GENDER EQUALITY AND COLLECTIVE BARGAINING: ACHIEVEMENTS AND SETBACKS FOR FEMALE TEACHERS AND BANK EMPLOYEES

IGUALDADE DE GÊNERO E NEGOCIAÇÃO COLETIVA: CONQUISTAS E RETROCESSOS PARA PROFESSORAS E BANCÁRIAS

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ABSTRACT

Objective: This study examines gender inequality in labor relations. It investigates predictions related to gender discrimination, which is a theme in the Brazilian legal system. In addition, it analyzes the role of collective bargaining in order to observe its usefulness to combat gender inequality in labor relations. The vicissitudes faced by trade unions are taken into consideration - especially professional ones - in the face of the opposition of the capital that has been strongly organized and empowered by its multidimensional intrinsic strength, besides globalization and neoliberal movements. Finally, the study examines the contributions of collective bargaining agreements for gender equality in labor relations that were in force during 2019, particularly within the following professional categories: teachers, in the State of Paraná, and bank employees and financiers, in Curitiba and Region.

Methodology: This research uses the hypothetical-deductive approach and is also a bibliographic and documentary study.

Results: The result shows that collective bargaining can be an effective instrument for the realization of gender equality in labor relations, providing expansion of rights, especially when it depends on the actions of combative unions, in particular, the Union of Teachers in the State of Paraná (SINPROPAR) and the Union of Employees in Banking and Financial Establishments in Curitiba and Region (SEEB).

Contributions: This paper contributes to the discussion regarding gender equality in labor relations by critically analyzing collective bargaining agreements entered into by the Union of Teachers of the State of Paraná (SINPROPAR) and by Union of Employees in Banking and Financial Establishments in Curitiba and Region (SEEB) that establish clauses that seek to protect female workers belonging to their respective categories.

Keywords: Gender equality; Gender discrimination; Labor relations; Collective bargaining; SINPROPAR; SEEB Curitiba.

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RESUMO

Objetivos: *Este estudo investiga a desigualdade de gênero nas relações de trabalho. Pesquisa previsões relacionadas à discriminação de gênero, tema no ordenamento jurídico brasileiro. Além disso, analisa o papel da negociação coletiva com o fito de observar sua utilidade para combater a desigualdade de gênero nas relações de trabalho. As vicissitudes enfrentadas pelas entidades sindicais são levadas em consideração, sobretudo as profissionais, frente à oposição do capital fortemente organizado e empoderado por sua força intrínsica multidimensional, além de pela globalização e pelos movimentos neoliberais. O trabalho, por fim, esquadrinha as contribuições dos instrumentos coletivos de trabalho para a igualdade de gênero nas relações laborais, vigentes durante o ano de 2019, especificamente no âmbito das categorias profissionais dos professores, no Estado do Paraná, e dos bancários e financiários, em Curitiba e Região.*

Metodologia: *Usa-se a abordagem hipotético-dedutiva, sendo a técnica a pesquisa documental e bibliográfica.*

Resultados: *Como resultado da pesquisa, tem-se que a negociação coletiva pode ser um instrumento eficaz para a efetivação da igualdade de gênero nas relações de trabalho, proporcionando ampliação de direitos, sobretudo quando depende da atuação de sindicatos profissionais combativos, em especial do Sindicato dos Professores do Estado do Paraná (SINPROPAR) e Sindicato dos Bancários e Financiários de Curitiba e Região (SEEB).*

Contribuições: *O trabalho contribui para a discussão relativa à igualdade de gênero nas relações de trabalho, ao analisar criticamente convenções coletivas de trabalho celebradas pelo Sindicato dos Professores do Estado do Paraná (SINPROPAR) e Sindicato dos Bancários e Financiários de Curitiba e Região (SEEB) que estabelecem cláusulas que procuram tutelar as trabalhadoras integrantes das respectivas categorias.*

Palavras-chave: *Discriminação de gênero; Igualdade de gênero; Negociações coletivas; Relações de trabalho; SINPROPAR; SEEB Curitiba.*

1 INTRODUCTION

The societies that recognize greater diversity among their citizens experience more lasting progress, as recognized by the United Nations High Commissioner for Human Rights in 2006.

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The diversity principle is a real instrument of inclusion and should guide public and private policies that seek to achieve material equality among members of minorities, whether in relation to gender, color, age, disability, sexual orientation, or others.

Gender equality is part of the Brazilian Constitution, both as a fundamental principle of the Republic, as stated in Article 3, IV, of the Constitution, which prohibits any form of discrimination, including those based on sex, for the promotion of the welfare of all, and as a fundamental right, according to Article 5, I, which recognizes the equality between men and women in rights and obligations.

