Also, in the light of the foregoing, will an increase in the insurable deposit to P100,000 give incentive to bank managers to be more circumspect in their dealings and thus, assure the financial soundness of our banking system? Will it greatly encourage prudent banking? Or will it further embolden these people to take on added risks and thus, correspondingly increase the threat of bank failures? By such an increase in insurable deposit, will it further erode market discipline on the part of the depositing public? These are some of the policy questions which our legislators should address themselves to. Insuring bank deposit is a wise policy, but it should be pegged at a level that will not destroy or lessen the consumers' concern over the operations of the banks they put their money in. It should be packaged in such a way that depositors will be positively and constructively induced from time to time to make careful examination of or check on the condition, both financially and operationally, of the financial intermediary they patronize. In this way, bank managers will be "forced" to be always on guard and to always undertake prudent banking transactions so as not to lose scrutinizing but good clients.

CONCLUSION

The survival of our banking system depends on the degree of public confidence it enjoys. Banking laws are therefore designed to ensure its viability and trustworthiness by providing effective regulatory powers to the Central Bank and by strengthening safeguards against imprudent banking practices. These laws should be diligently enforced. Erring bank directors and officers must be immediately dealt with to ensure the integrity of the banking system. Efforts to amend our banking laws must not only consider the emerging boldness of banks to engage in more risky transactions but also the ways to enhance market discipline on the part of the depositing public. Significantly, if these considerations are adequately reflected in the law and implemented, the public will, in effect, be made to take active part in enhancing and assuring the stability of banking institutions. Consequently, the depositing public itself will serve as the catalyst in strengthening and nurturing the very public confidence which is supposed to be reposed by it in our banking system. Should this happen, our banking institutions will truly become efficient and effective financial intermediaries between the providers of funds and the users of the same. Definitely, this will greatly contribute to the needed improvement in our economy.

ASPECTS OF PHILIPPINE LAW AND JURISPRUDENCE ON SERVICE CONTRACTING ARRANGEMENTS

DENNIS G. SOLIVEN*

The present dissertation attempts to trace the evolution of the law and jurisprudence on that aspect of Philippine labor relations law called "service contracting." Traditionally the bane of many labor law practitioners, not owing merely to the ambiguous rules applicable thereto but likewise to their seeming amplification by the Supreme Court and pertinent regulatory agencies, the law on service contracting arrangements has evolved into a conundrum of sorts. The author does not profess to provide clear-cut answers and thereby disentangle the legal mesh attendant to the topic of discussion; although it is hoped that the reader will come out of this more informed, less confused, and better able to cope with the development of law and jurisprudence on this controversial aspect of Philippine labor relations law.

I. PRE-LABOR CODE SERVICE CONTRACTING ARRANGEMENTS

A traditional bone of contention in many labor standards and labor relations cases has been the existence or non-existence of an employer-employee relationship between the parties. For the existence of such a relation, the Supreme Court frequently adopted the four (4) criteria approach first enunciated in the case of *Viaña v. Al Lagadan*,[1] thus:

> In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct - although the latter is the most important

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[1] 99 Phil. 408 (1956).

element (35 Am. Jur. 445).[2]

Of the above-enumerated elements, the "control test" was considered the most important.[3]

In *LVN Pictures v. Philippine Musicians Guild*,[4] the Supreme Court considered the musicians as employees of the film companies because despite their being hired by the musical directors who also paid them their salaries, it was the motion picture director, an employee of the film company, who supervised their work and told them what to do in every detail. As held by the Court:

> *It is well-settled that 'an employer-employee relationship exists . . . where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end . . . .'* (Alabama Highway Express Co. vs. Local, 612, 108 S. 2d 350). The decisive nature of said control over the 'means to be used', is illustrated in the case of Gilchrist Timber Co., et al., Local No. 2530 (73 NLRB No. 210, pp. 1197, 1199-1201), in which by reason of said control, the employer-employee relationship was held to exist between the management and the workers, notwithstanding the intervention of an alleged independent contractor, who had, and exercised, the power to hire and fire said workers. The aforementioned control over 'the means to be used' in reaching the desired end is possessed and exercised by the film companies over the musicians in the cases before us. (Emphasis supplied)

