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# Labor Arbitration in the Public Sector

El arbitraje laboral en el sector estatal

A arbitragem trabalhista no setor estatal



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### ABSTRACT

Based on a study of the law and case law concerning collective labor relations, this document describes the types of collective bargaining at the centralized and decentralized levels in the public sector, analyzing arbitration as an alternative to settle economic labor disputes. After describing the structure of the arbitration award and its execution, it is concluded that it is a mistake to grant executory force to an arbitration award derived from a public collective bargaining, since it does not recognize a certain and enforceable obligation in favor of a worker, but general obligations in favor of a group of workers.

**Key words:** public collective bargaining; optional arbitration; arbitration award.

**Indexing terms:** collective bargaining; arbitration; labour law (Source: Unesco Thesaurus).

## RESUMEN

A partir de un estudio legal y jurisprudencial de las relaciones colectivas del trabajo se describen las clases de negociación colectiva de nivel centralizado y descentralizado en el sector estatal, analizando el arbitraje como alternativa para la resolución de conflictos laborales económicos. Luego de describir la estructura del laudo arbitral y su forma de ejecución, se concluye que es un error otorgar mérito de título ejecutivo al laudo arbitral derivado de una negociación colectiva estatal, pues este no reconoce una obligación cierta y exigible a favor de un trabajador, sino obligaciones de carácter general a favor de una colectividad de trabajadores.

**Palabras clave:** negociación colectiva estatal; arbitraje potestativo; laudo arbitral.

**Términos de indización:** negociación colectiva; arbitraje; derecho laboral (Fuente: Tesouro Unesco).

## RESUMO

Com base em um estudo jurídico e jurisprudencial das relações coletivas de trabalho, descrevem-se os tipos de negociação coletiva centralizada e descentralizada no setor estatal, analisando a arbitragem como uma alternativa para a resolução de conflitos trabalhistas de natureza econômica. Após descrever a estrutura do laudo arbitral e sua forma de execução, conclui-se em que é um equívoco conceder o mérito como título executivo ao laudo arbitral derivado de uma negociação coletiva estatal, uma vez que não se reconhece uma obrigação certa e exigível em favor de um trabalhador, mas sim obrigações de natureza geral em favor de uma coletividade de trabalhadores.

**Palavras-chave:** negociação coletiva estatal; arbitragem eletiva; parecer arbitral.

**Termos de indexação:** negociação coletiva; arbitragem; direito do trabalho (Fonte: Tesouro Unesco).

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## 1. INTRODUCTION

The use of arbitration to settle disputes related to collective bargaining in the public sector is a long-standing practice in Peru. As such, Section 26 of the repealed Supreme Executive Order No. 003-82-PCM referred to a Court of Arbitration that would act when the parties failed to reach an agreement through direct negotiation. Section 31 of such order provided that the aforementioned court would consist of four (4) arbitrators appointed as follows: two (2) arbitrators appointed by the trade union and two (2) arbitrators appointed by the government department; the parties had to elect the president by mutual agreement and, if no agreement was reached as to the election, the president would be elected by the Presiding Judge of the Court of Appeals in and for the appropriate judicial district at the request of the head of the government department.

Act No. 30057, Civil Service Act, and its regulations, Supreme Executive Order No. 040-2014-PCM, considered that optional arbitration was a valid alternative to settle disputes arising from collective bargaining in the absence of an agreement between the bargaining parties.

Emergency Decree No. 014-2020 “Emergency Decree that regulates the general provisions for collective bargaining in the public sector,” contained in its Section 7 provisions on labor arbitration and stated that Act No. 30057 would apply to this proceeding on a supplementary basis.

The above Emergency Decree was expressly repealed by Act No. 31114, published on *El Peruano* Official Gazette on January 23, 2021; therefore, Act No. 30057 and its regulations became applicable to arbitration matters once again.

