Labour Legislation and Institutional Aspects of the Brazilian Labour Market \[1]

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[1]Please do not quote without the authorization of the authors.

[2]We are quite thankful to Alexandra Edwards for her commets.

Abstract:

This paper analyses the structure of the Brazilian Labour Code (CLT), the changes introduced in it since its approval in 1943 emphasizing the new Federal Constitution of 1988, the costs of labor and of dismissals for employers, the structure of unions organizations, the regulation of collective bargaining and capital labour conflicts, and the process of wages determination. We also analyse the evolution of strike activity, and the evolution of wage differentials and functional distribution of income between profits and wages in industry in the last 15 years.

Resumo:

Este trabalho estuda a estrutura do código trabalhista no Brasil (CLT), as mudanças introduzidas na lei desde 1943 com ênfase na nova Constituição federal aprovada em 1988, os custos trabalhitas e de demissão para as empresas, a estrutura sindical, a regulação das negociações coletivas e dos conflitos entre capital e trabalho, e o processo de determinação dos salários. Examinamos ainda a evolução da atividade grevista e a evolução dos diferenciais de salários e da distribuição funcional da renda entre salários e lucros na inústria nos últimos 15 anos.

1. Introduction

The Brazilian Labour Laws date from the late 30's and early 40's, and were grouped in 1943 in a labour code named Consolidation of the Labour Laws (Consolidação das Leis do Trabalho, CLT). Being introduced during a period of strong facist influence in Brazilian politics, and of a civilian dictatorship, the code has an authoritarian and paternalistic character. It is a comprehensive set of rules which defines the structure of unions organizations, the individual and collective rights of workers, the process of collective bargaining and the labour contract. To deal with the capital labour conflict the code creates a special system of Labour Courts to settle individual as well as collective conflicts between capital and labour.

The CLT has as its main characteristic the idea that harmonious capital/labour relations results from the capacity of the law to protect workers from employers' undue exploitation. The protection of workers was thus established in the law, and until very recently had never been a matter of negotiations between workers and employers.

The corporatist strucuture in which the representation of workers and employers is based created a strong dependency link between the union leaders and the State. Unions and union leaders were granted certain rights and privileges, but on the other hand,

were expected to help the government in the implementation of policies and as an instrument of colaboration and conciliation between capital, labour and the State. In retrospect, it seems quite clear that union leaders were not agents acting necessarily or always in the best interest of the workers, nor were they an instrument of coordenation of the political and economic power of workers in their relation with the employers. In certain circumstances they really acted more as State agents or party members than as representatives of the workers.

Based on these principles, a large set of rules was included in the law which defined the rights of the workers, conditons of work and the degree of protection of the worker from dismissals. The idea was to build a "fair" capital/labour relation based on the law and to avoid direct confrontation at the enterprise level.

Implicit in the spirit of the law there was an exchange between the union leaders and the State: the cooperative attitude of the leaders in relation to the State's policies was a much easier task if a monopoly of representation was granted. Hence, the plurality of workers' represetation was and still is illegal, and only one union has the right to represent the workers of each industrial sector or craft in each geographical region. At the same time, union activism was severily restricted by the law.

Finally, in line with the notion that capital labour conflicts should be seen not as a social and economic phenomena to be resolved through a direct negotiation betweeen workers and employers, but as a question of fairness and justice based on the

labour code, a comprehensive system of Labour Courts were created to judge the individual and collective disputes. The Labour Courts were the locus where concilation and arbitration were implemented and the disputes solved.

The CLT was basically unchanged until 1964, when a military government reduced the protection of labour and increased the control over collective bargaining, strikes and wage determination. After this, important changes were introduced in 1979 (in the strike law) and in 1988 by the new Constitution.

This paper analyses the structure of the Brazilian Labour Law (section 2), the changes introduced since its approval in 1943 (section 3), the costs of labor and of dismissals for employers (section 4) and the structure of unions organizations, collective bargaining, capital labour conflict and wages determination (section 5). In section 6 we analyse the evolution of strike activity, and in section 7 the evolution of wage differentials.

2. The Structure of the Labour Code

The CLT can be divided into three sections. The first, goes from Titles II through IV and defines the characteristics of the labour contract and the protection of the worker. The second, Title V, defines the structure of unions organizations and Titles VI through X defines the process of collective bargaining and the system of Labour Courts.

2.1. Individual Rights and the Right to Dismiss Workers

On Titles II through IV, the CLT defines a large set of rules which every labour contract must respect. Thee is a booklet (the "carteira de trabalho") in which the contract, and all the changes in it, must be registered by the employer. A limit on the number of hours of work per week is defined, maximum extra-time work, minimum payment for extra-time work, minimum wage, vacations, special protection for women and children, safety in the job and special rules for specific occupations are determined. This set of rules defined the conditions of work in the work place.

It should be noted that these rules were never subject to any negotiation between unions and employers. Indeed, most of them were not even demands of the unions when the code was created. In a sense, the laws played a preemtive role, that is, they anticipated the demands of the unions.

Workers were also protected against non-justified dismissals. If the dismissal was non-justified, the employer had

to pay a monetary compensation to the worker. The value of this compensation was the sum of one month of wage for each year of employment, calculated on base of the higher wage received by the worker during his contract. After ten years of employment in the same enterprise dismissals were forbiden, except if properly justified. If the enterprise went banckrupt or closed for some reason, the monetary compensation of stable workers had to be payed in double.

The motives which could be raised to justify a possible firing were clearly defined in the law. These were lenience in the job, habitual drunkness, violation of enterprise secrets, insubordination, throwing up of one's job and violence in the job. The enterprise was allways obliged to prove the accusation in the Labour Court if the worker was dismissed for a justified reason.

If the Court decided that the dismissal was not justified and the enterprise was wrong, it was compelled to re-contract the worker and pay all the wages since the dismissal.

The employer had also to notify the worker of his dismissal one month before it was implemented. During this period, the worker had two hours a day to look for a new job, without any reduction in wage.

The above restrictions made it very difficult to fire a worker. Up to 1965, when the law was completly changed, dismissals were always made through some kind of agreement between the enterprise and the worker, when both were interested in ending the work relation.

2.2. Union Organization

Title V defines the structure of union organization. Unions were constituted on paralel lines for workers and employers. They were defined on an occupational (for workers) and economic category (for the employers) basis, and the creation of unions which grouped different occupations or economic categories was forbiden. Occupations and economic categories were defined by the Ministry of Labour based on the similarity of the work characteristics or the business. All unions had to be registered and approved at the Ministry of Labour.

Once recognized by the Ministry of Labour, the union had monopoly of representation of the occupation (or economic category) at the regional base defined. The smallest regional base was the city and only on an exceptional basis an union could have a national jurisdiction. If two or more groups tried to register an union at the same regional basis and occupation, the dispute was solved by the Ministry of Labour.

A Federation could be created by at least five unions and more than one Federation could be created for the same occupation or economic category. However, they did not have the right to represent these categories, except if there was no union to represent them. The regional base of a Federation was the State and they should be recognized by the Ministry of Labour as well. The grouping of at least three Federations could form a Confederation at the national level.

Neither firms nor workers were obliged by the law to join their respective unions but a compulsory fee was charged both

from all employed workers and all registered enterprises. The value of the fee was one day work per year, for the worker, and proportional to the value of the capital of the enterprise. 60% of the fee went to the union, 15% to the Federation, 5% to the Confederation and 20% to the Ministry of Labour.

The utilization of the resources of this compulsory contribution was regulated by law and it could be used basically to social welfare objectives (libraries, funeral relief, education, scholarships, consumption cooperatives, etc.). It could not be used to constitute a strike fund or to any other activity which could be of some help to collective bargaining.

Unions could also collect a voluntary fee from their associates. The value of this fee had to be determined by the general assembly of the union and the resources originating from this voluntary contribution could be utilized by the unions at their discretion.

Unions boards were elected through secret balloting and the quorum for the validity of the election was at least 2/3 of the associates in the first balloting. If this quorum was not obtained, a new balloting was called, when the quorum was reduced to 50%. If this was not obtained, a third balloting was called and the quorum reduced to 40%. If none of these quorum were obtained, the Ministry of Labour could name a new board and a new election were called in the period of six months.

