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INSTITUTIONS AND THE LABOR MARKET IN BRAZIL

EDWARD J. AMADEO

JOSÉ MÁRCIO CAMARGO

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Edward J. Amadeo (PUC-Rio)
José Márcio Camargo (PUC-Rio)

Summary:

The paper presents a detailed discussion of the Brazilian labor legislation and institutions. It establishes the relation between such legislation and institutions, on the one hand, and the behavior of agents and the labor market, on the other. Emphasis is given to particular pieces of the legislation such as the cost of labor to the firms, the cost of dismissal and the unemployment insurance program. The relation between these institutions and the behavior of the labor market --in particular, the rate of unemployment and the size of the informal sector-- ate explored.

Introduction

The theoretical literature shows that where the standards guiding the behavior of firms and workers are stringent, the labor market will be rigid. Rigid in the sense that real wages and labor turn-over are low, and either the duration of unemployment is high or the market is segmented, or both. In this connection, the Brazilian case is interesting in the sense that, in spite of rigid legislative rules, the labor market is flexible. It is true that the degree of segmentation of the market is high but the levels of labor turn-over and mobility between the formal and informal segments of the market are also considerably high. The extent to which the segmentation of the market results from institutional rigidities or from other factors is obviously difficult to assess.

In Brazil, the labor code guiding the behavior of agents in the labor market and, in particular, the rules establishing the individual rights of workers, are extremely encompassing and detailed, leaving very little space for direct negotiations between employers and employees. Moreover, the labor justice not only plays an important role in arbitrations but has normative prerogatives as well. The main consequence of such institutional arrangement is that the incentives for cooperative actions on the part of firms and workes are slim. Since the rules are rigid and the Labor Courts play an important role in settling disputes, the incentives to establish a cooperative relation are very small. Hence, the space for adaptive and flexible responses to changes in the environment, except through the termination of the labor contract, tend to be small.

Besides the rigidity of the rules, the high level of turn-over of the labor force is also a consequence of a set of institutions which induce both firms and workers to terminate the contract very frequently. In comparison with the workers' wage, the cost of dismissal for the firms is relatively low and the benefits for the worker are relatively high. Hence, in face of adverse shoks firms do not have the incentives to restrain from firing their employees, and in periods in which the labor market is tight, workers have a strong inducement to force their dismissal or simply leave voluntarily.

If it is true that a certain degree of labor turn-over is a sign of competitive forces in action --hence a good sign-- it is true also that too great a level of turn-over could have hazardous effects on productivity. If short lived labor contracts is the rule, neither the firm nor the workers have great motivation to invest in human capital thus reducing the potential growth of labor productivity.

The paper expands on the issues and theses mentioned above with two main objectives. Section I presents a detailed discussion of the Brazilian labor legislation and institutions (Ministry of Labor, Labor Courts and unions). Section II establishes the relation between such legislation and institutions, on the one hand, and the behavior of agents and the labor market. In this section, emphasis is given to particular pieces of the legislation such as the cost of labor to the firms, the cost of dismissal and the unemployment insurance program. The relation between these institutions and the behavior of the labor market --in particular, the rate of unemployment and the size of the informal sector-- ate explored.

I. Brazilian Labour Legislation - Private Sector and State Enterprises

The main body of the Brazilian labour legislation directed to regulate capital/labour relations in the private sector of the economy and on State Enterprises was introduced during the thirthies and begining of the fourties, and consolidated into a Labour Code (the **Consolidação das Leis do Trabalho - CLT**) in 1943, by the Getúlio Vargas' Government.

There were three important changes in the legislation during this period, which affected capital/labour relations in the country. In 1966, the creation of a dismissal fund (Fundo de Garantia por Tempo de Serviço - FGTS) in substitution for a clause forbidding dismissals of workers with more than 10 years of tenure. In 1965 the introduction of a wage adjustment law which determined the minimum rate of wage adjustments of all workers in the economy and, in 1986, the creation of an unmeployment insurance program. Other changes were also introduced but, or the new institution was already a common practice in capital/labour relations in the country and the law just legalized the practices, or it was not as important as to change the structure of the CLT.

There are two important aspects of CLT which must be taken in mind, to understand its functioning. The first is the co-existence of individual and collective contracts. Each worker is supposed to have an individual contract with his/her employer where wages, conditions of work, work hours, etc. are clearly stated. It is illegal for a firm or a person to hire a worker without a signed contract, although the degree of enforcement of this legislation is somewhat weak (see section on the informal sector).

At the same time, firms are supposed to sign a collective contract with their workers' unions. Collective contracts are negociated yearly and they stipulate minimum standards for the workers represented by the unions. Individual contracts can only determine better conditions (wages, working conditions, less work hours, etc.), than those present in the collective contracts and those mandated in the Law. On the other hand, workers without an individual contract are not covered by collective contracts as well.

The second important characteristic of the Brazilian labour legislation is the very important role played by the Labour Courts in individual and collective contracts clauses enforcement and collective bargaining settlements. This makes the Brazilian labour relations system very much based on legal procedures, although collective bargaining gained an important role since the end of the seventies. As will be seen below, the understanding of how Labour Courts functions is an important step to understand how Brazilian labour market behaves, collectively and at the individual level.

This section is devoted to an analysis of the Brazilian labour legislation, the changes that occured since 1943 and how this legislation affected the structure of individual and collective bargaining in the country. The section is divided in three sub-sections. In section I.1, there is a discussion of the individual contract and the individual rights and duties of the workers. Section I.2, analyses the structure of unions organization and of collective bargaining, and how the legislation changed since 1943 to the present. In section I.3, the role played by the Labour Courts in individual and collective contracts enforcement and bargaining is presented.

I.1. The Individual Labour Contract and Minimum Labour Standards

The CLT is a very comprehensive set of rules which determines individual and collective rights and duties of the workers, unions and firms. The characteristics of the individual contracts and the individual rights of workers and firms are covered in Titles II through IV of CLT. The law determines that all workers must have a booklet where all individual labour contracts and its changes over time are registered by the employer. If the employer does not sign this booklet he/she can be prosecuted by the worker or by his/her union, at any time until five years after the end of the work relation (before the Constitution of 1988, this period was two years after the end of the work relation).

Besides the obligation to sign the booklet, the law stipulates a set of minimum conditions any employment must follow. The more important are:

maximum hours of work per week;
maximum extra-time work hours;
minimum wage;
minimum payment for extra-time work;
annual vacations (pre-payed);
special protection for women and children;
dismissal of pregnant women is forbidden;
the right of payed vacation before and after childbirth, for the mother;
special work conditions for night shifts;
one month pre notification of firing;
protection agains non-justified dismissal;
safety in the job and special rules for special occupations;
annual bonus (introduced in 1962);
family allowance (introduced in 1963);
Unemployment benefit (introduced in 1986);
the right of a five days holiday for the father after childbirth (introduced in 1988).

Untill 1988, the law defined a maximum work week of 48 hours and a maximum extra-time work of two hours a day. The minimum payment for extra-time work was 20% higher than normal wages. Women childbirth holyday of three months, one before and two after the childbirth. Each worker had the right of a 25 working days pre-payed vacations, per year of work in the same firm. In 1962 a one month bonus (13o. wage) was created for all private sector workers. This bonus should be payed half in november and half in december. 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. The family allowance was calculated as a percentage of the minimum wage for each children, and was financed through contribution by the employers.

In 1988, many important changes were introduced by the new Constitution. The maximum number of hours of work per week was reduced from 48 to 44 hours and the minimum payment for extra-time hours increased from 20% to 50% of the workers wages. For continuous work shifts the maximum daily journey was reduced from eight to six hours. A vacation bonus of 1/3 of the workers wages was created. Unemployment benefit, as defined in the law. The mother childbirth

holiday was increased to 120 days and a five days childbirth holiday was introduced for the father.

Finally, two others clauses were introduced in the Constitution to be implemented when specific law were aproved by the Congress. Those are profit-sharing and a change in the previous notification of firing from one month to a rule proportional to seniority in the enterprise. These last two laws were not regulated by law, and thus are not in effect, up to today (january 1994).

The protection against unfair dismissals is of special interest and will be analysed separately. Until 1965, to fire a worker without a proper justification the employer had to pay one month wage for each year of work in the firm. The compensation was calculated on the basis of the higher wage received during the work contract. It was a duty of the employer to prove the dismissal was justified, and the conditions for justified dismissals were clearly defined in the law.