Lastly, Act No. 31188 “Act on State Collective Bargaining,” published in *El Peruano* Official Gazette on May 2, 2021, was enacted. It was regulated by Supreme Executive Order No. 008-2022-PCM, published in the same gazette on January 20, 2022, which approves the guidelines to implement said Act.

Below is an analysis of the provisions of Act No. 31188 (hereinafter, the LNCSE) and of its regulations, Supreme Executive Order No. 008-2022-PCM (hereinafter, the “Guidelines”), including an explanation of the development of arbitration for the settlement of economic labor disputes in the public sector.

## **2. NATURE OF LABOR RELATIONS IN THE PUBLIC SECTOR**

In Peru, the relations between the State and its workers have evolved from a conception of administrative law, as was the case with Act No. 11377 and Legislative Decree No. 276, to one of a special labor nature, as is currently the case.

The labor nature of the relationship between the State and its workers was recognized for the first time in Act No. 28175, Framework Act on Public Employment (hereinafter, LMEP). Thus, Section II (4) of its Preliminary Title stated that one objective of such law was to “regulate labor relations in public employment”; Section IV (8) of the same Preliminary Title, recognized the “principles of labor law” as one of the principles of public employment; and, finally, Section 1 of the LMEP pointed out that the State-employee relationship linked the State as an employer with the persons who provide it with remunerated services under subordination, i.e. a relationship of a labor nature.

From the above rules, it is clear that the State-employee relationship is personal, remunerated and subordinated in nature, i.e. a special labor relationship and not an administrative one.

This position is further supported by the judgment issued by the Constitutional Court (2010) in connection with the proceeding where the constitutionality of Legislative Decree No. 1057—which regulates the administrative services contract—was discussed, which established that this type of contracting was “strictly speaking, a ‘special’ labor contracting system for the public sector” (Ground 47). Said judgment acknowledged that the State maintained special labor relations with its workers.

It is worth noting that the special nature of this type of relations is based on the possibility for the employer to establish restrictions on the broad exercised of labor rights, relying on the assumption that some situations of public interest justify limiting certain labor rights.

Now that it has been demonstrated that the relations between the State and its workers are of a special labor nature, it is perfectly acceptable that a collective bargaining proceeding may be carried out between such parties.

### 3. TYPES OF COLLECTIVE BARGAINING

There are two types of collective bargaining in the public sector: centralized and decentralized (LNCSE, Section 5).

In the centralized collective bargaining, agreements are effective for all the workers of State entities such as the Executive Branch, the Legislative Branch, the Judiciary, regional governments, local governments, agencies endowed with autonomy by the Peruvian Constitution and its organizational acts, and other State agencies, projects and programs whose activities involve the exercise of administrative powers (LNCSE, Section 5, paragraph a).

Decentralized collective bargaining takes place “at the sectorial, territorial and individual public entity level or in such area as deemed appropriate by trade unions” (LNCSE, Section 5, paragraph b), according to the following rules:

- a) The trade union in the corresponding area is competent to negotiate. If there is more than one trade union, the majority one is competent to negotiate.
- b) The trade union negotiates on behalf of all the workers of the respective area.
- c) The trade union who affiliates most of the workers of the respective area is the majority one.
- d) The number of trade union representatives for each decentralized bargaining process is determined by a resolution at the proposal of the most representative trade unions.

On the other hand, the local governments with less than twenty (20) workers may either be covered by the federal collective agreement of their branch organization or join the agreement of their choice with which they have an affinity as to area, territory or otherwise.

## **4. STAGES OF COLLECTIVE BARGAINING IN THE PUBLIC SECTOR**

As already explained, collective bargaining in the public sector can be centralized or decentralized. They differ from each other in that they have different stages, as detailed below.

### **4.1. Stages of centralized collective bargaining**

The centralized collective bargaining in the public sector starts with the submission of the collective agreement draft to the Office of the Prime Minister between November 1 and January 30 of the following year (LNCSE, Section 13, subsection 13.1, paragraph a).

