

TRADE UNION RESPONSES TO GLOBALIZATION

A review by the Global Union Research Network

Edited by Verena Schmidt

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GLOBAL UNION RESEARCH NETWORK

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FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING: THE PRACTICE OF MULTINATIONAL COMPANIES IN BRAZIL

7

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Introduction

This contribution presents the results of studies on 18 subsidiaries of MNEs operating in Brazil, concerning their practices in relation to freedom of association and collective bargaining. Although generalizations cannot be made about the conduct of all of the multinationals in Brazil¹ in relation to trade unionism, this synthesis seeks to assist in the analysis of this issue.

Instituto Observatório Social (IOS – Social Observatory Institute) has been researching corporate conduct in Brazil as a form of social vigilance over large national and multinational companies. The institute works closely with Brazilian trade unions, foreign trade union confederations and global unions. It is hoped that the study will stimulate social dialogue between trade unions and the corporations in order to achieve solutions to the problems identified by the research.

The companies that were the subject of these studies are part of large corporate groups in Brazil. Focusing on the specific interests of the trade unions that requested the studies, the scope of the research generally was limited to one or more subsidiary companies or specific plants in the case of industrial companies, or one or more areas of operations for service sector companies. This limit was defined in cooperation with the trade unions and was often negotiated with the companies themselves.

These studies were conducted at different times between 1999 and 2003, when Brazil was undergoing a phase of low economic growth, high

¹ The census of foreign capital in Brazil conducted by the Central Bank found 9,712 companies with 50 per cent or more of their capital controlled by foreigners in Brazil in the year 2000.

Table 7.1 Company revenue and number of employees Brazil, 1999–2003

Companies	Revenue or sales (R\$ million)	Employees of the corporation in Brazil	Employees in subsidiary companies studied
Akzo Nobel	849	2 426	1 052
Banco Real	784	22 247	22 247
Bayer S.A.	1 190	1 510	1 143
Bompreço S.A.	3 309	21 823	21 823
Embratel	7 270	7 206	7 206
Light Serviços de Eletricidade	8 577	5 200	5 200
Moto Honda da Amazônia	–	–	3 876
Nokia Brasil	773*	1 466	1 087
Parmalat	1 155	4 803	382
Philips da Amazônia	2 400	4 000	1 092
Robert Bosch Ltda	2 500	11 413	7 637
Santander Meridional	430	8 250	1 323
ThyssenKrupp Elevadores	2 880	–	571
ThyssenKrupp Fundições Ltda	–	–	1 341
Unilever Divisão Higiene e Beleza	7 300	15 000	1 203
Wal-Mart do Brazil Ltda	780	6 000	–

Source: Social Observatory Institute.

* million euros

unemployment and oscillating currency exchange rates. The period was also marked by initiatives for the flexibilization of labour relations, such as the use of subcontracting systems, flexible hours and variable pay. This environment contributed to tense labour relations.

The companies were chosen because they were among the leaders in their segments. Their annual sales or revenues exceeded R\$700 million (US\$227 million at the average exchange rate for 2003). Where data were available, the number of people employed by each group was at least 1,400 directly contracted workers (see table 7.1).

Most of the companies/plants (12) were located in the south-eastern part of the country, which is Brazil's most industrialized region and has the strongest tradition of union activity. Three of the companies were located in the north, in the Manaus Export Processing Zone. Two are in the southern region² and one in the north-east.

² One of the studies focused on business units located in Brazil's southern and south-eastern regions.

Table 7.2 Companies studied, sectors of activity, controlling group and country of origin

Subsidiary studied	Sector	Controlling company	Country
Wal-Mart do Brazil Ltda	Retail sales	Wal-Mart	USA
Light Serviços de Eletricidade	Electrical energy	Electricité de France	France
Parmalat	Food industry	Parmalat	Italy
Moto Honda da Amazônia	Metalworking	Honda Motor	Japan
Santander Meridional	Financial	Santander	Spain
Banco Real	Financial	ABN-Amro	Netherlands
Embratel	Telecommunications	MCI	USA
Nokia Brasil	Electronics	Nokia	Finland
Akzo Nobel	Chemical and pharmaceutical	Akzo Nobel	Netherlands
Unilever Divisão Higiene e Beleza	Chemical	Unilever	Netherlands
ThyssenKrupp Elevadores	Metalworking and services	ThyssenKrupp	Germany
ThyssenKrupp Fundições Ltda	Iron and steel	ThyssenKrupp	Germany
Philips da Amazônia	Electronics	Philips	Netherlands
Bompreço S.A.	Retail sales	Ahold	Netherlands
Bayer S.A.	Chemical and pharmaceutical	Bayer	Germany
Robert Bosch Ltda	Metallurgical	Bosch	Germany

Source: Social Observatory Institute.

