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Union dues are no longer compulsory. Or are they?

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Authors

Ana Luisa Dantas

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The Employment Reform (Law 13.467/2017) amended article 579 of the Consolidation of Labor Laws (CLT – Consolidação das Leis do Trabalho), with the result that payment of union dues is no longer compulsory, and employers can only deducted union dues from employees' pay if they have the employee's prior, express authorization to do so.

The constitutionality of this amendment was questioned by workers' unions in 19 constitutional challenges brought before Brazil's constitutional court, the Federal Supreme Court (STF – Supremo Tribunal Federal). One of the unions' main arguments was that doing away with the compulsory nature of union dues was contrary to article 146(II) and (III) of the Federal Constitution, which provides that only complementary legislation (which requires an absolute majority to be passed) may provide for contributions to unions.

Nonetheless, by a majority of six to three, the STF decided to reject the constitutional challenges, ruling that the change made by the Employment Reform was constitutional, and putting an end to compulsory union dues. A majority of the court therefore concluded that the amendment made by the Employment Reform was not unconstitutional either on formal grounds (Law 13.467 is ordinary legislation, not complementary legislation) or on material grounds (since it did not offend rights or freedoms guaranteed by the constitution). The court took the position that the freedom of union organization guaranteed by the Constitution gives employees not just the freedom to join a union (or not) but also the freedom to choose whether to contribute financially to the union that represents their professional category in collective bargaining.

Pressured to find new sources of financing, unions adopted a creative interpretation of the provisions of the Employment Reform, under which approval of union dues at a general assembly of employees would met the requirement of "prior" and "express" authorization for deduction of the dues from all employees' pay. Under this interpretation, approval would be collective rather than individual.

The STF, however, has issued a number of decisions contrary to the unions' interpretation. In most of those decisions, the STF finds that the wording of article 579 CLT, as amended by Law 13.5467/2017, makes it clear that under the new system of union dues and contributions, authorization is required from the party required to pay the dues, i.e. the employee. In other words, a collective authorization is not sufficient and each employee must authorize deduction of union dues before employers can validly do so.

Another trend among unions is to include a "negotiation fee" in collective bargaining agreements, to be paid by employers.

The question is, does a negotiation fee paid to workers' unions by employers have any basis in the legislation or the Constitution?

The Labor Courts have already considered this question, and have taken a stance against provisions in collective bargaining instruments for payment of fees directly by employers to workers' unions, on the grounds that such provisions violate the principle of union autonomy under article 8(III) of Brazil's Constitution and article 2 of ILO Convention no. 98.

Although most of the Labor Courts' decisions are contrary to the practice, they simply declare the provision in question to be void, not the collective agreement as a whole, and do not impose any liability or other consequence on employers that accepted the provision.

Five years after Law 13.467/2017 came into force, the end of compulsory payment of union dues and the unions' efforts to find new sources of revenue is a topic that still generates much litigation in the Labor Courts, and intensifies the debate over the need for a general reform of Brazil's union system.

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Ana Luisa Dantas