SUPREME COURT
SECOND DIVISION

FERDINAND PALOMARES and TEODULO MUTIA,
***Petitioners*,**

-versus-

G.R. No. 120064
August 15, 1997

NATIONAL LABOR RELATIONS COMMISSION, (5TH DIVISION) and NATIONAL STEEL CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

The issue presented before this Court is whether or not petitioners should be considered regular employees of respondent corporation.

Petitioners Ferdinand Palomares and Teodulo Mutia were hired by respondent National Steel Corporation (NSC) by virtue of contracts of employment for its Five Year Expansion Program or FYEP, Phase I and II-A, for varying lengths of time, as follows:

"**Mr. FERDINAND L. PALOMARES:**

DATES	PROJECT	NATURE OF WORK	POSITION/ DEPARTMENT	REMARKS
10-03-84 to 03-03-85	Project Undertaking: Clerical jobs at Office Services	Fixed-Period Employment	Clerk Typist Office Services	Expiration of Contract Mar. 3, 1985
03-04-85 to 09-04-85	Project Undertaking: Five-Year-Expansion Projects	Project-Based Employment	Control Clerk/Off. Services	Expiration of Contract Sept. 4, 1985
09-05-85 to 01-15-87	Project - Undertaking: Clerical jobs related to dispatching of service vehicles	do-	Control Clerk/Admin.- Club House-Off. Services	Termination of Contract Jan. 15, 1987
09-11-87 to 02-10-88	Project Undertaking: Temporary production recording jobs at 5-Stand Project	-do-	Production Recorder/ Accounting	Expiration of Contract Feb. 10, 1988
02-13-88 to 07-13-88	Project Undertaking: To handle cost monitoring, records keeping and reporting of FYEP II Project	-do-	Accountant I-Construction Accounting	
07-14-88 to 08-14-90	Project Undertaking: To handle cost monitoring, records keeping and reporting of FYEP II Projects	Project-Based Employment	Accountant I-Project Accounting, FYEP Controllership	
08-15-90 to 10-14-94	-do-	-do-	Accountant II Project Accounting, FYEP Project	Currently Working

Controllership

Mr. TEODULO A. MUTIA:

DATES	PROJECT	NATURE OF WORK	POSITION/ DEPARTMENT	REMARKS
11-04-85 to 03-04-86	Project Undertaking: Attesting of shipment through National Marine	Project-Based Employment	Audit Aide/ Internal Audit	Termination of Contract Mar. 4, 1986
04-05-86 to 05-15-87	Project Undertaking: Monitoring works for ship-breaking of MS. ASEAN KNOWLEDGE and MV ASEAN INDEPENDENCE	-do-	Monitoring Aide/Ship-breaking Opns	Expiration of Contract May 15, 1987
09-11-87 to 02-10-88	Project Undertaking: Temporary job of Production Recording at 5 Stand TDM Project	-do-	Production Recorder/ Accounting	Expiration of Contract Feb. 10, 1988
02-13-88 to 12-14-88	Project Undertaking: To handle cost monitoring, records keeping Accounting and reporting of FYEP II Project	-do-	Accountant I/ Accounting & Finance-Construction	Expiration of Contract Dec. 14, 1988
12-15-88 to 08-14-90	-do-	-do-	Accountant & Project Accounting FYEP Controllership	Currently Working
08-15-90 to 10-14-94	Project Undertaking: To handle cost monitoring,	Project-Based Employment	Accountant II, Project Accounting/ FYEP Project	Currently Working"[1]

Petitioners, along with other employees, filed a consolidated petition for regularization, wage differential, CBA coverage and other benefits.[2] In his decision dated April 29, 1992, Labor Arbiter Nicodemus G. Palangan ordered the dismissal of the complaint with respect to 26 complainants but ruled in favor of petitioners. Palomares, Mutia and four other complainants were adjudged as regular employees of respondent corporation. The dispositive portion of his decision reads:

