Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MANGGAGAWA SA KOMUNIKASYON NG PILIPINAS, Petitioner, - versus - **PLDT, INC.,** Respondent.	**G.R. No. 244695**
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PLDT, INC., Petitioner, - versus - **HON. SECRETARY OF LABOR AND EMPLOYMENT SILVESTRE H. BELLO III; and MANGGAGAWA SA KOMUNIKASYON NG PILIPINAS,** Respondent.	**G.R. No. 244752**
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SILVESTRE H. BELLO III, in his capacity as the Secretary of the Department of Labor and Employment, Petitioner, - versus - **PLDT, INC.,** Respondent.	**G.R. No. 245294** **Present:** GESMUNDO, *C.J., Chairperson* HERNANDO, ZALAMEDA, ROSARIO, MARQUEZ, *JJ.* **Promulgated:** FEB 14 2024

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DECISION

ZALAMEDA, *J.*:

Before the Court are consolidated Petitions[1] for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners Manggagawa sa Komunikasyon ng Pilipinas (MKP), PLDT, Inc. (PLDT), and Silvestre Bello III, in his capacity as then Secretary of the Department of Labor and Employment (Sec. Bello), all assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA). In the challenged issuances, the CA affirmed, albeit with substantial modifications, the resolutions issued by Sec. Bello in *"In Re: Special Assessment or Visit of the Establishment (SAVE) in Philippine Long Distance Telephone Company (PLDT),"* and docketed as OS-LS-0120-0804-2017.

Antecedents

Petitioner PLDT is a corporation engaged in the telecommunications business. For its operation, it engaged the services of several contractors and sub-contractors to provide services in various areas or phases of its operations. Petitioner MKP, on the other hand, was the exclusive bargaining agent of PLDT's rank-and-file employees.[4]

To settle the dispute that arose from the negotiation of the collective bargaining agreement between PLDT and MKP, the intervention of the Department of Labor and Employment (DOLE) was sought, and the parties agreed to have a "Special Assessment and Visit of Establishment" (SAVE) conducted in PLDT.[5] Thus, the DOLE issued Administrative Order No. 648 (AO 648),[6] constituting a DOLE Assessment Team that will:

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1 *Rollo* (G.R. No. 244695), pp. 17–96; *Rollo* (G.R. No. 244752), pp. 85–135-A; *Rollo* (G.R. No. 245294), pp. 87–147.

2 *Rollo* (G.R. No. 244695), pp. 99–145. The July 31, 2018 Decision in CA-G.R. SP No. 155563 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Maria Filomena D. Singh (now a Member of this Court) of the Tenth Division, Court of Appeals, Manila.

3 *Id.* at 147–156. The February 14, 2019 Resolution in CA-G.R. SP No. 155563 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Maria Filomena D. Singh (now a Member of this Court) of the Former Tenth Division, Court of Appeals, Manila.

4 *Id.* at 100.

5 *Id.*

6 *Id.* at 317.

> [C]onduct [SAVE] to assess, validate and verify PLDT's, including its contractors/subcontractors, compliance to Department Order 18-A, Series of 2011, on-the-job training and other training-in-employment practices, hiring practices, working arrangements and compliance with general labor standards and occupational safety and health standards.[7]

During the inspection, the DOLE Assessment Team interviewed a total of 1,104 PLDT employees and contracted workers, as well as 37 contractors' representatives from several offices of PLDT in the National Capital Region. The focus of the interview was PLDT's contracting activities and practices.[8]

During a conference held on December 5, 2016, the DOLE Assessment Team presented its *Report on the Special Assessment and Visit of the Philippine Long Distance Telephone Company* (SAVE Report).[9] In the *SAVE Report,* the DOLE Assessment Team enumerated their preliminary findings of PLDT's and its contractor's violation of DOLE Department Order No. 18-A, Series of 2011 (DO 18-A).[10] Among other things, the DOLE Assessment Team reported matters that tend to establish that PLDT and its contractors are engaged in labor-only contracting. In particular, the interviews of the workers intimated that PLDT exercised control and supervision over them,[11] which is demonstrated by the following:

a. PLDT informed the contractors of its personnel needs, setting the basic requirements for hiring job applicants. PLDT also conducted initial evaluation of contractors' job applicants, and those who passed were referred to the contractor for the completion of the hiring process. Contractors' employees also underwent trainings provided by PLDT, either alone or with the contractor.[12]

b. Work schedules for contractors' employees and work deadlines were set by PLDT. Rendition of overtime work and availment of leave benefits were subject to PLDT's approval. PLDT also reviewed the work and reports of contractors' workers on a weekly basis.[13]

c. Problems encountered by contractors' workers were referred to

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7 *Id.*
8 *Id.* at 100.
9 *Id.* at 376–399.
10 Rules Implementing Articles 106 to 109 of Labor Code, as amended (2011).
11 *Rollo* (G.R. No. 244695), p. 395.
12 *Id.*
13 *Id.*

PLDT's personnel for appropriate action. Most workers interviewed also said that organic PLDT employees supervised them. Special Point of Contact (SPOC) persons assigned by contractors to PLDT only communicated problems encountered by workers but had no authority to address the concerns themselves. PLDT managers or supervisors were always assigned to address work problems.[14]

d. Some workers of contractors performed tasks also performed by PLDT employees.[15]

e. PLDT possessed the authority to recommend replacement or termination of employment of contractors' workers.[16]

It was also reported that 47 of PLDT's contractors violated general labor standards provisions on overtime pay, holiday pay, service incentive leave, maternity leave, paternity leave and 13th month pay. Nineteen contractors were also found to have made unauthorized deductions for uniform, safety shoes, cable handset, monitoring tablet and other tools.[17]

Based on this finding of control, it was recommended that PLDT should regularize contractual employees performing jobs that are directly related to their business. PLDT was also declared solidarily liable with the contractors to pay the unpaid monetary benefits of the contractors' workers.[18]

On January 6, 2017, PLDT, through its counsel, filed a *Manifestation and Motion*,[19] where PLDT contested the legal or factual conclusions of the DOLE Assessment Team that it has engaged the services of labor-only contractors. PLDT asserted that any of its alleged violation of DO 18-A "can be explained by proper reference to appropriate documents, and with an objective approach, in an adversarial proceeding, that is less reliant on purely anecdotal evidence."[20] Thus, PLDT opined that it may be more appropriate to thresh out these matters in an adversarial proceeding such as a regularization suit before the National Labor Relations Commission (NLRC) that is initiated by workers claiming regularization.[21]

On January 6, 10, and 17 of 2017, mandatory conferences were held

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14 *Id.*
15 *Id.* at 396.
16 *Id.*
17 *Id.* at 377.
18 *Id.* at 399.
19 *Id.* at 400–408.
20 *Id.* at 401.
21 *Id.*

by the DOLE Assessment Team. The contractors were summoned and given copies of the Notice of Results pertaining to each of them. They were also asked to provide documents of their compliance with the labor standards provisions they allegedly violated. The contractors provided proof of payment as well as documentation and affidavits to challenge the finding that they were labor-only contractors.[22]

Worth noting that on April 19, 2017, Sec. Bello announced during a press briefing that he "will order the regularization of 10,000 workers under contracting and subcontracting arrangement but are performing jobs that are related to PLDT business."[23]

Order issued by the DOLE-NCR Regional Director

On July 3, 2017, the Regional Director of the DOLE-National Capital Region (Regional Director) issued his Order[24] where it was ruled:

1. PLDT's prayer in its *Manifestation and Motion* that the issue of regularization be endorsed to the NLRC, the Regional Director ruled that violations of the law and rules in labor-contracting under Section 9, Rule VIII, Book Three of the Omnibus Rules Implementing the Labor Code of the Philippines,[25] is considered a labor standards violation and thus, within the visitorial and enforcement powers of the DOLE.[26] Further, the legal consequence of a finding of labor-only contracting is the regularization by the principal of the employees provided by the labor-only contractor.[27] Hence, the issue of regularization may be determined by the DOLE as in incident of its

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22 *Id.* at 101.

