COLLECTIVE BARGAINING

IN BRAZILIAN MANUFACTURING, 1978-95

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THESIS ABSTRACT

Collective bargaining, it is widely claimed, has been on the increase in Brazil since the late 1970s. This is seen as part of a broader change in Brazilian industrial relations towards a hybrid system of interest representation, in which elements of both the old state corporatism and pluralism now coexist. However, there is little or no systematic empirical evidence available to support this conclusion. This thesis addresses the question of the strengthening of collective bargaining as a method of job regulation in Brazil by providing a detailed empirical study.

The questions of this study are: (a) how important has collective bargaining become in establishing provisions on the terms and conditions of the employment relationship which are not simply reproducing rules established via state regulation?; and (b) what factors accounted for changes in the content of these provisions? An analysis of 10,734 provisions in 287 collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, the capital of the southernmost state of Rio Grande do Sul, was carried out for the period of 1978-95.

This analysis offers support for the thesis that the significance of collective bargaining has increased. It shows that: (a) most substantive provisions created rules that were not established in other forms of regulation; (b) provisions that replicate the contents of regulatory legislation accounted for one out of seven substantive provisions, but in spite of being a copy of the law, these provisions are not entirely neutral for job regulation; (c) collective agreements also laid down substantive provisions benefiting employers, and not simply employees; and (d) the pace of change in bargaining outcomes oscillated with changes in the economic, legal and judicial contexts. This pace of change was mostly affected by (i) the rate of unemployment, (ii) the degree of openness of the economy to foreign competition, (iii) the capacity of employers to pass on costs to costumers, (iv) stabilisation policies aimed at curbing inflation, (v) the Federal Constitution made in 1988, (vi) the official rate of minimum wages, and (vii) the conduct of the labour judicial system in settling collective disputes.

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PREFACE

This dissertation originated in an intellectual dissatisfaction. For about ten years, between the early 1980s and the early 1990s, I worked as an economist for Brazilian trade unions. First, in the period between 1983 and 1984, I was engaged in a voluntary, somewhat militant, activity as an economic adviser for Paulo Paim, who was the president of the metalworkers' union of Canoas at the time, and an emergent leader linked to the so-called new trade unionism in Rio Grande do Sul, the southernmost state of Brazil. Later, from 1986 to 1994, I had a fulfilling experience as an economist working for the Inter-Union Department for Statistics and Socio-Economic Studies (DIEESE – "*Departamento Intersindical de Estatística e Estudos Sócio-Econômicos*"). Since its foundation by a hundred trade unions in 1956, DIEESE has been the main national think tank giving support to unions on matters such as collective bargaining, labour statistics and economic policy.

In my job at DIEESE, I could actively participate in numerous processes of collective bargaining, mostly regarding the bank sector. The 1980s were years of great excitement in Brazilian trade unionism. Since the late 1970s, trade unions had been increasingly regaining space in the political arena after years of overwhelming constraints imposed by the military dictatorship that lasted from 1964 to 1985. Among other consequences, this union resurgence brought about collective bargaining activity to a level Brazilian industrial relations had not witnessed so far. The multiplication of the examples of negotiations encouraged a researcher of the Brazilian scene to think of collective bargaining as becoming the rule in job regulation (Amadeo 1992: 11). My own work experience gave me the possibility of a more constant, closer observation of the facts. And facts apparently did not fully favour such a view.

Therefore, when I decided to apply for a Ph.D. programme, this seemed to be an opportunity for elaborating on both my own professional experience and the Brazilian debate on collective bargaining in a systematic way. Thus, in this thesis, I investigate the results of collective bargaining in Brazilian manufacturing industries from 1978 to 1995. My focus lies upon the degree to which bargaining outcomes have set down rules for the regulation of the employment relationship in light of a comprehensive state regulation that has been a major characteristic of Brazilian industrial relations since the 1930s. The intense union activity of the late 1970s and 1980s, when so much pressure

was put upon employers to directly negotiate terms and conditions of the employment relationship, supports the hypothesis of the strengthening of collective bargaining. My personal experience at DIEESE, however, caused me to take the eagerness with which this thesis was sometimes debated in Brazil with at least a grain of scepticism. What was uppermost in my mind was the need for empirical studies to shed some light upon this debate. And this was my main motivation in this research.

CHAPTER 1

INTRODUCTION

This thesis is about collective bargaining in Brazilian manufacturing. It addresses the question of the strengthening of collective bargaining as a method of job regulation by providing a detailed empirical study of collective agreements in selected bargaining units in manufacturing industries. The increase in the significance of collective bargaining after the late 1970s is seen as part of a broader change in Brazilian industrial relations towards a hybrid system of interest representation, in which elements of both the old state corporatism and pluralism now coexist. The study covers the period from 1978 to 1995.

The late 1970s, it is widely claimed, has been considered a turning point in Brazilian industrial relations after decades of an indisputable predominance of the state corporatist system of interest representation. Writing in the early stages of the 1980s, Pastore and Skidmore highlighted that "Brazil has seen more change in its labor relations system in the past five years than in preceding 40" (Pastore and Skidmore 1985: 110). Since then, continuous change in various constituent elements of the system indicates, as one of the most prominent Brazilian industrial relations scholars points out, that "the system of interest representation in Brazil is in transition" (Tavares de Almeida 1998: 5). This transitional period – whose background includes the passage from military rule to a liberal democracy in the 1980s, market-oriented economic reforms such as privatisation and the opening of the economy in the 1990s, high inflation up to the mid-1990s, and short economic cycles for the whole period – has been characterised by some chief features. These features are:

a) The revival of trade unionism as a strong political mass movement in the late 1970s and the 1980s, followed by a subsequent weakening in the 1990s;

b) the creation of pluralist central organisations of workers at the nationwide level, which represents a deep departure from the principles of state corporatism;

c) the highest levels of strike activity in Brazilian industrial relations history, recorded during the 1980s;

d) major statutory changes brought about by a new Federal Constitution issued in 1988 revoked various constraints over union organisation and activity which consisted of pillars of the state corporatist system;

e) an attempt by the government, parallel to the market-oriented reforms of the 1990s, of introducing far-reaching changes in the regulatory legislation of the employment relationship with the aim of weakening codified laws; and

f) the increasing importance of collective bargaining in defining the terms and conditions of the employment relationship.

Notwithstanding these changes, some of the main characteristics of the old state corporatism, which dates back to the 1930s, remained alive in the Brazilian industrial relations system after the late 1970s. The Federal constitution made in 1988, for instance, kept the principle of single union unchanged, as well as enlarged the normative power of the labour judicial system. Furthermore, legal enactment remains the major method of job regulation. The 1943 Labour Code has survived numerous attempts for deeper changes in its scope.

Given the picture of continuity and change, there are different views of the developments in Brazilian industrial relations. Some studies opted for highlighting that there has been a great degree of continuity in the trade union structure (Pochmann 1996: 296; Boito Jr. 2002). Most studies, however, point out that the Brazilian industrial relations system moved towards a hybrid or ambiguous system of interest representation, in which neither the old corporatism nor pluralist traits prevailed (Rodrigues 1992: 23; Souza 1992: 14; Tapia and Araújo 1994: 76; Tavares de Almeida 1998: 6; Barros 1999; Cardoso 1999: 39, 43-44).

Among the main changes in the Brazilian industrial relations system, the increasing significance of collective bargaining as a method of job regulation has been emphasised (Pastore and Zylberstajn 1988: 71, 77; Gonçalves 1988: 33, 1994: 269; Córdova 1989: 263; Moreira Alves 1989: 52; Rodrigues 1992: 31; Souza 1992: 18; Silva 1992: 90; Barbosa de Oliveira 1994: 218; Jácome Rodrigues 1995: 175; Prado 1998: 32). As early as 1982, Tavares de Almeida stressed the substitution of direct negotiations between trade unions and employers for statutory wage indexation rules as a chief goal of the new unionism that had emerged as a driving force of change in the industrial relations system in the late 1970s (Tavares de Almeida 1982: 83). Pastore and

Skidmore also associate “the remarkable upsurge of worker and unionist activism starting in 1978 (…) [to] a sharp increase in direct bargaining – an important departure for Brazil’s traditionally state-dominated labor relations” (Pastore and Skidmore 1985: 111).

A decade later, one of the most prominent Brazilian labour economists, who became Minister of Labour in the first Cardoso government (1995-98), made a statement on changes in the national system of industrial relations by writing that “direct negotiations between unions and employers [had become] the rule” in establishing the terms of the employment relationship during the 1980s (Amadeo 1992: 11). This view of the increase of collective bargaining, after decades in which direct negotiations between unions and employers had been inexpressive, was shared by Ramalho in remarks on the 1990s. This author points out that “the theme of negotiation is on the agenda, despite intense ideological opposition within trade unionism. The examples of negotiation are multiplying and apparently point to an irrefutable tendency in large sectors of trade unionism” (Ramalho 1996: 17).

If Amadeo’s and Ramalho’s arguments are correct, it can be accepted that a new feature in the rule-making process concerning the employment relationship emerged in Brazil after the late 1970s. Flanders (1970) identifies four methods of job regulation: legal enactment (state regulation), collective bargaining, unilateral regulation by trade unions, and unilateral regulation by employers. Strong state regulation of the employment relationship had been a key feature of the Brazilian system since the 1930s, with unilateral regulation by employers playing a secondary role. A broader legal enactment originated in the 1930s, when various statutes on both individual and collective labour relations were issued. These statutes were later grouped in the Consolidation of Labour Laws (“*Consolidação das Leis do Trabalho*” – CLT) in 1943, which is the Brazilian Labour Code. This Labour Code survived the waves of the recent political history of the country almost without a scratch: from the civilian dictatorship of Vargas (1937-45), and the democratic-populist period (1946-64), to the military dictatorship (1964-85). Although some important changes in industrial relations rules were brought about by the new democratic Constitution passed in 1988, legal enactment still remains the major method of job regulation.

The hypothesised strengthening of collective bargaining, however, suggests that a more complex picture with respect to job regulation would have arisen after the late

1970s. Collective bargaining would have begun "to get over virtual atrophy" (Córdova 1989: 263). As a consequence, collective bargaining would have been added to the state and unilateral employer regulation as an important method to determine the terms and conditions of the employment relationship.

This view of the increase of collective bargaining has not gone unchallenged in the Brazilian debate. Researchers who argue that no relevant change has been undergone by the national system of industrial relations also point out that collective bargaining still remains inexpressive. A common statement, which is shared not only by those who basically see continuity in the system, is that collective bargaining faces considerable limits posed by the regulatory legislation in order to become a relevant method of job regulation (Souza 1992: 18-19; Siqueira Neto: 1996: 218). In an important *forum* organised by the Ministry of Labour in 1994, which covered numerous issues on industrial relations and collective bargaining in Brazil, a top leader of the more militant wing of trade unionism and a high official in the United Workers Central (CUT) listed the following factors as limiting factors towards a genuine system of collective bargaining: (i) the statutory clause of the settlement date, with its related fixed annual terms of collective agreements, incorporates a great degree of rigidity in negotiations; (ii) the principle of the single union and the organisation of trade unions exclusively along the lines of occupational categories; and (iii) the arbitration of collective disputes by the labour judicial system (Ministério do Trabalho 1994: 153). Barelli, who was the Minister of Labour responsible for this *forum*, goes straight to the point by stating that "Brazilian labour relations are characterised by a great influence of state regulation, which is not compatible with effective collective agreements" (Barelli 1993: 28).

Both views of the development of collective bargaining in Brazil after the late 1970s, however, lack systematic empirical evidence supporting their conclusions. Those who stress continuity in the system rely almost exclusively on what are seen as the logical consequences of strong legal enactment over collective bargaining. As for the evidence displayed in the literature for supporting the hypothesis of the strengthening of collective bargaining, it comprises the following outcomes: (i) an increasing number of provisions in collective agreements; (ii) an enlargement in the scope of collective agreements; (iii) an increasing number of voluntary arrangements in contrast to either mediation or arbitration by labour tribunals; (iv) new forms of negotiations that depart

from the Labour Code model, such as the tripartite experience of the "*câmaras setoriais*" in the early 1990s; and (v) a higher incidence of strikes associated with negotiations in the 1980s.

An increasing number of agreement provisions has indeed been found in several studies (Vasconcellos 1983; Brandão 1991; Pichler 1995; Prado 1998). In researching on collective bargaining in the bank sector, I found that the number of provisions in agreements applied to bank clerks in Porto Alegre, the capital of the southernmost state of Rio Grande do Sul, oscillated between 12 and 14 provisions from 1962 to 1978. Ten years later, this number had reached 47 provisions (Horn 1992).

In the light of a broad state regulation of the employment relationship, however, this increase in the number of provisions in collective agreements should be seen as no more than a sign of change, and not as conclusive evidence on the strengthening of collective bargaining. This is a key point. By only pointing out the increasing amount of provisions or the enlargement of the bargaining scope, one cannot prove, say, that the greater amount of provisions is not merely a copy of the statutory clauses that abound in the Brazilian legal system. And if rules replicating the content of regulatory legislation accounted for most of the increasing number of agreement provisions, no hypothesis on strengthening of collective bargaining as a method of job regulation could be reasonably sustained.

A weakness of the evidence supporting the increase in collective bargaining is the absence of a comprehensive comparison between the content of agreement provisions and both statutory rules and judicial decisions. Even studies that focus upon the content of agreement provisions lack comprehensiveness. These studies often consist of a descriptive list of the content of provisions without any major analytical effort (Aguirre *et al*. 1985; DIEESE 1993, 1997, 1999; Carvalho N. 2001). Studies analysing the content of agreement provisions usually focus on a minor set of these provisions, mostly on pay issues (Brandão 1991; Horn 1992). Other studies concentrate on comparing trade union claims and bargaining outcomes in order to measure the degree of union success in enlarging job regulation, but again, either analysis is restrained to the bargaining scope (Pastore and Zylberstajn 1988) or it does not cover the full text of agreements (Brandão 1991; Horn 1992). Vasconcellos (1983) carried out a solitary attempt to model cross-variation in the content of selected provisions on pay

concerning collective agreements in the state of São Paulo. This kind of study, however, did not lay roots in the Brazilian literature.

Therefore, in order to settle the Brazilian debate, a more comprehensive investigation into the content of agreement provisions is necessary. In this investigation, special attention should be paid to a comparison between the content of agreement provisions and industrial relations rules set down on grounds of the discretionary power of state institutions. In this research, I analyse the content of provisions in collective agreements pertaining to manufacturing industries. This analysis covers the period from 1978 to 1995.

The thesis will address the following questions:

a) How important has collective bargaining become in establishing provisions on the terms and conditions of the employment relationship that are not simply reproducing rules established via state regulation?

b) What factors accounted for changes in the content of provisions regulating the employment relationship?

In order to deal with these questions, I selected 287 collective agreements in 17 bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, the capital of the southernmost state of Rio Grande do Sul. This resulted in a total amount of 10,734 provisions covering the period between 1978 and 1995. The content of these provisions makes up the primary empirical material for this study.

The structure of the thesis is as follows. In chapter 2, I give a descriptive account of the modern system of industrial relations in Brazil in order to set the broader stage for the analysis of the outcomes of collective bargaining. In chapter 3, I state the objectives, location and methods of the study.

In chapters 4 to 6, I carry out the content analysis of agreement provisions. Chapter 4 focuses on the scope of collective agreements, i.e. the issues which were the subject matter of negotiation in collective bargaining. In chapter 5, I evaluate whether agreement provisions established additional rules vis-à-vis existing statutory rules. Additional rules include both rules on issues not covered by the regulatory legislation and rules whose contents differ from the legislation addressing similar subject matters. An increasing number of additional rules in collective agreements suggest the strengthening of collective bargaining as a method of job regulation. And in chapter 6, I

assess change in the content of agreement provisions over time, irrespective of their relationship with the regulatory legislation.

Having concentrated upon empirical evidence on the strengthening of collective bargaining as a method of job regulation in chapters 4 to 6, I deal with the question of the factors that accounted for changes in the content of provisions in chapter 7. In this chapter, I analyse the determinants of change in selected bargaining outcomes as a result of change in the economic conditions under which negotiations were carried out. Finally, in chapter 8, I examine the consequences of the judicial environment over collective bargaining by looking at the normative power of the Brazilian labour judicial system. I present the main conclusions of the dissertation in chapter 9.

CHAPTER 2

THE BRAZILIAN SYSTEM OF INDUSTRIAL RELATIONS

The origins of the modern system of industrial relations in Brazil date back to the 1930s. Over that decade, the government started to regulate interest representation in labour-management relations, as well as to enlarge the statutory framework intended to govern the employment relationship. This system came to be known as a typical state corporatist system (Schmitter 1974; Mericle 1974; Collier and Collier 1979; Rodrigues 1990; Boito Jr. 1991; Tavares de Almeida 1996). Furthermore, as Rodrigues states:

> This model of organizing industrial relations and resolving labour disputes revealed itself as one of the most enduring institutions of the Brazilian society (Rodrigues 1990: 47).

Brazilian state corporatism remained virtually untouched until the late 1980s, notwithstanding opposing political regimes that followed one another since the 1930s. In 1988, however, a fresh Federal Constitution (1988 FC hereafter), which replaced the Constitution made in 1967-69 and marked the last step in the transition from military rule (1964-85) to liberal democracy, changed important statutory clauses on the system of interest representation. In particular, changes affected trade unions' certification and internal organisation, as well as powers granted for the Ministry of Labour to intervene in trade unions' internal affairs. This normative change, along with the revival of a strong militant trade unionism in the late 1970s and early 1980s, has lead industrial relations researchers to ask whether the nature of the Brazilian system persisted in being corporatist (Córdova 1989; Boito Jr. 1991; Souza 1992; Rodrigues 1992; Pochmann 1996; Tavares de Almeida 1996; Cardoso 1997; Cardoso 1999). Most of them have come to the same idea, namely, that the 1988 FC brought about a hybrid system of representation. Brazilian industrial relations were said to be in transition once more (Tavares de Almeida 1998: 5).

In this chapter, I aim at introducing the Brazilian system of industrial relations in order to set the stage for the analysis of collective bargaining outcomes. The selection of the bargaining units whose bargaining outcomes will be analysed is explained in the next chapter. Here, in dealing with the national system of industrial relations, I will focus upon (i) the chief institutional characteristics of the system with respect to the structure of the state corporatist system of interest representation, as well as the major

changes brought about by the 1988 FC; (ii) the machinery for resolving collective labour disputes; and (iii) the statutory regulation of the employment relationship. Since this chapter is conceived as an auxiliary one for the core research matter, I do not mean to address some controversies that account for the bulk of the literature on the Brazilian system of industrial relations, however interesting they may be, such as intended and unintended political functions performed by the system or the elements of continuity and change in corporatism over the 1980s and the 1990s.

I have organized this chapter in seven sections. I start in section 2.1 by highlighting the main characteristics of broader Brazilian political and economic contexts. Emphasis will be put in the years between the late 1970s and the mid-1990s, which correspond to the period of analysis of collective bargaining outcomes in this thesis. The rest of the chapter concentrates upon the broader industrial relations context. In section 2.2, I give a brief historical account of the origins of the state corporatist system, as well as of the governmental regulation of the employment relationship. In section 2.3, I detail the main characteristics of the system of interest representation that emerged from the 1930s by focusing upon trade union structure and the statutory functions that representative institutions are expected to carry out. I also deal with changes brought about by the 1988 FC in this section. Section 2.4 is devoted to explaining regulatory legislation on collective bargaining and arbitration of collective labour disputes by the labour judicial system. Both collective bargaining and judicial arbitration comprise the statutory machinery for resolving collective labour disputes. In section 2.5, I elaborate further on the role of the labour judicial system by highlighting the normative power of labour tribunals. This normative power denotes the capacity of tribunals to create new rules of law, and not only to apply existing ones in settling collective disputes. I complete this chapter in section 2.6 by dealing with the vast regulatory legislation on the employment relationship that characterises Brazilian industrial relations. A brief conclusion follows in section 2.7.

2.1 Main characteristics of the Brazilian political and economic contexts

Brazil became a politically independent nation from Portugal in 1822. This change was contemporary of a broader historical process that led to the political independence of Latin America from Portugal (the case of Brazil) and Spain (the rest of Latin American countries) in the first half of the nineteenth century. Instead of adopting a republican

system of government, as was the case with all the former Spanish colonies, however, Brazil evolved into a constitutional monarchy. The monarchic system of government lasted only until 1889, when a military coupe d'état brought the government down and declared the republic. The period between 1889 and 1930 is known as the old republic ("*República Velha*"). The Federal Constitution passed in 1891 established a republican, presidential, and federalist political regime. This regime lasted until October 1930, when a political movement under the leadership of Getulio Vargas – former president of the southern state of Rio Grande do Sul – put an end to the old republic and established the basis for the so-called populist period in Brazilian politics.

In the beginning, the Vargas government oscillated between liberal and authoritarian forces that made up its political coalition. The clash between these opposing trends was particularly critical during the provisional government ("g*overno provisório*") that lasted from 1930 to 1934. In 1934, a new Federal Constitution was passed with the aim of institutionalising the compromise between the distinct political forces of the 1930 revolution. This institutional compromise failed, and Vargas declared a dictatorship in 1937 ("*Estado Novo*"), which lasted until 1945. Regardless of its distinct phases, the Vargas government brought about a strengthening of the federal state's power for intervention in the economic and social life of the country.

In February 1945, the government announced the election of a Constitutional Assembly, as well as allowed the organisation of political parties. This put an end to the Vargas dictatorship. Between 1945 and 1964, Brazil underwent a new experience of liberal democracy under the mark of populist governments for most of the period. Vargas himself went back to a new period in office by means of popular vote (1950-54).

The so-called democratic-populist period ended in 1964, when the government was overthrown by a political movement led by the military. This gave rise to a military dictatorship which lasted until 1985. In the first period, which lasted from 1964 to 1967 (Castello Branco government), the military government promoted numerous institutional reforms aiming at "modernising" the political and economic life of the country. Although the military often declared its intention of devolving the power to an elected civilian government, the authoritarian characteristics of the regime deepened year after year. In 1968, the government turned into an open dictatorship by means of Institutional Act n. 5 in what is considered a "coup inside the coup". This inaugurated the second phase of the military dictatorship, which lasted until 1974 and corresponded

to the Médici government. In 1974, General Geisel took office as president by announcing a period of "slow, gradual and progressive opening" of the country's political life. This represented the beginning of the third phase of the military dictatorship. The liberalisation of the regime accelerated from the late 1970s on, when General Figueiredo succeeded General Geisel in the presidency. In the mid-1980s, the government moved back to a civilian president.

In 1984, Tancredo Neves, a moderate civilian politician of the opposition party PMDB, was elected president by the National Congress. However, Neves died before taking office. In his place, José Sarney, a former civilian political leader of the military dictatorship in the Northeast who had been elected vice-president with Neves, became president of Brazil. Soon after taking office, Sarney asked for the election of a Federal Congress with the aim of passing a new Federal Constitution. This Constitution was approved in 1988. In 1989, a new president was elected by popular vote (Collor). This period completed the transition from the military dictatorship to a new experience of liberal democracy.

Table 2.1 provides a chronology of the Brazilian republican political history up to 1995.

Table 2.1 – Chronology of Brazilian political history, 1889-1995

Period	Phase
1889	Proclamation of the Republic (Nov)
1889-1930	The "Old Republic"
1930	Government overthrown by a political movement under the leadership of Getulio Vargas (Oct)
1930-34	"Provisional government" of President Vargas
1934-37	Constitutional government of President Vargas
1937-45	"*Estado Novo*". Civilian dictatorship led by Vargas
1945-64	Democratic-populist period
1964-85	Military dictatorship
1985-89	Sarney government
1988	Federal Constitution passed in the Congress (Oct)
1989	First presidential elections by popular voting in 29 years
1989-92	Collor government. Collor impeached by the Federal Congress in 1992
1992-94	Itamar Franco government
1995-2002	Fernando Henrique Cardoso government

Brazilian political and economic life of the second half of the twentieth century was strongly affected by institutional changes brought about by the Vargas government

in the 1930s and 1940s. Vargas redesigned the Federal government in order to increase its powers to intervene in the economic activity. From the late 1930s on, Brazilian industrialization accelerated under the so-called model of import substitution. The basic characteristics of the model of import substitution were the following:

a) Strong governmental presence in economic life by means of traditional instruments of economic policy (fiscal and monetary), statutory regulation of the market activity, as well as the creation of numerous state-owned companies;

b) Economic growth based on the internal market. Consumer goods for higher-income groups of the population and investment goods made up the most dynamic sectors of economic activity;

c) Low degree of opening to manufacturing imports; and

d) Increasing investment of multinational companies in manufacturing sectors, especially in the production of consumer goods for higher-income groups of the population.

Between the late 1940s and the late 1970s, the Brazilian GDP increased by 7.1% a year. Manufacturing growth reached 8.5% a year during this period (Serra 1983: 58). This substantial increase in Brazilian GDP under the import substitution model went along with a huge change in the structure of the economy. In 1950, agriculture accounted for 24.3% of GDP. This percentage decreased to 10.2% by 1980. Change in manufacturing went the other way around. In 1950, manufacturing accounted for 24.1% of GDP, whereas in 1980 it had reached 40.6% of GDP. The services sector percentage of GDP remained virtually unchanged around 50% during these decades (Baer 2002: 481).

Following the increase in the manufacturing share of GDP, the distribution of the economically active population according to the great sectors of economic activity also displayed enormous change. In 1940, agriculture accounted for 64.1% of the Brazilian labour force, whereas manufacturing accounted for only 10.3% and the services sector for 23.8% (Hoffmann 1980: 45). In 1980, the agriculture share of the labour force had declined to 29.9%, manufacturing and building had increased to 24.4%, and the services sector to 42.8% (Fundação Instituto Brasileiro de Geografia e Estatística 1981a). The most important demographic consequence of this process consisted in a shift between the urban and non-urban population. In 1940, the urban

population represented 31.2% of the Brazilian population. In only forty years' time, this percentage had increased to 67.6% in 1980 (Martine and Camargo 1984: 126).

The vigorous increase in the economic activity lost momentum in the 1980s. In the first half of the 1970s, the Brazilian economy had suffered the negative effects of the oil crisis. The government response to this crisis consisted in accelerating the process of industrialization with huge investments made by state-owned companies which came to be financed by means of higher inflation and foreign credit. In 1980, manufacturing reached its highest share of Brazilian GDP in the period between 1950 and 2000. However, the increase in both the basic international rates of interest (both Libor and Prime) and the oil prices in the late 1970s threw the Brazilian economy into a deep recession in the early 1980s. This recession came to be aggravated by virtue of the Mexican debt crisis in 1982. The Brazilian GDP increase went down to 2.8% a year between 1979 and 1989 (Baer 2002: 481).

In the 1990s, the Brazilian economy did not manage to come out of the crisis. The increase in GDP of 1.7% a year between 1989 and 1999 was kept well below the exuberant performance displayed prior to 1980. Besides this lower increase in GDP, Brazilian economy was also characterized by a much higher volatility during the 1980s and the 1990s. Economic cycles became considerably shorter, as well as inflation accelerated to the point of reaching a four-digit level. Table 2.2 shows both the rate of increase in Brazilian GDP and the rate of inflation from 1978 to 1995. These years correspond to the period of analysis of collective bargaining outcomes in this research.

Table 2.2 – Rate of increase in Brazilian GDP and rate of inflation, 1978-95 (%)

	GDP	Inflation		GDP	Inflation
1978	4.8	38.7	1987	3.6	224.8
1979	7.2	53.9	1988	-0.1	684.6
1980	9.2	100.2	1989	3.3	1,319.9
1981	-4.5	109.9	1990	-4.4	2,740.2
1982	0.5	95.4	1991	1.1	414.7
1983	-3.5	154.5	1992	-0.9	991.3
1984	5.3	220.7	1993	4.9	2,103.4
1985	7.9	225.5	1994	5.8	2,406.9
1986	7.6	142.2	1995	4.2	67.5

Source: Fundação Getulio Vargas; Baer (2002).

The distribution of Brazilian GDP by the great sectors changed as a consequence of the worst economic performance of the 1980s and the 1990s, which especially

affected manufacturing. Thus, the manufacturing share of GDP, which had reached its peak in 1980 (40.6%), declined to 34.2% in 1990. In the mid-1990s it was 36%. Agriculture production as a proportion of Brazilian GDP went on decreasing from 10.2% in 1980 to 9.3% in 1990, to 8% in 1998. The counterpart to these changes consisted in an increase in the services sector production as a percentage of GDP from 49.2% in 1980 to 56.5% in 1990. In 1998, this percentage was 56% (Baer 2002: 428).

The short economic cycles brought about oscillation in the rate of unemployment in the 1980s and the 1990s. Monthly rates of unemployment have been estimated only since 1982 for the greater metropolitan areas of the country. Table 2.3 shows the annual average rates from 1982 to 1995.

2.3 – Rate of unemployment, 1982-95 (%)

	Unemployment
1982	6.3
1983	6.7
1984	7.2
1985	5.3
1986	3.6
1987	3.7
1988	3.8
1989	3.3
1990	4.3
1991	4.8
1992	5.7
1993	5.3
1994	5.1
1995	4.6

Source: Fundação Instituto Brasileiro de Geografia e Estatística (IBGE).

In the early 1980s, unemployment performance reflected the economic recession of the period. Recovery of the economic activity in the mid-1980s brought about a decrease in the rate of unemployment. However, a new period of recession in the early 1990s caused the rate of unemployment to increase once more. In 1999, the annual unemployment rate reached 7.6% (Fundação Getulio Vargas 2003: IX).

The distribution of employment according to the great sectors of economic activity displayed a decrease in the share of industrial employment. In 1981, employment in manufacturing and building accounted for 24.8% of the total, whereas in 1995 this percentage had decreased to 19.6%. Employment in the services sector performed the other way around. It increased from 43.3% in 1981 to 52.4% in 1995 as a

proportion of total employment. Agriculture employment decreased from 29.3% to 26.1% in the same period (Fundação Instituto Brasileiro de Geografia e Estatística 1981, 1995).

Finally, the distribution of employment according to the main forms of occupation also changed between the early 1980s and the mid-1990s. The number of wage-earners (including domestic employment) as a proportion of non-agricultural employment decreased from 75.6% in 1981 to 70.0% in 1995. Differently from this, the proportion of self-employed workers increased from 19.5% in 1981 to 21.8% in 1995 (Fundação Instituto Brasileiro de Geografia e Estatística 1981, 1995).

2.2 Historical development of the modern industrial relations system in Brazil

The modern Brazilian industrial relations system dates back to the 1930s. Before the triumph of the political movement that put an end to the old republic in October 1930, Brazilian industrial relations were characterised by a weak state regulation of both the system of interest representation and the employment relationship. Conversely, the system that evolved over the years of the first Vargas government, which remained virtually untouched until the 1988 Federal Constitution, was characterised by a strong presence of the government in industrial relations.

By 1930, associations of employee representation were legally independent from the government. Since the associations for mutual help from the 19th century, to the expansion of trade unions under the urge of socialist and anarcho-syndicalist ideologies over the first decades of the 20th century, to the growing importance of the Communist Party in the 1920s, a common trait of workers' representative institutions consisted of their organisational independence from state regulation. During the first decades of the 20th century, regulatory legislation over employee representation was restrained to Decree n. 979 (06 Jan 1903) and Decree n. 1637 (05 Jan 1907). Decree n. 979 allowed the joint grouping of employees and employers in agriculture, and in the so-called rural industries, into syndicates aimed at providing credit and social services for members. In addition, Decree n. 1637 authorised these groups to organise associations to protect their general interests, as well as specific members' interests. Both pieces of legislation, however, did not exert influence over trade union affairs in the early 20th century.

As for the state regulation of the employment relationship, some incipient governmental initiatives had been taken since the late 19th century. Thus, Decree n. 1313 (17 Jan 1891), which focused upon the employment of minors in undertakings placed in the capital of the then recently proclaimed Republic, is considered the first piece of labour legislation in Brazilian history (Martins 1989: 19). Additional legislation on the work of minors and women comprised Decree n. 2141 (14 Nov 1911) and Act n. 1596 (29 Dec 1917), whose application was restricted to the province of São Paulo. In 1927, the federal government approved Decree n. 17943-A (12 Oct 1927) to establish a national code on the work of minors. Still at the federal level, Decree n. 3724 (15 Jan 1919) set down rules to deal with accidents in work undertakings, and Decree n. 17496 (30 Oct 1926) stipulated 15-days annual paid holidays for employees in commerce, manufacturing and banking. Protective legislation benefiting railway workers was also established by means of Decree n. 4682 (24 Jan 1923) and Act n. 5109 (20 Dec 1926).

In the aftermath of the political movement that drove Vargas to the presidency in 1930, state regulation of industrial relations gained momentum to the point of laying the foundations of an entire new system of industrial relations. Thus, Decree n. 19770 (19 Mar 1931) set the fundamental pillars of the state corporatist system as early as March 1931. This piece of legislation laid down rules for the creation and functioning of trade unions on grounds that unions must act as bodies for collaboration with the government regarding economic and social policies. In 1934, Decree n. 24694 (12 Jul 1934) enlarged the set of rules aimed at creating a system of interest representation under official control. By reinforcing the state corporatist system, this decree was in direct opposition to the pluralist principles inscribed in the 1934 Federal Constitution. Surprisingly enough, the Federal Supreme Court refrained from ruling Decree n. 24694 as unconstitutional.

In 1937, the transformation of the Vargas government into a dictatorship ("*Estado Novo*") resolved the impasse between constitutional pluralism and statutory corporatism in favour of the corporatist model. In the 12-month's time between July 1939 and July 1940, the structural and functional elements of the Brazilian corporatist system of interest representation were laid down by means of three federal *decreto-lei*, i.e. decrees with powers of acts of law. Thus, *Decreto-lei* n. 1402 (05 Jul 1939) consolidated rules on trade unions' certification and organisation; *Decreto-lei* n. 2377 (08 Jul 1940) detailed the payment of an official union tax; and *Decreto-lei* n. 2381 (09

Jul 1940) established a parallel framing for trade unions and employers' associations. In May 1943, this regulatory legislation was grouped under title V of the Consolidation of Labour Laws ("*Consolidação das Leis do Trabalho*", *Decreto-lei* n. 5452, 01 May 1943). This Consolidation, which is ordinarily known as CLT, is the Brazilian Labour Code. Despite minor changes, the Labour Code's rules on trade unions remained the same until the promulgation of the 1988 FC.

A similar pattern of increasing state regulation since 1930 was observed with respect to the employment relationship. The government started to lay down rules on numerous issues such as foreign workers (Decree n. 19482, 12 Dec 1930); pensions (Decree n. 19497, 17 Dec 1930, among other pieces); work of minors (Decree n. 22042, 03 Nov 1932, and Decree n. 423, 12 Nov 1935); work of women (Decree n. 21417-A, 17 May 1932, and Decree n. 423, 12 Nov 1935); annual paid holidays (Decree n. 19908, 28 Mar 1931, and numerous other pieces); hours (Decree n. 21186, 22 Mar 1932, and other pieces); and minimum wages (*Decreto-lei* n. 2162, 01 May 1940). This regulatory legislation was consolidated under titles I to IV of the 1943 Labour Code. Since then, it has been steadily enlarged both by changes in the body of the Labour Code and by addition of new pieces of legislation.

The Brazilian industrial relations system that emerged from this wave of governmental regulation can be therefore seen as a combination of a state corporatist system of interest representation with a strong state regulation of the employment relationship. In the next sections, I intend to elaborate further on the structural characteristics of the Brazilian industrial relations system that prevailed between the late 1970s and the mid-1990s. This corresponds to the period focused by the analysis of collective bargaining outcomes in this study.

2.3 The Brazilian system of interest representation: From the state corporatism of the 1930s to the hybrid combination of the 1988 Federal Constitution

The Brazilian system of interest representation brought about by the Vargas government in the 1930s and 1940s fulfils most of the characteristics of a state corporatist system. Schmitter (1974) defines corporatism as:

> A system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, noncompetitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state and granted

> a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports (Schmitter 1974: 93-94).

Moreover, Schmitter distinguishes between two major subtypes of corporatism – societal corporatism and state corporatism – on grounds of the multiple dimensions of corporatism (Schmitter 1974: 102-104). These dimensions are: (i) limited number of component units; (ii) compulsory membership; (iii) singular, noncompetitive units; (iv) hierarchically-ordered internal structure, functional-differentiated units; (v) recognition or certification of units in some de jure or de facto way by the state; (vi) monopoly of representation; (vii) formal or informal controls on leadership selection and interest articulation (Schmitter 1974: 95, 103-104). I will take Schmitter's empirical dimensions as a guideline to detail the structural elements of the Brazilian state corporatist system. Furthermore, I will also take these dimensions to draw a comparison between the 1930s state corporatism and the system brought about by the 1988 FC.

2.3.1 The Brazilian state corporatist system, 1930s-1988

The main pillar of the Brazilian state corporatist system was the monopolistic trade union organised at the industry level within the boundaries of a fixed geographical area. It was not very common to this geographical area to correspond to the extension of the national territory; more often, it comprised one municipality, a group of municipalities, or eventually a single state territory.

Virtually every single aspect of this system of representation was regulated by the state according to the 1943 Labour Code and complementary pieces of legislation. Thus, statutory regulation allowed associations of people or firms to organise into units of representation – literally named syndicates ("*sindicatos*") in the Labour Code – regarding the following main groups: (i) employees in the private sector practising similar, related or identical jobs, which formed an occupational category; (ii) employers in similar, related or identical economic activities, which formed an economic category; and (iii) professionals of similar, related or identical professions. I will call trade unions the associations of employees, and employers' associations those of employers. In practice, regulatory legislation determined which specific groups of employees could join in specific trade unions by means of a framing of categories ("*enquadramento sindical*") based on specific industries in which employees worked. Therefore, although

occupational categories were defined on grounds of similar jobs, trade unions were actually organised by industry in accordance to the Labour Code. The very expression occupational categories came to be used strictly in relation to the legal framing of unions. Furthermore, each single union corresponded to at least one single employers' association, so that the whole spectrum of associations of employees and employers made up a parallel framing of a limited number of units of representation.

Trade unions could encompass employees within broader or narrower geographical areas. Unions could be organised at different levels: district, one or multiple municipalities, one or multiple states, and exceptionally at the national level. In each trade union's geographical extent ("*base territorial*"), the Ministry of Labour certified only one union as the legal unit of representation of employees (monopoly of representation). The same applied to employers' associations. Table 2.4 shows figures on union density in Brazil for non-agricultural workers between 1988 and 1995, according to the IBGE National Survey on Trade Unions (NSTU) and the IBGE National Survey of Households (NSH).

Table 2.4 – Union density for non-agricultural Brazilian workers, 1988-95

	Over non-agricultural economically active population (%)		Over non-agricultural employees (%)	
	NSTU	NSH	NSTU	NSH
1988	14.1	…[1]	19.1	…[1]
1989	9.9	…[1]	13.2	…[1]
1990	14.2	…[1]	19.4	…[1]
1991	14.6	…[1]	21.3	…[1]
1992	14.4	13.1	22.7	20.6
1993	…[2]	13.4	…[2]	20.7
1994	…[2]	…[1]	…[2]	…[1]
1995	…[2]	13.2	…[2]	20.8

Source: IBGE – National Survey on Trade Unions (NSTU); IBGE – National Survey of Households (NSH).
[1] Figures are not provided by the IBGE – National Survey of Households.
[2] Figures are not provided by the IBGE – National Survey on Trade Unions.

Trade unions in a number of at least five within a same industry could unite to organise a federation, normally at the state level. And at least three federations could give rise to a peak organisation at the national level called confederation. The whole vertically-ordered system was set down by the Labour Code's framing. According to a survey run in 1988, just before the promulgation of the Federal Constitution that

brought about changes in this system of representation, there were 9,120 units of representation at first level (trade unions, employers' associations, etc.) in Brazil. Table 2.5 displays the amount of units of representation by membership groups and their geographical level.

Table 2.5 – Units of representation by membership groups and geographical level, in Brazil, 1988

Type of unit of representation, by membership groups	Geographical level					Total	
	One municipality	Multiple municipalities	One state	Multiple states	National	N	(%)
Urban industries	1,763	1,568	1,258	67	41	4,697	51.5
Trade unions	1,076	1,015	416	29	11	2,547	27.9
Employers' associations	511	312	584	28	29	1,464	16.1
Professionals' associations	48	82	207	4	1	342	3.7
Self-employed	128	159	51	6	-	344	3.8
Rural industries	3,879	542	1	1	-	4,423	48.5
Trade unions	2,462	284	1	-	-	2,747	30.1
Employers' associations	1,417	258	-	1	-	1,676	18.4
Total	5,642	2,110	1,259	68	41	9,120	
(%)	61.9	23.1	13.8	0.7	0.4		100.0

Source: IBGE – National Survey on Trade Unions.

Table 2.6 shows the amount of trade unions in urban industries in 1988, by confederations to which they were affiliated, as well as great geographical regions.

Table 2.6 – Brazilian trade unions, by affiliation to national confederations and great geographical regions, 1988

National confederations	Great geographical regions					Total[1]	
	North	Northeast	Southeast	South	Central West	N	(%)
Manufacturing, building, electricity, water, sewage	65	228	588	350	43	1,274	48.6
Commerce	28	136	208	187	51	610	23.2
Maritime, fluvial and air Transport	30	62	49	31	2	174	6.6
Land transport	7	19	64	29	6	125	4.8
Communications	12	33	25	15	15	100	3.8
Bank, insurance	6	31	64	64	17	182	6.9
Education	8	24	72	38	14	156	5.9
Total[1]	156	533	1,070	714	148	2,621	
(%)	5.9	20.3	40.8	27.2	5.6		100.0

Source: IBGE – National Survey on Trade Unions.
[1] Data include 74 associations of self-employed workers.

This picture of the distribution of first-level units of representation in the late 1980s indicates that the bulk of Brazilian trade unions was organised at the municipal level, comprising either only one municipality or multiple municipalities. This suggests a considerable degree of decentralisation in the trade union structure.

The creation of trade unions was also completely regulated by the state. By the 1988 FC, the creation of a trade union was a governmental concession, and associations which had not been certified by the Ministry of Labour were outlawed. In order to be certified by the Ministry of Labour as an official trade union – that is to say, a trade union enjoying the legal powers conferred by the Labour Code –, associations of employees had to fulfil some conditions. Among these conditions, the Labour Code set down a standard rule, stipulating clauses such as, for instance, that "the association will act as a body for collaboration with government and other associations in order to further social solidarity, as well as to subordinate their economic and occupational interests to the national interest" (1943 Labour Code, art. 518, c).

Control of unions by the government encompassed a range of other instances. For example, the 1943 Labour Code laid down that, "in the event of conflict or any other circumstances that disturb the trade union's proper functioning, or for relevant reasons of national security, the Minister of Labour may intervene in the union through a ministerial delegate or an appointed board, which must carry out ordinary union affairs as well as adopt the necessary measures to bring the union functioning back to normality" (art. 528). Governmental legal powers over trade unions also included the suspension or destitution of union officials that had contravened the Labour Code (art. 553), and the decertification of trade unions that had actively opposed the economic policy (art. 555).

The Labour Code also stipulated which functions trade unions were expected to perform in accordance to the principles of the state corporatist system. Magano (1981: 177-189) identified the following broad functions: (i) cooperation with the state (1943 Labour Code, art. 513, d, and art. 514, a); (ii) furtherance of general interests of the occupational category and individual interests of their members (art. 513, a); (iii) regulation of the employment relationship, which is expressed in the right to celebrate collective agreements (art. 513, b); (iv) an economic function of taxation (arts. 578-610); and (v) the provision of social services and welfare facilities, such as, for instance, judicial assistance, medical care, dental care, facilities for the practice of sports and for

social events, and facilities for members' vacations (art. 514, b, d, and paragraph, and art. 592). Besides these positive functions, regulatory legislation also established that political activities by trade unions were explicitly forbidden (art. 521, d).

The internal organisation of unions and the appointment of union officials comprised fields for state control as well. The regulatory legislation set down that union administration had to be carried out by a board of three (minimum) to seven (maximum) officials. These officials were appointed by the vote of union members. Still more important, only members who had been previously approved by the Ministry of Labour could run for offices.

Although union membership was not compulsory, every single member of the occupational category had to pay an annual trade union tax. This tax was equal to one-day pay. Other means of union financial support became ordinary over the years. In the late 1980s, there were four basic sources of union finance:

a) Trade union tax – a compulsory contribution applied to all members of the occupational category through payroll deduction, according to the Labour Code and the 1988 FC, regardless of voluntarily being a member of the trade union;

b) voluntary membership fees – a voluntary contribution paid by trade unions' affiliated members;

c) collective bargaining deduction – a contribution commonly stipulated in collective agreements which had to be paid by all members of the occupational category regardless of union affiliation. Labour tribunals ruled this compulsory contribution as legal by the late 1980s; from then onwards, however, tribunals imposed numerous restrictions over trade unions to apply such a contribution to non-affiliated members of the occupational category; and

d) contribution to the confederative system – a compulsory contribution established by the 1988 FC in addition to the trade union tax.

Table 2.7 displays the number of trade unions according to the union tax share of total revenues in 1988. There are grounds for supposing that the importance of the union tax was underestimated in these figures by virtue of the so-called inflationary revenues (the union account's balance adjusted in line with daily inflation).

Table 2.7 – Brazilian trade unions, by union tax share of total revenues, 1988

Range	Number of unions[1]	(%)	
		Single	Cumulative
[0-10%]	650	27.4	27.4
(10%-20%]	521	22.0	49.4
(20%-30%]	297	12.5	61.9
(30%-50%]	403	17.0	78.9
(50%-80%]	295	12.4	91.3
(80%-100%]	207	8.7	100.0
Total	2,373	100.0	

Source: IBGE – National Survey on Trade Unions.
[1] Only unions that declared revenues.

The 1988 FC brought about some far-reaching changes in this system of interest representation. I turn my attention to these changes in the next part.

2.3.2 The hybrid system of the 1988 Federal Constitution

The promulgation of a new Federal Constitution in October 1988 completed the transition from military rule to liberal democracy. As far as interest representation in industrial relations is concerned, this Constitution compromised traditional forces of state corporatism and a pluralist approach. Pluralism was supported, among others, by the more militant wing of trade unionism. Articles 9 to 11 of the 1988 FC established the basic lineaments of a hybrid system of interest representation, as follows:

a) Authorisation of the government for the creation of trade unions, as well as intervention of the government in trade unions, was outlawed;

b) the principle of the single union, according to which only one trade union is the legal representative of an occupational category within the boundaries of a geographical area, remained unchanged;

c) a contribution for financing the confederative system was added to the trade union tax, providing a second statutory source of union finance; and

d) the trade unions' function came to be laid down as the protection of both collective and individual interests of the occupational category, including judicial and administrative affairs.

Table 2.8 draws a comparison between the characteristics of the state corporatist system of the 1930s and those of the system of representation that emerged from the 1988 FC. In doing so, I have taken Schmitter's dimensions of corporatism into account.

The system brought about by the 1988 FC may be classified as a hybrid one, for it kept some of the chief aspects of the state corporatist system – for instance, the principle of the single union and the trade union tax – at the same time that it provided a much higher degree of freedom for trade unions to decide on their internal affairs by removing traditional powers enjoyed by the Ministry of Labour.

Table 2.8 – Main characteristics of the systems of interest representation in the 1943 Labour Code and the 1988 Federal Constitution, according to Schmitter's dimensions of the state corporatism

Schmitter's dimensions	The 1943 Labour Code system	The 1988 FC system
1. Number of component units is limited	Limited number according to the framing of categories	In theory, unlimited number. However, both the principle of the single union and the need of official registration imposed some limit in the number of units
2. Compulsory membership	Membership was not compulsory. However, both a trade union tax and collective agreements applied to every employee in the occupational category regardless of membership	Membership is not compulsory. However, both a trade union tax and collective agreements apply to every employee in the occupational category regardless of membership. Moreover, trade unions are allowed to act in legal proceedings on behalf of the occupational category regardless of membership
3. Units of representation are noncompetitive between compartmentalised sectors	Units of representation were noncompetitive within the boundaries of one occupational category	Units of representation are noncompetitive within the boundaries of one occupational category. Peak organisations, however, are highly competitive in practice
4. Units of representation are hierarchically ordered in internal structure	Units of representation were hierarchically ordered in internal structure (trade unions, federations, confederations) according to the framing of categories	Units of representation continue to be hierarchically ordered in internal structure (trade unions, federations, confederations). Creation of competing peak organisations, however, weakened links between trade unions and higher-level statutory units (federations and confederations)
5. Units of representation are in some de jure or de facto way recognised or certified by the state	Units of organisation had to be legally recognised by the Ministry of Labour	Legal recognition or certification by the Ministry of Labour was outlawed. However, only officially-registered trade unions enjoy legal status of representation of occupational categories
6. Monopoly of representation	Trade unions enjoyed a monopoly of representation of the occupational categories within their related geographical area	Trade unions keep enjoying a monopoly of representation of the occupational categories within their related geographical area

Table 2.8 – Main characteristics of the systems of interest representation in the 1943 Labour Code and the 1988 Federal Constitution, according to Schmitter's dimensions of the state corporatism (continued)

Schmitter's dimensions	The 1943 Labour Code system	The 1988 FC system
7. Units of representation are subject to formal or informal controls on leadership selection and interest articulation	The functions to be performed by trade unions, as well as outlawed practices, were detailed in the Labour Code. Union officials were subject to legal scrutiny by the Ministry of Labour in order to run for offices	Statutory controls on leadership selection and detailed definition of union functions were revoked

2.4 The Labour Code model of collective bargaining

Collective bargaining has been strongly regulated by statutory legislation since the 1930s. Clauses on collective bargaining and collective agreements in the Labour Code, including those amended by *Decreto-lei* n. 229 (28 Feb 1969), remained virtually unchanged in the 1988 FC. In effect, dispositions of the 1988 FC strengthened collective bargaining as a method of job regulation (art. 7, VI, XIII, XIV, and XXVI) and the role of trade unions as the representatives of employees in negotiations (art. 8, VI). Although negotiations between trade unions (or other kinds of employee representation) and employers (or their representatives) which do not follow Labour Code canonical rules are not outlawed, only collective agreements resulting from the compliance with these rules are granted statutory recognition.

The Labour Code model of collective bargaining encompasses two broad forms of voluntary settlement of collective disputes, depending on the role performed by the labour judicial system in the matter. In the first form, negotiations are carried out without direct interference of the labour judicial system; in the second form, magistrates start acting as mediators at some point of the bargaining process. Rules on collective bargaining that involve no mediation by labour tribunals, are stated in title VI, articles 611 to 625, of the Labour Code, whereas rules on the mediation by the labour judicial system, as well as on the arbitration of collective disputes by labour tribunals, encompasses title X, chapter IV, articles 856 to 875, of the Labour Code.

Whatever the form through which collective disputes are voluntarily settled, negotiations are carried out under the same basic bargaining structure. Table 2.9 displays the main characteristics of the bargaining structure in the private sector

according to the Labour Code model. Firm and industry levels comprise the basic bargaining levels. In the bargaining level of a firm, the parties are employees and their individual employer, whereas the parties at the industry level are occupational and economic categories. Trade unions and employers' associations have a monopolistic position as representatives of their respective categories. When negotiations are carried out at the firm level, however, the individual employer may legally act as the bargaining agent instead of its related employers' association, but the employees must be represented by a trade union. In both the basic bargaining levels, the geographical extent of the bargaining structure ranges from the area of one municipality to the nationwide level.

Table 2.9 – Characteristics of the bargaining structure in the private sector according to the Labour Code

	Basic bargaining levels	
	Firm level	Industry level
Parties	All employees of an individual employer and their individual employer	Occupational categories and economic categories
Bargaining agents	Trade unions and an individual employer	Trade unions and employers' associations
Geographic extent	From the area of one municipality to the nationwide level	
Coverage of agreements	All employees regardless of union membership and their individual employer	All employees belonging to covered occupational categories regardless of union membership, and all employers belonging to covered economic categories regardless of membership

In negotiations at the industry level, the coverage of a collective agreement encompasses (i) all employees belonging to the occupational categories mentioned in the agreement regardless of union membership, and (ii) all employers belonging to the economic categories mentioned in the agreement regardless of employers' association membership. In firm-level agreements, the coverage is limited to an individual employer and its employees, regardless of membership.

There are two major kinds of collective agreements depending on whether labour tribunals perform some function in resolving disputes: voluntary collective agreements and conciliated collective agreements. If the bargaining agents engage in negotiations without applying for labour tribunals whatsoever, the process brings about

voluntary collective agreements. According to the Labour Code, this process is called the administrative form for settling collective labour disputes. If voluntary collective agreements apply for all employees belonging to at least one occupational category, as well as for all employers belonging to at least one economic category, in a particular geographical area, these will be called voluntary collective agreements at the industry level. If agreements apply only to one employer and its employees, they will be called voluntary collective agreements at the firm level.

In order to stamp voluntary collective agreements as statutory-like instruments, these agreements, as well as their processes of negotiation, have to fulfil certain conditions. For instance, provisions must not stipulate rules in disagreement with the economic policy of the federal government (art. 623). The Labour Code also lays down the *quorum* in the general meetings of members called for the approval of collective agreements (art. 612), the maximum term of agreements (art. 614, § 3), and the obligatory record of agreements in local offices of the Ministry of Labour (art. 614).

If either a trade union or an employers´ association applies for labour tribunal arbitration, the way of settling collective labour disputes is driven to the so-called judicial form. Any individual agent, say, a trade union, is entitled to take the initiative of asking for a judicial decision regardless of the wish of the employers' association. And even if this employers' association completely disagrees with the resolution of the dispute through a labour tribunal, it and its constituency are legally bound to the terms of the judicial decision.

The judicial form gives rise to either conciliated collective agreements or arbitrated collective disputes. Conciliated collective agreements – be that at the industry level or at the firm level – consist of agreements in which bargaining agents settle prior to the tribunals pronouncing their decisions. They often emerge from the activity of mediation exercised by labour tribunals. Offering a mediated solution for the agents to decide on is indeed a compulsory procedure set down by the Labour Code (arts. 860 and 862). That is to say, an obligatory stage of conciliation has already been legally prescribed for the process of arbitration.

