month contracts.

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185. Romares v. NLRC, 294 SCRA 411 (1998).

186. *Id.* at 420.

187. Philip Semiconductors v. Fadriquela, 427 SCRA 408 (2004).

188. Pangilinan v. General Milling Corporation, 434 SCRA 159 (2004).

189. *Id.* at 171-2.

5. Disabled Persons

The subject of evasion in *Eernardo v. NLRC*[190] was the employer's obligation to observe the salient provisions of Republic Act No. 7277[191] or the Magna Carta for Disabled Persons. This case involved deaf-mutes who were hired as money sorters by a bank. They were placed on fixed term arrangements during a three-year span. The Court, through Mr. Justice Panganiban, considered the money sorters as regular employees, considering they performed tasks necessary and desirable to the usual business and trade of the employer.

The bank argued that the basis for its fixed term contracts was Article 80 of the Labor Code, which allowed the employment of handicapped workers for a fixed duration. But Justice Panganiban asserted that Section 5 of the Magna Carta provides a qualified disabled employee the same terms and conditions of employment as a qualified able-bodied person. Since the deaf-mutes qualified as regular employees pursuant to Article 280, the Court allowed the Magna Carta to prevail over Article 80, and disregarded the fixed periods in their contracts. In response to the argument that the contracts hurdled the *Brent School* standards, Justice Panganiban explained that "(t)he validation of the limit imposed on their contracts, imposed by reason of their disability, was a glaring instance of the very mischief sought to be addressed by the (Magna *Carta).*"[192]

6. Timing Can Be Everything

The Court did not sustain the employer's claim of expiration of a fixed term in *Philex Mining v. NLRC.*[193] Four individuals were made to sign contracts of *temporary employment*, which stipulated a fixed term of one year. The contracts were dated 16 April 1989, months after their actual date of hiring. At the time they signed the contracts two individuals had worked beyond the collective bargaining agreement-stipulated probationary period, while two others were just nine days short. In invalidating the said arrangements, the Court through Mr. Justice Kapunan held:

> Petitioner's timing is indeed suspicious. The signing of the contracts at the time when private respondents had already attained... or were about to attain... regular employment status under the CBA is an indication of petitioner's illegal intent. The contracts appear to be a subterfuge, having

190. Bernardo v. NLRC, 310 SCRA 186 (1999).

191. An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for other purposes, Republic Act No. 7277 (1991).

192. *Id.* at 203.

193. Philex Mining v. NLRC, 312 SCRA 119 (1999).

> been foisted upon private respondents to circumvent their right to be secure in their tenure.[194]

Justice Kapunan noted that "companies 'with vast operations' are not immune from the temptation of circumventing labor laws for the sake of profit."[195]

7. Overseas Workers

In *Millares v. NLRC,*[196] the Court recognized the inclusion of overseas employment in Justice Narvasa's enumeration of *familiar examples* of fixed term employment in *Brent School.*[197] Mr. Justice Kapunan upheld the fixed term contracts of Filipino seafarers, whose employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Overseas employment is governed by the mutual agreements of the parties.

8. Contracts of Adhesion

Two cases, *Villanueva v. NLRC*[198] and *Philippine Federation of Credit Cooperatives, Inc. v. NLRC,*[199] involved combinations of different tenurial arrangements applied to the same employee. In *Villanueva,* the employee was hired for a one-year period commencing on 21 February 1994, until 21 August 1995 with a stipulation that he could be terminated before 21 August 1994. Should his employment be continued beyond 21 August 1994, he would become a regular employee upon demonstration of sufficient skill to meet the standards set by the company. Should he fail to demonstrate the ability to master his task during the first six months, he could be placed on probation for another six months; after which, he could be evaluated for promotion as a regular employee. The employee's services were terminated on 21 February 1995, but three weeks later he was rehired as a data encoder effective 13 March 1995 to 15 August 1995.

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194. *Id.* at 127.

195. *Id.* at 128.

196. Millares v. NLRC, 385 SCRA 309 (2002).

197. Brent School v. Zamora, 181 SCRA 702, 714 (1990) ("Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance — overseas employment contracts, for one to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied.").

198. Villanueva v. NLRC, 298 SCRA 326 (1998).

199. Philippine Federation of Credit Cooperatives, Inc. v. NLRC, 300 SCRA 72 (1998).

In *Philippine Federation of Credit Cooperatives,* the employee started as an office secretary with a non-government organization. She became a cashier-designate for four months ending in April 1988. Shortly after she resumed her position as office secretary, she went on maternity leave. Upon her return in November 1989, she discovered that another person was appointed to her position. She then accepted the position of regional field officer, which stipulated her probationary status for a period of six months. After the six-month period, she was signed to a one-year contract through 31 December 1991.