23 *Id.*

24 *Id.* at 439–745.

25 SEC. 9. *Labor-only contracting.* — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person: (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed. (b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (c) For cases not falling under this Rule, the Secretary of Labor and Employment shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

26 *Rollo* (G.R. No. 244695), p. 648.

27 *Id.*

jurisdiction to the determine the existence of labor-only contracting.[28]

2. The Regional Director also ruled that PLDT failed to present evidence to refute the LLCOs findings that some of its contractors are engaged in labor-only contracting despite having been afforded due process. As a result, several of PLDT's contractors were declared as "labor-only contractors."[29]

Based on these findings, the Regional Director found PLDT and its contractors solidarily liable to pay the unpaid monetary benefits of the contractors' workers amounting to PHP 78,699,983.71. The contractors found to be engaged in labor-only contracting were ordered to cease and desist from further engaging in contracting activities; and the license of those with existing DO 18-A registration were revoked. Finally, PLDT was ordered to regularize and include in its payroll, the workers of the declared labor-only contractors.[30]

On July 14, 2017, PLDT filed a Memorandum of Appeal[31] before the Secretary of Labor challenging the Order of the Regional Director. On July 12, 2017, the Regional Director issued a Supplemental Order[32] enumerating the names of the workers of each contractor that were declared regular employees of PLDT. On August 3, 2017, MKP filed its Opposition to PLDT's appeal.[33] On September 28, 2017, a Supplement to Opposition to Appeal[34] was also filed where MKP attached the affidavits of the workers interviewed during the SAVE proceedings to support the Regional Director's finding that PLDT and its contractors were engaged in labor-only contracting.[35]

Ruling of Sec. Bello

On January 10, 2018, Sec. Bello issued his Resolution[36] to the appeal filed by PLDT and the latter's contractors. Sec. Bello found no merit in PLDT's appeal but partially granted some of the appeal of the contractors.[37] In his Resolution, Sec. Bello found that the notarized statements of the

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[28] *Id.*
[29] *Id.* at 648–649.
[30] *Id.* at 698–861.
[31] *Id.* at 862–928.
[32] *Id.* at 747–861.
[33] *Id.* at 929–964.
[34] *Id.* at 978–995.
[35] *Id.* at 1006–1281.
[36] *Id.* at 1282–1481.
[37] *Id.*

contractor's officers and the Service Agreements, and other documents that PLDT offered were self-serving and did not constitute substantial evidence to dispute the Regional Director's ruling of labor-only contracting. On the contrary, the Regional Director's finding that PLDT exercised control over the contractors' workers was supported by said workers' affidavits, SAVE notes, and interviews of contractors' officers and line supervisors.[38]

In summary, the Sec. Bello ordered the following:

1. Seven thousand four hundred sixteen workers of the contractors that were declared as labor-only contractors were deemed as regular employees of PLDT from the time of their initial deployment. PLDT was ordered to include them in its payroll of regular employees.

2. The DO 18-A registration of the declared labor-only contractors were ordered to be cancelled after the conduct of cancellation proceedings.

3. Contractors and PLDT were ordered to solidarily pay the unpaid monetary benefits of the contractors' employees amounting to PHP 66,348,369.68.

4. Contractors that were able to show proof of compliance with DO 18-A were declared as legitimate contractors.

5. Contractors who were able to show sufficient proof of full or partial payment of the unpaid monetary benefits of their workers had their monetary liability either deleted or reduced.[39]

On April 24, 2018, Sec. Bello issued another resolution acting upon the motions for reconsideration filed by PLDT and MKP. Sec. Bello further reduced PLDT's and the contractors' total monetary liability to PHP 51,801,729.80. The number of employees regularized was also reduced to 7,344.[40]

Aggrieved with Sec. Bello's ruling, PLDT filed a Petition for *Certiorari* before the CA.[41]

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[38] *Id.* at 1399–1401.
[39] *Id.* at 1461–1481.
[40] *Id.* at 102.
[41] *Id.*

Ruling of the CA

On July 31, 2018, CA promulgated the assailed Decision affirming, albeit with substantial modifications, the resolutions of Sec. Bello. The dispositive portion of the Decision reads:

> . . . **WHEREFORE,** premises considered, judgment is rendered as follows:
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> 1. The Court **AFFIRMS** with **modification,** the Assailed Resolution dated January 10, 2018, and Resolution dated April 24, 2018 in *"In Re: Special Assessment or Visit of the Establishment (SAVE) in Philippine Long Distance Telephone Company (PLDT)"*, and docketed as OS-LS-0120-0804-2017, of public respondent Hon. Silvestre Bello III in his capacity as Secretary, Department of Labor and Employment, insofar as the same ordered the regularization of individuals performing functions and jobs that are usually necessary and desirable in the usual course of the business of the petitioner PLDT, Inc., specifically, as regards the **installation, repair** and **maintenance** of PLDT communication lines. Accordingly, and consistent with this Decision, the Court **REMANDS** to the Office of the Regional Director of the Department of Labor and Employment – National Capital Region the matter of the regularization of these individuals performing installation, repair and maintenance services for the conduct of the necessary factual determination on matters dealt with in this Decision.
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> 2. The Court **SETS ASIDE** the public respondent's Resolution dated January 10, 2018 and Resolution dated April 24, 2018, insofar as these issuances have declared that there was labor-only contracting of the following functions/jobs/ services, *viz*:
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> a. janitorial services, messengerial and clerical services;
> b. information technology (IT) firms and services;
> c. IT support services, both hardware and software; and applications development;
> d. back office support and office operations;
> e. business process outsourcing or call centers;
> f. sales; and
> g. medical, dental, engineering and other professional services;
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> and, accordingly, in this regard, the respondents Hon. Secretary of Labor and Employment Silvestre H. Bello III, and Manggagawa sa Komunikasyon ng Pilipinas, their officers, representatives, agents or any other person(s) acting on their behalf or under their direction are **ENJOINED** from implementing, enforcing and/or executing the Compliance Order dated July 3, 2017 in *Case No. NCROO-TSSD-JA-2017-05-001-GO-SOT/ Ref No. NCROO-TSSD1601-JA-004-PLDT,* Resolution dated January 10, 2018, and Resolution dated April 24, 2018 in *"In Re: Special Assessment or Visit of the Establishment (SAVE) in Philippine Long Distance Telephone Company (PLDT)", docketed as OS-LS-0120-0804-2017;* and

> 3. The Court **REMANDS** this case to the Office of the Regional Director of the Department of Labor and Employment – National Capital Region for the review and proper determination of the monetary award on the labor standards violation of petitioner PLDT, Inc., and to conduct further appropriate proceedings, consistent with this Decision.
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> **SO ORDERED.**[42]

The CA upheld the jurisdiction of the Regional Director and Sec. Bello to determine the existence of employer-employee relationship, which, according to the CA, is a condition *sine qua non* in the exercise of their visitorial and enforcement power.[43] The CA also agreed with Sec. Bello's ruling to prohibit PLDT from contracting out activities, services, jobs or functions that are usually necessary and desirable in the usual course of its business.[44] Thus, the CA held that individuals deployed by contractors performing installation, repair, and maintenance services of PLDT lines should be considered regular employees of PLDT.[45]

The appellate court, however, reversed Sec. Bello's ruling insofar as he ordered the regularization of the following groups of workers of the contractors: (1) those performing janitorial, maintenance, security, and messengerial services;[46] (2) medical services provider of PLDT;[47] (3) individuals who render "professional services;"[48] (4) contractual workers engaged in information technology-based services;[49] and (5) employees engaged in sales who are paid on commission basis.[50]

To explain the foregoing declarations, the CA held that the primary standard that determines regular employment is the reasonable connection between the activity performed by the employee and the usual business or trade of the employer. When the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular. Thus, individuals deployed by the contractors who are performing installation, repair, and maintenance services of PLDT lines are considered regular employees of PLDT.[51]