Workers running for the board of directors could not be fired once registered as candidates, and up to one year after the end of their mandate, if elected. Any worker employed in the

private sector had the right to become member of a union, but the unionization of State employees was forbiden. Although the unemployed worker continued to be member of the union, he was not elegible for the board of directors.

The Ministry of Labour had the right to intervene in the unions and depose their board of directors for many reasons of which the most important were the use of the resources of the compulsory contribution for ends which were not stipulated in the law, the calling of a non-authorized strike or lock-out, or the creation of "any obstacle to the implementation of the economic policy of the Government".

2.3. Collective Agreements and Conventions

Any labour contract between the firm and an employee had to follow the provisions of the collective agreements or conventions independently of the fact that the worker or the enterprise that were signing the contract were unionized or not. The difference between agreements and conventions is that the former is signed between a workers' union and a single enterprise, and the latter between a workers' union and more than one enterprise or an employers' union. The provisions of the conventions, if favorable to the workers, have hierarquical priority over the agreements and over the contracts signed between an enterprise and an individual worker.

It was forbiden to sign conventions and agreements with more than two years duration but, in principle, there was no minimum duration for them.

The right to represent workers in collective barganing and in the Labour Courts, and to sign collective agreements and conventions were reserved to the unions, unless there were no union representation in a given occupation and region, in which case the Federation could represent the interests of the workers.

Although unions had limited regional, occupational and economic jurisdiction, collective bargaining, agreements and conventions were not limited in the same way. There was no law prohibiting two or more workers' unions of different occupations or regional basis to sign a common collective convention with two or more employers' unions.

Economic categories and enterprises were forbiden to refuse to collective bargaining and the law stipulated as a duty of the (workers' and employers') unions to "colaborate with the State...in the study and solution of the problems of the occupation or economic category" and to "promote the concilation on work dissension".

The law declared "invalid any clause of a collective agreement or convention which, directly or indirectly, goes against any disciplinary rule or prohibition of the Government's economic policy or concerning the wages policy in force."

2.4. The Labour Courts, Conciliation and Arbitration

Every individual or collective dispute between capital and labour which could not be solved on the collective bargaining table was directly sent to the Labour Courts. The system has three branches hierarchily organized as follows:

- the Boards of Conciliation and Judgement;
- the Regional Labour Courts;
- the Superior Labour Court.

If the collective bargaining arrived at a stalemate any of the parts could call a Dissídio (Dissension). The dispute went first to the Board of Conciliation and Judgement of the region. This Board was composed of one labour lawyer, one worker representative and one employer representative. These last two members of the board were named by the President of the Regional Labour Court where the Board was located. If conciliation was not possible at this level, or if one part did not accept the solution proposed, the dispute went to the Regional Labour Court.

The Regional Courts have different compositions, depending on the region, but all have majority of labour lawyers and minority of representatives of workers and employers. The workers and employers representatives were choosen by the President of the Republic.

Finally, either the workers' or employers' union could appeal to any decision of the Regional Labour Courts, and if this happened, the case would go to the Superior Labour Court. This Court was composed of eleven labour lawyers, all named for lifetime by the President of the Republic, and approved by the Senate, three workers and three employers representatives, choosen by the President of the Republic.

The main functions of the Courts are to promote the conciliation and the judgement of the dissensions at their

jurisdiction. If conciliation is not possible, the Courts have to arbitrate the dispute and announce a decision. The decisions of the Superior Labour Court were final except if the dispute refers to a Constitutional principle. In this case, the decision of the Superior Labour Court could be appealled from at the Supreme Court.

There was no special rule for conciliation or arbitration which the Courts had to follow. The arbitration were based on the law, when applicable, on previous judgements of the Courts, if there were no law to be followed, or even on political grounds.

2.5. The Right to Strike and Lock-out

The right to strike was recognized by the 1946 Constitution (art. 158) and one interesting aspect of the CLT is that it has no explicit rules for calling strikes or lock-outs, but has very severe penalties for individuals or unions which implement or incite them before an explicit authorization by the Labour Courts. The principle seems to be that as capital/labour disputes are a question of Justice, to call a strike or lock-out before the permission of the Courts was an attempt to influence the Courts decision by force.

If workers or employers, individually or collectively, promoted a strike or a lock-out without previous authorization of the Labour Court, or did not carry out a resolution of the Court, the penalties could range from a fine to the intervention in the

union and the deposition of its directors, or even imprisionment of the leaders of the movement.

3. Important Changes Introduced in the CLT and in the Capital/Labour Relation in General

In this section we discuss the main changes which took place in the CLT with emphasis on the changes introduced after the promulgation of the new federal Constitution in 1988.

Annual Bonus

In 1962 the government created a bonus to be payed to all workers in private enterprises (Law n. 4090, 7/13/1962). The value of the bonus was equal to 1/12 of the value of the workers wage in december of each year, multiplied by the number of months of employment in the enterprise in that year. In case of dismissal without justified reason, the employer had to pay the bonus in the month of dismissal. The value was calculated taking as base the wage at the month of the dismissal and proportional to the number of months employed in the firm in the corresponding year.

Family allowance

A monthly family allowance was created by law in 1963 (Law n. 4266, 10/3/1963). Its value was calculated as a percentage of the minimum wage for each children, and was financed through contribution by the employers.

Changes in the CLT

After 1964, important changes were introduced in the CLT. The first important change was the approval of a strike law. We mentioned the fact that strikes were not forbiden or even regulated by the CLT, but that severe penalties were imposed in case a strike (or a lock-out) was called without previous permission by the Labour Courts. With the growth of labour activism and non-authorized strikes in the early sixties and the military coup of March 1964, one of the first decisions of the new government was to approve a Strike Law (Law n. 4330, June 1st. 1964). The idea was to regulate the right to strike and create rules that had to be followed so that a strike could be considered legal.

The law determined that a strike, to be considered legal, had to be approved by the general assembly of the union, and called through the local press. The period between the calling of the general assembly and its realization had to be of at least 10 days.

The quorum for the validity of the general assembly was 2/3 of the associates in the first calling and 1/3 on the second calling. On those unions representing more than 5,000 workers, the quorum in the second calling was 1/8 of the associates. Between the first and the second calling the minimum period required was two days. The decision had to be taken on secret balloting and by the majority of the votes of the assembly.

If the strike was approved by the general assembly, the union had to notify the employer of the decision, giving at least a five days period to him to accept the demands of the workers. In

economic activities considered fundamental (as defined in the law), this period was increased to 10 days. As soon as the strike was approved, the labour authorities were forced to start the conciliation procedures.

Fundamental activities were listed in the law and included water, energy and gas services, communications, transportation, funeral services, hospitals, food shops, pharmacies and drugstores, hotels and basic industries or industries which were considered essential for nacional defense, at the government discretion. In this activities, the law determined that the authorities should take all the necessary steps to keep them working during the strike.

Piqueting was forbiden but the union could try to peacefully convince the workers to strike. Government workers (at any level, Federal, State or Municipalities) were forbiden to strike.

Strikes were only permited for reasons related to the problems of the occupation, never for political or solidarity reasons. Persons not directly involved with the union or occupation which were deciding about a strike (except governmental officials) could not participate or intervene in the general assembly.

If the union followed all this process, the strike could be considered legal and wokers could not be dismissed or substituted. During the period of a legal strike, the workers had the righ to receive their wages. The penalties for "promoting, participating or incite a strike or lock-out desrespecting this

law" were a monetary fine and six months in jail. All the conditions of the law applied to lock-outs as well.

The activities considered essential to national defence were re-defined in 1978 and strikes on these activies were forbiden. The list included all the fundamental activities of the law n. 1330 and the public service.