After 10 years in the same enterprise, dismissals were forbidden by law, except if properly justified. In case the worker was accused by the employer, his contract could be interrupted and an inquiry was open to judge if the accusation was really correct. If the Judge decided that it was not so, the dismissal was overruled and the worker had to be reincorporated by the enterprise. In case of closure of the enterprise, the monetary compensation of the tenured worker was two wages per year of work, calculated on the basis of the higher wage received during the work contract. Thus, to fire workers with more than 10 year working in the same enterprise was very difficult.

In 1966, this entire system of protection against non-justified dismissals was changed. A capitalization fund was created, called the Fundo de Garantia por Tempo de Serviço (FGTS). When contracting a worker, the firm had to open a banking account to him and deposit 8% of the value of the wage, per month, in the account. These resources constituted a fund which were adjusted by inflation and earned a 3% interest a year. When fired (except in the case the firing was a result of some important fault, defined in the law), the worker could draw this money and received also a monetary compensation corresponding to a fine of 10% of the total amount of the fund payed by the employer. In 1988, this fine was increased to 40%. Besides this use, the fund could also be drawn by the workers to buy a house and when retiring. The system is in place up to the present

In principle, the FGTS was optional to the worker. But after it was approved, it became almost impossible to get a job if the worker did not opted for the fund, instead of the previous legislation. Thus, it rapidly became the main regulator of workers firing in the Brazilian private sector and state enterprises. After this legislation, firing became much easier and cheaper for the firms, and hiring and firing workers much easier.

The above list of clauses are the minimum individual rights of the private sector and state enterprise workers. Working conditions could be improved as compared to those defined in the law, or by introducing clauses in the individual contracts through negociations between the individual worker and the firm, or through collective bargaining.

I.2. Unions Organization, Collective Bargaining and Collective Contracts

The negociation of collective contracts in Brazil is made between workers unions and firms, or between workers unions and employers unions. Individual contracts clauses can not be worse, for the workers, than collective contracts clauses. In this sense, individual contracts are a complement of collective contracts in the Brazilian labour legislation. Collective contracts stipulates a floor for individual contracts.

To understand how collective contracts and collective bargaining is undertaken in Brazil it is important to know how unions are organized. Title V of CLT defines the structure of unions organization in the country. By this statute, unions are organized on parallel lines for workers and for employers. They are defined on an occupational (for the workers) and on economic category (for the employers) basis. The definition of occupations and economic categories is decided by the Ministry of Labour and is based on similarity of work characteristics and business activities. Untill 1988, it was forbiden by law to group different occupations and different economic categories into one single union. All unions had to be registered and approved at the Ministry of Labour.

Once recognized by the Ministry of Labour, the union have monopoly of representation of the occupation (or economic category) at the regional base defined. All collective bargaining must be carried with the participation of the worker's union. The smallest regional base is the city. State and inter-state unions is also allowed, but up to 1988 only on an exceptional basis an union could have a national jurisdiction. Disputes regarding representation was solved by the Ministry of Labour.

A Federation can be created by at least five unions and more than one Federation can be created for the same occupation or economic category. However, the Federations do not have the right to represent the unions in collective bargaining, except if there is no union to represent them. The regional base for a Federation is the State. The grouping of at least three Federations can form a Confederation, at the national level. A Central Union, grouping many different occupations at the national level were forbidden by CLT.

Unions affiliation is not compulsory neither for firms nor for workers, but a compulsory fee is charged from both to finance the unions. The financial resources collected through this fee was divided among the union (60%), the Federation (15%), the Confederation (5%) and the Ministry of Labour (20%).

The use of these resources is clearly defined by law. They can be used for social welfare objectives (libraries, funeral relief, education, scholarships, consumption cooperatives, etc.) but never for political objectives, like to constitute a strike fund or to help collective bargaining.

Besides this compulsory fee, unions can also collect a voluntary contribution from their associates. The value of this contribution is determined by the unions general assembly and the resources originating from this source can be utilized by the unions at their discretion.

Unions boards were elected through secret balloting and the quorum for the election was at least 2/3 of the associates in the first balloting, 50% in the second and 40% in the third balloting. If none of these quorum were obtained, the Ministry of Labour could name a new board and a new election were called.

Once registered as candidates for the board of directors, workers can not be fired. If elected, the worker can not be fired up to one year after the end of his/her mandate. Unemployed workers are not eligible for the board of directors.

The Ministry of Labour had the right to intervene on the unions and depose their board of directors for many reasons, of which the most important were the use of the compulsory contribution resources for objectives not stated in the law and the calling of a non-authorized strike or lock-out.

It was an obligation of the union "to act in cooperation with the State and other social institutions to improve social solidarity and to subordinate the economic and occupational interests to the national interest" (CLT, art. 518.c). The union could be closed by the President of the Republic in case it created "any obstacle to the implementation of the governmental economic policy" (CLT, art. 555.c).

Collective bargaining is mandatory and a monopoly of the wokers unions, which also represent workers at collective disputes in the Labour Courts and sign collective agreements and conventions. Collective bargaining is mandatory once a year, at the "data-base", between the occupational union and the employers union and/or an isolated firm. In the first case, the signed contract is called a "convention". In the second, an "agreement". The level of the bargaining is the same as that of the workers unions, if the employers is represented by a union, or that of the firm, if the employer is an enterprise.

Although unions representation had regional, occupational and economic jurisdiction, collective agreements and conventions were not limited in the same way. In principle, they can cover any regional, occupational and economic jurisdiction, if many unions negociated and signed the same convention or agreement. It is common to have different occupations in the same firm signing the same collective contract.

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" (CLT, art. 623).

The CLT had no explicit rules for calling a strike or a lock-out. Although there was no explicit rules for calling strikes or lock-outs, severe penalties were included in CLT for individuals or unions which implemented or incited them before an explicit authorization issued by the Labour Courts. These penalties could range from a fine to the intervention in the union and the deposition of the board of directors, or even imprisonment of the leaders of the movement.

As the representation of wokers in collective bargaining were a monopoly of unions, and these were constituted in an occupational and city basis, most collective bargaining was carried at this or at the firm level, although some unions were constituted in a multi-city, state and muti-state basis. This means that collective bargaining was very descentralized, at occupational and city levels or even at the enterprise level. Very little bargaining were made at a higher aggregation level, at least before the 1980's (see below for the evolution of this structure).

Finally, one very important aspect of collective contracts in Brazil is that they are mandatory for all workers and firms in the occupation and economic category represented, regardless if they were affiliated or not to the unions that negociated and signed the contract.

Important changes in this structure were implemented in 1964, by the military Government and in 1988, by the new Constitution. In 1964, two changes were of great importance. The introduction of a Strike Law and of a Wage Adjustment Law.

One of the first decisions of the military government which followed the military coup of march 1964, was the creation of a Strike Law. The main objective of this law was to regulate the right to strike (something not present in CLT) and create rules that had to be followed so that a strike could be considered legal.

The new law determined that a strike, to be considered legal, had to be approved by the unions' general assembly, which had to be called through the press. The period between the calling of the general assembly and its realization had to be of at least 10 days. To be valid, the general assembly had to reach a quorum of 2/3 of the unions members in the first calling and 1/3 on the second. For those unions representing more than 5,000 workers, the quorum in the second calling was 1/8 of the members. Between the first and the second callings the minimum period required was two days. Secret balloting was mandatory.

If the strike was approved, the union had to notify the employer, and he/she had a five days period to accept the demands of the workers before the strike could be started. Some economic activities were considered essencial (defined by law) and in these activities this period was increased to 10 days.

Essencial activities included water supply, energy and gas services, communications, transportation, funeral services, hospitals, food shops, and industries considered essential for national defense, at the government's discretion. This list was increased in 1978, to include all public services. In these sectors, the authorities should take all the necessary measures to keep them working during the strike.

Piqueting were forbidden, but the union could try to peacefully convince the workers to strike. Political and solidarity strikes were also forbidden and persons not directly involved with the unions or occupation which were deciding on a strike (except government officials) could not participate or intervene in the general assembly.

If the unions followed all these steps, the strike could be declared legal by the Labour Courts and the workers could not be dismissed or substituted, during the strike period. Wages were due during legal strikes.

Penalties for promoting, participating or inciting a non-legal strike were very severe, running from a monetary fine to six months in jail for the participants. All the conditions above applied equally to lock-outs.

This law was changed in 1989, so as to make it compatible with the new Constitution of 1988, which declared strikes a social right of all workers. So, the concept of "legal strike" became obsolete. Instead of declaring the strike legal, the new law introduced the concept of "abuse of the right to strike", and reduced significantly the restrictions to the right to strike. The notification to the employer was reduced to 48 hours in all sectors, except for "essencial sectors", where this period is 72 hours. The general assembly quorum to vote a strike was left to the unions discretion to decide and peacefull piqueting was allowed.