This was reiterated in *Investment Planning v. Social Security System*,[5] where the Court ruled:

[2] *See also* Allied Free Workers' Union (PLUM) v. Compania Maritima, 19 SCRA 258 (1967); De los Reyes v. Espineli, 30 SCRA 574 (1969); Social Security System v. Court of Appeals, 39 SCRA 629, (1971)

[3] LVN Pictures v. Philippine Musicians Guild, 110 Phil. 725 (1961); Viaña v. Al Lagadan, 99 Phil. 408 (1956); Sterling Products International Inc. v. Sol, 7 SCRA 446 (1963); Allied Free Workers Union v. Compania Maritima, 19 SCRA 258 (1967); Investment Planning Corporation of the Philippines v. Social Security System, 21 SCRA 924 (1967); De los Reyes v. Espinelli, 30 SCRA 574 (1969); Social Security System v. Court of Appeals, 30 SCRA 210 (1969).

[4] 110 Phil. 725.

[5] 21 SCRA 924 (1967).

> The specific question of when there is employer-employee relationship for purposes of the Social Security Act has not been settled in this jurisdiction by any decision of this Court. *But in other connections wherein the term is used the test that has been generally applied is the so-called control test, that is, whether the 'employer' controls or has reserved the right to control the 'employee' not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished.* (Emphasis supplied)

The absence of that element of "control" and one or more of the remaining elements negates any employment relation. More often than not, what would exist would be an independent contractor-contractee relationship. In this regard, a long line of decisions held that the existence of an independent contracting arrangement precludes any employment relation between the contractor and the contractee, as well as between employees of the former and the latter.[6]

Jurisprudence prior to the Labor Code did not distinguish between what is presently known as permissible "job contracting" and prohibited "labor-only contracting."[7] Of main concern was whether or not a party performing a particular service for another could properly be characterized as an independent contractor, in which event no employment relationship would arise between the contractor and the contractee, as well as between the employees of the former and the latter.

The definition of an "independent contractor" was first set forth in the early case of *Andoyo v. Manila Railroad Company*,[8] to wit:

> An independent contractor is one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work. A person who has no capital or money of his own to pay his laborers or to comply with his

[6] Philippine Manufacturing Company v. Geronimo, 96 Phil. 279 (1954); Viaña v. Al-Lagadan, 99 Phil. 408 (1956); Vda. de Cruz v. The Manila Hotel Co., 101 Phil. 361 (1957); Maligaya Ship Watchmen Agency v. Associated Watchmen and Security Union, 103 Phil. 920 (1958); Allied Free Workers' Union (PLUM) v. Compania Maritima, 19 SCRA 258 (1959); Social Security System v. Court of Appeals, 39 SCRA 629 (1971).

[7] Labor Code of the Philippines (Labor Code), Presidential Decree 442 as amended, Art. 106; Omnibus Rules (hereinafter cited as Implementing Rules).

[8] G.R. No. 34722 (March 28, 1932).

> obligations to them, who files no bond to answer for the fulfillment of his contracts with his employer, falls short of the requisites or conditions necessary to classify him as independent contractor. (Emphasis supplied)

The significant factors in characterizing an independent contractor were then laid down by the Supreme Court in a later case:

> Among the factors to be considered are whether the contractor is carrying on an independent business, whether the work is part of the employer's general business, the nature and extent of the work, the skill required, the term and duration of the relationship, the right to assign the performance of the work to another, the power to terminate the relationship, the existence of a contract for a specified piece of work, the control and supervision of the work, the employer's powers and duties with respect to the hiring, firing, and payment of the contractor's servants; the control of the premises, tools, appliances, material and labor; and the mode, manner, and terms of payment (56 C.J.S. p. 46.).[9]

In the case of *Vda. de Cruz v. The Manila Hotel Company*[10], the Supreme Court considered plaintiff Tirso Cruz as an independent contractor, and denied the latter and his musicians employment status vis-a-vis the Hotel. It took into account the following:

> What pieces the orchestra shall play, and how the music shall be arranged or directed, the intervals and other details - such are left to the leader's discretion. The musical instruments, the music papers and other paraphernalia are not furnished by the hotel, they belong to the orchestra, which in turn belongs to Tirso Cruz - not to the Hotel. The individual musicians and the instruments they handle have not been selected by the Hotel. It reserved no power to discharge any musician. How much salary is given to the individual members is left entirely to 'the orchestra' or the leader. Payment of such salary is not made by the Hotel to the individual musicians, but only a lump sum compensation is given weekly to Tirso Cruz.

