

■ Recent Court Cases ■

Dismissal of newly hired employees who joined minority union on the ground of “union shop agreement” was unlawful

[Case No. Supreme Court decision 2019du47377 dated November 28, 2019]

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The sole labor union at the plaintiff company and the plaintiff place of business (“Majority Union”) as of March 2016 had all new employees automatically become the union members immediately upon the employment at the plaintiff company, except the persons specified under Article 3 of the Union Shop Agreement (defined hereunder) (i.e., the employees other than the employees in the crew positions), and the plaintiff only employed the union members. The plaintiff entered into a bargaining agreement containing a union shop clause (“Union Shop Agreement”) with intent to dismiss the employees not having joined the labor union under Article 2 of the Union Shop Agreement.

A nationwide and industry-specific labor union established a branch at the plaintiff place of business (“Minority Union”) in December 2017, resulting in more than one labor union existing at the plaintiff place of business. Meanwhile, the Majority Union maintained as the members at least two thirds of the employees at the plaintiff place of business.

The employees who started working at the plaintiff company in August 2017 immediately joined the Minority Union around the time the Minority Union was established without going through the process of joining and withdrawing from the Majority Union. The plaintiff dismissed these employees in December 2017 by referencing the Union Shop Agreement.

The court found, in view of the statutory provisions and the intents of the relevant laws and regulations, including the Constitution, the Trade Union and Labor Relations Adjustment Act and the Labor Standards Act, the validity of the Union Shop Agreement which was executed between the Majority Union and the employer would not extend to the event of infringement of the employees' freedom to choose a labor union or of the right to organize by the labor union other than the Majority Union. That is, the validity of the Union Shop Agreement would extend only to the employees unaffected by the freedom to choose the labor union or by the right to organize by the union other than the Majority Union (i.e., the employees not having joined any labor unions).

The court further held the validity of the Union Shop Agreement could not be deemed to extend to the employees in the event the newly hired employees exercised the freedom to choose the labor union and already joined the labor union other than the Majority Union. Even if the employees had not separately completed the application or withdrawal procedures with the Majority Union, the employer's dismissal of the newly hired employees on the ground of the Union Shop Agreement would be found to be unjustified and thereby invalid.