

Expulsion of a member of the works council

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Headnote

A member of the works council may be expelled from the works council pursuant to § 23(1) of the Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) if he violates his duties on a continuing basis. It can be assumed that this is the case where he does not perform his work over a period of months because he is supposedly occupied with works council activities.

Facts

The employer had a workforce of over 200 until the end of 2013. The works council member X was completely released from his duty to work (§ 38(1) of the Works Constitution Act). Following the company's restructuring, the number of its employees was less than 200 so that new elections for the works council had to be held in 2014. X was re-elected to the works council. Although he was no longer entitled to a release from work pursuant to § 38 of the Works Constitution Act, he did not return to his performance of any work for the employer. He informed the employer day in, day out that he was occupied with works council activities, relying on § 37(2) of the Works Constitution Act, which provides for a temporary release from the performance of work duties. In the subsequent period, it was decided several times to release X for several weeks "due to works council activities". The letters only contained brief mention of a few tasks.

Decision

The employer submitted an application pursuant to § 23(1) of the Works Constitution Act for X's expulsion from the works council. The Bonn Labor Court ruled in the employer's favor (order of 17 March 2015, 1 BV 59/15; the order is not yet final). The court indicated

during the hearing that brief references to works council activities were not a sufficient basis for month-long releases from work pursuant to § 37(2) of the Works Constitution Act. In its opinion, the works council should have provided concrete proof of the necessity for the release from work. The grounds for the decision are not yet available.

Comments

An application to expel a member of the works council may be lodged pursuant to § 23(1) of the Works Constitution Act where the member commits a gross violation of his statutory duties. It can be assumed from this that an abuse of the authority to grant a release under § 37(2) of the Works Constitution Act can lead to expulsion from the works council. The section provides for a release from work where this is necessary for the proper performance of works council activities. The member of the works council has in this connection a discretion. Essentially, he is only required to inform his employer that he will be performing works council activities. He is not obliged to inform his employer in advance as to which activities require his release. However, the provision is susceptible to abuse due to its discretionary scope. As part of the relationship of trust between them, the employer has to rely on the member of the works council making efficient use of his time for works council activities.

In the present case, there was an obvious abuse of the authority to grant a release from work. The works council member had not performed any work after his re-election and had for all intents and purposes continued to be released full-time from the duty to work. He had exploited § 37(2) of the Works Constitution Act. As a result, the decision is to be welcomed. It remains to be seen whether it obtains legal force.

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 Jens Völksen on +49 221 33660-503 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

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