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The role of trade unions in legal support of collective agreements

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Abstract: In the article below, scientists are given such concepts as “collective agreement”, “collective negotiations”. In addition, the place of trade unions in matters of including a collective agreement at an enterprise is revealed, and the stages of collective negotiations between the employer and employees of the organization regarding the conclusion, amendment and operation of a collective agreement are listed, and different versions of scientists about who are the parties to the collective agreement are discussed. In addition, the author tried to describe and give examples to disclose the subject, types and purposes of including collective agreements, those benefits that may be provided for by the norms of this document; for this purpose, the methodology of comparative analysis of collective agreements of the Republic of Uzbekistan was used (indicating statistics on the conclusion of collective agreements in the republic) with other foreign countries. International labor standards in the field of labor are considered, citing the norms of the Conventions of the International Labor Organization (ratified by the Republic of Uzbekistan), regulating issues of collective bargaining and freedom to conclude a collective agreement at the enterprise. In the conclusion, the author gives several proposals for improving legislation in this direction.

Keywords: Collective agreement, collective bargaining, trade union, representative body of workers, International Labor Organization (ILO).

Introduction: Collective negotiations and the conclusion of collective agreements are defined as the main form of social partnership, which is aimed, on the one hand, at achieving social peace, and on the other, at regulating labor and other directly related relations, and establishing working conditions.[1].

This article will highlight some issues related to the participation of a trade union in concluding a collective

agreement. At different stages of state development, the collective agreement performed, with varying success, only a production and distribution function. Thus, it differed significantly from similar agreements in countries with developed market economies, where, as a result of long historical evolution, the collective agreement is characterized by a regulatory and protective function.

The concept and nature of a collective agreement have always been the central topic of research by labor scholars. For example, L.S. Tal believed that a collective agreement is a specific agreement not related to civil law contracts. He gave it a detailed description: a collective agreement is an agreement between a group or union of workers and individual employers or their union, establishing the content of future labor agreements in the event of their conclusion by these employers and members of the group or union [2 p.3].

I.S. Voitinsky made a huge contribution to the development of the doctrine of collective agreements. He developed theoretical models of the concept and content of collective agreements and was able to formulate well-founded conclusions about collective agreements, which are still relevant today. Thus, according to the teachings of I.S. Voitinsky, a collective agreement establishes labor standards, but at the same time, the subject of the collective agreement is divided into a team (group or trade union) and an individual (an individual worker). A collective agreement creates a certain form of contractual relations, but its legal consequences fall not on the person (group or legal entity) that is the counterparty to the agreement, but on individuals, the circle of which is not defined and who do not enter into legal relations with the employer under this agreement. Also, a collective agreement, according to I.S. Voitinsky, is only a preliminary agreement determining the content of those agreements that may be concluded in the future with an individual employee. At the same time, the collective agreement establishes the minimum rights of workers, and deviation from its terms in favor of workers is allowed. He also indicated that an unregistered collective agreement has the force of only a unilateral promise, since registration gives it the status of a source of law [3 p.116-187].

Until the 1930s, collective agreements played a dual role: they developed and supplemented the provisions of labor legislation, and also regulated social relations not regulated by labor legislation. In the 1930s, the importance of collective agreements significantly decreased, and from 1935 to 1947, they were not concluded at all [4 p.162].

The restoration of collective bargaining practice was associated with the adoption of the “General Provisions on the Procedure for Concluding Collective Agreements,” adopted on November 27, 1987 in the USSR. The imposition of the structure of the content of collective agreements “from above” was eliminated, and their registration was abolished [5 p.166].

To sum up, we can say that a collective agreement is a very necessary local act at the level of an organization, which discloses the roles of the employer and the representative body of employees, regulates their relations, there are procedures for reconciling emerging contradictions and, most importantly, ways to overcome difficulties in protecting the labor rights of employees.

In the history of independent Uzbekistan, issues of concluding, determining the content of a collective agreement, and making changes to it are regulated by the norms of the Labor Code of the Republic of Uzbekistan (hereinafter LC RUz).

According to Article 65 of the Labor Code of the Republic of Uzbekistan, a collective agreement is understood to be a legal act on labor that regulates individual labor relations and directly related social relations in an organization or individual entrepreneur and is concluded by employees represented by their representatives and the employer.

METHODS

During the study, the following methods of cognition were widely used: analysis, synthesis, logic, comparative legal analysis, observation, generalization, system analysis. In addition, data from the Federation of Trade Unions of Uzbekistan on statistics of collective agreements in organizations were studied.

