

## OUTSOURCING AND WORKERS ORGANIZATION - (CRITICAL) LESSONS FROM BRAZIL<sup>1</sup>

### TERCEIRIZAÇÃO E ORGANIZAÇÃO DOS TRABALHADORES: LIÇÕES (CRÍTICAS) DO BRASIL

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#### Resumo

Nos últimos anos o esgotamento dos modelos de produção do Fordismo e Toyotismo e da globalização levaram a uma transformação na produção por todo o mundo. Empresas não são mais estruturadas verticalmente, unindo todas as atividades no mesmo espaço. Elas começam a se organizar horizontalmente, focando em suas atividades-kerne e repassando a outras empresas suas atividades secundárias para otimizar o processo produtivo, em um processo denominado "acumulação flexível". Consequências no mercado de trabalho são inevitáveis. As empresas de prestação de serviços precisam de maior flexibilidade e mobilidade externas, tal como os movimentos de mercado, como são submetidas a um ambiente ferozmente competitivo. Então, para manter as suas atividades elas promovem a redução dos salários dos trabalhadores e dos benefícios sociais, oferecendo, em geral, empregos precários e temporários. A organização dos trabalhadores também se torna mais difícil nesta nova estrutura, uma situação que se espalha em muitos países, inclusive no Brasil. Mesmo com suas peculiaridades históricas e legislativas o país não é imune a esta nova realidade.

**Palavras-chave:** Terceirização. Organização. Trabalhadores. Flexibilização.

#### Abstract

In recent years, the exhaustion of Fordism and Taylorism as models of production and the globalization let to a shift in the economic production, all around the world. Companies no longer are structured vertically, bringing together all the activities in the same space. They begin to organize themselves horizontally, focusing on their core activities and passing on to other companies its ancillary activities in order to optimize the production process, in a process called "flexible accumulation". Consequences in the labor force are inevitable. Service provider companies need greater flexibility and external mobility, just like market movements, as they are

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subjected to fierce competitive environment. So, in order to maintain their activities, they promote reduction of workers' salaries and social benefits, offering, generally, precarious and temporary jobs. Workers organization also become more difficult in such new structure, a situation that spreads in many countries, included Brazil. Even with its historical and legislative peculiarities, the country is no immune to this new reality.

**Keywords:** Outsourcing. Workers. Organization. Flexibility.

**Sumário:** 1. Introduction to corporatist State and outsourcing; 2. Effects of outsourcing in the organization of workers; 3. Corporatist State, outsourcing and workers organization in Brazil; 4. References.

## 1 INTRODUCTION TO CORPORATIST STATE AND OUTSOURCING

The labor law regulates the legal relationship between the owner of the means of production (employer) and the devoid of these means (employee or worker), and for the late, the sale of his labor power acts as an inevitable survival strategy. The method adopted by employers in the implementation of economic activity reflects in the regulatory system of buying and selling of labor force, which is the production process' essence. Ford and Taylor production models influenced the construction of this system applicable to the employment relationship, especially when envisioned subordination as fundamental to its implementation. (RAMOS FILHO, 2012: 142/149).

The Fordism is the way in which the industry and the work were consolidated throughout the twentieth century and its basic building blocks were mainly the mass production through assembly line and more homogeneous products; the existence of piecemeal work and fragmentation of functions; the separation between elaboration and execution in the process of work; the existence of concentrated and vertically organized manufacturing facilities; and the establishment of the factory collective worker (ANTUNES, 2005: 25)

Nevertheless, after a long period of capital accumulation during the heyday of Fordism and Taylorism phase of capitalism, from the beginning of the 1970s, it began to show signs of a critical situation marked by falling rate of profit, exhaustion of the standards regarding Taylor's accumulation and Ford's production, hypertrophy of the financial sphere, concentration of capital, welfare state crisis and increment of privatizations (ANTUNES, 2003: 29/30).

In this moment of crisis of capitalism, clears up the emergence of a new model, the Toyotism, marked by reduced inventories and increased diversification, and whose appropriation by the industry turned out to influence irreversibly labor relations. In this model, companies no longer are structured vertically, bringing together all the activities in the same space. They begin to organize themselves horizontally, focusing on their core activities and passing on to other companies its ancillary activities in order to optimize the production process, in a process called "flexible accumulation".