However, if the bargaining agents do not reach an agreement, labour tribunals pronounce decisions – arbitrated collective disputes – through which magistrates adjudicate on the terms and conditions to be brought into effect within the boundaries of those categories of employees and employers and their representative organisations

linked to the case (Labour Code, title X). Labour tribunals are granted exclusive jurisdiction over arbitrating collective labour disputes by the Federal Constitution. Moreover, this kind of arbitration enjoys a semi-compulsory nature. Although trade unions and employers' associations may agree with bargaining without applying for the labour judicial system (administrative form), the application for judicial arbitration by an individual agent makes the other agent and its constituency bound to the arbitrated collective dispute. Table 2.10 shows figures on the distribution of collective agreements and arbitrated collective disputes in the late 1980s and the early 1990s in Brazil, according to the IBGE National Survey on Trade Unions.

Table 2.10 – Collective agreements and arbitrated collective disputes by bargaining level, in Brazil, 1989-92[1]

	1989		1990		1991		1992	
	N	(%)	N	(%)	N	(%)	N	(%)
Industry level	6,492	30.8	7,292	29.8	6,922	30.8	8,211	32.9
Voluntary collective agreements	3,746	17.8	4,319	17.7	3,906	17.4	4,533	18.2
Conciliated collective agreements	2,092	9.9	2,414	9.9	2,148	9.6	2,952	11.8
Arbitrated collective disputes	654	3.1	559	2.3	868	3.9	726	2.9
Firm level	14,599	69.2	17,142	70.2	15,520	69.2	16,735	67.1
Voluntary collective agreements	10,935	51.8	13,763	56.3	11,283	50.3	11,980	48.0
Conciliated collective agreements	3,120	14.8	2,846	11.6	3,429	15.3	4,209	16.9
Arbitrated collective disputes	544	2.6	533	2.2	808	3.6	546	2.2
Total	21,091	100.0	24,434	100.0	22,442	100.0	24,946	100.0
Voluntary collective agreements	14,681	69.6	18,082	74.0	15,189	67.7	17,413	69.8
Conciliated collective agreements	5,212	24.7	5,260	21.5	5,577	24.8	7,161	28.7
Arbitrated collective disputes	1,198	5.7	1,092	4.5	1,676	7.5	1,272	5.1

Source: IBGE – National Survey on Trade Unions.
[1] Excluding the outcome of negotiations still being carried out by 31 Dec.

Figures in table 2.10 point out that most of the collective disputes in Brazil were settled by means of voluntary and conciliated agreements between 1989 and 1992. Arbitrated collective disputes accounted for only 5.6% of all legal instruments on average. In arbitrating collective disputes, labour tribunals enjoy a special power conferred upon them by regulatory legislation, that is to say, the normative power of the labour judicial system. I deal with this normative power in the next section.

2.5 The normative power of the labour judicial system

The Brazilian labour judicial system is a three-layer system of courts and tribunals, according to the Federal Constitution as well as the 1943 Labour Code, title VII, arts. 643 to 735. Labour courts (former "*Juntas de Conciliação e Julgamento*"; now "*Varas*

da Justiça do Trabalho") constitute the first layer of the labour judicial system. Their dealings fall largely within the field of individual disputes. Labour tribunals at the state level, which are called regional labour tribunals ("*Tribunais Regionais do Trabalho*"), comprise the second layer of the system. Their function is to decide on appeals of decisions pronounced by labour court magistrates, as well as to settle collective disputes within one state's geographical area. The Superior Labour Tribunal ("*Tribunal Superior do Trabalho*") is placed on the upper layer of the system. Settling collective disputes both at the regional level (more than one state) and at the national level, as well as deciding on appeals made against regional tribunals' verdicts are among their duties.

The labour judicial system enjoyed an indisputable monopolistic position in arbitrating collective labour disputes until the 1988 FC. This Constitution offered a choice for the bargaining agents to apply for non-judicial arbitration. By the late 1990s, however, no system of private arbitration of collective labour disputes had been developed in Brazil. In arbitrating collective labour disputes, regional labour tribunals and the Superior Labour Tribunal may employ the normative power of the labour judicial system ("*poder normativo da Justiça do Trabalho*"). This means that tribunals are entitled to resolve collective disputes by creating new rules of law, and not only by applying existing ones. According to Teixeira (1994: 10), this normative power denotes the legal capacity that labour tribunals enjoy when deciding upon the terms and conditions of the employment relationship, as well as upon the procedural aspects of the relationship between the bargaining agents themselves and the agents and their constituency, in the event conciliation fails.

The origin of the normative power of the labour judicial system dates back to the 1946 Federal Constitution (Pereira Leite 1981; Puech 1984). Article 123, § 2, stipulated legal competence for tribunals to create rules, provided complementary legislation had been promulgated, as follows:

> Art. 123 − The labour judicial system is declared competent to conciliate and decide upon individual and collective disputes between employees and employers, and, subject to special regulatory legislation, on any other disputes that arise from labour relations.
> § 1 − ……..….
> § 2 − The law will specify the cases in which arbitrated collective labour disputes may lay down rules on terms and conditions of the employment relationship.

The 1967-69 Federal Constitution (art. 142, § 2) kept the normative power of the labour judicial system very much in the same terms that had been established by the 1946 FC. In 1988, however, the Constitution that replaced the code of the authoritarian regime broadened the boundaries of this normative power. Article 114, § 2, established that:

> Art. 114 −…….
> § 1 −…….
> § 2 − In the event either of the parties refuses to negotiate or to accept voluntary arbitration, trade unions and employers´ associations are allowed to apply for a judicial decision, in which case the labour judicial system may set up rules and conditions, provided the minimum legal and conventional dispositions for the protection of work are observed.

Thus, the resolution of collective labour disputes in Brazil shows this peculiar feature: labour tribunals, both at the state and at the national level, enjoy a special power to settle disputes by creating rules in addition to existing regulatory legislation. Employees, employers, trade unions and employers´ associations are all legally bound to the rules that stem from judicial decisions. The single existence of such a power makes it clear that the labour judicial system plays a relevant role, even though collective disputes are not actually brought before labour tribunals. The point is that no single bargaining agent or party should ignore the prospect that the other agent or party can give up negotiations and apply for a labour tribunal, in which case the tribunal may lay down rules of law to which both agents and their constituency are bound. Therefore, collective bargaining procedures always take place under the shadow of what labour tribunals are likely to decide in regards to each of the issues brought to the table. And it is not uncommon that agents start bargaining by agreeing that, whatever the course of the negotiations, no one will unilaterally apply for judicial arbitration.

2.6 Regulation of the employment relationship by law

Besides the tradition of a state corporatist system of interest representation and the normative power of the labour judicial system, a strong regulation of the employment relationship by law is also a chief characteristic of Brazilian industrial relations. Prior to 1930, just a few pieces of legislation were promulgated (Martins 1989: 19-25; Vianna 1989: 40-62). Regulatory legislation of the employment relationship gained momentum in parallel – and as a complement – to the development of the state corporatist system in the 1930s. In 1943, the Labour Code consolidated numerous pieces of legislation that

had been decreed in previous years. Notwithstanding various amendments and the promulgation of additional legislation since then, the 1943 Labour Code has remained the key piece of the regulatory legislation of the employment relationship in Brazil.

From the 1930s to the late 1970s, the employment relationship was almost exclusively regulated by the law. This was particularly the case during most of the authoritarian periods of 1937-45 (Vargas' civilian dictatorship) and 1964-85 (military dictatorship). Managerial discretion was exercised to a certain degree, nonetheless, especially over issues that lacked governmental regulation and in case employers decided to take the Labour Code's clauses only as a minimum concerning employees' rights. Collective bargaining, however, remained absolutely marginal over these years.

Regulatory legislation comprises numerous pieces of legislation that stipulate rules on the employment relationship. The Federal Constitution is placed at the top of this legal system. Two Constitutions are of importance with respect to the period covered by this research (1978-95). The first is the Federal Constitution issued in 1967-69, which represented the legal order inherited from the military rule. It was initially proclaimed by the National Congress in 1967. However, when the regime deepened its authoritarian characteristics in 1969, this Constitution underwent major changes that were promulgated through a governmental decree. In 1985, the military left power and the newly arrived civilian government called for congressional elections and the writing of a new Constitution. In 1988, a new Federal Constitution replaced the 1967-69 FC.

According to the 1967-69 FC, labour-relations rules were included in the part concerning the social and economic order. Article 165 stipulated a set of workers' rights, and article 166 dealt with the trade union organisation and activities. The 1988 FC expanded both the scope and contents of rules on industrial relations issues, having moved them from the section concerning the social and economic order to a specific chapter on social rights which became part of the so-called fundamental rights. Article 7 provided a list of thirty-four topics laying down workers' rights, and article 10 of the section of transitory clauses set down further rules on the employment relationship.

In the hierarchy of the legal system, statutes come immediately below the Constitution as a source of the labour law. Although statutes usually consist of a law promulgated by Congress, that is, an outcome of the congressional powers of creating new rights and duties, the Brazilian legal system has also supplied instruments by means of which the government might create rights and duties, which come into force

even before their approval by Congress. Prior to the approval of the 1988 FC, a particular type of governmental decree called *decreto-lei* (literally, a decree acting as a statute) was largely used by the government as an instrument to set down rules of conduct. The 1988 Constitution replaced the *decreto-lei*, which was seen as a symbol of authoritarian rule, with a fresh instrument called provisional decree ("*medida provisória*"). In practice, provisional decrees have proved to be very much the same as the *decreto-lei*, for they give the government permission to establish rights and duties that also come into force before approval by Congress. Thus, statutes, *decreto-lei* (before Oct 1988), and provisional decrees (from Oct 1988 on) comprise the basic sources of the labour law placed immediately below the Federal Constitution in the hierarchy of the legal system.

The 1943 Labour Code, which is the main piece of legislation of the Brazilian industrial relations system, is itself a *decreto-lei* (*Decreto-lei* n. 5452, 1 May 1943). The Labour Code covers numerous industrial relations issues arranged into eleven broad parts, as shown in table 2.11.

Table 2.11 – Structure and scope of the 1943 Labour Code

Issues	Part
Introduction: basic definitions	I
On the general rules about employment protection: identification of workers, records on the employment contract, hours, minimum wages, paid holidays, and health and safety	II
On special rules about employment protection: special dispositions on hours and work conditions, nationalisation of work, and work of women and minors	III
On the individual contract of employment: pay, change, interruption, and termination of contracts, notice, and job security	IV
On trade union and employers' association organisation and administration	V
On voluntary collective agreements	VI
On administrative sanctions	VII
On the labour judicial system	VIII
On the public prosecutor service	IX
On legal proceedings	X
Final and transitory dispositions	XI

The Labour Code has undergone various amendments since 1943. The new legislation has either changed rules originally set down by the Code or stipulated further regulation on issues which were not properly covered by the Code. If a piece of legislation changes the contents of the Labour Code's clauses, it becomes a part of the

Code. If it provides further regulation, it simply becomes a new piece of labour law. The relevant statutory legislation proclaimed between 1949 and 1990 is summarized in table 2.12, according to the subject matter covered by each piece of legislation.

Table 2.12 – Relevant Brazilian statutory legislation on labour-relations issues, 1949-90

Issues	Statutes	Date
Paid weekly rest and calculation of normal pay	Act n. 605	5 Jan 1949
Extra annual pay (Extra 13th month's pay)	Act n. 4090	13 Jul 1962
Job security due to military service	Act n. 4375	17 Aug 1964
Extra annual pay (Extra 13th month's pay)	Act n. 4749	12 Aug 1965
Severance pay	Act n. 5107	13 Sept 1966
Deductions	Act n. 5725	27 Oct 1971
Temporary work	Act n. 6019	3 Jan 1974
Official benefit for education	*Decreto-Lei* n. 1422	23 Oct 1975
Meals	Act n. 6321	14 Apr 1976
Time off to seek a job after having given notice	Act n. 7093	24 Apr 1984
Paid weekly rest	Act n. 7415	9 Dec 1985
Transport	Act n. 7418	16 Dec 1985
Severance pay	Act n. 7839	12 Oct 1989
Normal date of paying wages and related issues	Act n. 7855	24 Oct 1989
Disclosure of information on FGTS	Act n. 8036	11 May 1990

Besides this enlargement of the scope of regulatory legislation, some issues deserved special attention by the government. In particular, pay and social security issues were subject to a broad legislation on specific matters.

In 1965, major statutory legislation on pay started regulating not only minimum wages, whose value the federal government had been establishing since 1942, but also the increase in nominal wages in the private sector under a context of chronic and high inflation. Between 1965 and 1995, regulatory legislation on the increase in nominal wages was closely linked to the economic policy aimed at curbing inflation. This statutory system of wage indexation gave rise to various pieces of legislation, as listed in table 2.13. I will elaborate further on this in chapter 6.

Table 2.13 – Legislation on wage indexation, 1965-95

Statutes	Date
Act n. 4725	13 Jul 1965
Act n. 5451	16 Jun 1968
Act n. 6174	29 Nov 1974
Act n. 6708	30 Oct 1979
Act n. 6886	10 Dec 1980
Decreto-Lei n. 2012	25 Jan 1983

Table 2.13 – Legislation on wage indexation, 1965-95 (continued)

Statutes	Date
Decreto-Lei n. 2024	25 May 1983
Decreto-Lei n. 2045	13 Jul 1983
Decreto-Lei n. 2065	26 Oct 1983
Act n. 7328	29 Oct 1984
Act n. 7450	23 Dec 1985
Decreto-Lei n. 2283	28 Feb 1986
Decreto-Lei n. 2284	10 Mar 1986
Decreto-Lei n. 2302	21 Nov 1986
Decreto-Lei n. 2335	12 Jun 1987
Decreto-Lei n. 2336	15 Jun 1987
Provisional Decree n. 32 (later Act n. 7730)	15 Jan 1989 (31 Jan 1989)
Provisional Decree n. 37 (later Act n. 7737)	27 Jan 1989 (28 Feb 1989)
Provisional Decree n. 48 (later Act n. 7777)	19 Apr 1989 (19 Jun 1989)
Act n. 7788	3 Jul 1989
Provisional Decree n. 154 (later Act n. 8030)	15 Mar 1990 (13 Apr 1989)
Provisional Decree n. 193 (later Act n. 8178)	25 Jun 1990 (1 Mar 1991)
Provisional Decree n. 295 (later Act n. 8178)	31 Jan 1991 (1 Mar 1991)
Act n. 8222	5 Sept 1991
Act n. 8419	7 May 1992
Act n. 8542	23 Dec 1992
Provisional Decree n. 340 (later Act n. 8700)	31 Jul 1993 (27 Aug 1993)
Provisional Decree n. 434 (later Act n. 8880)	27 Feb 1994 (27 May 1994)
Provisional Decree n. 1053 (later Act n. 10192)	30 Jun 1995 (14 Feb 2001)

Social security issues are closely connected to labour-relations regulation, although they do not belong to the field of the labour law strictly speaking. Relevant social security legislation is shown in table 2.14.

Table 2.14 – Social security legislation, 1976-92

Issues	Regulatory Legislation	Date
Consolidation of social security laws	Presidential Decree n. 77077	24 Jan 1976
Consolidation of social security laws	Presidential Decree n. 89312	23 Jan 1984
Social security benefits	Presidential Decree n. 83080	24 Jan 1984
Social security benefits	Act n. 8213	24 Jul 1991
Social security benefits	Presidential Decree n. 611	21 Jul 1992

The regulatory legislation issued by the governmental agencies and even by the president comprises the third level of the Brazilian labour law hierarchy. In principle, this kind of legislation is not expected to create new rights and duties, but only help to make clear ways of applying rights and duties established by statutes and the like. However, it sometimes acts as if it holds statutory powers (e.g. presidential decrees on

the consolidation of the social security laws). Regulatory legislation of this type mostly consists of decrees and ministerial orders. Relevant decrees and orders are displayed in table 2.15.

Table 2.15 – Relevant decrees and ministerial orders on labour-relations issues, 1949-91

Issues	Regulatory Legislation	Date
Paid weekly rest and calculation of normal pay	Presidential Decree n. 27048	12 Aug 1949
Extra annual pay (Extra 13th month's pay)	Presidential Decree n. 57155	3 Nov 1965
Payment through deposit in current account and cheque	Ministry of Labour Order n. 3245	28 Jul 1971
Meals	Presidential Decree n. 78676	8 Nov 1976
Health and safety	Ministry of Labour Order n. 3214	8 Jun 1978
Education	Presidential Decree n. 87043	22 Mar 1982
Records on hours	Ministry of Labour Order n. 3082	11 Apr. 1984
Payment through deposit in current account and cheque	Ministry of Labour Order n. 3281	7 Sept 1984
Crèche	Ministry of Labour Order n. 3286	3 Sept 1986
Shifts	Ministry of Labour Order n. 3018	30 Jan 1987
Transport	Presidential Decree n. 95247	17 Nov 1987
AIDS	Ministry of Labour and Ministry of Health Order n. 3195	10 Aug 1988
Application of constitutional rules	Ministry of Labour Normative Instruction	12 Oct 1988
Meals	Presidential Decree n. 5	14 Jan. 1991
Records and other	Ministry of Labour Order n. 3626	13 Nov 1991

2.7 Conclusion

From the 1930s to the 1980s, the Brazilian system of industrial relations consisted of a combination of a state corporatist system of interest representation and a strong state regulation of the employment relationship. Notwithstanding some of its major characteristics remained unchanged, state corporatism was considerably loosened by the Federal Constitution made in 1988. A hybrid system emerged from the 1980s. On the one hand, typical state corporatist inducements (Collier and Collier 1979), such as the monopoly of representation held by trade unions and employers' associations, as well as the trade union tax, were reinforced by the law. On the other hand, the Constitution outlawed governmental intervention in trade unions, removing typical corporatist constraints (Collier and Collier 1979) over employees' representation. Furthermore, the 1980s witnessed the creation of pluralist national peak organisations.

The statutory regulation of the employment relationship remained a prominent characteristic of the industrial relations system over the 1980s and 1990s. However, as I pointed out in the introductory chapter, there are grounds to suggest that collective bargaining started to play an important role as well. This strengthening of collective bargaining as a method of job regulation is my central research question. Before going on, however, in chapter 3 I introduce the selected bargaining units whose collective agreements provide the basic empirical material for the analysis of bargaining outcomes, as well as I explain the methodological aspects of the study.

CHAPTER 3

THE STUDY:
COLLECTIVE BARGAINING IN MANUFACTURING INDUSTRIES IN THE METROPOLITAN AREA OF PORTO ALEGRE

In this chapter, I outline the design of the study – its objectives, location, and methods of data collection and analysis. First, I state the research objectives in section 3.1. Second, in section 3.2, I deal with the empirical boundaries of the study. This involves giving an account of the location of the study and the process of data collection. Collective agreement provisions pertaining to a set of 17 selected bargaining units make up the basic units of analysis in this study. After presenting an overview of the location of the study, I explain procedures adopted for selecting bargaining units and data collection. Major characteristics of the selected trade unions and bargaining units, as well as of collective disputes resolution, are also displayed in section 3.2. Lastly, in section 3.3, I address the methods of data construction and analysis.

3.1 Objectives of the study

This study is about collective bargaining as a method of job regulation in Brazil. Its objectives are:

a) To examine the hypothesised increasing importance of collective bargaining as a method of job regulation from the late 1970s onwards in view of the wide state regulation that has characterised the Brazilian system of industrial relations since the 1930s; and

b) to assess the factors that account for change in the content of provisions regulating the employment relationship between 1978 and 1995.

The achievement of these objectives involves the following subgoals:

a) To investigate the scope of collective agreements;

b) to analyse the various categories of provisions regulating the employment relationship according to their relationship with both regulatory legislation and consolidated decisions of the Superior Labour Tribunal; and

c) to assess change in the content of substantive provisions over time, irrespective of their relationship with regulatory legislation.

3.2 Empirical boundaries of the study

3.2.1 The location of the study

The location of this study consists of 17 bargaining units at the industry level in manufacturing industries in the Metropolitan Area of Porto Alegre ("*Região Metropolitana de Porto Alegre*"), capital of the southernmost state of Rio Grande do Sul. I identified these selected bargaining units during fieldwork done in 15 trade unions which were previously chosen from a universe of 44 trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre. The demographic and economic contexts of the Metropolitan Area of Porto Alegre are dealt with in subsection 3.2.2. Details on procedures for selecting trade unions and bargaining units, as well as their major characteristics, are shown in subsections 3.2.3 to 3.2.6.

Both voluntary and conciliated collective agreements covering the period between 1978 and 1995 comprise the primary empirical material for the analysis of bargaining outcomes in the selected units. Since the subject matter of this research consists of rules set down by means of collective bargaining, arbitrated collective disputes have been discarded for the obvious reason that they are an outcome of judicial arbitration, not of bargaining. As a consequence, 287 collective agreements were gathered in order to provide the empirical material. These collective agreements accounted for 10,734 collective agreement provisions, which make up the units of analysis of bargaining outcomes in manufacturing industries in the Metropolitan Area of Porto Alegre. The number of selected collective agreements by bargaining unit is shown in table 3.1.

Table 3.1 – Number of collective agreements by selected bargaining units, in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Bargaining units	N
Milk and milk products (Porto Alegre)	16
Bread, pasta, coffee (Porto Alegre)	17
Metal (Canoas)	17
Metal (Novo Hamburgo)	16
Metal (São Leopoldo)	18

Table 3.1 – Number of collective agreements by selected bargaining units, in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95 (continued)

Bargaining units	N
Metal (Porto Alegre)	18
Metal (Sapiranga)	18
Chemicals (Porto Alegre)	16
Fertilisers (Porto Alegre)	12
Pharmaceuticals (Porto Alegre)	18
Printing (São Leopoldo)	18
Leather (Novo Hamburgo)	18
Footwear (Novo Hamburgo)	17
Footwear (São Leopoldo)	18
Footwear (Campo Bom)	16
Footwear (Sapiranga)	18
Textiles (Porto Alegre)	16
Total	287

3.2.2 Demographic and economic contexts of the Metropolitan Area of Porto Alegre

By 1995, the Metropolitan Area of Porto Alegre encompassed 22 municipalities in the state of Rio Grande do Sul. Rio Grande do Sul is the southernmost state of Brazil. The city of Porto Alegre, which gives its name to the metropolitan area, is the capital of Rio Grande do Sul. Figure 3.1 shows the geographical location of the Metropolitan Area of Porto Alegre within both Brazil and South America.

In 1981, the Metropolitan Area of Porto Alegre had 2.33 million inhabitants. After having grown at 2.4% per year since then, it reached 3.26 million inhabitants in 1995. From the early 1980s to the mid-1990s, the Metropolitan Area of Porto Alegre concentrated a still higher proportion of the state population, oscillating from 29.0% in 1981 to 33.9% in 1995. It accounted for 2.14% of the Brazilian population in 1995 (1.95% in 1981). In 1995, more than 90.0% of the population of the Metropolitan Area of Porto Alegre resided in urban areas, whereas this percentage was about 79.0% for Rio Grande do Sul and Brazil (Fundação Instituto Brasileiro de Geografia e Estatística 1981, 1995).

Figure 3.1 – Geographical location of the Metropolitan Area of Porto Alegre

In the mid-1990s, the metropolitan economy accounted for a high proportion of the state economy. The gross domestic product of the Metropolitan Area of Porto Alegre was equivalent to 45.0% of the state GDP and to 3.7% of Brazilian GDP. Its GDP per head (US$ 5,966) was greater than both the state level (US$ 4,399) and the national level (US$ 3,305). The metropolitan economic activity was highly concentrated upon manufacturing, building and services. In 1990, manufacturing and building accounted for 41.6%, while the services sector accounted for 55.9% of the metropolitan GDP. Both percentages were greater than the state and Brazilian percentages. In Rio Grande do Sul, manufacturing and building accounted for 35.5% of GDP (36.7% in Brazil) in 1990. The services sector accounted for 53.8% of the state GDP and for 53.1% of the national GDP in that same year.

As a consequence of this distribution of the economic activity, employment in the Metropolitan Area of Porto Alegre concentrated on typically urban sectors. Figures

in table 3.2 show the distribution of employment by economic sector in the Metropolitan Area of Porto Alegre in both 1981 and 1995.

Table 3.2 – Employment by economic sector in the Metropolitan Area of Porto Alegre, 1981 and 1995 (%)

	1981	1995
Agriculture	1.6	4.9
Manufacturing	24.2	20.7
Building	9.3	6.6
Other industrial activities	1.5	1.1
Commerce	13.3	15.1
Private services	39.1	42.2
Public administration	5.8	5.0
Missing	5.2	4.4

Source: IBGE – National Survey of Households.

Most of the employment in the Metropolitan Area of Porto Alegre consists of wage-earners. In 1995, wage-earners accounted for 70.0% of total employment. Table 3.3 shows the distribution of employment according to forms of occupation in the Metropolitan Area of Porto Alegre in both 1981 and 1995.

Table 3.3 – Employment by forms of occupation in the Metropolitan Area of Porto Alegre, 1981 and 1995 (%)

	1981	1995
Wage-earners[1]	77.8	70.0
Domestic	…[2]	7.5
Self-employment	17.2	19.0
Employers	3.5	5.1
No income or missing	1.5	5.9

Source: IBGE – National Survey of Households.
[1] Including domestic employees.
[2] Information was not provided.

3.2.3 Preliminary conditions for selecting bargaining units

In order to make research feasible, I had to establish some preliminary conditions for selecting bargaining units. The first condition is associated to the geographical dimension of the bargaining structure. Nationwide coverage of this study was far from being reasonable since, in Brazil, there is no central office or database where collective agreements are available for gathering. Collecting agreements always involves direct fieldwork in trade union offices. Therefore, a smaller area than that of the entire country

had to be demarcated as the geographical boundary of this research. I chose the Metropolitan Area of Porto Alegre for reasons of representativeness – regarding both manufacturing and trade unionism –, data availability, and suitability as for budgetary constraints.

The second condition concerns the bargaining level. There are grounds to suggest that, when collective bargaining 'began to get over [its] virtual atrophy' (Córdova 1989: 263) in the late 1970s, the bargaining scope started to enlarge in agreements negotiated at the industry level. For instance, Pichler (1995) shows that, between 1985 and 1991, the scope of negotiations concerning the metalworkers in two municipalities in the Metropolitan Area of Porto Alegre covered a much greater variety of issues in industrywide agreements than in single-employer agreements.

Although firm-level agreements seem to become of importance in specific economic circumstances (e.g. in negotiations over reducing hours and pay during the 1981-83 and 1990-91 recessions), they mostly included supplementary provisions to industrywide agreements. The centre of the bargaining activity in manufacturing remained at the industry level from the late 1970s to the mid-1990s. Thus, I decided to focus upon industrywide agreements with respect to the bargaining-level dimension of this research.

The third condition concerns the time dimension. The period of time covered by this study begins in 1978 in virtue of the very statement of the research questions. Prior evidence suggests that collective bargaining started to gain importance in regulating the employment relationship in the late 1970s. In 1978, Brazilian industrial relations witnessed a huge wave of strikes demanding freedom of bargaining among other claims. Thus, I demarcated the year 1978 as the starting point of this research. The last year in which data was gathered was 1995, since fieldwork was conducted in 1996.

As a consequence of these preliminary definitions, the study refers to collective bargaining at the industry level carried out in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995.

3.2.4 Selection of trade unions and bargaining units

The procedures for selecting bargaining units started out by identifying the distribution of trade unions whose constituency consisted of occupational categories in manufacturing industries in the Metropolitan Area of Porto Alegre. Since no sampling frame of bargaining units was available, I had to proceed initially by selecting a number of trade unions, and later, in the fieldwork, by identifying those bargaining units associated to the selected trade unions. In order to be subject to selection, trade unions had to comply with both of the following criteria:

a) The coverage of collective agreements comprised occupational categories in manufacturing industries; and

b) the union headquarters was located in a city belonging to the Metropolitan Area of Porto Alegre. Otherwise, the union's geographical extent had to comprise a sizeable number of cities in the Metropolitan Area.

According to the IBGE Survey on Trade Unions carried out in 1987, there were 44 trade unions in the Metropolitan Area of Porto Alegre that fulfilled these conditions. From this list, a smaller number of trade unions were selected by means of a random sampling process, with trade union as the basic sampling unit. The sample size was calculated by firstly applying the formula for proportions:

(1) $n^* = [p(1-p)]/[SE(p)]^2$

where

n^* = sample size (before finite population correction)
p = proportion of an attribute of interest
$SE(p)$ = standard error of the estimator

Then, the formula for finite population correction was applied:

(2) $n = n^*/[1+(n/N)]$

where

n = sample size (after finite population correction)
N = population

By establishing $p = 0.5$ in order to have the highest possible numerator and $SE(p) = 0.1$, I had $n^* = 25$. After correcting for a finite population of 44 trade unions

(N), a sample size of 16 unions was found. The next step comprised the proper selection of these 16 trade unions.

Systematic sampling was run by taking two major criteria into account. First, the distribution of the trade unions to be selected had to reflect the distribution of employees in the manufacturing industries in the Metropolitan Area of Porto Alegre. This meant that a trade union in an industry that accounted for a higher proportion of employees had to have a greater chance of being selected than a trade union in an industry that was responsible for a smaller proportion. A numeric interval was associated to each of the 44 trade unions on condition that the sum of these numeric intervals for trade unions belonging to a particular industry equalised the number of employees in that industry in proportion to the total number of employees in manufacturing.

Second, trade unions were ordered according to the degree of concentration of the industries whose employees comprised their constituency. Kochan and Block (1977) found the degree of industrial concentration as a strong predictor of bargaining outcomes. Therefore, ordering trade unions according to this criterion aimed at minimising bias, which could result from selecting units mostly from one or the other extreme. Figures on the proportion of employees, the total number of trade unions, and the number of selected trade unions by industry are displayed in table 3.4.

The identification of the bargaining units associated to the selected trade unions followed the sampling process. This had to be done during the fieldwork by a direct search in trade union offices. I could gather relevant data for research in all but one of the selected trade unions. The trade union discarded was in the clothing industry. As a consequence, I ended up with a set of 15 out of 44 trade unions concerning manufacturing industries in the Metropolitan Area of Porto Alegre.

Table 3.4 – Proportion of employees, total number of trade unions, and number of the selected trade unions by industry, in the Metropolitan Area of Porto Alegre

Industry	Proportion of employees, 1986 (%)[1]	Number of trade unions, 1987	Number of the selected trade unions
Food, Drink, Tobacco	7.1	3	1
Metal[2]	31.9	5	5
Tyres, Rubber	1.9	2	-
Chemicals, Pharmaceuticals	7.6	5	2
Glass, Pottery	2.3	2	-
Paper, Cellulose	2.5	4	-
Printing	3.2	2	1
Furniture, Bricks, Cement	3.4	5	-
Leather	4.8	4	1
Footwear, Clothing	31.9	9	5
Textiles	3.4	3	1
Total	100.0	44	16

Source: Ministry of Labour – Annual Report on Registered Employees (RAIS), 1986; IBGE – National Survey on Trade Unions, 1987.

[1] Employees in industries with no certified trade union were not taken into account. Employees in industries displayed in the table account for 96.3% of all legally registered employees in manufacturing industries in the Metropolitan Area of Porto Alegre by the end of 1986.

[2] Including metallurgy, mechanical engineering, electric-electronic, and motor vehicles.

These 15 trade unions corresponded to a selection of 17 bargaining units. Most of the selected trade unions were associated to only one bargaining unit at the industry level. Before determining the final set of bargaining units, I took two complementary decisions, as follows: (i) to rule out one bargaining unit in the fertiliser industry, because of lack of information; and (ii) to rule out all bargaining units in the garage sector, since this sector accounted for only a tiny proportion of the metalworkers' union constituency. Table 3.5 lists the selected trade unions, their parallel employers' associations, and related bargaining units, as they were observed in 1996. Union headquarter municipalities are shown within brackets.

3.2.5 Major characteristics of the selected trade unions

In this subsection, I aim at introducing the selected bargaining units that are the location of this study by focusing upon the major characteristics of the selected trade unions. I will go on with this in the next subsection by dealing with the instruments of collective disputes resolution. Data were gathered during fieldwork in 1996. Whenever it is

relevant and data are available, figures on the selected unions will be put in contrast to nationwide statistics published in the IBGE National Survey on Trade Unions.

Table 3.5 – Selected bargaining units and bargaining agents by industry, in manufacturing industries in the Metropolitan Area of Porto Alegre

Industries	Bargaining agents		Bargaining units
	Trade union	Employers' association	
Food	Food (Porto Alegre)	Milk and milk products (Rio Grande Sul)	Milk and milk products
	Food (Porto Alegre)	Bread and pasta (Rio Grande Sul)	Bread, pasta, coffee
Metal	Metal (Canoas)	Metal (Canoas)	Metal
	Metal (N Hamburgo)	Metal (N Hamburgo) Metal (São Leopoldo)	Metal
	Metal (São Leopoldo)	Metal (São Leopoldo) Metal (N Hamburgo)	Metal
	Metal (Porto Alegre)	Metal (Rio Grande Sul) Mechanical engineering (Brazil) Motor vehicle components (Brazil)	Metal
	Metal (Sapiranga)	Metal (Sapiranga) Metal (São Leopoldo) Metal (N Hamburgo)	Metal
Chemicals	Chemicals (P Alegre)	Chemicals (Rio G Sul)	Chemicals
Fertilisers	Chemicals (P Alegre)	Fertilisers (Rio G Sul)	Fertilisers
Pharmaceuticals	Pharmaceuticals (Porto Alegre)	Pharmaceuticals (Rio Grande Sul)	Pharmaceuticals
Printing	Printing (São Leopoldo)	Printing (Rio G Sul)	Printing
Leather	Leather (N Hamburgo)	Leather (N Hamburgo)	Leather
Footwear	Footwear (N Hamburgo)	Footwear (N Hamburgo)	Footwear
	Footwear (S Leopoldo)	Footwear (S Leopoldo)	Footwear
	Footwear (Campo Bom)	Footwear (Campo Bom)	Footwear
	Footwear (Sapiranga)	Footwear (Sapiranga)	Footwear
Textiles	Textiles (Porto Alegre)	Textiles (Rio G Sul)	Textiles

Geographical extent

The Brazilian trade union structure has the municipality as its minimum geographical unit. The statutory regulation forbids more than one trade union representing the same occupational category in the same municipality (principle of single union). Trade union constituency may thereby encompass from the area of one municipality to nationwide extent. In 1996, the selected trade unions in the Metropolitan Area of Porto Alegre were organised either according to a single-municipality basis (six out of 15 unions) or a

multiple-municipality basis (nine out of 15 unions). No union covered the whole territory of the state of Rio Grande do Sul.

This distribution of the selected trade unions by geographical extent was similar to the distribution of the Brazilian urban trade unions in 1992: single-municipality (37.3%) and multiple-municipality unions (43.0%) accounted together for eight out of ten trade unions. Trade unions covering the entire territory of a state reached a much smaller proportion of Brazilian urban trade unions (18.3%), whereas a geographical extent of more than one state, including nationwide extent, was found in only 54 trade unions (1.4%).

Year of creation

The selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre were formally established between 1913 (Food/Porto Alegre) and 1960 (Metal/Canoas). Table 3.6 shows figures on the year of foundation and the year of certification of these unions by the Ministry of Labour, as informed by union officials.

The creation of the selected trade unions occurred well before the wave of new trade unions that came about in the 1980s and the early 1990s, in particular after the promulgation of the 1988 FC. According to the IBGE National Survey on Trade Unions carried out in 1992, half of the Brazilian urban trade unions were set up after 1981. As for the other half, 38.2% trade unions were created between 1941 and 1980, and 12% in a year prior to 1940. If only trade unions in manufacturing are taken into account, however, figures are respectively 33.6% (1981-92), 49% (1941-80), and 17.4% (prior to 1940).

Membership

Figures on union membership reveal that the selected trade unions had 3,113 members on average in 1996. The metalworkers union of Porto Alegre was the largest, with 16,000 members which accounted for 45.7% of the occupational category. On the opposite extreme, the trade union representing the employees in the textiles industry of Porto Alegre had an inexpressive membership of only 50 affiliated workers, covering 11.1% of the occupational category. Table 3.7 shows figures on union membership and

union density of the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, as informed by union officials.

Table 3.6 – Year of foundation and year of certification of the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre

Trade union	Foundation	Certification
Food (Porto Alegre)	1913	…[1]
Metal (Canoas)	1960	1964
Metal (Novo Hamburgo)	1946	…[1]
Metal (São Leopoldo)	…[1]	1944
Metal (Porto Alegre)	1931	…[1]
Metal (Sapiranga)	1956	1957
Chemicals (Porto Alegre)	…[1]	1942
Pharmaceuticals (Porto Alegre)	1948	…[1]
Printing (São Leopoldo)	1956	1958
Leather (Novo Hamburgo)	1953	…[1]
Footwear (Novo Hamburgo)	1933	…[1]
Footwear (São Leopoldo)	1941	…[1]
Footwear (Campo Bom)	…[1]	1960
Footwear (Sapiranga)	1955	…[1]
Textiles (Porto Alegre)	1942	1943

Source: Union officials.
[1] Information was not provided by union officials.

Table 3.7 – Union membership and union density by the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996

Trade unions	Membership	Union density (%)[1]
Food (Porto Alegre)	740	13.9
Metal (Canoas)	7,000	70.0
Metal (Novo Hamburgo)	1,750	43.8
Metal (São Leopoldo)	3,800	34.5
Metal (Porto Alegre)	16,000	45.7
Metal (Sapiranga)	650	50.0
Chemicals (Porto Alegre)	750	34.9
Pharmaceuticals (Porto Alegre)	85	14.7
Printing (São Leopoldo)	850	40.5
Leather (Novo Hamburgo)	350	12.5
Footwear (Novo Hamburgo)	3,500	35.0
Footwear (São Leopoldo)	710	23.7
Footwear (Campo Bom)	3,800	38.8
Footwear (Sapiranga)	6,660	30.0
Textiles (Porto Alegre)	50	11.1
Mean	3,113	33.3

Source: Union officials.
[1] Union density equals the number of associated workers in proportion to the total number of employees belonging to the occupational categories represented by the trade union.

Both the mean union membership and the mean union density were greater for the selected trade unions than for the whole set of Brazilian urban trade unions. In 1996, the selected trade unions had 3,113 affiliated members, on average, whereas the figure for Brazilian urban trade unions was 2,148 members (1992). Those figures accounted for 33.3% of the employees in occupational categories represented by the selected trade unions, and for 22.7% of employees in non-agricultural activities in Brazil.

The distribution of the selected trade unions by the size of membership went the same way. While 61.4% of the Brazilian urban trade unions had 1,000 or less affiliated members in 1992, the percentage for the selected unions in Porto Alegre was 43.0% in 1996. In an intermediary interval – ranging from 1,001 to 10,000 affiliated members –, half of the selected unions and only a little more than one third of the Brazilian urban unions were found. Only a few trade unions could be considered of a large size, with 10,000 affiliated members or more. In 1996, only the metalworkers union of Porto Alegre fell into this category. In 1992, there were 137 urban trade unions (3.6%) in the same position in Brazil.

Administration

Prior to the 1988 FC, trade union internal organisation was regulated by the 1943 Labour Code. In compliance with the Labour Code, the central union administration comprised an executive council of a minimum of three and a maximum of seven officials, plus their respective substitutes, who were appointed by membership vote. A council of inspection constituted by three members and their substitutes, whose duty was to inspect union finance management, was appointed together with the executive council. In addition, unions could also appoint two representatives and their substitutes in the federation to which they were affiliated. Placed above the executive council in the hierarchy of union administration, the general meeting of members constituted the main instance of the union decision-making process.

As a consequence of the weakening of governmental powers over unions' internal affairs in the 1988 FC, the issue of union administration moved from the regulatory legislation to the arena of union discretion to a large degree. Trade union codes of rules changed in order to set down provisions on union decision-making processes and administration. This gave rise to a variety of union organisational models

and to an increasing number of officials. Table 3.8 shows the number and distribution of officials in the selected trade unions in 1996.

Table 3.8 - Number and distribution of union officials by the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996

Trade union	Executive council		Council of inspection		Representatives in federation	
	Titular	Substit	Titular	Substit	Titular	Substit
Food (Porto Alegre)	7	7	3	3	2	2
Metal (Canoas)	10	0	3	3	0	0
Metal (Novo Hamburgo)	7	7	3	3	0	0
Metal (São Leopoldo)	7	0	6	0	0	0
Metal (Porto Alegre)	15	15	5	5	0	0
Metal (Sapiranga)	18	7	3	3	0	0
Chemicals (Porto Alegre)	3	0	3	2	0	0
Pharmaceuticals (Porto Alegre)	3	3	3	3	0	0
Printing (São Leopoldo)	5	5	3	3	2	2
Leather (Novo Hamburgo)	6	6	3	3	2	2
Footwear (Novo Hamburgo)	15	15	3	3	2	2
Footwear (São Leopoldo)	7	7	3	3	2	2
Footwear (Campo Bom)	9	25	3	3	0	0
Footwear (Sapiranga)	7	7	6	0	2	2
Textiles (Porto Alegre)	3	3	3	3	0	0
Total	122	107	53	40	12	12
Mean	8.1	7.1	3.5	2.7	0.8	0.8

Trade union	Other		Total			Members over total
	Titular	Substit	Titular	Substit	Total	
Food (Porto Alegre)	0	0	12	12	24	31
Metal (Canoas)	54	0	67	3	70	100
Metal (Novo Hamburgo)	0	0	10	10	20	88
Metal (São Leopoldo)	73	0	86	0	86	44
Metal (Porto Alegre)	45	0	65	20	85	188
Metal (Sapiranga)	0	0	21	10	31	21
Chemicals (Porto Alegre)	0	0	6	2	8	94
Pharmaceuticals (Porto Alegre)	0	0	6	6	12	7
Printing (São Leopoldo)	10	0	20	10	30	28
Leather (Novo Hamburgo)	0	0	11	11	22	16
Footwear (Novo Hamburgo)	0	0	20	20	40	88
Footwear (São Leopoldo)	0	0	12	12	24	30
Footwear (Campo Bom)	0	0	12	28	40	95
Footwear (Sapiranga)	0	0	15	9	24	278
Textiles (Porto Alegre)	0	0	6	6	12	4
Total	182	0	369	159	528	88
Mean	12.1	0.0	24.6	10.6	35.2	

Source: Union officials.

In 1996, the number of officials in executive councils in the selected trade unions had become greater than in the former Labour Code model. Some trade unions

had either created new administrative bodies or enlarged the number of the substitutes in their executive councils in order to increase the total number of officials. On average, trade unions had 8.1 titular officials, ranging from three to 18 officials. The number of officials in proportion to total membership varied widely in the selected trade unions. On one side of the scale, the ratio of membership to the total amount of officials reached four for the trade union representative of the employees in the textiles industry (Porto Alegre) and seven for the pharmaceuticals industry (Porto Alegre). On the other side, this ratio was 188 for the metalworkers' union (Porto Alegre) and 278 for the trade union representative of the employees in the footwear industry (Campo Bom). On average, this ratio was 88 members by official in 1996.

Becoming a trade union official does not necessarily ensure the employee a leave of absence from duties towards employers. This should be agreed on either directly with the employer or by means of collective agreements. In 1996, 83 out of 229 officials in executive councils enjoyed either part time or full time leave of absence. Table 3.9 shows the distribution of officials in executive councils, both titular and substitute, in relation to leave of absence in the selected trade unions in 1996.

Table 3.9 – Trade union officials in executive councils by leave of absence and the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996

Trade unions	Leave of absence							
	Time		Responsible for pay				Total	No leave of absence
	Full time	Part time	Employer	Union	Both employer and union	Retired and other		
Food (Porto Alegre)	2	1	2	0	0	1	3	11
Metal (Canoas)	10	0	10	0	0	0	10	0
Metal (Novo Hamburgo)	4	1	0	3	1	1	5	9
Metal (São Leopoldo)	2	0	2	0	0	0	2	5
Metal (Porto Alegre)	11	9	0	17	1	2	20	10
Metal (Sapiranga)	2	0	0	1	1	0	2	23
Chemicals (Porto Alegre)	1	0	1	0	0	0	1	2
Pharmaceuticals (Porto Alegre)	0	0	0	0	0	0	0	6
Printing (São Leopoldo)	2	0	0	2	0	0	2	8

Table 3.9 – Trade union officials in executive councils by leave of absence and the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996 (continued)

Trade unions	Leave of absence							
	Time		Responsible for pay				Total	No leave of absence
	Full time	Part time	Employer	Union	Both employer and union	Retired and other		
Leather (Novo Hamburgo)	2	0	0	2	0	0	2	10
Footwear (Novo Hamburgo)	8	0	0	4	3	1	8	22
Footwear (São Leopoldo)	4	0	1	2	0	1	4	10
Footwear (Campo Bom)	8	0	0	6	1	1	8	26
Footwear (Sapiranga)	10	0	3	7	0	0	10	4
Textiles (Porto Alegre)	6	0	1	0	0	5	6	0
Total	72	11	20	44	7	12	83	146
Mean	4.8	0.7	1.3	2.9	0.5	0.8	5.5	9.7

Source: Union officials.

Most officials were on leave of absence at a full-time basis (86.7%) and had their remuneration paid by trade unions (53.0%). Some 24.1% of officials received pay from the employers by whom they were hired, mostly by virtue of collective agreement provisions. There were eight retired people and four part-time officials who did not receive any pay from either employers or unions.

Evidence concerning the presidents of executive councils shows a reasonable degree of continuity in the administration of the selected trade unions by 1996. Nine out of 15 presidents were at least in their second period in office as a president, and all 15 presidents had been in office in other positions for more than one period, as can be seen in table 3.10. Figures in table 3.10 also show that a considerable number of presidents in the selected trade unions participated as officials in higher-degree federations. And three presidents were also judges in labour courts as employee representatives ("*juiz classista*").

Table 3.10 – Union presidents of executive councils by selected attributes and the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996

Trade unions	Periods in office		Judge in a labour court	Official in a federation
	Any position	As president		
Food (Porto Alegre)	5	2	No	Yes
Metal (Canoas)	5	1	No	No
Metal (Novo Hamburgo)	4	3	No	No
Metal (São Leopoldo)	4	1	No	Yes
Metal (Porto Alegre)	3	1	No	No
Metal (Sapiranga)	3	3	No	Yes
Chemicals (Porto Alegre)	4	2	No	No
Pharmaceuticals (Porto Alegre)	3	1	No	Yes
Printing (São Leopoldo)	4	4	Yes	Yes
Leather (Novo Hamburgo)	3	3	Yes	Yes
Footwear (Novo Hamburgo)	3	2	No	Yes
Footwear (São Leopoldo)	2	1	No	No
Footwear (Campo Bom)	3	2	No	Yes
Footwear (Sapiranga)	4	3	No	Yes
Textiles (Porto Alegre)	6	1	Yes	Yes

Source: Union officials.

Elections and affiliation to national central organisations

The appointment of officials has usually been by vote of union members. Since the normal period of office lasts three years, about seven electoral rounds took place in the selected unions from 1977 to 1996. In two out of three elections, there had been only one electoral list. This could suggest a relatively low degree of internal rivalry. However, opposition groups won the elections at least once in ten out of the 15 selected unions during this period. Table 3.11 shows figures on elections from 1977 to 1996.

Table 3.11 – Rivalry in elections, in the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1977-96

Periods	Number of Electoral Lists				Situation win		Opposition win	
	One		Two or more					
	N	(%)	N	(%)	N	(%)	N	(%)
1977-79	12	85.7	2	14.3	14	100.0	0	0.0
1980-82	10	71.4	4	28.6	12	85.7	2	14.3
1983-85	13	86.7	2	13.3	14	93.3	1	6.7
1986-88	6	40.0	9	60.0	9	60.0	6	40.0
1989-91	9	60.0	6	40.0	14	93.3	1	6.7
1992-94	10	66.7	5	33.3	14	93.3	1	6.7
1995-96	7	70.0	3	30.0	10	100.0	0	0.0
Total	67	68.4	31	31.6	87	87.9	11	12.1

Source: Union officials.

Figures in table 3.11 show a higher degree of electoral competition over the period 1986-88 than in other periods. During this three-year period, 60% of the elections were disputed by more than one group and two out of three elections were won by an opposition group. This wave of opposition group victories in the mid-1980s was lead by factions belonging to the new unionism that replaced traditional union leadership. In the early 1980s, the Brazilian new unionism was organised under the United Workers Central ("*Central Única dos Trabalhadores*" – CUT). A change in favour of CUT occurred in nine out of the 15 selected trade unions between 1980 and 1988 when those three elections prior to 1986, won by opposition groups linked to CUT, were taken into account. In 1996, there were nine selected trade unions affiliated to CUT and six selected trade unions that had no affiliation to a national central organisation, as can be seen in table 3.12.

Table 3.12 – Affiliation to national central organisations by the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1996

Trade union	Central organisation	Year of affiliation	Prior affiliation
Food (Porto Alegre)	CUT	1991	None
Metal (Canoas)	CUT	1983	None
Metal (Novo Hamburgo)	CUT	1983	None
Metal (São Leopoldo)	CUT	1985	CONCLAT (by 1985)
Metal (Porto Alegre)	CUT	1990	None
Metal (Sapiranga)	CUT	1990	CGT – Central (1986-89)
Chemicals (Porto Alegre)	None	-	CUT (1990-93)
Pharmaceuticals (Porto Alegre)	None	-	None
Printing (São Leopoldo)	None	-	None
Leather (Novo Hamburgo)	None	-	FS (1994-95)
Footwear (Novo Hamburgo)	CUT	1984	None
Footwear (São Leopoldo)	CUT	1985	None
Footwear (Campo Bom)	None	-	None
Footwear (Sapiranga)	CUT	1987	CGT – Central (by 1986)
Textiles (Porto Alegre)	None	-	None

Source: Union officials.
Note: CUT – United Workers Central (established Aug 1983); CONCLAT – National Coordination of the Working Class ("*Coordenação Nacional das Classes Trabalhadoras*", established Nov 1983), later split into CGT – Central ("*Central Geral dos Trabalhadores*", established Mar 1986), CGT – Confederation ("*Confederação Geral dos Trabalhadores*", established May 1989), and FS – Union Power ("*Força Sindical*", established Mar 1991).

A higher degree of competition in the mid-1980s vis-à-vis the 1990s seems to have also been a feature of the whole of Brazilian unionism. According to the IBGE National Survey on Trade Unions, more than one list competed for executive councils

in 30.1% of the elections in urban trade unions between 1986 and 1988. In 1992, this figure had decreased to 22.3%. In the selected trade unions, it is likely that internal rivalry in elections lost momentum in the 1990s as a consequence of the previous victories of CUT-linked groups, which had been the driving force of opposition against traditional leadership.

Finance

In 1996, there were four major sources for financing Brazilian trade unions: the trade union tax, voluntary membership fees, collective bargaining deductions, and the contribution for the confederative system. Both the trade union tax and the contribution to the confederative system were statutory sources of union finance. The trade union tax consisted of a more traditional source, having been laid down by the 1943 Labour Code as one of the pillars of the state corporatist system. Voluntary membership fees were paid only by the unions' affiliated members, whereas a collective bargaining deduction was paid by all employees belonging to occupational categories to which the related collective agreement applied, regardless of union membership. Table 3.13 displays statistics on union finance for both the selected trade unions and the Brazilian urban trade unions.

Table 3.13 – Sources of union income and degree of dependence on the union tax, in the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1995, and in Brazilian urban trade unions, 1992

	Selected unions, 1995		Brazil, 1992
	Average	Range	
Sources of union income (%)			
Union tax	17.9	9.7-36.9	…[1]
Collective bargaining deduction	40.1	0.0-67.7	…[1]
Contribution for the confederative system	4.5	0.0-36.1	…[1]
Membership voluntary fees	28.1	0.6-71.0	…[1]
Other	9.4	3.1-18.4	…[1]
Trade unions by union tax share of total income (%)			
[0-10%]	6.7	-	35.4
(10%-20%]	46.7	-	23.1
(20%-30%]	20.0	-	12.7
(30%-50%]	26.7	-	13.3
(50%-80%]	0.0	-	8.7
(80%-100%]	0.0	-	6.8

Source: IBGE – National Survey on Trade Unions; Union officials.
[1] Figures are not provided by the IBGE – National Survey on Trade Unions.

By taking all the selected trade unions into account, the collective bargaining deduction was the singlemost important source of revenues. It accounted for 40.1% of total union income, on average, in 1995. There was one selected trade union which had no revenue from collective bargaining deduction, whereas one union proved to be largely dependent on this source, for it accounted for 67.7% of its total income in 1995. The only trade union with no income from collective bargaining deduction had given up this source and substituted it for the contribution to the confederative system.

Voluntary membership fees came second, with an average of 28.1% of the total union income. This outcome was largely influenced by the weight of the selected trade union with the second greatest amount of revenues, in which membership fees accounted for 71% of the total income. Membership fees ranged from 0.6% to 38.8% of the total income in the other selected trade unions in 1995.

The traditional union tax was responsible for only 17.9% of income in the selected unions, on average, in 1995. Moreover, the maximum magnitude of the union tax in proportion to the total income in a single union was 36.9%. National figures show that the union tax accounted for less than 30% of total income for 71.2% of the urban trade unions in 1992, suggesting a low degree of dependence upon this source.

3.2.6 The predominance of conciliated collective agreements

According to the 1943 Labour Code, there are two forms of resolving collective labour disputes in Brazil: the administrative form and the judicial form. The choice of the administrative form excludes application for judicial arbitration. In this case, the outcome of negotiations is always a voluntary collective agreement. If one or both agents apply to a labour tribunal, but negotiations go on to the point of reaching an agreement under tribunal mediation, the judicial form gives rise to a conciliated collective agreement. However, if negotiations reach an impasse and no agreement seems to be possible, labour magistrates are asked to pronounce a decision. In this case, there are two possible outcomes. First, the tribunal can simply refuse to establish a formal instrument that sets down rules on the employment relationship. This case is said to be terminated without a decision upon substantive issues. Second, magistrates can pronounce a decision by setting down rules and the instrument will then be called an arbitrated collective dispute. Thus, both voluntary and conciliated collective

agreements consist of outcomes of collective bargaining, whereas arbitrated collective disputes are the outcome of the normative power of the labour judicial system.

