

IS THIS WORKPLACE BULLYING?  
CONFLICT MANAGEMENT AND WORKPLACE BULLYING IN THE  
BRAZILIAN BANKING SECTOR

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by

Paulo Eduardo Ferreira de Souza Marzionna

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Paulo Eduardo Ferreira de Souza Marzionna, Ph. D.

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This dissertation explores the development of Alternative Dispute Resolution (ADR) methods and other conflict management strategies to deal with workplace conflicts in the Brazilian banking sector, with a special attention to the topic of workplace bullying. Drawing on interviews with managers from 14 different banks and leaders from 6 different unions in the banking sector, and complemented by thorough archival research on unions' newspapers, results suggest that unions and banks have different understandings of workplace bullying, which are dependent on the frames of reference that they use to interpret labor relations (*critical/pluralist* in the case of unions, *unitarist* in the case of banks). Those different understandings, however, have direct impacts on how each actor responds to workplace bullying. Unions favor collective tools that frame bullying as a structural issue, while banks favor conflict management tools that focus on individual managerial behavior. In both cases, individual victims' perspectives of workplace bullying are not taken into consideration. Moreover, the research suggests that, although usually playing important roles in conflict management, HR departments

lack independence, autonomy and impartiality to handle workplace conflicts adequately. Furthermore, Ombudsman Offices in Brazil are shown to differ from the traditional description of Ombudsmen in international literature, by focusing on investigatory activities, which can be explained by institutional factors present in Brazilian labor relations. Finally, the research also reinforces the importance of sector-specific characteristics and of different types of conflicts in shaping conflict management responses by different labor relations actors.

## BIOGRAPHICAL SKETCH

Paulo Marzionna earned a Law degree in 2006 from University of São Paulo (USP), a Master's in Business Administration in 2009 from Fundação Getúlio Vargas (FGV – EAESP), both in Brazil, and a Master of Science in Industrial and Labor Relations in 2016 from Cornell University. Before joining the MS/PhD Program at ILR School in 2012, Paulo worked as an Employment Lawyer and as a Human Resource Business Partner in Brazil.

To my parents, Beatriz and Jaime.

To Bárbara, *minha menina*.

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## LIST OF ABBREVIATIONS

ABRH - Brazilian Association of Human Resources (*Associação Brasileira de Recursos Humanos*)  
ADI – *Ação Direta de Inconstitucionalidade*  
ADR - Alternative Dispute Resolution  
ANAMATRA – National Association of Labor Judges (*Associação Nacional dos Magistrados da Justiça do Trabalho*)  
BRL – Brazilian Real (currency)  
CBA - Collective Bargaining Agreements  
CLT - Consolidation of Labor and Employment Laws (*Consolidação das Leis do Trabalho*)  
CNJ - National Council of Justice (*Conselho Nacional de Justiça*)  
CSJT - Superior Council of Labor Courts (*Conselho Superior da Justiça do Trabalho*)  
EC – Constitutional Amendment (*Emenda Constitucional*)  
FAT – Workers’ Support Fund (*Fundo de Amparo ao Trabalhador*)  
FEBRABAN – Brazilian Federation of Banks (*Federação Brasileira de Bancos*)  
FENABAN - National Federation of Banks (*Federação Nacional de Bancos*)  
HPWS – High Performance Work Systems  
ILO – International Labour Organization  
MPT – Labor’s Federal Prosecution Office (*Ministério Público do Trabalho*)  
PAD - Formal disciplinary procedure (*Processo Administrativo Disciplinar*)  
PDV - Voluntary Resignation Plan (*Programa de Demissão Voluntária*)  
TRTs - Regional Labor Courts of Appeals (*Tribunais Regionais do Trabalho*)  
TST - Superior Labor Court (*Tribunal Superior do Trabalho*)  
USD – US Dollars (currency)

## CHAPTER 1 - INTRODUCTION

Workplace conflict is a global and widespread phenomenon, observable in workplaces under the most diverse institutional contexts. Similarly widespread is the concern of different actors over how to resolve or manage those conflicts. Under different contexts, traditional methods for resolving and managing workplace conflicts have been questioned in the past decades, resulting in the development of what is known as Alternative Dispute Resolution (ADR) methods.

In the US, the emergence of employment arbitration and adoption of nonunion grievance procedures in different organizations have been extensively studied in the past decades, resulting in considerable understanding of the factors influencing the adoption of different methods, and how different methods compare to each other in terms of results.

Outside the US, once different trends on ADR development became clear, academic researchers also started exploring the topic, trying to understand how different institutional factors might influence ADR development in different countries. As the ADR phenomenon outside the US is more recent, international research on the topic still is many steps behind the current stage of American scholarship on ADR. In Latin America, specifically Brazil, this research is still in its early stages, presenting an important gap to be filled.

This dissertation tries to fill this research gap by continuing an initial exploratory research project, which resulted in my MS Thesis (Marzionna 2016). This initial research depicted a scenario in which Brazilian organizations were adopting ADR methods, but in a different fashion in comparison to what is observed in the US: a possible trend towards the adoption of Ombudsman Offices could be forming, and

unions in different sectors were playing very different roles in the development of those Ombudsman Offices. That research effort, however, had several limitations, which the current research tries to overcome.

In this dissertation, in order to better understand the different mechanisms that come into play in conflict management in Brazilian workplaces, I conduct a thorough study of the Brazilian banking sector, analyzing conflicts observable in the sector, as well as banks and unions' reactions to those conflicts. The reasons for selecting the banking sector will be detailed in later chapters, but, in summary, it constitutes an ideal scenario for academic research on workplace conflicts and its management. Workplace conflicts of different natures occupy the central stage of labor relations in the banking sector, which is also recognized as a pioneering and model sector in the country in relation to conflict management practices. At different levels, unions and banks' strategies and attitudes in relation to conflict management are carefully studied, adapted and reproduced by actors in other sectors in the country. Not only that, from an academic perspective, the sector provides important variability in key characteristics of banks and unions, important to understand the mechanisms possibly influencing the adoption of different conflict management approaches within the sector.

With this in mind, this dissertation tries to cover different important topics related to conflict management in the Brazilian workplace. It starts trying to describe how banks in Brazil are responding to different types of workplace conflicts. It goes beyond simple description by trying to determine how different factors impact an organization's approach to workplace conflicts in Brazil, and how unions influence and are influenced by this process. Finally, given the centrality of workplace bullying in the

sector, it explores how different understandings of bullying, by unions and banks, impact how each of those actors respond to bullying in the sector.

The results analyzed in Chapters 7, 8, and 9 confirm the importance of the topic of workplace conflict in the Brazilian banking sector, manifested in different forms, and managed with different strategies by banks and unions.

First, the results will demonstrate that different types of conflicts are relevant in the banking sector, with their level of relevance depending on banks' and unions' characteristics, as well as on other external institutional factors. The conflicts analyzed in this research are legal conflicts, termination-related conflicts, sexual harassment, discrimination, interpersonal or relationship conflicts, and workplace bullying. This last one will be the object of the most thorough analysis, as it provides fertile ground for discussions on how different understandings of the same conflict impact how unions and banks respond to workplace bullying.

In relation to conflict management tools, banks and unions studied in this dissertation present an ample variety of different methods, from a union-led grievance system, somewhat similar to US grievance systems, to Ombudsman Offices, Compliance Channels, and HR channels. Several factors are identified to be linked to the decision by unions and banks to favor one or another conflict method. Those factors include not only bank's size, nature and type of operation, but also banks' and unions' understanding of workplace bullying.

It will be shown that unions understand workplace bullying as a structural problem in the banking sector, being a direct consequence of how banks determine their performance goals and structure their performance-based compensation systems. This view on workplace bullying fits with unions' overall strategies and the frame of

reference that they use to interpret labor relations. Banks, on the other hand, understand workplace bullying as an individual level conflict, caused by managers or workers who do not comply with the organization's policies and culture. Once again, this understanding of workplace bullying fits with banks' overall business strategies and the frame of reference that they use to interpret labor relations. Interestingly, this research will show that those different understandings of workplace bullying will impact how banks and unions respond to workplace bullying. In summary, by seeing workplace bullying as a structural issue, unions favor tools that tackle the problem at the organizational and sectoral level, trying to influence how banks define their performance goals. Banks, on the other hand, focus on individual level conflict management strategies, as they understand bullying as an individual phenomenon.

Additionally, this research will also dedicate several pages to compare the different conflict resolution methods used in the banking sector, and the role of different actors in those different methods. The comparison will use Budd and Colvin's (2008) efficiency-equity-voice model which will provide important insights about the advantages and shortcomings of each method. Moreover, the results will also analyze the centrality that HR departments usually have in conflict management in different banks, questioning if HR is apt or not to play this role. In summary, I argue that HR departments do not have the impartiality, neutrality and skills necessary to play this central role in conflict management, and that other actors should occupy this spot in Brazilian labor relations.

The points described above are not an exhaustive list of all the topics covered and conclusions reached in this research, but just some selected highlights of the most

important contributions that I believe that this dissertation will be able to make to the existing research on conflict and conflict management in the workplace.

This dissertation is organized as follows. Chapter 2 provides a literature review on three important topics for the development of this research: conflict management in the workplace; workplace bullying; and the concept of framing contests and the role of ideas in employment relations. In the first two topics, special attention is given to the current research status internationally and, more specifically, in Latin America and Brazil. This is followed by Chapter 3, which explores the research context. The goal of this chapter is to provide the reader with the necessary information regarding the Brazilian Industrial Relations system and banking sector for the proper comprehension of the data and results later presented. Chapter 4 is dedicated to the research methodology and research strategy adopted in this research project. It starts by detailing the research questions that the dissertation will try to answer, followed by an explanation for the choice of the banking sector as object of study. The case selection strategy for banks and unions is explained, followed by the methodology used in data collection and analysis. The chapter ends with the detailed presentation of the field research process. Supplemental material, such as the interviews instruments, and details on each interview, are provided as Appendices to this dissertation. The next two chapters are used to present the data collected. Chapter 5 focuses on describing the different types of conflicts observed in the banking sector, analyzing the perspective of different actors over the different types of conflicts described, as well as the sectoral variation observed in the occurrence or relevance of those different types of conflicts among the different banks from the sample. Chapter 6 departs from the different types of conflicts described in the previous chapter to analyze how banks and unions are responding to those

conflicts. Chapters 7, 8, and 9 analyze and discuss the data presented in Chapters 5 and 6. Chapter 7 explores the topics of workplace bullying and sexual harassment, using the concept of frames of reference and framing contests to understand the different meanings of workplace bullying used by unions and banks, and the consequences of those differences in conflict management. Chapter 8 discusses the different roles played by unions, by labor relations and HR departments, and by labor courts in the development and functioning of the different conflict management tools observed in the Brazilian banking sector. Chapter 9 is dedicated to the analysis of different conflict management methods, comparing them under the efficiency-equity-voice model (Budd and Colvin 2008). Finally, Chapter 10 concludes the dissertation by presenting a summary of the findings from the previous chapters, discussing the research limitations, and its theoretical and practical implications.

## CHAPTER 2 - LITERATURE REVIEW

This chapter presents a literature review of important topics for answering the questions proposed in this dissertation. First, a general overview of workplace conflicts research is presented, exploring different theoretical approaches to the topic available in the literature. The chapter follows with a review of research on Alternative Dispute Resolution (ADR), first highlighting the current research status on the topic in the US, followed by a summary of the limited and incipient international research on the topic. As workplace bullying plays a central role in the Brazilian banking sector, the chapter follows with a review of the workplace bullying literature internationally and in Latin America. Finally, the chapter is concluded with a review of existing literature on the role of ideas and frames of reference in employment relations, a topic that will be essential to later debate the consequences of different meanings of workplace bullying observed on the Brazilian banking sector.

### **Workplace Conflicts and Conflict Management**

Conflict can be approached in different forms and from different perspectives. Lewick, Weiss and Lewin (1992) identify six major approaches to conflict research: (1) *micro-level (psychological)* approach, in which the individual is the unity of analysis; (2) *macro-level (sociological)* approach, in which groups, departments and organizations constitute the unity of analysis; (3) *economic* approach, in which models of economic rationality are applied to conflict situations; (4) *labor relations*, which originated in the American industrial relations context; (5) *bargaining and negotiation*, which originated from the frequent use of these two processes in labor relations and international relations conflict; and (6) *third party dispute resolution*, which focus on

participation of parties external to the conflict in order to resolve it. Evidently, the distinction between those different approaches to conflict is much clearer in theory than what is observed in actual research. Since conflict is a complex phenomenon, it is almost impossible to use one approach without touching in relevant elements from other approaches. This is the case of this dissertation, which departs from a perspective on conflict with a *third-party dispute resolution* approach, while also considering elements from *labor relations* and *macro-level* approaches.

In general terms, conflict can be defined as situations in which parties find not only goal incompatibility, but also perceived opportunities for interfering with the attainment of the other's goals (Schmidt and Kochan 1972). This dissertation, however, focuses specifically on conflicts as they are observed in the workplace. In this case, Lewin (2001) suggests an important differentiation between workplace conflict perspectives by the fields of Industrial Relations (i.e. conflicts between workers and managers as widespread and enduring, being a natural consequence of the power imbalances that characterizes this relationship. These imbalances could only be corrected by union or government intervention) and of Human Resources (i.e. conflicts are widespread in the workplace, but they are not a consequence of power imbalances, but the result of poor management. Therefore, the solution does not lie on union or government intervention, but on management improvements). However, both approaches suggested by Lewin (2001) are somehow limited, as they are focusing exclusively on workplace conflicts between workers and managers, paying less attention to workplace conflicts between (same level) workers, which might constitute a significant amount of conflicts experienced by workers at their workplace.

With this in mind, it is worth highlighting the research on team level conflicts (e.g., Jehn 1995; Amason 1996). Although from an Industrial Relations perspective, conflicts are usually found to be associated with negative outcomes such as lower labor efficiency and productivity (Katz, Kochan and Weber 1985; Ichniowski 1986), micro-level research at the team level usually points to the existence of some form of “positive conflicts” at what is defined as task or cognitive conflicts (Amason and Schweiger 1994; Jehn 1995, 1997).

No matter the disciplinary approach used, it is easy to observe how the issue of conflict **management** quickly becomes a central part of conflict research, either from a theoretical or from a practical perspective on the topic. If conflicts are seen as dysfunctional, or even as a natural consequence from the power imbalances that characterize labor relations, conflict management is relevant, whether to avoid conflicts’ detrimental consequences, to change the power imbalances of this relationship, or simply to enhance workers’ voice in the workplace. Even for approaches which might see conflicts as potentially positive, conflict management plays a central role, as the positive effects of some forms of conflicts are lost once those conflicts are intensified beyond a certain level (De Dreu and Weingart 2003). For some authors, the issue of conflict management is so central (e.g., Rahim 2002), that it is the management of conflict, and not conflict per se, which should be in the heart of what they call “conflict positive organizations” (Tjosvold 2008).

It is worth noticing that conflict management is essentially different from conflict suppression. Although some forms of conflict management might aim at resolving or suppressing conflicts as a whole, methods for conflict management are numerous and vary in their origins, approaches and desired outcomes. The usage and

results of those different methods are the object of the research on Alternative Dispute Resolution (ADR).

### ***Alternative Dispute Resolution (ADR)***

In the US, traditionally, workplace conflicts in unionized places are resolved through grievance procedures, with a final step of labor arbitration. However, the last decades have also seen the rise of more formalized conflict resolution procedures in nonunion workplaces. Those procedures range from simple single methods procedures, such as open-door policies, up to complex conflict management systems marked by their preventive goals, multiple entry options and variety of possible decision makers (Lipsky, Seeber, and Fincher 2003; Avgar, Lamare, Lipsky, and Gupta 2013).

Traditional research in ADR has tried to identify the triggers that led to the expansion of ADR in nonunion workplaces. Although some different explanations can be found (e.g., Lewin 1990), there is some agreement about the external and internal factors motivating the adoption of ADR in nonunion workplaces: (1) litigation avoidance; (2) union avoidance; and (3) alignment with HR practices in High Performance Work Systems (HPWS) or other elements of business strategy (Rowe 1997; Colvin 2003a; Lipsky and Avgar 2008).

Litigation avoidance is pointed out as the first motive to explain expansion of nonunion ADR. The risk, costs and uncertainties involved in employment litigation may help to explain management efforts to change the forum of conflict-resolution from public to private sphere, thus explaining the adoption of employment arbitration as an alternative to employment litigation (Colvin 2003a).

The threat of unionization may help to further explain the rise of ADR in nonunion workplaces. Being the grievance procedure one of the main characteristics of

unionized workplaces in the US, nonunion grievance procedures could work as a tool to substitute unions, thus weakening any eventual desire of employees in a certain workplace to unionize. In fact, union avoidance has been found to be associated with the adoption of specific ADR methods, such as peer-review panels (Colvin 2003b).

While the first two drivers mentioned focus on external environmental pressures (i.e. litigation and union avoidance), the third one focus on the relationship between internal organizational pressures and the adoption and expansion of ADR. Although litigation and unionization avoidance help to explain why companies adopt ADR, this is a limited explanation, which fails to fully explicate the rise not only of single ADR procedures, but also of complex conflict management systems.

In traditional firms with low wage patterns, which are characterized by high turnover rates, adoption of ADR can be explained by a pursuit to diminish the costs involved in conflict resolution (litigation avoidance) or by the loss of managerial control over it (unionization avoidance). However, companies adopting practices related to HPWS may adopt more complex conflict management systems when looking to accomplish other goals aligned with the business and HR strategies. Companies operating under HPWS not only may see new forms of conflicts arising due to the transformation of the workplace, but may also use conflict management systems to achieve other goals such as greater involvement and commitment of workers in the workplace (Feuille and Delaney 1992; Olson-Buchanan 1996; Colvin 2003b, 2013). Although internal factors have been less explored in ADR research, interest on these internal drivers have recently risen significantly from a theoretical and empirical standpoint (e.g., Avgar 2016; Lipsky et al. 2017). From the theory perspective, it is worth highlighting Lipsky and Avgar's (2008) proposed strategic theory of conflict

management, which is a first attempt on trying to explain how conflict management systems interact with business and HR strategies, and how they help organizations to achieve their strategical goals (Lipsky and Avgar 2008).

Research on Alternative Dispute Resolution is usually phenomena driven, trying to identify the presence or usage of a certain ADR method, the differences on the usage of this method, the results obtained, and the consequences of usage of this method, etc. Research covering multiple ADR methods might include the identification of usage level of the different methods by organizations (e.g., Lipsky et al. 2003), as well as the proposal of a framework to properly compare different methods (e.g., Budd and Colvin's (2008) efficiency-equity-voice model). More commonly, however, ADR research focus on specific ADR methods, in which case, labor arbitration (e.g., Block and Stieber 1987), employment arbitration (e.g., Bingham 1997; Colvin 2011), and employment mediation (e.g., Bingham 2004; Poitras and Tareau 2009) have received most of the attention up to this point. Other less common ADR methods have also been objects of research, such as Ombudsman (e.g., Kolb 1987; Avgar 2016), or peer-review panels (e.g., Colvin 2004a).

### ***International research on Conflict Management and ADR***

As conflict is an integral part of any work relationship, independent of its geographic location, international settings have also been explored in conflict management and ADR research, with different theoretical and methodological approaches. In the case of ADR, research on international settings allow for the understanding of different ADR methods, less used in the US setting (e.g., research on interest and first contract arbitration in Canada), as well as a better understanding of how institutional factors impact the development of ADR (e.g., what is the role of union

avoidance as a trigger to ADR in countries where the labor and management relationship is less litigious than in the US?).

Despite recent development on international research in the field, most international ADR studies still tend to focus on descriptions of the development of ADR in different settings. That is the case, for instance, of research in Japan (Benson 2012; Yamakawa 2012), China (Liu 2014), New Zealand (Roth 2013), Australia (McCallum, Riley, and Stewart 2013), France (Clark, Contrepois, and Jefferys 2012), and in Europe as a whole (Purcell 2010). In 2011, Roche and Teague had already highlighted the lack of empirical research on ADR adoption outside the US. Despite Roche and Teague's (2011) effort to map ADR adoption in Ireland, or Hann, Nash, and Heery's (2016) effort to map ADR adoption in Wales, there are whole regions which are out of the academic conversation over the adoption of ADR. This is the case, for instance, of Latin America, and, more specifically, Brazil.

Overall, ADR research outside the US suggest that the ADR theory developed under the American industrial relations environment does not translate properly to different institutional settings (see, for instance, the several examples in Roche, Teague, and Colvin 2014). Some authors even argue that the diffusion of ADR-based conflict management system is actually a case of American exceptionalism, due to the institutional context incentives for ADR development not found in other countries (Teague, Roche, Currie, and Gormley 2017).

In Brazil, the few existing academic studies about ADR for employment conflicts tend to be represented by legal scholarship (e.g., Fragale Filho 2013). The topic coverage is slowly gaining traction in research in the country, although not necessarily at the academic realm. For instance, in 2016 the Brazilian Association of Human

Resources (ABRH) conducted a survey on the role of HR in conflict management. According to this survey, 60% of the respondents report open door policies to be in place in their organizations, 29% report the existence of some form of Ombudsman channel in the organization, and only 14% report the usage of mediation (with external mediators). Although what is called “managerial mediation” is reported by more than 75% of the respondents, the survey instrument loosely defines mediation, and there is no reason to believe that what is reported as “managers acting as mediators” could actually be considered employment mediation from an academic standpoint (Levy, Burbridge, Freire, and Silva 2016). In another non-academic publication, the business magazine Exame reported that Ombudsman Offices were in place in 112 out of the 150 companies which were elected the best places to work in Brazil in 2012 (Inohara 2013). Once again, although those numbers might sign in a certain direction, they would not survive academic scrutiny, as the Ombudsman Offices were loosely defined in the survey instrument.

Nonetheless, the previous information suggests an ADR scenario in Brazil different than the one observed in the US, object of most research available on the topic. This perception was reinforced by my own previous research on the topic, which highlighted the possible prevalence of other ADR methods, such as Ombudsman Offices, probably due to the influence of different institutional factors present in the Brazilian work environment. Moreover, it has suggested that the issue of workplace bullying might play a central role in the development of different ADR methods, contrary to what is observed in the US (Marzionna 2016).

Due to the centrality of workplace bullying in the Brazilian context, the next section reviews the literature on this specific topic.

## **Workplace Bullying**

Mobbing, workplace bullying, *acoso laboral*, *assédio moral*, *harcèlement moral* are all different terms used in different countries referring usually to the same phenomenon: **the systematic exhibition of significant aggressive behavior towards someone in the workplace (subordinate, colleague or superior), or the perception of being exposed to those systematic negative behaviors in the workplace.** This is the definition of workplace bullying that will be used in this dissertation, unless stated otherwise.

Although some authors argue that there are conceptual differences among the different terms listed in the beginning of this section, or that they highlight specific perspectives of the phenomenon instead of other alternative perspectives (e.g., Hoel and Beale 2006), a common position among researchers is that those terms can be used interchangeably, without any significant loss of meaning (Branch, Ramsay, and Barker 2013). In this dissertation, the term workplace bullying is favored, as it is more widely accepted in English speaking countries.

Historically, the research over the topic has its origins in the work of Leymann in Scandinavia in the late 1980s, even though bullying in the workplace had already been identified in the US by Brodsky, in 1976 (Branch et al. 2013; Evangelista and Faiman 2015; Harrington, Warren, and Rayner 2015). While Leymann's work was gaining traction in Scandinavia and Germany, the work by Adams and Bray (1992) and the surveys conducted by Hoel, Cooper and Faragher in 2001 were responsible for putting the topic in evidence in the UK, while Hirigoyen's (1998) bestselling book, *Le harcèlement moral: La violence perverse au quotidien*, brought the issue to the spotlight in France, later influencing not only continental Europe, but Latin America as well.

The multiplicity of terms used to refer to the same phenomenon is also reflected in the lack of a single accepted definition of workplace bullying. Based on Matthiesen and Einarsen (2007), Branch et al. (2013) suggest the following encompassing definition of workplace bullying: “a situation in which one or more persons systematically and over a long period of time perceive themselves to be on the receiving end of negative treatment on the part of one or more persons, in a situation in which the person(s) exposed to the treatment has difficulty in defending themselves against this treatment.” This definition highlights some important elements of workplace bullying: (1) persistence in time or pattern of behavior – i.e. an isolated action cannot be considered bullying, as the negative behavior must be prolonged in time; (2) the negative behaviors must be perceived as significant, inappropriate and unreasonable, which in consequence brings an element of subjectivity (i.e. the victim’s perception) to the bullying definition; and (3) an imbalance of power between parties must be present, although not necessarily hierarchical power (Branch et al. 2013). At the same time, those constitutive elements also mold important debates in the field: (1) How long should a behavior last, or in which frequency should it occur, in order to be considered workplace bullying? (2) If bullying can only be defined subjectively, from the victim’s perspective, is the aggressor’s intentionality of any relevance? (3) In cases where the bullying is targeted at colleagues or the superior, is there a power imbalance in place?

By and large, besides measuring its occurrence in different environments, workplace bullying research has focused on the victims’ perspective and understanding of workplace bullying, on attempts to identify demographic or psychological characteristics of those who are more prone to be victims or perpetrators of workplace bullying, and on antecedents and consequences of workplace bullying (Einarsen, Hoel,

Zapf, and Cooper 2011; Nielsen, Glasø, and Einarsen 2017; Nielsen and Einarsen 2018). Workplace bullying has been found to be related to job, health and well-being-related outcomes to victims (Nielsen and Einarsen 2012), as well as impacting job satisfaction, organizational commitment and turnover intention of witnesses of workplace bullying (Salin and Notelaers 2018).

Meanwhile, another strain of research has focused on exploring possible organizational causes for workplace bullying – what is commonly known as the “work environment hypothesis” (Salin and Hoel 2011). The work environment hypothesis usually covers five main factors as potential antecedents of workplace bullying: (1) work organization and job design (e.g., Arthur 2011); (2) organizational culture and climate (e.g., Bulutlar and Öz 2009); (3) leadership styles (e.g., Hoel et al. 2010); (4) rewards systems and competition (Sammani and Singh 2014); and (5) organizational change (e.g., Baillien and De Witte 2009; Spagnoli and Balducci 2017).

Most research adopting the work environment approach, however, tends to consider the organization simply as a background, providing conditions for interpersonal conflicts and bullying to occur (Berlingieri 2015). To overcome this limitation, another strain of research looks at organizations not only as facilitators of bullying behavior, but as the actual source of bullying in the workplace (Liefoghe and Davey 2001). In this case, managers could be seen as scapegoats in bullying research, assuming the responsibility for organizational practices beyond their control (Liefoghe and Davey 2001), given that organizational practices themselves are the actual bullies (D’Cruz and Noronha 2009), constituting, therefore, a form of institutionalized bullying.

If the concept of organizations as a source of bullying has slowly gained traction in international research, it is worth noticing that the topic of organizational responses to workplace bullying has received relatively little attention from researchers, with even fewer cases exploring the effectiveness of those organizational responses (e.g., Einarsen et al. 2017). Although HR departments are usually suggested as the appropriate department to deal with workplace bullying (e.g., Lorentz, de Lima, and del Maestro Filho 2015), HR professionals' perspectives on bullying are usually ignored by most research in favor of victims' perception, with the exception of few recent research efforts (e.g., Fox and Cowan 2015; Salin et al. 2018). Existing research has shown that bullying victims tend to have frustrating experiences in the application of anti-bullying policies by HR professionals, which exacerbates the negative effects of bullying to the victim (Harrington, Rayner, and Warren 2012; Harrington et al. 2015). Those negative experiences of appeals to HR departments might be directly linked to HR's movement away from an employee focused-agenda, and the movement towards a business and strategy agenda, ultimately represented by the creation of the role of HR Business Partners. Because of the importance for HR Business Partners to preserve their relationship with managers, those HR professionals tend to downplay the victim's account of workplace bullying. As a result, bullying behavior is usually relabeled as simply "inappropriate behavior," removing the term bullying from the daily conversation of the organization. It is also not unusual for HR professionals to reclassify the bullying behavior as an issue of "lack of adequate management tools," therefore assuming part of the blame for the inadequate behavior (Harrington et al. 2012), or to attribute bullying behavior to legitimate performance management practices (Harrington et al. 2015).

Although most empirical research on workplace bullying is found in Europe, specially Scandinavia, research on the topic has also been observed in different national contexts. Research on workplace bullying in different national contexts has more than simply encyclopedic value, as institutional, legal, organizational and cultural factors influence the understanding of workplace bullying (Salin et al. 2018). Cross-national research has also demonstrated that national contexts impact workers' (Escartín, Arrieta, Zapf, and Rodriguez-Carballeira 2011; Power et al. 2013) and HR professionals' (Salin et al. 2018) understanding of what constitutes bullying behavior.

### ***Workplace Bullying research in Latin America***

Research on workplace bullying in Latin America has been mostly influenced by the works of French author Hirigoyen, rather than by the Scandinavian school, and it has been dominated by Brazilian academia (Ansoleaga, Gómez-Rubio, and Mauro 2015). Moreover, Latin American and Brazilian academic production on the topic is dominated by essays and theoretical papers, with limited number of empirical papers (Carvajal Orozco and Dávila Londoño 2013; Possas, Medeiros, and Barroso 2015; Evangelista and Faiman 2015).

Existing empirical research on the region tends to focus on the victims' perspective on workplace bullying, based on discourse analysis methodology, exploring the experience of specific target groups (e.g., Correa and Carrieri 2007; da Silva, Oliveira, and de Souza 2011), specific sectors (e.g., Maciel and Gonçalves 2008; Soares and Villela 2012 - both in the banking sector), or the relation between the violence experienced by workers inside and outside the workplace (Castillo and Cubillos 2012). In research projects specifically targeted at the banking sector in Brazil, 38.9% of bank workers were found to have suffered mistreatments in the workplace, 7.97% of which

experienced those on a weekly basis for at least six months (Maciel and Gonçalves 2008).

Although research has constantly focused on individual victims' perspectives, the idea of organizational bullying – or at least the work-environment hypothesis - has been present in Brazilian academia since early 2000s (e.g., Barreto 2003; Freitas et al. 2008). For instance, da Silva et al. (2011) suggest that employees with Repetitive Strain Injuries are victims of organizational and individual bullying, being the organizational bullying consequence of the High Performance Work System environment, which increases productivity pressure. Academic understanding and focus on workplace bullying have been shown to influence unions and government agencies' communication about the topic in Brazil (Evangelista and Faiman 2015), as well as individual workers' understanding of workplace bullying (Soares and Villela 2012).

### **Framing contests and the role of ideas in employment relations**

Chapter 7 will show that, in the case of workplace bullying, different interpretations of the same kind of conflict are the basis of different responses by unions and banks to those conflicts. This idea of different meanings for the same concept and their impacts on employment relations is not new, as recent research has been exploring the role of ideas in employment relations and how different frames of reference on the employment relationship impact different elements of employment relations. This section will briefly review the literature on those topics.

Although traditional Industrial Relations research tends to focus on the role of institutions on labor relations, recent scholarship in the field has also been exploring how ideas help to shape the experience of work and the behavior of different actors in

an employment relationship. Borrowing from political science and other fields, Hauptmeier and Heery (2014) suggest four different types of ideas, potentially impacting employment relations (and other social relationships): (1) *Principled beliefs*, which are beliefs on how issues should be; (2) *Causal beliefs*, which are beliefs on causal relationships and roadmaps on how the world works; (3) *Ideas in the foreground of debates*, which are normative ideas at the public sphere, such as policy ideas, and societal discourses; and, finally, (4) *Ideas in the background of debates*, which are represented by economic paradigms, public sentiments, and culture. Under these different forms, ideas help different actors to understand and interpret the world in which employment relations are taking place, and ideas can also directly motivate or guide actors' behaviors (Hauptmeier and Heery 2014).

The importance of ideas is directly related to the power that they might play in different social relations. Analyzing the policy-making process, Carstensen and Schmidt (2016) propose that actors have the capacity to influence other actors' beliefs (*ideational power*) through three different processes: (1) *Power thorough ideas*, which is the ability of actors to influence the views and behaviors of other actors through the persuasive use of ideational elements; (2) *Power over ideas*, which is linked to compulsory power through agents' imposition of ideas and their power to resist the inclusion of alternative ideas to the debate; and (3) *Power in ideas*, which plays into processes of structural and institutional power, through agents that have established hegemonic positions over the production of ideas, or by the existence of institutions able to impose constraints on ideas that any agent may take into consideration (Carstensen and Schmidt 2016).

It should be noticed that ideas are not immutable elements in any social relationship, being developed, promoted and transformed by different actors, sometimes

outside the social relation under study, as it is the case with theorists and intellectuals' influences on the development and transformation of ideas. Moreover, institutional actors also play a central role in shaping and transforming ideas, as it is the case with courts and their interpretation of different norms to concrete cases (Hauptmeier and Heery 2014). In employment relations, ideas might have impacts at different levels, both at the individual worker experience in employment relations (Budd, Pohler, and Huang 2018) or at processes of labor policy change (McLaughlin and Wright 2018).

One possible approach to the role of ideas in social relations and the mechanisms behind the power of ideas, is to look at different actors' frames of reference. Frames of reference, or cognitive frames, are defined as the lenses through which one perceives, understands, and reacts to the world around him/her, structuring each individuals' expectations and behaviors in different contexts, including the employment relationship (Budd et al. 2018).

Budd and Bhawe (2010) suggest four different frames of reference on the employment relationship: (1) *Neoliberal Egoist*, which sees the employment relationship as an example of competitive labor markets, in which labor is a commodity; (2) *Critical*, which sees the employment relationship as a forum for sharp conflicts and unequal power dynamics between management and labor; (3) *Unitarist*, which assumes that employers and employees share a unity of many interests; and (4) *Pluralist*, which sees employers and employees as having a mix of common and conflicting interests (Budd and Colvin 2014). As those frames of reference structure individuals' expectations and behaviors in different contexts, they will impact how actors with each frame of reference will view and respond to conflicts at the workplace. So, actors with *neoliberal egoistic* frames expect conflicts to be resolved by the (perfectly-competitive)

market, while actors with a *critical* frame see conflict as an inescapable feature of the employment relationship, which can only be resolved by systematic shift in power relations through broad societal change. Actors with *unitarist* frames see conflicts as an organizational disfunction, which can be resolved by personal interventions and HR policies to align employer-employee interests. Finally, those with a *pluralist* perspective see on institutionalized processes that balance the bargaining power between the parties the best mechanism to resolve the conflicts observable in any employment relationship (Budd and Colvin 2014).

It is important to understand that different actors in the employment relationship can adopt different or similar frames of reference regarding the employment relationship. Analyzing possible matches and mismatches between frames of reference of employers and individual workers, Budd et al. (2018) suggest that mismatched frames are likely to result in conflict within the employment relationship. Although Budd et al.'s (2018) focus is on individual workers frames of reference, the same idea can be applied to collective actors in labor relations, such as unions, as I will suggest in Chapter 7.

Finally, where frames are mismatched, one might expect to find what Kaplan (2008) defines as “framing contests:” a model through which actors try to transform their frames into the predominant collective frames through daily interactions, engaging in framing practices that try to mobilize action in favor of their own frame. Those framing practices include efforts to establish the legitimacy of the actors’ frame, remove the legitimacy of opposing frames, or to realign frames in order to influence how others see relevant issues in the contested relationship (Kaplan 2008).

## Chapter Conclusion

The goal of this literature review chapter was not to provide an exhaustive review of the existing research on the covered topics, but to provide the reader with a basic understanding of the current status of the literature on workplace conflicts, conflict management, ADR, workplace bullying, and the role of ideas in employment relations, as well as possible gaps or understudied areas within those topics. This review effort allows for a better understanding over where this dissertation is positioned among the academic research on those topics, and what is the academic dialogue that this research tries to join and contribute.

I started the chapter by discussing the possible different approaches to conflict and conflict management research, stating that this dissertation departs from a perspective on conflict with a *third-party dispute resolution* approach, while also considering elements from *labor relations* and *macro-level* approaches. The chapter followed with a review on ADR research, summarizing the commonly cited drivers for ADR development in American workplaces (i.e. litigation avoidance, union avoidance, and HPWS), and highlighting the existing gaps in international ADR research, especially in Latin America and Brazil. As workplace bullying plays an important role in the development of ADR in Brazil, the chapter presented a review of workplace bullying literature, departing from the discussion over its definition, and covering the different explanations for workplace-bullying occurrence, which range from individual-level causes to organizational causes. The chapter concluded with the review of the literature on framing contests and the role of ideas in employment relations, which will be used later to discuss how different interpretations of workplace bullying influence banks' and unions' responses to this type of conflict.

Once the academic context is clear, it is essential to provide the same clarity to the reader regarding the context of this specific research. The next chapter provides the necessary information for the understanding of the Brazilian legal and industrial relations context and, specifically, of the Brazilian banking sector, which is the object of this research.

### CHAPTER 3 - RESEARCH CONTEXT

In Chapter 2 it was shown that ADR research in Brazil is still incipient, although there are elements to suggest that institutional factors shape a different ADR scenario in Brazil in comparison to the more studied US scenario (Marzionna 2016). Data collected in my previous research project (Marzionna 2016), however, was not sufficient to answer more complex questions, such as the reasons behind the prevalence of certain ADR methods over others, the impacts of this prevalence, or the role of unions in the development of those ADR methods. As informed in the introduction, this dissertation uses the Brazilian banking sector to deepen the understanding of workplace conflict management in Brazil. In order to successfully reach this goal, it is important to provide the reader with a basic understanding of the context, not only from the Brazilian Industrial Relations system, but also of the Brazilian banking sector. Those are the topics covered in this chapter.

The chapter starts with a brief explanation of the most important elements of the Brazilian industrial relations system. First the union system is described. This description is not restricted to the legal regulation of unions, as information on union density and collective bargaining coverage is also presented. This is followed by an overview of Brazilian employment legislation and a closer look at Brazilian employment litigation system. In this case, the description covers only the Labor and Employment Courts' functioning rules and structure, as specific statistics will be presented in Chapter 6, under the context of the banking sector. The 2017 Labor and Employment Law Reform is discussed very briefly, as its actual consequences in employment relations are still unclear and the debate is outside the scope of this dissertation. Finally, a quick overview of the Brazilian banking sector is presented. This

section does not describe individual banks – which will be object of the research methodology section in Chapter 4 – nor does it go into specific details regarding specific workplace conflicts or conflict resolution methods at different banks – which will be object of Chapters 5 and 6. This section only provides the necessary information for an initial approach to the topic and to understand the relevance of studying the Brazilian banking sector.

### **Brazilian Context**

The Brazilian Industrial Relations system has its origins in the 1930's under Vargas government<sup>1</sup>. The original industrial relations system was based on the complete control of the state over all labor relevant labor topics and actors, including unions (Pinto 2007; Nascimento 2008).

It is clear that in its origins, the Brazilian industrial relations system focused on the empowerment of the state to reduce class conflict. In that sense, (1) workers' interests were coopted by the state through abounding labor legislation and regulation of workplace relations, (2) unions were dominated by the state, therefore moderating labor movement demands, (3) collective bargaining was discouraged, and (4) labor courts played a central role in the solution of labor conflicts (Delboni 2009).

Although the system has gone through some transformation in the last decades, mostly after the re-democratization process of 1980's, the core of the labor and employment legislation in Brazil remains the same, albeit with lesser state intervention

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<sup>1</sup> It is debated how much the Brazilian Industrial Relations system was inspired by the corporatist system of the Italian Carta del Lavoro, enacted during Mussolini's fascist regime. For a discussion of the correctness of the claims that Brazilian labor and employment law system is a copy of the fascist Italian model see French (2004).

on the organization, recognition and administration of unions. A Labor and Employment Law Reform was enacted in 2017, which will be discussed later.

The Consolidation of Labor and Employment Laws (*CLT - Consolidação das Leis do Trabalho*), enacted in 1943 and which consolidated a series of labor and employment legislation in place since the 1930s, is still the main labor legislation in Brazil, maintaining defining characteristics of Brazilian union system (e.g., union unity (*unicidade sindical*)), employment system (e.g., great amount of employee's minimum rights defined in law), and dispute resolution system (e.g., the existence of a specialized Labor and Employment Court).

### ***Union system***

Brazilian union system is defined not only by the CLT and other statutes, but also by the Brazilian Constitution of 1988. The Constitution removed the former requirement of state authorization to the creation of a union, and the possibility of state intervention in unions. It also guarantees freedom of association, makes unions' participation in collective bargaining mandatory, guarantees the right to strike, and guarantees employment protection for union directors. Most important, the Constitution maintains the system of union unity (*unicidade sindical*), present since the enactment of the CLT in 1943. In this system, only one union can exist in the same territorial basis (no smaller than a municipality) to represent a professional and economic category. This means that workers of the same sector, in the same city, will always be represented by the same union.

Besides the Constitution, it is also necessary to look at the legal provisions of the CLT and other statutes, which define the overall structure of Brazilian union system. Brazilian unions are organized under a system of professional and economic categories.

This means that, in most cases, a Brazilian employee will be represented by the union that represents the category correspondent to his/her employer's main activity. For instance, an employee in the banking sector will be represented by the local Union of Workers in the Banking Sector, no matter the activity exercised by him/her in the company<sup>2</sup>. Moreover, unions represent all workers of the sector in their territorial basis, no matter if they are unionized or not. This is also the case for collective bargaining coverage. Taking the banking sector as an example, a bank employee who is not a member of the union will be covered by the collective bargaining agreement, as long as he was represented by his/her union in the collective bargaining process, and his employer took part or was also represented by the employer's association in the collective bargaining process. It is worth noting that most collective bargaining in Brazil takes places at the sectoral level (although not always nationally, but usually in the municipal level), rather than at the company or plant level<sup>3</sup>. Collective Bargaining Agreements (CBAs) are valid for a maximum period of 2 years, and if the parties fail to reach an agreement they can opt for private arbitration or ask the labor court to decide on the terms of the new CBA (*Dissídio Coletivo de Natureza Econômica*)<sup>4</sup>. Until 2017, all employees had to pay one day of their salary per year as union dues (*contribuição*

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<sup>2</sup> The only exceptions are special professional categories, such as secretaries, drivers, and elevator operators, among others, who might be represented by their specific unions, and covered by their collective bargaining agreement, as long as the employer was also represented in the negotiation.

<sup>3</sup> Company level negotiations are observable in some sectors, usually involving bigger companies, and they usually cover only some company-specific issues, such as a company specific profit-sharing scheme or benefits package. Just as the employment law sets the minimum standard, which can only be improved by collective bargaining, company level collective agreements will also respect the minimum standards set by the sectoral-level agreement. The 2017 Reform has changed some elements of this system, by trying to promote more individual negotiations between employers and employees, but it is still soon to reach any conclusions regarding the impact that the new regulation had on the actual functioning of the Brazilian industrial relations system.

<sup>4</sup> Until 2004, there was no need for the agreement of both parties in order to use the labor courts to decide over the terms of the new CBA. The Constitutional Amendment 45 of 2004 created the requirement of the agreement between union and employer to take the case to the labor courts for a *Dissídio Coletivo de Natureza Econômica*.

*sindical*), no matter if unionized or not. This amount was divided between unions, federations, confederations, and *centrais sindicais* (union centrals), and it also contributed to the government fund used for unemployment insurance and other employment benefits (*FAT - Fundo de Amparo ao Trabalhador*). The 2017 Reform removed the obligation to pay union dues, independent of union membership. In 2015, Brazilian unionization rate was of 19.5% (IBGE 2017), and it is still not clear the impacts that the 2017 Reform might have on unionization rates. Information about collective bargaining coverage is hard to obtain, but it is superior to the reported unionization rate. Visser (2015) reports a coverage rate of 35% for 2008. ILO reports collective bargaining coverage of 60% of the total number of employees in 2006 (Hayter and Stoevska 2011), and 65% in 2012 (Visser et al. 2017). The differences are attributed to the informal sector (not covered by CBAs), which are taken into consideration by Visser (2015), but not by the ILO data. In both cases, however, the data confirms that collective bargaining coverage is superior to the unionization rate in Brazil.

In Chapter 2 it was discussed that union avoidance strategies are usually identified as important drivers for ADR adoption in the US. Given the union system just described, the concept of union avoidance or union substitution in Brazil must be interpreted differently. Considering that union representation in the workplace is not directly related to union density, and that collective bargaining coverage is not directly related to union membership, it is unlikely that US-like union avoidance and union substitution strategies could be reproduced in the Brazilian environment with similar effects. However, although union substitution tactics might not generate a union free workplace, it might impact on union power or union influence in the workplace.

### ***Employment Law***

A wide array of employment rights is guaranteed to employees in Brazil by the Constitution, the CLT, and other statutes. CBAs and individual employment contracts can also be a source of employment rights, under certain conditions.

Article 7 of the Constitution brings a list of 34 rights guaranteed to all employees<sup>5</sup>, such as: unemployment insurance; minimum wage; irreducibility of wages; a thirteenth-month salary; additional payment for night work; work time limits of 8 hours per day, and 44 hours per week; overtime pay rate at least 50% higher than the normal pay rate; paid weekly rest; an annual paid vacation, at a rate at least one-third higher than normal pay; maternity leave; advance notice of dismissal; additional remuneration for strenuous, unhealthy or dangerous work; etc. This list of employment rights, which is not exhaustive, is further detailed and expanded by the *CLT* and other statutes. For instance, the *CLT* defines: the minimum duration for the lunch break and for the interval between two workdays; how to calculate total work hours for night work; the duration of the annual vacations and how it can be divided by the employer; the procedure to be adopted in the termination of the employment contract and the amounts owed as severance; cases in which it is possible to terminate an employee for cause (and therefore diminishing the severance that must be paid to the terminated employee); among other rights, including rights applicable to only specific professional categories.

### ***Employment Litigation System***

The large amount of employment rights guaranteed by Brazilian law, and the historic difference between the law as written and the law as enforced (French 2004), make conflicts over employment conditions common in Brazil. Historically, litigation

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<sup>5</sup> Domestic workers had limited rights in some cases, although a recent constitutional amendment extended most rights to them (EC 72/2013).

has been the main forum to resolve individual employment conflicts, via the specialized labor courts. Brazilian labor courts became a specialized arm of the judiciary branch after the end of the Vargas' first government, with the 1946 Constitution. Under this model, the labor courts would work under the Supreme Court in three different levels, all of them with a tripartite formation. Hence, in the lower courts (*Juntas de Conciliação e Julgamento*) the cases would be judged by one professional judge, one representative of the employers, and one representative of the employees. In the Regional Labor Courts of Appeals (*Tribunais Regionais do Trabalho - TRTs*) and in the Superior Labor Court (*Tribunal Superior do Trabalho - TST*), employees' and employers' representatives would also take part in the decision process, together with professional judges. In the superior courts, however, there would be proportionally more professional than lay judges (Abreu 2005).

This model was abandoned in 1999, with the Constitutional Amendment 24. The role of the lay judges was eliminated under the justification that this tripartite model was not adequate for a modern and solid labor court system under the judiciary branch, according to the justification of the Constitutional Amendment Proposal. However, news of that time reveal that, in reality, the expenses with lay judges and tripartite bodies were the main concern of the Congress.

The last major reform involving the structure of labor courts in Brazil was the one provided by the Constitutional Amendment 45/2004, focused on enhancing access to justice and the efficiency of the judiciary branch. During the 12 years in which the Amendment Proposal was in Congress, the existence of a specialized labor arm of the judiciary branch came close to an end, although in its final approved version it ended up expanding the jurisdiction of the labor courts as a part of a bigger judiciary reform.

The possibility of ending the specialized labor courts, which would be incorporated into the general system of federal courts, was highly criticized by labor lawyers and the Association of Labor Judges (*ANAMATRA*), who saw in the extinction of a specialized court a threat to the effectiveness of labor and employment law enforcement (Paiva 2012). Since the Constitutional Amendment 45/2004 the labor courts' jurisdiction encompasses all individual and collective claims originated in "working relationships," and not only from employment contracts.

The labor courts are organized in three levels. The Lower Courts (*Varas do Trabalho*) are composed of a single professional judge, the 24 Regional Labor Court of Appeals (*TRTs - Tribunais Regionais do Trabalho*) are composed of at least 7 professional judges, and the Superior Labor Court (*TST - Tribunal Superior do Trabalho*) is composed of 27 professional judges. In order to be a judge in the lower courts, the requirements are the same for labor and general courts: the candidate must be approved and ranked in a public exam, and he/she must have at least 3 years of experience in legal profession. The CLT states that the judges in all levels must make efforts to conciliate, and that the parties may decide to settle at any time. If a settlement is reached and ratified by the judge, the agreement is binding and enforceable. The plaintiff may act *pro se* or be represented by a lawyer or the union. After the lawsuit filing, there is no legal time limit for the scheduling of the initial hearing.

In theory, all the procedural acts should be concentrated in one single hearing session, which is initiated with an attempt to conciliate the parties. If the parties do not settle, the defense will be presented in the hearing, which will also encompass the discovery stage. In the discovery hearings, each party may present up to three witnesses. The final decision should also be issued in the same hearing session. If at any moment

it becomes necessary to split the hearings (conciliatory, discovery, and decision sessions), the judge can do it, scheduling the next hearing session to the next available day in the labor court.

Cases that discuss amounts below 40 times the minimum monthly wages<sup>6</sup> follow a simpler procedure. In this procedure the initial hearing must be scheduled at maximum 15 days after the filing of the labor claim, the discovery procedure is simpler (limit of 2 witnesses per party), and if the hearing must be delayed for any reason, the new hearing session must be scheduled no later than 30 days after the original hearing.

All final decisions from the lower courts can be appealed within 8 days. In the court of appeals, a panel of professional judges makes the decision. Under specific circumstances, the parties can appeal from the decisions of the Regional Labor Court of Appeals to the Superior Labor Court, where the decision will also be made by professional judges. After the decision of Superior Labor Court, a last appeal to the Supreme Court (*STF - Supremo Tribunal Federal*) might also be possible.

The goal of this section was simply to provide the reader with a basic understanding of the functioning and history of the Labor and Employment Court system, considered the traditional forum for conflict resolution in Brazilian employment relations. Details about its usage levels and its impacts will be discussed in the context of the banking sector at Chapter 6. Likewise, ADR methods will also be discussed in the same chapter, in the context of the banking sector.

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<sup>6</sup> 40 minimum monthly wages are approximately BRL 38,160 or USD 10,310 (exchange rate of 10/25/2018)

### ***The 2017 Labor Law Reform***

In 2017 a Labor Law Reform was enacted by Brazilian Congress. Although it is still not clear how courts as a whole are applying the new legislation – the law has been valid only since November 11<sup>th</sup>, 2017 – there are clear indications of an attempt to remove labor and employment conflicts from the courts.

From the collective standpoint, several sections of the new legislation have the clear goal of making the collective bargaining process prevail over the legislation. From the perspective of individual conflicts, the move away from the courts is even more clear, as evidenced by several provisions. First, new rules regarding court costs and fees and the “free justice benefit” (*benefício da Justiça gratuita*) make employment litigation more expensive and promote more requirements for the filing of lawsuits by employees. Likewise, new rules regarding court-mandated attorney’s fees are likely to also impact the decision of plaintiffs when filing lawsuits with the employment courts. But what is even clearer in this direction is the new provision which allows the usage of employment arbitration for cases involving high-paid employees (i.e. employees whose monthly salaries are at least twice the ceiling of the public pension benefit<sup>7</sup>).

### **The Brazilian Banking Sector**

The banking sector is one of the most important segments in Brazil, from several standpoints. Four out of the ten biggest employers in the country are banks, the five biggest banks (by assets) in Latin America are from Brazil (Exame 2017), and Brazil also has three banks in the list of the 50 biggest banks in the world by revenue (Salomão 2016).

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<sup>7</sup> Equivalent to BRL 11,290 or USD 3.050 (exchange rate of 10/25/2018).

When it comes to labor relations, the importance of the banking sector is even more evident. Workers in the sector have a long history of strikes<sup>8</sup> and they are the sole category to have a national level Collective Bargaining Agreement for more than 20 years – actually, the banking sector is still the first and only sector to negotiate a national level base-agreement in the country. Not only that, the sector innovated in 2016 by signing its first 2-year CBA in history, and banking sector unions led the protests in 2017 against the Labor Law Reform enacted by Congress. In relation to workplace conflict resolution, it is not wrong to say that the banking sector is among the most innovative and influential sectors in Brazil. Not only that, the Banking sector has also led the discussion of workplace bullying and its prevention, both from a practitioner and from an academic standpoint. The sector is probably among the most researched in academia on the topic of workplace bullying (e.g., Maciel and Gonçalves 2008; Soares and Villela 2012). Since 2010 the sectoral CBA has a clause of “Prevention of Conflicts in Workplace,” with impacts beyond the sector. For instance, in the primary sector, unions have expressly cited the banking sector clause of “Collective Prevention of Conflicts in Workplace” as a goal of their sectoral collective bargaining (Marzionna 2016).