Similarly to Fordism and Taylorism models, Toyotism also reflected in labor relations through the use of an administration technique called worldwide as "subcontracting" or "outsourcing". By fragmenting the production, workers end up being scattered among several companies, resulting in decisive influence on the way they organize their work force. If, until then, the discussion for better working conditions occurred in a single unit or before a single employer, in this new production model demobilization of workers is the rule. A harmful consequence to the process of searching for better working conditions.

In this regard, outsourcing emerges as an element that challenges the understanding of legal practitioners and scholar, especially in labor law, while inserts a third subject in the legal relationship between worker and employer. And it is a phenomenon that occurs worldwide, in developed and developing countries.

## **2 EFFECTS OF OUTSOURCING IN THE ORGANIZATION OF WORKERS**

Unions have always based their actions on claims related to the common rights of the represented working class. This cohesion was strengthened by the prevalence of Fordism and Taylorism production models with great concentration in the workforce industries with similar salary ranges (SANTOS, 2014: 215).

Globalization and changes in production processes are related to the diversification of functions, the proliferation of production units scattered in many countries, lending activities to smaller companies or companies located in other countries where the cost of labor and taxes are lower, among other things. This context decisively influenced the workers ability to organize.

Giovanni Alves highlights the discussion waged in European literature about the precarious employment situation, characterized by "bad jobs" or "poor job", that opposes the traditional employment contract that ensures a full-time contract, for an indefinite period and with social protection. Precarious work, therefore, is characterized by job insecurity, loss of social benefits and low salaries (2013: 148).

In labor relations taking place in Brazil, outsourcing is also marked by precarious and temporary jobs. Service provider companies need greater flexibility and external mobility, just like market movements, as they are subjected to fierce competitive environment. So, in order to maintain their activities, they promote reduction of workers' salaries and social benefits. (DELGADO and AMORIM, 2014: 39/49).

Ricardo Antunes relates falling unionization rates to changes in the working world, among which the changing of the working class way of being, as it became more heterogeneous, fragmented and complex. He exposes the collapse of the vertical unions, a Fordism heritage linked to the corporatist model. The unions fail to act horizontally and to cover all groups of workers (2005: 67/70).

From the late 1970s there were intense socioeconomic changes related to the internationalization of the world economy process. The opening markets, the importance of financial capital, the broad liberalization of foreign trade and deregulation of the economy started the design of a capitalist restructuring. This restructuring tends to boost the metamorphosis of industrial labor and the fragmentation of the working class. Under this framework, originated from Toyotist model, the outsourcing process appears as an obstacle to unions collective action (MASSONI, 2007: 22/26).

Outsourcing, among other consequences, acts as a barrier to organizing workers. By breaking down the production process into several parts, the labor contractual relationships, marked by low salaries and short-term contracts, do not concentrate on a single employer anymore, resulting in workers lack of the sense of identity and of belonging to a certain group.

Even when they are in the same working environment, workers are divided into several companies and are subjected to various contractual arrangements. This fragmentation, among other consequences, prevents workers from sharing the same ideals and join forces in search of better working conditions. The union and the right to

strike are emptied. Also, the market competition system leads services provider companies to pay lower salaries.

### **3 CORPORATIST STATE, OUTSORCING AND WORKERS ORGANIZATION IN BRAZIL**

In the Brazilian legal system, labor law has strong traits of state corporatism characterized by the decisive influence of the state on the organization of society. The corporatist state somewhat resembles the state model advocated by Thomas Hobbes in *Leviathan*. It is a strong state that interferes decisively in the lives of individuals on the grounds of law and order and protection against external attacks.

Regarding the state monopoly on the production of law, Hespanha highlights it first as a state creation, the result of its sovereignty. This idea belongs to democratic models, in which the popular will is expressed in the form of laws issued by the state. Then, the author denounces this model of legal monopoly as a tool used by authoritarian regimes of the mid-twentieth century, such as Fascism, Nazism and Bolshevism, in which the right is identified as legal act and as the totalitarian authority of the State (HESPANHA, 2009: 25/27).

