

## MEDIATION IN COLLECTIVE DISPUTES AS A TOOL OF INDUSTRIAL CONFLICT MANAGEMENT – CASE OF POLAND AND BRAZIL

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**Abstract:** The purpose of this paper is to investigate if mediation is an effective tool of industrial conflict management. Poland and Brazil are chosen to analyze this investigation since both countries have almost similar procedure to solve this kind of disputes (industrial conflict management). Based on International Labour Organization (ILOSTAT) and other sources data, the number of strikes in both countries between the years 2009 and 2016 was compared and the effectiveness of mediation in Poland and the number of collective bargaining in Brazil were analysed. The results show that mediation is one important and effective tool of industrial conflict management.

**Key words:** organizational conflict management, industrial relation, Alternative Dispute Resolution (ADR), collective bargaining, labor law, mediation in collective disputes

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### Introduction

Mediation is an extrajudicial method to solve disputes in which a third-party acts as a facilitator of communication between the parties. Thus, an Alternative Dispute Resolution (ADR) is made available to the parties, including companies and workers. In this context, mediation in collective disputes also appears as a method of industrial conflict management. Polish labor law includes mediation into the procedure of collective dispute resolution but there is no law in Brazil which allows the application of ADR in this kind of industrial conflict. It is natural that disputes related to industrial's rights occur inside the company and conflicts about collective labor management become reality. For employees to go on a strike, for instance, mediation is an obligatory stage before the strike happens in Poland. In Brazil, therefore, if the negotiations do not end in an agreement or the impossibility of applying arbitration is verified, the strike is allowed. This paper shows that mediation has an effective application in Poland. This ADR is one of the reasons why Polish data concern to strike is lower and if it is compared to Brazilian data.

It is possible to say that conflict is a common phenomenon during the development of industrial relations (Borras et al., 2011) and the mediation is necessary to try to solve this kind of dispute. Broome says that theory and practice are vital for the studies of peace and conflict. However, theory and practice could exist in separate

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worlds as both of them want privilege and recognition (Broome, 2017). Thus, this paper shows this ADR is an important tool of industrial conflict management and it is capable of avoiding more intensive forms of interests' protection. If Brazil were permitted to use mediation in those cases, the number of bargains would probably be superior, and the companies would spend less money and time to resolve that kind of dispute. Mediation in collective bargaining is also a toll of industrial conflict management because conflict between employer and labor unions is a case of organizational conflict which is very specific and important part of management in any organization where labor unions operate.

### **Literature Review**

Mediation is a technique of alternative dispute resolution (ADR). It is a practice of direct negotiation between parties. It should be a promising tool to prevent and solve conflicts in a constructive way. Williams and Robert (1997) state that mediation is to discovery ways of helping the other to discover more about themselves. Mainly, this involves facilitating learners to move across the next layer of comprehension or understanding (Cichobłaziński, 2013). There is an involvement of a third-party with mediation which is considered necessary to help the parties to deal with the conflicts when they are not able to discover a solution to their disputes by themselves (Dhialulhaq et al., 2018). The mediation should be applied in a context of wicked problems (Rittel and Weber, 1973) and when parties diverge about goals. With the assistance of the mediator, the people who are involved in dispute work out bargains on the issues aforementioned. The mediation procedure is combined with many technical solutions to solve the conflicts (Elkouri and Elkouri, 2017).

Therefore, mediation is an important instrument of industrial conflict management in Poland. Industrial conflict management is a collective dispute between workers and the company (Broński and Jarota 2015). It is an instrument to solve disputes in a more constructive mode. The mediator does not decide for the parties. Instead, they encourage them to agree on a settlement. It is a non-coercive procedure and it has the following advantages: simplicity; informality; economy; agility, confidentiality; larger chances to attend the party's interests. The mediation is conducted outside the scope and control of the judge, but there is a judicial mediation as well. The entrepreneurs should stimulate the mediation as a tool of industrial conflict management. This is a crucial factor for improving employee-employer relationship and what is the important value in effective management of an organization (Onyusheva, 2017; Beck-Krala et al., 2017) and how mediation could help to improve this factor.

