



Ponto de Contato Nacional - PCN

RELATÓRIO DE ENCERRAMENTO Itaú Unibanco S.A./Sindicato dos Bancários de São Paulo, Osasco e Região Reclamação PCN Nº 01/2010

On September 22nd 2009, the Brazilian National Contact Point (NCP) received a notification sent by the trade union Bank Workers Union of São Paulo, Osasco and Region (Bank Workers Union), the Federation of Workers in Credit Companies of the State of São Paulo (FETEC/SP-CUT), the Nation Confederation of Workers in the Financial Field (CONTRAF/CUT) and the Central Workers Union (CUT) – Complainants – against Itaú-Unibanco Bank – a multinational enterprise with its headquarters in São Paulo, Brazil.

According to the complainants, Itaú-Unibanco had violated the Guidelines by sending a notification, through e-mail, to its agencies orienting the behavior in relation to the bank workers strike. In this sense it would have been asked that the employees went to work regularly during the strike and that, if it was impossible to enter the work location, they were to meet in a determined place to wait for orientations. Furthermore, the complainants claimed that the Brazilian Bank Federation (FENEBAN) met with the Command of the Military Police of The State of São Paulo to discuss the topic “Planning joint actions against Strike Movements along the month” before even the publication of the Strike Notification. Such practices would violate the *caput* and Paragraphs 7 and 8 of Chapter IV of the Guidelines (2000 edition):

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organize, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.

8. Enable authorized representatives of their employees to negotiate on collective bargaining or labor-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorized to take decisions on these matters.

On February 2nd 2010, the NCP requested information to Complainants concerning the identification data of the Complainants and Itaú-Unibanco. The response was received the next day. On March 1st, 2010, there was a new request for information



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relating to judgments and/or the initiatives taken by the parties for the solution of the case. On March 3rd, the Complainants responded that there were not undertaken any other judicial action or policy in relation to the case. On May 26th, 2010, the Ministry of Labor and Employment (MTE) decided to accept the examination of the Complaint.

Thus, the NCPS has concluded, based on the Resolution n° 01/2007 NCP, that the Complaint brought together elements that had thematic relevance with the topics covered by the Guidelines, had well enough delimited focus area and presented detailed verifiable facts and evidence through objective criteria. On June 22nd, 2010, the NCP Complaint number 01/2010 was accepted and the fact was communicated to the parties and to the OECD.

On June 22nd, 2010, the NCP sent Official Message n°.123/2010/SAIN/MF-DF to the President of Itaú-Unibanco informing about the acceptance and requesting Itaú-Unibanco's comments. On July 19th, 2010, the Brazil's NCP received response from Itaú-Unibanco S.A. stating that it recognizes and respects the right to strike; the document that originated the Complaint does not constitute an anti-union practice, affirming that the intention was to ensure the right to work to the employees that did not join the strike; and requesting the filing of the complaint. The message was complemented by letter FN-0919/2010 of FENABAN, of June 14, 2010, reaffirming that the FENABAN and its affiliates recognize and respect the right to strike; that the use of judicial measures legally laid down is not an anti-union practice; and asking for the filing of the case.

After considering the arguments of Itaú-Unibanco and FENABAN, the NCP requested further information to the Bank Worker's Union through the Official Message n° 72/2012/SAIN/MF-DF. On April 20th, 2012, the Bank Workers Union expressed their considerations, in which reaffirmed that the guidance provided by Itaú-Unibanco consists of threat to strikers and reported that: there was involvement of the command of the military police of the State of São Paulo in the planning of the actions object of Complaint; the guidelines had been transmitted not only through e-mail but also phone calls; and the alleged attempts to force workers to attend the workplace has resulted in harsh actions from the police and in the arrest of a trade unionist.

After analysis of the above-mentioned documents, the MTE recommended mediation between the parties, pursuant to article 13, section IV, of the resolution n° 01/2007 NCP, in order to fuel good business and labor practices in strike acts. Four mediation meetings were held, about which we shall discuss below.

The first mediation occurred on December 14th, 2012 and featured participation by the Banking Union, Itaú-Unibanco, the MTE (Rapporteur) and the coordination of the NCP (Ministry of Finance). The parties submitted their comments on the use of the "*Interdito Proibitório*" in the context of labor negotiations and strikes: the Complainant stating that its use is not legitimate in labor relations, since it hinders negotiations; Itaú-Unibanco stating that the "*Interdito Proibitório*" does not affront strikers movements,



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but it ensures rights and for that it is accepted by the labor courts. Once the deliberations were made, it was decided that there would be a continuation of discussions on further meetings attended by representatives of the CONTRABASSOON-CUT and FENABAN.

The second meeting took place on February 5th, 2013 and its participants were representatives of the NCP coordination (MF), MTE, Bank Worker's Union, CONTRABASSOON, Itaú-Unibanco and FENABAN. The rapporteur submitted a document with proposals drawn up to the effect that the parties take a commitment to best practices during the period of the strikes. The parties agreed to analyze the document, send comments and continue the debate at the next meeting. On February 25th, Itaú-Unibanco sent their comments, which were shared with the Complainants. On the 26th, the Complainant forwarded their considerations, but without commenting the content of the proposals made by the rapporteur.

At the third meeting, held on March 26th, 2013, the same institutions that attended the previous meeting were present. The parties commented the counter-proposals submitted previously, but without reaching consensus. It was agreed that the Complainant submit their counter proposals to the considerations made by Itaú-Unibanco and that the parties establish direct negotiations on the content of the document and inform the NCP on the progress of the talks. The counter proposals of the Complainants were forwarded on April 23rd, 2014.

As the parties had not fulfilled the deal to continue negotiating without the mediation of the NCP, the Rapporteur invited them to a meeting under the NCP's watch. On October 8th, 2014, the Bank Workers Union, Itaú-Unibanco, CONTRABASSOON, FENABAN, the coordination of the NCP and the Rapporteur of the complaint met. The parties claimed that despite having discussions, there was no agreement with regard to their positions on anti-union practices. Itaú-Unibanco believes that the "*Interdito Proibitório*" is not an anti-union practice and would not be used if the Complainant would commit to not block the entrances of banks during the strikes. The Complainant reaffirmed that there would be no agreement on the contingency and the use of prohibited.

Despite the differences, both parties recognized that labor relations are advancing in the field and that in that year the "*Interdito Proibitório*" had not been used by the bank in the context of the strike. As the last recommendation of the mediation process it was decided that the report set out that dialog efforts have always existed and will continue to exist, the parties recognize that tradition of negotiation, but that differences remained on the concepts related to the "*Interdito Proibitório*": If on one hand the employees' representatives understand that this is an anti-union practice, on the other representatives of the banks understand that its use is legitimate.



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In the context of this Complaint, it was clear that the parties, although differ on opinion on specific issues in relation to practices adopted by Itaú-Unibanco in strike situations, in particular with regard to the use of the “*Interdito Proibitório*”, recognize the tradition of openness to dialogue on both sides. In this context, the NCP recommends that the parties proceed in dialogue on the topics in question and that Itaú-Unibanco seeks, in practices related to situations of strike, to go beyond their legal rights and obligations. Such progress should be in the interest of the development of more positive labor relations, in particular with regard to the use of the “*Interdito Proibitório*”, in line with the letter and the spirit of the Guidelines.

Due to the exposed, the NCP decides to conclude Complaint n°01/2010.

Brasília, March 30th, 2015.