Direct negotiation must start ten (10) calendar days after the collective agreement draft is submitted. Said term may be extended for up to thirty (30) days following start of direct negotiation (LNCSE, Section 13, subsection 13.1, paragraph b).

If the parties fail to reach an agreement, they may have recourse to the statutory mechanisms for a term of up to thirty (30) days from the end of the direct negotiation process (LNCSE, Section 13, subsection 13.1, paragraph c).

The agreements reached that have an economic impact are forwarded through the pertinent channels by the Office of the Prime Minister within a term of five (5) days from their execution so that they may be included in the Public Budget Act (LNCSE, Section 13, subsection 13.1, paragraph d).

On June 30, 2022, the 2022-2023 centralized collective agreement was entered into by and between the employer representation of the Peruvian State and the trade union representation made up of the state confederations CITE-CTE-UNASSE in the centralized collective bargaining committee.

As a consequence of the above-mentioned agreement, by Supreme Executive Order No. 311-2022-EF, published in *El Peruano*

Official Gazette on December 25, 2022, an increase was approved in the monthly salary of the servants, executives and officials working under the regimes established by Legislative Decrees No. 728 and 1057, as well as Laws No. 30057, 29709 and 28091; and the criteria and provisions for the implementation of such increase were set forth.

By Ministerial Resolution No. 035-2023-PCM, published in *El Peruano* Official Gazette on February 14, 2023, the employer representation was set up for the 2023 centralized collective bargaining process.

#### **4.2. Stages of decentralized collective bargaining**

The decentralized collective bargaining in the public sector starts with the submission of the collective agreement draft between November 1 and January 30 of the following year (LNCSE, Sections 12 and 13, subsection 13.2, paragraph a).

The direct negotiation stage “must start within ten (10) calendar days after the collective agreement draft is submitted. Said term may be extended for up to thirty (30) days following start of direct negotiation (LNCSE, Section 13, subsection 13.2, paragraph b).

The Guidelines have established some clarifications to the provisions of the LNCSE. They state that direct negotiation starts when the notice for the meeting to install the bargaining committee is served by the president of the employer representation. Said notice must be served within ten (10) calendar days following submission of the collective agreement draft (Guidelines, Section 17, subsection 17.1). Furthermore, the direct negotiation stage may be extended for up to thirty (30) business days after it has started (Guidelines, Section 18).

The direct negotiation stage comes to an end when the parties agree to sign a collective agreement (Guidelines, Section 22,



subsection 22.1) or when they sign a statement of non-agreement establishing their positions concerning the requests contained in the collective agreement draft (Guidelines, Section 22, subsection 22.2).

If no agreement is reached, the parties may have recourse to the conciliation mechanisms for a term of up to thirty (30) days from the end of the direct negotiation process.

The request for conciliation must be filed directly with the Administrative Labor Authority (LNCSE, Section 13, subsection 13.2, paragraph c).

The Guidelines specify that the conciliation stage starts with the filing of a conciliation request with the Ministry of Labor and Employment Promotion by either party, within three (3) days after the statement of non-agreement is signed (Guidelines, Section 25).

The Ministry of Labor appoints a conciliator within three (3) business days of receiving the conciliation request (Guidelines, Section 26, subsection 26.1).

The agreements reached during the conciliation stage are formalized through the record of conciliation, which has the same nature and effects as the collective agreements reached through direct negotiation (Guidelines, Section 28).

In the conciliation stage, if no agreement is reached, either party may request the commencement of an optional arbitration proceeding, which must end on June 30, unless the workers decide to organize a strike (LNCSE, Section 13, subsection 13.2, paragraph d).

## **5. THE LABOR ARBITRATION**

In accordance with the Guidelines, if no agreement is reached during the conciliation stage, “either bargaining party may request

the commencement of an optional arbitration proceeding within a term of thirty (30) business days, unless the servants decide to exercise the right to strike as an alternative” (Guidelines, Section 31).

