

# Distributive Negotiation Strategies in Labor Litigation: A Brazilian Case

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**Abstract:** *This case study examines the application of distributive negotiation strategies in labor litigation, focusing on a Brazilian case involving 12 clients who hired a lawyer to file a labor complaint against their employer. The negotiating process—which resulted in a favorable agreement for seven clients—emphasizes the importance of utilizing the Zone of Possible Agreement (ZOPA), exploring alternatives, and maintaining effective communication to achieve positive results. A successful agreement was primarily dependent on the lawyer's capacity to examine the company's original bid, and bargain for a better offer. Analysis of findings provides insight into the negotiating process and its implications for future labor conflict settlements. The results of this research may guide the creation of successful negotiation plans in labor lawsuits, thereby helping both companies and workers. Understanding the complexity of labor negotiations enables attorneys and other professionals to negotiate more effectively and achieve more favorable results.*

**Keywords:** Distributive Negotiation; Labor Litigation; Labor Dispute Resolution; Brazil.

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## INTRODUCTION

Labor disputes are a significant concern in Brazil, where workers' rights are protected by labor laws (Barros, 2019; Consolidação das Leis do Trabalho, 1943). The Brazilian labor law, known as the Consolidation of Labor Laws (CLT), provides a comprehensive set of rules and regulations governing employment relationships. However, despite the existence of clear laws and regulations, labor disputes still arise, and negotiation plays a crucial role in resolving these disputes (Dias, 2020; Dias & Lopes, 2021). Productive and successful negotiations require a deep understanding of the Zone of Possible Agreement (ZOPA) and the alternatives (Fisher & Ury, 1981; Lax & Sebenius, 1986). In Brazil, labor negotiations frequently involve complex issues, including salary, benefits, and working conditions, necessitating effective negotiation strategies to achieve favorable outcomes (Dias, 2021; Dias et al.,

2022). This article presents a case study of a successful labor negotiation in Brazil, highlighting the importance of distributive negotiation strategies in achieving a favorable outcome. By examining the negotiation process and strategies employed, this article provides understanding into the subtleties of labor negotiation in Brazil. It offers practical lessons for lawyers, professionals, and organizations seeking to resolve labor disputes effectively. The atmosphere in the forensic environment, characterized by the concentration of parties, representatives, and lawyers, reflected the dynamics inherent to mass conciliation hearings. The pressure was multifaceted, encompassing time management, given the sequence of agendas, the need for speed in decision-making, and the expectation generated by the presence of customers, who, although restrained, underscored the relevance of the moment for their situations (Chopade & Pachghare, 2021). The observation of these elements reinforced the need for a technical and strategic approach that would optimize results within a limited period. In this case, we have preserved the real names and identities for ethical reasons and corporate compliance.

In the complex world of forensic environments, labor disputes and business negotiations can have a significant impact on relationships (Fisher & Ury, 1981; Patton, 2012; Raiffa, Richardson, & Metcalfe, 2002). This study examines the challenges of resolving complex labor disputes in Brazil, emphasizing the importance of effective communication, creative problem-solving, and strategic negotiation (Shell, 2006; Lewicki et al., 2010). By examining the dynamics of this case, we provide insights into the negotiation process and the balance of business relationships. The negotiations involved 14 parties: a lawyer and twelve clients, against their former employer, as outlined by Dias (2020) in Type III negotiation, which involves multiple parties negotiating a single issue, where parties can disrupt operations and threaten relationships (Dias, 2020a, 2020b; Dias, Lopes, & Duzert, 2020; Shell, 2006). Negotiation offers a valuable solution, allowing parties to reach a consensual agreement without third-party intervention (Pruitt, 1981). By adopting a flexible and cooperative approach, businesses can resolve conflicts rapidly and cost-effectively (Fisher, Ury, & Patton, 1981). Effective negotiation is vital in business and dispute resolutions, enabling parties to find mutually beneficial solutions (Salacuse, 2003, 2006). This case study aims to identify key factors that contribute to successful negotiation outcomes in complex business disputes, with a focus on the importance of communication, trust, and creative problem-solving. Through this analysis, we will explore how businesses can navigate challenging negotiations to achieve mutually beneficial agreements.

