

Indemnification for Legal Costs is Only Available Where the Works Council has Duly Passed a Corresponding Resolution

Lena Jordan

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Decision

On 18 March 2015, the Federal Labor Court held that an employer will only be liable for the costs of counsel for the works council if the works council has duly passed the relevant resolution prior to counsel's appointment (7 ABR 4/13). According to the court's decision, this not only applies to the initial appointment of counsel, but also and especially where counsel lodges an appeal on behalf of the works council. The absence of such a resolution will not invalidate any appeal lodged. It will, however, mean that the employer is not liable to pay the costs of the appeal. The Senate based its reasoning on an implied duty on the part of the works council to consider the employer's interest in controlling costs. In its view, the works council was required to examine the chances of an appeal being successful prior to the appeal being lodged. As a rule, this was not something which the works council could assess at the time of the commencement of proceedings. In the court's opinion, the only permissible exception to this principle is where the matter is of such importance as to justify the works council believing from the outset that the case should be pursued through all instances.

Implications for Practice

The Federal Labor Court has reaffirmed once again that the works council has an obligation to have due regard to the employer's interest in controlling costs in cases involving § 40 of the Works Constitution Act (Betriebsverfassungsgesetz – BetrVG). The works council is obliged to pass a resolution duly appointing a lawyer not just at the time of commencement of proceedings relating to collective bargaining before a labor court, but also, as a rule, before lodgment of an appeal. Where an employer is not inclined to assume the costs of the work council's legal counsel, it should, for a start, request that the works council submit a copy of the resolution in which the decision was taken to appoint a lawyer. If no such resolution exists, then the question of whether it was necessary to conduct court proceedings is no longer decisive. The employer is then not obliged to bear the costs of the lawyer. In individual cases, the works council will not be obliged to duly pass a resolution if the works council was, due to the special significance of the matter, entitled to assume that an appeal would be necessary already at the time court proceedings were commenced.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Lena Jordan on +49 221 33660-544 or by email to ljordan@goerg.de. For further information about the author visit our website www.goerg.com.

Our offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Klingelhöferstraße 5, 10785 Berlin
Phone +49 30 884503-0, Fax +49 30 882715-0

COLOGNE

Kennedyplatz 2, 50679 Köln
Phone +49 221 33660-0, Fax +49 221 33660-80

ESSEN

Alfredstraße 220, 45131 Essen
Phone +49 201 38444-0, Fax +49 201 38444-20

FRANKFURT AM MAIN

Neue Mainzer Straße 69 – 75, 60311 Frankfurt am Main
Phone +49 69 170000-17, Fax +49 69 170000-27

HAMBURG

Dammtorstraße 12, 20354 Hamburg
Phone +49 40 500360-0, Fax +49 40 500360-99

MUNICH

Prinzregentenstraße 22, 80538 München
Phone +49 89 3090667-0, Fax +49 89 3090667-90