



## Collective bargaining in the public service: *A way forward*

### General Survey concerning labour relations and collective bargaining in the public service ILO 2013

#### Comments and Recommendations for Follow-up by Education International

1. EI welcomes this informative general survey report. It is 35 years since the adoption of Convention 151 so it was indeed high time for the ILC to focus on this crucial issue. We hope it will not be another 35 years until there is a follow-up further review.
2. EI welcomes the Committee of Experts' affirmation of the interdependence of civil liberties and trade union rights and the contribution of collective bargaining to the provision of quality public services. The report further notes that collective bargaining can assist effectively in the fight against corruption and in the promotion of equality.
3. EI notes with satisfaction that the report once again underlines the fundamental rights of teachers in both the public and private education sector to freedom of association and collective bargaining. The Committee notes specifically that the right to collective bargaining should be recognised for public sector teachers, whether or not they are considered in the category of civil servants under national legislation, and for all teaching personnel, including those performing technical and managerial functions in the education sector.
4. In this context, EI recalls that the ILO/UNESCO Recommendation concerning the Status of Teachers clearly requires that salaries and working conditions of teachers should be negotiated by their organisations, through statutory or voluntary machinery (paras 82 and 83) and, that this position has been supported in the subsequent recommendation on Higher Education, and in the recommendations of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART).
5. It is encouraging that the report identifies a global increase in bipartite consultation and collective bargaining in the public sector, most particularly in Europe, Oceania and Latin America. The report also recalls that Conventions 151 and 154 can be ratified, regardless of the size of the country or the numbers employed in the public service, or, indeed, the extent of the informal economy.
6. **However**, in the opinion of EI, the report fails to reflect adequately the general degradation of public service labour relations and social dialogue mechanisms. EI receives a constant flow of reports from its affiliates detailing major obstacles to effective implementation of collective bargaining rights, even in those countries where legislation to permit collective bargaining has been introduced relatively recently, which is the case, for example, in Uganda and Colombia.
7. The Committee rightly notes the generalization, in the public sector, of contracts governed by the general rules of private sector labour law, including short-term or temporary contracts

renewed repeatedly, and the use of service contracts, which are now used frequently in the education sector. The Committee notes that some of these modalities effectively deny workers access to freedom of association and collective bargaining rights, or can dissuade workers from joining trade unions. It recommends, and EI fully endorses the recommendation, that the member States concerned examine the impact of these forms of employment on the exercise of trade union rights (Para 560).

8. EI fully supports the Committee's concern regarding the tendency in certain jurisdictions to favour individual employment rights to the detriment of collective rights. The Committee states categorically that this trend is contrary to the principles of the ILO.

9. Concerning the content of collective agreements, the Committee notes the parties should be free to determine, within the limits of national legislation and of good public order, the content of agreements. It confirms that *"measures taken unilaterally by the authorities to restrict the range of subjects that may be negotiable are often incompatible with the Convention."* It cites a case from the public education sector, where CFA considered that *"determining the broad lines of educational policy, although it is a matter on which it may be normal to consult the teachers' organisations, does not lend itself to collective bargaining but that collective bargaining on the consequences on conditions of employment of decisions on educational policy should be possible"*. (Canada Case 1951).

10. EI encourages governments to adopt examples of good practice noted with interest by the survey. In particular, EI views very positively the quality partnership approaches, described in the report; as well as legislation to provide for the right to collective bargaining for temporary and contract workers in public administration; legislation to provide for the reversed burden of proof in cases of anti-union discrimination; and government awareness-raising programmes, consisting of television and radio broadcasts, and other training activities, to disseminate information on new legislation concerning collective bargaining in the public sector.

11. The survey restates the views of both the Committee of Experts and the Committee of Freedom of Association concerning collective bargaining in times of severe economic crisis. EI has concluded a study of trends in collective bargaining since 2008 and it is clear that, in countries most affected by the economic crisis, many governments have imposed substantive restrictions on collective bargaining rights, in some cases by the use of executive decree law:

- a) The outright revocation of existing collective agreements;
- b) Government imposed wage settlements or wage freezes rather than using existing conciliation and arbitration mechanisms;
- c) Legislation to prohibit strike action and impose mandatory negotiations;
- d) The adoption of new government powers to suspend or modify collective agreements in part or in their entirety, without any obligation to negotiate previously with the unions nor refer the matter to any conciliation or arbitration board or tripartite body;
- e) New legislation to prohibit collective bargaining for the public sector, including for teachers.

