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Velasco, Jr. J., no part due to prior action in OCA.
Perez, J., no part. Acted as Court Administrator.
Bersamin, J., on leave.

EN BANC

[G.R. No. 167622. January 25, 2011]

GREGORIO V. TONGKO, *petitioner, vs.* **THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. and RENATO A. VERGEL DE DIOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; LABOR LAW CONTROL; NOT PRESENT IN CASE AT BAR.— Control over the performance of the task of one providing service – both with respect to the means and manner, and the results of the service – is the primary element in determining whether an employment relationship exists. We resolve the petitioner's Motion against his favor since he failed to show that the control Manulife exercised over him was the control required to exist in an employer-employee relationship; Manulife's control fell short of this norm and carried only the characteristic of the relationship between an insurance company and its agents, as defined by the Insurance Code and by the law of agency under the Civil Code. x x x In our June 29, 2010 Resolution, we noted that there are built-in elements of control specific to an insurance agency, which do not amount to the elements of control that characterize an employment relationship governed by the Labor Code. The Insurance Code provides definite parameters in the way an agent negotiates for the sale of the company's insurance products, his collection activities and his delivery of the insurance contract or policy. In addition, the Civil Code defines an agent

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as a person who binds himself to do something in behalf of another, with the consent or authority of the latter. Article 1887 of the Civil Code also provides that in the execution of the agency, the agent shall act in accordance with the instructions of the principal. All these, read without any clear understanding of fine legal distinctions, appear to speak of control by the insurance company over its agents. They are, however, controls aimed only at specific results in undertaking an insurance agency, and are, in fact, parameters set by law in defining an insurance agency and the attendant duties and responsibilities an insurance agent must observe and undertake. They do not reach the level of control into the means and manner of doing an assigned task that invariably characterizes an employment relationship as defined by labor law. From this perspective, the petitioner's contentions cannot prevail.

2. ID.; ID.; ID.; ID.; THE GUIDELINES INDICATIVE THEREOF MUST HAVE THE NATURE OF DICTATING THE MEANS AND METHODS TO BE EMPLOYED IN ATTAINING THE DESIRABLE RESULT.— [G]uidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result. Tested by this norm, Manulife's *instructions regarding the objectives and sales targets*, in connection with the training and engagement of other agents, are among the directives that the principal may impose on the agent to achieve the assigned tasks. They are targeted results that Manulife wishes to attain through its agents. Manulife's codes of conduct, likewise, do not necessarily intrude into the insurance agents' means and manner of conducting their sales. Codes of conduct are norms or standards of behavior rather than employer directives into how specific tasks are to be done. These codes, as well as insurance industry rules and regulations, are not *per se* indicative of labor law control under our jurisprudence.

3. MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE AGENCY; THE DUTIES PERFORMED BY PETITIONER IN CASE AT BAR ARE THAT OF AN INSURANCE AGENT.— The duties that the petitioner enumerated in his Motion are not supported by evidence and, therefore, deserve scant consideration. Even assuming their

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existence, however, they mostly pertain to the duties of an insurance agent such as remitting insurance fees to Manulife, delivering policies to the insured, and after-sale services. For agents leading other agents, these include the task of overseeing other insurance agents, the recruitment of other insurance agents engaged by Manulife as principal, and ensuring that these other agents comply with the paperwork necessary in selling insurance. That Manulife exercises the power to assign and remove agents under the petitioner's supervision is in keeping with its role as a principal in an agency relationship; they are Manulife agents in the same manner that the petitioner had all along been a Manulife agent.

4. ID.; ID.; ID.; ID.; THE ARRANGEMENTS, TITLES AND POSITIONS THE PETITIONER WAS INVESTED WITH DID NOT CHANGE HIS STATUS FROM THE INSURANCE AGENT THAT HE HAD ALWAYS BEEN; CASE AT BAR.— The petitioner also questions Manulife's act of investing him with different titles and positions in the course of their relationship, given the respondents' position that he simply functioned as an insurance agent. He also considers it an unjust and inequitable situation that he would be unrewarded for the years he spent as a unit manager, a branch manager, and a regional sales manager. Based on the evidence on record, the petitioner's occupation was to sell Manulife's insurance policies and products from 1977 until the termination of the Career Agent's Agreement (*Agreement*). The evidence also shows that through the years, Manulife permitted him to exercise guiding authority over other agents who operate under their own agency agreements with Manulife and whose commissions he shared. Under this scheme – *an arrangement that pervades the insurance industry* – petitioner in effect became a "lead agent" and his own commissions increased as they included his share in the commissions of the other agents; he also received greater reimbursements for expenses and was allowed to use Manulife's facilities. His designation also changed from unit manager to branch manager and then to regional sales manager, to reflect the increase in the number of agents he recruited and guided, as well as the increase in the area where these agents operated. As our assailed Resolution concluded and as we now similarly conclude, these arrangements, and the titles and positions the petitioner was invested with, did not change his status from

the insurance agent that he had always been (as evidenced by the Agreement that governed his relationship with Manulife from the start to its disagreeable end). The petitioner simply progressed from his individual agency to being a lead agent who could use other agents in selling insurance and share in the earnings of these other agents.

5. REMEDIAL LAW; COURTS; SHOULD DECIDE CASES BASED ON THE FACTS AND THE LAW.— *This Court (and all adjudicators for that matter) cannot and should not fill in the evidentiary gaps in a party's case that the party failed to support;* ***we cannot and should not take the cudgels for any party***. Tongko failed to support his cause and we should simply view him and his case as they are; our duty is to sit as a judge in the case that he and the respondent presented. To support its arguments on equity, the Dissent uses the Constitution and the Civil Code, using provisions and principles that are all motherhood statements. *The mandate of the Court, of course, is* ***to decide cases based on the facts and the law****, and not to base its conclusions on fundamental precepts that are far removed from the particular case presented before it. When there is no room for their application, of capacity of principles, reliance on the application of these fundamental principles is misplaced.*

6. MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE AGENCY; PETITIONER'S EARNINGS ARE AGENT'S COMMISSIONS ARISING FROM HIS WORK AS AN INSURANCE AGENT; CASE AT BAR.— That his earnings were **agent's commissions** arising from his work as an insurance agent is *a matter that the petitioner cannot deny, as these are the declarations and representations he stated in his income tax returns through the years.* It would be doubly unjust, particularly to the government, if he would be allowed at this late point to turn around and successfully claim that he was merely an employee after he declared himself, through the years, as an independent self-employed insurance agent with the privilege of deducting business expenses. This aspect of the case alone – considered together with the probative value of income tax declarations and returns filed prior to the present controversy — should be enough to clinch the present case against the petitioner's favor.

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7. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; A CONCLUSION ON THE EXISTENCE THEREOF IN A PARTICULAR CASE LARGELY DEPENDS ON THE FACTS AND ON THE PARTIES' EVIDENCE *VIS-À-VIS* THE CLEARLY DEFINED JURISPRUDENTIAL STANDARDS.— Decisions of the Supreme Court, as the Civil Code provides, form part of the law of the land. When the Court states that the determination of the existence of an employment relationship should be on a case-to-case basis, this does not mean that there will be as many laws on the issue as there are cases. In the context of this case, the four-fold test is the established standard for determining employer-employee relationship and the existence of these elements, most notably control, is the basis upon which a conclusion on the absence of employment relationship was anchored. This simply means that a conclusion on whether employment relationship exists in a particular case largely depends on the facts and, in no small measure, on the parties' evidence *vis-à-vis* the clearly defined jurisprudential standards. Given that the parties control *what* and *how* the facts will be established in a particular case and/or how a particular suit is to be litigated, deciding the issues on a case-to-case basis becomes an imperative.

8. REMEDIAL LAW; COURTS; HAVE THE DUTY TO SAY WHAT THE LAW IS.— Another legal reality, a more important one, is that *the duty of a court is to say what the law is.* This is the same duty of the Supreme Court that underlies the *stare decisis* principle. This is how the public, in general and the insurance industry in particular, views the role of this Court and courts in general in deciding cases. The lower courts and the bar, most specially, look up to the rulings of this Court for guidance. Unless extremely unavoidable, the Court must, *as a matter of sound judicial policy*, resist the temptation of branding its ruling *pro hac vice*.

9. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; A PART-EMPLOYEE/PART-INSURANCE AGENT STATUS UNDER AN ESSENTIALLY PRINCIPAL-AGENT CONTRACTUAL RELATIONS HAS NO LEGAL BASIS; EXPLAINED.— [T]here is no legal basis (be it statutory or jurisprudential) for the part-employee/part-insurance agent status under an essentially principal-agent contractual relation which the Dissent proposes

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to accord to Tongko. If the Dissent intends to establish one, this is highly objectionable for this would amount to judicial legislation. A legal relationship, be it one of employment or one based on a contract other than employment, exists as a matter of law pursuant to the facts, incidents and legal consequences of the relationship; it cannot exist devoid of these legally defined underlying facts and legal consequences unless the law itself creates the relationship – an act that is beyond the authority of this Court to do. Additionally, the Dissent's conclusion completely ignores an unavoidable legal reality – that the parties are bound by a contract of agency that clearly subsists notwithstanding the successive designation of Tongko as a unit manager, a branch manager and a regional sales manager. x x x The Dissent, it must be pointed out, concludes that Tongko's employment as manager was illegally terminated; thus, he should be accordingly afforded relief therefor. But, can Tongko be given the remedies incidental to his dismissal as manager separately from his status as an insurance agent? In other words, since the respondents terminated all relationships with Tongko through the termination letter, can we simply rule that his role as a manager was illegally terminated without touching on the consequences of this ruling on his status as an insurance agent? Expressed in these terms, the inseparability of his contract as agent with any other relationship that springs therefrom can thus be seen as an insurmountable legal obstacle. The Dissent's compromise approach would also sanction split jurisdiction. The labor tribunals shall have jurisdiction over Tongko's employment as manager while another entity shall decide the issues/cases arising from the agency relationship. If the managerial employment is anchored on the agency, how will the labor tribunals decide an issue that is inextricably linked with a relationship that is outside the loop of their jurisdiction? As already mentioned in the Resolution granting Manulife's reconsideration, the **DOMINANT** relationship in this case is agency and no other.

10. REMEDIAL LAW; ACTIONS; CASES ARE DECIDED ON THEIR OWN UNIQUE FACTS AND THEIR RESPECTIVE FACTS MUST BE STRICTLY EXAMINED TO ENSURE THAT THE RULING IN ONE APPLIES TO ANOTHER.— The Dissent cites the cases of *Great Pacific Life Assurance Corporation v. National Labor Relations Commission* and *Insular Life*

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Assurance Co., Ltd. v. National Labor Relations Commission to support the allegation that Manulife exercised control over the petitioner as an employer. In considering these rulings, a reality that cannot but be recognized is that cases turn and are decided on the basis of their own unique facts; the ruling in one case cannot simply be bodily lifted and applied to another, particularly when notable differences exist between the cited cases and the case under consideration; their respective facts must be strictly examined to ensure that the ruling in one applies to another. This is particularly true in a comparison of the cited cases with the present case. Specifically, care should be taken in reading the cited cases and applying their rulings to the present case as the cited cases all dealt with the proper legal characterization of *subsequent management contracts* that superseded the original agency contract between the insurance company and the agent.

VELASCO, JR., *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTION; LABOR; LABOR LAWS AND JURISPRUDENCE APPLY WHEN THERE IS DOUBT AS TO THE LAW TO BE APPLIED IN A CASE WITH AN ALLEGATION OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.— The Constitution acknowledges the reality that capital and labor often do not deal on equal grounds, requiring the state to protect labor from abuse. To level the playing field, the framers of the Constitution incorporated two (2) provisions therein to safeguard the employee's right to security of tenure and enhance protection to employees' rights and welfare x x x. [T]he mandate of this Court is to ensure that the provisions of the Constitution are carried out. The Court has the responsibility to ensure that the rights of labor, as guaranteed by the Constitution, are actually enjoyed by the workers. Thus, in several cases, the Court has repeatedly resolved doubts as to the relationship between parties as that of employment, that which is most favorable to labor. **The Court, in a slew of cases, has consistently ruled that when there is doubt as to the law to be applied in a case with an allegation of an employer-employee relationship, labor laws and jurisprudence shall apply.** x x x [B]ased on the x x x sample of numerous cases, the Court has invariably applied labor laws and doctrines, particularly the four-fold and control test, over Civil Code provisions, to determine the relationship of parties

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where an employer-employee relationship is alleged, without regard to the industry or otherwise alleged relationship of the parties. The Court cannot now deviate from established precedents. The four-fold test must be used to determine whether Tongko was an employee of Manulife or not, and not the Insurance Code or Civil Code as claimed by Manulife.

2. LABOR AND SOCIAL LEGISLATION: LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— As a matter of long and settled jurisprudence, the following are the elements, constituting the four-fold test, usually considered in determining the existence of an employer-employee relationship: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct, with the "control test" being the most crucial or generally assuming primacy in the overall consideration.

3. ID.; ID.; ID.; EXISTS WHEN THE EMPLOYER HAS CONTROL OF THE MEANS AND METHODS EMPLOYED BY THE EMPLOYEE IN THE PERFORMANCE OF HIS WORK.— The NLRC, taking stock of the affidavits of petitioner's fellow insurance managers therein detailing their duties, had concluded that petitioner was an employee of Manulife. Indeed, the duties, responsibilities and undertakings of these insurance managers are strikingly similar to those of Ernesto and Rodrigo Ruiz, as set forth in the Decision in *Great Pacific Life Assurance Corporation v. NLRC.* There, the Court decreed that the brothers Ruiz were employees of Grepalife. The reasons behind the declaration need no belaboring. Suffice it to state that *vis-à-vis* the Ruizes in *Grepalife*, Manulife had control of the means and methods employed by the petitioner in the performance of his work as a manager of Manulife. Following the *stare decisis* rule, there seems to be no rhyme or reason to withhold from herein petitioner the benefits accruing from an employer-employee relationship. x x x A close scrutiny of the duties and responsibilities of the Manulife managers with those of the Ruizes would show a striking similarity that cannot be denied. More so, taking the aggregate of the evidence presented in this case, a just and objective mind cannot but conclude that, as in *Grepalife*, the Manulife managers are also employees of Manulife. x x x Here, by virtue of designating Tongko initially as a Unit Manager and later on as a Regional Manager, Manulife

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must be deemed as having considered Tongko as an officer of the company. Furthermore, Tongko has been involved in Manulife's manpower development programs. Thus, just as in *Equitable Banking Corporation*, Tongko must be considered as an employee of Manulife.

4. ID.; ID.; ID.; ELEMENT OF CONTROL; SUPERVISION AND MONITORING ARE SUFFICIENT TO ESTABLISH CONTROL.— With x x x [the]case [of *Aboitiz Haulers, Inc. v. Damapatoi*], it becomes apparent that supervision and monitoring is sufficient to establish control that is evidence of an employer-employee relationship. Such control would, therefore, be even more evident in the instant case considering that Tongko himself was tasked to supervise and monitor the activities of Manulife agents. Moreover, it may be gleaned from the records of the case that Tongko reported to Manulife with regards to the performance of his agents. It was not, as if, Tongko was left alone to supervise, and perhaps, discipline such agents. Tongko must be deemed as an employee of Manulife. In fact, in *Lazaro*, the Court ruled that a Sales Supervisor was considered an employee as she "oversaw and supervised the sales agents of the company" x x x. Tongko was held out as an officer of Manulife by Manulife itself, being tagged as its Manager. He was tasked to supervise the insurance agents of Manulife. Clearly, the *Lazaro* case must apply to Tongko and he must be considered an employee of Manulife.