The Brazilian Constitution, in its program related to gender equality, provides "protection of the labour market for women through specific incentives, as provided by law" (Article 7, XX), as well as prohibits differences in wages, in the performance of duties, and in employment criteria based on sex, age, color, and marital status.

The Consolidation of Labor Laws (Consolidação das Leis do Trabalho, or CLT) has a chapter dealing specifically with measures to protect women's work as a means of reducing the inequality experienced in comparison to men in the employment relationship.

It is also relevant to point out Law No. 9029/1995, which prohibits the practice of any discriminatory and restrictive practice for the purpose of hiring or during employment relationships based on sex, origin, race, color, marital status, family situation, disability, age, among others.

Despite a wide range of legal measures aimed to eliminate every form of discrimination against women, especially when related to the employers, the abstraction and generality of the laws often hinder the implementation of legally recognized guarantees; the laws lack complementarity that can be achieved by the social actors involved.

Collective bargaining is a mechanism for social pacification in which labor unions, employer's organizations, and companies seek to resolve existing conflicts within the scope of the represented categories; it proves to be useful to promote gender equality in labor relations.

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Despite the fact that the Labor Reform perpetrated by Law No. 13467/2017 has deeply restricted the unions' (especially labor unions) main source of funding for their claiming activities and improved several other setbacks and challenges for the labor unions in Brazil, collective bargaining is still effective as a legal instrument to improve the living conditions of male and female workers.

This study seeks to investigate to what extent collective bargaining has been an effective instrument for the realization of legal rights, especially those related to gender equality.

In order to address this issue, it was analyzed collective bargaining agreements signed by the Union of Teachers in the State of Paraná (Sindicato dos Professores no Estado do Paraná, or SINPROPAR) and by the Union of Employees in Banking and Financial Establishments in Curitiba and Region (Sindicato dos Empregados em Estabelecimentos Bancários e Financiários de Curitiba e Região, or SEED), registered with the Special Secretariat for Social Security and Labor of the Ministry of Economy, in force from 01/01/2019 to 01/01/2020.

2 PROHIBITION OF GENDER DISCRIMINATION IN THE BRAZILIAN LEGAL SYSTEM

The Universal Declaration of Human Rights of 1948 represents the historical manifestation that consolidated, at the universal level, "the recognition of the supreme values of equality, liberty, and fraternity among men, as stated in its Article I" (COMPARATO, 2003, p. 223).

Although originally considered just a recommendation, it is currently recognized that "the validity of human rights is independent of declarations in constitutions, laws and international treaties, precisely because they are demands of respect for human dignity, exercised against all established powers, official or otherwise" (COMPARATO, 2003, p. 224). Anyway, some contemporary doctrinal

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trends even have considered that human right international declarations are inherently lawfull and mandatory (PIOVESAN, 2016, p. 179; DELGADO, 2019, p. 184-185).

The Universal Declaration of Human Rights has fostered several international and national statutes that seek the realization of gender equality.

In the scope of the protection of female workers, the International Labor Organization (ILO) edited several Conventions, ratified by Brazil: Convention No. 3, of 1919, concerning the Employment of Women before and after childbirth (Maternity Protection); Convention No. 4, of 1919, concerning Women's Night Work; Convention No. 41, 1934, also concerning Women's Night Work; Convention No. 89, 1948, concerning Women's Night Work in Industries; Convention No. 100, 1952, concerning Equal Remuneration of Men and Women Workers for Work of Equal Value; Convention No. 103, 1952, concerning Maternity Protection (BRASIL, 2019b).

The ILO further enacted ILO Convention No. 111, which – although not specifically addressing the protection of women's work – prohibits the use of criteria based on race, color, gender, religion, political opinion, national origin, or social origin to distinguish, exclude or establish a preference in order to "destroy or change the equality of opportunity or treatment in respect of employment or occupation"; the Convention also provides for the duty of Member States to formulate and implement policies aimed at promoting "equality of opportunity and treatment in respect of employment" (BRASIL, 2019b, n.p.).

In the same vein, ILO Convention No. 117 addresses social policy and provides for "the suppression of all forms of discrimination against workers on the grounds of race, color, sex, religion, tribal membership, or trade union membership" (BRASIL, 2019b, n.p.).

It is also important to remember the International Covenant on Economic, Social, and Cultural Rights of 1966, introduced into the Brazilian legal system by Decree No. 591/1992, which, in its article 3, asserts the commitment to "ensure men and women equality in the enjoyment of the economic, social, and cultural rights enumerated" in that covenant (BRASIL, 1992a, n.p.).