Banks are also relevant from an employment litigation perspective, given that out of the ten biggest litigators in the Superior Labor Court, five are banks, and one is a pension fund of workers from a specific bank. If the public sector is excluded from the ranking, the three biggest litigators in the Superior Labor Court are banks.

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<sup>8</sup> Bank workers went on strike for 7 days in 2014, for 23 days in 2013, for 7 days in 2012, for 14 days in 2010, for 15 days in 2009, and for 15 days in 2008.

The fit of the banking sector for a research on workplace conflict in Brazil is justified not only by how central the topic of workplace conflict is to the sector. It is worth noticing that the banking sector holds a considerable variability of characteristics, which allow for proper comparisons of academic relevance, such as national origin, nature of the operation (private or state-owned), type of operation (commercial, corporate or investment banking) and region of operation (international, national or regional) as it will be detailed in the methods section in the next chapter.

### **Chapter Conclusion**

The goal of this chapter was to provide the reader with the basic knowledge about the Brazilian industrial relations context, so the cases that will be analyzed in the coming chapters can be properly understood. Under the country's industrial relations' context, I have first explained the basic organization of the union system, highlighting that labor laws in Brazil can lend a different meaning to "union substitution" and "union avoidance" tactics in comparison to the US. I have followed with an overview of Brazilian employment law, which is the legal basis of Brazilian employment relations. A brief description of Brazilian employment litigation system followed, but the topic will be further explored in Chapter 6, under the banking sector context. The 2017 Labor Law Reform was mentioned, but an analysis of its impacts on the country's employment relations is beyond the scope of this dissertation. Finally, I presented a brief overview of the Brazilian banking sector, which will be further developed in the next chapter, as the research and sampling strategy is discussed.

The next chapter presents the research methodology used in this project, detailing research questions, research strategy and field research.

## CHAPTER 4 - RESEARCH METHODOLOGY

Considering the current literature stage and research context described earlier, this research tries to advance the understanding of the development of Alternative Dispute Resolution (ADR) methods in Brazil, exploring the factors that determine the prevalence of one or another ADR method, and the impacts of each ADR method in different stakeholders and in conflict management in the workplace.

### **Research Questions**

Previous research has suggested that Ombudsman Offices could be trending in Brazilian organizations (Levy et al. 2016; Marzionna 2016), and factors such as the National Council of Justice (CNJ) Resolution number 125, the Superior Council of Labor Courts (CSJT) Resolution 174/2016, and the 2017 Labor Law Reform, also suggest that other forms of ADR might be gaining space in Brazilian organizations. This dissertation explores this topic, by analyzing conflict management in the banking sector. The decision to conduct research on the banking sector will be detailed in this chapter. In summary, the banking sector allows ADR-related topics to be compared in organizations with different characteristics, while in a sector where workplace conflicts are in a central stage of labor and employment relations.

With this in mind, the first research question (RQ) to be answered in this dissertation is one of exploratory nature:

**RQ-1: How are banks in Brazil managing different types of workplace conflicts?**

Describing different conflict management practices in the banking sector, although a valuable effort, is just the first step of this research. In order to better

understand the phenomena being observed, and evaluate the generalizability of the findings to other sectors, it is important to understand what factors and mechanisms are behind the adoption of different conflict management methods and strategies, leading to the second set of research questions:

**RQ-2: Which factors impact an organization's approach to workplace conflict in Brazil?**

**RQ-2.1) What is the role of (a) national origin of the organization, (b) nature of the organization, (c) influence of Unions in the workplace, and (d) HR strategies in determining an organization's approach to workplace conflicts in Brazil?**

Answering those questions is relevant not only to understand the banking sector in Brazil, but it can also be revealing of underlying mechanisms related to organizations' strategic approach to workplace conflict management, and how those mechanisms are influenced or constrained by institutional and sectoral factors.

Among the factors analyzed, one must be highlighted: the role of unions in the banks' strategic decision-making regarding conflict management in the workplace. In the US, unions were an important factor influencing the rise of non-union ADR, as ADR methods were developed by managers as union-avoidance tools. In that sense, Brazilian banking sector offers an interesting and different scenario for comparison. As unions are strong in the sector, but their influence within each organization varies, it is possible to try to understand not only how unions impact the adoption of different ADR methods in the sector, but also how unions are influenced by banks' adoption of different conflict management strategies. This leads to the third set of research questions:

**RQ-3: How do unions influence the adoption of ADR methods by organizations in Brazil?**

**RQ-3.1: How are unions impacted by the companies' different strategies to manage workplace conflicts?**

Finally, as it has been explained earlier and as it will be further explored later, workplace bullying occupies the central stage in the topic of workplace conflicts in Brazilian organizations, even more so in the banking sector. This dissertation will try not only to understand how Brazilian organizations and unions are responding to workplace bullying, but it will also explore what are the impacts of different interpretations of what constitutes workplace bullying and the roots of those contrasting understandings:

**RQ-4: How are Brazilian organizations responding to workplace bullying in Brazil?**

**RQ-4.1: How do different interpretations of workplace bullying impact how this conflict is managed in different organizations?**

It is worth highlighting that I have opted to approach those topics from an organizational level standpoint, which impacts the chosen methodology and research strategy described below.

### **Research strategy**

#### ***Why banking sector?***

As detailed in Chapter 3, the choice of the banking sector for a research on workplace conflicts in Brazil is justified by several reasons, which I review and summarize in this section. Some numbers confirm the relevance of the sector in Brazil and in Latin America from an economic perspective: four out of the ten biggest

employers in the country are banks, the five biggest banks (by assets) in Latin America are from Brazil (Exame 2017), and Brazil also has three banks in the list of the 50 biggest banks in the world by revenue (Salomão 2016).

However, the importance of the banking sector in Brazil goes beyond its size. As it was detailed earlier, this choice is also justified from a labor relations standpoint, as the sector is not only an extreme case of labor relations in Brazil, but also a model followed by companies and unions in other sectors. For instance, bank workers have a long history of strikes<sup>9</sup> and they are the sole category to have a national level Collective Bargaining Agreement for more than 20 years. Considering the issue of workplace bullying, the sector has led the discussion of its occurrence and prevention, both from a practitioner and from an academic standpoint. The sector is among the most researched in academia on the topic of workplace bullying (e.g., Maciel and Gonçalves 2008; Soares and Villela 2012), and since 2010 the sectoral CBA has a clause of “Prevention of Conflicts in Workplace,” with impacts beyond the sector, functioning as a model for labor relations in other sectors (Marzionna 2016). The sector is also relevant from the perspective of levels of individual workplace conflicts, as revealed by the employment litigation numbers (five out of the ten biggest litigators in the Superior Labor Court are banks) and the long history of use of Preliminary Conciliation Commissions (*CCPs*<sup>10</sup>), which will be detailed in Chapter 6.

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<sup>9</sup> Bank workers went on strike for 7 days in 2014, for 23 days in 2013, for 7 days in 2012, for 14 days in 2010, for 15 days in 2009, and for 15 days in 2008.

<sup>10</sup> It should be mentioned that in the banking sector unions also use the expression Voluntary Conciliation Commissions (*CCVs – Comissão de Conciliação Voluntária*). Although some disagree, the difference between CCPs and CCVs is simply on the name choice, actually representing the same conflict resolution method according to the employment legislation. Only the expression CCP is used throughout this dissertation, in order to avoid confusion for the reader.

Finally, although highly concentrated, the sector provides considerable variability of characteristics among organizations, which allows for proper comparisons across cases (e.g., national origin, nature and type of operation, size, region, nationality, union's influence, etc.). This variability will be further explored in the next section, where sampling strategies are discussed.

### ***Case selection strategy***

#### ***Banks***

Brazil had a total of 156 banks operating in August 2017<sup>11</sup>, when most data was collected. The financial system in the country, however, is highly concentrated, as the four largest banks hold 73% of all assets in the sector, and the five largest banks have 90% of all the bank local branches in the country (Castro 2017).

In order to be able to draw a proper image of the banking sector, sampling in this case should be able to cover the most representative banks and unions in the sector. However, this does not mean including in the sample only the four or five largest banks in the country. Among the totality of banks operating in Brazil, it is essential to pay close attention to variability in important organizational characteristics, which might be connected to the occurrence or the response to workplace conflicts, and which might help explaining any observable variability in the way that conflicts are manifested in each organization. The characteristics taken into consideration were size (measured by the number of employees), nature of the operation (state-owned/public or private), type of operation (commercial, corporate, investment, or retail), region of operation

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<sup>11</sup> This number includes only *Bancos Múltiplos*, *Caixas Econômicas*, *Bancos Comerciais* and *Bancos de Câmbio*, excluding *Bancos de Investimento*, *DTVMs*, *Cooperativas de Crédito*, etc. (BCB 2018).

(national, regional, or local), as well as union influence in the workplace. Some details should be explained in relation to each of these characteristics and their meaning.

In relation to size, I considered large banks those with more than 50,000 employees, which covers the five largest banks in Brazil, responsible for the vast majority of bank operations in the country, as discussed earlier. Banks with more than 2,000 employees, but less than 40,000 employees were considered medium-sized banks. Although this is a large interval, the majority of banks in this group are closer to the floor than to the ceiling of the interval, evidencing an important gap of medium-sized banks in Brazil, a possible consequence of the highly concentrated market. Finally, all banks with less than 2,000 employees were considered small banks.

In relation to the nature of the operation, I opted to simplify the division between state-owned and private banks. State-owned banks include both *empresas públicas* (public companies) and *sociedades de economia mista* (mixed capital companies). Although both are state-owned, the main difference is that *empresas públicas* are 100% owned by the state, whereas *sociedades de economia mista* also have private participation, with the state holding the majority of the company's shares. Although those differences have legal impacts, there are no reasons to believe that there would be any difference in relation to the topics of interest of this dissertation. In the case of private banks, although state-owned companies might hold shares of those banks, the majority of the shares will always be held by the private sector, therefore defining them as private companies.

The division regarding the types of operation used here are not related to the legal definition of each bank's activities, as the majority of operating banks in Brazil are registered under the definition of *bancos múltiplos*, i.e., banks that can act in

different banking activities as authorized by the Brazilian Central Bank. In this dissertation, I consider *commercial banking* the activities targeted at the general public, individuals or companies of different sizes. *Retail banks* refer to banks offering services to consumers with a broad network of branches and products for consumers and small businesses. *Corporate banks* are the ones with operations targeted at medium and large corporate clients, while *investment banking* refer to the focus on investment banking activities such as issuance of securities. Evidently, as all those banks are legally *bancos múltiplos*, their activities are not restricted to the ones used in my description. This is the case, for instance, of the large banks, here classified as “commercial/retail banks,” when in fact they also have important corporate and investment banking activities. The labels selected tried to describe only the main banking activity, i.e. the activities conducted by the majority of the bank’s workforce, and how the bank is perceived by unions and by the general public.

In relation to nationality, banks were classified in relation to the origin of their capital and location of their headquarters. Nationality is informed at the continent level, in order to avoid the identification of the individual banks included in the sample.

The region of operation was divided in three groups: *national*, for banks with significant operations spread through different regions in the country, even if not covering all country regions; *regional*, for banks with operations concentrated in specific geographical regions, usually a small group of close states; and, *local*, for banks with operations concentrated in a single state. Evidently, banks classified as regional or local can still have business with customers outside their region of operation, as this classification focus on the concentration of the workforce, branches and business units of the analyzed banks.

Finally, banks were classified in relation to the union influence in their workplace, based on how much access unions have to the workers in each bank, how much unions focus their activities on issues related to those banks, and how much the union activities impact each bank's daily operations. The information was collected from banks and unions, resulting in the classification between *high*, *medium* and *low* level of union influence in the workplace.

Taking all this information into consideration, cases were selected in order to include the most representative banks in the country (i.e. the five largest companies in the sector), as well as other banks with considerable variation in relation to the described characteristics, in order to identify any pattern or variation in terms of occurrence and management of different types of workplace conflicts. This resulted in the sampling detailed in Table 1. In all cases, the bank names were changed in order to maintain the anonymity of the information collected in interviews, as agreed with the organizations. Details about the strategies used to negotiate access to each bank, and the level of access obtained will be discussed in a later section.

**Table 1 - Bank sample: summary of main organizational characteristics**

| <b>Bank</b>           | <b>Size<sup>12</sup></b> | <b>Nature</b> | <b>Type of Operation</b>  | <b>Nationality</b> | <b>Geography</b> | <b>Union influence</b> | <b>Main union interaction</b>                                |
|-----------------------|--------------------------|---------------|---------------------------|--------------------|------------------|------------------------|--|
| BiggerPublicBank      | Large                    | State-owned   | Commercial/retail banking | Brazilian          | National         | High                   | All  |
| LargePublicBank       | Large                    | State-owned   | Commercial/retail banking | Brazilian          | National         | High                   | All  |
| BiggerPrivateBank     | Large                    | Private       | Commercial/retail banking | Brazilian          | National         | High                   | All  |
| LargePrivateBank      | Large                    | Private       | Commercial/retail banking | Brazilian          | National         | High                   | All  |
| BigForeignBank        | Large                    | Private       | Commercial/retail banking | European           | National         | High                   | All  |
| MediumForeignBank     | Medium                   | Private       | Commercial banking        | North-American     | Regional         | Medium                 | BigLocalUnion, BigConfederation                              |
| MediumNationalBank    | Medium                   | Private       | Corporate/Investment      | Brazilian          | National         | Medium                 | All  |
| MediumPublicBank      | Medium                   | State-owned   | Commercial/retail banking | Brazilian          | Local            | High                   | PublicLocalUnion, BigConfederation, TraditionalConfederation |
| LocalPublicBank       | Medium                   | State-owned   | Commercial/retail banking | Brazilian          | Local            | High                   | CriticalLocalUnion   |
| CorporateForeignBank  | Small                    | Private       | Corporate/Investment      | North-American     | Local            | Low                    | BigLocalUnion  |
| OtherForeignBank      | Small                    | Private       | Corporate/Investment      | Asian              | Local            | Low                    | BigLocalUnion  |
| CorporateNationalBank | Small                    | Private       | Corporate                 | Brazilian          | Regional         | Low                    | BigLocalUnion  |
| ForeignInvestmentBank | Small                    | Private       | Corporate/Investment      | European           | Local            | Low                    | BigLocalUnion  |
| SmallForeignBank      | Small                    | Private       | Corporate/Investment      | European           | Local            | Low                    | BigLocalUnion  |

<sup>12</sup> By number of employees: large (> 50,000); medium (> 2,000); small (< 1,999).

The bank sample consists of five large banks, four medium-size banks, and five small banks. Four banks in the sample are state-owned, being two large, and two medium-sized. Seven banks have predominant operations of commercial/retail banking, five banks operate predominantly with corporate/investment banking activities, while one bank is commercial, but not retailing, and one bank is focused on corporate activities, but not on investment banking. Eight banks are Brazilian, while the other six are from different nationalities. In the case of the foreign banks, their nationality does not reflect necessarily the country to which the Brazilian operation reports, or the level of autonomy of the Brazilian operation. Six banks can be considered to have national operations, two operate regionally, while the other six operate locally (i.e. operations concentrated in one single state). Finally, unions have high influence in seven cases, medium level of influence in two cases, and low level of influence in the other five cases. As it will be discussed later, unions' level of influence is highly correlated with bank's size and nature.

### *Unions*

In order to draw a proper picture of the banking sector in Brazil, it was also necessary to include unions in this study. There are relevant banking sector unions in Brazil at the local/municipality level (i.e. *Sindicatos*), regional level (i.e. *Federações*), and national level (i.e. *Confederações*). Local level unions are the ones responsible for daily interactions with workers and managers in the banks' offices and branches, while still participating in the company-specific and national sectoral collective bargaining, with different levels of influence. National level unions, i.e. the Confederations, are responsible for national level and sectoral bargaining processes, with the support and participation of local level unions. The stronger a local union (in terms of membership

and representativeness), the greater its influence at the Confederation/sectoral level, participating in the definition of national strategies or sitting on sectoral bargaining tables. Despite the existence of the three levels of unions in the sector, a local union does not need to be a part of a specific regional Federation, or national Confederation. This means that a union can be part of a Confederation without being part of a Federation, or can even opt to be an independent union, not participating in any Confederation. The same is true for all levels, up to the *Centrais Sindicais* (central unions), which operate at the national level, beyond sectoral barriers.

With this in mind, two important elements were taken into consideration for sampling in the case of unions. The sample should include the most active and important unions both at the local and national level, and it should also include local unions operating in the same territorial basis of the local or regional banks covered in the bank sample.

At the national level, BigConfederation and TraditionalConfederation are the only two official Union Confederations of the Banking sector, covering more than 95% of the professional category, and being the only two confederations which participate in sectoral level collective bargaining. BigConfederation is the newest one, but also the most representative, covering approximately 90% of the category nationally, usually being described as closer to the rank and file. TraditionalConfederation has a longer history in Brazilian unionism, but it has considerably lost space since the creation and official recognition of BigConfederation. TraditionalConfederation is usually described as more distant from the rank and file and friendlier to management's propositions.

At the local level, four unions are part of the sample. BigLocalUnion is the largest bank workers' union in the country. Being under BigConfederation,

BigLocalUnion's leadership plays a central role in the national collective bargaining process and in relevant discussions related to workplace bullying and harassment. Its territorial basis encompasses the headquarters of the majority of the banks in the sample (and in the country). RelevantLocalUnion is also under BigConfederation, and its territorial basis covers one of the five largest metropolitan regions in Brazil. PublicLocalUnion is under BigConfederation as well, but it is usually recognized as having a more critical position in comparison to BigLocalUnion and RelevantLocalUnion. Its territorial basis covers another one of the five largest metropolitan regions in Brazil, and it encompasses the headquarters of three state-owned banks of the bank sample. Finally, CriticalLocalUnion is among the most critical independent unions in the sector. It is not under any Confederation, due to political disagreements, and its territorial basis encompasses the headquarters and all branches of one of the regional-level state-owned banks of the bank sample.

Table 2 provides detailed information on the unions in the sample. Once again, names were changed in order to maintain the anonymity of the information collected in interviews.

**Table 2 - Union sample: summary of main union characteristics**

| <b>Union</b>             | <b>Level</b>             | <b>Confederation Report</b> | <b>Main interactions with banks from sample</b>                    | <b>Observation</b>   |
|--------------------------|--------------------------|-----------------------------|--|--|
| BigConfederation         | National (Confederation) | NA                          | All banks from sample  | Closer to rank and file  |
| TraditionalConfederation | National (Confederation) | NA                          | Focus on the large banks from the sample                           | Considered management-friendly                                 |
| BigLocalUnion            | Local                    | BigConfederation            | All banks from sample, except MediumPublicBank and LocalPublicBank | Most influential local union                                   |
| RelevantLocalUnion       | Local                    | BigConfederation            | Mainly the large banks from sample                                 |  |
| PublicLocalUnion         | Local                    | BigConfederation            | Mainly BigPublicBank, LargePublicBank and MediumPublicBank         | Covers the location of the headquarters of large public banks. |
| CriticalLocalUnion       | Local                    | Independent                 | LocalPublicBank  | More critical/radical than other unions.                       |

## ***Methodology***

Given the nature of the research questions that I propose to answer, I have opted to collect qualitative data through interviews with managers from the selected banks, and leaders from the selected unions. Managers interviewed should be able to respond company-level information about the occurrence of different types of workplace conflicts, as well as organizational responses to those conflicts. With this in mind, they could be managers from Human Resource, Labor Relations, Legal, and/or Ombudsman departments, depending on the specific characteristics of each bank. Ideally, managers of all the referred departments should be interviewed.

The interviews were semi-structured, following an instrument developed by me, covering different aspects of the organization's business and HR strategy and practices, the relationship with unions, and different ways that conflicts are manifested and treated in the workplace. The interview instrument was originally developed and used for the first time in my MS Thesis (Marzionna 2016) and constitute Appendix I of this dissertation.

Similarly, for data collection with unions I opted to conduct semi-structured interviews with union leaders from the sampled unions. The actual position of the union leader within the union would depend on the internal union structure, but the interviewee should be able to provide information regarding the general union strategy, and the specific strategies towards individual level workplace conflicts within the sector. The interview instrument was also developed by me, and can be found in the Appendix I of this dissertation.

Although interview data should constitute the main source of data for this research, it was complemented by archival data from banks (e.g., annual reports), unions

(e.g., unions' newspapers and newsletters), court decisions and news from traditional Brazilian newspapers and magazines.

Details about the amount of interviews made, as well as the analysis method, will be explored in the next section.

### **Field research**

The first set of data used in this dissertation was collected in July 2014, consisting of interviews with four managers from BiggerPrivateBank that were used in one of the case studies analyzed in my MS Thesis (Marzionna 2016). The information obtained in these interviews, as well as the analysis conducted in the MS Thesis, were essential to develop the research proposal which resulted in this dissertation.

Once this research proposal was concluded and presented, I started to try to negotiate access to different banks with the relevance and variability in characteristics described in the methodology section. Banks were accessed via personal contacts that I had<sup>13</sup> and from contacts suggested by managers from the banks that were already interviewed. The level of access varied across different banks, ranging from multiple interviews with managers from HR, Labor Relations, Legal and Ombudsman, to single interviews with a sole manager of one of these departments. The first wave of interviews occurred in August/September 2017, and the second wave of interviews occurred in January/February 2018. The second wave of interviews included banks different from the ones from the first wave, but the content of the interview instrument was essentially

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<sup>13</sup> Most contacts came from my experience of six years in the banking sector in Brazil (2005; 2007-2012). There were cases of former colleagues current working in different banks, who helped me to gain access to their organizations, or who introduced me to other professionals in the sector who helped me to gain access to their organizations. Moreover, during my period as a bank worker, I had also participated in inter-bank subcommittees at the Brazilian Federation of Banks, which allowed me to develop connections with professionals in other banks, who helped me to gain access to those organizations.

the same, as data collected in the first wave was analyzed just later, in conjunction with interviews from the second wave. The interview instrument was adapted for each bank, in order to reflect any peculiarity of that specific organization. Interviews were conducted by me in person, with the exception of one interview with BiggerPrivateBank in 2014, which was conducted via Skype, and two interviews with BiggerPublicBank, conducted in writing, by e-mail.

In the case of in person interviews, they were recorded if authorized by the interviewee, and later transcribed by me using the software ExpressScribe and NVivo 12 for Mac. The transcription was complemented by notes that I had taken during the interview. If recording was not authorized, I would take thorough notes of the interview. Once the interviews of that day were finished, I would go over my notes with a recorder, developing the topics of my notes based on the information obtained during the interview. By recording this process of “reading and commenting my own notes” right after the end of the interview, I guaranteed that a minimum amount of information was lost due to the lack of an audio record. Later, this record would also be transcribed by me using the software ExpressScribe and NVivo 12 for Mac. A total of 21 interviews were conducted in banks, with a total of 25 managers and average duration of one hour and a half each<sup>14</sup>. Table 3 details the interviews conducted in each organization, and if the interview was recorded or not. Appendix 2 provides detail on each individual interview.

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<sup>14</sup> Another 11 interviews outside the banking sector were conducted for the MS Thesis (Marzionna 2016), which were instrumental to the analysis of the data collected for this dissertation.

**Table 3 - Bank Interviews**

| <b>Bank</b>           | <b>Departments Interviewed</b>        | <b>Recorded</b> |
|-----------------------|---------------------------------------|-----------------|
| BigPublicBank         | HR; Ombudsman/Mediation               | No              |
| LargePublicBank       | Labor Relations/HR                    | No              |
| BigPrivateBank        | HR; Ombudsman; Legal; Labor Relations | Yes             |
| LargePrivateBank      | None                                  | NA              |
| BigForeignBank        | None                                  | NA              |
| MediumForeignBank     | Legal                                 | No              |
| MediumNationalBank    | HR                                    | No              |
| MediumPublicBank      | HR; Legal                             | Yes             |
| LocalPublicBank       | HR; Legal                             | No              |
| CorporateForeignBank  | HR                                    | No              |
| OtherForeignBank      | HR                                    | Yes             |
| CorporateNationalBank | HR                                    | Yes             |
| ForeignInvestmentBank | Legal                                 | No              |
| SmallForeignBank      | HR                                    | Yes             |

In the case of unions, access was first negotiated with the two national confederations. Their contact was provided by the labor relations department of BiggerPublicBank, and I conducted semi-structured in person interviews with representatives of BigConfederation and TraditionalConfederation. Contacts for representatives of BigLocalUnion and RelevantLocalUnion were provided by BigConfederation, whereas the labor relations department of MediumPublicBank provided the contact of PublicLocalUnion, and the legal department of LocalPublicBank provided the contact of CriticalLocalUnion. In the case of BigLocalUnion, I have not only interviewed their leaders, but I have also spent a full day with different union representatives, conducting unstructured interviews and observing different union activities. The process of recording (if authorized)/note taking and transcription for union interviews followed the exact same procedure used in the case of bank managers' interviews. A total of 8 semi-structured interviews were conducted, with 10 union leaders, and average duration of one hour and a half each, and 4 unstructured interviews with 4 union leaders of BigLocalUnion. Table 4 details the

interviews conducted in each union, and if the interview was recorded or not. Appendix 2 provides detail on each individual interview.

**Table 4 - Union interviews**

| <b>Union</b>             | <b>Interviews</b>          | <b>Recorded</b> |
|--------------------------|----------------------------|-----------------|
| BigConfederation         | Confederation leader       | No              |
| TraditionalConfederation | Confederation leaders (2x) | No              |
| BigLocalUnion            | Union leaders (4x)         | Yes             |
| RelevantLocalUnion       | Union leader               | No              |
| PublicLocalUnion         | Union president            | Yes             |
| CriticalLocalUnion       | Union leaders (2x)         | Yes             |

Once interviews and notes were transcribed, they were all coded by me in NVivo 12 for Mac. Coding for content analysis was done with descriptive coding derived from the interview being coded. Those codes were later used to identify recurrent topics and patterns regarding certain occurrences and banks or unions’ specific characteristics. Once recurrent and relevant topics were identified, I organized them for later usage in each case’s description, comparison and analyses.

**Chapter Conclusion**

This chapter has detailed the research methods and strategy used in this project and during field research. I started by presenting the Research Questions that I intend to answer in this dissertation, presenting the logical path that led to their elaboration based on my own previous research and existing literature gaps. The chapter followed with an explanation of the reasons for choosing the banking sector to answer the proposed research questions, continuing with the strategy adopted for case selection both for banks and unions. The methodology was then described. The chapter ended with a detailed description of the field research, describing how access was negotiated to each research site and the level of access obtained. Sample and interview details were

provided in Tables 1 to 4. The next chapter starts the analytical description of the cases, by first focusing on the different types of conflicts observed in the banking sector.

## CHAPTER 5 - THE TYPES OF CONFLICTS OBSERVED IN THE BANKING SECTOR

Before analyzing how conflicts are managed in the banking sector, it is important to understand the conflicts that are present in the sector and how they are perceived by banks, unions, and employees. The goal in the next sections is to understand how conflicts are manifested, described and perceived in the banking sector. In order to accomplish this, I rely mostly on the interviews with union leaders and bank managers, as well as on unions' newspapers and banks' annual reports. The goal is to compare the perspective of different actors over the conflicts observed in the sector, and to identify factors that might be connected to the presence of each type of conflict in any specific bank.

For all types of conflicts analyzed, first the conflict is described at a sectoral level, with its description and different understandings from the different sectoral actors. This is followed by a discussion on how different organizational characteristics might be related to the presence, absence or the way that a certain conflict is manifested in the workplace.

At this point, the goal is to simply understand the conflicts, not how they are managed and responded to, which will be the subject of the subsequent chapter.

The chapter starts with the debate over workplace bullying in the banking sector, exploring how the concept and the usage of the term developed in unions' communication since the early 2000s, and how it compares with banks' understanding of workplace bullying. The main idea is that unions see workplace bullying as a structural/organizational issue, whereas banks understand bullying as a problem related to individual employee's attitudes. The roles of the Labor and Employment Courts and

of the Labor Prosecution Office in the definition of workplace bullying is debated, concluding with an analysis on how the relevance of workplace bullying varies across the sector. It is shown that workplace bullying is linked to the bank's size and nature of operation (i.e. workplace bullying is more relevant in large banks and, among medium-sized banks, in private sector banks).

The discussion is followed by an analysis of sexual harassment, discrimination and interpersonal/relationship conflicts in the banking sector. Those conflicts are shown to have low relevance in the sector in comparison to workplace bullying. Reasons behind these differences in relevance are explored, as the shortcomings of legal definitions of sexual harassment are presented, and the misalignment between those conflicts and unions' discourse are detailed. Sexual harassment and discrimination are shown to be of lesser relevance independent of banks' characteristics, while relationship conflicts are the focus of HR managers in all banks, independent of the organization's characteristics.

Finally, I present a description of the role of legal conflicts and conflicts originated in termination and layoff processes in the banking sector, as well as sectoral variation of those types of conflicts. Legal conflicts are shown to be centered around overtime issues throughout the sector, whereas important differences relating to the termination process in public and private banks are highlighted. Legal conflicts are shown to be linked to bank's size, nature and type of operation (i.e. legal conflicts, notably overtime issues, are more relevant in large banks, public-sector banks, and, among smaller banks, in the ones with activities closer to the ones of a commercial bank), whereas differences regarding the nature of bank (i.e. public vs private), are in the root of the differences regarding conflicts related to termination processes.

The chapter is concluded with schematic models highlighting the factors that are identified to be related to the occurrence of the different kinds of conflicts in the sector.

## **Workplace Bullying**

### ***Workplace Bullying – Unions and Banks’ Perspectives***

Workplace bullying was defined at Chapter 2 as **the systematic exhibition of significant aggressive behavior towards someone in the workplace (subordinate, colleague or superior), or the perception of being exposed to those systematic negative behaviors in the workplace.** It was also shown that previous research in Brazil tended to focus on the victim’s experience of workplace bullying, ignoring how the phenomenon is understood and experienced at the organizational level.

It is undeniable that workplace bullying is one of the main topics whenever conflict in the workplace is discussed at the banking sector. In union publications, the first references to the term *assédio moral* (workplace bullying in Portuguese, as used in Brazil) are dated from early 2000s. The union of the ABC Region (*Sindicato dos Bancários do ABC*) was already informing its members about workplace bullying in March 2001, through the union’s newspaper. Comparing it in terms of its severity to sexual harassment, the newspaper brought one of the early definitions of workplace bullying to bank workers:

*The name is somewhat unknown, but the attitudes are well-known by the employees. It is characterized by its vexing behavior, in which the boss starts to persecute and isolate the employee, through insinuations or verbal threats of termination, leaving the worker with psychological instability, leading to his forced request to quit. (Notícias Bancárias 2001)*

Evidently, situations that could be classified as workplace bullying were already published in unions’ newspapers before 2001 (e.g., *Suplemento Diário da Folha Bancária* 1980; *Folha Bancária* 1986), but it was only in the early 2000s that the concept

was adopted by unions. According to the union's description, workplace bullying's goal was to force the employee to quit or to be terminated, and its methods included demands for high amounts of overtime work and work at weekends, and the concentration of work duties on one single employee. The union also cited Barreto's (2000) research and pointed in the direction of a relationship between workplace bullying and increasing suicide rates or health issues involving victims (Notícias Bancárias 2001).

In September 2001, the union magazine *Revista dos Bancários* also devoted four pages to the topic of workplace bullying, with a specific focus on *Banespa*, a state-owned bank, which later went through a privatization and merging process. Once again based on Barreto's research, the bullying attitude was described as repeated acts of humiliation, excess of demands, accusations of incompetence, constant threats of termination, and performance goals that are impossible to be achieved, resulting in health issues to the victim (Bento 2001). In reality, the issue of workplace bullying was already so prevalent in 2001 in *Banespa*, that it was a topic in a panel at the 15<sup>th</sup> National Congress of Banespa Workers, in 2001 (Jornal Afubesp 2001b).

Earlier in 2001, in an interview to *Banespa Workers Association's* newspaper, Barreto blamed 'neoliberal policies' of the time as enhancing factors for the occurrence of workplace bullying (i.e. due to pressures for labor law flexibilization, rise in unemployment, privatization processes, etc.). Barreto also stated that, although the manager/aggressor<sup>15</sup> cannot be considered innocent, the organization holds most of the

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<sup>15</sup> In this dissertation the terms (alleged) aggressor/perpetrator and victim/target are used to refer to the parties involved in a workplace bullying event. I have opted for the term aggressor or perpetrator instead of harasser (in Portuguese *assedrador*), or bully, in order to avoid confusions between parties involved in workplace bullying and sexual harassment cases.

blame for the bullying, as the manager is simply a mediator of companies' policies (Jornal da Afubesp 2001a).

Likewise, in January 2002 the union of São Paulo (*Sindicato dos Bancários de São Paulo*) also described in its newspaper workplace bullying situations in a private bank, defining it as:

*Bosses yelling, professional disqualification, constant humiliations, critiques to the job performed and termination threats.* (Folha Bancária 2002c)

After the expression workplace bullying was first used at *Folha Bancária* (São Paulo Union's main newspaper), its usage became constant, describing a wide range of cases, such as: banks publishing rankings of the employees according to their sales performance, generating pressures on workers and managers of all levels (Folha Bancária 2002b); superintendents and managers suggesting employees to use certain clothes to "attract customers" (e.g., low cut garments or tight skirts); employees having to use Brazilian national soccer team jerseys during the world cup, in an office full of Brazilian flags during the world cup period (Folha Bancária 2002a); termination threats if new worktime arrangements were not accepted (Folha Bancária 2003a); performance goal achievements demanded aggressively (Folha Bancária 2003b); prohibition for employees to use the branch's restroom (Folha Bancária 2010a).

It is worth noticing that while in the beginning cases described as workplace bullying seemed to be more connected to manager's individual behavior and the intention to force quitting, unions' publications quickly revealed a developing consensus over defining workplace bullying around the idea of attitudes somewhat related to the pressure for reaching performance goals defined by top management. The usage of the expression *metas abusivas* ("abusive"/impossible performance goals)

became recurrent in unions' publications, always following any piece about workplace bullying, even becoming part of the collective bargaining demands over the issue of workplace bullying and workplace environment (Folha Bancária 2007a). Even in a clear case of horizontal harassment due to a physical disability, the union opted to frame the issue as bullying, indirectly connected to pressures to achieve goals. In the case described at Folha Bancária in May 2009, the employee who had a disability in one leg informed about harassing behavior by a colleague, which included providing knowingly wrong information, pinches in the leg, and cutting the stocking used by the employee to protect her injured leg. This case was used by the union to inform workers about the new campaign against workplace bullying and to incentivize workers' solidarity. According to the Health Secretary of the Union, this kind of behavior was explained by pressure for performance goals and results, consequences of international crisis and mergers and acquisitions in the sector (Folha Bancária 2009a).

In some cases described by the union, it is not clear whether the negative behavior is understood as institutional or specific to a certain branch or manager (e.g., campaign "The Apprentice – who will be fired today?" (Folha Bancária 2006b), or workers having to vote in the branch's employee of the month, with impacts on performance assessment of those not voted (Folha Bancária 2010b)).

Anyhow, unions' newspapers reveal the consolidation of the understanding of workplace bullying as an institutional or structural problem of the sector. If initially organizations were blamed for their complicity or permissive environment to managers' abusive behavior (Folha Bancária 2003c), and workers were recommended to not understand their experience as victims as individual, but as a collective problem (Jornal da Afubesp 2001a), now there is almost a consensus among union leaders that

workplace bullying is a structural issue, directly related to top down pressures to reach goals, as evidenced by interviews with union leaders:

*Our perspective on workplace bullying here is that it is an institutionalized problem. It is implicit in the employment relationship, due to some practices adopted by the banks, such as the performance goals. The goals have no limit. They are numbers that never go down, never! [...] That is why we have such a difficult relationship with the goals, no matter the bank, whether public or private. (Interview - CriticalLocalUnion)*

*The conflicts that are more recurring are the ones about workplace bullying, because of the logic behind the performance goals, of the high productivity of the system. Currently the banks have a goal system, which through technology, measure your goals and performances the whole time. [...] The inability to reach this goal is what leads the banking worker to feel incapable, leading to [his/her] illness. (Interview 1 - BigLocalUnion)*

In the cases where pressure for goal achievement is observed, unions describe several ways in which this pressure can be characterized as workplace bullying. Since the pressure is understood as structural, some union leaders believe that the managers who bully are those who are unable to properly deal with the pressure that they receive from their superiors, channeling it to their own team. Actually, it is believed that most managers who are aggressors are also victims of workplace bullying themselves<sup>16</sup>. This might reflect in managers pressuring female workers to not get pregnant, in order to be able to continue to reach the department's performance goals, threats of termination in case goals are not achieved, usage of humiliating or aggressive words, etc.<sup>17</sup> It is worth noting that the unions recognize that the most humiliating and explicitly vexing bullying behaviors, such as dressing up the worst ranked employee as a clown, or putting a

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<sup>16</sup> Interview 2 - BigLocalUnion.

<sup>17</sup> Interview 1 - BigLocalUnion.

pineapple in his/her desk, somewhat common in the early 2000s, are almost inexistent today, when bullying behaviors are considered to be “subtler”<sup>18</sup>.

Although unions believe that the problem of workplace bullying is mostly structural, they recognize that it is not always easy to differentiate what is an organizational decision or culture, from what is simply poor individual management<sup>19</sup>. This also leads to some discussion of the adequacy of the term workplace bullying, as several union leaders preferred the term “organizational violence,” which clearly identifies the problem at the organizational level.

This union understanding of workplace bullying as an organizational issue is not shared by the banks. Managers interviewed tended to describe typical workplace bullying situations as individual behaviors by certain managers and employees – the bullying is not caused by the existence of goals per se, as argued by unions, but by the inadequate way that certain managers demand the goals to be achieved<sup>20</sup>. This means that although banks do not recognize the problem as structural, they recognize that instances of bullying might be observed in the workplace. In reality, HR managers describe attempts to change individual attitudes of certain managers with potential bullying behavior. That is the case when HR identifies that goals are being demanded in an aggressive or inadequate way, or when HR observes that, with the excuse that “reaching the goal is necessary,” unlawful practices are being perpetrated in the workplace, such as forcing the employee to “sell” legal vacation days, or to register the end of the workday in the system and go back to work afterwards<sup>21</sup>.

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<sup>18</sup> Interview 3 – BigLocalUnion

<sup>19</sup> Interview TraditionalConfederation.

<sup>20</sup> Interview MediumNationalBank and Interview 1 - BiggerPrivateBank.

<sup>21</sup> Interview 2 - BiggerPrivateBank.

Once the problem is understood by banks as individual, not structural, they can also identify individual manager characteristics being linked to the bullying behavior. In more than one bank the description of the typical bully manager links him/her to an “old-school” style of management, less concerned with the employee and managerial tools provided by the organization – characteristics each time harder to find in the “new generation” of managers<sup>22</sup>.

The different understandings over the issue of workplace bullying between banks and unions is also reflected in their perception of how pervasive the problem really is. A common complaint by banks in Brazil is that “for unions, everything is considered workplace bullying.”<sup>23</sup> To a bank manager, unions are unable to differentiate what is workplace bullying and what is simply a relationship problem, using the term “workplace bullying” for all kinds of cases. This problem is even recognized by union leaders, at least at the confederation level, who expressly state that there is an effort to educate bank workers about what *really* constitutes workplace bullying<sup>24</sup>.

Those different perspectives are also clear in the vocabulary choices of banks and unions. Whereas in interviews with union leaders and in unions’ newspapers the terms “workplace bullying” and “organizational violence” were constantly used, the term is seldom used officially by banks. Although in interviews most managers openly use the term workplace bullying, in some banks the official usage of the term is found less often, except in the context of trainings to prevent workplace bullying. Even the official CBA channel (covered in Chapter 6) receives two different treatments by unions and banks. While bank managers use the channel’s official name (i.e. “Protocol for

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<sup>22</sup> Interview 2 and 5 - BiggerPrivateBank.

<sup>23</sup> Interview 5 - BiggerPrivateBank and Interview – MediumNationalBank.

<sup>24</sup> Interview BigConfederation and Interview TraditionalConfederation.

prevention of workplace conflict”), almost all union leaders refer to it as “the CBA’s workplace bullying clause.”

***Workplace Bullying – The Role of Courts and the Ministério Público***

So far, I have discussed the perspectives of unions and managers regarding the issue of workplace bullying in the banking sector, but the judicial system should also be considered in order to have a complete picture over the development of the concept of workplace bullying and its relevance to the banking sector.

Although workplace bullying is not expressly covered by the existing national employment legislation, employment courts have been ruling extensively about the issue since mid-2000s, mainly in claims related to the banking sector. The goal of this section is not to analyze the court decisions from a legal standpoint, but to provide a summary of how courts have been interpreting workplace bullying in recent years.

Claims linking workplace bullying to performance goals have been decided at all levels of employment courts several times, not only in relation to the banking sector. For instance, the Superior Labor Court (*TST – Tribunal Superior do Trabalho*) has once decided that the use of the word “offender” (*ofensor*) to name employees who have not met their performance goals, in conjunction with constant termination threats, was enough to be considered workplace bullying<sup>25</sup>. In another case involving a bank, the *TST* confirmed that certain actions for pressuring for performance goals’ achievement should be considered workplace bullying, even using the expression “impossible goals” (*metas impossíveis*), which is constantly used by the unions in their newspapers<sup>26</sup>. In another case in a different bank, manager’s use of swearwords and negative nicknames

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<sup>25</sup> TST-RR-130720-76.2015.5.13.0023

<sup>26</sup> TST-RR-204-86.2013.5.15.0150

(e.g., *burro*, *ignorante*, and *cara de morto* – literally, dumb, stupid, and dead face) when demanding that goals were reached, was considered evidence of workplace bullying<sup>27</sup>. But even in the highest labor court, there are cases involving demands for reaching performance goals which are not considered workplace bullying. For instance, the manager saying to his subordinates that “who doesn’t reach the goal is not worth to wear the company’s uniform” (“*quem não batia a meta não era merecedor de vestir a camisa da empresa*”) is not enough to characterize workplace bullying, being a lawful exercise of management’s prerogatives<sup>28</sup>. Likewise, cases where management’s “excessive behaviors” were not clearly targeted at the plaintiff, were also not considered workplace bullying<sup>29</sup>. Some decisions are revealing about the kind of claims that were considered workplace bullying by plaintiff attorneys. For instance, in another case involving a bank, TST had to confirm that the mere demand for reaching a certain goal and the disclosure of the goals are not enough to characterize workplace bullying<sup>30</sup>.

Evidently, all those examples of the superior court are found in much higher volume in the regional courts of appeals (*TRTs – Tribunais Regionais do Trabalho*). In São Paulo, for instance, the TRT has decided that making an employee who had not reached the goal use a clown nose, even if only once during the employment contract, might be evidence of workplace bullying<sup>31</sup>. Obviously, cases that were not considered workplace bullying could still be considered reproachable enough so as to guarantee some kind of financial repair to the plaintiff for psychological damages<sup>32</sup>. In other cases,

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<sup>27</sup> TST-RR-1556100-50.2007.5.09.0010

<sup>28</sup> TST-RR-109500-13.2011.5.17.0003

<sup>29</sup> TST-RR-6769-75.2011.5.12.0035

<sup>30</sup> TST-RR-1600-95.2006.5.03.0112

<sup>31</sup> TRT/SP: 00445200643202000

<sup>32</sup> TRT/SP: 00526007920065020301

regional courts have found that even rigorous or harsh demands for goal reaching<sup>33</sup>, or disclosure of the results or rankings of specific sales campaigns<sup>34</sup>, might not be considered workplace bullying, mainly when the actions do not seem targeted individually at the plaintiff<sup>35</sup>, or the negative consequences for not reaching the goals do not seem clear. In all those cases, those actions are considered legal exercise of management's prerogatives.

It is worth noticing that in those cases that reached the higher labor court, awards specifically related to individual workplace bullying in the banking sector were usually limited to BRL 30,000.00 (approximately USD 8,500 as of May 2<sup>nd</sup> 2018), considerably less than average awards related to overtime payment in the sector<sup>36</sup>.

The issue of organizational or structural workplace bullying has also been analyzed by courts. TST has repeatedly considered companies' rules to be organizational workplace bullying, such as the case of a rule of quasi-mandatory participation in company chants and dances in Wal-Mart<sup>37</sup>, or the application of some extreme rules regarding authorization to use the restrooms during the worktime<sup>38</sup>. But, in other cases, the expression "organizational workplace bullying" was also used to characterize individual manager's behaviors regarding demands for goal achievement<sup>39</sup>.

If the analysis of court decisions shows a certain division between what is considered workplace bullying and what is simply exercise of management rights, the position of the *MPT – Ministério Público do Trabalho* (Labor's Federal Prosecution

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<sup>33</sup> TRT/SP: 01226200701602007

<sup>34</sup> TRT/SP: 02870200647202002

<sup>35</sup> TRT/SP: 02136200806402008

<sup>36</sup> e.g., TST-RR-64200-78.2012.5.13.0011

<sup>37</sup> TST-RR-21285-80.2014.5.04.0403

<sup>38</sup> TST-RR-1119-37.2014.5.09.0872

<sup>39</sup> TRT/SP: 100168534.2013.5.02.0472

Office) is much more aligned to the unions' vision of workplace bullying. Using its prerogatives to file class actions representing a group of workers when collective employment rights violations are observed, *MPT*'s Offices in different regions have filed since mid-2000s a high number of class actions against several banks, questioning practices that they consider "organizational workplace bullying." There is information of class actions filed or investigatory procedures started by the *MPT* against different banks in the states of São Paulo, Piauí, Bahia, Santa Catarina, Tocantins, Rio Grande do Norte, Rio Grande do Sul, and Distrito Federal. In several of these cases, the courts have found the banks to be guilty of organizational workplace bullying. A closer look at some of these decisions is informative about the *MPT* and the courts' perspective on the topic.

In a class action in Piauí, for instance, the regional court of appeals has confirmed the decision that found **structural** workplace bullying in a specific bank. In this case, the bullying is described to be directly connected to the bank's specific incentive program for reaching sales goals and the way that it was applied by a specific regional superintendent. The decision reaffirms that demands for goals and results is not illegal *per se*, but that they can become illegal if they are excessive or intense enough to cause health problems in the employees. Among those excessive actions, the decision highlights some examples, such as the employee receiving an average of 15 messages per day via phone or text-message demanding goals to be reached, with peaks of 60 messages on a single day. The content of those messages included sometimes compliments and motivational texts, but always demanding sales to be completed. In another case, an e-mail had the phrase "the dialogue is the best persuasion method, but if it doesn't work, we will use our last resource," which could be understood as threats

of downgrading (*descomissionamento*, i.e. removal of special or managerial position, with the consequent removal of salary bonus)<sup>40</sup>. The transcription of the official summary of the court of appeals decision is revealing about the court's perspective:

*STRUCTURAL WORKPLACE BULLYING CHARACTERIZED.  
COMPENSATION FOR COLLECTIVE PAIN AND SUFFERING.*

*As long as there is a human being under torture, all humanity will be in question, says [Brazilian Author] Graça Aranha. The society and the authorities could not remain indifferent to the phenomena of mental disorders arising from work, the third largest cause of withdrawal from work, caused by the adoption of aggressive business management that suffocates and requires from employees superhuman performances. How many must kill themselves to show that hundreds or thousands of them are sick? The category of bank workers is the holder of records of medical leaves from psychic illnesses in Brazil. And in the BANK this phenomenon was also observed with great intensity. To reorganize the structure of the company, to cut costs, to demand that goals are met. All this is part of the daily life of those who make a career in the BANK. This is followed by several abrupt downgrading, closure of hundreds of branches in a matter of a few months and total abandonment of the managers who work in the company. Thus, the decision is upheld [...]. (TRT - RO N° 0080511-82.2013.5.22.0004)*

In a case of a different bank, in another regional court of appeals, the court denied *MPT*'s demand that the sales goals and the way that they were changed and defined were abusive, and therefore, constituted structural workplace bullying. Nevertheless, the bank was convicted for abusive behaviors in the way that those goals were demanded, such as the use of termination threats and of messages outside regular working hours, etc.<sup>41</sup>

In a different case at another bank and at a different regional court, the *MPT* is filing a lawsuit based, among other evidence, on surveys elaborated by the *MPT* and responded by employees of this specific bank. 88% of the respondents in this case

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<sup>40</sup> TRT-RO-0080511-82.2013.5.22.0004

<sup>41</sup> TRT-RO-0000969-96.2014.5.21.0007

consider their goals to be excessive, and 66% consider that the goals are demanded on an “excessive manner.” Likewise, results of the percentage of employees who are able to reach the sales goals are also presented as evidence of the problems regarding the goal system. In 2015, the percentage of employees able to reach the monthly goal varied from 26% in October, up to 54% in March (MPT Notícias 2017).

In the cases that banks were found guilty of collective damages due to their workplace bullying practices, awards varied between BRL 1,000,000.00 to BRL 5,000,000.00 (approximately USD 271,000.00 to USD 1.351,000.00<sup>42</sup>), although *MPT*'s demands are usually much higher, reaching sometimes BRL 460,000,000.00 (approximately USD 124,000,000.00<sup>43</sup>). Those values are all directed to the *FAT – Fundo de Amparo ao Trabalhador*, a collective fund administered by the government to be used to finance work-related social programs and unemployment insurance. Besides that, some court decisions also mandate the creation of workplace committees to deal with workplace bullying, or changes in the ones existing in the workplace.

Besides the class actions, the *MPT* also has different activities targeted at workplace bullying in the banking sector. First, the *MPT* is also a possible channel to receive complaints of employees who believe themselves to be victims of workplace bullying – those complaints might later become the basis of the class actions, as described above. According to the *MPT*, one third of all the complaints that they receive regarding workplace bullying come from the banking sector (Basilio 2014). Moreover, in 2013, the *MPT* published nationally a guidebook about workplace bullying in the banking sector. Besides describing what should be considered workplace bullying and

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<sup>42</sup> Exchange rate of October 25, 2018.

<sup>43</sup> Exchange rate of October 25, 2018.

the possible legal protections to the victims and other possible responses, the guidebook also warned about the risks of “seeing everything as workplace bullying” (MPT 2013).

### ***Workplace Bullying – Sectoral Variation***

By and large, a general idea regarding the relevance of workplace bullying is shared all over the sector: most unions understand the issue of workplace bullying as central to the banking sector and as a structural issue linked to performance goals, and most banks see it as an individual management issue. However, there are observable variations regarding how relevant the issue really is at individual banks. More specifically, as it will be explained below, the collected data suggest that the relevance of workplace bullying in specific organizations might be connected to bank size (i.e. the larger the bank, the greater the relevance of the issue) and the nature of the bank operations (i.e. workplace bullying might be more present in the private sector, given its linkage to performance goals).

Although one might expect issues regarding unions’ criticisms of aggressive performance goals to be more present in the private sector, those issues are also observable in large state-owned banks. According to a union leader, in large state-owned banks the process of implementing performance goals started around 1997, first in commercial branch departments, later expanding to telemarketing and even back-office functions, usually being linked, at least partially, to the worker’s variable pay<sup>44</sup>.

However, the same criticism is not observable in smaller or regional state-owned banks. In the two cases of this level analyzed in this sample, unions and managers agreed that workplace bullying was not relevant in those regional/local state-owned banks, suggesting that this might be linked to the lack of aggressive performance goals or the

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<sup>44</sup> Interview TraditionalConfederation

absence of any linkage between performance goals and any amount of variable compensation. It is worth noticing that in those cases of regional/local state-owned banks, local unions put the workplace bullying debate in the center of their relationship with the larger banks operating in the region, but not in their relationship with those regional state-owned banks. This behavior reinforces the idea that this variability is probably connected to the banks' practices, and it is not due to variation in the unions' strategies.

It should also be highlighted that in one of these cases a new top executive with a private sector background and mindset seems to be trying to implement performance goals among management practices, generating the first debates among union leaders about workplace bullying<sup>45</sup>. This reinforces the link between unions' understanding of workplace bullying and business practices related to performance goals, which unions seem to understand to characterize the sector as a whole, no matter the nature of the operation:

*[The pressure for achieving performance goals] is an integral part of the bank system. [State-owned banks] use the same management model of the private banks and try to be more similar to private banks each day – because they are all evaluated [by the market] for operational efficiency – [i.e.] cost and results. (Interview PublicLocalUnion)*

It is worth mentioning that although unions seem to characterize workplace bullying as a widespread problem in the banking sector, there might be a link between workplace bullying relevance and bank size, as the cases of the regional state-owned banks might also be suggesting.