It was not until the case of *Social Security System v. Court of*

[9] Vda. de Cruz, 101 Phil. 361.

[10] *Id.*

Appeals,[11] however, that a service contractor was also considered an independent contractor when all the elements of the latter were present. In this case, respondent Philippine Guards Protection Unit (Agency) was engaged in the business of watchmen's services furnishing guards or watchmen to secure and protect the premises of client companies. When ordered to remit the corresponding SSS contributions in behalf of its thirty-nine (39) security guards, the Agency refused alleging that it was not the employer of these guards, but merely their agent; their true employers being the companies for whom the guards rendered services. In holding that the Agency was the employer of the thirty-nine (39) security guards, the Supreme Court considered the following:

> Private respondent carries on a business -- a watchmen's service - from which it derives its income in the form of what it terms "commission." It uses the services of other persons - the guards or watchmen - to carry on its business. Without them, 'respondent' would not be in business, which consists solely in the letting out of watchmen's services for a fee. The guards or watchmen render their services to private respondent by allowing themselves to be assigned by said respondent, which furnishes them arms and ammunition, to guard and protect the properties and interests of private respondent's clients, thus enabling that respondent to fulfill its contractual obligations. Who the clients will be, and under what terms and conditions the services will be rendered, are matters determined not by the guards or watchmen, but by private respondent. On the other hand, the client companies have no hand in selecting who among the guards or watchmen shall be assigned to them. It is private respondent that issues assignment orders and instructions and exercises control and supervision over the guards or watchmen, so much so that if, for one reason or another, the client is dissatisfied with the services of a particular guard, the client cannot himself terminate the services of said guard, but has to notify private respondent, which either substitutes him with another or metes out to him disciplinary measures. That in the course of a watchman's assignment the client conceivably issues instructions to him, does not in the least detract from the fact that private respondent is the employer of said watchman, for in legal contemplation such instructions carry no more weight than mere requests, the privity of contract being between the client and private respondent, not between the client and the guard or watchman. Corollarily, such giving out of instructions inevitably spring from the

[11] 39 SCRA 629 (1975).

> client's right predicated on the contract for services entered into by it with private respondent.
>
> In the matter of compensation, there can be no question at all that the guards, or watchmen receive compensation from private respondent and not from the companies or establishments whose premises they are guarding. The fee contracted for to be paid by the client is admittedly not equal to the salary of a guard or watchman; such fee is arrived at independently of the salary to which the guard or watchman is entitled under his arrangements with private respondent. All the fees received by private respondent from its clients constitute its gross income; and the salaries it pays to the guards or watchmen and to its clerk-secretary, its expenses for, say, office rent, light, water and telephone services, licenses, firearms and ammunition, are expenses incurred in the operation of the business. The net income or profit is arrived at after deducting all these expenses from the gross income. Consequently, the term "commission" as applied to the difference between the fee received from a client and the salary paid to a guard or watchman is a misnomer, and its use by private respondent cannot alter the relationship of employer and employee between it and the guards or watchmen.

The above decision is not without basis in earlier Philippine jurisprudence. In *Maligaya Ship Watchmen Agency v. Associated Watchmen and Security Union,*[12] an arrangement similar to that in the aforecited *Social Security System* case was impliedly recognized by the Supreme Court as an independent contractor-contractee relationship. What accounted for the divergence in the final outcome[13] of this case was the finding of the Supreme Court that the watchmen agency did not contract for the guarding of the ships and their cargo, but only to furnish the watchmen. Hence, only insofar as the contracts to recruit watchmen were concerned was the watchmen agency deemed an independent contractor. Its recruits, therefore, did not become, by mere virtue of their recruitment, laborers or employees of the shipping lines. As to the guarding of the ships and their cargo, due to the absence of specific contracts between the watchmen agency and the shipping

[12] 103 Phil. 920 (1958).