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The 1966 International Covenant on Civil and Political Rights, introduced into the Brazilian legal system by Decree No. 592/1992 (BRASIL, 1992b, n.p.), "addresses equal and effective protection against all discrimination," including those that occur based on gender (JORGE NETO; CAVALCANTE, 2019).

Along the same line, still in the scope of International Law, the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 1974, introduced in the Brazilian legal system by Decree No. 4377/2002, according to which:

> [...] the expression "discrimination against women" shall mean any distinction, exclusion or restriction made based on sex whose object or result is to impair or nullify the recognition, enjoyment, or exercise by women, regardless of their marital status, based on the equality of men and women, human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (BRASIL, 2002, n.p.).

The Convention on the Elimination of All Forms of Discrimination against Women also provides for the implementation of material equality in its Article 11, aiming to ensure equal employment rights for men and women, and, according to its Article 4, § 2, measures to protect maternity are not considered discriminatory, thus showing the permission for the implementation of protective measures (BRASIL, 2002).

At this point, it is relevant to mention that the Brazilian Supreme Federal Court (Supremo Tribunal Federal, or STF) has attributed the hierarchical status as a supra-legal[1] norm to the international treaties on human rights ratified by Brazil before enacting Constitutional Amendment (Emenda Constitucional, or EC) 45/2004, which introduced § 3 of Article 5 of the 1988 Brazilian Constitution. For the STF, international treaties on human rights ratified by Brazil before the adoption of EC No. 45/2004 were approved in each House of the National Congress, in two rounds, by three-fifths of the

[1] A norm that occupies a place above ordinary legislation.

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votes of the members; the international treaties occupy a place above legislation and below the constitutional norm in the hierarchy of norms (STF, 2009).[2]

It is also important to point out that "the international system for the protection of human rights is based on the principle of responsibility of the Member States for the human rights violations committed in their territories". Thus, "each signatory State to international human rights treaties assumes the obligation to ensure the protection of these rights for the population in its territory" (SOUZA et al., 2005, p. 64).

In the constitutional sphere, Article 1, III, provides that the dignity of the human being is a foundation of the Democratic State of Law, and, in Article 3, IV, the Constitution establishes the promotion of the welfare of all without prejudice of origin, race, gender, color, age, or any other form of discrimination as a fundamental objective of the Brazilian Republic. Also, Article 3, III, sets the objective of reducing social inequalities (BRASIL, 1988).

Furthermore, Article 5 of the Constitution enshrines the principle of formal equality, without distinction of any kind between people. In the same vein, Article 7, XX, of the constitutional law, provides for the protection of the labor market for women; in the same article, XXX, it establishes the prohibition of differences in wages, in the performance of duties, and in employment criteria based on gender, age, color, or marital status (BRASIL, 1988).

Moreover, Article 226, § 5, of the Brazilian Constitution, which concerns the family, seeks to establish equality in the exercise of rights and duties of conjugal society by men and women (BRASIL, 1988).

It is necessary to point out that collective bargaining conventions (convenções coletivas de trabalho, or CCTs) and collective bargaining agreements (CBAs) that violate these guarantees are invalids, as established in Article 3º, IV, of the Brazilian

[2] Therefore, the characteristic that attributes the supra-legal interpretation to human rights treaties and conventions seems more consistent. This thesis argues that treaties on human rights would be infra-constitutional, but, given their particular character in relation to other international normative acts, they would also be endowed a supra-legal attribute". "In other words, human rights treaties could not affect the supremacy of the Constitution, but they would have a special place in the legal system. Equating them with ordinary legislation would be to underestimate their special value within the context of the system of protection of human rights" (STF, 2009, p. 49).

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Constitution (BRASIL, 1988), in the United Nations Convention on the Elimination of All Forms of Discrimination against Women (BRASIL, 2002) and Article 611-B, XV, of the CLT (BRASIL, 1943). Furthermore, "the idea of collective bargaining as a vehicle for the precariousness of fundamental individual and social labor rights" (DELGADO; DELGADO, 2017, p. 215-216) cannot be found in the Constitution and international norms in force in Brazil, especially because the power of collective bargaining is not "absolute, uncontrollable and overwhelming" (DELGADO, 2019, p. 1,685). Indeed, this power is limited by the ethics inherent "to the achievements signed by the Constitution of the Republic, by the ILO International Conventions ratified by the Brazilian State, and by the heteronomous state legislation of the Federative Republic of Brazil" (DELGADO, 2019, p. 1,685).