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<sup>45</sup> Interview CriticalLocalUnion

In the smaller private banks (i.e. less than 2,000 employees) the issues of workplace bullying and pressure for performance goals are not described as a central or recurrent problem by managers, and there are no cases cited by union leaders or in union publications. Bank managers suggest that this might be connected to characteristics of the business strategy and the process to define performance goals, personal characteristics of the employees, or simply a different organizational culture<sup>46</sup>. Another possible explanation is that, since union presence seems to be important for interpreting “impossible” performance goals as instances of structural workplace bullying, in smaller private banks the issue of workplace bullying is less relevant because of the lack of relevance of the union in the workplace.

This pattern is also observable in the class actions filed by the *MPT*. Although it is possible to find class actions on workplace bullying referring to all the large banks in the country, they are extremely rare for the medium-sized banks, and completely inexistent for the smaller ones.

Finally, an important distinction should be made between public and private banks regarding the behaviors which are understood as individual manifestations of workplace bullying, specifically termination threats. Due to the different legal rules governing the workplace, which will be detailed later in this chapter, victims in the private sector face more termination threats than in the public sector, where *de facto* there is a just cause clause in place. In the public-sector, termination threats are less common, due to legal limitations, but they are substituted by threats to remove the

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<sup>46</sup> Interview CorporateNationalBank, OtherForeignBank, and CorporateForeignBank.

worker from a higher paid or management position (*descomissionamento* / downgrading)<sup>47</sup>.

## **Sexual Harassment, Discrimination and Other Relationship Conflicts**

### ***Sexual Harassment***

If workplace bullying has been a central topic in the banking sector in the last two decades, the issue of sexual harassment does not find the same prominence in the sector, despite the concern over the topic demonstrated by both bank managers and union leaders.

In Brazil, sexual harassment is defined by law as a crime since May 15<sup>th</sup> 2001, with the following definition:

*To embarrass or constrain someone with the purpose of gaining sexual advantage or favor, by the agent's use of his superior status in the exercise of employment, work position or job function.*

Even before the enactment of the law, it is possible to observe some attention being paid to the issue of sexual harassment in unions' publications (e.g., Pompeu 2001), usually in connection to the International Women's Day (e.g., Folha Bancária 2001). As in the contemporary publications about workplace bullying, the goal in those texts was usually to inform bank workers about the definition of sexual harassment and how it differs from simple consensual flirting in the workplace. Furthermore, those publications tried to incentivize that victims came forward and filed grievances with the union, at the same time that they highlighted the difficulties involved in gathering evidence of the harassment and the impacts that this can have in the victim's personal and professional lives (Pompeu 2001). In order to raise awareness to the issue, 100,000

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<sup>47</sup> Interview 1 – BigLocalUnion.

booklets on Sexual Harassment were printed and distributed by unions at the national level (Folha Bancária 2001).

Despite those early efforts and the existence of legislation on the topic, it is clear that sexual harassment discussion is less present than the discussion of cases of workplace bullying. In all the analyzed banks, no matter the size, nationality, or nature of the operation, the number of sexual harassment cases was very low or simply inexistent. In smaller banks, managers report a maximum of one sexual harassment case in the past decade – at least cases formally qualified as so. Even in larger banks, the number of cases is extremely low, mainly in comparison to workplace bullying. For instance, in a large bank, with approximately 1,400 complaints to the internal ombudsman office per year, only an average of 16 refer to potential sexual harassment cases<sup>48</sup>. Evidently, this does not mean that managers believe that there are no sexual harassment cases occurring in their workplaces – as it was already described by the union seventeen years earlier, their main challenge is to make sure that victims feel safe to bring those cases forward.

This concern seems to be shared by employees. In a large state-owned bank, LGBT and Women Collectives within the organization have been pushing the topic forward, pressuring management to develop campaigns about the issue. However, given the lack of hard evidence about the number of cases of sexual harassment in the workplace, management does not feel comfortable in putting a spotlight over the topic, being afraid to send a message that the issue is more prevalent in the workplace than it really is<sup>49</sup>. This difficulty, added to a perceived subjectivity in defining what constitutes

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<sup>48</sup> Interview BiggerPublicBank.

<sup>49</sup> Interview BiggerPublicBank.

sexual harassment and what is simply a legal flirtatious behavior, is shared by other managers in the banking sector.

It is interesting to note that the fact that sexual harassment is a criminal offense is also pointed by managers as a possible cause for the low number of cases reported. Given that the legal consequences for sexual harassment are much stricter than the ones for workplace bullying, considering its criminal nature, banks are more concerned with the quality of the evidence presented about an alleged sexual harassment case<sup>50</sup>. Likewise, even the Employment Courts seem to be more careful in defining what constitutes sexual harassment in comparison to what constitutes workplace bullying, or in analyzing evidence produced by the parties, given the gravity of a sexual harassment conviction and its consequences<sup>51</sup>.

This concern about low numbers of sexual harassment cases reported and the impression that real numbers might actually be higher is also shared by union leaders. They also have very few cases of sexual harassment to share, which is also evidenced by the lack of sexual harassment cases covered in unions' newspapers. The few cases that actually come to light receive as much attention as possible, in an attempt to raise awareness about the issue. That was the case of the cover piece of *Folha Bancária* in March 27, 2018, which described a sexual harassment case that had three female employees as victims, who reported the case to the union in 2015. The union's protests and pressure led the bank to investigate the case, which resulted in just cause termination to the perpetrator and his criminal prosecution and conviction in 2018. Although the case is described in detail, the names of the victims, of the aggressor and of the bank are

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<sup>50</sup> Interview 5 – BiggerPrivateBank.

<sup>51</sup> e.g., TRT-RO-1000837-39.2016.5.02.0085

not disclosed by the union, exactly due to the personal nature of the aggression (Folha Bancária 2018).

With the exception of one case described by a union which had a man as the victim, the totality of sexual harassment cases described by union leaders interviewed had women as victims, usually of young age (25 years old or less). It is noteworthy that both bank managers and union leaders described young workers as having more courage to bring sexual harassment cases forward and debate the topic<sup>52</sup>. Whether this occurs because they are the most common victims, or because they are more open to talk about the subject is unclear, although managers and union leaders seem to believe in the second case. Increasing the diversity in the workforce and strengthening the role of women collectives or gender commissions in unions and banks, also seem to be considered important ways to continue to raise awareness on the subject. The role of these women collectives might be important to remove some of the weight of the victim's shoulder, as the only one responsible for bringing the case forward, although those collectives might face legal barriers, given the individual nature of the sexual harassment from its legal definition.

Similar to what was observed in relation to the unions' communication efforts regarding workplace bullying in the early 2000s, currently most unions' communication efforts regarding sexual harassment aims at raising awareness over the topic and incentivizing employees to report cases that they experience or witness in the workplace. In February 2016, unions published at the national level the third edition of the booklet "Campaign of Prevention and Fight Against Sexual Harassment at Work,"

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<sup>52</sup> Interview 5 – BiggerPrivateBank and Interview CriticalLocalUnion.

which educated workers on sexual harassment definition and instructions for victims on how to report their cases.

The results of those actions aiming at raising awareness are still unclear. Besides the low number of cases reported, an internal union survey responded by 40,000 bank workers nationally presented that only 12% of the respondents considered it important to debate sexual harassment (Wrolli 2015). Although the number is a considerable increase in comparison to the previous year, when only 1% of the respondents held this position, it is still irrelevant if compared to the high support that the issue of workplace bullying has in all collective bargaining processes, as described earlier.

It should be mentioned that the pressure for reaching performance goals, which was central to the cases of workplace bullying, is also brought by unions to the center of the issue of sexual harassment. Although the individual agency of the aggressor is more easily recognizable in the cases of sexual harassment, the structural element of performance goals also is a part of the picture in cases of sexual harassment. A union leader describes what she considers a recurrent situation of sexual harassment that comes to her knowledge:

*The women bank workers constantly complain that others [in the department] are always suggesting: 'you have to come with your goal-achievement clothes', which means 'come with sexier clothes, in order to please the customer' (Interview 3 – BigLocalUnion)*

Sometimes, this behavior is believed to be incentivized institutionally not only by the existing pressure for performance goal achievement, but also through other bank communication pieces. As an example, a union leader describes a magazine advertisement from a bank with a female model in the gym, sweating, with the words "Come meet *So-and-so* – she is the manager of your account." This ad generated

protests by the union, as people were depicted as “merchandise, and their bodies were explored to sell a product,” generating an environment more prone to inadequate sexual behavior<sup>53</sup>.

Finally, among union leaders it is common to understand sexual harassment cases not only as a consequence of the performance goals structure present in the banks, but also as a reflection and consequence of the sexism (*machismo*) in society, reproduced in the banks due to their male dominated top management positions<sup>54</sup>, an issue closely linked to diversity and discrimination, which will be covered in the next section.

### ***Discrimination and Other Relationship Conflicts***

The issue of diversity and discrimination plays a bigger role in the sector at the collective or organizational level, than in the individual level. In interviews with management, a very small number of cases of discrimination in the workplace were described (e.g., homophobia<sup>55</sup>). In a large state-owned bank, individual grievances related to discrimination are usually less than 10 cases per year, representing approximately 0.1% of the total grievances filed with the bank’s internal channels<sup>56</sup>. Likewise, in a large private bank, individual grievances related to discrimination are also usually less than 10 cases per year, representing approximately 0.8% of the total grievances filed with the bank’s internal channels<sup>57</sup>. At union publications, the few

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<sup>53</sup> Interview 3 – BigLocalUnion.

<sup>54</sup> Interview 3 – BigLocalUnion.

<sup>55</sup> Interview CorporateNationalBank.

<sup>56</sup> BiggerPublicBank Annual Reports (2009, 2010, 2011 and 2014).

<sup>57</sup> BiggerPrivateBank Annual Reports (2014, 2015, 2016). In 2017 the number of grievances filed with the Ombudsman referring to discrimination went up to 37, although only one of the cases were found to have merit after investigation (BiggerPrivateBank Annual Report, 2017).

individual cases of discrimination described were usually framed as workplace bullying (e.g., Folha Bancária 2009a).

At the organizational level, several banks described ongoing projects on diversity and special actions towards minorities in the workplace, and concerns that those issues might be a potential source of workplace conflicts. One small international bank had “inclusion and diversity” as the main organizational topic in 2017: the financial sector, mainly at corporate and investment banks, is still seen as a very traditional workplace, and the HR department has the mission to promote greater diversity and inclusion, by providing training on unconscious bias and promoting increased representability of minorities<sup>58</sup>. Another bank, with headquarters in the US, also described a great focus on gender and racial diversity, but in this case as a topic led mostly by the headquarters<sup>59</sup>. In a large public bank, the issue of diversity is so central, that the groups representing the LGBT community and other minorities have periodical meetings with the bank’s CEO<sup>60</sup>.

At the sectoral level, the Brazilian Federation of Banks (FEBRABAN) has already conducted two “Diversity Census” in order to understand the real scenario regarding diversity in the banking sector – the first one in 2008, and the second in 2014 – likely motivated by the *MPT*’s sector wide investigation and litigation over the topic (Cardoso 2005). The censuses revealed: (1) a small predominance of men in the sector (51.7%); (2) a concentration of both men and women in the interval between 25 and 34 years old (34.8%, and 38.8%, respectively); (3) a vast majority of white workers (71.4%), although the proportion has changed since 2008 (77.4% of white workers at

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<sup>58</sup> Interview SmallForeignBank.

<sup>59</sup> Interview CorporateForeignBank.

<sup>60</sup> Interview BiggerPublicBank.

2008)<sup>61</sup>; (4) 3.6% of the workforce has some disability<sup>62</sup>; (5) average women salary equivalent to 77.9% of the average men salary; (6) average salary of African descendants equivalent to 87.3% of the average salary of a white worker; (7) and a predominance of men in top management positions (FEBRABAN 2014).

The issue of diversity and discrimination has comparatively less coverage in the unions' communication than other issues such as workplace bullying. Except from special dates (e.g., international women's day, black awareness day), the topic seems to come back only during the collective bargaining period, and yet, as a secondary issue (e.g., Folha Bancária 2015). It is worth noticing that unions have also pressured for the implementation of the two editions of the diversity census, as well as for changes in its coverage, by demanding the inclusion of sexual orientation questions in its second edition (Contraf-CUT 2014; Folha Bancária 2009b).

Besides the types of conflicts described so far, others are also cited in the interviews with bank managers. For instance, several banks have also described instances of interdepartmental conflicts. Those conflicts usually cover the definition of who is responsible for which activity in the organization (i.e. process conflicts), decisions of one department affecting the activities of another department (e.g., risk management department's decision barring activities from the commercial department<sup>63</sup>), or common conflicts between back-office and front-office departments.

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<sup>61</sup> According to the 2010 national census, among the overall Brazilian population 47.51% identify themselves as white and 50.94% as African descents (7.52% as *pretos*, 43.42% as *pardos*).

<sup>62</sup> According to the Law 8213/91 (art. 93), companies with 100 or more employees must comply with a quota for workers with disability, which varies from 2% to 5% of the total workforce of the company, depending on its size.

<sup>63</sup> Interview SmallForeignBank.

Evidently, those conflicts might occasionally escalate into interpersonal conflicts or even workplace bullying between employees and managers from different departments (see Baillien et al. 2015).

Finally, there are several other conflicts between peers or between employees and managers in the workplace which are relevant but do not characterize workplace bullying. Those are relationship conflicts which seem to be the result of the daily interactions in the workplace, and that miss the severity or repetitive elements to characterize workplace bullying or other of the conflicts described above. Those conflicts can refer both to relationship and task conflicts in relation to their content, and usually are observed in the daily interactions taking place in workplace. Although there are no measures of those conflicts in the workplaces studied, they are usually central to the definition of several HR policies and tools, such as workplace climate survey, feedback trainings, performance assessment tools, etc. In some banks the importance of those topics led the issue of conflict management to the center of their newly developed organizational culture<sup>64</sup>, while in others, those are central topics in the HR involvement in the performance assessment process<sup>65</sup>. Overall, those conflicts are observed in all organizations in the sector, although some variation in their occurrence is observable, even within the same organization, given some characteristics of the region, bank, department or the workforce. For instance, in a large public-sector bank, management describes that post-strike period is prone to the occurrence of conflicts between peers, involving the employee who had adhered to the strike and the ones who did not, as the striking employee assumes a position of someone “who has risked his job in the benefit

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<sup>64</sup> Interview MediumNationalBank.

<sup>65</sup> Interview CorporateNationalBank.

of those who did not want to fight.”<sup>66</sup> Likewise, in another bank, those conflicts are usually manifested by the employee after he/she was subject to a certain managerial decision, such as transfer for another branch, promotion denial or termination. In those cases, managers see these conflicts as a defense mechanism by the employee towards a management decision to which he/she disagrees<sup>67</sup>. Finally, cases of physical aggressions<sup>68</sup> are rare in the sector.

### ***Sexual Harassment, Discrimination and Other Conflicts – Sectoral Variation***

In general, little sectoral variation is observed for those other types of conflicts. Sexual harassment is understood as an important and delicate issue, but it is not actually relevant in any of the banks studied. The same might be said about discrimination, which is not central to any of the banks. For both sexual harassment and discrimination, the union attention is limited – there is some concern over both topics, but they are not a central part of unions’ discourse and strategies. In unions’ communications those topics just come to light during special dates or under special circumstances that happen to put a spotlight over a specific case with those types of conflicts.

Finally, relationship conflicts – and to a lesser extent interdepartmental (process) conflicts – seem to be present indistinctly in all the organizations in the sector. In all cases interviewed, those were common concerns for HR managers. In interviews with unions those conflicts tended to come up only when interpreted as workplace bullying or as potential sources of future workplace bullying.

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<sup>66</sup> Interview BiggerPublicBank.

<sup>67</sup> Interview MediumPublicBank.

<sup>68</sup> Interview CorporateNationalBank.

## **Legal Conflicts**

### ***Legal Conflicts – Topics and Definitions***

There is another important type of conflict in the banking sector that should be described: legal conflicts. Evidently, other conflicts such as workplace bullying, and sexual harassment have legal impacts or are based on legal provisions, and are object of court decisions, but, at the same time, they are experienced as conflicts independently of their legal definition. However, there are a number of conflicts in the workplace which are only experienced if having the employment law as their basis. It is no coincidence that they are usually not brought to light during the employment contract, but most often only after its termination, as it will be explained in Chapter 6.

Among legal conflicts in the banking sector, issues related to overtime compensation hold an unquestionable central position.

The general worktime rule in Brazil, as defined by the Constitution (Art. 7, XIII – XVI), defines an 8-hour per day and 44-hour per week limit to worktime – any work beyond those limits should be remunerated with a minimum additional of 50%. The Consolidation of Labor and Employment Law (art. 58 to 65) further regulate the general rules regarding worktime, while exempting from this general rule employees that conduct external activities, employees who work remotely, and managers (art. 62).

However, the Consolidation of Labor and Employment Law has special rules applicable exclusively to bank workers, which limit their normal worktime to six hours per day and thirty hours per week, from Monday to Friday (art. 224), which can be exceptionally extended to eight hours per day and forty hours per week, with adequate overtime compensation (art. 225). Managers are exempt from this rule (art. 224, § 2º)<sup>69</sup>.

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<sup>69</sup> The manager definition for both exceptions (art. 224 and art. 62) are different from a legal standpoint, but there is no need to delve into this discussion in this dissertation.

This specific worktime rule for the banking sector leads banks to try to develop different legal strategies to generally overcome the six-hour limit, with limited success. Given the financial impacts that court determination of overtime payment might have in lawsuits, overtime payment in the banking sector is the most recurrent topic in litigation among all the banks interviewed. The totality of the banks interviewed pointed to overtime related issues as the most recurrent conflict of legal nature observed in their workplace.

Another conflict of eminent legal nature that should be mentioned is the one referring to pay equity (*equiparação salarial*). The Consolidation of Labor and Employment Laws (art. 461) determines that all work of equal value, provided to the same employer, in the same office, should be compensated with the same salary, given some legal limitations<sup>70</sup>.

It is worth mentioning that although the 2017 Labor and Employment Law Reform has changed some rules regarding the legal limitations to pay equity, the banking sector's special worktime rules were not changed.

### ***Legal Conflicts - Sectoral Variation***

Legal conflicts relating to overtime payment seem to be an issue impacting almost all banks nationally, given its linkage to the specific work time legislation applicable to the whole sector. However, considering litigation levels as a proxy to the

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<sup>70</sup> “Art. 461. In identical job functions, all work of equal value, provided to the same employer, in the same business establishment, will receive equal wages, without distinction of sex, ethnicity, nationality or age.

Paragraph 1 - Work of equal value for the purposes of this Chapter is the one conducted with equal productivity and with the same technical perfection among persons whose difference in length of service for the same employer is no longer than four years and the difference of time in the function does not exceed two years. [...]”

volume of legal conflicts, some variation within the sector is noticeable, with impacts from bank size, nature and type of operation.

There is no question regarding the relevance of those conflicts in large banks. The five large banks are among the top nine litigators in the Superior Labor Court (*TST*) - the three private owned are the only organizations from the private sector to be in the top-ten of this ranking (TST 2016a), with similar high numbers in all the regional courts (CSJT 2016). Although in absolute numbers medium-sized banks have much smaller litigation levels than the large banks, there are cases in which the relative numbers are similar to the ones observed for larger banks. In the case of one medium-sized bank, for instance, the current number of lawsuits in the *TST* is equivalent to 26% of the current workforce of the bank (TST 2016b), much higher than the average of the large banks, as described later.

The interviews show, however, that smaller banks tend to have significantly fewer cases in the courts – although whenever a case is observed, it is likely to cover overtime payment issues. Among the smaller banks, some variation is noticeable in relation to the type of the operation of the bank. The closer the bank activities are to commercial bank activities, the higher the relevance of legal conflicts in the bank. This might be linked to the nature of the workers' activities – i.e. workers in commercial bank-like activities might be more exposed to worktime related conflicts -, or it might be linked to characteristics of the workforce and fear of retaliation in a smaller job market on investment/corporate banking type of activities. The available data, however, is not able to properly test those hypotheses.

Furthermore, relevance of legal conflicts also seems to be closely connected to the nature of the bank operations, being more prevalent in banks in the public sector.

This is explained by the usage of litigation as a proxy to legal conflicts. As it will be explained in the next section, workers in the private and public sector are subject to different rules regarding termination, which impacts the possibilities of retaliation towards those workers who file lawsuits while employed. Given that in the public-sector workers can only be terminated for just cause, lawsuits over worktime issues of current employees are observable in state-owned banks much more often than in the private sector. It is no surprise that while the number of cases in the *TST* for large state-owned banks is approximately 10% of their current workforce, in large private banks this number is closer to 5% (TST 2016b).

Finally, whereas overtime related issues seem to be widespread over all banks nationally, regional differences in terms of court decisions regarding pay equity seem to have a bigger impact on the occurrence of this type of conflicts among certain banks or certain local branches of those banks<sup>71</sup>.

Evidently, using litigation levels as a proxy for the presence of legal conflicts is problematic, given that the resolution channel is being used to measure the presence of the conflict. However, given the lack of a better measurement, and the fact that those conflicts are relevant only once manifested in court, this is the best available data able to provide a good picture of the sector. Moreover, the general picture drawn from the litigation numbers of each bank is confirmed by the level of relevance of those conflicts in each bank as described by the interviewed managers.

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<sup>71</sup> Interview 3 – BiggerPrivateBank.

## **Termination**

### ***Termination – Relevance and Definitions***

There is another important source of conflicts in the banking sector, which refers to termination processes and organizational restructuring. As explained before, termination is usually the source of some legal conflicts, notably in the private sector, which has termination as a *de facto* requirement for litigation. Likewise, termination might be connected or be the result of other types of conflicts, such as workplace bullying and sexual harassment. However, termination is more than a *de facto* condition for litigation or a result of workplace bullying, presenting some particularities and closer connections to conflicts in the workplace that justify its individual analysis.

As briefly explained earlier, termination processes vary widely between banks in the private and the public sector. Although there are some specific legal and constitutional protections for employees in specific conditions (e.g., pregnant employee; elected union officials), as a general rule, employees in the private sector can be terminated without just-cause, if appropriate compensation is paid. Under this system, terminated employees without just-cause are entitled to a termination notice and a sort of severance package defined by law, which might be improved by collective bargaining agreements. Employers are exempt from most obligations to the terminated employee when the termination occurs for just-cause, in the cases strictly defined by law (*CLT, art. 482*), usually linked to serious or repeated disciplinary faults by the employee. In the public-sector, on the other hand, banks and other employers face several limitations in their ability to terminate, facing a scenario in which employees can be terminated, most often, only for just cause. Although it is possible to discuss the applicability of some of these legal rules regarding termination for workers in some state-owned or

public-sector organizations, depending on their employment legal regime, the truth is that courts tend to demand just-cause for all terminations in the types of public organizations studied here (for more information on this legal discussion, see Monteiro 2017).

This difference has several impacts on how termination can be a source of conflicts in public and private sectors. As highlighted earlier, in the private sector, just-cause termination makes the employer exempt from paying the legal severance package. Despite that, the numbers of just-cause terminations in private banks is extremely low. In smaller banks they are almost inexistent<sup>72</sup> – banks with headquarters in the US state that just-cause terminations are more common in the American headquarters than in Brazil<sup>73</sup>. This does not mean that termination is not a relevant source of conflict in the private sector.

In a medium sized private bank, it was exactly the widespread process of layoffs during a crisis period that was identified as responsible for changing workers relationship with the organization, elevating the issue of conflict to a central stage in the company. Up to the moment of economic crisis, workers had long tenure in the company, and their relationship with the organization was described as one of “gratitude.” Financial crisis led the organization to terminate almost 40% of its workforce and restructure its operations. The interviewed HR manager described that once the employees were terminated, their perception of what before was a reason to be proud and grateful, was reinterpreted as a strategy of the bank to harm the employee, which would later be discussed in litigation. More than simply impacting the employees

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<sup>72</sup> Interview OtherForeignBank.

<sup>73</sup> Interview CorporateForeignBank.

who were terminated, this process also negatively impacted the relationship between the organization and the employees who remained, as the issue of conflict was now more evident<sup>74</sup>.

This high number of terminations and restructuring in the period of financial crisis was observed in more than one bank, both in private and public sector. Still in the private sector, a small bank changing its operation's focus from retail to corporate banking terminated almost two-thirds of its workforce in a period of less than three years. Initially, the level of conflicts resulting from those terminations was extremely high, with almost 80% of the cases resulting in litigation. HR identified the source of the problem in the "quality of the termination process" and the lack of transparency in the reasons behind these terminations<sup>75</sup>.

The issue of termination in the private sector is a source of conflicts not only at the individual level, but also collectively, with the union. Besides the typical protests when facing high number of terminations in a certain bank, recently unions faced a new experience in the private sector. The scenario of economic crisis in the country and the need for restructuring after acquiring another bank led a large private bank to implement for the first time in its history a "Voluntary Resignation Plan" (PDV - *Programa de Demissão Voluntária*) under which the bank offers favorable conditions for those workers willing to resign, given that certain conditions are met. As a response, the main local union has refused to negotiate over the plan:

*We do not negotiate over the PDV, because the union's fight is to defend the job positions, the professional career, the career perspectives, so we do not negotiate over PDVs. [...] What we can do is to fight and pressure, in order to try to block the terminations – and by doing this, the bank*

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<sup>74</sup> Interview MediumNationalBank.

<sup>75</sup> Interview CorporateNationalBank.

*might improve the conditions of the plan. But we are against the PDV.*  
(Interview 1 – BigLocalUnion)

Despite the union’s position, almost 7% of the workforce adhered to this specific plan.

In the public-sector banks, the referred legal limits to termination result in different approaches to termination, although it is clear that the banks are facing the same kind of economic pressures of its private sector counterparts. Most terminations in state-owned banks occur only after a formal disciplinary procedure (*PAD – Processo Administrativo Disciplinar*) has taken place – which will be covered in Chapter 6. But there are cases in which, due to lack of performance improvement, employees are “invited to resign” or “induced to retire” – or managers are simply removed from their managerial position<sup>76</sup> (downgrading). In some cases, political or market pressures to restructuring force state-owned banks to develop other strategies to terminate a large number of workers, which might later result in formalized conflicts in the courts. That was the case in one local level state-owned bank that in the past decade put in place a “forced retirement plan,” later contested (and reversed) in court by the majority of the affected workers<sup>77</sup>.

In the large banks in the public sector, despite the legal limitations to termination, market and political pressures seem to make voluntary resignation plans, incentivized retirement plans, and restructuring plans, even more common. In 2017, 9,900 employees joined the plan for incentivized retirement on a large bank in the public sector (Rousselet 2017), while another large bank in the public sector created three “voluntary resignation plans” in the past year (Campos 2018). In the first bank, a

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<sup>76</sup> Interview LocalPublicBank.

<sup>77</sup> Interview LocalPublicBank.

restructuring plan, reaching up to top management positions, was also put in place, extinguishing existing positions, offering internal job market movements and severance packages for those who would voluntarily resign (Coluna do Broadcast 2018). This kind of restructuring plan faces resistance from all unions, who see it as a disguised termination plan. The “disguise,” however, harms traditional union strategies against termination:

*It is a disgraceful strategy, because you cannot say that they are eliminating job positions, because they maintain the overall number of employees [via forced transfers to other regions or departments]. [...] So our speech that there are layoffs going on is denied by management, [who say that] there was only migration to a different unit. It is hard, but we will continue to fight. (Interview CriticalLocalUnion)*

#### ***Termination – Sectoral Variation***

As it is clear from the description above, termination is a possible relevant source of conflict all over the sector, impacting small and large banks, noticeably in moments of crisis or organizational change. The differences in legal rules for banks in the public and private sector impact the strategy and approach of the bank to terminations, but it does not change the essence of the conflicts resulting from termination.

Evidently, individual bank characteristics and business strategies and results might impact turnover rates and individual impacts of termination, but they do not seem to be linked to specific set of characteristics of the organizations in the sector.

Moreover, terminations seem to be the source of some other conflicts, generating different responses by individual employees (e.g., litigation) and unions (e.g., protests, strikes, etc.). Evidently, litigation levels might be impacted by other factors, as discussed under the “legal conflicts” section, and unions response will be more present in organizations with high relevance of the union in the workplace, which it has been shown to be linked with bank’s size and nature of the operation.

## **Chapter conclusion**

This chapter has provided the reader with an in-depth picture of the relevance of the issue of workplace conflicts in the banking sector, covering the different types of conflicts that are manifested in the sector and how they vary among the sector depending on specific bank characteristics.

Special attention was paid to the issue of workplace bullying which is central to the sector as evidenced by the unions' newspapers and collective bargaining strategies. In this chapter I have analyzed how labor and management perspectives on workplace bullying differ substantially, and how those perspectives have changed over time. What started in unions' newspapers in the early 2000 as a concept to describe obnoxious and objectionable behavior by individual managers, such as persecution, termination threats, and swearing, was in short-time linked to the idea of pressure for reaching impossible or aggressive performance goals. The concept of structural or organizational workplace bullying quickly gained terrain in the unions' discourse, and individual acts by managers were interpreted as symptoms of an overarching business model and structure of performance goals that are in essence unfair and prejudicial to workers' well-being. The constant use of the term "workplace bullying" in unions' publications led workers to incorporate the term into their vocabulary, and led the issue to become a specific topic in the collective bargaining process.

On the other hand, although banks have recognized the existence of workplace bullying in the sector, they have avoided to use the term and denied the structural or organizational nature of bullying, or its performance goals' related source. Banks have described the issue of workplace bullying as a problem of individual manager behavior, in misalignment with organizational culture and strategy. Even when the issue was

brought to the negotiation table and written on the collective bargaining agreement, banks have denied using the expression “workplace bullying,” preferring the term “workplace conflict.”

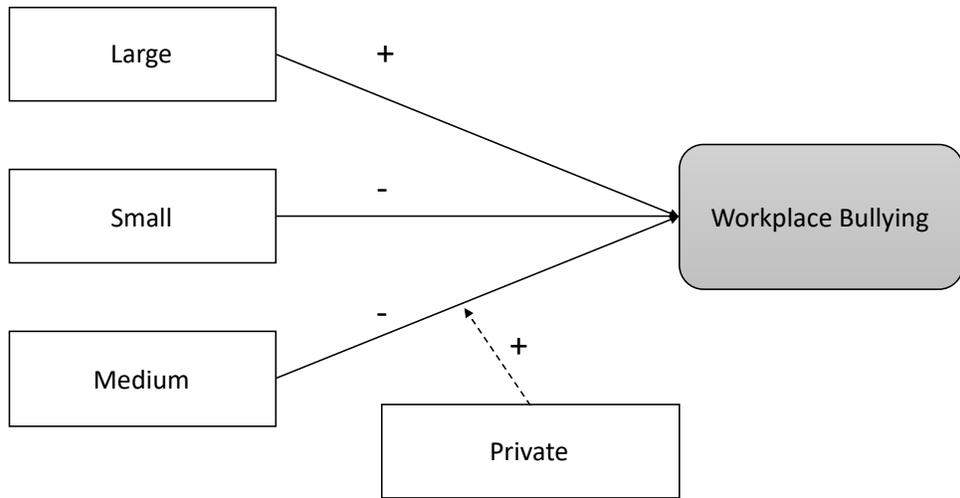
As it will be discussed in the next chapter, those differences in the banks’ and unions’ understanding of workplace bullying will also impact how they approach the management of this issue in the workplace.

Moreover, the role of the courts and *MPT* in the construction of the concept of workplace bullying in the sector was also debated. The cases cited demonstrated the *MPT* alignment with the unions’ interpretation of structural workplace bullying, but with mixed reception by judges in the employment courts. Several examples of courts’ decisions that considered individual managers’ actions as being workplace bullying were described, but other decisions in favor of banks showed the existing debates in courts over the limits of the concept of workplace bullying and what constitutes lawful exercise of managerial power.

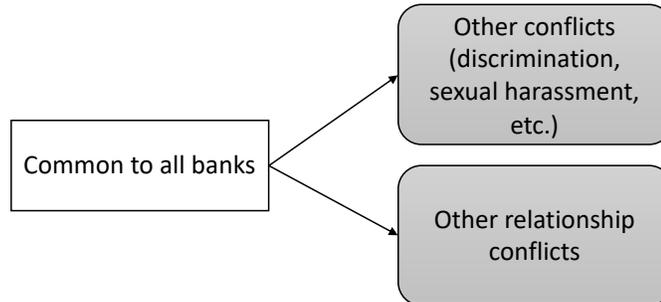
This chapter went beyond the discussion of workplace bullying in the sector, also analyzing other types of conflicts, such as sexual harassment, discrimination and other relationship conflicts that do not meet the definition of workplace bullying. Sexual harassment and discrimination were described as relatively relevant issues in unions and managers discourse, but with little occurrence in the workplace, therefore being less present in unions’ discourses or management strategies. Other relationship conflicts that do not meet the definition of workplace bullying were found to be central to HR managers in the sector, but less relevant to union leaders, who seem to pay attention to them mostly when they can be reinterpreted as workplace bullying.

The chapter also analyzed the occurrence and relevance of legal conflicts and of termination as a source of conflicts in the banking sector. In the debate over legal conflicts, the importance of claims regarding overtime payment was shown, based on the existence of worktime legislation applicable only to the banking sector. Finally, in the debate over termination as a source of conflict, differences between the public and private sector were highlighted, showing how the presence or absence of a *de facto* just-cause clause can impact the relevance of this kind of conflict and how it is manifested in different organizations in the sector.

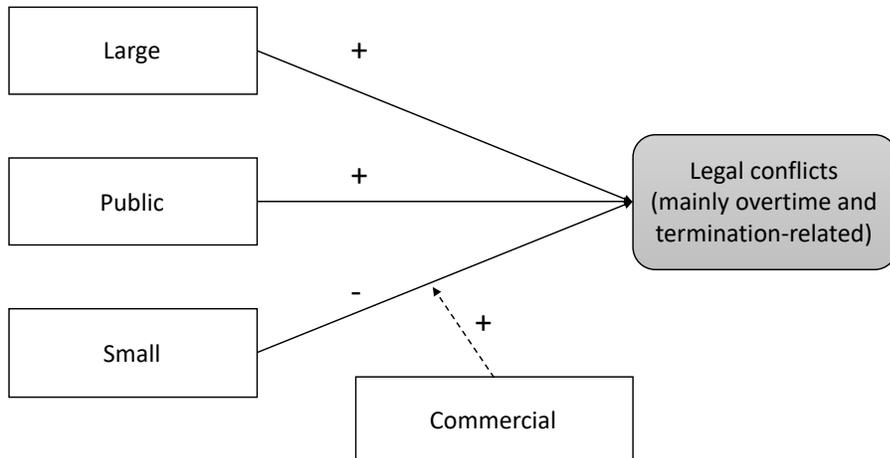
For all types of conflicts, the chapter went beyond the simple description of the conflict, by also looking for any evidence of pattern in the variation of the occurrence of those conflicts in the sector. Workplace bullying was found to be linked to the bank's size and nature of operation (i.e. workplace bullying is more relevant in large banks and, among medium-sized banks, in private sector banks). Whereas the lack of relevance of conflicts related to discrimination and sexual harassment was described to be common to all banks, independent of their characteristics, relationship conflicts that do not meet the definition of workplace bullying were found to be relevant to almost all HR managers in the sector, independent of bank characteristics. Legal conflicts were found to be linked to bank's size, nature and type of operation (i.e. legal conflicts, notably overtime issues, are more relevant in large banks, public-sector banks, and, among smaller banks, in the ones with activities closer to the ones of a commercial bank). Finally, for conflicts related to termination, the differences between the private sector (i.e. no just-cause clause) and state-owned banks (i.e. just cause necessary for termination) were highlighted. Figures 1, 2 and 3 represent in a schematic way how different bank characteristics are linked to the presence of certain types of conflicts.



**Figure 1 - Factors linked to the observation of workplace bullying**



**Figure 2 - Factors linked to the observation of sexual harassment, discrimination, and other relationship conflicts**



**Figure 3 - Factors linked to the observation of legal and termination-related conflicts**

## CHAPTER 6 - CONFLICT RESOLUTION IN THE BANKING SECTOR

In the previous chapter the types of conflicts that are present in the banking sector were analyzed in detail, as well as the organizational characteristics that might be related to variability in the relevance of each type of conflict in different banks. The focus of this chapter is to understand how banks and unions are responding to those different types of conflicts, exploring the different conflict management tools used and the factors behind their development, variation and results.

The chapter starts with a thorough analysis of the sectoral responses to workplace bullying, which was shown in the previous chapter to play a central role in labor relations in the sector, mainly in unions' discourses. The unions' interpretation of workplace bullying is shown to be directed related to the unions' strategies to deal with workplace bullying in the sector, through the bargaining and implementation of a form of sectoral grievance channel. The development, history, results and problems of this sectoral grievance channels is debated, from banks' and unions' perspectives, including unions that are critical to the channel. It is shown that supporting unions' praise the channel for the statistics it provides regarding workplace bullying in the sector, which can be later used in collective bargaining to leverage unions' position over the topic. Critical unions, on the other hand, criticize the channel for limiting union action regarding specific grievances, and by delegating the investigation activity to banks.

The chapter is followed by a thorough description of banks' internal channels targeted at those types of conflicts, such as Ombudsman Offices, ethics committees and compliance channels. Differences on these channels in different banks are discussed, as well as the difference in relation to the union preferred channel described earlier. The cases with Ombudsman Offices are compared, and their focus on investigatory

procedures is highlighted, as an important contrast to what is usually expected from Ombudsman Offices internationally. Banks without Ombudsman Offices are shown to be trying different internal channels, such as ethics committees, compliance channels or general investigatory departments. In all cases, those channels are shown to be lacking the impartiality and neutrality that characterizes Ombudsman Offices. Moreover, MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment is also analyzed in detail, as it presents a special kind of union participation in internal channels, by providing union with a seat in the bank's internal decision-making body. Overall, unions are shown to be critical to most of those internal channels, while also having limited access to them.

HR channels and tools are discussed in the context of responses to other relationship conflicts that do not characterize workplace bullying, and the initial experience of some banks with employment mediation are also discussed. HR channels, with a special attention to the role of HR Business Partners are shown to be poorly fitted to conflict management in most banks, mainly due to the lack of a proper image of independence and impartiality under the eyes of most employees. Mediation, on the other hand, is presented as a term often cited, but seldom understood by most bank managers. The exception is BiggerPublicBank, that has an employment mediation program connected to the Ombudsman Office, which is analyzed in detail.

The debate is followed by the description of tools currently used by banks in response to the legal and termination conflicts explained in the previous chapter. It starts with an overview of the employment litigation system in Brazil – usually the traditional forum for legal conflict resolution – and how the problems associated with it were the origin of two alternative methods for conflict resolution: court settlement programs and

the Preliminary Conciliation Commissions (*CCPs*). Those two methods are also debated in detail, with discussion of their results and sectoral variation. Court settlement programs are shown to be motivated not only by potential financial savings, but also as a bank strategy to change courts' overall perception over bank's compliance to labor and employment laws. Finally, CCPs are analyzed as a special case in the banking sector, as the sector is one of the few still using it in the country, and public banks have been using CCPs to also settle with current employees, without any form of retaliation.

The chapter concludes with schematic models that detail how each type of conflict is related to a specific conflict resolution tool, and the factors that influence banks and unions in the adoption of those different tools. Those models are later used as the basis for the discussion in Chapters 7, 8 and 9.

### **Responding to workplace bullying and sexual harassment**

In the previous chapter it was shown that workplace bullying is an extremely relevant topic in the banking sector, occupying a central role in the unions' discourse. Although the issue is usually described as present throughout the sector, in reality it is clearly concentrated in large banks. In medium-sized banks the relevance of workplace bullying seems closely related to the nature of the organization, being present in the private banks, and less relevant in state-owned banks (see Figure 1). However, even in medium-sized state-owned banks, workplace bullying is apparently becoming a more relevant issue when those banks adopt business and management strategies more similar to the private sector.

Other relationship conflicts and sexual harassment, on the other hand, do not occupy such a central role in the unions' discourse. While sexual harassment is seldom formalized in the sector (which, evidently, does not mean that it is not occurring), other

relationship conflicts that do not constitute workplace bullying are present in all banks, and are usually a concern of the HR departments.

In the next sections, unions and banks' approaches to workplace bullying and sexual harassment are discussed. I start with the description of the Collective Bargaining Agreement's Conflict Prevention Channel (the Protocol), explaining its history, development and functioning. This is followed by the perception of different actors towards this channel: supporting unions, critical unions, and banks. Although the Protocol occupies a central position in the response to workplace bullying and other conflicts under some unions' perspectives, it is shown that banks tend to concentrate their efforts in their own internal channels for conflict management, such as Ombudsman Offices, Ethics Committees and Compliance Channels. Those channels are analyzed in detail, followed by the unions' response to those channels.

***The Collective Bargaining Agreement's Conflict Prevention Channel (the Protocol)***

Due to the centrality of the issue of workplace bullying in the banking sector, unions have included demands regarding the topic in collective bargaining since the bargaining process of 2003. At that time, the demand was for banks "to adopt practices to prevent and disincentivize humiliating situations, caused by supervisors and managers" (Folha Bancária 2003c). In the 2006 bargaining, the demands were still generic for "the end of workplace bullying in the sector" (Folha Bancária 2006a), resulting in the creation of a working group between unions and banks to debate the topic and suggest solutions in 180 days (Folha Bancária 2006c). This working group generated a proposal of creation of a specific channel to receive grievances related to workplace bullying, which the first attempt to negotiate occurred in the 2007 collective bargaining process (Folha Bancária 2007b), but no agreement was reached in that year.

This became a priority issue in the collective bargaining process in 2008, but banks initially refused to agree to provide the grievance response to the union, instead of only to the grievant employee, and also opposed to the creation of a specific code of conduct referring to workplace bullying prevention (Folha Bancária 2008a). Although the first point was quickly resolved, further impasse was reached due to discussion of the confidentiality of the identity of the aggressor, the position defended by banks (Folha Bancária 2008b). The union main concern was that the confidentiality could work as a shortcoming for banks to guarantee the impunity of workplace bullying perpetrators (Folha Bancária 2010d). An agreement over the issue of confidentiality was not reached in 2009, and for the 2010 bargaining process, 68% of the workers consulted by the union regarded workplace bullying as a priority of the bargaining process (Folha Bancária 2010c). The clause was finally negotiated and agreed upon in 2010, but as a voluntary clause – banks would have to voluntarily opt to adhere to it, which led unions to use workplace bullying cases in each bank in the following months to protest and pressure for the bank’s adhesion to the clause (Folha Bancária 2010e). In 2010, eight out of the nine largest banks at the time opted to adhere to the clause (Folha Bancária 2011b), which was considered by the union as an historical landmark that would start to “change the logic under which banks operate,” according to one union’s president (Folha Bancária 2011a). One large state-owned bank opted to not adhere to the program in its first year, but it already had an Ethics Committee in place, which could be accessed by employees and the union (Folha Bancária 2011b).

In its original Collective Bargaining Agreement, the clause omitted the term workplace bullying, using the title “Protocol for Prevention of Workplace Conflicts.” The express goal of the Protocol was to “promote the practice of adequate actions and

behaviors to the employees of the signing banks, in order to prevent unwanted conflicts in the workplace.” According to the text of the specific company level agreement, the banks were agreeing to: (1) explicitly condemn any form of harassment/bullying<sup>78</sup>; (2) create specific channels within each signing bank to handle grievances, complaint, suggestions, and demands by its employees; (3) meet every six months to evaluate the program, by analyzing its statistics and creating indicators; (4) take into consideration behavioral, leadership and relationship skills as criteria for promotion to positions which involve managing a team; and, (5) give ample publicity to this protocol to its employees. Moreover, the union should also provide a channel to its constituents to receive grievances, complaints and suggestions from bank workers. If the grievance is presented to the union, the union would have ten days to forward it to the bank. The bank would have then 60 days to investigate and evaluate the grievance – during this investigation period, both parties agree to not disclose the grievance to others. Banks and unions agree to preserve the identity of the grievant employee and the alleged aggressor. If the employee files the grievance directly to the bank, the bank will not inform the union about the investigation result, but if the grievance is filed by the union, the bank will inform only the union about the results. Moreover, the bank has to investigate anonymous grievances filed by an employee, but the union is not allowed to forward to the bank anonymous grievances that it has received. However, the union can choose to not reveal to the bank the name of the grievant employee. Finally, the union has the freedom to decide if the grievance will be forwarded to the bank or not.

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<sup>78</sup> The term used is *assédio*, which in Portuguese is used both for workplace bullying (*assédio moral*) and for sexual harassment (*assédio sexual*).

The first case resolved via the new channel was amply publicized by the union in its newspaper. Although the grievance was confirmed by the bank, and the response took only 35 days to be given, the union was not completely satisfied with the solution provided by the bank, but it opted to not describe it further, in order to preserve the identity of those involved in the grievance (Folha Bancária 2011c).

The issue of workplace bullying continued to occupy a central position in the collective bargaining process in the following years. Since 2014 the Collective Bargaining Agreement clause on prevention of workplace conflicts include the banks' commitment to "monitor performance results with balance, respect and in a positive way, in order to prevent workplace conflicts." In 2014, the voluntary company level agreement changed the maximum time for the bank's response from 60 days to 45 days.

*The perception from supporting unions*

Although all signing banks are under the same "framework agreement" for prevention of workplace conflict, the way that the Protocol for Prevention of Workplace Conflict (the Protocol) is managed within each bank presents some variability as it will be explored in the next subsection. To the signing unions, however, those internal procedure differences among banks are less relevant, as it will be explained below. There are, however, considerable differences in the way that different local unions see the Protocol in practice, and those different perceptions will be highlighted in this and in the next section.

BigLocalUnion, the largest local union for the sector in the country, has been one of the most vocal proponents and advocates for the creation and signature of the Protocol. Moreover, it concentrates the vast majority of the cases going through the

formal Protocol channel<sup>79</sup>. Therefore, this section starts by focusing on how the Protocol works from BigLocalUnion perspective, later discussing other unions' perceptions.

First and foremost, it is important to highlight that although the official title of the clause is "Protocol for Prevention of Workplace Conflict," all union publications and union leaders refer to it as "The Workplace Bullying Channel," "Workplace Bullying Clause" or "Workplace Bullying Prevention Clause"<sup>80</sup>.

There are different ways that the union channel might be accessed by a grievant employee. In all signing unions, there is a grievance filing form which should be filled and submitted online to the union. In the case of BigLocalUnion, for instance, before accessing the webform the worker is informed about the goals of the Protocol, its overall functioning, definitions of what constitutes impossible goals (*metas abusivas*), and what constitutes workplace bullying. In the grievance form the worker must inform his/her name and identifying data (document, sex, date of birth), his bank, department, branch address, job position, bank tenure, and e-mail. Regarding the alleged aggressor, the grievant should inform his/her name, sex, and position in the organization. Finally, a check box asks if the grievance is related to impossible goals<sup>81</sup>, and a free writing box allows for the grievant to describe his/her case.

Once the grievance is received by the union employee responsible for the administration of the channel, the union representative has 72 hours<sup>82</sup> to investigate the case in the workplace and gather more information in order to evaluate the plausibility of the grievance. During this union preliminary investigation, the manager of the

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<sup>79</sup> Interview 1 – LargePublicBank.

<sup>80</sup> Interview 2 – BigLocalUnion.

<sup>81</sup> This specific question was found at BigLocalUnion, but not at other unions' websites.

<sup>82</sup> This is just an internal deadline, created by BigLocalUnion. The Protocol only determines the 10 day-limit for the union to forward the case to the bank.

grievant employee is never informed about the ongoing grievance<sup>83</sup>. Once this preliminary investigation is concluded and its results are input in the union system, the grievance is forwarded to the respective bank channel<sup>84</sup>.

It is worth stressing how important it is to the union to preserve the confidentiality of the grievant employee's identity. Even within the union, the only persons who have access to the grievant's name are the administrator of the Protocol channel system, and the union representative "bank coordinator." Other union leaders do not have access to the identity of the grievant employee. This concern, evidently, is not only internal – attention is paid in order to avoid providing unnecessary identification of the grievant to the bank as well. As a rule, the union tries to interfere as little as possible in the content of the grievance. The only exception refers to information that might allow the bank to identify who is the grievant employee – if possible, the union will omit the identifiable information. Otherwise, the risk of identification is informed to the worker, who will decide if he/she wants to proceed with the grievance process<sup>85</sup>. In reality, the employee is the sole "owner" of his/her own grievance, being the only one responsible for the decision to continue with the grievance or not, provided that enough information about the grievance was offered in the description of the case<sup>86</sup>.

Grievant's direct filing via the website form is not the only way to use the Protocol channel. Union leaders or representatives (shop stewards) might come to know about a possible grievance during their daily activities at work sites. In those cases, the

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<sup>83</sup> Interview 1 – BigLocalUnion.

<sup>84</sup> Interview 2 – BigLocalUnion.

<sup>85</sup> Interview 2 – BigLocalUnion.

<sup>86</sup> Interview – RelevantLocalUnion and Interview 1 – BigLocalUnion.

union representative can inform the worker about the Protocol and ask for his/her authorization to file the grievance for him/her<sup>87</sup>.

After the bank formally receives the grievance from the union, it has 45 days to respond to the union with its conclusion, or, occasionally, ask for a deadline extension<sup>88</sup>. While the bank is conducting its investigation, the union is not allowed to disclose any information about the case, or to publish anything related to it in its newspapers or websites. The responses that the banks give to each specific case tend to not be very detailed:

*[The responses] are formal, but the banks do not write anything. In the case of LargePrivateBank, it does not inform the [grievance] treatment. They call us, and they say: "look, the grievance from so-and-so has merit, or it has partial merit, and the action taken was this, this and that." This is how they do it [...] We write to them, but they do not write anything back to us. (Interview 2 – BigLocalUnion)*

The majority of the cases, under the unions' perception, are dismissed by the banks<sup>89</sup>. It is worth noticing, however, that the first grievance to ever go through the Protocol channel confirmed the grievance, which was heavily used by the union to publicize the channel among its constituents<sup>90</sup>. While the quickness of the decision was highlighted (35 days between the grievance filing and the bank's response), the solution adopted by the bank was considered unsatisfactory by the union, although it was not disclosed, in order to preserve the grievant's identity (Folha Bancária 2011c).

The complaints about the banks' decisions are recurrent among union leaders. Among the cases where the grievance is confirmed by the bank's investigation, most faulty employees or supervisors are simply advised and, in rare occasions, receive a

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<sup>87</sup> Interview 1 – BigLocalUnion.

<sup>88</sup> Interview 2 – BigLocalUnion.

<sup>89</sup> Interview 1 – BigLocalUnion.

<sup>90</sup> Interview 2 – BigLocalUnion.

formal written warning<sup>91</sup>. In some cases, this dissatisfaction is also manifested by the bank employees, as evidenced by the following quotation, in which a union leader describes bank's response to a specific grievance case involving workplace bullying perpetrated by a branch manager:

*[...] and the bank responded: "[grievance] confirmed, and the manager has been advised," "[grievance] confirmed, and manager sent to coaching." And the workers just reacting in awe: "for God's sake..." But at a certain point in time, workers say "Look, you [the union] do not solve anything." In a certain way, we are their last hope. (Interview 2 – BigLocalUnion)*

Usually, union's expectation is that the bank removes the aggressor from a management position, so he/she will not have to supervise workers anymore, therefore diminishing potential workplace bullying situations, as the supervisor has revealed to be unable to properly demand performance goals to be achieved<sup>92</sup>. As a rule, BigLocalUnion never demands that the bank terminates the manager, although this is object of heated discussions within the union:

*The union never asks for termination. The union, can at most, ask the bank to temporally remove the manager from his position for recycling – attend a new training – and to transfer the manager, so that that he does not return to the same branch. Because, since the union represents [all] the workers, even if a worker is improperly pressuring another, we will not ask for the termination. Of course, there are situations that we look at and say 'we will not ask [for the termination], but [if the bank decides to, we will not complain]...' (Interview 1 – BigLocalUnion)*

*That's a dilemma for us - we've had a lot of internal debates about it. The union does not demand for the termination of anyone. The union asks the bank to advise, for the person to attend a training... [Even in case of sexual harassment] the union does not ask for termination, although there are many union leaders who say that we should do so. This is a big controversy among us. But the union should never ask for someone to be terminated, it has to defend employment. But it also has to ensure that*

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<sup>91</sup> Interview 1 – BigLocalUnion.