5. ID.; ID.; ID.; ID.; A DIRECTIVE SEEKING TO PRESCRIBE THE MEANS AND METHODS TO ACHIEVE A COMPANY'S GOAL IS AN INDICATION OF CONTROL; CASE AT BAR.— [T]he letter of De Dios itself also contained several indicia of control. x x x The goal of Manulife was to become an agency-driven insurance company. If Tongko were indeed not an employee of Manulife, the company would not set the means and methods to achieve such goal. As long as Tongko was able to recruit the set number of agents, there would be no reason for Manulife to terminate his services as an independent contractor. However, that is not the case here. It may be gleaned from the letter that De Dios is directing Tongko to clamor more actively his peers and his agents to recruit other agents. It was not sufficient that Tongko, by himself, recruit agents. This directive certainly shows that Manulife sought to prescribe the means and methods to achieve its goal. De Dios further ordered Tongko to hire at

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his expense an assistant on whom he "can unload you of much of the routine tasks which can be easily delegated." There is no other way to classify this order but as an intrusion into the means and methods of achieving the company's goals.

6. ID.; ID.; ID.; ID.; THE POWER TO TRANSFER WORKERS FROM ONE WORKPLACE TO ANOTHER IS AN EXERCISE OF CONTROL.— In the letter [of De Dios], Tongko was also informed that his area of responsibility was going to be reduced. In *Megascope General Services v. National Labor Relations Commission*, between February 15, 1977 and January 1, 1989, petitioner contracted the services of several individuals as gardeners, helpers and maintenance workers. These workers were deployed at the National Power Corporation in Bagac, Bataan. Except for Gener J. del Rosario whose employment ended on April 30, 1989, the work of the other workers ceased on January 31, 1991. Consequently, private respondents filed a complaint for illegal dismissal, underpayment of salaries, nonpayment of five-day service incentive leave credits and holiday pay against petitioner with the NLRC. The Court ruled therein that the company exercised control over the workers that would establish an employer-employee relationship when it reassigned the workers from one workplace to another x x x. In *South Davao Development Company, Inc.*, the Court ruled that the workers must be considered as employees of the company as the latter exercised control over the means and methods employed by the workers to achieve their objective, as evidenced by its power to transfer the copra workers as its employees to that of Gamo x x x. Similarly, in the instant case, by limiting the area of responsibility of Tongko, this is akin to a transfer or reassignment, an exercise of control by Manulife over Tongko that must necessarily determine the existence of an employer-employee relationship.

7. ID.; ID.; ID.; ID.; PRESENT IN THE ADMINISTRATIVE DUTIES IMPOSED UPON PETITIONER IN CASE AT BAR.— [W]hile this Court has already ruled that Article 280 of the Labor Code may not be used to prove the existence of an employer-employee relationship when the same is denied, the fact that the work of the alleged independent contractor is usually necessary or desirable in the usual business or trade of the employer would establish a management structure that would mean that Tongko was Manulife's employee. Such element of

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control, however, was only present in the administrative duties imposed upon Tongko when he was a manager of Manulife. The Agreement, as well as the other evidence presented, does not show the control necessary to establish an employer-employee relationship while Tongko was just an agent of Manulife. Hence, it is emphasized that it was only upon the imposition of such administrative duties that Tongko was an employee of Manulife and only the consequent change in his remunerations should be considered as his salary. This would consist of his persistency income and management overrides only and not his commissions as an agent.

8. ID.; ID.; LEGITIMATE JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT; LACKING IN CASE AT BAR.— It bears pointing out that Tongko cannot be considered as an independent contractor of Manulife. There is no evidence to establish such a scenario. In *Television and Production Exponents, Inc. v. Servaña*, the Court enumerates the requirements for a worker to be considered an independent contractor x x x. Here, the records are bereft of any evidence to establish that Tongko had substantial capital or investment to be qualified as an independent contractor.

9. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; AN INDIVIDUAL MAY BE AN EMPLOYEE OF AN INSURANCE AGENCY WHILE CONCURRENTLY BEING ALLOWED TO SELL INSURANCE POLICIES FOR THE SAME COMPANY.— It may be stated, as a general proposition, that an insurance agent––who usually sells insurance at his convenience following his own selling methods and who, for the most part, is governed by a set of rules the company promulgates to guide its commission agents in selling its policies that they may not run afoul of the law—is not an employee. But as explained for reasons stated in my Dissent to the June 29, 2010 Resolution, Manulife, **upon the petitioner's appointment as manager**, exercised effective control not only over the results of his work, but also over the means and methods by which it is to be accomplished. For sure, petitioner, while acting as Manulife's unit or branch manager, was allowed to sell insurance policies. And there is nothing absurd, let alone novel about an employee of an insurance company being given the privilege to solicit insurance. In two (2) cases, the Court has already ruled that an individual may be an employee of an insurance agency while

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concurrently being allowed to sell insurance policies for the same company. In the *Insular Life* case, Insular Assurance Co., Ltd. (Insular) entered into an agency contract with Pantaleon de los Reyes authorizing the latter to solicit within the Philippines applications for life insurance and annuities for which he would be paid compensation in the form of commissions. Later, on March 1, 1993, the same parties entered into another contract where de los Reyes was appointed as Acting Unit Manager. The duties and responsibilities of de los Reyes included the recruitment, training, organization and development within his designated territory of a sufficient number of qualified, competent and trustworthy underwriters, and to supervise and coordinate the sales efforts of the underwriters in the active solicitation of new business and in the furtherance of the agency's assigned goals. x x x The fact that de los Reyes concurrently acted as an agent, selling insurance for Insular, and as an acting Unit Manager, did not prevent the Court from ruling that de los Reyes was Insular's employee. Similarly, in the *Grepalife* case, the brothers Rodrigo and Ernesto Ruiz entered into agency agreements with Great Pacific Life Assurance Corporation (Grepalife) for the former to sell the latter's insurance policies. They started out as trainee agents and later promoted to Zone Supervisor and District Manager, respectively. x x x [T]he Court ruled that the brothers Ruiz are employees of Grepalife, the latter exercising control over the means and methods employed by them to reach their objective. Clearly, the fact that an individual acts as an agent of an insurance company is irrelevant to the issue of whether the individual is an employee of the company. The Court has already recognized the reality that an employee of an insurance company may, at the same time, be an agent and allowed to act as such.

10. ID.; ID.; ID.; NOT NEGATED BY THE NON-PRESENTATION OF THE MANAGEMENT CONTRACT IN CASE AT BAR.— It may be, as asserted, that petitioner was unable to adduce in evidence copies of his management contracts specifying his overall duties and responsibilities as manager. But then, a management contract, for purposes of determining the relationship between the worker and the employer, is simply evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management

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contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be clearly defined. Moreover, other evidence, like the letter of De Dios, may be considered to support the contention that he was an employee of Manulife and prove his duties and responsibilities as such.

11. ID.; ID.; TERMINATION OF EMPLOYMENT; REQUIREMENTS FOR A VALID DISMISSAL ARE ONLY REQUIRED OF EMPLOYERS WITH REGARD TO THEIR EMPLOYEES.— Any lingering doubt that petitioner was, by virtue of the management appointment, under Manulife's employ should be laid to rest by its virtual admission made in its Motion for Reconsideration dated December 3, 2008 that petitioner was dismissed for a just and lawful cause: gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders of Manulife x x x. Notably, in the termination letter of Manulife that was addressed to Tongko, no mention is made of any valid cause for the termination of his services. No mention was made of any particular rule that Tongko violated leading to his separation. Evidently, Tongko's termination of employment was without cause. In an apparent about face, Manulife now claims that it had a valid cause for the termination of Tongko's services. While the Court allows the presentation of inconsistent defenses, Manulife's argumentation on this point would destroy its position that Tongko is not its employee. Manulife is essentially pointing out the facts that would show that it abided by the requirements of the Labor Code on the dismissal of an employee. Article 282, paragraphs (a) and (b), of the Labor Code requires the presence of valid grounds for the legal dismissal of an employee x x x. Stated differently, such requirements are only required of employers with regard to their employees. Manulife had no reason to comply with this provision of law if it did not consider Tongko as an employee. Therefore, the question is begged as to why Manulife deemed it necessary to comply with such provision of law. There is an implied admission that Tongko was Manulife's employee.

12. ID.; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ANY DOUBT AS TO THE EXISTENCE THEREOF SHOULD BE RESOLVED IN FAVOR OF THE EMPLOYEE.— I submit that petitioner's peculiar circumstances as unit manager, branch manager and ultimately regional sales

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manager of Manulife, with the exclusivity feature of his engagement and his duties as such manager, indicate, at the very least, a *prima facie* existence of an employer-employee relationship, following the control test. And given the bias of the Constitution, Labor Code and Civil Code in favor of labor, any doubt as to the existence of such relationship occasioned by the lack of evidence should be resolved in favor of petitioner and of employment. In this regard, I hark back anew to what the Court emphatically said in *Dealco Farms, Inc. v. National Labor Relations Commission* x x x. As in *Dealco Farms*, the sympathies of the Court in this case should be easy and clear. The flip-flopping of the lower tribunals and the change in the Court's own stand lucidly shows the ambiguity and doubt in the application of the labor laws to the instant case. As such, the Court is duty-bound to resolve such doubts in favor of the employee, Tongko.

13. ID.; ID.; TERMINATION OF EMPLOYMENT; IN CASES OF TERMINATION OF EMPLOYMENT FOR JUST CAUSES, THE BURDEN RESTS ON THE EMPLOYER TO JUSTIFY SUCH DISMISSAL.— In the NLRC and the CA, Manulife alleged that Tongko was validly dismissed for gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Evidently, such dismissal was due to Tongko's failure to recruit the required number of agents from his area of responsibility. To reiterate, two (2) of the alleged grounds for the dismissal of Tongko fall under Art. 282, paragraphs (a) and (b) of the Labor Code x x x. On the other hand, inefficiency as a ground for termination of employment is equated with gross and habitual neglect, as the Court explained in *St. Luke's Medical Center, Incorporated v. Fadrigo* x x x. In cases of termination of employment for just causes, the Court has repeatedly held that the burden rests on the employer to justify such dismissal. x x x Manulife has failed to overcome such burden.

14. ID.; ID.; ID.; JUST CAUSES; WILLFUL DISOBEDIENCE; REQUIREMENTS.— Willful disobedience, to justify termination from employment, must comply with the following requirements, as enunciated in *Areno v. SkyCable PCC-Baguio*, to wit: "As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful

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orders requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, *i.e.*, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge."

15. ID.; ID.; ID.; ID.; NEGLECT OF DUTY; REQUIREMENTS.— Neglect of duty, to be a valid ground for termination of employment must also conform to the following requirements, as stated in *Benjamin v. Amellar Corporation*: "It bears stressing in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross. It should also be habitual." x x x Here, Manulife has failed to identify the rule and the standards by which Tongko's acts were considered unsatisfactory. There were no set criteria for determining the sufficiency of Tongko's recruitment efforts. Moreover, Tongko's acts were not proved to be willful or gross and habitual as defined by the above-cited jurisprudence. Absent proof establishing such factors, Manulife cannot be considered to have discharged the burden required to prove that the just cause for termination of employment was indeed present. In fact, at the time Tongko's services were terminated, his area was not the last in agent recruitment. As such, Tongko's dismissal smacks of arbitrariness.

16. REMEDIAL LAW; COURTS; *SUB JUDICE* RULE; RESTRICTS COMMENTS AND DISCLOSURES PERTAINING TO JUDICIAL PROCEEDINGS TO AVOID PREJUDGING THE ISSUE, INFLUENCING THE COURT, OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE.— [T]he Court received and set for agenda four (4) letters in relation to the instant case: (1) Letter of Tongko dated November 30, 2005; (2) the aforementioned letter of the Joint Foreign Chambers of the Philippines dated December 16, 2008; (3) Letter of Gregorio Mercado, President of the Philippine Life Insurance Association, Inc. dated January 12, 2009; and (4) Letter of Tongko dated March 25, 2009, propounding their positions on the case. At that point in time, the case had not yet become final and executory, hence, *sub judice*. In *Romero v. Estrada*, the Court expounded on this principle, to wit: "The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings

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to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*: [I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies." The principle of *sub judice* is a two-way street. Inasmuch as the parties and other interested individuals should refrain from trying to influence the courts, the court itself should also be on guard against such attempts. The Court should, therefore, be wary from accepting and putting on record, papers and documents not officially filed with it. Such submissions have the appearance of influencing the Court despite the latter's determined objectivity and must be avoided. To illustrate, the November 7, 2008 Decision of this Court was decided in favor of Tongko with only one (1) dissent. However, in the July 29, 2010 Resolution, the original Decision was reversed in favor of Manulife by the Court *en banc*, with only two (2) dissents. The above-mentioned letters were received by the Court after November 7, 2008 but before July 29, 2010. While the letters themselves may not have actually swayed the members of the Court, the appearance of impropriety should be avoided. To reiterate, when the parties submitted the aforementioned letters, the case had not yet become final and executory, they had sufficient remedies under the Rules of Court for redress. There was no reason for the parties to have submitted such letters and for this Court to have taken cognizance thereof and to set the same for agenda.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro & Associates for petitioner.
Pizarras & Associates Law Office for respondents.

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R E S O L U T I O N

BRION, *J.*:

We resolve petitioner Gregorio V. Tongko's bid, through his *Motion for Reconsideration*,[1] **to set aside our June 29, 2010 Resolution that reversed our Decision of November 7, 2008**.[2] With the reversal, the assailed June 29, 2010 Resolution effectively affirmed the Court of Appeals' ruling[3] in CA-G.R. SP No. 88253 that the petitioner was an insurance agent, not the employee, of the respondent The Manufacturers Life Insurance Co. (Phils.), Inc. (*Manulife*).

In his Motion for Reconsideration, petitioner reiterates the arguments he had belabored in his petition and various other submissions. He argues that for 19 years, he performed administrative functions and exercised supervisory authority over employees and agents of Manulife, in addition to his insurance agent functions.[4] In these 19 years, he was designated as a Unit Manager, a Branch Manager and a Regional Sales Manager, and now posits that he was not only an insurance agent for Manulife but was its employee as well.

We find no basis or any error to merit the reconsideration of our June 29, 2010 Resolution.

A. Labor Law Control = Employment Relationship

Control over the performance of the task of one providing service – both with respect to the means and manner, and the results of the service – is the primary element in determining

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[1] Dated July 28, 2010.

[2] The Dissent considered the referral of the motion for reconsideration to the *En Banc* as an "APPEAL" from the Second Division to the *En Banc* (page 11 of the Dissent). Attention must be called to this matter for the use of the word "APPEAL" might give the impression that there is an appeal remedy from the decision of a division to the Court *En Banc*. The Court *En Banc* is not, as repeatedly held by the Supreme Court, an appellate court of any of its divisions.

[3] Dated March 29, 2005.

[4] Motion for Reconsideration dated July 28, 2010, p. 3.

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whether an employment relationship exists. We resolve the petitioner's Motion against his favor since he failed to show that the control Manulife exercised over him was the control required to exist in an employer-employee relationship; Manulife's control fell short of this norm and carried only the characteristic of the relationship between an insurance company and its agents, as defined by the Insurance Code and by the law of agency under the Civil Code.