The strike law was changed once again in 1989, to adapt it to the new Constitution. The new constitution considers the right to strike a social right of all workers, and for this reason, the new law eliminated the concept of 'legal strike' and introduced the concept of 'abuse of the right to strike'. The law became much less restrictive. The notification to the employer that a strike is being called has been reduced to 48 hours in all sectors, accept for essential activities, where this period is increased to 72 hours. The quorum to vote a strike in the general assembly was left to the unions to decide and peacefull piqueting became allowed. According to the law, employers are not allowed to use any means to bring workers to the work place, and are forbiden to fire workers during the strike. Unions, on the other hand, are responsible for the maintainance of the equipment in good conditions, and will be held responsible for damages or deterioration of it.

There are not any more sectors in which strikes are forbiden, and in the essencial sectors, defined by the law, the workers and employers unions are now responsible for the provision of the minimum sevices necessary to garantee the services considered indispensable to the community, that is, those which may cause damage to the community if not properly provided.

If an agreement is not reached, the dispute goes to the Labour Justice in which instance it is resolved. Once the final agreement is signed, independently of its nature, the strike must end.

In 1965 the legal procedures for the appeals to the Superior Labour Court were changed. Law n. 4725 of july 13, 1965 created the "Efeito Suspensivo". This meant that any effect of a decision of a Regional Labour Court could be suspended by the President of the Superior Labour Court if the decision was appealed from, until the final judgment of this Court. It was a very important change since it was much easier to control the decisions of the Superior Labour Court during the period of the military rule, than to control the Regional Courts all over the country.

In 1989, a law eliminated the "Efeito Suspensivo" and the decisions of the Regional Labour Courts became effective during the period until the judgement of appeals to the Superior Labour Court.

Wage Regulation

In 1964, a wage law was approved. This law determined the rate of adjustment of all wages in the formal sector of the economy, taking the past and expected future rate of inflation and the growth in GDP per capita as the base for the adjustments. This law also introduced an yearly adjustment for nominal wages. [3]

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[3]We discuss the evolution in the wage law in section 4 below.

Job Security and Capitalization Fund

In 1966, (Law n. 5107, september 13, 1966) the entire system of protection against non-justified dismissals was changed. A capitalization fund was created, the Fundo de Garantia por Tempo de Serviço (FGTS). When contracting a worker, the firm had to open an account in a comercial bank in name of the worker and deposit 8% of the value of the wage, per month, in the account. These resources were adjusted by inflation and earned a 3% interest a year.

The money could not be used by the worker except for specific reasons, which changed over time, but mainly to buy a house, when retiring and if dismissed for non-justified reason. In this last case, the worker was ellegible to use the fund accumulated in his name and the enterprise had to pay a 10% fine over the value of the fund. This was the only requirement for non-justified dismissals after 1965, unitil the new Constitution in 1988.

The resources of the FGTS were utilized to implement a housing program by the National Housing Bank (BNH) and to finance infraestructural investment in sewage and water systems.

In principle, the option for the FGTS was voluntary, but in fact, as the FGTS was much more flexible, any worker which

refused to opt for it was not able to find a job. Eventualy, all the labour contracts became governed by this system, except in the civil service.

The new Constitution of 1988

Finally, very important changes were introduced by the new Constitution aproved in October 1988. First of all, an entire chapter on the Social Rights (chapter II) was writen for the first time in a Brazilian Constitution. This chapter confirmed some and changed many other items of the old CLT. For the objectives of this paper, the most important changes were:

a) Individual rights

- The maximum working hours was reduced from 48 hours to 44 hours a week;

- For continuous work shift, the maximum dayly journey was reduced from eight to six hours;

- Minimum extra-time remuneration went from 20% to 50% of the wage for a normal hour work;

- One month a year payed vacations with a bonus of at least 1/3 of the value of the wage;

- Previous notification of dismissal proportional to seniority in the enterprise, to be regulated by a future law;

- Increase in the fine for non-justified dismissal from 10% to 40% of the FGTS;

- Unemployment-benefit as defined in the law. The first law was voted in 1986, and revised in 1989. The unemployment

benefit applies to a worker who has been employed in the last six months before he or she was fired, and has contributed for the social security system for 15 months in the last 24 months. The worker will receive benefits for four months for every 16 months of unemployment. Unemployed workers who received less than three minimum wages will get 50% of the wages they received when they were employed, or 1.5 minimum wages otherwise.

- Profit-sharing as defined in the law. The law stablishing profit sharing has not been voted yet.

b) Unions organization

- Any interference and intervention in unions by the State were forbiden;

- On collective bargaining, the participation of the union were compulsory;

- The right to strike was garanteed and it is the workers prerrogative to decide about the oportunity to start a strike;

- In the enterprises with more than 200 workers the workers have the right to have an elected representative to negociate with the employers;

- Public employees were allowed to unionize and adquired the right to strike. The prohibition to unionize and to strike were maintained only to the military;

- The Confederations or any union with a national caracter adquired the right to argue the contitutionality of a law or act of the government in the Supreme Court;

- The monopoly of representation and the compulsory contribution were maintained. However, the administration has sent

a project to Congress extinguishing the compulsory contribution in 1990.

c) Labour Courts

- The Constitution introduced the possibility of arbitration before the dispute was sent to the Labour Courts;

- The structure of the Labour Courts was basically unchanged, except by the increase in the number of Regional Labour Courts and the number of Judges in each Court.

4. Labor costs and the costs of dismissal

The labor costs for the employer as well as the costs of dismissing an employee increased considerably after the new Costitution was approved. In what follows we present an admitedly gross estimation of these costs.

Monthly Labor Cost (per employee)

	Percentage of Monthly wage
Wage	100,0
Vacations	11,0
Annual bonus	8,3
FGTS (capitalization fund)	8,0
Social security	12,0
Transport subsidy*	2,0
Total	141,3

(*) For a worker who receives two minimum wages.

This estimate does not consider the contribution for the unemployment benefit fund (0,5 of sale receipts) and other workers' benefits which only apply in especial circumstances such as education for young children.

The costs of dismissing a worker who has been with the firm for a period of five years and has gone in vacations six months before being dismissed is estimated in the following Table.

Average Cost of Dismissal

	Percentage of Monthly wage
Annual bonus	50,0
Vacations	65,0
Capitalization fund (FGTS)- 2 months	16,0
40% of the Capitalization Fund	200,0
Total	331,0

Before the new Constitution was voted the costs os dismissal were quite small, and firms used labor turnover as a means to reduce labor costs. Now, with greater costs, there is an incentive for firms to keep their worker and fire them only in situations of extreme necessity.

5. Unions Structure, Collective Bargaining, Capital/Labour Conflict and Wage Determination

The previous section provides a summary description of the set of rules which governs the capital/labour relations in the Brazilian economy. In this section we will analyse the way in which these rules affected and determined the structure of unions organizations, collective bargaining and conflict, and the process of wage formation.

The evolution of the capital/labour relations in Brazil can be divided in three periods, which are intimately linked to the political and economic evolution of the country. The first goes from 1943 to 1964 and was a period of rapid industrial growth. The steel and durable consumer goods industries were established during this period with all the industrial sectors which come together with them. At the same time, the union structure was consolidated on the lines defined by the CLT. As noted already, neither the rights of the workers nor the strict dependence of the unions in relation to the State present in the CLT were ever the subject of an open negotiation. They were instead part of the corporatist apparatus put in practice by the Vargas dictatorship.

Unions (workers and employers) were created on an occupational and municipal basis, as well as the Federations and Confederations. Three characteristics of the CLT were of great importance to determine how the capital/labour relations developed during this period: the compulsory contribution of all workers independent of affiliation, the universal coverage of collective

agreements and conventions to all workers with a signed contract ("carteira assinada"), and the protection of workers defined in the CLT.

The large set of rules which regulated working conditions at the firm and the protection against unjustified dismissals, pre-empted workers demands at the plant level due to its large coverage of workers individual rights. This took from the more active union leaders their most appealing demands and thus reduced their capacity to mobilize workers. As most of the individual rights were already given to the workers by law, the existence of representation at the plant level was considered by most Brazilian labour lawyers as unnecessary and the plant was considered the "domain of the employers, whose limits of action were only determined by the Labour Courts".\[4] Demands for workers representation at this level were considered by employers and labour lawyers as unecessary and absurd demands.