<sup>92</sup> Interview 2 – BigLocalUnion.

*there are proper working conditions [in the workplace]. (Interview 3 – BigLocalUnion)*

The decision to never ask for the aggressor to be terminated reflects not only the union's perspective that it represents all the workers, no matter their position or behavior, but also its perspective on the organizational nature of workplace bullying:

*We will never, under any circumstances, ask to terminate a worker. Because we believe that workplace bullying is institutional. There are people who can deal better [with the pressure], who can filter it, but there are people who explode and end up passing on [the pressure] to the team. We also believe that most likely the aggressor is also a victim in some way. (Interview 2 – BigLocalUnion)*

If the grievance is dismissed by the bank, or if the bank's response is considered unsatisfactory, unions tend to adopt two different approaches. Depending on the case, when the union informs the grievant worker that his/her case was dismissed by the bank's investigation, the union might simply inform the result to the grievant and ask if he/she has any other element or evidence to present that might justify reopening the case in the Protocol channel<sup>93</sup>. In other cases, where the union's own investigation has revealed that there is a serious case of workplace bullying going on in a certain branch and the bank denies it or does not provide a proper solution, the union takes public collective actions against the bank, in order to expose what is happening and pressure for a solution. The most famous one is the *sardinhada*:

*After we have tried all the 'friendly' strategies, the conversations... [When they have failed] then we take a barbecue grill, put it in front of the branch's door, buy a lot of sardines and grill the sardines right in front of the branch. We turn on the speakers and scold the branch's manager: "This branch has a bullying manager!" Usually we make some flyers to hand to customers who are in the branch – which is open and in full operation. And then, that damn sardine smell comes in to the branches building. And we publicize it, publish on the social networks,*

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<sup>93</sup> Interview 2 – BigLocalUnion.

*publish on our website - and the manager is exposed. (Interview 2 – BigLocalUnion)*

*Sardinhada is something that managers are really afraid of - it's a symbolic thing. We created something that is such a simple action, but for managers and banks it is an offense. You say you're organizing a sardinhada and everyone gets desperate. (Interview 3 – BigLocalUnion)*

Evidently, the *sardinhada* is just an example of some of the collective actions usually conducted by unions, when unhappy with the results obtained via the Protocol channel. Other times they organize partial or total work stoppages in the branch, with the goal of exposing the bank's image negatively to the general public<sup>94</sup>. These situations do not justify calling a strike, but justify some local and specifically targeted actions:

*I like to say that the bank does its pressure through its representative, its manager, and we do the counter-pressure, to see if it results in some relief [to the employee] and the manager rethinks his method of demanding for performance goals. (Interview 1 – BigLocalUnion)*

The Protocol channel, therefore, is seen as an alternative to traditional union action, sometimes complementing it, but never leading to the complete abandonment of traditional union manifestations<sup>95</sup>. It is seen, therefore, as bringing positive results to unions, while potentially avoiding some of the risks usually brought to banks by traditional union action:

*Imagine that before the Collective Agreement we had a case in which I knew the guy was a bully, we had witnesses, several workers' reports, etc. What was my only alternative? To put a sound system in front of their door and scold him to his clients, suppliers and neighbors. It's a shame for him... [Some argue that] it's cruel to do that! But we're reacting to an attack on workers. So, for banks as well, this agreement is better than negatively exposing their image to the customers and the population. That's why we always say: always try the [Protocol] channel, so that they can investigate and return to us with a positive answer, so that we do not*

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<sup>94</sup> Interview 2 – BigLocalUnion.

<sup>95</sup> Interview 2 – BigLocalUnion.

*need to go to this extreme. Because when there is no agreement, we're going to the extreme!* (Interview 3 – BigLocalUnion).

Although originally the Protocol was developed by the union to focus on workplace bullying cases, it quickly expanded for other kinds of grievances, such as issues related to workplace structure, such as air-conditioner malfunction, or improper workstation furniture<sup>96</sup>. In 2013, 62% of the cases referred to workplace bullying, 15% to work conditions, 13% to air-conditioner issues, 7% to noncompliance with the Collective Bargaining Agreement, and 3% to excess of work and other issues (Folha Bancária 2014). Only among workplace bullying cases, in 2017, 58% were related to demands for performance goals, 35% to supervisor behavior, and 7% to other issues<sup>97</sup>.

Cases of sexual harassment are brought to the Protocol channel less frequently than the union deems ideal. Due to the specific characteristics of those cases, the fact that this is a criminal offense, the personal impacts that it can have in the lives of those involved in it, and the difficulty of gathering evidence, sexual harassment victims are usually less prone to use the channel. Therefore, most cases on this topic start with union representatives visiting the workplace, being informed about the sexual harassment, and offering to the victim the possibility of formalizing the grievance via the Protocol channel<sup>98</sup>. The final decision over taking the grievance to the bank to investigate is always from the worker, as he/she is informed by the union about potential risks of being identified by the bank once the case is reported, due to the potential lack of witnesses to the reported harassment<sup>99</sup>.

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<sup>96</sup> Interview 3 – BigLocalUnion.

<sup>97</sup> Interview 4 – BigLocalUnion.

<sup>98</sup> Interview 2 – BigLocalUnion.

<sup>99</sup> Interview 3 – BigLocalUnion.

It is worth noticing that the Protocol does not define how grievances should be handled internally by each bank, nor does it interfere on the availability and functioning of the internal channels for grievance handling used by the banks – its only definition is that a response is provided within the 45 days deadline. For the union it is irrelevant who is conducting the investigation internally, as long as a response is provided within 45 days<sup>100</sup>. In some cases, the union might even recommend the worker to use both channels – the Protocol one, administered by the Union, and the bank’s internal channel, such as an Ombudsman Office – as this might increase the chances of the grievance being resolved and it might provide the union with more information about internal investigations being conducted by the bank<sup>101</sup>.

Although the Protocol does not provide express protection against retaliation towards grievant employees, the union participation in the process seems to work as some form of protection<sup>102</sup>. According to the union, it is not unusual to hear from workers that they have used the internal channel (without the union participation), and, as a consequence, they have been terminated<sup>103</sup>.

The existence of the Protocol also allows unions to have a better control over the grievances than before. By having all cases registered in a system, union representatives are able to return to the workplace later to check if the solution proposed by the bank actually promoted changes in the workplace or if the problems that led to the grievance filing are still observable<sup>104</sup>.

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<sup>100</sup> Interview RelevantLocalUnion.

<sup>101</sup> Interview BigConfederation.

<sup>102</sup> Interview 3 – BigLocalUnion.

<sup>103</sup> Interview 1 – BigLocalUnion.

<sup>104</sup> Interview 1 – BigLocalUnion.

All the cases that go through the Protocol channel are object of a biannual meeting between unions' representatives and banks' representatives. In those meetings, sectoral statistics of the Protocol are presented, including total number of cases, their nature, time to solution and grievances' results. Although those numbers are not separated for each individual bank, they provide the union with important statistics, which can be used strategically in future bargaining: if before the Protocol unions' statements that workplace bullying was a recurrent issue in the sector could be challenged by banks, after the Protocol they have numbers, provided by the banks, to back their workplace bullying related demands<sup>105</sup>. Moreover, the existence of the biannual meeting is also believed to create a certain peer pressure among the banks, via *FENABAN* (National Federation of Banks), in order for all banks to comply with the rules and deadlines of the Protocol<sup>106</sup>.

Although most grievances are dismissed by the banks after investigation, the union still believes that the overall bank behavior in relation to workplace bullying has changed. As a result, banks are being more careful when demanding for performance goals, avoiding improperly public exposing a certain employee in the workplace. Despite that small improvement, the issue remains relevant and problematic in the sector, but banks seem to currently be subtler in their demands for performance goals<sup>107</sup>.

It should be noticed that, despite the dissatisfaction with the results of the majority of the banks' investigation, which tend to dismiss the grievances, banks are seen as partners in the implementation of the Protocol. Initially, the union believes that banks were willing to negotiate about the issue as a result of the union's pressure and as

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<sup>105</sup> Interview 2 – BigLocalUnion.

<sup>106</sup> Interview BigConfederation.

<sup>107</sup> Interview 1 – BigLocalUnion.

an attempt to preserve the bank's external image<sup>108</sup>. Even LargePrivateBank, which refuses to use CCPs or court settlement strategies, so those are not interpreted as an admission of guilty, is described to be a solid partner in the development and implementation of the Protocol<sup>109</sup>.

*The perception from opposing unions*

Although the largest union (BigLocalUnion) is a strong advocate for the Protocol, its perception is not necessarily shared by other local unions, for different reasons. Among the unions interviewed in this research project, PublicLocalUnion originally signed the Protocol, later dropping from it, while CriticalLocalUnion has been against the Protocol since it was first proposed.

For PublicLocalUnion, the main criticisms refer to the lack of transparency regarding the grievance treatment and the lack of control that the union has over it. At the biannual meetings the information provided was usually believed to be incomplete. At the local interactions with banks, the majority of the grievances were dismissed by the banks, but the union had no clear understanding over how the grievances were being investigated and treated locally<sup>110</sup>.

Moreover, union leaders believed that the prohibition to disclose any information about the case before the end of the bank investigation was hampering union strength towards the bank and the union image towards its constituents. The solution was to abandon the Protocol, but to continue to file grievances through each bank's internal channels. But now, the pressure for banks to quickly respond to the union has its origins in the threat of union action, and not in the Protocol text:

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<sup>108</sup> Interview 3 – BigLocalUnion.

<sup>109</sup> Interview 2 – BigLocalUnion.

<sup>110</sup> Interview PublicLocalUnion.

*When you are part of the Protocol, if you file a grievance you have to keep the confidentiality of that grievance - so you cannot use it in newspapers and in the website to publicize it. So, it turns out that the thing gets very “underground-ish” [...] [Now] we file it directly to each bank, even without having the Protocol, and the banks will investigate it or not, but I have no obligation to maintain confidentiality regarding the grievance. Now I can publish about it if I see that their decision is not in accordance with our own investigation – and to some extent this embarrasses and pressures the bank. (Interview PublicLocalUnion)*

Although the decision to abandon the Protocol was locally made by PublicLocalUnion, their goal is to bring the issue and their experience of not using the Protocol to the national sectoral discussion<sup>111</sup>.

The case of CriticalLocalUnion is different, as it has never agreed to the Protocol. This was an explicit decision to use a more direct and aggressive strategy on a case by case basis. Under the union’s perspective, unions and banks can work together to resolve a grievance, but the investigation must be conducted exclusively by the unions, as the banks lack the necessary independence:

*We do not think we have to investigate [the grievances] with the bank. We have to do our own investigation by giving all the support for the victim - and not handing it to the bank. [...] The solution of the problem we can even do it together, but the investigation cannot be conducted by the bank. [...] It is not that their internal channels cannot perform a function, but they have certain attitudes that are very conflictive, of direct conflict with the bank, with the boss, who is the one who would have to punish the aggressor, or solve the problem. [...] And the bank does not punish, because the bank is the aggressor. [...] It has no independence. (Interview - CriticalLocalUnion)*

#### *The perception from banks*

Among the banks which have signed the Protocol, some variation is observable in relation to how the grievances are handled and investigated internally, and how this process is similar or different to the grievance handling process used by the bank in its internal channel, which will be analyzed in the next section. In this section, banks’

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<sup>111</sup> Interview PublicLocalUnion.

general approach to the Protocol is analyzed, as well as banks' reactions to how unions use the channel.

In all the analyzed cases, no matter the internal structure of each bank, Labor Relations departments (or its equivalent) are responsible for receiving the grievances from the union via the Protocol channel<sup>112</sup>. Whether the grievance will be internally handled by the Labor Relations department itself, whether it will be forwarded to a different department in the bank, the institutional union contact with the bank happens only via the Labor Relations department.

Once the union's grievance is received by the banks, different actions are observed. In BiggerPublicBank and BiggerPrivateBank, for instance, the grievance is immediately forwarded to the internal Ombudsman Office, which will treat the case exactly as if it were an internal grievance<sup>113</sup>. In MediumNationalBank, where there is no Ombudsman Office, but there is a "Conduct Channel," the Labor Relations department might choose how to handle the grievance, if registering it into the conduct channel process, activating the investigations department (*inspetoria*), or using HR resources<sup>114</sup>. The lack of a more structured process might be a reflection of the relatively small volume of cases received through this channel in MediumNationalBank.

In LargePublicBank, where volume of grievances arriving via the Protocol channel is significant, and there is no Ombudsman Office in place, just the *Corregedoria* – similar to an ethics/investigations office – the process for handling grievances from the Protocol is more defined. There are two employees in the Labor Relations department exclusively assigned to handle the Protocol grievances. Once the grievance

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<sup>112</sup> Interviews BiggerPublicBank, LargePublicBank, BiggerPrivateBank, and MediumNationalBank.

<sup>113</sup> Interview BiggerPublicBank and Interview 5 – BiggerPrivateBank.

<sup>114</sup> Interview MediumNationalBank.

is received, a first evaluation is conducted, checking if there is enough information to proceed with the investigation – if more information is necessary, the union is immediately contacted in order to complete the grievance. If in this evaluation the Labor Relations department identifies that the case consists of a severe disregard of the organization’s code of conduct, the case is immediately forwarded to the *Corregedoria*, to follow that department’s traditional procedure, which will be explained in the next section. If that is the case, the union will lose all control over the grievance, and the bank might not follow the Protocol rules. If the case is not forwarded to the *Corregedoria*, Labor Relations department will forward the case to the local manager responsible for the employees involved in the grievance. This local manager has a script to be followed in order to conduct the local investigation and returns its results to the Labor Relations department, who will then inform the union about the result of the investigation. This response to the union is “cleared” by the Labor Relations department beforehand, in order to provide the minimum information necessary, and to make sure that no identifiable information is disclosed<sup>115</sup>.

Therefore, the Labor Relations departments in most cases end up working as a buffer between the union and the department responsible for the investigations and the grievance handling from the Protocol.

It is worth noticing some differences related to the types of conflicts that are usually received via the Protocol channel. In MediumNationalBank, the interviewed manager informed that very few grievances are brought by the union via the Protocol channel, and the few cases filed refer to Collective Bargaining, profit-sharing scheme,

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<sup>115</sup> Interview 1 – LargePublicBank.

or benefit issues, and not to relationship conflicts with management<sup>116</sup>. In larger banks the Protocol channel is used more extensively, and mostly for issues involving relationship conflicts between one manager and one employee, usually described by the union as workplace bullying<sup>117</sup>. Banks also describe a clear concentration of grievances from the region covered by BigLocalUnion<sup>118</sup>, which might be explained not only by the concentration of the workforce on this region, but by the leadership that BigLocalUnion has played in the bargaining over the Protocol through the years. Despite that, the number of grievances received is actually lower than what was expected by some banks, likely due to the lack of proper advertisement of the channel by the unions<sup>119</sup>.

In LargePublicBank, one of management's complaints was that the unions seem to usually not filter the cases that are filed via the Protocol channel, which leads to constant requests for additional information, or investigation of cases which, under the bank's perspective, could have been resolved directly by the union<sup>120</sup>. However, the bank also recognizes that this might occur because the union is using the Protocol channel strategically, trying to gather information about cases that they are aware that are currently under investigation in the *Corregedoria*, over which the union has no control at all<sup>121</sup>.

In BiggerPublicBank, on the other hand, management's perception is that unions do not bring all the cases to the Protocol channel, but mainly those that might give the

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<sup>116</sup> Interview – MediumNationalBank.

<sup>117</sup> Interview 1 – LargePublicBank.

<sup>118</sup> Interview 1 – LargePublicBank.

<sup>119</sup> Interview 1 – LargePublicBank.

<sup>120</sup> Interview 1 – LargePublicBank.

<sup>121</sup> Interview 1 – LargePublicBank.

union more visibility towards its constituents. The union would be looking more for the potential visibility of the case, rather than its potential solution<sup>122</sup>.

Although managers confirm that the majority of the grievances are dismissed after the investigation<sup>123</sup>, they also criticize unions' position towards the grievances that they file, stating that they seem to strongly believe that all the grievances that they file have merit, being unable to agree with any decision otherwise<sup>124</sup>:

*[...] In other cases, when the answer is that there was no workplace bullying, they are dissatisfied. It is part of the [union's] growth process that they understand that not all grievances that they bring will be confirmed and that they will not be always right. (Interview 4 – BiggerPrivateBank)*

Sometimes, the lack of direct contact between the union, who files the grievance, and the department that conducts the investigation, seems to increase the likelihood that negative results are not accepted by the union, or that they are seen with suspicion. To overcome this, in a case in which the union was extremely disgruntled with the ombudsman's decision over a certain grievance, the Ombudsman in BiggerPublicBank asked the Labor Relations department to directly talk to the union representative and present him the rationale and facts behind the ombudsman's investigation and decision<sup>125</sup>. Despite those few exceptions, overall the banks' internal investigation bodies and channels, such as the Ombudsman, have the perception that unions see them as a threat<sup>126</sup> or even as an enemy to unions<sup>127</sup>.

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<sup>122</sup> Interview – BiggerPublicBank.

<sup>123</sup> Interview 1 – LargePublicBank.

<sup>124</sup> Interview 5 – BiggerPrivateBank.

<sup>125</sup> Interview – BiggerPublicBank.

<sup>126</sup> Interview – BiggerPublicBank.

<sup>127</sup> Interview 5 – BiggerPrivateBank.

Usually, unions get the results of the banks' internal investigations only in cases filed by the union, via the Protocol channel<sup>128</sup>. BiggerPublicBank is an exception in the sector, as it also brings internal cases results to the biannual meetings with the unions, established by the Protocol<sup>129</sup> – although those are never detailed by bank in those meetings. Unions usually have no formal tool to question a grievance decision that they consider unsatisfactory<sup>130</sup> - this is usually done via other union actions, such as the *sardinhas*, as explained in the previous sections.

Finally, it is worth highlighting the LargePublicBank's general perspective on the Protocol when it comes to the expected results for grievance investigations. As the title of the agreement is "Protocol for Prevention of Workplace Conflicts," LargePublicBank focus specifically on the **prevention** element of the agreement, therefore focusing on actions that might result in the prevention of the recurrence of the observed conflict, such as orientation, feedback, coaching, training or team building activities, never punishment<sup>131</sup>. This is also explained by the types of cases that are kept under the Protocol in LargePublicBank, as cases of breach of the Code of Conduct, which might lead to punishments, are always forwarded to the *Corregedoria*. In other banks<sup>132</sup>, where this division between Protocol channel and *Corregedoria* is not observed, punishments are more observed, such as warnings or even terminations, although usually not advocated by the unions.

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<sup>128</sup> Interview 1 – LargePublicBank, Interview 5 – BiggerPrivateBank.

<sup>129</sup> Interview – BiggerPublicBank.

<sup>130</sup> Interview 1 – LargePublicBank.

<sup>131</sup> Interview 1 – LargePublicBank.

<sup>132</sup> Interview BiggerPublicBank, Interview 5 – BiggerPrivateBank.

### ***Banks' internal channels***

In the previous sections the Protocol channel was described from the perspective of supporting and critical unions, as well as from the banks' perspective. The Protocol, however, does not determine how banks should internally conduct grievance handling filed via the Protocol channel, nor does it determine that banks give any kind of preference to the usage of the Protocol channel. Actually, despite the central role of the Protocol channel for BigLocalUnion, all the banks have other internal channels developed to deal with workplace conflicts, which not necessarily are the same departments used to handle the Protocol grievances.

Although some form of internal channel for workplace conflict is present in all banks, it is hard to clearly identify a pattern among banks' different options. In the next pages, the characteristics of the main channels are described and later compared. I start with the analysis of BiggerPublicBank and BiggerPrivateBank's Ombudsman Offices, following with the description of Ethics Committees and Compliance channels, present in a wide number of banks in the sample. MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment has some peculiarities that justify a separate analysis and description. This section concludes with an analysis of the unions' responses to all those internal conflict management channels.

### ***The Ombudsman Offices***

BiggerPublicBank and BiggerPrivateBank have an Ombudsman Office in place, specially created to manage workplace conflicts, such as relationship conflicts or potential cases of workplace bullying. Although they share the same name, the Ombudsman Offices' structure, role and methods in each organization vary significantly.

At BiggerPublicBank, the creation of the Ombudsman Office occurred as a development of a former HR channel to answer questions from employees. As it was transformed into an Ombudsman Office in 2005, it started to handle cases of employee misbehaviors, instead of simply answering questions from employees. The roles of the Ombudsman Office have expanded since its creation, currently also exercising a consulting role for ethical dilemmas – an employee who is unsure if a certain behavior is allowed by the company’s policies might directly ask the Ombudsman Office about the issue<sup>133</sup>.

The Ombudsman Office might be reached via intranet, mail, in person or via e-mail – the latter corresponding to 70% of all the cases received. Women and transgender workers might request to interact only with a woman employee from the Ombudsman Office throughout the grievance handling process in cases related to sexual harassment or gender discrimination<sup>134</sup>. The case handling will depend on a series of different factors. If the grievance is not directly related to relationship conflicts or people management, such as a case of a complaint about the office structure, it is forwarded to a different department to handle it. If the grievance refers to a clear case of breach of the Code of Conduct, the case is forwarded to the disciplinary control department. However, if the grievance refers to relationship or interpersonal conflicts, there are two possible paths: mediation, for cases involving only two persons, and “Ombudsman Case Studies,” for larger conflicts<sup>135</sup>.

The goal of the Case Studies is to identify the merit of the grievance, which is done by an investigation procedure conducted by a specific team within the Ombudsman

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<sup>133</sup> Interview – BiggerPublicBank.

<sup>134</sup> 2017 Annual Report, page 42.

<sup>135</sup> Interview – BiggerPublicBank.

Office. The alleged aggressor's supervisor is always the first one informed about the investigation, followed by the alleged aggressor himself/herself, who is instructed to cease any faulty behavior and prohibited to retaliate against the grievant employee. During the investigation, usually conducted by phone, the Ombudsman Office collects information from different relevant parties to the case. At the end of the investigation, the alleged aggressor is informed about the conclusion of the investigation and presented with the possibility to tell his/her side of the story. The Ombudsman's conclusion for all cases is binary: whether the case is considered to have merit or not<sup>136</sup>.

Cases dismissed might still generate some feedback to the party originally accused of misbehavior. Cases found to have merit are taken to an Ethics Committee, that will define a period of 6, 9 or 12 months, over which the faulty employee cannot receive any promotion or pay raise, and a probation period of double the punishment time, over which any new fault will be punished more severely. Throughout the investigation process, if the case is found to constitute a breach of the Code of Conduct or other company policy, the Case Study is immediately terminated and forwarded to the disciplinary control department<sup>137</sup>.

In Ombudsman Case Studies, the only response that the grievant employee receives after the conclusion of the investigation is whether the case was considered to have merit or not. The lack of a more complete response is the result of the legal department's strategy, which is afraid that if more information is provided, it can later be used in employment litigation cases<sup>138</sup>.

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<sup>136</sup> Interview – BiggerPublicBank.

<sup>137</sup> Interview – BiggerPublicBank.

<sup>138</sup> Interview – BiggerPublicBank.

In BiggerPrivateBank, the creation of the Ombudsman in 2007 was top-down, as an initiative from the bank's president and the HR Vice-President, who had learnt about the existence of a similar department in an international organization and decided to replicate the experience in Brazil<sup>139</sup>. Although originally the channel was designed to receive grievances and complaints about employees' misbehaviors, relationship conflicts and potential cases of conflict of interests<sup>140</sup>, initially the channel was constantly sought to clarify questions regarding HR benefits or office structure issues, such as air-conditioner problems<sup>141</sup>. The types of cases changed significantly after the Ombudsman left the HR structure, starting to respond to the bank's president – which led to an increase in grievances related to workplace misbehavior<sup>142</sup>.

Originally employees could access the Ombudsman via phone, e-mail, intranet, mail, PO box, internal mailing service and in person<sup>143</sup>. The PO box was abandoned by the organization and the fax has not been used by employees, whereas a smartphone app is also being developed<sup>144</sup>. Cases that do not refer to employee behavior, relationship conflict or workplace bullying are forwarded to the department responsible for the respective topic. For the former cases, the Ombudsman Office will try to handle the case via counseling, if possible, or via investigation, whenever necessary<sup>145</sup>. Currently, approximately 20% of the cases are handled via counseling, 60% of the cases are investigated, and 20% of the cases are forwarded to a different department<sup>146</sup>.

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<sup>139</sup> Interview 5 – BiggerPrivateBank.

<sup>140</sup> Interview 1 – BiggerPrivateBank.

<sup>141</sup> Interview 5 – BiggerPrivateBank.

<sup>142</sup> Interview 5 – BiggerPrivateBank.

<sup>143</sup> Interview 1 – BiggerPrivateBank.

<sup>144</sup> Interview 5 – BiggerPrivateBank.

<sup>145</sup> Interviews 1 and 5 – BiggerPrivateBank.

<sup>146</sup> Interview 5 – BiggerPrivateBank.

The decision for counseling is usually connected to the stage of conflict being presented. In conflicts that seem to be in an initial stage (e.g., complaints that the manager treated the grievant inadequately in a meeting), the Ombudsman Office questions the grievant about the recurrence of the behavior<sup>147</sup>, and incentivize that the parties openly discuss the event<sup>148</sup>.

In cases that must go to investigation, the procedure is conducted by employees from the Ombudsman Office structure. Human Resources department and the manager of the alleged aggressor or faulty employee are immediately informed about the investigation, but their support to the investigatory process is not essential<sup>149</sup>. During the investigation, peers and potential witnesses are questioned by the Ombudsman Office<sup>150</sup>, but only after the alleged aggressor had the chance to explain his/her version to the Ombudsman Office<sup>151</sup>.

All investigations result in what is called an “Ombudsman Conclusion,” which determines if the grievance has merit or not, and, if positive, defines the kind of punishment or disciplinary measure that should be applied to the faulty employee. The direct manager of the faulty employee is responsible for the application of the disciplinary measure, which is conducted without questions in the vast majority of cases. In the few cases that the manager disagrees with the Ombudsman’s decision, the case is taken to the review of the Ethics Committee that can uphold or modify the Ombudsman’s conclusion<sup>152</sup>.

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<sup>147</sup> Interview 5 – BiggerPrivateBank.

<sup>148</sup> Interview 1 – BiggerPrivateBank.

<sup>149</sup> Interview 5 – BiggerPrivateBank.

<sup>150</sup> Interview 1 – BiggerPrivateBank.

<sup>151</sup> Interview 5 – BiggerPrivateBank.

<sup>152</sup> Interview 5 – BiggerPrivateBank.

Although investigations are far more common than counseling solutions, the Ombudsman Office sees it as a last resort, avoiding investigations whenever possible, as the investigation procedure might, *per se*, increase the conflicts in the team:

*Our main role is not to punish everyone, as this is not a witch hunt. We always try to function as a dialogue channel of the organization. [...] The investigation procedure per se can already destabilize a team. That is why it is our last resort. [...] We know that [whenever we have to conduct an investigation] no matter how careful our approach is, the investigation causes distress in the team. Because the people being interviewed do not know exactly what will happen, what will be done with that information. This always causes some distress among the team where the fact is being investigated. (Interview 1 – BiggerPrivateBank).*

Once the general functioning of the Ombudsman Offices at BiggerPublicBank and BiggerPrivateBank has been described, some similarities and differences should be highlighted.

Preserving the identity of the grievant employee is a great concern in both cases, as ombudsmen consider this point extremely relevant in order to guarantee workers' trust on the channel. In both banks, grievances brought to the Ombudsman are treated as confidential and anonymous as a general rule. If the simple act of investigating the grievance might reveal the grievant worker's identity, the worker is questioned if he/she would like the investigation to proceed<sup>153</sup>. In both cases, the individual worker is the sole owner of the grievance. Problems related to possible identification of the worker filing the grievance are common in sexual harassment cases, in which there might be no direct witness of the alleged harassment. Moreover, final reports of the investigation tend to avoid using witnesses' names or any other information that might be able to identify the grievant or any other part involved in the investigation<sup>154</sup>. In

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<sup>153</sup> Interview BiggerPublicBank and Interview 1 BiggerPrivateBank.

<sup>154</sup> Interview 1 – BiggerPrivateBank.

BiggerPublicBank the concern over the confidentiality of the process is such, that the legal department is never allowed to use the Ombudsman's report in litigation defense in cases involving workplace bullying or other harassment. Likewise, when the case investigated becomes an internal administrative procedure and disciplinary process, the Ombudsman's report is not shared with other departments in the organization, even if this means that a new investigation procedure will have to be conducted by a different department<sup>155</sup>. In BiggerPrivateBank, the legal department identifies the concern of the Ombudsman Office with the process confidentiality as the reason behind the lack of more involvement of the legal department in the Ombudsman's investigations<sup>156</sup>. Currently, 34% of the cases filed with BiggerPrivateBank's Ombudsman are filed anonymously, although this has reached 45% of the cases in the past<sup>157</sup>.

An important difference in the two organizations refer to the Ombudsman Office current reporting structure, with significant consequences to the channel functioning. In BiggerPublicBank, the Ombudsman Office has been under the HR department structure since 2012. The Ombudsman does not see this as a problem, but as an advantage compared to a possible report to the chair of the board of administrators, for instance. Being under the HR structure guarantees that a chain of people is above the Ombudsman, making it harder for a single executive to exert any kind of individual pressure over the Ombudsman Office. The internal auditing department, however, sees this reporting structure as potentially detrimental to the independence of the Ombudsman Office<sup>158</sup>.

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<sup>155</sup> Interview BiggerPublicBank.

<sup>156</sup> Interview 3 – BiggerPrivateBank.

<sup>157</sup> Interview 5 – BiggerPrivateBank.

<sup>158</sup> Interview – BiggerPublicBank.

BiggerPrivateBank functions as an interesting comparison point, as the Ombudsman Office originally was a part of the HR structure, later being changed in order to respond to the organization's president. Although when the Ombudsman Office was under the HR department the official discourse was that this was not affecting the department's independence<sup>159</sup>, after the change in the report it became clear that reporting to the HR was, at least, hampering the workers' perception of independence of the Ombudsman Office<sup>160</sup>. The change to a new reporting structure was an old demand from the Ombudsman, which was responded once the channel reached a certain level of maturity. The change and the enhanced perception of independence that has followed it was extensively used in internal communications with workers, which led to different uses of the channel. The Ombudsman identifies that since the new structure was put in place, the number and the severity of the cases filed increased substantially, even including grievances against top executives of the organization, which were not observed in the former structure. Moreover, more serious cases of harassment and workplace bullying started to be brought more constantly than before – under the Ombudsman perception those were cases that were happening before, but which were not being properly reported for lack of confidence in the channel. The structure also generated impacts in the relationship with managers, that are now more prone to accept or agree with the Ombudsman's conclusions and suggestions over different cases<sup>161</sup>.

Regarding the workers' perception of the Ombudsman Office, BiggerPublicBank faces serious difficulties in promoting a positive image of the channel internally. The investigatory procedure tends to not satisfy any of the parties

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<sup>159</sup> Interview 1 – BiggerPrivateBank.

<sup>160</sup> Interview 5 – BiggerPrivateBank.

<sup>161</sup> Interview 5 – BiggerPrivateBank.

involved, as the alleged aggressor feels that he/she is being treated unfairly, by being investigated for “simply following the bank’s instructions,” and the grievant employee tend to feel that his/her desire of seeing the aggressor terminated is not being fulfilled<sup>162</sup>. In BiggerPrivateBank, the main resistance towards the Ombudsman seemed to come from managers, not workers, as the initial impression of the channel was that “it was created to protect the worker in face of his/her supervisor,” an image that was slowly changed by the actual usage of the channel<sup>163</sup>.

An important element that might impact employees’ perception over the Ombudsman Office and its usage levels refer to the fear of retaliation after filing a grievance. In BiggerPublicBank, even if after the investigation a grievance is found to be an intentional false report, the Ombudsman opts to not punish the grievant, in order to avoid any of risk of the punishment being perceived as retaliation<sup>164</sup>. In BiggerPrivateBank, on the other hand, the grievant will be terminated if it is found out that he/she purposefully false reported something, therefore prioritizing the credibility of the channel over the avoidance of the fear of retaliation<sup>165</sup>.

Comparing the Ombudsman Offices in both organizations in relation to usage levels is a difficult task, considering that the two organizations might not be using the same criteria to define and classify grievances received, their contents and solutions provided. Even among the same organization, data available for different years are hard to be compared, given the lack of a clear and common measurement criteria throughout the years. At BiggerPublicBank, the total number of cases filed with the Ombudsman

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<sup>162</sup> Interview – BiggerPublicBank.

<sup>163</sup> Interview 1 – BiggerPrivateBank.

<sup>164</sup> Interview – BiggerPublicBank.

<sup>165</sup> Interview 5 – BiggerPrivateBank.

Office in four different years is presented at Table 5. Those numbers, however, represent all types of manifestations filed with the Ombudsman Office, including not only grievance and complaints, but also questions and compliments, among others, therefore being subject to a bigger fluctuation given the availability of different channels for those kinds of manifestations. The data available for BiggerPrivateBank, as displayed in Table 6, seems more consistent, but it is also unclear if the same measuring criteria is being used throughout the different years. However, the information is more precise regarding the past two years for the topics of the grievances filed with the Ombudsman (Table 7), the types of Ombudsman responses (Table 8), and the disciplinary measures implemented by the Ombudsman Office (Table 9).

**Table 5 - BiggerPublicBank – Total cases filed with the Ombudsman Office (all types of manifestations)**

| <b>Year</b> | <b>Approximate Number of Cases filed with the OO</b> |
|-------------|--|
| 2008        | 4,700  |
| 2009        | 7,000  |
| 2016        | 1,409  |
| 2017        | 3,700  |

Source: BiggerPublicBank’s Annual Reports 2008, 2009, 2016, 2017

**Table 6 - BiggerPrivateBank – Total cases filed with the Ombudsman Office (all types of manifestations)**

| <b>Year</b> | <b>Approximate Number of Cases filed with the OO</b> |
|-------------|--|
| 2010        | 2,545  |
| 2012        | 2,100  |
| 2013        | 1,142  |
| 2015        | 921  |
| 2016        | 1,227  |
| 2017        | 1,367  |

Source: BiggerPrivateBank’s Annual Reports 2010, 2012, 2013, 2015, 2016, 2017

**Table 7 - BiggerPrivateBank – Topics of the Grievances filed with the Ombudsman Office**

| Year                          | 2016 | 2017 |
|-------------------------------|------|------|
| Disrespect                    | 44%  | 39%  |
| Internal policy breach        | 26%  | 29%  |
| Lack of managerial efficiency | 10%  | 9%   |
| Intimidation                  | 8%   | 13%  |
| Communication problems        | 4%   | 4%   |
| Harassment/Bullying           | 3%   | 3%   |
| Other                         | 5%   | 3%   |

Source: BiggerPrivateBank’s Annual Report 2017

**Table 8 - BiggerPrivateBank – Ombudsman responses to grievances**

| Year                              | 2016  | 2017  |
|-----------------------------------|-------|-------|
| Total Grievances                  | 1,227 | 1,367 |
| Counseling and orientation        | 26.6% | 28.3% |
| Investigated                      | 69.5% | 56.5% |
| <i>Confirmed by investigation</i> | 50%   | 43%   |
| <i>Dismissed by investigation</i> | 37%   | 44%   |

Source: BiggerPrivateBank’s Annual Report 2017

**Table 9 - BiggerPrivateBank - Disciplinary measures implemented by the Ombudsman Office**

| Year                | 2016  | 2017  |
|---------------------|-------|-------|
| Termination         | 12.7% | 13.7% |
| Warning             | 25.9% | 21.2% |
| Department Transfer | 5.2%  | 6%    |
| Formal feedback     | 56%   | 59.1% |

Source: BiggerPrivateBank’s Annual Report 2017

The information on the topics of the grievances should be observed with care, as they represent only the organization’s perspective on the topic of the grievances, which might not reflect the individual employee perception over his/her own grievance. As explained in Chapter 5, there is evidence that banks adopt a stricter understanding of what constitutes workplace bullying in comparison to unions’ comprehension of the same phenomenon. Although BiggerPrivateBank chose to classify grievances as referring to cases of *disrespect*, *policy breach*, *lack of managerial efficiency*, *intimidation*, *communication problems* and *bullying/harassment*, the description of each of these categories suggest that the same facts could be interpreted as bullying or

harassment by unions, and, potentially, by the grievant employee. For instance, *disrespect* is defined as “authoritarianism, harshness, and arrogance,” *lack of managerial efficiency* is defined as “lack of support or planning of the team’s activities,” *intimidation* is defined as “termination threats, aggressive behavior, and improper employee exposure,” and *communication problems* is defined as “lack of clarity in communication, or absence of communication.” Therefore, depending on the context, all cases could be interpreted as workplace bullying as well.

Finally, it is worth comparing how managers from the Ombudsman Office in each organization see their role in the future of the organizations. In BiggerPublicBank, the goal is to reinforce its mediation tools (covered later) and to be able to identify the conflicts as soon as possible, so there is still time to properly use restorative tools<sup>166</sup>. In BiggerPrivateBank, on the other hand, the focus seems to be on empowering people in the organization in order to make them seek first conciliatory solutions to their conflicts, based on dialogue:

*We try to empower people. We even joke that the best case scenario is one in which there is no need for the Ombudsman, in which people have the freedom to talk [with each other]. Because conflict will always exist - it is inherent in the relationship between people, but ideally people would be able to dialogue over it. (Interview 1 – BiggerPrivateBank)*

#### *Ethics Committees and Compliance Channels*

Although other banks do not have an Ombudsman Office in place, Ethics Committees and Compliance channels tend to play similar roles in those organizations. If even among the organizations that had an Ombudsman Office in place the name would tell little about the office’s organization, structure, and functioning, the differences in the equivalent channels in other organizations are even more clear.

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<sup>166</sup> Interview - BiggerPublicBank.

MediumNationalBank, for instance, opted for a “Conduct Channel,” which was developed after the creation and implementation of a new Code of Ethics in the organization. This channel centralizes all grievances, covering different topics, and forwards it to different departments depending on its content. For instance, all grievances referring to management issues are forwarded to the HR department, which will count on the HR Business Partners to evaluate the content of the grievance and compare it to HR perception over what goes on in the respective team or department. If further investigation is deemed necessary, which might be the case in grievances referring to bullying or harassment, the case is forwarded to the investigations department (*inspetoria*) that is responsible for all investigations within the company. Once HR analyzes the grievance or the results of the investigation, it will define the consequences to the faulty employee in conjunction with his/her direct manager. If they disagree, the case is taken to the executive committee, composed of the five executive directors of the organization. It is the HR duty to try to guarantee the uniformity of punishments and disciplinary measures within the organization. The channel usage is relatively low, with approximately five new cases per month, mostly referring to individual interpersonal relationship conflicts between one employee and his/her direct manager. Depending on the case, HR suggestions vary from coaching and training, up to disciplinary measures, such as warnings or suspensions<sup>167</sup>.

Other small private banks have developed compliance channels which work closely connected to the HR department for cases of bullying, harassment and other employee’s misbehaviors. This is the case of CorporateNationalBank – although seldom

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<sup>167</sup> Interview MediumNationalBank.

used in the bank, this compliance channel is open to all employees and subcontracted service providers, who can use the intranet to file complaints and grievances related to a wide range of topics, from bullying and harassment, to complaints about dirty bathrooms or suspicions of accounting or financial frauds. If the case is related to workplace or interpersonal conflicts, it is forwarded to the HR department, which has 30 days to handle it. In 2017, only five of this type of cases were received, being four of potential workplace bullying. Due to the size of the bank and HR knowledge of employees' overall behavior, cases described are usually not a complete surprise to the HR manager or business partners, who will look for evidence of the misconduct in HR materials, such as performance assessment reports, or conduct informal investigation in the team involved in the conflict. In 2017, 100% of the cases were confirmed after HR's informal investigation. In this case, the report is taken to the Ethics Committee, composed of HR, Auditing, Compliance, and all executive directors of the organization, for a decision on the matter. The final decision is also informed to the author of the grievance, and most cases so far have resulted in termination of the faulty employee<sup>168</sup>.

In large state-owned banks, such as LargePublicBank, the need to have a proper investigatory department to deal with severe cases of fraud and misconducts leads to the availability of another channel that might be used to handle workplace conflicts, such as bullying and harassment. In LargePublicBank the *Corregedoria* is used exclusively for cases involving breaches of the Code of Conduct or other internal policies. This channel is completely unrelated to HR or the Protocol channel, and conducts its own investigation over the alleged breach of the internal policy, later sending its final report

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<sup>168</sup> Interview - CorporateNationalBank.

to the evaluation of the appropriate committee. Cases of bullying, harassment or discrimination, which constitute violations to the organization's Code of Ethics, are evaluated and decided by the Ethics Committee<sup>169</sup>.

International banks, such as MediumForeignBank and ForeignInvestmentBank, count not only on their local compliance channels, but also on similar grievance channels or hotlines connected to their headquarters. Those global channels are very rarely used by employees in the Brazilian offices, and tend to be accessed only in cases of severe misbehavior or harassment. In MediumForeignBank, if an employee accesses the global hotline, investigations are conducted by the local compliance department, following the global policies and practices<sup>170</sup>. In ForeignInvestmentBank, if the global channel is used – which has not happened so far – the headquarters would conduct the investigations and determine disciplinary measures, with the support of the local team<sup>171</sup>. In CorporateForeignBank, the code of ethics is global and elaborated by the headquarters, being very rigid in terms of consequences for each type of fault. In less severe cases, the local HR has some flexibility to use the local context to apply a less severe punishment if it is deemed adequate. For severe cases, such as bullying or harassment, local HR department has to simply follow what is determined in the global policies, with almost no room for any flexibilization<sup>172</sup>. In OtherForeignBank, where the local administration has more independence from the global headquarters, all cases are locally handled by the Brazilian compliance department<sup>173</sup>.

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<sup>169</sup> Interview 1 – LargePublicBank.

<sup>170</sup> Interview - MediumForeignBank.

<sup>171</sup> Interview - ForeignInvestmentBank.

<sup>172</sup> Interview – CorporateForeignBank.

<sup>173</sup> Interview - OtherForeignBank.

Although all the channels described above are at a certain level similar to the overall concept of an Ombudsman Office, they tend to lack some key characteristics, usually important to guarantee the impartiality and neutrality of the ombudsman. For instance, the issue of anonymity or confidentiality of the grievant's identity, although a concern, is not as central in the design of these channels as it is the case in Ombudsman Offices. However, the possibility of anonymously filing a grievance is still a characteristic in most channels, as it is the case with CorporateNationalBank's compliance channel<sup>174</sup>. Likewise, reports of the investigations are usually attached to the banks' litigation defenses, whether to serve as evidence to a just cause termination, or to demonstrate that the organization had put efforts in combating harassment in the workplace<sup>175</sup>.

When it comes to the structures of channels, some concerns over worker's perception of the channels' impartiality and neutrality becomes clear. At MediumNationalBank, the channel was originally under the HR structure, and it was moved to the auditing department in order to guarantee more independence and neutrality. Even the change in the name of the channel, removing the word HR from it, had the goal of promoting an image of complete autonomy to the eyes of the potential grievant. On the other hand, HR plays an important role as part of the structure, in order to guarantee the alignment of the decisions with the organization's culture and the uniformity of the punishment being applied throughout the bank<sup>176</sup>. At CorporateNationalBank, the fact that the channel is under the Compliance department allows HR to use it strategically. There are cases in which HR is aware about recurring

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<sup>174</sup> Interview – CorporateNationalBank.

<sup>175</sup> Interview – CorporateNationalBank and MediumNationalBank.

<sup>176</sup> Interview – MediumNationalBank.

conducts of a certain manager, which are misaligned to the bank's culture, but over which HR lacks the proper organizational authority to act upon, due to the manager's positive business performance and general acceptance within the group. In those cases, when an employee approaches HR with a complaint about this manager, HR incentivizes him/her to use the compliance channel, so it can internally leverage HR's position over the necessity of properly controlling the manager's inadequate behavior<sup>177</sup>.

It is worth observing individual employees' overall perception over those channels, which seems very similar to what is reported in organizations with proper Ombudsman Offices in place. The worker who files the grievance in cases of bullying or harassment apparently expects the company to terminate the alleged aggressor – any punishment below that would be considered an inadequate answer<sup>178</sup>. However, HR managers' reaction to this expectation vary. At MediumNationalBank, HR expressly states that its role is not to simply respond to the grievant's expectation, but to evaluate what is the proper response to the case, which is more aligned to the organization's culture<sup>179</sup>. At CorporateNationalBank, the channel is not seen to have the role to simply confirm the grievant's expectation, but the overall perception is that the cases that reach the channel are usually confirmed by the investigation and found to be severe enough to justify the termination<sup>180</sup>. This attitude might be related to the perception of the types of cases that tend to reach the channel in each organization. In some cases, the perception is that those channels are the last resort to the worker, who usually will not

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<sup>177</sup> Interview – CorporateNationalBank.

<sup>178</sup> Interviews – MediumNationalBank and CorporateNationalBank.

<sup>179</sup> Interview – MediumNationalBank.

<sup>180</sup> Interview – CorporateNationalBank.

file a grievance and face all the process involved in the system if it is not something severe enough:

*Most times in cases brought to the Channel, when you read the text of the grievance, the person is on the edge. He is really using it as the last resort. [...] The person [uses it] when he really feels very, very hurt. Very disrespected. So, usually, the texts that go up to the channel are aggressive and sad. Because the person reports the situation in a very, very strong manner. [A feeling] of being disrespected, because, usually, in order for you to access such a channel, you have to feel very disrespected. (Interview – CorporateNationalBank)*

Finally, although the issue is a concern for HR managers, those channels tend to lack any form of retaliation protection, which is recognized as a potential cause that might be hindering grievances to be filed<sup>181</sup>. There are even cases in which, for other reasons the HR opted to terminate an alleged victim of workplace bullying that had used the bank's channel, which clearly caused a negative impact on the workers' overall perception over the reliability of the channel<sup>182</sup>.

#### *Commission for workplace bullying and sexual harassment*

Ombudsman Offices, compliance channels, and ethics committees do not exhaust all the alternatives available to banks in order to have a specific channel tailored to handle conflicts such as bullying or harassment. MediumPublicBank, a regional state-owned bank, has a specific commission for workplace bullying and sexual harassment that deserves a closer look.

This commission was created in 2012, originally developed to handle exclusively cases of workplace bullying and sexual harassment. Employees' usage of the channel, however, transformed it into a channel for workplace conflicts and

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<sup>181</sup> Interview – MediumNationalBank.

<sup>182</sup> Interview – CorporateNationalBank.

workplace related grievances in general, as currently approximately only 10% of the cases reported refer to bullying or harassment<sup>183</sup>.

The commission is composed of representatives of HR (two), sustainability, and commercial departments, as well as a union appointee, who is usually a union director. The channel can be accessed via intranet by all employees, interns and subcontractors. A form should be filled with the grievance content – the form’s questions direct the grievant to identify if the case constitutes or not bullying or harassment. However, even if the information provided is already enough to determine that the case does not constitute bullying or harassment, the commission will proceed with the process, in order to provide the grievant with a voice opportunity<sup>184</sup>.

In the process, the commission will first hear the alleged victim, followed by informal hearings of other potential witnesses. The alleged aggressor is the last person to be heard, after the conclusion of the other hearings is presented – this final hearing works as an informal opportunity for the alleged aggressor to present his/her “defense.” If the commission concludes that the case constitutes harassment or bullying, it will be forwarded to the disciplinary commission with the recommendation that an administrative disciplinary procedure is opened. If the case is not identified as bullying or harassment, the commission itself will determine the next steps and treatment to the manager responsible, depending on the case characteristics and internal regulations. Those might include warnings, training or coach recommendation. Besides that, most cases end up with some form of internal transfer to another department or branch of the bank, for the manager or employee. This is deemed necessary because most of the cases

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<sup>183</sup> Interview – MediumPublicBank.

<sup>184</sup> Interview – MediumPublicBank.

that arrive to the commission refer to longstanding conflicts that cannot be handled by keeping both parties in the same workplace:

*[...] the cases we have had in the committee, as the conflict that arrives at the commission is already at a more serious level – in most cases we end up recommending some internal transfer. Whether for the manager or for the grievant. [...] For any kind of conflict that needs it. Because we identify that when the conflict reaches the commission, if we somehow do not separate them... What would happen to the conflict? It's one thing for someone to have a difference with X and that difference being tiny and hidden there. [In those cases] if he sits with us, we can still work it out. But when it comes to the commission, he no longer talks to X and X no longer talks to him. [...] [It reaches a point that] we do not identify that you can try to rescue [the relationship in order to guarantee] the maintenance of the coexistence. So, we usually separate them. (Interview – MediumPublicBank)*

The channel receives approximately 30 cases per year, of which only 10% refer to harassment or bullying in the workplace. In 2018 the commission analyzed its first ever case of alleged sexual harassment<sup>185</sup>.

Once again, the concern with preserving the identity of the grievant and the confidentiality of the investigation is central to the commission, as it was seen to be the case in other channels, mainly Ombudsman Offices, even though the grievance cannot be filed anonymously. The alleged victim of harassment or bullying is the sole owner of the grievance, even in cases where he/she is not the author of the grievance – there are cases in which a colleague or third person reports the case to the commission, who will only initiate the investigation after authorized by the alleged victim. Furthermore, all that happens within the commission and its hearings is completely confidential and never shared with anyone outside the commission. In the past, this concept was stretched to an extreme, in which even when the case was forwarded to the disciplinary

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<sup>185</sup> Interview – MediumPublicBank.

commission for the start of an administrative disciplinary procedure, the names of the witnesses were kept confidential, sometimes forcing the disciplinary commission to conduct once again the same complete investigation procedure. Currently, the names of the witnesses are open for the disciplinary commission only in cases of bullying or harassment<sup>186</sup>.

The concern with the confidentiality is not due only to the intent of preserving the parties. Sometimes even the results obtained by the channel or the advertisement of the channel is avoided, with the fear that any communication over the topic might be interpreted as a sign that harassment and bullying are a more present issue in the workplace than they really are<sup>187</sup>.

It should be noticed that, although the commission is not under the HR, nor is it composed exclusively of HR representatives, the channel is often recommended by HR to employees who reach the HR department with potential harassment or bullying cases<sup>188</sup>.

Finally, it should be highlighted the importance that the channel seems to have as a voice mechanism for workers, even in cases where there is no evidence of workplace bullying or harassment. The channel is usually most accessed right after the supervisor's feedback during the performance assessment process. Facing in the performance assessment tool a critique from the supervisor with which he/she does not agree with, the worker opts to use the commission channel to question some of the supervisor's behavior in the lack of a proper channel to do so<sup>189</sup>.

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<sup>186</sup> Interview – MediumPublicBank.

<sup>187</sup> Interview – MediumPublicBank.

<sup>188</sup> Interview – MediumPublicBank.

<sup>189</sup> Interview – MediumPublicBank.

### *Unions' perceptions*

In the previous pages the banks' internal channels, such as Ombudsman Offices, Compliance Channels and Ethics Committees have been described, but little has been said regarding the relationship of those channels with unions and the unions' perceptions over those channels. Understanding this is important not only in order to have a complete picture of the functioning of those channels, but also to properly compare them to the Protocol channel described earlier and favored by some unions in the sector.

Regarding the relationship between internal channels and the Protocol channel, two situations are commonly observed. In some cases the channels are completely separated from each other, not sharing access channels, structure or investigation procedures (e.g., MediumNationalBank), whereas in others the internal channel is responsible for all the investigations, whether the grievance was filed internally or via the union, using the Protocol channel (e.g., BiggerPublicBank and BiggerPrivateBank). In all cases, however, all the interaction between those internal channels and the unions are intermediated by the Labor Relations department of each bank<sup>190</sup>. Usually, Labor Relations departments function as buffers in the relationship between the unions and the internal channels, filtering and conducting all the communication between both. In BiggerPrivateBank, for instance, the Labor Relations department simply receives the final Ombudsman report from the Ombudsman Office and forwards it to the union through which the grievance was filed, not acting on anyway in the investigation procedure and activity, in order to maintain the Ombudsman's impartiality and confidentiality<sup>191</sup>. There are, evidently, exceptional cases in which the Ombudsman might ask Labor Relations to have a direct contact with union representatives, in order

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<sup>190</sup> e.g., Interview 5 – BiggerPrivateBank.