The petitioner asserts in his Motion that Manulife's labor law control over him was demonstrated (1) when it set the objectives and sales targets regarding production, recruitment and training programs; and (2) when it prescribed the Code of Conduct for Agents and the Manulife Financial Code of Conduct to govern his activities.[5] We find no merit in these contentions.

In our June 29, 2010 Resolution, we noted that there are built-in elements of control specific to an insurance agency, which do not amount to the elements of control that characterize an employment relationship governed by the Labor Code. The Insurance Code provides definite parameters in the way an agent negotiates for the sale of the company's insurance products, his collection activities and his delivery of the insurance contract or policy.[6] In addition, the Civil Code defines an agent as a person who binds himself to do something in behalf of another, with the consent or authority of the latter.[7] Article 1887 of the Civil Code also provides that in the execution of the agency, the agent shall act in accordance with the instructions of the principal.

All these, read without any clear understanding of fine legal distinctions, appear to speak of control by the insurance company over its agents. They are, however, controls aimed only at specific results in undertaking an insurance agency, and are, in fact, parameters set by law in defining an insurance agency and the attendant duties and responsibilities an insurance agent must observe and undertake. They do not reach the level of control into the means and manner of doing an assigned task that invariably characterizes an employment

[5] *Id.* at 29.

[6] Sections 300, 301 and 306 of the Insurance Code.

[7] Article 1868 of the Civil Code.

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relationship as defined by labor law. From this perspective, the petitioner's contentions cannot prevail.

To reiterate, guidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result.[8] Tested by this norm, Manulife's *instructions regarding the objectives and sales targets*, in connection with the training and engagement of other agents, are among the directives that the principal may impose on the agent to achieve the assigned tasks. They are targeted results that Manulife wishes to attain through its agents. Manulife's codes of conduct, likewise, do not necessarily intrude into the insurance agents' means and manner of conducting their sales. Codes of conduct are norms or standards of behavior rather than employer directives into how specific tasks are to be done. These codes, as well as insurance industry rules and regulations, are not *per se* indicative of labor law control under our jurisprudence.[9]

The duties[10] that the petitioner enumerated in his Motion are not supported by evidence and, therefore, deserve scant consideration. Even assuming their existence, however, they mostly

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[8] *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465.

[9] *Id.* at 466-467.

[10] *Rollo*, pp. 977-978; Motion for Reconsideration dated July 28, 2010, pp. 29-30.

Petitioner asserts that:

"Aside from soliciting insurance for Manulife, petitioner was required to submit to the Company all completed applications for insurance and to deliver policies, receive, collect and remit premiums to respondent Manulife. Petitioner was required to use only sales materials and illustrations that were approved by Manulife. He was even required to provide after-sales services, including the forwarding of all written complaints to Manulife's Head Office. Petitioner as also obliged to turn over to Manulife any and all sums of money collected by him. He was further tasked to interview potential recruits both for his direct unit and units under the Metro North Region of Manulife. However, the appointment of these recruits is subject to the approval of Manulife. Likewise, he coordinated planning Key Result

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pertain to the duties of an insurance agent such as remitting insurance fees to Manulife, delivering policies to the insured, and after-sale services. For agents leading other agents, these include the task of overseeing other insurance agents, the recruitment of other insurance agents engaged by Manulife as principal, and ensuring that these other agents comply with the paperwork necessary in selling insurance. That Manulife exercises the power to assign and remove agents under the petitioner's supervision is in keeping with its role as a principal in an agency relationship; they are Manulife agents in the same manner that the petitioner had all along been a Manulife agent.

The petitioner also questions Manulife's act of investing him with different titles and positions in the course of their relationship, given the respondents' position that he simply functioned as an insurance agent.[11] He also considers it an unjust and inequitable situation that he would be unrewarded for the years he spent as a unit manager, a branch manager, and a regional sales manager.[12]

Based on the evidence on record, the petitioner's occupation was to sell Manulife's insurance policies and products from 1977 until the termination of the Career Agent's Agreement (*Agreement*). The evidence also shows that through the years, Manulife permitted him to exercise guiding authority over other agents who operate under their own agency agreements with Manulife and whose commissions he shared.[13] Under this scheme – *an arrangement*

Areas for all the subordinate managers and distribute to subordinate managers and agents Manulife memos, copies of the Official Receipt, Daily Exception Reports, Overdue Notice Reports, Policy Contracts, Returned Check Notices, and Agent's Statement of Accounts and post on the bulletin board the Daily Production Report, Back-ended Cases Report and Daily Collection Reports. To reiterate, petitioner was tasked to supervise agents and managers assigned to his unit, the Metro North Region. It was Manulife who exercised the power to assign and remove agents under his supervision."

[11] *Rollo*, p. 966.

[12] *Id.* at 968.

[13] The Decision cites the Affidavits of other agents, wherein they described their duties and conditions of employment, all of which support the finding that they are independent agents and not employees of Manulife.

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that pervades the insurance industry – petitioner in effect became a "lead agent" and his own commissions increased as they included his share in the commissions of the other agents;[14] he also received greater reimbursements for expenses and was allowed to use Manulife's facilities. His designation also changed from unit manager to branch manager and then to regional sales manager, to reflect the increase in the number of agents he recruited and guided, as well as the increase in the area where these agents operated.

As our assailed Resolution concluded and as we now similarly conclude, these arrangements, and the titles and positions the petitioner was invested with, did not change his status from the insurance agent that he had always been (as evidenced by the Agreement that governed his relationship with Manulife from the start to its disagreeable end). The petitioner simply progressed from his individual agency to being a lead agent who could use other agents in selling insurance and share in the earnings of these other agents.

In sum, we find absolutely no evidence of labor law control, as extensively discussed in our Resolution of June 29, 2010, granting Manulife's motion for reconsideration. The Dissent, unfortunately, misses this point.

B. No Resulting Inequity

We also do not agree that our assailed Resolution has the effect of fostering an inequitable or unjust situation. The records show that the petitioner was very amply paid for his services as an insurance agent, who also shared in the commissions of the other agents under his guidance. In 1997, his income was ₱2,822,620; in 1998, ₱4,805,166.34; in 1999, ₱6,797,814.05; in 2001, ₱6,214,737.11; and in 2002, ₱8,003,180.38. All these he earned as an insurance agent, as he failed to ever prove that he earned these sums as an employee. In technical terms, he could not have earned all these as an employee because he

[14] *Rollo*, p. 970. The petitioner admits in this motion that he was paid overriding commissions earned by agents under him.

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failed to provide the substantial evidence required in administrative cases to support the finding that he was a Manulife employee. No inequity results under this legal situation; what would be unjust is an award of backwages and separation pay – amounts that are not due him because he was never an employee.

The Dissent's discussion on this aspect of the case begins with the wide disparity in the status of the parties – that Manulife is a big Canadian insurance company while Tongko is but a single agent of Manulife. The Dissent then went on to say that "[i]f is but just, it is but right, that the Court interprets the relationship between Tongko and Manulife as one of employment under labor laws and to uphold his constitutionally protected right, as an employee, to security of tenure and entitlement to monetary award should such right be infringed."[15] We cannot simply invoke the magical formula by creating an employment relationship even when there is none because of the unavoidable and inherently weak position of an individual over a giant corporation.

The Dissent likewise alluded to an ambiguity in the true relationship of the parties after Tongko's successive appointments. We already pointed out that the legal significance of these appointments had not been sufficiently explained and that it did not help that Tongko never bothered to present evidence on this point. The Dissent recognized this but tried to excuse Tongko from this failure in the subsequent discussion, as follows:

> [o]ther evidence was adduced to show such duties and responsibilities. For one, in his letter of November 6, 2001, respondent De Dios addressed petitioner as sales manager. And as I wrote in my Dissent to the June 29, 2010 Resolution, it is difficult to imagine that Manulife did not issue promotional appointments to petitioner as unit manager, branch manager, and, eventually, regional sales manager. Sound management practice simply requires an appointment for any upward personnel movement, particularly when additional functions and the corresponding increase in compensation are involved. Then, too, the adverted affidavits of the managers of

[15] Dissent of Justice Presbitero J. Velasco, Jr., p. 12.

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Manulife as to the duties and responsibilities of a unit manager, such as petitioner, point to the conclusion that these managers were employees of Manulife, applying the "four-fold" test.[16]

This Court (and all adjudicators for that matter) cannot and should not fill in the evidentiary gaps in a party's case that the party failed to support; ***we cannot and should not take the cudgels for any party****.* Tongko failed to support his cause and we should simply view him and his case as they are; our duty is to sit as a judge in the case that he and the respondent presented.

To support its arguments on equity, the Dissent uses the Constitution and the Civil Code, using provisions and principles that are all motherhood statements. *The mandate of the Court, of course, is* ***to decide cases based on the facts and the law****, and not to base its conclusions on fundamental precepts that are far removed from the particular case presented before it. When there is no room for their application, of capacity of principles, reliance on the application of these fundamental principles is misplaced.*

C. Earnings were Commissions

That his earnings were **agent's commissions** arising from his work as an insurance agent is *a matter that the petitioner cannot deny, as these are the declarations and representations he stated in his income tax returns through the years*. It would be doubly unjust, particularly to the government, if he would be allowed at this late point to turn around and successfully claim that he was merely an employee after he declared himself, through the years, as an independent self-employed insurance agent with the privilege of deducting business expenses. This aspect of the case alone – considered together with the probative value of income tax declarations and returns filed prior to the present controversy — should be enough to clinch the present case against the petitioner's favor.

[16] *Id.* at 39.

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D. The Dissent's Solution: Unwieldy and Legally Infirm

The Dissent proposes that Tongko should be considered as part employee (as manager) and part insurance agent; hence, the original decision should be modified to pertain only to the termination of his employment as a manager and not as an insurance agent. Accordingly, the backwages component of the original award to him should not include the insurance sales commissions. This solution, according to the line taken by the Dissent then, was justified on the view that this was made on a case-to-case basis.

Decisions of the Supreme Court, as the Civil Code provides, form part of the law of the land. When the Court states that the determination of the existence of an employment relationship should be on a case-to-case basis, this does not mean that there will be as many laws on the issue as there are cases. In the context of this case, the four-fold test is the established standard for determining employer-employee relationship and the existence of these elements, most notably control, is the basis upon which a conclusion on the absence of employment relationship was anchored. This simply means that a conclusion on whether employment relationship exists in a particular case largely depends on the facts and, in no small measure, on the parties' evidence vis-à-vis the clearly defined jurisprudential standards. Given that the parties control *what* and *how* the facts will be established in a particular case and/or how a particular suit is to be litigated, deciding the issues on a case-to-case basis becomes an imperative.

Another legal reality, a more important one, is that *the duty of a court is to say what the law is.*[17] This is the same duty of the Supreme Court that underlies the *stare decisis* principle. This is how the public, in general and the insurance industry in particular, views the role of this Court and courts in general in deciding cases. The lower courts and the bar, most specially, look up to the rulings of this Court for guidance. Unless extremely

[17] *Marbury v. Madison*, 5 US 137 (1803).

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unavoidable, the Court must, *as a matter of sound judicial policy*, resist the temptation of branding its ruling *pro hac vice*.

The compromise solution of declaring Tongko both an employee and an agent is legally unrealistic, unwieldy and is, in fact, legally infirm, as it goes against the above basic principles of judicial operation. Likewise, it does not and cannot realistically solve the problem/issue in this case; it actually leaves more questions than answers.

As already pointed out, there is no legal basis (be it statutory or jurisprudential) for the part-employee/part-insurance agent status under an essentially principal-agent contractual relation which the Dissent proposes to accord to Tongko. If the Dissent intends to establish one, this is highly objectionable for this would amount to judicial legislation. A legal relationship, be it one of employment or one based on a contract other than employment, exists as a matter of law pursuant to the facts, incidents and legal consequences of the relationship; it cannot exist devoid of these legally defined underlying facts and legal consequences unless the law itself creates the relationship – an act that is beyond the authority of this Court to do.

Additionally, the Dissent's conclusion completely ignores an unavoidable legal reality – that the parties are bound by a contract of agency that clearly subsists notwithstanding the successive designation of Tongko as a unit manager, a branch manager and a regional sales manager. (As already explained in our Resolution granting Manulife's motion for reconsideration, no evidence on record exists to provide the Court with clues as to the precise impact of all these designations on the contractual agency relationship.) The Dissent, it must be pointed out, concludes that Tongko's employment as manager was illegally terminated; thus, he should be accordingly afforded relief therefor. But, can Tongko be given the remedies incidental to his dismissal as manager separately from his status as an insurance agent? In other words, since the respondents terminated all relationships with Tongko through the termination letter, can we simply rule that his role as a manager was illegally terminated without touching on the consequences of this ruling on his status as an

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insurance agent? Expressed in these terms, the inseparability of his contract as agent with any other relationship that springs therefrom can thus be seen as an insurmountable legal obstacle.

The Dissent's compromise approach would also sanction split jurisdiction. The labor tribunals shall have jurisdiction over Tongko's employment as manager while another entity shall decide the issues/cases arising from the agency relationship. If the managerial employment is anchored on the agency, how will the labor tribunals decide an issue that is inextricably linked with a relationship that is outside the loop of their jurisdiction? As already mentioned in the Resolution granting Manulife's reconsideration, the **DOMINANT** relationship in this case is agency and no other.

E. The Dissent's Cited Cases

The Dissent cites the cases of *Great Pacific Life Assurance Corporation v. National Labor Relations Commission*[18] and *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*[19] to support the allegation that Manulife exercised control over the petitioner as an employer.

In considering these rulings, a reality that cannot but be recognized is that cases turn and are decided on the basis of their own unique facts; the ruling in one case cannot simply be bodily lifted and applied to another, particularly when notable differences exist between the cited cases and the case under consideration; their respective facts must be strictly examined to ensure that the ruling in one applies to another. This is particularly true in a comparison of the cited cases with the present case. Specifically, care should be taken in reading the cited cases and applying their rulings to the present case as the cited cases all dealt with the proper legal characterization of *subsequent management contracts* that superseded the original agency contract between the insurance company and the agent.

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[18] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

[19] 350 Phil. 918 (1998).

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In *Great Pacific Life*, the Ruiz brothers were appointed to positions different from their original positions as insurance agents, whose duties were clearly defined in a subsequent contract. Similarly, in *Insular*, de los Reyes, a former insurance agent, was appointed as acting unit manager based on a subsequent contract. In both cases, the Court anchored its findings of labor control on the stipulations of these subsequent contracts.

In contrast, the present case is remarkable for the absence of evidence of any change in the nature of the petitioner's employment with Manulife. As previously stated above and in our assailed Resolution, the petitioner had always been governed by the Agreement from the start until the end of his relationship with Manulife. His agency status never changed except to the extent of being a lead agent. Thus, the cited cases – where changes in company-agent relationship expressly changed and where the subsequent contracts were the ones passed upon by the Court – cannot be totally relied upon as authoritative.

We cannot give credit as well to the petitioner's claim of employment based on the affidavits executed by other Manulife agents describing their duties, because these same affidavits only affirm their status as independent agents, not as employees. To quote these various claims:[20]

1.a. I have no fixed wages or salary since my services are compensated by way of commissions based on the computed premiums paid in full on the policies obtained thereat;

1.b. I have no fixed working hours and employ my own method in soliciting insurance at a time and place I see fit;

1.c. I have my own assistant and messenger who handle my daily work load;

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[20] Motion for Reconsideration, dated December 3, 2008, quoting from the Affidavit of John Chua (Regional Sales Manager) dated April 28, 2003, Affidavit of Amanda Tolentino (Branch Manager) dated April 29, 2003, and Affidavit of Lourdes Samson (Unit Manager) dated April 28, 2003; *rollo*, p. 803.