Strike is a situation of work stoppage. It happens by a refusal of employees to work. Unlike the cases of collective bargains and other kinds of arrangements, it does not stipulate that labor unions and companies have the right to start and conduct collective bargaining; nevertheless they have just the right to discuss, in particular to solve collective disagreements (Jarota, 2014). Consequently,

a collective conflict serves to ensure the process of determining interests between the main actors of industrialized relations in a market economy as civilly as possible (Cichobłaziński, 2015). In Poland and in Brazil, if there is no agreement between company and employees in negotiation (stage 4 - text above), the trade union has to do a referendum to start the strike. It is valid in Poland just if at least half of the workers take part and the preponderance votes in support of the strike. (Lankašová, 2017). In Brazil, this number depends on the trade union regulation according to the article 4th, first paragraph of the Law of Strike of that country (Law of Strike, 1989). The strike affects employers, employees, economy and the society. Additionally, whether or not the strike is legitimate it is resolved by the Judiciary System and it will cost a lot of money and time. It is recommendable for everyone involved in a society (mainly, the businessman and employer) to avoid the strike and a collective dispute. But how is this done? How to avoid the strike? Mediation is an effective tool of industrial conflict management and this sentence would be proved in the following paragraphs.

### **Methodology**

The main concern of this paper is to investigate if mediation is an effective tool of industrial conflict management. The method used is the statistical analysis of existing data (Veal, 2017) which were obtained from documents published by the following companies: International Labor Organization (ILOSTAT) – data related to the numbers of strikes in Poland between 2009 to 2016 and in Brazil between 2009 to 2012; *Departamento Intersindical de Estatística e Estudos Socioeconômicos* (DIEESE) – data concerned to the numbers strikes in Brazil in 2013 and 2016; The Polish Ministry of Labor and Social Policy – the results of Mediations in Poland during 2009 to 2017 (Mediation with agreements, without agreements and with partial agreements); and *Tribunal Superior do Trabalho* (the Supreme Court of Labor Work in Brazil) – data concerned to the numbers of total judicial cases received by that court (2009 to 2017), of judicial trials judged by the court and agreements made by the parties in front of the judge.

### **Procedure to Solve Industrial Conflict Management in Poland and in Brazil**

Poland has a Law which regulates the procedure to solve collective disputes. Brazil has an Act that is similar to this as well. Common idea of collective labor disputes is the collective representation of workers' interests. This is mostly proper to the circumstance that the workplace is part of the social arrangement and many features of its functioning are of a group environment. Secondly, employers negotiating power in comparison to a worker individually is generally much stronger. This disproportion is reduced by a cooperative representation of the workers' interests. Labor unions are labelled to do that. The procedure to solve industrial conflict management in Poland is regulated by Collective Disputes Act, created on May 23rd, 1991 (Journal of Laws RP, No 55, Item 236, 1991). The

subject of this conflict might be the workers' interests in relations of working environment conditions and the matter of employment relationships. It is not just the conditions of the job, but similarly all dynamics determining directly or indirectly the matter of the employment (Broński and Jarota 2015). According to the Collective Disputes Act in Poland (the resolution of collective bargaining), to resolve this kind of conflict, the dispute has the follow these stages:

1. Proposal of demands: At the beginning, the labor unions have to send a list of demands to the employer. The workers requests must be related directly to the subject listed by law (working conditions, payment features, social benefits and other). According to Collective Disputes Act the just the labor unions can start the dispute. Employer cannot begin this procedure. Thus, a collective bargaining always is started by employees. The employer always has a defensive position.
2. Company's response: After to receive the demands of workers, the employer has to respond it. This stage determines the course of the dispute. If the employer agreed with demands, there is no dispute anymore. However, if the answer is negative, the procedure has to continue.
3. Collective dispute starts: if the company's response is negative, a collective bargaining begins. In this case, the employer has to report the dispute to a District Labor Inspectorate.
4. Negotiations Stage: In this step, employer and workers represented by labor unions discuss to try resolving the disputes. It should be highlighted that the company is obliged to instantaneously make negotiations to try an agreement with labor union. If there is agreement in negotiation stage, the collective bargaining ends.
5. Mediation Stage: if there is no agreement in negotiation stage, company and workers has to go to mediations. This ADR is different from negotiation and consist of many phases. The type of mediation and number of sections will depend on each case. The mediator and the involved parties in conflict have great permission in this area.
6. Arbitration or Strike: If the result of mediation is not an agreement, the parties might demand a resolution in the Board of Social Arbitration. However, it is a not effective institution, because its decisions are compulsory only if the people involved in dispute agree with it. Because of this they rarely use this institute. Another solution to try to solve the dispute is strike.