In this sense, despite the historical-social context pushing labor relations towards precariousness, the norms that surround the rights to collective bargaining seem to point to the need for social progress of workers, not being in line with the Brazilian legal system, in this case, clauses of CBA and CCT that restrict the protection of women in the labor market.

In the infra-constitutional[3] scope, it is worth highlighting Law No. 9029/1995, Article 1, which forbids "any discriminatory and restrictive practice for the purpose of access to the employment relationship, or its maintenance based on sex" (BRASIL, 1995, n.p.).

This law, besides the prohibition of discriminatory practices, also "prohibits the requirement of pregnancy and sterilization certificates [...] for hiring purposes or for the continuation of the legal employment relationship" (BRASIL, 1995, n.p.), characterizing, according to its Article 2, as a crime "the requirement of a test, examination, report, certificate, statement or any other procedure related to sterilization or pregnancy" (BRASIL, 1995, n.p.), as well as "the adoption of any measures that may constitute induction or instigation to genetic sterilization by the employer" (BRASIL, 1995, n.p.) or, also, the "promotion of birth control, not considering the offer

[3] Norms or laws that are below the Brazilian Constitution.

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of counseling services or family planning, performed by public or private institutions, subject to the rules of the Unified Health System" (BRASIL, 1995, n.p.).

However, for one doctrinal trend, there is the possibility of requiring a pregnancy test in order to keep the job, mainly because the constitutional provision that guarantees the stability of the pregnant employee aims to protect the child before protecting the mother. For this trend, such conduct would not constitute discrimination; but, on the contrary, would favor maternity protection (GOSDAL, 2003). The interpretation given by Luciano Martinez (2019, p. 828) follows this same vein; according to him, there are no impediments regarding the request of the pregnancy test since the measure "would prevent litigation and would work as a mechanism that would allow the female worker to keep her job".

On the other hand, it's possible to interpret this kind of conventional rule as discriminatory of women, as far as it diminish an important guarantee fixed by Constitution, besides hurting the privacy and intimacy principle fixed by the same Brazilian Federal Constitution (Article 5º, X). Moreover, that collective clause doesn't seem respect a Brazilian Supreme Federal Court (Supremo Tribunal Federal, or STF) and a Brazilian Superior Labor Court (Tribunal Superior do Trabalho, or TST) major jurisprudence which states forward an objective employer's responsibility facing pregnant woman stability, with no concern about awareness of pregnancy either by the employee woman or by the employer. This major jurisprudence interpretation was constructed based in the fact that Constitution has fixed a Democratic State of Law, which aims better conditions to the people, with a special and objective protection to women and maternity (Articles 1º, IV; 6; 7º, I; 227, Federal Constitution; Article 10, II, "b", Transitory Rules Act of the Constitution). In this sense displays the judgment fixed in STF-RE-629053, concluded in October of 2018.[4] The same interpretation also was established by TST, Súmula 244, I.

[4] BRASIL, STF-RE-629053, Relator(a): Min. MARCO AURÉLIO, Redator(a) do acórdão: Min. ALEXANDRE DE MORAES, Julgamento: 10/10/2018, Publicação: 27/02/2019. Disponível em: www.stf.jus.br. Acesso em 18/01/2022.

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Still regarding the prohibition of discrimination against women, Article 373-A of the CLT provides for the possibility of establishing rules to "correct distortions that affect women's access to the labor market" (BRASIL, 1943, n.p.); therefore, "it is forbidden [...] to publish or cause to be published an advertisement for employment in which there is a reference to sex [...] or family situation, except when the nature of the activity to be exercised, publicly and clearly, requires it" (BRASIL, 1943, n.p.). According to the same article, it is also prohibited to "refuse employment, promotion or justify dismissal from work based on sex [...], family situation or pregnancy, except when the nature of the activity is clearly and publicly incompatible" (BRASIL, 1943, n.p.); or also, "to consider sex [...] or family situation as a determining variable for the purposes of remuneration, professional training, and career advancement opportunities" (BRASIL, 1943, n.p.).

In the same line, it was also prohibited to "demand a certificate or examination, of any nature, to prove sterility or pregnancy, for hiring or continuation of employment" (BRASIL, 1943, n.p.); as well as to "prevent access or adopt subjective criteria for granting registration or approval when applying for a job in private companies based on sex [...], family situation, or pregnancy" (BRASIL, 1943, n.p.); in addition, it “impedes the employer or agent to perform intimate searches of female employees" (BRASIL, 1943, n.p.).

However, the provisions of Article 373-A of the CLT do not prevent the temporary establishment of measures aimed at creating "policies of equality between men and women, in particular those aimed at correcting distortions affecting professional training, employment access, and the general working conditions of women" (BRASIL, 1943, n.p.).