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1.d. I use my own facilities, tools, materials and supplies in carrying out my business of selling insurance;

xxx xxx xxx

6. I have my own staff that handles day to day operations of my office;

7. My staff are my own employees and received salaries from me;

xxx xxx xxx

9. My commission and incentives are all reported to the Bureau of Internal Revenue (BIR) as income by a self-employed individual or professional with a ten (10) percent creditable withholding tax. I also remit monthly for professionals.

The petitioner cannot also rely on the letter written by respondent Renato Vergel de Dios to prove that Manulife exercised control over him. As we already explained in the assailed Resolution:

> Even de Dios' letter is not determinative of control as it indicates the least amount of intrusion into Tongko's exercise of his role as manager in guiding the sales agents. Strictly viewed, de Dios' directives are merely operational guidelines on how Tongko could align his operations with Manulife's re-directed goal of being a "big league player." The method is to expand coverage through the use of more agents. This requirement for the recruitment of more agents is not a means-and-method control as it relates, more than anything else, and is directly relevant, to Manulife's objective of expanded business operations through the use of a bigger sales force whose members are all on a principal-agent relationship. An important point to note here is that Tongko was not supervising regular full-time employees of Manulife engaged in the running of the insurance business; Tongko was effectively guiding his corps of sales agents, who are bound to Manulife through the same agreement that he had with manulife, all the while sharing in these agents' commissions through his overrides.[21]

[21] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc. and Renato A. Vergel de Dios*, G.R. No. 167622, Resolution dated June 29, 2010, pp. 26-27.

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Lastly, in assailing the Agreement between him and Manulife, the petitioner cites *Paguio v. National Labor Relations Commission*[22] on the claim that the agreement that the parties signed did not conclusively indicate the legal relationship between them.

The evidentiary situation in the present case, however, shows that despite the petitioner's insistence that the Agreement was no longer binding between him and Manulife, no evidence was ever adduced to show that their relationship changed so that Manulife at some point controlled the means and method of the petitioner's work. In fact, his evidence only further supports the conclusion that he remained an independent insurance agent – a status he admits, subject only to the qualification that he is at the same time an employee. Thus, we can only conclude that the Agreement governed his relations with Manulife.

Additionally, it is not lost on us that *Paguio* is a ruling based on a different factual setting; it involves a publishing firm and an account executive, whose repeated engagement was considered as an indication of employment. Our ruling in the present case is specific to the insurance industry, where the law permits an insurance company to exercise control over its agents within the limits prescribed by law, and to engage independent agents for several transactions and within an unlimited period of time without the relationship amounting to employment. In light of these realities, the petitioner's arguments on his last argument must also fail.

The dissent also erroneously cites eight other cases — *Social Security System v. Court of Appeals*,[23] *Cosmopolitan Funeral Homes, Inc. v. Maalat*,[24] *Algon Engineering Construction Corporation v. National Labor Relations Commission*,[25] *Equitable Banking Corporation v. National Labor Relations*

[22] 451 Phil. 243 (2003).

[23] 240 Phil. 364 (1987).

[24] G.R. No. 86693, July 2, 1990, 187 SCRA 108.

[25] 345 Phil. 408 (1997).

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Commission,[26] *Lazaro v. Social Security Commission*,[27] *Dealco Farms, Inc. v. National Labor Relations Commission*,[28] *South Davao Development Company, Inc. v. Gamo*,[29] and *Abante, Jr. v. Lamadrid Bearing & Parts Corporation*.[30] The dissent cited these cases to support its allegation that labor laws and jurisprudence should be applied in cases, to the exclusion of other laws such as the Civil Code or the Insurance Code, even when the latter are also applicable.

In *Social Security System*, *Cosmopolitan Funeral Homes*, *Dealco Farms*, and *South Davao Development*, the issue that repeats itself is whether complainants were employees or independent contractors; the legal relationships involved are both labor law concepts and make no reference to the Civil Code (or even the Insurance Code). The provisions cited in the Dissent — Articles 1458-1637 of the Civil Code[31] and Articles 1713-1720 of the Civil Code[32] — do not even appear in the decisions cited.

In *Algon*, the issue was whether the lease contract should dictate the legal relationship between the parties, when there was proof of an employer-employee relationship. In the cited case, the lease provisions on termination were thus considered irrelevant because of a substantial evidence of an employment relationship. The cited case lacks the complexity of the present case; Civil Code provisions on lease do not prescribe that lessees exercise control over their lessors in the way that the Insurance Code and the Civil Code provide that insurance companies and principals exercised control over their agents.

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[26] 339 Phil. 541 (1997).

[27] 479 Phil. 384 (2004).

[28] G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[29] G.R. No. 171814, May 8, 2009, 587 SCRA 524.

[30] G.R. No. 159890, May 28, 2004, 430 SCRA 368.

[31] Dissent of Justice Velasco, Jr. p. 14.

[32] *Id.* at 16.

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The issue in *Equitable*, on the other hand, is whether a lawyer-client relationship or an employment relationship governs the legal relation between parties. Again, this case is inapplicable as it does not illustrate the predominance of labor laws and jurisprudence over other laws, in general, and the Insurance Code and Civil Code, in particular. It merely weighed the evidence in favor of an employment relationship over that of a lawyer-client relationship. Similarly in *Lazaro*, the Court found ample proof of control determinative of an employer-employee relationship. Both cases are not applicable to the present case, which is attended by totally different factual considerations as the petitioner had not offered any evidence of the company's control in the means and manner of the performance of his work.

On the other hand, we find it strange that the dissent cites *Abante* as a precedent, since the Court, in this case, held that an employee-employer relationship is notably absent in this case as the complainant was a sales agent. This case better supports the majority's position that a sales agent, who fails to show control in the concept of labor law, cannot be considered an employee, even if the company exercised control in the concept of a sales agent.[33]

It bears stressing that our ruling in this case is not about which law has primacy over the other, but that we should be able to reconcile these laws. We are merely saying that where the law makes it mandatory for a company to exercise control over its agents, the complainant in an illegal dismissal case cannot rely on these legally prescribed control devices as indicators of an employer-employee relationship. As shown in our discussion, our consideration of the Insurance Code and Civil Code provisions does not negate the application of labor

[33] *Supra* note 30 at 379-380. The Court specifically noted that: "While it is true that he [petitioner therein] occasionally reported the Manila office to attend conferences on marketing strategies, it was intended not to control the manner and means to be used in reaching the desired end, but to serve as a guide and to upgrade his skills for a more efficient marketing performance."

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laws and jurisprudence; ultimately, we dismissed the petition because of its failure to comply with the control test.

WHEREFORE, premises considered, we hereby *DENY* the *Motion for Reconsideration WITH FINALITY* for lack of merit. No further pleadings shall be entertained. Let entry of judgment proceed in due course.

SO ORDERED.

Corona, C.J., Carpio, Peralta, del Castillo, Abad, Perez, and *Mendoza, JJ.,* concur.

Carpio Morales, J., maintains her original veto, hence, her dissent.

Velasco, Jr., J., see dissenting oipinion.

Nachura, Leonardo-de Castro, and *Bersamin, JJ.*, join the dissent of Justice Velasco, Jr.

Villarama, Jr. and *Sereno, JJ.,* no part.

D I S S E N T I N G O P I N I O N

VELASCO, JR., *J.*:

Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if Labor had not first existed. Labor is superior to capital, and deserves much the higher consideration.

—–Abraham Lincoln

Prefatory Statement

At the outset, it has to be made clear that the instant petition applies solely to petitioner Tongko with respect to his relationship with Manulife as the latter's Regional Manager of Metro North Region and not to ordinary underwriters of different insurance companies claiming to be totaling 45,000 in the Philippines. In view of the facts and circumstances peculiar only to Tongko's case, the disposition in the instant petition is *pro hac vice* in line with the previous rulings of this Court that the determination

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of an employer-employee relationship shall be on a case-to-case basis.[1]

There is, therefore, no reason to conclude that the November 7, 2008 Decision of this Court was meant to indiscriminately classify all insurance agents as employees of their respective insurance companies. Nowhere in the Decision was such a conclusion made or espoused. To reiterate, it was specifically stated in the Decision that Tongko, given his administrative duties as a manager of Manulife, and not any other insurance agent in the Philippines, was an employee. As in every case involving the determination of whether or not an employer-employee relationship obtains, it must be established in each case that the alleged employer exercises control over the means and methods employed by the worker in achieving a set objective. Only then can such relationship be said to exist.

In a Letter dated December 16, 2008, the Joint Foreign Chambers of the Philippines implored this Court to reverse its November 7, 2008 Decision on the stated ground that it is "a case of judicial legislation that impairs the obligations of commercial contracts and interferes with established business models and practices." The Chambers conclusion, sad to state, was based on the erroneous premise that the Decision was a blanket declaration that all agents or underwriters are considered employees of the insurance company.

The Philippine Life Insurance Association, Inc., through its then President Gregorio D. Mercado, also wrote a letter dated January 12, 2009 reiterating the concerns of the Joint Foreign Chambers of the Philippines. In the letter, Mercado states:

> Thus, with the recent Decision of the Honorable Supreme Court, generalizing the code of conduct as an indication of control over

[1] *Philippine Fuji Xerox Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 111501, March 5, 1996, 254 SCRA 294; *Associated Anglo-American Tobacco Corporation v. Clave*, G.R. No. 50915, August 30, 1990, 189 SCRA 127; *Tabas v. California Manufacturing Company, Inc.*, No. 80680, January 26, 1989, 169 SCRA 497.

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the means and method of an employee, PLIA is alarmed that the floodgates would open to unscrupulous claimants and leave PLIA's member companies vulnerable to a multitude of law suits from agents who shall insist on benefits that only employees enjoy. Such a scenario would certainly cripple PLIA's member insurance companies, as their time and resources would be devoted to fending off unscrupulous claims instead of focusing on improving themselves to serve the interests of the public.

Mercado goes on to imply that the finality of the November 7, 2008 Decision would spell the end of the insurance industry.

The grim scenario depicted in Mercado's letter and the unmistakable veiled threats implied therein are uncalled for.

The November 7, 2008 Decision, to reiterate, applies only to Tongko in light of the circumstances attendant in his case. Certainly, his situation is unique from most other agents considering that he was promoted initially to Unit Manager, then to Branch Manager and, eventually, Regional Manager. By this fact alone, the Decision cannot be applicable to all other agents in the Philippines. Furthermore, the Decision was reached considering the totality of all relevant matters underpinning and/or governing the professional relationship of Tongko and Manulife, not only the Code of Conduct, or certain duties only. All the factors mentioned in the Decision contributed to the conclusion that at the time that Tongko was dismissed, he was an employee of Manulife. And it will only be in the far off possibility that a completely identical case is presented that the findings therein would apply.

Additionally, in line with the Court's ruling in the November 7, 2008 Decision that Tongko became an employee after his designation as a manager of Manulife, any backwages for illegal dismissal should only correspond to his income, bonuses and other benefits that were appurtenant to his designation as a manager. Under Tongko's Career Agent's Agreement, he was entitled to commissions, production bonus and persistency income. Thus, the basis for backwages would only be his management overrides and other bonuses relative to his position as manager.

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The Case

For the consideration of the Court is the Motion for Reconsideration dated July 28, 2010, filed by petitioner Gregorio V. Tongko. Tongko seeks the reversal of our June 29, 2010 Resolution which dismissed the instant petition finding that Tongko was not an employee of Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife). The Resolution reversed the Court's November 17, 2008 Decision.

The Facts

For clarity, the facts of the case are hereby reiterated:

Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) is a domestic corporation engaged in life insurance business. Renato A. Vergel De Dios (De Dios) was, during the period material, its President and Chief Executive Officer. Gregorio V. Tongko started his professional relationship with Manulife on July 1, 1977 by virtue of a Career Agent's Agreement[2] (Agreement) he executed with Manulife.

In the Agreement, it is provided that:

> It is understood and agreed that the Agent is an independent contractor and nothing contained herein shall be construed or interpreted as creating an employer-employee relationship between the Company and the Agent.
>
> xxx xxx xxx
>
> a) The Agent shall canvass for applications for Life Insurance, Annuities, Group policies and other products offered by the Company, and collect, in exchange for provisional receipts issued by the Agent, money due or to become due to the Company in respect of applications or policies obtained by or through the Agent or from policyholders allotted by the Company to the Agent for servicing, subject to subsequent confirmation of receipt of payment by the Company as evidenced by an Official Receipt issued by the Company directly to the policyholder.

[2] *Rollo*, pp. 451-453.

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x x x x x x x x x

14. TERMINATION

The Company may terminate this Agreement for any breach or violation of any of the provisions hereof by the Agent by giving written notice to the Agent within fifteen (15) days from the time of the discovery of the breach. No waiver, extinguishment, abandonment, withdrawal or cancellation of the right to terminate this Agreement by the Company shall be construed for any previous failure to exercise its right under any provision of this Agreement.

Either of the parties hereto may likewise terminate his Agreement at any time without cause, by giving to the other party fifteen (15) days notice in writing. This Agreement shall similarly terminate forthwith upon the death of the Agent.

In cases of termination, including the Agent's death, the Agent and/or his estate, executors or administrators, heirs, assignees or successors-in-interest, as the case may be, shall remain liable to the Company for all the Agent's obligations and indebtedness due the Company arising from law or this Agreement.

In 1983, Tongko was named as a Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. He was thereafter promoted to Regional Manager. As the Court of Appeals (CA) found, Tongko's gross earnings from his work at Manulife as a Regional Manager, consisting of commissions, persistency income, and management overrides, may be summarized as follows:

January to December 10, 2002	-	₱865,096.07
2001	-	6,214,737.11
2000	-	8,003,180.38
1999	-	6,797,814.05
1998	-	4,805,166.34
1997	-	2,822,620.00[3]

The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter

[3] *Id.* at 53.

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dated November 6, 2001[4] to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

> The first step to transforming Manulife into a big league player has been very clear - to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.
>
> xxx xxx xxx
>
> The issues around agent recruiting are central to the intended objectives hence the need for a Senior Managers' meeting earlier last month when Kevin O'Connor, SVP - Agency, took to the floor to determine from our senior agency leaders what more could be done to bolster manpower development. At earlier meetings, Kevin had presented information where evidently, your Region was the lowest performer (on a per Manager basis) in terms of recruiting in 2000 and, as of today, continues to remain one of the laggards in this area.
>
> While discussions, in general, were positive other than for certain comments from your end which were perceived to be uncalled for, it became clear that a one-on-one meeting with you was necessary to ensure that you and management, were on the same plane. As gleaned from some of your previous comments in prior meetings (both in group and one-on-one), it was not clear that we were proceeding in the same direction.
>
> Kevin held subsequent series of meetings with you as a result, one of which I joined briefly. In those subsequent meetings you reiterated certain views, the validity of which we challenged and subsequently found as having no basis.
>
> With such views coming from you, I was a bit concerned that the rest of the Metro North Managers may be a bit confused as to the directions the company was taking. For this reason, I sought a meeting with everyone in your management team, including you, to clear the air, so to speak.

[4] *Id.* at 295-300.

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This note is intended to confirm the items that were discussed at the said Metro North Region's Sales Managers meeting held at the 7/F Conference room last 18 October.

x x x x x x x x x

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we have been discussing these past few weeks, *i.e.*, Manulife's goal to become a major agency-led distribution company in the Philippines. While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."