The procedure to solve Collective Disputes in Brazil is regulated especially by Law n. 7.783 (Law of Strike, 1989), created on June 28th, 1989. Mainly, Poland and Brazil have the same procedure to solve industrial conflict of management. However, mediation is an obligatory stage in Poland's procedure before strike, but in Brazil there is not this obligation. In other words, the main difference about it between Poland and Brazil is the stage 5 above mentioned. The data shown in the next section shows that mediation is useful to avoid the Strike which means it is good to management and business. According to Article 3 of the Law of Strike of

Brazil, if the negotiations do not end in an agreement or the impossibility of appeals through arbitration is verified, the collective termination of the work (strike) is allowed (Law of Strike, 1989). It is possible to realize that in Brazil there is negotiation and arbitration as in Poland. Although, it is not mentioned any mediation applied in industrial conflict management in Brazil, because there is no law in this country which allows the mediation in labor collective bargaining. This fact (no mediation in collective dispute in Brazil) strongly affects the collective conflict management in the company. In Brazil, there are 03 (three) main acts that regulate the mediation of conflicts, which are: Resolution n. 125 of the *Conselho Nacional de Justiça / CNJ* (Conselho Nacional de Justiça, 2010), which provides the National Judicial Policy with adequate treatment of conflicts of interest within the scope of the Judiciary and other measures; the New Code of Civil Procedure - Law no. 13,105, created on March 16, 2015 (Code of Civil Procedure, 2015); and Law no. 13.140, of June 26, 2015, the Law of Mediation (Law of Mediation, 2015), which deals with mediation among parties as a means of dispute settlement and with the self-rule of disputes within the public supervision. None of them regulates mediation in collective disputes (of management, for instance). The article 42, unique paragraph, from that last quoted Act (Law of Mediation, 2015), says that mediation in employment relations will be legalized by another regulation. There is no law in Brazil which regulates this issue, so it is not possible to apply mediation in collective disputes. To summarize, mediation in Polish legal structure has significant place in the collective bargaining resolution procedure, because it permits the use of this ADR and all methods of resolving disputes, before employees represented by labor unions could make the work stoppage. It is the simplest form of pursuing their benefits. Brazil should follow Poland's Collective Disputes Act and turn mediation an obligatory step before the strike of employees. It is mostly significant in the perspective of conflict management in collective relations, because as it is shown on the next section, Mediation has been effective as a tool of collective conflict management.

### **Mediation as a Tool of Collective Conflict Management – Case of Poland and Brazil**

The differences between the procedure to solve an industrial conflict and to try to avoid the strike are very narrow. There is Law in both countries which regulates the procedure to solve a collective conflict (of management, for instance) as shown on the last section. To summarize, at the beginning, the trade union has to send a notification to the entrepreneur (stage 1). Then, the businessman has to respond the notification (stage 2). If he does not accept the employees' demands (it is the most ordinary situation), the collective disputes involved have to try the negotiation (stage 4). After this stage, the difference of both countries procedure to solve this kind of disputes begins. In Poland, employer and trade union have to try mediation before strike, but in Brazil there is no ADR in industrial disputes. The Table 1 shows the real numbers of strike in both countries.

