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Learning from History: union tactics that contributed to the labor counter-reform

Aprendendo com a História: táticas sindicais que contribuíram para a contrarreforma trabalhista

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ABSTRACT – This article analyzes the tactics adopted by the Brazilian trade union movement in recent times, particularly between 2003 and 2015/2016, during the PT (Worker's Party) governments, in order to deal with conflicts arising from the relationship between capital and labor. Based on the research, it is possible to affirm that the prospects for negotiation and conciliation of the interests of classes assimilated by workers' representative organizations in the face of capital, created the necessary conditions to carry out the recently approved labor counter-reforms, whose content materializes the agenda of the national bourgeoisie to face the fall of the rates of profit in the context of the structural crisis of capitalism. The reconstruction of the social processes which culminated in this counter-reform is essential for workers to be able to assess the negative impact of those tactics on the collection of historically conquered rights, and elaborate answers that effectively contribute toward social emancipation.

Keywords – Labor union movement. Conciliation of classes. Labor Rights.

RESUMO – No presente artigo são problematizadas as táticas adotadas pelo movimento sindical brasileiro nos períodos recentes, em particular entre os anos de 2003-2015/2016 durante os governos petistas, para enfrentar os conflitos oriundos da relação entre capital e trabalho. A partir da pesquisa realizada, é possível afirmar que as perspectivas de negociação e de conciliação de interesses, de classes assimiladas pelas organizações representativas dos trabalhadores em face do capital, acabaram por criar as condições necessárias para levar a cabo a contrarreforma trabalhista recentemente aprovada, cujo conteúdo materializa a pauta da burguesia nacional para enfrentar a queda das taxas de lucro no contexto de crise estrutural do capitalismo. A reconstrução dos processos sociais que culminaram na referida contrarreforma é essencial para que os trabalhadores possam avaliar o impacto negativo daquelas táticas sobre o acervo de direitos conquistados historicamente e elaborar respostas que efetivamente contribuam para a emancipação social.

Palavras-chave – Movimento sindical. Conciliação de classes. Direitos trabalhistas.

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As of the early 2000s, with the coming to power of the Workers Party (PT), part of the political forces on the left believed that structural changes would be implemented. However, once again, through a policy of conciliation between class interests, the objective conditions were developed for the proposals for capital's offensive, contrary to those expectations.

The policy of conciliation that was adopted ended up forming an alignment of the various political forces to the hegemonic project of the national bourgeoisie. This perspective was assimilated acritically, including by the representations of the workers inside the government and of the parliament, as well as within the trade union movement, contributing to reinforce the objectives of the bourgeoisie in the construction of alternatives to face the falling profit rates.

As has been stated elsewhere, during the period in which the PT was in government (2003 / 2015-2016), there was a convergence in the evaluations of businessmen and sectors of the labor movement in relation to labor relations in Brazil, in terms their "archaism" and "rigidity", as well as on the alternatives they considered essential for the "modernization" of these relations. Thus, the strategy of conciliation and the defense of the prevalence of the negotiated over the legislated acquired centrality in the scope of labor relations (HILLESHEIM, 2015).

In order to show how an important part of the labor union movement adhered to the bourgeois project of reordering labor relations in Brazil, we analyzed a set of documents produced by trade union centers (most of them with a representation certificate issued by the current Ministry of Labor and Social Security) and unions affiliated to them, as well as news articles released by these entities and by the press in general.

A critical analysis of the empirical material that was consulted allows us to affirm that, the alignment with a co-opting democracy (IASI, 2012) carried out by the PT governments, a portion of the workers' union movement helped to create the conditions for advancing the proposals that culminated in the recently approved labor reform.

King Triton personified in the "modernization" of labor relations required by the Brazilian bourgeoisie

Triton, according to some interpretations of Greek mythology, is the son and faithful servant of Poseidon and Amphitrite, and takes on the responsibility to lead his parents through safe routes. As king of the seas, his task is to calm the waters so that the carriage of Poseidon can move forward smoothly. By analogy, the set of proposals to "modernize" the labor relations defended by the Brazilian bourgeoisie presented itself as a true Triton, capable of protecting the interests of capital (personified in the figure of Poseidon - the supreme god), leading him to the path for continuous growth. However, in revealing another face, also according to interpretations of the Greek mythology, Triton becomes a figure with bad instincts that commits violence against the beings that inhabit the margins of the seas, rivers, and lakes, where he exerts his dominion. Thus, if those beings, again by analogy, were compared to Brazilian workers, the same Triton would be condemning them to the storm and the suffering. This is because the posture of servitude and allegiance to the supreme god Poseidon - capital - is not revealed in this other form of Triton that, on the contrary, is dominated by perverse instinct against those beings of the margins - the workers.

Unlike the tragic character present in Greek mythology in general, the history of men is constructed by them from choices that occur under certain conditions, and because of this, we could say that in the historical process in which the social being is made, a certain dramatic quality is present, given that human actions have implications for humanity as a whole, which includes the field of ethics. If tragedy has an immobile quality where characters only fulfill fate by means of actions under which there are no possibilities other than those which are defined once and for all, the drama, although it has a dimension of suffering due to doubts with respect to the choices and objective conditions upon which they are made, allows the subject who makes choices to determine his ends and to take responsibility for the implications of his choices and to commit himself to them. According to Lukács (2013, p. 99), in the course of the history

of the social being, "[...] there necessarily arises a continuous chain of alternatives and ... the right decision as to whether any of them is determined in the future, of the end that must be realized".