Article 390-B of the CLT provides that "all places in professional training courses offered by governmental institutions, by the employers themselves, or by any professional training institution, shall be offered to employees of both sexes" (BRASIL, 1943, n.p.). In Article 390-C, of the same statute, it is provided that "all companies with more than one hundred employees, of both sexes, shall maintain special programs of incentives and professional training" (BRASIL, 1943, n.p.) and, also, Article 390-E of

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the CLT asserts the possibility for the legal entity to join "professional training institutions, civil societies, cooperative societies, public bodies and entities, or trade unions" (BRASIL, 1943, n.p.). Besides, it provides for "signing agreements for the development of joint actions, aiming at the execution of projects related to the encouragement of women's work" (BRASIL, 1943, n.p.).

It is also important to mention Article 392, § 4, II, of the CLT, which provides for the right to "be released from working hours for the necessary time to undergo, at least, six medical examinations and other complementary tests" (BRASIL, 1943, n.p.).

These legal provisions provide for the complementary protection of women through collective bargaining that covers situations of gender discrimination within companies. They were introduced in the CLT by Law No. 9799/1999, which contributes to the realization of gender equality in labor relations, bringing the Brazilian legislation closer to the international provisions on the subject. A relevant point of this law - which reveals itself as a true limitation of the employer's directive power, as well as his right to property protection - is the prohibition of intimate searches that hurt the image, privacy, and intimacy of women (BRASIL, 1999).

The Superior Labor Court (Tribunal Superior do Trabalho, or TST), however, admits the search of purses, bags, and backpacks of female employees, prohibiting only the search in which there is physical contact or exposure of the woman's body (TST, 2017; TST, 2018).

It must be considered that, just because protective norms are blamed to create a stigma around women, there is a more conservative and controversial position in part of the reviewed bibliography, such as that of Octávio Bueno Magano, in the sense that the principle of non-discrimination in labor relations must prevail, excluding even positive discrimination. For him, "protectionist norms are only justified in relation to pregnancy and maternity; the others must be abolished, especially when they engender the possibility of discrimination" (MAGANO, 1992, p. 100).

Nevertheless, this conservative position doesn’t seem to fit to the core sense of United Nations Convention on the Elimination of All Forms of Discrimination against Women and even to Brazilian Federal Constitution, both expressing an harmonic

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favorable view about positive measures do face inequality among women and men and even gathering other minorities groups. In this direction goes the main jurisprudence of Brazilian federal courts, either STF or TST.

Thus, without intending to reduce the complexity of the union struggle to clauses related to pregnancy and maternity, this paper exposes these clauses just to highlight the contributory potential of collective bargaining, even when it starts from a less progressive view.

3 GENDER EQUALITY AS A WORKING-CLASS INTEREST

The Brazilian social and historical context points to a necessity to seek gender equality in labor relations due to a stereotyped culture and historical differences that prevent women from reaching the same level as men in the workplace.

However, collective bargaining became more common on Brazilian labor market reality only in the 1980s, with the political and institutional achievements brought by Federal Constitution of 1988 on unionism freedom.

Since the 1990 economic crisis, though, which affected mainly emerging countries, including Brazil, this process intensified the weakening of the unions' actions in the search for improvements in the living conditions of the workers. As a result, there was a reduction in negotiations of economic clauses (e.g., wage increases), as they were in direct conflict with the interests of employers. Moreover, the fear of job loss overrode the demanding nature in the face of the economic crisis, which led many companies to go bankrupt and, consequently, to the elimination of many jobs. The large level of unemployment increased the difficulty of union action, significantly reducing the number of unionized workers and, consequently, the spontaneous contribution for the funding of union activity, as well as the capture of the workers' subjectivity by the logic of capital, which makes the worker more susceptible to capitalist exploitation and, therefore, less demanding (ALVES, 2000).

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Brazilian trade union action - including gender issues - faces, yet, other obstacles, especially because of the aggravating factor that there has been a tendency for jobs to be held in subcontracted or outsourced companies with predominantly female labor.

Conversely, it is important to consider the historical weakness of the Brazilian unions, also very harshly treated by a great deal of the authoritarian regimes that existed since the beginning of unionism on the dawn of 1900s (DELGADO, 2019, 1618-1629). Yet, recently, with the Labor Reform (Law No. 13467/2017), the labor unions suffered new deep defeats, that diminished substantially its strength for collective bargaining and its corollary, the strike. These adverse circumstances, in the face of gender issues, demand from "Brazilian unionism a new political (and organizational) posture", as Giovanni Alves predicted 20 years ago (ALVES, 2000, p. 267).

