 

DEMAREST

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The Dispute for Collection of Union Contributions in Brazil

Brazil is going through big changes in the labor area, and one of them comprises the employees' obligation to pay union contributions.

Brazil has a very peculiar union system, in which employees are "automatically" represented by a worker's union based on their employers' industry and place where the services are provided, regardless of the employees' choice, exception made to some specific activities. Further, there may only exist one union per industry and location[1].

In the same way, collective bargaining agreements are enforceable to the companies and their employees regardless of whether they are associated to the union (or association) or not.

To support this union system, until November 2017 union contributions used to be mandatory by law in Brazil, and companies were required to deduct the contributions from the employees' salaries, in an amount equivalent to one day of salary every year.

Unions could also charge additional contributions from employees, what generated several judicial disputes with those employees who did not opt to participate of the union's activities.

These rules lead to a scenario that may be seem as a great business opportunity: you have no competitors, you have a guaranteed income and, in most cases, no inspection of the fulfillment of your obligations (in favor of the represented employees). It is not a coincidence that there are currently 11,624 worker's unions in Brazil.

Despite the above, this scenario started to change in November 2017, when Federal Law 13,467 became in effect, amending almost 100 articles of the Brazilian Labor Code, including those related to union contributions.

As from such date, union contributions ceased to be mandatory. The change in labor law established that the deduction of any union contribution from payroll would only be legal if previously and expressly authorized by the employees.

What is interesting is that the same federal law gave more power to the unions, providing that collective agreements negotiated with the workers union would prevail upon law depending on their content. Due to this, legislators started to be criticized, under the argument that once unions were granted with more power to negotiate with employers, it did not make sense to weaken them by reducing their main source of income.

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[1] Unions are usually set per State level in Brazil.

Legislators counter argue that several of the 11,624 existing unions did not do anything in favor of the employees, not even negotiated collective agreements with the company's association; they were only created to collect contributions to benefit the union leaders, so the reform aimed to solve this situation and lead the labor legal system into a scenario in which only the real active unions would survive, as employees would recognize their work and spontaneously contribute to the union.

In practice, things did not come out as expected: as employees in some industries faced decades of low or none interaction with the unions and, in some cases, suffered salary deductions for the payment of union contributions that they did not agree with and did not see any benefit, they are now refusing to contribute with the unions, so most of the workers' unions are now facing financial problems, even the big ones.

From the union side, they are trying to keep any source of income, so they started to question the new rules in court, and insert additional rules in collective bargaining agreements that would allow them to continue charging contributions from employees, based on their own interpretation of specific constitutional provisions.

In the middle of that fight are the companies, which in several cases need to execute collective agreements with the unions to enforce specific work conditions, such as differentiated working schedules or employment rules.

Being aware of their importance to the companies, some unions are refusing to negotiate any kind of agreement with companies until past contributions are paid, while other unions are suing companies for the payment of such contributions, as the Brazilian Code (after the labor reform) established that employers are required to deduct the union contributions from payroll.

Trying to put an end in this legal uncertainty scenario, on March 1st, 2019, the Brazilian President issued the Executive Act number 873/2019, which is a provisional measure of the government to change the law and anticipate its effects until the National Congress is able to analyze and create, or not, a law to the same effect.

Executive Act 873/2019 has mainly set forth the following:

(i) Reinforced that any union contribution are only due by employees who voluntarily, individually and expressly agree with the payment;

(ii) Set that the payment of union contributions can only be collected through bank slips issued by the union against the employees who authorize the collection of the union contributions (and not be deducted from payroll anymore).

The Executive Act 873/2019 remains in force by law for 120 days, that is, until June 29, 2019, or until the congress decides to ratify or reject it, otherwise it will lose its effects after the end of these 120 days.

If the Executive Act is rejected or not ratified at the end of its term, it is possible that unions start to charge companies again for the payment of contributions due by their employees, with penalties and interests.

Meanwhile, some unions are now seeking legal remedies to suspend the effects of the Executive Act 873/2019, while a few are already claiming for a future change in law that gives employees the freedom to choose their representative unions and sustaining that collective agreements should apply only to those who contribute to the unions.

This discussion is far from ending, and has chances of leading to a change of the entire union system in Brazil, with a possible extinction of the single union representation per industry. As the political scenario also affects the next moves of this battle, companies are keeping their eyes on the news and being cautious on every action they take.