One of the fundamental precepts of Marx (2013) is that men make their history, but not under conditions chosen by them. This means that men are subjects determined by the objective conditions they encounter, but that they are also determining subjects, because they are capable of transforming them. And in doing so, they transform themselves and the social relations in which they are inserted. If today the concrete reality of workers is dominated by the dramas imposed by the capital system, one cannot forget that history is an open field of possibilities, and that what we have and what we are today in no way defines a priori what we can come to have and to be. And, as Lukacs (2013, p. 77) teaches, "the real social process, from which both the end-point and the discovery and application of the means emerge, is what determines-and delineates it concretely - the field of possible questions and answers, of the alternatives that can actually be realized."

Therefore, understanding the nuances of bourgeois strategies - which are always renewed - to perpetuate the processes of economic exploitation and political domination over workers is a challenge to be faced continually. For the national bourgeoisie, "modernizing" labor relations from their perspective is an indispensable or desirable condition for the Brazilian economy to become competitive and to be able to enter securely into the world market.

In the wake of the conciliatory policy pursued by the PT governments - which is a constituent element of the socio-historical formation of Brazilian society, as Florestan Fernandes (2005) has so well demonstrated - entrepreneurs also create spaces for articulation and "dialogue" between themselves and with the political forces that make up the governments, and also with the workers themselves, aiming to build a consensus capable of executing the desired "reforms" in the field of labor relations.

The presupposition of "modernization" required by the Brazilian bourgeoisie was that the legislation that regulated such relations was anachronistic, obsolete, and an obstacle for the country to reach new standards of productivity and competitiveness in the international market. This discourse, however, hid the real needs of capital in constructing the counter-tendencies to the fall of the rates of profit, imposing on the workers increasingly precarious working conditions.

Raising productivity by reducing labor costs may immediately appear to be a good way out for capital, but history has shown that this is no more than mere fiction. Both the lowering of wages and the purchasing power of workers and the layoffs of the labor force facilitated by the flexible forms of contracts impose limits on capitalist reproduction. In this sense, Mészáros (2002, p. 672) is emphatic in stating that "[...] from the point of view of capital - labor is not only a 'factor of production', in its aspect of labor force, but it is also the 'consuming mass' so vital to the normal cycle of capitalist reproduction and the realization of surplus value." Equally fallacious is the argument that the so-called "modernization" of labor relations allows increases competitiveness among companies in the market, since the rules that damage relations and working conditions benefit all companies, from all economic sectors, placing them, therefore, under similar conditions¹.

In addition, it seems to us that the use of the noun "modernization" to express the need for capital to institute a new regulation for labor relations in Brazil reveals the objective conditions to which the workers will be submitted with the advent of the recent labor counter-reform, similar to those that existed at the beginning of the 19th century. The idea using the term "modern" to qualify labor relations harmed by this offensive by capital over labor is, of course, an inept one. However, it is adequate to demonstrate that we are facing a "return to the past" in terms of conditions and labor relationships. This, in essence, was the teleology that guided that offensive, stimulating Triton's evil instincts on the beings that inhabited the shores.

The mostly defensive posture of the trade union movement: the opening of the paths that led to the labor counter-reform

The approval of Law no. 13467, on July 13, 2017, fully materializes the agenda of the business class in relation to the changes in labor legislation, making what is negotiated prevail over what is legislated. In order to understand how this became feasible, we considered it fundamental to analyze how the conciliatory practices and the labor regulations were treated by the workers' organizations in the periods that preceded that approval, because there are different opinions and positions in dispute. First of all, it is important to note that, with the advent of Law no. 9.958 on January 12, 2000, which creates the so-called Pre-Conciliation Commissions (CCPs), many unions were structured to respond to conciliatory demands as an alternative to judicial processing, which already indicated a position that corroborated with the argument of the need to "modernize" labor legislation.

In this sense, we can say that, over the last few years, many unions affiliated to the CUT (Single Workers Center) started to create and stimulate conciliatory mechanisms for resolving conflicts arising from the relationship between capital and labor. With the advent of Law no. 9.958/2000, the mobilization for the creation of CCPs became more evident. CUT, its affiliated workers' unions, and employer associations considered Inter-union Conciliation Nucleus a way of encouraging the resolution of individual conflicts between workers and employers, without needing to go to court. This perspective is evident when, in 2000, one of these nuclei was set up on the initiative of employer and worker organizations². At the time, a CUT union official, Antônio Carlos Spis, who was involved in the implementation of the proposal, said that such an initiative constituted "[...] a convention greater than the law [...]" because it would guarantee the search for rights through negotiations with parity (SPIS apud AVELAR, 2000, p.1).

This structure contributed to the advancement of the employer's perspective to impose the negotiated over the legislated, given the great representativeness of the center among the Brazilian labor class in various sectors of the economy. Based on individual agreements, workers began to negotiate rights that are part of the heritage of class conflict.

Although CUT was against certain rules imposed by the law that created the CCPs, it ended up recommending their installation in their affiliated unions throughout Brazil, although this recommendation was not a unanimous decision among the leaders. The defense of CCPs was based on the fact that they would serve to expedite the resolution of conflicts between dismissed workers and former employers in an autocompositive way, without the participation of the State through labor courts, which would mean, according to the center, greater celerity. CUT also argued that, with CCPs, it would be possible to identify the main demands that affected labor relations, which could subsidize new actions and negotiation strategies.