A large predominance of conciliated collective agreements was found within the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. Bargaining agents used to apply to the regional labour tribunal, but systematically avoided the tribunal's awarding a solution for the dispute. Table 3.14 displays figures on the formal instruments for resolving collective disputes in the selected bargaining units. I have joined together annual data in periods of three years each just for the sake of concision.

Table 3.14 – Formal instruments of collective disputes resolution, in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Period	Administrative form		Judicial form					
	Voluntary collective agreements		Conciliated collective agreements		Arbitrated collective disputes		Terminated without decision on substantive issues	
	N	(%)	N	(%)	N	(%)	N	(%)
1978-80	1	2.0	48	94.1	2	3.9	0	0.0
1981-83	0	0.0	49	96.1	2	3.9	0	0.0
1984-86	0	0.0	48	94.1	3	5.9	0	0.0
1987-89	0	0.0	51	100.0	0	0.0	0	0.0
1990-92	5	9.8	43	84.3	0	0.0	2	3.9
1993-95	7	13.7	36	70.6	3	5.9	3	5.9
Total	13	4.2	275	89.9	10	3.3	5	1.6
Mean	0.7		15.3		0.6		0.3	

Sources: Union officials.
Note: There were three disputes which had not been settled by the regional labour tribunal by 1996, when fieldwork was carried out. The selected bargaining units amount for a total of 306 instruments between 1978 and 1995.

The preference of bargaining agents for the judicial form was almost absolute up to 1989, when it started to show signs of weakening. In the 1990s, some agents moved to the administrative form of settling disputes through voluntary agreements. Nonetheless, a return to arbitrated disputes, as well as the first instances where the case terminated without reaching a decision on the substantive issues, was also observed during this period.

Application to labour tribunals seemed to be much more frequent in the selected bargaining units than in the whole number of Brazilian units linked to urban trade unions. While 84.3% of the collective disputes pertaining to the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre were settled through conciliated agreements, only 33.5% of the disputes at the industry level followed this example in relation to Brazilian urban trade unions between 1990 and 1992. Voluntary collective agreements were favoured in 56.9% of all disputes at the industry level regarding urban trade unions in Brazil.

This high incidence of the judicial form in the selected bargaining units in Porto Alegre indicates a peculiarity. It was a conscious strategy of trade unions to apply to the labour tribunal, especially during the 1980s. This strategy consisted of combining direct negotiations with employers' associations and the application to the labour regional tribunal. The application would not only ensure some decision on the substantive issues if negotiations failed, but a decision by that regional labour tribunal known as the most beneficial for employees among all regional tribunals. I will come back to this issue in chapter 8, where I discuss the relevance of the normative power of the labour judicial system for collective bargaining. At this point, it is enough to highlight that, since the regional labour tribunal in the state of Rio Grande do Sul was inclined to create rules benefiting employees whenever it was asked to settle a dispute – and trade unions would often ask –, employers' associations had no option other than searching for a reasonable deal directly with trade unions.

This point is reinforced by the more mixed evidence for the 1990s, when not only the regional labour tribunal in Rio Grande do Sul, but especially the Superior Labour Tribunal started to refuse to settle collective disputes in order to pressure the bargaining agents to settle collective disputes by themselves. Under this context, employers' associations gained greater room for refusing to negotiate. Then, either trade unions and employers' associations entirely gave up the judicial form, in order to redefine procedural aspects of their relationship in respect to collective bargaining, or negotiations hardened and a higher degree of confrontation was observed in some units. Table 3.15 shows data for each of the selected units.

Table 3.15 – Formal instruments of collective disputes resolution by the selected trade unions in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95 (%)

Trade unions	Voluntary collective agreements		Conciliated collective agreements		No agreement	
	1978-89	1990-95	1978-89	1990-95	1978-89	1990-95
Food (Porto Alegre)	0.0	0.0	100.0	83.3	0.0	16.7
Metal (Canoas)	0.0	66.7	91.7	33.3	8.3	0.0
Metal (Novo Hamburgo)	0.0	66.7	83.3	33.3	16.7	0.0
Metal (São Leopoldo)	8.3	50.0	91.7	50.0	0.0	0.0
Metal (Porto Alegre)	0.0	0.0	100.0	100.0	0.0	0.0
Metal (Sapiranga)	0.0	0.0	100.0	100.0	0.0	0.0
Chemicals (Porto Alegre)	0.0	0.0	91.7	50.0	8.3	50.0
Pharmaceuticals (Porto Alegre)	0.0	0.0	100.0	100.0	0.0	0.0
Printing (São Leopoldo)	0.0	0.0	100.0	100.0	0.0	0.0
Leather (Novo Hamburgo)	0.0	0.0	100.0	100.0	0.0	0.0
Footwear (Novo Hamburgo)	0.0	0.0	100.0	83.3	0.0	16.7
Footwear (São Leopoldo)	0.0	0.0	100.0	100.0	0.0	0.0
Footwear (Campo Bom)	0.0	0.0	100.0	66.7	0.0	33.3
Footwear (Sapiranga)	0.0	16.7	100.0	83.3	0.0	0.0
Textiles (Porto Alegre)	0.0	0.0	83.3	100.0	16.7	0.0

Source: Union officials.

Figures in table 3.15 suggest three different patterns over time. First, the traditional and prevailing pattern of applying to the regional labour tribunal before settling the dispute through conciliated agreements. The examples of this pattern, with no change from the 1980s to the 1990s, include the following trade unions: Metal (Porto Alegre), Metal (Sapiranga), Pharmaceuticals (Porto Alegre), Printing (São Leopoldo), Leather (Novo Hamburgo), and Footwear (São Leopoldo). This same pattern was also observed, although at a lower degree, in the following unions: Food (Porto Alegre), Footwear (Novo Hamburgo), Footwear (Sapiranga), and Textiles (Porto Alegre). Second, a move towards voluntary arrangements was found in the cases of Metal (Canoas), Metal (Novo Hamburgo), and Metal (São Leopoldo), where the proportion of voluntary collective agreements largely increased in the 1990s. Third, a greater degree of confrontation was observed in the Chemicals (Porto Alegre) and the Footwear (Campo Bom) unions, to which the proportion of no-agreement cases increased substantially in the 1990s.

3.3 Data construction and analysis

In this section, I give an account of the methods of data construction and data analysis which were employed in this study. The basic unit of analysis consists of rules set down by means of collective agreements. Raw data totals 10,734 collective agreement provisions laid down in 287 collective agreements pertaining to selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. These agreements cover the period from 1978 to 1995.

3.3.1 The classification of collective agreements

Data construction involved a process of coding agreement provisions according to three different perspectives of analysis, that is to say (i) the scope of collective agreements, (ii) the relationship between substantive provisions and regulatory legislation, and (iii) change in the content of rules set down by of provisions *per se* over time. Table 3.16 gives an overview of this process.

Table 3.16 – Overview of data construction

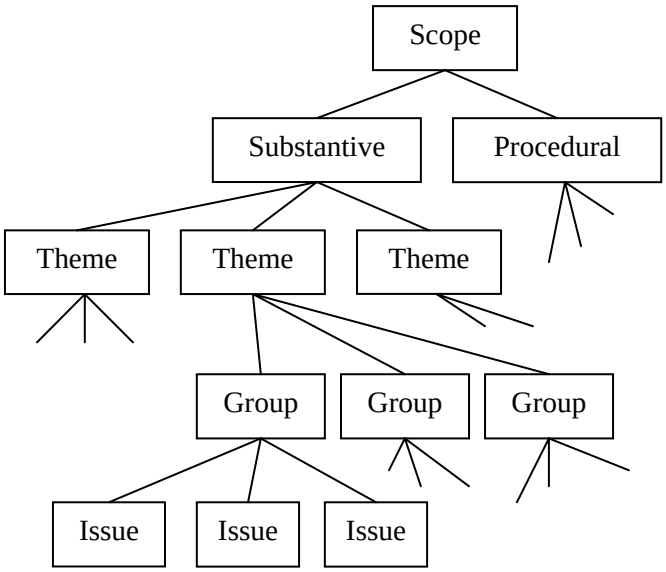
Coding categories	Units of analysis	Source
Scope	Collective agreement provisions (n = 10,734 provisions)	Voluntary and conciliated collective agreements (n=287 agreements) in selected bargaining units (n=17) in manufacturing industries in the Metropolitan Area of Porto Alegre
Relationship with regulatory legislation		
Change in the rule-content		

Scope

I designed subcategories for classifying provisions according to their scope by mostly drawing on two existing schemes (DIEESE 1995; Dunning 1985). I have named the basic values of classification as issues. Issues of similar scope are aggregated into groups, groups into themes, and themes are aggregated according to the substantive or procedural nature of their rules. This resulted in four-layer hierarchical scheme, as can be seen in Figure 3.2. The full scheme comprises 163 issues aggregated into 32 groups and 13 themes, plus the substantive-procedural distinction. I give a detailed account of

the construction of this coding frame in chapter 4, section 4.1. In reporting this and the subsequent coding frames, I aimed at the highest degree of transparency so that anyone may replicate the measurement process.

Figure 3.2 – Hierarchy of categories for classifying agreement provisions according to scope



The coding frame satisfies categorical conditions. First, subcategories for classifying agreement provisions are mutually exclusive. Each provision is classified into one-and-only-one issue. Since it has been classified into a specific issue, this provision is automatically classified into one group and one theme, as well as either substantive or procedural provision. Second, subcategories are unidimensional. Only one value applies to each subcategory. Lastly, the scheme fulfils the criteria of exaustiveness. Every single provision was coded.

Regulatory legislation

In order to analyse the contents of substantive provisions in comparison to the wide Brazilian regulatory legislation of the employment relationship, I designed a further scheme of classification. Since I did not find an attempt to measure agreement provisions vis-à-vis regulatory legislation in a comprehensive way in the literature, I had to develop an entirely original coding frame in light of the overall objectives of this study. The scheme comprises 11 subcategories, which may be aggregated according to

the beneficiary of the rule – either employers or employees. It also satisfies the criteria of mutual exclusiveness of subcategories, unidimensionality, and exaustiveness. I report the steps for building this scheme in detail in chapter 5, section 5.1.

Content of rules over time

Lastly, I built a coding frame for analysing change in the content of substantive provisions over time, regardless of their relationship with regulatory legislation. This may also be considered an original coding frame. The scheme comprises 20 subcategories, which may be aggregated into the following groups: change favouring employees, change disfavouring employees, change favouring employers, change disfavouring employers, no change, and indeterminate change. The criteria of mutual exclusiveness of subcategories, unidimensionality, and exaustiveness apply to this coding frame as well. A detailed account of the building of this scheme is given in chapter 6, subsection 6.3.1.

3.3.2 Statistical modelling

Data analysis concerning the overall question on the strengthening of collective bargaining as a method of job regulation is carried out in chapters 4 to 6. The basic approach consisted in measuring the amount of provisions classified into subcategories of interest in order to provide empirical support to the hypothesised strengthening of collective bargaining. Furthermore, I also established patterns of change in the amount of provisions of interest between 1978 and 1995.

The question on the forces that brought about change in bargaining outcomes is dealt with in chapters 7 and 8. In chapter 7, I test models explaining bargaining outcomes in terms of change in the economic variables by using ordinary least square multiple regression with panel data. Dependent variables consist of four selected measures of agreement provisions which I built from the classification of agreements chapters. Independent variables were gathered from various sources. Appendix 2 gives an account of the measurement and sources of each independent variable.

In chapter 8, I complete the analysis of the forces that brought about change in bargaining outcomes, as well as reinforce conclusions on the strengthening of collective bargaining as a method of job regulation, by focusing upon the Brazilian labour judicial

system. An analysis of consolidated decisions of the Superior Labour Tribunal is carried out by constructing data in a similar way to I did with respect to the relationship between agreement provisions and regulatory legislation. This allowed me to provide empirical evidence on change in the pattern of conduct of the Superior Labour Tribunal and the way this change affected bargaining outcomes.

CHAPTER 4

THE SCOPE OF COLLECTIVE AGREEMENTS

Between the late 1970s and the late 1980s, the Brazilian system of industrial relations underwent significant changes after decades of institutional continuity under the state corporatist system of interest representation. Among these changes, collective bargaining is supposed to have come to play some role of importance as a method of job regulation. One researcher even mentions that, in the late 1970s, collective bargaining 'began to get over virtual atrophy' (Córdova 1989: 263). A sharp increase in the amount of provisions of collective agreements was observed nationwide (Vasconcellos 1983; Brandão 1991; Horn 1992; Prado 1998). This was also the case with the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre for the period 1978-95.

Collective agreements pertaining to those selected bargaining units comprise the basic empirical data of this research. Analysing the contents of their rules is the chief concern here. I start the analysis in this chapter by focusing upon the scope of agreements, i.e. those issues which were the subject matter of negotiation in collective bargaining. The main purpose consists in investigating the broadening of scope as a consequence of the increasing number of provisions. This investigation is divided into two main parts. First, I give an account of the increase in the amount of provisions and the patterns of change between 1978 and 1995. Second, I examine the main fields through which the bargaining scope broadened.

First and foremost, giving an account of the scope of agreements involves classifying their clauses according to the subject matter of the rules. This step requires a coding frame of industrial relations rules. In designing this scheme of classification, I start from the traditional distinction between substantive and procedural rules, which has been frequently used to classify industrial relations rules according to their scope after Dunlop and Flanders (Wood *et al*. 1975: 24). Since this binary division would not suffice a detailed account of the scope of agreements, further units of classification were added to the scheme, bringing about a four-layer coding frame. The basic terminology and the structure of the classification scheme are presented in section 4.1.

In section 4.1, I also deal with a methodological problem that arises in comparing the contents of agreed rules both across bargaining units and over time. Collective agreements pertaining to the selected bargaining units are made up of formal, written provisions. In classifying provisions by similar subject matter, I faced a problem of comparability in virtue of the various ways these agreements were written. The writing of an agreement does not necessarily follow clear established criteria, whereby each provision consists of a definite single rule on a specific issue. One provision may often be a compound of various rules dealing with different issues which could otherwise be helpfully divided into various clauses for the sake of accuracy. This lack of criteria makes comparing the scope of singular agreements a rather problematic, not to say impracticable, task. For instance, it is not uncommon to find more than one rule grouped into a single clause of one agreement, whereas the same rules comprise more than one clause of another agreement. Consequently, I begin the analysis by rearranging provisions in order to make collective agreements comparable in scope. Agreed rules must be singled out so that each particular rule on a specific issue is consistently classified into a unique category over time and across bargaining units. The analysis of scope is only made possible from the point where agreed rules have been rearranged and classified according to their subject matter.

I start the analysis in section 4.2 by examining the great increase in the amount of provisions between 1978 and 1995. Evidence on the increase in the number of provisions is presented, and the patterns of change in the number of provisions within the period are discussed. In section 4.3, I deal with the main topic of the chapter, that is, the scope of collective agreements. I begin by clarifying the limitations in the range of subject fields covered by the selected collective agreements in the late 1970s. Then, I give an account of the enlargement of scope which was observed from that time up to the mid-1990s. This section concludes by focusing upon the most frequently addressed issues which were brought about by the enlargement of scope. Conclusions are highlighted in section 4.4.

4.1 Classification of collective agreement provisions

In this section, I aim at introducing both the basic terminology for analysing the bargaining scope and a classification scheme of collective agreement provisions. Here, I

also face the methodological problem that arises when comparing the contents of provisions both across bargaining units and over time. In subsection 4.1.1, I define substantive and procedural rules. This primary distinction between kinds of industrial relations rules is taken as the starting point for designing a coding frame aimed at analysing the bargaining scope. Then, in subsection 4.1.2, I introduce a scheme for classifying collective agreement provisions. I also define a procedure for avoiding the methodological problem that arises in comparing agreement provisions in their original order and writing.

4.1.1 Substantive and procedural rules

Collective bargaining is a rule-making process. It is primarily conceived to lay down rules that regulate the employment relationship. Agreed rules on the employment relationship consist of rights and duties employers and employees (the parties) must comply with. However, since this process is carried through an interaction between other social agents performing the role of negotiators – usually trade unions and employers' associations (the bargaining agents) – collective bargaining also deals with the agents' relationship and their institutional rights and duties.

Definitions of collective bargaining usually point out to two major distinguishing groups of rules stipulated by agreements (Windmuller 1987: 3; Deakin and Morris 1995: 3; Córdova and Bamber 1993: 371; Burchill 1997: 99). A classical dichotomy is found in the literature at least since Dunlop and Flanders. These authors, who are deemed the two leading members of the so-called 'rules school' of industrial relations, have put forward a distinction between substantive and procedural rules (Wood *et al*. 1975). In his seminal work of 1958, *Industrial Relations Systems*, Dunlop defines the sphere of application of substantive rules by listing aspects of the employment relationship (Wood *et al*. call it a 'descriptive definition'), whereas procedural rules would concern the establishment and administration of substantive rules (Dunlop 1993: 51-52). In his theoretical discussion on collective bargaining, Flanders (1970) suggests a similar dichotomy by stating that

> The parties to collective bargaining negotiate procedural as well as substantive agreements in order to regulate their own relationships as distinct from the employment relationships of their constituents (Flanders 1970: 222).

Wood *et al*. (1975) discuss the role and classification of rules within the industrial relations theory with reference to the work of Dunlop and Flanders. Demarcation is made between substantive and procedural rules as follows:

Substantive rules:	- rules governing action in the production system (p. 22). - rules defining jobs (p. 24).
Procedural rules:	- rules governing action in the industrial relations system (p. 22). - rules regulating the defining process (p. 24).

In classifying collective agreement rules according to their scope, I will follow this basic distinction between substantive rules as governing jobs and procedural rules as governing rule-making.

Substantive rules, therefore, aim at directly regulating the employment relationship. These rules govern jobs. Thus, substantive rules in collective agreements apply to all individual contracts subject to the agreement. The relationship between employers and employees must follow the set of rights and duties stipulated by provisions. In regulating jobs, not individuals, substantive rules define a wide set of rights and duties pertaining to a singular job, which encompass, for instance, pay, hiring, duration of the individual contract, hours, and termination of the individual contract, among other issues. Moreover, substantive rules may even define a person other than the employee or the employer as their direct beneficiary, provided the benefit is laid down by a rule linked to a job. A benefit establishing that an employer must pay for the education of employees' children is an example of this case. A child becomes eligible at the very moment one of his parents occupies a job that is also defined by this type of rule.

Procedural rules, on their turn, are first defined as the negative of substantive rules: they do not aim at directly regulating jobs. What procedural rules do is indirectly govern the employment relationship by regulating the process of making, applying and enforcing rules. Therefore, procedural rules focus on the bargaining agents' relationship and the institutional rights and duties concerning their role as negotiators. Most of the times, procedural rules are set up to govern relations between trade unions and employers' associations (e.g. on negotiation procedures), as well as the institutional rights and duties each agent has before other agents and parties of the full spectrum of relations concerned with collective bargaining (e.g. on rights for trade unions to call

meetings of their members within the workplace). Procedural rules are also valid for the application and enforcement of collective agreements. Provisions fixing the duration of agreements and penalties imposed upon employers who oppose substantive rules are instances of procedural rules that aim at applying and enforcing collective agreements.

4.1.2 A classification scheme for analysing the scope of collective agreements

In order to give a more comprehensive account of the scope of collective bargaining, I have gone beyond the basic demarcation between substantive and procedural rules. Thus, I have developed a scheme for classifying rules on grounds of their subject field by finding out the range of issues covered by agreements regarding the selected bargaining units. This coding frame, introduced in this section, has been designed by mostly drawing on two existing schemes (DIEESE 1995; Dunning 1985). Literature on the usual contents of collective agreements and statutory clauses of employment regulation has also been useful (Grubb and Wells 1993; Dunn and Wright 1994; Storey 1980; Green 1994).

Collective agreements pertaining to the selected bargaining units are made up of formal, written clauses. These clauses consist of rules as they are originally arranged in collective agreements, that is, in the order and phrasing present in real agreements. Taking clauses as the unit of analysis, however, would bring about serious methodological problems in comparing their contents across bargaining units and over time. A clause may comprise either a set of rights or duties that parties and agents must comply with or rules that do not stipulate mandatory rights and duties, although they are necessary for the making and application of collective agreements.

Clauses do not allow one to compare like with like. Consider the case of any two agreements: one agreement, say, agreement 1, includes a clause that stipulates rules on more than one particular issue, whereas the same rules (same issues and same contents) are arranged into different clauses in another agreement, say, agreement 2. The contents of one single clause in agreement 1 are actually comparable with the contents of more than one clause in agreement 2. This could mislead interpretation as to their coverage. Notwithstanding agreements lay down identical rules, one could conclude that agreement 2 covers a greater variety of issues for the mere reason of setting down more than one clause.

Therefore, in order to compare like with like, the contents of collective agreements should be rearranged to single out rules according to their particular issue as much as possible. This is aimed at avoiding lumping rules on different issues together in a single clause. Two kinds of adjustment are of interest. First, if the original clause consists of a compound of rules covering different issues, its contents have to be split into various single rules according to the criterion ‘one issue, one rule’. Second, if the contents of more than one clause pertain to the same issue, they have to be combined to form a single rule. As a consequence of these rearrangements, the number of clauses as disposed in the original selected agreements will not necessarily match the number of agreed rules after adjustment, although the contents of agreements are exactly the same before and after revision. I will call these agreed rules after rearrangement of their contents provisions. Each provision is defined as a rule on a single issue. Provisions make up the basic unit of analysis in this study.

The scheme of classification of provisions according to their scope comprises three layers. The first layer refers to the issues addressed by provisions. These issues are the basic units of classification of the scheme. For instance, provisions stipulating nominal wage increase by virtue of cost-of-living increase are classified into the issue cost of living adjustment (COLA). Issues with similar scope are arranged into groups, which constitute the second layer of the classification scheme. For instance, all kinds of provisions on nominal wage increase (e.g. cost of living adjustment, minimum wages, and wages of a new employee) are gathered into a group called nominal wage increase. The third layer of the scheme comprises different themes into which the groups of issues are arranged in accordance with their subject field. The theme designed to group all rules on pay, for instance, embraces issues on this aspect of the employment relationship.

The full scheme of classification consists of 163 issues for classifying provisions. These issues are the basic units of classification. They have been elected on condition that at least one provision in the selected collective agreements stipulated a rule on the chosen issue. Thus, the coding frame itself gives an idea of the bargaining scope in the selected agreements. For instance, resulting 46 issues on pay indicate a higher frequency of provisions on such a theme in contrast with provisions on both training and temporary work, which altogether gave rise to a mere three issues of the classification scheme.

Issues have been arranged into 32 groups and 13 themes. Themes for classifying provisions aimed at directly regulating the employment relationship are: pay, hours, paid holidays, recruitment and contract of work, security of employment, temporary work, training and work conditions. They account for 132 issues. Themes for classifying procedural provisions, which account for the remaining 31 issues, are unions-management relations (rules on the institutional rights and duties of trade unions in their relationship with management), negotiation procedures and disputes resolution (rules on the regulation of the relationship between the bargaining agents concerning the making and administration of collective agreements, as well as on disputes resolution through their arbitration by labour tribunals), complementary provisions on the agreements (rules for the application of collective agreements), penalties (rules for the enforcement of collective agreements), and employers' associations (rules on the institutional rights and duties of employers' associations). Table 4.1 gives the list of themes, groups, and issues of the classification scheme of collective agreement provisions according to their scope.

Table 4.1 – Classification scheme of collective agreement provisions according to their scope

Theme 01 Pay

Group 0101 Nominal Wages Increase

Cost of living adjustment (COLA)
Annual improvement factor (AIF)
Cost of living adjustment (COLA): Employee hired after previous settlement date
Wage indexation
Complementary rules on cost of living adjustment
Minimum wages
Minimum wages indexation
Minimum wages: Special cases
Temporary substitution
New employee
Discrimination

Group 0102 Administrative Procedures on Pay

Normal date of payment
Date of payment of due wages
Form of payment
Calculation of pay
Advance payments
Documents
Deductions
Calculation of pay: Special cases
Need of health certificate for guarantee of hours and pay

Table 4.1 – Classification scheme of collective agreement provisions according to their scope (continued)

Group 0102 Administrative Procedures on Pay

Delays
Guarantees against loss through abnormal events

Group 0103 Overtime Pay

Overtime rate: General rate
Overtime rate: Sundays, holidays, paid weekly rest
Overtime rate: Holidays on Saturdays or similar under compensatory scheme of hours
Overtime rate: Employee on vacations
Number of hours of call-in-call-back pay
Overtime rate: Work on a rest day under compensatory scheme of hours

Group 0104 Pay Supplements other than Overtime

Night work pay
Seniority pay
Extra annual pay (13th pay): Advance payment
Extra annual pay (13th pay): Pay in special cases
Hazardous work
Special duties
Extra monthly pay

Group 0105 Fringe Benefits

Meals
Transport
Education
Official benefit for education ("*salário-educação*")
Crèche
Sick pay schemes
Retirement
Bereavement
Essentials ("*cesta básica*")
Marriage
Special rules on fringe benefits

Theme 02 Hours

Group 0201 Normal Working Hours

Maximum normal weekly hours
Distribution of normal weekly hours: Compensatory scheme of hours
Intervals
Start and finish times
Record of hours
Time on transport
Shifts
Unhealthy work conditions: Compensatory scheme of hours

Table 4.1 – Classification scheme of collective agreement provisions according to their scope (continued)

Group 0203 Women

Extension of hours: Compensatory scheme of hours and night work
Breast-feeding

Group 0204 Minors

Extension of hours: Compensatory scheme of hours

Group 0209 Special Rules on Hours

Short-time
Student
Extended holidays: Compensation of hours

Theme 03 Paid Holidays

Group 0301 Paid Annual Holidays

Date of payment
Start
Split
Communication
Conversion in pay
Employee without legal rights: Anticipation of holidays
Employee without legal rights: Payment
Sick and accident leave
Collective holidays
Special rules on paid annual holidays

Group 0302 Paid Leave

Maternity
Paternity
Abortion
Marriage
Death of relatives
Clinical consultation of relatives
Hospitalisation of relatives
Donation of blood
Testimony
PIS
Student
Sickness of relatives
Special rules on paid leave

Theme 04 Recruitment and Contract of Work

Group 0401 Recruitment, Promotion, and Redeployment

Tests for recruitment
Interplant transfers
Recruitment and promotion
Job ladders

Table 4.1 – Classification scheme of collective agreement provisions according to their scope (continued)

Group 0402 Trial Period
Prerequisites Period of time Exemption
Group 0403 Records and Communication
Obligation of recording in CTPS (Work and social security official booklet) Prohibition of recording in CTPS (Work and social security official booklet) Obligation of supplying documents Obligation of communication/information
Group 0404 Unpaid Leave
Clinical consultation of relatives Hospitalisation of relatives PIS Search of documents CIPA (Statutory safety committee)
Theme 05 Security of Employment and Individual Dismissals
Group 0501 Job Security
Pregnancy Military service Sick and accident leave Short of retirement
Group 0502 Administrative Procedures for Individual Dismissals
Trade union assistance Time limit for payments after dismissal Calculation of payments after dismissal Documents and communication
Group 0503 Notice of Termination of Employment
Notice period Leaving early Special rules Time off to seek for a job Severance pay FGTS (Fund for compensation for time of service)
Theme 06 Temporary Work
Group 0601 Fixed-Term Employment Contracts
Prerequisites
Theme 07 Training
Group 0701 Training
Training New technology: Retraining and redeployment

Table 4.1 – Classification scheme of collective agreement provisions according to their scope (continued)

Theme 08 Work Conditions
Group 0801 Working Environment and Welfare
Clothing Tools and equipment Facilities Women Duty of care
Group 0802 Safety
Protective clothing (EPI) Information and training Safety staff Safety measures
Group 0803 Health
Overall conditions First aid Medical checks AIDS Private health service Women Information and training
Theme 09 Unions-Management Relations
Group 0901 Union Facilities at the Workplace
Access to the workplace Time off work
Group 0902 Information and Communication
Information and communication
Group 0903 Union Finance
Collective bargaining deduction Membership fees (check-off) Trade union tax Employers´ contribution to trade unions
Group 0905 Shop Stewards
Shop stewards

Table 4.1 – Classification scheme of collective agreement provisions according to their scope (continued)

Theme 10 Negotiation Procedures and Disputes Resolution
Group 1001 Negotiation Procedures
Meetings during the term of agreement Reopening of provisions under the current agreement Trade union official and member of negotiation committee: Job security Extension of time Statements of intention Registration at the Ministry of Labour local office CIPA (Statutory safety committee) Special committees
Group 1002 Disputes Resolution
Application of the current agreement Labour courts and labour tribunals Industrial action
Theme 11 Complementary Provisions on the Agreement
Group 1101 Complementary Provisions on the Agreement
Parties Settlement date ("*data-base*") Period in force Coverage
Theme 12 Penalties
Group 1201 Penalties
Firm's delay to transfer union fees and contributions Failure to fulfil a provision Firm's delay to pay wages Firm's failure to annotate in the work and social security official booklet (CTPS) Firm's failure to pay after dismissals in due time Firm's failure to give publicity to the agreement Firm's failure to pay according to the agreement
Theme 13 Employers' Associations
Group 1301 Employers' association finance
Employers' association finance

In this section, I have established the basic terminology as well as a classification scheme of collective agreement provisions for analysing the bargaining scope in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. Before proceeding with the proper analysis of the scope, however, I give an account of the great increase in the total amount of provisions in the

selected agreements between 1978 and 1995 in section 4.2. This increase in the amount of provisions brought about an enlargement of the bargaining scope, as I analyse further in section 4.3.

4.2 The increase in the number of provisions

A sharp increase in the number of provisions after the late 1970s has been reported in studies on bargaining outcomes in Brazil (Vasconcellos 1983; Brandão 1991; Prado 1998). In researching on collective bargaining in the bank sector, I found that the number of provisions in agreements applied to bank clerks in Porto Alegre remained virtually unchanged from 1962 to 1978, oscillating between 12 and 14 provisions. After a period of sharp increase starting in 1979, however, this number more than trebled, rising to 47 provisions in 1988 (Horn 1992).

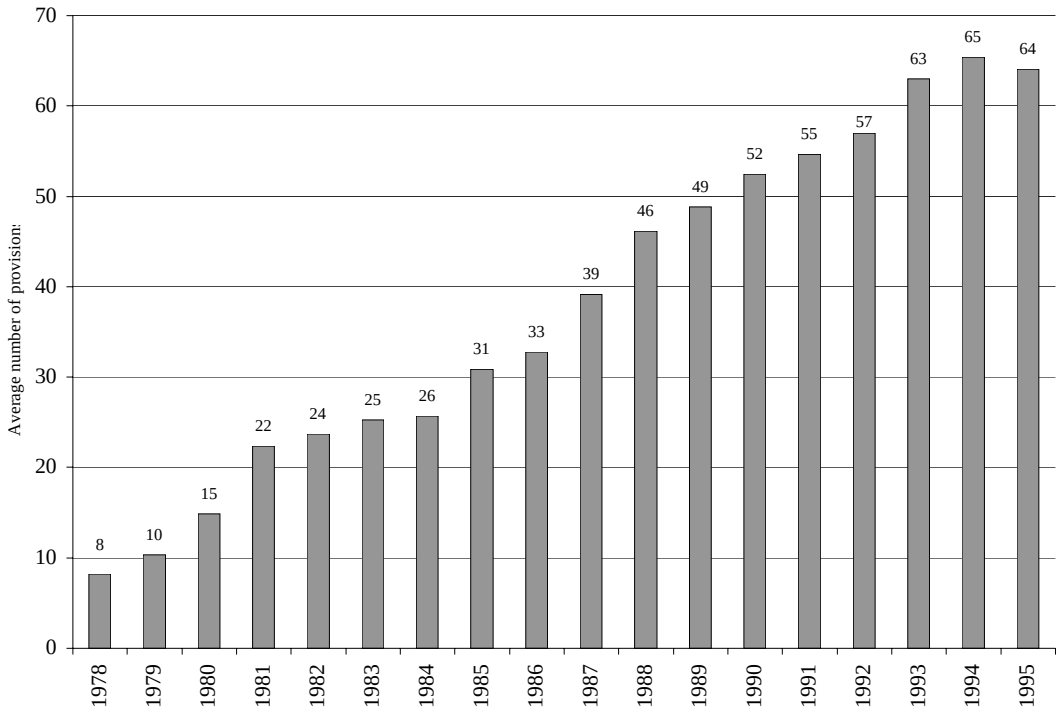
Such a great increase in the number of provisions suggests a strengthening of collective bargaining as a method of job regulation in Brazil after the late 1970s. Nonetheless, this must be taken into consideration with caution. By only pointing out an increase in the number of provisions one cannot prove, say, that the greater number of agreed rules is nothing more than a copy of statutory rules that abound in the Brazilian legal system. Hence, the increase in the number of provisions should be merely seen as a sign of change, and a reasonable starting point for a more comprehensive analysis of the contents of collective agreements.

Similarly to what has been reported concerning other bargaining units, the number of provisions in the selected agreements covering manufacturing industries in the Metropolitan Area of Porto Alegre increased sharply from the late 1970s on. In 1978, these collective agreements comprised only 8.2 provisions on average. In 1995, this number had been multiplied by almost eight times, to 64.1 provisions. Figure 4.1 shows the average amount of provisions between 1978 and 1995.

The small number of provisions in 1978 suggests that collective bargaining had not yet assumed an important role as a method of industrial relations regulation, in contrast to the extensive statutory regulation, by that year. Figures on the distribution of agreements by number of provisions reinforce this point. First, 11 out of the 17 selected agreements showed a number of provisions lower than the mean (8.2 provisions). Second, all but one agreement comprised no more than 11 provisions. And the largest

agreement comprised only 17 provisions. If one observes that in 1978 almost four decades had passed since the consolidation of a statutory framework for collective bargaining in the Labour Code, one will realise that the increase in the number of provisions after the late 1970s constitutes a very significant sign of change.

Figure 4.1 – Average amount of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95



The increase in the number of provisions was not absolutely linear. Periods of faster increase and periods of slower increase succeeded one another between 1978 and 1995. By taking the mean (3.1 provisions) and the median (2.5 provisions) of the distribution of annual change in the average amount of provisions as a yardstick, I have set the boundaries of two periods of faster increase and two periods of slower increase. I give an account of these periods in the following paragraphs.

Period 1978-81

The first period, which lasted from 1978 to 1981, represented a turning point in Brazilian trade unionism. Trade unions started to put pressure on employers to adopt collective bargaining under both a favourable economic context, characterised by low

unemployment, and a less authoritarian political scenario. The average amount of provisions in the selected agreements increased from 8.2 to 22.4 provisions. The rate of change increased yearly, reaching 7.5 provisions in 1981. Table 4.2 shows statistics on the number of provisions.

Table 4.2 – Selected statistics on the number of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-81

Year	Number of agreements	Number of provisions			Annual change in the number of provisions					
		Mean	Range		Mean	Range[1]		Number of agreements on condition that[1]		
			Min.	Max		Min.	Max.	ΔN>0	ΔN=0	ΔN<0
1978	17	8.2	5	17	-	-	-	-	-	-
1979	16	10.3	6	18	2.1	-4	8	12	3	2
1980	16	14.9	7	36	4.6	0	18	15	2	0
1981	15	22.4	9	42	7.5	-1	19	15	1	1
Mean	16	14.0	7.3	32.0	4.5	0	15.0	14.0	2.0	1.0

[1] In order to calculate these indicators in tables 4.2 to 4.5, a value was assigned for the number of provisions in those years bargaining units had not reached an agreement (19 out of 306 cases for the whole period 1978-95). This value was calculated as the midpoint between the number of provisions in agreements in immediately previous and subsequent years.

A negative change in the number of provisions was recorded only three times for the whole period. The case of Metal/São Leopoldo, with a net decrease of four provisions in 1979, is particularly interesting. This was the outcome of revoking eight procedural provisions, mostly on unions-management relations and disputes resolution, and adding four new substantive provisions on pay and hours. Among the cancelled rules was a rather odd provision stipulating that employers had to pay a financial contribution to trade unions. The case of Metal/São Leopoldo illustrates a move aimed at adjusting bargaining issues to a new age.

As a consequence of three-year increase, in 1981 the amount of provisions in single agreements ranged from nine to 42 provisions (five to 17 provisions in 1978). In 14 out of 17 collective agreements, on average, the annual change in the total number of provisions was positive, whereas a negative change occurred in just one agreement a year.

Period 1982-84

In 1982, however, the trend to increase the number of provisions lost momentum. A slower increase in the amount of provisions, which lasted from 1982 to 1984, replaced the previous vigorous pace. During this period, the annual rate of change fell off to 1.1 provisions a year, and a greater number of agreements displayed a negative change in the number of provisions at least for one year (17.6% of the selected agreements). Maximum increase in the number of provisions in a single agreement also fell off to 8.3 provisions on average (against 15 provisions in 1979-81). Table 4.3 shows selected statistics on the number of provisions between 1982 and 1984.

Table 4.3 – Selected statistics on the number of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1982-84

Year	Number of agreements	Number of provisions			Annual change in the number of provisions					
		Mean	Range		Mean	Range		Number of agreements on condition that		
			Min.	Max		Min.	Max.	ΔN>0	ΔN=0	ΔN<0
1982	17	23.7	11	42	1.3	-3	10	12	2	3
1983	17	25.2	12	44	1.5	-1	6	11	5	1
1984	16	25.7	11	46	0.5	-2	9	9	3	5
Mean	16.7	24.9	11.3	44.4	1.1	-2	8.3	10.7	3.3	3.0

Period 1985-88

The mid-1980s marked a second period of greater increase in the amount of collective agreement provisions in the selected bargaining units, which lasted from 1985 to 1988. The average rate of change in the amount of provisions climbed to 5.1 provisions a year, well above those of the previous period (1.1 provisions a year), as well as of the whole period 1979-95 (3.1 provisions a year). In 1985-88, maximum change in a single agreement reached 20.7 provisions, on average, whereas the percentage of agreements showing negative change decreased to 11.8% (eight agreements). Table 4.4 shows statistics for the period 1985-88.

Table 4.4 – Selected statistics on the number of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1985-88

Year	Number of agreements	Number of provisions			Annual change in the number of provisions					
		Mean	Range		Mean	Range		Number of agreements on condition that		
			Min.	Max		Min.	Max.	ΔN>0	ΔN=0	ΔN<0
1985	17	30.9	14	51	5.2	0	14	16	1	0
1986	15	32.8	22	55	1.9	-6	20	10	3	4
1987	17	39.1	21	60	6.3	-2	24	13	2	2
1988	17	46.2	23	79	7.1	-2	25	14	1	2
Mean	16.5	37.2	20.0	61.2	5.1	-2.5	20.7	13.3	1.7	2.0

Period 1989-95

The fourth period started in 1989 and lasted up to 1995. The average increase in the number of provisions slowed down to 2.5 provisions a year. Moreover, the annual change in the average amount of provisions was kept below the whole 1978-95 mean for all but one year. Maximum annual change in a single agreement fell off to 14.1 provisions on average, and almost one out of four agreements showed some negative change in their number of provisions. Table 4.5 shows selected statistics for the period 1989-95.

Table 4.5 – Selected statistics on the number of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1989-95

Year	Number of agreements	Number of provisions			Annual change in the number of provisions					
		Mean	Range		Mean	Range		Number of agreements on condition that		
			Min.	Max		Min.	Max.	ΔN>0	ΔN=0	ΔN<0
1989	17	48.8	24	74	2.6	-5	18	10	1	6
1990	16	52.4	26	78	3.6	-10	11	12	2	3
1991	16	54.6	29	93	2.2	-9	19	12	2	3
1992	16	57.0	27	93	2.4	-4	11	10	3	4
1993	15	63.0	29	86	6.0	-6	26	13	1	3
1994	12	65.4	31	87	2.4	-4	5	7	5	5
1995	15	64.1	36	91	-1.4	-5	9	9	3	5
Mean	15.3	57.9	28.8	86.0	2.5	-6.1	14.1	10.4	2.4	4.2

From 1989 to 1992, and later in 1994, annual change in the average amount of provisions showed little deviation from the mean (2.5 provisions). Outcomes

for 1993 and 1995, however, display a discrepancy from this pattern. In 1993, the average number of provisions increased by 6.0 provisions. This may be regarded as an exceptional event during a period of slower change in the size of collective agreements. In 1995, a decrease in the average number of provisions was observed for the first time since 1979.

Taking the whole period 1978-95 into account, the average number of provisions in the selected collective agreements was multiplied by almost eight times. From a tiny base of 8.2 provisions in 1978, these agreements reached an average 64.1 provisions in 1995. As a consequence, a vast array of new issues came to be addressed in negotiations. This expansion of the bargaining scope is analysed in section 4.3.

4.3 The expansion of the bargaining scope

In this section, I aim at analysing the bargaining scope in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre. This entails an account of industrial relations issues covered by collective agreements. In subsection 4.3.1, I start by evincing how narrow the scope of agreements was in 1978. This narrow agreement constituted the basis over which the bargaining scope broadened from the late 1970s on. In subsection 4.3.2, which constitutes the core of this section, I analyse the expansion of the bargaining scope in the selected bargaining units between 1978 and 1995. Finally, in subsection 4.3.3, I deal with the scope of collective agreements in 1995, which is the outcome of the preceding broadening.

4.3.1 The 1978 typical agreement

In 1978, the selected collective agreements comprised only 8.2 provisions on average, ranging from five provisions (Textiles/Porto Alegre and Leather/Novo Hamburgo) to 17 provisions (Metal/São Leopoldo). A complete inventory of topics covered by all collective agreements comprised no more than 29 issues. This stands for 17.8% of the whole set of issues that came to be covered in at least one agreement of the sample by 1995. Table 4.6 shows all issues covered by at least one collective agreement in 1978. Issues are arranged by themes.

Table 4.6 – Issues covered by at least one collective agreement, in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978

Substantive issues	Procedural issues
Pay • Cost of living adjustment (COLA) • Annual improvement factor • Cost of living adjustment (COLA): Employee hired after previous settlement date • Wage indexation • Complementary rules on cost of living adjustment • Minimum wages • Seniority pay • Hazardous work Hours • Distribution of normal weekly hours: Compensatory scheme of hours • Extension of hours: Compensatory scheme of hours and night work (women) • Extension of hours: Compensatory scheme of hours and night work (minors) Paid holidays • Paid leave: Student Security of employment • Pregnancy Work conditions • Clothing	Unions-management relations • Access to the workplace • Collective bargaining deduction • Membership fees (check off) • Employers' contribution to trade unions Negotiation procedures and disputes resolution • Extension of time • Registration at the Ministry of Labour local office • Application of the current agreement • Labour courts and labour tribunals Complementary provisions on the agreement • Parties (not in the preamble) • Settlement date ("*data-base*") • Period in force • Coverage Penalties • Firm's delay to transfer union fees and contributions • Failure to fulfil a provision Employers' associations • Employers' association finance

The number of issues covered by a great deal of collective agreements, however, was much smaller than these 29 issues. There were only four issues which were covered by at least 14 out of 17 collective agreements. This group of high-frequency issues comprised cost of living adjustment (both normal COLA and COLA applied for employees hired after the previous settlement date), distribution of normal weekly hours (compensatory scheme of hours), and union finance (collective bargaining deduction). In an intermediary position, issues covered by at least six and no more than nine collective agreements consisted of three issues: extension of hours (both compensatory scheme of hours and night work for women, and compensatory scheme of hours for minors), and penalties to be applied upon firms that delayed in transferring union fees and contributions. Lastly, a lot of 20 issues was covered by no more than four agreements each, among which 14 issues were covered by only one collective agreement. Examples of these low-frequency issues are seniority pay, disputes resolution (labour courts and labour tribunals), union finance (employers' contribution to trade unions), settlement date, minimum wages, and parties (not in the preamble).

Issues of high frequency accounted for 56.1% of all provisions in 1978. Together with issues of intermediary frequency, they reached 77.0% of the total number of provisions. That means more than three quarters of provisions negotiated in 1978 were classified into just nine issues. Moreover, these issues accounted for at least 60.0% of the number of provisions in each single collective agreement, with the exception of the agreement applied to the metalworkers of São Leopoldo. This concentration of provisions in an extremely limited collection of issues gives clear evidence on how narrow the bargaining scope was in 1978. High- and intermediary-frequency issues make up what can be considered the typical collective agreement of the late 1970s. This typical agreement consisted of the following provisions:

(i) Cost of living adjustment (COLA) for employees who had been working at the previous settlement date. It has been a common feature of the Brazilian system of industrial relations that collective agreements are revised annually on what is called settlement date ("*data-base*"). Each bargaining unit has its own settlement date. COLA provisions have usually stipulated a nominal wage increase based on a cost-of-living index concerning the period of 12 months before the settlement date. In 1978, one agreement without this kind of provision included a clause on an annual improvement factor (AIF) instead. This may be regarded, in effect, as a less important difference on how to arrange rules concerning nominal wage increase. Statutory rules on wage indexation in force in 1978 would establish a mandatory floor for wage increase to be applied at the settlement date regardless of whether a collective agreement was reached by the bargaining agents. Hence, it did not matter whether any further percentage of wage increase was called COLA or AIF. In the late 1970s, as well as for most of the period of analysis, the chief point of negotiations over wages concerned the size of the extra wage increase to be added to the statutory percentage. In 1978, all agreements of the sample addressed this issue.

(ii) Cost of living adjustment (COLA) for employees hired after the previous settlement date. In 1978, statutory rules on wage indexation laid down indices to be applied only over the wages of employees who had been on the job at the previous settlement date. Any wage increase regarding employees hired afterwards had to be negotiated in order to become mandatory upon employers. Agreements used to establish indices as a variable proportion of the full statutory rate: the farther from the current settlement date the hiring was, the greater the wage-increase index.

(iii) Distribution of normal weekly hours. Maximum statutory hours were 48 per week and eight per day in 1978. If an employee worked more than eight hours a day, this employee was entitled to overtime pay. Provisions on the distribution of normal weekly hours used to consist of permission for employers to make employees work more than eight hours a day without paying for overtime, provided weekly hours did not exceed the maximum of 48 hours. This rule provided for some degree of flexibility concerning working hours vis-à-vis the legal pattern. Some agreements included further provisions closely related to the main one. Thus, in order to apply any compensatory scheme of hours both to minors and women, employers were required to obtain a special permission issued by either the Ministry of Labour or trade unions.

(iv) Union finance: Collective bargaining deduction. This kind of provision is related to deductions from employees' pay transferred to unions by employers. By and large, provisions on this issue used to stipulate a percentage to be deducted from employees' pay and a check-off scheme (employers must deduct union collective bargaining deduction from their employees' pay and transfer funds to unions in due time). A closely related provision consisted of a penalty to be imposed upon firms that delayed to transfer funds.

(v) Employers' association finance. Employers' associations also took advantage of collective bargaining in order to get funds for their activities. Provisions in nine agreements set down donations to employers' associations that firms were obliged to fulfil regardless of membership. This kind of provision was often completed by a penalty imposed upon firms that failed to accomplish their contributions.

(vi) Period in force. Provisions establishing one year as the period in force of collective agreements were included in all but one agreement.

The 1978 typical agreement consisted of rules on no more than six subject matters. Rules focusing upon substantive issues encompassed provisions on COLA and distribution of normal weekly hours, whereas provisions on union and employers' association finance, as well as on the period in force of collective agreements, established procedural rules. Although these and the less-frequent provisions benefited employees, employers and employers´ association also benefited from some rules. For instance, substantive provisions on hours were primarily designed to benefit employers, for they provided a more flexible arrangement vis-à-vis the Labour Code at the

employers' discretion. Subsidiary rules for protecting minors and women from excessive hours merely supplemented the main provision.

A narrow collection of issues typical of agreements in the late 1970s forms the basis over which the bargaining scope was enlarged from then on. In the next subsection, I focus upon the expansion of the bargaining scope in the selected collective agreements between 1978 and 1995.

4.3.2 Expansion of the bargaining scope

From 1978 to 1995, the bargaining scope enlarged in parallel to the sharp increase in the number of provisions. This expansion of scope may be observed on grounds of:

a) An increasing number of issues addressed in single collective agreements, which indicates a greater variety of matters that deserved attention by the bargaining agents within the selected units; and

b) an increasing number of collective agreements covering each singular issue, showing that the greater variety of issues were not confined to one or another single bargaining unit.

Table 4.7 shows that both the number of issues addressed in at least one agreement and the number of single issues covered by a greater amount of collective agreements increased between 1978 and 1995. Figures are displayed for 1978 and 1995, as well as for those periods identified in the previous section.

In 1978, only 29 issues were addressed in at least one agreement. This comprised what may be called the full scope of all selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre. If only those issues of higher frequency are taken into account, i.e. issues covered by half or more of the selected collective agreements, however, this number falls to only six issues. Both figures indicate how narrow the bargaining scope was in the late 1970s. This bargaining scope started to enlarge in the late 1970s. First, the average number of issues addressed in at least one collective agreement increased to 45 issues in the period 1978-81. By 1995, this number reached 148 issues. Second, the number of issues covered by at least half the selected agreements increased from 9.8, on average for the period 1978-81, to 48 issues in 1995.

Table 4.7 – Number and percentage of single issues according to their coverage by the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Coverage (% agreements)	Number and percentage of single issues[1]											
	1978		1978-81		1982-84		1985-88		1989-95		1995	
	N	(%)	N[2]	(%)	N[2]	(%)	N[2]	(%)	N[2]	(%)	N	(%)
Zero	134	82.2	118.0	72.4	80.7	49.5	57.3	35.1	22.1	13.6	15	9.2
Non-zero	29	17.8	45.0	27.6	82.3	50.5	105.7	64.9	140.9	86.4	148	90.8
[0,25)	154	94.5	142.3	87.3	130.4	80.0	117.8	72.2	90.8	55.8	87	53.4
[25,50)	3	1.8	11.0	6.7	15,7	9.6	19.3	11.8	31.0	19.0	28	17.2
[50,75)	1	0.6	4.8	2.9	9.7	5.9	12.3	7.5	16.4	10.1	24	14.7
[75,100]	5	3.1	5.0	3.1	7.3	4.5	13.8	8.4	24.7	15.2	24	14.7
[100]	0	0.0	2.0	1.2	1.7	1.0	4.0	2.5	6.4	3.9	5	3.1

[1] The total number of issues in the classification scheme is 163.
[2] Annual mean.

Further evidence on the enlargement of the bargaining scope within the selected units is provided by figures on both the degree of concentration and the Gini coefficient for the distribution of provisions by issues and groups of issues. The degree of concentration (C_i) presents the cumulative percentage of elements in a fixed amount i of classes of a distribution on condition that these are the classes with the greatest frequency of elements. Take the distribution of provisions by issues: the smaller the Ci, the lower the percentage of provisions classified into the fixed amount i of issues. Thus, a smaller C_i is also a sign of a broader bargaining scope. In table 4.8, I display the degree of concentration of the distribution of provisions by issues and groups of issues by assigning different values to i, as follows:

(1) $C_{10} = P_{10}/N$, for the distribution of provisions by issues

where

C_{10} = degree of concentration of provisions (distribution by issues)
P_{10} = cumulative amount of provisions for the ten issues with the greatest frequency of provisions
N = total amount of provisions

and

(2) $C_4 = P_4/N$, for the distribution of provisions by groups of issues

where

C_4 = degree of concentration of provisions (distribution by groups of issues)
P_4 = cumulative amount of provisions for the four groups of issues with the greatest frequency of provisions

N = total amount of provisions

Table 4.8 – Degree of concentration and Gini coefficient for distributions of provisions by issues and groups of issues, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	1978	1978-81	1982-84	1985-88	1989-95	1995
Issues (N_{max}=163)						
Gini	0.921	0.861	0.754	0.681	0.566	0.524
C_{10} (%)	79.1	60.5	35.9	29.9	23.9	22.4
Groups of issues (N_{max}=32)						
Gini	0.778	0.647	0.473	0.454	0.439	0.430
C_4 (%)	66.2	51.4	33.9	33.0	33.9	33.1

Table 4.8 also shows figures for the Gini coefficient (G) for the distribution of provisions by issues and groups of issues. The coefficient G for a discrete distribution can vary between zero and one: the closer G is to one, the more the distribution is unequally arranged, and vice versa. Take the distribution of provisions by issues: G closer to one would indicate a concentration of provisions into just a few issues. Figures in table 4.8 reinforce conclusions on the enlargement of the bargaining scope within the selected bargaining units between 1978 and 1995. First, the degree of concentration of provisions by issues decreased from 79.1% in 1978 to 22.4% in 1995. A similar downward trend was observed for the distribution of provisions by groups of issues. Second, the Gini coefficient for the distribution of provisions by issues steadily decreased from 0.921 in 1978 to 0.524 in 1995. This decrease means that a greater number of provisions came to cover a greater number of issues.

Evidence analysed so far points to the enlargement of the bargaining scope without showing which issues were mostly addressed in the selected collective agreements. Table 4.9 displays frequencies of provisions by themes, allowing for a qualitative analysis of the bargaining scope.