During a non abusive strike, firing continued forbidden and wages are due. The unions are responsible for the maintenance and protection of the firm's equipment, being held responsible for damages. In the "essencial sectors", as defined in the law, the workers and employers unions became responsible for the provision

of the minimum services needed to guarantee the levels considered indispensable to the community. This is the law which is in effect at the present moment.

A second important change in CLT was the introduction of a Wage Adjustment Law in 1965. Before this date, wage adjustments were decided through collective bargaining between workers and employers unions, at the "data-base", and through individual negociations between one worker and his/her employer. Only the minimum wage was determined directly by the President of the Republic.

The Wage Adjustment Law gave the government the right to determine the minimum rate of adjustment of all wages in the formal sector of the economy. The first wage law stipulated that nominal wages should be adjusted once a year, at the "data-base" of each occupation, following a formula which took the past and expected future rate of inflation and the growth rate in GDP per capita as the base for the adjustments. The specific formula and the adjustment period was changed many times over the years, as the rate of inflation increased. The most important changes occured in 1979, when the period of wage adjustment was reduced from one year to six months and a productivity index, negociated by each occupation, substituted GDP per capita as part of the negociation proccess.

Other changes were introduced in 1986, when an automatic wage adjustment clause was introduced any time the rate of inflation reached 20%. After 1987, when the rate of inflation accelerated sharply, this clause was discontinued and the wage adjustment period was reduced to one month. Since then, indexation to past inflation is not perfect, for higher wages. The limit varies depending on the period, from three to six minimum wages. Individual contracts adjustments, above that stipulated in the wage law, are negociated by the firm with their workers. Although the rate of wage adjustment period were reduced from one year to one month between 1979 and 1990, collective bargaining continued to be held annually, as before. In 1990, the Wage Adjustment Law was discontinued, but returned in the following year, when the rate of inflation increased again.

The Constitution of 1988, changed many of the CLT restrictions on unions organization and collective bargaining. The first important change was the prohibition of intervention or interference on unions activities by the Government. Unions are now completly free of Government control. Second, the right to strike was turned into a constitutional right of all workers in the country and changes in the Strike Law had to be made. Third, the Constitution allowed the formation of national unions, or central unions, which also gained the right to argue the constitutionality of a law or act of government in the Supreme Court of Justice. Finally, in enterprises with more than 200 employees, the workers have the right to organize an ellected workers council, to negociate with the employer (this last point has is still to be regulated by law).

Although these were important changes in the legislation, as will be seen below, many of them were already common practice in the country. On the other hand, the compulsory fee, the monopoly of representation and the extention of collective contracts to all workers, regardless of affiliation to the unions, which are some of the pillars of the Brazilian unions organization, were not changed. This means that many of the most important characteristics of the Brazilian unions structure and collective bargaining was maintained after the changes (see section III).

I.3. Labour Courts

Brazilian Labour Courts have three important functions in the Brazilian labour relations system. First, every dispute over the compliance to the law has to be solved through the Labour Courts. Second, the Labour Courts are responsible for solving all disputes over individual and collective labour contracts compliances. Third, the Labour Courts are also responsible for the conciliation, arbitration and judgement of collective bargaining. These three very important roles make the Labour Courts a key element in the Brazilian Labour relations system.

The Brazilian Labour Courts system has three branches, hierarchly organized as follows:

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

The Board of Conciliation and Judgement is composed of one labour lawyer, one worker representative and one employer representative. These last two members are named by the President of the Regional Labour Court where the Board is located.

The Regional Labour Courts is composed by majority of labour lawyers and minority of workers and employers representatives. Workers and employers representatives are choosen by the President of the Republic. The Regional Labour Courts judge the demands of workers and employers and must pronounce a sentence. The sentence can be appealed at the Superior Labour Court by workers and employers.

The members of this Superior Court are named by the President of the Republic and approved by the Senate. Its composition is the following: three workers and three employers representatives and eleven labour lawyers, who have a lifetime mandate. The decisions of the Superior Labour Court are final, except if the dispute is over a Constitutional principle. In this case, the decision can be appealed at the Supreme Court of Justice.

At the individual level, all agreements between workers and employers, over disputes on individual contract compliance and/or on compliance with the law, is only valid if it is made through the Boards of Conciliation and Judgement. This means that any firing of a worker has to be made in the Judge's presence, if the employer wants to be sure the worker will not claim any right not accomplished by the employer during the work relation. Since 1988, the worker has five years period to file a claim in the Labour Justice. If that happens, it is the duty of the employer to prove that he/she did follow the contract and/or the law. If he/she is unable to do so, the Judge is free to decide if the claim is acceptable. If the Judge decides it is acceptable, the employer will have to pay the worker the rights he/her is claiming. Note that only monetary claims are acceptable, since the worker can not claim to be re-admited by the employer.

At the collective bargaining level, disputes over collective contracts compliance are solved through the Labour Courts, between labour unions and the firms. Here also it is the employers duty to prove that he did follow the law. Conciliation and arbitration of collective bargaining are also an important function of the Labour Courts. If the negociations arive to a stalemate, the Courts have the final decision (being it at the Regional or at the National level).

The main function of the Courts in collective bargaining is to promote the conciliation and the judgment of the dissensions at their jurisdiction. Any time a collective bargaining arrived at a stalemate, any of the parts can call unilaterally a "Dissídio" (dissension). The dispute is then sent to the Board of Conciliation and Judgement of the region the bargaining is being carried out. If conciliation at this level is not possible, a sentence is pronounced. Workers and employers can appeal from the decisions of the hyerarquically inferior to the hyerarquically superior Courts.

Conciliation and arbitration follows no special rules or principle. When the dispute is over non compliance of the law, arbitration is based on the law, otherwise, previous sentences of the Tribunal can be used as a guide, but, many times, judgement is based on political grounds. The Brazilian Labour Justice is the only branch of the Brazilian Justice which has normative power, in the sense that it can make the law, instead of just apply an existing law.

II. Labour Legislation and the Behaviour of the Brazilian Labour Market

In the previous section, a description of the Brazilian Labour Legislation was presented. In this section, an analysis of how this legislation influences the behaviour of workers and employers and of workers and employers unions and how the Brazilian Labour relations system developed through time is presented. This is important to understand most of the changes described in section II and to understand how the Brazilian labour market behaves, at the individual and at the collective levels.

The section is divided as follows. In section II.1 the evolution of the Brazilian collective bargaining system is presented, from its introduction in 1943 to the present. In section II.2 the paper studies how the individual contract and the Labour Courts behaviour affect worker/employers relations at the individual level.

II.1. Brazilian Labour Relations System and Collective Bargaining

In this section, the evolution of the Brazilian labour relations system, the structure of unions organization and collective bargaining, the process of wage formation and capital/labour conflict is analysed.

The evolution of the Brazilian labour relations system can be divided in three periods. The first period goes from 1943 to 1964 and was a period of rapid industrial growth. The steel and durable consumer goods industries were established 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 Consolidação das Leis do Trabalho (**CLT**). The second period starts with the militaty coup of 1964 and persisted up until 1978. This is a period characterized by repressive government/labour relations and centralization of the process of wage formation. Finally, the third period, which starts in 1978/1979 and goes to the present day, is a period of increasing labour organization and unrest and of centralization of unions organization, coupled with a descentralization of the process of wage formation.

II.1.1 The Implantation Period (1943-1963)

As was described above, the Brazilian Labour Laws dates from the late 30's and early 40's, and were grouped in 1943 in a labour code, the CLT. Being

introduced during a period of strong fascist influence in Brazilian politics, and of a civilian dictatorship, the code has an authoritarian and paternalistic character.

The main pressuposition behind the structure of the CLT is 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 by law, and until very recently (end of the seventies) had never been a matter of negotiations between workers and employers. The objective was to build a "fair" capital/labour relation and to avoid direct confrontation at the enterprise level.

Unions are considered mainly as solidarity organizations, whose main objectives are to help the government in the implementation of policies and as an instrument of collaboration and conciliation between capital, labour and the State. The corporatist structure in which the representation of workers and employers is based, created a strong dependency link between the union leaders and the State.

Three characteristics of the CLT are of great importance to determine how the labour relations system developed during this first period: the compulsory contribution of all workers regardless of affiliation, the universal coverage of collective agreements and conventions to all workers with a signed contract, and the protection of workers defined in the labor code.

The large set of rules which regulate working conditions at the firm and the protection against unjustified dismissals, pre-empted workers demands at the plant level due to its ample 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. Workers representation at the plant level was considered as unnecessary and sometimes even ilegal. The plant was considered the "domain of the employers, whose limits of action were only determined by the Labour Courts"\[1].