The main aspect of CUT's disagreement with regard to CCPs concerned the obligation of submitting the claim to the commission by the employee, before entering the judicial sphere. When the STF removed this obligation, that resistance no longer existed. Following Recommendation No. 92 of the ILO in 1951, CUT unions and employer associations also created the Voluntary Conciliation Commissions (CCVs). With the same purposes as CCPs, CCVs are now provided for in Collective Labor Agreements (ACT) or Collective Labor Conventions (CCT)³. One possible difference between CCPs and CCVs is that in the latter, active workers in some sectors, such as the banking sector⁴, can claim rights during the course of the employment relationship.

Many criticisms were made of these CCVs by the workers who denounced that the companies did not, in fact, negotiate, but imposed their proposals before the demands submitted by the workers to that conciliation mechanism. This point is highlighted in the following excerpt:

The voluntary conciliation committees already implemented by Banco do Brasil in recent years are commissions that seek to settle labor rights with their employees, chosen according to the specific interests of the bank, through meetings that are not negotiations, but proposal presentations that do not consider the positions of the employees and do not present arguments for the preparation of the proposal submitted by the representatives of the bank.

[...] Banco do Brasil presents proposals that represent 10% (ten percent) of the amount that should be paid to the employee. [...] All without any discussion or justification. It is just a reduced amount to get rid of a liability [...].

The Banking Union of Curitiba rejected the proposal to create these harmful commissions and already has more than 2,500 bank employees represented in the lawsuits filed as procedural substitutes. The Banking Union of Rio de Janeiro also rejected the creation of these flexibilization commissions and denounced the Bank's practice to the Labor Public Prosecutor (SINDBANCÁRIO, 2015, p.1).

In spite of these denunciations, CUT directed its bases to encourage the resolution of conflicts through conciliatory mechanisms, as already stated. However, at the same time, in official documents that addressed the trajectory of the center, the conciliation of class interests, apparently, is rejected. In the document entitled *Estratégia e organização da CUT: construindo o futuro* (Strategy and organization of CUT: building the future), written and published in 2006, stated:

We created CUT driven by the so-called New Syndicalism, in spite of the repression and legal prohibition regarding the establishment of trade union centers in the country until 1988, breaking with one of the legacies left by the *Estado Novo* - the architect of a type of unionism based on the conciliation of interests between Capital, Labor, and the State, in which a plurality in the representation of workers or employers was perceived as creating the risk of politicizing the masses and breaking the commitments established under the heel of State populism (LOURENÇO, 2006, p.18).

The prospects for reconciling class interests are, as we have said, only seemingly neglected. In the same document, the center stated that one of its tasks was the preparation of the trade union cadres for negotiations with employers, seeing this strategy as a way to strengthen the class struggle in order to institute socialism. Therefore, CUT claimed: "CUT has the enormous task of preparing its leaders, especially those who are at the head of the Branches and the States, to act in a scenario in which negotiations will become increasingly broad and complex" (LOURENÇO, 2006, p. 20).

Also, in the same document, CUT commends the initiatives of the Lula government in the creation of mechanisms for dialogue (which in fact constituted spaces for the construction of class consensus - contrary to the presuppositions of their actions) with the government and the business community. These spaces, according to CUT, allowed "[...] to form more democratic relations and to establish the possible advances in the correlation of forces present in the country" (LOURENÇO, 2006, p.20). CUT highlighted the importance of initiatives to promote dialogues between workers and capitalists, mediated by the State, the FNT (National Labor Forum) (2003) and the CRT (Labor Relations Council) (2004)⁵.

Regarding the debates within the FNT, the document mentions that the proposals regarding collective bargaining and the ways to resolve conflicts are defended by CUT, despite criticism:

The discussions on union reform in the National Labor Forum's working groups pointed to a set of changes that could have a direct impact on the organization of CUT, its structures, and unions. The issues discussed in the Union Organization Groups (GT1), Collective Bargaining (GT2) and Conflict Composition System (GT3) are closely related, and despite the resistance from some sectors of society to the changes, CUT continues to strongly defend its proposals (CUT, 2006, page 27).

Specifically in relation to conciliatory practices, it should be noted that the aforementioned GT System for the Composition of Individual and Collective Conflicts discussed, during the operation of the FNT, especially the solution of individual and collective conflicts and the instruments of conciliation, mediation, and arbitration. In the FNT Internal Bylaws, it is explicit in opening statement that it is a space for dialogue aimed at promoting the negotiation between workers and employers regarding trade union and labor reforms (BRASIL, 2003)⁶.

Converging to a large extent with the CUT's positions regarding the conciliatory forms of resolution of labor conflicts, since the definition of its statutory rules, Força Sindical (FS) mentions as one of its

prerogatives and duties the resolution of conflicts using non-judicial alternatives. This is what is meant by the provisions of article 4 of the entity's bylaws:

Art. 4 - The prerogatives of FORÇA SINDICAL are:

[...]

V. Promote union participation in legislative activity at its different levels, seeking the improvement of the legal order, the rights and interests of workers, retirees, and pensioners, notably in order to speed up the jurisdictional provision of the State and the extrajudicial composition of interests under conflict;

[...] (FORÇA SINDICAL, 2013).

Throughout its history, FS has also created mechanisms that could facilitate the resolution of conflicts between workers and capitalists, as well as developing initiatives that reveal its historical collaborationist position with capital.

