

Brazil

Introduction

There is no precise date indicating the beginning of syndicalism in Brazil. However, the first relevant collective labor movements in Brazil occurred at the beginning of this century (the expression “syndicate” (*sindicato*) was first used in 1903), when the environment was characterized by pluralism concerning the organization and administration of trade unions and by the absence of public intervention. At that time, trade unions were normally organized in the form of cooperatives, unions, or leagues of works. The early Brazilian syndicalism was strongly influenced by European labor movements, and its mainstream was dominated by ideas of anarchic syndicalism caused by the considerable presence of European immigrants (especially from Italy) in the labor movement.

The first efforts to regulate syndicalism in Brazil occurred in 1903, for rural workers, and in 1907, for city workers. According to these original regulations, the main purpose of trade unions was to protect, study, and improve the collective interests of a profession and the individual interests of their members. However, during this period, despite regulation and public intervention, social conditions – characterized by poor industrialization – did not allow for sensible development of syndicalism in Brazil.

Beginning in the 1930s, following the European movement, public intervention in Brazilian syndicalism began to strengthen steadily and to influence related Brazilian regulations and the behavior and social role of trade unions. Initially, public intervention was characterized by a preoccupation with raising labor movements and demonstrations against industrialization, with the increasing influence of foreign workers disseminating anarchic ideas and the political actions of trade unions. Public intervention was based on an “integration philosophy,” rather than the previous conflict ideology, and on apolitical syndicalism, under which trade unions would play the role of state collaborator in order to achieve agreements between employees and employers. As this new philosophy gained popularity, the organization and administration of trade unions became considerably more regulated and strongly controlled by the public administration – even to the point where the existence of a trade union depended upon approval by the relevant ministry.

The “interventionist system” of the 1930s (which was further strengthened in the 1940s) considerably restricted trade unions. For example, the single trade union system (*unicidade*), which bans more than one union in the same geographical area (normally a county) was introduced; unions were classified according to the professions of their workers; the hierarchical organization system, under which more than three unions constitute one federation and more than five federations constitute one confederation, was introduced; civil servants were prohibited from taking part in trade unions; a compulsory union tax was introduced; and new restrictions were introduced regarding participation in international unions or entities. Additionally, unions were considered part of the state and prevented from striking or organizing lockouts, and the Ministry had several legal remedies to control union activities, such as revoking a union’s operating permit. The organization and function of unions were also highly regulated. For example, agreements negotiated by unions with employers were applicable to all workers, regardless of whether or not the workers were members of the union.

Then, in 1942, the Labor Law Consolidation (*Consolidação das Leis do Trabalho* or “CLT”) was enacted. The CLT introduced no significant changes (with the exception of a more liberal strike right) and maintained the existing system until the democratization of the country in the 1980s and the enactment of the new Federal Constitution of 1988.

The Federal Constitution of 1988, Articles 5 and 8, reintroduced the principle of freedom of association and organization in Brazilian syndicalism and gave unprecedented freedom to trade union activity in Brazil. However, some restrictions developed during the interventionist system were still maintained, such as the single trade union principle, compliance with occupational or economic categories for establishing a trade union, the hierarchical system of organization of unions, and mandatory contributions.

The system as outlined in the CLT still exists in Brazil. However, as it has not been adapted to the new constitutional environment, it is not unusual to find rules within the CLT that have been superseded or that are no longer applicable, particularly those rules regarding the organization and control of trade unions.

Additionally, Brazil has ratified Convention 98 of the International Labor Organization (ILO) on collective bargaining. It has not, however, yet ratified Convention 87 on the freedom of association and organization or Convention 151 on the syndicalism of civil servants.

Trade Unions

The General Role Of The Trade Union

Trade unions can be freely organized in Brazil, provided that they are done so for the purpose of studying, protecting, and coordinating the financial or professional interests of a group or its members. The main requirement for forming a union is that the union must be composed of members that have solidarity of interests, who perform similar work, or who are in a similar position. In view of that, employees and employers necessarily compose different categories of trade unions: professional unions (*categorias profissionais*) representing employees, and economical unions (*categorias econômicas*) representing employers.

The Brazilian trade union system is based on the purpose of obtaining a consensus between social agents and on preventing conflicts; therefore, Brazilian unions concentrate their work on bargaining labor conventions (*convenções coletivas do trabalho*) and collective labor agreements (*acordos coletivos do trabalho*). Labor conventions and collective labor agreements are recognized by the Constitution of 1998, pursuant to Article 7, XXVI, as a social right of Brazilian workers. The intervention of unions in the bargaining process of labor conventions or agreements is – according to Article 8, Paragraph VI of the Constitution – not only a guarantee, but an obligation. In addition to negotiating collective labor agreements and conventions, trade unions are entitled to give assistance to their members, particularly in regard to health, educational, and legal matters, and should collaborate with the government to find solutions to problems relating to labor and work conditions.