The compulsory contribution tends to make union leaders very little responsible for the rank and file worker (and employer), since union finances are independent from the number of affiliates and voluntary contributions. On the other hand, as collective agreements and conventions are valid for every worker with a signed contract, independent of union affiliation, they have very little incentive to be affiliated to the union. Affiliation is not an issue for union leaders who depended very little on union membership and a strong union is not important for the worker since most of its rights were whiten in the law and any collective agreement is universally valid. This, of course, has changed recently with the appearence of autonomous unions.

Until the 1960's, the small size of the industrial sector, the restrictions on unions activities, the influence of the government over the Labour Courts whose members were appointed by the President of the Republic, the absence 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, bureaucratic structures involved in national politics but without any important links with the day to day problems of the workers.

1 . Rodrigues, 1972, pg. 92.

The unions turned into institutions to promote relief and recreation activities to the workers and a locus for party politics, but not very important in collective bargaining. Direct negotiations between employers and workers at the individual level, which determined the terms of the individual contracts, were much more important to determine wages than collective bargaining, except for the minimum wage which was determined by the President of the Republic.

Collective bargaining developed in a very disaggregated basis with each union of each occupation and city negotiating in a different month of the year. Thus, a completely dissincronized and decentralized pattern of wage adjustment developed, with individual contracts and minimum wage being the main determinants of the workers wages during this period.

This scenario started to change in the beginning of the sixties. The growth of the industrial sector based on durable consumption goods and mechanical and metallurgical sectors, and the high degree of concentration of these industries in Säo Paulo, created the conditions for the appearance of relatively active unions on these occupations (metallurgical, chemical, electrical workers, etc.). On the other hand, the populist pro-workers government of Joäo Goulart, helped to increase unions activism and also strike activity. The first period ended with the military coup of march 1964.

II.1.2 The Authoritarian Period (1963-1978)

The coup replaced the pro-workers government by an active anti-workers military government which persecuted the unions, jailed their more active leaders and changed in very important ways the capital/labour relations in the country. The new strike law, the reduction in workers protection against unjustified dismissals and the political repression of unions reduced drastically unions activism.

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 announced by the Federal government. 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, 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". On the other hand, a "Dissídio" could be called unilateraly, by the workers or by the employers, anytime during the negociation period.

Thus, any time a worker union, during a collective bargaining, decided to ask more than what was determined by the wage law, 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 automatically applied to the collective dispute. This institutional setting, combined with the authoritarian political situation made it impossible for the unions to have any important effect on nominal wages formation during this period. Thus, the rate of

wage adjustment in collective bargaining was entirely controlled by the government through this process\[2].

Any drift from this governmental guides were a result of individual contracts negociations, which continued to be free. The result was that wages negociated at the individual level (mainly white collar workers) increased much faster than those negociated at collective bargaining (mainly blue collars workers).

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 coordinate and control the rate of adjustments of nominal wages quite tightly for blue collar workers\[3]. This was, probably, one reazon why the distribution of labour incomes turned much more concentrated during this period.

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. 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 of return to democratic rule. The liberalization of the political scenario resulted in the gradual liberalization of the unions movement.

Another important aspect was the increase in labour turnover after the approval of the FGTS system discussed above. With the introduction of FGTS, labour turnover and other issues like the rhythm and intensity of work, extra-time work, authoritarianism in the firm and at the shop-floor, etc., became important issues at the plant level\[4].

II.1.3 The Reconstruction Period (1978-to the present)

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 an important issue in collective bargaining and workers

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

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

4 . 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.

representation in the work place a constant demand of the unions\[5]. Workers organization at the firm level through the shop steward and/or workers councils increased, supported by the unions.

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, a "Workers Party" (Partido dos Trabalhadores) was created, closely linked to the unions. Legislative and Executive candidates have been elected by this party at regional and national elections since 1982. In 1989, the presidential candidate of this party arrived second, just 5 percentage points behind the elected candidate.

At the same time, the movement spreaded 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.

As the use of the compulsory contribution resources were very limited, one important aspect of this Central strategy was to increase voluntary contribution. This turned many important unions relatively independent from the compulsory contribution and increased the links between unions leaders and rank and file workers.

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

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

Sector/Congress	First Congress 1984	Second Congress 1986	Third Congress 1988
Public Service	68	114	185
Industry	144	182	233
Services	246	276	282
Rural Union	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

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

fastest growing 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 Constitution, the Central is now reorganizing its files. Table 2 shows the number of unions affiliated by sector based on this new classification. By these numbers, CUT has 1,069 affiliated unions, being 656 urban and 413 rural. It claims to represent close to 18 million workers, but representation here does not mean voluntary affiliation but official representation in collective bargaining which includes affiliated and non-affiliated workers in each occupation.

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

Sector	Number of Unions
Health Services Workers	79
Educacional Services Workers	75
Metalurgical Workers	55
Communications and Advertising Workers	50
Public Services 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.

Evolution of the numbers of workers voluntarily affiliated to unions is impossible to get. Recently, 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 number of affiliated workers
Industrial Workers	20.0
Oil Industry workers	0.7
Urban Services Workers	1.8
Commerce and Services Workers	12.0
Health Services Workers	7.5
Transportation Services Workers	3.0
Financial Sector Workers	4.0
Educacion Services Workers	6.0
Public Services Workers	4.5
Retired	0.1
Professinals	2.0
Rural Workers	38.4

Source: CUT

These 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, two other important Centrals developed during this period, the Confederaçäo Geral dos Trabalhadores (CGT) and, more recently, Força Sindical. The first organization behaves like a Confederation, with very little influence on the individual unions and in collective bargaining.

The second, is very much concentrated in Säo Paulo, where it has as affiliated, the Metallurgical Workers Union of the city of Säo Paulo, which represents more than 100,000 workers in collective bargaining. Recently, it disputed with CUT and gained the ellections on the Metallurgical workers union in Volta Redonda, where the first Brazilian Ironworks firm is located (Companhia Siderúrgica Nacional). This is a former state enterprise, privatized in 1992, and has important simbolic importance for the union movement. Unfortunately more organized data from these Central Unions are not available.

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), 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
Members of a Class Association
Brazil
1986

Sector	U1 (%)	U2 (%)
Manugacturing	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
Transport & 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 individual employers belong to a class association and index U2 assumes that none of the individual employers belong to a class association. For details of the methodology used to arrive to the above estimations, see E. Amadeo and J.M. Camargo, op. cit., pag. 42-43.

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 is 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%.

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 daily problems of workers at the bargaining table and invested in parliamentary representation.

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, 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. This created an important wage drift between the official wages adjustment policy and the actual wages adjustment arived at collective bargaining (see J.M. Camargo, 1990).

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 aggregation 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 even greater disaggregation of collective bargaining since a large part of the disputes was solved through the signing of agreements between a worker union and a firm\[6]. The Social Rights approved in the new Constitution in 1988, tend to reinforce this scenario.

The final result of the process described above was an hybrid collective bargaining system. On the one hand, wage negociations are very descentralized and dissincronized, ranging from individual contracts, to firm, occupation and sectoral collective contracts. Collective contracts are most important for those occupations which are strongly unionized, mainly blue collars and public service workers. This comprise about 30% of the wage workers and makes up the middle range of the wage distribution.

Individual contracts are prevalent on non-organized occupations, which includes low qualified workers, low clerical workers in Commerce, Service and Construction, and unorganized blue collars in the industrial sector, on the one hand, and highly qualified white collar workers in all economic sectors, on the other. These covers the other 70% of the wage workers and comprises low payed wage workers as well as the best payed wage workers in the country. A picture very much similar to the American labour relations system.

Combined with this descentralization and dissincronization of individual and collective contracts bargaining, unions organization is very centralized, at the regional and at the national level. The national union is a very important reference

6 . 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.

point and acts actively at lower levels to improve the bargaining power of affiliated unions. A structure quite similar to the West European unions organization system.

As a result of this hybric institutinal setting, the Brazilian labour relations system presents none of the benefits of the centralization of collective bargaining and unions organization of Western Europe, nor those of the descentralized North American labour relations system. Capital/labour relations are very conflictual and non-cooperative, since negociations are descentralized and unions activism is very strong due to its national caracter. This setting, combined with the indexation coming from the wage and the rate of exchange policies, made stabilization policies very difficult and costly in terms of unemployment. On the other hand, although the rate of inflation went from 40% a year in 1976 to 40% a month in 1993, with some interruption in this increasing tendency when stabilization plans with price freezes were implemented, unions were quite effective in protecting unionized workers wages (see E. Amadeo, at all, 1993).