The negotiation process began to be reinforced with the implementation of CCPs in several FFS affiliate unions, with the support of employers. The year the law establishing these commissions was approved, about 50 CCPs were set up in inter-union nuclei, in partnerships established between the FS and employer organizations from various sectors of the economy (COMISSIONS ..., 2000).

In 2002, these CCPs became the object of criticism and denunciations that they were practicing acts for which they had no jurisdiction, such as approval of employment contract terminations (FERNANDES; ROLLI, 2002a, 2002b).⁷

At the time, when making a statement regarding the complaints, the then president of FS, Paulo Pereira da Silva, said: "[...] What is happening is a lobby by labor lawyers to end the commissions, because they are losing money. We charge a fee, but of the companies. The Courts also charge a fee" (SILVA apud FERNANDES; ROLLI, 2002c, p.2).

In the face of these denunciations, the then Minister of the former Ministry of Labor (MTe), Paulo Jobim Filho, defended the CCPs and argued that cases of abuse could not morally impugn such commissions, given the important services they provided to society. For him, if there were frauds, they were exceptions and could be avoided with intensified inspections (JOBIM apud FERNANDES; ROLLI, 2002d, p.2).

The defense of conciliatory practices by FS is not only materialized by the encouragement of CCPs and training activities for trade union cadres in negotiations and collective bargaining agreements, but also by the propagation and appreciation of labor conciliatory practices at the grassroots level. In 2010, several unions linked to FS held celebrations for the 10 year anniversary of the law that established the CCPs (GUARULHOS ..., 2010).

The conciliatory perspective was also observed in the trade union policy of the General Union of Workers (UGT) when referring to the conflicts inherent in labor relations. The union's work is based on the idea that the achievements of workers depend on the capacity to build consensus through social dialogue, an aspect that is also evident in the programs adopted by other trade union centers.

Although we have not found any clear statements regarding conciliatory practices for the resolution of labor conflicts, it is possible to realize that they were also encouraged by UGT. This is because, in their media - website and trade union newspapers - information about the practices of CCPs in affiliated unions were shared. According to the Secretary General of the Banking Union of Franca/SP and member of the CCP, José Maria Loureiro:

Although this agreement is a pilot project and initially has a validity of 90 days as of 05/26/2011, the CCP is an important instrument for resolving labor disputes with the company, because in case of an agreement, the former employee in a few days already have the conciliation funds credited to their checking account (LOUREIRO apud UNIÃO GERAL DOS TRABALHADORES, 2011, p. 1).

Another article, published on the center's official site in 2013, announced the installation of a CCP in the Union of Paraná Road Transport Workers (SITRO), affiliated with UGT. According to the testimony of the then president of the union, Moacir Czeck:

The installation of the Preliminary Conciliation Commission means another step forward for road workers. SITRO wants to strengthen common sense among the parties involved in labor relations. For the worker, the Commission means the solution of divergences which, if sent to the Labor Courts, may take a long time for a final agreement (CZECK apud UGT, 2013, p.1).

In a magazine of the Union of Employees in Food Supply Units of the State of São Paulo (SINDBAST), also affiliated with UGT, published an editorial in 2010 by the then president of the union Enilson Simões de Moura - that addressed the issue of delays in the courts and the innovations of the new CPC. When referring to the alternative forms of conflict resolution, including conciliation, Moura (2010, p.3) argued:

It is also necessary to recognize the need for other measures aimed at speeding up procedures, such as encouraging conciliation, which came about through the implementation of the National Conciliation Week, which - according to official figures, presented satisfactory results.

Above all, it is necessary to continue the search for negotiated solutions as well as to pray for something to change in those institutions characterized by inaction (with rare exceptions) that are the Senate and the Lower House, and thus the laws change in favor of citizenship.

Although he doesn't mention labor conciliation, the reference to this form of conflict resolution and the National Conciliation Week (SNC) shows a positive evaluation of the conciliation practices by unions that form the base of UGT.

Regarding the position of the Brazilian Workers' Center (CTB) on conciliation in the context of labor relations, we find that on the official website of the entity, articles and news were published that aimed to disseminate the SNC (CENTRAL DOS TRABALHADORES E DAS TRABALHADORAS DO BRASIL, 2011) and those of Labor Execution (CTB, 2014), without any criticism of these initiatives carried out by the national courts.

On the other hand, the entity was in favor of the STF's (Supreme Federal Court) decision to keep the broad right of access to justice unaffected so as not to make it mandatory to submit labor claims to CCPs prior to taking them to court. According to CTB's position at the time, this strategy of compulsory conciliation attempted to deplete the normative power of the labor courts and facilitate the process of flexibilizing labor rights (CTB, 2009).

In a document called the **Final Declaration of the Fifth Trade Union Meeting of Our America** (ESNA) held in Mexico in 2012, the trade union entities present, among them CTB, as a signatory of this document, criticized the conciliatory practices that removed workers' rights to benefit the capitalists and governments. When referring to the reality of the Mexican workers, the participants of the meeting wrote the following text:

[...] ESNA V objects to the joint practices of the Local and Federal Conciliation and Arbitration Boards, which violate workers' rights and favor the interests of employers and government. It categorically rejects the forced deployment of outsourcing, the proliferation of protection contracts, and the nefarious complicity of the corporate unions that promote them.

We also oppose the "labor reform" that employers try to impose on Mexican workers, in an effort to legalize the exploitation and devaluation of their workforce, a reform that cancels stability in employment and overrides collective bargaining and the unions (CTB, 2012, p.2).