The national origin of the capital in these companies was predominantly European, coming from six countries (see table 7.2). This, to a large degree, is a reflection of the partnerships that the Social Observatory Institute (IOS) has maintained with Dutch and German trade union centres. There is a low representation of American companies in the group (two), although more of the multinationals operating in Brazil are headquartered in the United States than in any other country.

The companies conduct industrial, service and retail operations. The industrial companies were dominated by those in metalworking, chemicals, electronics and food. The service companies were in the financial, telecommunications and electrical energy sectors. In commerce, the companies studied operate in the supermarket sector.

References for evaluation of the companies

The IOS adopted the ILO Declaration on Fundamental Principles and Rights at Work (Core Labour Rights – CLR) as its reference for the evaluation of working conditions and union relations at the companies. The themes of health and safety at work were added as well as environmental protection, given their importance for the workers.

Two steps were necessary so that these international standards could be used as references in the analysis of company practices. The first was to convert international and national standards into criteria for the evaluation of corporate conduct. The second was to compare international standards with the Brazilian reality, legislation and practice of labour relations.

To define the indicators related to the right to freedom of association, it was necessary to consider that the corporatist model of union organization in Brazil guarantees the right to unionization. The model allows the existence of only one union for each professional category that legally represents workers, even those who are not union members, in their territorial area of operation. There are legally representative unions for the large majority of waged workers in the country.³ Most of these unions have a small territorial base (73 per cent of them cover just one municipality) and small memberships (93 per cent have fewer than 5,000 members). But the single union system does not prevent various unions from operating at a given company, because they are divided into different occupational categories. Subcontracting aggravates the negative effects of this division, because a large portion of the subcontracted workers are not part of the majority union membership, which is normally the most active in the company.

On the other hand, the representation of workers and the presence of union representatives within companies and at workplaces are quite rare in Brazil. Less than half of the unions of salaried urban workers have a union delegate at their workplace. There are only 168 works councils (factory commissions) in Brazil and only 1,000 of nearly 10,000 unions said they were aware of the existence of a works council.

In relation to the right to freedom of association, the indicators chosen focused on the possibilities for a worker to join the existing union, the existence of representative organizations of employees, the presence of union representatives at the workplaces and recognition and respect for union decisions, movements and agreements (table 7.3).

Concerning the right to collective bargaining, labour issues in Brazil are regulated by the Federal Constitution (1988) and principally by the Consolidated

³ According to Instituto Brasileiro de Geografia e Estatística (IBGE), in 2001, unions of urban employees in Brazil represented 31.7 million workers (total union base) and there were 9.2 million union members (*Pesquisa Sindical 2001, 2001*). In that year, there were 36.7 million employees in non-agricultural activities in the country (*Pesquisa Nacional por Amostra de Domicílios [PNAD]* data).

Table 7.3 Freedom of association – indicators and description

Indicator	Description
Freedom of organization	Workers' freedom to unionize Respect for the right to organize at the workplace Freedom of union entities to draw up their own rules
Freedom of union action	Access of union leaders to the workplace and freedom of communication with workers
Union recognition	Recognition of the decisions of union organizations, as approved in assemblies Respect for the right to strike Compliance with decisions taken in agreement with the union

Source: Social Observatory Institute.

Labour Laws (1943). Standards issued by the federal Government define the implementation of the regulations and, above all, decisions of the Labour Court establish the interpretations of or may even, at times, create rules.

Since the 1990s, there has been debate in Brazil about making this legislation more flexible, partly through a series of “isolated” changes in labour regulations such as: permission for so-called “hour banks” (flexibilization of the work shift and overtime payments), the creation of temporary labour contracts, institutionalization of lay-offs, stimulation of flexible pay schemes, and so on.

Collective bargaining effectively returned to the country in the late 1970s and is thus relatively recent and quite limited. It is complementary to the law and principally defines the annual pay rise, basic pay, benefits and some union rights. Collective agreements and company agreements usually have a duration of one or two years and are no longer valid after they expire. This places workers at a disadvantage because they are faced with the possible automatic loss of their rights, creating pressure on them to sign a new agreement. The alternative is to request the intervention of the Labour Court. This can also be required by the Government, if there is a strike.