**Table 1. Absolute numbers of strikes in Poland and in Brazil***(Ilostat, 2018; Dieese, 2018)*

Country	2009	2010	2011	2012	2013	2014	2015	2016	Total
Poland	49	79	53	17	93	1	14	5	311
Brazil	518	446	554	873	2050	n.d.	n.d.	2093	6534

In Poland, according to the Collective Disputes Act, a strike, before it is established, must be applied mediation, a strike referendum, and only trade unions can legally organize a strike action (Journal of Laws RP, No. 55, item 236, 1991). The number of strikes in that country has remained quite consistently low. There were 93 strikes in 2013, for example. Therefore, in 2014, there was just one strike registered and it has remained lower in the following years with 14 strikes in 2015 and 5 work stoppage in 2016 (Ilostat, 2017). In Brazil, the data of strikes each year is expressively higher when it is compared with Poland. The total of work stoppage in Poland during the years 2009 and 2016 is just 311. This number is much lower than the total in Brazil which is 6534. It is important to realize that there is no data regarding strikes in Brazil in the years 2014 and 2015. If it is considered the average of the strikes in Brazil between the years 2009 and 2013 and 2016 and 2017, it would be possible to say that there were 1157 strikes in Brazil in 2014 and the same number of work stoppage in 2015 as it is shown on Table 2. However, it is necessary to consider that Poland and Brazil are different countries and do not have the same number of inhabitants, territory, economy, companies, minimum wage income, average income, working hour, health insurance and etc. Additionally, besides the different features of both countries, there are many variables involved at the beginning of one strike, such as working environments, circumstances of wages or social benefits such as labor union rights and autonomies of workers or other groups. Therefore, the main concern of this article is to show that mediation is an effective tool to avoid strikes. To prove this is necessary to make the data of Table 1 more realistic and comparable as possible. So, the authors decided to compare the number of strikes in Poland and in Brazil assuming that both countries have the same population. According to Statistic Office of Poland (2018), Poland had, on August 2018, 38.420 inhabitants. Brazil in the same period had approximately 208.5 million inhabitants (IBGE, 2018). Thus, it is possible to notice that Brazil has almost 5.5 times more inhabitants than Poland. Because of this, the numbers on Table 1 had two modifications which are: 1. The numbers of strikes in Poland were multiplied to 5.5. This allowed us to know proportionality how many strikes this county would have had if it had the same population as Brazil; 2. As Brazil do not have the data of the work stoppage in 2014 and 2015, to fill the table in those years, it was considered the average of the strikes in Brazil between the years 2009 and 2013 and 2016 and 2017. The result of these modifications is shown on the Table 2.

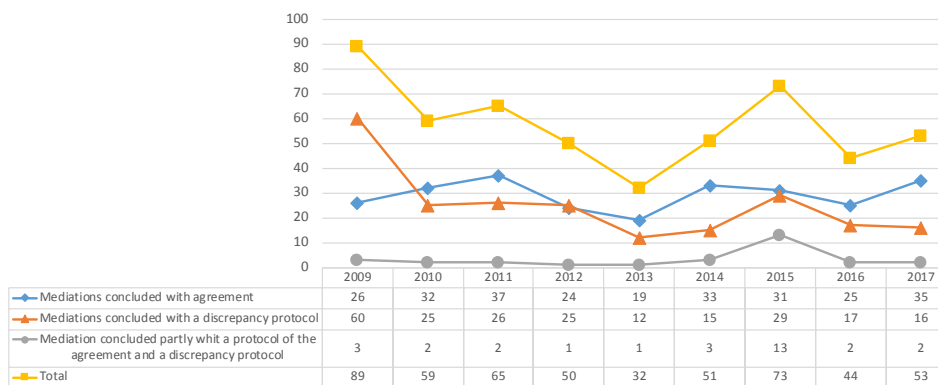


**Table 2. Relative number of strikes in Poland and in Brazil**  
(Ilostat, 2018; Dieese, 2018)

Country	2009	2010	2011	2012	2013	2014	2015	2016	Total
Poland*	270	435	292	94	512	6	77	28	1714
Brazil	518	446	554	873	2050	1157**	1157**	2093	8848

\*The data of strikes in Poland were multiplied by 5,5 according explanation on paragraph above the Table 2. \*\*This number is the average of the strikes in Brazil between the years 2009 and 2013 and the years 2016 and 2017.