The degree of conflict is reflected in the degree of strike activity in the country. Data on strike activity for the period before 1985 is rare and incomplete. The only set of information available is a survey made by the University of Campinas, Säo 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
Ind. Work	84	77	43	41	73	189	317	246	534
Prof.	8	55	43	48	31	85	84	211	237
Cons truc.	8	20	19	7	4	10	18	23	45
Othe r	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 until 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	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	1,119	3,523,265

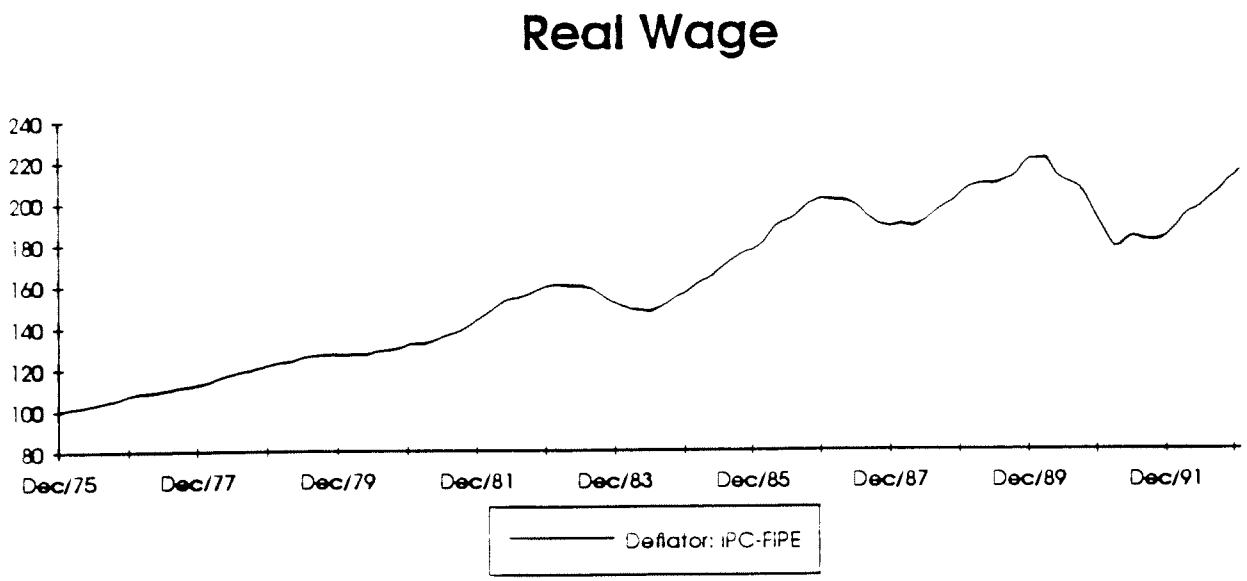
Source: Ministério do Trabalho, CEBET/SIGREV

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 law strongly restricted strikes, but were unable to contain the increase in strike activity. Actually, strikes never followed the rules determined by the law during this period. As the law was considered too authoritarian and the penalties for illegal strikes were considered too hash by the society in general, they were not respected but the penalties for illegal strikes were not imposed in the unions. An institutional vacuum was created. The Law existed but was not applied. In 1988 and 1989, the law was changed to accomodate the new social practices.

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. At least in part, this was a result of the control of blue collars wages through the official wages policy, combined to the drift generated by individual contracts negociation of white collar workers, as discussed above.

As can be seen in Figure 1, the average real and product wages of industrial workers in Säo Paulo increased almost continuously between 1976 and 1988. These workers are certainly the most organized in the country, 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
240
220
200
180
160
140
120
100
80
Dec/75
Dec/77
Dec/79
Dec/81
Dec/83
Dec/85
Dec/87
Dec/89
Dec/91
Deflator: IPC-FIPE

II.2. Individual Contracts, Costs of Dismissals, Flexibility and Informality

Given the importance of individual labour contracts, any analysis of the Brazilian labour relations system must include an analysis of how labour legislation affect individual contract negociations and determination. The main set of institutions which regulates individual labour contracts in the country are:

a. the individual rights of workers defined at CLT and at the 1988 Constitution and the non-wage costs of labour;

b. how Labour Courts act in individual contracts disputes;

c. the costs (monetary or otherwise) of firing workers;

d. the unemployment insurance scheme and its effects on the behaviour of the labour market.

The objective of this section is to discuss these aspects of the Brazilian labour relations system.

a. Individual rights and non-wage costs of labour

As seen in previous sections, the CLT and the 1988 Constitution stipulate a very comprehensive set of minimum standards any individual contract must follow to be legal. The rules are quite rigid, in the sense that they do not provide space for negociations between employers and workers. The implicit idea behind this rigidity is that the employer/worker relation is assymetrical, with the employer having more power than the worker. If conditions are left to be negociated between employers and workers, the final result will not be fair. So, it is important to protect the worker. The result is a rigid set of minimum rules, which reduces the flexibility of the labour market and its capacity to adapt itself to changes in the economic environment.

Besides the increase in rigidity, these rules imply non-wage costs for the employer, which can be estimated. The cost of labour in Brazil can be decomposed in four parts:

the basic wage, which includes the contractual wage, plus the annual one month bonus (13o. wage), plus the contribution to the worker capitalization fund (FGTS) and a contribution payed by firms to finance an worker's assistance service (SESI);

contribution to social security and to fund educational services (salário educação) and an on-the-job accident insurance fee mandatory for all firms and proporcional to the payroll;

contribution to the official training system (SENAI and SENAC) and to finance an institution which assist small enterprises (SEBRAE). These financial resources and institutions are administered by the employers federations and confederations;

finally, hours payed but not effectively worked, due to vacations and holidays are also an important share of labour costs.

From these four components, it can be said that the first and the fourth are appropriated by the workers, directly or through a capitalization fund, or indirectly through the use of facilities of SESI. This last component is different from the two others since it is a social service which not all workers use, while the basic wage and the capitalization fund are directly appropriated by the individual worker. On the same line, payed vacations and holidays benefit directly the individual worker

and, in this sense, is similar to the other costs.

The contribution to the official training system, SENAI and SENAC, is difficult to be appropriated. In the one hand, it benefits the worker, because through these systems they can increase their degree of qualification an so obtain occupational and wages improvement. On the other hand, as it also increase labour productivity, the employer are also benefited from the contributions. The fact that the financial resources comming from these contributions and the training institutions are administered by the employers Federations and Confederations sugests that employers are more directly favored by this contribution than workers. Actually, a share of these contributions are used to finance these Federations and Confederations. But this can also be a result of historical contingencies, since the system it was the employers who lobied for the constitution of these institutions in the fourthies.

The contribution to finance SEBRAE has the same caracter as the above and it seems that it tends to favor more the employer than the workers, as a whole.

Finally, there are those contributions which goes to the federal government, to finance the social security system, work accident insurance and education. Although, in principle, the workers are the final beneficiaries of these contributions, the quality of these government services in Brazil is so low that they feel little benefit from them. On the other hand, social security contribution, besides financing the retirement benefit of the contributory worker, also finance a social security system for all old workers which are not able to provide for their own retirement (pensions for the very poor).

Table 7 shows the composition of the hourly cost in the Brazilian industrial sector in 1992. The table is divided between those contributions which means a direct benefit to the workers and those which do not.

Table 7
Worker's Pay and Labor Cost
(Monthly with normal number of hours = 44 weekly)

	percentage	total
Basic Wage		100
annual bonus	0.083	
FGTS	0.080	
SESI	0.015	
others*	0.100	
total pay to workers - monthly		127.8
Payed leisure	0.160	
Payed to worker plus leisure		148.2
SENAI/SEBRAE	0.016	
INSS + Accid. insur. + educat.	0.245	
Total labour cost		186.9

* These include benefits which can not be calculated for all workers, since they depend on sex, kind of work done, economic sector and the like. These include family allowances, pregnancy leaves, transport subsidies, etc.

The total non-wage labour cost in the Brazilian industrial sector is 186.9% of the basic wage. From this cost, 48.2% goes directly to the worker in the form of direct or indirect wages or payed vacations or holidays. The difference between the total cost of labour, 186.9% of the basic wage, and the amount directly appropriated by the worker, 148.2% of the basic wage, is partly appropriated by the worker, partly appropriated by the employers and partly appropriated by society through the government.

Although it is difficult to make comparisons with other countries some data are available and could be used to gather an idea of how large is this non-wage labour cost. Based on data reported by the US Bureau of Labor Statistics and using conservative estimates of the number of holidays and vacations in some OECD countries, the following estimates for the difference between what workers receive and the amount firms pay were found: Sweden 54%, Italy 58%, USA 37%, Germany 47%. To the extent that these estimates are reliable, the cost of contributions and payed leisure for the Brazilain firms is in line with these countries.