The labor protection system established in Brazil is the result of authoritarian and concentrator State. President Getúlio Vargas age (1930-1945 -first a dictatorship then a democratic term), considered as the historical moment of consolidation of labor laws, is marked by a prominent State's role addressed to individuals. Specifically, in labor law, clears up the construction of a structure in which workers and employers are aligned by the State for implementation of a unified national project regarding growth and the suppression of the conflict between capital and labor by imposing a hiring model regulated by the State. The union could not get out of this process unscathed.

According to Antunes, the Getulism was a remarkable experience for the Brazilian labor movement, as in that period a comprehensive labor legislation was built as a fundamental tool for the viability of the country's industrialization project. Regarding the workers organization, Getúlio Vargas government fought intensely against left-wing workers' and trade union leaders and impose a trade union structure that is classified in Brazil as "*Sindicalismo de Estado*" (state unionism) (2011: 82/83).

RAMOS FILHO classifies this model as Fordist corporatism<sup>4</sup>, characterized by limiting collective bargaining and emphasizing the statutory (legislated) rights as a way to not leverage social conflicts, interpreted as inadvisable. (2012: 137).

The origin of the trade union organization in the Brazilian legal system is based on the suppression of the conflict between capital and labor, as well as the placement of trade unions as partners of the State in the execution of public policies aiming economic growth. Specifically in labor relations, the corporatist system seeks to replace the conflict between capital and labor by an integrated action between employers and workers, the last represented by their respective unions, focusing on the realization of the interests of the entire community.

Mauricio Godinho Delgado outlines four models for aggregation of workers to trade union: 1) by profession; 2) by company; 3) by business segment/branch; 4) by occupational category (2002, 1303/1307). In Brazil, the corporatist state adopted the concept of category as a criterion for organizing workers. This was the model developed in Fascist Italy in order to convey the power of state control over the productive forces and organize the socio-economic life of the country through corporations (SANTOS, 2014: 191).

The most important labor law in Brazil is the Executive Act issued in the period mentioned above, (Decreto-Lei n. 5.452/1943), named as Consolidation of Labor Laws ("Consolidação das Leis Trabalhistas"). It states that the similarity of living conditions arising from the profession or work in common, in an employment situation in the same, similar or related economic activity makes up the basic social expression understood as a professional category (Decreto Lei n. 5.452/43, article 511, § 2).

Therefore, economic activity developed by the employer defines the "professional category", a concept needed to identify the union representing the worker. Thus, the workers at a metallurgical company are part of the trade union of metal workers. Also, workers hired by banks rely on the representation of the union of bank workers and so on.

So, the concept of professional category provided by the statute is a manifestation of an authoritarian model of state control over union activity, which is

<sup>4</sup> About corporatism, v. Ramos Son (2012 : 137) that news very model of authoritarian governments of Portugal and Spain and influenced by Italian fascism.

incompatible with the Constitutional Principles of freedom of association and union autonomy.

The Art. 8 of the Constitution of Brazil provides that professional or union association is free and there is no need of State authorization for the union to be founded. Nevertheless, the unions must do their registration in the competent organ. The Government interference and intervention in the union is forbidden. Also it establishes that the creation of more than one organization representing professional or economic category in the same territorial base is prohibited. The territorial base must be defined by the workers or employers concerned and cannot be smaller than the area of a municipality.

It seems to have a contradiction, regarding the registration. Although the Government interference and intervention is forbidden, the Constitution maintained the need for registration in order to protect the trade union unity. Indeed, after the promulgation of the Constitution of 1988, the Ministry of Labor and Employment understood initially that the trade union registration it was not necessary anymore, on the grounds that such a requirement would imply interference of government in the union. However, in 2003 the Supreme Court, by Precedent. 677, defined that until a specific act regarding registration is not issued, the Ministry of Labor has the duty to do the registration of unions and to protect the principle of unity with regard to the limits to create new unions within a given municipality.

Then, "category" is nothing more than the criteria adopted by the state to organize unions. It could it be done by company or by branch of economic activity, but in the Brazilian labor system the unions are organized from the concept of category. The division of fields of activity between existing unions, which act only after the registration in a State organ, settles a model that is conducive to state intervention on the activities of trade unions.

Ronaldo Lima dos Santos highlights that the rating by category acts as a tool to enhance greater social control as it allows achieving certain uniformisation of behaviors, thoughts and values of the people framed in the specified category. That is, by defining a collective pattern of behavior, one can predict the behavior of individuals and hence enable social control over them and the groups that they are inserted in (2014: 194/195)<sup>5</sup>.

<sup>5</sup> It is certainly a theme that allows an in-depth study from the lessons of Foucault and Deleuze about the forms of power and control society, respectively.

It is noteworthy that the category approach has proving detrimental to workers due to a highly specialized criteria of economic activity developed by the employer. In the event of outsourcing, workers hired by the subcontracted companies integrate diverse professional category and therefore are represented by others unions than the ones that represent the workers hired by the main firm.

Among other aspects of this fragmentation of the union organization, there are collective bargains and agreements of distinct work whose content is unable to guarantee equality to workers who share the same workplace. Therefore, the decentralization of the production process added to the use of category concept allows the same workplace count on workers represented by several unions whose representativeness and effective defense of workers may differ and may not meet the expectations of workers.

Outsourcing breaks the spirit of solidarity among workers built in the Fordist model. In the Toyotist model of company's fragmentation, there is a conflict of interest between workers directly contracted and outsourced. Those fear the loss of jobs, as these are subjected to more precarious contractual conditions.

By discriminating against workers hired directly and workers hired by subcontractors, the current union organization system, together with the Toyota-production model, tend to fragment the union representation system. The spirit of solidarity necessary to the union engagement by workers suffers in the face of precarious working conditions that outsourced workers are subjected.

The union unicity principle established in the Federal Constitution of 1988 cannot act as insurmountable obstacle to effective action of unions for the defense of workers. The concept of category, by the way, is legal and not constitutional, and it opens a space for a change in interpretation, in order to ensure the fullness of the freedom of association guaranteed in the same Constitution.

The concept category was forged from a corporatist state model that was developed during the Fordist production system and became a legal institution unable to guarantee to the unions the possibility of effective defense of workers' interests in the present moment, marked by the decentralization of the production process that characterize the Toyotism production system, that prevail nowadays.



Furthermore, It is important to note that the collective bargaining conducted by the trade unions representing the workers directly employed tends to be more beneficial in relation to collective bargaining undertaken by unions representing outsourced workers. This conclusion stems from the process of deterioration that is part of outsourcing, as shown above.

Delgado advocates an wider interpretation of the professional category concept in order to strengthen the action of the unions. The idea of similitude of life and labor conditions, on the basis of the worker's relationship to similar or related economic business activity, allows the enlargement of unions, not their withering -as it has happened in recent years (2002, 1305).

In Toyotist outsourcing times, the concept of category should be reviewed for the purpose of enabling uniform performance of the labor union for the benefit of all workers who share the same workplace, even if employed by different employers. The narrow concept of category cannot restrict the power and the legitimacy of trade unions when doing the defense of diffuse and collective rights and acting broadly, searching to cover workers who are not necessarily part of the professional category represented.

The general rule is that collective bargaining benefit solely the members of the workers category. This results on the possibility of submission of outsourced workers in more precarious working conditions than those employed directly by the main firm. Outsourced workers are linked to the collective agreement negotiated with the outsourcing company and not with the main firm, despite the late being benefited by the services provided by outsourced workers.

Thus, an alternative would be the unification of collective bargaining. Get together all employee unions in a single negotiation with employers in order to avoid damages for outsourced workers. The unified trading would allow the definition of equal remuneration floors, profit sharing, as well as other social benefits such as health care, transportation and food.

The reconstruction of the concept of category will consist in a solid fight instrument against the harmful effects of outsourcing in relation to the organization of workers as well as a contribution to the improvement of social conditions of all workers who share the same working place, to whom is indispensable to have the same legal protection. Otherwise it is considered discriminatory practice and anti-union act.

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