You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.

x x x x x x x x x

2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x

I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.

x x x x x x x x x

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The above changes can end at this point and they need not go any further. This, however, is entirely dependent upon you. But you have to understand that meeting corporate objectives by everyone is primary and will not be compromised. We are meeting tough challenges next year and I would want everybody on board. Any resistance or holding back by anyone will be dealt with accordingly.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001,[5] terminating Tongko's services, thus:

It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O'Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Management's avowed agency growth policy.

x x x x x x x x x

On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this notice of termination of your Agency Agreement with us effective fifteen days from the date of this letter.

Therefrom, Tongko filed a Complaint dated November 25, 2002 with the National Labor Relations Commission (NLRC) against Manulife for illegal dismissal. The case, docketed as NLRC NCR Case No. 11-10330-02, was raffled to Labor Arbiter Marita V. Padolina.

In the Complaint, Tongko, in a bid to establish an employer-employee relationship, alleged that De Dios gave him specific directives on how to manage his area of responsibility in the latter's letter dated November 6, 2001. He further claimed that Manulife exercised control over him as follows:

Such control was certainly exercised by respondents over the herein complainant. It was Manulife who hired, promoted and gave various assignments to him. It was the company who set objectives as regards productions, recruitment, training programs and all activities pertaining

[5] *Id.* at 301-302.

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to its business. Manulife prescribed a Code of Conduct which would govern in minute detail all aspects of the work to be undertaken by employees, including the sales process, the underwriting process, signatures, handling of money, policyholder service, confidentiality, legal and regulatory requirements and grounds for termination of employment. The letter of Mr. De Dios dated 06 November 2001 left no doubt as to who was in control. The subsequent termination letter dated 18 December 2001 again established in no uncertain terms the authority of the herein respondents to control the employees of Manulife. Plainly, the respondents wielded control not only as to the ends to be achieved but the ways and means of attaining such ends.[6]

Tongko bolstered his argument by citing *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*[7] and *Great Pacific Life Assurance Corporation v. NLRC*,[8] which Tongko claimed to be similar to the instant case.

Tongko further claimed that his dismissal was without basis and that he was not afforded due process. He also cited the Manulife Code of Conduct by which his actions were controlled by the company.

Manulife then filed a Position Paper with Motion to Dismiss dated February 27, 2003,[9] in which it alleged that Tongko is not its employee, and that it did not exercise "control" over him. Thus, Manulife claimed that the NLRC has no jurisdiction over the case.

In a Decision dated April 15, 2004, Labor Arbiter Marita V. Padolina dismissed the complaint for lack of an employer-employee relationship. Padolina found that applying the four-fold test in determining the existence of an employer-employee relationship, none was found in the instant case. The dispositive portion thereof states:

---

[6] *Id.* at 310.

[7] G.R. No. 119930, March 12, 1998, 287 SCRA 476.

[8] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

[9] *Rollo*, pp. 430-450.

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WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of jurisdiction, there being no employer-employee relationship between the parties.

SO ORDERED.

Tongko appealed the arbiter's Decision to the NLRC which reversed the same and rendered a Decision dated September 27, 2004 finding Tongko to have been illegally dismissed.

The NLRC's First Division, while finding an employer-employee relationship between Manulife and Tongko applying the four-fold test, held Manulife liable for illegal dismissal. It further stated that Manulife exercised control over Tongko as evidenced by the letter dated November 6, 2001 of De Dios and wrote:

> The above-mentioned letter shows the extent to which respondents controlled complainant's manner and means of doing his work and achieving the goals set by respondents. The letter shows how respondents concerned themselves with the manner complainant managed the Metro North Region as Regional Sales Manager, to the point that respondents even had a say on how complainant interacted with other individuals in the Metro North Region. The letter is in fact replete with comments and criticisms on how complainant carried out his functions as Regional Sales Manager.
>
> More importantly, the letter contains an abundance of directives or orders that are intended to directly affect complainant's authority and manner of carrying out his functions as Regional Sales Manager.[10]

Additionally, the NLRC also ruled that:

> Further evidence of [respondents'] control over complainant can be found in the records of the case. [These] are the different codes of conduct such as the Agent Code of Conduct, the Manulife Financial Code of Conduct, and the Manulife Financial Code of Conduct Agreement, which serve as the foundations of the power of control wielded by respondents over complainant that is further manifested in the different administrative and other tasks that he is required to

[10] *Id.* at 361.

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perform. These codes of conduct corroborate and reinforce the display of respondents' power of control in their 06 November 2001 Letter to complainant.[11]

The *fallo* of the September 27, 2004 NLRC Decision reads:

WHEREFORE, premises considered, the appealed Decision is hereby reversed and set aside. We find complainant to be a regular employee of respondent Manulife and that he was illegally dismissed from employment by respondents.

In lieu of reinstatement, respondent Manulife is hereby ordered to pay complainant separation pay as above set forth. Respondent Manulife is further ordered to pay complainant backwages from the time he was dismissed on 02 January 2002 up to the finality of this decision also as indicated above.

xxx xxx xxx

All other claims are hereby dismissed for utter lack of merit.

From this Decision, Manulife filed a motion for reconsideration which was denied by the NLRC First Division in a Resolution dated December 16, 2004.[12]

Thus, Manulife filed an appeal with the CA docketed as CA-G.R. SP No. 88253. Thereafter, the CA issued the assailed Decision dated March 29, 2005, finding the absence of an employer-employee relationship between the parties and deeming the NLRC with no jurisdiction over the case. The CA arrived at this conclusion while again applying the four-fold test. The CA found that Manulife did not exercise control over Tongko that would render the latter an employee of Manulife. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED and the writ prayed for accordingly GRANTED. The assailed Decision dated September 27, 2004 and Resolution dated December 16, 2004 of the National Labor Relations Commission in NLRC NCR Case No. 00-11-10330-2002 (NLRC NCR CA No. 040220-

[11] *Id.* at 363-364.

[12] *Id.* at 375-377.

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04) are hereby ANNULLED and SET ASIDE. The Decision dated April 15, 2004 of Labor Arbiter Marita V. Padolina is hereby REINSTATED.

Hence, Tongko filed a petition with this Court raising the following issues: (1) whether Tongko was an employee of Manulife; and (2) whether Tongko was illegally dismissed.

In the November 17, 2010 Decision, this Court ruled that Tongko was an employee of Manulife and was illegally dismissed. Applying the four-fold test, the Court found sufficient indicia of employment to conclude that Manulife and Tongko had an employer-employee relationship. Thus, the Court further ruled that because there was no just or valid cause for the termination of Tongko's employment, he was therefore illegally dismissed.

Manulife appealed such Decision to the Court *en banc* which reversed the same in a June 29, 2010 Resolution. In the Resolution, the Court used the intent of the parties as well as the established insurance industry practices to conclude that the control required by the labor code to be present to establish an employer-employee relationship between Manulife and Tongko was not present. It was further ruled that there was no other concrete evidence to establish that Tongko was an employee of Manulife.

Thereafter, Tongko filed the instant motion for reconsideration of the Resolution.

The motion for reconsideration must be granted.

Labor laws, not the Insurance Code or the Corporation Code, shall prevail in the instant case

Manufacturers Life Insurance Co. (Phils.), Inc. is part of a Canada-based multinational financial company claiming to be the largest life insurance company in North America having 3,000 employees and 25,000 agents.[13] On the other hand, Tongko

[13] Manulife Financial. "Global Presence." October 20, 2010. <https://hermes.manulife.com/ Canada/wmHomepagesPub.nsf/public/strength_presence>.

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is but a single Filipino agent/manager of Manulife. It is but just, it is but right, that the Court, interpret the relationship between Tongko and Manulife as one of employment under labor laws and to uphold his constitutionally protected rights as an employee, to security of tenure and an entitlement to monetary award should such right is infringed. And this constitutionally-guaranteed right cannot be diminished, let alone undermined, by a mere contract, or however the parties choose to call their true working relationship.[14] Neither, to stress, may the employer-employee relationship, if one exists, be subverted by the manner and form of remuneration or earnings being paid or received,[15] *i.e.*, fixed or on commission basis, or the method of calculating the same.

The controversy in this case arose from the fact that, initially, Tongko executed a Career Agent's Agreement whereby he became an agent of Manulife. As such agent, Manulife did not control the means and methods for accomplishing his assigned objective of canvassing life insurance applications. It is, therefore submitted that when he was exclusively an agent of Manulife, he was not the latter's employee.

The evidence, however, will reveal that he was later on promoted to the positions of unit, branch and regional manager. The evidence will also show that he, similar to his colleagues, was assigned other duties and responsibilities aside from those enumerated under the Agreement.

And there lies the crux of the problem. There is now an ambiguity as to the true relationship between Manulife and Tongko. Moreover, it is now unclear as to what law, labor laws, corporation code, insurance code or civil code, should be applied to the two parties.

Jurisprudence teaches that, given the doubt as to the applicable law in the instant case, labor law shall govern.

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[14] *Traders Royal Bank v. National Labor Relations Commission*, G.R. No. 127864, December 22, 1999, 321 SCRA 467.

[15] *Lazaro v. Social Security Commission*, G.R. No. 138254, July 30, 2004, 435 SCRA 472.

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The Constitution acknowledges the reality that capital and labor often do not deal on equal grounds, requiring the state to protect labor from abuse. To level the playing field, the framers of the Constitution incorporated two (2) provisions therein to safeguard the employee's right to security of tenure and enhance protection to employees' rights and welfare:

ARTICLE II
DECLARATION OF PRINCIPLES
AND STATE POLICIES PRINCIPLES

STATE POLICIES

Section 18. The State affirms labor as a primary social economic force. **It shall protect the rights of workers and promote their welfare.**

ARTICLE XIII
SOCIAL JUSTICE AND HUMAN RIGHTS

LABOR

Section 3. **The State shall afford full protection to labor**, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure, humane conditions of work, and a living wage.** They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. (Emphasis supplied.)

In the Civil Code, it is provided in Articles 1700 and 1702 thereof that:

Art. 1700. The relations between capital and labor are not merely contractual. **They are so impressed with public interest that labor contracts must yield to the common good.** Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

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Article 1702. In case of doubt, all labor legislation and **all labor contracts shall be construed in favor of the safety and decent living for the laborer.** (Emphasis supplied.)

Verily, the mandate of this Court is to ensure that the provisions of the Constitution are carried out. The Court has the responsibility to ensure that the rights of labor, as guaranteed by the Constitution, are actually enjoyed by the workers. Thus, in several cases, the Court has repeatedly resolved doubts as to the relationship between parties as that of employment, that which is most favorable to labor.

The Court, in a slew of cases, has consistently ruled that when there is doubt as to the law to be applied in a case with an allegation of an employer-employee relationship, labor laws and jurisprudence shall apply. Consider:

1. In *Social Security System v. Court of Appeals*,[16] the Court was faced with the conflicting claims of the workers and the proprietor on the issue of whether an employer-employee relationship exists. Romeo Carreon and Quality Tobacco Corporation (QTC) entered into an agreement whereby Carreon would allegedly purchase and sell QTC's products. Carreon claims that he was an employee of QTC while QTC claims that Carreon is an independent contractor. In the agreement, Carreon was referred to as a vendee of QTC's products. Their relationship would therefore be covered by the Civil Code provisions on sales.[17] However, in view of the complaint of Carreon praying for SSS benefits on the claim that he is an employee of QTC, there arose the question as to which law should apply—the Civil Code or the Labor Code and jurisprudence. The Court applied the jurisprudence in labor cases and used the four-fold test to determine the existence of an employer-employee relationship. The Court stated:

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[16] No. L-46058, December 14, 1987, 156 SCRA 383, 388-389.

[17] Arts. 1458-1637.

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The issue raised by the petitioner before this Court is the very same issue resolved by the Court of Appeals-that is, whether or not Romeo Carreon is an employee or an independent contractor under the contract aforequoted. Corollary thereto the question as to whether or not the Mafinco case is applicable to this case was raised by the parties.

The Court took cognizance of the fact that the question of whether or not an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen with the aid of lawyers have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.

For this reason, in order to put the issue at rest, this Court has laid down in a formidable line of decisions the elements to be generally considered in determining the existence of an employer-employee relationship, as follows: a) selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the employer's power to control the employee with respect to the means and method by-which the work is to be accomplished. The last which is the so-called "control test" is the most important element (*Brotherhood Labor Unity Movement of the Phils. vs. Zamora*, 147 SCRA 49 [1987]; *Dy Ke Beng vs. International Labor and Marine Union of the Phil*., 90 SCRA 162 [1979]; *Mafinco Trading Corp. vs. Ople*, 70 SCRA 141 [1976]; *Social Security System vs. Court of Appeals*, 37 SCRA 579 [1971]).

Applying the 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 method by which the same is to be accomplished, the question of whether or not there is an employer-employee relationship for purposes of the Social Security Act has been settled in this jurisdiction in the case of *Investment Planning Corp. vs. SSS*, 21 SCRA 924 (1967). In other words, where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his effort, the relationship of employer-employee does not exist. (*SSS vs. Court of Appeals*, 30 SCRA 210 [1969]). (Emphasis supplied.)

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2. In *Cosmopolitan Funeral Homes, Inc. v. Maalat,*[18] Cosmopolitan Funeral Homes, Inc. engaged the services of Noli Maalat as a "supervisor" to handle the solicitation of mortuary arrangements, sales and collections. Maalat was dimissed after having committed violations of the company's policies. He filed a complaint for illegal dismissal and nonpayment of commissions. Cosmopolitan argues that there is no employer-employee relationship between it and Maalat, the latter being an independent contractor. The Court ruled that:

> **In determining whether a person who performs work for another is the latter's employee or an independent contractor, the prevailing test is the "right of control" test.** Under this test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end.

The Court did not consider the provisions of the Civil Code on a Contract for a Piece of Work[19] in determining the relationship between the parties. Instead, it used the labor law concept, the control test, to determine such relationship.

3. The Court in *Algon Engineering Construction Corporation v. National Labor Relations Commission*[20] did not consider the Civil Code provisions on lease when it ruled upon the existence of an employer-employee relationship. In that case, from March 1, 1983 to May 10, 1985, Algon was in the process of completing the Lucena Talacogon Project in Del Monte, Talacogon, Agusan del Sur. Jose Espinosa's house is located near that project site. Thus, throughout that same period of time, Espinosa allowed petitioner Algon to use his house and the grounds adjacent thereto as a parking and storage place for the latter's heavy equipment. However, Espinosa also claims in addition thereto that there existed an employment

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[18] G.R. No. 86693, July 2, 1990, 187 SCRA 108, 112-113.

[19] Arts. 1713-1720.

[20] G.R. No. 83402, October 6, 1997, 280 SCRA 188, 197-198.

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contract between himself and petitioner Algon which, he insisted, hired him as a watchman to guard the heavy equipment parked in other leased house spaces in Libtong, Talacogon, Agusan del Sur. The Court ruled therein that:

> No particular evidence is required to prove the existence of an employer-employee relationship. All that is necessary is to show that the employer is capable of exercising control over the employee. In labor disputes, it suffices that there be a casual connection between the claim asserted and the employer-employee relations.
>
> The elements of an employer-employee relationship are: (1) selection and engagement of the employee; (2) payment of wages; (3) power of dismissal; and (4) employer's own power to control employee's conduct. **Control of the employee's conduct is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.** In the case at bar, there is no doubt that petitioner exercises control over Espinosa's conduct, as shown by the fact that, rather than address the loss of batteries as a breach of the purported contract of lease, the memorandum instead emphasized the company rules and regulations and the fact that Espinosa was "on duty" at the time of the said loss. Moreover, the petitioner's act of transferring Espinosa to the day shift clearly shows its treatment of Espinosa as an employee, and not as a landlord. Thus, 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 an end. (Emphasis supplied.)