The research problem centers on labor disputes in Brazil, with a particular focus on the challenges of resolving complex labor disputes through negotiation. The specific case involves 12 employees of a maintenance contracting company who claimed unpaid severance pay, vacation time, and other labor rights, leading to financial hardship and uncertainty. Studying this problem is important because labor disputes can have significant impacts on relationships, financial stability, and overall well-being. Effective negotiation strategies are crucial in resolving these disputes rapidly and cost-effectively. Understanding the dynamics of labor negotiation in Brazil can provide practical lessons for lawyers, professionals, and organizations seeking to resolve labor disputes effectively.

Finally, the case study addresses the problem by examining a successful labor negotiation involving 7 out of 12 employees, where a lawyer employed strategic negotiation techniques. The study highlights the importance of distributive negotiation strategies, effective communication, and creative problem-

solving in achieving a favorable outcome. By analyzing the negotiation process and strategies employed, the case study offers valuable insights into the subtleties of labor negotiation in Brazil and provides practical lessons for professionals and organizations, detailed in the upcoming sections.

## METHODS

This research employs a qualitative approach, which is well-suited for exploring complex organizational phenomena and gaining rich insights (Saunders et al., 2009). An inductive rationale is employed, allowing themes and patterns to emerge from the data (Bryman & Bell, 2015). The interpretive approach recognizes that reality is socially constructed, and meaning is derived from individuals' experiences and perceptions within the organization (Walsham, 1995). This subjective perspective enables a nuanced understanding of the case. A single-case study design is employed, providing an in-depth examination of the Hospital Services organization. According to Yin (2014), this approach is ideal for exploring complex phenomena and gaining detailed insights. Data collection involves document analysis, observations, and interviews, analyzed using content analysis to identify emerging patterns and themes (Miles & Huberman, 1994). This methodology enables an understanding of the case, informing both theoretical and practical discussions.

## BACKGROUND

Twelve employees of a maintenance contracting company, which had agreements with a local municipality for public sector projects, found themselves embroiled in a labor dispute due to unpaid severance pay, vacation time, and other labor rights. Specifically, the employees claimed they had not received their 13th salary<sup>1</sup>, a mandatory annual bonus equivalent to one month's salary, as well as their FGTS<sup>2</sup>, a severance fund to which employers contribute 8% of an employee's monthly salary, according to the Brazilian Labor Law (CLT, 1943). The employees, who had worked on various projects for the company, claimed that their rights had been violated, leading to financial hardship and uncertainty. Seeking resolution, the employees hired a lawyer to file a labor complaint and negotiate a settlement with the company.

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<sup>1</sup> 13th Salary: This is an annual bonus equivalent to one month's salary, paid in two installments. The first installment is typically paid by November 30th and the second by December 20th. The amount is calculated based on the employee's salary and length of service during the year. Established by Law No. 4,090/1962 and regulated by Law No. 4,749/1965, the 13th salary is a constitutional right (Article 7, VIII, of the Brazilian Constitution) that guarantees an annual bonus equivalent to one month's salary for employees.

<sup>2</sup> FGTS (*Fundo de Garantia do Tempo de Serviço*): The fund serves as a safety net and can be accessed by the employee in specific situations, such as dismissal without cause, retirement, or purchasing a home. Created by Law No. 5,107/1966 and currently governed by Law No. 8,036/1990, FGTS is a constitutional right (Article 7, III, of the Brazilian Constitution) that requires employers to deposit 8% of an employee's monthly salary into a restricted bank account linked to the employee.

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The 12 (twelve) clients worked for the same contracting companies and had similar rights; they hired the lawyer in 2022 to file a labor complaint in order to guarantee all rights and fines for late payment. The lawyer settled for seven of these clients in a single hearing, an effort that would have required legal expertise and negotiation skills. The preparation for such an event went beyond the mere review of procedural documents; it involved anticipating scenarios, aligning expectations, and employing appropriate strategy and negotiation techniques.

