OBSERVATÓRIO PORTUGUÊS DE BOAS PRÁTICAS LABORAIS | PORTUGUESE OBSERVATORY OF GOOD LABOR PRACTICES

OPBPL Electronic Papers

OPBPL e-Working Papers (ISSN 2182-8393)

Av. das Forças Armadas, Edifício ISCTE, 1649-026 LISBOA, PORTUGAL

Objectives

The Electronic Papers published by the Portuguese Observatory for Good Labour Practices (OPBPL) main goals are to confer the accessibility and high-speed readability of essential information and good practices in regards to work organisation, collective bargaining, human resources management, labour relations, inclusion and sustainability, corporate social responsibility, and labour market statistics.

Editoral Board

OPBPL Electronic Paper |2013/14

New Labor Legislation and Union Support

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Abstract

In this day and age we find ourselves living in a maelstrom of uncertainties, at the core of a particularly deep socio-economical and financial crisis, we are now faced with the very real possibility of falling from grace, the essential social elements of the European model that allowed in the past decades for an unprecedented growth and development, supported by commonly shared values and principles amongst the European countries.
One of those values is precisely the right to negotiate and to act as a collective force, integrated within the Charter of Fundamental Rights of the European Union.

1 | Introduction

Cyclically we are forced to understand how feeble the models in which our life stands upon really are, and for this reason we question ourselves about the subsistence of all the things we took for granted.

In this day and age we find ourselves living in a maelstrom of uncertainties, at the core of a particularly deep socio-economical and financial crisis, we are now faced with the very real possibility of falling from grace, the essential social elements of the European model that allowed in the past decades for an unprecedented growth and development, supported by commonly shared values and principles amongst the European countries.

One of those values is precisely the right to negotiate and to act as a collective force, integrated within the Charter of Fundamental Rights of the European Union, that states that both "employees and employers, or respective organizations, hold accordingly to the Union`s law and nationally enforced legislation, the right to negotiate and conduct collective conventions at the appropriate levels, as well as to appeal, whenever there is a conflict of interests at play, to conduct collective actions in order to protect their best interests, including going on strike".

The labor code approved in law nº99/2003, of August 27th and revised by law nº7/2009 of February 12th, created – on the path to consecrate our fundamental law – the duty of the State to promote collective employment, in the way that collective conventions are applicable to the highest number of employees and employers.

It is in fact nowadays – more than ever- that the role of trade unions becomes so pressing and necessary, in representing and defending the employees and the refusal of giving up what is most valued, particularly the collection of rights, freedoms and guarantees attained throughout the years.

For that we might be forced to re-think and to re-evaluate the role of the trade unions, creating for example, the means for these associations to become important and diversified service providers working towards their associate`s best interests, always keeping in mind that a society in which strong and independent trade unions participate

in will always be a fairer society and an essential counterweight in the intrinsic web of laborer relationships

2 | The Central Role of Trade Unions

Whichever the chosen path may be, it will always be a mistake to limit, disregard or crush the central role of the trade unions, or the importance and necessity of collective negotiation.

Exactly the opposite path that has been taken since the Labor Code publication in 2003, and its successive alterations as well as the publication of laws that empty the contents of freely negotiated clauses in collective work regulation instruments, based upon the much-vaunted necessity to increase the laborer norms flexibility and to fight off the crisis and labor market segmentation.

As such, throughout the last years, we have seen the crumbling of the very foundations of our labor law, which we took for granted and safeguarded. An example of this happened with the most favorable treatment towards the worker clause, making it now possible for legal regulations to be changed *in pejus* by the collective work convention. This alteration was and is based on the assumption that there is an alleged balance between both parties – employers and unions – that when in effect and in the majority of events does not correspond to reality, being merely formal and not real.

Similarly it was acknowledged the possibility of the collective work conventions to expire, pushing away the scheme of previous negotiated ones immutability thus increasing the fragile balance between parties, taking the risk of the unions having to negotiate and accept clauses that are less favorable to the employees than the ones previously agreed upon, with the goal of avoiding the expiration of the collective labor conventions.

With the Labor Code it also became possible to choose the collective convention that would be applicable to the employee not affiliated with any type of trade union, thus emptying the principle behind the affiliation and discouraging the employees' needs of becoming affiliated with any trade union, which subsequently will result into a general weakening of the trade unions.

Recently and specifically through law n.º23/2012 of July the 2th,the diploma that end up changing the labor code, the trend of depreciating the collective negotiation and the role of trade unions was maintained, as seen for instance with the imperative alteration to the remuneration of overtime work or the revoking of the compensatory rest attributed for performing that overtime work on a regular working day, complementary rest day or holiday, accordingly to that diploma the collective labor regulation instruments negotiated before the aforementioned law came into effect are deemed to be null.

Finally, without running short of examples, Law nº. 23/2012 of July 25th, also allowed for a direct and individual negotiation between employees and employers around the essential issue of work time management, now with the existence of the possibility of negotiating an individual bank hour system, which before was only possible through a collective labor regulation instrument, as demanded by the labor Code of 2003.

A change that naturally carries multiple risks given the frail position that the employee finds himself in when paired up with their employer, made worse by the fact that the work time organization is a delicate, albeit relevant matter particularly when trying to manage one`s personal and professional life.

These are just some examples – and many others could be mentioned – that illustrate the legislator`s tendency, in the last couple of years, of devaluing the labor cost and the role played by the trade unions, which can be seen by the subtle yet systematic detachment of the importance of collective negotiation, thus creating a dangerous balance of the labor relationship forces and putting in question the fundamental and structural principles of our legal system, specifically the rights granted to the trade unions and especially the collective laborer employment.

In this day and age where so much is said regarding best practices, it would be smart to keep in mind that it is precisely in the most developed European countries, namely the Nordic ones, that it is possible to find the best and strongest social cohesion, it is also amongst those countries that the highest rate of trade union affiliation is found, they also have stronger trade unions and a significant weight to the collective labor employment on the labor relations regulation.

To step back in order to foster the existence of a stronger, plural and independent trade union will not only be deemed intelligent but absolutely necessary and essential to reach the goals of a motivated, effective and productive market.

3 | Further Reading

SITE: http://opbpl.cies.iscte-iul.pt/

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