The compulsory contribution tended to make unions leaders very little responsible for the rank and file worker (and employer), since union finances were independent from the number of affiliates and voluntary contributions. On the other hand, as collective agreements and conventions were valid for every worker with a signed contract, independent of union affiliation, they had very little incentive to be affiliated to the union. Affiliation was not an issue for union leaders who depended very little on union membership.

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4 . Rodrigues, 1972, pg. 92.

This, combined with the small size of the industrial sector, the restrictions on unions actitivities, the influence of the government over the Labour Courts (remember that their members were appointed by the President of the Republic), the absense of any explicit rule for conciliation and arbitration, and the power given to the State to intervene and penalize unions leaders, generated an union movement which was, on the one hand, very much controlled by, and dependent on, the State, and on the other, involved in national politics but without any important links with the day to day problems of the workers.

During this period, the labour unions strength was much more determined by the support it received from the government in charge than by rank and file organization. When the government was in favor of unions, they were able to grow and obtain important gains. When it was anti-union, the movement tended to become weak and non-demanding. The unions turned into institutions to promote relief and recreation activities to the workers and not a very important institution in collective bargaining.

Direct negotiations between employers and workers at the individual level were much more important to determine wages than collective bargaining, except for the minimum wage which was determined by the President of the Republic. Although collective bargaining was present in the labor code, it was of secondary importance in the determination of wages.

Collective bargaining developed in a very disaggregated basis each union of each occupation and city in a different month of the year. Thus, a completly dissincronized and dicentralized pattern of wage adjustment developed.

This scenario started to change in the begining of the sixties. The growth of the industrial sector based on durable consumption goods and mechanical and metalurgical sectors, and the high degree of concentration of these industries in São Paulo, created the conditions for the appearance of relatively active unions on these occupations (methalurgical, chemical, electrical workers, etc.) in the region. On the other hand, the populist pro-workers government of João Goulart, helped to increase unions activism in the country and also strike activity.

This first period ended with the military coup of march 1964. The coup replaced the pro-workers government by an active anti-workers military government which persecuted the unions, enjailed their more active leaders and changed in very important ways the capital/labour relations in the country. The more important changes were a new strike law, a reduction in the protection of workers against unjustified dismissals and the implementation of a wage law.

The new strike law, determined very rigid conditions for strikes to be declared legal, and maintained the hash penalties for illegal strikes (see above description of Law n. 1330). This, the reduction in workers protection against unjustified dismissals and the political repression of unions reduced drastically unions activism. The difference in relation to the first period was that union activism was not low because union leaders were coopted by the government, but because their activity became strongly repressed.

In 1965, a wage law was approved to control the rate of adjustment of all wages in the formal sector of the economy. The

law stipulated that all wages should be adjusted once a year. The adjustment rate was calculated by the Federal government and based on a formula which took into consideration past and future estimated rates of inflation and the growth in GDP per capita. The adjustment was due in the date of the collective bargaining of the occupation, which was spread throughout the year for different occupations in different regions of the country.

This law, together with the weakness of the workers movement and the CLT apparatus which gave the Labour Courts the function of arbitration in capital/labour disputes, became a very important instrument of control and coordination of the process of nominal wages adjustment in the Brazilian economy. It is important to understand how it worked.

First of all, let us recall that the CLT declares as "invalid any clause of collective convention or agreement which, directly or indirectly, goes against any disciplinary rule or prohibition of the government economic policy or concerning the wage policy in force". Thus, any time a worker union, during a collective bargaining, decided to ask more than what was determined by the wage policy, the employer or its union went directly to the Labour Courts, calling a "Dissídio". The arbitration by the Courts had to take into account the Law which implies that the wage law was authomatically applied to the collective dispute. Thus, the rate of adjustment in collective bargaininig was entirely controlled by the government through this process.\[5]

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5 . This does not mean that the rate of adjustment of nominal

Thus, although the wages adjustments were very dissincronized, with each union of each occupation in each city having a different date of bargaining, the government was able to coordenate and control the rate of adjustments of nominal wages quite tighly. The Central Government was able to control every important variable of the process: the rate of adjustment to past inflation, the estimated rate of inflation and the rate of growth of productivity.\[6] Through the manipulation of the expected rate of inflation the wage policy became a very important instrument to reduce the rate of inflation from more than 100% a year in 1964 to less than 20% a year in 1973, with relatively little effect over the unemployment rate. Actually, after a two years recession in 1965/1966, the rate of growth of output turned positive and increasing in 1967. Between 1968 and 1974, industrial output grew very fast, at an average annual rate of more than 10%, while the rate of inflation declined slowly.

The model just described changed gradually from the mid-seventies to the present. The first link which was broken in the above structure was the repression over the workers movement. In 1974, as a result of the defeat on Legislative elections, the military decided to implement a controlled process to return to

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wages in individual contracts could not be above that determined by the wage law. But, in collective agreements and conventions, the law were the base for the adjustments.

6 . For a description of the wage policy of this period see M.H. Simonsen, 1983, and E. Amadeo and J.M. Camargo, 1989.

democratic rule. The liberalization of the political scenario resulted in the gradual liberalization of the unions movement as well.

Another important aspect was the increase in labour turnover after the approval of the FGTS system. With the reduction in the cost of dismissals and the increase in flexibility in the labour market, labour turnover and together with it, other issues like the rythm and intensity of work, extra-time work, authoritarianism in the firm and the shop-floor, etc., became important issues at the plant level\[7].

Collective bargaining became much more important and a series of very violent strikes exploded in 1978/79 in the most industrialized regions of the country (Santo André, São Bernardo and São Caetano, in São Paulo), where the mechanical and durable consumer goods industry are located. A very strong union movement appeared in this region giving rise to a new and original movement which came to be known as the "new unionism".

The new unionism had very different characteristics from those of the pre-1964 period. In the first place, and certainly as a result of the deterioration of working conditions at the plant level, it was closely linked to the rank and file. Conditions of work became a very important issue in collective barganinig and workers representation in the work place a constant demand of the

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7 . See L. Abramo, O Resgate da Dignidade, M.A. Dissertation, USP, São Paulo, 1986. See also E. Amadeo and J.M. Camargo, 1989.b, pg. 18-33.

unions\[8].

Workers organization at the firm level through the shop steward and/or workers councils increased rapidly, supported by the unions. In 1981, in a research conducted by a research institute in São Paulo, the CEDEC, 31% of the workers interviewed said that there were workers councils in their occupation. From these, 53% were created by the unions iniciative and 23% by the workers directly. 60% of the workers interviewed said the workers councils were to deal with questions specifically related to the firm. As for shop stewards, 30% said they existed in their occupation and 60% of them were indicated directly by the workers.

On the other hand, given the strong links between the CLT, the wage law and the arbitration procedures through the Labour Courts, this new movement perceived that to be able to obtain better conditions in collective bargaining, it was very important to make themselves represented in the Legislative process. In 1981, the leaders of this movement created a Workers Party (Partido dos Trabalhadores), closely linked to the unions. Legislative and Executive candidates have been elected by this party at regional and national elections since 1982.

At the same time, the movement spread out through the country and a national union was created in 1983, the Central Unica dos Trabalhadores (CUT), to coordinate the movement at the national level and to advise individual unions which follow this group leadership on collective bargaining.

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8 . See M. Castro, 1988 and E. La Rocque, 1989.

One important aspect of this Central strategy is to increase voluntary contribution, as opposed to compulsory contribution. In each collective bargaining, a percentage of the wage gains is payed voluntarily to the union as a contribution. This process made many important unions relatively independent from the compulsory contribution. A few of them decided not to utilize the resources from the compulsory contribution and return it to the workers.

The growth of this Central was very rapid. Table 1 shows the evolution of the number of individual unions which were present at the CUT national congress between 1984 and 1988.

Table 1
Number of Individual Union
Central Unica dos Trabalhadorores (CUT)
1984/1988

Sector/ Occupation	1st. Congress 1984	2nd. Congress 1986	3rd Congress 1988
Public Service	68	114	185
Industry	144	182	233
Services	246	276	282
Rural Unions	308	366	374
Total	937	1,014	1,157

Source: Boletim of the National Congress of the CUT.