Certainly, other non-wage labour costs are important, like the minimum extra-hours payment, the six hour limit on continuous time shifts, etc. But these costs are difficult to measure and, in general, are special circunstances of the work relation, not the normal condition.

b. Labour Courts and the Individual Contract Disputes

As was discussed in the previous section, it is allways due to the employer to prove that all the laws and the conditions of the individual labour contract was followed during the work relation. The worker, or his/her union, can allways sue the employer in the Labour Courts, if he/she believes the contract, or the law, was not respected. Also, all agreements between workers and employers, over disputes on individual contract compliance and/or on compliance with the law, is only valid if it is made through the Boards of Conciliation and Judgement.

This means that any firing of a worker has to be made in the Judge's presence, if the employer wants to be sure the worker will not claim any right not accomplished by the employer. Since 1988, the worker has five years period to file a claim in the Labour Justice.

Any individual dispute starts with a worker or his/her union filling a complain with the Board of Conciliation and Judgement.The employer is notified and asked to provide the documents to prove he/she is not guilty. The complain and the documents are analysed by the Judge who call the worker and the employer to a conciliation. The process, at this level, is quite burocratic. The judge ask the employer if he/she wants to make a counter-proposal to the worker. If he/she does, the Judge ask the worker if the counter-proposal is acceptable. If so, the dispute is over. In case the employer does not make a counter-proposal or it is not accepted by the worker, the judge ends the hearing. After sometime, in general months or even years, a sentence is pronounced and sent to the parties in dispute.

Once the sentence is received, the employer must pay within seven days, if the workers demands were accepted by the judge, or he can appeal to the Regional Labour Court. In the end the final sentence takes years to be filled.

Again, the important characteristic of the Labour Courts operation is the protection of the workers against the employer. In principle, the worker is right in his/her accusation, being the duty of the employer to prove that he/she is not guilty. As will be analysed below, this generates an incentive for the worker to free-ride against the employers, after the end of the work relation, and distrustfull employer/worers relations.

c. Institutions which regulate workers firing

The second important institution which can affect employers/workers relations at the individual contract level is the cost of firing and the effects of the institutions which regulate firing on workers and employers behaviour. In the Brazilian case, this is the FGTS (see bellow) and the previous notification of firing.

The only restriction to firing in the Brazilian labour relations system is monetary. The employer has to pay a fine, which corresponds to 40% of the total amount of money deposited by the employer in the workers FGTS account while he/she was working in the firm. Besides this fine, the employer has to notify the worker one month before he will be fired. This is the "aviso prévio" or previous notification of firing.

Thus, for the firms, the costs to dismiss workers in Brazil has two components, namely, the previous notification ("aviso prévio") and the fine on FGTS. During the month the worker has received the previous notification of firing, he/she is allowed, according to the law, to take two hours a day to look for a new job. This implies a minimum cost of 25% of the worker's monthly wage. In fact the cost is usually higher since the firms end up paying the notification fee to the worker and dismissing him immediately and, when it is not done, the worker's productivity declines sharply during this period. Hence, the actual cost ranges betweeen 25% and 100% of the monthly wage.

Thus, the total cost of dismissal is given by 25% to 100% of the monthly wage plus 40% of the FGTS. The cost depends on the number of months the worker has worked for the firm, since the 40% fine is over the FGTS deposited by the firm. Table 8 shows the costs fo the firm, in numbers of monthly wages, according to the number of years of the worker's contract, under the assumption that the full cost of the previous notification of firing is born by the firm.

Table 8
Total Cost of Firing a Worker
(in number of monthly wage)

Cont. period	1 year	2 years	3 years	4 years	5 years	10 years	15 years	20 years
FGTS fine	0.41	0.84	1.27	1.72	2.19	4.72	7.66	11.07
prev. notif.	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Total	1.41	1.84	2.27	2.72	3.19	5.72	8.66	12.07

d. The unemployment insurance programme

The Brazilian unemployment insurance program was created in 1986, as part of the Cruzado Plan. At the begining the program had a very low coverage and did not have a secure source of resources. The program was substantially improved in 1990. The changes introduced reduced the elligibility requirements leading to a sharp increase in the proportion of the labor force covered. Moveover, the changes provided a secure mechanism to fund the program. Such mechanism was based on the creation of a specific fund --the Fundo de Amparo do Trabalhador (FAT)-- financed with taxes on the revenues of the firms (PIS/PASEP). Besides financing the unemployment insurance program, 40% of FAT's revenues is capitalized through the Brazilian Development Bank (Banco Nacional de Desenvolvimento Econômico e Social - BNDES) and utilized to finance investment projects. The fund also pays an annual bonus of one minimum wage for all formal workers receiving less than two minimum wages a month. The resources transfered to BNDES must give a rate of return of 5% a year, after corrected by inflation. Table 9 shows the

evolution of total revenues and of FAT, between 1991 and 1993.

Table 9
Fundo de Amparo ao Trabalhador
(Total Revenues)
(monthly averages, in US$ 1,000, dez. 1990)
1991/1993

Year	Tax revenue	BNDES	BACEN	Others	Total
1991	375.5	8.0	127.0	25.2	535.7
1992	325.3	15.3	356.9	134.8	832.3
1993*	294.4	21.9	431.0	257.3	1,004.6

Source: IESP/FUNDAP - indicadores IESP, jan. 1994
* Monthly average between january and november 1993.

The data show an increase in the Funds average monthly revenues from US$ 535.7 thousand to US$ 1.004 billion between 1991 and 1993, which is a result of an increase in the interests payed by BNDES and on financial revenues on resources maintained at the Central Bank (public debt titles). Tax revenues declined during the period, certainly a result of the increasing recession.

Table 10 shows the evolution of FAT's expenditures during the same period.

Table 10
Fundo de Amparo ao Trabalhador (FAT)
Total Expenditures
(monthly averages, in US$ 1,000, dez. 1990)
1991/1993

Year	BNDES	Bonus	Unemployment Insur.	Others	Total
1991	155.8	34.0	108.1	15.9	313.8
1992	126.7	35.8	107.1	5.7	211.6
1993*	115.7	49.1	92.0	3.8	260.6

Source: IESP/FUNDAP - Indicadores IESP, Jan. 1994.
* Monthly average between jan. and nov., 1993.

As can be seen from the table, during this period, expenses were allways smaller than revenues. The surplus was used to buy public debt titles which

are deposited at the Central Bank. This is the origin of the financial revenues comming from the BACEN, in talbe 9. Also, expenditures with unemployment insurance declined, in real terms in 1993, a result of the reduction in the number of unemployed workers covered by the insurance and on the average value of the benefit, as will be seen below.

To become ellegible to receive the benefit, the worker must meet the following criteria:

(a) to have been dismissed without a just cause;

(b) to have had a formal labour contract during the last six months or to have been legally self-employed for at least 15 months;

(c) to be unemployed for at least seven days;

(d) must not receive any other pension;

(e) must not have any other type of income sufficient to garantee his own subsistence and that of his family.

The unemployment insurance program offers partial coverage for up to four months of unemployment. The value of the benefit cannot be lower than the value of the minimum wage, is monthly adjusted by inflation, and is related to the average wage received by the worker in the last three months in the previous job. Table 11 shows the evolution of the monthly average number of workers which applied for the benefit, the monthly average number of workers actually covered and the average value of the benefit, between 1986, when it was created, and 1993.

Table 11
Unemployment Insurance
Workers Covered and Value of the Benefit
1986/1993

Year	Applicants * A	Covered* B	B/A	Average Value (US$)	Average Value (M.W.)
1986**	25,545	18,715	73,3		1.14
1987	82,819	60,671	73,3		1.02
1988	110,093	87,023	79,0		0.82
1989	122,436	100,586	82,2	86.36	1.06
1990	258,024	233,516	90,5	107.17	1.75
1991	263,637	246,987	93,7	110.43	1.83
1992	331,269	321,041	97,0	106.81	1.70
1993***	317,024	305,289	96,2	96.81	1.39

Source: IESP/FUNDAP, Indicadores IESP, various numbers.
* monthly average
** Period may to december, 1986.
*** Period january to october, 1993.

The data indicates a sharp increase in the unemployment insurance coverage during the period, at least as compared to applicants. After the rapid increase between 1986 and 1988, which should be explained mainly by the fact that the insurance was created in 1986 and workers were not entirely aware of the program, the total number of applicants increased again sharply in 1990. This time, this was a result of the reduction in the ellegibility requirements and of the recession which started in 1990 and persisted through 1992. In 1992, the unemployment insurance program covered 3,850,000 workers.