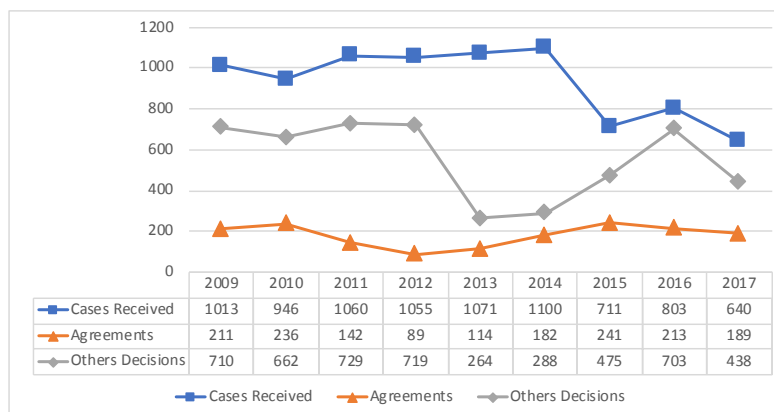
Even with the multiplication of the data of strikes in Poland by 5.5, the total of strikes in Brazil is much higher in this country than it is in Poland. It is possible to notice that the total of work stoppage in Poland during the years 2009 and 2016 with these modifications is 1.714 and in Brazil increase to 8.848. In other words, this data means that in Brazil there were approximately 5.2 more strikes in this county than in Poland. Making this data most comparative as possible, it is necessary to make a question: does mediation could be the reason why Poland has less strike than Brazil? The answer to this question is affirmative. The difference between Polish and Brazilian procedures to solve collective dispute is very narrow. The Polish law demand to apply mediation before the strike. In Brazil, this does not happen. Thus, mediation is one of the reasons of the numbers of strike in Poland be much lower than in Brazil, according to the following paragraphs. In Poland, the procedure of a collective bargaining resolution has a very strong legitimacy concerning legislation as it is mentioned in the constitution. The Republic of Poland Constitution, created on April 2, 1997, refers to discussions with the participation of a labor union society. According to the interpretation of the art. 59 par. 3 of that Act (Poland Constitution), labor unions and companies have the right to participate in the discussion of a collective bargaining during negotiation. In Poland, the numbers of mediation applied to try to solve collective disputes appear on the Figure 1. According to the graph, it is possible to notice that Poland has an effective system of mediation. In almost every year between 2009 and 2017 the numbers of mediation done with agreement was higher than mediation without agreement (with a discrepancy protocol). The exceptions are the years of 2009 and 2012. Without these years (2009 and 2012), it is possible to notice that the data related to mediation with agreement has been improving each year. In 2016, for example, the data of agreement is 1.4 times higher than mediation without agreement. In 2017, this number increased to approximately 2.2. Therefore, mediation is one of the reasons why Poland has had less strikes than Brazil. The data shown above demonstrates that this ADR has been avoiding the strike in Poland. In Brazil, however, mediation is not an obligatory stage before the strike. Actually, there is no possibility of applying mediation in collective disputes in that country. Perhaps, this is one of many points why the numbers of strikes in Brazil is expressively higher when it is compared with Poland's data (Table 1 and 2).



**Figure 1. Results of Mediations in Poland during 2009 to 2017**

(Own study based on *Biblioteka Dialogu Społecznego – Ministerstwo Pracy i Polityki Społecznej, Warszawa 2008 and Informator 2015, MRPiPS, Warszawa 2016*)

As Brazil's law do not allow mediation in collective disputes, in that country the Judiciary System receive every handers of trials which it has not been possible to the Court to judge all of them. Additionally, the managers, companies and workers in Brazil spend a lot of money and time with judicial litigation. These both facts are shown in the Figure 2.



**Figure 2. Number of collective disputes in TST Court in Brazil (Brazil TST, 2016)**

The graph shows the number of cases received related to collective disputes by the Supreme Court of Labor in Brazil (TST); the number of agreements made by the parties with the judge helps (agreements); and the term “other decisions” means that the number of cases which the judge had to judge, because there was no agreement between companies and trade unions. According to the graph it is possible to realize that the Labor Court in Brazil (TST) received 8.399 cases to judge between the years 2009 and 2017. However, just 1.617 trials had agreement made by parties, and only 4.988 had decision from that Court between those years.



