WORKERS' RIGHTS IN THE BRAZILIAN SUGARCANE ETHANOL INDUSTRY

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Abstract

In 2007, the Brazilian government invited management and organized labor to establish a general agreement on working conditions in the sugarcane ethanol industry. The outcome of the negotiation - the so called "National Agreement" – is a continuous process of tripartite production of rules that has improved working conditions in the industry and has helped workers and companies to manage the transformation of the production process of sugarcane ethanol. This paper describes the creation process, the structure, the functioning and the evolution of the "National Agreement", and examines some impacts on employment practices in the industry. The author uses media reports, and material collected in interviews with the main actors involved. The paper ends with a positive evaluation of the experiment, which constitutes a rare case of success in social dialogue in Brazil.

1. Introduction

This paper describes the process of establishment of the "National Agreement" in the sugarcane/ethanol industry in Brazil. It describes in Session 2 the Brazilian System of Labor Relations, in order to provide some basic and background information that will help the reader to understand the developments described in the next sections. Session 3 provides the context surrounding the National Agreement, with includes some historical and product market information. Session 4 describes the representation structures of the parties, and is followed with Session 5, which addresses the process of negotiation of the Agreement. Session 6 presents the outcomes and includes the content of the agreement itself, and some additional results. The papers ends with a summary and conclusions, in Session 7.

2. The Brazilian System of Labor Relations

This section presents a brief description of the essential elements of the Brazilian LRS in terms of the following elements: workers' unions, employers' associations, collective bargaining, mechanisms for conflict resolution, strikes and the role of the govemment.

The System of Labor Relations in Brazil places a heavy emphasis on legal regulation, of both individual and collective rights. Its legal foundations date from the 1930s and have remained virtually unchanged since then, despite major social, economic and political change. The Administration of President Fernando Henrique Cardoso (1994-2002) adopted the strategy of reforming the system through a succession of individual measures that made certain individual rights more flexible. Ali of the measures adopted allowed the rules in question to be made more flexible through collective bargaining, provided that they were negotiated by the concerned parties. Despite submitting flexibilization to collective bargaining, the Cardoso Administration did not take steps to improve the negotiation system. The result of these individual changes were derisory and the system remained virtually unchanged during the whole of the 1990s

(Zylberstajn, 2002). President Luis Inácio "Lula" da Silva adopted the opposite strategy of concentrating on the elaboration of a proposal to reform ot collective rights and leaving the reform of individual rights until a later stage.

In 2003, Brazil had an active labor force of approximately 70 million individuals, but only 41 % of these were in the formal sector of the economy. These are employees with an employment card and public sector employees, represented respectively in rows 1 and 4 of Table 1. This table reveals two aspects of the Brazilian labor market. Firstly, it is a predominantly informal market. Secondly, the degree of informality remained practically unchanged during the 1990s, a period marked by a profound structural adjustment in the Brazilian economy. The implication for this paper is obvious: union reform is a subject that affects, at least at an initial stage, only the minority of Brazilian workers employed in the formal sector, in which unions are organized. Some sectors of the Brazilian union movement have attempted to organize informal workers, but the extent of these attempts has been extremely limited. Informal workers, who constitute the majority, are not directly affected by union reform and it would be an exaggeration to claim that the unions in the formal sector represent them.

Workers' unions: within Brazil, labor unions of workers represent ali of the workers in a given geographical area (termed a "territorial constituency"), both affiliated and unaffiliated. These work on the principle of the single union, according to which there can only be one union for each category of workers. Initially, categories were defined by law, leading to curious situations. One of these is that of data processing workers. When the law defined the categories during the 1940s, the world was not familiar with computers. During the 1970s when data processing emerged, workers devoted to this activity could not have their union, since the law did not recognize them as a category. They were thus represented by unions of commerce employees. The unions for such workers could only recognized by law when this category was added to the original list in the law.

In 1988, during the process of re-democratization after the military regime, the country drew up a new Constitution which prohibited Government authorities from interfering in union activity and maintained the principle of the single union. In this way, the definition of categories became a prerogative of workers themselves. The combination of the principle of the single union with the freedom to create categories led to an explosion of new unions. Until1988, there were some 4,000 unions in Brazil. Today, there are 18,0003, The rate of unionization within Brazil is approximately 20% and has not changed significantly over the last 15 years. The explosive growth in the number of union thus indicates clearly the fragmentation of worker representation.