<sup>191</sup> Interview 4 – BiggerPrivateBank.

to explain the peculiarity of a certain case, or if it is a case that has been central to the union discourse – this direct contact, however, is not the rule, but the exception<sup>192</sup>. There are union leaders that do not view the lack of direct contact between unions and the banks' internal channels as a problem, as some distance might be necessary in order for the internal channel, such as Ombudsman Office, to guarantee its level of independence and confidentiality. Moreover, the usually close connection between unions and Labor Relations department allows unions to try to use this relationship and the intermediated access to internal channels to fish for information on cases being investigated internally by the bank, which did not go through the union<sup>193</sup>. On the other hand, some managers of banks' internal channels affirm to prefer that a direct link to the union would be in place<sup>194</sup>, to which some union leaders agree, but for different reasons:

*In my perception, I would prefer [to have direct access to the internal channels]. Labor Relations departments usually have the role of alleviating [the conflict] - they are negotiators, after all. They are a containment barrier that holds the pressure that we make. If we could exert direct pressure on the VP or the executive director, it would be better, because we would be exposing those people. (Interview 1 – BigLocalUnion)*

Overall, most unions have a critical perspective on the banks' internal channels, which is confirmed by interviews with union leaders, unions' publications, and bank managers' own perception. The tone of the criticism targeted at the internal channels, however, varies among unions. At one extreme, there are union leaders that consider simply irrelevant what happens inside the banks with any grievance filed by the union via the Protocol channel (i.e. who is responsible for the grievance investigation), as long as the response is received in 45 days. In some cases, those union leaders even

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<sup>192</sup> Interview BiggerPublicBank.

<sup>193</sup> Interview BigConfederation.

<sup>194</sup> Interview 5 – BiggerPrivateBank.

recommend that workers use both the union's Protocol channel and the bank's internal grievance channel, as a strategy to cover the grievance with all possible tools and make sure that attention is being paid to the matter<sup>195</sup>. In the other extreme, there are union leaders who completely distrust banks' internal channels, such as Ombudsman Offices, to even conduct investigation:

*Because we do not trust the company's investigation. We do not trust it. Because if the bullying is organizational, how can I allow the investigation of the grievance to be conducted by the one who instructs the bullying to happen? It is like putting a fox to guard the chicken coop, therefore letting the victim very exposed. We always advise workers to report to the union, either via the shop steward or via our hotline. (Interview CriticalLocalUnion)*

The most common criticism from unions, however, lays not over the investigatory procedures of the internal channels, but at the decision-making procedure and the lack of independence, consistency or transparency involved in this process.

*The Bank's ombudsman system is very good - so technically I have no criticism to their investigation model. What we have problems with is the decision model. Since we do not have [a say in] the decision, it is much more politicized. Although the technicians make their suggestions, the decision ends up being political. [...] In some situations that reaches the bank's top management, we haven't seen any important decisions being made [...]. Those who decide on the Ethics Committee will hardly make any decision against someone who has superior hierarchical position. They have neither the courage nor the authority to punish [the top management]. (Interview – PublicLocalUnion)*

In other cases, union leaders doubt about the actual level of confidentiality guaranteed by those internal channels<sup>196</sup>, or they see channels such as Ethics Committees as non-transparent ways of finding excuses to punish or terminate certain employees<sup>197</sup>.

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<sup>195</sup> Interview – BigConfederation.

<sup>196</sup> Interview 2 – BigLocalUnion.

<sup>197</sup> Interview 4 – BigLocalUnion.

Different union publications tend to treat internal channels negatively as well. There are cases in which Ombudsman Offices are described simply as “a source of retaliation and termination of the grievant employee” (SEEB - Catanduva 2015). Cases of retaliation against those who have filed a grievance with the internal channels are constantly described in union communication, what is usually used as a warning to prefer the unions’ channels instead of banks’ internal channels:

*The Ombudsman [...] should resolve interpersonal conflicts, being a secure channel. However, what can be observed is that the company’s real interest is to terrorize bank workers who file grievances. The Union warns that any problem should be filed with the union, the true channel for the workers’ defense. (FEEB – BA/SE 2016)*

Unions main point of comparison between unions’ channels and banks’ internal channels refer to the confidentiality of the grievance authorship, and the risk of retaliation and termination when using banks’ internal channels (e.g., SPBancarios 2015a). Although in most cases this is simply used as warning to reinforce the differences between unions and banks’ channels, there are cases in which harsher words are used to describe the banks’ internal channels as anti-union in essence, or as something that should be completely eliminated from banks:

*This shows once again that the institution of the Ombudsman in the bank is not serious. The Bank created this office, where workers should be able to channel their dissatisfactions, in order to try to keep them away from the union movement. But this case shows that the Ombudsman ends up being another tool to weaken and punish the workers. (SEEB – Campo Grande, 2013)*

*The Ombudsman transforms victims in defendants. The goal of the Union is to end with this tool that should have another function, but just became another form of retaliation. (SEEB - Bahia 2013)*

Bank managers are aware of the negative perspective that most unions have over their internal channels. Some Ombudsman even feel that they are seen as enemies by

the union leaders<sup>198</sup>. Several possible reasons behind this antagonistic relationship are suggested. One possible problem is the lack of union participation in the construction of most of those banks' internal grievance channels. Moreover, unions are seen as unprepared for decisions that dismiss the grievance<sup>199</sup>. In other cases, managers recognize that unions see banks' internal channels as threats to the unions' power and influence over its constituents, but they also criticize that unions are usually not interested in resolving the grievances, but on gaining visibility with them<sup>200</sup>. Finally, unions are described as partial by nature, able to only see the worker's perspective, therefore not being prepared to deal with an impartial channel, such as an Ombudsman Office<sup>201</sup>.

Another common criticism by union leaders refers to banks taking advantage of their easy access to workers to intensively advertise the bank's internal channels instead of the union's or Protocol channel<sup>202</sup>, or simply leading to confusions about the different channels (SPBancarios 2015b). However, sometimes unions also try to take advantage of this situation, by coordinating the simultaneous filing of multiple grievances with similar contents to the internal channels, in order to pressure banks to take some action over a collective problem (SPBancarios 2011). Given the banks' internal advertisement, it is common for workers to first try to use the internal channels, seeking the union only after the internal channels have failed<sup>203</sup>.

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<sup>198</sup> Interview 5 – BiggerPrivateBank.

<sup>199</sup> Interview 5 – BiggerPrivateBank.

<sup>200</sup> Interview BiggerPublicBank.

<sup>201</sup> Interview 5 – BiggerPrivateBank.

<sup>202</sup> Interview 4 – BigLocalUnion.

<sup>203</sup> Interview 2 – BigLocalUnion.

It is important to notice that all the scenario described above is not applicable to MediumPublicBank, where the Commission for Workplace Bullying and Sexual Harassment includes a union representative as previously described. The bank has considered the experience extremely positive, reporting that the union representative has also been working with the necessary impartiality in the commission. Moreover, being part of the commission, the union is described to trust more in the channel, considerably helping with the channel's advertisement among its constituents<sup>204</sup>. PublicLocalUnion, that deals with different kinds of internal channels in its territory, also considers the experience with MediumPublicBank's commission positive. The union is able to maintain its independence in the Commission, and by hearing the versions of the alleged victims and aggressors, it is also able to propose solutions that are adequate for all the parties involved, who, after all, are all technically represented by the same union<sup>205</sup>. Other banks and union had brief experiences with workers' representatives sitting in committees similar to the Ethics Committees described previously. However, the lack of any form of employment protection to the workers' representative left him/her on a fragile position, which made the union not support the channel, later abandoned by the bank<sup>206</sup>.

Finally, it should be highlighted that with very few exceptions (i.e. LargePublicBank and MediumPublicBank), the alleged victims and aggressors are usually not allowed to bring their own attorneys to any stage of those internal channels investigatory and decision-making process<sup>207</sup>.

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<sup>204</sup> Interview – MediumPublicBank.

<sup>205</sup> Interview PublicLocalUnion.

<sup>206</sup> Interview 2 – BigLocalUnion.

<sup>207</sup> Interview PublicLocalUnion.

### **Responding to other relationship conflicts**

As explained previously, workplace bullying and sexual harassment constitute just a small, but extremely relevant part of the conflicts currently taking place in the banking sector. Other interpersonal conflicts that do not characterize bullying or harassment, and do not have considerable legal relevance, probably constitute the bulk of most conflicts in the sector. Although some of those conflicts might end up being treated by the channels specially designed for other types of conflicts, as described, banks usually see HR departments as responsible for managing those relationship conflicts, whether directly, or indirectly, by training managers and team members on conflict management techniques. In the following sections, the role of HR is analyzed, followed by a description of the current development of some mediation attempts currently being conducted in the sector.

### ***HR Tools and Channels***

All the banks in the sample, public or private, small or large, have an HR department in place, with at least some level of strategic mission. Practices such as performance assessment and variable compensation are present one way or another in all banks, although state-owned banks, mainly at the regional level, tend to devote less attention to variable compensation based on individual performance.

In relation to conflict management, HR Business Partners and similar structures seem to play a central role in most banks analyzed. HR Business Partners usually refer to HR professionals assigned to have a more strategic role and work closer to one or a group of teams and departments, functioning as an intermediary between the internal client and the HR functional subdepartments.

In a small international bank, such as OtherForeignBank, the business partners are in constant direct interaction with managers, even discussing different strategies to handle conflicts that those managers might be observing in their teams<sup>208</sup>. In a medium sized private-owned bank, such as MediumNationalBank, the proximity of HR Business Partners with managers and employees in certain departments, make it almost natural that Business Partners are sought to help managing conflicts in certain teams<sup>209</sup>. That is also the case in a large private bank, such as BiggerPrivateBank, where Business Partners constitute the frontline of the HR department, being close to different managers and departments on a daily basis, therefore being able to feel the climate in a certain team, and notice if any interpersonal conflict is going on or is in the verge of being developed among a certain team, which also makes them great partners to the Ombudsman Office<sup>210</sup>.

The role of Business Partners in relation to conflict management seems to face some important obstacles, mainly in large organizations. Given the size of teams and departments covered by each HR Business Partner, they tend to naturally be much closer to managers than to other employees who are members of the team. This proximity to management is usually perceived by employees in general, which is believed to make them less comfortable and prone to report a conflict to the HR Business Partner, mainly when it involves their managers, who they see as closer to HR<sup>211</sup>.

In smaller banks, where sometimes the size might not justify the existence of a Business Partner structure, HR managers try to take advantage of the proximity to all

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<sup>208</sup> Interview – OtherForeignBank.

<sup>209</sup> Interview – MediumNationalBank.

<sup>210</sup> Interviews 1, 2 and 3 – BiggerPrivateBank.

<sup>211</sup> Interviews 1 and 5 – BiggerPrivateBank.

employees and managers allowed by the smaller size of the organization. Although this small structure has the advantage of allowing workers and managers to reportedly feel more comfortable in directly accessing HR via phone, e-mail, or personally whenever necessary<sup>212</sup>, this creates other problems for HR managers, who usually try to make team leaders and department managers responsible for trying to resolve their own teams' internal conflicts<sup>213</sup>. In MediumNationalBank, for instance, HR struggles with managers who want to simply delegate their conflict management responsibilities to HR, or use an HR decision as a way to remove himself/herself from the role of managing the conflict<sup>214</sup>. In order to avoid this kind of behavior, HR tries to implement a culture of conflict management where each manager feels responsible for managing his/her own team's conflicts<sup>215</sup> or by making sure that the HR professional will only play a supporting role in conflict management, making suggestions, but leaving the responsibility to personally handle the conflicts to each manager<sup>216</sup>.

Despite the existence of proper channels exclusively dedicated to dealing with conflicts, such as Ombudsman Offices, or the reported proximity of the HR department with managers and employees in smaller banks, most HR departments still have some form of hotline or specific HR channel, which might occasionally receive conflict-related grievances. Most of the time, though, those channels are simply used to answer questions and doubts from employees regarding HR-related topics, such as payroll or benefits<sup>217</sup>. Even when those channels might be apt to receive grievances connected to

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<sup>212</sup> Interviews SmallForeignBank, CorporateForeignBank and CorporateNationalBank.

<sup>213</sup> Interview SmallForeignBank, MediumNationalBank, and MediumPublicBank.

<sup>214</sup> Interview – MediumNationalBank.

<sup>215</sup> Interview – MediumNationalBank.

<sup>216</sup> Interview MediumPublicBank.

<sup>217</sup> Interview – LargePublicBank.

workplace conflicts, their usage is reported to be extremely low, probably connected with the lack employee trust in the autonomy and independence of an HR channel in comparison to the other available channels<sup>218</sup>.

Although not specifically designed to deal solely with conflicts in the workplace, almost all HR departments have HR tools used company-wide that end up dealing with or supporting conflict management. Among those, performance assessment systems, climate surveys and termination interviews are the ones more commonly cited in interviews. Regarding performance assessment tools, for instance, in CorporateNationalBank, HR pays special attention to the top 20% performers and the bottom 10%, through individual interviews with the employees – in the case of the bottom 10%, it is not uncommon for issues relative to interpersonal conflicts to be brought up by the worker, which occasionally might help to explain the poor performance<sup>219</sup>. In other banks, performance assessment tools play a role in conflict, but not as a tool to identify its occurrence, but as a potential source of conflict. It is not unusual to observe a higher usage of diverse grievance channels after the performance assessment process, as workers might be looking for a channel to voice their dissatisfaction with the manager's feedback or evaluation<sup>220</sup>.

The connection between climate surveys and conflict management is even more evident. Almost all the banks interviewed have some form of climate survey in place, although with some variation in terms of its content or periodicity. In LargePublicBank, for instance, the climate survey is conducted every 2 years, leading managers to elaborate action plans with the support of the HR department, once results are disclosed.

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<sup>218</sup> Interview – MediumNationalBank.

<sup>219</sup> Interview – CorporateNationalBank.

<sup>220</sup> Interview – MediumPublicBank.

The central HR tends to work even closer in the critical cases, when the presence of different types of conflicts are not uncommon<sup>221</sup>. In a large private bank, HR has two different climate survey tools – a complete one, applied every two years, and a short one, applied up to three times per year, which allows for better monitoring on the implementation of different plans based on the surveys' results<sup>222</sup>. Even smaller banks tend to rely on climate surveys, although usually tailoring the instrument to the reality of the smaller firm. In one case, almost 30% of the climate survey questions refer to issues related to relationship and communication, therefore potential sources of interpersonal conflicts. Besides working as a good tool to identify conflict occurrences in certain departments, climate surveys facilitate HR managers' access to different teams and departments, as the existence of a survey result make department managers less prone to question HR interventions in the team<sup>223</sup>.

Termination interviews, although less common, also allow for HR departments to identify some patterns of conflict or potential bullying behavior in certain teams or departments<sup>224</sup>.

If those tools described above show how HR departments are becoming aware of conflicts taking place in the workplace, they tell little about how those conflicts are handled once identified. In most cases, defined procedures do not seem to be in place, but expressions with the terms “dialogue,” “coach,” and “mediation” were constantly cited in the interviews, although those terms are usually loosely defined by HR managers.

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<sup>221</sup> Interview – LargePublicBank.

<sup>222</sup> Interview 2 – BiggerPrivateBank.

<sup>223</sup> Interview – CorporateNationalBank.

<sup>224</sup> Interview 2 – BiggerPrivateBank.

At SmallForeignBank, for instance, once the HR manager identifies that the conflict probably has its origins in communication problems, she tries to use coaching techniques with the involved parties, describing it as talking with the parties involved to understand their perspectives, generate possible solutions with the involved managers, and promoting a group meeting for an agreement over the solution to be adopted<sup>225</sup>.

At LocalPublicBank, where within HR there is an Employee Relations department composed mostly of social assistants, which is designed to monitor workplace climate, some form of informal mediation was developed naturally after the failure of other techniques. In cases of the Ethics Committee that the HR department was involved, originally HR would simply listen to each party individually about their perspective on the conflict, usually with little result. Those failures led the HR to listen to both parties at the same time, in the same room, trying to promote some form of conciliation, which usually can be resolved by one of the parties apologizing to the other<sup>226</sup>.

Whether through dialogue promotion<sup>227</sup>, informal mediation, or coaching techniques, the goal of HR managers is usually to make department managers and team leaders feel responsible for resolving the conflicts that occur in their own teams, using HR only as a support in cases deemed necessary:

*As much as possible we try not to intervene directly [in the conflict]. I try to always put myself as a [neutral] third person, in the sense of [asking]: 'Look, how did this conflict happen? Tell me the story [behind it].' And to play the role of a coach, in the sense that I'll put the person as the protagonist of the issue at hand. [For instance,] if you did not feel well because person X said a certain word to you or disrespected you in front*

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<sup>225</sup> Interview – SmallForeignBank.

<sup>226</sup> Interview – LocalPublicBank.

<sup>227</sup> Interview – CorporateForeignBank.

*of others, I encourage people to seek each other and resolve the conflict between them, totally without my presence. This is the guide we give here internally: be the protagonist. You did not feel well about it, you did not like it, you must have the freedom to talk and question the other person, regardless of [your and his/her] position. I do not mean arguing about it, but talking about the conflict. And we teach people how to do it. Usually the people who come to us for this are the youngest workers. And they use our support. They come to HR, and they ask us: 'but how am I going to talk with him? How will I call him to talk? What am I going to tell him? Should I e-mail? Speak in person? Use the messenger? Should I tell my supervisor first?' (Interview – CorporateNationalBank)*

In small international banks, the HR involvement from the headquarter tend to vary depending on the severity of the conflict. Most daily conflicts, which are not too severe, are treated locally and internally by HR departments in Brazil, without the involvement of global HR departments<sup>228</sup>. In more severe conflicts, global HR departments tend to be involved, as they usually have more experience with different types of conflicts, given their dedicated employee relations structure<sup>229</sup>.

### ***Mediation***

In relation to employment mediation, two different situations are easily identified. On the one hand, most HR departments tend to use the word mediation or conciliation to refer to any procedure that tries to reach a consensual outcome for a certain conflict. On the other hand, BiggerPublicBank is the only firm in the sample that has a proper employment mediation program in place, although other banks also affirm to have plans to implement their own mediation programs in the future.

Among the first group, where employment mediation is not properly structured, some cases should be highlighted. LocalPublicBank affirms to try to conciliate all the conflicts that reach its grievance committee. Although originally this was done via

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<sup>228</sup> Interview – ForeignInvestmentBank.

<sup>229</sup> Interview – CorporateForeignBank.

separated conversations with each of the parties involved in the conflict, this model was found to increase conflicts. Currently, both parties involved in the conflict are listened to at the same time, as an attempt to promote an apology or an agreement to change a certain behavior<sup>230</sup>. At MediumNationalBank, the attempts from HR to do something similar to mediation, by putting the employee and the supervisor together to discuss the conflict with the support of an HR representative, faces great resistance from supervisors, who are reported to feel betrayed by the employee who seeks the HR instead of the supervisor himself/herself<sup>231</sup>. At CorporateNationalBank, where HR states that the goal is to try to mediate conflicts whenever possible, this process is described as simply an HR feedback to the alleged aggressor after the investigation over the grievance is conducted. Attempts to conduct conversations between the parties at the same room, led by the HR, were abandoned, due to the lack of HR training and the complete failure of the previous attempts<sup>232</sup>.

Therefore, it seems that the concept of mediation is not exactly clear to most HR managers, although the term is used often, in conjunction with other loosely defined terms, such as conciliation or coaching. Even HR managers who affirm to be currently seeking to establish an employment mediation program, seem to have some difficulty in differentiating the concepts of arbitration and mediation<sup>233</sup>.

The main exception is BiggerPublicBank, which has a well-developed employment mediation program in place since 2014, established by the Ombudsman Office in the organization. At the time, an individual employee of the department

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<sup>230</sup> Interview – LocalPublicBank.

<sup>231</sup> Interview – MediumNationalBank.

<sup>232</sup> Interview – CorporateNationalBank.

<sup>233</sup> Interview – MediumPublicBank.

observed the lack of proper solution to a great amount of the grievances reaching the Ombudsman Office, and, inspired by the local civil courts' experiences with restorative justice, started the development of the mediation program. The whole program is based on the concepts of restorative justice and nonviolent communication<sup>234</sup>.

All cases that reach the Ombudsman Offices that do not present evidence of being a breach of an internal policy and that are comprised of only two individuals in conflict are sent to mediation – whereas all other cases follow the Ombudsman Case Studies procedure, described earlier, or are forwarded to the disciplinary commission<sup>235</sup>.

The mediation process is always conducted by the local HR department and the parties' participation in the mediation process is always voluntary. The local HR first contacts the grievant and explains the mediation process, asking for his adhesion, later proceeding in the same way with the respondent. If the grievant chooses to not participate in the mediation, but the respondent agrees to it, HR will conduct a “restorative conversation” with the respondent, which is a well-structured feedback process based on the concepts of nonviolent communication (Rosenberg 2015) and restorative justice (Mika and Zehr 2017). If the grievant agrees with the mediation, but the respondent does not, the case is treated as an Ombudsman Case Study, and the investigation procedure is initiated<sup>236</sup>.

All mediation sessions have the participation of both parties, a mediator, and a co-mediator, who checks the mediation procedures, and take notes in order to later draft a settled agreement. Sessions take place in neutral environments, i.e., outside the office space where both parties work. Desks are always round, or in the absence of a round

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<sup>234</sup> Interview – BiggerPublicBank.

<sup>235</sup> Interview – BiggerPublicBank.

<sup>236</sup> Interview – BiggerPublicBank.

table, chairs are disposed in a way that is clear that there is no hierarchy or privileged position of any of the parties in the mediation session. Square or rectangular desks are never used, for this exact reason<sup>237</sup>.

The mediator paraphrases what one party is saying to the other, mainly at the beginning of the mediation, in order to overcome any emotional barriers for one party to listen to the other. Mediators have to follow a strict script with six questions to be answered by both parties. The first question asks for each party to describe what happened in the conflicting situation, which is followed by each party's description of their feeling about the event. The third question asks the parties about how they might have contributed to the conflict, followed by their perception about who else might have been affected by the conflict. Fifth question asks what the person believes that is necessary to fix the relationship, and finally the parties are asked about how they can contribute to fix the relationship. Usually the parties tend to talk to the mediator during the first two questions, progressing to a direct conversation in the final questions<sup>238</sup>.

At the end of the six-questions cycle, if an agreement is reached, its conditions are written down by the co-mediator, and signed by the parties. Thirty days after the agreement's signature, the local HR department contact the parties to check if it has been properly followed by the parties, or if more time is needed. In the first nine months of 2017, 400 mediation sessions were held, with 96% of the cases reaching an agreement. At the same period, there were 180 cases of restorative conversation, with a reported success rate of 99%. Overall the focus of all the mediation process lays on the future of the relationship, and less on defining who was responsible for the conflict,

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<sup>237</sup> Interview – BiggerPublicBank.

<sup>238</sup> Interview – BiggerPublicBank.

which tends to be the focus of the Ombudsman Case Studies and other disciplinary tools<sup>239</sup>.

The types of cases that tend to go to mediation usually refer to early stage interpersonal relationship conflicts, such as unwanted nicknames and behaviors that make someone uncomfortable in the workplace. Usually, the grievants themselves are not using the word bullying or harassment to describe those conflicts, although the Ombudsman believes that those cases might develop into bullying or harassment if not treated early on. Their goal is exactly to spot those conflicts as early as possible, as, from their experience, only conflicts that are less than “six months old” are likely to be resolved in mediation. Conflicts beyond that tend to have developed into more severe cases, which will need to be treated by the Ombudsman Case Studies, other disciplinary channels, and, in some cases, even litigation<sup>240</sup>.

Currently there are 787 employees trained in restorative mediation techniques, who might be sought by anyone in the organization for informal mediations, over which the Ombudsman Office has no control at all. Most of those trained mediators are part of the Ombudsman Office structure or of the networks of local HR departments. Formal mediations are conducted by approximately 80 mediators, who are also apt to train other employees in the restorative mediation techniques. All training material was developed internally by the organization, and the bank has promised to hold at least 30 training sessions per year in order to form new mediators. Besides that, video-training on nonviolent communication is available company-wide, and trainings on the topic are offered in specific departments where the conflict rates are noticeably high<sup>241</sup>.

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<sup>239</sup> Interview – BiggerPublicBank.

<sup>240</sup> Interview – BiggerPublicBank.

<sup>241</sup> Interview – BiggerPublicBank.

Whereas other banks with Ombudsman Offices also plan to implement similar employment mediation programs<sup>242</sup>, unions seem to be little interested in those kinds of programs. The leader of PublicLocalUnion, representative of employees in the headquarter of BiggerPublicBank, has no knowledge about the employment mediation program, which has been in place since 2017<sup>243</sup>. Leaders of other unions question the usage of mediation to handle cases of workplace bullying or harassment: “To mediate a sexual harassment case is to lay a stone over the problem. There is no room for mediation in a sexual harassment case.”<sup>244</sup>

### **Responding to legal conflicts and conflicts originated in the termination process**

As discussed in Chapter 5, legal conflicts are extremely relevant in the banking sector as a whole, with some concentration on large, commercial and state-owned banks. Due to the existence of a special worktime rule specific to the banking sector, the vast majority of the legal conflicts observed in the sector discuss issues related to overtime payment. Issues of pay equity are probably the second most recurrent issue in legal conflicts in the sector, but not as relevant as the overtime cases. Evidently, legal conflicts involve a myriad of other issues, but none as relevant and as recurrent as overtime.

The described concentration of those conflicts in state-owned banks is directly related to the differences in the rules governing the termination process in private and public employers. Given that employees in state-owned banks are protected under a *de facto* just-cause clause, they are more prone to formalize those legal conflicts in lawsuits, as they are less afraid of retaliations by the employer. As a consequence, it is

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<sup>242</sup> Interview 5 – BiggerPrivateBank.

<sup>243</sup> Interview – PublicLocalUnion.

<sup>244</sup> Interview 4 – BigLocalUnion.

possible to find current employees filing lawsuits against their employers in the public-sector, whereas in the private sector litigation tends to be observed only after termination.

In the next sections, I first describe the existing system for employment litigation, providing important details specific to employment litigation in the banking sector. As the shortcomings of the litigation system become clear, two alternatives to litigation are explored and compared: court settlement programs and the Preliminary Conciliation Commissions (CCPs).

***The traditional forum for legal conflicts: litigation***

It was already suggested earlier that the traditional path for dealing with legal conflicts in the workplace in Brazil is the Labor and Employment Court system (*Justiça do Trabalho*). As a matter of fact, litigation numbers in this specialized court system were used as a proxy to measure the relevance of legal conflicts in the sector.

The goal of this dissertation is not to focus on the Brazilian litigation system, which was briefly described at Chapter 3, but some data should be discussed in order to provide the reader with a clear picture of the Labor and Employment Court system before the alternatives to this system are discussed.

As mentioned in the previous chapter, banks are among the biggest litigators nationally in the Labor and Employment Court system. As of March 2018, five out of the ten biggest litigators in the Superior Labor Court (*TST*) are banks: the two large state-owned banks have more 9,000 active cases in the TST each, and the three other large private banks have more than 4,000 open cases in TST each (CESTP 2018). Information from 2015 at the regional court of appeals level (*TRTs*) also show that banks are among the top litigators at the regional courts in several regions of the country. For

instance, in Rio de Janeiro (TRT 1), private banks occupied first, fifth and sixth position as top litigators, even though none of the banks have their headquarters in the region. In São Paulo (TRT 2), where the headquarters of the three largest private banks are located, they occupy the second, third and sixth positions at the top litigators ranking. In the regional court that covers the capital (TRT 10), where the two large state-owned banks have their headquarters, they occupy the second and third positions at the top litigators ranking. Banks are among the top ten litigators at the regional court of appeals level in sixteen out of the twenty-four judicial regions of the country (CSJT 2016). Considering the whole Labor and Employment Court system, the banking/financial sector was responsible for 3.8% of all the new cases nationally in 2017 (CESTP 2018). At the first level of the court system (*Varas do Trabalho*) this corresponded to 84,526 new filed cases of the financial sector all over the country, of which 22,810 cases were filed in the state of São Paulo (i.e. TRT 2 and TRT 15) (CESTP 2018).

Although the issue of overtime payment is even more important in the banking sector due to the existence of a special rule for the sector, worktime related issues are central to claims from almost all sectors in the country – but awards might be of lower amounts if compared to the banking sector. Of all the new cases filed with the employment courts in 2017 (all sectors) overtime payment was an issue in 433,951 cases<sup>245</sup>, being the seventh most recurrent demand topic. The other six more recurrent topics refer to payments linked to termination (i.e. termination notice, fines, legal severance package value, etc.). As a basis for comparison, workplace bullying was the object of 155,883 new lawsuits in the first level of the Labor and Employment Court

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<sup>245</sup> The number might be as high as 752,679 cases, considering potential misclassification of cases by courts (CESTP 2018)

system (CESTP 2018). At the regional court of appeals, overtime is the most discussed topic in all sectors in 2017, with a total of 162,353 new appeals over this topic (CESTP 2018).

The information above provide a good picture of the topics being discussed in the 2.65 million new lawsuits filed with the Labor and Employment Court system in 2017 (3.9% less than the total cases filed in the previous year). Although in 2017 the number of cases resolved was 7.1% superior to the number of new cases filed with the courts, there are still 1.8 million cases waiting for a decision. Considering cases from all sectors, the total amount paid in awards in 2017 was BRL 26.7billion (approximately USD 7.2billion as of October 25<sup>th</sup> 2018), of which BRL 11.8billion (approximately USD 3.2billion as of October 25<sup>th</sup> 2018) referred to court settlements. These numbers do not include the other BRL 3.5billion (approximately USD 946million as of October 25<sup>th</sup> 2018) paid by defendants in court costs, fines, social security contribution or income tax retained (CESTP 2018).

The average time between the filing of a lawsuit with the Labor and Employment Court system and the issue of the first decision is 238.33 days. However, once a first decision is issued, the *execution* process is initiated (sometimes parallel to the appeals to the first decision), which takes an average of 1,026.85 days, only at the *Varas do Trabalho*. This corresponds to a total average of 1,265.18 days between the filing of the lawsuit and the end of the execution process. In some regions (e.g., TRT 20) this average duration might be more that 2,300 days (CESTP 2018).

Although most of the numbers presented above refer to cases beyond the banking sector, they are able to provide a good picture of the court system under which the banks' litigation cases take place. Evidently one must bear in mind some

characteristics of the banking sector that might impact the banks experiences in courts. For instance, the relative high salaries paid by banks on average might reflect in higher average awards in comparison to the national average. Likewise, banks tend to have a proper legal department or legal structure which allows them to use all possible tools in courts that they deem needed, which might potentially increase the average duration of the cases in comparison to the national average.

A good indicator of the relevance of litigation for banks in Brazil is to analyze the accounting provision/accrual reported by some banks in their annual reports referring to possible future expenses related to employment litigation. Table 10 has information on the six largest banks from the sample and reveal how the accrual for payment of possible awards in existing employment lawsuits compare to the bank’s net profit in 2017.

**Table 10 – Accounting Accruals for Employment Lawsuits and Net Profit for 2017 – Six largest banks**

| <b>Bank</b>                       | <b>Accounting Accruals for Employment Lawsuits*</b> | <b>Net Profit*</b>                  |
|-----------------------------------|---|-------------------------------------|
| BiggerPublicBank                  | BRL 2.65 billion (USD 716 million)                  | BRL 12.27 billion (USD 3.3 billion) |
| LargePublicBank                   | BRL 4.2 billion (USD 1.14 billion)                  | BRL 12.5 billion (USD 3.4 billion)  |
| BiggerPrivateBank                 | BRL 7.3 billion (USD 1.9 billion)                   | BRL 23.9 billion (USD 6.5 billion)  |
| LargePrivateBank                  | BRL 5.5 billion (USD 1.5 billion)                   | BRL 17.3 billion (USD 4.7 billion)  |
| BigForeignBank                    | BRL 3.4 billion (USD 919 million)                   | BRL 10 billion (USD 2.7 billion)    |
| MediumNationalBank <sup>246</sup> | BRL 887 million (USD 240 million)                   | BRL 426 million (USD 115 million)   |

\* All USD values are approximate, and calculated based on exchange rate from October 25<sup>th</sup>, 2018.  
Source: Banks’ Annual Reports

As mentioned before, litigation levels seem to be linked to bank’s size, nature, and type of operation. In large and medium sized private banks, on average, between 60% and 80% of all terminated employees are reported to file a lawsuit against their former employers<sup>247</sup>. Numbers in state owned banks might be even higher. Total number

<sup>246</sup> 2016 data  
<sup>247</sup> Interview MediumNationalBank.

of employment lawsuits are not available for most banks, but the ones that make them public should be analyzed with care, since they probably include lawsuits filed by subcontractors – whether seeking the bank’s liability for an eventual award payment, or seeking that a direct employment relationship with the bank is characterized by the court.

In smaller banks, managers believe that the lower levels of litigation are linked to the employees’ profile, usually described as a characteristic of corporate and investment banks<sup>248</sup>. A manager describes that employees in that type of bank might be more concerned with their “relationship with the market and their professional image”<sup>249</sup>. This idea is reinforced in the case of a small private-bank that changed its business model from one more similar to commercial banking to one closer to corporate and investment banking. The interviewed manager estimates that approximately 80% of the terminated workers aligned with the previous strategy would file lawsuits against the bank, a number that fell significantly for workers with a profile more aligned to the new business model. The average employee aligned to commercial banking was described as someone with a weaker educational basis compared to investment or corporate bankers<sup>250</sup>. Even in corporate or investment banks, some level of litigation is observed. Managers suggest that some factors might be related to those few cases that become a lawsuit in those banks. The most cited one is the scenario of economic crisis and unemployment: with extended period of unemployment and difficulties to return to the job market, terminated employees see the lawsuit as a last resort to receive some

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<sup>248</sup> Interview CorporateForeignBank.

<sup>249</sup> Interview OtherForeignBank.

<sup>250</sup> Interview CorporateNationalBank.

money in a difficult time, probably influenced by unions or attorneys<sup>251</sup>. More than one manager stated that some workers see the lawsuit as a form of a “savings account” for a moment of need<sup>252</sup>. On the other hand, banks that were able to diminish their litigation levels refer to changes in the termination process, bringing more transparency to the reasons behind the termination decision and providing support for the future employee relocation in the market as important tools for managing litigation levels for terminated employees<sup>253</sup>.

The description that employees of a certain profile might avoid filing a lawsuit in order to preserve their image in the market is directly related to an issue that is a taboo in the sector: retaliation against employees who file – or who have already filed – a lawsuit. The issue of retaliation is present both for current and for prospective employees in the sector.

For prospective employees, having filed a lawsuit significantly diminishes their employability, mainly in smaller job markets, such as corporate or investment banking. A manager in a bank in this segment describes what is a common situation in the sector:

*The issue [of not hiring someone who has filed a lawsuit] is not disclosed. If it was explicit, I think almost no one would file a lawsuit. What we know that happens very often in the sector is the informality. I want to hire X, and he has worked in another bank. I call the bank and ask if X has filed a lawsuit against them. (Interview OtherForeignBank)*

For current employees in the private sector, the idea of termination as retaliation for the filing of a lawsuit is so widespread, that it is not uncommon to find some cases in which the employee filed the lawsuit with the goal of being terminated by the company – and therefore being entitled to the legal severance payment and other

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<sup>251</sup> Interview SmallForeignBank.

<sup>252</sup> Interview MediumNationalBank.

<sup>253</sup> Interview CorporateNationalBank and Interview 3 – BiggerPrivateBank.

specific benefits. In the public sector the issue is more complex as the legislation and courts prevent unjustified terminations – and the filing of a lawsuit is not a lawful reason for termination. This does not mean that employees in state-owned banks are free to file lawsuits without fearing any negative consequences.

Managers in state-owned banks suggested that employees who file lawsuits during the employment relationship might face barriers to their career development. A manager describes this kind of retaliation as natural – “would it make sense for someone with a lawsuit to become a manager? Or to be promoted to supervisor?”<sup>254</sup>. The issue is so clear in the public sector, that managers sometimes regret that the retaliation was not sought before, blaming the lack of retaliation for the high levels of litigation involving current employees. In one regional state-owned bank, managers describe a situation in which the lack of retaliation and success obtained in the lawsuit led employment lawsuits “to become viral” in certain departments, where almost 90% of the department is currently suing the bank. The situation is so extreme, that according to managers “those who do not sue the company become objects of mockery by the others”<sup>255</sup>. In another state-owned bank, the managers request is not for retaliation, but that at least the ones who do not sue the company receive some form of benefit in their career movements:

*In my perspective - this trend in suing the bank is very related to the bank's culture. Because when you have a permissive top-down culture, the employees don't see themselves being discouraged to file a lawsuit or feel compelled to sue the bank. Because if my superiors are suing the bank themselves, or are permissive with employees suing, I'll sue too. And then the culture expands throughout the company.*

*When you have a culture of belonging to the company and you understand that you are a part of the organization, people are more*

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<sup>254</sup> Interview 1 – LargePublicBank.

<sup>255</sup> Interview Banestes.

*resistant to sue. Because the person understands that there is no need for retaliation - but that the decision to sue will somehow impact his career progression, therefore discouraging him. Because the administrator will naturally be more interested in those that haven't sued the company. The administrator will give priority to the one who did not sue the company.*

*Now, it is not really necessary for you to punish the person who sued, provided you prioritize the person who has not sued. It's the organizational culture. It is the way you treat the topic. (Interview MediumPublicBank)*

Although some state-owned banks deny the existence of any sort of retaliation against those who file lawsuits, or defend some form of privileges to those who do not sue the organization, union leaders describe the usual negative impacts to those who sue during the employment contract:

*He's decommissioned [i.e. removed from the managerial or special position]. He basically loses 70% of his pay. Then he will never want to sue the company. He is not terminated, but he suffers something even worse, which is like "being put in a freezer" with salary reduction. This happens in all banks, to everyone. That is why we always recommend litigation only after termination. (Interview PublicLocalUnion)*

So far individual litigation has been discussed, but there are also cases of class actions (*Ação Civil Pública*), in which groups of workers are represented by the union or by the Labor Prosecution Office (*MPT – Ministério Público do Trabalho*). Although the volume of those class actions is relatively low, awards might be relatively higher than individual claims, as discussed in the previous chapter on the role of the *MPT* in the definition of workplace bullying in the sector.

Anyhow, unions are dissatisfied with the results obtained in courts or the way that the Labor and Employment Court system is structured:

*We also file lawsuits [instead of using other strategies], because in some cases there is no better alternative, such as in legal conflicts. But the Labor and Employment Court system is not up to date. [...] We are not in favor of finishing with the Labor and Employment Court system, because*

*if you do this, you would be abolishing the Employment Law. But we are in favor of changing its role. (Interview CriticalLocalUnion)*

The previous interview excerpt is revealing of how much the idea of employment law is directly related to the idea of a specialized court system able (at least in theory) to enforce it.

But even with some dissatisfaction with employment courts, unions find ways to use litigation strategically. Filing the lawsuit might not be about resolving the conflict in court, but about giving visibility to wrongdoings or misconducts taking place in the banking sector, which can be used to raise awareness over the issue and to mobilize workers to join other union activities against the employer:

*The judicial response is not good. We had a case [of workplace bullying] for which we defined an attacking strategy. We reported the case of a bank manager from the legal department. And for 6 months we kept asking to negotiate a settlement in which he would agree to change his behavior, the way that he treated his employees - but we were not allowed to negotiate. So, we gathered evidence, went to court, filed a class action against the manager and made a public exposition of all the facts. So, we used the lawsuit to expose the bank to the media. [...] The lawsuit had no result, but with the public exposure we got the director to be fired. [...]*  
(Interview PublicLocalUnion)

Evidently, banks' responses to litigation are not restricted to firing a faulty manager or to retaliate against the plaintiff. More than one bank manager described litigation as an important diagnosis tool, to which banks responded by changing internal policies, therefore increasing their success rates on courts in the long run<sup>256</sup>.

In summary, the previous pages depicted the Labor and Employment Court system flooded with a high volume of lawsuits, which tend to take relatively long to provide the plaintiff with proper repair and fail to provide proper protections for retaliation against plaintiffs. Overall, the system is criticized by banks and unions as

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<sup>256</sup> Interview MediumNationalBank.

inefficient. For those reasons, alternatives to litigation and incentives to court settlement have characterized recent years, as will be explained in the next sections.

Before that, however, it is worth mentioning that the 2017 Labor Law Reform brought some changes in procedural rules in the Labor and Employment Court system, which might impact the level and types of cases brought to employment courts. In the first three months of 2018, the number of new lawsuits filed fell 45% in comparison to the same period in the previous year (CESTP 2018).

***Alternatives to litigation: court settlement strategies***

With a litigation system characterized by high volume of cases and considerable delay in definitive solutions, court settlements have been a central issue in the Labor and Employment Courts System for a long time.

The Consolidation of Labor and Employment Laws determines that judges should first try to settle all cases that arrive in the Labor and Employment Courts (art. 764 and art. 846) and try to settle again before the decision is issued (art. 850). In 2010 the National Council of Justice (*CNJ – Conselho Nacional de Justiça*) issued the Resolution 125 that creates a national policy that promotes conciliation in all Brazilian courts, by the creation of Permanent Centers for Conflict Resolution via Consensual Methods (*Núcleos Permanentes de Métodos Consensuais de Resolução de Conflitos*), aimed at promoting court settlements in different courts. The Superior Council of the Labor Court System (*CSJT – Conselho Superior da Justiça do Trabalho*) further regulated the issue for labor and employment conflicts with the Resolution 174/2016. Despite those efforts, in the whole Labor and Employment Court system the settlement rate in 2017 was 37.7% - the lowest since 1980, when the settlement rates started to be measured. A pattern of decline is observable in the past decades: from 1981 to 1989 the

rates were always between 51% and 55.6%; in the 1990s rates varied between 43.1% and 48%; in the first decade of this century rates were between 42.8% and 45.1%; it fell below 40% for the first time 2014, reaching the lowest number in 2017 (CESTP 2018).

Under this scenario, banks adopt different court settlement strategies regarding their employment litigation cases. In one extreme, there are banks that have a policy of no settlement, under any conditions (e.g., LargePrivateBank). In the other extreme, banks that attempt to settle every case, since the first hearing in the court (e.g., BiggerPublicBank). There seems to be no clear pattern on organizational characteristics linked to one or another court settlement strategy.

In the cases where banks opt for settling most of the cases, it is common to have specific teams exclusively dedicated to managing court settlements (e.g., BiggerPublicBank, BiggerPrivateBank, MediumForeignBank, MediumNationalBank). The settling proposals are usually defined as a percentage of the accounting accrual for that specific case, which tend to be calculated based solely on the demands about overtime payment<sup>257</sup>. Settling proposals by the bank usually start around 30% of the accounting accrual, up to 50% of this value<sup>258</sup>. Moreover, there are issues that banks opt to never negotiate over, such as just cause terminations<sup>259</sup>.

Among the banks that opt to adopt a settling strategy, their main motivation tends to be to diminish the total amount of the accounting accrual that refer to employment litigation – this was mentioned by almost all the banks that have a settling strategy<sup>260</sup>. This is no surprise, given the centrality that the accounting accrual might

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<sup>257</sup> Interview 3 – BiggerPrivateBank.

<sup>258</sup> Interview 3 – BiggerPrivateBank and Interview MediumPublicBank.

<sup>259</sup> Interview MediumForeignBank.

<sup>260</sup> Interviews BiggerPublicBank, BiggerPrivateBank, MediumForeignBank, MediumNationalBank, and CorporateNationalBank.

have in legal limitations to the financial leverage of banks. The strategy seems successful in all banks, that describe diminishing accounting accruals – in some cases of more than 30% in less than three years<sup>261</sup>. Besides the savings on accounting accrual, banks are also attracted by the savings in other costs related to litigation, mainly with attorneys<sup>262</sup>. In a specific bank, potential costs are seen as potentially so high, that the bank opts to try to settle every case, with no exceptions – it is always cheaper to settle than to litigate:

*We have a court settlement policy. Usually for all cases. Because the cases take long to be resolved, it becomes a 'financial bomb' in the end, with indexation, interests... The bank usually tries to settle, even in cases in which we know that the plaintiff has no rights – because that is how the system works. (Interview CorporateNationalBank)*

Immediate cost savings is not the only goal of banks' settlement strategies. Legal departments also use their court settlement programs as an attempt to change the courts overall perception regarding the bank and its overall compliance to employment laws. By settling in most cases, banks try to demonstrate to the courts that they are only taking forward the cases in which the bank is actually right<sup>263</sup>. Overall, the courts response to settlement strategies is positive, given the internal pressure that judges themselves have been receiving to increase their settlement rates:

*The courts' greatest interest is to clean their agenda, to diminish their case overload. [...] The important thing for them is to reach a settlement. And then they [the judges] push hard. In the hearing session, they do not even want to hear what is the content of the case: 'Let's settle, let's settle!' [...] Their first approach is to always look for a settlement - they do not even want to look at what is object of the case. (Interview 3 – BiggerPrivateBank)*

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<sup>261</sup> Interview MediumPublicBank.

<sup>262</sup> Interview MediumForeignBank.

<sup>263</sup> Interview 3 – BiggerPrivateBank and Interview MediumPublicBank.

Evidently, bank managers identify situations in which, no matter how much bank and judge pressure for settlement, plaintiffs are less prone to accept any offer, at least in early stages of the case. That is observed mainly for cases in which the plaintiff's termination was somehow "traumatic" to him/her, or in which he/she is angry with the organization<sup>264</sup>. Those behaviors tend to change over time, as plaintiffs realize how far they might be from a final decision – therefore, banks tend to use court delays in their favor when trying to reach a settlement<sup>265</sup>.

A common concern for all organizations that opt to not settle most (or any) cases, and even for those that have a settling strategy<sup>266</sup>, is what is known in Brazil as "settlement industry" (*indústria do acordo*). The idea behind this concept is that workers will be more prone to file a lawsuit if they are aware that the company has an active settlement strategy – therefore, workers who in other cases would not sue the company, decide to do so with the expectation of quickly receiving some money sum as defined in a court settlement. Some banks have even changed the timing of their settlement offers – i.e. do not offer any settlement before a first decision is issued – exactly to avoid incentives to plaintiffs looking for a quick source of money<sup>267</sup>. Although this concern was cited by the majority of banks interviewed, there seems to be no evidence that this phenomenon is really observable. Different banks with court settlement strategies in place for years affirm that they could not observe any correlation between higher settlement rates and volume of lawsuits<sup>268</sup>. Higher volume of lawsuits is understood to

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<sup>264</sup> Interview MediumForeignBank.

<sup>265</sup> Interview MediumNationalBank.

<sup>266</sup> E.g. Interview 3 – BiggerPrivateBank, Interview MediumNationalBank and Interview CorporateNationalBank.

<sup>267</sup> Interview MediumNationalBank.

<sup>268</sup> Interview MediumForeignBank and MediumPublicBank.

be linked to other factors, such as downsizing<sup>269</sup>, restructuring and macroeconomic context<sup>270</sup>, or even to the lack of retaliation:

*Under my perspective, these settlements did not stimulate the increase of litigation cases. What caused this large litigation was not having had any 'punishment' [to those who sued the company]. One sued, and nothing happened. Another one sued, and nothing happened. [...]* (Interview MediumPublicBank)

As it can be seen from previous pages, court settlement strategies seem to be linked solely to each bank's own conflict management and business strategies, and external pressures from the Labor and Employment Courts. Unions, as a whole, play almost no role in court settlement strategies. One interesting exception was observed in a regional level state-owned bank. During a certain period, due to political conflicts, the bank management and the union had suspended all official relationship, not even negotiating a company-specific collective bargaining agreement. In this scenario, court settlement for cases involving the union were easier to be reached, as the courts were the only forum for some form of management and union negotiation to take place. Once the normal relationship was reestablished, court settlement in cases involving the union became harder<sup>271</sup>.

Finally, it is worth highlighting that since litigation cases tend to involve only terminated employees, as explained in detail in the previous section, court settlement strategies also tend to be applicable only to cases involving terminated, but not currently active employees.

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<sup>269</sup> Interview MediumForeignBank.

<sup>270</sup> Interview SmallForeignBank

<sup>271</sup> Interview LocalPublicBank.

***Alternatives to litigation: The Preliminary Conciliation Commissions (CCPs)***

In 1998, motivated by the high volume of cases filed in the labor and employment courts and the time spent until a final decision was reached, the executive branch proposed a bill that would allow the creation of Preliminary Conciliation Commissions (*CCPs – Comissões de Conciliação Prévia*). The bill had the express intention of diminishing the cases filed in the Labor and Employment Court system, and it cited the success of similar in-company commissions in foreign countries as a model. Although those were not cited in the bill, some isolated cases of non-judicial conciliation commissions at the local level were already observed in the country since mid-1990's (Vasconcelos 2000). The bill was approved by the Congress in 2000, enacted as Law 9,958/2000.

According to the law, the CCPs could be created by the employer or by the union, and they should be composed of the same number of representatives from employers and employees. Their goal is to conciliate individual employment conflicts. CCPs can also be constituted by a group of employers or a group of labor unions. The statute determines that all individual labor claims should be submitted first to the CCPs (where they exist), as a condition for the filing of a lawsuit to the labor and employment courts. The conciliation session should be held in no more than ten days after the attempt of conciliation notice, and settlements reached within the CCPs should be considered binding and final. All statute of limitations applicable to employment litigation are suspended once the employee looks for the CCP, until a conciliation is obtained or at least attempted.

Despite the efforts of the Brazilian legislator, the CCPs have been severely criticized and weakened by the courts. For instance, in 2009 the Brazilian Supreme

Court considered unconstitutional the obligation to submit all cases to CCPs before the filing of the lawsuit, since this requirement would hinder the constitutional right of access to justice (ADI 2139 and ADI 2160). Critics of the CCPs see the institute as a forum to increase frauds (the employer would use the CCPs to pay only partially amounts that he knows that are owed to the employee in order to be released from any further liability related to the employment contract). Other criticisms are related to the lack of supervision or control by a state representative (Hirano 2009) and the fact that the plaintiff does not have to be represented by a lawyer (Souza 2004). On the other hand, employers in some sectors have avoided the use of the CCPs due to the risk of having the settlement further reviewed by a judicial decision.

It is worth noticing that most of the criticisms currently directed at the CCPs' settlements should also apply to court settlements (Hirano 2009), since judges might approve settlements in which the employer is only partially paying amounts that he knows that are owed to the employee, in order to be released from any further responsibility related to the employment contract.

As a result of the described courts' resistance, CCPs are seldom used in the country, with the banking sector being a rare exception. Unions believe that the banking sector is an exception due to the strength of bank workers' unions both locally and nationally, their multiple financing sources, which allow them to give up on litigation attorney fees<sup>272</sup>, and the historic openness of banks and unions in the sector to conciliatory conflict resolution strategies<sup>273</sup>.

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<sup>272</sup> Interview TraditionalConfederation.

<sup>273</sup> Interview BigConfederation.

Although CCPs are more popular in the banking sector than in any other sector in the country, this does not mean that they are adopted in every single bank. As it will be seen, different factors play important roles in determining whether CCPs are used in a certain bank or not.

Whereas bank size was not a relevant issue in the court settlement strategies, the same cannot be said in relation to the CCPs. Only large banks are currently using CCPs, and there is no register of any small bank having used it in the past. The size limitation of the CCPs is clear from the interviews with bank managers. In more than one small and medium sized banks, managers informed that CCPs were not used because “the volume of cases is not enough to justify having a CCP”<sup>274</sup>. There is one case of a medium-sized private bank that had a CCP in place in the past, which was abandoned for the lack of usage. Although management seems interested in creating a new CCP, the local union is resistant, due to the previous negative experience with this specific bank<sup>275</sup>. Evidently, this does not mean that all large banks use the CCPs, as bank’s strategy also plays an important role. The same large bank that has a policy of not settling in court ever, also opts to not use a CCP. According to a union representative, this bank’s position is that “settling on a CCP is equivalent to admit that I was wrong. [...] But I haven’t done anything wrong, so there is no need to have a CCP in place”<sup>276</sup>. The position of this bank against settling is so firm, that even after acquiring another bank, which had a CCP in place, one of their first measures in labor relations was to suspend the CCP’s functioning<sup>277</sup>.

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<sup>274</sup> Interview OtherForeignBank.

<sup>275</sup> Interview MediumNationalBank.

<sup>276</sup> Interview 2 – BigLocalUnion.

<sup>277</sup> Interview 2 – BigLocalUnion.

Despite CCPs prevalence in large banks, there is an important difference between private and state-owned banks. For a long time, in public and private banks, CCPs would be used exclusively for terminated employees, focusing on claims regarding overtime payment. However, since 2013 the two large state-owned banks have negotiated with unions CCPs applicable to current employees, as it will be detailed later.

