

■ Recent Court Case ■

An employer's action to selectively sell a business division with numerous labor union workers and lay off employees in the business is both an unfair dismissal and an unfair labor practice

[Seoul Administrative Court 2018Kuhap85204 decided on June 20, 2019]

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The Seoul Administration Court ruled that selectively selling a business division which had numerous labor union members and laying off the workers is an unfair dismissal and also an unfair labor practice.

Company Y was founded in 2012, and it ran H hotel with 250 rooms. It had a food & beverage team and a culinary team, and workers of those teams provided work such as cooking and serving at the hotel restaurant bar and buffets. But H hotel signed a contract selling its food & beverage and culinary business division to another company, due to low profitability. And the hotel gave 'dismissal for managerial reasons' notices to workers working in those business division, including worker A.

In this court decision, the issue was whether the dismissal of worker A satisfied criteria required by Article 24 of the Labor Standards Act, and also whether it was an unfair labor practice.

The court decided that the dismissal of the workers including worker A was an unfair dismissal that did not satisfy the criteria of Article 24 of the Labor Standards Act. The court first stated that the execution of the business sale contract did not appear to be an unavoidable contract for the company Y, and that there was not an urgent managerial necessity for the transfer of the business in order to prevent

managerial deterioration, which was required by above article. Also considering the fact that the company Y hired a new cook even after passing of shareholder and board resolutions to sell the food & beverage and culinary business division, the court recognized that the company Y did not put its best effort to avoid the layoff.

In relation to the unfair labor practice, the court decided it was an unfair labor practice under Article 81 (1) and (4) of the Labor Union Act that the company Y sold food & beverage and culinary business division where numerous pro-labor union workers were working.