Arbitration can be defined as an alternative dispute resolution method where the parties submit their disputes to private third parties to be settled by means of an arbitration award, which has similar effects to those of a court decision.

The use of arbitration proceedings is a valid alternative for the settlement of labor disputes, inasmuch as it is the parties who choose the arbitrators, they consider to be suitable and impartial to solve their disputes. According to the Constitutional Court (2006), arbitrators must respect the due process, given that the nature of arbitration as an independent jurisdiction does not mean that they may exercise their powers in disregard of the constitutional principles that govern the activities of the bodies in charge of administering justice, such as the principles of independence and impartiality of judicial bodies, as well as the principles and rights thereof. In particular, as a jurisdiction, arbitration is not exempted from directly observing all the due process guarantees (Ground 9).

In the opinion of the Constitutional Court (2011), the arbitration jurisdiction is not exempted from the duty to respect the fundamental rights and the procedural and substantial guarantees of the due process. Likewise, the constitutional precepts and principles must be observed, according to the interpretation thereof resulting from the Constitutional Court’s judgments, as well as the binding precedents and the regulatory judgments issued by such court, given its capacity as the supreme interpreter of the Constitution (Ground 16).

The labor arbitration applicable to collective bargaining between the Peruvian State and its workers is optional in nature, because it starts at the request of one of the parties. It differs from

the optional arbitration applicable to collective bargaining in the private sector in that the latter may only be invoked by the representation of workers, as provided for in Section 46 of the Regulations to the Single Consolidated Text of the Collective Labor Relations Act, as amended by Supreme Executive Order No. 014-2022-TR.

## 6. THE ARBITRATORS

The arbitrator may be an individual or a collegiate court appointed to solve an economic labor dispute through a decision known as arbitration award, which is binding on the parties involved. In the state collective bargaining, the arbitrator will always be an Court of Arbitration consisting of three (3) members (LNCSE, Section 18, subsection 18.1).

In order to participate as an arbitrator in an arbitration proceeding in the public sector, it is an essential requirement to be registered in the National Registry of Collective Bargaining Arbitrators (*Registro Nacional de Árbitros de Negociaciones Colectivas*), as established in Section 2 of Supreme Executive Order No. 014-2011-TR.

Section 2 of Supreme Executive Order No. 014-2011-TR, published in the Official Gazette *El Peruano* on September 17, 2011, created the National Registry of Collective Bargaining Arbitrators, which is managed by the Ministry of Labor and Employment Promotion and is made up of professionals of proven track record.

The arbitrators are selected by the professionals registered in the above-mentioned Registry. Each of the parties appoints one arbitrator and these in turn select the president of the court. The notice sent by one of the parties to the other informing on its decision to have recourse to arbitration must also include the appointment of its arbitrator (LNCSE, Section 18, subsection 18.2).

If the summoned party fails to appoint its arbitrator within five (5) days after receiving the notice of resort to arbitration, the Labor Authority appoints such arbitrator by raffle pursuant to the rules applicable to the private regime. Regarding the appointment of the president of the Court of Arbitration, the LNCSE provides that, if the arbitrators do not reach an agreement on the appointment of the president within five (5) business days following the appointment of the second arbitrator, the Labor Authority will choose the president by raffle according to the rules established for the private regime (LNCSE, Section 18, subsection 18.3).

The Guidelines state that, if the arbitrators fail to reach an agreement on the appointment of the president of the Court of Arbitration, such situation must be notified to the administrative labor authority of the Ministry of Labor and Employment Promotion (MTPE) so that they may appoint the arbitrator by raffle from among the arbitrators registered in the National Registry of Collective Bargaining Arbitrators, within five (5) business days after becoming aware of such fact (Section 34, subsection 34.5).

“Arbitrators do not represent the interests of any of the parties in conflict and perform their duties with strict impartiality and absolute discretion.” (Guidelines, Section 32, subsection 32.2).