Table 4.9 – Average amount and percentage of provisions by themes, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Themes	1978		1978-81		1982-84		1984-88		1989-95		1995	
	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)
Substantive provisions	4.1	50.4	9.8	69.8	19.3	77.5	29.7	79.7	47.4	81.7	53.5	83.5
Pay	2.4	29.5	4.8	34.9	7.8	31.5	11.9	32.0	20.1	34.6	22.3	34.8
Hours	1.5	18.7	2.3	17.1	3.3	13.3	4.0	10.8	5.0	8.6	6.3	9.8

Paid holidays	0.1	0.7	0.3	2.1	0.9	3.5	1.9	4.8	4.6	7.8	5.8	9.1
Recruitment and contract of work	0.0	0.0	0.3	1.4	1.2	5.0	2.4	6.4	4.2	7.2	4.5	7.1
Security of employment	0.1	0.7	1.4	7.4	3.9	15.6	6.1	16.4	8.0	13.9	7.8	12.2
Temporary work	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1
Training	0.0	0.0	0.0	0.0	0.1	0.2	0.1	0.3	0.2	0.3	0.3	0.5
Work conditions	0.1	0.7	0.7	3.4	2.1	8.3	3.2	8.6	5.3	9.2	7.0	10.9
Procedural provisions	4.1	49.6	4.2	30.2	5.6	22.5	7.6	20.3	10.5	18.3	10.6	16.5
Unions-management relations	1.2	15.1	1.3	9.1	1.8	7.1	2.6	6.9	4.2	7.3	4.5	7.0
Negotiation procedures and disputes resolution	0.5	5.8	0.3	2.4	0.4	1.4	0.7	1.7	1.6	2.7	1.4	2.2
Complementary provisions	1.3	15.8	1.2	8.9	1.1	4.4	1.1	3.0	1.5	2.7	1.6	2.5
Penalties	0.4	5.0	0.6	4.0	1.4	5.6	1.9	5.1	1.6	2.8	1.5	2.3
Employers' associations	0.6	7.9	0.8	5.8	1.0	4.0	1.3	3.5	1.6	2.8	1.7	2.6
Total	8.2	100.0	13.9	100.0	24.9	100.0	37.2	100.0	57.9	100.0	64.1	100.0

Figures in table 4.9 show that the amount of substantive and procedural provisions multiplied after the late 1970s, however in a varied pace of increase. This varying pace brought about a huge change in each category's share. Thus, while procedural and substantive provisions accounted each for about half of the total number of provisions in 1978, the percentage of substantive provisions had increased to 79.8% in 1995.

The single most important theme within procedural provisions was unions-management relations, which mostly consists of institutional trade unions´ rights. It accounted for 7.3% of the total number of provisions (36.2% of procedural provisions) between 1978 and 1995, covering matters such as union access to the workplace, time off work for union activities, disclosure of information, union finance and shop stewards. Other single themes pertaining to procedural rules accounted for a smaller proportion of provisions.

With respect to substantive provisions, six themes were of importance within the selected bargaining units: pay, hours, paid holidays, recruitment and contract of work, security of employment and individual dismissals, and work conditions. Altogether, these six themes made up 79.5% of the total number of provisions between 1978 and 1995. Pay was the single most important theme, accounting for one-third of the total number of provisions. Other themes were responsible for a smaller proportion of provisions: security of employment and individual dismissals (14.3%), hours (10.3%),

work conditions (8.6%), recruitment and contract of work (6.4%), and paid holidays (6.3%).

Changes in the proportion of provisions by themes give an idea on matters which the bargaining agents have paid attention to. Substantive provisions may even be split into four groups according to this trait. The first group comprises provisions on paid holidays, recruitment and contract of work, and work conditions, whose share increased steadily from 7.1% in the period 1978-81 to 25.3% of the total number of provisions in the period 1989-95. The second group comprises provisions on hours, whose proportion showed a bias to decrease between the late 1970s (17.1%) and the early 1990s (8.6%), notwithstanding a slight recovery observed in 1994-95. The third group consists of provisions on security of employment and individual dismissals. Changes in their proportion over time described an inverted-U. After an increase from 7.4% in the period 1978-81 to 16.4% in the period 1985-88 (peak of 17.3% in 1986), its proportion fell down to 13.9% in the period 1989-95. Lastly, the fourth group is made up of provisions on pay. Their proportion showed a narrow oscillation around 33.7% (annual mean) between 1978 and 1995.

Notwithstanding the enlargement of the bargaining scope after the late 1970s, the degree of concentration of provisions by subject matter remained relatively great in the selected bargaining units by the mid-1990s. In 1995, ten single issues accounted for 22.4% and four groups of issues accounted for 33.1% of the total number of provisions. Moreover, only 48 issues had their coverage relatively spread over collective agreements, with half or more of the selected agreements including at least one provision on this collection of issues. This suggests some limits facing the broadening of the bargaining scope within the selected units. In the next subsection, I give an account of the scope of agreements in 1995.

4.3.3 The bargaining scope in 1995

In the late 1970s, agreements consisted of a small number of provisions dealing with a very limited set of industrial relations issues. About 80.0% of the total number of provisions was classified into only ten issues (C_{10}=79.1%). I have referred to them as the typical agreement of 1978. The great increase in the number of provisions along with the enlargement of their scope in the selected bargaining units brought about a

rather different picture in 1995. In this subsection, I focus on what can be called the typical bargaining scope in 1995 by selecting those issues addressed by a great deal of provisions, as well as covered by a significant number of collective agreements.

Those subject matters addressed by a great number of provisions were determined by the coefficients of concentration of provisions by issues and groups of issues. In 1995, a little more than one out of five provisions were classified into the ten most frequent issues (C_{10}=22.4%), whereas four groups of issues accounted for one third of the total number of provisions (C_4=33.1%). As for the coverage of particular issues by a significant number of collective agreements, I took those 48 issues which were addressed in half or more of the selected agreements as representing the typical collective agreement in the selected bargaining units in 1995. Table 4.10 displays the list of issues and groups of issues that accounted for the highest percentages of provisions, whereas table 4.11 shows the list of issues which were covered by half or more of the selected agreements.

Table 4.10 – Issues and groups of issues with the greatest percentages of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1995

Issues (C_{10}=22.4%)	Groups of issues (C_4=33.1%)
Work conditions: Clothing (2.7%)	Normal pay (10.9%)
Obligation of recording in CTPS (Work and social security official booklet) (2.6%)	Administrative procedures on normal pay (9.7%)
Employers' association finance (2.6%)	Fringe benefits (6.7%)
Complementary rules on cost of living adjustment (2.5%)	Normal working day (5.8%)
Unions-management relations: Information and communication (2.4%)	
Administrative procedures for individual dismissals: Documents and communication (2.3%)	

Table 4.10 – Issues and groups of issues with the greatest percentages of provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1995 (continued)

Issues (C_{10}=22.4%)	Groups of issues (C_4=33.1%)
Notice of termination of employment: Leaving early (1.9%) Safety: Protective clothing (1.9%) Distribution of normal weekly hours: Compensatory scheme of hours (1.8%) Records of hours (1.8%)	

Note: The percentage of provisions classified into each single issue or group of issues is shown within brackets.

Table 4.11 – Coverage of issues addressed in half or more of the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1995

Issues	Agreements (%)[1]	Provisions (%)[2]
Normal pay		
Cost of living adjustment (COLA)	100	1.56
Annual improvement factor (AIF)	67	1.04
Cost of living adjustment (COLA): Employee hired after previous settlement date	100	1.56
Wage indexation	60	0.94
Complementary rules on COLA	87	2.50
Minimum wages	93	1.46
Minimum wages indexation	67	1.04
Administrative procedures on pay		
Date of payment of due wages	53	1.14
Form of payment	67	1.04
Advance payments	73	1.35
Documents	80	1.25
Deductions	87	1.35
Need of health certificate for guarantee of hours and pay	53	0.83
Delays	60	0.94
Overtime pay		
Overtime rate: General rate	80	1.25
Overtime rate: Sundays, holidays, paid weekly rest	60	0.94
Pay supplements other than overtime		
Seniority pay	73	1.14
Extra annual pay (13th pay): Advance payment	53	0.83
Extra annual pay (13th pay): Pay in special cases	60	0.94
Fringe benefits		
Education	80	1.35
Bereavement	87	1.35
Normal working hours		
Distribution of normal weekly hours: Compensatory scheme of hours	100	1.77
Record of hours	67	1.77
Unhealthy work conditions: Compensatory scheme of hours	80	1.25

Table 4.11 – Coverage of issues addressed in half or more of the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1995 (continued)

Issues	Agreements (%)[1]	Provisions (%)[2]
Women		
Breast-feeding	53	0.83
Minors		
Extension of hours: Compensatory scheme of hours and night work	53	0.83
Special rules on hours		
Extended holidays: Compensation of hours	93	1.46
Paid annual holidays		
Start	60	0.94
Employee without legal rights: Anticipation of holidays	53	0.94
Employee without legal rights: Payment	67	1.04
Paid leave		
Death of relatives	60	0.94
Student	80	1.25
Records and communication		
Obligation of recording in CTPS (Work and social security official booklet)	93	2.60
Job security		
Pregnancy	93	1.46
Short of retirement	87	1.35
Administrative procedures for individual dismissals		
Time limit for payments after dismissal	60	0.94
Documents and communication	80	2.29
Notice of termination of employment		
Leaving early	93	1.87
Time off to seek for a job	53	0.83
Working environment and welfare		
Clothing	100	2.71
Safety		
Protective clothing (EPI)	67	1.87
Union facilities at the workplace		
Access to the workplace	67	1.04
Information and communication		
Information and communication	87	2.39
Union finance		
Collective bargaining deduction	93	1.46
Membership fees (check-off)	80	1.25
Complementary provisions on the agreement		
Period in force	100	1.56
Penalties		
Firms' delay to transfer union fees and contributions	73	1.56
Employers' associations		
Employers' association finance	87	2.60

[1] Percentage of the selected collective agreements that cover the single issue.
[2] Percentage of provisions classified into the single issue.

Issues listed in table 4.11 were addressed in half or more of the selected collective agreements. They accounted for 66.6% of the total number of provisions in 1995. There were 41 substantive issues and seven procedural issues. Pay was the most frequent theme, accounting for 21 issues.

In this section, I have analysed the enlargement of the bargaining scope in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. In 1978, agreements covered a narrow array of issues. A typical collective agreement of that year comprised rules on cost of living adjustment, distribution of normal weekly hours, unions and employers' associations finance, and the term of agreements. During the 1980s and the 1990s, the number of provisions increased sharply. A great deal of new issues came to be addressed in negotiations, most of them on the employment relationship. As a consequence, substantive provisions accounted for 79.8%, whereas procedural provisions were responsible for 20.2% of the total number of provisions in the whole period 1978-95. Furthermore, this enlargement of scope was not restrained to a few bargaining units; rather, all collective agreements displayed a significantly broader scope in 1995 in contrast to the 1978 scope.

4.4 Conclusion

In this chapter, I analysed the increase in the number of provisions and the consequent enlargement of the bargaining scope in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. In 1978, collective agreements consisted of provisions on pay increase under a context of high and continuous inflation, flexibilisation of hours vis-à-vis statutory rules on the issue (although protective rules for minors and women were kept unchanged), trade unions and employers' associations finance, and the term of agreements. This set of issues could be found in over half of the agreements; thus, I called it the 1978 typical collective agreement.

Union initiative to put pressure upon employers towards collective bargaining gave rise to a sharp increase in the number of provisions after the late 1970s. From 8.2 provisions on average in 1978, collective agreements in the selected units reached 64.1

provisions in 1995. Such an outcome provided a sign of the strengthening of collective bargaining as a method of job regulation within those units.

The enlargement in the bargaining scope was characterised by a wider set of substantive provisions. While in 1978 this kind of provision accounted for 50.4% of the total amount of provisions, the percentage reached 83.5% in 1995 (79.8% in the whole period 1978-95). Most of the substantive provisions were about pay, in which the proportion of the total number of provisions oscillated around two-thirds during the 1980s and the 1990s. Other relevant job-regulation themes covered by the selected agreements consisted of hours (10.3% of provisions in 1978-95), paid holidays (6.3%), recruitment and contract of work (6.4%), security of employment and individual dismissals (14.3%), and work conditions (8.6%).

Procedural provisions accounted for 20.2% of the total number of provisions in the period 1978-95. These rules covered areas such as unions-management relations (7.3% of the total number of provisions in 1978-95), negotiation procedures and disputes resolution (2.3%), complementary provisions (3.4%), penalties (3.7%), and employers' associations finance (3.4%).

The broadening of the scope was not restrained to a few bargaining units. In 1978, the group of ten most frequent issues accounted for 79.1% of the total number of provisions, whereas in 1995 this percentage had declined to 22.4%. The Gini coefficient decreased from 0.921 to 0.524. A selection of issues covered by over half of the selected agreements totalled 48 issues in 1995.

The sharp increase in the number of provisions, along with the enlargement of their scope, suggests a shift in the location of job regulation within the selected bargaining units after the late 1970s. Collective bargaining seems to have strengthened its role vis-à-vis traditional statutory regulation and unilateral regulation by management. Nevertheless, the broad coverage of labour-relations issues by statutory law, which is a major feature of Brazilian industrial relations, poses a further question for analysis. One can hardly come to a conclusion about the strengthening of collective bargaining without analysing the contents of provisions vis-à-vis statutory rules. Among other questions, this analysis would verify whether the selected collective agreements laid down additional rules or merely a copy of statutory ones. In the next chapter, I aim

at analysing this question by comparing the contents of the selected collective agreements with Brazilian regulatory legislation on industrial relations.

CHAPTER 5

SUBSTANTIVE PROVISIONS AND REGULATORY LEGISLATION

Since the 1930s, regulatory legislation has played a major role in setting labour-relations rules in Brazil. By regulatory legislation, I mean legislation directly laying down rules for the employment relationship (Kahn-Freund 1977: 24). It has been against this backcloth of an extensive regulatory array of industrial relations issues by the government that the scope of collective agreements broadened after the late 1970s. Under such a wide regulatory framework, one can hardly come to a conclusion about the strengthening of collective bargaining without contrasting the contents of agreement provisions with labour legislation, in particular with statutory rules which are the main source of Brazilian labour law. The crucial question in this respect is whether agreement provisions have established additional rules vis-à-vis existing statutory ones. Additional rules include both rules on issues not covered by regulatory legislation and rules whose contents differ from legislation addressing similar subject matters.

In this chapter, I aim at evaluating how relevant the negotiation of additional rules has been in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. Attention is paid to the contents of agreement provisions in comparison to labour legislation in order to find out to what extent collective bargaining gave rise to provisions consisting of additional rules in the employment relationship. In dealing with the regulation of the employment relationship, the focus of the analysis is directed towards substantive provisions. Substantive rules that are laid down by regulatory legislation and collective agreements aim at establishing mutual rights and obligations to parties of the employment relationship. Insofar as both statutory and agreed clauses are normative statements, they are composed of similar abstract elements, which allow for comparing collective agreements with various pieces of legislation.

An increasing number of additional rules in collective agreements suggests the strengthening of collective bargaining as a method of job regulation. If the enlargement of the bargaining scope were otherwise characterised by a high proportion of provisions, say, whose contents were already found in statutes, one would hardly envisage the strengthening of collective bargaining. This is because no actual shift in

the location of job regulation takes place when collective agreements merely reproduce both the issues and the contents of regulatory legislation.

This chapter has five sections. I start in section 5.1 by differentiating, after Reale (1996: 95-97), between two basic types of legal rules: rules of conduct and rules of organisation. Rules of conduct establish the rights and duties of social agents, whereas rules of organisation consist of subsidiary rules aiming at the proper functioning of the rules of conduct. The abstract elements that form a rule of conduct are then brought to focus, insofar as they point out what the relevant issues for the analysis of substantive provisions are. These issues form the basis for measuring the contents of provisions vis-à-vis regulatory legislation. A further coding frame, in which categories are designed to provide a measure of the extent to which collective agreement rules differ from comparing statutory ones, completes section 5.1.

In sections 5.2 to 5.4, I analyse the contents of collective agreement provisions pertaining to the selected bargaining units, by comparing them with regulatory legislation. In section 5.2, I look at the contents of substantive provisions vis-à-vis regulatory legislation in order to find out whether collective bargaining has given rise to additional rules or not. Evidence comes largely from the distribution of provisions according to the categories I have developed in section 5.1, as well as their patterns of change between 1978 and 1995. In section 5.3, I focus upon the outcomes and functions performed by provisions of advantage to employees which set down rules already found, either in scope or in scope and contents, in regulatory legislation. Lastly, in section 5.4, I analyse agreement provisions laying down rules that actually benefit employers, eventually to the point of unlawfulness, by looking at both the scope and the magnitude of this kind of provisions in the selected agreements, as well as the functions they perform. Conclusions are set forth in section 5.5.

5.1 Measurement of substantive provisions vis-à-vis regulatory legislation

5.1.1 Rules of conduct and rules of organisation

Substantive provisions consist of rules establishing mutual rights and obligations of the parties to the employment relationship. As long as provisions define rights and duties, they share common features with the most important type of legal rule, i.e. the legal rule of conduct. Substantive provisions are, in effect, rules of conduct because of their nature

as normative statements. Common abstract elements of legal rules of conduct provide a guide for analysing the contents of agreement provisions vis-à-vis regulatory legislation. This subsection aims at determining (i) what these common abstract elements are, as well as (ii) what the relevant issues for the content analysis of substantive provisions are, by individualising those abstract elements of a rule of conduct. I start by defining legal rule and differentiating between two kinds of legal rules, according to Reale (1996).

For the purposes of this research, it is enough to define legal rule as "a propositional structure that states rules of organisation and conduct, which must be obeyed in an objective and mandatory way" (Reale 1996: 95). This definition points to a discrimination between two kinds of rules. First, there are rules of conduct, that is, imperative commandments of human conduct, which establish the sort of behaviour one is expected to observe under defined conditions. Consider this example taken from the British Employment Protection (Consolidation) Act 1978, Section 49:

> (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for [one month] or more – (a) shall be not less than one week's notice if his period of continuous employment is less than two years.

This extract of Section 49 shows the particular conduct an employer who decides to terminate the contract of an employee must follow, provided conditions like 'period of continuous employment of one month or more' and 'period of continuous employment less than two years' are met. Most of the rules found in the regulatory legislation of the employment relationship refer to similar commands that employers (or employees) ought to conform to if the rule affects them.

Second, legal rules also comprise what Reale calls rules of organisation. This kind of rule plays an instrumental role in any legal system by setting requirements and conferring upon someone powers for validation, application, and change of rules of conduct. Sections for definition of terms are usually made up of rules of organisation. For instance, the British Trade Union and Labour Relations (Consolidation) Act 1992 starts by defining the meaning of trade union:

> In this Act a "trade union" means an organisation (whether temporary or permanent)—
>
> (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation

of relations between workers of that description or those descriptions and employers or employers' associations; or

(b) which consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or

(ii) representatives of such constituent or affiliated organisations,

and whose principal purposes include the regulation of relations between workers and employers or relations between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations.

In this example, the rule of organisation plays an important role in settling the sphere of application of numerous rules of conduct and other rules of organisation that form the Consolidation Act.

5.1.2 Common abstract elements of rules of conduct

Rules of conduct are usually conveyed as a logical statement of rights and duties that connects parties to a social relation under defined conditions: one pole of the relation benefits from some set of rights, whereas the other pole is obliged to fulfil some duties. Basic abstract elements of a rule of conduct may be expressed as follows:

If A happens, B must happen

This form of stating rules of conduct articulates two elements. Element A consists of a hypothetical condition that must be found in reality in order to make element B, that is, either a right or a duty, valid in a mandatory way. Element B is the core of a social link between two entities since it prescribes duties of one entity as a converse to rights of another entity, and vice versa, provided conditions stated in element A are met. Conduct B may be conveyed either as a prohibition, i.e. a negative obligation, e.g. in legislation on maximum hours or on the employment of children, or as a positive obligation, e.g. in legislation on minimum wages or on periods of notice (Kahn-Freund 1977: 27-28).

The logical link of a rule of conduct does not mean an inevitable causal connection in which B is the sure consequence of A. The sentence 'If A happens, B must happen' is not a factual statement. In effect, B is just the behaviour the legal

system expects one will follow under conditions established in A. As long as B is a normative conduct, it embodies both assumptions of being followed and not being followed at all by the one who has to bring an obligation to completion. In legal rules of conduct, consequence B is no more than the expected outcome of a logical link that subsumes conduct B under fact A.

Whenever someone does not comply with the command of a legal rule that affects him, however, the lawbreaker is put at risk of sanction. In this case, officials who carry the responsibility for enforcing legal rules must impose some sanction upon the social agent whose behaviour differs from the expected one. Therefore, a second phrase must be added to the sentence of legal rules of conduct:

If A happens, B must happen
If B does not happen, S must happen

This logical formula shows that sanction S must be imposed when conduct B is not observed. Element B is the expected behaviour one must conform to under conditions described in element A. If B is not properly observed, that is to say, in the case of a breach in the rule, sanction S must be applied to the social agent who disobeys what is stated in B as its obligation.

Common elements of rules of conduct supply a guide for analysing the contents of substantive provisions vis-à-vis regulatory legislation. Three questions are of particular importance. The first question is about the mandatory nature of rules. Legal rules of conduct do not consist of mere statements of intent, in which case the rule should be alternatively written as ‘if A happens, B is recommended to happen’. The more collective agreements establish mandatory substantive provisions, the less individual employers show any disposition not to apply what has been agreed on between unions and employers’ associations. Mandatory provisions are legally enforceable rules.

Most substantive provisions in the selected agreements set down mandatory rules by stating positive or negative obligations to be complied with by employers. However, a few provisions declare only a suggestion of conduct. For instance, a provision included in the 1995 agreement of metal workers of Porto Alegre stated a recommendation for management to take proper steps for the training and redeployment of employees whose jobs had been affected by technological change. A

recommendation acts as an advice, a suggestion for management, which does not enjoy mandatory status. If management does not follow the advice, no sanction will be imposed on grounds of the collective agreement or regulatory legislation. Non-mandatory provisions are not legally enforceable rules.

The second question refers to the parties to which mutual rights and duties are set down by collective agreements. Finding out which party actually benefits from a right and which party has to comply with an obligation is a key point. Trade unions and employers' associations (bargaining agents) negotiate on behalf of employers and employees (the parties). These agents agree on provisions that regulate (i) the employment relationship, (ii) relations between themselves, and (iii) relations between specific agents and specific parties. Any combination between employees, employers, trade unions, and employers' associations can in theory result in a pair of subjects of rights and duties. In analysing substantive provisions nonetheless, what matters is whether employees or employers benefit from regulation laid down for the employment relationship.

The third question addresses the core of the rule, i.e. what are the rights or obligations stated by provisions (element B) and under what conditions are they enforceable (element A). An answer to this question requires previous breakdown of the contents of provisions into their constituent elements according to the common expression of rules of conduct. Contrasting the contents of these elements with the contents of similar elements in regulatory legislation gives rise to different types of substantive provisions. Categories for classifying substantive provisions based on different combinations between their contents and regulatory legislation are developed in the next subsection.

5.1.3 Dimensions for analysing substantive provisions in comparison to regulatory legislation

There are three basic dimensions to consider in analysing the contents of substantive provisions in comparison to regulatory legislation which must be taken into account when designing categories for classifying provisions. These dimensions may be stated in the form of questions, as follows.

Does the substantive provision establish a mandatory rule?

Either the answer is yes, where provisions establish mandatory rules, or the answer is no, where provisions are made up of non-mandatory statements of intention.

What party benefits from the substantive provision?

An answer to this question may initially be found in the word order of provisions. If a provision states that employees are entitled to some right, the most likely answer to the question is that employees benefit from the agreed provision. The rule can alternatively be written as an obligation some party must fulfil, and it is true for a great deal of cases. In these cases the beneficiary is not the party that comes before the modal auxiliary verb "must", that is, the one which is obliged to act on the instructions of the rule, but the party that comes after the verb phrase as the object of the sentence, i.e. the one which is affected by the other's action.

A more important and problematic issue, however, comes up where negotiated employees' rights are narrower than, say, statutory ones. Such a provision, when taken on its own and in a literal way, is probably said to benefit employees. This conclusion, though, is subject to strong opposition insofar as the provision is not seen isolated from the rest of the legal system; rather, it has to be correctly examined as a particle of the system. In the context of Brazilian industrial relations, the only possible conclusion is that employers, rather than employees, benefit from this kind of rule. When necessary, a distinction between the party which is the nominal beneficiary (employees) and the party which is the actual beneficiary of the rule (employers) should be taken into account.

The fundamental axiom for deducing that employers may benefit even from agreed rules that establish employees as nominal beneficiaries resides in the principle of protection, which is located in the foundations of various systems of codified labour law. This principle states that the labour law aims at protecting employees in view of the intrinsic disequilibrium that characterises the employment relationship (Rodriguez 1996: 28). Focusing on a different legal context, Kahn-Freund puts forward that "rules governing labour relations are an attempt to mitigate the disequilibrium inherent in the employment relation" (Kahn-Freund 1977: 22). This author, however, has not come to explicitly state a principle of protection as Rodriguez has done.

According to Rodriguez, there are three main criteria for the application of the principle of protection (Rodriguez 1996: 42-43). The first one is the *in dubio, pro operario* criterion. According to this, if some doubt arises on how to interpret a rule, the decision must take the most favourable outcome from the employees' standpoint. The second criterion is that of the most favourable rule. This determines that if more than one rule regulates the same issue, decision must follow the most favourable one from the employees' standpoint, regardless of the hierarchy of the sources of law. The third criterion is that of the most favourable condition. Its consequence is that if a fresh rule comes into force and brings about a change in a previous legal condition, this previous condition must remain applicable to those employees who were already affected by it, provided it is more favourable than the one resulting from the new rule.

The criterion of the most favourable rule is of particular interest for the purposes of comparing substantive provisions and regulatory legislation. In case an agreement provision sets up employees' rights that are less favourable than statutory ones, only in literal meaning employees may be regarded as benefiting from these rights. Actually, such a rule benefits employers insofar as it brings about a reduction in the set of employees' rights. Moreover, this kind of rule is regarded as unlawful once examined according to the principle of protection. As long as statutory legislation stipulates rules that are more favourable than agreed provisions from the employees' standpoint, the criterion of the most favourable rule determines that only statutes are lawful. In the event employers start acting in accordance with such agreement provisions instead of keeping a conduct according to statutes, employees may apply to a labour court, where employers are very likely to be sentenced to reinstate those conditions fixed by statutes.

Therefore, in analysing substantive provisions, the question on the beneficiary party is neither an exclusive matter of word order, nor of the individual wish of the parties, nor of the subjective value any party attributes to the rule. One should look at this question against the backcloth of the legal system within which collective bargaining is carried out. Wherever a codified set of rules is the main source of labour law, provisions that enlarge the set of employees' rights (and, therefore, leave smaller room for managerial discretion) vis-à-vis statutory legislation will be considered as benefiting employees. On the reverse, any provision that leaves greater room for managerial discretion vis-à-vis statutory legislation will be classified as benefiting employers.

What is the relation between logical links that establish rights and duties in an agreement provision and in the pertinent piece of legislation? What is the relation between elements A and B of the agreement provision and elements A and B of the piece of legislation?

The logical link of rights and duties (elements A and B) in agreement provisions and comparable statutory clauses is the core and most complex dimension of the analysis of substantive provisions. I have developed five categories of provisions according to the answer given to this question, as follows.

(a) Category no legislation. This is the case of substantive provisions that set down rules on a subject matter which is not regulated by any piece of legislation. A provision about allowances due at the time an employee retires, for instance, fits in with this category. The 1995 agreement of metal workers of Porto Alegre ordained employers to pay an amount equal to a one-month wage to an employee when he left for retirement, on condition that he had been under the same employer for at least five years. There is no regulatory legislation that establishes an employers' duty of providing allowances for employees at their retirement time.

In all categories of mandatory provisions other than no legislation, there is always at least one piece of legislation covering a subject matter similar to that of comparing substantive provisions. The different relationship between the contents of provisions and the contents of regulatory legislation gives rise to four contrasting categories.

(b) Category broader. Substantive provisions classified into category broader stipulate rules which are more favourable than those laid down by regulatory legislation from the employees' standpoint.

Category broader applies exclusively to provisions benefiting employees. In most branches of the law, there is a hierarchy of sources to be obeyed. If one rule finds itself in contradiction with another, often that rule stipulated by the source of law placed higher in the hierarchy of the legal system prevails. For instance, if a contract between two parties establishes a clause that is opposed to a statutory rule beyond question, the contract's clause is likely to be regarded as unlawful. Statutes come before private contracts in the hierarchy of civil law. However, this is not the case with labour law, where the criterion of the most favourable rule applies in benefit of employees. Notwithstanding collective agreements are placed below statutes in the hierarchy of the

legal system, agreement provisions prevail over statutory rules if they enlarge the set of employees' rights. The only exception for this lies in regulatory legislation that explicitly establishes prohibitions for the bargaining agents to negotiate provisions that go beyond statutory rules.

For the same criterion of the most favourable rule, category broader is not consistent with provisions that benefit employers. Provisions that bring about a reduction in the set of employees' rights set down by regulatory legislation, which could be considered as "broader" from the standpoint of employers, contradict the criterion of the most favourable rule. As a consequence, no provision benefiting employers that square with the case should be classified as broader.

Substantive provisions fixing employees' rights or employers' duties broader than comparable clauses in statutes and other pieces of legislation are regarded as entirely valid in the law, coming immediately into force within the bargaining unit. Provisions on minimum wages give an example of this category. The Brazilian government has been fixing statutory minimum wages since 1942. In May 1995, employers were under the obligation of paying a monthly wage at least equal to R$ 100.00 (about US$ 110.00 at the exchange rate of the time) to any employee under normal hours. The 1995 agreement of metal workers of Porto Alegre set a minimum wage of R$ 171.60, a value 71.6% greater than the statutory one. This provision is, in effect, paradigmatic of category broader.

(c) Category operative. This category is designed to classify substantive provisions concerning the case where statutory clauses of similar subject matter are not written in a fully operative way, thereby requiring a complement to make them applicable. Thus, the basic attribute of operative provisions is to make application of regulatory legislation plain.

In classifying agreement provisions in the selected bargaining units, three classes of non-operative regulatory legislation were identified, as follows:

a) Rules that forbid some sort of conduct, mostly pertaining to that of employers', unless permission is granted by collective agreements;

b) rules whose phrasing lacks completion. Lack of completion may cause disputes of rights about the consequences of legislation. The bargaining agents might

avoid these disputes by negotiating provisions that stipulate ways of applying legislation; and

c) rules that explicitly establish more than one competing alternative of application, in which case collective agreements might elucidate what alternative should prevail, either by directly making the parties bound to one alternative or by fixing prerequisites for the application of each alternative.

Typical instances of provisions that give a party permission to act in a way which would otherwise be regarded as unlawful (class a) are found in agreements after the Federal Constitution made in 1988 came into force. The 1988 FC, article 7, VI, determines that wages are irreducible unless collective agreements allow for wage decrease. In addition, article 8, XIII, establishes a maximum of eight hours a day and forty-four hours a week as normal hours, but tolerates negotiated schemes of compensation according to which employees may work above those daily hours during certain days without being paid for overtime, on condition that they work below daily hours on other days as compensation. In fact, such a possibility of compensation of hours had already been granted by article 59 of the 1943 Labour Code. Numerous provisions in the selected agreements authorised employer practices on wages and hours that would otherwise be considered unlawful. If there were no provision allowing for reduction of nominal wages, for instance, the employers' unilateral decision to cut wages would surely be regarded as unlawful. As long as constitutional clauses consent to wage cuts, provided it is supported by an agreement provision, this kind of provision is an example of operative provisions according to which behaviour is only made lawfully operative through collective agreements.

The method of paying wages gives an example of operative provisions that regulate over competing alternatives stated by statutes and ministerial decrees (class c). The 1943 Labour Code stipulated that wages must be paid in cash at the workplace during hours, or immediately after. Ministerial orders of 1971 and 1984 updated this rule, allowing payment through deposit in current account and eventually by cheque (Ministry of Labour orders n. 3245/71 and n. 3281/84). In the selected collective agreements, there are provisions regulating payment through cheque so long as employers give employees leave from the workplace to withdraw their money during normal hours. Although legislation specifies competing ways of payment, its basic goal

is that employees must be allowed to spend their money on the same day payment is due. Payment through cheque may eventually defraud this goal. Thus, a provision ensuring time for employees to withdraw money during normal hours, which is not a mere reproduction of legal rules, removes any sign of unlawfulness of paying wages through cheque.

There is a fourth class of agreement provisions which also plays a role of stamping kinds of behaviour as lawful, although, unlike the previous three classes, comparing regulatory legislation does not necessarily require a complement to become fully operative. This is the case where prohibition or obligation of a particular behaviour may be inferred from generic clauses, despite the fact that these clauses do not explicitly address the particular behaviour. This kind of regulatory legislation may be regarded as already operative in the sense that a conduct is enforceable by law without requiring any complement through, say, collective agreements. Nevertheless, as long as its application requires more than literal interpretation, for the particular conduct may only be inferred from generic rules, it may bring about a conflict of rights, and eventually legal disputes before labour courts. Thus, if agreement provisions stipulate rules which are already enforceable by generic clauses in regulatory legislation, these provisions are also classified as operative, because they play the role of removing any doubts in regards to the application of legislation.

An example of substantive provisions fixing a conduct that may be only inferred from regulatory legislation is found in the 1995 agreement of metal workers of Porto Alegre. A provision stated that employers were not allowed to make wage deductions where interruptions of work stemmed from their own decisions. This kind of provision established a guarantee against loss of pay through abnormal events. There is no explicit statutory rule about the subject. Nevertheless, such a prohibition may be deduced from two clauses of the Labour Code. Definition of employer in article 2 entails that the risk of business must be run by those who employ. In addition, article 468 stipulates that any unilateral change in the individual employment contract by any party is unlawful. By combining both clauses, one may come to the conclusion that the sort of conduct prescribed in the metal workers' agreement was already legally enforceable, although not in a clearly expressed way. Deduction from wages may be deemed as a unilateral change of contract, as well as an attempt to partially transfer the risk of business to employees, thereby characterising an unlawful practice on the part of employers. Thus,

as long as agreed provisions explicitly stated a prohibition which had not been literally set down by the Labour Code, and this prohibition could only be deduced from generic rules, provisions were classified as operative.

(d) Category as the law. Similarly to broader and operative categories, category as the law presumes the existence of pieces of legislation covering the same subject matter. Its particular feature, however, consists in that provisions merely reproduce the contents of regulatory legislation. Either provisions simply replicate the phrasing, or they convey with different phrasing rights and duties that are already clearly determined by legislation.

Notwithstanding apparent similarities, operative and as the law categories are not exactly the same case. Category operative, on the one hand, squares provisions whose parallel regulatory legislation clauses are either clearly non-operative or raise doubts as to whether their application is lawful without the support of agreed provisions. Thus, making regulatory legislation fully operative is their basic function. As the law provisions, on the other hand, do not play such a role because corresponding regulatory legislation clauses are already clearly operative without requiring any complement. These provisions merely establish rules which have undoubtedly been set down by legislation.

Provisions on job security benefiting women after childbirth give an instance of category as the law. According to article 10, II (b), of the 1988 FC (Section of transitory clauses), dismissal of women during pregnancy and until five months after childbirth is prohibited, unless there are clear legal grounds for such a decision (e.g. misconduct). A provision in the 1995 agreement of metal workers of Porto Alegre lays down that pregnant women enjoy job security up to 150 days after childbirth. If one disregards details such as the difference between five months and 150 days, the only possible conclusion is that this provision is just a copy of the constitutional rule. As a consequence, it was classified into category as the law.

(e) Category disputable. This category groups those provisions that may be deemed as unlawful. Calling them unlawful, however, would mislead the analysis of their contents. The point is that most, if not all, disputable provisions are very likely to give rise to individual labour disputes before labour courts, where they are supposed to receive the

sign of lawfulness or unlawfulness. For this reason, it seems more accurate to call them disputable rather than unlawful provisions.

Two broad classes of provisions make up category disputable. The first class consists of employers' rights in conflict with employees' rights when employees' rights are already ensured by regulatory legislation. The second class comprises employees' rights whose contents are narrower than those fixed by regulatory legislation. Disputable provisions bring about a reduction in the set of rights already enjoyed by employees on grounds of regulatory legislation. They disagree with the criterion of the most favourable rule (principle of protection), according to which if two rules define different rights or duties on the same issue, the most favourable rule from the employees' standpoint must prevail. Disputable provisions, in effect, always benefit employers, regardless of who the nominal beneficiary is.

An example of the first class of disputable provisions is found in the 1995 metal workers' agreement. A provision authorised employers to reduce break time from the minimum statutory one hour to 30 minutes, provided they lay on meals in their own facilities. According to the Labour Code, however, employers have to apply to the Ministry of Labour in order to get such an exemption, and only officials can decide upon it. There is no piece of legislation allowing exemption on break time to be negotiated between employers' associations and trade unions. Agreement provisions that established a reduction in employees' rights by enlarging managerial discretion in collision with the Labour Code or any other piece of legislation were classified into category disputable.

An instance pertaining to the second class of disputable provisions is found in the 1995 agreement of workers in the food industry of Porto Alegre. A provision specified that employees were warranted job security for 90 days when they returned to work after a minimum period of 15 days on sick leave by virtue of accidents at the workplace. However, article 118 of Act n. 8213/91 establishes a much longer period of job security (12 months) under similar conditions. Thus, this provision was classified as disputable insofar as it had set up less favourable employees' rights than statutory ones.

5.1.4 A scheme for classifying substantive provisions in comparison to regulatory legislation

The combination of different outcomes for the questions I have dealt with in the previous subsection gave rise to 11 categories for classifying substantive provisions vis-à-vis regulatory legislation. These categories, which are displayed in table 5.1, make up a scheme for classifying substantive provisions in the selected agreements in manufacturing industries in the Metropolitan Area of Porto Alegre.

Table 5.1 – Classification scheme of substantive provisions according to their relationship with regulatory legislation

Dimensions of analysis	Categories	
Mandatory provisions benefiting employees		
• There is no piece of legislation on the issue covered by the provision	No legislation benefiting employees	1
• Provision sets down broader rights than regulatory legislation	Broader	2
• Provision sets down rules that make regulatory legislation fully operative	Operative benefiting employees	3
• Provision reproduces regulatory legislation	As the law benefiting employees	4
Mandatory provisions benefiting employers		
• There is no piece of legislation on the issue covered by the provision	No legislation benefiting employers	5
• Provision sets down rules that make regulatory legislation fully operative	Operative benefiting employers	6
• Provision reproduces regulatory legislation	As the law benefiting employers	7
• Provision sets down employers' rights in conflict with employees' rights stipulated by regulatory legislation	Disputable I	8
• Provision sets down less favourable employees' rights in comparison to regulatory legislation	Disputable II	9
Non-mandatory provisions benefiting employees	Non-mandatory provisions benefiting employees	10
Non-mandatory provisions benefiting employers	Non-mandatory provisions benefiting employers	11

In table 5.1, categories 1 to 9 pertain to mandatory substantive provisions, whereas categories 10 and 11 refer to non-mandatory substantive provisions. Categories for classifying mandatory provisions are grouped according to which party actually benefits from the rule. Thus, categories 1 to 4 consist of mandatory substantive provisions whose beneficiaries are employees, whereas categories 5 to 9 consist of provisions actually benefiting employers. A similar distinction is found among non-

mandatory provisions. In each group of mandatory provisions, categories are designed according to the possible outcomes for the logical links between rights (duties) in provisions and rights (duties) in regulatory legislation. For instance, substantive provisions fixing rules whose issue is not covered by any comparable piece of legislation should be classified into category 1 (employees as beneficiaries) or category 5 (employers as beneficiaries).

Having thus developed a coding frame for classifying substantive provisions in comparison to regulatory legislation, I now aim at analysing the outcomes of collective bargaining concerning manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. Regulatory legislation relevant for this analysis has already been discussed in chapter 2, section 2.5. In section 5.2, I start by analysing the patterns of change in the amount of those provisions that established rules without parallel, both in their issues and in their contents, in regulatory legislation. An increase in the number of these provisions means an enlargement of regulation of the employment relationship by collective bargaining.

5.2 Patterns of change in additional substantive provisions

In this section, I analyse the patterns of change in the amount of substantive provisions in search of evidence on the strengthening of collective bargaining in the selected bargaining units. Under a context of wide regulatory legislation that characterises the Brazilian industrial relations system, both an increase in the number of provisions and the enlargement of the bargaining scope – as reported in chapter 4 for the selected bargaining units over the period 1978-95 – may not be considered evidence enough to ascertain the relevance of collective bargaining in regards to the regulation of the employment relationship. A major criterion for coming to the conclusion that collective bargaining has strengthened its role as a method of job regulation, in an environment of strong state regulation of the employment relationship, consist in an increasing amount of provisions that stipulate rules which are not found in regulatory legislation. I will call this kind of provision additional provisions.

In terms of the categories listed in table 5.1, additional provisions account for mandatory substantive provisions classified in one of the following: no legislation benefiting employees (category 1), broader (category 2), no legislation benefiting

employers (category 5), disputable I (category 8), and disputable II (category 9). Those provisions classified into category as the law, as well as non-mandatory provisions, are clear instances of non-additional rules. Provisions classified into category as the law, regardless of who the beneficiary is, consist of a mere copy of regulatory legislation in their scope and content, whereas non-mandatory provisions do not enjoy the imperative status of a legal rule. As for provisions grouped into category operative, these form a borderline case. Although both their scope and contents may be found in regulatory legislation, operative provisions do not consist of a simple copy of legislation insofar as they provide an alternative choice on how to apply existing legislation. Table 5.2 displays the annual average amount of additional provisions, as well as their change, in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, between 1978 and 1995.

Table 5.2 – Average amount of additional provisions by beneficiary, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Provisions benefiting employees[1]		Provisions benefiting employers[2]		Total	
	N	Change	N	Change	N	Change
1978	1.5	…[3]	-	…[3]	1.5	…[3]
1979	3.2	1.7	-	-	3.2	1.7
1980	5.9	2.7	0.2	0.2	6.1	2.9
1981	8.3	2.4	1.1	0.9	9.5	3.3
1982	9.5	1.1	1.1	0.0	10.6	1.1
1983	10.3	0.8	1.1	-0.1	11.4	0.8
1984	10.5	0.2	1.1	0.0	11.6	0.2
1985	13.6	3.1	1.3	0.2	14.9	3.3
1986	15.5	1.9	1.3	0.0	16.8	1.9
1987	20.1	4.6	1.4	0.1	21.5	4.7
1988	24.1	4.1	2.0	0.6	26.1	4.6
1989	24.6	0.5	2.1	0.1	26.7	0.6
1990	25.9	1.3	2.5	0.4	28.4	1.7
1991	25.9	0.1	2.8	0.3	28.7	0.3
1992	26.6	0.6	3.9	1.2	30.5	1.8
1993	30.3	3.8	4.4	0.5	34.7	4.2
1994	31.4	1.1	5.3	0.9	36.8	2.0
1995	30.4	-1.0	5.3	0.0	35.7	-1.0
Mean	17.6	1.7	2.1	0.3	19.7	2.0

[1] Additional provisions benefiting employees comprise categories no legislation and broader.
[2] Additional provisions benefiting employers comprise categories no legislation, disputable I, and disputable II.
[3] Data for 1977 were not gathered.

Figures in table 5.2 account for a continuous increase in the average amount of additional provisions after the late 1970s. In 1978, no more than two provisions on average stipulated rules which were not found in regulatory legislation. This evinces that collective bargaining used to play a minor role in regulating the employment relationship within the selected units. After increasing at a rate of 2.2 provisions a year, however, the average number of additional provisions reached a figure as great as 36.8 provisions in 1994. In 1995, this figure decreased for the first time since 1978. This multiplication in the number of additional provisions also brought about an increase in the percentage of the total amount of substantive provisions, which almost doubled from 37.1% in 1978 to 66.8% in 1995. As a consequence, the picture had changed by the mid-1990s, when collective bargaining accounted for a good deal of rules that regulate the employment relationship in the selected units.

The vast majority of additional provisions laid down rules fixing employees´ rights. As table 5.3 shows, provisions benefiting employees accounted for 89.8% of all additional provisions between 1978 and 1995. This outcome is consistent with both the very existence of collective bargaining and the historical context in which it is supposed to have acquired momentousness in Brazil. Collective bargaining is supposed to bring about some degree of restraint on managerial discretion through obligations employers must fulfil in their relations with employees. In the Brazilian environment, the expansion of the bargaining scope during the late 1970s and the 1980s was associated to a trade union offensive. An increasing proportion of additional rules benefiting employees was a major feature of this expansion of scope in the selected bargaining units, climbing from 18.7% in 1978 to a peak of 52.2% in 1988, before decreasing to 47.5% in 1995.

Notwithstanding additional provisions benefiting employees accounted for almost half of all agreement provisions and nine out of ten additional provisions in the whole period 1978-95, employers also benefited from a certain amount of rules. Additional substantive provisions benefiting employers are rules that entail enlarging managerial discretion over the employment relationship in the light of a wide regulatory legislation. The average number of additional provisions benefiting employers in the selected agreements increased from none in 1978 to 5.3 provisions in 1995. In 1995, these rules accounted for 14.5% of all additional provisions.

Table 5.3 – Percentages of additional provisions by beneficiary, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Percentage of provisions benefiting employees over			Percentage of provisions benefiting employers over		
	All provisions	Substantive provisions	Additional provisions	All provisions	Substantive provisions	Additional provisions
1978	18.7	37.1	100.0	-	-	-
1979	31.5	50.5	100.0	-	-	-
1980	39.9	54.0	96.9	1.3	1.7	3.1
1981	37.2	47.3	88.0	5.1	6.4	12.0
1982	40.0	51.6	89.4	4.7	6.1	10.6
1983	40.8	52.7	90.7	4.2	5.4	9.3
1984	40.9	52.7	90.8	4.1	5.3	9.2
1985	44.0	56.8	91.3	4.2	5.4	8.7
1986	47.2	59.9	92.1	4.1	5.2	7.9
1987	51.3	63.7	93.4	3.6	4.5	6.6
1988	52.2	64.3	92.3	4.3	5.3	7.7
1989	50.4	61.8	92.1	4.3	5.3	7.9
1990	49.3	60.5	91.2	4.8	5.8	8.8
1991	47.5	58.8	90.4	5.0	6.2	9.6
1992	46.6	57.8	87.1	6.9	8.6	12.9
1993	48.1	59.1	87.3	7.0	8.6	12.7
1994	48.0	58.0	85.5	8.2	9.8	14.5
1995	47.5	56.9	85.1	8.3	10.0	14.9
Mean	46.4	58.1	89.8	5.3	6.6	10.2

In table 5.4, overall percentages of additional provisions both benefiting employers and employees are displayed according to their constituent categories. Figures point out that additional provisions benefiting employees were evenly distributed through categories no legislation and broader. Provisions classified in category no legislation accounted for 22.1% of all agreement provisions, whereas broader provisions accounted for 24.3% of all agreement provisions for the whole period 1978-95.

Provisions classified as no legislation consist of complete new rules in the industrial relations system. For instance, provisions on seniority pay were stipulated in 13 out of 17 selected collective agreements, mostly fixing a pay increase between 2.5% and 5% of the basic rate of wages for every five years a employee remains on the job. As long as there was no piece of legislation that obliged employers to seniority pay, those provisions that laid down such a rule were classified into category no legislation.

Table 5.4 – Percentages of additional provisions by beneficiary and category, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

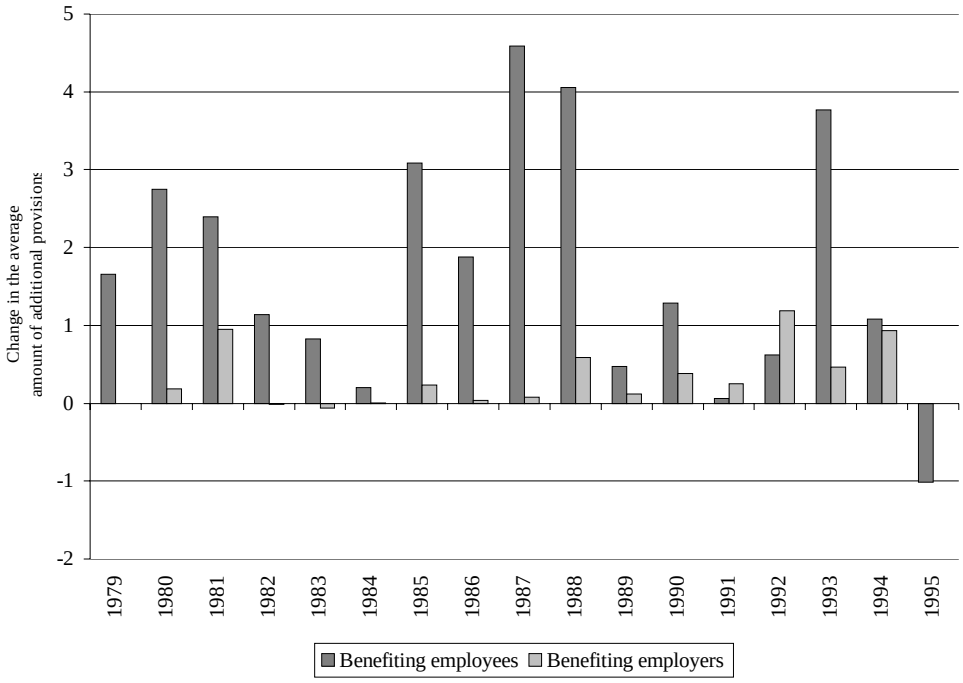
Beneficiaries and categories of provisions	Percentage of provisions over		
	All provisions	Substantive provisions	Additional provisions
Benefiting employees	46.4	58.1	89.8
No legislation	22.1	27.7	42.8
Broader	24.3	30.4	47.0
Benefiting employers	5.3	6.6	10.2
No legislation	1.0	1.2	1.9
Disputable I	3.5	4.4	6.7
Disputable II	0.8	1.1	1.6

The other half of additional provisions benefiting employees fell into category broader. Its basic difference in relation to provisions classified as no legislation is that broader provisions lay down rules on issues already covered by regulatory legislation. In a similar way to no legislation provisions, however, these rules also bring about improvements in the terms and conditions of the employment relationship upon regulatory legislation from the employees' standpoint. Most provisions fixing an increase in nominal wages belong to this category, for they usually stipulate a percentage higher than the one in regulatory legislation.

The distribution of additional substantive provisions benefiting employers, on its turn, is concentrated in category disputable I. Provisions classified into this category accounted for 3.5% of all agreement provisions between 1978 and 1995, whereas those classified as disputable II accounted for only 0.8%, and those classified as no legislation accounted for 1.0% of agreement provisions.

Figures analysed so far show that both the average amount and the percentage of additional substantive provisions, regardless of the beneficiary party, increased substantially after the late 1970s. Nonetheless, the pace of change in the average amount of provisions varied both over time and according to who the beneficiary party was. Figure 5.1 displays the annual change in the average amount of additional provisions by beneficiary between 1979 and 1995.

Figure 5.1 – Annual change in the average amount of additional provisions by beneficiary, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95



Both figure 5.1 and statistics in table 5.2 indicate that the patterns of change in the average amount of additional provisions benefiting employees differed from that of provisions benefiting employers. I will first elaborate on change in provisions benefiting employees by taking the average change in the amount of additional provisions (1.7 provisions a year) as a yardstick. Annual outcomes suggest there were four different periods regarding change in these bargaining outcomes between 1979 and 1995. Table 5.5 summarises basic statistics for each period.

The first period concerning change in the amount of additional provisions benefiting employees lasted from 1978 to 1981. Collective bargaining gained momentum in the late 1970s. From only 1.5 provisions on average in 1978, the number of additional provisions benefiting employees accelerated between 1979 and 1981 at a rate of 2.3 provisions a year. In 1981, the average amount of additional provisions benefiting employees had increased over five times to 8.3 provisions. This pace was broken in 1982. The annual change in the average amount of provisions went down to 0.7 provisions during the second period (1982-84). In 1984, there were 10.5 provisions on average. In the third period (1985-88), the annual change in the average amount of

provisions displayed the highest annual rates. The amount of provisions increased by 3.4 provisions a year. In 1988, additional provisions benefiting employees totalled 24.1 provisions. The fourth period started in 1989 and lasted until 1995. The annual change in the average amount of additional provisions benefiting employees (0.9 provisions a year) remained well below the overall mean (1.7 provisions a year) during this period. Nonetheless, the increase in the average amount of provisions in 1993 was exceptionally higher (3.8 provisions) than the average for the period 1989-95. In 1995, the average amount of additional provisions benefiting employees decreased for the first time since 1979.

Table 5.5 – Patterns of change in the amount of additional provisions benefiting employees, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Annual average amount	Annual average change	Percentage over additional provisions
1978	1.5	…[1]	100.0
1979-81	5.8	2.3	93.1
1982-84	10.1	0.7	90.3
1985-88	18.3	3.4	92.4
1989-95	24.4	0.9	88.3
1995	30.4	-1.0	85.1
1978-95	17.6	1.7	89.8

[1] Data for 1977 were not gathered.

As for additional provisions benefiting employers, figure 5.1 and statistics in table 5.2 suggest two broad periods based on different patterns of change. The first period lasted from 1979 to 1987; the second period lasted from 1988 to 1995. In 1978, there was no additional provision benefiting employers. This type of provision was first negotiated in 1980. From 1979 to 1987, however, the average change in the amount of additional substantive provisions benefiting employers was no more than 0.1 provisions a year. Between 1988 and 1995, this rate of change multiplied by five times. In 1995, there were 5.3 additional provisions on average benefiting employers in the selected bargaining units. Table 5.6 displays statistics for each period.

Table 5.6 – Patterns of change in the amount of additional provisions benefiting employers, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Annual average amount	Annual average change	Percentage over additional provisions
1978	-	…[1]	-
1979-87	1.0	0.1	8.0
1988-95	3.5	0.5	10.8
1995	5.3	-0.1	14.9
1978-95	2.1	0.3	10.2

[1] Data for 1977 were not gathered.

When comparing the patterns of change in the average amount of additional provisions according to the beneficiary party, the period starting in the late 1980s meant an acceleration in the pace of change of provisions benefiting employers and a decrease in the pace of change of provisions benefiting employees, whereas the period between the late 1970s and the late 1980s was the other way around.

The major conclusion thus far is that the multiplication of the average number of additional substantive provisions, both benefiting employees and benefiting employers, gives evidence to the strengthening of collective bargaining as a method of job regulation in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. Most of this increase was brought about by a change in the average amount of additional provisions benefiting employees. The consequence was an enlargement of the set of employees´ rights. Nonetheless, the single fact of negotiation over some provisions that brings about broader managerial discretion points out to a more complex picture, where employers took some advantage out of the bargaining process as well. I will come back to this issue later in section 5.4. Before proceeding, however, I analyse substantive provisions benefiting employees other than additional provisions in section 5.3.

5.3 Further categories of substantive provisions benefiting employees

Collective bargaining in the selected units also gave rise to mandatory substantive provisions benefiting employees other than additional provisions. These comprise provisions classified into categories operative and as the law. In this section, I will

analyse the outcome of these types of provisions in the selected collective agreements and the functions each of them perform.

