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Chile

Chile: Nonunionized Workers Can Sign Collective Agreements, Court Rules

By Tom Azzopardi

Workers in Chile can sign a collective agreement with their employer without the need to form a union, an appeals court has ruled.

In a harshly worded ruling dated Dec. 4, the Santiago Court of Appeals accused the country's Labor Inspectorate of deliberately ignoring the existing law in its decision not to recognize a collective agreement signed between a logistics firm and its employees.

Chile's national labor director Cristian Melis has said that he plans to appeal the decision before the Supreme Court.

The case is the first to venture into the legal fog regarding the status of nonunionized negotiating groups caused by a constitutional tussle over a controversial labor reform recently signed into law.

Legal Vacuum

After 13 workers approved a deal negotiated with Empresa Servicios Generales Maper Limitada, the company tried to register the agreement with local labor authorities in northern Santiago.

The authority refused to register the pact, however, arguing that the reformed labor code (Law No. 20,940) left no space for collective agreements with nonunionized workers.

The workers appealed that decision, arguing that the refusal to recognize the deal infringed some of their fundamental rights, including the right not to join a union and the right to negotiate collectively.

In its ruling, the Appeals Court backed the workers, noting that the right to negotiate collectively was still protected under the law.

The government's original bill, approved by Congress in April 2016, sought to give unions an exclusive right to negotiate collectively, a long-held aim of Chile's labor movement, but following a challenge by opposition lawmakers, the Constitutional Court struck down the key clause as an infringement of workers' constitutional right to collective negotiations.

Despite warnings from labor lawyers that the removal of the key clauses created a legal vacuum with regards to the status of nonunionized negotiating groups, the government enacted the bill largely unchanged, and labor lawyers have since been waiting for the issue to be resolved in the courts.

Ignoring the Law

In the thirteen-page ruling, the Appeals Court said that it appeared the Labor Inspectorate was deliberately ignoring "the ruling by the Constitutional Court and applying what was never law, a bill which legally did not succeed."

The fact that "the administration ignores all these laws and only allows unions to negotiate collectively suggests that the Labor Inspectorate is motivated purely by voluntarism, that is the taking of decisions based only on what is desirable or pleasant," wrote Judge Juan Cristobal Mera.

Although the new ruling does not set a binding precedent for workers at other companies, it does give them strong grounds to challenge the labor authority's refusal to recognize their agreements, labor lawyer Luis Parada of BAZ DLA Piper told Bloomberg BNA on Dec. 6.

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For More Information

For more information on Chilean HR law and regulation, see the Chile primer.

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