As can be seen on the table, the total number of unions present at the CUT congress increased 23.47% during the period 1984/1988. Among the sectors, the fastest increasing group was the Public Service unions, which increased by 172% in the period, followed by the industrial unions (61.80%).

To adapt itself to the new Constituion, the Central is now

reorganizing its files. Table 2 shows the number of unions affiliated by sector based on this new classification.

Table 2
Number of Unions Affiliated to the CUT by Sectors
1990

SECTOR	Number of Unions
Health Service workers	79
Educational Service workers	75
Metalurgical workers	55
Communications and Advertising workers	50
Public service workers	48
Constructions workers	45
Financial Sector workers	42
Commerce workers	33
Clothing and Garment industry workers	33
Transportation workers	33
Food Services workers	30
Rural workers	413
Others	133
Total	1,069

Source: CUT.

By these numbers, the CUT has 1,069 affiliated unions, being 656 urban and 413 rural unions. It claims to represent close to 18 million workers, but representation here does not mean voluntary affiliation in the unions but official representation in collective bargaining which includes affiliated and non-affiliated workers in each occupation.

Evolution of the numbers of workers voluntarily affiliated to unions is impossible to get. Recently, the CUT published the participation of each occupation in the total number of workers affiliated to the Central. Table 3 shows these numbers.

Table 3
Share of each Occupation in the Total
Number of Affiliated Workers in the CUT
1990

Occupation	percentage of the total
Industrial workers	20.0
Oil Industry workers	0.7
Urban Service workers (garbage collectors and others)	1.8
Commerce and Services workers	12.0
Health Services workers	7.5
Transportation Services workers	3.0
Financial Sector workers	4.0
Eduation Service workers	6.0
Public Service workers	4.5
Retired	0.1
Professionals	2.0
Rural workers	38.4

Source: CUT

The above tables show the rapid growth of this Central union since 1983 and the diversity of occupational unions affiliated to it. These are the most out-spoken and activists unions in the country.

Besides CUT, ther is another important Central developed during this period, the Confederação Geral dos Trabalhadores (CGT). This organization behaves like a Confederation, with very little influence on the individual unions and in collective bargaining. Unfortunatly data from this Confederation is not available, but it certainly has some important affiliated unions like the Methalurgical Workers Union of the city of São Paulo, which represents more than 100,000 workers in collective bargaining. At the present moment, November 1990, the Secretary of Labour is the former president of the CGT.

Although it is impossible to find data on the evolution of unions voluntary membership, it seems that it has increased during the eighties. The only set of data available is an estimation made by E. Amadeo and J.M. Camargo (1989.c), based on a special household survey carried out by FIBGE for 1986. This data is presented on Table 4.

Table 4
Percentage of non-agricultural Wage Workers
Memebers of a Class Association
Brazil
1986

Sector	U1 %	U2 %
Manufacturing	29.10	33.94
Construction	12.30	16.22
Other Industries	43.36	44.62
Commerce	14.79	27.25
Services	5.61	10.44
Auxiliary Services	36.30	50.88
Transp. & Communication	43.37	46.28
Social Services	25.85	27.64
Public Administration	20.89	21.05
Others	48.56	50.35
Total	21.36	28.05

Source: E. Amadeo and J.M. Camargo, 1989.b, pg. 44.
Note: Index U1 assumes that all employers belong to a class association and index U2 assumes that none of the employers belong to a class association. For details of the methodology used to arive to the above estimations, see E. Amadeo and J.M. Camargo, op. cit., pag. 42-43.

As can be seen on the table, the unionization rate varies widely between sectors. In manufacturing it is close to 30%. In transportation and communications it is higher than 40% of the wage workers. On the other extremes, construction and Services are

the least unionized sectors. Differences are also great between regions. In the South, the rate of unionization are 27.09% for U1 and 33.23% for U2, in the southeast the corresponding numbers are 21.62% and 28.62% and in the northeast 16.40% and 22.32%. This numbers are relatively high if we consider the fact the country lived through an authoritarian regime untill 1979 and before 1964 the unions were not very important in collective bargaining.

The important point about this "new unionism" is that, instead of the old link between union leaders and the government, the lack of organization at the plant level and the unimportance attached to the day-to-day problems of the workers, it adopted a strategy to organize workers at the plant level, favored the dayly problems of workers at the bargaining table and invested in parliamentary representation. A pattern resembling the union organizations of western Europe.

These developments forced the break of the second link between wages policy and wages adjustment. After the violent strikes of 1978/1979, the government decided to reduce the wage adjustment period from one year to six months and changed the wage policy so as to leave to collective bargaining the gains in productivity. As the only parameter for arbitration was the law, this meant that when the dispute arrived at the Courts, the productivity gains could be decided independently by the Judge, without any control of the government. By this mechanism, and as unions activism increased, the rate of adjustment determined by the government formula became a floor for the wage adjustments obtained by unions at collective bargaining. The ceiling was

determined by the relative power of the workers and employers unions, and by the will of the Judge in the arbitration procedures.

As the importance of collective bargaining increased, workers unions changed its strategy so as to increase its power in the bargaining table. As there were no explicit rule which defined the level of agregation of bargaining, some occupations were able to make it at the national level (like the financial sector workers, electrical sector workers) and, at the same time, maintained bargaining at the level of the firm as well. The aggregate bargaining defined the floor adjustments, which could be improved at the firm level. When this strategy was not possible the unions tried to bargain at the occupation and at the firm level as well. This generated an even more desagregation of collective bargaining since a large part of the disputes was solved through the signing of agreements between a worker union and a firm\[9].

The Social Rights approved in the new Constitution in 1988, tend to reinforce this scenario. First of all, the compulsory contribution and the monopoly of representation was maintained, but at the same time, controls on union activity were drasticaly reduced. In its Art. 8o., I, the Constitution says that "the law can not require any authorization from the State to

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9 . In the industrial sector of São Paulo, agreements of this type represented 42% of the total in 1979, 66% in 1983 and 77% in 1987. See J. Pastore and H. Zylberstajn, 1988, pg 133.

stablish unions...being the Public Authcrities forbiden to interfere or intervene in the union organization". This means that although the representation of workers and employers in collective bargaining continues to be a legal monopoly of specific groups, the restrictions to the use of the monopoly power granted by law is now very small.

It is interesting to note that the maintainance of the monopoly of representation and the compulsory contribution was approved by the representatives of a lobby of the CGT and the employers unions, mainly the nacional employers Confederations, against the votes of the Workers Party representatives and the lobby of the CUT.

At the same time, the right to strike (but not to lock-out) was amplified and declared a social right of workers. Only the workers can decide about when and for what reasons a strike should be called (Art. 9o). For essencial sectors, a law to regulate the ways the undelayable necessities of the community should be atended had to be approved by the Congress. This means that strikes can now be called for any reason, economic, solidarity, political, etc., at the workers discretion.

For the first time a Brazilian law required a representation of the workers at the firm level. On any enterprise with more than 200 employees the workers have now the right to have one elected representant to promote direct negociations with the employers (Art. 11).

On another front, dismissals became more difficult and the costs to fire workers was increased. The previous notification for

non-justified dismissal became proportional to the time the worker was employed in the enterprise, with a minimum of one month. The fine for non-justified dismissals was increased from 10% to 40% of FGTS. Thus, as the FGTS represents aproximately one month wage for each year of employment in the enterprise (8% a month), a worker employed for five years in the same firm, if fired, will receive the normal wage plus 2 months wages, plus the annual bonus proportional to the number of months worked in that year, plus vacations proportional to the period since the last vacation was taken and the 1/3 bonus for vacations. The higher the time of employment in the enterprise the higher the cost to dismiss the worker.

6. Strike Activity and Real Wage

The final result of the process described above was a very dissincronized collective bargaining process, on the one side, and a centralized and activist union structure on the other -- an institutional setting which favored conflictual capital/labour relations and, combined with the indexation coming from the wage policy, made stabilization policies very difficult and costy in terms of unemployment.

Data on strike activity for the period before 1985 is rare and incomplete. The only set of information available is a suvey made by the University of Campinas, São Paulo. This is based on newspapers news and is quite incomplete. Table 5 shows these data.