The most representative sectors of the union movement perceive that they cannot prevent the process of fragmentation since there is an incentive for the formation of unions that is beyond their control: the union contribution, the value of which is equivalent to a day's work (or 1/30 of a monthly or 1/360 of annual salary). This contribution is checked off from the payroll by the employer who collects it on behalf of the government as if it were a tax The government distributes the revenue in the following proportions: 60% to the union, 15% to the state federation, 5% to the national confederation and 20% to the Department of Labor and Employment. In this way, any recognized union has guaranteed revenue, equivalent to 60% of the union contribution

of ali the workers in the relevant territorial constituency. The higher union structures receive their shares regardless of the existence and number of unions in their respective regions.

In addition to the Union Contribution, the unions may charge two more fees: the social contribution (normally charged for the service of representing workers in collective bargaining) and the confederation contribution (established in the Constitution, to finance the higher entities in the hierarchy to which unions are affiliated). These two fees may be levied on ali the workers in a category represented by the union. The Labor Courts have nevertheless recognized the right of workers to refuse to pay these two fees when companies deduct them from the payroll. Finally, unions can charge an associate fee from workers who voluntarily sign up as members.

This funding system has two effects, both operating in the direction of weakening of representation of workers' interests. The first is an incentive to fragmentation of territorial constituencies and/or "categories". A union that represents a category of workers in a number of municipal authorities may be dismembered at any moment jf a group of individuals decides to form a union in one of these authorities. In addition, a new union may be recognized jf it defines itself as the representative of a new "category" which was previously part of a broader category. In both cases, the representation of the workers will have been fragmented.

The second effect is the disincentive to affiliate and to organize workers. Since the union has guaranteed revenues from union contributions, there is no need to affiliate workers. On the contrary, when the number of affiliates is small, the revenue from the union contribution is "divided" among a small number, and the fewer the number of affiliated workers, the greater the amount available "per capita" to the members. Since the end of the 1970s, with the emergence of the Central Única dos Trabalhadores (CUT) [Single Confederation of Workers), the abolition of both, the union contribution and the single union principle have been a banner raised by many sectors of the union movement. The election of Lula represented a concrete opportunity for these sectors to achieve their objective. It is no exaggeration to say that the reorganization of the unions and the funding of their activities is the main objective to be achieved with union reform for these sectors. For other sectors of the Brazilian union movement, however, namely those that survive on the basis of the single union principle and the union contribution, the reform of the system of representation of interests is not exactly a priority.

Employers' Associations. Brazilian law created a structure for representing the interests of companies symmetric to that of the structure representing workers, which obeys the same principle of the single union. In this case, the law speaks of "economic categories' and establishes that for each category there can only be one employers' association in each territorial constituency. The law also created an employers' association fee that all companies in the territorial constituency must collect, regardless of whether they are affiliated to the employers' association. The employers' associations form state federations which in tum form national confederations, all of which are divided into five sectors: industry, commerce, banks, transportation, and agriculture. In addition to representing the interests of companies, this structure has another function: administering the system of training and social services to workers. In order to finance this system, the Brazilian government imposes a specific tax equivalent to 2.5% of

payrolls, which is collected by the National Institute of Social Security (INSS). The law allows the government to delegate the administration of the system of training and social services and allows administrators to charge a percentage of the revenue for management service. Since the start, the administration of the system was transferred to the federations of employers' associations. In this way, the structure of representation of interests of companies created an enormous parallel structure for the provision of training and social services. This set of organizations and interests is known as the Sistema S (S System), since ali of the organizations are designated by the word Serviço. [Service] which begins with an S.

Shortage of space prevents the author from describing the activities and results of these enormous structures. For the purposes of this article, it is sufficient however to highlight that the law delivered the task of training labor and providing social assistance to workers to the federations and confederations of employers' associations. For this purpose, it guaranteed abundant resources, collected directly from the payrolls of every company. It is not difficult to imagine that after decades thus system led to the creation of gigantic structures and bureaucracies, whose interests may be far removed from those of the companies that they are supposed to be representing. Indeed, these are powerful structures with significant lobbying influence in the National Congress as well as in local and regional politics. It is also not hard to imagine that these structures have no interest in modernizing and democratizing the system of representing interests within Brazil.