BiggerPrivateBank has been working with CCPs even before the law was enacted in 2000. Although settlements in CCPs are administered by the Labor Relations department, the legal department is also involved in the definition of the overall strategy, so litigation and court settlement strategies do not interfere or hinder the CCPs strategy. Considering that settlements on CCP will basically cover overtime payment (although they can cover any other topic), the legal department determines the job positions in which it is worth to settle in the CCPs, given the likelihood of losing this claim in a future lawsuit<sup>278</sup>.

Originally, the functioning of the CCPs in the large state-owned banks was similar to the one described earlier, with few differences. In BiggerPublicBank, for instance, the same department, linked to HR, is responsible for administering the CCP settling strategy and the court settlement strategies, therefore guaranteeing that they are compatible with each other<sup>279</sup>. The biggest difference to what is observed in the private sector happened around 2013, when the CCPs began covering current employees of those banks, at least partially. In the two large state-owned banks, management opted to review worktime of certain positions, officially diminishing them from 8 hours per day

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<sup>278</sup> Interview 4 – BiggerPrivateBank.

<sup>279</sup> Interview BiggerPublicBank.

to the legal 6 hours per day, probably motivated by recurrent losses in courts over those topics and attempts to diminish the negative accounting impact of those lawsuits<sup>280</sup>. In BiggerPublicBank, those changes are believed to have impacted about 20,000 positions and more than 20,000 employees who were currently occupying or had formerly occupied those positions<sup>281</sup>. This change in the worktime regime of thousands of workers was interpreted by the unions as an “admission of guilty” by bank management. Considering that in the two banks the new worktime arrangement negatively impacted employees’ total compensation, unions pressured for the creation of a CCP for those workers, having litigation and class actions as a reasonable threat to banks<sup>282</sup>. It is worth noticing that in a regional state-owned bank a similar change in worktime arrangement was observed, but with no consequences in workers’ total compensation. In this case, a specific CCP was not negotiated, and litigation was not presented as a threat by unions<sup>283</sup>.

In general, settlements in CCPs are seen as extremely positive by management. They are usually able to make settlement offers with discounts bigger than those used in court settlements<sup>284</sup>, mainly for cases of active employees<sup>285</sup>. Actually, it seems that all banks tend to work with similar CCP settlement strategies, often a discount of around 55% of the calculation referring to overtime payment, so unions are unable to use a specific bank’s settlement strategy as a pressure tool for other banks to raise their offers<sup>286</sup>. Overall, CCPs are seen as a good way to diminish and keep accounting

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<sup>280</sup> Interview BiggerPublicBank and Interview BigConfederation and TraditionalConfederation.

<sup>281</sup> Interview BigConfederation.

<sup>282</sup> Interview PublicLocalUnion.

<sup>283</sup> Interview PublicLocalUnion.

<sup>284</sup> Interview 4 - BiggerPrivateBank

<sup>285</sup> Interview PublicLocalUnion.

<sup>286</sup> Interview MediumNationalBank.

accruals under control, being sometimes also used as a strategy to improve the bank's image in court. This is even clearer in large state-owned banks that change the worktime regime of part of their workforce – in one bank, the employees could opt-in for the new worktime arrangement, and in such cases the use of CCPs was actively offered by management<sup>287</sup>. Despite the positive perspectives of those involved in the administration of CCPs in the management side, line management in some cases might have restrictions on this kind of settlement for their former employees, presenting a challenge to Labor Relations managers:

*Over the years our job has been of demonstrating, explaining, and disseminating what exactly is the CCP, so it does not seem like a settlement in which the worker simply takes some money and stays quiet. On the contrary, this amount being paid [in the CCP] avoids a risk, and a much greater cost could be seen in litigation. [So we have to show that] this is actually good for the bank. (Interview 4 – BiggerPrivateBank)*

So far, the banks' perspective on the CCPs has been analyzed, but it is important to understand unions' different perspectives on it. According to a union leader, the main motivation behind the unions' demand for the CCPs was to overcome barriers posed to workers in courts due to the statute of limitations<sup>288</sup>. Per Brazilian Constitution, workers have up to two years after the end of the employment contract to file a lawsuit, which can include demands referring to the period of five years before the filing of the lawsuit (Federal Constitution, art. 7º, XXIX). Therefore, given the lack of protections against retaliation for employees who file a lawsuit while employed, plaintiffs would find no legal path to receive from their employers amounts guaranteed by law from the period beyond the statute of limitations. This is a problem more present in the public sector,

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<sup>287</sup> Interview BiggerPublicBank.

<sup>288</sup> Interview TraditionalConfederation.

where job tenure is considerably higher, given the *de facto* just cause clause that governs their workplace.

From a collective bargaining standpoint, CCPs agreements are usually negotiated by the Confederations. Those agreements work as a framework agreement, which must be later voted by local unions who want to have CCPs implemented in their region.

Locally, initial experiences with the CCPs and bank strategies caused different reactions by local unions. It is described that in 2001, when BiggerPublicBank tried to create a CCP for the first time, it demanded that all unions dropped their class actions regarding overtime payment. This requirement led some local unions to refuse to sign the first CCP agreement. Later the bank dropped this requirement, but some of the unions refused to sign the CCP agreement ever since<sup>289</sup>. In other cases, disagreements between the union leadership perspective and the rank and file are clear. This is the case of PublicLocalUnion: dissatisfied with the low values of the banks' offers in CCPs, union leadership tried to cancel the CCP agreement, but the union rank and file voted to keep it in place<sup>290</sup>. This clash between union leadership and the rank and file regarding CCPs was also observed in other local unions<sup>291</sup>, although there are also cases in which the union leadership is in favor of the CCPs, but workers vote against it (SPBancarios 2013a).

The sometimes observable opposition of union leadership towards the CCPs does not impact the functioning of the CCPs, given the union role in the conciliation process. In general, union leaders focus on informing the worker, so he/she can make

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<sup>289</sup> Interview BigConfederation.

<sup>290</sup> Interview PublicLocalUnion.

<sup>291</sup> Interview CriticalLocalUnion.

an informed decision on accepting or refusing the bank's offer on the CCP. Usually this includes informing the worker about the bank's offer and explaining the potential risks, earnings and time involved in litigation for a similar case. Therefore, unions do not pressure workers to accept or refuse any offer, as they are aware that each worker might have more or less need for immediate money, but they try to provide as much information as possible to the worker, who, ultimately, will be the sole decision-maker regarding the bank's offer<sup>292</sup>. In cases where the union's rank and file voted to maintain the CCP, despite the union's leadership disagreement, union's orientation in the individual cases is used successfully in order to guarantee that, on the union's perspective, workers are not hurt by unfair settlement offers in the CCPs. PublicLocalUnion, for instance, informed that 70% of the offers were rejected by the workers after the union's orientation meeting, when the union unsuccessfully tried to cancel the CCP<sup>293</sup>. Settlement rates, however, became higher, once it started involving current active employees, who are far away from retiring, and who wish to maintain a good relationship with the organization:

*[...] Currently, most people are not even close to retiring - they still have at least 20 years of professional career ahead, they do not want to go to court, but they still want to get some of that money to compensate for the worktime arrangement change. It ends up being a compensatory amount for the wage loss that they had. Not that they actually think that the amount is good or fair. But our role is only to show them what they might be missing. (Interview – PublicLocalUnion)*

The previous quote highlights one important characteristic of the CCPs, mainly for current employees in the public-sector: the lack of retaliation. Although it was shown that litigation is usually associated with some kind of retaliation – termination in the

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<sup>292</sup> Interview TraditionalConfederation.

<sup>293</sup> Interview PublicLocalUnion.

private banks, *descomissionamento*/downgrading in the state-owned banks –, there is a consensus that workers that seek the CCPs are not retaliated against by their current or prospective employers<sup>294</sup>. In one state-owned bank, several managers and supervisors had previously settled in the CCPs, with no negative consequences in their career progression, as using the CCPs is seen as something natural within the organization<sup>295</sup>. Despite this relative positive perspective on CCPs within the banks, unions still try to make sure that the CCP does not become a one-sided management-controlled tool. Therefore, all CCP sessions take place in the union's office, or in a place authorized by the union, as long that it is not the bank's own office<sup>296</sup>.

Overall, settlement rates in CCPs are described as positive, by banks and unions. BiggerPrivateBank, for instance, describes a 93% settlement rate in the approximate 2,000 cases brought to CCPs in 2013<sup>297</sup>. In that year, the union in São Paulo settled in approximately 1,700 cases with different banks, in a total amount of more than BRL 74 million (approximately USD 31.6 million, as of December 31<sup>st</sup>, 2013) (SPBancarios 2013b). In 2014, settlement rates in São Paulo for a state-owned bank were about 97% of all the cases (SPBancarios 2014a). In the first eleven months of 2017, 1,344 cases were settled at the CCPs, in a total sum of approximately BRL 80 million (approximately USD 24.5 million as of November 30<sup>th</sup>, 2017) (SPBancarios 2018). It is worth noticing that CCPs are available for both members and non-members of the union, as long as he/she is legally represented by this union according to the law. In PublicLocalUnion, for instance, in 2016 and 2017, almost 5,000 cases were settled via

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<sup>294</sup> Interview BiggerPublicBank and PublicLocalUnion.

<sup>295</sup> Interview 1 – LargePublicBank.

<sup>296</sup> Interview RelevantLocalUnion.

<sup>297</sup> Interview 4 – BiggerPrivateBank.

CCPs, with an average amount of BRL 44,000 per case (approximately USD 11,900 as of October 25<sup>th</sup>, 2018) – of those, 55% of the cases were from non-union members<sup>298</sup>. Conciliation rates – or even the approval of the CCPs locally – are also connected to local characteristics of the region covered by the union. In states where litigation tends to take much longer than in others, the incentives to implementing a CCP and settling on it are much higher than on cases where, usually due to the lower volume of cases, litigation tends to be much quicker in providing an answer<sup>299</sup>.

It is worth noticing that more than one union leader stated that once a worker decides to go to the CCPs, if the case is not settled there, there is a great likelihood that the worker will later pursue litigation. This is true even for cases in which initially the worker seemed resistant to litigate:

*[...] We often bring the person here and often she would have no interest in litigating. Usually, workers in BiggerPublicBank would come to us and say things like "everything I have, I owe to the bank..." [...] [We would respond that] "it was not the bank that made the mistake - it was the managers who had chosen to neglect the employment legislation." Then we would bring the person, show what was not being paid to her because of bank's choices, and when there was no conciliation [in the CCP], then they would choose to go to court. So, we understand that many of these people would never seek litigation if they hadn't gone through the conciliation attempt [in the CCP], where they became aware of what they were entitled to receive. (Interview PublicLocalUnion)*

Likewise, in another union's region, the litigation numbers increased after the CCPs were implemented<sup>300</sup>.

Despite this overall success of CCPs in unions and banks where they were implemented, unions still complain about the lack of topics being negotiated on them – usually restricted to overtime payment in the case of current employees (SPBancarios

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<sup>298</sup> Interview PublicLocalUnion.

<sup>299</sup> Interview TraditionalConfederation.

<sup>300</sup> Interview RelevantLocalUnion.

2012a). Therefore, the most common union demand for banks is to expand the topics and job positions covered by CCPs (SPBancarios 2014b). In some cases, however, union leaders face difficulties in convincing the rank and file that it is worth pressuring banks to settle over other topics besides overtime payment, as those topics might not affect as many bank workers as it is the case with overtime payment issues<sup>301</sup>.

It should also be evaluated the impact that the 2017 Labor Law Reform might have on CCPs in the sector, although there were no changes directly impacting the CCPs. For some union leaders, this is the moment to focus even more on the CCPs, considering the uncertainty of how courts will interpret the new legislation<sup>302</sup>. On the other hand, different unions used the moment of the termination confirmation process (*homologação*) to inform the worker about the possibility of using the CCP<sup>303</sup>. The Labor Reform, however, made this process optional to employers, and several banks have already opted to not conduct it anymore<sup>304</sup>. Therefore, unions might be currently losing their main opportunity to explain to the terminated employee about the CCP, which might impact CCPs' usage rates.

As it could be seen in previous pages, the usage of CCPs by banks is directly linked to the bank's overall strategy towards employment conflicts, similar to what was observed in the court settlement strategies. What is strikingly different in the case of CCPs is the active participation of unions in pressuring banks to implement the CCPs. In some cases, this pressure comes from the rank and file, even in contradiction to the local union leadership position, which is only possible due to the national characteristics

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<sup>301</sup> Interview TraditionalConfederation.

<sup>302</sup> Interview TraditionalConfederation.

<sup>303</sup> Interview BigConfederation.

<sup>304</sup> Interview BiggerPublicBank, OtherForeignBank and CorporateNationalBank.

of the negotiation of the general CCP agreement conducted by the confederations. Finally, the size of the bank and the nature of its operation clearly play an important role in the CCPs, given the lack of CCPs in smaller banks, due to the small volume of potential cases, and the specific characteristics of the CCPs in the public sector, where CCPs are also available to current employees and not only terminated workers.

### **A Note on Employment Arbitration**

As explained earlier, employment arbitration was blocked by Brazilian courts, as it would disrespect legal principles of access to justice and non-negotiability of individual employment rights. However, the 2017 Labor Law Reform expressly authorized the usage of employment arbitration for employees whose salary is above twice the ceiling of the public pension scheme benefit (currently BRL 11,291.60, approximately USD 3,050.63 as of October 25<sup>th</sup>, 2018).

Most interviews were conducted before the Congress approval of the bill or right after the enactment of the Labor and Employment Law Reform, so the scenario was still unclear regarding the usage of employment arbitration by banks after the reform. However, it seems that smaller banks, national and international, were more prone to adopt employment arbitration, at least to top executives and higher-level managers, as studies in that direction were being conducted at the time of the interviews<sup>305</sup>. In some cases of international banks, the decision over the adoption of employment arbitration would be made at the headquarters, similar to what happens to civil/commercial arbitration<sup>306</sup>. This general tendency of the use of arbitration in smaller banks, mainly investment banks, might be connected with the demographic profile of the workforce

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<sup>305</sup> Interview – SmallForeignBank, ForeignInvestmentBank, MediumNationalBank, and MediumForeignBank.

<sup>306</sup> Interview – ForeignInvestmentBank.

and the relative large amount of workers with remuneration above the threshold for the authorization of usage of employment arbitration<sup>307</sup>. In the case of larger banks, on the other hand, a manifested concern referred to the potential negative consequences of having conflict management tools applicable only to a small part of the workforce<sup>308</sup>.

The specific case of MediumPublicBank is worth being highlighted. This was the only case where the possibility of adopting employment arbitration was denied right away by the legal managers interviewed. This position has its origins in a negative past experience with commercial arbitration, in which the lack of the possibility to appeal led the bank to lose a case due to an arbitrator's interpretation in disagreement with what later would become the Superior Court interpretation over the issue. Since this negative experience, the legal department recommendation has always been against the usage of any form of arbitration in any contract, what would include employment contracts of any kind<sup>309</sup>.

### **Chapter Conclusion**

Whereas the previous chapter was devoted to the description of the types of conflicts that occur at the banking sector, their variability within different banks, and how those conflicts are experienced and interpreted differently by management and unions, this chapter was devoted to the description of the tools and channels used to handle those conflicts. Once again, management and unions' perspectives on the same topics were compared and analyzed.

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<sup>307</sup> Interview – MediumForeignBank.

<sup>308</sup> Interview – BiggerPublicBank.

<sup>309</sup> Interview – MediumPublicBank.

The chapter started with the analysis of conflict resolution methods used by banks and unions to respond to workplace bullying, sexual harassment, and other relationship conflicts.

First the Collective Bargaining Agreement's Protocol for Conflict Prevention (Protocol) was discussed. Reflecting the unions' focus on the issue of workplace bullying in the bargaining process since early 2000s, the Protocol was signed in 2010, to which eight of the nine largest banks at the time opted to adhere. The Protocol creates rules that allow bank workers to file grievances to the union regarding potential workplace bullying situations and obliges banks to investigate and respond to the union in 45 days. Among supporting unions, the Protocol was praised for the statistics that it provides regarding the occurrence of workplace bullying in the sector, which is used by unions to leverage their position over the topic during the bargaining process with banks. It is worth reminding that even supporting unions have not abandoned other traditional union actions, such as strikes, stoppages or protests/picketing, mainly for cases in which the response obtained via the Protocol seems insufficient. Despite the solid support of the largest banking union for the Protocol, it was also shown that other unions position themselves against it, usually criticizing the lack of transparency of the decisions being made under the Protocol and the lack of independence of banks in order to conduct the investigations of grievances under the Protocol. Although individual employees were not directly interviewed, evidence was shown suggesting that individual workers might be dissatisfied with the Protocol results as well, considering that their expectations of the aggressor being terminated is seldom confirmed, and this expectation is not supported by the union.

Although banks differ in their internal handling of the grievances that arrive through the Protocol channel, in all cases the Labor Relations departments concentrated all the interaction with unions, blocking any direct contact between unions and the organization's department responsible for handling the grievance management internally. Moreover, it became clear that all the banks that opted to sign the Protocol still gave preference to their internal channels for conflict management, over which unions have little to no influence or interaction.

Internal channels were shown to vary among the different banks, although a set of three different types of channels was clear from the data presented.

First, the banks with Ombudsman Offices dedicated to workplace conflict management were described. By having Ombudsman structures, those banks focused on the transparency, neutrality and impartiality of the channel for conflict management made available to their employees. Despite having the same principles at their basis, the Ombudsman Offices presented some differences between them, in relation to their general structure and function. Despite those differences, it is worth noticing their focus on relatively informal investigation procedures, not always an activity reserved to Ombudsman Offices according to existing literature in other countries. It should be highlighted that the fear of retaliation among employees for the usage of the Ombudsman channel was also a common topic, being treated differently in the different organizations, potentially impacting employees' trust and perception over the channel.

Other banks that do not have an Ombudsman Office in place have tried different alternatives to internal channels for grievance handling, which were also described in detail, such as ethics committees, compliance channels, or simply relying on existing investigatory departments, usually with a close participation of the HR department in

relation to potential workplace bullying cases. Most of the channels were shown to lack the same impartiality and neutrality guarantees present in the Ombudsman Offices described previously, and fear of retaliation was present once again among potential users of those channels.

The specific case of MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment deserved an individual coverage, given its peculiar structure, that allows for union representation in the body responsible for the decision making in cases of potential workplace bullying and other workplace conflicts. It is worth highlighting that in this, as in all the other cases described before, channels originally developed to handle only workplace bullying grievances were quickly expanded by employee usage, in order to include other types of conflicts experienced in the workplace.

With the exception of the last channel described, unions were shown to have a critical perspective on banks' internal grievance channels, at the same time that they have very limited access to those same channels – usually, no access at all. It is not uncommon for union leaders to describe those channels as a potential source of employee retaliation and union substitution, generating an antagonistic relationship between the union and the managers of the internal channels, perceived by all the parties involved in this almost non-existent relationship.

Although workplace bullying was shown to play the most important role in unions' discourse over workplace conflicts in the banking sector, it constitutes just a small portion of the conflicts taking place in Brazilian banks. Other interpersonal conflicts that do not hold the characteristics of bullying or harassment are probably among the most common conflicts experienced daily in banking workplaces. Those

conflicts were shown to be “ignored” by unions, if not framed as bullying, and to be treated mostly by HR departments in different banks.

HR Business Partners, present in several of the banks in the sample, were found to play a central role on management of daily conflicts taking place in banks. However, the proximity of Business Partners to managers was posed as an important potential obstacle for making individual workers look for them in case of conflict. In smaller banks, HR managers tended to be more open and accessible for direct contact of workers and managers experiencing conflict in the workplace, but at the same time they struggled with managers trying to be exempt from their responsibilities toward conflict management within their own team. Moreover, other HR tools, with different goals, were reported to play an important role in diagnosing and treating workplace conflicts, such as performance assessment tools, climate surveys and termination interviews.

Additionally, mediation was presented as a method constantly referred to by HR managers in interviews, but seldom used or even understood. The exception is BiggerPublicBank, which mediation program, attached to the Ombudsman Office, was described in detail. Despite the lack of a clear understanding over the concept of mediation, evidence was presented in the sense that mediation might actually be in the horizon for several banks and HR managers, whether facilitative, whether transformative, or even restorative, as the case of BiggerPublicBank.

The chapter followed with the analysis of conflict management tools targeted specifically at legal conflicts and conflicts originated in the termination process. The first conflict resolution method analyzed was litigation, presented as the traditional forum for legal conflict resolution. Banks are usually the top litigators in Brazilian Labor and Employment Courts, mostly for issues regarding overtime payment. Besides the

high cost involved in litigation for banks, as demonstrated by the accounting accruals of the banks in the sample, attention was called to the time spent in litigation – depending on the region, the average duration of an employment legal case, from start to finish, may reach 2,300 days. The concentration of litigation among larger banks was discussed, and a link between commercial bank activities and higher litigation levels was suggested, based on variation in litigation levels among smaller banks. The topic of retaliation for users of certain conflict resolution channels was recurrent throughout the chapter, but it was cited mostly in relation to workers who opt to litigate against their current or former employers, which might have different negative career consequences in the private (i.e. termination or non-hiring) or public sectors (i.e. obstruction to promotions). Although in terms of volume, individual lawsuits correspond to the majority of cases being handled by banks in employment courts, large banks also face constant court disputes against the Labor Prosecutors Office (*MPT*) or unions in class actions, with a much higher monetary risk involved. Furthermore, litigation should not be seen only from the financial perspective, as it was shown that unions are also able to use litigation strategically in order to leverage their bargaining power outside the courts.

The limitations involved in litigation for the resolution of conflicts of legal nature led to the development of other conflict resolution strategies by banks and labor. Some of these strategies have clear court support, which is the case of court settlement strategies, adopted by some banks, and incentivized by the *National Council of Justice*. Banks opting for a court settlement strategy are motivated not only by the potential financial savings, but are also trying to use court settlements as a strategy to change the courts' overall perception over the bank's compliance to employment laws. Although several banks' experiences show no supporting evidence to managers' concern, it is

common to hear from different managers that there is still a fear outside the legal departments that court settlement programs might incentivize workers to file lawsuits, therefore limiting the financial benefits of court settlement.

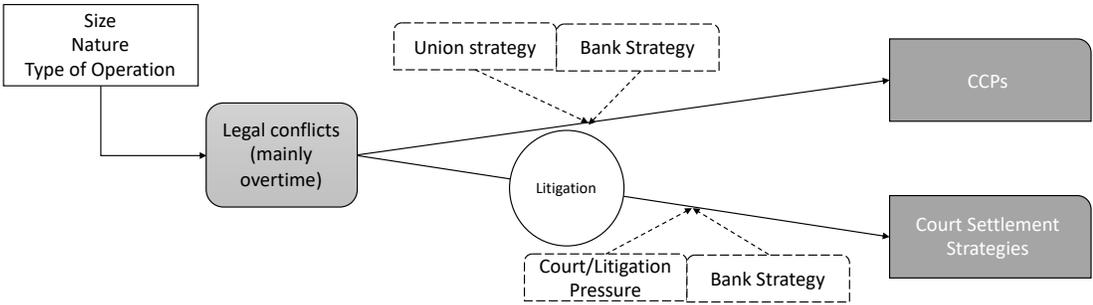
While court settlement takes place within the employment court setting, the Preliminary Conciliation Commissions (*CCPs*) were an attempt to move employment conflict resolution outside the court system. Organizations and unions in the banking sector were not only the first adopters of the *CCPs*, but currently are among the few that still rely on *CCPs* for conflict resolution. This reflects courts resistance towards the *CCPs* specifically, but also suggest a broader resistance against alternative dispute resolution methods for workplace conflicts of legal nature taking place outside the courts' realm. The current usage of *CCPs* was shown to be concentrated in larger banks, although banks that have a strong position against court settlements have also shown the same resistance towards *CCPs*. Whereas in the private sector *CCPs* are used exclusively for specific legal issues for terminated employees, public banks have started to experience the usage of *CCPs* for settling also with current employees, mainly for overtime related issues. This responds to an old demand from unions, while protecting employees against potential retaliation. This protection is not observed in the usage of court-connected dispute resolution tools. Actually, the use of *CCPs* for current employees has been one of the main demands from some unions in the banking sector, which see in the Commission a way to overcome the problems with the statute of limitation for employment rights. Despite the overall positive perception of managers and unions using *CCPs*, it was also shown that some union leaders oppose to *CCPs*, given the low amounts usually paid by banks in *CCPs*' settlements. Although not a requirement for litigation, evidence suggests that workers who try and fail to settle at

the CCPs, become more prone to file a lawsuit over the same topic, therefore pointing to another connection between these two dispute resolution methods.

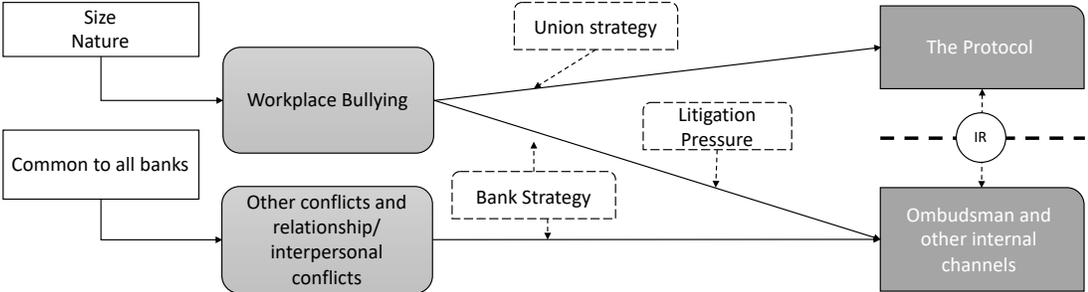
Finally, the case for employment arbitration was described as likely being currently under consideration by different banks, given the recent Labor Law Reform, which expressly authorized the use of employment arbitration in the country, under certain conditions.

In all cases, the chapter went beyond the simple description of the methods employed by each bank, and different actors' perception over those. Great care was taken in order to demonstrate how the different types of conflicts are related to the conflict management methods used by the organizations studied, as well as the factors that influenced the adoption or not of a certain method. For instance, CCPs were shown to be a response to legal conflicts, being influenced by banks' and unions' strategies over those conflicts. Court settlement strategies, although being a response to the same type of conflicts, were not influenced by union strategies, but by banks' strategies and court and litigation pressures. Workplace bullying led to different responses by unions and banks. Unions have focused most of their efforts in the Protocol channel, negotiated in the Collective Bargaining Agreement, while banks have opted to focus their efforts on internal channels, such as Ombudsman Offices, compliance channels, etc. In common to those different channels, is the role of the Labor Relations department as the responsible for the link and interaction between union and the investigatory and decision-making body of the company. Although those internal channels can also be used for other interpersonal relationship conflicts that do not constitute workplace bullying, those conflicts have been treated in banks mostly by HR tools and channels, or by employment mediation, depending mostly on the bank's strategy, with little

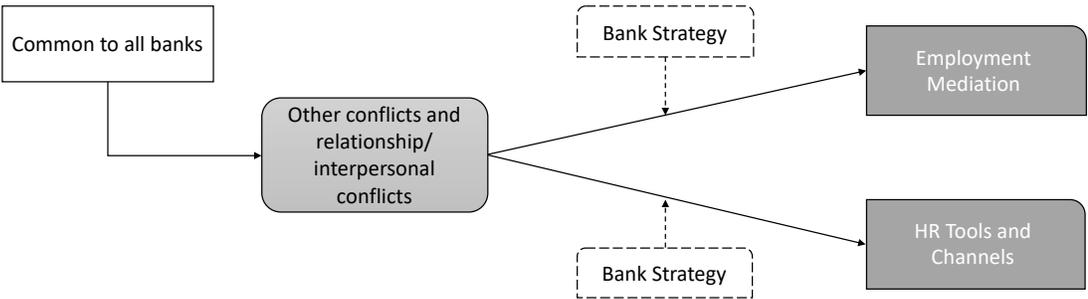
influence from unions' strategies. Figures 4, 5 and 6 represent in a schematic way how different types of conflict are being treated differently in the sector, depending on different sources of influences. Table 11 presents a summary of the main conflict management channels present in each bank from the sample.



**Figure 4 – Factors linked to the adoption of CCPs and Court Settlement Strategies**



**Figure 5 – Factors linked to the adoption of the Protocol Channel and Ombudsman Offices and Other Internal Channels**



**Figure 6 – Factors linked to the adoption of Employment Mediation and HR tools and channels for workplace conflicts**

**Table 11 - Conflict Management Channels by Bank**

| <b>Bank</b>           | <b>Signed the Protocol?</b> | <b>Litigation level</b> | <b>Court settlement program</b> | <b>CCPs</b>                        | <b>Main internal channels<sup>310</sup></b>             |
|-----------------------|-----------------------------|-------------------------|---------------------------------|------------------------------------|---|
| BiggerPublicBank      | Yes                         | High (includes active)  | Yes                             | Yes - Current and former employees | Ombuds and Mediation                                    |
| LargePublicBank       | Yes                         | High (includes active)  | <i>No information</i>           | Yes - Current and former Employees | <i>Corregedoria</i>                                     |
| BiggerPrivateBank     | Yes                         | High                    | Yes                             | Yes - Former employees             | Ombudsman   |
| LargePrivateBank      | Yes                         | High                    | No                              | No                                 | <i>No information</i>                                   |
| BigForeignBank        | Yes                         | High                    | Yes                             | Yes - Former employees             | <i>No information</i>                                   |
| MediumForeignBank     | Yes                         | High                    | Yes                             | No                                 | Compliance channel                                      |
| MediumNationalBank    | Yes                         | High                    | Yes                             | No                                 | Ethics channel  |
| MediumPublicBank      | No                          | High (includes active)  | Yes                             | No                                 | Commission for workplace bullying and sexual harassment |
| LocalPublicBank       | No                          | High (includes active)  | Case by case                    | No                                 | Ethics committee  |
| CorporateForeignBank  | No                          | Low                     | NA                              | No                                 | Global hotline  |
| OtherForeignBank      | No                          | Low                     | Case by case                    | No                                 | Compliance channel                                      |
| CorporateNationalBank | No                          | Moderate                | Yes                             | No                                 | Compliance channel                                      |
| ForeignInvestmentBank | No                          | Low                     | NA                              | No                                 | Global hotline  |
| SmallForeignBank      | No                          | Low                     | NA                              | No                                 | Only HR   |

<sup>310</sup> Does not include HR tools used by each bank.

## CHAPTER 7 – WORKPLACE BULLYING AND ITS DIFFERENT MEANINGS

The previous two chapters have focused on describing different types of conflicts present in the Brazilian banking sector, and the different responses to those conflicts. In Chapter 5, the types of conflicts that are observable in the banking sector were described, with attention to the sectoral variation and how they might be connected to certain organizational characteristics. Chapter 6 departed from the types of conflicts in order to describe different conflict resolution methods and strategies being used by banks and unions in the sector. Although some critical analysis was already present in the previous chapters, the next three chapters will deepen and structure the analysis of the topics described before.

In Chapter 7, I pay special attention to the issue of workplace bullying in the banking sector, exploring how different interpretations of workplace bullying by unions and banks impact how each actor approach to resolving those kinds of conflict. I start by exploring the different meanings that workplace bullying has for unions and companies in the banking sector, which is followed by a review of the factors earlier identified to be linked to the presence of workplace bullying in different banks. I follow with a discussion on the reasons that are behind the different understandings of workplace bullying in the banking sector, later discussing the impacts of those different understandings on unions' and banks' responses to workplace bullying. The analysis of workplace bullying is finalized using the concepts of the role of ideas at work and framing contests in employment relations, as discussed in the literature review in Chapter 2.

Finally, in order to explore how other elements besides the different understandings of the same conflict are also behind different responses to certain types

of conflicts, I analyze the case of sexual harassment. In that case, unions and banks seem to agree in a single definition of the conflict, but also seem unable to properly respond to it.

### **Workplace Bullying – Impacts of different meanings for the same concept**

Previously it has been highlighted that the concept of workplace bullying has clear different meanings for unions and managers. This section will show that the impacts of those different understandings of the causes and consequences at the same topic have vast impacts on how each actor chooses to manage those types of conflicts, and, therefore, the results obtained by those different conflict management approaches. The literature on framing contests and the role of ideas in employment relations, reviewed in Chapter 2, will be used to analyze this contest between two different meanings of workplace bullying in the banking sector.

The debate over the definition of workplace bullying – or even over the choice of the term workplace bullying instead of other options – is far from finished in the academic research realm, as shown in the literature review section. Despite that, it is possible to come up with an encompassing definition of workplace bullying, which covers the main points present in the workplace bullying/mobbing academic research, although it might be contested by different actors in any given employment relationship. The academic definition used in this dissertation was the following: **the systematic exhibition of significant aggressive behavior towards someone in the workplace (subordinate, colleague or superior), or the perception of being exposed to those systematic negative behaviors in the workplace.**

This definition contains the essential elements present in the debate over what constitutes workplace bullying from a research perspective: the bullying behavior

should be (1) systematic; (2) significantly aggressive; (3) and take place in or be related to the workplace. The second part of the definition, regarding the perception of being exposed to those behaviors, highlights another important element of workplace bullying: its individual nature and the room for subjectivity of the victim's perception in its definition. Bearing in mind those elements is important to discuss the reasons behind the relevance of workplace bullying in the banking sector, as well as unions' and managers' responses to it.

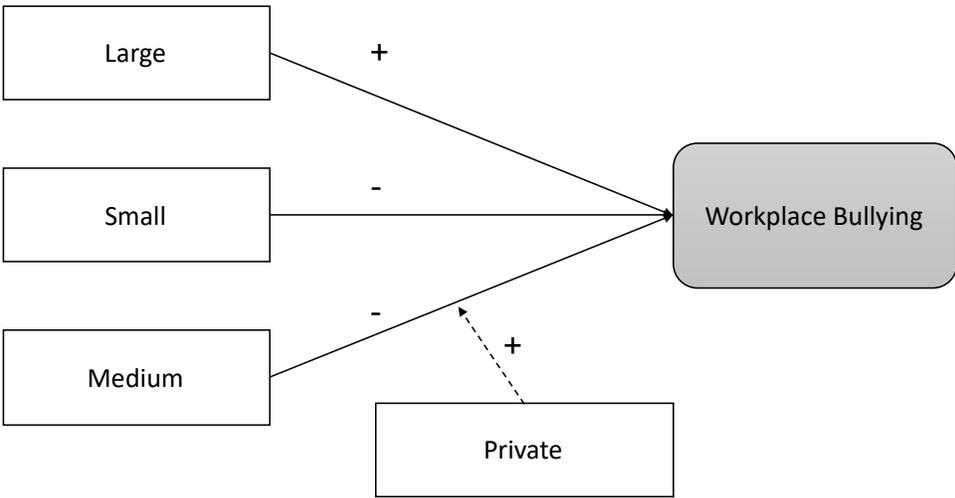
As it was shown extensively in Chapter 5, the definition of workplace bullying adopted in practice by unions and banks present noticeable differences from the multiple academic definitions. Unions in the banking sector started focusing on the kind of individual behaviors that characterized workplace bullying (e.g., “Bosses yelling, professional disqualification, constant humiliations, critiques to the job performed and termination threats.” (Folha Bancária 2002c)), and over time it developed into a view of workplace bullying as an institutionalized or structural problem in the banking sector (e.g., *“Our perspective on workplace bullying here is that it is an institutionalized problem. It is implicit in the employment relationship, due to some practices adopted by the banks, such as the performance goals.”* (Interview - CriticalLocalUnion)). Banks, on the other hand, have systematically denied any institutional or structural element in workplace bullying in the sector, suggesting that workplace bullying is linked to individual managers' improper behavior, not aligned with company's policies. In this case, management's focus is not only on the individual level, but specifically on the aggressor's behavior, not on the victim's perception.

Those different understandings of workplace bullying are not unexpected. The institutional perspective of workplace bullying and its link to new forms of work

organization had already been identified in unions' communication in Brazil (Evangelista and Faiman 2015), potentially influencing individual workers' understanding of bullying and its relationship with performance goals (Soares and Villela 2012), although it still represents a minor academic perspective (Liefoghe and Davey 2001). Likewise, management's preference to frame workplace bullying as individual behavior of managers that deviate from organizational policies or to reframe bullying behavior as part of performance management have also been observed among HR professionals in other parts of the world (Harrington et al. 2015).

***Identifying workplace bullying in the banking sector and causing factors***

In Chapter 5, a schematic model was presented with the organizational factors that were identified to be connected to the relevance of workplace bullying in any certain bank. The figure is reproduced once again below.



**Figure 7 - Factors linked to the observation of workplace bullying**

The model is simple, and it displays the factors that were identified in the sample to be connected to the occurrence of workplace bullying – or at least to the relevance of workplace bullying in different banks. Bullying was observed in large banks, indistinctly of the nature of their operation (private or public). In medium-sized banks, though, workplace bullying was found to be relevant in private banks, but not in state-owned banks. Finally, workplace bullying was not a relevant issue in small banks.

The explanation for this difference between medium-sized private and public banks was suggested to be linked to the issue of performance goals' systems in banks of different nature. In private medium-sized banks, it is common for variable compensation to be linked to performance assessment results and whether performance targets were reached or not by the employee. Evidently, this linkage is clearer in commercial departments, where a considerable part of the compensation tends to be linked to **individual** performance, whereas in other departments team-level, department-level or company-level performance might play a bigger role. This explanation was reinforced by the case of a state-owned medium-sized bank, where the new management that came from the private sector is currently trying to implement what is described by the union as a “private mindset,” which includes increasing participation of individual performance on employees' compensation. After this change started to be implemented, workplace bullying started to slowly gain relevance in the bank, which was unobserved before.

But does this case really demonstrate the link between workplace bullying and performance goals, or does it simply demonstrate the limitations of the union's definition of workplace bullying?

The proposed explanation seems to fit the unions' interpretation of workplace bullying, as a structural issue linked to performance goals: as performance goals become more relevant, workplace bullying also becomes more relevant. The problem is exactly on the last part of the statement: **relevance**. Both unions' and managers' descriptions are able to reveal only how relevant the issue of workplace bullying in a certain bank or workplace is to unions, but not how often workplace bullying is actually being experienced by individuals in the bank or workplace. This is even more troublesome when it is reminded that academic (and usually policy) definitions of workplace bullying contain a clear individual subjective element, and it is usually understood and studied from the victim's perspective.

One might question if the management's report might not resolve this problem, as it has no interest in simply reproducing the unions' perspective. The issue here is that managers in general tend to adopt a much stricter definition of workplace bullying, usually avoiding the usage of the term completely. It is no wonder that the *Protocol for Prevention of Workplace Conflicts* does not contain the term "workplace bullying" in its name, despite unions referring to it as the "Workplace Bullying clause." Bank C's 2017 Annual Report is a clear example of the stricter definition of workplace bullying adopted by banks. Grievances filed with the bank's internal channel are classified as *disrespect, policy breach, lack of managerial efficiency, intimidation, communication problems* and *bullying/harassment*. The description of each of these categories suggests that the same facts could be interpreted as bullying, depending on the context, if a broader definition of bullying was used. For instance, *disrespect* is defined as "authoritarianism, harshness, and arrogance," *lack of managerial efficiency* is defined as "lack of support or planning of the team's activities," *intimidation* is defined as

“termination threats, aggressive behavior, and improper employee exposure,” and *communication problems* are defined as “lack of clarity in communication, or absence of communication.” Curiously, bullying and harassment are never defined by the organization in that same report<sup>311</sup>.

If in BiggerPrivateBank the definitions adopted suggest that cases that are understood by the bank as general workplace conflicts, such as “disrespect” or “lack of managerial efficiency,” are potentially understood by unions as workplace bullying, it is possible to imagine a similar scenario taking place in banks where workplace bullying relevance is reported to be low: unions do not identify the existence of high levels of workplace bullying, since the conflicts do not fit the union’s definition of workplace bullying, and banks tend to not characterize conflict cases as workplace bullying. However, the existence of conflicts of apparent similar nature in all banks analyzed, suggests that the apparent lack of relevance of workplace bullying does not mean that this type of conflict is not occurring in the workplace.

Small private banks are good places to discuss this issue. None of them have reported high levels of workplace bullying, or high relevance of the topic. However, most of them present noticeable links between compensation and performance assessment. If unions’ hypothesis for workplace bullying was correct, high levels of workplace bullying should be observed in those banks. What explains this discrepancy? One hypothesis is that workers and managers’ characteristics in those banks differ from the characteristics of workers and managers in larger banks, or that external and internal pressures for performance are lower in smaller banks. There is no evidence supporting

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<sup>311</sup> BiggerPrivateBank – 2018 Annual Report (p. A-429)

this explanation, which puts into question unions' hypothesis of a link between workplace bullying and performance based compensation. Another alternative hypothesis is that, as unions are less present in smaller banks, conflicts that are interpreted as workplace bullying in larger banks are interpreted as other types of conflicts in those smaller banks.

It is worth noticing that Sammani and Singh (2014) had already suggested that pay-by-performance might lead to increased rates of workplace bullying where individual competition and stress levels are high, by creating a work environment that pressures for quick responses to stressors – even if those responses can objectively be considered bullying behavior. Although this hypothesis has not been properly tested yet, unions' understanding that this relationship is true is enough to shape their response to pay-by-performance strategies and workplace bullying. The goal of this dissertation is not to test this link between performance based compensation and bullying. In reality, in the studied environment, it does not matter if bullying occurrence is actually linked to performance goals – as unions believe that this link exists, they respond to it, independent of academic confirmation, as it will be discussed later.

The discussion above suggest that it is possible, therefore, to make some conclusions over unions' role in defining and interpreting workplace bullying in the banking sector:

**1) Where the link between conflicts and performance goals is not clear (e.g., medium-sized state-owned banks), unions' definition of workplace bullying excludes conflicts that potentially could constitute workplace bullying cases.**

**2) Even where the performance goals' link to compensation is clear, potential cases of workplace bullying might not be identified as so, if the union is not present (e.g., small private banks).**

**3) Neither unions nor management's definition of workplace bullying consider the individual victim's perception over the conflict, in contrast to academic definitions of workplace bullying.**

The issues debated above go beyond the simple definition or measurement of workplace bullying occurrences by banks and unions, actually impacting how those conflicts are approached by each actor in the sector, as it will be discussed later. First, however, the reasons behind the definitions adopted by unions and banks should be discussed.

***Why different understandings of workplace bullying?***

The points above highlight the possible limitations of unions' and managers' definitions of workplace bullying. However, they do not explain the reasons that led each actor to adopt their definition, nor do they suggest the reasons that led workplace bullying to gain so much traction in the labor discourse in the banking sector.

The initial union understanding of workplace bullying at the individual level seemed appropriate to elicit workers and banks' attention and an adequate response in a time when the manifestations of workplace bullying behavior were much more explicit. Those were the infamous cases described in Chapter 5, such as dressing up the worst ranked employee as a clown or putting a pineapple in his/her desk. Although common in the early 2000s, unions' reactions, court pressure, and management's response made those types of bullying behavior practically disappear<sup>312</sup>. "Subtler"

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<sup>312</sup> Interview 3 – BigLocalUnion

manifestations of bullying behavior<sup>313</sup>, however, likely demand different approaches to the topic, which might explain the rise of the “institutional perspective” on workplace bullying in the banking sector<sup>314</sup>.

The data presented in the previous chapters explain at least some of the reasons that might be behind the unions’ approach to workplace bullying. The institutional perspective on workplace bullying fits into unions’ general discourse, strategy, and available tools. Suggesting that workplace bullying occurrences are enhanced by “neoliberal policies” and its effects (i.e. pressures for labor and employment law flexibilization, rise in unemployment, privatization process, etc.) and that the organization holds most of the blame for bullying (Jornal da Afubesp 2001a), fits well in the unions’ general discourse against employment law flexibilization, unemployment, privatization, etc. Moreover, it is worth remembering that Brazilian workplaces have no tradition of individual grievance procedures with union participation, as it is common in the US, as individual conflicts tend to have the courts as its most traditional forum. Since Brazilian unions tend to focus on different forms of collective actions (e.g., strikes, work stoppages, picketing, protests, etc.), an organizational perspective on workplace bullying seems a best fit to the available union tools, which tend to better target organizational policies, instead of individual managers’ behaviors.

Labor and Employment Courts’ role in the development of the workplace bullying concept in Brazil can also help explain the prevalence of the institutional perspective on unions’ discourse. It was shown that the MPT (Federal Labor

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<sup>313</sup> Interview 3 – BigLocalUnion

<sup>314</sup> It should be highlighted that what is being discussed here is not the existence of structural or organizational factors in the occurrence of workplace bullying, a position currently debated in academic research, as shown in the literature review. The question debated here is why have unions decided to focus almost exclusively on this perspective on workplace bullying over other possible perspectives.

Prosecution Office) reinforces the union perspective of workplace bullying as a structural issue, by filing several class actions across the country against medium and large banks. MPT's approach to the issue from an organizational perspective makes sense, as by law the MPT can protect only collective rights and interests, and not individual rights, having in class actions its most powerful tool. Even if relying on class actions is not simply a choice by the MPT, but a legal obligation, this leads to an organizational perspective of workplace bullying, which reinforces unions' perspectives after each favorable decision obtained.

It was also shown that individual litigators also rely on similar definitions for filing workplace bullying related lawsuits, which result in a still overall divided court positioning over the topic. It can be argued that those individual litigation cases are not only a consequence, but also a reinforcement to unions' organizational perspective on workplace bullying. It is a consequence, as the unions' organizational definition tend to be more generic, focusing less on the individual victim's perspectives (and evidence of being a victim). With a generic definition of workplace bullying, plaintiff attorneys seem more prone to include workplace bullying among the topics being demanded in litigation, even if only with the expectation of increasing the lawsuit value, potentially obtaining a better court settlement, as discussed in Chapter 6. On the other hand, by adopting the broader definition of workplace bullying in litigation, plaintiff attorneys reinforce the unions' organizational perspective on bullying, whether by simply spreading the discourse, whether by occasionally obtaining a favorable court decision. It should be interesting to observe the impact that the Labor and Employment Law Reform will have on plaintiff attorneys' behavior in relation to workplace bullying, as with the new rules for court fees and costs, explained in Chapter 3, it is likely that only

cases where there is evidence that the plaintiff was individually targeted in a bullying behavior will be brought to court. This new plaintiff attorney's behavior, consequently, will potentially stop reinforcing unions' organizational perspective of workplace bullying.

The banks' approach to workplace bullying bears an easier explanation, as suggested by the data presented in the previous chapters. An individual perspective on workplace bullying, centered in aggressors' behaviors not in alignment with company's policies has several advantages to management. First, by disentangling bullying from organizational policies and blaming bullying on employees and managers going rogue (similar to what is observed with HR professionals in UK (Harrington et al. 2015)), companies face an easier solution to bullying behavior – it is unquestionably easier to change (or terminate) individual employees, than to change organizational policies, mainly when those policies are linked to the business strategy. Moreover, a stricter definition of workplace bullying might save the bank from financial and image problems and risks. The financial risks are evident, such as the ones involved in individual litigation or class actions. Risks to the bank's image are presented in different manners. First there are risks related to the image of the bank in Employment Courts, which is believed to have some weight in judges' approach to cases involving each bank, as evidenced by the different court settlement strategies which explicitly have the goal of improving banks' image in courts, as described in Chapter 6. Internally, a stricter definition of workplace bullying, and moderate usage of the term, also avoids image risks to management among the bank's own workers. For bullying, but mainly for sexual harassment, managers have reported some concern that campaigns to raise awareness over the topics might be understood internally as a sign that those problems are even

more recurrent in the organization than they actually are. Finally, a stricter definition of bullying, and therefore a smaller amount of cases being recognized as bullying, might also prevent risks to the bank's image to an external audience. The importance of the external image of the banks as employers is clear, as evidenced in the efforts put by banks in being part of different rankings of best places to work, as well as by the explicit goal of several union actions, targeted at negatively exposing the bank's image to the general public<sup>315</sup>.

Banks' avoidance of using a broad definition of workplace bullying is clear by the resistance to the usage of the term in banks' communication, as shown in BiggerPrivateBank's annual report described in the previous section. It is no surprise that even the *Protocol* negotiated with the union with the explicit intent of covering workplace bullying, does not bring the term workplace bullying in it, per banks' initiative.

The concept of frames of reference, detailed in Chapter 2, might also help to explain those different understandings of workplace bullying by banks and unions. Frames of reference are defined as the lenses through which one perceives, understands, and reacts to the world around him/her, structuring each individuals' expectations and behaviors in different contexts, including the employment relationship (Budd et al. 2018). Following the four frames of reference used by Budd and Colvin (2014), it is easy to identify banks as users of an *unitarist* frame of reference, i.e., identifying that employers and employees share a unity of many interests, and that conflicts are mostly interpersonal and a product of organizational dysfunction. Unions in the banking sector,

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<sup>315</sup> Interview 2 – BigLocalUnion.

on the other hand, vary from *pluralist* frame of reference – the clearest example is BigConfederation – to a *critical* frame of reference – the clearest example is CriticalLocalUnion. Under the *pluralist* frame of reference, employers and employees have a mix of common and conflicting interests, but with unequal bargaining power, and under the *critical* frame of reference, employers and employees have inherent, antagonistic conflicts of interest (Budd and Colvin 2014). Since frames of reference are the lenses with which each actor interpret and interact with the world around, it makes sense that different actors, using different frames of reference, have different understandings of workplace bullying. Therefore, banks, under an *unitarist* perspective, understand workplace bullying as an interpersonal problem, result of organizational dysfunction. Unions, on the other hand, under a perspective that ranges from *pluralist* to *critical*, see workplace bullying as a structural issue in the employment relations in the sector.

The discussion above suggest that it is possible, therefore, to make some conclusions over the reasons behind the different approaches to workplace bullying used by unions and banks.

**4) Unions’ use of an organizational or structural perspective on workplace bullying can be explained by the fit between this perspective and the unions’ overall discourse, strategy, available tools, and frame of reference.**

**5) Courts reinforce the unions’ organizational perspective on workplace bullying, via MPT’s class actions and plaintiff attorneys’ approach to bullying in individual litigation, as both cases depend on a broader and collective definition of workplace bullying.**

**6) A narrower definition of workplace bullying is aligned with banks' frame of reference and interests in preserving the organization against financial and reputational risks associated with the existence of multiple cases of workplace bullying in a certain organization.**

The relevance of this discussion is not restricted to identifying the reasons behind different definitions of workplace bullying preferred by each actor. As it will be discussed next, those different definitions also impact how each of those actors approach managing and resolving workplace bullying cases.

***Impacts on responses to workplace bullying***

It was shown previously that unions' and banks' preferred approaches to workplace bullying reflect different concerns from unions and banks (statements 4 and 6) but can each exclude different types of conflicts occurring in the workplace (statements 1 to 3). The goal of this section is to show that those different approaches impact not only the types of conflicts that are considered workplace bullying under the proposed definitions, but also how the cases identified as workplace bullying are handled by each of the involved actors.

Chapter 6 described the Protocol for Prevention of Workplace Conflicts (the Protocol), which basically creates a grievance procedure in which the union receives the grievance, forwards it to the bank, and the bank has a strict deadline to provide a response to the union over the merits of the grievance, after conducting internal investigations. Although the Protocol has not been signed by some unions and it has been abandoned by others, it still is the main channel for handling workplace bullying used by the biggest and most important banking union in the country, which has not

only been a strong advocate of the Protocol, but also the union setting the tone for the workplace bullying debate since early 2000s.

The data presented in the previous chapters show unequivocally that the strengths and shortcomings of the Protocol channel reflect the unions' perspective on workplace bullying described earlier. If workplace bullying is understood as a structural or organizational phenomenon, directly linked to the way that performance targets are set in the banking sector and that the whole banking activity is organized, a proper mechanism to handle workplace bullying would have to target influencing and changing banks' strategic decision making, mainly related to performance goals' setting. Actually, this objective was made explicit by the union's president after the signature of the first Protocol in 2010: The Protocol was considered an historical landmark that would start to "change the logic under which banks operate" (Folha Bancária 2011a).

The way that the Protocol helps unions to achieve this goal is also evident in union leaders' description of the advantages of the channel, as even if the union considers that the cases were not properly resolved by the bank, the channel at least is able to provide sectoral statistics about workplace bullying and other conflicts taking place in the sector. Those statistics are used by the union as a leverage in future bargaining tables and correct a previous weakness of unions' demands over workplace bullying during the bargaining process. Before the Protocol was signed, any union statement that workplace bullying was a recurrent issue in the sector could be challenged by banks, but now unions have numbers, provided by the banks, to back their workplace bullying related demands<sup>316</sup>.

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<sup>316</sup> Interview 2 – BigLocalUnion.