Substantive provisions classified into category as the law denote the opposite symmetric to additional provisions, for they consist of a mere copy of rights and duties which are already set down by regulatory legislation. Those classified into category operative, on their turn, are placed in an intermediary position between additional and entirely non-additional rules. Operative provisions do not consist of additional rules, for they stipulate rights and duties which are already prescribed by pieces of legislation. The point of interest, however, is that such legislation is usually written in a way that (i) either requires a complement through collective agreements to become lawfully enforceable, (ii) or allows a complement that helps make their rules fully operative, (iii) or even allows a complement that merely makes a choice between competing alternatives formulated by legislation. Thus, operative provisions do not fall into pure non-additional provisions as well. Table 5.7 displays statistics on as the law and operative provisions benefiting employees.

Table 5.7 – As the law and operative substantive provisions benefiting employees, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	As the law			Operative		
	Annual average amount	Annual average change	Percentage over substantive provisions	Annual average amount	Annual average change	Percentage over substantive provisions
1978	0.8	…[1]	18.6	0.9	…[1]	22.9
1979-81	2.4	1.1	20.8	1.3	0.2	11.1
1982-84	3.8	0.0	19.9	1.4	-0.1	7.1
1985-88	4.3	0.2	14.4	1.7	0.2	5.8
1989-95	5.2	0.2	11.0	3.1	0.1	6.7
1995	5.9	-0.2	11.1	3.2	0.6	6.0
1978-95	4.1	0.3	13.5	2.1	0.1	6.9

[1] Data for 1977 were not gathered.

Figures in table 5.7 show that one out of five substantive provisions negotiated between 1978 and 1995 were classified into either category as the law or category operative. This ratio, however, decreased over the years, cutting by more than half the amount of provisions in both categories as a proportion of substantive provisions. A declining proportion of as the law and operative provisions consists of the opposite

symmetric to the increasing additional provisions quota, which was analysed in the previous section. The amount of as the law provisions changed at an average 0.3 provisions a year, oscillating from 0.8 provisions in 1978 to 5.9 provisions in 1995. The average amount of operative provisions expanded from 0.9 to 3.2 provisions at an average rate of 0.1 provisions a year.

Although provisions classified into categories operative and as the law, especially the latter, do not bring about an enlargement in the scope of industrial relations rules, for they are part of the already existing regulatory legislation, a closer examination of their specific roles help shed light on further roles performed by collective bargaining in Brazil. Substantive provisions classified into category as the law consist of an extreme case, for they do not exhibit the slightest deviation from what regulatory legislation stipulates. Nevertheless, these provisions accomplish at least two functions of interest. First, they play the function of publicising statutory rules, reinforcing regulatory legislation within the bargaining unit, since the knowledge of collective agreements is much more easily spread over workplaces than regulatory legislation. Second, as long as trade unions enjoy the legal role of representing employees before labour courts in case of a breach of agreement provisions, but not in case of a breach of statutory rules, negotiation over as the law provisions strengthens the role of trade unions in enforcing regulatory legislation.

In case an employer does not comply with an agreement provision, application for labour courts might be carried out by trade unions on behalf of workers even without the permission of individual employees, provided some conditions are met. Provisions stipulating that employers must obtain a medical permit for women and minors to work overtime are an example. Until 1989, employers were obliged by the Labour Code to obtain a medical permit before extending the hours of minors and women. The inclusion of such provisions in collective agreements, notwithstanding their being a literal copy of regulatory legislation, furnished trade unions with a right they would otherwise not be able to apply before labour courts on behalf of employees in the event employers would not comply with them.

Substantive provisions classified into category operative perform the prime function of making the application of regulatory legislation plain. Operative provisions entail some choice on how to apply or avoid regulatory legislation without falling into

conflict with the legal principle of protection. For instance, over one third of operative provisions established rules on how to apply an agreed percentage of increase in nominal wages in the case of employees hired between the immediately previous settlement date and the current settlement date. Wages on the previous settlement date used to set the basis for the increase in nominal wages (provisions on COLA and AIF). As for employees hired after the previous settlement date, however, there was a lacuna in regulatory legislation. Statutes only prescribed a generic principle of proportionality: the percentage of increase should be proportional to the time extent of the work contract. Therefore, this lacuna in legislation could be closed by means of collective bargaining, giving rise to operative provisions in collective agreements.

5.4 Enlarging managerial discretion through collective bargaining

I have emphasised hitherto that collective bargaining gained momentum in Brazil following a strong trade union mobilization that took place in the late 1970s. Under this context, the amount of provisions regulating the employment relationship increased largely in benefit of employees. Nonetheless, as figures in section 5.2 have advanced, employers also benefited from negotiations from the early 1980s on, when collective agreements started including additional rules favouring employers. Bargaining over additional rules benefiting employers eventually came to a point of still greater importance during the 1990s. In this section, I analyse substantive provisions stipulating rules that were of advantage to employers.

Substantive provisions benefiting employers were classified into five categories. Three out of these five categories account for additional rules: provisions without similar statutory rule in scope (no legislation), provisions in which employers are both the nominal and the actual beneficiaries (disputable I), and provisions in which employees are the nominal beneficiaries, but employers are the actual beneficiaries (disputable II). The meaning of these categories has already been explored in section 5.1. Similarly to provisions benefiting employees, there are two categories of non-additional rules as well: as the law and operative. Table 5.8 shows the average amount of substantive provisions benefiting employers according to their different categories. Figures are displayed in two periods associated to different patterns of change in provisions benefiting employers.

Table 5.8 – Substantive provisions benefiting employers by category, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Additional provisions									
	No legislation		Disputable						Total	
			Disputable I		Disputable II		Total			
	Mean	(%)[1]	Mean	(%)[1]	Mean	(%)[1]	Mean	(%)[1]	Mean	(%)[1]
1978	-	-	-	-	-	-	-	-	-	-
1978-87	0.0	0.0	0.7	4.0	0.1	0.8	0.8	4.8	0.9	4.8
1988-95	1.0	1.8	2.1	4.6	0.6	1.2	2.7	5.8	3.7	7.6
1995	1.1	2.1	3.6	6.7	0.6	1.1	4.2	7.9	5.3	10.0
1978-95	0.4	1.2	1.3	4.4	0.3	1.1	1.7	5.4	2.1	6.6

	Non-additional provisions						Total	
	Operative		As the law		Total			
	Mean	(%)[1]	Mean	(%)[1]	Mean	(%)[1]	Mean	(%)[1]
1978	0.8	20.0	-	-	0.8	20.0	0.8	20.0
1978-87	1.5	9.7	0.7	3.7	1.3	13.4	1.9	18.2
1988-95	3.3	6.5	2.2	4.8	2.5	13.3	6.2	20.9
1995	3.7	6.9	2.9	5.5	6.6	12.4	12.0	22.4
1978-95	2.3	7.6	1.4	4.6	3.7	12.2	5.8	18.8

[1] The percentage was calculated over the total amount of substantive provisions.

Provisions benefiting employers roughly accounted for one out of five substantive provisions from 1978 to 1995 in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre. In 1978, these provisions were constrained to one single issue of employers´ interest. In 14 out of 17 bargaining units, collective agreements set down a compensatory scheme of hours through which employees had to extend their hours between Mondays and Fridays in order not to work on Saturdays. Article 59 of the 1943 Labour Code allowed such a compensation on condition that the parties agreed through collective bargaining.

The average amount of substantive provisions benefiting employers multiplied by 15 times between 1978 and 1995. Half this increase stemmed from additional provisions, the other half from operative and as the law provisions. In particular, provisions classified into category no legislation played a minor role in the increase in the amount of provisions benefiting employers. The vast majority of substantive provisions benefiting employers, regardless of whether they determine additional or non-additional rules, addressed issues already covered by regulatory legislation. This characteristic, which gives a hint on the function collective bargaining played from the

employers´ standpoint, is still more noticeable in contrast to the distribution of provisions benefiting employees, as can be seen in Table 5.9.

Table 5.9 – Percentage of substantive provisions by beneficiary and coverage by regulatory legislation, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Beneficiary	No piece of legislation covers issues addressed in provisions	At least one piece of legislation covers issues addressed in provisions
Employees	34.5	63.3
Employers	6.4	93.4
Total	28.9	68.4

In order to elaborate upon the functions performed by collective bargaining from the employers' standpoint, I have first looked at the scope of substantive provisions benefiting employers. The whole set of these provisions covered 36 different issues between 1978 and 1995. Table 5.10 shows the distribution of issues covered by provisions benefiting employers by themes and categories for classifying provisions according to their relationship with regulatory legislation.

Table 5.10 – Distribution of issues covered by substantive provisions benefiting employers, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Theme	No legislation		Disputable		Operative		As the law		Total	
	Issues	(%)	Issues	(%)	Issues	(%)	Issues	(%)	Issues	(%)
Pay	2	60.2	9	24.6	2	20.0	3	17.9	11	23.4
Hours	-	-	6	36.8	4	65.4	2	14.9	9	40.8
Paid holidays	-	-	4	10.8	1	0.5	-	-	4	3.3
Recruitment	-	-	1	1.1	-	1.3	1	1.3	2	0.6
Job security	1	31.1	4	23.9	2	13.8	-	-	5	14.5
Training	1	1.0	-	-	-	-	-	-	1	0.1
Work conditions	1	7.8	3	2.8	1	0.3	3	65.9	4	17.4
Total	5	100.0	27	100.0	10	100.0	9	100.0	36	100.0

Note: Percentages were calculated by the number of provisions classified into both a given category and a given theme over the total amount of provisions classified into a given category.

The great bulk of substantive provisions benefiting employers focused upon four issues: pay, hours, security of employment and individual dismissals, and work conditions. These accounted for 96.1% of the total amount of provisions. Nonetheless, the scope varied according to the category into which provisions were classified. For

instance, operative provisions were highly concentrated upon four issues on hours, whereas provisions classified into category as the law concentrated upon three issues on work conditions. Table 5.11 lists the main issues covered by operative, as the law and no legislation provisions. Further on, I will deal with disputable provisions.

Table 5.11 – Issues covered by operative, as the law and no legislation provisions benefiting employers, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Operative		As the law	
Issues (N=10)	(%)	Issues (N=9)	(%)
Distribution of normal weekly hours: compensatory scheme of hours	44.8	Working environment and welfare: clothing	31.8
Extended holidays: compensation of hours	19.5	Safety: protective clothing	24.9
Notice of termination of employment: leaving early	13.1	Complementary rules on cost of living adjustment	16.7
Administrative procedures on pay: deductions	12.9	Normal working hours: record of hours	14.6
Total (C_4)	90.3	Total (C_4)	88.0

No legislation	
Issues (N=5)	(%)
Complementary rules on cost of living adjustment	54.4
Administrative procedures for individuals dismissals: trade union assistance	31.1
Safety: protective clothing	7.8
Special rules on fringe benefits	5.8
Total (C_4)	99.1

Note: Percentages were calculated by the number of provisions benefiting employers classified into both a given category and a given issue over the total amount of provisions benefiting employers classified into a given category.

The general purpose of operative provisions consists of making the application of regulatory legislation plain. This function acquires special meaning when it comes to employers´ interests. Lack of precision in regulatory legislation may give rise to disputes before labour courts as to the application of rules in the workplace. Sometimes the legislation itself stipulates conducts which can only be followed in the case of a formal agreement between the legal bargaining agents. Thus, in order to avoid risks of legal disputes concerning a number of issues, employers have made use of collective bargaining.

A major issue covered by operative provisions was compensation of hours. Regulatory legislation on hours comprised rules spread over various pieces of legislation, including the Federal Constitution. Any departure from the norm would bring about higher costs for employers. Overtime work, for instance, has been allowed for no more than two daily hours at a wage rate 50% higher than for normal hours. Compensation of hours, however, was only allowed on condition that a formal collective agreement was reached (Labour Code, article 59, § 2). Another example is given by partial suppression of both hours and pay. This has also been permitted through collective agreements just after the promulgation of the 1988 FC (article 7, VI and XIII). Under Brazilian regulatory legislation, therefore, flexibilisation of hours demands collective bargaining; otherwise, it may be ruled unlawful.

Substantive provisions benefiting employers that were classified into category as the law played very much the same role of publicising rules of interest within workplaces as in provisions benefiting employees. For instance, provisions that oblige employees both to the duty of care and to compensate for any loss of clothing or protective clothing supplied by employers surely acted as a means of publicising rules of conduct within workplaces. Although duty of care was legally enforceable by the Labour Code, agreement provisions reproducing this statutory rule caused the rule to be better known by employees.

The function of risk avoidance may well have also been performed by provisions classified into category as the law. That seems to be the case with some provisions stipulating complementary rules on cost of living adjustment. A complex system of statutory wage indexation featured in the Brazilian industrial relations system between 1965 and 1996. Successive pieces of legislation built vast machinery for establishing the regular increase in nominal wages under high and chronic inflation. However, because this was an imperfect system, single employers used to voluntarily adjust their employees' wages in order to uphold real wages, in particular in times of accelerating inflation. Most provisions stipulating complementary rules on COLA that were classified into category as the law aimed at defining a way of compensating these voluntary adjustments vis-à-vis statutory COLA, avoiding the duplication of wage increase. A similar prescription could be found in pieces of the legislation on COLA. Similar agreement provisions, however, proved to be extremely important for employers to avoid legal risks. Numerous proceedings before labour courts involved

grievances on these voluntary wage adjustments with the aim of avoiding their compensation with statutory adjustments. This is the outcome of a scenario of legal restlessness caused by a sequence of various pieces of legislation in time, some of them prescribing compensation, some not. Agreement provisions which undoubtedly set down compensation removed unlawfulness from the employers´ conduct.

Provisions stipulating compensation of voluntary wage adjustments vis-à-vis statutory ones were classified into category as the law if there was an identical norm in regulatory legislation. Otherwise, these provisions were classified as no legislation provisions. Regardless of the category into which they fell, provisions on compensation should be understood as an employers´ device to avoid legal risks. There are grounds for suggesting, thus, that employers made use of collective bargaining to protect themselves from individual grievances before labours courts. Some of operative, as the law, and no legislation provisions came up just to play this function of risk preclusion.

Substantive provisions classified as disputable, on the contrary, implies high legal risk exposure. The very definition of disputable provisions comes from the existence of such risks. Disputable provisions may eventually be deemed as unlawful, for they are not in accordance with the criterion of the most favourable rule that stands at the basis of the Brazilian labour law. Nevertheless, the amount of disputable provisions accelerated between the late 1980s and the mid 1990s. Table 5.12 exhibits a list of the most frequent issues covered by disputable provisions.

Provisions allowing employers to terminate a work contract before the end of the period of notice were typical disputable provisions, so long as the employee had neither been hired within the notice period, nor been compensated for the full period. The Labour Code stipulates a minimum notice period of 30 days (article 487), within which employees are entitled to full wages. Therefore, a unilateral decision by employers for terminating employment without paying wages related to the notice period carries a strong impression of unlawfulness, being subject to legal disputes.

Another example of disputable provisions pertains to the issue of compensatory scheme of hours for employees who work under unhealthy conditions. Article 60 of the Labour Code clearly states that the extension of hours for employees who usually work under unhealthy conditions presupposes a license by the authorities. By insistence of employers´ associations, however, collective agreements inserted a provision allowing

such an extension and the related compensation of hours within a week, leaving room for individual disputes before labour courts.

Table 5.12 – Issues covered by disputable provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

Disputable I		Disputable II	
Issues (N=16)	(%)	Issues (N=12)	(%)
Notice of termination of employment: leaving early	17.6	Notice of termination of employment: time off to seek a job	24.4
Normal working hours: record of hours	11.5	Job security: sick and accident leave	22.2
Unhealthy work conditions: compensatory scheme of hours	11.5	Paid annual holidays: communication	14.4
Extended holidays: compensation of hours	10.7	Cost of living adjustment	10.0
Normal working hours: intervals	8.0	Extra annual pay: advance payment	7.8
Night work pay	7.5	Paid annual holidays: date of payment	6.7
Nominal wages increase: annual improvement factor	7.2	Unpaid leave: statutory safety committee	5.6
Anticipation of paid annual holidays for employees not yet fulfilling legal criteria	7.2	Time limit for payments after dismissal	3.3
Total (C_8)	81.2	Total (C_8)	92.2

Note: Percentages were calculated by the number of provisions benefiting employers classified into both a given category and a given issue over the total amount of provisions benefiting employers classified into a given category.

Disputable provisions like these instances reveal an employers' attempt to enlarge managerial discretion beyond the rigidities of labour law, even at the cost of facing legal proceedings by individual employees. Furthermore, the dissemination of agreement provisions which were not in accordance with regulatory legislation was assumed as a device to legitimise these rules and, in addition, to exert influence over judicial, congressional and governmental decisions in order to change regulatory legislation. The case of provisions on record of hours provides a successful example. Until 1989, article 74 of the Labour Code stipulated that the daily record of hours, i.e. when starting and getting off work, was mandatory. Some provisions in the selected bargaining units allowed employers not to require such a record for both exit and entry associated to intervals of resting. These provisions were classified as disputable provisions. In 1989, a change in the statutory rule came into force by means of Act n.

7855/89, according to which employers were no longer obliged to keep a record on exit and entry in intervals.

The very point in these examples is that the dissemination of disputable provisions over various bargaining units strengthens the position of individual employers and employers' associations to put pressure upon labour courts and labour tribunals to change their interpretation, from against to in favour of the lawfulness of this kind of conduct, on grounds that they express the wish of the bargaining agents and the need of the workplace. This has been especially relevant since the promulgation of the 1988 FC, when collective bargaining acquired a legal prominence it had not enjoyed before. The dissemination of agreement provisions, particularly when this is followed by a change in the interpretation by labour tribunals, may eventually lead to the approval of new legislation, whereby rules once regarded as unlawful become an acceptable pattern of conduct.

5.5 Conclusion

In this chapter, I have analysed the contents of substantive provisions in the light of the comprehensive regulatory legislation that characterises the Brazilian industrial relations system. The major point of analysis concerned the strengthening of collective bargaining as a method of job regulation in the selected units after the late 1970s. The mere increase in the number of provisions, as well as the enlargement of the bargaining scope, which I reported in chapter 4, do not consist of sufficient evidence of the weight of collective bargaining under a context of an encompassing regulatory legislation. Suppose expansion of the scope brought about a majority of rules that literally reproduce regulatory legislation, and consequently no hypothesis of strengthening of collective bargaining could be sustained. Some further evidence had to be added in order to allow a more consistent conclusion on the strengthening of collective bargaining. I have dealt with this evidence in this chapter.

Evidence analysed here demonstrates that most provisions aimed at regulating the employment relationship within the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre comprised rules either whose scope or contents were not found in regulatory legislation. Between 1978 and 1995, two out of three substantive provisions stipulated rules whose contents were not found in

regulatory legislation. Furthermore, most of these additional provisions established rules to the advantage of employees (89.8%). This outcome is consistent with the very nature of collective bargaining as an attempt by trade unions to improve employment terms and conditions, as well as with the historical circumstances of the late 1970s and early 1980s in Brazil. These circumstances brought about a trade union offensive to improve work conditions. This suggests collective bargaining actually gained prominence as a method of job regulation after the late 1970s.

A more complex picture has nonetheless emerged from data analysis. First, the pace of change in the number of additional substantive provisions benefiting employees was not constant over the whole period 1978-95. Four different periods could be identified according to this pace of change, suggesting alternating periods of higher and lower degree of difficulties from the trade unions' standpoint. Second, a good deal of substantive provisions benefiting employees laid down rules which could already be found in regulatory legislation. The content analysis of these provisions allowed making further roles played by collective bargaining more comprehensible. Substantive provisions classified into category as the law, which are indeed the paradigm of non-additional rules, nevertheless performed functions of publicising rules and, still more relevant, ensuring trade union legal representation of employees before labour courts on a larger amount of industrial relations issues. As for operative provisions, besides these two roles, they performed a function of making pieces of regulatory legislation fully enforceable.

Third, about one out of five substantive provisions benefited employers. An amount equal to one third of these provisions brought about rules without parallel in regulatory legislation. Substantive provisions benefiting employers performed distinct and virtually opposite functions of employers´ interest. On the one hand, most of the provisions classified into categories as the law and operative entailed minimising legal risks of individual disputes before labour courts, because their inclusion in collective agreements gave their rules of conduct the status of lawfulness. On the other hand, disputable provisions involved legal risks by definition. The proportion of disputable provisions over the total amount of substantive provisions, notwithstanding, increased steadily after 1988. This can be understood as conscious device employers' associations adopted in order to enlarge managerial discretion under a context of wide regulatory legislation. Collective bargaining could be a useful instrument for the pursuit of this

goal, because disseminating disputable provisions over bargaining units could lead these rules to become acceptable by labour courts, as well as to changes in legislation.

Although the analysis of substantive provisions carried out in this chapter took regulatory legislation as a yardstick for comparison with rules in collective agreements, the examination of disputable provisions shed some light on a third relevant source of industrial relations regulation, i.e. judicial decisions. Brazilian Constitutions of the period, especially the 1988 FC, gave labour tribunals exceptional powers for creating rules, regardless of congressional approval. The very existence of these powers poses a question on the consequences of judicial decisions over collective bargaining. I intend to come back to this question in chapter 8, in order to analyse the consequences of the normative power of the labour judicial system over collective bargaining.

The analysis of the contents of substantive provisions in comparison to regulatory legislation allows a more consistent conclusion on the strengthening of collective bargaining which was not possible solely on the basis of evidence on the increase in the amount of provisions. This comparison between provisions and law, however, supplies only partial evidence on how the contents of agreement provisions evolved over the years. The problem arises in that the content of a provision may change from one year to another without changing the condition of this provision with respect to their relationship with regulatory legislation. In order to capture change in the contents of provisions over time, I have to look directly at these contents regardless of their relationship with regulatory legislation. In the next chapter, I deal with the question of the patterns of change in the content of rules set down by substantive provisions in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995.

CHAPTER 6

PATTERNS OF CHANGE IN THE CONTENT OF SUBSTANTIVE PROVISIONS

I have so far analysed the contents of provisions according to (i) the scope of rules, and (ii) the relationship between these contents and regulatory legislation. Evidence on the enlargement of the scope of collective agreements, as well as on the increase in the amount of rules that are not found in regulatory legislation, suggests collective bargaining began to perform a greater role in regulating the employment relationship within the selected bargaining units after the late 1970s. This increasing amount of rules points to an important change in Brazilian industrial relations. The indisputable predominance of regulatory legislation in association with unilateral regulation by employers, which had prevailed since the consolidation of the state corporatist system in the 1930s, weakened. Thus, collective bargaining actually started to strengthen its role as an alternative method of job regulation.

However, an increasing amount of provisions *per se* does not provide complete support to assess change in the content of rules established by provisions, even if this increase is based upon rules which are not found in regulatory legislation. The reason is that provisions may change in content without modifying their relationship with regulatory legislation. For instance, negotiated minimum wages changed their monetary value over the years (change in the content), but their category according to the relationship between agreement provisions and regulatory legislation, was kept the same. Therefore, in order to assess change in the content of provisions, I have to look directly at this content regardless of their relationship with regulatory legislation.

This chapter aims at assessing change in the content of provisions *per se* by focusing upon patterns of change in negotiated rules on the employment relationship in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. In section 6.1, I start by analysing provisions on cost of living adjustment (COLA) and additional improvement factor (AIF). Under macroeconomic conditions of high and chronic inflation that marked the Brazilian economy for most of the period between 1978 and 1995, negotiation over these issues played a central role in collective bargaining. Trade unions used to adopt the expression ‘wage campaign’

("*campanha salarial*") to refer to the whole process that goes from meetings to establishing the annual list of claims, to negotiation rounds, to the settlement of collective agreements. The fact that unions labelled collective bargaining as a process for negotiating wages illustrates the central attention paid to this issue. Moreover, the focus upon adjusting wages under a context of high inflation was not exclusively directed towards the rate of nominal wage increase, but also to minimum wages. Thus, outcomes of wage bargaining over minimum wages are analysed in section 6.2.

In section 6.3, I assess change in the content of overall substantive provisions, with the exception of provisions on COLA, AIF, and minimum wages, which I will have already analysed in previous sections. Measuring change in the content of rules of most substantive provisions, however, is not as straightforward as it is for provisions on COLA, AIF, and minimum wages, because data are not measured at the interval-ratio level. Therefore, I have developed a specific coding frame to capture change in the content of rules. These categories focus upon differences in the content of provisions in the current agreement vis-à-vis provisions in the immediately previous agreement. As a consequence, measuring provisions on the basis of these categories will allow verifying, for instance, whether there is change in content and, if so, whether this change brings about larger or narrower rights from the employees' standpoint. In section 6.4, I conclude this analysis by taking selected measures of collective bargaining outcomes into consideration in order to assess patterns of change in the content of substantive provisions as a whole.

6.1 Bargaining over nominal wages under high and chronic inflation

From 1978 to 1995, wage bargaining between trade unions and employers´ associations was carried out under a context of high and chronic inflation, as well as statutory indexation of wages. High inflation constituted the most salient feature of the economic environment relevant for negotiations over wages. The average rate of inflation oscillated within a large band around the annual mean 351.3% for 1978-95. Table 6.1 displays the annual rate of inflation as measured by both a nationwide general index of prices (IGP-DI) and a cost-of-living index for the Metropolitan Area of Porto Alegre (IPC-IEPE). Under this context of high inflation, the Brazilian government had devised a complex system of official indexation which covered nominal wages as well as other basic prices. Statutory indexation of nominal wages was applied to private sector

employees as early as 1965. This remained as a major feature of Brazilian industrial relations until 1996, when it was suppressed as a consequence of a policy aimed at curbing inflation ("*Plano Real*").

Ordinary wage bargaining concentrated on adjusting nominal wages to cost-of-living increase. As a general rule, trade unions took the cost-of-living increase between the immediately previous and the current settlement dates ("*data-base*") into account. A typical union claim consisted of adjusting nominal wages of all employees according to a previous cost-of-living increase plus an additional rate – under the label of 'productivity increase'. The underlying rationale for this claim resided in recovering the peak of real wages, which was supposed to have been set up on the immediately previous settlement date, and adding a further percentage. The outcome of this operation was seen as a new peak to be recovered in the next round of negotiations, and so forth.

Table 6.1 – Brazilian inflation, 1978-95 (%)

	IGP-DI	IPC-IEPE
1978	38.7	38.1
1979	53.9	53.0
1980	100.2	92.1
1981	109.9	112.0
1982	95.4	96.8
1983	154.5	142.3
1984	220.7	191.4
1985	225.5	225.6
1986	142.2	145.3
1987	224.8	202.4
1988	684.6	599.4
1989	1,319.9	1,287.9
1990	2,740.2	2,762.0
1991	414.7	423.6
1992	991.3	926.3
1993	2,103.4	1,893.3
1994	2,406.9	2,459.4
1995	67.5	70.8

Source: Fundação Getulio Vargas; Centro de Estudos e Pesquisas Econômicas (IEPE)/UFRGS.

This section has five parts. In subsection 6.1.1, I summarise the main characteristics of the Brazilian regulatory machinery for wage indexation. In subsections 6.1.2 and 6.1.3, I assess the outcomes of wage bargaining over cost-of-living adjustment (COLA) and additional improvement factor (AIF) by drawing a comparison between these outcomes, and both statutory rates of nominal wage increase and cost-of-living increase. In subsection 6.1.4, I deal with provisions on wage

indexation. A conclusion on the patterns of change in the outcomes of wage bargaining over 1978-95 is put forward in subsection 6.1.5.

6.1.1 Brazilian statutory wage indexation

From 1965 to 1996, statutory wage indexation was a crucial piece in the governmental regulation of the employment relationship in Brazil. Statutory wage indexation was originally put into effect through Act n. 4725/65. Prior to this piece of legislation, direct regulation of wages by government was restrained to minimum wages and civil servants´ wages. By means of Act n. 4725/65, however, government could also stipulate rules for the annual increase in the private sector's nominal wages. Although statutory wage indexation had originally been meant to last for just three years, it remained a major feature of Brazilian industrial relations for more than three decades.

Numerous systems of indexation succeeded one another between 1965 and 1996. These systems could be distinguished one from another according to aspects such as the time lag between adjustments, the index of cost-of-living increase, and the formula for calculating the percentage of increase in nominal wages. Details on the various indexation systems that came into force between 1965 and 1996 can be seen in table 6.2. The full date concerning the numerous pieces of legislation has already been displayed in table 2.10. Replacement of one system for another was always brought about by change in the macroeconomic policy aimed at controlling inflation. Thus, I have grouped the different systems of wage indexation according to the major periods in the Brazilian stabilisation policy.

Table 6.2 – Brazilian statutory wage indexation systems, 1965-96

Pieces of legislation	Wage indexation system		
	Time lag	Index	Formula for calculating the increase in nominal wages
Period 1965-79: Military rule I			
Act 4765 Act 5451 Act 6174	12 months	Not specified	Average real wage of previous 24 months (12 months from 1974 on) + Half predicted rate of inflation in the following 12 months + Additional improvement factor.

Table 6.2 – Brazilian statutory wage indexation systems, 1965-96 (continued)

Pieces of legislation	Wage indexation system		
	Time lag	Index	Formula for calculating the increase in nominal wages
Period 1979-86: Military rule II			
Act 6708 Act 6886 *DL* 2012 *DL* 2024 *DL* 2045 *DL* 2065 Act 7328 Act 7450	6 months	INPC-IBGE (cost of living)	Multiple of change in INPC-IBGE in the previous 6 months. ▪ Factor of multiplication between 0 (higher wages) and 1.1 (lower wages).
Period 1986-87: Cruzado plan ("*Plano Cruzado*")			
DL 2283 *DL* 2284 *DL* 2302	According to the cost-of-living increase	IPC-IBGE (cost of living)	(i) Mar 1986: Average real wage in Sept 1985-Feb 1986 + 8%. (ii) Apr 1986 to Jun 1987: (a) On the settlement date ("*data-base*"), 60% of the change in IPC-IBGE since the previous settlement date; (b) Between one and another settlement date, 20% each time change in IPC-IBGE reached 20% or more (flexible wage scale).
Period 1987-89: Bresser plan ("*Plano Bresser*")			
DL 2335 *DL* 2336	Monthly (except in the settlement date)	URP (an index linked to IPC-IBGE)	(i) Jul and Aug 1987: None. (ii) Sept 1987 to Jan 1989: Change in URP + Residual of cost-of-living increase prior to Jul 1987. ▪ Change in URP = average monthly change in IPC in a previous fixed quarter (e.g. monthly change in URP from Apr to Jun equals average monthly change in IPC from Jan to Mar). ▪ Residual until Feb 1988.
Period 1989-90: Summer plan ("*Plano Verão*")			
PD 32 Act 7730 PD 37 Act 7737 PD 48 Act 7777	Monthly	IPC-IBGE	(i) Feb 1989: Max (average real wage in 1988; nominal wage in Jan 1989). ▪ Formula for calculating the average real wage was modified twice in Mar and Apr 1989. (ii) May 1989: None. (iii) Jun 1989 to Mar 1990: Multiple of change in IPC-IBGE in the immediately previous month. ▪ Factor of multiplication between 0 (higher wages) and 1 (lower wages).
Period 1990-91: Collor I plan and Collor II plan ("*Planos Collor I e II*")			
PD 154 Act 8030 PD 193 PD 295 Act 8178	Yearly	FRS (an index linked to IPC-IBGE)	(i) Apr and May 1990: None. (ii) Jun 1990 to Feb 1991: Average real wage in previous 12 months. (iii) Mar 1991: None. (iv) Apr to Aug 1991: Fixed amount.

Table 6.2 – Brazilian statutory wage indexation systems, 1965-96 (continued)

Pieces of legislation	Wage indexation system		
	Time lag	Index	Formula for calculating the increase in nominal wages
Period 1990-91: Collor I plan and Collor II plan ("*Planos Collor I e II*")			
Act 8238			
Period 1990-91: Reinstating wage indexation			
Act 8222 Act 8276 Act 8149 Act 8542 PD 340 Act 8700	Bimonthly (Sept 1991 to Jul 1993) Monthly (Aug 1993 to Feb 1994)	INPC-IBGE (Sept 1991 to May 1992); FAS (an index linked to change in IRSM-IBGE, which was an index adjusting statutory minimum wages, Jun 1992 to Feb 1994)	(i) Sept 1991 to May 1992: Change in INPC-IBGE every four months, together with an adjustment stipulated by the Ministry of the Economy in the middle of the period. (ii) Jun to Dec 1992: FAS every four months, together with an adjustment stipulated by the Ministry of the Economy in the middle of the period. ▪ Both (i) and (ii) applied only to the fraction equal to or smaller than three statutory minimum wages. (iii) Jan to Jul 1993: FAS every four months, together with an adjustment stipulated by the Ministry of the Economy in the middle of the period. (iv) Aug 1993 to Feb 1994: FAS every four months, together with a monthly adjustment equal to change in IRSM-IBGE in the previous month minus 10 points of percentage. ▪ Both (iii) and (iv) applied only to the fraction equal to or smaller than six statutory minimum wages.
Period 1994-96: Real plan ("*Plano Real*")			
PD 434 Act 8880 PD 1053 Act 10192	Monthly (Apr to Jun 1994); On the annual settlement date (Jul 1995 to Jun 1996)	URV (a daily index arbitrated at government discretion, Mar to Jun 1994); IPC-r (Jul 1995 to Jun 1996)	(i) Mar 1994: Average real wage in Sept 1993-Feb 1994. (ii) Apr to Jun 1994: Change in URV up to the paying day. (iii) Jul 1995 to Jun 1996: Change in IPC-r between the settlement date prior to Jul 1995 and Jun 1995.

Note: DL stands for *Decreto-Lei*, PD stands for Provisional Decree.

Wage indexation system of the military government I, 1965-79

The Brazilian machinery of statutory wage indexation stemmed from the 1965 Plan for Governmental Economic Action (PAEG – "*Plano de Ação Econômica do Governo*"). This plan consisted of a macroeconomic policy aimed at curbing inflation which came into force during the opening years of the military government. The government sought to minimise the effects of collective bargaining over the general level of wages by

directly regulating nominal wages in the private sector. Campos and Simonsen – both ministers of the military government at some point – made the role of statutory wage indexation clear by assuming:

> the considerable advantage of laying down a rule for arbitrating wage bargaining. The great problem that stems from wage bargaining in a modern world – including when this bargaining concerns wage determination at government discretion – is that negotiations are aggressively affected by the political power of trade unions and employers´ associations, by electoral criterion, and by other criterions which are far from any theorem of economic efficiency. This kind of formula [the authors refer to the formula of PAEG] enjoys the advantage of substituting a simple arithmetic operation for an endless game of strikes and pressure (Simonsen and Campos 1979: 112).

Hence, a statutory system of wage indexation was devised to replace collective bargaining by what policy-makers thought to be good economic theory. It consisted of a rule for the annual adjustment of nominal wages on the settlement date of each occupational category according to average real wages throughout the previous 24 months, plus half the predicted inflation rate for the following 12 months.

The underlying goal of this system consisted in increasing real wages exclusively on the grounds of the productivity increase measured for the Brazilian economy as a whole. In doing so, policy-makers expected to avoid distributive shocks which could supposedly place the stabilisation policy in danger of collapse. Thus, nominal wage increase turned out to be officially established by the Federal government. Despite minor changes, this system of wage indexation remained in force until 1979.

Wage indexation system of the military government II, 1979-86

The wage indexation system set down by the military government in 1965 was subject to cutting criticism by numerous commentators, ranging from trade unions to researchers on labour relations, as being a device to promote wage squeeze ("*arrocho salarial*"), in particular of lower wages (Carvalho 1973: 82; DIEESE 1976: 63; Xavier 1979: 254; Souza 1980: 162; Oliveira 1985: 51). In the late 1970s, this criticism turned into strong political mobilization of the trade unions (Prado 1998: 30). At that time, the more militant wing of trade unionism reached the point of calling for a definite suppression of the statutory system of wage indexation. In the mood of those days,

increase in nominal wages should exclusively be left to collective bargaining. The military government reacted by bringing a completely new system of indexation into life.

The statutory indexation system that came into force in 1979 consisted of an attempt to combine official wage indexation, a distributive policy, and the trade unions´ claim for freedom of negotiation. According to this system, nominal wages would be adjusted every six months – on the settlement date of each occupational category and in the middle of the period between one settlement date and another. Nominal wage increase was calculated as a multiple of the rate of inflation observed in the previous six months. Still according to Act 6708/79, the factors of multiplication oscillated from 1.1 for lower wages – the distributive element – to none for higher wages. The magnitude of these factors of multiplication was modified more than once in subsequent legislation without changing other traits of the system.

Together with wage indexation, regulatory legislation allowed the agents to bargain over an extra increase in nominal wages. It stipulated, however, that this extra percentage had to be negotiated on the grounds of productivity increase at the industry level. From the late 1970s to the mid-1990s, the machinery for adjusting nominal wages consisted of a combination between statutory wage indexation, which fixed the floor percentage for nominal wage increase, and wage bargaining over a further increase.

In practice, this piece of legislation was superseded by wage bargaining over the 1980s in two points. First, provisions on COLA increasingly established the increase in nominal wages according to full inflation regardless of the level of wages. Second, the time lag between successive wage adjustments narrowed in line with accelerating inflation. In March 1986, the wage indexation system of the military government II was definitely replaced by another system as a consequence of a new stabilisation policy.

Wage indexation in the Cruzado plan ("Plano Cruzado"), 1986-87

The kind of macroeconomic policy that started to be carried out from the mid-1980s on, with the aim of curbing inflation, was known as heterodox shock. Theoretical findings on the nature of Brazilian inflation suggested to policy-makers not to rely upon traditional monetary and fiscal instruments to contain inflation (Rego et al. 1986: 45). The most important element of heterodoxy in this policy, which was devised to deal

with the problem of inertial inflation, was placed in the administration of distributive conflicts through, for instance, official control over nominal wages and prices. In March 1986, the government launched the Cruzado plan, named after the new currency. The Cruzado plan became the most heterodox of all heterodox shocks: the government froze prices and conducted an expansionist monetary and fiscal policy.

The Cruzado´s prescription for nominal wages was to be carried out in two stages:

a) In March 1986, nominal wages of all employees were adjusted to an equivalent to the average real wages observed between September 1985 and February 1986, plus 8%. The underlying assumption for adjusting nominal wages by the average real level – in opposition to their peak in a past time – resided in avoiding distributive shocks in order to help control inflation; and

b) from April 1986 on, the Cruzado stipulated a system of wage indexation that combined a rule to be applied on the settlement date with a rule to be applied during the rest of the year. On the annual settlement date of each occupational category, nominal wages had to be increased 0.6 times the percentage of the cost-of-living increase observed since the preceding settlement date. For the rest of the year, the system established a flexible time lag between adjustments: nominal wages had to be adjusted 20% each time the cost-of-living increase reached this magnitude.

In fact, Cruzado policy-makers were so optimistic about the prospect of their policy that they had not even seriously considered the hypothesis that such a flexible wage scale would be actually put in force. As inflation was expected to be restrained to well below 20% a year – some even referred to a zero-inflation goal –, the consequence was that nominal wages would be legally adjusted only on the settlement date, and not by the full cost-of-living increase. This meant a push towards breaking links between past inflation and current wages. After a few months of very low inflation, however, accelerating inflation not only caused the wage indexation system to be put fully into functioning, but also precipitated the demise of the Cruzado plan, as well as the endorsement of a new heterodox shock in June 1987.

Wage indexation in the Bresser plan ("Plano Bresser"), 1987-89

In June 1987, the Cruzado was replaced by a new macroeconomic policy called Bresser plan, after the name of the Minister of the Economy. Notwithstanding some similar characteristics to those of its predecessor, such as official price control, the government made a move towards a more orthodox approach by sustaining the necessity of a tight monetary and fiscal policy.

The Bresser plan also brought about a change in the statutory system of wage indexation. It set down monthly adjustments of nominal wages linked to past cost-of-living increase, although not in a straightforward way. A device to delay the transmission of higher prices to nominal wages was implemented as an attempt to break inflationary inertia. Once more, accelerating inflation caused the whole policy to collapse. In 1989, for the third time, president Sarney changed ministers and policy altogether.

Wage indexation in the Summer plan ("Plano Verão"), 1989-90

In January 1989, the government announced a new macroeconomic policy that came to be known as the Summer plan. This plan applied to nominal wages the same basic treatment its predecessors had: adjustment according to past average real wages. Unlike Cruzado and Bresser, however, the government cut all statutory links between nominal wages and past inflation. For the first time since 1965, regulatory legislation did not stipulate a system of wage indexation. This gave rise to a political battle in the Federal Congress, for oppositionist parties and trade unions had become strong supporters of statutory indexation aimed at minimising the effects of inflation upon wages. In the late 1980s, statutory systems of full wage indexation had been elevated to a consensual claim among the whole spectrum of the Brazilian trade unionism, including the more militant wing that had previously opposed any piece of legislation on nominal wages.

As a consequence, Act 7788/89 passed in Congress reinstating wage indexation. This system consisted of monthly adjustments of nominal wages by a multiple of the rate of inflation observed in the immediately previous month. Factors of multiplication oscillated between 0 (higher wages) and 1 (lower wages).

Wage indexation in the Collor plans ("Planos Collor"), 1990-91

President Collor, who had won the first presidential election by popular vote after nearly thirty years, took office in March 1990. Soon afterwards he announced a controversial macroeconomic policy which involved official control of prices and nominal wages, as well as the prohibition of withdrawing money from bank accounts over a given amount. For the fourth time since 1986, the government engaged in a heterodox shock. Collor plan I initially froze nominal wages. This lasted until July, when the government promulgated a new system of wage indexation which was made up of an annual adjustment of nominal wages on the settlement date by an equivalent to average real wages observed in the preceding 12 months.

Similarly to other stabilisation policies, Collor plan I did not succeed in restraining inflation. In February 1991, it was replaced by Collor plan II. Besides stipulating that the nominal wages of all employees had to be converted to an equivalent to average real wages observed between February 1990 and January 1991, Collor II pushed towards suppressing statutory wage indexation. Once more, political disputes in the Federal Congress resulted in keeping statutory wage indexation alive, although with a much more imperfect linkage to past inflation than other systems had stipulated. This rule consisted in adjusting nominal wages by a fixed amount equal to the increase in the cost of a basket of selected essential goods. Since Collor plan II did not succeed and inflation accelerated again, a new statutory system of wage indexation was adopted in September 1991.

Reinstating wage indexation, 1991-94

The system of statutory wage indexation that came into force in September 1991 consisted of adjusting nominal wages according to past inflation every two months. The percentage of wage increase was fixed as a multiple of past inflation, with factors of multiplication oscillating between 1 (lower wages) and 0 (higher wages). Despite minor changes, this system remained basically the same until July 1993, when the time lag between successive adjustments was narrowed to one month as a consequence of huge accelerating inflation.

From transitional indexation to breaking links between current wages and past inflation: the Real plan ("Plano Real"), 1994-96

In March 1994, the government announced a new macroeconomic policy. The Real plan, which was named after the new currency, consisted of a further attempt to restrain inflation through an economic shock. The nominal wages of all employees were fixed as an equivalent to average real wages observed between November 1993 and February 1994. These wages had to be then denominated in URV, which consisted of a unit of value that was revised everyday according to an estimate of inflation in *reais* by governmental decree. On the paying day, wages had to be reconverted into *reais* by an amount proportional to their value in URV. This system represented what can be seen as the ultimate in wage indexation without giving up national currency under a context of high inflation: daily indexation of wages by an estimate of current inflation.

Daily indexation of wages based on URV lasted only four months. Since the announcement of the Real plan, the system was conceived as a transitional device aimed at helping the economy move from high to low inflation without any major trauma. After a cyclical movement of heterodox shocks and accelerating inflation, which lasted from March 1986 to March 1994, the Real plan succeeded in keeping inflation within acceptable boundaries. This also helped the government suppress the legal linkage between nominal wages and inflation from Jul 1996 onwards.

6.1.2 Wage bargaining and statutory indexation

From 1978 to 1995, increase in nominal wages in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre was determined to a great extent by statutory wage indexation. In addition to wage indexation, regulatory legislation also left room for wage bargaining. The coexistence between statutory wage indexation and collective bargaining brought about a particular rationale for wage bargaining. From the trade unions´ standpoint, the statutory increase was seen as a floor adjustment of nominal wages. Collective bargaining should aim at both making links between wages and inflation less imperfect – for instance, by extending the 1.0-factor of multiplication for all wages – and stipulating additional improvement factors. According to this rationale, the total rate of increase in nominal wages (ΔW) on the settlement date of occupational categories was composed of a statutory element (sw) and a collective bargaining element (bw):

(1) $\Delta W = sw + bw$

In the writing of most agreements, however, the magnitude of the element sw was not isolated from the magnitude of the element bw. The typical COLA provision would establish a percentage of increase in nominal wages by taking both the statutory percentage and the pure negotiated percentage together. In order to isolate the magnitude of the element bw, it is necessary to find the difference between the sum of COLA and AIF percentages and the statutory rate of increase in nominal wages:

(2) bw = (COLA – sw) + AIF

I have calculated the magnitudes of both sw and bw elements for lower wages. Table 6.3 displays statistics for assessing the relevance of the pure element of bargaining (bw) in the selected collective agreements. Column two shows the annual average increase in nominal wages by bargaining unit. Column three displays the magnitude of the element of bargaining (bw) in proportion to the total rate of increase in nominal wages. Column four shows the annual average change in real wages on the settlement date under the supposition that nominal wages were adjusted exclusively according to statutory rules. I will call this outcome statutory real wages hereafter. This indicates the degree to which statutory indexation systems linked nominal wages to past inflation.

Figures in table 6.3 indicate that the increase in nominal wages displayed too high an adherence to the statutory rate until 1985. The pure element of bargaining (bw) accounted for less than 10% of the increase in nominal wages for most of these years. Moreover, in six out of eight years, nominal wage increase equalled the statutory rate in at least one collective agreement over 1978-85. From 1986 onwards, however, the element of bargaining started to have a growing share in nominal wage increase. In 1988 and later again in 1991, when it reached its peak, the element of bargaining accounted for over half the increase in nominal wages.

Figures in table 6.3 also evince a negative relationship between the magnitude of the element of bargaining and change in statutory real wages. Change in statutory real wages reveals the degree to which official indexation links nominal wages to past inflation. A decrease in statutory real wages suggests official indexation largely weakened nominal wages' ties to past inflation from 1986 on. As a consequence, trade

unions sought to compensate this weakening through an increase in the magnitude of the element of bargaining.

Table 6.3 – Annual increase in nominal wages, magnitude of the element of bargaining, and annual change in statutory real wages, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Annual increase in nominal wages (%)	Magnitude of the element of bargaining (bw) as a share of the increase in nominal wages (%)	Annual change in statutory real wages (%)[1,2]
1978	43.1	8.3	1.0
1979	55.5	20.4	0.2
1980	96.6	11.8	-0.2
1981	124.2	9.9	-2.9
1982	117.2	9.0	4.8
1983	125.0	7.9	-2.3
1984	187.2	4.3	-4.6
1985	235.9	9.2	-1.3
1986	141.4	16.4	-28.4
1987	158.0	30.8	-16.5
1988	423.2	52.4	-41.6
1989	995.8	19.3	-16.9
1990	3,643.1	31.1	-45.7
1991	338.8	54.2	-56.8
1992	828.0	21.2	-12.4
1993	1,561.3	7.9	5.5
1994	3,500.0	15.8	-18.3
1995	131.1	7.4	-27.2

[1] Calculated under the supposition that nominal wages were adjusted exclusively according to statutory rules of indexation.
[2] Cost-of-living index: IPC-IEPE.

Huge drops in statutory real wages as observed over 1986-95 were the inevitable outcome of successive conversions of nominal wages according to past average real wages under high inflation and imperfect wage indexation systems. Converting nominal wages according to past real wages was a pillar of the stabilisation policies of that period. If inflation was kept within acceptable limits, the government argued, employees would not undergo a loss of purchasing power. On the contrary, low inflation would open the opportunity for a stable increase in real wages. However, as stabilisation policies did not succeed, accelerating inflation pushed converted real wages down, so that still lower real wages supplied the new reference for further conversion of wages in the advent of the next stabilisation policy, and so on. As a consequence of

these weaker ties between past inflation and official indexation, wage bargaining became increasingly important in sustaining real wages under chronic and high inflation.

Two broad patterns regarding the magnitude of the element of bargaining (bw) were observed between 1978 and 1995. The first one expresses the goal of the official indexation system promulgated in 1979. According to this pattern, which lasted until 1985, only a marginal percentage of the increase in nominal wages was brought about by means of wage bargaining. Accelerating inflation and a more imperfect statutory wage indexation system gave rise to a second pattern, which was observed between 1986 and 1995. Wage bargaining started to play an increasing role in adjusting nominal wages. This minimised the decrease in real wages vis-à-vis the worse performance of statutory real wages.

6.1.3 Wage bargaining and inflation

In this part, I analyse the outcomes of wage bargaining vis-à-vis the cost-of-living increase in the selected collective agreements. The focus is directed towards change in real wages on the settlement date of occupational categories. In order to calculate relevant measures of real wages, I have taken both nominal wages adjusted according to collective agreements and nominal wages adjusted exclusively according to statutory rules into account. Thus, relevant measures are:

ω_{bw} = negotiated real wages, which is a measure of real wages based on the increase in nominal wages according to provisions of collective agreements;

ω_{sw} = statutory real wages, which is a measure of real wages based on the increase in nominal wages exclusively according to statutory rules.

Thus, negotiated real wages is a function of COLA, AIF, and cost-of-living increase. I have compared the percentage increase in nominal wages with the percentage increase in the cost of living regarding periods of 12 months between successive settlement dates. Change in real wages is measured as follows:

(3) $\Delta\omega = [(1+\Phi/100)/ (1+\pi/100) -1].100$

where

$\Delta\omega$ = percentage change in real wages
Φ = percentage change in nominal wages
π = percentage change in the cost of living according to IPC-IEPE

In order to make a comparison between change in negotiated real wages and change in statutory real wages, the notation will be:

(3a) $\Delta\omega_{bw} = [(1+\Phi_{bw}/100)/ (1+\pi/100) -1].100$

(3b) $\Delta\omega_{sw} = [(1+\Phi_{sw}/100)/ (1+\pi/100) -1].100$

where

$\Delta\omega_{bw}$ = percentage change in negotiated real wages
Φ_{bw} = percentage change in negotiated nominal wages (COLA plus AIF)
$\Delta\omega_{sw}$ = percentage change in statutory real wages
Φ_{sw} = percentage change in statutory nominal wages

In table 6.4, I display figures on the average percentage change in both negotiated and statutory real wages between 1978 and 1995 for the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, as well as make a note on the major stabilisation policies adopted in the period. According to these figures, change in negotiated real wages remained positive and below 10% for most of the 1978-85 period. This was a period when the pure element of bargaining accounted for a minor proportion of the total rate of increase in nominal wages. Nevertheless, this pure element of bargaining brought about a continuous increase in real wages on the settlement date in contrast to a continuous drop in statutory real wages until the mid-1980s. Accelerating inflation, which had shown its first signal in 1983 as a consequence of the huge devaluation of the exchange rate that followed the Mexican debt crisis, as well as successive macroeconomic policies aimed at controlling the inflationary process, gave rise to an unsettled period which lasted until the Real plan came into force in 1994. Between 1986 and 1995, change in negotiated real wages oscillated within a large band from an enormous reduction to a great increase.

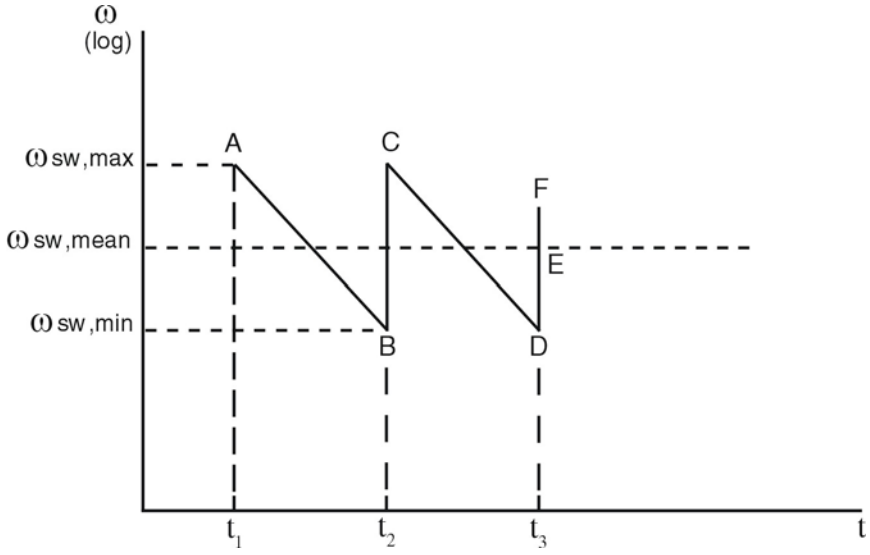
In order to illustrate what the logical consequences of successive stabilisation policies that rely on converting nominal wages according to mean real wages under a context of chronic inflation are, I have taken the Cruzado plan (1986) as an example. One of the pillars of the Cruzado plan was the conversion of nominal wages according to mean real wages observed between September 1985 and February 1986. In 1986, statutory real wages decreased 28.4%, on average, by bargaining units. This percentage was close to the difference between the mean and the peak of real wages.