In the internal context, in the debate regarding legislative proposals, when expressing their opinion on the content of PEC no. 369/2005⁸ (attached to PEC no. 314/2004), CTB opposed alternative forms of

private conflict resolution such as arbitration. In a statement by his then vice-president, Joilson Cardoso, in early 2014, he said:

This PEC changes the union organization and executes labor reform, by which it ends the unity and creates the supremacy of the negotiated over the legislated [...]. It encourages arbitration for the resolution of labor conflicts, where the worker stays with God knows what [...]. Because of this PEC another bill came up with more than 350 articles. [Bill 4330/2004] opens up outsourcing, leaving workers without any legal protection. [In addition, it revives Amendment 3 which] harms labor relations, ignoring all the achievements of the working class and the labor laws, and allows the transformation of the employee into a legal entity, removing all of the employer's obligations to his employee. [...] It is the institutionalization of informality (CARDOSO apud CTB, 2014, pp. 1-2).

In addition, CTB opposed other legislative proposals that, if approved or re-presented under a new guise, would harm labor relations. All of these were incorporated, to a large extent, in the recent labor reform approved by Michel Temer during the consolidation of the legal and parliamentary coup of 2016. On the whole, the legislative initiatives were in the interests of the workers and materialized the advance of the conservative thought on the normatization of labor relations.

Like the other centers mentioned here, the New Workers Union Center (NCST) also encouraged the conciliation for the resolution of labor disputes, sharing SNCs and Labor Execution with their base, as stated by Maux (2015) and Semana... (2013). We also can see and encouragement of conciliation before the filing with the labor courts in some CCTs signed between unions affiliated to NCST and the employers⁹.

The encouragement of these forms of labor dispute resolution is in line with the principles of the NCST, in view of the choice of a trade union practice based on the negotiation route to the detriment of a unionism based on confrontation with capital in the face of the processes of regression of rights.

In the same way, we also note that the Brazilian Trade Union Center (CSB) would frequently provide notification regarding the SNC and Labor Execution organized by the courts. Arguably, this initiative was already in line with the judicial policy pursued at the national level, especially with regard to aspects of labor.

We also found that, among the entities that formed the basis of CSB, the labor conciliation institute was valued without any questioning about possible injury to workers' rights. In an event on union matters held in 2014 in the city of Juiz de Fora/MG, the president of a union affiliated to CSB, Sérgio Félix, in his address, stated that the labor conciliation:

[...] is an important topic to be discussed not only in the National Conciliation Week [...], but the whole year. The main objective of the lecture was to alert workers, business owners, lawyers, and people involved in labor issues of the need and importance of conciliation (FÉLIX apud FESERPMG, 2014, p.1).

Like other trade union centers, CSB greatly contributed to the assimilation of conciliatory practices that, as a rule, were transforming the rights of workers into "half-rights", a fact that is even more perverse if we consider that these rights, before being reconciled, had already been reduced. The proposition, therefore, was always to reconcile that which was almost nothing.

In the institutional documents of CSP-Conlutas - Union and Popular Center, and also of Intersindical - Center for the Working Class, we did not identify the defense nor the forceful denial of the use of alternative means for the resolution of labor conflicts, among which conciliation, court proceedings in individual or collective bargaining hearings, or through CCP.

Specifically with regard to CSP-Conlutas, we found that their affiliated unions, in collective bargaining or labor dispute hearings, considering the time lag of the present study, were maintaining an offensive position when considering the employers' proposals. On the website of the Union of Metalworkers of São José dos Campos and Region (SINDMETALSJC), this position is evidenced in the report

on the negotiation process and the organization for participation in a conciliation hearing in the labor court system, regarding the workers' wage campaigns involving two companies in 2013:

The Regional Labor Court - 15th Region (TRT) will hold a conciliation hearing on Friday the 4th in the collective bargaining agreement filed by General Motors in São José dos Campos and MWL in Caçapava. In both cases the Metalworkers are in the midst of a Salary Campaign.

In the last round of negotiations with the Union, held on Wednesday the 2nd, GM proposed an 8% adjustment and agreement until 2015, applying only inflation during that period. The proposal was rejected by the Union at the negotiation table.

This week, the workers at the automaker crossed their arms for 24 hours to demand an advance in the negotiations.

At MWL, metallurgists have been on strike since September 20 and claim at least a 10% readjustment, a reduction of the work week to 40 hours, the end of the 6 x 1 system, payment for stoppage days, and the end of the company's attacks on organization of workers, and right to a Factory Commission.

A caravan of workers from the two factories will be attending the hearings, which will take place in Campinas at 2:00 p.m. (MWL) and 2:20 p.m. (GM) (SINDICATO DOS METALÚRGICOS DE SÃO JOSÉ DOS CAMPOS E REGIÃO, 2013, p.1).

In early 2015, General Motors (GM) of São José dos Campos/SP announced the layoff of about 800 workers. Trying to halt the layoffs, the workers went on strike. The proposal built after six days of stoppage included lay-off for five months (the company's proposal initially was two months with a return guarantee. They also agreed to an additional three months of job stability for six hundred and fifty workers as of March 9, 2015. The stoppage days were also the object of demands, and were not deducted from wages, but compensated during the period. According to Luiz Carlos Prates, Secretary General of CSP-Conlutas at the time:

This scenario confirms the need for the federal government to take immediate action in defense of employment. The Union and CSP-Conlutas defend the issuance of a provisional measure by President Dilma Rousseff, guaranteeing employment stability for workers of companies that receive tax incentives, as is the case of automakers. Attacks on workers cannot continue (PRATES apud SINDMETALSJC, 2015, p.1).