However, collective bargaining may have the nature of seeking collective interest from a convergent composition between those involved (AGUIAR, 2018), as well as the fact that companies see opportunities to gain a market advantage before their employees, customers, suppliers, etc. through the incorporation of ethical values to their activities (CORTINA, 2007).

Thus, the quest for gender equality in labor relations is not necessarily a claim that conflicts with the interests of employers because a socially responsible agenda can be presented as a genuine moral interest of companies or as a market advantage for customers and employees, which is still legitimate since it contributes to the plural development of society. For example, XP Inc., an investment management company, recently announced a hiring process for vacancies to be filled exclusively by women to work in the Data, Engineering, and Infrastructure areas (BERTÃO, 2021).

In this sense, even though issues related to equal treatment between male and female workers are dealt with in the international, constitutional, and legislative spheres, it is necessary to emphasize the collective bargaining mechanism because this allows, within the scope of each collective bargaining agreement - which usually corresponds to the scope of the respective professional category - to identify the possible extent of advances regarding gender equality.

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Thus, collective instruments can take the lead in affirmative or protective measures that aim to promote gender equality (RAMALHO, 2003).

Although Article 611-A of the CLT - which was introduced by Law No. 13467/2017 - establishes the controversial rule of the prevalence of negotiation over legislation (BRASIL, 2017), Brazilian Constitution states that collective bargaining cannot perpetuate gender inequality, whether in face of general prohibition of discrimination displayed in Article 3, IV, or in result of express prohibition of wage discrimination based on gender in Article 7, XXX, or by the protection of women's labor market, through incentives under Article 7, XX (BRASIL, 1988). Furthermore, Article 611-B, XV, of the CLT, expressly prohibits collective bargaining that aims to reduce or suppress rights related to the protection of women's labor market (BRASIL, 2017).

Collective labor bargaining, when dealing with matters related to the search for material equality between men and women workers, should serve as an instrument to expand this equality, especially by providing for the possibility of other rights "that aim at improving the [...] social condition" (BRASIL, 1988, n.p.) of workers, contained in the head of Article 7 of the CRFB/1988, and never to expand inequality (DELGADO; DELGADO, 2017; DELGADO, 2019).

However, there is the possibility that the perspective of expanding measures that seek gender equality through union action will encounter obstacles within the professional unions themselves, whose leaders are usually men.

In this context, a historically sexist society (in which the union movement is also inserted) with several social and economic fractures aggravated by the covid-19 pandemic constitutes a union model that seeks to claim preferentially results related to job maintenance and wage improvement.

In fact, the successive economic crises that have persisted since the beginning of the 1970s have consecrated the unionism of results, in which the maintenance of jobs and wage improvements are sought through collective bargaining, in detriment of discussions that involve structural changes in the economy, the State, and even in society (ALVES, 2000).

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A union agenda that seeks the realization of material equality between male and female workers is opposed to the unionism of results to the extent that it proposes changes in the structure of society itself, questioning various social dogmas, among which is the "glass ceiling" characterized by the invisible obstacles created in corporate structures that prevent women from rising to management positions (TOBÍAS OLARTE, 2018).

In comparative law, there are examples of the search for gender equality in labor relations through collective bargaining, thus "it is possible to identify clauses with the potential to contribute to gender equality in labor relations in the instruments that result from collective bargaining" (MOTTA; BARACAT; RODRIGUES, 2019, n.p.).

In Latin America, the presence of gender issues in collective bargaining results is relevant. For example, the average number of clauses related to the gender theme present in the instruments resulting from collective negotiations is: 2.3 in Argentina; 4.4 in Brazil; 4.5 in Chile; 5.7 in Paraguay; 0.4 in Uruguay; and 8.1 in Venezuela (ABRAMO; RANGEL, 2005).

In addition, it is important to clarify that conventional clauses related to maternity protection, for example, although they represent advances against discrimination against pregnant employees and mothers, they have a defensive dimension, limiting themselves to delaying a probable contract termination by the employer's initiative or extending breaks and rest periods.

Therefore, it is relevant to analyze some of the clauses that provide for gender equality, selecting for this purpose those clauses negotiated by SINPROPAR and SEEB.

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4 COLLECTIVE BARGAINING AND GENDER EQUALITY IN LABOR RELATIONS: ANALYSIS OF CBAS AND CCTS CELEBRATED BY SINPROPAR AND SEEB IN 2019

The following results are from the research carried out within the scope of the SINPROPAR and SEEB unions during 2019.