## **7. IMPEDIMENTS TO BE APPOINTED ARBITRATOR**

There are two cases in which a person cannot be appointed arbitrator: those persons who have a relationship with the parties and those who perform a public function.

The first group includes lawyers, counsels, attorneys-in-fact or, in general, any person who had a direct relationship with the public sector or the trade union organization in the last twelve (12) months prior to their appointment. The above list does not include the arbitrators selected by either of the parties in previous arbitration proceedings (Guidelines, Section 33, subsection 33.1).

The following persons who perform or have performed a public function in the last twelve (12) months prior to their appointment, as the case may be, may not be appointed as arbitrators:

- a) The President and Vice Presidents of the Republic, members of the Congress of the Republic, Cabinet Ministers, Vice Ministers, heads and members of the collegiate body of Autonomous Constitutional Organizations.
- b) Judges, except for Justices of the Peace, and Prosecutors.
- c) The Comptroller General of the Republic and Vice Comptrollers.
- d) The heads of public agencies or institutions of the Executive Branch.
- e) The regional governors, mayors, and members of the Regional or Municipal Council.
- f) The directors of State-owned companies.
- g) The military and police personnel on active duty.
- h) Civil servants, regardless of the position they hold, not included in the previous items, while they perform their duties.
- i) The spouse, common-law spouse or relatives up to the fourth degree of consanguinity or the second degree of affinity of the persons listed in the preceding items. (Guidelines, Section 33, subsection 33.2)

## **8. ARBITRATION PROCEDURE**

As previously explained, arbitration to settle a dispute concerning collective bargaining in the public sector is optional. The steps to process it are described in the following lines.

## **8.1. Commencement**

After accepting his designation as such, the president of the Court of Arbitration must summon the parties to an installation hearing; thus, the arbitration has been formally commenced (LNCSE, Section 18, subsection 18.4; Guidelines, Section 35).

## **8.2. Challenge of arbitrators**

The parties may challenge the arbitrators on the grounds provided for in Legislative Decree No. 1071 and those set forth in the Guidelines (LNCSE, Section 36, subsection 36.1).

Arbitrators may also be challenged on the following grounds:

- a) When they are not registered in the National Registry of Collective Bargaining Arbitrators;
- b) When they are subject to the grounds set forth in Section 28 of Legislative Decree No. 1071” (LNCSE, Section 36, subsection 36.2).

## **8.3. Duration of arbitration**

The arbitration proceeding, together with the service of notice of the arbitration award, may not extend for more than forty-five (45) business days (LNCSE, Section 18, subsection 18.4).

The Guidelines specify that the above-mentioned maximum term of forty-five (45) business days is calculated from the commencement date and that the arbitration award must be rendered within such term (Guidelines, Section 37, subsection 37.1).

## **8.4. Supplementary application of the legislation governing the private sector**

The LNCSE and its Guidelines expressly establish that the Single Consolidated Text of the Labor Collective Relations Act approved

by Supreme Executive Order No. 010-2003-TR (hereinafter, TUOLRCT), its regulations, and Legislative Decree No. 1071 shall apply to labor arbitration in the public sector on a supplementary basis, as long as they are not inconsistent with the LNCSE (LNCSE, Section 18, subsection 18.7; Guidelines, Section 37, subsection 37.2).

## **9. THE ARBITRATION AWARD**

It is the final decision handed down by arbitrators which puts an end to the dispute submitted to their consideration. It becomes enforceable once it is declared final or once the remedies that may be filed against it have been exhausted.

The Guidelines define the arbitration award as “the final outcome of the arbitration proceeding, containing the Arbitration Court’s decision concerning the dispute submitted to its jurisdiction” (Section 38, subsection 38.1).

## **10. CONTENTS OF THE ARBITRATION AWARD**

The LNCSE and its Guidelines consider that the arbitration award may reflect the final approach of one of the parties or an alternative that combines both proposals (LNCSE, Section 18, subsection 18.5; Guidelines, Section 38, subsection 38.2).