Collective bargaining: The Brazilian labor unions have the right to collectively bargain over working conditions and wages of the workers represented. This right is only guaranteed however outside the workplace. The law does not guarantee the unions the right to represent workers in the workplace. Indeed, there are few companies in which unions operate in the workplace. Such cases, which constitute exceptions, are found in the major auto mobile manufacturers and in a number of other large industrial companies in which unions are sufficiently strong to impose their presence. For the great majority of wage earners, collective bargaining is an activity that occurs outside the company and is limited to the annual renewal of collective agreements. In general, the parties to a negotiation are: a union of workers in a given category (e.g. workers in the metal or chemical industries or commerce workers, etc.) and an employers' association representing the companies in the corresponding economic category. In the majority of cases, the negotiations cover one or more municipalities. Often these may cover an industry across an entire state, although only in a few cases, such as the banking sector, does bargaining cover the entire country. As such, collective bargaining in Brazil is both centralized within sectors and at the same time, geographically decentralized.

In the same way that legislation does not guarantee the representation of workers' interests in the workplace, the law also fails to recognize the right to negotiation of apex union organizations. Within Brazil, there are various union factions, all of which have a central organization. None of these may negotiate collectively, however. In this way, collective bargaining is an activity within an extremely restricted territory: it cannot descend to the level of the workplace or rise to macro agreements on a national scale. The vast majority of Brazilian unions have operated within these limits for the last six or seven decades.

Mechanisms for conflict resolution: One of the vital functions of any system of labor relations is that of conflict resolution (Schregle, 1981). In Brazil there is a specific judicial system for the resolution of labor disputes: the . Justiça do Trabalho. [labor Courts), which is organized on three hierarchical levels: local, regional and national. The court of first instance, consisting of branch courts (*tribunais*) with microregional authority, deals with individual grievances. The court of second instance (constituted by the Regional Courts at state) level hear two kinds of case: collective disputes (breakdowns in negotiations) and appeals regarding individual claims in courts of the first instance. Finally, the third level, the Supreme labor Court, receives appeals against cases judged in the regional courts, as well as breakdowns in negotiations at supra-regional or national leveI. Until 1998, the labor Courts had a monopoly on resolving complaints regarding individual rights. In that year, the law recognized the legality and finality of private settlement procedures for resolving individual grievances.

There are two characteristics of the Brazilian system of labor relations that increase the importance of the labor Courts. One of these is the fact already mentioned that the law does not allow unions to represent the interests of workers in the workplace. Secondly, the law allows companies to dismiss employees without just cause, provided that they pay an indemnity and give prior notice. The absence of the union and the scope for dismissal inhibit the manifestation of conflict in the workplace during the employment relationship. Workers delay their grievances until the end of the relationship. When they are dismissed and have nothing more to lose, they bring these before the labor Courts.

Given the absence of representation of interests and negotiation in the workplace, the system of labor Courts, designed in the 1930s, channels conflicts towards another procedure, litigation in the labor court. In Brazil, small conflicts that would normally be administered by collective bargaining, are transformed into legal proceedings. Being incapable of resolving minor disputes, the system pushes hundreds of thousands of grievances every year (Graph 1) onto the labor Courts. Despite the trivial and repetitive nature of these, the system is unable to prevent and resolve them in advance (Zylberstajn, 2002). This inability to prevent minor conflicts has led to the growth of the labor Courts, which today comprise no less than 1,553 judges, who in 2003 heard no less than 2.3 million cases. In the same year, the local courts received some 1.7 million grievances and solved virtually all of them. The regional courts receive appeals against some of the sentences of the local courts and act as arbitrators for breakdowns in collective bargaining. In 2003, the Regional labor Courts (TRT) heard some 470,000 cases. Finally, in 2003, the TST, the Supreme labor Court, received no less than 123,000 appeals for individual grievances and/or collective disputes. This added up to some 2.3 million cases at the three levels of court.