4. Even when faced with the contention that the relationship between two parties was in the nature of a lawyer-client relationship, the Court, in *Equitable Banking Corporation v. National Labor Relations Commission*,[21] still employed the control test, a strictly labor law concept, to determine the existence of an employer-employee relationship. There, Ricardo L. Sadac was engaged in 1981 as Equitable's Vice-President for the legal department and as its General Counsel. In 1989, nine (9) lawyers of the legal department issued a letter-petition

[21] G.R. No. 102467, June 13, 1997, 273 SCRA 352, 371.

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to the chairperson of the board of the bank accusing private respondent of abusive conduct, inefficiency, mismanagement, ineffectiveness and indecisiveness. Later, the lawyers threatened to resign en masse if Sadac was not relieved as the head of the legal department. After a formal investigation of the charges, Sadac was advised that he would be substituted as the bank's legal counsel. Sadac charged the bank with illegal dismissal. The bank in turn denied the existence of an employer-employee relationship between it and Sadac. The Court stated in its Decision that:

> **In determining the existence of an employer-employee relationship, the following elements are considered: (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 employee's conduct, with the control test generally assuming primacy in the overall consideration.** The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential, in other words, for the employer to actually supervise the performance of duties of the employee; it is enough that the former has the right to wield the power. (Emphasis supplied.)

5. In *Lazaro v. Social Security Commission*,[22] Rosalina M. Laudato was a sales supervisor of Royal Star Marketing, the proprietor of which was Angelito L. Lazaro. Laudato claimed that the company failed to report her and remit her contributions as an employee, to the Social Security System (SSS). Denying that Laudato was a sales supervisor of Royal Star Marketing, Lazaro claimed that the former was only a sales agent earning on a commission basis. He added that Laudato did not maintain definite hours of work and therefore could not be considered as an employee of Royal Star Marketing. The Court, in determining the true relationship of the parties, did not apply the provisions of the Civil Code on agency. Rather, the labor law concept of the control test was applied to determine the relationship of the parties. The Court ruled therein that:

> Lazaro's arguments may be dispensed with by applying precedents. Suffice it to say, the fact that Laudato was paid by way of commission

[22] G.R. No. 138254, July 30, 2004, 435 SCRA 472, 476-477.

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does not preclude the establishment of an employer-employee relationship. **In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, 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.**

Neither does it follow that a person who does not observe normal hours of work cannot be deemed an employee. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*, the employer similarly denied the existence of an employer-employee relationship, as the claimant according to it, was a "supervisor on commission basis" who did not observe normal hours of work. This Court declared that there was an employer-employee relationship, noting that "[the] supervisor, although compensated on commission basis, [is] exempt from the observance of normal hours of work for his compensation is measured by the number of sales he makes."

It should also be emphasized that the SSC, also as upheld by the Court of Appeals, found that Laudato was a sales supervisor and not a mere agent. As such, Laudato oversaw and supervised the sales agents of the company, and thus was subject to the control of management as to how she implements its policies and its end results. x x x (Emphasis supplied.)

6. While in *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division)*,[23] the Court declared the workers as employees of Dealco farms and not independent contractors. There, Albert Caban and Chiquito Bastida were hired by Dealco as escorts or "comboys" for the transit of live cattle from General Santos City to Manila in 1993. Sometime 1999, Caban and Bastida were summarily replaced. Thus, they filed a case for illegal dismissal. Dealco claimed that Caban and Bastida were in fact independent contractors hired by the buyers of the cattle who arranged for the transport thereof to

[23] G.R. No. 153192, January 30, 2009, 577 SCRA 280, 292-293, 295-296.

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Manila. The Court again did not take into consideration provisions of the Civil Code on Contracts for a Piece of Work and instead used the four-fold test to determine the true nature of the parties' relationship. The Court ruled:

> Regrettably, upon an evaluation of the merits of the petition, we do not find cause to disturb the findings of the Labor Arbiter, affirmed by the NLRC, which are supported by substantial evidence.
>
> The well-entrenched rule is that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. Section 5, Rule 133 defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."
>
> Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. We may take cognizance of and resolve factual issues only when the findings of fact and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA.
>
> In the case at bench, both the Labor Arbiter and the NLRC were one in their conclusion that respondents were not independent contractors, but employees of petitioner. **In determining the existence of an employer-employee relationship between the parties, both the Labor Arbiter and the NLRC examined and weighed the circumstances against the four-fold test which has the following elements: (1) the power to hire, (2) the payment of wages, (3) the power to dismiss, and (4) the power to control the employees' conduct, or the so-called "control test."** Of the four, the power of control is the most important element. More importantly, the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof.
>
> xxx xxx xxx
>
> We reject petitioner's self-serving contention. Having failed to substantiate its allegation on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that doubts reasonably arising from the evidence should be resolved in the former's favor. The policy is reflected in no less than the Constitution, Labor Code and Civil Code. (Emphasis supplied.)

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7. Similarly, in *South Davao Development Company, Inc. v. Gamo*,[24] the Court refused to apply the provisions of the Civil Code on Contract for a Piece of Work to a copra maker contractor and instead used the control test to determine the worker's relationship with the company. South Davao Development Company was the operator of a coconut and mango farm in San Isidro, Davao Oriental and Inawayan/Baracatan, Davao del Sur. Sometime in August 1963, the company hired respondent Sergio L. Gamo (Gamo) as a foreman. Sometime in 1987, Gamo was appointed as a copra maker contractor. Ernesto Belleza, Carlos Rojas, Maximo Malinao were all employees in petitioner's coconut farm, while respondents Felix Terona, Virgilio Cosep, Maximo Tolda, and Nelson Bagaan were assigned to petitioner's mango farm. All of the abovenamed respondents (copra workers) were later transferred by petitioner to Gamo as the latter's copraceros. The Court ruled in that case that the workers must be considered as employees of the company as the latter exercised control over the workers as evidenced by its power to transfer the copra workers as its employees to that of Gamo:

In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme. (Emphasis supplied.)

8. While in *Abante v. Lamadrid Bearing & Parts Corp.*,[25] despite the allegation that the worker was a commission salesman, the Court still used the four-fold test to determine the existence of an employer-employee relationship. The worker, Empermaco

[24] G.R. No. 171814, May 8, 2009, 587 SCRA 524, 534.

[25] G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

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B. Abante, Jr., was employed by respondent company Lamadrid Bearing and Parts Corporation sometime in June 1985 as a salesman earning a commission of 3% of the total paid-up sales covering the whole area of Mindanao. Sometime in 2001, Abante was informed by his customers that Lamadrid had issued a letter informing them that Abante was no longer their salesman. Thereafter, Abante filed a case against Lamadrid for illegal dismissal. Lamadrid, for its part, argued that Abante was not its employee but rather a freelance salesman on commission basis. The Court ruled therein:

> We are called upon to resolve the issue of whether or not petitioner, as a commission salesman, is an employee of respondent corporation. **To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control.** Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied.)

Verily, based on the above-mentioned sample of numerous cases, the Court has invariably applied labor laws and doctrines, particularly the four-fold and control test, over Civil Code provisions, to determine the relationship of parties where an employer-employee relationship is alleged, without regard to the industry or otherwise alleged relationship of the parties. The Court cannot now deviate from established precedents. The four-fold test must be used to determine whether Tongko was an employee of Manulife or not, and not the Insurance Code or Civil Code as claimed by Manulife.

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Using the Four-Fold Test, Manulife exercised control over Tongko

As a matter of long and settled jurisprudence, the following are the elements, constituting the four-fold test, usually considered in determining the existence of an employer-employee relationship: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct, with the "control test" being the most crucial[26] or generally assuming primacy in the overall consideration.[27]

In *Meteoro v. Creative Creatures, Inc.*,[28] the Court stated that in the determination of the existence of an employer-employee relationship, any competent and relevant evidence may be considered, to wit:

> To resolve the issue raised by respondent, that is, the existence of an employer-employee relationship, there is need to examine evidentiary matters. The following elements constitute the reliable yardstick to determine such relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. **There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted.** Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status. These pieces of evidence are readily available, as they are in the possession of either the employee or the employer; and they may easily be looked into by the labor inspector (in the course of inspection) when confronted with the question of the existence or absence of an employer-employee relationship.

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[26] *Id*.

[27] *Traders Royal Bank v. NLRC, supra* note 14.

[28] G.R. No. 171275, July 13, 2009, 592 SCRA 481, 492-493.

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Some businessmen, however, try to avoid an employer-employee relationship from arising in their enterprises, because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, termination pay, and unionism. **Thus, in addition to the above-mentioned documents, other pieces of evidence are considered in ascertaining the true nature of the parties' relationship. This is especially true in determining the element of "control."** The most important index of an employer-employee relationship 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 NLRC, taking stock of the affidavits of petitioner's fellow insurance managers therein detailing their duties, had concluded that petitioner was an employee of Manulife. Indeed, the duties, responsibilities and undertakings of these insurance managers are strikingly similar to those of Ernesto and Rodrigo Ruiz, as set forth in the Decision in *Great Pacific Life Assurance Corporation v. NLRC*.[29] There, the Court decreed that the brothers Ruiz were employees of Grepalife. The reasons behind the declaration need no belaboring. Suffice it to state that *vis-à-vis* the Ruizes in *Grepalife*, Manulife had control of the means and methods employed by the petitioner in the performance of his work as a manager of Manulife. Following the *stare decisis* rule, there seems to be no rhyme or reason to withhold from herein petitioner the benefits accruing from an employer-employee relationship.

Thus, in the Court's November 7, 2008 Decision, finding that Tongko was Manulife's employee, it was ruled that:

> More importantly, Manulife's evidence establishes the fact that Tongko was tasked to perform administrative duties that establishes his employment with Manulife.
>
> In its Comment (Re: Petition for Review dated 15 April 2005) dated August 5, 2005, Manulife attached affidavits of its agents purportedly

[29] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

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to support its claim that Tongko, as a Regional Sales Manager, did not perform any administrative functions. An examination of these affidavits would, however, prove the opposite.

In an Affidavit dated April 28, 2003, John D. Chua, a Regional Sales Manager of Manulife, stated:

> 4. On September 1, 1996, my services were engaged by Manulife as an Agency Regional Sales Manager (RSM) for Metro South Region pursuant to an Agency Contract. As such RSM, I have the following functions:
>
> 1. Refer and recommend prospective agents to Manulife
> 2. **Coach agents to become productive**
> 3. **Regularly meet with, and coordinate activities of agents affiliated to my region**.

While Amada Toledo, a Branch Manager of Manulife, stated in her Affidavit dated April 29, 2003 that:

> 3. In January 1997, I was assigned as a Branch Manager (BM) of Manulife for the Metro North Sector;
>
> 4. As such BM, I render the following services:
>
> a. Refer and recommend prospective agents to Manulife;
> **b. Train and coordinate activities of other commission agents;**
> **c. Coordinate activities of Agency Managers who, in turn, train and coordinate activities of other commission agents**;
> d. Achieve agreed production objectives in terms of Net Annualized Commissions and Case Count and recruitment goals; and
> e. Sell the various products of Manulife to my personal clients.

While Ma. Lourdes Samson, a Unit Manager of Manulife, stated in her Affidavit dated April 28, 2003 that:

> 3. In 1977, I was assigned as a Unit Manager (UM) of North Peaks Unit, North Star Branch, Metro North Region;
>
> 4. As such UM, I render the following services:
> a. To render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products and who will be part of my Unit;

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b. To coordinate activities of the agents under my Unit in their daily, weekly and monthly selling activities, making sure that their respective sales targets are met;

c. To conduct periodic training sessions for my agents to further enhance their sales skills.

d. To assist my agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts.

e. To provide opportunities to motivate my agents to succeed like conducting promos to increase sales activities and encouraging them to be involved in company and industry activities.

f. To provide opportunities for professional growth to my agents by encouraging them to be a member of the LUCAP (Life Underwriters Association of the Philippines).

A comparison of the above functions and those contained in the Agreement with those cited in Great Pacific Life Assurance Corporation reveals a striking similarity that would more than support a similar finding as in that case. Thus, there was an employer-employee relationship between the parties. (Emphasis supplied.)

In comparison, in *Great Pacific Life Corporation v. NLRC* (*Grepalife*),[30] the Court stated:

Furthermore, it cannot be gainsaid that Grepalife had control over private respondents' performance as well as the result of their efforts. A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out. For instance, the District Manager must properly account, record and document the company's funds spot-check and **audit the work of the zone supervisors**, conserve the company's business in the district through 'reinstatements', **follow up the submission of weekly remittance reports of the debit agents and zone supervisors**, preserve company property in good condition, train understudies for the position of district manager, and maintain his quota of sales (the failure of which is a ground for termination). On the other hand, a zone supervisor must **direct and supervise the sales activities of the debit agents under him**, conserve company property through "reinstatements,"

[30] *Id.* at 698-699.

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undertake and discharge the functions of absentee debit agents, **spot-check the records of debit agents, and insure proper documentation of sales and collections by the debit agents**. (Emphasis supplied.)

A close scrutiny of the duties and responsibilities of the Manulife managers with those of the Ruizes would show a striking similarity that cannot be denied. More so, taking the aggregate of the evidence presented in this case, a just and objective mind cannot but conclude that, as in *Grepalife*, the Manulife managers are also employees of Manulife.

In *Equitable Banking Corporation*,[31] the Court ruled:

> The NLRC, in the instant case, based its finding that there existed an employer-employee relationship between petitioner bank and private respondent on these factual settings:
>
> "It was complainant's understanding with respondent Morales that he would be appointed and assigned to the Legal Department as vice President with the same salary, privileges and benefits granted by the respondent bank to its ranking senior officers. He was not hired as lawyer on a retainership basis but as an officer of the bank.
>
> "Thus, the complainant was given an appointment as Vice President, Legal Department, effective August 1, 1981, with a monthly salary of ₱8,000.00, monthly allowance of ₱4,500.00, and the usual two months Christmas bonus based on basic salary likewise enjoyed by the other officers of the bank.
>
> "Then, as part of the ongoing organization of the Legal Department, the position of General Counsel of the bank was created and extended to the complainant. In addition to his duties as Vice President of the bank, the complainant's duties and responsibilities were so defined as to prove that he was a bank officer working under the supervision of the President and the Board of Directors of the respondent bank.
>
> "In his more than eight years employment with the respondent bank, the complainant was given the usual payslips to evidence his monthly gross compensation. The respondent bank, as

[31] *Supra* note 21, at 331-334.

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employer, withheld taxes due to the Bureau of Internal Revenue from the complainant's salary as employee. Moreover, the bank enrolled the complainant as its employee under the Social Security System and Medicare programs. The complainant contributed to the bank Employees' Provident Fund.

"When the respondent bank changed its payroll accounting system in September 1988 by appointing SGV & Co. to handle it and Far East Bank & Trust Company to pay the salaries and other benefits of Equitable Banking Corporation officers, the complainant was included as one of corporate officers. Specifically, that there were eleven Far East Bank and Trust Company credit memos starting October 13, 1988 up to September 13, 1989 received by the complainant from FBTC crediting his salary and Christmas bonus to his account with FBTC per instruction of the respondent bank.