In both cases, the employer argued that the termination of services was not by virtue of dismissal, but by expiration of the stipulated periods. The Court expressed disappointment over both arrangements. In *Villanueva,* the contract combined fixed term and probationary employment. In *Philippine Federation of Credit Cooperatives*, the employee's predicament combined fixed term, probationary, even (as alleged by the NGO) project employment.

Mme. Justice Romero observed that the Court was "confronted with a situation under which the terms of the contract are so ambiguous as to preclude a precise application of the pertinent labor laws."[200] Hence, the Court adhered to the well-settled rule that where a contract of employment being a contract of adhesion, is ambiguous, any ambiguity therein should be construed strictly against the party who prepared it.[201] The employee's vitiated consent was apparent from the confusing set of tenurial circumstances.

In *Manila Water Company v. Pena,*[202] the Court, through Mme. Justice Ynares-Santiago, affirmed a Labor Arbiter's decision that invalidated three-month contracts involving collectors for a private water distribution concessionaire. The Labor Arbiter condemned the individual three-month contracts, which were prepared by the company in the form of letters addressed to the workers. These letters were sent while the workers were engaged under initiatory one-month work arrangements. Justice Ynares-Santiago quoted the pertinent portion of the Labor Arbiter's decision as likewise affirmed by the Court of Appeals, as follows:

> With their employment as their means of survival, there was no room then for complainants to disagree with the presented letter-contracts. Their choice then was not to negotiate for the terms of the contract but to lose or not to lose their employment – employment, which they already had at that time. The choice is obvious, as what they did, to sign the ready-made letter-contract to retain their employment, and survive. It is a defiance of the teaching in *Brent School v. Zamora* if this Office rules that the individual

200. *Id.* at 79.

201. *Id.*

202. Manila Water Company v. Pena, 434 SCRA 53 (2004).

contracts in question are valid; so, in deference to *Brent School* ruling, this Office rules they are null and void.[203]

9. Allowed to Work Beyond Fixed Term

In *Viernes v. NLRC,*[204] the Court, through Mme. Justice Austria-Martinez, converted valid fixed term employment into regular employment after contracted meter readers for Benguet Electric Cooperative were allowed to continue working in the same capacity without the benefit of new contracts or agreements or without the terms of their employment being fixed anew.

VI. THE PERFECT SEASON

There is a time to tear down, and a time to build; and, in the case of policy issuances pertaining to security of tenure, there shall always be a time to build. The body of jurisprudence on project, seasonal, and fixed term employment are fertile ground and impetus for government actors to properly apprise the public of the parameters of such tenurial arrangements. The following matters could form part of a DOLE issuance or advisory on project seasonal, and fixed term employment:

A. Project Employment (1) the principal test to determine the existence of project employment; (2) definition of duration; (3) causes for termination; (4) records or evidentiary matters required to establish project employment; (5) report requirement for the construction industry; (6) "project-to-project" arrangements for long periods of time; (7) work pool tiers (the Maraguinot test); and (8) entitlement to separation pay and backwages.

B. Seasonal Employment (1) definition of season (climate- or demand-based); (2) regular seasonal employment (concept, determination of those entitled); (3) effect of the Mercado ruling.

C. Fixed Term Employment (1) the Brent School requisites; (2) considering the Brent School requisites, an enumeration of activities that may be covered by fixed term arrangements, e.g. academic positions, overseas employment dry run operations, and other circumstances where the fixed term aspect of employment is accepted by and clear to the employee; (3) extension of fixed term arrangements through a written contract of renewal; (4) badges of invalid fixed term employment (e.g. terms at the pleasure of the employer, contracts entered into after employees qualified for

203. *Id.* at 63.

204. Viernes v. NLRC, 400 SCRA 557 (2003).

regular status, a substantial "casual" or "fixed term" workforce in the establishment); and (5) interpretation of contracts of adhesion.

The sub-components of each area are embedded in jurisprudence, as it makes perfect legal sense to hear the Supreme Court's word on the matter. After all, "whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all interests and purposes, and not the person who first spoke or wrote them."[205]

205. Gumabon, et al v. Director of Prisons, 37 SCRA 420 (1971) (citing Bishop Haedley).