Table 6.4 – Average change in negotiated real wages and statutory real wages, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95 (%)

	Negotiated real wages	Statutory real wages	Stabilisation Policy
1978	3.6	1.0	
1979	8.0	0.2	
1980	5.9	-0.2	
1981	2.7	-2.9	
1982	10.2	4.8	
1983	2.3	-2.3	
1984	-1.8	-4.6	
1985	5.5	-1.3	
1986	-20.8	-28.4	Cruzado (Mar)
1987	3.4	-16.5	Bresser (Jun)
1988	2.0	-41.6	
1989	0.8	-16.9	Summer (Jan)
1990	-22.2	-45.7	Collor I (Mar)
1991	-23.9	-56.8	Collor II (Feb)
1992	12.3	-12.4	
1993	14.4	5.5	
1994	-4.4	-18.3	Real (Mar-Jun)
1995	-24.0	-27.2	

Figure 6.1 shows the hypothetical path of real wages on the grounds of constant rates of cost-of-living increase, as well as statutory indexation of nominal wages according to the system which was in force before the advent of the Cruzado plan. On the settlement date t_1, $\omega_{sw,max}$ (point A) indicates the purchasing power of nominal wages as measured by prices in t_1, or simply real wages in t_1. As nominal wages remain unchanged between t_1 and t_2, real wages decrease continuously down to $\omega_{sw,min}$ (point B) by virtue of the cost-of-living increase over this time lag. In t_2, nominal wages are adjusted according to the cost-of-living increase observed between t_1 and t_2. As a consequence, real wages recover their peak $\omega_{sw,max}$ (point C) after having reached their bottom $\omega_{sw,min}$. The same story happens again between points C and D, when real wages recover their peak at the settlement date t_3. Supposing constant rates of inflation and the wage indexation system in force before March 1986, figure 6.1 describes the path of real wages between one and another settlement date with accuracy. If inflation accelerates, however, real wages at the bottom are still lower than they appear in figure 6.1. If inflation slows down, it is the other way round.

Figure 6.1 – Real wages under constant inflation and the wage indexation system of the military government II (1979-86)



In figure 6.1, the average purchasing power of nominal wages between t_1 and t_2 is expressed by $\omega_{sw,mean}$ (mean real wages). Over the first half time between t_1 and t_2, real wages are higher than $\omega_{sw,mean}$; over the last half they are smaller than $\omega_{sw,mean}$. The same happens between t_2 and t_3. The goal of all stabilisation policies that came into force from 1986 on was to convert nominal wages into level $\omega_{sw,mean}$. Nonetheless, each stabilisation policy displayed particular features that meant some degree of deviation from this paradigm. The Cruzado plan, for instance, converted wages into level $\omega_{sw,mean}$, plus 8% (point F). If the cost-of-living increase proved to be very low afterwards, as Cruzado policy-makers expected, statutory real wages would oscillate between points E (mean) and F (mean plus 8%) in the short run. However, the Cruzado plan actually did not succeed in controlling inflation, so that statutory real wages decreased again.

In June 1987, when the Bresser plan was implemented, all measures of statutory real wages – peak, mean, and bottom – were smaller than they had been observed before the Cruzado plan. The same principles of converting nominal wages in a way to avoid distributive shocks that could place control over inflation in danger were applied to the Bresser plan and subsequent stabilisation policies. The crucial point is: whenever successive stabilisation policies that rely on such conversion of nominal wages fail, *ceteris paribus*, the consequence is that real wages are continuously dragged down. The Brazilian experience over the 1986-94 period fits this model in which the path of real wages resembles an endless move down the steps of a staircase.

Still according to the assumptions of the stabilisation policies in the period 1986-94, real wages after conversion were expected to become the new reference for wage bargaining instead of real wages on a past settlement date. This would mean a change in the pattern of wage bargaining that had prevailed before the Cruzado plan, which had real wages on the immediately previous settlement date as a level to be recovered. Figures in table 6.5 show there was no exception to this pattern until 1985, for all collective agreements stipulated COLA provisions by making nominal wages on a previous settlement date (or something which was mathematically the same) the reference for adjustment. A typical provision would set down a percentage increase over nominal wages as observed on a past settlement date. This percentage would equal the cost-of-living increase between the previous and the current settlement dates.

Table 6.5 – Number of agreements according to their time reference for adjusting nominal wages, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre 1978-95

	Reference to the immediately previous settlement date	Reference to a date other than the immediately previous settlement date
1978	17	0
1979	16	0
1980	16	0
1981	15	0
1982	17	0
1983	17	0
1984	16	0
1985	17	0
1986	2	13
1987	13	4
1988	17	0
1989	14	3
1990	11	5
1991	3	13
1992	15	1
1993	14	1
1994	3	9
1995	12	3

In 1986, the bulk of collective agreements stipulated COLA provisions without reference to the immediately past settlement date. This suggests collective agreements

in the selected bargaining units sanctioned the governmental attempt to break the rationale of recovering the peak. Between 1986 and 1995, a similar break was verified in 1991 (Collor plan I) and 1995 (Real plan). In other years, the number of agreements in which the reference for provisions on increase in nominal wages to a date other than the immediately previous settlement was not as high as in this year, although some partial break could be observed.

The continuous decrease in statutory real wages from 1986 onwards, however, was not fully transmitted to negotiated real wages. Figures in tables 6.4 and 6.5 evince that negotiated real wages changed almost in line with statutory real wages only after the Cruzado plan (1986) and the Real plan (1994-95). Moreover, those were years when most collective agreements set up COLA provisions without reference to the immediately previous settlement date. That means the government succeeded in keeping the outcomes of wage bargaining within the boundaries of the economic policy.

In contrast, the path of negotiated real wages diverged from the path of statutory real wages by a great deal in the Bresser plan (1987-88) and the Summer plan (1989). For instance, in 1987, statutory real wages decreased by 16.5% on average, whereas negotiated real wages increased by 3.4%. Besides, most agreements kept the immediately settlement date as the time reference for COLA provisions during these years. It is likely that accelerating inflation soon after the policy had come into force, as was the case both in the Bresser and the Summer plans, weakened attempts by the government to keep outcomes of wage bargaining within the boundaries of the stabilisation policy.

Collor plan I (1990) and Collor plan II (1991) displayed mixed outcomes. Negotiated real wages underwent a huge decrease, although to a much lower degree than the statutory ones. Increase in negotiated real wages over 1992 and 1993 indicate a partial recovery of their magnitude.

6.1.4 Bargaining over wage indexation

Notwithstanding regulatory legislation had stipulated rules for wage indexation over the period 1978-95, it was not uncommon that collective agreements also established provisions on wage indexation to be applied within the bargaining units. These provisions would improve upon existing statutory rules. Table 6.6 displays the average

number of provisions on wage indexation, as well as the percentage of these provisions which stipulates rules whose content was broader than the comparable regulatory legislation.

Table 6.6 – Average number of provisions on wage indexation and percentage of provisions classified into category broader, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Number of provisions	
	Average	Broader (%)
1978	0.059	100.0
1979	0.563	100.0
1980	0.250	75.0
1981	0.400	100.0
1982	0.353	100.0
1983	0.353	100.0
1984	0.688	100.0
1985	0.941	100.0
1986	0.400	83.3
1987	0.176	100.0
1988	0.294	100.0
1989	0.118	100.0
1990	0.563	88.9
1991	0.500	87.5
1992	0.750	91.7
1993	0.867	100.0
1994	0.750	100.0
1995	0.600	100.0
Mean	0.479	96.3

Note: Provisions classified into category broader mean their contents are broader than the contents of the comparable regulatory legislation.

Figures in table 6.6 show that the average amount of wage indexation provisions exceeded the overall mean in 1979, 1984-85, and 1990-95. There is a common environmental feature regarding the increase in the number of these provisions in 1979 and 1984-85, which is accelerating inflation. In the late 1970s, inflation escalated to a three-digit level from about 50% a year. Under the statutory wage indexation system in force (military government I), accelerating inflation brought about a decrease in real wages. Thus, the higher number of wage indexation provisions observed in 1979 may be seen as a reaction against the imperfection of the statutory system. As the government changed the whole indexation system in October 1979 (military government II) and inflation was kept close to 100% a year over 1980-82, the number of wage indexation provisions declined below the overall mean until 1984. Further accelerating inflation in 1983-84 brought about a decrease in statutory real wages once

more. Trade unions reacted by negotiating specific rules on wage indexation which were expected to prevent real wages from additional decline. In 1985, there was hardly an agreement without wage indexation provisions.

Between 1986 and 1994, stabilisation policies pursued breaking, or at least weakening, statutory links between wages and past inflation. Employers were pressed to adopt tougher approaches towards wage indexation provisions. In particular, official control over prices played a decisive role in making employers adopt tougher approaches towards wage bargaining over indexation. As long as firms were not allowed to freely set up their prices, employers refrained from agreeing with indexation clauses. The mean number of these provisions fell to a tiny 0.118 in 1989.

During the first half of the 1990s, however, the average amount of wage indexation provisions started increasing again. Between 1990 and 1995, two out of three collective agreements displayed some rule on wage indexation. This is likely to be the outcome of resilient inflation. Inflation had exceeded 1,000% a year in 1989, and a four-digit level was not uncommon over the 1990s. Under a context of high inflation and erratic statutory wage indexation, wage indexation provisions became much more frequent.

Figures in table 6.6 also confirm that wage indexation provisions laid down rules whose content was broader than the related regulatory legislation on wage indexation. Wage bargaining sought to improve rules upon existing statutory ones by changing the indexation machinery mostly in the following direction:

a) By narrowing the time lag between one adjustment of nominal wages and the next; and

b) by increasing the factor of multiplication of past inflation for the adjustment of higher wages.

The ultimate goal of trade unions consisted of a monthly increase in nominal wages according to the cost-of-living increase. Even the achievement of this goal, however, would not avoid a cut in real wages under continuous accelerating inflation whatsoever.

6.1.5 Conclusion

In this section, I have analysed the outcomes of wage bargaining regarding the increase in nominal wages under a context of high and chronic inflation. Evidence suggests two patterns of outcomes were observed between 1978 and 1995. The first pattern lasted from 1978 to 1985. Over these years negotiated rules on nominal wage increase were kept very much in line with statutory wage indexation. Basically:

a) On average, the pure element of bargaining in collective agreements (bw) accounted for less than 10% of the total rate of increase in nominal wages for all but one year;

b) the time reference for adjusting wages on the settlement date ("*data-base*") was always the immediately previous settlement date of occupational categories; and

c) the average number of agreements with wage indexation provisions was smaller than the overall mean.

From the trade unions´ standpoint, the underlying rationale of wage bargaining consisted in taking statutory increases in nominal wages as a floor adjustment so as to negotiate over an additional increase that could bring about higher negotiated real wages on the settlement date (ω_{bw}). This logic proved to succeed for most of the 1978-85 period.

The second pattern is associated to the stabilisation policies of the 1986-94 period. Higher inflation in contrast to the previous period and unsuccessful policies brought about a change in wage bargaining outcomes. This was an unsettled period. The main outcomes are:

a) Statutory rules of wage indexation became erratic as a consequence of a governmental push towards breaking links between past inflation and current wages. Under such a context, the pure element of bargaining in negotiated provisions on nominal wage adjustment (bw) came to account for a greater proportion of the increase in nominal wages – on average, 25.6% (1986-95) against 10.1% (1978-85);

b) more than one third of provisions on the increase in nominal wages changed their time reference from the settlement date to another point. Over the preceding period, all provisions had immediately previous settlement dates as their time reference; and

c) the amount of wage indexation provisions decreased between 1986 and 1989 before becoming more frequent over the 1990s. The 1986-95 mean exceeded the overall mean.

In years of greater instability, wage bargaining performed the important role of minimising the decrease in real wages. *Ceteris paribus*, this decrease would be the logical consequence of the loss of control over inflation together with successive conversions of nominal wages according to past mean real wages. Trade unions fought this prevailing tendency through wage bargaining. Outcomes were mixed. In some years, collective agreements sanctioned lower negotiated real wages in accordance to the macroeconomic policies; in others, wage bargaining succeeded in minimising the decrease in negotiated real wages. Even though negotiated real wages increased in 1987-89 and 1992-93, in opposition to a decrease in statutory real wages, it is highly likely that the huge accelerating inflation brought about a continuous decrease in annual real wages, in particular over the 1990s.

6.2 Bargaining over minimum wages

In this section, I analyse the outcomes of wage bargaining over minimum wages. Although adjustments in the general level of nominal wages were the main concern of trade unions in wage bargaining under high and chronic inflation, negotiation over minimum wages also became important in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre over 1978-95. In subsection 6.2.1, I give a brief account of the Brazilian legislation on minimum wages. Then, in subsection 6.2.2, I compare negotiated rates of minimum wages with statutory rates. I complete this analysis in subsection 6.2.3 by looking at the path of change in real minimum wages on the settlement date.

6.2.1 Statutory minimum wages

The Brazilian government has been setting minimum rates of wages since 1940. Minimum wage laws were laid down over the 1930s, together with the whole regulatory machinery that gave rise to the Brazilian state corporatist system. The 1934 Federal Constitution became the first legal diploma to establish the right of employees to minimum wages. Both Act n. 185 (14 Jan 1936) and "*Decreto-lei*" n. 399 (30 Apr 1938)

set down a statutory definition of minimum wages and created minimum wage committees. These committees, which were made up of governmental officials as well as representatives of both employers and employees, had the task of preparing proposals for the first rates of minimum wages to be established by government. In May 1940, the Federal government finally announced the first rates of minimum wages by means of "*Decreto-lei*" n. 2142 (1 May 1940).

From 1940 to 1984, official rates of minimum wages varied according to the country's geographical areas. In 1940, there were 14 different rates. After a peak of 34 different rates in 1954, the government steadily diminished this amount until 1984, when the official rate of minimum wage was unified for the whole country. In 2000, a change in regulatory legislation set down that any state government could also set statutory minimum rates of wages to be applied within the geographical area of the state, as long as these rates were higher than the national rate, which remained to be stipulated by the Federal government.

Between the late 1970s and 1995, the index of the statutory real minimum wage displayed a tendency to decrease, as figures in table 6.7 indicate. From 1978 to 1982, real annual minimum wages oscillated up and down within narrow boundaries. In 1983-84, however, accelerating inflation dragged this rate down by 16.6%. Notwithstanding a few years of recovery, the real minimum wage underwent a path of decline from the mid-1980s to the mid-1990s.

6.2.2 Negotiated minimum wages and statutory minimum wages

In the early 1980s, provisions on minimum wages became well spread over collective agreements in the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre. In 1978, only two out of 17 agreements had displayed this kind of provisions. This amount increased to two out of three agreements in 1981. In 1987, all agreements established provisions on minimum rates of wages. Table 6.8 displays statistics on wage bargaining over minimum wages, drawing a comparison between negotiated and statutory minimum rates of wages.

Table 6.7 – Brazilian statutory real annual minimum wages, 1978-95

	Real annual minimum wages[1]	Index of real annual minimum wages
1978	140.78	100.0
1979	140.03	99.5
1980	145.11	103.1
1981	140.38	99.7
1982	142.49	101.2
1983	128.39	91.2
1984	118.80	84.4
1985	120.45	85.6
1986	120.17	85.4
1987	104.15	74.0
1988	114.26	81.2
1989	119.25	84.7
1990	92.66	65.8
1991	105.46	74.9
1992	101.45	72.1
1993	115.52	82.1
1994	100.63	71.5
1995	97.78	69.5
Mean	119.32	84.8

[1] Measured in R$ (*reais*) at constant prices of Dec 1995 by IPC-IEPE (cost-of-living index). In 1995, the official rate of exchange (R$/U$) equalled 0.9174.

Figures in table 6.8 indicate that negotiated minimum wages increased in proportion to the statutory minimum rate of wages. In 1978, only two collective agreements had laid down provisions on minimum wages: the lower rate equalled 1.19 times the statutory rate, whereas the higher rate equalled 1.45 times the statutory rate (mean 1.32). Notwithstanding the fluctuations, the average rate of negotiated minimum wages increased by 1995, when it equalled 1.81 times the statutory rate. Both minimum and maximum levels of negotiated minimum wages also showed a tendency to increase in proportion to statutory minimum rate of wages.

This tendency of negotiated minimum wages to increase in proportion to official rates is likely to be an outcome of the decrease in statutory real minimum wages which was verified from 1978 to 1995. If negotiated minimum wages remained unchanged in proportion to statutory rates, they would capture this decrease in full. Thus, similarly to what happened in negotiations over nominal wage increase (COLA and AIF provisions), trade unions sought to minimise the negative effects of accelerating inflation over the minimum rates of real wages by enlarging the pure element of bargaining, which manifests itself in the difference between negotiated and statutory

rates. In table 6.8, figures on minimum rates of negotiated minimum wages indicate such an attempt. They suggest that lower negotiated rates have been explicitly stipulated as a multiple of statutory rates. These lower rates gradually increased over the 1990s, when statutory real minimum wages dropped by almost one fifth.

Table 6.8 – Negotiated minimum wages, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Number of agreements			Negotiated minimum wages over statutory minimum wage		
	Total	With minimum wages provisions	In which minimum wages are explicitly stipulated as multiple of legal rates (%)	Average	Minimum	Maximum
1978	17	2	0.0	1.32	1.19	1.45
1979	16	6	0.0	1.38	1.09	1.66
1980	16	9	22.2	1.37	1.05	1.87
1981	15	10	20.0	1.46	1.12	1.99
1982	17	13	46.2	1.41	1.10	2.05
1983	17	14	42.9	1.45	1.10	2.30
1984	16	13	53.8	1.50	1.05	2.65
1985	17	15	53.3	1.58	1.05	3.17
1986	15	14	35.7	1.45	1.10	1.79
1987	17	17	29.4	1.58	1.16	2.12
1988	17	16	6.3	1.49	1.08	1.95
1989	17	17	11.8	1.59	1.10	2.38
1990	16	16	18.8	1.60	1.10	2.04
1991	16	16	6.3	1.41	1.07	1.90
1992	16	16	12.5	1.68	1.10	3.27
1993	15	15	13.3	1.65	1.20	2.60
1994	12	12	8.3	1.71	1.30	1.95
1995	15	14	7.1	1.81	1.30	2.67
Mean	15.9	13.1	23.0	1.52	1.13	2.21

It has been a rationale of bargaining over minimum wages to take statutory rates as a floor above which negotiated rates are stipulated. In some cases, statutory rates were literally taken as a yardstick for the writing of provisions on minimum wages as a multiple of official rates. In 1984-85, for instance, more than half of negotiated rates were set up as a multiple of statutory rates. From 1986 on, however, the percentage of agreements that explicitly stipulated minimum wages as a multiple of statutory rates decreased mostly by virtue of a governmental push towards breaking links between

prices and statutory minimum wages. These links were rather common in some contracts, for instance in housing markets. Taking statutory rates as an explicit unit of measurement in negotiated minimum wages, however, remained in use in a few cases.

6.2.3 Negotiated minimum wages and cost-of-living increase

The fact that negotiated minimum wages displayed a tendency to increase in proportion to statutory minimum wages over 1978-95 does not mean that their purchasing power followed the same path. This increase suggests, above all, an attempt by unions to minimise the effects of accelerating inflation. The path of negotiated real minimum wages can be described as the net outcome of this increasing proportion and the decrease in statutory real minimum wages under a context of high and chronic inflation. Table 6.9 displays statistics on negotiated minimum wages as measured against constant prices of December 1995.

Table 6.9 – Negotiated real minimum wages, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1978-95

	Negotiated real minimum wages (R$)[1]			Index of negotiated real minimum wages (mean)
	Mean	Minimum	Maximum	
1978	170.1	169.3	170.9	100.0
1979	183.3	178.4	189.9	107.7
1980	192.5	150.0	232.4	113.2
1981	197.6	158.3	232.7	116.2
1982	198.0	152.9	253.0	116.4
1983	184.0	134.1	259.5	108.2
1984	168.7	111.6	247.8	99.2
1985	180.3	105.3	267.1	106.0
1986	180.3	132.5	221.3	106.0
1987	159.6	111.7	216.8	93.9
1988	169.7	121.2	228.1	99.8
1989	182.7	130.4	241.6	107.4
1990	147.2	90.7	190.8	86.5
1991	147.9	101.6	214.2	87.0
1992	174.6	103.3	221.1	102.6
1993	194.1	127.6	233.8	114.2
1994	177.6	117.0	220.8	104.4
1995	179.8	136.4	235.7	105.7
Mean	177.1	129.6	226.5	104.1

[1] Measured in R$ (*reais*) at constant prices of Dec 1995 by IPC-IEPE (cost-of-living index). In 1995, the official rate of exchange (R$/U$) equalled 0.9174.

Figures in table 6.9 indicate a slight tendency of the mean rate of negotiated real minimum wages to decrease between 1978 and 1995. Wages increased steadily by 1982, when they reached their overall peak (R$ 198.00). From this year to 1991, the mean rate of real minimum wages oscillated until it reached its overall bottom (1990 = R$ 147.20; 1991 = R$ 147.90). A slight recovery can be observed afterwards. The rates of negotiated real minimum wages as displayed in table 6.9 are measured for settlement dates. Therefore, no conclusion on the annual rates of negotiated real minimum wages can be drawn from these figures. As negotiated real minimum wages consist of peak rates in successive settlement dates, annual real minimum wages are lower then those rates within a 12-month period. The higher the cost-of-living increase, the smaller the average rate of real wages between two settlement dates. In years of accelerating inflation, this means that lower peaks result in still lower annual rates of real minimum wages. And higher peaks do not necessarily bring about higher annual rates of real minimum wages.

6.2.4 Conclusion

In this section, I have analysed the outcomes of wage bargaining over minimum wages. From the late 1970s on, negotiation over minimum wages became increasingly important within the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, to the point that all collective agreements came to include a provision on the issue by the mid-1980s. Under a context of high and chronic inflation, as well as the official establishment of statutory minimum wages, which were the main environmental features with regards to negotiations over minimum wages, trade unions aimed at a double goal. First, unions strived for recovering rates of real minimum wages which were continuously depreciated as the consequence of cost-of-living increase. Second, they aimed at setting negotiated rates greater than statutory ones. The main outcomes are:

a) The average rate of negotiated minimum wages increased between 1978 and 1995 in proportion to statutory rates. It is likely that this outcome evinces an attempt by trade unions to minimise the effects of accelerating inflation upon real minimum wages; and

b) nonetheless, negotiated real minimum wages displayed a slight tendency to decrease, although to a much smaller degree than statutory rates did. There are grounds

for supposing, in addition, that annual rates of negotiated real minimum wages decreased to a degree closer to the annual statutory rates. Thus, although collective bargaining supplied a way for minimising the depreciation of wages, it did not prove to be strong enough to contain the consequences of high accelerating inflation.

6.3 Regulating the employment relationship: Change in the content of provisions

In this section, I assess change in the content of rules set down by substantive provisions other than both nominal wages increase (COLA and AIF) and minimum wages. In contrast to the content of provisions on nominal wage increase and minimum wages, however, the brunt of substantive provisions is not measured at the interval-ratio level. As a consequence, I had to develop a coding frame for classifying substantive provisions according to changes in their content. This scheme is described in subsection 6.3.1. In subsection 6.3.2, I analyse the outcomes of collective bargaining for the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre concerning changes in the content of substantive provisions regardless of their relationship with regulatory legislation.

6.3.1 Measuring change in the content of substantive provisions

In order to establish categories for measuring change in the content of substantive provisions, I have taken five aspects into consideration, which are supposed to address all the relevant issues concerning change in the content of provisions *per se*. These aspects are displayed in table 6.10. Categories for measuring change in the content of substantive provisions in a current agreement, in comparison to the immediately previous agreement, were built upon various combinations between possible outcomes as for these relevant aspects. For instance, if an issue that has not been addressed in the immediately previous agreement gives rise to a provision benefiting employees in the current agreement, change favouring employees is detected. I will eventually refer to the current agreement as agreement in year t, and to the immediately previous agreement as agreement in year t-1.

Table 6.10 – Relevant aspects for measuring change in the content of substantive provisions

Aspect	Issue	Possible outcomes
1. Beneficiary	Who is the rule's beneficiary?	1.1) Employees 1.2) Employers
2. Provisions in previous collective agreement	Have provisions on the same issue as in the current agreement been set down in the immediately previous collective agreement?	2.1) Yes 2.2) No 2.3) No, but provisions on the same issue have been set down in past agreements other than the immediately previous one.
3. Provisions in current collective agreement	Supposing provisions on a certain issue have been set down in the immediately previous agreement, has at least one provision on the same issue been set down in the current collective agreement?	3.1) Yes 3.2) No (suppressing)
4. General conditions (applicable only to outcomes 2.1 and 3.1 above)	How can general conditions of the rule in the current agreement be classified in comparison to the immediately previous agreement from the standpoint of the beneficiary?	4.1) Improvement 4.2) Worsening 4.3) Virtually no change
5. Monetary value (applicable only to outcomes 2.1 and 3.1 above, provided rules also display a monetary value)	How can the monetary value (or the formula for calculation) of the rule in the current agreement be classified in comparison to the immediately previous agreement from the standpoint of the beneficiary?	5.1) Increase 5.2) Decrease 5.3) Constant

The most interesting cases, nonetheless, regard provisions on a same issue in successive collective agreements. In these cases, besides the beneficiary, there are two relevant aspects for measuring change in the content of substantive provisions: the monetary value aspect and general conditions of the rule. As for the monetary value, one has to assess whether it increases, decreases or remains constant between one and another agreement. Sometimes, this aspect is put forward as a mathematical formula instead of the monetary value itself. By increase in the monetary value, I mean change above the inflation rate. General conditions of the rule, on their turn, comprise an array of aspects such as, for instance, criteria for being eligible for the benefit; who the actual beneficiary is, other than employer or employee; the period of time to enjoy the benefit; and coverage of costs. There are three possible outcomes stemming from the comparison between provisions on their general conditions: improvement, worsening, and virtually no change.

Table 6.11 summarises the various relevant combinations of outcomes by focusing upon the beneficiary of provisions. These combinations have taken actual provisions into account so that if a possible logical combination does not apply to the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, it has been discharged for the purposes of analysis. This was the case, for instance, with the monetary-value aspect in provisions favouring employers. As long as there was no provision benefiting employers which comprised a monetary-value element, this aspect was not taken into consideration when assessing change in the content of such provisions.

Table 6.11 – Relevant combinations of outcomes for assessing change in the content of substantive provisions

Combination of outcomes	Description of change	Notation
Change favouring employees		ΔPE
1.1+2.2	Provision benefiting employees whose issue has not been addressed in the immediately previous agreement	ΔPE_1
1.1+2.3	Provision benefiting employees whose issue has been addressed in a past agreement other than the immediately previous agreement	ΔPE_2
1.1+2.1+3.1+4.1	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions improve upon previous agreement. No monetary value	ΔPE_3
1.1+2.1+3.1+4.1+5.1	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions improve upon previous agreement. Higher monetary value or improved formula for calculating monetary value	ΔPE_4
1.1+2.1+3.1+4.1+5.3	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions improve upon previous agreement. Unchanged monetary value or formula for calculating monetary value	ΔPE_5
1.1+2.1+3.1+4.3+5.1	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are kept virtually unchanged. Higher monetary value or improved formula for calculating monetary value	ΔPE_6
Change disfavouring employees		ΔNE
1.1+2.1+3.1+4.2	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are worse than in the previous agreement. No monetary value	ΔNE_1

Table 6.11 – Relevant combinations of outcomes for assessing change in the content of substantive provisions (continued)

Combination of outcomes	Description of change	Notation
Change disfavouring employees		ΔNE
1.1+2.1+3.1+4.3+5.2	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are kept virtually unchanged. Decreased monetary value or worse formula for calculating monetary value	ΔNE_2
1.1+2.1+3.1+4.2+5.3	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are worse than in the previous agreement. Unchanged monetary value or formula for calculating monetary value	ΔNE_3
1.1+2.1+3.1+4.2+5.2	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are worse than in the previous agreement. Decreased monetary value or worse formula for calculating monetary value	ΔNE_4
1.1+3.2	Provision benefiting employees which was included in the immediately previous agreement is suppressed in the current agreement	ΔNE_5
Change favouring employers[1]		ΔNE
1.2+2.2	Provision benefiting employers whose issue has not been addressed in the immediate previous agreement	ΔPF_1
1.2+2.3	Provision benefiting employers whose issue has been addressed in a past agreement other than the immediate previous agreement	ΔPF_2
1.2+2.1+3.1+4.1	Provision benefiting employers whose issue has been addressed in the immediate previous agreement and whose general conditions improve upon previous agreement. No monetary value	ΔPF_3
Change disfavouring employers[1]		ΔNF
1.2+2.1+3.1+4.2	Provision benefiting employers whose issue has been addressed in the immediately previous agreement and whose general conditions are worse than in the previous agreement. No monetary value	ΔNF_1
1.1+3.2	Provision benefiting employers which was included in the immediately previous agreement is suppressed in the current agreement	ΔNF_2
No change		
2.1+3.1+4.3	Provision regardless of the beneficiary whose issue has been addressed in the immediately previous agreement and whose general conditions are kept virtually unchanged. No monetary value	
2.1+3.1+4.3+5.3	Provision regardless of the beneficiary whose issue has been addressed in the immediately previous agreement and whose general conditions are kept virtually unchanged. Unchanged monetary value or formula for calculating monetary value	

Table 6.11 – Relevant combinations of outcomes for assessing change in the content of substantive provisions (continued)

Combination of outcomes	Description of change	Notation
Indeterminate change		
1.1+2.1+3.1+4.1+5.2	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions improve upon previous agreement. Decreased monetary value or worse formula for calculating monetary value	
1.1+2.1+3.1+4.2+5.1	Provision benefiting employees whose issue has been addressed in the immediately previous agreement and whose general conditions are worse than in the previous agreement. Higher monetary value or improved formula for calculating monetary value	

[1] No provision benefiting employers in the period 1978-95 established a monetary value.

Change in the content of provisions can be assessed from the standpoint of either employers or employees by comparing agreements in year t with agreements in year t-1. This gives rise to three different measures of change in the content of provisions according to which standpoint is taken into account:

(4) $\Delta E_n = \Sigma\ \Delta PE_i - \Sigma\ \Delta NE_i$

(5) $\Delta F_n = \Sigma\ \Delta PF_i - \Sigma\ \Delta NF_i$

(6) $\Delta E_o = \Delta E_n - \Delta F_n$

where

ΔE_n = measure of the net change favouring employees
ΔF_n = measure of the net change favouring employers
ΔE_o = measure of the overall net change favouring employees

Measure ΔE_n (4) captures the net change favouring employees. Positive changes (ΔPE_1 … ΔPE_6) and negative changes (ΔNE_1 … ΔNE_5) in the content of provisions are taken into account together. The difference between positive and negative changes is the net change favouring employees. A similar procedure applies to measure ΔF_n (5). As for measure ΔE_o (6), it denotes the overall net change favouring employees by deducting the net change favouring employers from the net change favouring employees.

6.3.2 Change in the content of substantive provisions other than COLA, AIF, and minimum wages

I have calculated change in the content of substantive provisions other than COLA, AIF, and minimum wages, according to measures ΔE_n (4), ΔF_n (5), and ΔE_o (6). Table 6.12 displays figures on change in the average amount of substantive provisions by bargaining units according to change in their content. Between 1979 and 1995, four different periods can be observed based on the patterns of change in the measure of change favouring employees – ΔE_n (4). These periods are:

a) Period 1979-81 – figures went up and oscillated above the overall mean in 1980 and 1981;

b) period 1982-84 – figures oscillated below the overall mean;

c) period 1985-89 – figures oscillated above the overall mean for most of the period; and

d) period 1990-95 – figures oscillated below the overall mean for most of the period, including one year of negative change.

Table 6.12 – Change in the average amount of substantive provisions according to change in their content, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95

	Net change favouring employees (ΔE_n)	Net change favouring employers (ΔF_n)	Overall net change favouring employees (ΔE_o)
1979	1.4	0.2	1.3
1980	4.3	0.4	3.8
1981	4.2	1.6	2.6
1982	1.5	0.4	1.1
1983	0.7	0.3	0.4
1984	1.1	0.3	0.8
1985	2.9	0.2	2.7
1986	3.7	0.2	3.5
1987	6.1	0.4	5.7
1988	7.5	0.7	6.8
1989	4.1	1.0	3.1
1990	-0.4	1.1	-1.5
1991	1.5	1.3	0.2
1992	2.4	1.0	1.4
1993	6.4	1.0	5.4
1994	1.9	0.7	1.3
1995	1.0	0.3	0.7
All	3.0	0.6	2.3

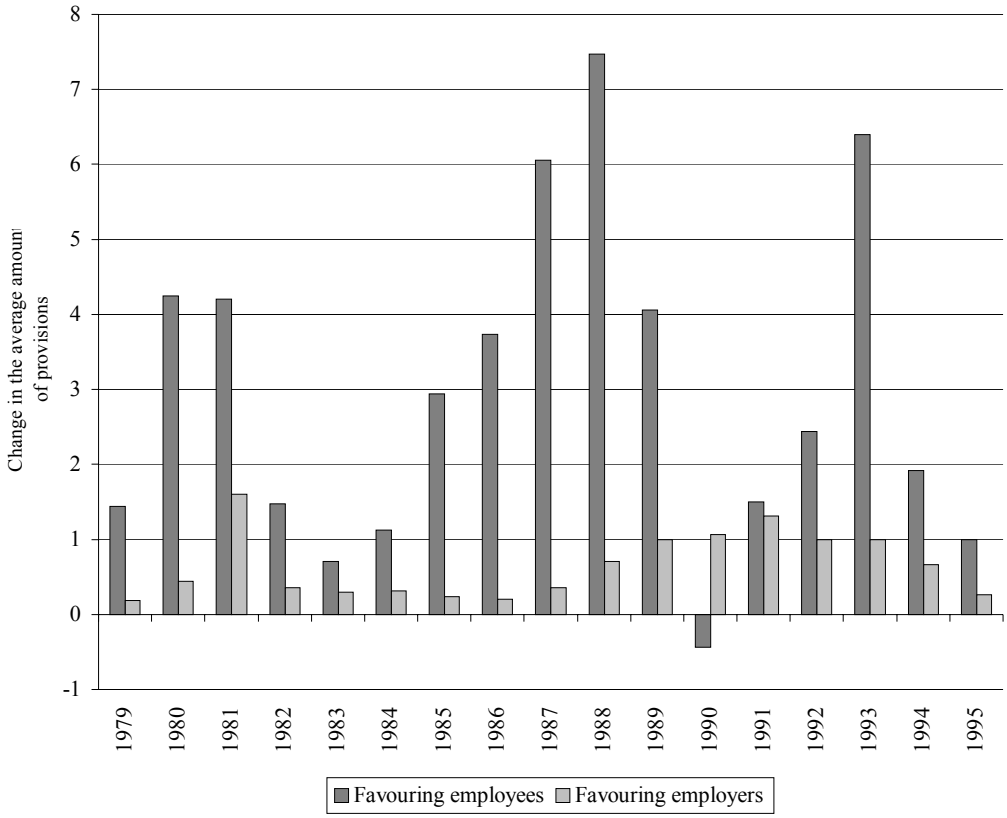
Figures for change favouring employers, which correspond to the outcomes of measure ΔF_n (5), suggest two major periods according to their patterns between 1979 and 1995:

a) Period 1979-87 – figures oscillated below the overall mean, with the exception of year 1981; and

b) period 1988-95 – figures oscillated above the overall mean, with the exception of year 1995.

Figure 6.2 illustrate the patterns of change in measures ΔE_n (net change favouring employees) and ΔF_n (net change favouring employers).

Figure 6.2 – Net change favouring employees (ΔE_n) and net change favouring employers (ΔF_n), in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95



Although measures ΔE_n and ΔF_n display an opposite performance in 1990, no negative correlation between them was found when the whole 1979-95 period is taken into account. On the contrary, a slight positive correlation (Pearson´s r = 0.133), although not statistically significant (significant at the 0.612 level), was found between

both distributions. This may suggest no strong opposition of the adversarial kind – 'either change favouring employees or change favouring employers' – marked the increase in the amount of agreement provisions between 1979 and 1995, notwithstanding (or perhaps because of) the leadership of the more militant wing of trade unions in this move towards collective bargaining, as well as a high incidence of strikes for most of the 1980s.

This outcome makes sense under the specific conditions of the Brazilian system of industrial relations in the late 1970s, in particular both the strong regulatory legislation and the small amount of provisions in collective agreements. The bargaining agents sought to take some advantage of collective bargaining in order to supersede regulatory legislation. Trade unions started earlier in the late 1970s to put pressure upon employers to directly negotiate over the terms and conditions of the employment relationship; they were followed right away in the early 1980s by employers and their associations, which chose not to refuse collective bargaining at all. As a consequence, some sort of an exchange pattern of negotiations could be observed. The tiny number of provisions in collective agreements in the late 1970s indicated that there was room for accommodating both the interests of trade unions and employers to a certain degree. Eventually this enlargement in the scope of bargaining would face its limit. Outcomes for the negotiations in the mid-1990s lead to the belief that this limit had already been reached.

6.3.3 Conclusion

In this section, I have analysed the patterns of change in the content of substantive provisions other than COLA, AIF, and minimum wages, concerning the selected agreements in manufacturing industries in the Metropolitan Area of Porto Alegre from 1978 to 1995. The results point out that in the whole period 1979-95, except for year 1990, the net change in the content of substantive provisions favoured employees. The average change was 3.0 provisions a year. Notwithstanding the fluctuations, this repeated positive change meant an enlargement of the set of employees' rights by means of collective bargaining. A positive change favouring employers was also observed in the period of analysis, especially from 1988 on. This outcome evinces once more that not only trade unions and employees, but also employers, obtained some advantage from collective bargaining, reinforcing the conclusions of chapter 5.

6.4 Conclusion: Patterns of change in the content of substantive provisions

In this chapter, I have assessed bargaining outcomes in the selected units in regards to change in the content of substantive provisions *per se*. I have initially dealt with provisions on nominal wage increase (COLA and AIF) and minimum wages in view of their distinctive importance in collective bargaining under a context of high and chronic inflation. For most of the period 1978-95, collective bargaining was known as the 'wage campaign' ("*campanha salarial*") among trade unions and workers. Afterwards, I have taken all substantive provisions other than nominal wage increase and minimum wages into consideration to measure change in their content.

The patterns of change in the content of substantive provisions – measured by change in negotiated real wages, change in negotiated real minimum wages, and the net change favouring employees with respect to substantive provisions other than negotiated real wages and negotiated real minimum wages – suggest four different periods for the outcomes of collective bargaining in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. The first period lasted from 1979 to 1981. During these years, change in the content of substantive provisions always benefited employees regardless of how it was measured. Figures remained well above the overall mean for 1979-95, with the exception of change in the average amount of substantive provisions other than real wages and real minimum wages in 1979. The second period lasted from 1982 to 1984, when the picture was the other way round. Figures for the selected measures of change in the content of substantive provisions were smaller than the overall mean, except for negotiated real wages in 1982-83. The third period (1985-89) displayed more mixed outcomes than the second one. Most of the change in the selected measures was greater than the overall mean. However, the considerable oscillation of negotiated real wages and negotiated real minimum wages, including years of negative change, reflected the consequences of unsuccessful stabilisation policies, as well as accelerating inflation. The fourth and last period coincides with the 1990s. Figures for the selected measures of change in the content of substantive provisions remained below the overall mean for most of the period. In contrast to the late 1970s and early 1980s, bargaining outcomes became frequently unfavourable from the standpoint of employees and trade unions during the 1990s.

Notwithstanding the different pace of change observed between 1979 and 1995, the overall change in the content of substantive provisions other than COLA, AIF and minimum wages favoured both employees and employers. This came along with the dissemination of bargaining over minimum wages in the selected units, and the still greater importance of wage bargaining in virtue of high inflation and imperfect statutory wage indexation. All of this reinforces conclusions of previous chapters on the strengthening of collective bargaining after the late 1970s. The analysis of the contents of agreement provisions I have done so far points out to:

a) The number of agreement provisions multiplied several times, suggesting the strengthening of collective bargaining;

b) the scope of collective agreements covered a broader variety of industrial relations issues;

c) the number of substantive provisions stipulating rules which were not found in regulatory legislation also multiplied several times; and

d) the net change in the content of substantive provisions, regardless of their relationship with regulatory legislation, indicates a steady increase in the set of both employees' and employers' rights.

The patterns of change in the content of substantive provisions suggest some relationship between bargaining outcomes and change in the Brazilian economic and judicial environment in the period between 1978 and 1995. In chapter 7, thus, I will turn my attention to the relationship between change in the bargaining outcomes and change in the economic environment. In chapter 8, I will focus upon the judicial context by dealing with the consequences of the normative power of the labour judicial system over collective bargaining.

CHAPTER 7

ECONOMIC DETERMINANTS OF BARGAINING OUTCOMES

Up to this point, I have analysed collective agreements in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre in search of evidence of the strengthening of collective bargaining as a method of job regulation between 1978 and 1995. In so proceeding, I have also established different patterns of change in bargaining outcomes over this period. In this chapter, I turn my attention to the analysis of the determinants of these varying patterns of change in bargaining outcomes. Thus, in section 7.1, I summarise the patterns of change in selected outcomes of collective bargaining which have been subject to analysis in previous chapters. In section 7.2, I review theories on the determinants of bargaining outcomes in order to set a framework for analysing the outcomes in the selected units. Lastly, in section 7.3, I discuss correlation and regression results for the bargaining outcomes and explanatory variables. This analysis of the determinants of bargaining outcomes in the selected units will go on in the next chapter, where I focus upon the judicial context of collective bargaining.

7.1 Patterns of change in selected bargaining outcomes

In chapters 4 to 6, I analysed outcomes of collective bargaining in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre with particular attention to their patterns of change between 1978 and 1995. These bargaining outcomes comprise rules set down by collective agreement provisions. Some specific categories for measuring the contents of agreement provisions have been developed in order to capture the bargaining scope, the relationship between agreement provisions and regulatory legislation, and change in the content of rules set down by provisions over time. I have now selected four measures of bargaining outcomes in order to analyse which forces brought about the results observed for the 1978-95 period. These measures, which are dependent variables in models I analyse in section 7.3, are displayed in table 7.1.

Table 7.1 – Selected measures of change in agreement provisions

Variable	Description
ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES	Annual change in the average amount of additional substantive provisions benefiting employees
CHANGE IN THE CONTENT OF RULES-EMPLOYEES	Annual net change in the average amount of substantive provisions benefiting employees (difference between change favouring employees and change disfavouring employees)
REAL MINIMUM WAGES	Annual average change in negotiated real minimum wages
REAL WAGES	Annual average change in negotiated real wages

The variable ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES measures the annual change in the average amount of additional substantive provisions benefiting employees. An increase in the amount of additional provisions (positive values of ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES), as stated in chapter 5, indicates a strengthening of collective bargaining as a method of job regulation under the context of a wide regulatory legislation. This measure is particularly important in industrial relations systems characterised by strong state regulation of the employment relationship. The higher the magnitude of ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES, the more important the role of collective bargaining becomes.

The variable CHANGE IN THE CONTENT OF RULES-EMPLOYEES measures the annual change in the content of substantive provisions by calculating the net change favouring employees, as explored in chapter 6. The magnitude of CHANGE IN THE CONTENT OF RULES-EMPLOYEES is calculated by the difference between the average amount of provisions whose change in their content favour employees and the average amount of provisions whose change in their content disfavour employees, between one year and another. Provisions whose content is kept unchanged from one year to another are neutral for the measurement of CHANGE IN THE CONTENT OF RULES-EMPLOYEES. Positive values of CHANGE IN THE CONTENT OF RULES-EMPLOYEES mean that a greater number of provisions undergo a change in their content that favours employees in comparison to those provisions whose change in their content disfavours employees, and vice versa. Successive years of positive values, for instance, would mean a broadening in the set of employees' rights.

Variables REAL MINIMUM WAGES and REAL WAGES measure the annual change in negotiated real wages. I analysed their outcomes in chapter 6. REAL MINIMUM WAGES measures change in negotiated nominal minimum wages between one and another settlement date vis-à-vis past cost-of-living increase. Positive magnitudes of REAL MINIMUM WAGES indicate that the purchasing power of negotiated minimum wages is higher on the current settlement date than it was on the previous one, and vice versa. Variable REAL WAGES measures change in negotiated nominal wages (provisions on cost-of-living adjustment and additional improvement factor) in comparison to past cost-of-living increase, between one and another settlement date. The meaning of positive magnitudes of REAL WAGES is similar to the one of REAL MINIMUM WAGES: it indicates an increase in the purchasing power of the general level of nominal wages on the current settlement date, in comparison to the immediately previous settlement date of the occupational category.

In chapters 5 and 6, I analysed the patterns of change in each of these variables between 1979 and 1995 with respect to the selected collective agreements. Variables ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES displayed a positive sign for every year but one in the whole 1979-95 period. Moreover, their patterns of change proved to be considerably similar. Variables REAL MINIMUM WAGES and REAL WAGES alternated years of a positive sign with years of a negative sign. Their patterns of change were neither as clearly close as in ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES, nor close to the patterns of change in each of these variables. Figures in table 7.2 on Pearson's coefficients of correlation (r) between these bargaining outcome variables may help us inspect similarities and dissimilarities between the patterns of change in these variables.

Figures in table 7.2 show that variables ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES were strongly correlated, with Pearson's r significant at the 0.01 level. This suggests similar patterns of change in the bargaining outcomes these variables measure. The relationship between ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and REAL MINIMUM WAGES, as well as between CHANGE IN THE CONTENT OF RULES-EMPLOYEES and REAL MINIMUM WAGES, was neither so

strong, nor statistically significant. Lastly, variable REAL WAGES was positively correlated with each of the other variables, although at the 0.1 level of significance. This also suggests some degree of similarity between its patterns of change and those of other variables.

Table 7.2 – Pearson's correlation between variables measuring change in agreement provisions, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95

	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES	CHANGE IN THE CONTENT OF RULES-EMPLOYEES	REAL MINIMUM WAGES	REAL WAGES
ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES	1.000	0.797*	0.094	0.472**
CHANGE IN THE CONTENT OF RULES-EMPLOYEES	0.797*	1.000	0.377	0.415**
REAL MINIMUM WAGES	0.094	0.377	1.000	0.420**
REAL WAGES	0.472**	0.415**	0.420**	1.000

* Correlation is significant at the 0.01 level (2-tailed).
** Correlation is significant at the 0.1 level (2-tailed).
N=17.

In table 7.3, I display the annual magnitude of bargaining outcome variables in proportion to their overall mean for the 1979-95 period. If this magnitude is both positive and over the unity, change in bargaining outcomes is meant to benefit employees and the pace of change is greater than the overall mean, and vice versa. Since the overall mean for REAL WAGES was negative (-1.7 points of percentage), I have considered its module so that annual positive magnitudes indicate change benefiting employees. Those cells with results both positive and over the unity, as well as cells with positive values for REAL WAGES, are darkened in order to highlight similarities between the patterns of change in each variable.

Figures in table 7.3 indicate that the patterns of change in selected outcome variables gave rise to four different periods concerning the pace of change in bargaining outcomes. These periods were identified in chapters 5 and 6. Thus, change in bargaining outcomes was particularly beneficial to employees in the periods between 1979 and 1981, and between 1985 and 1989. Over these years, (i) the magnitudes of variables ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE

CONTENT OF RULES-EMPLOYEES were greater than the overall mean, and (ii) change in negotiated real wages (both REAL MINIMUM WAGES and REAL WAGES) was mostly positive and above the overall mean. In 1982-84 and 1990-95 periods, it was the other way around. Although variables ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES showed positive magnitudes, indicating change both in the amount and in the content of provisions of benefit to employees, these magnitudes remained below the overall mean for most of these years. In addition, the magnitudes of variables REAL MINIMUM WAGES and REAL WAGES were negative for a great number of years. Negotiated real minimum wages and negotiated real wages were strongly affected by accelerating inflation and the various policies aimed at curbing inflation. This proved to be especially true over the 1990s.

Table 7.3 – Change in selected bargaining outcome variables in proportion to their overall mean, in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95

	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES	CHANGE IN THE CONTENT OF RULES-EMPLOYEES	REAL MINIMUM WAGES	REAL WAGES [1]
1979	0.98	0.85	4.56	4.64
1980	1.62	2.50	2.96	3.43
1981	1.41	2.47	1.57	1.58
1982	0.67	0.87	0.13	5.90
1983	0.48	0.42	-4.18	1.33
1984	0.12	0.66	-4.88	-1.03
1985	1.82	1.73	4.04	3.20
1986	1.11	2.20	-0.02	-12.01
1987	2.70	3.57	-6.73	1.95
1988	2.39	4.40	3.72	1.15
1989	0.28	2.39	4.52	0.48
1990	0.76	-0.26	-11.46	-12.85
1991	0.04	0.88	0.29	-13.79
1992	0.37	1.44	10.61	7.11
1993	2.22	3.77	6.61	8.30
1994	0.64	1.13	-5.01	-2.56
1995	-0.60	0.59	0.71	-13.85

[1] The overall mean for REAL WAGES was -1.7 (1979-95). Annual negative changes still retained the negative sign, as if the original values had been divided by the module of the overall mean, in order to facilitate the analysis of outcomes.

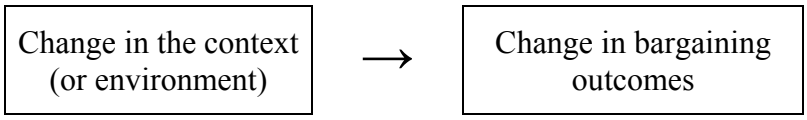
Having summarised these different patterns of change in selected bargaining outcomes, I aim now at exploring which forces brought about these varying results. In

the next section, I summarise theories on the determinants of bargaining outcomes in order to set hypothesized models for explaining the bargaining outcomes in manufacturing industries in the Metropolitan Area of Porto Alegre. Statistical results will be discussed in section 7.3.

7.2 Theories on the determinants of collective bargaining outcomes

A common general framework for explaining change in the outcomes of collective bargaining may be found in the industrial relations literature, where a basic relationship is stated as in figure 7.1.

Figure 7.1 – General framework for analysing change in bargaining outcomes



According to this framework, change in the bargaining outcomes is affected by change in the relevant context (or environment) where the agents interact in collective bargaining. Theories on the determinants of collective bargaining outcomes have usually been built on the grounds of this single basic relationship, including those theories relying upon the concept of bargaining power. Theories mostly differentiate from each other according to which contexts are deemed relevant, as well as according to which aspects of the relevant contexts are judged as having a significant impact on bargaining outcomes.

In his *Industrial Relations Systems*, Dunlop (1993) presented the output of the interaction between the actors in an industrial relations system – the hierarchy of managers, the hierarchy of workers, and the specialised agencies – as a web of rules. Collective agreement provisions are an instance of these rules. The interaction between these actors is carried out within a broader context (or environment). More precisely, there are three relevant contexts in the Dunlop theory: the technological characteristics of the workplace and work community, the product and factor markets or budgetary constraints facing the actors, and the locus and distribution of power within the larger society (Dunlop 1993: 48-51). For this author, "contexts are decisive in shaping the rules established by the actors" (Dunlop 1993: 48). Which specific contexts account for

the rules depend on the specific settings in which real actors interact. Furthermore, these rules change over time in response to changes in these contexts, in the hierarchies of the actors, in the actors' shared understandings (ideology), and in the relationships actors establish between themselves.

Chamberlain and Kuhn (1965) hypothesised the outcomes of collective bargaining as a consequence of the agents' bargaining power. Bargaining power is defined as "the ability to secure another's agreement on one's own terms" (Chamberlain and Kuhn 1965: 170) after Hicks (1968). It basically depends on the costs of agreeing and disagreeing with each other, in relation to both pecuniary and non-pecuniary costs. These costs, and therefore the bargaining power of the agents, are affected by environmental and non-environmental factors. The main non-environmental factors are the tactics of trade unions and management, as well as the nature of the demands. The main environmental factors comprise economic conditions, the public opinion, and the governmental influence over collective bargaining.

Kochan and Wheeler (1975) and Kochan and Block (1977) present theoretical models and empirical research on the impact of environmental factors on bargaining outcomes. Kochan and Wheeler's general conceptual framework is a typical structure-conduct-performance model, according to which environmental characteristics affect bargaining outcomes both directly and indirectly through their effects on union and management organisational characteristics and the bargaining process. The authors argue that "outcomes favourable to the union are a function of union power" (Kochan and Wheeler 1975: 52). Their focus is therefore directed to the specific environmental and organisational sources of union power. Environmental sources of power comprise three broad groups – legal, economic, and political – within which specific factors are hypothesized as having an impact on bargaining power.

Kochan and Block aim at presenting "a general framework for conceptualizing, measuring, and analysing the determinants of bargaining outcomes in the private sector U.S. industry" (Kochan and Block 1977: 432). Bargaining outcomes are hypothesized as a function of the relative power of the parties. The sources of this power comprise environmental factors, institutional characteristics of the parties, and bargaining structure variables. Their research focuses upon those variables that account for variation in bargaining outcomes across industries. Similarly to Kochan and Wheeler,

relevant environmental factors are assumed to be grouped into economic, legal, and political areas. However, for the purposes of the empirical analysis, they disregard legal factors on grounds that they are constant across industries, as well as political factors by virtue of difficulties in measuring variables under a great geographical dispersion of the settings.

Kochan (1980) elaborates further on the previous models. In his conceptual framework for the study of collective bargaining, he takes bargaining outcomes as a dependent variable. These outcomes are hypothesized to be determined by independent variables pertaining to the external environment, as well as by intervening variables associated to the bargaining structure, union organisational characteristics, and management bargaining characteristics. In comparison to precedent models, Kochan expands the groups of environmental variables in order to add demographic, technological and social contexts, besides public policy, to economic and political environments. These environmental factors are assumed to exert impact on bargaining outcomes, both directly and indirectly through intervening variables.

Mishel (1986) presents an attempt "to explain and measure the variation of union power across manufacturing industries at a point in time" (Mishel 1986: 90). The relevant bargaining outcome to be explained is earnings, or more precisely union earnings. Differences between earnings across industries are hypothesized to be a consequence of variation in union bargaining power. This power depends on characteristics of the structural setting or environment that impact on the ability of employers to make concessions to unions ("ability to pay"), as well as on institutional characteristics of the bargaining agents and the bargaining structure. The environmental characteristics are grouped into (i) factors that allow employers to 'pass on labour costs', such as profitability and the degree of industrial concentration, (ii) factors that allow employers to 'absorb labour costs', such as productivity growth, and (iii) non-pecuniary characteristics of work and labour demand. This model is subject to empirical analysis.