"In as much as the complainant and the lawyers in the Legal Department were receiving salaries and other benefits as other bank officers and employees, the attorney's fees, documentary and notarial fees earned in the exercise of their profession as in-house lawyers were not given to or even shared with them, instead all were credited to the income of the bank. In 1987 and 1988, the complainant and his subordinate lawyers were able to generate by way of attorney's fees, documentary and notarial fees a total income of ₱973,028.00 for the bank('s) benefit. In turn, the respondent bank shouldered the professional tax and Integrated Bar of the Philippines dues of the complainant and his subordinate lawyers. **Further proofs that there existed employer-employee relationship between the respondent bank and the complainant are the following, to wit:**

> **"(1) Complainant's monthly attendance, like those of other bank officers, was recorded by the Chief Security Officer and reported to the Office of the President with copy of the report furnished to the bank Personnel and HRD Department.**
>
> **"(2) Complainant was authorized by the President to sign for and in behalf of the bank contracts covering legal services of lawyers to be retained by the respondent bank for its branches on periodical retainership basis.**

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> **"(3) Complainant participated as part of management in annual Management Planning Conferences which started in 1986 on objective-setting and long-range planning in response to the requirement of the rapidly changing environment.**
>
> **"(4) Respondent bank extended to complainant the benefit (of) a car plan like any other qualified senior officer of the bank.**
>
> **"(5) Respondent bank since 1982 continuously reported and included the complainant as one of its senior officers in its statements of financial condition holding the position of Vice President. These bank statements have been distributed and circularized to the public, including bank clients and government entities.**
>
> **"(6) Complainant, like other bank officers, prepared his biographical data for submission to the Central Bank after his assumption of duties in 1981. Thereafter, and pursuant to the regulations of the Central Bank, he has been required to update annually his biographical data."**

It would virtually be foolhardy to so challenge the NLRC as having committed grave abuse of discretion in coming up with its above findings. Just to the contrary, NLRC appears to have been rather exhaustive in its examination of this particular question (existence or absence of an employer-employee relationship between the parties). Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies, connotes merely that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion. (Emphasis supplied.)

Here, by virtue of designating Tongko initially as a Unit Manager and later on as a Regional Manager, Manulife must be deemed as having considered Tongko as an officer of the company. Furthermore, Tongko has been involved in Manulife's manpower development programs. Thus, just as in *Equitable Banking Corporation*, Tongko must be considered as an employee of Manulife.

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While in *Aboitiz Haulers, Inc. v. Dimapatoi*,[32] Dimapatoi and several other individuals worked as checkers in Mega Warehouse, which Aboitiz Haulers, Inc. owned. Aboitiz claimed that the complaining workers are not its employees, but rather, of Grigio Security Agency and General Services (Grigio), a manpower agency that supplies security guards, checkers and stuffers. It allegedly entered into a Written Contract of Service with Grigio in 1994. The workers' services were terminated by Aboitiz on the pretext that its contract with Grigio had already expired. In this case, the Court found that Aboitiz was the employer of the workers exercising control over them:

> Petitioner's allegation that Grigio retained control over the respondents by providing supervisors to monitor the performance of the respondents cannot be given much weight. **Instead of exercising their own discretion or referring the matter to the officers of Grigio, Grigio's supervisors were obligated to refer to petitioner's supervisors any discrepancy in the performance of the respondents with their specified duties.** The Written Contract of Services provided that:
>
> > 5.c. That the GRIGIO personnel, particularly the supervisors, shall perform the following:
> >
> > The Supervisor for the warehouse operation shall monitor the performance and productivity of all the checkers, jacklifters, stuffers/strippers, forklift operators, drivers, and helpers. He shall coordinate with AHI's supervisors regarding the operations at the Warehouse to ensure safety at the place of work.
> >
> > He shall see to it that the cargoes are not overlanded, shortlanded, delivered at a wrong destination, or misdelivered to consignee's port of destination. Any discrepancy shall be reported immediately to AHI's Logistic Manager, Mr. Andy Valeroso.
>
> **The control exercised by petitioner's supervisors over the performance of respondents was to such extent that petitioner's Warehouse Supervisor, Roger Borromeo, confidently gave an evaluation of the performance of respondent Monaorai Dimapatoi, who likewise felt obliged to obtain such Certification from Borromeo.**

Petitioner's control over the respondents is evident. And it is this right to control the employee, not only as to the result of the

[32] G.R. No. 148619, September 19, 2006, 502 SCRA 271, 288-289.

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work to be done, but also as to the means and methods by which the same is to be accomplished, that constitutes the most important index of the existence of the employer-employee relationship. (Emphasis supplied.)

With this case, it becomes apparent that supervision and monitoring is sufficient to establish control that is evidence of an employer-employee relationship. Such control would, therefore, be even more evident in the instant case considering that Tongko himself was tasked to supervise and monitor the activities of Manulife agents. Moreover, it may be gleaned from the records of the case that Tongko reported to Manulife with regard the performance of his agents. It was not, as if, Tongko was left alone to supervise, and perhaps, discipline such agents. Tongko must be deemed as an employee of Manulife.

In fact, in *Lazaro*,[33] the Court ruled that a Sales Supervisor was considered an employee as she "oversaw and supervised the sales agents of the company":

> Lazaro's arguments may be dispensed with by applying precedents. Suffice it to say, the fact that Laudato was paid by way of commission does not preclude the establishment of an employer-employee relationship. In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, 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.
>
> Neither does it follow that a person who does not observe normal hours of work cannot be deemed an employee. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*, the employer similarly denied the existence of an employer-employee relationship, as the claimant according to it, was a "supervisor on commission basis" who did not observe normal hours of work. This Court declared that there

[33] *Supra* note 22, at 476-478.

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was an employer-employee relationship, noting that "[the] supervisor, although compensated on commission basis, [is] exempt from the observance of normal hours of work for his compensation is measured by the number of sales he makes."

It should also be emphasized that the SSC, also as upheld by the Court of Appeals, found that Laudato was a sales supervisor and not a mere agent. As such, Laudato oversaw and supervised the sales agents of the company, and thus was subject to the control of management as to how she implements its policies and its end results. x x x

The finding of the SSC that Laudato was an employee of Royal Star is supported by substantial evidence. The SSC examined the cash vouchers issued by Royal Star to Laudato, calling cards of Royal Star denominating Laudato as a "Sales Supervisor" of the company, and Certificates of Appreciation issued by Royal Star to Laudato in recognition of her unselfish and loyal efforts in promoting the company. On the other hand, Lazaro has failed to present any convincing contrary evidence, relying instead on his bare assertions. The Court of Appeals correctly ruled that petitioner has not sufficiently shown that the SSC's ruling was not supported by substantial evidence.

A piece of documentary evidence appreciated by the SSC is Memorandum dated 3 May 1980 of Teresita Lazaro, General Manager of Royal Star, directing that no commissions were to be given on all "main office" sales from walk-in customers and enjoining salesmen and sales supervisors to observe this new policy. The Memorandum evinces the fact that, contrary to Lazaro's claim, Royal Star exercised control over its sales supervisors or agents such as Laudato as to the means and methods through which these personnel performed their work. (Emphasis supplied.)

Tongko was held out as an officer of Manulife by Manulife itself, being tagged as its Manager. He was tasked to supervise the insurance agents of Manulife. Clearly, the *Lazaro* case must apply to Tongko and he must be considered an employee of Manulife.

Furthermore, the letter of De Dios itself also contained several indicia of control. To reiterate, it was stated in the letter that:

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we

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have been discussing these past few weeks, *i.e.*, Manulife's goal to become a major agency-led distribution company in the Philippines. **While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.**

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

1. **You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated.** This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."

You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.

x x x x x x x x x

2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x

I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups. (Emphasis supplied.)

The goal of Manulife was to become an agency-driven insurance company. If Tongko were indeed not an employee of Manulife, the company would not set the means and methods to achieve such goal. As long as Tongko was able to recruit the set number of agents, there would be no reason for Manulife to terminate his services as an independent contractor. However, that is not the case here. It may be gleaned from the letter that De Dios is directing Tongko to clamor more actively his peers and his agents to recruit other agents. It was not sufficient

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that Tongko, by himself, recruit agents. This directive certainly shows that Manulife sought to prescribe the means and methods to achieve its goal.

De Dios further ordered Tongko to hire at his expense an assistant on whom he "can unload you of much of the routine tasks which can be easily delegated." There is no other way to classify this order but as an intrusion into the means and methods of achieving the company's goals.

In the letter, Tongko was also informed that his area of responsibility was going to be reduced. In *Megascope General Services v. National Labor Relations Commission*,[34] between February 15, 1977 and January 1, 1989, petitioner contracted the services of several individuals as gardeners, helpers and maintenance workers. These workers were deployed at the National Power Corporation in Bagac, Bataan. Except for Gener J. del Rosario whose employment ended on April 30, 1989, the work of the other workers ceased on January 31, 1991. Consequently, private respondents filed a complaint for illegal dismissal, underpayment of salaries, nonpayment of five-day service incentive leave credits and holiday pay against petitioner with the NLRC. The Court ruled therein that the company exercised control over the workers that would establish an employer-employee relationship when it reassigned the workers from one workplace to another:

> Private respondents were selected and hired by petitioner which assigned them to the NPC housing village in Bagac and in Km. 168, Morong, Bataan. They drew their salaries from petitioner which eventually dismissed them. Petitioner's control over private respondents was manifest in its power to assign and pull them out of clients at its own discretion. Power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee. It is enough that the former has the right to wield the power.

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[34] G.R. No. 109224, June 19, 1997, 274 SCRA 146, 154.

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In *South Davao Development Company, Inc.*,[35] the Court ruled that the workers must be considered as employees of the company as the latter exercised control over the means and methods employed by the workers to achieve their objective, as evidenced by its power to transfer the copra workers as its employees to that of Gamo:

> In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme.

Similarly, in the instant case, by limiting the area of responsibility of Tongko, this is akin to a transfer or reassignment, an exercise of control by Manulife over Tongko that must necessarily determine the existence of an employer-employee relationship.

On the same issue, Justice Carpio Morales added in her Dissenting Opinion to the June 29, 2010 Resolution that:

> More significantly, in the succeeding Insular Life case, the Court found the following indicators material in finding the presence of control in cases involving insurance managers:
>
> > Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner. x x x

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[35] *Supra* note 24, at 534.

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The *ponencia* concludes that "[a]ll these are obviously absent" in petitioner's case. The facts show otherwise, however. On top of the exclusive service rendered to respondent, which *AFP Mutual Benefit Association, Inc. v. NLRC* instructs to be not controlling, other factors were present. Petitioner established no agency of his own as the Metro North Region to which he was assigned remained intact even after his ties with respondent were severed. Respondent provided and furnished company facilities, equipments and materials for petitioner at respondent's Makati office. Respondent's control of assignments was evident from its act of removing the North Star Branch from petitioner's scope of the Metro North Region, on which a "memo to spell this matter out in greater detail" was advised to be issued shortly thereafter. Respondent reserved to impose other improvements in the region after manifesting its intention to closely follow the region. Respondent's managers, like petitioner, could only refer and recommend to respondent prospective agents who would be part of their respective units. In other words, respondent had the last say on the composition and structure of the sales unit or region of petitioner. Respondent, in fact, even devised the deployment of an Agency Development Officer in the region to "contribute towards the manpower development work x x x as part of our agency growth campaign."

Such an arrangement leads to no other conclusion than that respondent exercised the type of control of an employer, thereby wiping away the perception that petitioner was only a "lead agent" as viewed by the ponencia. Even respondent sees otherwise when it rebuked petitioner that "[y]ou (petitioner) may have excelled in the past as an agent but, to this date, you still carry the mindset of a senior agent." Insofar as his management functions were concerned, petitioner was no longer considered a senior agent.

Furthermore, while this Court has already ruled that Article 280 of the Labor Code may not be used to prove the existence of an employer-employee relationship when the same is denied,[36] the fact that the work of the alleged independent contractor is usually necessary or desirable in the usual business or trade of

[36] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406.

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the employer would establish a management structure that would mean that Tongko was Manulife's employee.

Such element of control, however, was only present in the administrative duties imposed upon Tongko when he was a manager of Manulife. The Agreement, as well as the other evidence presented, does not show the control necessary to establish an employer-employee relationship while Tongko was just an agent of Manulife. Hence, it is emphasized that it was only upon the imposition of such administrative duties that Tongko was an employee of Manulife and only the consequent change in his remunerations should be considered as his salary. This would consist of his persistency income and management overrides only and not his commissions as an agent.

The majority would seem to suggest that the notion of "control" as understood in the Labor Code and as applied in labor relations cases differs from the concept of "control" that governs the relationship between an insurance company and its agents. In *Grepalife* and in the earlier *Insular life Assurance Co. Ltd. v. NLRC (4th Division)* (*Insular Life*),[37] it was distinctly noted that the Court did not posit the dichotomy presently parlayed by the majority. Consider the following excerpts from *Insular Life*:

> Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner.

Similarly, Justice Carpio Morales, in the same Dissenting Opinion, wrote:

> The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the

[37] G.R. No. 119930, March 12, 1998, 287 SCRA 476, 489.

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application of the Labor Code with regard to labor standards and labor relations.

It bears pointing out that Tongko cannot be considered as an independent contractor of Manulife. There is no evidence to establish such a scenario. In *Television and Production Exponents, Inc. v. Servaña*,[38] the Court enumerates the requirements for a worker to be considered an independent contractor:

> Aside from possessing substantial capital or investment, a legitimate job contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. TAPE failed to establish that respondent is an independent contractor. As found by the Court of Appeals:
>
> > We find the annexes submitted by the private respondents insufficient to prove that herein petitioner is indeed an independent contractor. None of the above conditions exist in the case at bar. Private respondents failed to show that petitioner has substantial capital or investment to be qualified as an independent contractor. They likewise failed to present a written contract which specifies the performance of a specified piece of work, the nature and extent of the work and the term and duration of the relationship between herein petitioner and private respondent TAPE.

Here, the records are bereft of any evidence to establish that Tongko had substantial capital or investment to be qualified as an independent contractor.

Tongko being allowed the privilege to canvass insurance applications is not contrary to his employment status

The majority described petitioner as a lead insurance agent, at best, the change in his designation—from unit manager to branch manager and then to regional sales manager—being

[38] G.R. No. 167648, January 28, 2008, 542 SCRA 578, 588.

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merely reflective of the increase in the number of agents under his guidance as well as the increase in the area of operation. Tongko, so the majority suggests, never rose to the level of Manulife's employee, as he did not even present copies of his managerial appointment to prove the fact that his agency relationship changed in the sense that Manulife controlled the means and methods of his work. The majority posits that even though the other managers of Manulife admitted to having duties and responsibilities other than those contained in a Career Agents Agreement, Tongko could not have been anything other than an agent.

With due respect, I beg to disagree with this posture.

It may be stated, as a general proposition, that an insurance agent—who usually sells insurance at his convenience following his own selling methods and who, for the most part, is governed by a set of rules[39] the company promulgates to guide its commission agents in selling its policies that they may not run afoul of the law—is not an employee. But as explained for reasons stated in my Dissent to the June 29, 2010 Resolution, Manulife, **upon the petitioner's appointment as manager**, exercised effective control not only over the results of his work, but also over the means and methods by which it is to be accomplished. For sure, petitioner, while acting as Manulife's unit or branch manager, was allowed to sell insurance policies. And there is nothing absurd, let alone novel about an employee of an insurance company being given the privilege to solicit insurance.