### **ANALYSIS OF THE NEGOTIATION**

Techniques that were used more simply before the experience of the module. The conduct of the negotiation used the company's first proposal as a reference point. Instead of a direct rebuttal, the strategy involved analyzing the proposal in the context of ZOPA and, based on that, determining the next steps. The perception of the financial and bureaucratic limitations imposed by the company's size and the nature of its contracts with the public sector led to the adoption of a pragmatic stance. Instead of unthinkingly insisting on a nominally higher value, the focus was directed toward presenting robust legal justifications of the clients' rights, combined with arguments about the benefits of immediate conciliation for both parties. It was emphasized that a speedy agreement would eliminate future procedural costs, risks of conviction in higher amounts, and the unpredictability inherent to the judicial process, factors that were of interest to the company.

The analysis of the negotiation scenario revealed the configuration of a "distributive negotiation" inherent to the sharing of a finite resource. The complexity was exacerbated by the presence of a third indirect actor, the Municipality of São Gonçalo do Amarante, which, due to its potential subsidiary liability, gave the situation the qualification of a three-party negotiation - Type III negotiation (see Dias (2020)). This tripartite structure required a thorough understanding of the interests and positions of each involved. The central objective established for the negotiations was not limited to the financial aspect; It was the resolution of the process, which implied the stabilization of legal relations, the regularization of employment relationships, and the satisfaction of recognized labor rights. Such an approach was aimed not only at closing the dispute but also at promoting a comprehensive solution for the workers. One of the principles addressed was the potential advantage of allowing the adverse party to formulate the first proposal. Such a strategy is beneficial when the negotiator has a consolidated reading of the opponent's environment and probable negotiation margins. Instead of starting with a maximum demand that could be perceived as unrealistic and lead to an impasse, waiting for the first offer allows the parties to calibrate the other party's perception of the value of the issue and identify its initial Zone of Possible Agreement (ZOPA).

Based on this precept, the lawyer adopted a posture of active listening and observation. The presentation of the initial terms by the Maintenance Company was received. After analysis, it was found that the proposition was within the pre-established limits for the Possible Agreement Zone (ZOPA) of my clients, validating the internal projections. The ZOPA had been calculated with precision and validation of each of the customers. The process involved individualizing the amounts claimed in each of the seven

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lawsuits, followed by an estimate of the probability of success in an eventual contentious trial. This projection encompassed analyses of recent jurisprudence, the history of the labor court, and the probative value of the elements of each case. Based on these data, a ZOPA spectrum was established for the set of seven lawsuits, ranging from R\$ 375,000.00 (nearly \$70,000), which is the minimum acceptable value, considering the risks and speed of the agreement) to R\$ 500,000.00 (approximately \$100,000). The company's adherence to the initial proposal within this interval confirmed the thoroughness of the prior preparation and signaled a genuine predisposition for conciliation on the part of the company.

The origin of the litigation primarily resided in the recurring absence of payment of severance pay and other labor rights, such as vacation, 13th salary, and FGTS. Such default is not merely an accounting issue; It often reflects systemic failures in personnel management or the company's financial health. This failure was the basis of the conflict, informing the urgency and legitimacy of the workers' demands. Regarding BATNA, the parties elaborated on strategic planning. They contemplated that, in the event an agreement was not reached, the parties would explore their options for pursuing unemployment insurance through the courts or receiving payment in the form of an indemnity from the company. This BATNA was quantified: although it guaranteed a fundamental right of the worker, it implied a reduction in the pecuniary amount to be disbursed by the company of approximately R\$7,500.00 (nearly \$1,200) per client due to the compensatory nature or the lack of need to provide formal guidelines. This knowledge of BATNA's clients provided an accurate measure of the acceptable lower bound for the monetary settlement, and this offered a strategic lever: the lawyer could, if necessary, give in at a higher face value in exchange for the certainty and speed of unemployment insurance, a benefit of direct impact on the life of the worker in transition.