By way of an exception, the Labor Code also considers as regular, a

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42 *Id.* at 143–144.
43 *Id.* at 118–121.
44 *Id.* at 122.
45 *Id.*
46 *Id.* at 122–126.
47 *Id.* at 126–128.
48 *Id.* at 128.
49 *Id.* at 128–130.
50 *Id.* at 130–131.
51 *Id.* at 131–132.

casual employment arrangement that had lasted for at least one year, regardless of the engagement's continuity. The exception, however, cannot apply to the group of individual workers enumerated above. The engagement of these workers, no matter how long cannot ripen into regular employment with PLDT as the law is clear that the exception only applies to casual employees who rendered at least one year of service or, based on jurisprudence, to project employees who were continuously rehired even after the cessation of the project to which they were assigned. The said group of workers are neither casual nor project employees of PLDT but rather are employees of independent contractors which supply services to the company under permitted legitimate job contracts. They are governed by different provisions of the Labor Code and its applicable implementing rules. For instance, the contractual workers engaged by PLDT in information technology-enabled services are explicitly governed by DO 01-2017, which, on the other hand, are excluded from the application of DOLE Department Order No. 174, Series of 2017[52] (DO 174-2017).[53]

Returning to its earlier ruling ordering the regularization of workers performing installation, repair, and maintenance services of PLDT lines, the CA recognized that certain legal consequences may arise from this pronouncement. The CA explained that the regularization of said workers might result in the payment of salaries and benefits beyond the prescriptive period provided under the Labor Code, or employees receiving double compensation. The CA realized that the resolution of these legal consequences would require an inquiry into factual issues that the appellate court cannot determine considering the limited scope and inflexible character of a *certiorari* proceeding. Thus, the CA ordered the case be remanded to the Regional Director for the proper determination of factual issues concerning the legal consequences of its order to regularize specific workers of contractors.[54]

Finally, the CA ruled that the issuances of Sec, Bello were tainted with grave abuse of discretion. To begin with, the ruling of the Regional Director, on which the resolution of Sec. Bello was based, presumed, not demonstrated, the existence of control. It was based on interviews conducted by the labor law compliance officers of not more than a thousand individuals, which figure also includes regular PLDT employees, but the results of which were made to apply to at least 7,344 employees. It is highly conjectural, if not purely speculative to consider the individual circumstances of some workers who were interviewed to be exactly like the factual circumstances pertaining to the other contractors' workers. Thus,

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[52] Rules Implementing Articles 106 to 109 of Labor Code, as amended (2017).
[53] *Rollo* (G.R. No. 244695), pp. 132–133.
[54] *Id.* at 133–134.

such findings cannot constitute the substantial evidence required to prove the existence of employer-employee relationship or labor-only contracting.[55]

Further, the assailed issuances neither stated nor referred to any concrete evidence to support a finding of an employer-employee relationship. The assailed issuances can only refer to inconclusive and general declarations made by a handful of individuals who were interviewed during the inspection. The findings and conclusions of the Regional Director were largely based on what PLDT referred to as anecdotal evidence. In the absence of facts supporting a general allegation or broad claim that employment relationship existed, the evidentiary standard could not be said to have been satisfied.[56]

The CA also called-out Sec. Bello's apparent bias in favor of the contractors' workers. According to the CA, this is evident from his public comment that appears to have spilled over his appreciation of the evidence presented in this case. The CA explained that Sec. Bello wrongly appreciated the exercise by PLDT of its power to control the results intended to be achieved by the contracting arrangement with the concept of control as to the means and methods of achieving the said results.[57]

As regards the monetary award ordered by Sec. Bello, the CA found that the same was arrived at arbitrarily. It was based on the application of the straight computation method, which is an oversimplified approach that is not in accord with existing jurisprudence. Thus, the same must be remanded to the Regional Director for the determination of the proper proceeding to determine the exact amount of monetary award.[58]

Issue

Aggrieved by some aspect of the CA's decision or by its entirety, petitioners filed their respective petitions for review on *certiorari* before the Court.

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[55] *Id.* at 134–137.
[56] *Id.* at 137–139.
[57] *Id.* at 139–142.
[58] *Id.* at 142–143.

MKP alleges that the CA failed to consider the totality of the circumstances of every contractor's contracting agreement with PLDT, and instead, sweepingly categorized them as either labor-only or legitimate contracting, based only on their contracted-out services. By doing so, the CA unjustly disregarded the specific factual findings of the Regional Director and Sec. Bello, even if these findings were supported by substantial evidence, and therefore, conclusive and binding upon courts. What the CA should have done is to determine whether Sec. Bello had committed a jurisdictional error in his factual findings. Substantial evidence, MKP argues, was presented during the proceedings, which consisted of the numerous interviews and affidavits, voluminous documents supplied by PLDT and its contractors, and reports on ocular inspection of outside plant work sites.[59]

Next, MKP claims that the CA erred in holding that the specific group of contracted workers that perform work not "directly related to the core activities" of PLDT, such as janitors, and security guards, among others, cannot be regularized by PLDT.[60] In this regard, MKP argues that jurisprudence is replete of cases where a contractor that deployed janitors and utility workers was still determined to be engaged in labor-only contracting. Similarly, there is nothing in the laws defining legitimate job contracting that states that employees of contractors performing work not directly related to the core activities of the principal may only be treated as regular employees of the contractor. They also not require the performance of activities "directly related to the core activities" of the principal before labor-only contracting may be said to exist. MKP claims that the CA effectively devised its own indicator for labor-only contracting that is inconsistent with the provisions of the Labor Code and DO 18-A, and therefore gravely abused its discretion. MKP also explains that the CA's ruling would create results that are iniquitous to the affected messengers and janitors. It effectively shielded the erring contractors and PLDT from any liability arising from their labor-only contracting scheme.[61]

Further, MKP asserts that the CA made the correct ruling, albeit hinged on the wrong legal basis, when it declared as regular employees of PLDT, workers of contractors engaged in the installation, repair, and maintenance of telephone or data lines. MKP insists that PLDT's and the concerned contractors' violation is grounded upon the fact that these workers were performing functions being done by regular employees of PLDT. Moreover, several contractors supplying these workers: (1) had no valid service contracts with PLDT, (2) had no DOLE contractor's license, or (3)

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[59] *Id.* at 43–46.
[60] *Id.* at 49–50.
[61] *Id.* at 50–55.

their workers were repeatedly hired for terms shorter than that provided in the service contact.[62]

Similarly, the CA made the wrong ruling when it declared those who perform medical, dental, engineering, and other professional services as independent contractors, and thus, no labor-only contracting could exist between them and PLDT as their relationship is only bilateral. MKP stresses that the relationship between PLDT, the contractor providing these medical, dental, engineering, and other professional services, and the latter's workers, is a trilateral one governed by Article 106 of the Labor Code.[63]

MKP also found as an error the appellate court's declaration that sales workers of PLDT's contractors are outside the coverage of DO 18-A. These workers were supplied by contractors found to be engaged in labor-only contracting primarily because some contractors exercised no control and supervision over the performance of sales personnel of their work. MKP also argues that the payment on commission basis does not negate the existence of employer-employee relationship. It does not change the fact that these workers, the contractor that hired them, and PLDT have a trilateral relationship that is regulated by DO 18-A. Since the contractors committed prohibited contracting activities, these employees should be deemed as PLDT's employees.[64]

Next, MKP claims that the CA should not have exempted contractors of PLDT providing information technology-enabled services and sales agents from the coverage of DO 18-A. MKP argues that what is exempt is the business process outsourced but not the contractors themselves. Otherwise, every contractor which have these services as its principal purpose in their articles of incorporation shall be exempt from the coverage of Article 106 of the Labor Code and the issuances implementing it.[65]

MKP contradicts the CA's ruling that Sec. Bello's decision was tainted with grave abuse of discretion because PLDT was denied administrative due process. PLDT participated actively during the SAVE inspections and had the opportunity to adduce evidence, and comment and oppose the activities conducted by the DOLE Assessment Team. However, PLDT refused to participate, despite notice, in the mandatory conferences called by the DOLE-NCR RD. Had it chosen to participate, PLDT could have presented evidence to refute the DOLE Assessment Team's report. Further, during the SAVE inspection and while the mandatory conferences were going on,

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[62] *Id.* at 58.
[63] *Id.* at 60–62.
[64] *Id.* at 63–65.
[65] *Id.* at 68.