RESULTS

By means of a collective agreement it is possible to find a balance of interests of both employees and employers. Therefore, it is not surprising that in the conditions of reforming labor legislation, the collective agreement comes to the forefront and becomes the main document, where higher standards will be established in comparison with those that will be fixed in the Labor Code of the Republic of Uzbekistan.

Unfortunately, today's statistics on the conclusion of collective agreements (especially in commercial organizations) show that it is very difficult to achieve the desired model of labor relations regulation (within the framework of social partnership, concluding collective agreements). Moreover, the indicators show that in commercial organizations the percentage of collective agreements concluded is several times lower than in the public sector. These statistics are given in Appendix [6].

According to the Federation of Trade Unions of

Uzbekistan [7], today in the republic there is one General Agreement, 105 sectoral agreements, 14 territorial agreements at the level of the Republic of Karakalpakstan, regions and the city of Tashkent, more than 111,789 collective agreements directly at enterprises and organizations. But this number is insufficient if we compare the number of existing organizations in the republic.

It should be noted that such a sad picture is not only observed in our country. Thus, there is a clear trend towards a decrease in the spread of collective agreements to British workers. If in Great Britain in 1984 collective agreements applied to approximately 71% of workers, then by the 1990s this figure had dropped to 54%, and at present it is believed that collective agreements protect only about 30% of workers in Great Britain. And according to the British Trade Union Congress, in 2005 collective agreements applied to only 7% of British workers [8 p.64].

According to the author, the main factors that hinder the conclusion of collective agreements are the lack of initiative of the parties and, first of all, such initiative is absent in commercial organizations. Often, workers are not united in them, representative bodies of workers have not been created that could organize themselves with the initiative to conclude a collective agreement, and if such representative bodies (trade unions) operate in commercial organizations, then the work to protect the rights and legitimate interests of workers is weak. Well, and, of course, organizations of the private sector of the economy do not want to take on additional obligations to create a system of additional guarantees for workers, because the main social function of a collective agreement is the function of protecting workers. It is expressed in the focus of the collective agreement on protecting, first of all, the collective interests of workers, and not the employer. At the same time, a collective agreement is a kind of instrument for ensuring fairness and equality of workers in labor relations, the main document regulating issues of labor protection and employment, ensuring social guarantees for workers.

It should be noted that concluding a collective agreement in a commercial organization has its advantages. First of all, these include direct interaction between employees and the employer, the search for the most optimal conditions for organizing the labor process in the company, and a comprehensive solution to a wide range of social and labor issues. Moreover, when concluding a collective agreement, which will establish additional guarantees for the company's employees (former employees of the company), the motivation of employees to work increases, the efficiency of the work of an individual employee increases, which is beneficial to the employer.

In addition, collective agreements can establish additional payments for work in a multi-shift mode, compensation payments for business trips, reimbursement of expenses for the use of property belonging to the employee, additional payments for the mobile and traveling nature of work, additional payments for long-term work experience, additional payments for work in difficult and harmful working conditions, additional payments for climatic conditions in the summer and winter periods, and much more.

Analysis of research results

Moving on to the participation of the trade union in concluding a collective agreement, it should be said that the Labor Code of the Republic of Uzbekistan in defining a collective agreement identifies two parties: employees and the employer. Despite this, the science of labor law is still debating the advisability of recognizing employees and the employer as parties to a collective agreement. There is a point of view according to which the "labor collective" or employees in general cannot be recognized as an independent subject of law [10 p. 263], since the theory of law identifies only two types of subjects: individuals and legal entities. Neither the labor collective nor the organizations of employees can be classified as the named subjects.

Thus, A.F. Nurtdinova, analyzing the status of the parties to a collective agreement, notes that by calling “workers” as a party, we use this term to denote a social institution (class) covered by cooperation in the broad sense of the word. She then suggests recognizing trade unions as a party to a collective agreement, since they, unlike the work collective or employees of the enterprise, “although they do not always have the rights of a legal entity, are nevertheless a legally defined subject of law” [11 p.81].

It should be said that even Kantorovich Ya.A. defended the independent role of trade unions as a tool for protecting the collective interests of workers, including when concluding a collective agreement. He called one of the principles of collective bargaining regulation the exclusive right of trade unions to act on behalf of the workers of the enterprise [12 p.176-190].