During the development of the negotiation, several "alternatives" were considered. The ideal alternative for clients, from a substantive law perspective, was the full payment of severance payments, accompanied by the respective payment of the Guarantee Fund for Length of Service (FGTS) into the worker's linked account and the issuance of forms for qualification for unemployment insurance. However, the negotiation process required considering "options" that could promote a fair and equitable agreement, even if they did not reflect absolute idealism. Among the strategic options, the inclusion of the amount corresponding to the FGTS in the overall compensation amount stood out. This approach simplified the payment process for the company, eliminating the need for specific banking procedures and ensuring that the customers received the amount owed. Another crucial option was the possibility of unemployment insurance being released through an official letter from the Ministry of Labor or directly by the Labor Court if the company did not provide the guides within the stipulated period. These flexibilities, conceived as options, were instrumental in formulating an agreement that sought a balance between the company's capabilities and the urgent needs of those represented.

## **REACHING THE DEAL**

The conduct of the negotiation used the company's first proposal as a reference point. Instead of a direct rebuttal, the strategy consisted of analyzing the proposal in the light of ZOPA and, from it, building the next steps. The perception of the financial and bureaucratic limitations imposed by the company's size and the nature of its contracts with the public sector led to the adoption of a pragmatic stance. Instead

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of unthinkingly insisting on a nominally higher value, the focus was directed toward presenting robust legal justifications of the clients' rights, combined with arguments about the benefits of immediate conciliation for both parties. It was emphasized that a speedy agreement would eliminate future procedural costs, risks of conviction in higher amounts, and the unpredictability inherent to the judicial process, factors that were of interest to the company.

The negotiation of the installment plan proved to be a decisive element in implementing the agreement. A percentage reduction in the value of the claim was proposed, which, although it implied an adjustment about the initial claim, was justified by the speed of receipt and legal certainty. The proposal of an installment plans commensurate with the company's ability to pay mitigated its immediate financial burden, making the agreement more attractive. This ability to negotiate flexibility in payment terms, based on a clear legal basis and the mutual benefits of the transaction, was what allowed consensus to be reached. The approach was based on rational persuasion, seeking to demonstrate the comparative advantages of an agreement at that time to the detriment of the continuity of the litigation. The negotiation process culminated in its successful conclusion, with the formalization of the agreements. For the seven customers involved, a value of R\$ 400,000.00 (approximately \$72,000) was established. In addition to the pecuniary aspect, essential non-financial terms were ensured: the formal recognition of the employment relationship, which is essential for the regularization of the workers' social security and professional situation, the proper annotations in the work card, and the release of unemployment insurance. Securing these rights, often overlooked in longer proceedings, added significant value to the settlement.

## **LESSONS LEARNED**

From a technical-legal and strategic point of view, the result was evaluated as highly positive. In a context such as the Labor Courts, where obtaining the full amount claimed is the exception, and lawsuits may have an extended duration, sealing an agreement that guarantees clients an average of 75% (seventy-five percent) of the value of the case initially requested represents a favorable outcome. This percentage, considering the scenario of economic uncertainty and the slowness of the judicial system, is considered a pragmatic success, confirming the effectiveness of the negotiation strategy implemented. Despite the success in implementing the agreements, the experience provided valuable insights and opportunities for improvement in future processes. Self-criticism is particularly directed at optimizing the organization and communication with customers. Of the twelve clients represented, an agreement was reached for seven workers. However, the impossibility of effective contact with the five remaining clients on the day of the concentrated hearings prevented the inclusion of their cases in the conciliation of that period. This logistical failure resulted in the postponement of the resolution for these customers, which meant longer waiting times and legal uncertainty for them.