However, even though on the trade union sites affiliated with CSP-Conlutas the work of CCPs was not as publicized as in other unions affiliated with other centers, it was found that in CCTs these commissions were maintained, or agreements were made for the implementation of CCPs or Conciliation Chambers¹⁰.

It is also important to point out that a large part of CSP-Conlutas's trade union base is made up of unions of public service workers - municipal, state and federal, a fact that, given the nature of the (statutory) affiliation implies the non-use of conciliation - at least in the terms analyzed here - to resolve labor disputes, especially the individual ones.

In any case, it is important to point out that, even among the trade unions affiliated with CSP-Conlutas that belong to those that are part of the left-wing trade union movement in Brazil, conciliatory practices for the resolution of labor conflicts through CCPs, or something similar, are quite common.

It is worth noting that some trade unions linked to federal public services, especially those in the judiciary, have even used SNCs to fight the government because of their struggles. In 2011, when the 6th SNC was held, public servants of the Federal Judiciary and the Federal Public Prosecution held demonstrations throughout the country under the slogan: *Zero Conciliation, the goal is the PC* In the extract from a story published on the website of CSP-Conlutas, this confrontation is reported:

In São Paulo, those who were at the opening of the 'Conciliation', held at the Latin America Memorial in Barra Funda (same neighborhood of the largest labor forum

in the country), could not fail to see and hear the servants who participated in the 'National Week of Indignation.' They were prevented from entering the auditorium by security guards, but they took *vuvuzelas* (horns), whistles, and banners to the vicinity of the site and 'scheduled' the PCS-4 and strike at the opening of the event. The security guards barred the government workers, but they could not stop the noise from invading the auditorium and disturbing the speeches. Sharply annoyed, Judge Nelson Nazar, the president of TRT-2, who determined the payroll cut, made a somewhat irritated reference to the protest: 'With disorderly conduct and yelling nothing can be accomplished. No raises will be achieved,' he said, almost yelling.

In Maceió, the strike 'occupied' Avenida da Paz, one of the main streets of the capital of Alagoas, to denounce the threats of retaliation and payroll cut in the Labor Court. Demonstrators also said that the "Week of Conciliation" is driven by the sickness of government employees and moral harassment, and encourages workers to give up rights that the Courts should rescue. In João Pessoa, in Paraíba, the workers on strike decided in the assembly to adhere to the boycott of the Week of Conciliation, which happens amid the repression of the administrations and is associated to a 'trading counter' sponsored by the Court, which auctions labor rights (DUARTE FILHO, 2011, pp. 1-2).

It is important to observe some aspects pointed out by the civil servants who work in the operationalization of the conciliation campaigns, considering that they imply, besides the damages to the workers who participate in it as litigants, also damages to the health of the public employees called on to support such campaigns. In the same sense, the denunciation that justice was becoming a "trading counter" to auction workers' rights was already and still is of the utmost importance to promote reflections on the policies of trade union policy with respect to conciliatory practices, especially regarding labor rights.

From the set of reflections that we carried out around the positions of the union centers on the advance of capital on the rights of the workers, we can formulate some syntheses:

Despite the predominate adhesion of these working class struggle mechanisms to the PT governments, since the arrival of the former metallurgist Lula da Silva, the practices of the "official" trade union centers are not homogeneous, nor are they assimilated unconditionally by the whole the working class and its representative organizations. This allows us to think of alternatives that could strengthen the left-wing trade union movement, which should permanently call those sections of the trade union movement in line with the conciliatory perspective to reflect on the issue.

In this sense, the role of CSP-Conlutas and Intersindical is essential and absolutely decisive. On the other hand, the challenge is to give more evidence to what unites the workers than to what differentiates them, because differences in tactics and conceptions cannot put the protagonists of this process in opposing trenches. This, however, imposes on the union movement as a whole the apprehension of social reality in its complexity in order to formulate tactics of struggles that do not reiterate the atrophied dialectic of the "centrifugality of capital" (MÉSZÁROS, 2015), whose responses to the fall of profit rates have in deregulation, flexibilization and suppression of rights, as well as in negotiation processes and conciliation of interests, the privileged means to build counter-tendencies to the limits of the increased accumulation of capital, intensifying the exploitation of workers.

Concluding Remarks:

Despite criticisms to the PT governments that they have stolen the dreams of the left, and in so doing, they have nourished the conservative and even reactionary forces that have historically decided the destinies of the country unilaterally, one can not fall into the voluntarist point of view of a certain portion of the movements of the left that, detached from the concrete reality and its contradictions, hoped that the rise to power of a labor party would suffice for socialism to be installed in Brazil. Even more so in governments whose composition of political forces was extremely confrontational, ranging from subjects

from the historical struggles of trade unions and the most combative social movements in the country, to industrial entrepreneurs, agribusiness, and representatives of financial capital.

In addition, we should also emphasize the fact that collective bargaining had already been widely assimilated by trade union entities since its inclusion in Article 7 of the constitutional text. From capital's point of view, this mechanism was essential in the face of the argument that the labor standards contained in the CLT (Consolidated Labor Laws) were outdated and in disagreement with contemporary labor relations. That is why it was common for employers to criticize the decisions of the labor courts, which sometimes declared null and void certain agreements made through collective bargaining, claiming they violated the rights of workers considered unalienable, violating the principle of human dignity or were against the rule of law.