Table 5
Number of Strikes
1978/1986

	1978	1979	1980	1981	1982	1983	1984	1985	1986
Industrial workers	84	77	43	41	73	189	317	246	534
Middle class workers	8	55	43	48	31	85	84	211	237
Const.	8	20	19	7	4	10	18	23	45
Others	18	94	21	54	36	63	73	139	188
Total	118	246	144	150	144	347	492	619	1004

Source: NEPP/Unicamp, reproduced from Tavares de Almeida, 1988.

The number of strikes increased in the late seventies and reduced in the first years of the eighties, during the economic recession. As the recession ended, strikes increased again untill 1986. Between 1984 and 1986 strike activity more than doubled.

After 1985 the Ministry of Labour started to collect statistics on strike activity. Table 6 shows the evolution of the total number of strikes and the total numbers of workers on strikes per year, between 1985 and 1990.

Table 6
Number of Strikes and Number of Workers on Strikes
1985/1990

year	number of strikes	number of workers on strike
1985	843	6,635,183
1986	1,493	7,146,958
1987	2,275	8,303,807
1988	1,914	7,137,035
1989	3,164	10,047,000
1990(unt. june)	1,119	3,523,265

Source: Ministério do Trabalho, CEBET/SIGREV

The data shows the importance of strike activity in the Brazilian economy since 1985. It is important to note that until october 1988, when the new Constitution was approved, the CLT, Law 1330 and the 1978 Law defining essential activities were in force, but were unable to contain the increase in strike activity. Actually, strikes never followed the rules determined by these Laws during this period. As these laws were considered too

authoritan and the penalties for ilegal strikes were considered too hash, they were not respected but the the penalties for ilegal strikes were not imposed in the unions. This meant that an institutional vaccuum was created. The Law existed but was not applied.

The increase in strike activity since the late 1970's resulted, inter alia, from the dissatisfaction of workers with the reduction in the purchasing power of wages since 1964. It is a well known fact that the personal and functional distribution of income in Brazil deteriorated quite dramatically since the mid-sixties. As can be seen in Figure 1, the average real and product wages of industrial workers in São Paulo increased almost continuously between 1976 and 1988. These workers are certainly the most organized in the country, and as we will note in section 6, their wages grew faster than the average wage in the industrial sector. However, what is important to note is that their demands are seen by other unions as a target in their negotiations with employers, and therefore influence negotiations all over the country. The central unions, on the other hand, play an important role in increasing the bargaining power of the less organized unions and in leveling out the differences in wage adjustments to inflation.

Figure 1

Real Wage, Product Wages, and the share of Wages in the Industrial Output

Figure 1 (a)
Industry, São Paulo

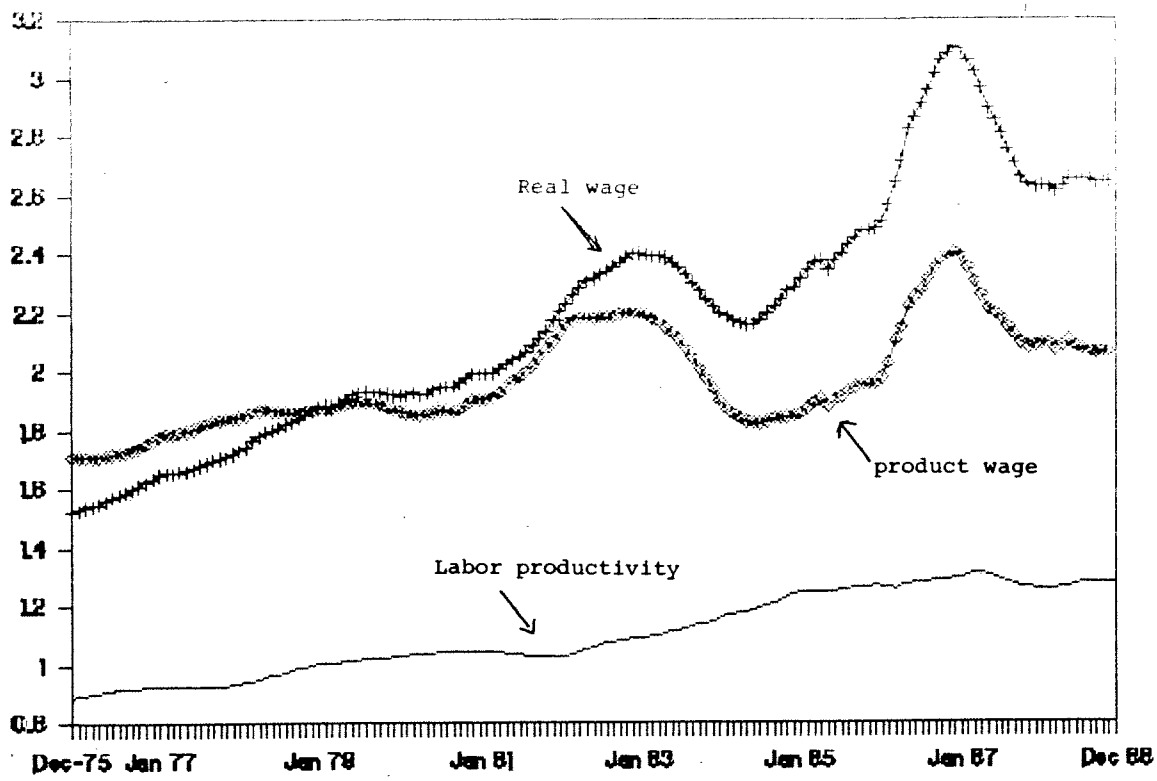
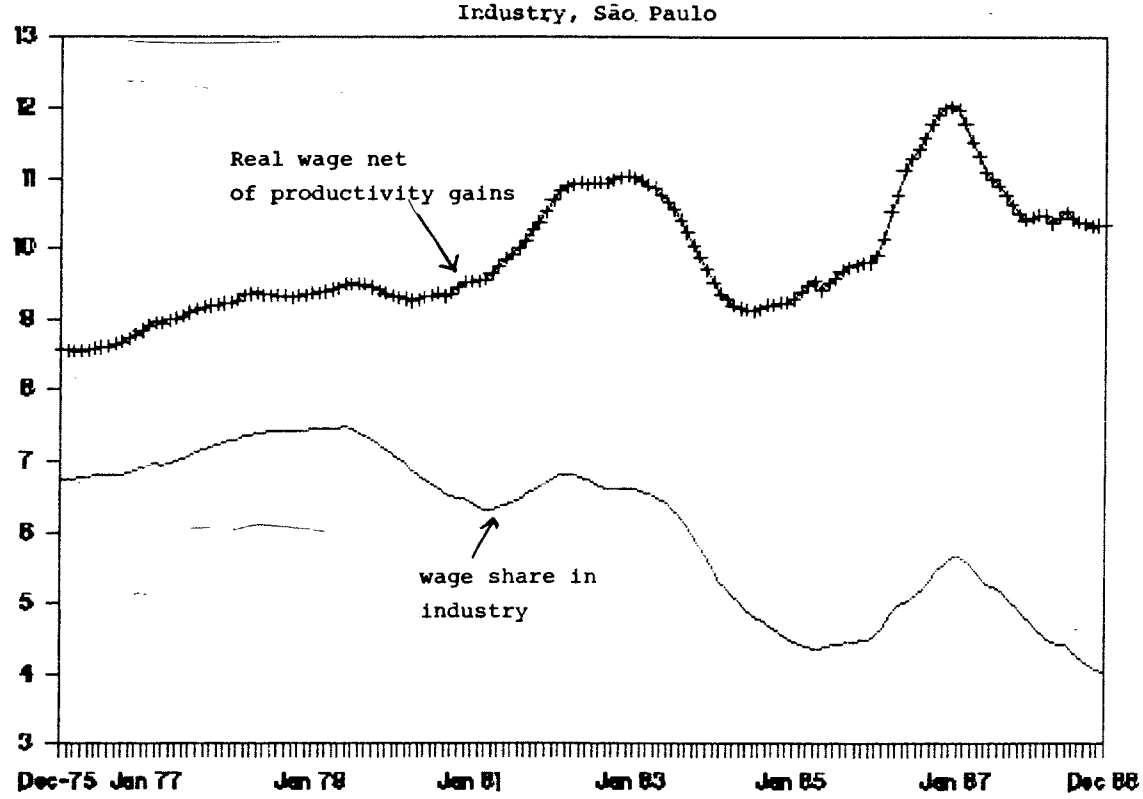


Figure 1 (b)
Industry, São Paulo



As seen in painel (b) of Figure 1, although the real wage in the industry of São Paulo increased in relation to productivity over the period 1976-1988, the share of wages in output decreased over the same period. This can be seen as an evidence of a redistribution of income from agents in the non-industrial (or non-tradables sector) towards the agents in the industrial (or tradables sector) since it results from the increase in the ratio of wholesale industrial prices to the consumer price index.