[13] The Court here ruled that only the watchmen furnished by the Agency, who actually worked for the shipping lines, were considered employees of the latter and not of the Watchmen Agency.

lines, the former was not deemed an independent contractor. The watchmen who actually worked for these shipping lines were considered the latter's employees.

Had the contracts between the watchmen agency and the shipping lines covered both the furnishing of watchmen and the guarding of the ships and cargo, the watchmen agency would have been considered an independent contractor very much like the one in the *Social Security System* case.

II. PRESENT LAW AND JURISPRUDENCE ON SERVICE CONTRACTING ARRANGEMENTS

A. JOB CONTRACTING VIS-A-VIS LABOR-ONLY CONTRACTING

Service contracting arrangements in general are now governed by Articles 106 to 109 of the Labor Code (Pres. Dec. No. 442, as amended) and Sections 7 to 9, Rule VIII, Book III of its Implementing Rules.[14]

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

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

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

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

(continued...)

[14](...continued)

Art. 107. Indirect employer. - The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Art. 108. Posting of bond. - An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

Art. 109. Solidary liability. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

Sec. 7. Civil liability of employer and contractors. - Every employer or indirect employer shall be jointly and severally liable with his contractor or sub-contractor for the unpaid wages of the employees of the latter. Such employer or indirect employer may require the contractor or sub-contractor to furnish a bond equal to the cost of labor under contract on condition that the bond will answer for the wages due the employees should the contractor or sub-contractor, as the case may be, fail to pay the same.

Sec. 8. Job contracting. - There is job-contracting permissible under the Code if the following conditions are met:

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

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

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

(continued...)

Essentially, the Labor Code and its Implementing Rules set forth two (2) types of service contracting arrangements, "job contracting" and "labor-only contracting."

There is "labor-only contracting" when a person or entity (contractor) undertakes to supply workers to an employer under the following conditions:

> a) The contractor has no substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> b) The contractor's workers perform activities directly related to the principal business or operations of the employer in which the workers are habitually employed.[15]

There is "job contracting", on the other hand, when the contractor:

> a) Carries on an independent business on his own account and responsibility;

[14](...continued)

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

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

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to ensure the protection and welfare of the workers.

[15] Presidential Decree 442 as amended, Art. 106; Implementing Rules, Bk. III, Rule VIII, Sec. 9.

b) Performs the contracted work in his own manner and method free from control of the employer; and

c) Possesses sufficient capital or investment in the form of tools, etc., necessary in the conduct of his business.[16]

"Job contracting" and "labor-only contracting" are not expressly prohibited under the Labor Code. Article 106, however, authorizes the Secretary of Labor, by appropriate regulations, to restrict or prohibit the contracting out of labor to protect the rights of workers under the Code. And by virtue of this authority, labor-only contracting has been expressly prohibited under Section 9(b) of the Implementing Rules.[17]

The aforesaid proscription has thus accounted for differing legal consequences as between "job contracting" and "labor-only contracting." For instance, on the question of whether or not the contractee has the putative liability to absorb as its own the employees of the contractor, in a permissible job contracting arrangement, such liability cannot possibly arise. The reason is simple. Under the Implementing Rules, "job contracting" is expressly allowed and is deemed to establish an independent contractor relationship between the company and the contractor.[18] Such being the case, no employer-employee relationship may possibly be created between them.

Thus, in *B.F. Goodrich Employees Assn. v. Goodrich Philippines*,[19] the then Minister of Labor affirmed *in toto* the decision of the Labor Arbiter dismissing a complaint by the employees of the contractor for their absorption into the work force of the contractee, to wit:

> *Employees hired by a job contractor to handle house-keeping activities such as janitorial, security, landscaping and other incidental services in a company are not employees of the latter; hence, benefits accorded to rank-and-file employees of the Company are not to be extended as a matter of law to the employees of the job contractor.* (Emphasis supplied)

[16] Implementing Rules, Bk. III, Rule VIII, Sec. 9.

[17] *See* note 16.

[18] *Id.*; *see also* Philippine Bank of Communications v. National Labor Relations Commission, 146 SCRA 347 (1986).

[19] NLRC Case No. BR-IV-1688-75, (Sept. 29, 1976).