According to the employers, this "interference" inhibited the elasticity of labor standards, made possible by collective negotiations translated into ACT or CCT. However, considering the reality of labor in Brazil, historically marked by processes of labor overexploitation, this protection by the labor courts was and is still necessary to keep the minimum set of rights guaranteed by the CLT from being undermined in the face of economic power. The employers' argument that collective or individual bargaining processes allow workers to reach higher levels in relation to the rights hitherto ensured in legislation is misleading. Since the adoption of collective bargaining in Brazil, what has already been verified is the constant suppression of rights, not the expansion of them. They have served and will continue to serve, therefore, to further increase the subjection of labor to capital and to increase the appropriation of the highest value produced by the worker.

This discussion is by no means disconnected from the question of conciliation, since collective bargaining - and now also the recently admitted individual bargaining itself - implies the establishment of a relationship in which the parties concede and conquer at the same time, building agreements that should start from an inviolable basis, mortgaging the possibilities of social setbacks.

Specifically with regard to the question of labor conciliation, whether through extrajudicial channels through CCPs, or through the intensification of the use of the legal institute of labor conciliation in the course of the process, it is observed that, within the trade union movement, there is no reflection regarding this topic.

What is found in the documents issued by the entities and in news articles published by the press is, at most, the holding of debates on the issue of access to justice (an aspect that had already been overcome in recognition of the non-mandatory submission of the complaint to the CCP prior to the filing of a lawsuit, but now again gaining strength with the advent of the new labor rules), the general liberating effectiveness or full discharge of the terms of conciliation, the possibilities of irregularities committed by trade unions and employers, also in the case of CCPs. If these commissions served basically to relieve the State of the expenses related to the judicial provision, for the workers they formed a form of agreement, whose starting point was always to relinquish rights guaranteed by an earlier agreement, of the legislation that was in force, but which was not observed during the course of the employment relationship.

The CCP functioned as a "filter" for a smaller number of conflicts to reach the judiciary and, when they arrived, underwent several other attempts at resolution by the use of the labor conciliation institute, which normally meant that the worker accepted a "lesser right" or a renunciation of rights that integrate the heritage of the struggles of the working class. In other words, if, on the one hand, trade union centers established a dialogue based on partnership with the PT governments and a collaborative position with the employer class, in an attempt - in our view, inglorious - to assert some workers' rights and avoid their suppression - on the other, in their pragmatism they ended up allowing the consolidation of mechanisms that mortgage the effectiveness of these rights. The structuring of the unions to establish the CCPs shows a predisposition to accept these mechanisms acritically as beneficial ways of coping with labor disputes.

Concerning the use of the conciliation institute in the course of the court case, the debate within the union movement as a whole was and is practically nonexistent, nor were the implications of conciliatory practices for all workers questioned. These debate still needs to occur.

Moreover, if on the one hand conciliatory practices were used to deal with problems of the courts - excessive demands and procedural delays -, on the other hand, they gradually became potent forms of capital appropriating the value produced in the necessary labor time¹¹ (therefore, work to be paid) that should be appropriated by the worker, given the constituent of the work fund that should be used for the reproduction of the worker himself and his family. This is an aspect that needs to be analyzed by all the workers within the class organizations.

In the proposal for a "national agreement" advocated by the PT governments, the need for "reforms" in the state apparatus was explicit, including "reform" of the judiciary, in particular the labor courts, in order to meet the needs of the market and legitimize the ongoing processes to harm labor in Brazil. In all the initiatives that also aimed at the "modernization" of this power, conciliation was taken as a fundamental strategy to recover the credibility of the judiciary before society. In the labor real, however, we can see that such a legal institute was widely used to legitimize the mitigation and suppression of individual and collective rights of workers, in a rationale in which the worker always lost and will always lose.

In view of the above and the recent approval of the labor counter-reform, we believe that, from now on, the trade union tactics will require positions of conflict and confrontation with capital and of rupture with those perspectives based on the conciliation of class interests.

Today, perhaps more than at other times in the history of workers' struggles, for their trade union organizations, strong cohesion in their foundations is essential for their struggles to be conducted in order to overcome the defensive posture which has become dominant. Reality demands that these organizations take a firm stance against all attempts to limit, for example, the right to strike - an essential mechanism so that workers can offensively stand before capital in the struggle for the maintenance and expansion of rights - as well as for the adoption of Convention 158 of the International Labor Organization (ILO), which prohibits dismissal without cause. These are just some guarantees that could put Brazilian workers in more favorable conditions in the face of the offense of capital over their rights, in order to contribute to the process of building social emancipation.

The data presented here show that workers' organizational entities, even those that are to the left of the Brazilian trade union movement, did not critically discuss the implications of the consensual mechanisms for resolving conflicts - autocompositive or heterocompositive - arising from labor relations. What happened was that unions and union centers, from different perspectives, had more or less been encouraging and valuing conciliatory practices to (not) face such conflicts. History is relentless and very quickly demanded the adjustment of accounts, which materialized in the recent approval of the labor counter-reform. We must learn from them.

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¹ For this see: Souto Maior, Jorge Luiz [Internet blog]. **O custo do trabalho no Brasil é excessivo**. April 31. 2017 [cited on Aug. 5th. 2017]; [approximately 4 screens]. Available at: <http://www.jorgesoutomaior.com/blog/v-o-custo-do-trabalho-no-brasil-e-excessivo>.