> "WHEREFORE, premises considered, the petition for regularization as well as the monetary benefits of the above-named complainants are hereby ordered DISMISSED for lack of merit except six complainants stated below.
>
> However, the respondent shall not terminate their services while the activities they performed still exist, and to give them preference provided they are qualified in cases of vacancies when the expansion program becomes operational.
>
> For the complainants who were terminated during the pendency of these cases the respondent is hereby ordered to pay them separation pay equivalent to one month salary for those who have rendered one or two years of service and three months salary for those who have served the company for at least 5 years.
>
> For complainants Edgardo Pongase, Aquiles Colita, Lolinio Solatorio, Ferdinand Palomares, Teodulo Mutia, and Rodolfo Leopoldo, this office consider (sic) them as regular employees for reason that the activities they performed are regular, and necessary in the usual trade or course of business of the company.
>
> Respondent is likewise ordered to pay these regular employees their salary differential to be computed three years back from the filing of these complaints.

All other claims are hereby ordered dismissed.

SO ORDERED."[3] (Emphasis added)

On appeal, the NLRC reversed the findings of the Labor Arbiter in a decision dated November 23, 1994. Respondent Commission held that petitioners were project employees and that their assumption of regular jobs were mainly due to peakloads or the absence of regular employees during the latter's temporary leave.[4] After their motion for reconsideration was denied on March 30, 1995,[5] petitioners filed this petition.

The Court finds that petitioners failed to show any grave abuse of discretion on the part of the NLRC in rendering its questioned decision and resolutions of November 23, 1994 and March 30, 1995, respectively.

Petitioners argue that as regards functions and duration of work, contracted employees should, by operation of law, be considered regular employees. Respondent NSC, on the other hand, maintains that petitioners are mere project employees, engaged to work on the latter's Five-Year Expansion Projects (FYEP), Phases I and II-A, hence, dismissible upon the expiration of every particular project.

Article 280 of the Labor Code, the law on the subject of regular employment, reads:

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

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

The principal test for determining whether an employee is a project employee and not a regular employee is whether he was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time he was engaged for that project.[6]

It is quite evident that petitioners were employed for a specific project or projects undertaken by respondent corporation. The component projects of the latter's Five Year Expansion Program include the setting up of a Cold Rolling Mill Expansion Project, establishing a Billet Steel Making Plant, installation of a Five Stand TDM and Cold Mill Peripherals Project. In the case of ALU-TUCP vs. NLRC, we held that the same Five Year Expansion Program (or more precisely, each of its component projects) constitutes a distinct undertaking identifiable from the ordinary business and activity of NSC, which is the production and marketing of steel products.[7] Further:

> "Each component project, of course, begins and ends at specified times, which had already been determined by the time petitioners were engaged. We also note that NSC did the work here involved — the construction of buildings and civil and electrical works, installation of machinery and equipment and the commissioning of such machinery — only for itself . Private respondent NSC was not in the business of constructing buildings and installing plant machinery for the general business community, i.e., for unrelated, third party, corporations. NSC did not hold itself out to the public as a construction company or as an engineering corporation." (Emphasis supplied.)[8]

Respondent corporation's FYEP I was to cover years 1982 to 1988; the FYEP II to cover the years 1989 to 1994; and FYEP III to cover

succeeding years. The NLRC added that FYEP III has not yet materialized due to financial and political difficulties.[9]

Mutia was initially assigned in the shipbreaking operations of the NSC. This venture consists of land and sea operations — the latter consisting of breaking salvaged vessels into chunks, while the land-based operation consists of cutting these chunks into small and meltable sizes. The metal scraps are consequently utilized to produce billets at NSC's Billet Steel-Making Plant (BSP), a completely new installation, and one of the component projects in the FYEP.

Unfortunately, the operation was found to be an unreliable source of scrap metals due to scarcity of vessels for salvaging, higher cost of operations and unsuitable raw material mix. It was permanently phased out sometime in November 1986.[10] Consequently, Mutia was transferred to other component projects of FYEP.

Palomares' assertion, on the other hand, that he was hired even before the FYEP began is misleading. He was actually employed on October 3, 1984, long after the FYEP began its preparatory stages in 1982. Two years from FYEP's inception, NSC found itself in need of more project workers. It was in this factual context that Palomares was engaged in 1984 as clerk typist detailed at the Office Services department of NSC.