Thus, the existence of direct negotiations between the company and the union and the conditions needed so that workers' representatives, whether they are unionists or not, can undertake effective negotiations, are the central indicators related to the right to collective bargaining. The other indicators derive from these, since information about the companies or units is one of the necessary conditions for effective bargaining. In the case of MNEs, it is essential that the Brazilian subsidiaries have the authorization to negotiate, and that they do not threaten to transfer their activities as a negotiating ploy (table 7.4).

Table 7.4 Collective bargaining – indicators, description and sources

Indicator	Description
Right to collective bargaining effective	<p>Direct negotiations between company and union</p> <p>Offer workers' representatives the conditions needed for negotiations</p> <p>Make possible direct negotiations in each country of operation</p> <p>Do not threaten to transfer activities to other countries in order to influence negotiations</p>
Right to information for collective bargaining	Offer the information necessary for effective negotiations, with data about the units and the company as a whole

Source: Social Observatory Institute.

Results

Freedom of association

In all of the cases studied, there were unions legally recognized as representatives of the predominant category of qualified workers employed (such as metalworkers, chemical workers and so on). But there were also other unions representing specific smaller groups of qualified workers. So, most companies had more than one representative union and sometimes even dozens. For example, 12 unions were noted at Akzo, 20 at Bomprego and more than 30 at ThyssenKrupp Elevadores.

There were also union representatives of occupational categories other than the major ones, such as engineers, secretaries, mid-level technicians, and others, within each corporate unit.

The workers in subcontracting companies are not represented by the same union as represents the directly contracted personnel, but this union often intermediates for subcontracted workers and seeks a solution to problems with the contracting company.

The rate of unionization is quite varied. Based on the average rate of unionization among waged urban workers in the country, which is 29 per cent,⁴ an arbitrary five-level scale can be constructed: very low = 0–10 per cent; low = 10–20 per cent; medium = 20–35 per cent; high = 35–70 per cent; very high = above 70 per cent. In these terms, of the 18 distinct situations, 13 can be considered medium to very high, while the other five are below medium (see table 7.5). This reflects a positive general situation.

⁴ Calculated according to *Pesquisa Sindical 2001*, by IBGE.

Although the number of employees with a union mandate at these companies is quite variable, we can surmise that the information about the two banks is applicable to all of the banks in the country. Similar generalizations cannot be made on the basis of the studies in other sectors. However, only two companies did not have union leaders among their employees, which shows the importance that these companies have within the union membership (we do not have information for the other four companies).

The union leaders have access to the workplaces to undertake communication activities with the workers, but frequently depend on the authorization of company management. This can be considered a potential limiting factor, especially during disputes with the company. In addition, access by leaders of the workers' organizations who were not employees of the company was even more difficult. In some cases, their access to certain areas of the establishments was prohibited or restricted.

At only one company (Bayer S.A.) did the studies find the existence of an organization that represented personnel, such as a works council, as defined by

Table 7.5 Freedom of association – results

Company	Unionization rate	Union representatives	Discrimination against union participation (%) *
Akzo Nobel	Low/Medium	0	–
Banco Real	High	298	–
Bayer S.A.**	Low/High	2 and 17	2.4
Bompreço S.A.	Medium	–	–
Embratel	–	–	–
Light Serviços de Eletricidade	Very high	–	5
Moto Honda da Amazônia	Medium	5	40
Nokia Brasil	Very low	0	–
Parmalat	–	–	–
Philips da Amazônia	Medium	4	37
Robert Bosch Ltda **	High/Very high	5 and 7	8 and 16
Santander Meridional	High	100	–
ThyssenKrupp Elevadores	Medium	3	3
ThyssenKrupp Fundições	Medium	7	8
Unilever	Very low/High	–	30
Wal-Mart do Brazil Ltda	Very low	1	–

Source: Instituto Observatório Social.

* Percentage of responses stating that there was discrimination against union participation in the company.

** Two different plants were studied.

the collective agreement and exclusively composed of elected representatives. But, even so, the relationships between the factory commission and the union were negatively affected by standards that restrict the participation of unionists in the election to the commission. Another company had a mixed commission with representatives nominated by the company and elected by the workers. This served to channel demands to the company. On the other hand, all the companies studied were required to have operating internal accident prevention committees, and all do so.