PLDT filed several please pleadings with the DOLE Assessment Team. It also appealed the Order of the Regional Director before Sec. Bello, and when it received the latter's adverse decision. PLDT also moved for reconsideration.[66]

MKP also argues that the decision of Sec. Bello was based on substantial evidence. The representative number of workers interviewed was sufficient to show the violations committed by PLDT and the contractors, as those not interviewed are also employed under the same contracts and are subjected to the same working conditions. Moreover, the sworn testimonies were corroborated by documentary evidence such as the "Technical Protocols" attached and made part of the service contracts between PLDT and the contractors. Contrary to the CA's ruling, the "Technical Protocols" are indicative of the control that PLDT exercises over the workers of its contractors. These protocols are not mere guidelines to achieve the desired results but are dictations of the means and methods to be employed in doing the work.[67]

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PLDT asserts that the CA erred in upholding the regularization of the contractors' workers performing installation, repair, and maintenance services. According to PLDT, the CA failed to consider the possibility that these workers were engaged as "project" or "seasonal" employees, which are valid employment arrangements for the performance of any kinds of services, whether they be usually necessary or desirable in the usual business or trade of the employer or not. PLDT holds that the CA disregarded the clear-cut distinctions between a "fixed-term" employment on one hand, and a "regular" employment on the other, when it made a sweeping declaration that the "installation, repair and maintenance" workers should be regularized. The fact that a job is usually necessary or desirable, PLDT explains, does not automatically imply regular employment.[68]

PLDT also points out that the work performed by the workers concerned are construction-related activities that are, not only distinct from PLDT's telecommunication business, but also excluded from the coverage of DO 174-2017.[69]

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[66] *Id.* at 66–74.
[67] *Id.* at 74–88.
[68] *Rollo* (G.R. No. 244752), pp. 98–102.
[69] *Id.* at 107–110.

PLDT also assails the CA's pronouncement that Sec. Bello can determine the existence of employer-employee relationship in the exercise of his visitorial and enforcement powers. PLDT maintains that such conclusion has no basis in fact and law because the purpose of SAVE is to verify compliance with labor laws based on data and not to adjudicate. Meanwhile, the existence of employer-employee relationship, and consequently, regularization, is a legal issue, the determination of which requires examination of evidence that are not verifiable in the normal course of a labor inspection. PLDT is adamant that the regularization claims should be resolved in an adversarial proceeding that is within the jurisdiction of the Labor Arbiters.[70]

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For his part, Sec. Bello argues that the CA's ruling should have been limited to the determination of whether he committed grave of abuse of discretion. He explains that the writ of *certiorari* does not include the correction of his evaluation of the evidence on record, considering that the factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence. Sec. Bello claims that there is nothing to support the accusation that he arrived at his findings arbitrarily. He examined the evidence offered by PLDT and each contractor involved, not only during the main appeal, but also upon their motions for reconsideration. Also, his findings were based on several pieces of evidence, both testimonial and documentary.[71]

Further, Sec. Bello surmises that there is nothing legally objectionable about the fact that his decision was applied to 7,344 employees even if the number of workers interviewed were not more than 1,000. According to Sec. Bello, in case of an award arising from a company's violation of labor legislations, the entire roster of employees should benefit from the award.[72]

The finding that PLDT was engaged in labor-only contracting, according to Sec. Bello, is strongly supported by the fact that PLDT was exercising control over the workers of the contractors. This conclusion was reached after he considered the totality of the evidence presented by all parties, including those offered by the contractors and PLDT's organic employees.[73]

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[70] *Id.* at 114–124.
[71] *Rollo* (G.R. No. 245294), p. 103–104.
[72] *Id.* at 104–106.
[73] *Id.* at 117–127.

PLDT's control over the contractors' worker, Sec. Bello contends, is sufficient to validate the finding of labor-only contracting notwithstanding that the workers were performing activities such as janitorial, messengerial, and clerical services, IT-related services, back-office support and office operations, business processing outsourcing, sales, and medical, engineering, and other professional services, so long as their work were controlled by PLDT. Thus, it was an error on the part of the CA to declare that the above-mentioned services were correctly contracted out by PLDT.[74]

Next, Sec. Bello asserts that apart from the finding of labor-only contracting, PLDT and its contractors committed several violations of DO 18-A that also effectively accorded regular status to the workers. Sec. Bello points out that PLDT and the contractors were guilty of contracting out services in bad faith when they repeatedly hired their workers for periods shorter than their service agreement, in an obvious effort to circumvent their right to security of tenure. This finding, Sec. Bello explains, was arrived at after all available substantial evidence was considered, and thus, should be given great respect.[75]

As regards the supposed arbitrariness of his monetary awards, Sec. Bello contends that the CA's reliance on *South Cotabato Communications Corp. v. Sto. Tomas* (South Cotabato),[76] to justify its ruling is misplaced. Unlike in *South Cotabato*, Sec. Bello based his award not only on the interviews of the workers but also on the several pieces of evidence presented during the entire SAVE proceedings. This is supported by the fact that Sec. Bello adjusted the monetary obligations of some contractors based on the documents and additional evidence they submitted. Sec. Bello claims that if his computations have been arbitrary, the monetary award should have been uniform between him and the Regional Director.[77]

Finally, Sec. Bello belies the findings that he deprived PLDT of its right to due process, and that his ruling failed to distinctly state the facts and law on which it was based. Sec. Bello bares that PLDT was not denied the opportunity to present its case as it was allowed to submit evidence during the preliminary and mandatory conferences. He then concluded with his argument that he made an independent consideration of the law and facts for if merely relied on the findings of the Regional Director, it would not be possible for him to make the necessary modifications and adjustment in his

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[74] *Id.* at 127–129.
[75] *Id.* at 129–133.
[76] 787 Phil. 494 (2016) [Per J. Velasco, Jr., Third Division].
[77] *Rollo* (G.R. No. 245294), p. 133–138.

ruling.[78]

Ruling of the Court

We sustain the assailed Decision of the CA and, thus, dismiss the consolidated Petitions.

The extent of the Court's judicial review of labor cases vis-à-vis the scope of the CA's certiorari review of the decisions of the Secretary of Labor and the labor tribunals

To begin with, it must be emphasized that the consolidated petitions before Us are riddled with factual issues that would require the Court to take a second look at the records of the case just to have a complete disposition of this long-drawn controversy. Normally, these factual issues are outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court, which is a mode of appeal that is almost restricted to pure questions of law,[79] save for some exceptions where factual review is allowed, such as when the finding of the lower tribunals are contradictory.[80]

We had recently confirmed this doctrine in *Coca-Cola FEMSA Philippines, Inc. v. Coca-Cola FEMSA Phils., MOP Manufacturing Unit Coordinators and Supervisors Union-All Workers Alliance Trade Unions* (CCFP-MMUCSU-AWATU),[81] where We explained:

> As early as 1993, the Court has already ruled that "**judicial review by [the Supreme] Court in labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the labor officer or office based his or its determination** but are limited to issues of jurisdiction and grave abuse of discretion." This limitation on the scope of review in labor cases is based on the summary nature of labor adjudication proceedings and the nature of the mode of review allowed by law therefrom. Thus, "[i]n labor cases, petitions for review on certiorari under Rule 45 [are] limited to determining whether the Court of Appeals was

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78 *Id.* at 138–142.

79 *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 120 (2017) [Per J. Leonen, Second Division].

80 *Dela Cruz-Cagampan v. One Network Bank, Inc.*, G.R. No. 217414, June 22, 2022 [Per J. Leonen, Second Division].