The records show that petitioners were hired to work on projects for FYEP I and II-A. On account of the expiration of their contracts of employment and/or project completion, petitioners were terminated from their employment. They were, however, rehired for other component projects of the FYEP because they were qualified. Thus, the Court is convinced that petitioners were engaged only to augment the workforce of NSC for its aforesaid expansion program.

In the case of Philippine National Oil Company - Energy Development Corporation vs. NLRC, we set forth the criteria for fixed contracts of employment which do not circumvent security of tenure, 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.[11]

Where, from the circumstances, it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good customs or public order.[12] In the case at bar, however, there is nothing in the records which reveal an attempt to frustrate petitioners' security of tenure. The fact that petitioners were required to render services necessary or desirable in the operation of NSC's business for a specified duration did not in any way impair the validity of their contracts of employment which stipulated a fixed duration therefor.

It should be noted that there were intervals[13] in petitioners' respective employment contracts with NSC, thus bolstering the latter's position that, indeed, petitioners are project employees. Since its work depends on availability of such contracts or projects, necessarily the employment of its work force is not permanent but co-terminus with the projects to which they are assigned and from whose payrolls they are paid. It would be extremely burdensome for their employer to retain them as permanent employees and pay them wages even if there are no projects to work on.[14] The fact that petitioners worked for NSC under different project employment contracts for several years cannot be made a basis to consider them as regular employees, for they remain project employees regardless of the number of projects in which they have worked.[15]

Even if, as admitted by the parties, petitioners were repeatedly and successively re-hired on the basis of a contract of employment for more than one year, they cannot be considered regularized. Length of service is not the controlling determinant of the employment tenure of a project employee.[16] As stated earlier, it is based on whether or not the employment has been fixed for a specific project or undertaking, the completion of which has been determined at the time of the engagement of the employee. Furthermore, the second paragraph of Article 280, providing that an employee who has rendered service for at least one (1) year, shall be considered a regular

employee, pertains to casual employees and not to project employees such as petitioners.[17]

Regulation of manpower by the company clearly falls within management prerogative.[18] Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives,[19] subject to the constitutional requirement for the protection of labor and the promotion of social justice which tilts the scales of justice, whenever there is doubt, in favor of the worker.[20] In the case at bar, we conclude that NSC acted within the parameters of a valid exercise of management prerogative.

WHEREFORE, the instant Petition is **DISMISSED**. The Decision and Resolution of the National Labor Relations Commission dated November 23, 1994 and March 23, 1995, respectively, are **AFFIRMED.**

Regalado, Puno and Mendoza, *JJ*., concur.
Torres, Jr., *J*., is on leave.

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[1] Rollo, pp. 49-52.
[2] NLRC Case No. M-000970-92.
[3] Emphasis supplied. Rollo, pp. 58-59.
[4] Rollo, p. 47.
[5] Ibid.
[6] Guinnux Interiors, Inc. et al. vs. NLRC, G.R. No. 115569, May 27, 1997; J. & D.O. Aguilar Corporation vs. NLRC, G.R. No. 116352, March 13, 1997.
[7] 234 SCRA 678 (August 2, 1994).
[8] Ibid., at 686.
[9] Rollo, p. 304.
[10] Rollo, pp. 305-306.
[11] cited in Pantranco North Express, Inc. vs. NLRC, 239 SCRA 272 (December 16, 1994).
[12] Ibid.
[13] There is an eight-month interval between Palomares' third and fourth contracts; Mutia had a four-month interval between his second and third contracts.
[14] Cartagenas vs. Romago Electric Company, Inc., 177 SCRA 637 (1989), cited in Rada vs. NLRC, supra.
[15] Ibid.

[16] Rada vs. NLRC, 205 SCRA 69 (January 9, 1992); Sandoval Shipyards Inc. vs. NLRC, 136 SCRA 674 (May 31, 1985).
[17] Mercado Sr. vs. NLRC, 201 SCRA 332 (1991) cited in ALU-TUCP vs. NLRC, supra.
[18] San Miguel Corporation vs. Ubaldo, 218 SCRA 293 (1993).
[19] Union Carbide Labor Union vs. NLRC, 215; SCRA 554 (1992).
[20] Employees Association of the Philippine American Life Insurance Company vs. NLRC, 199 SCRA 628 (1991).