In connection with the above, the author considers it appropriate to recognize the “trade union” as the subject of this right and officially recognize its status.

The conclusion of a collective agreement is preceded by collective negotiations between representatives of the employer and representatives of employees. Today, the rules governing all procedures related to collective negotiations, settlement of disagreements, guarantees and compensation for persons participating in

negotiations apply to all levels - from a collective agreement within an organization to agreements at all levels. Modern legislation complies in this aspect with international legal norms [13].

The Labor Code of the Republic of Uzbekistan does not contain the concept of "collective negotiations", but international acts will help to fill this gap. Thus, the Convention of the International Labor Organization (hereinafter ILO) No. 154 "On the Promotion of Collective Bargaining" (this Convention has been ratified by the Republic of Uzbekistan) contains the concept of collective negotiations and defines it as all negotiations that are conducted between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for the purpose of determining the conditions of work and employment, and (or) regulating relations between employers and employees, and (or) regulating relations between employers or their organizations and an organization or organizations of employees.

The Labor Code of the Republic of Uzbekistan does not limit the employer and the trade union in choosing the issues to be discussed during collective bargaining. Both parties have sufficient freedom in choosing the place, time and procedure for holding negotiations. It is important to remember that the employer is obliged to create conditions that ensure the activities of employee representatives and the negotiating commission, including providing them free of charge with premises for meetings, holding meetings and consultations, means of internal communication and information, copying and other office equipment, and places for placing stands [14].

Having a fairly large freedom in choosing issues, often the trade union, acting as representatives of employees during collective negotiations on concluding a collective agreement, strives to defend benefits for its members. For example, increased guarantees for members of an elected trade union organization may be provided, related to the need to obtain preliminary consent from a higher trade union in all cases of termination of labor relations at the initiative of the employer.

If we turn to the legislation, we will see that the status of trade unions is regulated in legislation in more detail. According to Article 29 of the Law on Trade Unions, it is the trade unions, their associations, divisions and primary trade union organizations that have the preferential right to conduct collective negotiations, conclude collective agreements and contracts on behalf of employees.

CONCLUSIONS

Let's consider the main problems encountered during negotiations between a trade union and an employer on issues of concluding or amending a collective agreement. First of all, it is necessary to focus on the problems of the trade union's legitimacy in representing the interests of employees when concluding or amending a collective agreement. Let's consider several options for representing employees by a trade union(s) during negotiations with an employer on concluding, amending, or extending a collective agreement.

If a company has one primary trade union organization that unites more than half of the employees, it has the exclusive right to represent the interests of employees during collective negotiations, amendments and conclusion of a collective agreement, and control over its implementation. This provision complies with international labor standards. According to ILO Recommendations No. 91 (1951), priority in concluding a collective agreement at an enterprise is given to representative organizations of workers, and in the absence of such public organizations at the enterprise, a collective agreement is concluded with other representatives of workers.

However, there is a certain gap in the current legislation related to proving the legality of the primary trade union organization's representation in collective negotiations on concluding a collective agreement. Employers often cannot, and do not want to, establish the fact of the legality of the representation of the primary trade union organization for conducting negotiations on concluding a collective agreement.

Due to the lack of a mechanism in the legislation for employers to recognize the trade unions being created, as well as the lack of an indication in the legislation of the legal fact from which moment a trade union can be considered legitimate in representing the interests of the company's employees, the rights of the latter are constantly violated, which does not make it possible to fully represent the interests of both an individual employee and the entire company team.

Moreover, several primary trade union organizations can be created at once in a company. The company's employees can be members of all the company's trade union organizations. And in practice, a paradoxical situation can arise when, for example, two trade union organizations de jure represent the interests of more than half of the employees and simultaneously send a notice to the employer about the beginning of collective negotiations on the issue of concluding a collective agreement. The legislation does not provide an answer to what the employer should do in such a situation.

Two or more primary trade union organizations, which together unite more than half of the employees of a

given employer, by decision of their elected bodies may create a single representative body to conduct collective negotiations and subsequently implement all procedures related to the development and conclusion of a single collective agreement.

The basis for the formation of such a single body is the principle of proportional representation depending on the number of trade union members. Each trade union organization independently determines its representative (representatives). At the same time, it must include a representative of each of the primary trade union organizations that created the single representative body. The single representative body has the right to send the employer (his representative) a proposal to begin collective negotiations on the preparation, conclusion or amendment of a collective agreement on behalf of all employees.

