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PROPER REPRESENTATION OF EMPLOYERS IN EMPLOYMENT-LAW ISSUES

The skilled legal representation of employers before employment and labor authorities should be accorded special judgment. Any deficient representation in this respect could lead to grave consequences in the outcome of labor issues.

The above criterium is best illustrated in dealing with individual labor litigation, in whose initial hearing, namely the hearing for conciliation, complaint and defenses, and submittal and admission of evidence, an inadequate accreditation of representation of the individual or entity that has been sued as employer results in the Conciliation and Arbitration Board (“the Labor Board”) to rule that the defendant has responded the plaintiff’s allegations in the affirmative, which implies, in almost all cases, that at the end of the proceedings the Labor Board will find against the defendant.

Accordingly under the terms of the Federal Labor Law, whoever appears as an individual’s attorney in fact must do so by exhibiting either a power of attorney duly legalized before notary public or a proxy signed by the defendant individual as employer and two witnesses.

The proxy must invariably be exhibited in original and must stipulate the names of the grantor and the witnesses. The notarized power of attorney may be an original true copy from the notary’s register (a “testimonio”) or a certified copy thereof, whose return may be requested from the labor authority upon comparison with a photocopy of the said legal instrument, for the photocopy to be kept in the matter’s file.

The above-mentioned requirements naturally apply to the individuals who appear as attorneys of employees or company officers, who very frequently are sued under the allegation that they are employers.

In the case of sued juridical persons (i.e., companies) the same must necessarily exhibit the notarized legal

instrument stating the powers of the legal representative, or, if any, the proxy signed by whomever grants powers to the individual appearing; in this case the grantor must have explicitly-stated powers to substitute or delegate his/her own powers in the corresponding notarized power of attorney that obviously must also be submitted.

Although, in my experience, Labor Boards currently admit that sued companies' legal representatives prove their capacity as such by submitting, as discussed above, notarized legal instrument stating that they have general powers for litigation and collections, in the particular case of individual labor trials I deem convenient that the notarized power also grants powers for acts of administration in labor matters, in order to prevent objections based on already overruled courts' criteria, requiring that attendance at the first hearing by the sued companies must be attended by the sued companies' officers themselves.

The convenience should also be noted that the powers contained in notarized legal instruments stipulate that attorneys in fact have power to respond to interrogations in the admissions stage ("absolver posiciones") on behalf of the defendant company, as this is an indispensable requirement to enable the legal representative to answer to the interrogatory that the plaintiff will doubtless propose to the Labor Board in the so-called stage of admissions by the defendant.

Concerning conflicts with trade unions, both in the "hearing for conciliation, complaint and defenses, admission of evidence and ruling on the procedures for the tenure of the collective bargaining agreement", and in the "hearing for conciliation of strike-call procedures", in general terms the same above-discussed requirements apply in order to accredit the capacity of legal representatives of individuals and companies appearing as defendants.

An ineffective representation of the employer in the first hearing in the trials for tenure of collective bargaining agreements, by law, causes that the employer is held as having conceded the plaintiff union's petitions. However jurisprudence has been issued by the Supreme Court of Justice of the Nation establishing that the Labor Board's resolution regarding which union should be granted the tenure and management of the collective agreement, depends upon the result of the involved workers' balloting.

On the other hand, an inadequate accreditation of the representation of employers in the hearing for conciliation of strike procedures, besides implying that the employer will be unable to introduce incidental actions (e.g., moving to assert the plaintiff's lack of sufficient power of representation), will signal a lack of interest by the employer on reaching a conciliatory solution, with the consequences inherent.

With respect to citations issued by the Attorney for the Defense of Labor to hold conciliatory talks, the individual appearing as representative of the defendant individual or company named as employer does not need to accredit his/her capacity as such.

That is because the above-discussed rules apply only to employment and labor processes, and the Attorney's function lacks jurisdictional nature as it only strives for the reaching of amicable solutions.

The above is true even if a citation from any of these Attorney's offices states that whoever appears in the employer's representation must accredit his/her capacity, as in practice such offices do not demand accreditation from employers' representatives, rather only a photocopy of their ID.

Even supposing that any Attorney's Office rejects the appearance of the summoned employer's representative for not proving his/her capacity as such, besides that being absurd –since the main purpose of the citation, an amicable settlement, would be impeded-, such rejection in itself does not imply any damage to the summoned employer; it will only imply the possibility that the Attorney's Office or any individual represents the plaintiff in the labor lawsuit that the plaintiff might file before the Labor Board, wherein the defendant will have the opportunity to defend their case.

Solely in the event that an amicable settlement is reached may the Attorney for Defense of Labor's office actually demand proof of the capacity as representative of whomever has appeared on behalf of the employer to execute the respective agreement and make the respective payment to the plaintiff; in which case, the person appearing will have to prove his/her capacity as representative in the manner and under the terms discussed above concerning employers' representation in the individual labor trials' initial hearing, but without a power for acts of administration in labor matters being at all necessary.

The foregoing should not bar keeping in mind that the Attorney for the Defense of Labor lacks authority to approve of agreements, as that authority corresponds legally solely to the Labor Board.

The above-discussed general rules concerning due representation of employers apply too to the inspection visits to workplaces carried out by the Federal Labor Inspection's General Directorate, not only regarding the attention to the inspections itself, but also in connection with the procedures performed before such authority to confront imposition of sanctions, including procedures for challenging fines imposed for violations of the Labor

Law.

Thus the inadequate representation of employers in such procedures for challenging sanctions results in such sanctions being affirmed and naturally being deemed enforceable.

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