Leap and Grigsby (1986) also draw on the concept of bargaining power to explain bargaining outcomes. Their work aims at presenting a comprehensive model of power in collective bargaining. The authors make a distinction between potential and actual bargaining power. Potential bargaining power is determined by three groups of

factors: (i) those factors over which the bargaining agents do not exert any control, such as the economic conditions and the political and social context, (ii) those factors the agents may exert control over to a certain degree in the long run, such as trade union certification and management organisation, and (iii) those factors the agents may control in the short run, such as employer wage policies and the bargaining team composition. Uncontrollable factors are indeed made up of environmental conditions, whereas the so-called controllable factors comprise institutional variables. These sources determine the limits of potential bargaining power, which may be fully or partially exerted by the bargaining agents (enacted power) in search for influencing collective bargaining outcomes.

Martin (1992) also focuses upon the balance of power between management and union. According to this author, "the outcomes of the [bargaining] process are determined by the latent power of the parties and the success of the parties in translating latent power into bargaining power" (Martin 1992: 14). The environment – within which management and union organisations interact in the bargaining process according to their specific strategies – comprises economic, technological, political, social, and judicial conditions.

Amadeo and Camargo (1989) develop a model for explaining increase in the general level of nominal wages in the Brazilian economy. This variable is hypothesized to be affected by the statutory system of wage indexation, as well as by the bargaining power of unions and employers. Bargaining power depends on the capacity of employers to avoid that the nominal wage increase become an increase in labour costs at constant prices, as well as the capacity of mobilisation of trade unions. Union capacity for mobilising workers is dependent upon economic factors, which are grouped into variables that impact the cost for employees of being fired and the degree of dissatisfaction with real wages, as well as political factors.

In table 7.4, I make a summary of the numerous environmental variables in models of collective bargaining outcomes, according to these sources in the literature.

Table 7.4 - Environmental variables impacting on bargaining outcomes, according to different sources in the literature

Environmental variables	Martin	Kochan	Kochan and Block	Mishel	Leap and Grigsby	Amadeo and Camargo
Economic factors	X	X	X	X	X	X
Macroeconomic conditions	X	X			X	X
Unemployment	X	X				X
Inflation		X				X
Economic activity	X					X
Degree of openness to imports	X					X
Exchange rate	X					
Product-market conditions	X	X	X	X	X	X
Degree of concentration	X	X	X	X		X
Elasticity of demand	X	X			X	
Elasticity of substitution	X					
Profitability	X	X	X	X		X
Nature of the product itself: Time sensitivity	X					
Degree of import competition	X	X		X		X
Geographical dimension of the product-market				X		
Barriers to entry: Minimum efficient scale				X		X
Barriers to entry: Product differentiation				X		X
Barriers to entry: Capital requirements upon entry				X		X
Barriers to entry: Access to technology or inputs				X		X
Ratio of effective product to potential product						X
Relative prices						X
Production growth						X
Industry structure					X	X
Degree of monopoly of the economy/market						X
Firm's operating system	X	X	X	X	X	
Establishment size	X			X		
Technology: Degree of essentiality of the specific work group	X		X			
Technology: Degree of interdependence of the stages of the production process	X					
Capital-labour ratio	X				X	
Elasticity of substitution between capital and labour			X			
Elasticity of the supply of other factors of production		X				
Ratio of labour costs to total costs of production		X	X			
Productivity	X		X	X		
Payments system	X					
Product life cycle	X					

Table 7.4 - Environmental variables impacting on bargaining outcomes, according to different sources in the literature (continued)

Environmental variables	Martin	Kochan	Kochan and Block	Mishel	Leap and Grigsby	Amadeo and Camargo
Economic factors	X	X	X	X	X	X
Labour-market conditions	X		X	X		X
Index of shortage of specific types of labour	X					X
Occupational differentiation: Skill	X					X
Occupational differentiation: Formal qualifications	X					X
Occupational differentiation: Scarcity	X					X
Occupational differentiation: Relative pay	X					
Occupational differentiation: Mode of entry	X					
Occupational differentiation: Costs of training	X					
Degree of individual commitment to the labour force	X					
Number of different occupations in an operating unity (rivalry)	X					
Pay comparison	X					X
Employment growth				X		
Industry's injury and illness rate				X		
Demographic variables: % male				X		
Demographic variables: % white				X		
Demographic variables: Mean education				X		
Demographic variables: Mean experience				X		
Demographic variables: % craftsmen			X	X		
Demographic variables: % operatives			X	X		
Demographic variables: % transport operatives				X		
Demographic variables: % service workers				X		
Unemployment insurance						X
Labour force turnover						X
Costs of dismissal						X
Current real wages						X
Non-economic factors	X				X	X
Regulatory legislation	X					
Executive action	X					
Judicial context	X					X
Media	X					
Public opinion	X					
Degree of political freedom						X
Degree of governmental control/repression over trade unions						X
Ideology of the system	X					
Political-social context					X	
Public policy	X				X	

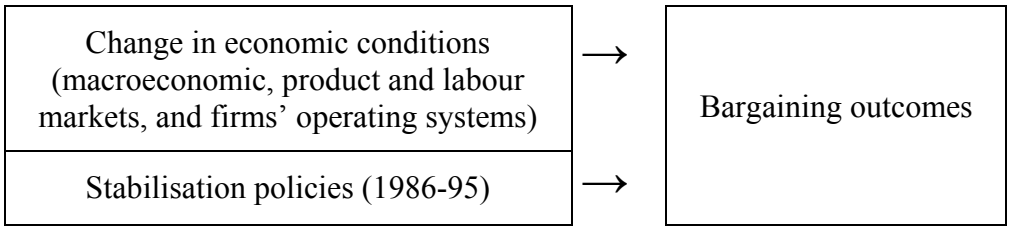
In section 7.3, I elaborate upon the determinants of the bargaining outcomes in the selected units in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995 by drawing on these theories on the determinants of collective bargaining outcomes.

7.3 Economic determinants of bargaining outcomes

7.3.1 A framework for explaining bargaining outcomes in the selected agreements

The bargaining outcomes that will be analysed comprise change in the content of substantive provisions, as measured by variables ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES, CHANGE IN THE CONTENT OF RULES-EMPLOYEES, REAL MINIMUM WAGES, and REAL WAGES. An inspection of the patterns of change in these variables, which I analysed in previous chapters, suggests some degree of association between change in these variables and both the economic cycle of the Brazilian economy and the stabilisation policies carried out by the government after 1986. Therefore, a generic framework for explaining bargaining outcomes in the selected units as a function of change in the Brazilian economic environment is shown in Figure 7.2.

Figure 7.2 - General framework for analysing bargaining outcomes in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre



The task in translating this generic framework into models for empirical analysis of the bargaining outcomes in the selected units consists in defining a set of independent variables. In table 7.4, I listed environmental variables which are hypothesized as having an impact on collective bargaining outcomes in empirical and non-empirical studies. There are some points to be considered about this set of variables when it

comes to analysing change in bargaining outcomes in the particular Brazilian manufacturing setting over time.

First, some variables seem to be adequate for analysing bargaining outcomes across industries at a point in time, as in Mishel's analysis, but not for an analysis of change in the content of agreement provisions over time, where variables represent an average of different industries' outcomes. This is the case with variables such as, for instance, minimum efficient scale (barriers to entry) and % white (demographic variables). The same applies to some variables listed in Martin's theory of bargaining power. Variables such as time sensitivity (nature of the product itself), degree of interdependence of the stages of the production process (technology), and product life cycle, for instance, seem to make sense in the analysis of bargaining outcomes across firms.

Second, in gathering data for the statistical analysis, I have come to the fact that some variables were available only for a few years, or were not available at all. This was the case, for instance, with variables such as degree of concentration and degree of individual commitment to the labour force.

As a consequence, I ended up with a set of 12 independent variables which capture change in Brazilian economic conditions. These variables are hypothesized as having an impact on bargaining outcomes in the selected units. Besides these variables, I have also suggested that bargaining outcomes in the selected units were affected by the stabilisation policies carried out by the government in the period 1986-95. These policies will be included as dummy variables. Figure 7.3 displays a hypothesised model for analysing bargaining outcomes in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. Appendix 2 gives details on the measurement of these independent variables. A statistical analysis of the association between these independent variables and the bargaining outcomes was carried out. In subsection 7.3.2, I present the correlation results; in subsection 7.3.3, I discuss the regression results for each dependent variable.

Figure 7.3 - Hypothesized model of bargaining outcomes in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre

Unemployment	→	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES
Inflation	→	
Production growth	→	
Ratio of effective product to potential product	→	
Exchange rate	→	CHANGE IN THE CONTENT OF RULES-EMPLOYEES
Tariff rate	→	
Relative prices	→	
Profitability	→	
Productivity change	→	
Employment growth	→	REAL MINIMUM WAGES
Ratio of labour costs to total costs	→	
Official real minimum wages change	→	
Stabilisation policies	→	REAL WAGES

7.3.2 Correlation results

Table 7.5 shows the Pearson's coefficients of correlation (r) between the independent variables, except for the stabilisation policies, and the bargaining outcomes. The variable production growth entered twice, for I have also considered a time gap (t, t-1) under the hypothesis that change in production growth (t-1) may delay in being transmitted into bargaining outcomes (t). I will discuss the results by separating macroeconomic conditions from those conditions more directly concerned with the industry level.

Macroeconomic conditions

The signs on the correlations between the bargaining outcomes and variables measuring macroeconomic conditions are as expected with a few exceptions. Thus, correlations between unemployment and outcomes are negative. Only the correlation with CHANGE IN THE CONTENT OF RULES-EMPLOYEES, however, is significant at the 0.1 level. Correlations between inflation and outcomes are also negative, although these are neither strong, nor significant. Correlations between both exchange and tariff rates and bargaining outcomes are positive, with the exception of the correlation between tariff rate and REAL MINIMUM WAGES. The only significant correlation, at the 0.1 level, is between exchange rate and REAL WAGES. Although the signs of the

correlations are as expected, macroeconomic variables perform poorly in accounting for variation in collective bargaining outcomes in the selected units.

Table 7.5 – Pearson's correlation between economic variables and bargaining outcomes in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre, 1979-95

	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES	CHANGE IN THE CONTENT OF RULES-EMPLOYEES	REAL MINIMUM WAGES	REAL WAGES
Unemployment	-0.305	-0.418***	-0.205	-0.129
Inflation	-0.004	-0.075	-0.328	-0.118
Production growth (t)	0.297	0.311	0.527**	0.495*
Production growth (t-1)	0.408***	0.261	-0.152	0.052
Ratio of effective product to potential product	0.237	0.350	0.276	-0.096
Exchange rate	0.319	0.120	0.119	0.403***
Tariff rate	0.363	0.141	-0.070	0.204
Relative prices	0.338	0.416***	0.505**	0.772*
Profitability	0.255	0.049	-0.091	-0.013
Productivity change	-0.430***	-0.449***	-0.181	0.100
Employment growth	0.454***	0.399	0.368	0.231
Ratio of labour costs to total costs	-0.348	-0.134	0.184	-0.364
Official real minimum wage change	0.158	0.484**	0.702*	0.199

* Correlation is significant at the 0.01 level.
** Correlation is significant at the 0.05 level.
*** Correlation is significant at the 0.1 level.
N=17.

Sector variables

Variables measuring change in the economic conditions of the manufacturing sector seem to perform better. The signs of the correlations are also as expected for a great deal of cases. Thus, production growth correlates positively with bargaining outcomes. Correlations are stronger and statistically significant with wage outcomes (at the 0.01 level for REAL WAGES and at the 0.05 level for REAL MINIMUM WAGES). If production growth in t-1 is taken into account, correlation becomes significant at the 0.1 level with ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES. Results for correlations between production growth and wage outcomes, however, are worse.

The correlations between relative prices and bargaining outcomes perform much better. The coefficients show a stronger association between change in relative prices and change in the outcomes. They are significant with REAL WAGES (at the 0.01 level), REAL MINIMUM WAGES (at the 0.05 level), and CHANGE IN THE

CONTENT OF RULES-EMPLOYEES (at the 0.1 level). The correlations between employment growth and bargaining outcomes also show a positive sign as expected without any exception, although no correlation was significant.

The ratio of effective product to potential product, the ratio of labour costs to total costs, and profitability perform poorly in accounting for variations in collective bargaining outcomes in the selected units. The signs of correlations between effective product and labour costs and the outcomes are as expected, with the exception of REAL WAGES (effective product) and REAL MINIMUM WAGES (labour costs), but none of them is statistically significant. As for profitability, the sign is not as expected with wage outcomes, and correlations with ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES are weak.

Lastly, correlation between productivity change and bargaining outcomes shows a negative sign for ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES and CHANGE IN THE CONTENT OF RULES-EMPLOYEES (significant at the 0.1 level), as well as for REAL MINIMUM WAGES. This sign is not in accordance to what was expected. It may be noted, however, that even the hypothetical relationship between productivity change and bargaining outcomes is not free from ambiguities. On the one hand, productivity growth improves the capacity of firms to absorb labour costs. On the other hand, productivity growth affects negatively the demand for labour, *ceteris paribus*, and therefore it weakens union relative power. Results may suggest that the latter occurred in the selected bargaining units. A closer inspection of the data shows an increasing productivity growth in Brazilian manufacturing during the 1990s, when labour market conditions deteriorated. In the 1980s, when bargaining outcomes had been more beneficial for employees, productivity growth was negative for seven years.

Official real minimum wage change

A variable that measures public policy towards the labour market was also taken into account. The correlation between annual change in statutory real minimum wages and bargaining outcomes is particularly strong for REAL MINIMUM WAGES (at the 0.01 level), suggesting that negotiated minimum wages were considerably affected by the official rate.

7.3.3 Regression results

I have regressed the bargaining outcomes on various combinations of the independent variables. The stabilisation policies variable was entered as a dummy variable. The size of the sample (number of years covered by the selected collective agreements) suggests some caution in the interpretation of the results. In reporting regression results, I will be much more interested in the sign of the relationships than in the magnitudes of the coefficients. Resulting models show differences on which independent variables had a stronger impact on outcomes, although stabilisation policies, unemployment and relative prices seem to be powerful explanatory variables.

ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES (Change in the amount of substantive additional provisions benefiting employees)

Table 7.6 shows two models concerning the variable ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES.

Table 7.6 – Multiple regression results for dependent variable ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES

	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES (model 1)[1]	ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES (model 2)[1]
Unemployment	-0.714* (-3.518)	-1.160* (-4.265)
Exchange rate	0.508** (2.719)	0.764* (4.025)
Relative prices	0.360** (2.211)	0.303*** (1.945)
Stabilisation policies		
Bresser plan	0.305*** (1.828)	
Summer plan	-0.353*** (-1.996)	-0.342*** (-1.935)
Production growth (t-1)		0.370*** (1.839)
Effective product		-0.624** (-2.377)
R^2	0.718	0.773
Adjusted R^2	0.590	0.636

* Significant at the 0.01 level.
** Significant at the 0.05 level.
*** Significant at the 0.1 level.
[1] The standardised regression coefficients are presented. The t-ratios are within brackets.

Model 1

In model 1, the signs of the coefficients for independent variables unemployment, exchange rate, and relative prices, are as expected. The variable unemployment captures

the general state of the labour market. The higher the rate of unemployment is, the weaker the position of trade unions in collective bargaining. Model 1 indicates that change in the number of additional provisions benefiting employees was smaller in years of greater rates of unemployment.

The impact of both exchange rate and relative prices on ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES may be associated to the capacity of employers to pass on labour costs. Constraints to pass on costs to costumers are usually weaker in economies with a lower degree of internal competition and high inflation. High inflation characterised the Brazilian economy for most of the 1978-95 period. Greater rates of exchange mean imports become more expensive, affecting the degree of competition within the national economy. Thus, higher manufacturing relative prices indicate a greater facility for manufacturing industries to pass on costs. This may bring about a softening of employers' conduct in making concessions in collective bargaining in order to avoid any disruption in labour relations. Greater rates of exchange impact not only on the degree of internal competition, but also on the potential of Brazilian manufacturing to take advantage of international trade. Both consequences affect positively the bargaining context from the standpoint of employees.

There is no point in explaining the positive sign for dummy Bresser plan (1987) and the negative sign for dummy Summer plan (1989) in terms of these stabilisation policies. In effect, these coefficients are likely to capture the impact of the Federal Constitution made in 1988 instead of the stabilisation plans on the variable ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES. This Constitution brought about some improvements in the labour law from the employees' standpoint. An instance is the increase in overtime rates from 25% (previous clause in the 1943 Labour Code) to 50% (new constitutional clause). In 1987, collective agreements may have anticipated what the bargaining agents expected the Federal Congress would approve. Provisions that incorporated broader employees' rights in the light of existing legislation before the approval of the 1988 FC were classified as additional provisions, thereby causing a greater change in their number (greater ADDITIONAL SUBSTANTIVE PROVISIONS-EMPLOYEES) in comparison to the overall mean. Once the 1988 FC was approved, some of these provisions became non-additional ones, slowing down their pace of increase in 1989.

Model 2

When variables production growth and the ratio of effective product to potential product (effective product) are entered in the regression, the dummy Bresser plan turns out not to be statistically significant. Production growth is a real variable – in contrast to monetary variables such as relative prices and the exchange rate –, which catches the state of the product demand in manufacturing. The positive sign of its coefficient is as expected.

The negative sign for the independent variable effective product, however, is not in accordance to the overall logic that increasing economic activity brings about better bargaining outcomes from the employees' standpoint. A further examination of the performance of the investment rate and its impact on the ratio of effective product under an economy characterised by short cycles, as was the case for the Brazilian economy from the early 1980s on, could shed some light on the point.

CHANGE IN THE CONTENT OF RULES-EMPLOYEES (Change in the content of substantive provisions between one year and another regardless of its relationship with regulatory legislation)

This bargaining outcome apprehends change in the content of rules set down by substantive provisions as a net change favouring employees. Thus, a positive magnitude of CHANGE IN THE CONTENT OF RULES-EMPLOYEES equals the net number of provisions with change in their contents favouring employees, and vice versa. Table 7.7 shows the results of a regression model for this variable. Regression results for an explanatory model of CHANGE IN THE CONTENT OF RULES-EMPLOYEES show only unemployment and the dummy Collor plans (1990-91) as statistically significant (at the 0.05 level). The relationship between the rate of unemployment and CHANGE IN THE CONTENT OF RULES-EMPLOYEES, as expected, is negative. Change in the content of substantive provisions beneficial to employees was, thus, associated to lower unemployment.

Table 7.7 – Multiple regression results for dependent variable CHANGE IN THE CONTENT OF RULES-EMPLOYEES

	CHANGE IN THE CONTENT OF RULES-

	EMPLOYEES[1]
Unemployment	-0.480** (-2.281)
Stabilisation policies	
Collor plans	-0.470** (-2.235)
R^2	0.392
Adjusted R^2	0.305

** Significant at the 0.05 level.
[1] The standardised regression coefficients are presented. The t-ratios are within brackets.

The negative sign for the dummy Collor plans (1990-91) reinforces what I emphasised in chapter 6. From the employees' standpoint, change in the content of substantive provisions worsened to a large degree in 1990-91. These years witnessed the beginning of a pattern that characterised the subsequent years, with the exception of 1993. The stabilisation policies of the Collor government, which brought about a huge recession in the economic activity, impacted negatively on collective bargaining, and this was captured by the regression results. Furthermore, in line with the structural reforms prescribed by the Washington consensus, the Collor government pushed towards a greater degree of openness of the Brazilian economy by cutting tariff rates, as well as accelerating the process of privatisation of state-owned companies. Lastly, the Collor government acted to strengthen trade unions that opposed the more militant wing united in CUT by appointing one of their leaders, Antonio Rogério Magri, as Minister of Labour.

REAL MINIMUM WAGES (Change in negotiated real minimum wages)

The bargaining outcome variable REAL MINIMUM WAGES measures the annual change in negotiated real minimum wages on the settlement date of each occupational category. It is an average for the selected collective agreements. Results displayed in table 7.8 explain change in negotiated real minimum wages as a function of change in official real minimum wages and the dummy variable Collor plans. Other variables were not statistically significant (at the 0.1 level). This suggests that negotiation over minimum wages in the selected bargaining units were strongly dependent upon public policy. Official rates of minimum wages seemed to provide a yardstick around which negotiated rates oscillated. In a similar way to variable CHANGE IN THE CONTENT OF RULES- EMPLOYEES, there are grounds for supposing that the Collor plans exerted considerable influence over negotiated real minimum wages.

Table 7.8 – Multiple regression results for dependent variable REAL MINIMUM WAGES

	REAL MINIMUM WAGES[1]
Change in official real minimum wages	0.665* (4.016)
Stabilisation policies	
Collor plans	-0.359** (-2.166)
R^2	0.620
Adjusted R^2	0.565

* Significant at the 0.01 level.
** Significant at the 0.05 level.
[1] The standardised regression coefficients are presented. The t-ratios are within brackets.

REAL WAGES (Change in negotiated real wages)

The variable REAL WAGES measures the annual change in negotiated real wages on average in the selected collective agreements. This indicates change in the general level of nominal wages, as adjusted according to COLA and AIF provisions, vis-à-vis past cost-of-living increase. Regression results shown in table 7.9 indicate that negotiated real wages, which was regarded as the most important issue under high inflation, was strongly affected by relative prices and the stabilisation policies. The highest R^2 was obtained for this equation.

Table 7.9 – Multiple regression results for dependent variable REAL WAGES

	REAL WAGES[1]
Relative prices	0.374* (3.351)
Stabilisation policies	
Cruzado plan	-0.429* (-5.521)
Collor plans	-0.445* (-4.001)
Real plan	-0.456* (-5.671)
R^2	0.931
Adjusted R^2	0.908

* Significant at the 0.01 level.
[1] The standardised regression coefficients are presented. The t-ratios are within brackets.

This model suggests basically two conclusions. First, wage bargaining was highly dependent upon the ability of employers to pass on costs to costumers, which is captured by the performance of relative prices. Second, whenever the government succeeded in converting nominal wages according to their past real magnitudes, as was the case for the Cruzado plan (1986), the Collor plans (1990-91), and the Real plan

(1994), this pattern of association between negotiated wages and relative prices was broken so that the public policy goal was accommodated in collective agreements.

7.4 Conclusion

In this chapter, I aimed at exploring the determinants of bargaining outcomes in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre between 1978 and 1995. Four selected outcomes were taken into consideration as the dependent variables to be explained. By drawing upon theories on the determinants of collective bargaining outcomes, I defined a general framework for the analysis. This framework gave rise to a hypothesized model of bargaining outcomes, according to which the outcomes in the selected bargaining units would be explained in terms of the macroeconomic conditions, the product- and labour-market conditions, characteristics of the operating system of manufacturing firms, the stabilisation policies carried out by the Brazilian government from 1986 to 1995, and the public policy on minimum wages.

Most of the environmental economic conditions that were hypothesised as having an impact on collective bargaining showed the correlation signs as expected, although only some of the correlations were statistically significant. The regression results for each of the outcomes variables indicated that collective bargaining in the selected units was basically impacted by the general conditions of the labour market as measured by the rate of unemployment, the ability of employers to pass on labour costs as measured by manufacturing relative prices, and the stabilisation policies implemented by the Brazilian government to curb inflation. Negotiated minimum wages, in addition, were strongly affected by the official rate of minimum wages.

The correlation and regression results reinforce conclusions I anticipated in chapters 4 to 6 when analysing the patterns of change in agreement provisions. This analysis of the determinants of bargaining outcomes in the selected units needs now to be expanded in order to contemplate the consequences of a very peculiar characteristic of the Brazilian system of industrial relations over collective bargaining. This characteristic is the normative power of the labour judicial system. In chapter 8, thus, I turn my attention towards the relationship between the labour judicial system and collective bargaining by focusing upon this normative power.

CHAPTER 8

THE NORMATIVE POWER OF THE LABOUR JUDICIAL SYSTEM AND COLLECTIVE BARGAINING

The Brazilian system of industrial relations features a distinctive institution aiming at settling collective disputes: the normative power of the labour judicial system ("*poder normativo da Justiça do Trabalho*"). Settling collective labour disputes is placed among the constitutional prerogatives conferred upon labour tribunals. Tribunals are entitled to resolve collective disputes by creating new rules of law, and not only by applying existing ones. Moreover, the only general impediment for the exercise of this normative power is that the issues subject to a judicial decision must fall into the fields of the employment relationship and unions-management relations. That is to say, when tribunals are set to decide upon collective disputes, they are legally authorised to perform a typical legislative function. The mere existence of such a normative power is enough for one to think of the possible consequences brought about over collective bargaining.

Brazilian literature on the normative power of the labour judicial system has been largely focused on the boundaries within which such a power may be legally employed, as well as on the impact upon collective bargaining. Literature on the labour law, for instance, has been witness to an argument between opponents of the unbounded application of the normative power by tribunals (Saad 1995; Goldschmidt 1996), eventually claiming its unconstitutionality (Romita 1994), and those who defend the thesis that legal restrictions over the use of normative powers are considerably softer (Pereira Leite 1981; Martins Filho 1989, 1994; Teixeira 1994). The major hypothesis on the issue of the consequences of the normative power over collective bargaining suggests it has been instrumental in restraining the development of collective bargaining as a method of job regulation (Costa 1984; Puech 1984; Pastore and Zylberstajn 1988; Maciel 1990; Loguércio 1994; Romita 1994; Siqueira Neto 1996; Barros 1999: 20).

Though the issue of the consequences of the normative power over collective bargaining has brought up some interest, the literature has not yet provided a more comprehensive analysis of the contents of judicial decisions in settling collective labour disputes. The argument on the barrier over the development of collective bargaining that supposedly arises from the exercise of the normative power by tribunals is built

exclusively upon both the very concept of the normative power and the description of the institutional machinery for its exercise. Although hypothetical consequences of the normative power over collective bargaining may logically be put forward in such a way, an analysis of the contents of judicial decisions is necessary in order to determine the extension to which labour tribunals actually created new rules of law. Furthermore, an analysis of the contents of judicial decisions may also identify change and determine patterns of change in the conduct of the labour judicial system as for collective disputes. As long as the contents of collective agreements are at least indirectly affected by the normative power, analysing patterns of change in the practice of the normative power by labour tribunals also helps explain change in the contents of collective agreements.

In this chapter, I aim at examining the possible consequences brought about over collective bargaining by the employment of the normative power by labour tribunals. First, I take the concept of normative power and the machinery for its exercise into account in order to establish the relevance of the normative power for collective bargaining. Second, I analyse the contents of judicial decisions in settling collective labour disputes. In so proceeding, I focus upon consolidated decisions of the Superior Labour Tribunal ("*Tribunal Superior do Trabalho*") on collective disputes. In particular, I focus attention on the key-instrument where the normative power has been expressed, i.e. the normative precedents ("*precedentes normativos*") of the Superior Labour Tribunal, which consist of formal statements of rule that are laid down by the Superior Labour Tribunal.

Third, I analyse the substantive provisions in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre vis-à-vis the normative precedents of the Superior Labour Tribunal. Conclusions on the strengthening of collective bargaining, as I have put forward in chapter 6, require an analysis of the contents of provisions in comparison to other sources of labour law, such as statutory legislation and consolidated judicial decisions. In chapter 6, I compared substantive provisions and regulatory legislation. Here, I add substantive normative precedents of the Superior Labour Tribunal to the regulatory legislation in order to compare them to substantive provisions.

This chapter has six sections. In section 8.1, I set down the formal instruments that express the operation of the normative power by the Superior Labour Tribunal, with particular attention to the normative precedents of the Superior Labour Tribunal. In

sections 8.2 to 8.4, I intend to analyse the contents of consolidated judicial decisions manifested through normative precedents and other formal instruments laid down by the Superior Labour Tribunal. In section 8.2, I deal with the scope of the normative precedents. In section 8.3, I examine procedural rules setting prerequisites for the parties to apply for judicial arbitration of collective disputes, while in section 8.4, I compare the contents of the normative precedents with regulatory legislation when it comes to regulating the employment relationship. These sections, thus, deal with the conduct of the Superior Labour Tribunal as for the exercise of the normative power of the labour judicial system and its hypothetical consequences over collective bargaining.

In section 8.5, I analyse the substantive provisions in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre in the light of both regulatory legislation and consolidated decisions of the Superior Labour Tribunal. The crux of the matter resides in finding out to what extent collective agreements set down additional rules vis-à-vis what both regulatory legislation and the normative precedents stipulated. Conclusions are presented in section 8.6.

8.1 Consolidated decisions of the Superior Labour Tribunal: Normative precedents and other formal instruments

The normative power of the labour judicial system is actually exercised at the very moment a judge or a group of judges decides upon collective disputes. Whenever labour tribunals are asked to settle collective conflicts, they are entitled to lay down rules that apply to the employment relationship, as well as to other aspects of the relationship between unions, employers´ associations, employers and employees within the unit covered by that particular arbitrated collective dispute. Insofar as numerous single decisions arise to set up some recurrent rules, a majority view on the points at issue consolidates these, and tribunals are expected to decide accordingly. An instance of such a recurrent ruling is provided by the issue of overtime pay, which the Superior Labour Tribunal set at 100% normal pay in successive arbitrated collective disputes over the 1980s.

A previous attempt by the Superior Labour Tribunal to consolidate decisions dates back to the mid-1970s. The Tribunal issued a directive called *prejulgado* (*Prejulgado* n. 56, 14 Jun 1976), whose scope was limited to a few clauses on cost-of-living adjustment (COLA) and procedures the parties had to follow in applying for

judicial arbitration. These rules were later revised in 1982, giving rise to a normative instruction (Normative Instruction n. 1, 15 Oct 1982), which only added a pair of rules to the list of *Prejulgado* n. 56.

Still in the 1980s, nonetheless, a much more influential move was made by the Superior Labour Tribunal. Recurrent decisions taken in arbitrating collective disputes on a larger variety of issues were arranged into formal normative precedents (NP/SLT hereafter). From then on, ministers of the Superior Labour Tribunal were expected to settle single collective disputes on the basis of these normative precedents. The scope of decisions that were consolidated into normative precedents encompassed numerous issues on three broad subject matters: the employment relationship, union-management relations, and prerequisites for unions and employers´ associations to make use of labour tribunals to settle disputes.

Although the normative precedents have been rooted in previous arbitrated collective disputes, they themselves do not consist of decisions on actual disputes brought before tribunals. Furthermore, no single judge at regional labour tribunals is legally bound to decide upon similar issues according to what normative precedents stipulate. Nonetheless, normative precedents perform strongly as standards that judges are expected to take into account when adjudicating on conflicts. NP/SLT n. 20, for instance, laid down that employers ought to supply their employees with pay slips in which all entries of pay and discounts had to be clearly stated. Whenever the issue of pay slips was put before tribunals in collective disputes, judges were supposed to decide on grounds of this normative precedent. This is likely to happen because of a clear-cut reason: if a single party appeals against an arbitrated collective dispute by a regional tribunal, ministers of the Superior Labour Tribunal are strongly expected to decide according to those normative precedents they have issued.

This point deserves further comment. Most arbitrated collective disputes are decisions made by regional labour tribunals. In this case, if an agent resolves to appeal against a decision, it has to direct it to the Superior Labour Tribunal. The appellant may select particular clauses from the lower court's decision; it is not obliged to apply for an appeal over the complete arbitrated collective dispute. For instance, an employers´ association could appeal only against a decision made by a regional tribunal which made NP/SLT n. 20 on pay slips a valid rule for its constituent employers. As a consequence, the Superior Labour Tribunal will manifest only on this issue, and it is

very likely the clause will be kept in the arbitrated dispute. Under this machinery for settling collective disputes, a rational conduct to be expected from trade unions is that they include rules laid down by normative precedents of the Superior Labour Tribunal into their list of claims. If the dispute is brought before the judicial labour system, tribunals are likely to decide in favour of these claims.

The promulgation of the normative precedents of the Superior Labour Tribunal in the 1980s established a yardstick for collective bargaining. In any process of negotiation, bargaining agents became conscious that:

a) Any single agent may apply for arbitration or for an appeal against a lower court's decision, giving up voluntary arrangements;

b) appeals may be made against single clauses of a lower court's decision to be selected by the appellant; and

c) the higher court is likely to decide according to what their normative precedents and other formal instruments stipulate.

The Superior Labour Tribunal has initially promulgated 141 different normative precedents, mostly based upon decisions taken in arbitrating collective disputes between 1983 and 1985 (hereafter NP/SLT 1980s). A small proportion of these precedents were not formally labelled normative precedents, but *ementas de jurisprudência*. This distinction of label, however, does not imply any substantive differentiation as for their use in collective disputes resolution. Pereira adduces that:

> The adoption of normative precedents by the Brazilian labour judicial system has stemmed from the informal practice in use at the Superior Labour Tribunal since April 1985. In fact, by initiative of Minister Orlando Teixeira da Costa, that tribunal has called into use applicable judicial precedents in order to abbreviate judges´ reasoning when taking their decisions and, therefore, to speed up arbitrated collective disputes, both of its original jurisdiction and of appealing, provided those precedents have shown to represent at least 50% of the members of the Tribunal (Pereira 1996: 41).

In 1988, shortly after the new Federal Constitution had been promulgated, Act n. 7.701, art. 4, d, ratified the competence for the Superior Labour Tribunal to approve precedents prevailing in arbitrated collective disputes. Moreover, art. 14 ascribed to internal directives of regional labour tribunals the stipulation of their own normative precedents.

However, it was only in June 1992 that the Superior Labour Tribunal revised its normative precedents on grounds of Act n. 7.701, when it laid down 118 normative precedents (NP/SLT 1992 hereafter). In comparison to previous NP/SLT 1980s, 111 precedents were kept the same, four precedents changed their contents, and 26 precedents were just suppressed. Only three completely new precedents were added, thus completing the whole set.

In 1993, the Superior Labour Tribunal issued Normative Instruction n. 4 (8 Jul 1993). This instruction was entirely devoted to the procedures to be followed by the Tribunal and by the bargaining agents in the process of judicial arbitration. This new directive revised Normative Instruction n. 1/82, which was then revoked, by adding several new rules.

A second major revision of the normative precedents was undertaken in two stages in 1998. In the first stage, revision was largely intended to set aside some of the precedents adopted in the early 1990s. As a consequence, 26 NP/SLT 1992 were just revoked, one precedent had its contents changed, one new precedent was added, and 90 precedents were corroborated. Later, in a second stage of revision, the Superior Labour Tribunal gave a further and influential step by laying down 32 precedents, which came to be labelled *precedentes jurisprudenciais* instead of the usual normative precedents. These mostly set prerequisites for unions and employers´ associations to apply for arbitration by labour tribunals. As a consequence, the key-instrument of the normative power of the labour judicial system came to comprise 123 normative precedents (NP/SLT 1998 hereafter).

Figures in table 8.1 summarise the number of normative precedents of the Superior Labour Tribunal between the 1980s and 1998 by distinguishing their range of application. These normative precedents group all kinds of consolidated judicial decisions with respect to collective disputes, regardless of minor differences in their labels. Most normative precedents have been classified as comprehensive, for no distinction on the occupational and economic categories to which they apply is made. Some of the precedents, however, are category-specific, and their application has been limited to the boundaries of a single category – for instance, to rural workers or to bank clerks. No major change in the percentage distribution of normative precedents according to these features has been observed.

Table 8.1 – Normative precedents of the Superior Labour Tribunal, 1980s-98

	NP 1980s[1]		NP 1992		NP 1998[2]	
	N	(%)	N	(%)	N	(%)
Range						
Comprehensive	109	77.3	93	78.1	100	81.3
Category-specific	32	22.7	26	21.9	23	18.7
Total	141	100.0	119	100.0	123	100.0

[1] NP/SLT 1980s encompass normative precedents and *ementas de jurisprudência*.
[2] NP/SLT 1998 encompass normative precedents and *precedentes jurisprudenciais*.

In this section, I have shown that, although the normative power of the labour judicial system is exercised in arbitrating collective disputes, the Superior Labour Tribunal enlarged the amount of consolidated decisions by promulgating normative precedents from the mid-1980s on. Given the Brazilian institutional machinery for settling collective labour disputes, in particular the semi-compulsory nature of the arbitration process, these normative precedents, along with other formal instruments of the Superior Labour Tribunal, consist of a strong reference for collective bargaining. Therefore, I will focus upon the contents of these consolidated decisions and their influence over collective bargaining in the next three sections. In section 8.2, I deal with the scope of the normative precedents of the Superior Labour Tribunal; in section 8.3, I analyse the legal procedures for applying for judicial arbitration; and in section 8.4, I draw a comparison between the rule-content of substantive normative precedents and regulatory legislation. In each section, I make an attempt to characterise the patterns of conduct of the Superior Labour Tribunal from the mid-1980s to the late 1990s.

8.2 Scope of the normative precedents of the Superior Labour Tribunal

Following chapter 4, in this section, I will analyse the normative precedents of the Superior Labour Tribunal according to their scope. The distribution of these normative precedents according to the primary distinction between substantive and procedural rules, as well as what themes are covered by their rules, is displayed in table 8.2. Figures show that four out of five NP/SLT laid down substantive rules when they were first adopted in the mid-1980s. Most of these rules focused on issues on pay (47.5%) and job security (14.9%). Precedents on pay, for instance, addressed issues such as discounts, pay slips, calculation of pay under unplanned interruption of work, abnormal events, accident benefits, and educational benefits.

Table 8.2 – Scope of the normative precedents of the Superior Labour Tribunal, 1980s-98

Themes	1980s[1]		1992		1998[2]	
	N	(%)	N	(%)	N	(%)
Substantive precedents	113	80.1	97	81.5	81	65.9
Pay	67	47.5	56	47.1	47	38.2
Hours	4	2.8	3	2.5	1	0.8
Paid holidays	8	5.7	9	7.6	7	5.7
Recruitment and contract	9	6.4	9	7.6	8	6.5
Job security	21	14.9	15	12.6	13	10.6
Work conditions	4	2.8	5	4.2	5	4.1
Procedural precedents	28	19.9	22	18.5	42	34.1
Unions-management relations	11	7.8	10	8.4	10	8.1
Negotiation procedures and disputes resolution	10	7.1	7	5.9	28	22.8
Complementary rules	1	0.7	-	-	1	0.8
Penalties	6	4.3	5	4.2	3	2.4
Total	141	100.0	119	100.0	123	100.0

[1] NP/SLT 1980s encompass normative precedents and *ementas de jurisprudência*.
[2] NP/SLT 1998 encompass normative precedents and *precedentes jurisprudenciais*.

The major outcome of the revision carried out by the Superior Labour Tribunal in 1992 was a decrease in the total amount to 119 normative precedents. The scope of remaining precedents, however, was kept virtually unchanged. A slight increase in the percentage of precedents covering issues on paid holidays, recruitment and contract of work, work conditions, and unions-management relations was the counterpart to a similar slight decrease as for the rest of the themes. These outcomes indicate that the 1992 revision was basically oriented towards reducing the number of precedents without any major concern for their distribution by subject matter.

Yet, a rather different picture emerged from the 1998 revision. Although the total amount of consolidated decisions increased by a few precedents, a change in the distribution of precedents by subject matter suggests a broader change in the behaviour of the Superior Labour Tribunal. The total amount of normative precedents addressing issues on the employment relationship decreased from 97 to 81 precedents, whereas the number of procedural precedents increased from 22 to 42. That means the 1998 revision went further in self-restraining judicial regulation of substantive issues, not only by cutting substantive precedents – a decision that reinforced the sort of conduct adopted in the 1992 revision – but also by creating fresh formal difficulties for the agents to apply for judicial arbitration of collective labour disputes.

The decrease in the amount of substantive precedents (both in 1992 and in 1998), as well as the increase in the number of procedural rules aiming at setting up requirements for the bargaining agents to apply for judicial arbitration (in 1998), therefore, evince a far-reaching move that featured decisions of the Superior Labour Tribunal over the 1990s. The highest labour court seems to have departed from a policy of actively exercising the normative power by laying down rules on the employment relationship, which came indeed to determine the consolidation of numerous single decisions into normative precedents in the mid-1980s, to a policy aimed at building up barriers for the use of tribunals by unions and employers´ associations to settle collective disputes.

A second change brought about by the 1992 and 1998 revisions is also of interest. Since the first promulgation of normative precedents in the 1980s, the Superior Labour Tribunal has classified them as either positive or negative precedents. A positive precedent means that a majority of ministers of the Superior Labour Tribunal agrees with the related content and is likely to decide accordingly whenever asked to settle collective disputes. A negative precedent goes the other way around. The importance of such a distinction is placed in the sort of signal given by the Superior Labour Tribunal to the bargaining agents. If a normative precedent is labelled as positive, ministers are expected to lay down its rule in the event of a negotiation failure and the agents let the conflict to be settled by the Tribunal. Conversely, if a normative precedent is labelled as negative, ministers are not expected to lay down its rule in any particular arbitrated collective dispute.

This distinction between positive and negative precedents is especially relevant when it comes to substantive issues. The stipulation of normative precedents in the 1980s consisted of a reaction of the Superior Labour Tribunal towards the multiplication of collective disputes after the revival of Brazilian trade unionism in the late 1970s. A good deal of these disputes came to be settled by labour tribunals, magnifying the amount of work to be done by labour magistrates. In deciding upon collective disputes, judges had the claims that unions demanded from employers, most on the employment relationship, as a primary material to work out. Thus, a positive precedent may also be seen as a formal sign that ministers of the Superior Labour Tribunal agree with its associated rule, which has been normally a rule claimed by trade unions, whereas a negative precedent signals the opposite situation. Table 8.3 displays

the amount and the percentage of positive and negative substantive precedents according to their scope.

Table 8.3 – Scope of positive and negative substantive precedents, 1980s-98

Amount of substantive precedents

Themes	NP 1980s[1]		NP 1992		NP 1998[2]	
	Positive	Negative	Positive	Negative	Positive	Negative
Pay	52	15	44	12	38	9
Hours	3	1	3	0	1	0
Paid holidays	4	4	5	4	5	2
Recruitment and contract	8	1	8	1	6	2
Job security	15	6	12	3	8	5
Work conditions	4	0	5	0	5	0
Total	86	27	77	20	63	18
	113		97		81	

Percentage of substantive precedents

Themes	NP 1980s[1]		NP 1992		NP 1998[2]	
	Positive	Negative	Positive	Negative	Positive	Negative
Pay	77.6	22.4	78.6	21.4	80.9	19.1
Hours	75.0	25.0	100.0	-	100.0	-
Paid holidays	50.0	50.0	55.6	44.4	71.4	28.6
Recruitment and contract	88.9	11.1	88.9	11.1	75.0	25.0
Job security	71.4	28.6	80.0	20.0	61.5	38.5
Work conditions	100.0	-	100.0	-	100.0	-
Total	76.1	23.9	79.4	20.6	77.8	22.2

[1] NP/SLT 1980s encompass normative precedents and *ementas de jurisprudência*.
[2] NP/SLT 1998 encompass normative precedents and *precedentes jurisprudenciais*.

Figures in table 8.3 show that most substantive precedents comprised positive precedents. The decrease in the total amount of substantive precedents, brought about by both 1992 and 1998 revisions, kept the distribution of precedents according to this trait virtually unchanged. Since an increase in the amount of positive precedents and a decrease in the amount of negative precedents mostly benefit employees, the outcome of the 1992 and 1998 revisions may not be considered as beneficial to employees. The decrease in 23 positive precedents and nine negative precedents between the 1980s and 1998 gave a net change of 14 substantive precedents against the standpoint of employees, notwithstanding the percentage of positive and negative precedents has undergone just a very minor change.

The main conclusions that emerge from this analysis of the normative precedents of the Superior Labour Tribunal according to their scope are therefore the following:

a) The decrease in the amount of substantive precedents between the 1980s and 1998 indicates that the Superior Labour Tribunal has increasingly avoided the exercise of its normative power to regulate the employment relationship;

b) moreover, the net outcome between diminishing both positive and negative substantive precedents suggests a bias against the employees´ interests in the 1992 and 1998 revisions; and

c) the noticeable increase in the amount of procedural precedents in the second round of the 1998 revision – a good deal of them on prerequisites to be followed by the bargaining agents before applying for judicial arbitration – suggests a clear attempt by the Superior Labour Tribunal to build up barriers for the use of tribunals by unions and employers´ associations to settle collective disputes.

This attempt by the Superior Labour Tribunal to restrain employers´ associations´ and especially trade unions´ access to judicial arbitration of collective disputes is further analysed in the section 8.3.

8.3 Restraining access to judicial arbitration

In 1998, the Superior Labour Tribunal laid down further procedural precedents, most of them on negotiation procedures and disputes resolution. Half of these new precedents specified prerequisites the bargaining agents must comply with in order to apply for the judicial arbitration of collective disputes. The promulgation of such precedents reiterated Tribunal directives towards the use of judicial arbitration which could be observed from the late 1980s onwards. In 1993, the Superior Labour Tribunal had already replaced a normative instruction of the early 1980s (Normative Instruction n. 01/1982) with another one (Normative Instruction n. 04/1993) through which it reinforced the statutory requirements that the agents had to observe in order to apply for judicial arbitration, as well as enlarged this existing list with further prerequisites. Both these changes evince a disposition to restrain application for judicial arbitration. Table 8.4 displays the set of requirements for the agents to apply for judicial arbitration according to their stipulation by either normative instructions or normative precedents of the Superior Labour Tribunal, besides the 1943 Labour Code. These requirements set that the application to labour tribunals shall be preceded by some procedures and be accompanied by specified documents.

Table 8.4 – Requirements for the bargaining agents to apply for judicial arbitration

Procedures and documents required for application to labour tribunals	Normative Instructions[1]			Normative Precedents			1943 Labour Code
	1976	1982	1993	1980s	1992	1998	
(1) Documents that show an attempt to negotiate previous to application for tribunals has been made			X			X	X
(2) Information on the causes for negotiation not to succeed	X	X	X				X
(3) Parties´ qualifying	X	X	X				X
(4) Information on the geographical area where trade unions and employers´ associations operate and recruit their membership	X	X	X				X
(5) Information on trade union and employers´ association constituency	X	X	X				X
(6) General meetings of trade union and employers´ association members aimed at both deliberating on claims and stating representation to sign collective agreements			X			X	X
(7) General meetings of trade union and employers´ association members in each municipality where trade unions and employers´ associations operate and recruit their membership						X	
(8) Information on the quorum for general meetings according to trade union and employers´ association rules			X				
(9) Statutory quorum in general meetings			X			X	X
(10) Information on trade union and employers´ association total membership			X			X	
(11) List of members that have attended general meetings			X				
(12) List of claims	X	X	X				X
(13) General meeting minutes with list of claims						X	
(14) Causes of collective dispute	X	X	X				X
(15) Justification of each of the claims	X	X	X	X	X	X	X
(16) Legal copy of general meeting minutes			X			X	
(17) Copy of general meeting announcements						X	
(18) Publication of general meeting announcements in newspapers in each municipality where trade unions and employers´ associations operate and recruit their membership						X	
(19) Legal copy of either previous collective agreement or previous arbitrated collective dispute	X	X	X				
(20) Name and signature of legal representatives and clear statement of the date when the application is made			X				
(21) Employees permission to apply for judicial arbitration (for disputes within a single firm)			X				X

[1] Includes *Prejulgado* n. 56 (14 Jun 1976).

Table 8.4 shows that some of the procedural prerequisites that made up both Normative Instruction n. 04/1993 and normative precedents are also found in the 1943 Labour Code. Labour Code rules, however, used to be only partially observed by tribunals until the late 1980s. A good number of collective disputes would be brought before labour tribunals without properly complying with the procedural rules for application, and even so tribunals used to go ahead with further legal proceedings towards settling disputes. It was not a lack of rules but a permissive conduct by the labour tribunals that allowed the agents to apply for judicial arbitration without major rigorous preparation.

The conduct of the labour tribunals concerning the observance of prerequisites for judicial arbitration started changing in the late 1980s. The Federal Constitution made in 1988 had given some prominence to collective bargaining in articles 7 and 8. Some lawyers came to interpret that this enlarged constitutional relevance of collective bargaining narrowed the scope of labour tribunal action in settling collective disputes. Such an interpretation of the law has gained prevalence within the Superior Labour Tribunal, which started to act much more rigorously in the observance of the prerequisites for judicial arbitration. In practice, this change of conduct resulted in a growing number of collective disputes brought before labour tribunals which remained without resolution, for tribunals decided not to promulgate any substantive decision and to put pressure on the bargaining agents to actively negotiate.

This change of conduct was recorded in the Brazilian newspaper *Gazeta Mercantil*, in its issue of 20 August 1996:

> The Superior Labour Tribunal has been rigorous in conducting collective disputes over the last years. This year, from January to June, 202 out of 707 disputes brought before the Tribunal were not settled because of either lack of documents or inaccurate presentation of documents – for instance, lack of evidence on previous negotiation over the issues, insufficient presence of members in general meetings, and inaccuracy of general meeting minutes (Nascimento 1996: A-6).

In the 1998 revision of the normative precedents, the Superior Labour Tribunal reinforced its disposition to restrain access to judicial arbitration of collective disputes. Nine normative precedents stating requirements for application were added to the existing 1992 set, which comprised just one precedent – a rule, by the way, that could already be found in the Labour Code. In the 1998 revision, moreover, two normative

precedents comprised fresh requirements to judicial arbitration which had not been stipulated by the law or in any judicial consolidated decision so far.

This increased amount of prerequisites the bargaining agents had to comply with in order to apply for judicial arbitration evinces a change in the pattern of conduct of the Superior Labour Tribunal towards collective disputes in the 1990s. In the mid-1980s, the Superior Labour Tribunal had consolidated single arbitrated collective disputes into formal normative precedents in order to help magistrates to settle further disputes. The higher court used to adjudicate upon disputes even though statutory requirements for application were not fully or properly observed. In the 1990s, the Tribunal behaviour came the other way around by enlarging the list of requirements and demanding strict observation of such rules. This reveals a conscious self-imposed constraint on the exercise of the normative power of the judicial labour system. Table 8.5 summarises these distinctive patterns of conduct of the Superior Labour Tribunal in the 1980s and the 1990s.

Table 8.5 – Patterns of conduct of the Superior Labour Tribunal towards settling collective disputes, 1980s and 1990s

Issues	1980s	1990s
Observance of requirements to apply for judicial arbitration of collective labour disputes	Most rules according to the 1943 Labour Code; Softer conduct	Increasing amount of rules through consolidated judicial decisions; Tougher conduct
Likelihood of settling collective disputes	More likely to settle	Increasingly likely not to settle
Consolidation of judicial decisions •Positive substantive precedents •Negative substantive precedents	 Promulgation Promulgation	 Decrease in the amount Decrease in the amount

According to the basic features summarised in table 8.5, the Superior Labour Tribunal changed conduct as for the settlement of collective disputes. Thus, observance of requirements to apply for judicial arbitration – most of them already found in the Labour Code since 1943 – was softer during the 1980s. Even though the agents had only partially complied with the rules, the magistrates at the Superior Labour Tribunal were expected to take legal procedures ahead and to settle disputes. Furthermore, this propensity to settle any collective dispute led the Tribunal to consolidate recurrent judicial decisions into normative precedents.

Conversely, in the 1990s, the Superior Labour Tribunal laid down a good deal of fresh requirements concerning application for judicial arbitration of collective disputes, and started to require a strict observance of these requirements. The settlement of collective disputes by labour tribunals, therefore, became increasingly unlikely, leaving the parties without a substantive solution. This pattern of conduct was reinforced by the decrease in the amount of substantive normative precedents as a consequence of the 1992 and 1998 revisions.

A further question on the contents of the normative precedents of the Superior Labour Tribunal remains to be analysed: to what extent the Tribunal actually exercised the legal possibility of creating new rules of law in promulgating normative precedents. This analysis, which involves a comparison between the contents of the normative precedents and the broad Brazilian regulatory legislation on industrial relations, is carried out in section 8.4 regarding their rules on the employment relationship.

8.4 Substantive normative precedents and regulatory legislation

The normative power of the Brazilian labour judicial system enables magistrates to perform the typical legislative function of creating new rules of law. In this section, I aim at examining whether the normative precedents of the Superior Labour Tribunal on the employment relationship stipulated rules which were not found in the regulatory legislation.

I have developed a coding frame designed to compare the contents of agreement provisions with regulatory legislation in chapter 5. This scheme of classification can be applied not only to agreement provisions but also to other substantive rules which are not drawn from regulatory legislation, as in the case of the normative precedents of the Superior Labour Tribunal. The scheme of classification comprises five distinguishing categories of rules, viz:

a) Category no legislation applies to industrial relations rules whose subject matter is not addressed in any piece of legislation;

b) category broader applies to industrial relations rules whose subject matter is addressed in at least one piece of legislation. More than that, their contents stipulate a command which is more favourable than the statutory one from the employees´ standpoint;

c) category operative applies to industrial relations rules whose subject matter is also addressed in at least one piece of legislation. Statutory clauses and the like, however, are not written in a fully operative way, thereby requiring a complement through other kinds of rules to make them applicable;

d) category as the law applies to industrial relations rules which reproduce pieces of regulatory legislation both in their subject matter and their contents; and

e) category disputable applies to industrial relations rules which are very likely to give rise to individual disputes before the labour courts, for they may be deemed as unlawful.

Normative precedents classified into categories no legislation, broader and disputable consist of rules which are not laid down by regulatory legislation. Like agreement provisions classified into these categories, these normative precedents comprise additional rules. There may remain a point over whether operative substantive precedents also make up additional rules, but it is certainly not the case of substantive precedents classified into category as the law. Table 8.6 displays the amount and percentage of substantive normative precedents of the Superior Labour Tribunal according to their relation with regulatory legislation.

Figures show that most substantive precedents laid down rules benefiting employees (mean 94.4% for the three years). In 1992 and later in 1998, revisions carried out by the Superior Labour Tribunal caused the number of these substantive precedents to decrease, albeit their percentage was kept virtually unchanged.

Over half the substantive precedents fell into categories of positive additional rules benefiting employees. Although the proportion of these positive precedents remained around the average 54.1%, their total amount deceased in both revisions of the 1990s. Some change in the proportion of single categories was nonetheless observed. Thus, positive precedents classified into category no legislation, which accounted for 31.9% of substantive normative precedents in the 1980s, increased their proportion to 34.6% in 1998. On the contrary, the percentage of positive precedents classified into category broader decreased from 23.0% in the 1980s to 18.5% in 1998.

