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Change the name and give away: extending benefits from a collective bargaining agreement

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Abstract: Peruvian legal scholars have been split on whether it is valid to extend benefits from a collective bargaining agreement entered into with a minority union to other, non-unionized employees in a company.

The Supreme Court has recently ruled on the issue: while it is forbidden to extend benefits from such a collective bargaining agreement, employers can grant benefits similar or equivalent to those included in the agreement to non-unionized employees.

Hence, employers can just change the name of the benefit and grant it unhindered.

Unions can be classified in many ways. There are trade v. company unions, worker v. employee unions and majority v minority unions, among many other classifications.

Peruvian legislation is mostly aimed at regulating the relationship between majority unions at company level, which is evident from many provisions in the Collective Work Relations Law.

The lack of legal regulation of minority unions and the effect of their activities (for example, the consequences of a strike held by a minority union or the mandatory provision of minimum services) has opened the door to differing opinions on several issues that coexist in our legal doctrine.

One such issue is the possibility of extending the benefits granted by way of a collective bargaining agreement to employees not affiliated to the union that negotiated such agreement.

When majority unions are involved, the law automatically grants them the representation of all employees.

However, when minority unions are involved, they only represent their members. The law is silent on whether the employer may extend the agreement to non-unionized employees.

Some scholars argue that the extension of benefits will be always be valid, provided it has not been forbidden expressly by the collective bargaining agreement in question and non-unionized workers are not put in a better position than unionized workers after such an extension. This was standard practice for many years,

But during the last years there have been conflicting theories and rulings. Some are of the opinion that extending benefits from a minority collective bargaining agreement undermines the union's purpose and violates every worker's constitutional right to freedom of association.

On December 13, 2018, the Supreme Court ruled on the issue. They decided that while it is forbidden to extend benefits from such a collective bargaining agreement, employers can grant benefits similar or equivalent to those included in the agreement to non-unionized employees, provided that union affiliates are not worse off because of it.

Therefore, if an employer decides to extend the benefits included in a collective bargaining agreement, all it will have to do is change their name. The position is novel, because it prohibits extension all the while providing a practical way for companies to achieve the same result.

The Supreme Court's decision is not final. First, because it does not set a mandatory precedent for other labor judges and second, because such a matter could also be brought before the Constitutional Court, culminating in a different ruling. However, it does shed light on the opinion currently held by the Judiciary at its highest level.