12. In this context, and as the survey states, “fully aware of the implications of their position”, the Committee reiterates that collective agreements in force **must** be respected and that any economic stabilisation measures should only come into effect upon the expiry of their term. The Committee also underlines that limitations on the content of future collective agreements, particularly in relation to wages, are **only** admissible on condition that they have been subject to prior consultations with workers’ and employers’ organisations and that:

- (i) they are applied as an exceptional measure;
- (ii) they are limited to the extent necessary;
- (iii) they do not exceed a reasonable period; and
- (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected.

13. EI therefore calls on those governments concerned to carry out an urgent “press-the-restart-button” review. Continuous resort to compulsory arbitration and legislative imposition of cuts in wages and other conditions, over a period of years, are actions which are not only contrary to fundamental ILO principles but, as the report indicates, can pose incalculable risks to democratic institutions.

14. In this context, EI further considers that the Committee’s recommendations, directed at EU, IMF and World Bank, concerning the need for effective consultations with workers’ organisations and the need to fully take into account the obligations of States concerning ILO Conventions, are particularly important. EI is confident that the ILO Governing Body and Office will provide the strong and decisive leadership required to ensure their implementation in practice with the aim of achieving policy coherence throughout the international institutions.

### **EI Recommendations on the Way Forward**

15. EI proposes the following recommendations for immediate follow-up:

- a) Governments of those countries which have not yet done so, should seek to ratify Conventions 151 and 154 within the shortest possible timeframe;
- b) Governments should establish a tripartite mechanism to review the functioning of the current collective bargaining or consultation mechanisms in the public sector with a view to strengthening their provisions;
- c) Government of those countries which have established joint public sector negotiating councils and other national social dialogue mechanisms should review their functioning with a view to ensuring that these mechanisms are working effectively, meeting regularly, are sufficiently resourced and that parties have available to them the necessary economic and social data to inform the negotiations;
- d) Governments, which are currently subject to an examination by ILO supervisory mechanisms concerning the right to freedom of association and collective bargaining in the public sector, fully implement the recommendations of those bodies, in

consultation with the social partners, and where necessary, avail themselves of ILO technical assistance.

16. Given the importance of this issue, which goes to the core of ILO's mandate, EI also proposes that the ILO adopt a **4 year integrated action programme on the promotion of collective bargaining in the public sector**. It could build on the existing Sectoral programme to promote ratification of Conventions 151 and 154 and plans, within the 2014-15 Programme and Budget for a promotion of the *Handbook of good human resource practices in the education sector*. It could also contribute to "Strengthening workplace compliance through labour inspection".

17. While the proposed programme may encompass all major sectors with a public service component, including education, health, media, postal services and transport, it should have a strong focus on sector specific activities. The programme could have the following modalities of action:

- a) Promotional campaign for the ratification of Conventions 151 and 154 through the production of publicity materials (posters, background notes and leaflets); and a prominent and active information hub on the ILO website;
- b) Exchange of information through an electronic newsletter;
- c) Sub-regional tripartite training programmes (regions to be determined, but certainly Arab region and Asia Pacific);
- d) Specific national action plans, with a view to establishing or strengthening:
  - partnership agreements for quality public services;
  - bipartite mechanism to address the incidence of precarious forms of employment in the public service;
  - national negotiating bodies and disputes resolution machinery;
  - in-built monitoring mechanisms.
- e) Bi-partite study or exchange programmes to review bargaining systems and related issues;
- f) Training programmes for law enforcement services regarding freedom of association;
- g) Training programmes on Conventions 151 and 154 for international financial institutions involved in country assessment missions related to economic stabilization schemes, leading to agreement on a model standard compliance mechanism for the country memorandum of understanding.

18. EI would further recommend establishing a small working group to include the participation of interested global unions to assist in the initial design, implementation and monitoring of this 4 year action programme to promote collective bargaining in the public sector.

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