Coverage, as compared to total number of dismissed formal sector workers can also be estimated. In Brazil, every legally registered enterprise, with more than 5 employees, is obliged by law to register monthly, in the Ministry of Labour, every new labour contract signed, admission, and every labour contract ended, dismissal. With these data, the Labour Ministry keeps a file of the total number of dismissals and admissions by legally registered enterprises. These numbers can be compared to the number of workers receiving unemployment insurance benefits to estimate the percentage of dismissed workers receiving the benefit. Table 12 shows these data for the period 1989/1993.

Table 12
Number of Formal Workers Dismissed and
Number of Workers Receiving Unemployment Insurance Benefit
(monthly averages)
1989/1993

Year	Dismissed workers* (A)	Workers Receiving Benefit (B)	Percentage (B/A)
1989	529,225	100,586	19.0
1990	595,221	233,516	39.2
1991	543,037	246,987	45.8
1992	451,177	321,041	71.2
1993**	460,954	355,289	77.1

Source: Ministry of Labour - Law 4923.
* This includes only firing by the employer.
** Monthly average for the period january-october, 1993.

As can be seen from the table, coverage increased steadly since 1989. In 1993, 77.1% of all workers fired in the formal labour market were receiving unemployment insurance benefit. Although these data should be interpreted with care, since they cover only firms with more than five employees, they show that the Brazilian unemployment insurance program is quite important for the formal unemployed worker in the country.

The unemployment insurance program is not linked to any employment or training service. Once the workers application is received and approved by the Ministry of Labour, the worker receives the benefit during four months. He/she is not required to visit an employment office to look for a job, or to accept any offer made by the government employment offices, or to get any training during this period. It is impossible to check if the worker is employed in a non-signed contract job or if he/she is self-employed during the period he/she is receiving the unemployment insurance benefit. Actually, although the Ministry of Labour could check if the worker got a signed contract job during the period he/she was receiving the benefit, this is not done. Thus, in this sense, the Brazilian unemployment insurance system functions much like a pure income transfer system for unemployed formal workers than as a tradicional unemployment insurance system. As will be seen in the next section, this characteristic tends to generate important incentives in the labour market.

II.3. Individual Contract Regulations and Labour Market Incentives

The above description of how individual labour contracts are regulated suggests many important points regarding the way these regulations can create incentives to individual workers and employers in the labour market, and how these incentives affect labour market behaviour.

From this point of view, the most important aspect to be considered is axiomatic. One of the main arguments of this work is that the structure of the regulations is based on the pressupositon that there is important power assymetry on the employers/labour relation. Workers are weaker than employers and thus should be protected if the objective is to arrive at a fair employer/worker relation. This is why there is no room for negociations of minimum working conditions, or the way Labour Courts functions, etc.

On the other hand, this generates rigidities and incentives to agents in the labour market, which tends to induce behaviour not conducive to productivity growth. Take, for example, the way Labour Courts behaves, as described above. The process is quite awkward, for the employer and for the worker. On the one hand, the worker has no costs if he/she sues the employer, except the cost to go to the hearings\[7]. This means that, anytime the worker is fired, he/she has a strong incentive to sue the employer. He/she can not loose anything, but can win the sue. Thus, from the workers point of view, the process provides good protection against unlawfull practices, but creates incentives to free-ride over the employer. So, workers tends not to complain while they are employed, in fear of being fired, but are very active in the Labour Courts, after they are fired for some reason.

Employers, on the other hand, tends to appeal from the decisions of the Board of Conciliation and Judgement, since they say that, at this level, the sentences in general favors the workers. As the system is quite paternalistic, it is not surprising that, common knowledge in the Labour Courts says that this is realy so.

The final result is a very congested Labour Justice, with millions of

7. In general, labour lawyers determine their remuneration as a proportion of the value of the lawsuit, if the sentence is favorable to the worker.

demands per year (Pastore, J. and Zylberstajn, H., 1988), which ends up impairing the workers rights, as the final judgement can take years to be pronounced. On the other hand, it generates distrustfull employer/workers relations, with employers allways afraid of being sued in the Labour Justice, and very little incentive to cooperation at the firm level.

This situation is made even worse due to the normative power of the Labour Justice. This means that any sentence which is pronounced by the Superior Labour Court, which is not specifyed clearly in the law, becomes the law. Thus, things like the acceptance of fringe benefits as part of the workers regular wage, became a normal procedure in the Courts, and has force of law. The result is a quite rigid and distrustfull work relation, at least at this level.

Even if it is assumed that employers/workers relations are assymetrical, the alternative to protect the workers is to create regulations which would induce an increase in workers power, so as tomake the relation more symetric. At the individual level, this would mean an increase in the degree of qualification of the labour force, combined to an increase in the importance of workers unions and more room for the definition of minimum work standards through collective contracts negociations, at the all levels, including the firm level.

But this would also mean the recognition that negociations between employers and workers, are an important way to solve the conflict between these agents. In this context, the Labour Courts should have a much less dominant role to play and workers councils at the firm level would be of fundamental importance, to improve workers bargaining power and induce negociations at the plant level. In a structure like this, wokers councils should be the forum to negociate working conditions at the firm, check if the employer is effectively following minimum working conditions, etc. In other words, a much more negociational system would have to be designed, where the existence of conflict and negociation at the firm level would be prevalent. But certainly, the individual labour contract would be much more flexible in many dimensions.

Although the above considerations imply rigidity in the work standards dimension, on the employment dimension the regulations tend to generate incentives for a very flexible real wage and employment relation. This is so for two reasons. First, because the costs of firing are only monetary. There is no really important non-monetary limitation for a firm to fire a worker. And the monetary cost is not exceptionally high, as is shown in Table 8.

But, maybe even more important is that the mechanism of FGTS provides an incentive for very short run individual labour contracts. To understand this, note that, if fired, the worker can draw his/her FGTS and receive the 40% fine which the employer has to pay to fire him/her. If he/she never changes employment, he/she will never receive the fine and will only draw his/her FGTS when retiring. For unskilled workers, in jobs without clear promotion opportunities, being fired means an immediate income flow which can be substantial, depending on how long they have held their jobs. This revenue would not be available to him/her or would only become available to him/her on retirement. Obviously, the incentive is the highest the smaller is the rate of unemployment, since the probability to get another job quikly increases in this case.

For these workers, the optimum strategy becomes to do on-the-job

search and to seek to be fired, reducing the amount of effort dedicated to the current job and, consequently, reducing productivity.

As short-term work relations are the optimal strategy for the worker, for the employer the best strategy is to get the most the worker can give in this short period of time and never to invest in the worker in the long run. This is so since the probability of loosing the investment made in workers through training and qualification is very high, for the firm. Thus, the optimal strategy for the firm will be to provide the minimal amount of training to unskilled workers and to exploit them as much as possible.

Under these circunstances, worker-firm relationships are expected to be of short duration. Firms have no interest in providing training for workers, while workers are not involved with the firms objectives. The employment relation is very flexible, but there is very little room for labour productivity growth through training and learning on the job. Table 13 shows the turn-over rate of the Brazilian formal sector workers during the period 1985/1993. These are data from the Law 4923, and the turnover rate is calculated as the minimum between admissions and dismissals, divided by the total labour force. Thus, it shows the percentage of of jobs which have changed the worker during a given period. The table shows the monthly average turnover rate and the annual labour turnover rate for the periods for which data are available.

Table 13
Labour Turnover Rates
Brazilian Formal Labour Market
1985/1993

year	labour turnover monthly average	labour turnover annual
1985	2.80	n.a.**
1986	3.67	n.a.
1987	3.72	n.a.
1988	3.80	n.a.
1989	3.49	39.66
1990	3.26	38.20
1991	2.69	35.75
1992	2.26	28.05
1993*	2.73	32.81

Source: Ministry of Labour - Law 4923
* Period january-october, 1993
** n.a. - not available

The data should be read as follows. In 1985, on the average, 2.80% of the jobs of all Brazilian legally registered firms with more than five employee changed its worker in the period of one month. In 1989, 39.66% of the jobs of all Braailian legally registered firms with more than five employees changed its worker in this year. Thus, in the period 1989/1993, 28% or more of the legally registered firms jobs changed its occupant in the period of one year.

Although the period of time is very short to more elaborated statistical inferences, the turnover rates showed in the table are striklingly high. On the one hand it shows a high employment flexibility in the Brazilian labour market. On the other, it suggests that, with such a high turnover rates, training and on the job learning must not be very common in the Brazilian formal labour market. Although this can not only be directly related to the FGTS mechanism, this mechanism is very probably one of the causes of this result.