Therefore,

> The individual complainants cannot choose their employer much less, by merely claiming that they want their employer to be the respondent Goodrich. If and when respondent AIB General Services fails in paying its obligations to its employees . . . it will be then the duty of respondent Goodrich to assume this specific contractor's obligation . . . . The said individual complainants (even) in the event of such default, however, have no right to become the regular employees of respondent Goodrich.

In this regard, it should be stated that there is only one conceivable situation under the law that renders the contractee (employer) liable to the employees of the job contractor. This is where the job contractor defaults in the payment of the wages or emergency living allowances of its own employees. Where such occurs, the contractee becomes jointly and severally liable with the contractor for payment of said wages and other monetary benefits.[20] It is only in this limited sense that the contractee may be considered an indirect employer of the contractor's employees, who have a right of recourse against the contractee for the payment of their wages or allowances. But this legal remedy cannot be stretched to justify the forced absorption of the contract workers by the contractee as the latter's employees. Thus, it has been aptly held by the Office of the President in one case:

> *Anent the claim of the Company General Milling Corporation that it should not be directed to reinstate the twelve (12) dismissed complainants, this Office sustains the view that while respondent corporation might be classified as an indirect employer of the complainants for purposes of the Minimum Wage Law, it could not be considered as a direct employer against whom reinstatement must be ordered. It has been established that there is no employer-employee relationship between complainants and General Milling Corporation. The latter cannot therefore be compelled to reinstate persons who were never its employees.* The Supreme Court in the case of San Miguel Brewery, Inc. vs. Court of Industrial Relations (SCRA, 1089), held that 'reinstatement' means 'a restoration to a state from which one has been removed or separated. It is the return to the position from which he was removed.' Complainants never held any position in General Milling Corporation and to compel the latter to accept them would result in the creation of a new relation which did not

[20] Presidential Decree 442 as amended, Art. 106; Implementing Rules, Bk. III, Rule VIII, Sec. 7.

exist prior to the filing of the case.[21] (Emphasis supplied).

The case of "labor-only contracting", however, presents a different set of legal effects. In this regard, the law considers the contractor merely an agent of the contractee who shall be responsible to the contract workers in the same manner *as if the latter were directly employed by the contractee.*[22] In such case, the contractee would be legally obliged to absorb into its regular work force the contract workers if they perform activities which are usually necessary and desirable in the usual conduct of the contractee's trade or business.[23]

B. THE PB COM CASE

For a while, it seemed that the Implementing Rules of the Labor Code had provided sufficient standards to distinguish one form of contracting from the other. This, however, proved to be shortlived owing to the landmark decision of the Supreme Court in *Philippine Bank of Communications v. National Labor Relations Commission.*[24]

In this case, a service contractor, Corporate Executive Search, Inc. ("CESI") assigned eleven (11) of its messengers to the Philippine Bank of Communications (PB COM). One of them, the complainant Ricardo Orpiada was to perform varied messengerial services for the bank. Subsequently, upon the request of PB COM, Orpiada's assignment was withdrawn by CESI. This, in turn, resulted in his dismissal from CESI. Orpiada then filed with the National Labor Relations Commission a complaint for illegal dismissal and failure to pay his 13th month pay not against CESI, but against PB COM alleging that he was an employee of the bank. The Labor Arbiter to whom the case was assigned ruled in his favor and ordered his reinstatement by PB

[21] General Milling Rank-And-File Independent Labor Union v. General Milling Corp., NLRC Case No. MC-006 (April 16, 1976).

[22] Presidential Decree 442 as amended, Art. 106; Implementing Rules, Bk. III, Rule VIII, Sec. 9; Industrial Timber v. NLRC, 169 SCRA 341 (1989); Tabas v. California Manufacturing Co., 169 SCRA 497 (1989); Guarin v. NLRC, 178 SCRA 267 (1989).

[23] RJL Martinez Fishing Corporation v. National Labor Relations Commission, 127 SCRA 454 (1984); Philippine Bank of Communications v. National Labor Relations Commission, 146 SCRA 347 (1986); Brotherhood Labor Unity Movement v. Zamora, 147 SCRA 49 (1987); Broadway Motors, Inc. v. National Labor Relations Commission, 156 SCRA 522 (1987).