It is clear, therefore, that the Protocol channel is a reflection of unions' understanding of workplace bullying. For instance, contrary to what would be expected in a traditional grievance procedure, the Protocol channel does not provide unions with an appeals mechanism in case they disagree with the bank's investigation results. Actually, the Protocol does not even demand that banks do something in case they identify that workplace bullying or other faults were taking place in the organization – banks' obligation under the Protocol is simply to investigate the grievance, not to punish an identified aggressor. It is worth highlighting, once again, that unions have no interference over the investigation conducted by the bank, being simply informed of its results. The ability of banks to conduct the investigations without the union participation, is actually one of the main criticisms from unions opposing to the Protocol channel<sup>317</sup>.

With all these characteristics described above, the Protocol channel seems apt to support union's collective activity towards workplace bullying, but it seems poorly suited to resolve individual problems of individual victims of workplace bullying. This apparent conflict between union's structural interpretation of bullying and victim's potential individual interpretation of the same case is also reflected in the clear misalignment between individual workers' expectations over the grievance channel, and unions' actual demands for banks in cases of workplace bullying. Different actors interviewed reported that individual workers' expectations for the closure of a bullying case usually involve the termination of the aggressor. Unions, however, never ask for a termination, actually opposing this possibility. Most often, unions' demands include

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<sup>317</sup> Interview – CriticalLocalUnion.

only the removal of the aggressor from a managerial position, temporarily or definitively, or the transfer of the manager to a different branch or unit. The justification for this position is not only the fact that managers are also represented by the unions and the union has a position to always defend employment<sup>318</sup>, but it also reflects the perception that the problem is organizational, not individual. If workplace bullying is caused by the existence of impossible performance targets defined by top management, the termination of a middle manager will do little to solve the structural problem of workplace bullying.

This divide between the individual perspective of the victim of workplace bullying and a structural interpretation by other actors, is not present only in cases involving unions. Class actions filed by the *MPT* are likely to cause similar perceptions of misalignment with individual victims' expectations. In the case of class actions this misalignment is probably even more evident, as victims might benefit only from the court order to bullying behaviors to cease, but they will not receive any monetary compensation for damages in the class action, as all the money paid by banks on those cases are reverted to the Workers' Support Fund (*FAT – Fundo de Amparo ao Trabalhador*), a state managed fund.

Evidently, the Protocol channel also has some other advantages beyond providing statistics, as it allows for unions to have better control over the grievances. By having all cases registered in a system, union representatives are able to return to the workplace later to check if the solution proposed by the bank actually promoted changes in the workplace or if the problems that led to the grievance filing are still observable<sup>319</sup>.

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<sup>318</sup> Interviews 1 and 3 – BigLocalUnion.

<sup>319</sup> Interview 1 – BigLocalUnion.

In case the problems are still present, the union will still resort to traditional collective action, such as the *sardinhas* described in Chapter 6. Moreover, the existence of the biannual sectoral meeting between banks and unions to present the Protocol's statistics is also believed to create a certain peer pressure among the banks, via *FENABAN* (National Federation of Banks), pressuring all banks to comply with the rules and deadlines of the Protocol<sup>320</sup>.

The analysis of the development of the Protocol channel, as well as other channels targeted at workplace bullying management with union involvement, such as MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment, also allows one to question the centrality of the issue of workplace bullying in the daily experience of the individual bank worker, as suggested by unions. In all cases, channels originally developed to exclusively handle workplace bullying, quickly expanded to cover other types of conflicts, such as relationship conflicts, or other types of problems faced in the workplace, such as the often-cited problems with the office's air conditioning unit. In all cases, the transformation of the channel happened naturally, by the simple usage of the channels by workers. This transformation suggests not only the lack of proper channels for filing grievances about those types of problems – a phenomenon observed in the development of Ombudsman Offices in organizations of different sectors in Brazil (Marzionna, 2016) – but it also suggests that workplace bullying might play a secondary role in the daily experience of different workers. Or, at least, this is the case for workplace bullying if framed almost exclusively in terms of performance goals, as suggested by unions in the sector.

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<sup>320</sup> Interview BigConfederation.

In terms of the results obtained by the Protocol, most cases investigated by banks under the Protocol are dismissed, although the first case ever was confirmed by the bank – a trend also observed in other cases of implementation of different ADR forms (see, for instance, Colvin 2004a). Despite that, supporting unions believe that the overall results obtained are positive, as it provides unions with valuable information about workplace bullying, which was shown above to be used by unions as the basis for other union actions, and some changes in managerial behavior are also observed. Those changes, however, refer mostly to ceasing extreme cases of workplace bullying, what was already observed earlier by simply bringing the problem of workplace bullying to light.

If unions' structural view of workplace bullying was shown to influence unions' approach to how to handle workplace bullying cases, a similar argument can be made in relation to the banks' general perspective on workplace bullying and the internal tools usually available to handle them, such as Ombudsman Offices, Ethics Committees, and Compliance Channels.

Banks tend to see workplace bullying as an individual issue – less from the victim's perspective, as it is common in the academic literature – but individual from the aggressor's perspective: bullying is not a structural problem caused by the company's strategies or culture, but simple examples of attitudes from individual managers who are unable to properly follow the existing rules and internal policies, including rules regarding how to demand the achievement of certain goals. Or, in other words, bullying, when linked to performance goals, would not be caused by the goals per se, but by how individual managers are using and demanding those goals. Harrington et al. (2015) observe a similar phenomenon among HR managers in UK, and

suggest that this is an active decision by HR professionals in order to normalize managers' behaviors, while saving their relationship with those same managers.

Whether a conscious decision or not, in general, banks' internal channels seem to reflect this understanding of bullying, allowing what could be considered a more pragmatic approach to the issue. Usually, the internal channels' goal is never to change the business strategy, but simply to resolve individual cases. This is usually tried via investigation and consequent punishment, or with counseling, coaching or feedback to the parties involved. This is relatively easy to understand: if the problem resides not in the performance goals, but in individual attitudes relating to them, the bank might be able to try to change the manager's behavior, which is potentially easier than to change a company's whole strategy or policy. Evidently this does not mean that Ombudsmen, for instance, might not suggest policy changes in case patterns of conflicts are identified – it only means that this is not their ultimate or central goal.

Once again, however, as it happens to unions' channels, banks' channels do not seem to properly respond to individual victims' expectations about how workplace bullying cases should be treated – i.e. with the aggressor's termination<sup>321</sup>. Most internal channels' see their role being more than simply responding to the grievant's expectation, but to align the solution with the organization's general culture<sup>322</sup>. It should be highlighted, however, that the number of cases treated by banks with termination are not insignificant, as the numbers of BiggerPrivateBank demonstrate. There, 13.7% of all cases reaching the Ombudsman Office result in termination – although those cases

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<sup>321</sup> Interviews – MediumNationalBank and CorporateNationalBank.

<sup>322</sup> Interview – MediumNationalBank.

do not refer only to conflicts explicitly identified as bullying by the company (see Table 6).

It is worth highlighting that if cases identified by unions as workplace bullying are usually characterized by banks as other types of relationship conflicts, most of those cases might be handled internally in banks by HR departments, where individually targeted approaches and tools are even more common. If in the case of channels such as Ombudsman Offices, unions' access to the channels is already limited, intermediated by Labor Relations departments, in the cases in which HR handles those conflicts, the tendency is that unions will have no proper way to interfere in the case solution, or to even be aware of the case existence.

It should be highlighted that the idea of frames of reference used in the previous section, can also be used here to analyze the impacts of different interpretations of workplace bullying in how different actors respond to workplace bullying. As it was discussed previously, unions' frame of reference vary from *pluralist* to *critical*. Those frames of reference are determinant on their view on workplace conflict, and also on their preferred methods for conflict management. Usually, a *pluralist* perspective favors institutionalized conflict management methods that balance the bargaining power, while a *critical* perspective favors conflict management methods that promote a systematic shift in power relations (Budd and Colvin 2014). The Protocol is a clear method favored by a *pluralist* perspective, as evidenced by the use in Collective Bargaining of the statistics that it generates – a clear attempt to balance bargaining power. However, its ultimate goal might also be seen as fit to a *critical* perspective, as union leaders expressly want to use it to “change the logic under which banks operate” (Folha Bancária 2011a), by having a say on how banks define their business strategy and

performance goals. However, clear *critical* unions, such as CriticalLocalUnion, prefer a more confrontational strategy to reach this goal, therefore not adhering to the Protocol.

Likewise, banks' *unitarist* perspective is also reflected on their preferred conflict management methods. As workplace bullying is seen as an interpersonal conflict, result of organizational dysfunction, preferred conflict management methods tend to rely on personal interventions to resolve interpersonal, behavioral conflicts and HR policies that try to align employer-employee interests (Budd and Colvin 2014). In that sense, the different internal channels analyzed here, are all different ways to approach to workplace bullying individually, treating it as interpersonal or behavioral conflicts, caused by individual misalignment of a manager or employee with the company's policies.

The discussion above suggest that it is possible, therefore, to make some conclusions over the impacts that different understandings of workplace bullying have over the conflict management tools and channels favored by banks and unions:

**7) Unions' understanding of workplace bullying as structural is reflected in their preferred method for handling workplace bullying. The Protocol is good at providing unions with statistics and information that can be used by unions in collective bargaining or collective action, but it is inadequate to provide individual victims with proper solutions to their workplace bullying experience.**

**8) Class actions promoted by the MPT also tackle the workplace bullying issue only from an organizational perspective, doing little to relieve the individual victim of workplace bullying.**

**9) So far, unions' actions are able to cease extreme cases of bullying, but there is no evidence that unions are actually affecting banks' business strategies.**

**10) Banks' understanding of workplace bullying is also reflected in their internal channels targeted at handling those kinds of conflicts. Organizational changes are only secondary goals of banks' internal channels, which are more apt to focus on individual behavior change and/or punishment.**

**11) Banks' and unions' different responses to workplace bullying are aligned to the different frames of reference used by each actor to understand employment relations.**

**12) Individual victims' perspectives on workplace bullying, usually favored by academia, are at most of secondary importance to unions and banks in relation to their workplace bullying management mechanisms.**

**13) Workers usage of different channels originally targeted at workplace bullying (i.e. to use those channels to file grievances related to other types of conflicts or problems in the workplace) suggest that: (a) workplace bullying is not as central in individual workers' experience in the workplace as suggested by unions; and (b) that there is a lack of adequate channels for workers to voice their actual concerns and problems in the sector.**

***Workplace bullying as an example of framing contests***

The previous two sections explored, among other topics, how different interpretations of workplace bullying by unions and banks can be understood using the concept of frames of reference. This section will explore how workplace bullying in the Brazilian banking sector can also be analyzed under other concepts developed in Chapter 2, regarding framing contests and the role of ideas in employment relations.

For instance, using the idea classification proposed by Hauptmeier and Heery (2014), it is easy to understand unions' view on workplace bullying as a *causal belief*,

which are beliefs on causal relationships and roadmaps on how the world works. Therefore, the belief that performance goals and performance-based compensation cause workplace bullying provides unions with the guidance on how to deal with these situations, functioning as roadmaps for union action. It should once again be highlighted that the simple belief that this causal relationship exists is enough to influence unions' responses to workplace bullying, even if the causal relationship does not find support in academic research.

Moreover, unions and banks are not the only actors with important roles in developing, promoting advocating, and altering ideas. Theorists and intellectuals, such as university academics, also play an important role (Hauptmeier and Heery 2014). This is the case, for instance, of the influence of Barreto's seminal work on workplace bullying in the Brazilian banking sector, often cited in unions' newspapers. Chapter 5 has shown how the work of Barreto and others have influenced the construction of the concept of workplace bullying as a structural/organizational problem. Likewise, another important institutional actor cited by Hauptmeier and Heery (2014) and also found here are courts. Chapters 5 and 6 have demonstrated how Labor and Employment Courts, and, through them, attorneys and the MPT, have played an important role in reinforcing or questioning unions' structural understanding of workplace bullying.

Furthermore, the case of workplace bullying in the banking sector can also be analyzed under the concepts of framing contests, a model proposed by Kaplan (2008) to explain how actors try to transform their frames of reference in the predominant frame of reference through daily interactions. The case of workplace bullying in the banking sector is a good example of efforts to establish the legitimacy of the actors' frame, to remove the legitimacy of opposing frames, or to realign frames in order to influence

how others see relevant issues in the contested relationship. For instance, those efforts can be seen in the *sardinhas* and other public exposures of faulty bank managers, in unions' strategic use of class actions and litigation on workplace bullying, or even in banks' attempts to direct workers to banks' internal channels, which treat workplace bullying as an individual interpersonal problem.

Finally, the case of workplace bullying in the banking sector can be used to start to test the model currently being developed by Budd et al. (2018) on the result of mismatched frames of references. Although in that case frames of reference being compared are the employer's and the individual employee's, there are no reasons to not expand this model to mismatched frames from employers and unions, as it is the case in this dissertation.

Budd et al. (2018) expect that a mismatch of an *unitarist* employer with a *pluralist* or *critical* employee would result in an employment system characterized by "high-commitment strategic HRM policies with union substitution approaches including voice mechanisms" (Budd et al. 2018, p. 35). In the case of workplace bullying in the banking sector, an approximate result is observed, considering the peculiarities of the Brazilian context. Banks are responding to workplace bullying not only with different forms of HR practices, but mainly with voice mechanisms, such as Ombudsman Offices and Compliance Channels, which are not rarely labeled by unions as union substitution tools.

### **Sexual Harassment – Single definition but problems in reporting**

In the previous sections it was shown the impact that different understandings of workplace bullying had on how those types of conflicts were managed in the banking sector. In this section it will be shown that differences in understandings of a conflict

are not the sole factor potentially impacting how a type of conflict is handled. In reality, in the case of sexual harassment, there are other factors that seem to impact the importance of sexual harassment in the banking sector.

In Chapter 5 it was shown that discussions and attempts to raise awareness over sexual harassment in the banking sector are present in the union discourse at least since 2001, therefore, at the same period that the debate over workplace bullying was initiated in the sector. After seventeen years, however, the two types of conflicts face a very different scenario in the banking sector. While the debate over workplace bullying was able to gain traction, quickly becoming an important issue in labor relations in the sector, little has changed in relation to sexual harassment during the same period. Numbers of cases of sexual harassment actually reported are extremely low, and internal union surveys point that between only 1% and 12% of the union constituents consider it relevant to debate sexual harassment in the collective bargaining process (Wrolli 2015). Despite that, the belief that sexual harassment cases are extremely underreported in the sector seems to be shared by managers and union leaders.

Some factors might explain why sexual harassment has not developed into a central issue as it was observed in the case of workplace bullying.

The first factor refers to the individual characteristic of sexual harassment and the consequences and necessity of the victim's exposure. As sexual harassment tends to have a single individual target, victims are described to feel unsafe to report cases of sexual harassment, as their image and privacy may be at risk. Moreover, the lack of witnesses in several cases of sexual harassment usually hinder anonymous reports of sexual harassment. The most interesting point to be discussed, however, refers to the fact that sexual harassment is defined as a criminal offense in Brazilian law.

Whereas workplace bullying is not covered by national legislation, sexual harassment became a crime in 2001, with the following definition: *“To embarrass or constrain someone with the purpose of gaining sexual advantage or favor, by the agent’s use of his superior status in the exercise of employment, work position or job function.”* Despite the rather limited scope of the sexual harassment definition adopted by the Brazilian legislator<sup>323</sup>, the fact that sexual harassment is a criminal offense has significant consequences in the workplace.

First, banks demand more and stronger evidence to consider a case sexual harassment in comparison to any other conflict, such as workplace bullying, which do not have the constraints of a legal definition<sup>324</sup>. Considering the legal consequences of a sexual harassment case, banks demand that alleged victims produce evidence or witnesses that would not be necessary in cases of workplace bullying. Therefore, victims that might already feel uncomfortable with the exposure involved in reporting a sexual harassment case, might see in this need for additional evidence another barrier to reporting. It was shown that this greater care in characterizing sexual harassment is also observed in Labor Court decisions, what is not observable in relation to workplace bullying.

Moreover, given the individual nature of sexual harassment, unions and the MPT seem less prepared to deal with sexual harassment cases. It was discussed earlier that the structural definition of workplace bullying had the advantage of perfectly fitting in the unions’ available tools for collective action and in MPT’s class actions. Those tools, however, are inadequate for a conflict of clear individual nature, such as sexual

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<sup>323</sup> It should be noticed that employment courts have broaden the definition of sexual harassment for employment law purposes.

<sup>324</sup> Interview 5 – BiggerPrivateBank.

harassment. Even in the few cases where unions tried to use punishment of sexual harassers in the sector in order to raise awareness over the topic to its constituents (Folha Bancária 2018), the limitations to the disclosure of more detailed information in order to guarantee the victim's privacy and avoid legal risks constitute a clear barrier for traditional union communication strategies.

Despite the clear individual characteristic of sexual harassment, unions have also been trying to frame it as an organizational issue linked to workplace bullying and performance targets. The pressure to reach those performance goals would be linked to demands, suggestions, or insinuations of sexual content, such as suggesting that team members wear certain clothes that would “help to achieve sales goals”<sup>325</sup>. The potential for success of this approach seems limited, given the unequivocally individual characteristics of the sexual harassment definition adopted by Brazilian law.

The discussion above suggests that it is possible, therefore, to make some conclusions over how the characteristics of sexual harassment impact how it is experienced and reported in the banking sector:

**14) The individual nature of sexual harassment makes existing union tools used for workplace bullying less apt to respond to sexual harassment cases.**

**15) The fact that sexual harassment is defined as a criminal offense in Brazilian legislation, although potentially offering greater protection, might be functioning as a barrier for more reports of sexual harassment cases in different organizations.**

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<sup>325</sup> Interview 3 – BigLocalUnion.

## **Chapter conclusion**

This chapter was dedicated to the analysis of two specific types of conflicts in the banking sector: workplace bullying and sexual harassment. In the case of workplace bullying, it was shown that unions and banks have different interpretations of the meaning and origins of this conflict, and that those differences impact how they respond to it.

Unions' definition focus on a potential link between workplace bullying and performance-based compensation, while banks' definition focus on individual managers' behaviors not aligned to the company's culture and policies. In both cases, individual victim's perspectives on workplace bullying are not taken into account, with the risk of ignoring cases of workplace bullying for not fitting into unions' and banks' definitions of the conflict.

The two approaches to workplace bullying were shown to fit each actor's frame of reference – *unitarist* in the case of banks, and *pluralist* or *critical* in the case of unions – as well as each actor's available tools to respond to workplace conflicts in general. Other actors, such as courts, MPT, attorneys, and even academic researchers, were also shown to play important roles in reinforcing or contesting the different definitions of workplace bullying, in the process of framing contests, as defined by Kaplan (2008).

The different understandings of workplace bullying not only reflect different frames of reference, but they also impact each actor's responses to the conflict. In the case of unions, for instance, the Protocol is shown to be good in providing unions with statistics to try to tackle the issue collectively, but poor in solving the individual cases of workplace bullying experienced by each victim. Likewise, banks internal channels

focus on individual punishment or behavioral change, while doing nothing in transforming the structural elements that might be connected to workplace bullying.

Finally, sexual harassment was analyzed as a good comparison point to workplace bullying. The clear individual nature of the conflict was shown to be an obstacle to unions, since it is harder to fit sexual harassment with unions' frames of reference and existing tools, as it is the case of workplace bullying. Moreover, it was discussed that the fact that sexual harassment is defined as a criminal offense in Brazilian legislation, although potentially offering greater protection, might be functioning as a barrier for more reports of sexual harassment cases in different organizations.

The next chapter goes beyond different types of conflicts, analyzing the role of different actors in conflict management in the sector.

## CHAPTER 8 – DIFFERENT ACTORS AND THEIR ROLES IN CONFLICT MANAGEMENT

While the previous chapter focused on two specific types of conflicts observed in the sector (workplace bullying and sexual harassment), this chapter analyzes the role played by different actors in conflict management in the banking sector.

The chapter starts with an analysis of the role of unions, highlighting the consequences of unions' choice to focus on specific conflict management channels (e.g., the Protocol), while ignoring banks' internal channels (e.g., Ombudsman Offices). I suggest that this decision might be alienating part of unions' constituents, whose needs are not covered by union sponsored channels, while also recognizing that union sponsored channels work as complements and not substitutes to traditional union action.

The chapter continues with an analysis of the reasons and consequences of the central role played by banks' labor relations departments in all conflict management channels with some form of union participation. I suggest that this centrality is beneficial only for labor relations departments themselves, which work as buffers between unions and other internal bank departments.

The next topic covered in this chapter refers to the centrality of employment courts and employment litigation, and how they influence ADR. It is shown how employment court system can work both as barriers and incentives to ADR development in the banking sector, and how unions and banks are able to use litigation strategically in order to reach other conflict-management goals.

Finally, the chapter explores the centrality of HR departments in the development of several internal ADR methods and other conflict resolution tools. The analysis suggests that the lack of independence, autonomy and impartiality of HR

departments negatively impact workers' perceptions over conflict management initiatives which count with considerable HR participation.

### **The role of unions**

In Chapter 7 it was discussed how unions' interpretation of workplace bullying influenced how workplace bullying was managed in the banking sector. Unions' influence on conflict management and the development of ADR in the banking sector, however, goes beyond the issue of workplace bullying. Several conflict management tools described in Chapter 6 reflected direct participation of unions in their development or were management responses to some form of union action. Therefore, this section covers the role of unions in the overall conflict management and ADR development in the Brazilian banking sector.

From the analysis of previous chapters, it is clear that unions' priorities regarding workplace conflicts and their resolution are not always aligned to individual workers' priorities and expectations. The issue was already covered in the discussion of workplace bullying victims' expectations of the termination of the aggressor in opposition to the general union position against termination. It should be noted, however, that this conflict between the union and its constituents was observed in several other conflicts and conflict management tools discussed in this dissertation. This discrepancy is observed, for instance, in the high adhesion of workers to Voluntary Resignation Plans proposed by different banks, described in Chapter 5. Although unions are opposed to those plans, refusing to negotiate them, there are cases in which individual adhesion rates are close to 7% of the total workforce. Likewise, cases of disagreement between the union leadership position regarding the signature of *CCPs* agreements and the rank and file were observed in both directions (i.e. leadership in

favor of signing *CCPs* agreements and rank and file against it, and leadership against signing *CCPs* agreements and rank and file in favor).

Disagreements between union leadership and the rank and file are not something exclusive to the banking sector in Brazil, but the several cases described in relation to conflict management should be discussed with care. First, they confirm, as expected, that individual conflicts and possible resolutions are experienced differently by unions and their constituents individually. But, most importantly, they suggest that unions' choices to focus exclusively on certain conflict management tools, such as the Protocol, might actually be alienating some of their constituents, whose needs are not properly covered by unions' preferred channels. Due to the lack of proper union participation in the development of certain conflict management solutions, individual workers might be relying on different management-controlled conflict resolution channels, over which unions have little or no influence at all.

In reality, this lack of influence is sometimes recognized by union leaders themselves, as unions' criticism to internal channels such as Ombudsman Offices make it clear. Unions critical to the Protocol point their main criticisms exactly to the lack of influence that unions have over the investigation procedure taking place in banks, and mainly, the lack of influence over the decision-making after the investigation. Union leaders adopt two different positions in this scenario. There are some who suggest that, in the case of the Protocol, the company's investigation and decision are less relevant than the statistics provided to the union, which will be later used in Collective Bargaining over topics such as workplace bullying. Others defend that the independent investigation that they deem adequate can only be conducted by unions, never by managers. The fact is that, no matter the position adopted, banks are offering different

internal channels to workers to deal with their workplace conflicts, from HR to Compliance Channels or Ombudsman Offices. Workers are using those channels, and unions have no influence or knowledge over what happens in them, and do not seem interested in gaining access to them.

Overall, more than simply having no influence over the internal channels, unions and banks hold an antagonistic relationship in relation to them. It was shown to be common for unions to depict those channels in their newspapers as “sources of retaliation and termination” (SEEB - Catanduva 2015), instead of channels for proper conflict resolution. This antagonistic relationship, more than a union communication strategy to value the Protocol channel, might be a reflection of the lack of union participation in the construction of those internal channels, which are seen simply as threats to unions’ power and influence over their constituents and their workplace experience. This hypothesis is reinforced by the case of MediumPublicBank’s Commission for Workplace Bullying and Sexual Harassment, which involved union participation in its development and still involves it in its current functioning. MediumPublicBank’s Commission is by far the case of strongest coordination between managers and union leaders in relation to internal channels, and it was defended by both sides.

It should be mentioned that in some cases, as in BiggerPrivateBank’s Ombudsman, managers responsible for banks’ internal channels demonstrated interest in having higher union involvement in those channels. They have not succeeded yet in those efforts, supposedly because of unions’ lack of interest or fear of losing control over conflict management. However, another hypothesis should be considered, which

will be developed later, that this closer interaction between union and internal channels might not reflect the best interests of labor relations managers within banks.

The relationship between unions and individual conflict management channels and tools, in general, is a complex one. Taking the Protocol channel as an example of an ADR tool with union participation, it is clear that potential benefits for unions in using those conflict management tools go beyond the possible resolution of the individual conflict. Chapter 6 describes in detail how unions tend to follow what they consider inadequate solutions provided by the Protocol with traditional union collective action, of which the most famous one is the *Sardinhada*. Therefore, although ADR can in some contexts be seen as substituting for or threatening traditional union action, this example shows how bank unions in Brazil are using some forms of ADR as a complement to their traditional union action. However, as stated before, the relationship between unions and individual conflict management tools is a complex one. The same Protocol which is used by unions as a complement to traditional union action, also poses barriers to traditional union action, as its rules prohibit cases' details of being disclosed while the bank is conducting its investigation. Therefore, the Protocol rules make unions give up on their ability to exert some traditional forms of pressure over banks in relation to workplace conflicts – or at least to postpone this pressure for 45 days. Actually, this is one of the main criticisms to the Protocol presented by unions that have abandoned the tool in recent years.

Bank managers also perceive that unions usage of the channels that they have access to, such as the Protocol, have other goals, beyond simple resolution of the individual conflict at hand. Unions use the Protocol strategically, in order to try to obtain more information on internal grievances, over which they would have no access

otherwise, and politically, by choosing to file only cases with potentially high visibility, which might generate reputation benefits to the union towards its constituents.

The discussion above suggests that it is possible, therefore, to make some conclusions over the role of unions in conflict management channels in the banking sector, and the consequences of this role:

**16) The decision of unions to focus only on specific conflict management channels, with no effort to access banks' internal channels, might be alienating some of their constituents, whose needs are not properly covered by unions' preferred channels.**

**17) Due to the lack of union participation in certain conflict management solutions, individual workers are relying on different management-controlled conflict resolution channels, over which unions have little or no influence at all.**

**18) Unions' antagonistic relationship with banks' internal channels reflects the lack of union participation in the development and functioning of those channels.**

**19) Conflict management channels over which unions have some participation or access do not work as a substitute to traditional union action, but as a complement to traditional union collective action.**

### **The centrality of the Labor Relations Department**

An important point worth discussing in relation to the structure of most conflict management channels analyzed in Chapter 6 refers to the centrality of the Labor Relations department in all ADR methods that count on unions' direct participation. Whether for CCPs or for the Protocol, all interaction between unions and banks is intermediated by the banks' labor relations departments. As summarized earlier, labor

relations departments in most cases end up working as a buffer between the union and the department responsible for the investigations and grievance handling.

This intermediation has clear consequences for unions and their role in workplace conflict management. As explained before, the lack of direct contact between the union, which files the grievance, and the department that conducts the investigation, seems to increase the likelihood that negative results are not accepted by the union, or that they are seen with suspicion. This is noted mostly by managers from the Ombudsman Office, who report having interest in a closer direct contact with unions<sup>326</sup>.

If managers of internal channels suggest that a direct relationship with unions is potentially beneficial, one might ask who actually is benefiting from the labor relations department intermediation. Although unions seem used to the situation, there seems to be little benefits to them in the current structure of those channels. Actually, with less direct access to the conflict management channels, less amount of information is available to unions regarding the conflicts happening in the workplace. No wonder unions try to use the Protocol channel strategically, as a way to obtain information over conflicts and investigation happening at the internal channels, to which unions have no direct access.

There are reasons to believe that the Labor Relations departments are the main beneficiaries of their own centrality in the Protocol, and, to a lesser extent, in the *CCPs*. There are two possible hypotheses in that sense. First, a direct relationship between unions and investigatory departments under the Protocol would weaken the Labor Relations department, by making it less relevant in the union-bank interaction. The

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<sup>326</sup> Interview 5 – BiggerPrivateBank.

second, and most likely hypothesis, is that controlling all union-management interaction, the Labor Relations department maintains its access to strategic information which might be useful in collective bargaining and other interactions with union. As it has been shown, it is not unusual for cases first brought to the Protocol, to later develop into other collective union actions, such as the *Sardinhadas*. Being removed as an intermediary would likely hurt Labor Relations strategic position in future interactions and negotiations with the union.

The discussion above suggest that it is possible, therefore, to make some conclusions over the reasons behind the centrality of Labor Relations department in the union-management relationship in conflict management tools in the banking sector:

**20) Having the Labor Relations departments as intermediaries between unions and the banks' investigatory bodies under the Protocol is beneficial mostly to the Labor Relations departments themselves. By having this role, Labor Relations departments are able to continue to have access to relevant and strategic information that can be used in future interactions with the union and future bargaining processes.**

#### **The centrality of employment courts and litigation and their influence over ADR**

As it has been shown in Chapter 6, employment courts and litigation play a central role in conflict resolution in the banking sector. This section will show that the centrality of employment litigation impacts not only how different actors in the sector relate to legal conflicts, but it also impacts how each actor experiences different types of conflicts, as well as different conflict resolution tools.

First, it should be reminded that employment courts are so central to the experience of conflict resolution in the sector, that some excerpts from union leaders'

interviews clearly demonstrate some confusion between employment law, its enforcement, and employment courts: “[...] *We are not in favor of finishing with the Labor and Employment Court system, because if you do this, you would be abolishing the Employment Law. [...]*”<sup>327</sup>. This centrality can, and sometimes actually does, work as a barrier to the development and acceptance of ADR methods that take place outside the courts, as will be discussed.

One of the founding principles of the Brazilian Employment Law is that the law and the courts should protect the weaker party in the employment relationship, i.e. the employee (*Princípio de Proteção ao Hipossuficiente*). This principle is manifested in several court procedural rules regarding cost fees structure, burden of proof, among others, all in favor of the employee. This constitutes an important barrier to other ADR methods because no other method, channel or tool with the employer participation will be designed with such protections to workers as the ones observed in the employment courts. As impartiality is mitigated in employment litigation, tending to the employee’s side, even an ADR method that tries to follow a principle of impartiality, such as an Ombudsman Office, will be seen under negative lens when compared to the official pro-worker partiality of employment litigation.

The barriers posed by employment litigation to ADR might be indirect, as litigation might be used as a comparison to other methods, as described above, but it can also be direct, as evidenced by court decisions described earlier that prohibited employment arbitration, or which had weakened the CCPs system. Evidently, the 2017 Labor and Employment Law Reform, which diminished the pro-worker characteristics

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<sup>327</sup> Interview – Union 4

of employment litigation, might contribute to a better acceptance of conflict resolution mechanisms that take place outside the court system, by diminishing the indirect barriers, but also by removing some direct barriers, such as the prohibition of employment arbitration.

The impacts of litigation over other conflict methods go beyond what has been discussed so far. In the case of CCPs, for instance, the problems identified in litigation (e.g. statute of limitations), were some of the main incentives for unions to push for the adoption of CCPs<sup>328</sup>. Moreover, the strategies used in CCPs are also directly impacted by employment litigation, as banks' legal and labor relations departments base the value of CCPs' settlements, as well as their topics, on the results obtained in litigation for similar cases. Moreover, individual employees' litigation threats, and mainly unions' class action threats, were among the main pressure tools that led BiggerPublicBank and LargePublicBank to start offering CCPs for current employees. Likewise, the usage of CCPs is also used by banks as a strategy to improve their image in courts, as an attempt to positively influence the decision-making process in litigation. The fear of litigation even impacts the functioning of other ADR tools, such as Ombudsman Offices, which limits the amount of information that they share with grievant employees, as legal departments fear that the information might be used against the bank in future litigation.

Litigation has impacts not only as it generates barriers to other ADRs or push and shape the development of other methods. It is also used strategically by unions and managers. Unions use litigation and class actions strategically, for instance, as a tool to call public attention to an existing conflict. Managers, on the other hand, recognize

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<sup>328</sup> Interview – TraditionalConfederation.

litigation information as an important diagnosis tool in order to identify conflicts occurring at their workplace. In both cases, those are strategic usages of litigation that could be also reproduced in other conflict resolution tools, with certain adaptations.

It is also worth highlighting that variation in litigation distribution within the sector also reinforces the room available for other conflict resolution methods outside the court realm. It was shown that in smaller banks, lower litigation levels might be a reflection not of lower levels of conflicts, but of what managers describe as the bigger concern among workers of those banks regarding “their relationship with the market and their professional image”<sup>329</sup>. What this suggests is that a certain profile of worker, or workers of banks with a certain profile, might actually find themselves unprotected by the court system, due to the impacts that it might have in their professional career, while still experiencing conflicts in the workplace. More than simply highlighting the limitations of the employment court system, it reinforces the importance of providing workers with different paths and tools for conflict management in the workplace.

The discussion above suggest that it is possible, therefore, to make some conclusions over the impacts of the centrality of employment litigation and the employment court system in the conflict resolution in the banking sector:

**21) The employment court system and employment litigation can work as barriers to the development of ADR. The barrier can be indirect, as ADR methods are compared negatively to litigation in relation to their balance in favor of workers, but also direct, as court decisions expressly prohibit or limit methods such as CCPs and Arbitration.**

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<sup>329</sup> Interview – OtherForeignBank.

**22) On the other hand, limitations and shortcomings of employment litigation are also among the main incentives to the adoption of alternative methods, such as CCPs.**

**23) Litigation results and litigation threats also shape other conflict resolution tools and how they are used, such as banks' settlement strategies in CCPs, or how much information an Ombudsman will share with a grievant employee.**

**24) Litigation is used strategically by unions and banks, and they can repeat this strategic usage with other conflict management methods.**

**25) Workers of a certain profile do not see litigation as a viable alternative, therefore lacking voice mechanisms in case ADR methods are not offered. This opens possibilities for the adoption of different tools and channels.**

#### **The HR department centrality**

If externally the centrality of employment courts and litigation is undeniable, inside organizations HR departments play a central role in the development of different conflict management tools and in the daily attempts to manage workplace conflicts. However, as HR departments are not specifically designed or prepared to handle workplace conflicts, this centrality has some impacts on how conflicts are managed in the banking sector.

There are several indications of HR centrality, such as the different cases in which Ombudsman Offices initial development were directly linked to HR initiatives (BiggerPublicBank and, to a certain extent, BiggerPrivateBank), or how much internal channels are linked to HR, as it is the case in MediumNationalBank and CorporateNationalBank, for instance. The HR participation in those cases suggests that

the HR department, due to its nature and internal activities, is a “natural place” to discuss conflicts in the workplace. Being a natural place, however, does not mean that it is an ideal place to do so. The HR structure and mission are often linked to problems of lack of independence, autonomy and impartiality to handle workplace conflicts, or at least that is how they are perceived by workers in general. Not only that, this perception of lack of independence and impartiality contaminates the perception over other channels with important HR participation, as some Ombudsman Offices, and Ethics Channels.

In BiggerPrivateBank, for instance, the Ombudsman Office was originally part of the HR structure, despite protests of the Ombudsman himself. Once the structure was changed and the Ombudsman Office was moved to report to the bank’s president, the types of cases filed with the Ombudsman Office changed significantly, now including cases of greater severity, which earlier were not reported. As the only change that took place was the change in the reporting structure, it is possible to suggest that reporting to HR can in fact negatively impact workers’ perception over the channel’s independence and impartiality. This was also identified by other banks when defining the structure of other internal channels. MediumNationalBank, for instance, not only moved its conduct channel from HR to Auditing, but also removed the word HR from the channel’s name, exactly with the intent of promoting a perception of higher autonomy of the channel under the eyes of individual workers. This link between HR and hindered perception of autonomy, independence or impartiality is not a new idea. As discussed in the literature review, Harrington et al. (2012) already suggested that HR structures, such as HR Business Partners – present in most banks in Brazil – are usually seen by workers as too close to management, with whom they hold most of their daily interactions. As a result, individual workers do not trust in HR to file grievances involving management

behavior, afraid that HR will tend to side with the manager. No wonder most of internal HR channels targeted at workplace conflict were reported to have very low usage rates (e.g., MediumNationalBank).

Despite this apparent lack of autonomy or independence of HR departments, they still play an important role in conflict management in banks, as described in detail in Chapter 6. It should be highlighted the HR role as “guardians” of the organizational culture, guaranteeing that existing conflict management tools and concrete solutions adopted adhere to the organizational culture consistently. Not only that, HR departments also use some internal channels strategically, similarly to the way that unions use the Protocol channel sometimes. As described earlier, in cases in which HR lacks the power or internal authority to demand a behavioral adjustment of a certain manager or worker – usually someone with high productivity rate, but low adherence to the organizational culture or expected behavior – it is not uncommon for HR professionals to use or incentivize the usage of internal conflict resolution channels, in order to backup and leverage HR internal position, usually in face of the commercial department (e.g., CorporateNationalBank).

Finally, it is worth highlighting that although HR departments are usually seen as natural places for conflict management discussion, this is not always reflected in HR tools. In MediumPublicBank, for instance, the Commission for Workplace Bullying and Sexual Harassment was described to be accessed most after the performance assessment process. Seeing in the performance assessment tool a critique from the supervisor to which he/she does not agree, the worker usually opts to use the Commission to question

some of the supervisor's behavior<sup>330</sup>. What this pattern actually reflects is the lack of a proper voice mechanism within the performance assessment tool used by the HR – and that in the lack of a proper voice mechanism, workers will use any other voice channel that they consider appropriate. This suggests that, although workplace conflicts are naturally gravitating towards HR in most banks, HR is not considering the impacts that its own tools can have in generating workplace conflicts, and HR is also not seeing how its own tools can provide proper voice mechanisms to deal with workplace conflicts that surface in the application and usage of those tools.

The discussion above suggest that it is possible, therefore, to make some conclusions over the impacts of the internal centrality of HR departments in relation to conflict resolution in the banking sector:

**26) Under the eyes of workers, HR lacks independence, autonomy and impartiality to handle workplace conflicts adequately. This perception negatively impacts the usage and functioning of all internal channels over which HR participation is apparent to the internal audience.**

**27) HR is also able to strategically use other internal channels for conflict resolution in order to leverage its own position in face of other departments.**

**28) HR tools are not always designed with their potential to generate conflicts and their conflict management capabilities in mind. In cases where they do not provide proper voice mechanisms, workers will bring those conflicts to other channels, in case they opt to voice their concerns.**

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<sup>330</sup> Interview – MediumPublicBank.

## **Chapter conclusion**

This chapter was dedicated to the analysis of the different roles played by different actors in conflict management in the banking sector, and the causes and consequences of those roles.

The chapter started with an analysis of the role of unions in conflict management in the sector, and their choice to focus on specific union-controlled conflict management channels, paying little attention to banks' internal channels. This was shown to potentially alienate some workers, whose needs are not properly covered by the Protocol or other union-led conflict management initiatives. In those cases, workers end up looking for banks internal channels, for lack of better alternatives. Moreover, conflict management channels over which unions have some participation or access were shown to not function as substitutes to traditional union collective action, but as complement to traditional union action.

The chapter followed with a discussion over the reasons behind the centrality of Labor Relations departments in most conflict resolution methods with any kind of union participation or access. I suggested that, by functioning as a buffer between unions and banks' internal channels, Labor Relations departments are able to continue to have access to relevant and strategic information that can be used in future interactions with the union and future bargaining processes.

The discussion continued with an analysis of the centrality of employment courts and employment litigation, and their impact on other conflict resolution methods. The employment court system was shown to be an indirect and direct barrier to the development of ADR mechanisms, while its shortcomings are among the main

motivators for the development of alternatives to litigation, potentially benefiting specially a certain group of workers who do not see litigation as a viable possibility.

Finally, I concluded with a discussion on the role of HR in conflict management in the banking sector. HR departments are perceived by workers to be lacking the independence, autonomy and impartiality to handle workplace conflicts adequately, and this perception was shown to negatively impact the usage and functioning of all internal channels over which HR participation is apparent to the internal audience. Moreover, I discussed how HR tools often are designed without taking into consideration their conflict generation and conflict management potentials.

The next chapter concludes the discussion of the cases by deepening the analysis of specific conflict management tools and comparing different conflict management systems, using the equity-efficiency-voice model (Budd and Colvin 2008).

## CHAPTER 9 - COMPARING CONFLICT MANAGEMENT METHODS: EQUITY- EFFICIENCY-VOICE

While Chapter 7 focused on workplace bullying and sexual harassment, and Chapter 8 focused on the role of different actors in the conflict management systems adopted in the banking sector, this chapter will explore, analyze and compare characteristics of each conflict management tool described in Chapter 6.

The chapter starts with an analysis of the Ombudsman Offices found in BiggerPublicBank and BiggerPrivateBank, highlighting how they differ from international definitions of Ombudsman Offices by favoring investigatory activities instead of other conflict management strategies. This is followed by a brief discussion on employment mediation as a likely path to be followed by different organizations in the sector.

I follow the chapter with a schematic comparison of all the conflict resolution methods observed in the different banks from the sample. For this comparison I rely on Budd and Colvin's (2008) equity-efficiency-voice model, which is used to evaluate each conflict management method using those three dimensions.

The chapter continues with a brief discussion on how certain conflict management tools can also become sources of other conflicts in the workplace. This is the case of CCPs possibly increasing the risks of litigation, and interpersonal conflicts originated in the investigatory procedure conducted by Ombudsman Offices and other departments.

Finally, the chapter concludes with a discussion over some of the conditions identified for the development of the multiple conflict management methods described in the dissertation. Banks' concern with their institutional image and reputation and the

lack of other existing proper individual voice channels are some of the conditions observed in the banking sector that might be behind the observed multiplicity of conflict management strategies in the banking sector.

### **Considerations about Ombudsman Offices**

Ombudsman Offices were present in only two banks of the sample. This information, per se, is already important to question the centrality of the concept of an Ombudsman in the banking sector and to the general public. As pointed out in Chapter 2, non-academic management literature in Brazil suggested that Ombudsman Offices were widely adopted by Brazilian organizations to deal with workplace conflicts, mainly in the banking sector (Inohara 2013). However, this research revealed that most banks described by non-academic management literature as having an Ombudsman Office did not have one in place. This incongruency is a reflection of the lack of clarity of what an Ombudsman Office really is to the general public, and how it differs from a simple grievance channel without the proper protections regarding impartiality, autonomy, neutrality, and independence of a proper Ombudsman Office.

Even among the two banks that officially had an Ombudsman Office in place, a thorough analysis revealed that the term Ombudsman Office could actually mean different things in different banks. Although the general principles of the Ombudsman were considered to be in place in the Ombudsman structures of BiggerPublicBank and BiggerPrivateBank, it is undeniable that the autonomy and independence of both could be put into question, as at least at some point in history they were under the HR department structure.

More than simply questioning the autonomy or independence of the Ombudsman, the description of the two Ombudsman Offices revealed a characteristic

of the Ombudsman activity that is not observed as commonly in the general description of Ombudsman in international research: the focus on investigation/fact finding activities. In general, Ombudsmen are described as the focal point of conflict management systems in organizations, orienting and supporting workers about how to better proceed in relation to a certain conflict situation, and helping the worker to navigate different options of conflict management available (Rowe and Gadlin 2014). Most times, investigations are not conducted by Ombudsman Offices, nor does it constitute their main activity. In the case of Brazilian banks, however, the importance of investigation in Ombudsmen activities is undeniable. This is revealed not only by the interviews, but it is also confirmed by the data detailed at Table 8, in Chapter 6, which shows that in BiggerPrivateBank, the Ombudsman investigated 69.5% of all cases received in 2016, and 56.5% of all cases received in 2017. As a consequence, punishments applied by the Ombudsman to faulty employees, although constituting the minority of the cases, are more present than would be expected in a traditional Ombudsman activity (see Table 9, Chapter 6).

The current research is unable to respond why the Brazilian Ombudsman holds this characteristic, but it is plausible to suggest that it might be linked, once again, to the centrality of employment litigation in conflict resolution in the banking sector. In order to disciplinary measures to be upheld in court, and in order to avoid that courts consider that the bank did not put the necessary efforts to evaluate and punish instances of workplace bullying, it is natural that banks try to protect themselves by collecting as much formal information about potential misconducts, bullying, or harassment behavior as possible.

The prevalence of investigation also has other impacts. Whether in the case of investigations conducted after the Ombudsman was accessed directly internally, or indirectly, via the Protocol, difficulties were described involving grievant workers' acceptance that the result of the investigation did not confirm their grievance. This problem is avoided in cases where some form of counseling, coaching or formal feedback is adopted, as it does not need to reach a conclusion about the veracity of the allegation in order to produce any result or impact in the employment relationship. This suggests that favoring non-investigatory approaches to conflict could produce better perceptions of Ombudsman Offices by individual workers in comparison to investigatory procedures. Evidently, this statement does not deny that there are cases, such as sexual harassment and workplace bullying, where investigating – whether by the Ombudsman Office or by a different department – is not only recommendable, but probably necessary.

The discussion above suggest that it is possible, therefore, to make some conclusions over the role of Ombudsman Offices in the banking sector, in relation to workplace conflicts:

**29) The term Ombudsman Office is loosely defined in Brazil, and it is used to refer to some structures, functions and activities that differ from the international understanding of what is an Ombudsman.**

**30) The prevalence of investigatory activities among Ombudsman Offices in the banking sector might be a reflection of the centrality of employment litigation in conflict management at the banking sector, and it can impact how workers see and interact with the Ombudsman Office in their organizations.**

### **Mediation as a likely path**

Although employment mediation was formally present only at BiggerPublicBank, where it is an initiative from the Ombudsman Office, there are signs in Chapter 6 that suggest that mediation might be a natural development path for conflict resolution in most banks.

HR managers in different banks revealed some explicit interest in mediation, although there is some lack of clarity in their understanding of what mediation actually is. In other cases, even when the expression mediation was not used, descriptions of different attempts to resolve workplace conflicts clearly depicted some rough concept of mediation. A good example is LocalPublicBank's HR department promoting sessions where both parties to a conflict are listened to in the same room, and in which HR tries to promote some form of conciliation, ideally involving an apology from one party to the other<sup>331</sup>. Chapter 6 describes similar attempts by MediumNationalBank and CorporateNationalBank.

It is worth highlighting that in the case of BiggerPublicBank, where employment mediation is offered by the Ombudsman Office, the difference between Ombudsman activities and mediation is made very clear internally. Considering that the Ombudsman's main function in Brazilian banks is related to investigation, BiggerPublicBank's manager described the Ombudsman as more focused on defining who was responsible for a certain unwanted conduct or a conflict, therefore focusing on the past. Mediation, on the other hand, is described as a process focused on the future and on behavioral change.

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<sup>331</sup> Interview – LocalPublicBank.

The discussion above suggest that it is possible, therefore, to make some conclusions over employment mediation in the banking sector:

**31) Employment mediation might be a natural path in the development of conflict resolution in different banks, promoted by HR, Ombudsmen, or other relevant internal actors.**

**Comparing different methods and channels: the efficiency, equity, and voice model.**

The different dispute resolution methods adopted by banks have been thoroughly described and analyzed in the previous sections, but they yet have not been compared under the same metric. Budd and Colvin (2008) suggest using efficiency, equity, and voice as adequate metrics to evaluate different dispute resolution systems. This section uses these metrics to evaluate and compare the dispute resolution methods analyzed in the dissertation.

Under this model, efficiency should be understood as the effective use of scarce resources, specially time and money. Therefore, an efficient dispute resolution method has concerns over its cost, speed, and the promotion of productive employment. Equity is connected to the idea of fairness and justice, being a standard of fairness and unbiased decision making. An equitable dispute resolution system is characterized by unbiased and consistent decision making, provision of effective remedies, reliance on evidence, protections against retaliation, and provision of appealing opportunities. Finally, the voice dimension refers to individual's ability to participate and affect decision making, therefore being characterized by the existence of hearings, ability to present evidence, to be represented by advocates or use experts, and to participate in the outcome

definition, as well as in the design and operation of the dispute resolution system (Budd and Colvin 2008).

With those metrics in mind, each of the dispute resolution methods presented in Chapter 6 is analyzed.

### ***Employment Litigation***

Employment litigation scores high in terms of equity, as the judge and courts are determined to issue unbiased decisions, which should rely on evidence presented by both parties. Although local and regional inconsistency in decision-making is a common complaint, appeals to the superior courts are available as a tool to harmonize inconsistent decisions across different judges or regional courts. Opportunities for appeal are available to both parties. The method, however, also suffers some criticism from an equity perspective. For instance, the principle of protection of the weaker party, described earlier and adopted in the employment court system in Brazil, is usually pointed by managers as a factor that leads to decision-making biased in favor of workers. Finally, as it has been discussed, litigation does not provide proper protections against retaliation. In the private sector it is usual to terminate current employees who litigate, while in the public sector the retaliation might be observed in relation to the plaintiff's career progression in the organization. In some cases in the private sector, the retaliation can go beyond the existing employment relationship, by blocking the plaintiff from obtaining another job in the sector<sup>332</sup>.

Litigation scores relatively high in terms of voice, as hearings are conducted, both parties have the chance to present evidence, and can be represented by attorneys. However, the parties have little input into the design and operation of employment court

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<sup>332</sup> Interview – OtherForeignBank.

functioning, and no direct participation in determining the outcome, besides the production of evidence.

The lowest score of litigation is undoubtedly in relation to efficiency. Although before the 2017 Labor and Employment Law Reform litigation was relatively inexpensive for plaintiffs in relation to court costs and fees, the reform has considerably changed the cost structure of litigation. For employers, on the other hand, court costs and attorney's fees had always put litigation among the most expensive dispute resolution systems available. Similarly, litigation has always scored extremely low in relation to its speed, as evidenced by the long average duration of most litigated cases, as detailed in Chapter 6.

#### ***Court Settlement Strategies and Programs***

Court settlement strategies try to enhance the efficiency of dispute resolution, by improving cost and speed metrics, what is achieved by reducing costs and increasing speed, while hampering equity.

Court settlement solves litigation duration problems for employees and cost problems for employers. Considering that from the employee perspective litigation is likely connected to unemployment, as shown earlier, court settlement allows the worker to receive some financial compensation earlier than if litigation was taken to its end. For employers, settlements score high in efficiency, as they are able to settle for less than what they would eventually have to pay in the end of litigation, while also promoting savings regarding attorney's fees.

In theory, equity is hurt in the settlement process, as settlements tend to be less consistent, and to not rely on evidence. The reality of the settlement strategies in the banking sector, however, show that negative effects on equity are actually mitigated.

Although less consistent than litigation, some consistency is observable in court settlement strategies, as banks report using similar settling strategies to most cases, which usually involves calculating settlement offers based on a discount of the calculated overtime risk. Similarly, although not formally based on evidence, banks tend to consider evidence produced by plaintiffs when determining their settlement offers. Finally, as those settlements occur in courts, their enforcement is guaranteed by courts, demonstrating the effectiveness of the used remedies.

Voice would be expected to suffer less – or even be enhanced - in the substitution of litigation for court settlement, as the parties continue to be represented, and now can actively participate in determining the outcome. If this is true from the banks' perspective, it might not hold true for workers. As plaintiffs' representatives might have incentives to settle, even if this is not on their clients' best interest, workers' voice might actually be hurt by court settlements. Likewise, although technically participating in the determination of the outcome, it was shown that workers participation tends to be reduced to simply accepting or rejecting banks' financial offers, since the offers are usually determined by the bank's general court settlement policy.

### ***The CCPs – Preliminary Conciliation Commissions***

Similar to court settlements, the CCPs focus on enhancing efficiency while hampering equity and voice.

In comparison to court settlements, efficiency is even more prioritized in CCPs, as settlements in CCPs occur even before a lawsuit is filed, therefore demonstrating a clear gain in time and costs involved in the filing of a lawsuit that precedes all court settlements.

Although equity is hindered in comparison to litigation, as CCPs do not rely on evidence, nor do they provide the parties with an opportunity to appeal, consistency is guaranteed by the union's participation in all settlements achieved via CCPs, and it is also usually sought by banks in their CCPs' settlement strategies. Although the CCP process per se does not provide any retaliation protection, the practice shows that workers who settle in CCPs do not face the same problems with retaliation as those who settle in court or litigate. This is evident by the cases of the state-owned banks that offer CCPs for their current workers under specific conditions.