81 G.R. No. 238633, November 17, 2021 [Per J. Gaerlan, Second Division].

> correct in finding the presence or absence of grave abuse of discretion and jurisdictional errors on the part of the lower tribunal."[82]

Meanwhile, and as already intimated in the above-quoted ruling, the purview of the CA's *certiorari* powers over labor disputes are focused on finding whether grave abuse of discretion attended the assailed ruling of the labor tribunal or officer.[83]

No doctrine is more settled than that the sole office of a writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction.[84] A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment to be "equivalent to lack of jurisdiction."[85] Furthermore, the abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law.[86] In labor disputes, grave abuse of discretion may be ascribed to labor officers and tribunals when, *inter alia*, their findings and conclusions are not supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[87] In *Barroga v. Quezon Colleges of the North*,[88] We held:

> In labor cases, grave abuse of discretion may be ascribed when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[89]

Based on the foregoing, the scope of the Court's review of the CA's decision involving labor disputes remains confined to questions of law; a unique question of law, at that: did the CA correctly determine whether grave abuse of discretion attended the determination and resolution of the NLRC, or for this matter, the Secretary of Labor?[90] This is best explained in *Montoya v. Transmed Manila Corp.*,[91] to *wit*:

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[82] *Id.*; Emphasis and underscoring supplied.
[83] *G. & S Transport Corp. v. Medina*, G.R. No. 243768, September 5, 2022 [Per J. Hernando, First Division].
[84] *Romy's Freight Service v. Castro*, 523 Phil. 540, 546 (2006) [Per J. Corona, Second Division].
[85] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, *supra* note 79.
[86] *Id.*
[87] *Atienza v. Orophil Shipping International Co., Inc.*, 815 Phil. 480, 491 (2017) [Per J. Perlas-Bernabe, First Division].
[88] 844 Phil. 1031 (2018) [Per J. Perlas-Bernabe, Second Division].
[89] *Id.* at 1039; Citations omitted.
[90] G.R. No. 238633, November 17, 2021 [Per J. Gaerlan, Second Division].
[91] 613 Phil. 696 (2009) [Per J. Brion, Second Division].

> We review in this Rule 45 petition the decision of the CA on a Rule 65 petition filed by Montoya with that court. In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. **In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case.[92] (Emphasis and underscoring supplied)

Bearing these foregoing principles in mind, We rule that the CA did not err in finding grave abuse of discretion on the part of Sec. Bello in issuing his assailed Resolutions. As will be discussed, the CA correctly ruled that the Resolutions of Sec. Bello were not supported by substantial evidence.

The Secretary of Labor, in the exercise of its visitorial and enforcement power, may determine the existence of employer-employee relationship

The SAVE process was conducted in PLDT's premises and offices pursuant to the DOLE's visitorial and enforcement powers under Article 128 of the Labor Code, which provides:

> ART. 128. Visitorial and Enforcement Power. (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to, day or night, whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.
>
> (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-

[92] *Id.* at 706–707.

employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

(c) The Secretary of Labor and Employment may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or his duly authorized representatives issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

(e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall, after appropriate administrative investigation, be subject to summary dismissal from the service.

(f) The Secretary of Labor and Employment may, by appropriate regulations, require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code.[93]

The purpose of these powers granted to the Secretary of Labor, or his

[93] LABOR CODE, art. 128.

duly authorized representative, is to determine violations of, and to enforce the provisions of the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Indispensable to the DOLE's exercise of such power is the existence of an actual employer-employee relationship between the parties.[94]

This power of the DOLE to determine the existence of an employer-employee relationship to carry out its mandate under Article 128 has been settled in *People's Broadcasting Service v. Secretary of the Department of Labor and Employment*.[95] Thus:

> No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. **The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code**, as amended by RA 7730.
>
> The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct. The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.[96] (Emphasis supplied)

The DOLE has the authority to rule on the existence of an employer-employee relationship between the parties, considering that such relationship is a condition precedent for the exercise of its visitorial and enforcement powers. Conversely, if there is no employer-employee relationship, or if one has already been terminated, the Secretary of Labor is without jurisdiction to determine if violations of labor standards provision had in fact been committed, and to direct employers to comply with their alleged violations of labor standards.[97]

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[94] *South Cotabato Communications Corp. v. Sto. Tomas*, 787 Phil. 494, 506 (2016) [Per J. Velasco, Jr., Third Division].

[95] 683 Phil. 509 (2012) [Per J. Velasco, Jr., *En Banc*].

[96] *Id.* at 518.

[97] *South Cotabato Communications Corp. v. Sto. Tomas*, 787 Phil. 494, 508 (2016) [Per J. Velasco, Jr.,

The present case does not fall under the "exception clause" of Article 128 of the Labor Code

PLDT asserts that the DOLE has no jurisdiction over the case because the pieces of evidence used in determining the existence of employer-employee relationship are not subject to the "normal course" of a labor inspection under Article 128 of the Labor Code.[98] Moreover, according to PLDT, considering that the present case involves an inquiry into the dynamics of the trilateral relationship between the principal, the contractor, and the contractors' workers, the DOLE was divested of its jurisdiction to determine the employer-employee relationship.[99]

We do not agree.

In *Meteoro v. Creative Creatures, Inc.* (Meteoro),[100] We held that the so-called "exception clause" of Article 128 of the Labor Code has the following elements, all of which must concur: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection.[101] To divest the DOLE of jurisdiction under the "exception clause," We explained:

> We would like to emphasize that "to contest" means to raise questions as to the amounts complained of or the absence of violation of labor standards laws; or, as in the instant case, issues as to the complainants' right to labor standards benefits. **To be sure, raising lack of jurisdiction alone is not the "contest" contemplated by the exception clause. It is necessary that the employer contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results. More importantly, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters be not verifiable in the course of inspection.** Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine it; and these officers are not divested of jurisdiction to decide the case.[102] (Emphasis supplied)

Third Division].

[98] *Rollo* (G.R. No. 244752), pp. 113–123.

[99] *Id.* at 118–121.

[100] 610 Phil. 150 (2009) [Per J. Nachura, Third Division].

[101] *Id.* at 160; Citations omitted.

[102] *Id.* at 162–163.

Thus, in *Bay Haven, Inc. v. Abuan*,[103] We held that the DOLE was not divested of its jurisdiction over the case because the pieces of evidence considered (alleged contract of lease, payroll sheets, and quitclaims) were all verifiable in the normal course of inspection. We further held that granting they were not examined by the labor inspector, they have nevertheless been thoroughly examined by the Regional Director and the DOLE Secretary. For these reasons, the exclusion clause of Article 128 (b) does not apply.[104]

Here, the DOLE was not divested of its jurisdiction because the evidence considered are verifiable in the normal course of inspection. PLDT asserts that the DOLE relied on the affidavits, SAVE notes, and interviews of contractors' officers and line supervisors in issuing the Resolutions. However, records show that the DOLE also examined service agreements and other employment documents and inspected work areas.[105] Certainly, the service agreements and other employment documents are verifiable in the normal course of inspection.

PLDT also relies on Our pronouncement in *Meteoro* where We ruled that "whether or not petitioners were independent contractors/project employees/freelance workers is a question of fact that necessitates that examination of evidentiary matters not verifiable in the normal course of inspection."[106] This pronouncement must be put into context. In *Meteoro*, the respondent (corporation) claimed that the petitioners were not precluded from working outside the service contracts they had entered into with the respondent and that there were instances when petitioners abandoned their service contracts with the respondent, because they had to work on another project with a different company. With this, We held that the resolution of these issues requires the examination of evidentiary matters not verifiable in the normal course of inspection.[107] In other words, it is not the question of whether the individuals involved are independent contractor, project employees or freelance workers that divests the DOLE jurisdiction over the case. Rather, it is whether the answer to this question requires the examination of evidentiary matters not verifiable in the normal course of inspection.

In this case, PLDT submits that the DOLE has no jurisdiction over the case considering that the inquiry examines the dynamics of the trilateral relationship among the principal, the contractor, and the contractor's

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[103] 582 Phil. 451 (2008) [Per J. Austria-Martinez, Third Division].
[104] *Id.* at 466.
[105] *Rollo* (G.R. No. 244695), p. 377.
[106] *Rollo* (G.R. No. 244752), p. 118; *Meteoro v. Creative Creatures, Inc.*, supra note 99, at 162.
[107] *Meteoro v. Creative Creatures, Inc.*, *id.*

workers. This assertion, without more, will not trigger the application of the "exception clause" under Article 128 of the Labor Code. To be sure, this "dynamics" may easily be determined in the contracts and other related documents that are expected to be kept and maintained in premises of the workplace. As such, PLDT fails to establish that the factual circumstances surrounding this case necessitate an examination of evidentiary matters not verifiable in the normal course of inspection. Therefore, this case falls under the jurisdiction of the DOLE.