Table 8.6 – Amount and percentage of substantive normative precedents according to their relationship with regulatory legislation, 1980s-98

Categories		1980s			1992		
		Positive	Negative	Total	Positive	Negative	Total
Benefiting employees	N	82	26	108	73	18	91
	(%)	72.6	23.0	95.6	75.3	18.6	93.8
No legislation	N	36	16	52	33	12	45
	(%)	31.9	14.2	46.0	34.0	12.4	46.4
Broader	N	26	8	34	20	6	26
	(%)	23.0	7.1	30.1	20.6	6.2	26.8
Operative	N	2	1	3	3	-	3
	(%)	1.8	0.9	2.7	3.1	-	3.1
As the law	N	18	1	19	17	-	17
	(%)	15.9	0.9	16.8	17.5	-	17.5
Benefiting employers	N	3	-	3	3	1	4
	(%)	2.7	-	2.7	3.1	1.0	4.1
Operative	N	2	-	2	2	-	2
	(%)	1.8	-	1.8	2.1	-	2.1
As the law	N	1	-	1	-	1	1
	(%)	0.9	-	0.9	-	1.0	1.0
Disputable	N	-	-	-	1	-	1
	(%)	-	-	-	1.0	-	1.0
Missing	N	1	1	2	1	1	2
	(%)	0.9	0.9	1.8	1.0	1.0	2.1
Total	N	86	27	113	77	20	97
	(%)	76.1	23.9	100.0	79.4	20.6	100.0

Categories		1998		
		Positive	Negative	Total
Benefiting employees	N	60	16	76
	(%)	74.1	19.8	93.8
No legislation	N	28	10	38
	(%)	34.6	12.3	46.9
Broader	N	15	2	17
	(%)	18.5	2.5	21.0
Operative	N	3	-	3
	(%)	3.7	-	3.7
As the law	N	14	4	18
	(%)	17.3	4.9	22.2
Benefiting employers	N	2	1	3
	(%)	2.5	1.2	3.7
Operative	N	1	-	1
	(%)	1.2	-	1.2
As the law	N	-	1	1
	(%)	-	1.2	1.2
Disputable	N	1	-	1
	(%)	1.2	-	1.2
Missing	N	1	1	2
	(%)	1.2	1.2	2.5
Total	N	63	18	81
	(%)	77.8	22.2	100.0

Both the amount and the percentage of substantive normative precedents classified as negative additional rules decreased between the 1980s and the 1990s. These precedents accounted for 21.2% in the 1980s and 14.8% in 1998 of the total amount of substantive precedents. Similarly to positive substantive precedents, negative precedents classified as broader had a decrease in their share from 7.1% in the 1980s to 2.5% in 1998.

Figures in table 8.6 reinforce the conclusions of sections 8.2 and 8.3 on two distinguishing patterns of conduct of the Superior Labour Tribunal with respect to the settlement of collective labour disputes from the early 1980s to the late 1990s. In the 1980s, the Superior Labour Tribunal reacted to an increasing amount of applications for arbitrated collective disputes by actually settling those disputes and by moving further to the point of consolidating judicial decisions into more than a hundred normative precedents. This consolidation of judicial decisions brought about a further, impacting yardstick for collective bargaining by virtue of the way the Brazilian institutional machinery operates, in particular the semi-compulsory nature of arbitration of collective disputes by the labour judicial system. In the 1980s, key aspects of this role played by the normative precedents were the high likelihood that the Superior Labour Tribunal would settle any collective dispute, the majority of positive precedents stipulating additional rules vis-à-vis regulatory legislation, and the very existence of negative precedents.

The contents of the normative precedents, however, did not unambiguously indicate which party would mostly benefit from judicial decisions in actual cases. At least three reasons deserve to be mentioned. The first reason is associated to the fact that the Superior Labour Tribunal never stipulated a normative precedent concerning the key issue in collective bargaining in the 1980s, i.e. cost-of-living adjustment under conditions of high inflation. This lack of a consolidated yardstick issued by the higher court obliged the bargaining agents to permanently look at up-to-date decisions in regional tribunals, which would reveal the dispositions of the magistrates on the matter at each point in time, in order to make up their minds whether to apply for judicial arbitration or not.

Second, positive substantive precedents, including those stipulating rules which were not found in the regulatory legislation, did not necessarily mean an advantage for employees. Suppose a collective agreement that comprised a good deal of provisions

which were broader in their contents than the comparable normative precedents. When the term of this agreement expired and the common annual round of negotiations resumed, the employers´ association would be in a position of refusing to renew the agreement. As a consequence, the dispute would end in a labour tribunal, where decisions were likely to take the normative precedents of the Superior Labour Tribunal into account. As a consequence, provisions in previous collective agreements which were not in line with these precedents could simply be eliminated.

Third, the very existence of negative precedents on substantive rules of employees´ interest provided a signal of judicial decisions on the related matters which was not favourable to employees. Negative precedents enhanced the power of employers' associations to deny agreeing on these rules.

Notwithstanding, the narrowness of the scope of collective agreements in the early 1980s, which resulted from the low degree of development of collective bargaining thus far, suggests that a good number of trade unions and their constituency could benefit from applying for labour arbitration. In a given industry, the less trade unions and employers´ associations had developed specific machinery for collective bargaining and had become used to that, the more they would look for judicial arbitration.

The 1990s witnessed a different story. The pattern of conduct of the Superior Labour Tribunal was predominantly characterised by an increasing refusal to settle collective labour disputes at all. In addition, figures in table 8.6 also show a decrease in the proportion of substantive precedents classified as broader and an increase in the proportion of those classified into category as the law over the 1990s. These outcomes indicate a further shift in the exercise of the normative power. It seems that the Superior Labour Tribunal, when awarding a substantive decision on a case, partially gave up settling these disputes by creating new rules on issues that had already been regulated by statutory legislation. This completes the picture on the pattern of conduct of the Superior Labour Tribunal over the 1990s: first, an increasing refusal to settle disputes; second, in the case of settling disputes, an increasing disposition to follow regulatory legislation in a stricter way.

8.5 Substantive provisions and normative precedents

In this section, I look at substantive provisions in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre by comparing their contents with the consolidated decisions of the Superior Labour Tribunal on collective disputes. I aim at examining the extent to which collective agreements set down additional rules for the employment relationship. A comparison between the contents of agreement provisions with the contents of rules that stem from two sources of the Brazilian labour law – regulatory legislation and consolidated decisions of the Superior Labour Tribunal on collective disputes – is carried out. In this comparison, I have taken the following consolidated decisions into account: positive substantive precedents of the Superior Labour Tribunal, and substantive rules set down by *Prejulgado* n. 56/76, Normative Instruction n. 1/82, and Normative Instruction n. 4/93. Table 8.7 shows the annual average and the percentage of substantive provisions by the usual categories according to their relationship with alternative sources of the law. In A, I compare substantive provisions to regulatory legislation, whereas in B, I compare substantive provisions with both regulatory legislation and consolidated decisions of the Superior Labour Tribunal.

Table 8.7 – Substantive provisions in the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre vis-à-vis regulatory legislation and consolidated decisions of the Superior Labour Tribunal on collective disputes, 1978-95

Categories	Substantive provisions in comparison to regulatory legislation (A)		Substantive provisions in comparison to both regulatory legislation and consolidated decisions (B)		Difference (B-A)	
	Annual mean	(%)	Annual mean	(%)	Annual mean	(%)
Benefiting employees	23.8	80.7	21.5	72.7	-2.3	-8.0
No legislation	8.4	28.5	4.7	15.9	-3.7	-12.5
Broader	9.2	31.2	8.0	27.0	-1.2	-4.2
Operative	2.1	7.1	1.3	4.5	-0.8	-2.6
As the law	4.1	13.9	7.5	25.3	3.4	11.4
Benefiting employers	5.7	19.3	8.2	27.3	2.5	8.0
No legislation	0.4	1.2	0.4	1.2	-	-
Operative	2.3	7.8	2.0	6.8	-0.3	-1.0
As the law	1.4	4.7	1.7	5.7	0.3	1.0
Disputable	1.6	5.6	4.1	13.5	2.5	7.9
Total	29.5	100.0	29.5	100.0	-	-

As can be seen in table 8.7, one out of five substantive provisions changes their categories in comparison B vis-à-vis comparison A. There are two basic sources for this difference. The first one refers to a change in the classification of provisions by categories within the group of provisions benefiting employees. The second one is that some provisions classified as benefiting employees when only the regulatory legislation is considered, become provisions benefiting employers when the comparison also takes the consolidated decisions of the SLT into account. I comment on each of these sources of difference separately.

The amount of provisions benefiting employees which are classified as either no legislation, or broader, or operative, in proportion to the total amount of substantive provisions, diminishes 19.3 points in comparison B. This decrease is a partial counterpart to the increase in the percentage of provisions classified into category as the law (11.4 points). An increase in the proportion of provisions as the law is consistent with the hypothesis that the consolidated decisions of the Superior Labour Tribunal exert some impact on collective bargaining. Although no single provision in the selected agreements, by definition, was the direct outcome of arbitrated collective disputes, the increase in the amount of provisions classified into category as the law in comparison B suggests that negotiations in the selected bargaining units took the consolidated decisions of the SLT effectively into account. Since trade unions and employers´ associations were conscious that arbitrated collective disputes would likely lay down these provisions in case negotiations failed, this gave unions a strong case to argue in favour of their inclusion in collective agreements.

Notwithstanding the decrease in the amount of additional substantive provisions benefiting employees, their proportion remained an impressive 42.9% of all substantive provisions in comparison B (sum of no legislation and broader provisions). Still in this comparison, average additional provisions accounted for just 1.6 provisions in 1978, whereas they reached 22.0 provisions in 1995 (1.6 and 30.4 provisions, respectively, if only regulatory legislation is considered as in comparison A). These outcomes reinforce the conclusion on the strengthening of collective bargaining as a method of job regulation in spite of the large state machinery, which embodies both regulatory legislation and judicial decisions.

The second major source of difference between results in comparison B vis-à-vis comparison A is the increase in the amount of provisions benefiting employers

classified as disputable. Their annual average more than doubles, oscillating from 1.6 provisions (comparison A) to 4.1 provisions (comparison B). This increase constitutes a partial counterpart to a smaller amount of provisions benefiting employees classified as no legislation and broader.

Disputable provisions comprise rules whose contents are assessed as worse from the employees´ standpoint in contrast to comparable sources of law. Disputable provisions in the light of the consolidated decisions of the Superior Labour Tribunal, however, should not be interpreted exactly as they are in the light of regulatory legislation. The single reason for this is that the condition of being worse than a consolidated decision of the higher court will not provide legal grounds for an individual dispute before labour courts. The increase in the amount of disputable provisions in comparison B indicates that some agreement provisions, although classified as additional to regulatory legislation, did not level the contents of consolidated decisions. This was the case for provisions on 23 different issues. For instance, provisions stipulating overtime rates between 50% (statutory rate after the 1988 FC) and 100% (NP/SLT n. 43) would be classified as broader in comparison A and disputable in comparison B. Another example is given by provisions that grant job security for employees who are short of retirement. There is no comparable rule in regulatory legislation. Therefore, they would be classified as no legislation in A. Yet, if job security was set down for a period inferior to 12 months in collective agreements, as stipulated in the 1992 NP/SLT n. 85 (former 1980s NP/SLT n. 137), provisions would be classified as disputable in B.

The increase in the amount of disputable provisions in B indicates further points of interest. The mere existence of consolidated decisions of the SLT on those issues covered by disputable provisions (comparison B) in the selected agreements seems to have exerted an impact on collective bargaining, even though agreement provisions did not fully incorporate rules set down by consolidated decisions. Once more, this is consistent with the hypothesis that the normative power of the labour judicial system has a consequence over collective bargaining.

In comparison B, disputable provisions also suggests that the consolidated decisions of the SLT are not completely transferred to collective agreements. Partial transfer is likely to reflect the costs of applying for judicial arbitration. Although trade unions may play with most normative precedents during negotiations, they and

employers´ associations are conscious of the costs bargaining agents incur in when opting out of collective bargaining and moving towards labour tribunals in search of an arbitrated collective dispute. These include costs due to a longer time for magistrates to make a decision and, for trade unions, costs due to negative precedents that entail the risk of loosing some provisions.

8.6 Conclusion

In this chapter, I have analysed the normative power of the Brazilian labour judicial system and its relationship with collective bargaining. This normative power, which was first laid down by the Federal Constitution issued in 1946, means the legal capacity labour tribunals enjoy in creating new rules of law in arbitrated collective disputes. The main questions were the consequences of this particular trait of the Brazilian machinery for judicial arbitration of labour disputes over collective bargaining, and the extent to which the selected collective agreements in manufacturing industries in the Metropolitan Area of Porto Alegre set down additional substantive rules in contrast to both regulatory legislation and consolidated decisions of the Superior Labour Tribunal.

The mere existence of a normative power under a system of semi-compulsory arbitration of collective disputes by labour tribunals causes judicial decisions to become a yardstick for collective bargaining. Thus, when the Superior Labour Tribunal consolidated various decisions into normative precedents in the 1980s, magnifying the number of consolidated rules to be applied in awarding collective disputes, these normative precedents became a yardstick for the bargaining agents. Any single agent could give up voluntary negotiations in order to apply for judicial arbitration, and an arbitrated collective dispute based on these normative precedents was supposedly set down by magistrates.

The pattern of conduct of the Superior Labour Tribunal concerning collective disputes underwent a major change between the 1980s and the 1990s. In the 1980s, the Tribunal was expected to settle any collective dispute brought before it, irrespective of the degree of observance of formal requirements to apply for judicial arbitration. In settling disputes, moreover, the higher court would take their consolidated decisions into account, which could result in creating new rules of law – on grounds of the positive precedents –, as well as refusing to stipulate rules on certain issues – on grounds of the negative precedents. In the 1990s, conversely, the Superior Labour

Tribunal turned out to be considerably tougher in the observance of the formal requirements to apply for arbitration. This change in conduct brought about a great number of disputes that remained without substantive resolution by the judicial system. This basic trait of conduct – higher probability of refusing to settle collective disputes in order to let the agents deal with their business – was reinforced in 1992 and 1998, when revisions of the normative precedents resulted in suppressing numerous rules on the employment relationship. Thus, in the 1990s, the Superior Labour Tribunal seems to have self-imposed considerable constraints over the exercise of the normative power.

Evidence analysed in this chapter also indicates that the normative power of the labour judicial system exerted an impact on collective bargaining in manufacturing industries in the Metropolitan Area of Porto Alegre. The distribution of agreement provisions according to their relationship with regulatory legislation changed when the consolidated decisions of the Superior Labour Tribunal were also taken into account. About 15.0% of substantive provisions changed categories, mainly from no legislation and broader towards as the law and disputable. This means one out of seven provisions stipulated rules that would be set down by labour tribunals with at least the same outcome.

Although the proportion of substantive additional provisions decreases from 59.7%, when compared only with regulatory legislation, to 42.9% when the consolidated decisions of the Superior Labour Tribunal are also taken into consideration, there still remains a sizeable share of additional rules aimed at regulating the employment relationship. This reinforces the main conclusion of chapter 5. Collective bargaining gained prominence as a method of job regulation after the late 1970s under the context of a comprehensive state regulation that characterises the Brazilian system of industrial relations.

CHAPTER 9

CONCLUSION

9.1 The research questions

In this thesis, I have addressed the following overall questions:

a) How important has collective bargaining become in establishing provisions on the terms and conditions of the employment relationship that are not simply reproducing rules established via state regulation?

b) What factors accounted for changes in the content of provisions regulating the employment relationship between 1978 and 1995?

The strengthening of collective bargaining in Brazil is hypothesised to have started in the late 1970s (Tavares de Almeida 1982; Pastore and Skidmore 1985; Pastore and Zylberstajn 1988; Gonçalves 1988, 1994; Córdova 1989; Moreira Alves 1989; Amadeo 1992; Rodrigues 1992; Souza 1992; Silva 1992; Barbosa de Oliveira 1994; Jácome Rodrigues 1995; Ramalho 1996; Prado 1998). From the 1930s up to the late 1970s, legal enactment had been the prevailing method of job regulation. What epitomises this characteristic of the national system of industrial relation is the long-lasting effect of the 1943 Labour Code, which consolidated and extended previous legislation set down during the first Vargas government (1930-45). This Labour Code survived almost untouched throughout two political regimes: the democratic-populist period (1946-64) and the military dictatorship (1964-85). The state regulation of the employment relationship left some room for a discretionary choice by employers over those issues which were not covered by the law. Collective bargaining, however, had not come to play a significant role, notwithstanding the legal machinery for direct negotiations in force since the 1940s.

The strengthening of collective bargaining has been made on grounds of the following changes in Brazilian industrial relations during the period starting in the late 1970s: (i) an increasing number of provisions in collective agreements; (ii) an enlargement in the scope of collective bargaining; (iii) an increasing number of voluntary arrangements in contrast to either mediation or arbitration by labour tribunals;

(iv) new forms of negotiations that represent a departure from the Labour Code model; and (v) a higher incidence of strikes associated with negotiations in the 1980s.

This increase of collective bargaining is part of a broader context that has been considered a turning point in Brazilian industrial relations. Between the late 1970s and the late 1980s, the system underwent changes that brought about a hybrid or ambiguous system of interest representation by combining traits of state corporatism and pluralism (Pastore and Skidmore 1985; Rodrigues 1992; Souza 1992; Tapia and Araújo 1994; Tavares de Almeida 1998; Barros 1999; Cardoso 1999). Conversely, some studies have pointed out that there has been a great degree of continuity in Brazilian industrial relations. Thus, the trade union structure remained virtually unchanged (Pochmann 1996; Boito Jr. 2002). And collective bargaining has not come to play a major role in job regulation by virtue of numerous constraints imposed by regulatory legislation (Souza 1992; Barelli 1993; Siqueira Neto: 1996).

Notwithstanding the various new bargaining outcomes underlined in studies on the development of collective bargaining in Brazil, a weakness of these studies has been the lack of empirical evidence that conclusively support the hypothesised strengthening of collective bargaining as a method of job regulation. Thus, evidence on an increasing number of collective agreement provisions and the enlargement of the bargaining scope (Vasconcellos 1983; Brandão 1991; Horn 1992; Pichler 1995; Prado 1998) suggests indeed an increase in the significance of collective bargaining, though they are not sufficient. An increasing number of agreement provisions do not necessarily mean provisions supersede regulatory regulation or recurrent judicial decisions.

I have argued, therefore, that one has to analyse this increase in the number of agreement provisions against the Brazilian institutional backcloth of strong state regulation of the employment relationship by looking at the degree to which the content of provisions innovates in regulating jobs. Thus, the overall objective I have pursued in this study has been to analyse the content of agreement provisions in relationship to other forms of job regulation, namely the regulatory legislation and consolidated judicial decisions. The location of this study comprised 17 bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, the capital of the southernmost state of Rio Grande do Sul. The study covers the period from 1978 to 1995.

In order to examine the content of agreement provisions, data construction involved a process of coding provisions according to three different perspectives of analysis, that is to say (i) the scope of collective agreements, (ii) the relationship between substantive provisions and regulatory legislation, and (iii) change in the content of provisions, irrespective of their relationship with other forms of job regulation. The development of coding frames for classifying provisions according to both their relationship with regulatory legislation and change in their content over time represent an innovative aspect of this research, for they were not previously available in the literature. The bulk of analysis focused upon the extent to which different kinds of provisions, in special rules on the employment relationship which were not set down by either the regulatory legislation or the consolidated decisions of the Superior Labour Tribunal, were found in collective agreements, as well as their patterns of change from 1978 to 1995. Once patterns of change in the amount of different kinds of provisions were identified, I have also elaborated upon the determinants of this change.

The main limitations of this study result from their geographical and sector boundaries. Given the amount of resources available for this research, it was virtually impossible to carry out the sort of empirical work needed to draw conclusions on various regions in the country. Thus, in studying bargaining outcomes in manufacturing industries in the Metropolitan Area of Porto Alegre, I have come to conclusions restricted to these bargaining units. I might also add that extending the empirical findings of this study to the national level is a risk one must refrain from. Nonetheless, I am confident this study contributes to the Brazilian debate on the developments of the industrial relations system after the late 1970s by adding further, relevant evidence.

Another limitation comes from exclusively focusing upon rule-making under the model of collective bargaining set down by the 1943 Labour Code. This implied in not having addressed eventual innovations in collective bargaining such as direct negotiations between shop stewards and employers at the firm level. Nevertheless, I consider this a minor problem regarding the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre, since fieldwork indicated a low degree of innovation in these units.

9.2 Main findings

The first and key empirical finding of this research is that most of the increase in the number of agreement provisions concerning the selected bargaining units in manufacturing industries in the Metropolitan Area of Porto Alegre stipulated additional rules governing the employment relationship. Additional rules include both rules on issues not covered by regulatory legislation (or by consolidated decisions of the Superior Labour Tribunal) and rules whose contents differ from legislation addressing similar subject matters (idem for consolidated decisions of the Superior Labour Tribunal).

This finding provides evidence on the increasing significance of collective bargaining as a method of job regulation. The sharp increase in the total amount of provisions enlarged the scope of collective agreements in the selected units after 1978 in a similar way to what happened nationwide, as already evinced in previous studies (Vasconcellos 1983; Aguirre *et al.* 1985; Gonçalves 1988, 1994; Brandão 1991; Horn 1992; Pichler 1995; Prado 1998). Furthermore, I found that this enlargement in the scope was accompanied by entirely new rules governing the employment relationship.

Collective bargaining performed a greater regulatory role in the selected units even constrained by the limits of the Labour Code. This view is not in accordance to studies that emphasise a high degree of continuity in Brazilian industrial relations (Souza 1992; Siqueira Neto: 1996; Boito Jr. 2002). In researching on trade unions and collective bargaining, these authors seem to draw conclusions by reference to an ideal type of industrial relations system. According to this ideal model, for instance, trade unions have to be absolutely free from state regulation, including the settlement of disputes by tribunals. Thus, this unlimited freedom has to prevail for one to conclude on major changes in the Brazilian system of interest representation. A similar reasoning applies to collective bargaining. The ideal type of collective bargaining comprises freedom of trade union organisation, freedom for strike activity, the presence of shop stewards, not to mention environmental conditions such as low unemployment, and so on. Otherwise, one is not allowed to talk of effective bargaining. In this way, authors could sustain that no change in the Brazilian industrial relations system was observed after the late 1970s because this ideal-type system had not been reached (so far).

In analysing the outcomes of collective bargaining, I built a detailed empirical evidence, for I considered that further empirical evidence was – and it still is – necessary to draw more convincing conclusions on the hypothesised strengthening of collective bargaining after the late 1970s. Thus, conclusions on the increasing significance of collective bargaining were based on this empirical material by contrasting observations of reality over time, and not on an ideal model of collective bargaining that could be eventually reached in a more or less distant future.

The second finding concerns the major beneficiary of this strengthening of collective bargaining. Most of the increase in the number of agreement provisions, as well as most of the increase in the number of additional substantive provisions, stipulated rules benefiting employees. In addition, figures on the annual change in the content of substantive provisions, regardless of their relationship with regulatory legislation, indicated change favouring employees. Overall, the increase in the number of agreement provisions mostly enlarged the set of employees' rights, both over time and in comparison to regulatory legislation. This outcome is consistent with the fact that a "remarkable upsurge of worker and unionist activism starting in 1978" (Pastore and Skidmore 1985: 111) lies in the origins of the process. Up to the late 1970s, employers supported the constraints imposed over union activity by the military dictatorship, as well as the prevalence of regulatory legislation. The initiative to call for direct negotiations was taken by trade unions under a context of strong militant activity.

The third finding relates to the fact that the enlargement of the set of employees' rights through the stipulation of additional substantive provisions was not linear over time. A varying pattern of change in the amount of additional provisions was found in the selected collective agreements. By taking the average annual change in the amount of substantive provisions benefiting employees between 1978 and 1995 as a yardstick, annual change was greater in 1979-81, when collective bargaining first gained momentum, and 1985-89. Conversely, it was smaller than the overall mean during the 1982-84 period and over the 1990s.

The fourth finding of this study is that a number of substantive provisions, which I classified into the category of as the law, set down rules which could already be found either in the regulatory legislation or in consolidated decisions of the Superior Labour Tribunal. Notwithstanding, these provisions may not be considered absolutely neutral, for they perform two functions of interest in job regulation: (i) they help publicise

statutory rules in undertakings, thereby reinforcing regulatory legislation within the bargaining units, because the knowledge of collective agreements is much more easily spread over workplaces than regulatory legislation; and (ii) since trade unions enjoy a legal role of representing employees before labour courts in case of a breach of agreement provisions, but not in case of a breach of statutory rules, these provisions strengthen the role of trade unions in enforcing regulatory legislation.

The fifth finding is that around one out of five substantive provisions benefited employers instead of employees, implying that there has been a departure of some bargaining outcomes from the overall pattern – enlargement of employees' rights – in a still more interesting way. When the rate of increase in the number of provisions benefiting employees dropped in the 1990s, the rate of increase in provisions benefiting employers increased above the overall mean. This suggests that employers moved from avoiding direct negotiations with trade unions, which had been the prevailing conduct by the late 1970s, to bargaining over issues of their interest. An assessment of the scope and the content of provisions benefiting employers indicates two particular, opposing roles performed by these provisions.

Some provisions played the function of risk avoidance for employers. Since there are substantive rules in the regulatory legislation that lack precision, employers made use of collective bargaining to set the way these imprecise rules would be applied in workplaces, thereby protecting themselves from individual grievances before labour courts. Lack of precision may give rise to disputes before the labour courts as to the proper application of regulatory legislation. Provisions classified into categories operative and as the law seem to perform this function by removing imprecision from the way the labour law should be applied.

Conversely, other provisions benefiting employers entailed high exposure to legal risks. This was the case with provisions classified into the disputable category, which may be deemed as unlawful by virtue of the criterion of the most favourable rule which is placed on the basis of the Brazilian labour law. Nevertheless, employers started to deliver a defiant strategy against the state aimed at bringing a greater degree of flexibility to job regulation, as well as enhancing managerial discretion, by means of collective bargaining. The point is that the multiplication of disputable provisions strengthened the position of individual employers and employers' associations so that they could more easily put pressure upon the labour judicial system to change

interpretation on the unlawfulness of some sorts of conduct, on grounds that these conducts express the wish of the bargaining agents and the need of the workplace. This has been especially relevant since the promulgation of the 1988 FC, when collective bargaining acquired a legal prominence it had not enjoyed before. In addition, a multiplication of disputable provisions reinforced employers' claims for change in the regulatory legislation.

The sixth finding concerns negotiation over wages. Under macroeconomic conditions of high and chronic inflation that marked the Brazilian economy for most of the period between 1978 and 1995, negotiation over wages played a central role in collective bargaining. The expression wage campaign ("*campanha salarial*") was largely employed to refer to the whole process that goes from negotiation rounds to the settlement of collective agreements, regardless of the variety of other points at issue.

Wage bargaining in the selected units displayed two different patterns of outcomes. The first pattern, which was characterised by a high adherence to the statutory indexation system, lasted from 1978 to 1985. On each settlement date, lower wages were adjusted according to full past inflation plus an additional factor. The second pattern coincided with the unsettled period between 1986 and 1995. Since statutory rules became erratic, oscillating between full indexation and no links to past inflation, collective bargaining accounted for a greater proportion of the increase in nominal wages. In addition, the number of provisions stipulating indexation increased in comparison to the previous period. Nonetheless, the government succeeded in adjusting wages according to the goals of the economic policy in the Cruzado, Collor and Real plans.

As collective bargaining did not supersede statutory rules and inflation accelerated between the mid-1980s and the mid-1990s, negotiated real wages decreased by 53.5% from 1985 to 1995. Between 1977 and 1985, negotiated real wages had increased by 42.1%. A tendency to decrease under conditions of accelerating inflation, although not in the same proportion as that displayed by negotiated real wages, was also found for negotiated real minimum wages.

The last set of findings concerns the factors that accounted for change in the content of agreement provisions over time. By drawing on existing theories on the determinants of bargaining outcomes, I set a general framework for the analysis of change in the content of substantive provisions in the selected collective agreements.

Change in the content of substantive provisions was hypothesised as being determined by environmental factors that affect bargaining outcomes both directly and indirectly through intervening factors such as the strategies, values and organisation of the parties and their representatives. I elaborated upon change in the economic and judicial contexts as affecting change in selected outcomes in the bargaining units. A statistical analysis was carried out concerning four measures of bargaining outcomes as dependent variables.

The first selected bargaining outcome is the annual change in the number of additional substantive provisions benefiting employees. This variable was mostly affected by the general state of the economic activity, the degree of openness of the economy to foreign competition (or, alternatively, the degree of competitiveness of domestic goods in foreign markets), and the capacity of employers to pass on costs to costumers. Thus, change in the number of additional substantive provisions benefiting employees was negatively affected by the rate of unemployment, and positively associated to the exchange rate and to manufacturing relative prices. Change in the regulatory framework brought about by the Federal Constitution issued in 1988 also affected the pace of change in the number of additional substantive provisions benefiting employees, for the selected collective agreements in 1987 anticipated a good amount of those rules that came to be set down by the Constitution.

The second selected bargaining outcome is the annual change in the number of provisions substantive whose content changed in the benefit of employees, regardless of their relationship with regulatory legislation. Regression results showed this variable was basically affected by the rate of unemployment between 1978 and 1995. The higher this rate was; the lower the degree of change that favoured employees. It was also negatively associated to both the Collor plans (1990-91). This reinforces the hypothesis that the Collor government succeeded in restraining the pace of increase in the number of new rules favouring employees in collective agreements, vis-à-vis the 1980s.

Change in negotiated real wages is the third selected bargaining outcome. Changes in this variable were associated to changes in manufacturing relative prices and to the stabilisation policies adopted between the mid-1980s and the mid-1990s. The positive association between manufacturing relative prices and negotiated real wages suggests that wage bargaining under high inflation resulted in a better outcome from the employees' standpoint when employers in manufacturing industries had better

possibilities to pass on costs through higher prices. Negotiated real wages were also affected by the impact of the Cruzado, Collor and Real plans. The negative sign of the association indicates that the government succeeded in converting nominal wages in line with past mean real wages when implementing these stabilisation policies.

Change in negotiated real minimum wages is the fourth selected bargaining outcome. It was also negatively impacted by the Collor plans, yet not by the Cruzado and Real plans. Regression results also show a positive association between official and negotiated real minimum wages, thereby suggesting that negotiated rates of minimum wages were dependent upon public policy. Official rates of minimum wages seem to have provided a yardstick around which negotiated rates oscillated.

In addition to the impact of the economic environment over collective bargaining, there are grounds for supposing that the conduct of the judicial labour system also accounted for change in the patterns of change in the number of substantive provisions between 1978 and 1995. Under the Brazilian industrial relations system, the conduct of labour tribunals affects collective bargaining by virtue of both the semi-compulsory nature of judicial arbitration of collective disputes and the normative power of the labour judicial system. I revealed evidence that the conduct of the Superior Labour Tribunal with respect to the settlement of collective disputes changed in the 1990s. This conduct came to be marked by an increasing refusal to settle disputes. In addition, when the Tribunal decided to settle, it tended to predominantly arbitrate disputes in strict accordance with the regulatory legislation. Thus, a combination of a context of worst economic performance and a tougher approach of the Superior Labour Tribunal towards settling collective disputes brought about a weaker position of trade unions in collective bargaining in the 1990s. Therefore, change in the number of provisions benefiting employees slowed down.

The main theoretical contribution made by this research consists in providing empirical evidence as to the relationship between change in relevant contexts and change in bargaining outcomes. I have explicitly drawn both on the industrial relations systems' theory, namely on Dunlop's main writing, and on theories on the determinants of collective bargaining outcomes, especially on works by Kochan, in order to account for the forces that brought about change in agreement provisions regulating the employment relationship in selected manufacturing units in Brazil. The empirical findings of this research suggests that change in the economic context – with an

emphasis on aspects such as relative prices, unemployment, economic policies aiming at curbing inflation, official minimum wages, and the degree of openness of the economy –, the political context marked by a transition from a military dictatorship to a liberal democracy, and the judicial context, exerted an influence over the patterns of change in both the amount and the contents of substantive provisions.

Besides this theoretical contribution, this research also makes a methodological contribution by providing innovative measures of the contents of collective agreements. I have focused upon the whole set of substantive provisions, and not only upon wages, vis-à-vis the prevailing method of job regulation, i.e. legal enactment. Although the selected bargaining units refers to a particular national setting, this approach suggests the need for comparing bargaining outcomes with rules laid down by other sources of job regulation wherever more than one source of regulation is found, in order to assess the relevance of collective bargaining as a method of job regulation. The coding frames I have designed provide a way of measuring agreement provisions under such a context of competing forms of job regulation.

9.3 Future research

The main motivation in this research has been the lack of empirical evidence that has thus far been given in conclusively support of the hypothesis about the increasing enlargement of collective bargaining after the late 1970s under discussion in the Brazilian literature. The research question on how important collective bargaining has become in regulating jobs in view of the wide state regulation indicates the need for further evidence on a point that has not been fully explored by prior studies: the content of rules set down by collective agreements in contrast to the strong state legislation. In elaborating upon this question, I have made a methodological contribution by developing categories for the measurement of agreement provisions in view of the state regulation. These categories may be applied in future research covering other bargaining units.

Further research could firstly apply the same methodology to studies covering other sectors and regions of Brazil. This would provide a broader picture of collective bargaining as a method of job regulation in Brazilian industrial relations after the late 1970s. Secondly, this analysis should be expanded to the period beyond 1995. Available evidence indicates that the number of provisions in collective agreements remained

virtually unchanged in the late 1990s by contrast to the early 1990s (Prado 1998: 32-33). A number of questions could be explored in analysing agreement provisions set down in accordance to the traditional Labour Code model of collective bargaining. For instance, have there been any changes in the content of rules? Has the increasing amount of provisions benefiting employers that marked the early 1990s been extended to subsequent years? Thirdly, further research could study innovations in collective bargaining that represent a departure from the Labour Code model. For instance, this research could focus upon new issues of job regulation that became of importance in the late 1990s, such as profit sharing and flexibility of hours.

APPENDIX 1

QUESTIONNAIRES

Two questionnaires were designed in order to gather further empirical material. The first questionnaire was designed for gathering data on the selected trade unions and the processes of collective bargaining in which these unions engaged in 1995. Information was provided by trade union officials. The second questionnaire consists of a guide for interviewing several actors in the industrial relations scene in Rio Grande do Sul, such as trade union officials, trade union lawyers, employers' association lawyers, and magistrates at the regional labour tribunal. Their answers helped me understand some details on the collective bargaining procedures, although I have not supplied a formal analysis of them in the thesis. A list with the titles of the interviewees and the dates of interviews is provided in a section of the bibliography.

QUESTIONNAIRE 1 – INFORMATION ON SELECTED TRADE UNIONS AND COLLECTIVE BARGAINING

Part A – Information on selected trade unions

1 – Identification of the trade union
• Name:
• Address:
• Telephone:
• Fax:
• E-mail

2 – Geographical extent
• Municipalities (1995):
• Change (1978-95):

3 – Date of foundation

4 – Date of certification

5 – Date of registration/1988 Federal Constitution

6 – Number of officials (1995)
• Titular:
• Substitute:
• Council of inspection:
• Representatives in federation:
• Other:
Note: If the administration does not fit the CLT model, describe how the union organises its administration.

7 – Number of officials by leave of absence (1995)
• Full time:
• Part time:
• No leave of absence:

(Only for officials enjoying leave of absence)
• Full pay by employer
• Full pay by trade union
• Paid partially by employers, partially by trade union
• No pay either by employer or by trade union

(Other conditions)
• Retired:
• Other (describe):

8 – President of the executive council (1995)
• Name:
• Number of periods in office as president of the executive council:
• Number of periods in office regardless of the position:
• Is a magistrate at the judicial labour system?
• Is also an official at a higher-order association? Which one?

9 – Previous presidents of the executive council (1978-95)
• Name
• Period in office

10 – Elections for the executive council (1978-95)
• Year of election
• Number of electoral lists

11 – Number of employees (1995)
(Provide details on health and lawyer services)

12 – Number of offices (1995)
(Provide details on regular activities carried on in each office)

13 – Shop stewards and representatives of employees (1995)
(Shop stewards)
• Number of shop stewards:
• Number of undertakings in which a shop steward was nominated:

(Representatives of employees)
• Number of representatives of employees:
• Number of undertakings in which a representative of employees was nominated:

14 – Affiliation to higher-order associations
(Federation/1943 Labour Code model)
• Name:
• Year of affiliation:

(Confederation/1943 Labour Code model)
• Name:
• Year of affiliation:

(Central or any other association other than 1943 Labour Code model)
• Name:
• Year of affiliation:

• Change in the period 1978-95:

15 – Affiliation to the main institutions providing consultancy to trade unions or other relevant institutions (1995)
• Name:
• Year of affiliation:

16 – Employees in the occupational category and union membership (1996)
• Number of employees in the occupational category:
• Total union membership:

17 – Description of union press (1995)

18 – Sources of union income (R$, 1995)
• Membership voluntary fees:
• Union tax:
• Collective bargaining deduction:
• Contribution to the confederative system:
• Other:
• Total income:

19 – Interventions of government in the trade union (1978-88)
• Period:
• Details:

20 – Final notes

Part B – Information on collective bargaining procedures in which the selected trade union engaged in 1995

1 – Identification of collective bargaining procedures
(At the industry level)
• Occupational categories:
• Settlement date ("*data-base*"):

(At the firm level)
• Firm:
• Settlement date ("*data-base*"):

2 – Trade union lawyers
• Name:
• Address:
• Telephone:
• Fax:

3 – Employers' associations related to each collective bargaining procedure listed in 1
• Related occupational categories (or firm):
• Name:
• Economic categories:
• Person for contact:
• Position:
• Address:
• Telephone:
• Fax:

(Lawyers)
• Name:
• Address:
• Telephone:
• Fax:

4 – Main firms related to the occupational categories
• Occupational category:
• Main firms:
• Number of employees in each firm:

5 – Industrial actions related to collective bargaining procedures (1978-95)
• Year
• Occupational categories or firms:
• Duration:
• Coverage (% employees):
• Main claims:
• Main outcomes:
• Any dismissals after the termination of the industrial action?
• Other information:

6 – Trade union specialised consultancy in negotiation rounds
• Lawyer:
• DIEESE:

7 – Final notes

Responsible for information:
Position in the trade union:
Date of interview:

QUESTIONNAIRE 2 – INTERVIEW TOPIC GUIDE

1 – Collective bargaining in Brazil is said to have become important for establishing rules on the employment relationship during the 1980s vis-à-vis previous decades.
a) Do you agree with this statement?
b) Is this statement also valid for the negotiations carried out by your union/your employers' association?
c) What forces brought about this outcome in your opinion?

2 – Both the employers and the employers' associations are said to have been taken unaware by the unions' initiative in the field of collective bargaining in the late 1970s and the early 1980s. Do you agree with this statement?

3 – What was the employers' associations' reaction to the unions' demand for collective bargaining in your industry/in general during the 1980s? How did the employers' association behaviour regarding this aspect evolve from the 1980s to the 1990s in your industry/in general?

4 – Trade unions are said to not have been successful in bringing to the 1990s the logic of claim-response typical of the 1980s.
a) Do you agree with this statement?
b) Is this statement also valid for the negotiations carried out by your union/your employers' association?

c) What forces brought about this outcome in your opinion?

5 – What sort of demands has the employers' association your union negotiates with/your employers' association brought to the negotiations?

6 – Has FIERGS (Federation of Employers' Associations in Manufacturing in the State of Rio Grande do Sul) played any role in collective bargaining in your industry/in general? If so, what role? Since when has FIERGS been playing any role?

7 – Mr. E. M. Garcez, a lawyer, has been the main negotiator on behalf of the employers' associations in most of the bargaining units I have selected to analyse. How do you assess the conduct of Mr. Garcez in the negotiations in your industry?

8 – In the United States and the UK, both union membership and collective bargaining coverage decreased during the 1980s. It is said that American and British employers took advantage of an unfriendly environment from the unions' standpoint in order to promote a de-unionisation of their firms. In Brazil, a strategy aiming at a reduction in bargaining coverage under a similar unfriendly environment in the 1990s would be barred by the law. However, a reduction in the number of agreement provisions could be pursued by employers. Have/Has the employers' associations your union negotiates with/your employers' association pushed towards this reduction in the number of provisions?

9 – How do you assess the influence of labour tribunals over collective bargaining in your industry/in general?

10 – Do you agree that judicial decisions in both collective disputes and individual grievances have changed from a pro-labour approach to a pro-employer approach during the 1990s?

11 – Do you expect the Regional Labour Tribunal in Rio Grande do Sul would keep the provisions of a previous collective agreement unchanged if the parties failed to reach a new agreement and the dispute came into judicial arbitration? What about the Superior Labour Tribunal?

12 – There have been examples of employers' associations trying to minimise the degree of discretion trade unions enjoy in establishing the terms of the *collective bargaining contribution*. Moreover, decisions by both the Public Prosecution Service and labour tribunals have corroborated this attempt.
a) Has your union faced such a restriction by the employers' associations it negotiates with?
b) How do you assess the role of both the Public Prosecution Service and labour tribunals regarding this issue?

13 – Collective agreements have set down provisions that may be considered 'against the law'. Is there any provision in the agreement you negotiate that fits the case? If so, what are the origins of these provisions?

14 – Collective agreements have set down provisions that virtually reproduce the text of the law. Is there any provision in the agreement you negotiate that fits the case? If so, what are the origins of these provisions?

15 – Is collective bargaining at the firm level important in your industry?

16 – Why has collective bargaining at the industry level been more important than that at the firm level?

17 – What sources has your trade union taken into account when deciding on the list of claims?

18 – Has your trade union taken into account negotiations carried out by other unions in order to decide on the list of claims as well as the terms of an agreement? If so, which other unions?

19 – Has your trade union/employers' association usually applied to judicial arbitration of collective disputes? If so, why?

20 – Why has the application to judicial arbitration been the norm in the manufacturing sector in Rio Grande do Sul?

21 – Do you believe that the settlement date of collective bargaining in your case exerts any impact over the outcomes of negotiations? If so, what impact?

22 – Where have the negotiation rounds usually taken place?

23 – How many negotiation rounds have been necessary to reach an agreement?

Name of the interviewee:
Institution:
Position of the interviewee in the institution:
Date of the interview:

APPENDIX 2

INDEPENDENT VARIABLES IN MODELS FOR EXPLAINING BARGAINING OUTCOMES IN THE SELECTED UNITS

In chapter 7, I discussed correlation and regression results for the association between selected bargaining outcome variables and a set of 12 independent variables, plus the stabilisation policies carried out in the 1986-95 period. In this appendix, I give details about the measurement of these independent variables.

Unemployment

Unemployment is measured as the rate of unemployment in the Metropolitan Area of Porto Alegre. This rate indicates the proportion of the economically active population over the age of 15 that is classified as unemployed. The source of data is the Monthly Employment Survey ("*Pesquisa Mensal de Emprego*"), a monthly household survey carried out by the Brazilian Foundation of Geography and Statistics (IBGE – "*Fundação Instituto Brasileiro de Geografia e Estatística*"). IBGE is the official national statistics office.

Data for unemployment was available only for the 1982-95 period. In order to complete the series for the whole 1979-95 period, I have estimated the rate of unemployment for 1979-81 as a function of the ratio of effective product to potential product in manufacturing, the exchange rate, profitability in manufacturing, and inflation. Regression results for this model are shown in table A.1.

Table A.1 – Multiple regression results for the rate of unemployment, 1982-95

Effective product	-0.197* (-4.489)
Exchange rate	0.475* (4.667)
Profitability	-0.045*** (-2.250)
Inflation	4.409E-04 (1.683)
(Constant)	12.965** (3.151)
R^2	0.959
Adjusted R^2	0.919

* Significant at the 0.01 level.
** Significant at the 0.05 level.
*** Significant at the 0.1 level.
The t-ratios are within brackets.

Inflation

Inflation is measured as change in a cost-of-living index for the Metropolitan Area of Porto Alegre (annual average). The source of data is a monthly survey on prices carried out by the Centre of Economic Studies and Research (IEPE – "*Centro de Estudos e Pesquisas Econômicas*") of the Federal University of Rio Grande do Sul (UFRGS – "*Universidade Federal do Rio Grande do Sul*"). Data were available for the whole 1979-95 period.

Production growth

Production growth is measured as change in manufacturing production in the state of Rio Grande do Sul. The source of data is an annual report on regional social accounting issued by the Foundation of Economics and Statistics of the state of Rio Grande do Sul (FEE – "*Fundação de Economia e Estatística Siegfried Emanuel Heuser*"). FEE is the official statistics office at the state level. Data were available for the whole 1979-95 period.

Ratio of effective product to potential product (effective product)

Effective product is measured as the ratio of effective product to potential product in Brazilian manufacturing. The source of data is a quarterly survey on Brazilian manufacturing carried out by the Brazilian Institute of Economics (IBRE – "*Instituto Brasileiro de Economia*") of the Getulio Vargas Foundation (FGV – "*Fundação Getulio Vargas*"). IBRE-FGV is a think tank that has been responsible for national social accounting statistics since 1949. Data were published in *Conjuntura Econômica*, and were available for the whole 1979-95 period.

Exchange rate

Exchange rate is measured as the index of an effective exchange rate (R$/U$). The source of data is the Institute of Applied Economic Research (IPEA – "*Instituto de Pesquisa Econômica Aplicada*") of the Ministry of Planning. IPEA publishes numerous economic statistics in its site (www.ipeadata.gov.br), from which data were gathered. Data were available for the whole 1979-95 period.

Tariff rate

Tariff rate is measured as an average of Brazilian tariff rates (unweighted). Data were gathered from the World Bank site in www1.worldbank.org/wbiep/trade/TR_Data, and were available for the 1980-95 period.

Relative prices

Relative prices are measured as the ratio of an index of manufacturing prices to a general index of prices, both at the national level. The index of manufacturing prices is the IPA-OG and the general index of prices is the IGP-DI. Both indices are calculated by the Brazilian Institute of Economics (IBRE – "*Instituto Brasileiro de Economia*") of the Getulio Vargas Foundation (FGV – "*Fundação Getulio Vargas*"), and published in *Conjuntura Econômica*. Data were available for the whole 1979-95 period.

Profitability

Profitability is measured as profits over equity for a sample of Brazilian manufacturing companies belonging to metal, footwear, food, chemicals, fertilisers, pharmaceuticals, printing, leather, and textiles industries. The source of data is an annual survey carried out by the specialised magazine *Exame*. Data were available for the 1979-94 period.

Productivity change

Productivity change is calculated as change in the ratio of change in manufacturing production to change in manufacturing employment for the Brazilian manufacturing. The source of both change in manufacturing production and change in manufacturing employment is a national survey on manufacturing carried out by the Brazilian Foundation of Geography and Statistics (IBGE – "*Fundação Instituto Brasileiro de Geografia e Estatística*"). Data were available for the whole 1979-95 period.

Employment growth

Employment growth is measured as change in the number of employees in manufacturing industries in the state of Rio Grande do Sul. The source of data is a monthly survey which has currently been carried out by the economic and statistics department of the Federation of Manufacturing Employers of the State of Rio Grande do Sul (FIERGS – "*Federação das Indústrias do Estado do Rio Grande do Sul*"). Data were available for the whole 1979- 95 period.

Ratio of labour costs to total costs (labour costs)

Labour costs are measured as the ratio of labour costs to total costs in a sample of Brazilian manufacturing companies. The source of data is the Brazilian Statistics Yearbook, which is published by the Brazilian Foundation of Geography and Statistics (IBGE – "*Fundação Instituto Brasileiro de Geografia e Estatística*"). Data were available for 1979-90 and 1992-94 periods.

Change in official real minimum wages

Change in the official rate of real minimum wages is measured as change in the official rate of nominal minimum wages in comparison to change in a cost-of-living index for the Metropolitan Area of Porto Alegre.

BIBLIOGRAPHY

This bibliography lists the sources of materials I have used in this research. I group these materials into five separate lists: (i) sources of information on the selected trade unions and collective bargaining in the selected units, where I list the interviewees who have provided information based on the questionnaire n. 1, as well as their titles, the trade unions where they were carrying out their activities, and the date of the interviews; (ii) in-depth interviews, where I list the interviewees to whom I applied questionnaire n. 2, as well as their titles, institutions to which they were connected, and the date of the interviews; (iii) sources of relevant statutes and judicial decisions; (iv) sources of relevant statistical data; and (v) secondary sources.

1 Sources of information on the selected trade unions and collective bargaining in the selected units (interviews based on questionnaire n. 1)

Alves, V., president of the Printing Workers' Union in São Leopoldo (15 May 1996).

Ávila, W. C. de, president of the Food Workers' Union in Porto Alegre (10 Jun 1996).

Cichoki, N., member of the executive council of the Textile Workers' Union in Porto Alegre (13 Jun 1996).

Damin, J., president of the Metalworkers' Union in Porto Alegre (11 Jul 1996).

Koch, C. G., president of the Footwear Workers' Union in Novo Hamburgo (30 May 1996).

Lima, J. J. de F., president of the Metalworkers' Union in Canoas (24 Jun 1996).

Machado, A., president of the Footwear Workers' Union in Sapiranga and Nova Hartz (07 May 1996).

Pacheco, P. R. H., president of the Metalworkers' Union in Novo Hamburgo (14 Jun 1996).

Pinheiro, G., president of the Metalworkers' Union in Sapiranga (16 May 1996, 29 May 1996).

Reis, M. P. dos, president of the Pharmaceutical Workers' Union in Porto Alegre (08 May 1996).

Lima, J. J. de F., president of the Metalworkers' Union in Canoas (24 Jun 1996).

Schmidt, A., president of the Footwear Workers' Union in São Leopoldo and Portão (14 May 1996).

Selistre, V. P. de O., president of the Footwear Workers' Union in Campo Bom (16 May 1996).

Silva, A. S. da, president of the Leather Workers' Union in Novo Hamburgo (14 May 1996).

Teixeira, G. G., president of the Chemical Workers' Union in Porto Alegre, Canoas, Esteio and São Leopoldo (05 Jun 1996).

Vargas, V. M. de, member of the executive council of the Metalworkers' Union in São Leopoldo (03 May 1996).

2 In-depth interviews based on questionnaire n. 2

Alves, V., president of the Printing Workers' Union in São Leopoldo (15 May 1996).

Ávila, W. C. de, president of the Food Workers' Union in Porto Alegre (10 Jun 1996).

Azevedo, G. de, magistrate at the Regional Labour Tribunal in Rio Grande do Sul, later a magistrate at the Superior Labour Tribunal (09 May 1996).

Bortolini, C., legal aide of the Federation of Employers' Associations in Manufacturing in the State of Rio Grande do Sul (09 Aug 1996).

Campos, G. P. B., lawyer of the Pharmaceutical Workers' Union in Porto Alegre (08 May 1996).

Cichoki, N., member of the executive council of the Textile Workers' Union in Porto Alegre (13 Jun 1996).

Coelho, R. V., lawyer of the Bank Clerks' Union in Porto Alegre, the Physicians' Union in Rio Grande do Sul, the State School Teachers' Union in Rio Grande do Sul, and several others (31 Jul 1996).

Conceição, P. C. C., chief of the Section of Mediation and Arbitration of the Ministry of Labour Regional Office (24 Jul 1996).

Corrêa, L., lawyer of the Footwear Workers' Union in São Leopoldo and Portão (19 Jun 1996).

Damin, J., president of the Metalworkers' Union in Porto Alegre (11 Jul 1996).

Escouto, R., lawyer of the Printing Workers' Union in Porto Alegre (21 Aug 1996).

Fabrício, R. R., lawyer of the Chemical Employers' Association in Rio Grande do Sul (25 Jul 1996).

Fagundes, M., lawyer of the Footwear Workers' Union in Novo Hamburgo (05 Jul 1996).

Faria, C. P. de, lawyer of the Leather Employers' Association in Novo Hamburgo (19 Aug 1996).

Feloniuk, I. S., lawyer of the Chemical Workers' Union in Porto Alegre, Canoas, Esteio and São Leopoldo (23 Jul 1996).

Ferreira, L., president of the Textile Workers' Union in Guaíba (11 Jun 1996).

Fraga, J. A. G. de, president of the Printing Workers' Union in Porto Alegre (10 Jun 1996).

Franzoi, R., supervisor of the Inter-Union Department for Statistics and Socio-Economic Studies regional office (15 Aug 1996)

Garcez, E. M., lawyer of several employers' associations in the manufacturing sector in Rio Grande do Sul (22 Jul 1996).

Koch, C. G., president of the Footwear Workers' Union in Novo Hamburgo (30 May 1996).

Lima, J. J. de F., president of the Metalworkers' Union in Canoas (24 Jun 1996).

Lima, M. A. A. de, lawyer of the Metal Industry Employers' Association in Canoas (21 Aug 1996)

Machado, A., president of the Footwear Workers' Union in Sapiranga and Nova Hartz (07 May 1996).

Mealho, M., lawyer of the Footwear Workers' Union in Sapiranga and Nova Hartz, the Metalworkers' Union in Sapiranga, and the Textile Workers' Union in Porto Alegre (02 Jul 1996).

Moura, S., lawyer of the Footwear Workers' Union in Sapiranga and Nova Hartz, the Metalworkers' Union in Sapiranga, and the Textile Workers' Union in Porto Alegre (02 Jul 1996).

Obino F., F., lawyer of several employers' associations in Rio Grande do Sul, and president of the National Institute of Mediation and Arbitration/Section Rio Grande do Sul (24 Jul 1996).

Pacheco, P. R. H., president of the Metalworkers' Union in Novo Hamburgo (18 Jul 1996).

Paese, R., lawyer of the Nurses' Union in Rio Grande do Sul, the Furniture Workers' Union in Gravataí, the Civil Servants in Social Security Union in Rio Grande do Sul, and the Paint Workers' Union in Gravataí (25 Apr 1996).

Papaléo, C. C. C., lawyer of the Bank Employers' Association in Rio Grande do Sul, the Insurance Employers' Association in Rio Grande do Sul, and several firms, later a magistrate at the Regional Labour Tribunal in Rio Grande do Sul (26 Apr 1996).

Petry, G., member of the executive council of the Federation of Employers' Associations in Manufacturing in the State of Rio Grande do Sul (27 Aug 1996).

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