Brazilian trade unions are also entitled to defend the individual and collective interests of their members, including in judicial and administrative proceedings. The judicial representation of workers by unions is, however, pursuant to precedents of the Superior Labor Court (*Tribunal Superior do Trabalho*), not assured by the Constitution and is limited to conflicts involving certain wage adjustments and to cases expressly foreseen in statutes of law, such as claims regarding additional payments for dangerous work.

Brazilian trade unions must comply with a hierarchical system composed of unions, federations (a group of unions), and confederations (a group of federations). The main purpose of the hierarchical system is a wider and more efficient protection of interests of groups and their members within Brazil. However, the maintenance of the system, which is constitutionally guaranteed, is likely to produce unexpected problems in the interpretation of the extension of the freedom of association and organization principle reintroduced in Brazil.

Constitution Of The Trade Union

The new trade union system established by Article 8 of the Federal Constitution of 1988 ensures the principle of freedom of association and organization, so that unions can now be freely organized. The system under which the government laid down requirements relating to trade union structures and recognition has been extremely reduced or eliminated. Despite the freedom of association principle, constitutional restrictions regarding the existence of the single union principle, the hierarchical system, and payment of the union tax still exist. Pursuant to the single trade union principle, company-based unions are not allowed in Brazil, and the geographical area, where just one union exists, cannot be smaller than a municipality.

Today in Brazil, trade unions are not required to obtain authorization to be incorporated. The only formal condition applicable for the organization of a trade union in Brazil is the registration at the relevant public agency, which, pursuant to the decision of the Brazilian Supreme Court of Justice, is the Ministry of Labor and Employment.

Brazilian trade unions are normally organized in the form of a civil partnership, but there are no restrictions concerning the election of another form. In view of the protection offered to directors of a trade union and in order to avoid abuse of that protection, certain scholars defend the applicability of rules concerning the composition of the board of directors contained in Article 522 of CLT. The board of a union should be integrated, consequently, by at least three members and by a maximum of seven members. However, despite these rules, in the last few decades, many workers' associations (the *centrais sindicais*, such as the *Central Única dos Trabalhadores*, or "CUT," and the *Central Geral dos Trabalhadores*, or "CGT") have been established. These workers' associations do not comply with a great part of these rules, but have still been exercising considerable pressure in Brazilian syndicalism. In view of the hierarchical system of Brazilian syndicalism, which is constitutionally ensured, the legal existence and activity of such associations have been questioned, but in March of 2008, the Brazilian government formally recognized the legality of these associations.

All workers, including employees of the public system (as provided in Article 37, Paragraph VI), have the right to take part in a trade union – even though no one will be obligated to join or remain a part in the union.

The existence and function of Brazilian trade unions is guaranteed by payment of the union tax (*contribuição sindical*), as provided in Article 580 of CLT – equivalent to one day’s wage per year for employees, which is mandatory.

The different treatment of rural and urban syndicalism in Brazil, which had already been partially relieved, was also eliminated with the Constitution of 1988, so that rural unions are now governed under the same rules applicable to urban unions, except for peculiarities relating to the Brazilian rural environment.

The Scope Of Trade Union Rights In Businesses

Unions are entitled to defend the interests of a group and its members, particularly in the negotiation of collective labor agreements or conventions, because the participation of unions in the collective bargaining process is constitutionally ensured. The conditions negotiated by unions have a normative character and the advantages and/or rights obtained by the collective bargaining generally complement the work conditions negotiated by workers individually or guaranteed in statutes of law, such as the CLT. In Brazil, the direct bargaining process between unions and employers (“collective labor agreements”) represents a large part of the negotiations. The normative character of the collective labor agreements and conventions is a result of the wide applicability of such agreements to the members of the union and also to non-members that belong to the same group (*categoria*).

There is no rule defining the rights that form the basis of the collective bargaining process, but the main issues generally negotiated in collective agreements and conventions in Brazil include working time, compensation for overtime, benefits, vacation, tenure jobs, the establishment of certain facilities to improve the work environment, and wages. Profit sharing for employees may also be ruled by collective agreements and conventions, as provided by Law 10.101/2000.

Additionally, it is important to note that, in accordance with Article 623 of the CLT, provisions of a collective labor agreement or convention shall be deemed illegal where they are contrary to the standards established by the government economic policy or the wage policy in force.

The Function Of Trade Union Representatives

Union representatives (*dirigentes sindicais*) are entitled to represent the union and to negotiate during the collective bargaining process with another union or directly with the employer. The specific powers and limitations of union representatives shall be ruled, however, by a union's articles of organization and not by statutes of law.