The Guidelines strictly establish that “an arbitration award may not contain concessions that differ from, are additional to, or exceed those expressly requested by the trade union in the Collective Agreement draft” (Guidelines, Section 38, subsection 38.2).

In the event that “due to equity reasons, the Arbitration Court deems it necessary to attenuate any aspect of the proposal chosen because it is excessive, it must state in the arbitration award what the modification or modifications are about and the reasons for their adoption” (Guidelines, Section 38, subsection 38.3).

The Guidelines (Section 38, subsection 38.4) provide that the following reports are considered in rendering the arbitration award, as the case may be:

- a) The report prepared by the employer representation designated by the Office of the Prime Minister, specifying the cost of implementing the collective agreement draft and the budget availability.
- b) The report prepared by the entity's Budget Office in coordination with the Administration Office or those acting in such capacities as identified in the list of demands.
- c) The final report on the status of the financial administration of the public sector, issued by the Ministry of Economy and Finance.

## **11. APPEAL FOR ANNULMENT OF THE ARBITRATION AWARD**

Arbitration awards in state collective bargaining matters are unappealable. However, unappealable should not be confused with unchallengeable, since an arbitration award may be challenged through the appeal for annulment referred to in Section 62 of Legislative Decree No. 1071. Said appeal must be processed pursuant to the provisions set forth in such decree, as long as they are compatible with the provisions contained in the Guidelines (LNCSE, Section 42, subsection 42.1).

The provisions on nullity of arbitration awards contained in Section 63 of Legislative Decree No. 1071 that apply to the labor proceeding include the following:

- a) One of the parties has not been duly notified of the appointment of an arbitrator in an arbitration proceeding or has otherwise being unable to enforce its rights.



- b) The composition of the arbitration court or the arbitration procedures have not been in accordance with the agreement between the parties or the arbitration provisions set forth in the LNCSE.
- c) The arbitration court has resolved on matters not submitted to its consideration.
- d) The Arbitration Court has resolved on matters that are manifestly non-arbitrable pursuant to law.

We are of the opinion that, applying Section 66 of the TUOLRCT on a supplementary basis, an arbitration award may be challenged when it is manifestly contrary to the Constitution and to law or when it recognizes lesser rights than those contemplated by law in favor of workers.

## **12. ADMINISTRATIVE ENFORCEMENT OF THE ARBITRATION AWARD**

Arbitration awards in labor matters are enforced within the term established therein and must conform to the provisions set forth in Section 14, subsection 14.5 of the Guidelines (LNCSE, Section 19, subsection 19.3; Guidelines, Section 39, subsection 39.3).

Based on the above, in order to implement any provisions with an impact on the budget, collective bargaining must come to an end on June 30 of each year. Pursuant to subsection 5.3 of the regulations, if such term is exceeded, any provisions with an impact on the budget shall be implemented during the stages of budgeting and shall take effect from January 1 of the year following their registration (Guidelines, Section 14, subsection 14.5).

It is understandable that, since the arbitration award is the result of a proceeding followed before a court of autonomous jurisdiction, it will remain in full force until a final court decision renders it ineffective.

The LNCSE provides that the untimely enforcement of the arbitration award entails administrative liability for the officials responsible for authorizing such enforcement (LNCSE, Section 19, subsection 19.2). With regard to this matter, it is worth reflecting on what will happen when the necessary budget resources are not available despite the officials' willingness to comply with the arbitration award. We are of the opinion that, in this case, said officials will be exempted from any liability if they documentarily evidence that they took the pertinent steps to obtain the resources, but they were not delivered.

### **13. JUDICIAL ENFORCEMENT OF THE ARBITRATION AWARD**

Arbitration awards rendered in state collective bargaining have executory force; they are enforced through an executory proceeding, as provided for in Section 57 of the New Labor Procedural Act (LNCSE, Section 19, subsection 19.6; Guidelines, Section 41).