In two (2) cases, the Court has already ruled that an individual may be an employee of an insurance agency while concurrently being allowed to sell insurance policies for the same company. In the *Insular Life* case,[40] Insular Assurance Co., Ltd. (Insular) entered into an agency contract with Pantaleon de los Reyes authorizing the latter to solicit within the Philippines applications

[39] Usually the Codes of Conduct.

[40] *Supra* note 7, at 481.

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for life insurance and annuities for which he would be paid compensation in the form of commissions. Later, on March 1, 1993, the same parties entered into another contract where de los Reyes was appointed as Acting Unit Manager. The duties and responsibilities of de los Reyes included the recruitment, training, organization and development within his designated territory of a sufficient number of qualified, competent and trustworthy underwriters, and to supervise and coordinate the sales efforts of the underwriters in the active solicitation of new business and in the furtherance of the agency's assigned goals. We also stated that:

"**Aside from soliciting insurance**, De los Reyes was also expressly obliged to participate in the company's conservation program, *i.e.*, preservation and maintenance of existing insurance policies, and to accept moneys duly receipted on agent's receipts provided the same were turned over to the company. As long as he was unit manager in an acting capacity, De los Reyes was prohibited from working for other life insurance companies or with the government. He could not also accept a managerial or supervisory position in any firm doing business in the Philippines without the written consent of petitioner.

"**Private respondent worked concurrently as agent and Acting Unit Manager until he was notified by petitioner on 18 November 1993** that his services were terminated effective 18 December 1993. On 7 March 1994 he filed a complaint before the Labor Arbiter on the ground that he was illegally dismissed and that he was not paid his salaries and separation pay." (Emphasis supplied.)

The fact that de los Reyes concurrently acted as an agent, selling insurance for Insular, and as an acting Unit Manager, did not prevent the Court from ruling that de los Reyes was Insular's employee.

Similarly, in the *Grepalife* case,[41] the brothers Rodrigo and Ernesto Ruiz entered into agency agreements with Great Pacific Life Assurance Corporation (Grepalife) for the former to sell the latter's insurance policies. They started out as trainee agents

[41] *Supra* note 8, at 698.

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and later promoted to Zone Supervisor and District Manager, respectively. Describing the brother's duties, the Court ruled:

> x x x [T]heir work at the time of their dismissal as zone supervisor and district manager are necessary and desirable to the usual business of the insurance company. They were entrusted with supervisory, **sales** and other functions to guard Grepalife's business interests and to bring in more clients to the company, and even with administrative functions to ensure that all collections, reports and data are faithfully brought to the company.

Upon the foregoing factual setting, the Court ruled that the brothers Ruiz are employees of Grepalife, the latter exercising control over the means and methods employed by them to reach their objective.

Clearly, the fact that an individual acts as an agent of an insurance company is irrelevant to the issue of whether the individual is an employee of the company. The Court has already recognized the reality that an employee of an insurance company may, at the same time, be an agent and allowed to act as such.

It may be, as asserted, that petitioner was unable to adduce in evidence copies of his management contracts specifying his overall duties and responsibilities as manager. But then, a management contract, for purposes of determining the relationship between the worker and the employer, is simply evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be clearly defined. Moreover, other evidence, like the letter of De Dios, may be considered to support the contention that he was an employee of Manulife and prove his duties and responsibilities as such.

It may not be remiss to point out that Tongko was dismissed from his employment with Manulife for his failure to recruit sufficient numbers of agents. As was explained in the November 7, 2008 Decision:

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The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter dated November 6, 2001 to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

> The first step to transforming Manulife into a big league player has been very clear to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001, terminating Tongko's services, thus:

> It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O' Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Managements' avowed agency growth policy.
>
> xxx xxx xxx
>
> On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this notice of termination of your Agency Agreement with us effective fifteen days from the date of this letter.

And yet, the recruitment of agents is not among the duties and responsibilities that were designated to Tongko in the Agreement. And while there may not have been another contract to supersede the Agreement that was presented as evidence, the facts of the case bear out that Tongko was assigned various other duties and responsibilities that were not included therein.

Manulife's decision not to execute a management contract with petitioner was well within its prerogative. However, the bare fact of Manulife and petitioner not having executed a management contract, if this were the case, did not reduce the

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petitioner to a mere "lead agent." While there was perhaps no written management contract whence petitioner's duties and undertaking as unit/branch manager may easily be fleshed out prefatory to determining if an employer-employee relationship with Manulife did exist, other evidence was adduced to show such duties and responsibilities. For one, in his letter[42] of November 6, 2001, respondent De Dios addressed petitioner as sales manager. And as I wrote in my Dissent to the June 29, 2010 Resolution, it is difficult to imagine that Manulife did not issue promotional appointments to petitioner as unit manager, branch manager, and eventually regional sales manager. Sound management practice simply requires an appointment for any upward personnel movement, particularly when additional functions and the corresponding increase in compensation are involved. Then, too, the adverted affidavits of the managers of Manulife as to the duties and responsibilities of a unit manager, such as petitioner, point to the conclusion that these managers were employees of Manulife, applying the "four-fold" test.

Any lingering doubt that petitioner was, by virtue of the management appointment, under Manulife's employ should be laid to rest by its virtual admission made in its Motion for Reconsideration dated December 3, 2008 that petitioner was dismissed for a just and lawful cause: gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders of Manulife, to wit:

> 5.4. And yet, until the November 7 Decision, Respondents never thought for one moment that Petitioner was Manulife's employee. All the agreements executed with him, his flexible hours, his unsupervised choice of clients and method of selling the products, his ability to take leave anytime, his separate business expenses, his own declarations in his tax return, Respondent Manulife's non-contribution of SSS premiums for him, his non-existence in the company plantilla, Respondent Manulife's withholding from him of creditable income tax, all consistently showed that Respondent Manulife's belief was singular in the existence of independent contractorship.

[42] *Rollo*, p. 53.

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x x x x x x x x x.

5.7. And yet, respondent Manulife did indeed substantially comply with the requirements for lawful dismissal of a regular employee, assuming *arguendo* that petitioner is one. He was dismissed for a just and lawful cause – for gross disobedience of the lawful orders of Respondent Manulife. Respondents presented an abundance of evidence demonstrating how termination happened only after failure to meet company goals, after all remedial efforts to correct the inefficiency of Petitioner failed and after Petitioner, as found by the CA, created dissension in Respondent Manulife when he refused to accept the need for improvement in his area and continued to spread the bile of discontent and rebellion that he had generated among the other agents.

Notably, in the termination letter of Manulife that was addressed to Tongko, no mention is made of any valid cause for the termination of his services. No mention was made of any particular rule that Tongko violated leading to his separation. Evidently, Tongko's termination of employment was without cause. In an apparent about face, Manulife now claims that it had a valid cause for the termination of Tongko's services.

While the Court allows the presentation of inconsistent defenses, Manulife's argumentation on this point would destroy its position that Tongko is not its employee. Manulife is essentially pointing out the facts that would show that it abided by the requirements of the Labor Code on the dismissal of an employee. Article 282, paragraphs (a) and (b), of the Labor Code requires the presence of valid grounds for the legal dismissal of an employee:

Article 282. Termination by employer. – An employer may terminate an employment for any of the following just causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

Stated differently, such requirements are only required of employers with regard to their employees. Manulife had no

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reason to comply with this provision of law if it did not consider Tongko as an employee. Therefore, the question is begged as to why Manulife deemed it necessary to comply with such provision of law. There is an implied admission that Tongko was Manulife's employee.

The following excerpts appearing in my Dissent to the June 29, 2010 Resolution are self-explanatory:

> At this juncture, the Court notes that Manulife has changed its stance on the issue of illegal dismissal. In its *Position Paper with Motion to Dismiss* filed before the Labor Arbiter, in *its Motion for Reconsideration (Re: Decision dated 27 September 2004)* dated October 11, 2004 filed before the NLRC, and in its *Comment* dated August 5, 2006 filed before the Court, Manulife had consistently assumed the posture that the dismissal of petitioner was a proper exercise of termination proviso under the Career Agent's Agreement. In this motion, however, Manulife, in a virtual acknowledgment of petitioner being its employee, contends that the petitioner was "dismissed for a just and lawful cause – for gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders." Manulife adds that:
>
> > Respondents presented an abundance of evidence demonstrating how termination happened only after failure to meet company goals, after all remedial efforts to correct the inefficiency of Petitioner failed and after Petitioner, as found by the CA, created dissension in Respondent Manulife when he refused to accept the need for improvement in his area and continued to spread the bile of discontent and rebellion that he had generated among the other agents.

In all, I submit that petitioner's peculiar circumstances as unit manager, branch manager and ultimately regional sales manager of Manulife, with the exclusivity feature of his engagement and his duties as such manager, indicate, at the very least, a *prima facie* existence of an employer-employee relationship, following the control test. And given the bias of the Constitution,[43] Labor

[43] Art. II, Section 8; and Art. XIII, Sec. 3.

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Code[44] and Civil Code[45] in favor of labor, any doubt as to the existence of such relationship occasioned by the lack of evidence should be resolved in favor of petitioner and of employment. In this regard, I hark back anew to what the Court emphatically said in *Dealco Farms, Inc. v. National Labor Relations Commission*:

> Having failed to substantiate its allegations on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that doubts reasonably arising from the evidence should be resolved in the former's favor.[46]

As in *Dealco Farms*, the sympathies of the Court in this case should be easy and clear. The flip-flopping of the lower tribunals and the change in the Court's own stand lucidly show the ambiguity and doubt in the application of the labor laws to the instant case. As such, the Court is duty-bound to resolve such doubts in favor of the employee, Tongko.

Tongko was illegally dismissed

Having established that Tongko was indeed an employee of Manulife when he was a manager thereof, the next question is whether the dismissal was illegal.

This must be answered in the affirmative.

In the NLRC and the CA, Manulife alleged that Tongko was validly dismissed for gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Evidently, such dismissal was due to Tongko's failure to recruit the required number of agents from his area of responsibility.

To reiterate, two (2) of the alleged grounds for the dismissal of Tongko fall under Art. 282, paragraphs (a) and (b) of the Labor Code:

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[44] Art. 4.

[45] Arts. 1700 and 1702.

[46] *Supra* note 23, at 295.

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Article 282. Termination by employer. – An employer may terminate an employment for any of the following just causes:

(b) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(c) Gross and habitual neglect by the employee of his duties;

On the other hand, inefficiency as a ground for termination of employment is equated with gross and habitual neglect, as the Court explained in *St. Luke's Medical Center, Incorporated v. Fadrigo*:[47]

Gross inefficiency is closely related to gross neglect, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. As a just cause for an employee's dismissal, inefficiency or neglect of duty must not only be gross but also habitual. Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. (Emphasis supplied.)

In cases of termination of employment for just causes, the Court has repeatedly held that the burden rests on the employer to justify such dismissal. Art. 277, paragraph (b) of the Labor Code states:

Article. 277. Miscellaneous provisions. — x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall

[47] G.R. No. 185933, November 25, 2009, 605 SCRA 728, 736.

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be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. **The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.** The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (Emphasis supplied.)

Thus, the Court has ruled in *Caltex (Philippines), Inc. v. Agad*[48] that:

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.

The quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct and loss of trust and confidence must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

While in *Lima Land, Inc. v. Cuevas*,[49] the Court ruled:

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his

[48] G.R. No. 162017, April 23, 2010.

[49] G.R. No. 169523, June 16, 2010.

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dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him. The first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.

The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.

Manulife has failed to overcome such burden. Willful disobedience, to justify termination from employment, must comply with the following requirements, as enunciated in *Areno v. SkyCable PCC-Baguio*,[50] to wit:

As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, *i.e.*, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

[50] G.R. No. 180302, February 5, 2010.

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Neglect of duty, to be a valid ground for termination of employment must also conform to the following requirements, as stated in *Benjamin v. Amellar Corporation*:[51]

> It bears stressing in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross. It should also be habitual. There being nothing in the records to identify what specific duties Anabel violated and whether the violations were gross and habitual, any discussion herein is an exercise in futility.

Here, Manulife has failed to identify the rule and the standards by which Tongko's acts were considered unsatisfactory. There were no set criteria for determining the sufficiency of Tongko's recruitment efforts. Moreover, Tongko's acts were not proved to be willful or gross and habitual as defined by the above-cited jurisprudence. Absent proof establishing such factors, Manulife cannot be considered to have discharged the burden required to prove that the just cause for termination of employment was indeed present. In fact, at the time Tongko's services were terminated, his area was not the last in agent recruitment. As such, Tongko's dismissal smacks of arbitrariness.

Informal communications violate the principle of *sub judice*

On a final note, the Court received and set for agenda four (4) letters in relation to the instant case: (1) Letter of Tongko dated November 30, 2005;[52] (2) the aforementioned letter of the Joint Foreign Chambers of the Philippines dated December 16, 2008;[53] (3) Letter of Gregorio Mercado, President of the Philippine Life Insurance Association, Inc. dated January 12, 2009;[54] and (4) Letter of Tongko dated March 25, 2009,[55]

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[51] G.R. No. 183383, April 5, 2010.

[52] *Rollo*, p. 680.

[53] *Id.* at 834-836.

[54] *Id.* at 839-840.

[55] *Id.* at 860.

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propounding their positions on the case. At that point in time, the case had not yet become final and executory, hence, *sub judice*. In *Romero v. Estrada*,[56] the Court expounded on this principle, to wit:

> The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*:
>
> > [I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The principle of *sub judice* is a two-way street. Inasmuch as the parties and other interested individuals should refrain from trying to influence the courts, the court itself should also be on guard against such attempts. The Court should, therefore, be wary from accepting and putting on record, papers and documents not officially filed with it. Such submissions have the appearance of influencing the Court despite the latter's determined objectivity and must be avoided. To illustrate, the November 7, 2008 Decision of this Court was decided in favor of Tongko with only one (1) dissent. However, in the July 29, 2010 Resolution, the original Decision was reversed in favor of Manulife by the Court *en banc*, with only two (2) dissents. The above-mentioned letters were received by the Court after November 7, 2008 but before July 29, 2010. While the letters themselves may not have actually swayed the members of the Court, the appearance of impropriety should be avoided. To reiterate, when the parties submitted the aforementioned letters, the case had not yet become final and executory, they had

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[56] G.R. No. 174105, April 2, 2009, 583 SCRA 396, 403.

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sufficient remedies under the Rules of Court for redress. There was no reason for the parties to have submitted such letters and for this Court to have taken cognizance thereof and to set the same for agenda.

To reiterate, the declaration that Tongko is an employee of Manulife, having performed administrative functions as its manager, cannot be applied to insurance agents in general. Any finding of an employer-employee relationship shall always be on a case-to-case basis. The instant case is no exception. Any fear that the grant of Tongko's motion for reconsideration shall render all insurance agents in the country as employees of insurance companies is badly misplaced.

WHEREFORE, I vote to grant Tongko's Motion for Reconsideration dated July 28, 2010, to annul and set aside the June 29, 2010, and to reinstate the November 7, 2008 Decision with modification on the amount of backwages to which Tongko shall be entitled. As thus modified and subject to the qualifications defined in the Dissenting Opinion to the June 29, 2010, petitioner should be awarded backwages, to be computed as the monthly average of his management overrides, as well as other bonuses and benefits, corresponding to the period he was serving Manulife as unit, branch and eventually regional sales manager.

EN BANC

[G.R. No. 192280. January 25, 2011]

SERGIO G. AMORA, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and ARNIELO S. OLANDRIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.— We find that the COMELEC ruling smacks of grave abuse of discretion, a capricious and whimsical exercise