[24] 146 SCRA 347.

COM. This decision was subsequently affirmed by the NLRC. The Supreme Court, on petition for certiorari, affirmed the ruling of the NLRC and held that PB COM and not CESI was Orpiada's true employer. In this regard, the Court first applied the four (4) criteria in determining the existence of an employer-employee relationship, namely (1) the power to select the employee, (2) the payment of his wages, (3) the power of dismissal, and (4) the power to control the employee's conduct. This test, however, proved to be inconclusive because although PB COM had the powers of selection and control over the messengers, CESI retained the power to dismiss them, and actually paid their wages. The Court then resorted to the provisions on "job contracting" and "labor-only contracting" in the Labor Code and its Implementing Rules. In so doing, the Supreme Court declared that the provisions of the Implementing Rules on "labor-only contracting" should be read *in conjunction* with the provisions on "job contracting". Thus, applying the criteria set forth for both "job contracting" and "labor-only contracting" enumerated in the Implementing Rules, the Supreme Court held that CESI was engaged in prohibited "labor-only contracting", as a consequence of which, CESI was deemed to be a mere agent of PB COM and thus constituted the latter as the true employer of the messengers.

In arriving at its conclusion, the Supreme Court rejected the contention of PB COM that a contractor possessed of substantial capital or investment in the form of office equipment, tools and trained service personnel cannot be properly considered as a "labor-only contractor". The Court concluded that the foregoing notwithstanding, where the service rendered by the workers is directly related to the day-to-day operations of the contractee, then the contractor supplying such workers is a labor-only contractor. In consonance with the respective criteria of "job contracting" and "labor-only contracting" set forth in the Labor Code and its Implementing Rules, the Court considered the following circumstances to justify its conclusion: the principal undertaking of CESI was merely to provide its client, PB COM, with a certain number of persons ("warm bodies") able to carry out the work of messengers; these messengers utilized the premises and office equipment of the bank and not those of CESI; and the messengerial work was directly related to the day-to-day operations of the bank.

Significantly, the *PB COM* case, in its apparent attempt to clarify the prevailing rules on service contracting arrangements, in effect, amplified the same. It likewise served as a catalyst for subsequent similar rulings both by the Department of Labor[25] and by the Supreme Court.[26]

[25] *In re* Citibank, N.A., NCR-NS-07-332-07 (May 4, 1989).

AS A FINAL NOTE

In retrospect, the lessons derived from *PB COM* are noteworthy. These may be summarized in the following rules:

1. The most important factor to consider in determining whether an arrangement is a prohibited labor-only contracting or permissible job contracting arrangement is whether or not the contractor carries on an independent business and undertakes the contracted work on his own account, under his own responsibility, according to his own manner and method, *free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof.*

2. Where the undertaking of the contractor is not the performance of a specific job, but merely to provide the client with a certain number of persons able to carry out the work, the contractor shall be deemed to be engaged in prohibited labor-only contracting.

3. In order to be considered a legitimate job contractor, it is essential that the contractor possesses sufficient capital or investment in the form of tools, equipment, machineries, work premises, and materials which are necessary in the conduct of its business.

4. For a contractor to be considered a true or bona-fide job contractor, the work it has contracted to do must be its main line of business, i.e. promotion or advertising, messengerial, maintenance, etc.

5. Where the work to be performed by the contractor is directly related to the principal business or operations of the contractee/employer, in the absence of other evidence to the contrary, the workers furnished by the contractor shall be considered employees of the contractee.

6. The determination of whether or not a prohibited labor-only contracting agreement exists is still largely a question of fact, which must be resolved on the basis of the peculiar circumstances of each case.

[26] Industrial Timber v. NLRC, 169 SCRA 341 (1987); Tabas v. California Manufacturing Co., 169 SCRA 497 (1989); Guarin v. NLRC, 178 SCRA 267 (1989).

Anent all that has been said thus far, the *PB COM* decision represents the prevailing jurisprudence on service contracting arrangements. Consequently, until a subsequent decision is promulgated by the Supreme Court clarifying, and hopefully, simplifying the rules enumerated above, such remains good law.