



Pressemitteilung

RED CARD TO COLLECTIVE AGREEMENT UNITY ACT? – OR MAYBE JUST YELLOW AND SUBSEQUENT IMPROVEMENTS?

Karlsruhe/Munich, 10 July 2017 – Tomorrow, the German Federal Constitutional Court will decide whether the so-called Collective Agreement Unity Act (*Tarifeinheitgesetz*) is contrary to the German Basic Law. The Collective Agreement Unity Act stipulates that there is only one collective bargaining agreement permitted per company whereby the collective agreement of the majority union, e.g. the union that has the most members in this company, will apply. Among others, the occupational group and sectoral unions (*Berufsgruppen- und Branchengewerkschaften*) had challenged the Act (1 BvR 1571/15 inter alia).

Before the entry into force of the Act, smaller (sectoral) unions were able to conclude own collective bargaining agreements for individual occupational groups. This became possible as in 2010 the German Federal Labour Court had discontinued its previous case law according to which there was only one collective bargaining agreement in force per company (decision of 07 July 2010 - 4 AZR 549/08). Any party entitled to conclude collective bargaining agreements is also entitled to call a strike. If an occupational group of particular importance to the company or the infrastructure of the whole country is on strike, it may thereby more or less paralyse the company or the whole country although only a small number of employees is on strike. Since 2010, this legal situation had not only increased the risk and consequences of strike but also created a direct competition between the unions as various collective bargaining agreements with different regulations were possibly applicable. With the Collective Agreement Unity Act, the Federal Minister of Labour, Andrea Nahles, put an end to this in 2015. This Act has the objective to restore the former principle abandoned by the German Federal Labour Court: "One Company – One Collective Agreement". Smaller unions, however, consider this as an infringement of their "Freedom of Association" pursuant to Section 9 (3) of the German Basic Law and the Act unconstitutional.

"The judgement is the most important labour law decision of the year," says *Markus Künzel*, licensed specialist for labour law and a partner at the international commercial law firm BEITEN BURKHARDT. "Companies will now gain legal certainty on the question which collective bargaining agreements will apply to them," the lawyer further explains. *Martin Fink*, also licensed specialist for labour law and a partner at BEITEN BURKHARDT states: "Should the German Federal Constitutional Court overturn the Act, this would constitute a defeat for



Pressemitteilung

the Federal Minister of Labour and the large unions which exercised a significant influence on politics to protect themselves from unwanted competitors by the Collective Agreement Unity Act." With regard to the consequences for the respective companies, the lawyer says: "If the Collective Agreement Unity Act is declared (partly) unconstitutional by the judgement, employers will keep facing the complex legal situation with, in part, several collective agreements per company. However, there are additional structuring opportunities. Each company has to individually and carefully decide which of these it will choose."

Markus Künzel and Martin Fink are specialist lawyers for employment law and partners at BEITEN BURKHARDT's Munich office. They are available for further information, statements and guest contributions.

Contact:

Markus Künzel

Phone: +49 89 35065-1131

E-mail: Markus.Kuenzel@bblaw.com

Martin Fink

Phone: +49 89 35065-1138

E-mail: Martin.Fink@bblaw.com

Public Relations (Labour & Employment Law)

Markus Bauer

Phone: +49 89 35065-1104

Markus.Bauer@bblaw.com

Bettina Kaltenbach

Phone: +49 89 35065-1142

Bettina.Kaltenbach@bblaw.com

Information about Beiten Burkhardt

- Beiten Burkhardt is an independent international commercial law firm with a focused range of services and some 280 lawyers working in 8 locations.
- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks and



Pressemitteilung

financial institutions as well as the public sector.