The Labor Courts are relatively rapid since they resolve practically the same number of cases that they receive each year (Graph 1). Naturally, in the event that one of the parties to a grievance decides to appeal to the TRT and then to the TST, it may spend years in the labor courts before receiving a final sentence. In general, however, sentences and/or settlements at the first level are not subject to appeals and the grievance is settled at this level. In 2003, a typical year, each judge settled an average of

5 cases a day or 0.6 cases per hour (Table 6). Only the trivial nature of the grievances can explain such "efficiency" of the Labor Courts.

The prevalence of litigation procedures over negotiation has important consequences, since it distorts the vision that social agents have of the role of the unions and collective bargaining. The facility of access and the frequency of litigation in the courts give the impression both to businessmen and trade unionists that labor relations and litigation are virtually synonymous. This distortion appears clearly in the discussion on one of the points of the union reform, the so-called "procedural replacement, which will be considered in the next section. In addition, it is not hard 10 imagine that the community of labor lawyers is a force that is at least potentially opposed to a labor reform that increases the scope for negotiation, since this implies the loss of a precious economic opportunity represented by the "market" for labor grievances. And evidently, the Labor Courts themselves represent an important group of interests that would lose a great deal of influence with lhe growth of the role of collective bargaining.

Finally, there is a last aspect that it is essential to mention. The Brazilian labor courts have the function of arbitrator in collective conflicts. In reality, they are more than simply an arbitrator, since in addition to power of resolving impasses, they also have the power of legislating on aspects of working conditions. This prerogative of the Labor Courts is termed "normative power". In the face of an impasse, any of the parties (including the Government via the Labor Attorney General (*Procuradoria do Trabalho*) may institute arbitration proceedings in the Labor Courts (termed .collective dispute"). Many unions and many employers would like the Labor Courts to have less power in order to create greater scope for negotiated solutions.

Strikes: The right to strike is recognized in Brazil, albeit with limitations. One of these is the concept of "illegality", according to which, a strike may be considered as "illegal" by the Labor Courts, which in such cases may order it to be lifted. Even jf the strike is not considered illegal, the tact that a case may be brought in the Labor Court to impose a solution creates a kind of "competition" between the two procedures, negotiation and dispute. For the union, the decision to go on strike is less risky since within a few hours or days the dispute will be terminated with the intervention of the Labor Courts. At the same time, however, the intervention of the Labor Courts also reduces the pressure that a strike can exert since the company knows that it will be short-lived. Evidently, a union reform on the scale that Lula wishes will have to consider this question in order to attempt a solution of these inconsistencies.

The Government: The Government plays an extremely important role in the Brazilian system of labor relations. The Legislature has a tradition of intervening in the labor market, issuing laws and regulations with the declared objective of protecting workers, resulting in extremely detailed and protective legislation. The Judiciary also plays an essential role as described in the previous sections. Finally, the Executive is no less important This arm of government still maintains important links with the unions, since it has the prerogative of granting registrations to these. It is true that this prerogative was more important prior to 1988, but even today the process of creating unions still depends to a certain degree on the good will of the Ministry of Labor. For many years, certain sectors of the Brazilian trade union movement supported the ratification of the

ILO's Convention 87, since Brazil is one of the few ILO member companies that has not yet ratified what is perhaps the most important convention of that organization, since it establishes the principle of freedom to organize unions. With so many rules and procedures regulating union organization and activity by the government, the union reform would necessarily have to consider the question of union freedom. However, most of the union movement is opposed to ratifying this convention as it is afraid that without the principle of the single union established in law and without the compulsory contribution, also established in law, few unions would survive.

Ali in all, the Brazilian system of labor relations has many defects. Perhaps the main one is its inability to administer disputes in an autonomous way. As a result of this inability, it expels them o outside the company. As has been demonstrated, this arrangement creates an industry of grievance and resolution of conflicts. Up to a certain point, the system as a whole is convenient for unions (Zylberstajn, 2003). At the same time, it creates legal insecurities for companies in 50 far as they cannot gauge the degree of their vulnerability to the decisions of the Labor Courts, since grievances are not presented until after the end of the employment relationship. Despite the defects of the system, both employers' associations and unions have few incentives to accept changes since the status quo guarantees them many benefits. In fact, the question of the modernization of labor relations in Brazil has been discussed exhaustively for the last two decades without any progress in proposals due to an apparently insuperable contradiction: the segments responsible for proposing the changes are precisely those with little interest In carrying them out.

3. The context of the National Agreement