If none of the primary trade union organizations or the primary trade union organizations as a whole that wish to create a single representative body unite more than half of the employees of a given employer, then the general meeting (conference) of employees may, by secret ballot, determine the primary trade union organization that, with the consent of its elected body, is instructed to send the employer (his representative) a proposal to begin collective negotiations on behalf of all employees.

Therefore, in order to prevent controversial situations when trade unions wish to initiate the conclusion of a collective agreement, we believe that it is necessary to supplement Article 65 of the Labor Code of the Republic of Uzbekistan and provide that if there are two or more primary trade union organizations operating in a company, each of which unites more than half of the employees, the latter may either form a representative body in the manner determined by legislation and the primary trade union organizations themselves, which has the right to send the employer a proposal to begin collective negotiations on the conclusion of a collective agreement.

Or, a procedure can be established whereby one trade union is given a privileged right to participate in negotiations on the issue of concluding a collective agreement with the employer. Such experience exists in the USA and Great Britain. For example, in the USA, if there are several trade unions at one enterprise, but only one of them must be selected for negotiations with the employer, then the most representative (by number of members) is selected, which is given the authority to conduct collective negotiations on behalf of all employees of the enterprise. The employer, in turn, is obliged to negotiate only with it.

A similar situation applies in the UK. There, the employer draws up an agreement with one of the trade unions at the enterprise on collective bargaining. This agreement is concluded only with the trade union that undertakes to renounce the right to strike for the duration of this agreement.

The issue of concluding a collective agreement in a separate structural division is also interesting. As is known, collective agreements operate at the local level, i.e. in a specific organization. The collective agreement applies to the entire organization, including branches and representative offices located in another locality. In accordance with Part 2 of Article 65 of the Labor Code of the Republic of Uzbekistan, a collective agreement can be concluded in the organization as a whole, as well as in its separate divisions. To do this, the head of the organization must grant the appropriate powers to the head of the separate structural division. When concluding a collective agreement in a branch, this legal act will apply only to a specific branch. However, the conditions that will be included in it should not put the employees of the branch in a worse position compared to the conditions of the collective agreement of the entire organization. At the same time, the employees of the branch do not have the right to demand more favorable conditions for themselves at the expense of infringement of the interests of employees of other structural divisions.

Korshunova T.Yu. believes that the conclusion of collective agreements at the level of a separate structural division of an organization violates the unified system of social partnership and proposes to provide for the right of employees of branches and representative offices to discuss the collective agreement concluded in the organization. The comments and proposals they express should be taken into account in the process of collective negotiations [15 p.35].

If the company does not have a collective agreement and it is planned to conclude one, we believe that it is advisable to invite representatives of employees of separate structural divisions to discuss the terms of the collective agreement and make appropriate changes to the Labor Code of the Republic of Uzbekistan, since the legislator does not indicate that, for example, a trade union operating in a branch has the right to participate in the negotiation process on issues of concluding a collective agreement in the organization. At the same time, by concluding a collective agreement at the organizational level, the parties extend its effect to the entire company (branches, representative offices, etc.), and the involvement of representatives of employees, for example, of a branch will be logical, since they know the specifics of labor organization in the branch, etc. At the same time, we should agree with the position of T.L. Soshnikova, who believes that it is advisable to conclude

a collective agreement in branches in the absence of a single collective agreement of the organization as a whole. It would be desirable to reflect this provision in Part 2 of Article 65 of the Labor Code of the Republic of Uzbekistan in order to exclude a conflict of interest between the parent organization and its separate divisions [15].

The next thing I would like to draw your attention to is the term of validity of the collective agreement when the owner of the organization changes. In this matter, the legislation of the Republic of Uzbekistan applied domestic collective bargaining regulation of labor with world practice and reproduces the structures adopted throughout the world. From the point of view of comparative law, it is noteworthy that the acts of the European Union contain a more favorable rule for employees regarding the validity of the collective agreement when the form of ownership of the organization changes than that contained in our legislation.

Thus, according to Article 74 of the Labor Code of the Republic of Uzbekistan, when the owner of the enterprise's property changes, the collective agreement remains in effect for six months. And, the European Union Directive of February 14, 1977 No. 77/187 sets a period of one year in this case.

Therefore, the author considers it appropriate to amend Article 74 of the Labor Code of the Republic of Uzbekistan in terms of terms, in particular, to replace the “six-month period” of validity of the collective agreement at the enterprise with “one year”.

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