Employers are prevented from dismissing union representatives, from their candidacy to the end of their term, for up to one year after the end of the mandate, with the exception of termination due to gross negligence, as provided by Article 543, Paragraph 3 of CLT.

Works Councils

General Requirements And Principles

Pursuant to Article 11 of the Constitution of 1988, companies with more than 200 employees must elect an employee representative who is exclusively responsible for direct negotiations with the employer. Though the legal background for the regulation of Works Councils in Brazil was introduced by the Constitution, there are currently no statutes regulating the organization and action of such representatives. In addition, the Constitution of 1988 guarantees, pursuant to Article 7, Paragraph XI, only an exceptional participation of employees in the company's management. The form of this participation is, however, also not regulated.

The Brazilian syndicalism remains, therefore, based on the union system, so that the concrete regulation of such constitutional initiatives is likely to be difficult, particularly due to union opposition to Works Councils.

Functions And Rights Of Works Councils

Collective labor agreements and conventions in Brazil must be negotiated by unions, as provided by Article 8, Paragraph VI, of the Constitution of 1988. In theory, works councils could be entitled, based on the private autonomy principle, to negotiate specific agreements with the management without violating the monopoly of unions, but the establishment and functions of such Works Councils are not regulated. Additionally, even though Works Councils are foreseen in the Constitution of 1988, Article 11, for companies with more than 200 employees, no specific regulation exists.

Unions are entitled to negotiate collective labor agreements with relative autonomy, but the CLT rules the negotiation process and the enforceability of the conditions of such agreements. In order to reach enforceable agreements, the bargaining process must, therefore, comply with certain formal requirements, and the final agreement must at least include the issues listed in the CLT, such as the conditions for renewal and dispute settlements, as well as penalties. The agreement must be registered with the relevant department of the Labor Ministry within eight days from its execution and shall enter into force three days following registration. The Labor Ministry has, however, no right to comment on the merit of the negotiated conditions. Agreements cannot have a term longer than two years.

In principle, unions are not entitled to use collective labor agreements and conventions as an instrument to limit or reduce individual labor rights. However, due to the recent necessity to create more flexible labor relationships and, therefore, to preserve jobs during an economic recession, the Constitution of 1988 has permitted the reduction of wages or the time compensated by means of collective bargaining. The advantages or benefits obtained by means of collective bargaining shall not be part of the individual labor rights of workers and, upon termination of the agreement or the convention, workers do not preserve such benefits or advantages – they must be renegotiated.

A labor dispute can be settled by means of arbitration according to Article 114, Paragraph 1, of the Constitution of 1988. When arbitration does not work or is not accepted by one party, the labor courts are empowered to decide on the conflict and to set out conditions regulating the dispute.

Enforcement Issues

In order to ensure the enforceability of collective labor agreements and conventions, unions are entitled to claim against employers or employers' unions on the specific performance of such agreements (*ações de cumprimento*).

The Interaction Between A Works Council And A Trade Union

The establishment of Works Councils by means of collective bargaining is expressly ensured by Article 621 of the CLT, but employees' unions have had no success in implementing Councils. As other similar forms of Works Councils constitutionally foreseen have not yet been regulated, the interaction between works councils and trade unions does not represent a legal issue in Brazil.

Other Types Of Employee Representation

There are two other types of employee representation in Brazil: (i) internal commissions for the prevention of accidents (“CIPA”) and (ii) trial settlement commissions (*Comissões de Conciliação Prévia* or “CCP”). These commissions have, however, limited authority and are not entitled to take part in the collective bargaining process.

The CLT and Ruling 3214/78 regulate the CIPAs, and their main purpose is to discuss labor accidents occurring in a company and to present solutions or preventive measures to such accidents. The CIPAs are also responsible for organizing prevention campaigns and courses for employees. The CIPAs are composed equally of members representing the employer and members representing employees, each elected for one year. The number of members elected in a CIPA depends on the risk related to the company’s activity and on the total number of employees in the company. The CIPA president must be a representative of the employer. Employers are prevented from arbitrarily dismissing employees elected to the CIPA.

The CCPs were created to offer an alternative settlement solution for individual conflicts and/or disputes between employers and employees without the necessity of judicial intervention, thereby reducing the excessive number of labor claims before the Labor Courts. The employer or unions are entitled to establish a CCP, but not obliged to do so. A CCP in a company must be equally composed of representatives of the employees and the employer, and the composition of a CCP in a union must be regulated in the collective labor agreements or conventions. Representatives are elected for one year. The employer is prevented from dismissing the representatives of employees, unless for gross negligence.