The final important regulation discussed is the unemployment insurance program. As was described above, this program functions more like a monetary transfer program to formal workers, than like a traditional European and American unemployment programs, which link the right to receive the benefit to some specific duties, like not to refuse a job offered by the government employment service, or to being available for re-training.

Actually, the fact that it functions like a monetary transfer program to unemployed formal sector workers can create an incentive for workers and firms to convert signed labour contract jobs into temporary (during the four months the benefit is received by the worker) non-signed labour contract jobs (see below for a discussion of the importance of non-signed labour contracts in the Brazilian labour market).

To understand why this is so, just remember that during the four months the worker receives the benefit, the unemployment board has no control over the activities of the unemployed workers. Thus, if the worker finds an informal job during these four months, there is no way the benefit can be discontinued. If the new job is a signed contract job, the unemployment board could, in principle, discover that he is not unemployed and cut the benefit, although that is never done, maybe because the costs of the fiscalization are greater than the amount of the benefit payed.

For the employer, on the other hand, it is allways less expensive to have a non-signed contract worker than a signed contract worker, due to the non-wage costs discussed above.

Thus, a coalision can be formed between workers and employers to informalize the labour force. If the contract is discontinued during four months, but the worker maintain his/her employment, he will keep his/her wage and receive the unemployment benefit. Actually, the agreement could include the drawing of FGTS by the worker and the employer could negociate the informal repayment of the 40% fine of the FGTS to him/her. Thus, both empoyer and worker could have a financial gain, at the expense of the State.

This conjecture could help to explain, at least in part, the fact that the introduction of an unemployment insurance program in Brazil did not result in a tendency to increase the rate of unemployment or to a reduction in the percentage of workers with a non-signed contract job, as the labour market models would anticipate. These models conclude that unemployment insurance benefits could

increase the rate of unemployment or the percentage of workers with a non-signed contract job for at least two reazons: because it would reduce the "utility" of work and thus induce leisure (for a good critical survey of these models see A. B. Atkinsons and J. Micklewright, 1991), or because, as the worker receives the benefit, he/she can refuse worse employment opportunities in the non-signed contract labour market to provide his/her subsistence while unemployed, the "buffer" function of this segment.

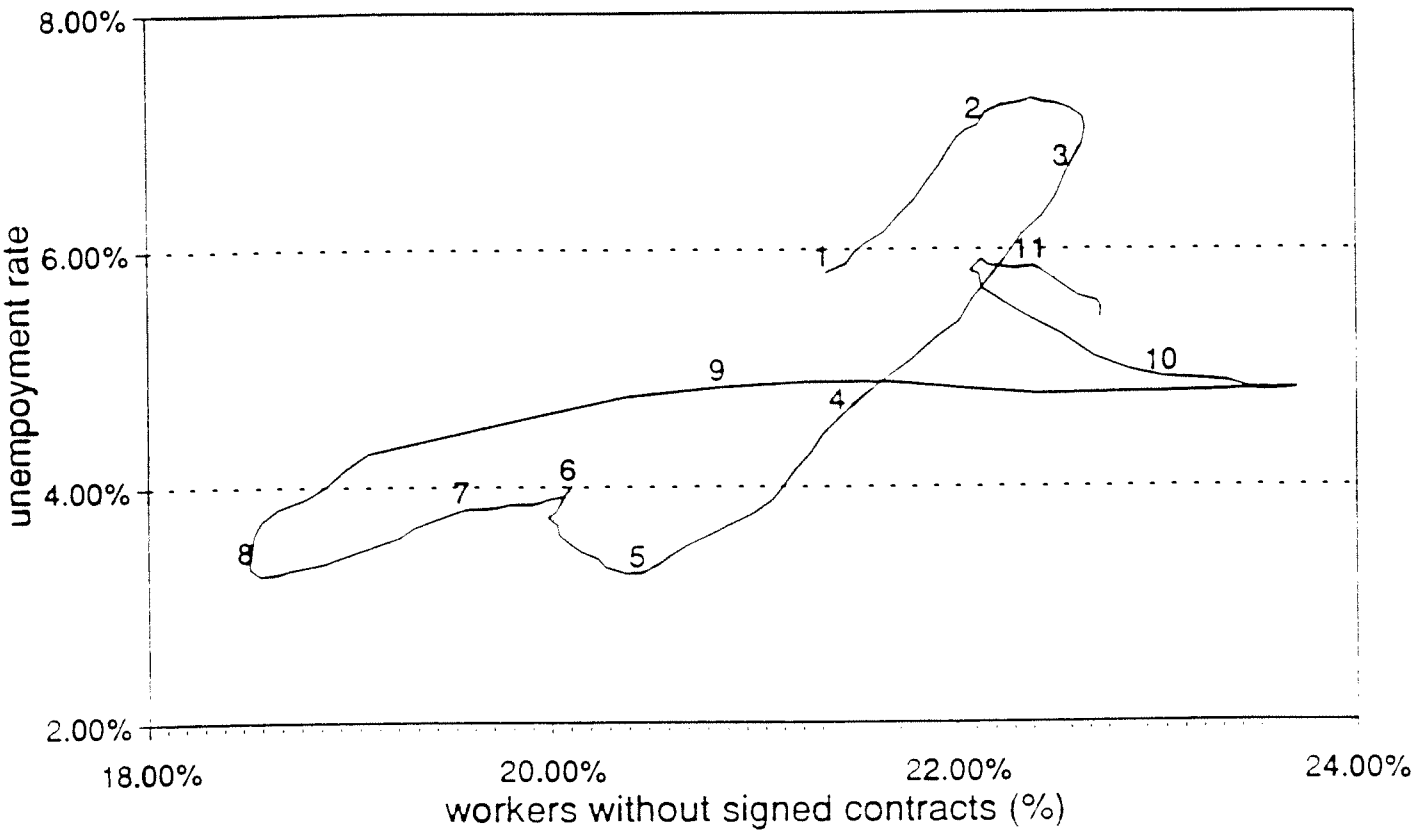
Figure 2 shows the evolution of the rate of unemployment (y axis) versus the evolution of the percentage of workers without a signed contract (x axis) between may 1982 and october 1993. These are monthly household surveys data (Pesquisa Mensal de Emprego - IBGE) for the six greater Metropolitan Regions of the country (São Paulo, Rio de Janeiro, Belo Horizonte, Recife, Salvador and Porto Alegre). Each point in the curve represents the combination of the twelve month moving averages of the rate of unemployment and the percentage of workers without a signed contract, for a given period. For example, point 1 represent the moving average between may 1982 and april 1983 of these two variables, point 2 for the period may 1983 throug april 1984, etc. The slope of this curve shows the relative behaviour of these two variables. The steeper the slope, the more the unemployment rate is the labour market adjustment variable, as compared to the percentage of workers without signed contracts.

Points 1 and 2 correspond to the strong recession of the begining of the eighties (1982/1984). Points 3 through 8 represent the years 1985/1990, which is a period of rapid economic growth (1985/1986) and of relatively small growth, without a recession (1987/1989). Finally, points 9 through 11 represent the recession period of the begining of the nineties. As can be seen from the figure, there is a clear change in the reaction of the Brazilian labour market in the two recession periods (points 1,2 and 3 as compared to points 9,10 and 11). While in the first recession, the rate of unemployment was the main labour market adjustment variable, in the second the percentage of workers without signed contract took its place as the main labour market adjustment variable. The unemployment rate reduced its labour market adjustment function sharply in this later period. Very little of the adjustment in this second period was made through the increase in the rate of unemployment. Although this behaviour can not be entirely credited to the unemployment insurance system, the fact that the unemployment rate became a less important labour market adjustment variable after the creation of the unemployment insurance program, is quite unexpected, as most economic models of labour market behaviour antecipates. Thus, the supposition that the Brazilian unemployment insurance system creates incentives to an increase in the share of non-signed labour contract workers is highly supported by these informations.

Summing up, the individual labour contract is a very important instrument of the Brazilian labour relations system. The paternalistic character of the regulations of the individual contract and the importance of the Labour Courts, generate rigidities on work standards practices, but the lack of non-monetary restrictions, the relatively small cost to dismiss workers, combined to institutions which generate important incentives for workers-firms relations of short duration, discriminate against human capital investment on the job and labour productivity growth. This implies a flexible employment relation, as opposed to the rigidities observed in the labour contract per se. Finally, the relatively righ difference between

the basic wage received by the workers and the total cost of labour, combined to an unemployment insurance program which creates incentives to the transformation of signed contract jobs into non-signed contract jobs, induces the growth of non-signed contract work relations. The importance of this segment of the Brazilian labour market and how it behaves will be analysed in the next section.

FIGURE 2



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