The application of the strategic planning and stakeholder management, highlights the need for even more robust and efficient communication protocols. This fact would include the preparation of a



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contingency plan for contact with all clients, holding more comprehensive pre-hearing meetings to align expectations and obtain powers of attorney for agreements, and utilizing technological tools for mass management and communication. Such measures would mitigate operational failures and maximize reconciliation opportunities in future negotiations of similar volume, ensuring that technical preparation is complemented by flawless logistical execution. Negotiation, as evidenced by this experience, is not restricted to the moment of the negotiation itself but encompasses the entire process that precedes it, from the initial organization to the final communication with all stakeholders.

## DISCUSSION AND IMPLICATIONS

The positive outcome of the negotiations in this example highlights the importance of strategic preparation, effective communication, and adaptability in distributive negotiations (Fisher & Ury, 1981; Lax & Sebenius, 1986). Understanding the Zone of Possible Agreement (ZOPA) and examining the interests of all parties enabled the attorney to negotiate the complexity of labor disputes and secure a favorable arrangement for seven clients. This result is consistent with other studies emphasizing the importance of preparedness and flexibility in negotiations (Shell, 2006; Lewicki et al., 2010). By utilizing ZOPA computation and scenario prediction, the lawyer's method ensured informed decision-making and flexibility in the negotiation dynamics. Dias (2020), who underlines the need to know the interests and points of view of every party in Type III talks, supports this result. Moreover, in line with the principles of distributive bargaining, the lawyer's ability to negotiate flexibility in payment conditions and emphasize the benefits of quick conciliation contributed to creating a mutually advantageous arrangement (Fisher, Ury, & Patton, 1981).

For attorneys, experts, and companies trying to handle labor conflicts properly, the results of this case study have great relevance. As the difficulties in contacting the five surviving customers demonstrate, effective communication and contingency planning can help reduce operational failures and improve reconciliation chances. This case study's findings have broader implications for various fields of research. The principles of distributive negotiation employed in this labor dispute can be applied to other areas, such as buyer-seller negotiations (Dantas & Dias, 2025; Vidaletti & Dias, 2025), business acquisitions (Delgado & Dias, 2025; Gasparini, Vieira & Dias, 2025; Moura & Dias, 2025; Oliveira, Souza & Dias, 2025; Scheuer & Dias, 2025; Soliva & Dias, 2025; Valle et al., 2025; Vidaletti, Ferreira & Dias, 2025), and private equity negotiations (Correa et al., 2025). Additionally, the strategies used in this case can inform research on legal claim negotiations (Barros & Dias, 2025), real estate acquisitions (Lago et al., 2025), and judicial agreements (Bairros et al., 2025; Rico & Dias, 2025; Teodoro & Dias, 2025). Furthermore, the intersection of strategy and legal proceedings, as explored in the context of the court of auditors (Panzarini & Dias, 2025), can also benefit from the insights gained from this study. By examining the applications of distributive negotiation in these diverse fields, researchers can develop a more comprehensive understanding of effective negotiation strategies.

## CONCLUSION

The successful negotiation of labor disputes in Brazil requires a deep understanding of the negotiation process and techniques employed, effective communication, and strategic planning. By turning distributive negotiation strategies into integrative ones and analyzing the interests of all parties involved, it is possible to achieve favorable outcomes that balance the needs of both employees and employers. This case study highlights the significance of preparation, flexibility, and creative problem-solving in labor negotiations in Brazil, offering valuable insights for professionals and organizations aiming to resolve labor disputes efficiently and effectively.

## RESEARCH LIMITATIONS AND FUTURE RESEARCH

This case study has its limitations. Firstly, it focuses on a specific labor conflict in Brazil, which limits the generalizability of the findings to other contexts. Additionally, the research is based on a single example, which may not represent other labor conflicts or negotiation situations. While the qualitative approach provides valuable insights, it may not be scalable or replicable across different populations. Finally, the study emphasizes the lawyer's perspective, which could introduce bias. Future research would benefit from incorporating insights from multiple stakeholders to gain a more comprehensive understanding of the negotiating process. Finally, future studies could expand on this work by examining the application of distributive negotiating techniques in other settings and investigating how technology may facilitate conflict resolution and negotiation.

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