



Court Finds Layoffs Implemented Without the Union's Consent Lawful

Company C suspended the operations of a business division that had incurred substantial operating losses for an extended period and laid off the surplus workforce (layoffs based on urgent managerial necessity). However, the collective bargaining agreement signed between Company C and the labor union representing a majority of the employees contained a provision requiring the Company C to reach an agreement with the labor union before implementing such layoffs or other workforce restructuring measures. Company C consulted with the majority labor union regarding the workforce restructuring for five months but ultimately implemented the layoffs without reaching an agreement with the union.

Consequently, the majority labor union and the employees subject to the layoffs filed petitions for relief for unfair dismissal and unfair labor practice with the Gyeongbuk Regional Labor Relations Commission. The Regional Labor Relations Commission dismissed the petitions, and the National Labor Relations Commission likewise dismissed the subsequent petitions for re-examination. The majority labor union and the dismissed employees then filed an administrative lawsuit seeking revocation of the National Labor Relations Commission's decision on re-examination. After the court of first instance dismissed their claims, the plaintiffs appealed, and the case proceeded before the appellate court.

The primary issues before the appellate court were whether there was an urgent managerial necessity for the layoffs, whether the criteria for selecting the employees subject to the layoffs were reasonable and fair, and, in particular, whether the majority labor union had abused its right to consent.

Shin & Kim demonstrated, through documentary evidence and witness testimony, that: (i) an urgent managerial necessity was supported by numerous objective materials; (ii) the company had made its best efforts to ensure a reasonable and fair selection of employees subject to the layoffs, including giving due consideration to the union's views in establishing the selection criteria; and (iii) the failure to reach an agreement regarding the layoffs resulted from the union's markedly excessive demands concerning the terms of voluntary retirement and its lack of intent to reach an agreement, such that the union should be deemed to have abused or waived its right to consent.

The appellate court accepted all of Shin & Kim's arguments and dismissed the plaintiffs' claims in their entirety, holding that all requirements for the layoffs had been satisfied and that the union had abused its right to consent.

Key Contacts

Young Seok Ki

Partner

+82-2-316-4021

ysgi@shinkim.com

Jong Soo Kim

Partner

+82-2-316-1678

jsokim@shinkim.com

Sery Lee

Partner

+82-2-316-4034

srlee@shinkim.com

Chanyoung Cho

Partner

+82-2-316-4109

cyocho@shinkim.com