In relation to voice, the worker's participation in the outcome is once again limited mostly to accepting or rejecting the bank's offer. Union's representation tends to be less problematic than attorney's representation in court settlements, as unions have fewer incentives to consider anything besides the worker's own interest when suggesting the acceptance or rejection of a certain offer. On the other hand, as court settlements can occur later at the litigation process, after evidence have already been produced and hearings conducted, comparatively CCPs offer less voice to workers in relation to those specific elements.

***The Protocol - Protocol for prevention of workplace conflict***

When evaluating other dispute resolution methods such as the Protocol, one must be careful if using the metrics to compare this dispute resolution system with the others analyzed thus far, such as litigation. Although the comparison is possible, it is important to remember that, as demonstrated before, those dispute resolution systems target different types of workplace conflicts: legal conflicts, in the case of litigation, court settlement, and CCPs, and workplace bullying and relationship conflicts in the case of the Protocol and the other methods discussed later.

With this in mind, it is possible to say that the Protocol channel scores reasonably well in terms of efficiency. The procedure has no direct costs, and an answer is obtained at maximum 45 days after the union files the grievance to the bank. Although 45 days is considerably faster than any time involved in litigation, it is worth highlighting unions' constant pressure to diminish this timeframe, which originally was 60 days. Their argument is that, although 45 days is relatively fast, it can be too long for someone who is suffering the consequences of workplace bullying daily. In relation to cost, although no direct cost is involved, unions' resources are used to promote the channel, receive the grievance and give it a first treatment, while banks' resources are used throughout the investigation process – although usually conducted by a channel already responsible for internal investigations.

The Protocol scores considerably low in terms of equity. The decision making is conducted solely by the employer, and available data discussed earlier suggest that decisions considerably tend in favor of the company. The channel, per se, does not allow for any formal appealing procedure, and it does not provide any formal protection against retaliation, which is guaranteed only by the confidentiality of the channel and its users.

Voice score is higher, at least from a union perspective, as unions actively participated in the design and operation of the channel. Moreover, unions represent the individual grievant throughout the process. However, union or worker's participation in determining the outcome is almost inexistent, except from indirect pressures from traditional union activity, such as the *sardinhadas*.

### ***Ombudsman Offices***

From the banks' perspective, the Ombudsman Office efficiency is hampered, as the organization bear all the costs of maintaining a whole team dedicated to conflict management, with multiple activities, such as receiving and filtering grievances, providing coaching and counseling, and conducting investigations. Even when the investigations are conducted by a third department, this is done internally, so the organization still bears the involved costs. Moreover, since the Ombudsman activities are not regulated by any external rule, as in the case of the Protocol channel, time involved in Ombudsman procedures can be above the cited 45-day limit.

Ideally, Ombudsman Offices would score higher in terms of equity and voice. Equity should be guaranteed by the independence, autonomy, and neutrality of the Ombudsman within any organization. However, the actual structure of the Ombudsman in one of the analyzed banks, in which it stays under the HR department, allows for some questioning over those characteristics. Likewise, not only the studied Ombudsman does not offer formal protection against retaliation, but in one of the cases there are several union reports of retaliation against workers who have sought the ombudsman internally.

As the Brazilian Ombudsmen conduct more investigations than their international counter-parts, voice could be guaranteed by the hearing of victims, witnesses and alleged aggressors in all investigatory procedures. However, as those investigations do not follow any formal procedure, voice elements could be questioned. Likewise, workers are not allowed to be represented by attorneys or union leaders, and unions have no access to the Ombudsman, nor can they offer any input into its design and operation. Therefore, the Brazilian bank version of the Ombudsman Office scores

much lower in terms of voice than the ideal ombudsman defined by international academic literature.

### ***Ethics Committees and Compliance Channels***

The Ethics Committees and Compliance Channels analyzed in the sampled banks are very similar to the Ombudsman Offices discussed above in terms of their scores on efficiency, equity, and voice. This is no surprise, as they play similar roles in the analyzed banks, with a clear focus on investigatory activities. Despite those similarities, some differences are apparent.

In relation to efficiency, it is possible to state that Ethics Committees and Compliance Channels score slightly higher than Ombudsman Offices, mainly from a cost perspective. Although in all cases the bank has to use its own resources in the complete management and functioning of the channels, in the studied Committees and Channels the existing structures are not completely dedicated to investigating workplace conflicts and related issues, contrary to what is observed with Ombudsman Offices. As they count on the existing compliance, auditing or investigations department structure, the usage of those resources can be, potentially, optimized, therefore diminishing its costs. From a time perspective, however, there are no signs that those channels would significantly differ from Ombudsman Offices.

In relation to equity, if Ombudsman Offices were already suffering as their actual structure would not guarantee the expected independence and neutrality within the organization, this is also a potential problem to the analyzed committees and channels, which are not necessarily designed with the intent of increasing their independence and neutrality. This problem, however, is partially mitigated by the recurrent participation of some auditing and compliance departments in the analyzed

channels, as those departments usually are also designed with independence as an important driver. However, once again parties are not presented with chances to appeal, and there are no formal retaliation protections.

Finally, those channels are not designed in order to enhance voice, as workers have no input in the design and operation of the channels or in the determination of the outcome, nor can they be represented by advocates.

***MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment***

This is another channel that holds considerable similarity to the Ombudsman Offices in relation to its score on efficiency, equity, and voice, but with some differences that will be highlighted below.

In relation to efficiency, it scores slightly higher than Ombudsman Offices from a cost perspective, as it does not have an exclusive structure dedicated only to those activities, counting on the efforts of other internal actors, as well as an external one (i.e. the union representative). Although this might represent cost efficiency, it can also negatively impact efficiency from a time perspective. Moreover, since cases identified as bullying or harassment are forwarded to the disciplinary commission, which will conduct a similar investigation once again, this might negatively impact the channel's score from both the cost and time dimensions, due to the repetition of some investigatory efforts.

From an equity perspective, the union participation in the Committee definitely guarantees a higher score to MediumPublicBank's Commission, as it increases the possibility of unbiased decision-making. Union participation also increases voice, as the union can influence the design and operation of the commission, siding with the

worker's interest. Finally, voice is also enhanced by the possibility of professional representation to workers during the Commission's process.

### ***HR Channels***

HR tools and channels are harder to be evaluated as a group, given the variability of elements present in each different HR tool. Taking HR Hotlines as the basis for analysis, it is evident how, in comparison to Ombudsman Offices, efficiency is prioritized instead of equity and voice. As a one-sided channel, completely based within HR, those channels are highly efficient from a cost and time perspective. However, they score poorly in relation to their equity dimension, given HR's bias towards the organization's interests, and its proximity to management within the company. Similarly, those channels score poorly in relation to voice, as decisions are not always based on evidence, attorneys and representatives are not allowed, and workers have no participation in designing the system and determining its outcome.

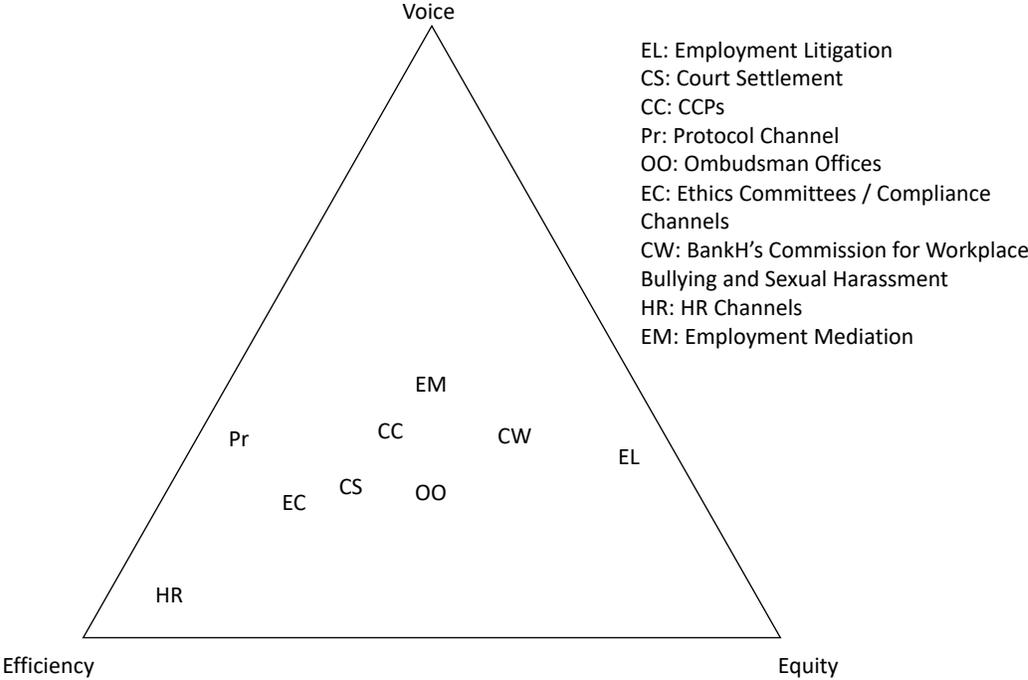
### ***BiggerPublicBank's Mediation Program***

BiggerPublicBank is the only bank to hold a proper employment mediation program. As with most employment mediation programs, this one enhances efficiency in comparison to litigation, as it is quicker, and it relies exclusively on internal resources. Compared to Ombudsman Offices and other similar channels, it can still be considered efficient, although failure in reaching an agreement in mediation might lead to delays in the investigatory process which can follow the failed mediation attempt. From an equity perspective, problems with bias on the decision-making are eliminated by the participation of both parties in reaching a consensual decision. Likewise, voice is enhanced by the need for the parties to actively participate in determining the outcome. It is worth noticing, however, that contrary to what is observed in other mediation programs, in BiggerPublicBank workers have little influence over the design

of the dispute resolution system, as BiggerPublicBank’s mediation program follows a fairly rigid mediation procedure.

***Equity-Efficiency-Voice – a summary***

Figure 7 summarizes the above analysis for all the conflict management tools and channels described in this dissertation.



**Figure 8 - Banks' conflict management tools under the efficiency-equity-voice model**

**Conflict management as a source of conflicts**

In Chapter 8 it was discussed how each conflict management tool impacted each other, as was the case with litigation threats and litigation results influencing the adoption of CCPs, or influencing the strategies used in CCPs or the Ombudsman Offices’ functioning. The cases discussed in Chapter 6, however, also highlight another important impact of different conflict management methods, which is seldom discussed:

the idea that conflict management tools themselves might be the source of other workplace conflicts.

Although it is clear that all the conflict management tools discussed in this research were developed and implemented with the intention of managing, resolving and potentially diminishing conflicts in the workplace, the research revealed that in several cases conflict management tools function as relevant sources of new conflicts in the workplace.

For instance, while it is evident that litigation results and litigation threats impact settlements obtained in CCPs, it is less evident that CCPs also impact litigation. For instance, leaders in PublicLocalUnion and RelevantLocalUnion reported that a worker initially resistant to litigate, but who is convinced to attempt to settle in the CCP, is more likely to pursue litigation after a failed CCP settlement attempt. In other words, a conflict not resolved in CCPs is more likely to become a litigated conflict after a CCP settlement is attempted (and failed). This example suggests that, although ADR is usually developed with the intent of diminishing and resolving conflicts, they might increase conflict levels in different channels if not properly managed in the original channel, or lead to conflict escalation.

Likewise, different banks suggested that conflict management tools that include investigation procedures can also become sources of conflicts themselves. In BiggerPrivateBank, for instance, an Ombudsman Office manager informed that all investigations, no matter how carefully they are conducted, cause distress in the team in which the original conflict took place, as team members are uncertain about the consequences of the investigation or of the information that they are providing.

Similarly, in MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment, disclosure of more information about cases being resolved in the commission is avoided not only to preserve the confidentiality of the parties involved in the conflict, but also because of fear that communication over the topic might negatively impact the bank's image, suggesting that harassment and bullying are more present in the workplace than they really are. This possible interpretation resulting from disclosing and publicizing issues related to harassment and bullying is not unsubstantiated. As described earlier, unions use this phenomenon to their advantage when they distribute educational material about bullying in certain branches, as a strategy to inform workers about bullying taking place in the branch without revealing any confidential or identifying information.

The analysis above suggest that it is possible, therefore, to make some conclusions over ADR as a source of conflict in the banking sector:

**32) Different conflict management tools can also be a source of new conflicts in the workplace, conflict escalation, or be interpreted as signs of the presence of those conflicts in the workplace.**

### **Conditions for development of different conflict management methods in the banking sector**

In this section, I try to identify the reasons that led the channels and methods analyzed above to develop in the banking sector the way they did, and I suggest under which conditions similar results should be expected in different sectors.

When the choice for studying the banking sector was presented in Chapter 4, it was highlighted how the sector is at the central stage in Brazil in relation to the debate and practices regarding individual workplace conflicts and their management. Strong

unions explain only partially why some conflict management tools have flourished in the banking sector, given that some of those tools and channels do not count on unions' participation or even support.

The first point that can be discussed is the relevance of different types of workplace conflicts in the sector. Unions have pushed workplace bullying to the spotlight in the sector, while special legal rules applicable only to the banking sector explain the prevalence of legal conflicts regarding overtime. The sectoral concern over discrimination, evidenced by the "Diversity Census" promoted by the FEBRABAN and several diversity policies in different banks, became clearer after the MPT's sector wide investigation and litigation over the topic. In cases such as workplace bullying and discrimination, the cases discussed in Chapter 5 unequivocally suggest that the goal of preserving the bank's reputation also played an important role in the centrality of the topic in different banks' actions. Banks' concern over their reputations and institutional images are clear not only in the interviews, but also in other bank efforts, such as their constant participation in the "best places to work" lists.

What this suggests is that workplace conflicts of different types might become a central concern in different sectors where institutional image and reputation are relevant to the business, if those conflicts are perceived to pose a threat to this image and reputation.

On the other hand, it is worth noticing that the same concern over banks' reputation worked as a barrier for some conflicts to occupy a more central position in the sector, to which sexual harassment is a perfect example. As shown in Chapter 5, there are bank managers who expressly reported some resistance to promote more internal campaigns regarding sexual harassment, afraid that this could be read internally

and externally as a sign that sexual harassment was more recurrent in the company than what available statistics suggest.

Moreover, if methods such as the CCPs were clearly made possible by the limitation of the traditional conflict resolution mechanisms (i.e. litigation) and the presence of strong unions in the sector, in the case of some internal channels, the presence of an internal champion and involvement of top executives seemed to play an essential role. This is clear, for instance, in the origins of the Ombudsman Office in BiggerPrivateBank, or the development of the mediation program in BiggerPublicBank.

Finally, it is worth highlighting that even in a sector where workplace conflicts are a central part of the relationship between labor and management, the quick transformation of several tools originally designed for specific types of conflicts into broad conflict resolution tools suggest that the sector was lacking proper individual voice mechanisms, leading to overall large adhesion of individual workers to new channels and tools.

The discussion above suggest that it is possible, therefore, to make some conclusions over the reasons behind the centrality of workplace conflict management in the banking sector and the multiplicity of channels observed:

**33) Centrality and relevance of different workplace conflicts have different causes. However, in all cases, banks' concern over their institutional image and reputation seem to be an important driver for the adoption of different conflict resolution mechanisms.**

**34) The apparent large adhesion to different conflict management tools and channels described in this dissertation, and their observable transformation by**

**individual workers' usage of the channels, reflect the previous lack of proper individual voice channels in the sector.**

### **Chapter conclusion**

This chapter proposed to analyze and compare the different conflict resolution methods described in detail in Chapter 6.

The chapter started with an analysis of the two cases of Ombudsman Offices observed in banks from the sample. It was highlighted how Ombudsmen in Brazil tend to focus on investigatory activities, in contrast to what is expected from traditional Ombudsman activities described in international literature. This focus on investigations was suggested to be a reflection of the centrality of employment litigation in conflict management at the banking sector, and it was shown to be potentially impacting how workers see and interact with the Ombudsman Office in their organizations.

The chapter followed with a brief analysis of mediation in the sector. Although formally present in only one bank from the sample, there are reasons to believe that mediation might be a natural path in the development of conflict resolution in different banks, promoted by HR, Ombudsmen, or other relevant internal actors.

The next section was devoted to the comparison of all the described conflict resolution methods using the efficiency-equity-voice model, proposed by Budd and Colvin (2008). This analysis resulted in Figure 7, which summarizes how each conflict management method scores under each dimension.

This was followed by a brief discussion on how conflict management tools and activities can also work as sources of new conflicts, or can be interpreted by different actors as signs of the presence of those conflicts in the workplace.

Finally, the last section tried to identify the reasons that led the channels and methods described previously to develop the way they did in the banking sector, and suggested under which conditions similar results should be expected in different sectors. An important driver for the adoption of different conflict management methods was banks' concern with their institutional image and reputation. Finally, the previous lack of proper individual voice channels in the sector was evidenced by the large adhesion to different conflict management tools and channels, and their transformation by individual workers' usage.

The final chapter will summarize this dissertation's findings, discuss its limitations, as well as theoretical and practical implications.

## CHAPTER 10 - CONCLUSION

### **Summary of Findings**

This dissertation proposed to answer a set of questions, detailed in Chapter 4. Chapter 7, 8 and 9 presented different conclusions and debates on different topics risen by this research, which were summarized in thirty-four statements. The goal of this section is not to simply reproduce those statements, as the reader can easily access them in the previous chapters, but to link the previous discussions with the research questions that originally motivated this research effort.

The first research question was exploratory in nature, and it aimed at understanding how Brazilian banks are managing different types of workplace conflicts. It was shown that banks were responding differently to different types of workplace conflicts, not being restricted to the traditional employment litigation forum. Alternative methods such as the CCPs, Ombudsman Offices, the Protocol, Ethics Committees, Compliance Channels, HR Hotlines, and Mediation programs have been observed in different banks, each targeted at specific types of workplace conflicts.

As different conflict management tools were observed, the second set of questions tried to understand the factors influencing the adoption of each method or of any specific conflict management strategy in each organization. Figures 1 through 6 have provided a schematic summary of how different factors influence the relevance/presence of certain kinds of conflicts, and the factors that influence banks' and unions' responses to those conflicts. For instance, it was shown that workplace bullying was found in large banks, independent of their nature, as well as in medium-sized banks, as long as they would function under a private mindset. As it has been extensively discussed, this might be a reflection not of the occurrence of workplace

bullying, but of the occurrence of conflicts that fit into the unions' preferred definition of workplace bullying, according to their frame of reference. Likewise, size was found to be linked to the presence of legal conflicts, mediated by the type of bank activity in the case of small banks. Once those kinds of conflicts were observed in each bank, different factors came into play for determining how banks and unions would respond to them. Therefore, CCPs were a result of unions' and banks' strategies when facing legal conflicts, while court settlement programs were not influenced by unions, but by banks' strategies and court pressures. In the case of workplace bullying, unions' strategy towards it (and their understanding of this conflict), resulted in the development of the Protocol, whereas Ombudsman Offices and other internal channels were the result of banks' strategies and litigation pressures. Finally, the case of employment mediation and the multiple HR tools and channels described were identified to be the result of banks' strategies towards general relationship or interpersonal conflicts, with no influence from unions.

The next set of questions focused specifically on the role of unions in conflict management in the sector. It was shown that unions have consciously chosen to focus on specific types of workplace conflicts, and that this choice has important consequences in how each type of conflict is managed in the sector. Moreover, it was shown that, under certain conditions, unions are able to strategically use certain conflict management tools in conjunction or as a complement to traditional union activity. The uses of the Protocol in conjunction to the *sardinhas* is the best example of this complementarity between traditional union activity and new conflict management tools.

Finally, the last set of questions referred specifically to the issue of workplace bullying and its different meanings. The topic was object of ample discussion in Chapter

7. In summary, it was shown that different understandings by banks and unions about the nature of workplace bullying (i.e. individual vs. organizational) are a consequence of different frames of reference used by each actor in the employment relationship, and that those different understandings have direct consequences on how workplace bullying is preferably managed by each actor. Therefore, unions prefer channels such as the Protocol, which are better in treating the issue collectively and providing statistics to unions, which will later be used in Collective Bargaining, while banks prefer internal channels, such as Ombudsman Offices or Ethics Committees, which treat cases as individual misbehaviors of specific managers or workers.

### **Limitations and Future Research**

This research has several limitations, mostly connected to the methodology employed and the sample selected. The focus on the banking sector was a conscious decision to choose an extreme case in terms of centrality of workplace conflicts in the sector's employment relations. Not only that, the choice of the banking sector was also justified by its influential role in Brazilian labor and employment relations, as it has been shown that management and labor practices developed in the sector are constantly used as references or models for decisions in other sectors in the country. Within the banking sector, case selection was done carefully in order to guarantee not only the analysis of the most important and influential banks and unions in the sector, but also in a way that variability in important characteristics, such as national origin, nature and type of operations, etc., was also observed.

Although this careful sample selection and the methods employed guarantee high internal validity of the research, this dissertation suffers in relation to external validity and generalizability. For this reason, there were no attempts to generalize the

findings beyond the sector, although some theoretical contributions are made. Evidently, those contributions must be tested later with adequate quantitative, national level or cross-industry research.

It is also worth noticing that, although the banking sector is an important model for other sectors in the country, it contains specific characteristics, which clearly impact the issue of workplace conflict and its management in the sector. The specific sectoral work-time legislation is the most evident sector-specific characteristic – in this case with high impact on legal conflicts occurrence and litigation –, but there are other important factors which are characteristics almost exclusive to the banking sector, at least in the levels here observed. An example is the union strength and its national unity, reflected in the national sectoral CBA for more than twenty years – something unprecedented in the country. For instance, union strength and its influence in the workplace have clear impacts in the workplace bullying experience in the sector and in the successful experience with CCPs, unobserved in other sectors. Future research in other sectors might help to put unions' influence under perspective in relation to those topics. Other important characteristics of the banking sector which could be influencing the results obtained, and therefore should be analyzed with care before any attempt to generalize these findings, refer to the high concentration of the banking sector and the role of state-owned banks both nationally and locally.

Although studies of other sectors and national quantitative studies are the most evident ways to overcome the limitations of this research, there are also other promising paths for the topic research in Brazil. One that is worth mentioning refers to the impacts caused by the 2017 Labor and Employment Law Reform. As explained earlier, the Reform can easily be seen as an institutional incentive to the adoption of Alternative

Dispute Resolution methods in the employment relations context, as evidenced, for instance, by the express authorization for the use of employment arbitration in certain cases. However, the timing of the data collection, as well as the current unstable political moment of the country, makes it hard to explore the issue at this point. However, if the next Presidential cycle confirms this movement in the direction of institutional incentives to ADR, Brazil becomes an ideal scenario for testing the influence of legal and institutional factors on the development of ADR for workplace conflicts, as the legislation change can potentially be seen as a natural experiment.

As explained earlier on this dissertation, ADR research internationally is an incipient but growing field of research, and the same can be said in relation to organizational perspectives on workplace bullying. This dissertation tried to be another step in the better understanding of both topics not only in the banking sector, but in the context of Brazilian labor relations.

### **Theoretical implications**

The findings discussed in the previous chapters highlight important theoretical contributions of this research. It was presented earlier that traditional ADR research focused on external environment pressures (e.g., litigation and union avoidance) to explain adoption and expansion of ADR. This line of research was later enriched by propositions highlighting the role of internal organizational pressures (e.g., HR and business strategy) in the expansion and adoption of ADR in the workplace. This dissertation contributes to the debate about factors influencing the adoption of different ADR methods, and it also adds an important element of frames of reference, here manifested as the different understandings of certain types of conflicts, to explain the preference for one or another dispute resolution method.

Avgar's (2016) case study on the health sector had already covered in detail a case in which the traditional motivators of litigation avoidance and union substitution played a less relevant role in the organization's decision to adopt a conflict management system, than what tradition ADR research would suggest. Likewise, the same work opened the possibility of industry-specific pressures playing a central role in the development of ADR in certain circumstances (Avgar 2016). The case of the Brazilian banking sector analyzed here is similar to the one in the health sector analyzed by Avgar (2016), as litigation avoidance and union substitution play a different role in the expansion of some forms of ADR, and innumerable sector-specific elements played an important role in the development of the current scenario of conflict management in the Brazilian banking sector.

The relevance of the cases discussed here, however, is not limited to reinforcing the importance of internal organizational factors and sector-specific elements in the development of ADR. In a seminal work, Colvin (2003b) suggested that different pressures led organizations in the telecommunications sector to adopt different conflict resolution procedures: firms facing greater litigation threats are more likely to adopt arbitration, whereas firms facing unionization threats are more likely to adopt peer-review panels (Colvin 2003b). In the same line, this study of the Brazilian banking sector suggests that two important elements also play central roles in organizations' decision to adopt or develop a certain conflict resolution procedure: the relevance of certain types of conflicts and the interpretation of those conflicts – or, in other words, their frame of reference.

It was clear from the description in Chapter 6 that each conflict resolution method described was a direct response to the observance of a specific type of conflict

– even if later usage of the channel could transform it, expanding its usage to encompass other types of conflicts. So, CCPs or Court Settlement strategies, shown to be fit to respond to legal conflicts, are observed only in organizations where the presence of legal conflicts is significant. The mere presence of the conflict, however, is not enough to lead to the adoption of certain conflict resolution method, as evidenced by the case of LargePrivateBank. In this bank, although legal conflicts are extremely relevant, as evidenced by the high litigation numbers, organizational strategy leads the bank to not adopt any ADR method specifically targeted at those kinds of conflicts. This reinforces the idea that external pressures (in this case, litigation pressure) only partially explain ADR strategies, which are also dependent on internal pressures (in this case, the company's strategy). Not only that, it reinforces the idea that different ADR methods are responses to different pressures. While in the telecommunications sector litigation avoidance was leading to arbitration and union substitution was leading to peer-review (Colvin 2003b), here, in the Brazilian banking sector, litigation threat is behind the adoption of CCPs, whereas workplace bullying is behind the adoption of Ombudsman Offices and other internal channels.

The case of workplace bullying, however, adds another important element in the theory behind the drivers for ADR adoption and expansion in organizations. It is not only a matter of type of external pressure (or type of conflict, as described here) or organizational strategy. Organizations' conflict management decisions are also influenced by their interpretation of different conflicts, which was shown to be a reflection of each actor's frame of reference (Budd and Colvin 2014). It was shown that organizations' approach to workplace bullying is a direct reflection of their understanding of bullying as an individual phenomenon, caused by individual

managerial behavior, in contrast to unions' approach, which is influenced by their interpretation of bullying as a structural conflict in the sector. This can be seen as an example of different ADR strategies reflecting the different strategic benefits that organizations hope to obtain from ADR (Lipsky et al. 2017), which would be a worth contribution in itself. But, more than that, this dissertation suggests that different conflict interpretations are behind the different strategic benefits that organizations hope to obtain from different conflict management procedures.

Therefore, the discussion developed in Chapter 7 presents an important contribution to the use of the concepts of frames of reference and framing contests to explain certain conflict management decisions and choices made by unions and organizations in employment relations (Kaplan 2008; Budd et al. 2018).

### **Practical Implications**

This dissertation and the data here discussed provide not only important theoretical contributions, but also relevant practical implications for unions, managers, and all actors interested in workplace conflict management. This section covers the main practical contributions of this research in different topics covered in the dissertation.

### ***Workplace Bullying and other interpersonal conflicts***

It was shown that workplace bullying is a relevant issue in the banking sector, but that this relevance is also dependent on the union presence in the workplace – although not the only factor influencing the relevance of workplace bullying, it was clear that without the unions' strong presence, the topic of workplace bullying would not occupy the center stage of employment relations in the sector. As bank managers avoid using the term workplace bullying, union absence in smaller banks might give the impression that conflicts that could be characterized as workplace bullying are not

taking place in those organizations. However, no matter the approach adopted to define and research workplace bullying, it is unlikely that actual cases of bullying are not taking place in those organizations. Not using the word workplace bullying, or not having a union to point to the existence of those conflicts, does not mean that workplace bullying is not happening in those banks. However, by avoiding using the term, banks run the risk of letting those conflicts be left untreated, generating the negative individual and organizational consequences described in the literature review chapter.

Even where unions are present, their interpretation of workplace bullying exclusively as an institutional problem, linked to performance goals, can also be problematic, as cases of workplace bullying that do not fit the union's definition might also be ignored or end up left untreated.

Under this scenario, it is important for managers and unions to consider using appropriate tools to identify instances of workplace bullying, including those that favor a more individual perspective on bullying. In that sense, academic research on workplace bullying can contribute significantly, as different tools have been extensively used and tested in the past decades (see Cowie et al. 2002; Einarsen, Hoel and Notelaers 2009; Nielsen, Notelaers and Einarsen 2011).

It is important, though, that attention is devoted not only to workplace bullying, but also to different types of workplace conflicts. Unions' focus on workplace bullying was able to bring the issue to the spotlight, but at the risk of alienating workers who face other conflicts in the workplace and ignoring other conflict management tools not specifically targeted at workplace bullying. This became clear as in the analysis of the channels originally created to handle bullying and harassment cases, issues related to other types of conflicts, such as relationship conflicts or air-conditioning problems,

quickly became a considerable portion of the grievances brought to those channels. Those cases suggested not only that workers were lacking a proper channel to voice their concerns regarding those issues, but they also suggested that bullying might not be as central as suggested by unions' focus on the topic.

Paying attention to those conflicts is relevant even if the focus remains on workplace bullying, as it has been extensively shown by other researchers that cases of interpersonal conflict can escalate into workplace bullying when badly managed (Baillien et al. 2015; Mikkelsen, Høgh, and Puggard 2011).

With all this in mind, it seems clear that it is important that unions pay more attention to other interpersonal conflicts in the banking sector, including those that cannot be characterized initially as bullying or harassment. Considering that several of those interpersonal conflicts are already the object of other internal conflict resolution channels provided by banks to their employees, it may be a sign that unions should also try to gain access to those internal channels, instead of focusing exclusively on union initiatives, such as the Protocol.

A focus on other types of interpersonal conflicts can even have an indirect positive impact on workplace bullying levels, as it has been shown that strong beliefs by employees that interpersonal conflicts are managed fairly in the organization tend to prevent that those conflicts escalate into bullying (Einarsen et al. 2018).

Finally, it is worth highlighting an important topic discussed earlier, regarding sexual harassment. It was shown that, despite efforts by unions and managers, there is a general sense in the sector that sexual harassment is underreported by victims. A potential factor contributing to this situation was the fact that sexual harassment is considered a criminal offense under Brazilian legislation, which leads to stricter

demands in terms of evidence of harassment in comparison, for instance, to workplace bullying. This observation suggests that, from a policy perspective, the effects of sexual harassment criminalization should be analyzed with care. The information provided by this research obviously is not sufficient to suggest that the policy should be changed, but it suggests that this debate should be initiated.

### ***Conflict management tools and channels***

The data presented in the previous chapters also allow for important practical suggestions and debates regarding the current conflict management tools and channels available in most banks.

The first important point of debate refers to the role of HR departments in conflict management in most banks. It is clear that HR departments play a central role in conflict management in most banks, including issues related to workplace bullying. The data discussed in this dissertation allow to both question this HR centrality and suggest ways that HR could be more efficient in playing this central role in conflict management.

It seems clear that HR departments are assuming responsibilities regarding conflict management, that they are not prepared to assume. This lack of preparation refers not only to the lack of individual conflict management knowledge and skills, as evidenced by the lack of clarity on concepts such as mediation, but it is also a reflection of HR characteristics not always compatible with conflict management best practices. It has been shown that HR's proximity to management, present mainly in HR Business Partners structures – extremely popular in Brazilian banks – are usually incompatible with the perception of neutrality or impartiality needed to properly deal with workplace bullying and other interpersonal conflicts (Harrington et al. 2012, 2015). For this reason,

it is commonly suggested that other dispute resolution methods and channels are better prepared to deal with certain kinds of workplace conflicts, such as bullying or harassment. In that sense, Ombudsman-like structures can play a bigger role in conflict management in the workplace, as their confidentiality and impartiality might be an advantage in comparison to HR when dealing with workplace bullying and other conflicts (Hollis 2016).

However, no matter the role reserved to HR in conflict management in the workplace, it is clear that HR tools could be better used as mechanisms for conflict diagnosis or grievant's voicing. MediumPublicBank, for instance, informed that its internal grievance channel experiences spikes in its usage rates right after the performance assessment cycle, functioning as a channel for workers to voice their discontentment with the evaluation received. It is clear, therefore, that the performance assessment tool does not provide a proper voice channel in which workers can question their supervisor's decision, making workers seek MediumPublicBank's Commission for Workplace Bullying and Sexual Harassment, even if the conflict clearly does not refer to a workplace bullying case. This is a problematic solution from several perspectives. First, as the channel was developed with bullying and harassment cases in mind, its procedures are not the most adequate or efficient to deal with other types of conflicts. Not only that, as the channel is not specifically designed to deal with conflicts originating in the performance assessment process, it is possible that a considerable amount of conflicts originated in the performance assessment process are currently not being reported, potentially escalating into workplace bullying in the future, or generating other responses by workers (e.g., exit, silence, or neglect, instead of voice (Hirschman 1970; Farrell 1983)).

With this in mind, it is recommended that HR departments consider the potential for using several of their current management tools as potential conflict diagnosis and management channels. This can be easily the case not only in performance assessment tools, but also in climate surveys, termination interviews, among others.

The discussion chapters also allowed for some conclusions over other dispute resolution channels, beyond HR departments. In that sense, the usage of the efficiency-equity-voice model (Budd and Colvin 2008) is an important tool, as it helps revealing the strengths and weaknesses of each channel analyzed. The use of this model does not necessarily mean that changes should be made to each method, but it at least provides different stakeholders with a proper way to measure, evaluate and compare different dispute resolution tools.

For instance, the use of the model revealed that the lack of an appeals process in the Protocol significantly hurts its score in terms of equity. By revealing this, it might be a useful tool to suggest that unions could be focusing more on demanding from banks a system of appeals, rather than another reduction on the deadline for obtaining a bank's response to a grievance, which would only increase its efficiency score, which is already relatively high.

A similar exercise could be done in relation to all channels available to any specific bank or union, in order to determine the best strategy regarding the development of new channels or the choice of which channel to use. For instance, Ombudsman Offices could obtain different results if not focusing as much on investigation procedures, as observed in BiggerPublicBank and BiggerPrivateBank.

Moreover, another important point risen by the discussion chapters refer to unions' participation in banks' internal channels. With the exception of

MediumPublicBank's positive experience, in all other cases analyzed in this dissertation, unions' interaction with banks were limited to traditional union channels – usually intermediated by the Labor Relations departments – or the usage of the Protocol channel. It has been shown that by ignoring banks' internal channels, unions might be missing or ignoring a considerable amount of conflicts that are relevant to their constituents, which are usually brought to different internal channels, without unions' knowledge. In that sense, MediumPublicBank can potentially be used as an example for unions to try to gain access and participate more actively in banks' internal channels, instead of focusing exclusively in strengthening the Protocol channel, as observed mainly in the case of BigLocalUnion.

Another point currently unexplored by most banks refer to the idea of Integrated Conflict Management Systems (Lipsky et al. 2003). The way that this dissertation was organized was perfect to demonstrate how currently different types of conflicts are being channeled to different conflict management tools in the sector and in each bank individually. However, no bank seems to be taking advantage of the complementarities of each channel and method, through the proper design of an Integrated Conflict Management System.

Employment mediation should also be highlighted as a potential trend among conflict resolution methods favored by different banks. Although BiggerPublicBank is the only one with a proper structured employment mediation program, the topic was constantly brought by managers in different banks, suggesting a clear potential to explore mediation as a possible path for future conflict resolution in the sector. The 2017 Labor Law Reform, although not covering the topic explicitly, might contribute by

generating an environment generally more open to the adoption of employment arbitration and mediation.

Finally, it is important for all parties in the sector involved in the design and development of conflict management channels and systems to pay special attention to the issue of retaliation for the usage of the channel. Except for the CCPs, fear of retaliation was brought as a relevant obstacle to the usage of all the tools described in the dissertation. Despite that, in several cases there are no express rules protecting employees against retaliation, or concern over the enforcement of those rules by banks. It seems clear that without proper retaliation protection, the most developed conflict management system will still receive only a small amount of the conflicts actually taking place in each organization. BiggerPublicBank Ombudsman Office's decision to never punish the grievant employee, even if the grievance is found to be purposefully false is a good comparison point to BiggerPrivateBank's Ombudsman experience, where false reports are constantly punished. It is no surprise that, as it was shown, retaliation is part of the union critique to BiggerPrivateBank's Ombudsman, but not to BiggerPublicBank's Ombudsman.

As it can be seen, there is considerable room for unions and banks to enhance their conflict management strategies, potentially generating a better work environment for thousands of workers who are directly or indirectly connected to the banking sector. As those transformations might influence other sectors, millions of workers might be impacted by positive changes in the conflict management systems described in the previous pages. If this dissertation somehow positively contributes to this

transformation of the Brazilian workplace, it will have accomplished its practical goals, while enriching the academic understanding of conflict management in the workplace.

## APPENDIX I - INTERVIEW PROTOCOLS

### **Human Resources department**

#### *Understanding HR in the company*

- 1) How is the HR department structured? (include number of employees, their levels, etc.)
- 2) How does the HR department fit in the company's overall structure? To whom does the HR department report? Is there a HR director?
- 3) What are the roles and functions of the HR department?

#### *The company's HR strategy*

- 1) In general terms, how do you describe the company's HR strategy?
- 2) How does the company's HR strategy relate to the company's overall strategy?
- 3) How does the company's labor relations strategy relate to the company's Labor Relations and Legal (litigation) strategy?

#### *Company's HR practices*

- 1) Remuneration strategy (includes variable and benefits). Is there some variation by position or department or the remuneration policy is similar to all the company? What is the role of the variable remuneration (bonus, profit sharing, etc.) from the strategic perspective?
- 2) Training strategy. How does HR see employee training and development? What is their importance, their goals and results?
- 3) Recruitment and selection strategy. What are the practices, goals and results?
- 4) Performance assessment practices, strategy and tools. How does it work, what are its goals and results?
- 5) Who is responsible for the disciplinary policy? Who can discipline an employee? What is the role of HR? Is there any form of control over disciplinary actions?
- 6) What are the practices adopted by the company in relation to termination of employment contract? Who is responsible for the decision? What is the role of HR? Is there any form of follow-up? Is HR aware of cases that generate labor complaint? What are you doing about it?
- 7) Other relevant HR practices (climate survey? Other?).

#### *Workplace conflict*

- 1) What is HR department's perspective over workplace conflict?
- 2) What kinds of conflicts come to be known by the HR department?
- 3) How does the HR Department get to know about these conflicts?
- 4) What does the HR Department do once it is informed about the existence of a conflict?
- 5) Is there a pattern in the occurrence of each kind of workplace conflict (e.g., some kinds of conflicts are more easily found in certain locations or departments)?
- 6) How important is the topic of workplace conflict for the company?
- 7) How does the HR Department relate to other departments (mainly Ombudsman, Labor Relations and Legal) regarding those conflicts?

#### *Conflict resolution*

- 1) What forms of conflict resolution are usually adopted by the company?
- 2) What is the HR department opinion on the company's ombudsman program?

- 3) What is the impact of the Ombudsman office in the workplace conflicts (emergence, externalization and resolution)?
- 4) How is the relationship between the HR department and the Ombudsman office?
- 5) What is the HR department's opinion on the *Comissões de Conciliação Prévias* (Preliminary Conciliation Commissions)? What is their impact in employment litigation?

*Internationalization*

- 1) What is the role of the HR department in the process of internationalization of the company?
- 2) Is the experience in international business units regarding workplace conflicts different in any way?

*Other questions*

- 1) Is there anything else that you want to talk about workplace conflicts and their resolution in the company?

**Labor Relations department**

*Understanding the labor relations department in the company*

- 1) How is the labor relations department structured? (include number of employees, their levels, etc.)
- 2) How does the labor relations department fit in the company's overall structure? Is there a Director of Labor Relations (only Labor Relations or is he responsible for other areas)? To whom does the Labor Relations department report?
- 3) What are the roles and functions of the Labor Relations department?

*The company's labor relations strategy*

- 1) In general terms, how do you describe the company's labor relations strategy?
- 2) How does the company's labor relations strategy relate to the company's overall strategy?
- 3) How does the company's labor relations strategy relate to the company's Human Resources and Legal (litigation) strategy?

*The relationship with the unions*

- 1) Which are the main unions with which the company negotiates?
- 2) How do you define the relationship between the company and the unions as a whole?
- 3) What is the level of influence of unions in the company's workplace? Are there any significant variations depending on the level and skills of the employee? Are there any significant variations depending on the geographical location of the area/branch?

*Workplace conflicts*

- 1) From the labor relations department perspective, how are the conflicts in the workplace usually shown up? Please, focus not only on collective disputes, but mainly on the individual level disputes in the workplace.
- 2) How important is the topic of "individual conflicts in the workplace" in the collective bargaining process with the union(s)?
- 3) How does the company see the position of the union regarding this topic?

- 4) What is the company's opinion on the "Collective Agreement to the Prevention of Workplace Conflicts" signed by the Banks and the unions?
- 5) How this agreement has been implemented in the Bank (if applicable)?

*Conflict resolution*

- 1) What forms of conflict resolution are usually adopted by the company?
- 2) What is the labor relations department opinion on the company's ombudsman program?
- 3) What is the impact of the Ombudsman office in the workplace conflicts (emergence, externalization and resolution)?
- 4) How is the relationship between the Ombudsman Office and the Labor Relations department?
- 5) What is the labor relations department opinion on the *Comissões de Conciliação Prévias* (Preventive Conciliation Commissions)? Are they used by the company? If yes, how are they used?

*Internationalization*

- 1) What is the role of the labor relations department in the process of internationalization of the company?
- 2) Is the experience in international business units regarding workplace conflicts different in any way?

*Other questions*

- 1) Is there anything else that you want to talk about workplace conflicts and their resolution in the company?

**Ombudsman Office**

*Understanding the ombudsman office in the company*

- 1) How is the ombudsman office structured? (include number of employees, their levels, etc.)
- 2) How does the ombudsman office fit in the company's overall structure? To whom does the Ombudsman office report?
- 3) What are the roles and functions of the Ombudsman Office?
- 4) What is the history of implementation of the Ombudsman Office? Who implemented it? Why? Who supported the implementation?

*The company's strategy*

- 1) How does the Ombudsman Office relate to the company's overall strategy? And to the strategies from the Labor Relations department, legal department and Human Resources?
- 2) Are there metrics for the Ombudsman Office? Which ones?

*Workplace conflict*

- 1) What is the Ombudsman's perspective over workplace conflict?
- 2) What kinds of conflicts come to be known by the Ombudsman?
- 3) How does the Ombudsman get to know about these conflicts?
- 4) What does the Ombudsman do once he is informed about the existence of a conflict?
- 5) Is there a pattern in the occurrence of each kind of workplace conflict (e.g., some kinds of conflicts are more easily found in certain locations or departments)?
- 6) How important is the topic of workplace conflict for the company?

- 7) How does the Ombudsman relate to other departments (mainly Legal, Labor Relations and HR) regarding those conflicts?

#### *Conflict resolution*

- 1) What forms of conflict resolution are usually adopted by the company?
- 2) What is the Ombudsman opinion on the company's conflict resolution methods?
- 3) What is the impact of the Ombudsman office in the workplace conflicts (emergence, externalization and resolution)?

#### *Internationalization*

- 1) What is the role of the Ombudsman Office in the process of internationalization of the company?
- 2) Is the experience in international business units regarding workplace conflicts different in any way?

#### *Other questions*

- 1) Is there anything else that you want to talk about workplace conflicts and their resolution in the company?

### **Legal department**

#### *Understanding the legal department in the company*

- 1) How is the legal department structured? (include number of employees, their levels, etc.)
- 2) How does the legal department fit in the company's overall structure? To whom does the employment law team report? To the head of the legal department or other area (HR)?
- 3) What are the roles and functions of the Legal department?
- 4) Which activities are done internally by the legal department, and which activities are outsourced to an external law firm?

#### *The company's legal strategy*

- 1) In general terms, how do you describe the company's legal strategy?
- 2) How does the company's legal strategy relate to the company's overall strategy?
- 3) How does the company's legal strategy relate to the company's Human Resources and Labor Relations strategy?
- 4) How do the legal litigation and counseling strategies relate to each other?
- 5) Does the company have a litigation settlement policy? For which cases?

#### *Workplace conflict*

- 1) What is the legal department's perspective over workplace conflict?
- 2) What kinds of conflicts come to be known by the Legal department?
- 3) How does the Legal Department get to know about these conflicts?
- 4) What does the Legal Department do once it is informed about the existence of a conflict?
- 5) Is there a pattern in the occurrence of each kind of workplace conflict (e.g., some kinds of conflicts are more easily found in certain locations or departments)?
- 6) How important is the topic of workplace conflict for the company?
- 7) How does the Legal Department relate to other departments (mainly Ombudsman, Labor Relations and HR) regarding those conflicts?

### *Conflict Resolution*

- 1) What forms of conflict resolution are usually adopted by the company?
- 2) What is the legal department opinion on the company's ombudsman program?
- 3) What is the impact of the Ombudsman office in the workplace conflicts (emergence, externalization and resolution)?
- 4) How is the relationship between the Legal department and the Labor Relations department?
- 5) Is the existence of the Ombudsman Office used by the company in their legal defense in the existing lawsuits? What about the "Collective Agreement to the Prevention of Workplace Conflicts"? What is the impact of these initiatives on employment litigation?
- 6) What is the Legal department opinion on the *Comissões de Conciliação Prévias* (Preventive Conciliation Commissions)? What is their impact in employment litigation?
- 7) What is the Legal department opinion on the Labor Courts? What about their Centers for Conciliation and Mediation?

### *Internationalization*

- 1) What is the role of the legal department in the process of internationalization of the company?
- 2) Is the experience in international business units regarding workplace conflicts different in any way?

### *Other questions*

- 1) Is there anything else that you want to talk about workplace conflicts and their resolution in the company?

## **Unions**

### *Topics covered*

- 1) What is the importance of workplace conflict, workplace bullying and sexual harassment at the workplace in the sector and specifically in Banks XYZ?
- 2) What is the importance of those topics in Collective Bargaining?
- 3) How CBA coverage of those topics impact the daily interaction with bank managers?
- 4) What is the importance of those topics for bank workers? How do they communicate about those issues with unions in the sector?
- 5) What is UnionX' perspective on the Ombudsman Office/Ethics Committee/Etc. at Bank XYZ and how they are used by workers?
- 6) What has been UnionX's experience with CCPs? What are the results obtained and how do they impact litigation levels?
- 7) What is the importance of the *Protocol* for UnionX? What are the results obtained by the Protocol and how do they impact workers' experience in the workplace?
- 8) What is UnionX's communication strategy regarding workplace conflicts and conflict management methods provided by the union and Banks XYZ?
- 9) What is UnionX's perspective on the current functioning of the Labor and Employment Court system?

- 10) What is UnionX's perspective on the potential usage of employment arbitration, as authorized by the 2017 Labor Law Reform?
- 11) Can you please detail the overall strategy for relationship with Banks XYZ?
- 12) What is UnionX's position regarding the alleged harasser or perpetrator of workplace bullying?

APPENDIX II – INTERVIEW DETAILS

| Organization      | Department / Interviewee | Date       | Duration | Recorded? | Interview # in footnotes | Observation  |
|-------------------|--------------------------|------------|----------|-----------|--------------------------|--|
| BiggerPublicBank  | HR                       | 01/23/2018 | 3h30m    | No        | Interview                | One single interview (3h30) with two managers (one for each department). First hour dedicated only to general HR issues. |
|                   | Ombudsman and Mediation  | 01/23/2018 | 3h30m    | No        | Interview                |  |
| LargePublicBank   | Labor Relations          | 08/22/2017 | 1h30m    | No        | Interview 1              |  |
|                   | HR (Workplace Climate)   | 08/22/2017 | 1h00m    | No        | Interview 2              |  |
| BiggerPrivateBank | Ombudsman                | 01/08/2014 | 1h00m    | Yes       | Interview 1              | Interview from MS Thesis with supervisor from Ombudsman Office.  |
|                   | HR                       | 06/06/2014 | 1h00m    | No        | NA                       | Meeting with HR VP to collect preliminary data and negotiate access (MS Thesis)  |
|                   | HR                       | 07/18/2014 | 1h30m    | Yes       | Interview 2              | Interview from MS Thesis with HR VP.   |
|                   | Legal                    | 07/18/2014 | 1h00m    | Yes       | Interview 3              | Interview from MS Thesis with Legal Department manager.  |
|                   | Labor Relations          | 06/11/2014 | 1h30m    | Yes       | Interview 4              | Interview from MS Thesis with Labor Relations manager.   |
|                   | Ombudsman                | 02/16/2017 | 1h00m    | No        | NA                       | Meeting with Ombudsman and supervisor to discuss MS Thesis findings.   |
|                   | Ombudsman                | 01/03/2018 | 1h30m    | No        | Interview 5              | Interview with Ombudsman and supervisor to update  |

| Organization          | Department / Interviewee | Date       | Duration | Recorded? | Interview # in footnotes | Observation  |
|-----------------------|--------------------------|------------|----------|-----------|--------------------------|--|
|                       |                          |            |          |           |                          | information from MS Thesis interview.  |
| LargePrivateBank      | NA                       | NA         | NA       | NA        | NA                       | No interviews were obtained for this bank.   |
| BigForeignBank        | NA                       | NA         | NA       | NA        | NA                       | No interviews were obtained for this bank.   |
| MediumForeignBank     | Legal                    | 08/30/2017 | 1h00m    | No        | Interview                |  |
| MediumNationalBank    | HR                       | 09/11/2017 | 1h30m    | No        | Interview                |  |
| MediumPublicBank      | HR                       | 01/24/2018 | 1h30m    | Yes       | Interview                | One single interview with three managers: one from HR and two from legal department. |
|                       | Legal                    | 01/24/2018 | 1h30m    | Yes       | Interview                |  |
| LocalPublicBank       | HR                       | 01/08/2018 | 3h00m    | No        | Interview                | One single interview with three managers: one from HR and two from legal department. |
|                       | Legal                    | 01/08/2018 | 3h00m    | No        | Interview                |  |
| CorporateForeignBank  | HR                       | 08/31/2017 | 1h45m    | No        | Interview                | One single interview with the participation of one manager from each department.     |
|                       | Business                 | 08/31/2017 | 1h45m    | No        | Interview                |  |
| OtherForeignBank      | HR                       | 02/08/2018 | 1h00m    | Yes       | Interview                |  |
| CorporateNationalBank | HR                       | 02/02/2018 | 1h00m    | No        | NA                       | Meeting with HR supervisor to collect preliminary data and negotiate access.         |
|                       | HR                       | 02/06/2018 | 1h30m    | Yes       | Interview                | Interview with HR Director   |
| ForeignInvestmentBank | Legal                    | 08/28/2017 | 1h00m    | No        | Interview                |  |
| SmallForeignBank      | HR                       | 08/25/2017 | 1h00m    | Yes       | Interview                |  |
| BigLocalUnion         | Union leader             | 09/08/2017 | 1h00m    | Yes       | Interview 1              | Interview with union representative responsible for BigForeignBank                   |

| Organization             | Department / Interviewee | Date       | Duration | Recorded? | Interview # in footnotes | Observation   |
|--------------------------|--------------------------|------------|----------|-----------|--------------------------|---|
|                          | Union leader             | 09/08/2017 | 1h30m    | Yes       | Interview 2              | Interview with union representative responsible for LargePrivateBank                        |
|                          | Union leader             | 09/08/2017 | 1h00m    | Yes       | Interview 3              | Interview with union vice-president   |
|                          | Union leaders            | 09/05/2017 | 6h00m    | No        | NA                       | Several unstructured interviews with different union leaders throughout a day at the union. |
| RelevantLocalUnion       | Union leader             | 08/29/2017 | 1h00m    | No        | Interview                |   |
| PublicLocalUnion         | Union leader             | 01/23/2018 | 1h30m    | Yes       | Interview                |   |
| CriticalLocalUnion       | Union leaders            | 01/11/2018 | 3h00m    | Yes       | Interview                | Single interview with two union leaders.  |
| BigConfederation         | Confederation leader     | 08/29/2017 | 1h00m    | No        | Interview                |   |
| TraditionalConfederation | Confederation leaders    | 08/21/2017 | 1h30m    | No        | Interview                | Single interview with two union leaders.  |

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