It is interesting to note the increase in strike activity in 1989 as compared with the preceding years. This was the result of the increase in strike activity in the public sector and the non-existence of a strike law in the first semester of the year, combined with a relatively righ rate of inflation and a very low rate of unemployment. Table 7 shows strike activity in 1989 divided by public and private sectors strikes and the percentage of strikes between january and may of 1989.

Table 7
Strike Activity
Private and Public Sectors
1989

	Private sector	Public sector	joint strikes	withou information	Total
No. of strikes	1987(60.7)	1154(53.7)	11	12	3164
no. of days on strikes (average)	9.1	15.3	6.8	11.8	11.3
average no. of workers on strike	1626	4790	169820	219	3179

Source: Ministry of Labour: CEBAT/SIGREV
Note: numbers in parenthesis represent the number of strikes between january and may of 1989.

The number of strikes in the public sector was 36.4% of the total number of strikes in the country, but the average duration of strikes were 6.2 days and the average number of workers on strike three times higher in the public than in the private sector. On the other hand, the non-existence of a wage policy, combined with a price freeze and the small rate of unemployment, in the first semester of the year, generated a sharp increase in strike activity in the private and public sector as well. These data suggest that the objective of having stable prices together with low unemployment in the context of the Brazilian collective bargaining framework is very difficult to obtain.

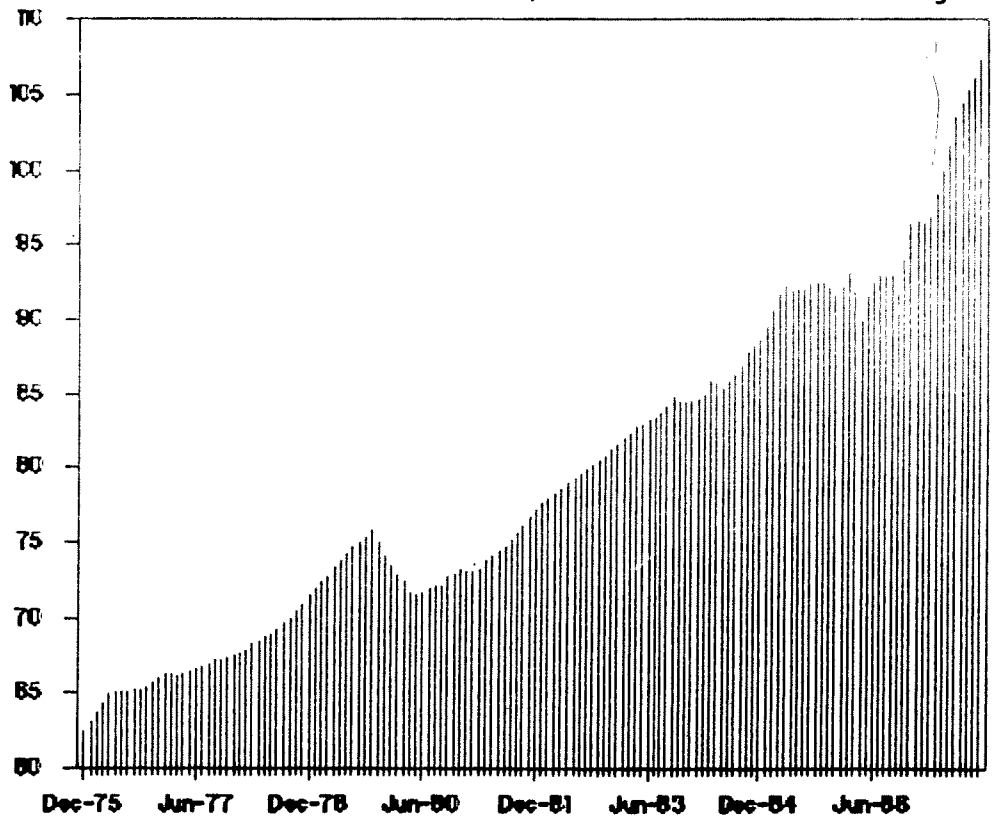
7. Wage Differentials

There are two important elements in the determination of wage differentials in the Brazilian economy. One is the difference in the degree of organization of unions in different sectors. Unions in the industrial sector, and within it, in the most developed areas (most notably São Paulo), are better organized and have greater bargaining power than the average. Their achievments are seen by other unions as their targets in wage bargains.

However, there is another factor which works in the direction of increasing the average barganing power of unions and, at the same time, of leveling out the differences amongst unions. This is the development of the two main central unions, most notably CUT, which has as their main objective the growth of their rank and file base. The central unions supports the smaller and less organized unions and by doing so increase their bargaining power and reduces their distance in relation to the most organized unions.

Figure 2 shows the ratio of the minimum wage in relation to the average wage paid in the industry of São Paulo. The institutional minimum wage can be seen as a proxy for the wage paid to workers in the lower bound of te distribution of wages in the economy. As seen in the Figure, the ratio falls continuously over time indicating that workers whose wages are indexed to the minimum wage have lost their relative position in comparison with industrial workers in São Paulo.

Figure 2
Wage Differential
Average Wage (São Paulo) over the Minimum Wage



There is also ample evidences of changes in the distribution of wages within the industrial sector and between the latter and other sectors of the economy. As seen in Figure 3 (painels a, b, c, d) relative wages within the industry of São Paulo have changed considerably since the mid-70's. Wages in the paper, chemicals, transport materials, and communications materials have grown in relation to the average; whereas wages in the process, textile, plastic materials, furniture, foodstuff and metallurgy industries have fallen in relation to the average.

Figure 3

Wage Differentials in the Industry of São Paulo

Figure 3 (a)

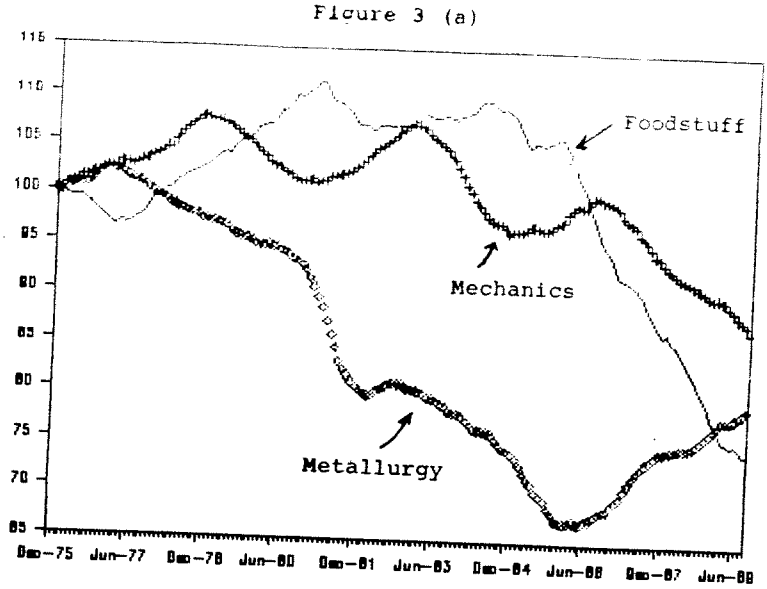


Figure 3 (b)