We consider that this is an erroneous provision, since arbitration awards are granted executory force without taking into account that this type of decisions must contain a certain and enforceable obligation recognized in favor of someone, in this case a worker.

An arbitration award arising from state collective bargaining recognizes obligations in favor of a group of workers. It might be necessary to discuss whether the state worker falls within the scope of the arbitration award, which is not possible in an executory proceeding, but in an ordinary labor proceeding that includes an extended evidentiary stage.

## **14. MOTION TO DISMISS BASED ON NONCOMPLIANCE WITH THE ARBITRATION AWARD**

The failure to enforce the arbitration award disqualifies the employer from challenging the award or from continuing the proceeding if during it such failure is proven. For this purpose, the trade union may file a motion to dismiss based on noncompliance with the arbitration award at any stage of the proceeding (LNCSE, Section 19, subsection 19.4).

We consider that this provision is also erroneous, since it prevents the exercise of the right to effective judicial protection, as the entity will not be able to start or carry on with the challenge procedure if it has not previously complied with an award that, in its opinion, is null and void.

The correct course of action would have been for the entity to carry on with the challenge procedure, without prejudice to requiring the entity to comply with the arbitration award through the ordinary labor proceedings, given that, as these are two different proceedings, the arbitration award remains in force, unless it is suspended through an interim measure.

The Guidelines expressly establish that the consequences of noncompliance with the arbitration award do not apply when such noncompliance is due to the enforcement of an interim measure ordered by the Judiciary (Guidelines, Section 40, subsection 40.3).

## **15. VERIFICATION OF NONCOMPLIANCE WITH THE ARBITRATION AWARD**

At the request of the trade union, the competent supervision and control bodies verify the noncompliance with the arbitration award. The record of verification is sufficiently valid for the courtroom in charge of the nullity proceeding to dismiss the complaint on the merits (LNCSE, Section 19, subsection 19.4).

We consider that the competent body to verify the noncompliance is the National Superintendence of Labor Inspection (SUNAFIL), created by Act No. 29981. SUNAFIL performs its duties and responsibilities in accordance with the General Labor Inspection Act, Act No. 28806, and its regulations, Supreme Executive Order No. 019-2006-TR, as supplemented and amended.

## **16. NOTICE OF ARBITRATION AWARD**

The arbitration award is formalized in writing in three (3) copies and is notified to the parties within a term not to exceed five (5) business days after it is issued. The president of the Arbitration Court sends the third copy to SERVIR for registration and filing within the same term established for giving notice to the parties (Guidelines, Section 43, subsection 43.1).

The president of the employer representation forwards the arbitration award to the Office of the Prime Minister or to the highest administrative authority of the public sector entity, according to the bargaining level, within a term not to exceed three (3) business days from its receipt (Guidelines, Section 43, subsection 43.2).

## **17. CONCLUSIONS**

- a) Arbitration in state collective bargaining is optional and may be commenced at the request of either party, without this affecting the workers' right to strike.
- b) The arbitration award in state collective bargaining may be formulated on the basis of the proposals made by both the trade union and the employer. This represents a major difference with the arbitration awards issued in collective bargaining processes between private entities and their workers, where the arbitrators must select the proposal of one of the parties, with the possibility of attenuating it.

- c) By granting executory force to an arbitration award derived from a state collective bargaining process, the legislator committed a serious mistake, insofar as such type of award does not recognize a certain and enforceable obligation in favor of a worker, but general obligations in favor of a group of workers. While in some cases such obligations may be individualized, in other cases they must be determined in a proceeding that includes an evidentiary stage for discussing the existence or certainty of the obligation.
- d) The motion to dismiss based on noncompliance with the arbitration award incorporates the *solve et repete* principle, which violates Section 139, subsection 3 of the Peruvian Constitution, as it prevents the public entity that considers to be affected by an arbitration award from resorting to a judicial body; in other words, it is a violation of the right to effective judicial protection.

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