CBAs or CCTs involving SINPROPAR provide for nine types of expansion of rights that contribute to gender equality in labor relations, which are respectively accompanied by their percentage of frequency in negotiations: paid leave for women victim of domestic violence, 9.09%; stability to the father, 45.45%; expansion of paternity leave, 18.18%; expansion of maternity leave, 63.64%; increase in breastfeeding time, 9.09%; daycare assistance, 18.18%; flexibility for replacement of absences for monitoring family members, 54.55%; flexible hours, 18.18%, and reduced hours, 9.09%.

With regard to the CBAs or CCTs involving SEEB Curitiba, twenty-three clauses for the expansion of rights in relation to the provisions of the legal system were extracted from their analysis, with their respective frequencies: combating harassment with the creation of awareness programs and reporting channel, 6.25%; institution of policies to promote equality and respect for differences, 6.25%; stability for pre-retired women, 6.25%; stability to the father, 18.75%; expansion of paternity leave, 18.75%; extension of the distribution of profits or results to employees who took adoption leave during the period, 18.75%; extension of the distribution of profits or results to employees who took paternity leave during the period, 6.25%; expansion of stability to the adopter, 6.25%; expansion of stability for pregnant women, 25.00%; expansion of the special journey during the breastfeeding period, 12.50%; expansion of the adoption leave, 25.00%; extension of maternity leave, 25%; assistance for children with disabilities, 18.75%; nanny assistance, 18.75%; daycare assistance, 18.75%; stability to the pregnant woman who had an abortion, 25%; extension of the distribution of profits or results to female employees who took breastfeeding leave during the period, 6.25%; extension of the distribution of profits or results to employees who took

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maternity leave during the period, 37.50%; extension of payment of food or meal support to employees who took maternity leave during the period, 18.75%; maintenance of a position in commission or gratified function after returning from maternity leave or adoptive leave, 6.25%; expansion of justified absences from work to monitor family members, 25%; leave to accompany sick family members, 6.25%, and relocation of pregnant women who work in unhealthy environments or inappropriate for her state, 12.50%.

It is important to emphasize that the discussion around measures that seek the professional success of women cannot be overshadowed by others that aim to protect maternity.

In fact, it is common to conclude conventional clauses that provide, for example, the expansion of maternity leave, pregnancy stability, and even stability for the adopter, as well as the increase in breastfeeding time.[5] [6]

This can be seen, for example, in the CCTs signed between SINPROPAR and the Union of Private Teaching Establishments of the State of Paraná (Sindicato dos Estabelecimentos Particulares de Ensino do Estado do Paraná, or SINEPE/PR), which provide for the possibility of extending maternity leave with partial remuneration if the maternity leave provided by law ends after the beginning of the school semester, also extending the stability of the pregnant woman (BRASIL, 2018c; BRASIL, 2018b; BRASIL, 2019c; BRASIL, 2019d).

The same clause also appears in the CBA concluded by SINPROPAR and the State Federation of Rehabilitation Institutions of the State of Paraná (Federação Estadual das Instituições de Reabilitação do Estado do Paraná, or FEBIEX/PR) (BRASIL, 2018a).

Another clause that is commonly negotiated within the scope of maternity protection is the extension of breastfeeding time. Article 396 of the CLT provides that "in order to breastfeed her child, even if born by adoption, until the child is six (6) months old, the woman shall be entitled, during working hours, to two (2) special

[5] Article 7, XVIII, of the CRFB/1988.
[6] Article 392 of the CLT.

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breaks of half an hour each" (BRASIL, 1943, n.p.).[7] The CCT concluded between SINPROPAR and the Union of Private Language Schools in the Northeast of Paraná (Sindicato das Escolas Particulares de Idiomas do Nordeste do Paraná, or SINDIOMAS/NOPR), for example, provides that thirty-minute additions to the legal break are ensured when the lactating teacher or monitor needs to move to breastfeed, a period that must be replaced during the same week under penalty of being unpaid (BRASIL, 2019a).

In the scope of bank union representation, SEEB concluded with the Federal Savings Bank (Caixa Econômica Federal, or CEF), CBA, an extension of job stability for the employee who is a mother in one hundred and eighty days after the end of the adoption leave, and in case of dismissal, the employee has a period of sixty days to request the benefit (SEEB CURITIBA, 2018a).

In the same CBA signed with CEF, it was also agreed to extend the stability for pregnant women to one hundred and eighty days after the end of the maternity leave, and, in case of dismissal, the pregnant employee has a period of sixty days to request the benefit (SEEB CURITIBA, 2018a); while the CBA signed with the Bank of Brazil (Banco do Brasil, or BB) brings the provision of stability for the pregnant woman "from pregnancy until five months after the end of maternity leave" (SEEB CURITIBA, 2018b, p. 13-14).