Labor contracting is not illegal per se

We must clarify that labor contracting is not illegal *per se*. The fact that PLDT had contracted out specific jobs, works, or services does not automatically mean that the contractors' employees are the direct employees of PLDT.

In *BPI Employees Union-Davao City-FUBU v. Bank of the Philippines Islands*,[108] We held that contracting out of services is not illegal *per se*, which is an exercise of business judgment or management prerogative and absent any proof that the employer acted maliciously or arbitrarily, We will not interfere with the exercise of judgment by an employer.[109]

We explained in *Aliviado v. Procter & Gamble Phils., Inc.*[110] that:

> Clearly, the law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, **it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature**. However, in order for such outsourcing to be valid, it must be made to an *independent contractor* because the current labor rules expressly prohibit labor-only contracting.
>
> To emphasize, there is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such

[108] 715 Phil. 35 (2013) [Per J. Mendoza, Third Division].
[109] *Id.* at 49.
[110] 628 Phil. 469 (2010) [Per J. Del Castillo, Second Division].

> contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.[111]

Indeed, Article 106 of the Labor Code expressly allows an employer to engage in legitimate labor contracting, which the DOLE implements through DO 18-A and DO 174-2017. An employer is not necessarily engaged in labor-only contracting whenever it farms out specific jobs, works, or services. We must distinguish between legitimate labor contracting and labor-only contracting.

As will be discussed below, Sec. Bello's findings that PLDT engaged in labor-only contracting must be anchored on substantial evidence. Otherwise, We cannot sustain Sec. Bello's assailed Resolutions.

Sec. Bello committed grave abuse of discretion in issuing the assailed resolutions

Factual findings of the Secretary of Labor are generally accorded respect and finality in the absence of grave abuse of discretion.[112] As already mentioned, in labor cases, grave abuse of discretion may be ascribed when its findings and conclusions are not supported by substantial evidence.[113]

In ruling that Sec. Bello committed grave abuse of discretion, the CA drew heavy parallels between the present case and our ruling in *South Cotabato*.[114] The appellate court explained that the ruling of the Regional Director was highly conjectural as it was based mainly on anecdotal evidence, *i.e.*, the interviews conducted by the labor law compliance officers of not more than a thousand individuals, which figure also includes regular PLDT employees, but the results of which were made to apply to at least 7,344 employees. According to the CA, the interviews do not constitute substantial evidence to prove the existence of employer-employee relationship or labor-only contracting.

We agree with the CA.

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[111] *Id.* at 483; Citation omitted; Emphasis supplied.
[112] *Finman General Assurance Corp. v. Salik*, 266 Phil. 803, 810-811 (1990) [Per J. Paras, Second Division].
[113] *Barroga v. Quezon Colleges of the North*, *supra* note 88.
[114] *Supra* note 76.

Substantial evidence was already defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[115] Indeed, in *South Cotabato,* the Court found the employees' allegation in their Reply as insufficient evidence to support the ruling of the Secretary of Labor. Thus:

> **The Secretary of Labor adverts to private respondents' allegation in their Reply to justify their status as employees of petitioners. The proffered justification falls below the quantum of proof necessary to establish such fact as allegations can easily be concocted and manufactured**. Private respondents' allegations are inadequate to support a conclusion absent other concrete proof that would support or corroborate the same. Mere allegation, without more, is not evidence and is not equivalent to proof. Hence, private respondents' allegations, essentially self-serving statements as they are and devoid under the premises of any evidentiary weight, can hardly be taken as the substantial evidence contemplated for the DOLE's conclusion that they are employees of petitioners.[116] (Emphasis and underscoring supplied)

The same is true in this case.

Indeed, the doctrine requiring the decisions of the Secretary of Labor to be supported by substantial evidence was not created out of thin air but finds mooring in the oft-cited requirements of administrative due process, which was first enunciated in *Ang Tibay v. The Court of Industrial Relations and National Labor Union, Inc.*[117] In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[118] these requirements were re-stated as follows:

> In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character." It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:
>
> (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
>
> (2) The administrative tribunal or body must consider the evidence presented.

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[115] *Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017) [Per J. Del Castillo, First Division].

[116] *Supra* note 76, at 511–512.

[117] 69 Phil. 635, 642–644 (1940) [Per J. Laurel, *En Banc*].

[118] 841 Phil. 114 (2018) [Per J. Leonen, Third Division].

> (3) There must be evidence supporting the tribunal's decision.
>
> (4) **The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."**
>
> (5) **The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.**
>
> (6) **The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.**
>
> (7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.[119] (Emphasis and underscoring supplied)

To ensure that their rulings are backed by substantial evidence, administrative tribunals, bodies, and officers, including the Secretary of Labor, are enjoined to utilize "authorized legal methods of securing evidence and informing [themselves] of facts material and relevant to the controversy."[120] Thus:

> In fact, the seminal words of *Ang Tibay* manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court reminded that administrative bodies have the active duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.[121]

It is, therefore, evident that even if labor proceedings, such as the Secretary of Labor's exercise of his or her visitorial and enforcement powers, are not tethered to technical rules of procedure, the process cannot completely ignore basic tenets of appreciating evidence. For instance, self-serving statements cannot be accepted as evidence.[122] Also settled is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[123] This was reiterated by the Court recently in *Sermona v. Hacienda Lumboy*[124]:

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[119] *Id.* at 135.

[120] *Saunar v. Executive Secretary*, 822 Phil. 536, 551 (2017) [Per J. Martires, Third Division].

[121] *Id.*

[122] *See Restaurante Las Conchas v. Gonzales*, 372 Phil. 697, 703–704 (1999) [Per J. Kapunan, First Division].

[123] *Rosaroso v. Soria*, 711 Phil. 644, 656 (2013) [Per J. Mendoza, Third Division].

[124] G.R. No. 205524, January 18, 2023 [Per J. Leonen, Second Division].

> **Although Section 10, Rule VII of the New Rules of Procedure of the NLRC allows a relaxation of the rules of procedure and evidence in labor cases, this rule of liberality does not mean a complete dispensation of proof.** Labor officials are enjoined to use reasonable means to ascertain the facts speedily and objectively with little regard to technicalities or formalities but nowhere in the rules are they provided a license to completely discount evidence, or the lack of it. The quantum of proof required, however, must still be satisfied.[125] (Emphasis and underscoring supplied)

The evidence relied upon by Sec. Bello failed to establish, among others, labor-only contracting and other illicit forms of employment arrangements

Central to Sec. Bello's declaration that PLDT and its contractors were engaged in labor-only contracting was the finding that PLDT, allegedly, was exercising control over the contractors' employees. Sec. Bello also found that PLDT's contractors committed other violations, such as repeatedly hiring its workers for short duration.

Here, Sec. Bello's finding of control allegedly exercised by PLDT was largely based on the interviews of the workers, and supported by the service agreements, "Technical Protocols" attached to some of the service agreements between PLDT and the contractors, as well as other employment documents. Sec. Bello also anchored on these interviews his findings of other violations, such as the contractors' alleged practice of repeatedly hiring workers for short contracts. We agree with the CA that these pieces of evidence are not substantial to establish these allegations.

To be sure, the interviews of the workers are mere allegations that are devoid of any probative value. While these interviews may have invited the DOLE's attention to PLDT's and its contractors' potential violations, to rely heavily on these pieces of evidence to support its conclusion is to ignore basic evidentiary tenets and principles.

In *South Cotabato*,[126] the Court rejected this specie of evidence as substantial evidence. It was explained:

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[125] *Javier v. Fly Ace Corp.*, 682 Phil. 359, 371 (2012) [Per J. Mendoza, Third Division].
[126] *Supra* note 76.