² We are referring to the initiative involving SIMPLI (Association of Micro and Small Industry of the State of São Paulo) and CUT, in partnership with the National Confederation of Metalworkers and the State Federation of Metalworkers.

³ In this sense see: amendment of ACT 2013/2014 entered into between Contraf/CUT and Caixa Econômica Federal. Available at: <<http://www.contrafcut.org.br/download/Arquivo/1412211223.pdf>>. Accessed: Feb 25 2015.

⁴ In this specific case, it was the conciliation for the payment of the 7th and 8th hours of work for appointed positions of a technical nature.

⁵ The National Labor Forum was created by Decree No. 4796, on July 29, 2003, to discuss trade union and labor reforms. It was coordinated by the Department of Labor Relations of the Ministry of Labor and Employment, and comprised of 600 government representatives, employers, and workers. FNT efforts decided to create the CRT - Labor Relations Council.

⁶ Based on the discussions held in both the FNT and the later CRT, in 2005 the federal government forwarded the Constitutional Amendment Proposal - PEC No. 369/2005, which was aimed at the labor union "reforms." In it, issues related to collective bargaining processes and the reconciliation of individual conflicts were also addressed.

⁷ The funds resulting from contractual terminations are rights granted to the dismissed worker. Only the incorrect payment of the amounts related to the termination (or non-payment of other labor funds) could constitute a labor conflict, object of the CCPs. Many workers began to argue in labor court that, in practice, there was no conciliation, and that the agreements arrived ready to be signed, without discussion. The argument, in general, was that it would be better to receive what was being proposed than to enter a labor lawsuit and wait years to receive what is rightfully theirs. The irregularities of the CCPs also came to be denounced by the National Association of Labor Magistrates (ANAMATRA), which brought the problem to the TST (Superior Labor Court). In many cases, passing through CCPs involved the payment of fees, in addition to percentages on the agreed amounts. In unions affiliated with FS, there was a provision to transfer 1/3 of the amount collected by the reconciliations to the center. In the complaint lodged by ANAMATRA, some commissions of this nature, constituted by unions affiliated with CUT, were also accused of illegal practices. See: Fernandes e Rolli (2002b).

⁸ At the beginning of 2015, PEC No. 314/2004, which also addressed trade union organization and to which PEC no. 369/2005 was attached, was reopened. PEC No. 369/2005 would establish "the contribution of collective bargaining, union representation in the workplace, and collective bargaining for Government Employees. It would also eliminate union unity and would encourage arbitration to resolve labor disputes and broaden the scope for procedural substitution so that trade unions could defend individual homogeneous rights. Labor Union Reform Proposal." Available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=277153>. Accessed: March 17, 2015.

⁹ An example of this is what is included in the 2013/2014 CCT signed between the Federation of Road Transport Workers of the State of Paraná and other unions in the region with the Association of Industries and Companies in the fields of Installation, Operation, and Maintenance of Networks, Equipment and Telecommunication Systems for the state of Paraná (SIITEP-PR), which in its fifteenth and sixteenth clauses, included efforts to resolve labor disputes through self-determination: FIFTEENTH CLAUSE - CONCILIATION The Boards of the participating Trade Union Entities will make efforts to resolve individual labor conflicts, which may exist, in order to prevent the entry of labor claims. SIXTEENTH CLAUSE - REGARDING PERVIOUS CONCILIATION COMMISSIONS. Pursuant to article 625-C of Law no. 9.958 (DOU on January 13, 2000), the parties, as much as possible, will make efforts towards the implementation of Previous Conciliation Commissions (FEDERAÇÃO DOS TRABALHADORES EM TRANSPORTE RODOVIÁRIO DO ESTADO DO PARANÁ et al., 2013, p. 9).

¹⁰ For this see: SINDICATO DAS INDÚSTRIAS GRÁFICAS DO DISTRITO FEDERAL (SINDGRAF); SINDICATO DOS TRABALHADORES NAS INDÚSTRIAS GRÁFICAS NO DISTRITO FEDERAL, 2013; SINDICATO DOS TRABALHADORES NAS INDÚSTRIAS GRÁFICAS, DE JORNAIS E REVISTAS NO ESTADO DE MINAS GERAIS; FEDERAÇÃO DOS TRABALHADORES DA INDÚSTRIA GRÁFICA, DA COMUNICAÇÃO GRÁFICA E DOS SERVIÇOS GRÁFICOS; SINDICATO DAS INDÚSTRIAS GRÁFICAS DO ESTADO DE MINAS GERAIS, 2013; SINDICATO DAS INDÚSTRIAS METALÚRGICAS, MECÂNICAS E DE MATERIAL ELÉTRICO DE ITAJUBÁ/MG; SINDICATO DOS TRABALHADORES DAS INDÚSTRIAS METALÚRGICAS, MECÂNICAS E DE MATERIAL ELÉTRICO DE ITAJUBÁ/MG, 2014.

¹¹ According to Marx (2013, pp. 292-293), "[...] as in the part of his workday in which he produces the daily value of the labor force, ... the worker produces only an equivalent of the value already paid by the capitalist - and thus only restores, by means of the new value created, the value of the advanced variable capital - this production of value appears as a mere reproduction. Therefore, I call the part of the workday in which this reproduction takes place 'necessary labor time', and the work spent during that time 'necessary labor.' It is necessary to the worker, because it is independent of the social form of his work, and it is necessary to capital and his world, because the continuous existence of the worker forms its basis."