If the two last data were summed (agreements and other decision), the result would be 6.605. As TST received 8.399 cases to judge between the years 2009 and 2017, it is possible to say that the Labor Court in Brazil could not complete 1.794 judicial cases. This data can show that companies in Brazil have been wasting a lot of time and money to solve industrial disputes, for instance. TST has a data called Congestion Index (in Portuguese: *Índice de Congestionamento – IC*) which measures the percentage of repressed demands for definitive solutions in the processes under responsibility of TST. It corresponds to the proportion of processes still unresolved. In the last 10 years (1995 – 2015), the average rate of this index was 55.8%. In 2015, the IC was 53.4% (CNJ, 2016). Thus, it is visible that IC in Brazil is really high. The Labor Court in Brazil has been judging less judicial cases than they have been receiving. The application of the mediation in collective disputes would represent tool of industrial conflicts management and it would help to decrease the rate of IC. Thus, it is possible to notice in graph 2 that the quantity of judicial trial that the TST has to judge rests high. When the Court judges a trial, this situation probably not beneficial to the companies, workers and economy, because in a suit process so much time and money is involved when it is compared with mediation. If this ADR is applied, the people involved in dispute decide the dispute. On the other hand, in a judicial trial the judge is not chosen by the parties and it is this authority who will decide the case. Maybe, the application of mediation in collective bargaining management is more adequate to the people involved in a dispute. In Poland, this application has been executed successfully as it was possible to analyse in this section.

### Conclusions

After the analysis of the data shown in this article, it is possible to conclude that mediation is an effective tool for industrial conflict management. Poland has fewer strikes (in absolute and relative numbers) than Brazil as tables 1 and 2 demonstrates. When the number of strikes between those two countries is compared, it is possible to notice that the first country had 311 work stoppage and the second had 6534 strikes (Table 1). The numbers on Table 2 were obtained using the supposition that Poland and Brazil would have the same population. In this case, Poland would have had 1714 strikes and Brazil 8848. Even with this assumption, the Brazilian data is approximately 5.2 times bigger than Polish data. These numbers can show that mediation may be helpful to avoid the strikes in Poland, because it is an obligatory stage before trade unions make a work stoppage. Thus, this ADR helps the companies to spend less money and time to solve industrial conflicts. When mediation is completed with a successful agreement it is a good result for business and for the management of industrial relations. Strike means, at least, less hours of works which is prejudicial to the productivity. More than to avoid strike, mediation is relevant to business, because it is possible to increase control over the outcome, to lower the cost and make the process more efficient and to preserve the good relationships between workers and employers.

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### MEDIACJE W SPORACH ZBIOROWYCH JAKO NARZĘDZIE ZARZĄDZANIA KONFLIKTEM ORGANIZACYJNYM – PRZYPADEK POLSKI I BRAZYLII

**Streszczenie:** mediacje są pozasądową metodą rozwiązywania konfliktów, w których trzecia strona spełnia funkcje facylitacyjne. Mediacje jako metoda alternatywnego rozwiązywania konfliktów jest dostępna w Polsce w rozwiązywaniu sporów zbiorowych, lecz nie w Brazylii. Niniejszy tekst ukazuje, jak i dlaczego metodę tę można zastosować w zarządzaniu konfliktem organizacyjnym powstałym między związkami zawodowymi i pracodawcą w Brazylii. Jakie są ku temu przesłanki oraz jakie korzyści mogą wynikać z wprowadzenia tej metody dla zarządzania konfliktem przemysłowym.

**Słowa kluczowe:** zarządzanie konfliktem organizacyjnym, stosunki przemysłowe, alternatywne rozwiązywanie konfliktów, prawo pracy, mediacje w sporach zbiorowych

#### 集体纠纷调解作为工业冲突管理的工具 - 以波兰和巴西为例

**摘要:** 本文的目的是进行研究。波兰和巴西是一种争议(工业冲突管理)。根据国际劳工组织(ILOSTAT)和巴西讨价还价的其他来源进行了分析。工业冲突管理的结果。

**关键词:** 组织冲突管理, 产业关系, 替代性争议解决(ADR), 集体谈判, 劳动法, 集体纠纷调解