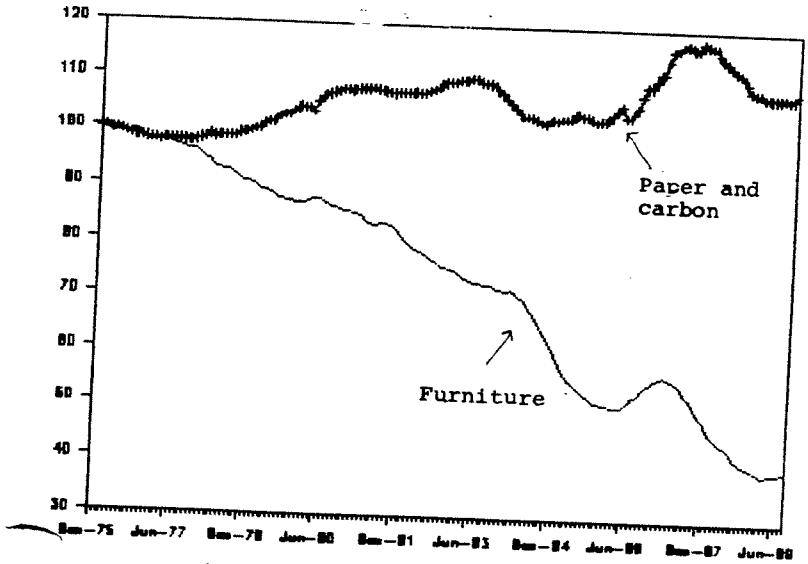


Figure 3 (c)

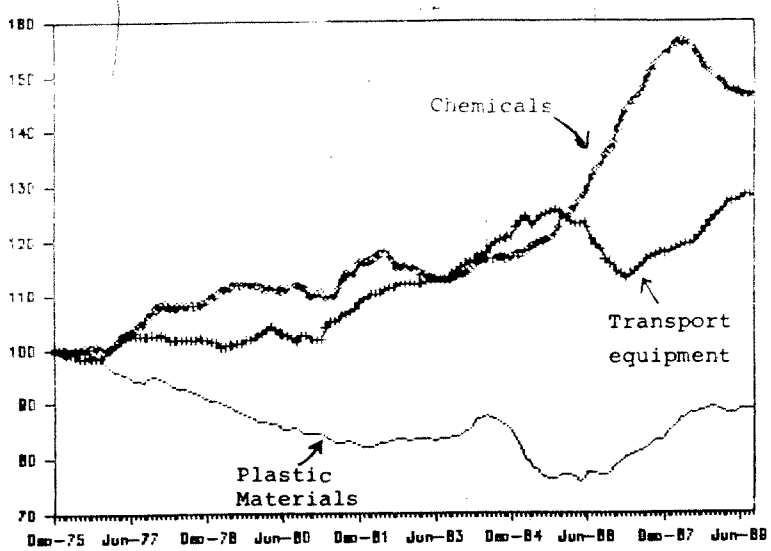
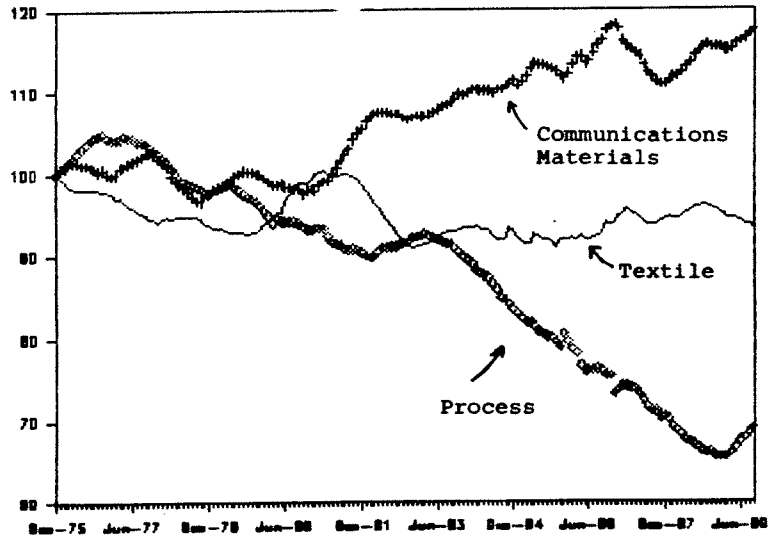


Figure 3 (d)



As seen in Table 8, the wages paid in the non-industrial sectors fall over the period 1980-1986 in relation to the average wage paid in industry. This may be taken as an evidence that there is a redistribution of wages from workers in the agriculture, services and commerce to workers in the industrial sector. Within the industrial sector, the wages of workers in the eletrical materials, transport materials, paper, chemical and textile industries were above the average wage in 1980, and grew relatively to the average wage paid in industry over the succeeding years. Wages of workers in the furniture, plastic materials, clothing, and editorial industries were below the average in 1980, and suffered a relative reduction over time. The same is true, although the tendency is considerably stronger for the case of wages paid in construction, commerce and services.

Table 8
Relative Wage
(in relation to average wage of the industrial sector)

Sector	1980	1981	1982	1983	1984	1985	1986
GENERAL INDUSTRY	100	100	100	100	100	100	100
Process	78	78	78	78	76	82	77
Metallurgy	122	123	124	123	121	122	124
Mechanics	131	131	132	132	130	131	137
Electrical materials	131	133	134	137	140	138	138
Transport materials	146	149	157	162	167	165	159
Wood	52	51	51	51	49	48	49
Furniture	61	61	60	58	57	57	59
Paper	106	106	110	111	112	114	117
Chemicals	192	192	199	203	204	205	200
Plastic	87	92	94	90	90	90	88
Textile'	52	52	51	50	50	48	51
Clothing	69	70	69	70	69	67	67
Foodstuff	107	106	105	103	99	101	105
Editorial							
Construction	79	77	76	74	73	73	77
Commerce	71	69	68	66	65	66	66
SERVICES							
Transportation	99	100	99	98	94	94	93
Communication	133	135	134	143	133	141	144
Housing and foodstuff	47	46	45	44	43	41	44
Personal services	76	73	72	70	65	64	68
Commercial services	101	97	103	92	90	88	89
Public Utilities	178	179	180	177	169	172	196

Source:

It is interesting to note that the wages in the public utilities sector (public enterprises) is considerably above the average wage paid in the industrial sector. The distribution of wages within the industrial sector, however, is quite unequal. As seen in Table 9, wages paid in official banks and the defence industry are above the average wage paid in the public sector whereas wages in education, health and post are well below the average.

Wage Differentials in the Public Sector
(Average = 100, 1985)

Average	100
Official Banks	179
Data Processing	87
Defence industry	111
Development and Reseach	101
Secondary education	82
Higher education	91
Health	76
Social assistance	78
Post	35

Source:Saldanha, R. et al. (1988)

In sum, there are ample evidences of changes in wage differentials in the last fifteen years in Brazil. These changes are associated, on the one hand, with the deliberate policy of the government providing incentives to the tradable sectors, and on the other, to the relative capacity of unions in different sectors to protect wages against the acceleration of inflation.

8. Concluding remarks

There has been many changes in the institutional setting based on which employers and employees interact in Brazil in the last few years. Most of these changes can be seen as a result of the democratization of the polity, on the one hand, and on the other as a response to the demands of organized workers.

The system developed in Brazil resembles the system of some Western european countries, and is quite different from the pluralist US model. Unions and central unions behave as social actors, and their activities go way beyond negotiaions of wages and working conditions at the plant level. In fact, they represent workers' interests at the national level, maintaining strong relations with political parties, and affecting the legislation not only in labor matters but also in other matters which have indirect effects for the workers. In recent years, in many instances the administration has tried to bring union leaders to negotiate a "social pact" in a clear demonstration of the importance attibuted to the unions to achieve economic stability.

At this point the system is clearly in a transition, and its final destination is still uncertain. There are important issues such as the specific conditions under which a firm could fire a worker and the corresponding costs and profit-sharing which have not been discussed in Congress, but will be in the future. On the other hand, there are issues such as commercial liberalization, industrial restructuring and technological innovations which have not yet been contemplated by the administration or the central unions, and which might be of some

importance in definig the relation between employers and emploees in the years to come.

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