The CCT concluded between SEEB and the National Federation of Banks (Federação Nacional dos Bancos, or FENABAN) also contains a clause on the extension of stability for pregnant women in sixty days after the end of the maternity leave (SEEB CURITIBA, 2018d, p. 21-22), while the one agreed upon with the Interstate Federation of Credit, Financing and Investment Institutions (Instituições de Crédito, Financiamento e Investimento, or FENACREFI) guarantees the stability for pregnant women in ninety days after the end of the maternity leave, in addition to enabling the request of such benefit to the pregnant employee dismissed without the knowledge of her pregnancy status by the company, within a period of ninety days. (SEEB CURITIBA, 2018c).

[7] Article 396, of the CLT.

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In these clauses, there is an absence of measures that seek to equalize labor conditions between men and women, whether in terms of wage, functional progression, or even concerning the occupation of management positions by female employees.

In this sense, the only provision found in the scope of the research that, to some extent, achieves this desideratum is in the CBA signed between SEEB and BB, when it states the employer's commitment to expanding policies that seek to promote equal opportunities and respect for differences, as an adherent to the Pro-Gender Equality Program of the Secretariat of Policies for Women (Secretaria de Políticas para as Mulheres, or SPM), of the Ministry of Justice and Public Security (SEEB CURITIBA, 2018b). Although it is a clause with enormous abstraction and generality, it represents an embryonic manifestation and has the merit of recognizing the existence of the problem and the intention to face it, at least in the future.

Transparent promotion and hiring rules would also be helpful in the quest for equality because they could ensure that decisions do not only consider the woman's pregnancy status (GOSDAL, 2003).

However, when it comes to the possibilities within careers, there is the possibility of negotiating clauses that establish management indicators that guarantee the transparency of selection and promotion criteria to provide equality between men and women, especially in access to employment and career advancement within companies (TOBÍAS OLARTE, 2018).

In short, union action in the search for gender equality in labor relations involves negotiating clauses that establish fair models for "hiring, training, professional promotion, qualification, classification, working conditions, safety and health, compensation and reconciliation of work and family life" (TOBÍAS OLARTE, 2018, p. 170), so that genders have equal conditions in labor relations.

However, clauses aimed at protecting maternity, even if to a lesser extent, contribute to gender equality in labor relations since they make it easier to reconcile work and family life.

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CBAs and CCTs cannot be read in isolation from the Brazilian social-historical reality, in which, in fact, there is an unequal division of family responsibilities. If on the one hand it is unfair to overshadow the projection of women in the labor market through maternity rights, on the other hand, given the reality faced by most Brazilian women, the rights to stability, breastfeeding time, and maternity leave end up (albeit indirectly) alleviating the social burden that is placed on the shoulders of female workers: reconciling family life, especially childcare, with professional life.

5 CONCLUSION

The Brazilian legal system prohibits gender discrimination, whether by the international covenants to which Brazil has adhered or by the Constitution and infra-constitutional rules. However, the discriminatory practices that generate this inequality are still present in Brazilian society, including in the labor market, reaching gender violence in labor relations in the most extreme cases. This situation is a challenge for labor law as a way to overcome inequalities and, consequently, to bring about gender equality in labor relations.

In the collective bargaining process, the union is a fundamental instrument because its mission is to negotiate with employers for improvements in the living and working conditions of male and female workers.

The various economic crises faced by the country from the 1980s onwards has led union struggle to a tendency of searching immediate and restrict results as wage adjustment by inflation and other peripheral benefits.

In this context, in the scope of gender equality, the union achievements analyzed in this article - mostly related to the protection of maternity, with the increase of the periods related to maternity leave, pregnant stability, and breastfeeding breaks - were shown as minor advances in the themes addressed. However, in the research, it is important to point out the existence of one clause related to the effective search for equal opportunities, even if in a generic way.

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Thus, it is clear that the transformation of society, through the equalization of wages between men and women, functional progression for women, and guarantees of access to management positions, is not yet a great part of the union's results agenda, and it is imperative to recognize that the clauses analyzed contributed in little measure to the realization of gender equality in labor relations, being, still, incipient to this intention.

Therefore, collective bargaining is an effective instrument for the enforcement of gender equality in labor relations because it has provided advances to the law, although they are minor advances, with the possibility of expanding these rights, as long as the unions manage to become more demanding and break away from the limits that they are bounded in last years.

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