> The proffered justification falls below the quantum of proof necessary to establish such fact as allegations can easily be concocted and manufactured. Private respondents' allegations are inadequate to support a conclusion absent other concrete proof that would support or corroborate the same. Mere allegation, without more, is not evidence and is not equivalent to proof. **Hence, private respondents' allegations, essentially self-serving statements as they are and devoid under the premises of any evidentiary weight, can hardly be taken as the substantial evidence contemplated for the DOLE's conclusion**. . .

Indeed, as astutely cited by the CA, in *Tongko v. The Manufacturers Life Insurance Co., Inc.*,[127] the Court already warned about the dangers of utilizing anecdotal evidence to support factual conclusions. Thus:

> A disturbing note, with respect to the presented affidavits and Tongkos alleged administrative functions, is the selective citation of the portions supportive of an employment relationship and the consequent omission of portions leading to the contrary conclusion. For example, the following portions of the affidavit of Regional Sales Manager John Chua, with counterparts in the other affidavits, were not brought out in the Decision of November 7, 2008, while the other portions suggesting labor law control were highlighted. . .
>
> . . . .
>
> The answers to these questions may, to some extent, be deduced from the evidence at hand, as partly discussed above. But strictly speaking, the questions cannot definitively and concretely be answered through the evidence on record. The concrete evidence required to settle these questions is simply not there, since only the Agreement and the anecdotal affidavits have been marked and submitted as evidence.[128]

As can be shown above, anecdotal evidence is malleable and may be tailored to suit any narrative or conclusion.

We also agree that the application to 7,344 workers of the DOLE's findings based on the statements of not more than 1000 employees is venturing in speculation and guesswork. Conclusions based on "sampling" or "probability" should not be considered as substantial evidence because facts and circumstances showing control may not be uniform but instead be individualized, and therefore, must be established with particularity. The approach employed by the DOLE was highly speculative and failed to meet the substantial evidence requirement. The Court expresses apprehension to this approach considering the result of the interviews of less than 1000 employees were used as basis to regularize 6000 other employees. As

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[127] 636 Phil. 57 (2010) [Per J. Brion, *En Banc*].
[128] *Id.* at 97-98, 101.

mentioned, what is true for some may not be true for the rest. This conjectural method is indeed whimsical and arbitrary clearly indicating that the conclusions reached was tainted by grave abuse of discretion.

The heart of the matter is that the DOLE could have done more to collect evidence and to convince itself that the statements of the workers, are, in fact, grounded in reality. It had the power to **inspect** the actual work being done by the contractors' workers and the extent of PLDT's involvement in their work. This could have transcended the nature of these statements from being mere allegations to substantial evidence. However, based on the facts presented by the parties, no such thorough fact-finding was done.

Finally, the Court notes that in his resolution, Sec. Bello also indicated the contractors' alleged commission of other illegal forms of employment arrangements. Among those highlighted were the practice of repeatedly hiring workers for short periods, and contractors' workers performing work already performed by regular employees. Nevertheless, these findings suffer the same evidentiary defect as they are based largely, if not exclusively, from the interviews of the workers. Therefore, there is also no substantial evidence to sustain said findings.

The guidelines allegedly proving PLDT's control over the means and methods of performing work are, in fact, directed towards the company's desired results

The Court is also in accord with the CA's pronouncements that Sec. Bello mistook PLDT's exercise of its power to control the results with control as to the means and methods of achieving the said results. Indeed, the validation of results and quality, checking of final output, the use of Technical Protocols and Implementing Guidelines, the outline of the "General Scope of Work", product training and knowledge, and evaluation of the contractors were all erroneously considered to be "means and methods control".

It has been held that not all form of control could make the principal and contractor liable for labor-only contracting. In *Orozco v. Court of Appeals*,[129] the Court held:

[129] 584 Phil. 35 (2008) [Per J. Nachura, Third Division].

> It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
>
> **Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.**[130] (Emphasis and underscoring supplied, citations omitted)

These guidelines or indicators are still results-oriented, i.e., it is concerned with the successful implementation and completion of the work to be performed by the employee. Contrary to MKP's and Sec. Bello's claims, these guidelines do not dictate the means and methods of how the work is to be performed. To be sure, the guidelines did not direct the employee to utilize specific tools or a particular method. For instance, the "Technical Protocol" instructs the technician to install or to troubleshoot but said worker is left to decide how the installation or troubleshooting are to be carried out. To sustain MKP's and Sec. Bello's view would preclude any company, such as PLDT, to recommend guides and procedures that are consistent with its own systems, infrastructures, and facilities, which would also ensure that the contractors' work satisfies the needs and the intended results of PLDT.

There is no merit in PLDT's claim the those engaged in installation, repair, and maintenance services of PLDT lines may be considered as "project" or "seasonal" employees

The Court, nevertheless, sustains the CA's findings that the workers engaged in installation, repair, and maintenance services of PLDT lines need to be regularized because they perform tasks that are necessary and desirable, and directly related to the business of PLDT.

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[130] *Id.* at 49.

Anent this issue, PLDT argues that the CA "failed to account for the possibility of 'project' or 'seasonal' engagements."[131] PLDT's claim has no merit. To be sure, it is outside the province of the CA's competence to speculate on the nature of the worker's employment. It is up to PLDT to prove with substantial evidence that what We have in Our midst are, as a matter of fact and not possibly, cases of project or seasonal employment. It is settled that the burden of proof to establish project employment belongs to the employer.[132] PLDT's obligation is to prove its claim, not to enumerate legal provisions, doctrines, and precedents. Apart from its bare assertion, PLDT offered no iota of proof that the employee was assigned to carry out a specific project or undertaking, and the duration and scope of which were specified at the time the employee was engaged for such project.[133] Neither did PLDT prove that there was indeed a project undertaken.[134]

The same is true with proving seasonal or fixed-term employment.[135] To exclude those claimed as "seasonal" employee from those classified as regular employees, the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) they had been employed for the duration of the season.[136] No proof was ever given by PLDT to establish these circumstances.

On the other hand, the law on the matter is clear. Article 295 of the Labor Code provides:

> ART. 295. [280] Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.[137]

We agree with the CA that the employees engaged in installation, repair, and maintenance services of PLDT lines, are performing work

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[131] *Rollo* (G.R. No. 244752), p. 98.
[132] *Carpio v. Modair Manila Co. Ltd., Inc.*, G.R. No. 239622, June 21, 2021 [Per J. J. Lopez, Third Division].
[133] *See Engineering & Construction Corporation of Asia v. Palle*, 877 Phil. 60, 74 (2020) [Per J. Hernando, Second Division].
[134] *Supra* note 131.
[135] *See Price v. Innodata Phils. Inc.*, 588 Phil. 568, 586 (2008) [Per J. Chico-Nazario, Third Division].
[136] *Universal Robina Sugar Milling Corp. v. Acibo*, 724 Phil. 489, 501–502 (2014) [Per J. Sereno, First Division].
[137] LABOR CODE, Article 295.

directly related to PLDT's telecommunication business. Under Article 295, what determines regular employment is the reasonable connection between work performed by the employee and the usual business or trade of the employer.[138] It cannot be denied that without the work performed by these employees, PLDT would not be able to carry-on its business and deliver the services it promised its consumers.

Finally, the Court echoes the CA's view that regularization of the employees identified above would entail factual consequences that cannot be determined in this Decision. The CA correctly observed:

> Clearly, the application of these legal provisions to the facts of the case requires an inquiry into factual issues, such as the years of service of the contractors' workers and their period of actual deployment with PLDT, their receipt of salaries from the respective contractors, the amount and level thereof, and the payment of other benefits. These are factual issues which the Court in a certiorari proceeding under Rule 65 of the Rules of Court – being limited in scope and inflexible in character and limited to jurisdictional errors - cannot wade into.
>
> More importantly, the determination of which contractors and individuals deployed by these contractors are performing installation, repair and maintenance services of PLDT lines, likewise, requires an inquiry into facts that are presently not available to this Court and is a matter that is precluded by the present Rule 65 petition.
>
> Given all the above, a remand of the case for further conduct of proceedings by the Regional Director for the determination of these factual issues is in order.[139]

Similarly, the Court deems it necessary to remand the case to the Regional Director for the proper identification, review, and determination of these factual consequences of regularization.