In contrast, some companies also have some form of internal participation by the employees in activities linked to the improvement of production and the quality of the product and process.

In general, no open discrimination against unionization was found as a company policy. But the unionists interviewed frequently accused managers of exercising some type of pressure against unionization or participation in union activities or of inducing the workers to think that it would be harmful to their employment or professional careers. Despite the different formats of the surveys, at seven companies the percentage of responses indicating some type of discriminatory action against unionization or participation in union activity was 2–16 per cent of the total. Only in three cases did responses of this type reach significant percentages, of 30–40 per cent, but this was in companies where the rate of unionization was average or high.

The sample studies revealed that the workers did, as a rule, receive printed material from the unions (70–90 per cent of those interviewed), but that a much lower percentage maintained direct contact with trade unionists.

The studies identified two concrete cases of attitudes contrary to union organization, in the form of lay-offs of union leaders either in the past or during the studies. Other complaints concerned discrimination against union leaders regarding career advancement and salary increases. But the most critical points were certainly the lack of coordination among unions that represented workers within one company and the absence of employee representation bodies within each workplace.

Collective bargaining

The studies show that the companies were governed mainly by collective agreements negotiated between the local unions and the employers' organizations (13) (see table 7.6). Ten companies had direct negotiation processes with local unions. Only one of the companies was governed by an agreement signed directly with the majority union.

The central issue here is the limited scope of the collective bargaining. No company negotiated internal standards (for example, job and wage plans

Table 7.6 Collective bargaining – results

Company	CCT	ACT	Profit sharing bargaining participant
Akzo Nobel	X		–
Banco Real	X	X	–
Bayer S.A.	X	X	Trade union + commission
Bompreço S.A.	X		One of the many local trade unions
Embratel	–	–	–
Light Serviços de Eletricidade		X	Trade union
Moto Honda da Amazônia	X		–
Nokia Brasil	X	X	Trade union
Parmalat	X	X	Trade union
Philips da Amazônia	X	X	Commission
Robert Bosch Ltda	X	X	Trade union
Santander Meridional	X	X	Trade union
ThyssenKrupp Elevadores	X		Commission
ThyssenKrupp Fundições	X	X	Trade union + commission
Unilever	–	–	–
Wal-Mart do Brazil Ltda	X	X	None

Source: Instituto Observatório Social.

CCT: Convenção Coletiva de Trabalho (collective labour contract signed between trade union and employer organization)

ACT: Acordo Coletivo de Trabalho (collective labour agreement signed between trade union and a company)

or personnel management policies) with the unions. Many unionists interviewed did not know of and did not interfere in decisions concerning job and function descriptions, pay scales, job promotion mechanisms, criteria for performance evaluation and other aspects of personnel management.

The standard practice is for the union to be limited to negotiating the so-called basic wage (sectoral minimum wage) upon which companies build their pay structures. Since the agreements apply to a municipality or region, each of them has a different basic wage, resulting in different pay structures within a single company. This was quite clear at companies in the retail sector, which have quite broad areas of operation.

Another theme which completely escapes the realm of collective bargaining is that of training, which is considered a prerogative of the employer.

It should be noted that the implantation of flexible systems for work shifts and pay is, by law, conditional on negotiation with the union (or with a commission of employees). So the companies usually seek to negotiate with the

unions in such a way as to obtain advantages from these systems (reduction of additional wages and of social security payments). Various unions have not agreed to negotiate some of these points, precisely because of the adverse circumstances and the threat of a reduction of labour rights.

Profit- and income-sharing is the most visible form of flexible remuneration in the country. A distinction can be made between companies that identify the union as the interlocutor in this negotiation, and those that opt to give priority to specific commissions for this discussion. The attempt to exclude the union is evaluated as a form of weakening the employees' negotiating capacity. Thus, at seven companies this negotiation took place with the active participation of the union and at two others, with a commission with little or no union participation. In one of the cases, the rules were simply not negotiated, while in the other, only one of the many unions had discussed them (i.e. the others were excluded). There was not enough information about five companies.

The lack of the information needed for effective negotiations appears to be a critical issue. In addition to the dearth of information about internal personnel management norms, in most cases unionists do not have access to indicators and data about company performance. Most of the companies studied do not have publicly traded shares and are thus not required by law to disclose their balance sheets, much less to publish a social report.

On the other hand, there is one way in which information is made available to workers' representatives, through developments where companies have sought to be more transparent to the internal and external public, either through management systems that seek the involvement of workers or through the diffusion of the concept of CSR (the issuing of social reports, for example).

It is important to mention the limited coordination of the negotiating processes, reflecting the type of union organization previously described. Only at the two banks studied, and in an initial stage at Unilever and Bosch, were there some types of union organization that could promote this coordination. The very studies and parallel activities undertaken by the labour confederation Central Única dos Trabalhadores (CUT – Single Workers' Confederation) and the IOS sought to support and stimulate the creation of union committees or networks that could conduct negotiations in a more joined-up way.

Conclusions

The results show that there is no uniform conduct among the companies studied. It is apparent that these MNEs follow the labour relations standards pertaining in Brazil, with little importation of standards from their countries of origin. This is the case, for example, for representation at the workplace.

The Brazilian union model guarantees the existence of unions and certain general conditions for freedom for unionization that company practices can limit, but not entirely suppress. The rates of unionization at the companies studied were higher than the national average and reflect a greater union presence, indicated by the number of union leaders employed at companies.

The major restriction noted by the workers employed at these companies, concerning their ability to collectively intervene in the internal labour conditions of the companies, was that the right to organization at the workplace is poorly developed.

The results related to the other indicators selected for the theme of freedom of association, considering the differences between companies and certain isolated restrictions, were positive (in terms of access to the workplaces, recognition of union decisions and compliance with agreements reached).

Concerning collective bargaining, it was also found that there are prevailing practices of both sectoral and direct negotiations. The deficiencies in this case are more closely linked to the lack of information about the companies and the absence of coordination for negotiations at the corporate or group level. This point is particularly critical when a company undergoes a restructuring process that has a strong impact on employment.

So what could and should trade unions do to make a difference? It should first be considered that a process is under way to transform labour relations in Brazil, with the Government proposing to address some of the issues cited, such as the demand for a real legitimacy for unions, financial contributions linked to negotiation and a new system for conflict resolution in collective bargaining and workplace-level organizing. This reform will have a strong impact on all of the points examined here, if in fact the current model of union organization is altered.

Putting this reform, which still has to pass through the legislative process, to one side, Brazilian unions that act within large companies can limit their deficiencies if they give priority to creating ways to coordinate their actions and, in particular, the collective bargaining processes. The experience of the Social Observatory Europe Project⁵ is illustrative, because it resulted in the creation of forums for social dialogue among some of these companies and groups of unions, confederations and the CUT (Bayer, ThyssenKrupp, Akzo Nobel, Bompreço). The impacts reported in these experiences were the broadening of freedom of activity of union leaders among the workers at these companies and greater access to information about company strategies. It is hoped that concrete measures that can improve working conditions will be implemented in the medium term.

⁵ This project was a partnership between the IOS, the German DGB [Deutsche Gewerkschaftsbund] and the Dutch FNV (Federatie Nederlandse Vakbeweging) and aimed at the promotion of dialogue among trade unions, works councils and companies of three German MNEs (Bayer, Bosch and ThyssenKrupp) and three Dutch multinationals (ABN-Amro, Ahold and Unilever).

Brazilian unions can also use their own networks as instruments for information exchange and mutual preparation for talks with the companies.

To improve worker representation, the study showed that it would be possible to build up a broad network of trade unionists and other types of worker representatives within these companies, including members of internal accident prevention committees, as a way of broadening union power to influence working conditions in companies. To do so, it is important to revive this objective, which was one of the main issues for trade unionism in the 1980s and which was ignored in the defensive phase of the 1990s.

Concerning the social indicators chosen and the methodology employed, one consideration is that, as the IOS became known within the companies, and principally to the unions, doors were opened to the realization of more complete studies, with the use of more refined research techniques. It is important to note that in the more recent studies, the companies agreed to open their doors so that researchers could survey workers' opinions by means of questionnaires on the basis of statistically representative samples. In this sense, it is already possible to argue that the evaluation indicators should be redefined, to allow greater quantitative precision and greater comparability among companies and to accompany changes over time with greater precision. These steps may be very useful in the near future, when an important reform may be implemented.

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All research reports of the studies on which this paper is based are available at the IOS website (www.observatoriosocial.org.br).

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