The computation of the monetary awards, to which PLDT and the erring contractors are solidarily liable, needs to be revisited

Finally, the Court agrees with the CA's observation that the Regional Director and ultimately, Sec. Bello, adopted a "straight computation method"

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[138] *De Leon v. National Labor Relations Commission*, 257 Phil. 626, 632 (1989) [Per J. Fernan, Third Division].

[139] *Rollo* (G.R. No. 244695), p. 134.

in arriving at the monetary awards given to the contractors' workers. The "straight computation method" was explained in *South Cotabato*[140] in this manner:

> In a similar vein, the use of the straight computation method in awarding the sum of [PHP] 759,752 to private respondents, without reference to any other evidence other than the interviews conducted during the inspection, is highly telling that the DOLE failed to consider evidence in arriving at its award and leads this Court to conclude that such amount was arrived at arbitrarily.
>
> **It is quite implausible for the nine (9) private respondents to be entitled to uniform amounts of Service Incentive Leave (SIL) pay, holiday pay premium, and rest day premium pay for three (3) years, without any disparity in the amounts due them since entitlement to said benefits would largely depend on the actual rest days and holidays worked and amount of remaining leave credits in a year.**[141] (Emphasis and underscoring supplied)

Similarly, the Court observed here that the Regional Director awarded uniform amounts of service incentive leave pay (PHP 5,701.70), unpaid 13th month pay (PHP 24,016.17), and refund of unauthorized deductions (PHP 500.00), not only to workers working for the same contractor, but to workers employed by different contractors. The trend appears to almost all contractors, and while some employees were given different amounts, they come very few and far between. To illustrate, reproduced below are portions of the Regional Director's Order showing the amounts awarded to the workers of three contractors: AE Researcher Exponents, Inc., Aremay Enterprise, and Comworks, Inc. The names of the workers will be withheld for purposes of anonymity. Thus:

AE Researcher Exponents, Inc.:

No.	Name of Employee	13th Month Pay	Service Incentive Leave	Total
1	xxx	24,016.17	5,701.70	29,717.87
2	xxx	24,016.17	5,701.70	29,717.87
3	xxx	24,016.17	5,701.70	29,717.87
4	xxx	9,242.33	1,787.62	11,029.95
5	xxx	24,016.17	5,701.70	29,717.87
6	xxx	24,016.17	5,701.70	29,717.87
7	xxx	24,016.17	5,701.70	29,717.87
8	xxx	24,016.17	1,782.62	25,803.79
9	xxx	24,016.17	5,701.70	29,717.87

[140] *Supra* note 76.
[141] *Id.* at 511-512.

10	xxx	24,016.17	5,701.70	29,717.87
11	xxx	10,096.67	2,589.29	12,685.96
12	xxx	24,016.17	5,701.70	29,717.87
13	xxx	24,016.17	5,701.70	29,717.87
14	xxx	24,016.17	5,701.70	29,717.87
15	xxx	24,016.17	5,701.70	29,717.87[142]

Aremay Enterprises:

No.	Name of Employee	Service Incentive Leave	Unauthorized deductions	Total
1	xxx	5,701.70	500.00	6,201.70
2	xxx	5,701.70	500.00	6,201.70
3	xxx	5,701.70	500.00	6,201.70
4	xxx	5,701.70	500.00	6,201.70
5	xxx	5,701.70	500.00	6,201.70
6	xxx	5,701.70	500.00	6,201.70[143]

Comworks, Inc.:

No.	Name of Employee	13th Month Pay	Service Incentive Leave	Unauthorized deductions	Total
1	xxx	8,426.73	2,714.64	500.00	11,641.37
2	xxx	24,016.17	5,701.70	500.00	30,217.87
3	xxx	23,189.33	5,505.31	500.00	29,194.64
4	xxx	24,016.17	5,701.70	500.00	30,217.87
5	xxx	24,016.17	5,701.70	500.00	30,217.87
6	xxx	24,016.17	5,701.70	500.00	30,217.87
7	xxx	24,016.17	5,701.70	500.00	30,217.87
8	xxx	24,016.17	5,701.70	500.00	30,217.87
9	xxx	24,016.17	5,701.70	500.00	30,217.87
10	xxx	24,016.17	5,701.70	500.00	30,217.87
11	xxx	21,610.83	2,800.36	500.00	24,911.19
12	xxx	24,016.17	5,701.70	500.00	30,217.87
13	xxx	24,016.17	5,701.70	500.00	30,217.87
14	xxx	24,016.17	5,701.70	500.00	30,217.87
15	xxx	24,016.17	5,701.70	500.00	30,217.87
16	xxx	24,016.17	5,701.70	500.00	30,217.87
17	xxx	24,016.17	5,701.70	500.00	30,217.87
18	xxx	24,016.17	5,701.70	500.00	30,217.87
19	xxx	24,016.17	5,701.70	500.00	30,217.87
20	xxx	18,303.50	4,344.77	500.00	23,148.27
21	xxx	24,016.17	5,701.70	500.00	30,217.87
22	xxx	24,016.17	5,701.70	500.00	30,217.87

[142] *Rollo* (G.R. No. 244695), pp. 510.
[143] *Id.* at 512.

23	xxx	24,016.17	5,701.70	500.00	30,217.87
24	xxx	20,784.00	4,933.97	500.00	26,217.97
25	xxx	24,016.17	5,701.70	500.00	30,217.87
26	xxx	10,912.17	2,589.29	500.00	14,001.46
27	xxx	24,016.17	5,701.70	500.00	30,217.87
28	xxx	24,016.17	5,701.70	500.00	30,217.87[144]

The uniformity of the amounts awarded implies one thing – that almost all workers are receiving the same salary. We find this unrealistic if not impossible considering that: (1) the workers were employed by different contractors, (2) they are, presumably, engaged under separate employment contracts, and (3) they are, presumably and in varying degrees, performing different works or activities. Worse, the Regional Director failed to explain how these amounts were computed apart from his description that they were "based on the assessment". While Sec. Bello appears to have scrutinized the awards to the extent that he determined, per contractor, who is entitled to them and who are not, the Court cannot affirm these monetary awards, which, to Our minds, were erroneously computed.

Make no mistake, nevertheless, that under Article 109 of the Labor Code, PLDT and the contractors remain solidarily liable for these amounts. However, We agree with the CA that the case should be remanded to the Regional Director for the correct computation of the monetary awards after the conduct of the necessary proceedings intended for this purpose.

FOR THESE REASONS, the Petitions in G.R. No. 244695, G.R. No. 244751, and G.R. No. 245294 filed by petitioners Manggagawa sa Komunikasyon ng Pilipinas, PLDT, Inc., and Silvestre H. Bello III (Sec. Bello), respectively, are **DISMISSED**. The Decision dated July 31, 2018 and Resolution dated February 14, 2019 of the Court of Appeals in CA-G.R. SP No. 155563 are **AFFIRMED**.

The Resolution of Silvestre H. Bello III in OS-LS-0120-0804-2017, issued in his capacity as then Secretary of Labor, is **MODIFIED**. Sec. Bello's order to regularize the workers of PLDT's service contractors is **SET ASIDE,** except those performing installation, repair, and maintenance services, who are hereby declared regular employees of PLDT subject to the terms of the **REMAND** as set out below.

Accordingly, the Court **REMANDS** the case to the Office of the Regional Director of the Department of Labor and Employment – National Capital Region and **ORDERS** said office to conduct the following:

[144] *Id.* at 518–519.

(1) To review and properly determine the effects of the regularization of the workers performing installation, repair, and maintenance services;

(2) To review, compute, and properly determine, the monetary award on the labor standards violation, to which petitioner PLDT, Inc., and the concerned contractors are solidarily liable; and

(3) To conduct further appropriate proceedings, consistent with this Decision.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice