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

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

Executive Summary by Education International

1. This is the very first time that the ILO has conducted a survey on collective bargaining in the public service. The survey focuses on the application of the Conventions 151 and 154 (appendix 1) and their corresponding recommendations which were adopted over 30 years ago in 1978 and 1981[i]. The report is published in the name of the Committee of Experts on the Application of Conventions and Recommendations (hereinafter "the Committee") and analyses the scope, significant features, implementation and impact of these instruments.

2. The Committee refers to the long-standing demand of the trade union movement for global recognition of the right to collective bargaining in the public sector. (Para 226) It appeals to member States to ratify the Conventions. The Conventions 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 (Para 601). To date, 48 countries have ratified Convention 151, and 43 countries have ratified Convention 154, out of which 29 have ratified both Conventions (list of countries in appendix 2).

3. The report observes a global expansion towards bipartite consultation and the right to collective bargaining in the public administration sector in Europe, Oceania and Latin America, in a considerable number of African countries and in a number of Asian countries. (Para 237) Collective bargaining on wages currently now takes place in almost all countries in Europe and the Americas. (Para 325) However, the report fails to reflect adequately the general degradation of public service labour relations and social dialogue mechanisms.

4. The Committee emphasises the benefits of collective bargaining in the public sector and its positive impact on the delivery of quality public services. The report provides many arguments to support this position (see among others Paras 28, 80, 225). Collective bargaining can also contribute to the fight against corruption and the promotion of non-discrimination and equality. (Para 229)

5. Under the terms of Conventions 151 and 154, the right to collective bargaining covers employees of public enterprises, municipal employees, employees of decentralised institutions and public sector teachers, whether or not they are considered under the national legislation as being in the category of public servants. **"The right to collective bargaining should be recognized for teaching personnel in educational institutions, as well as those performing technical and managerial functions in the education sector." (Para 257**)

6. There should be no restrictions on the content of collective bargaining agreements, which can deal with "all conditions of work and life, including social measures." It cites a useful case from the public education sector, where the Committee on Freedom of Association considered that "determining the broad lines of educational policy", although it is a matter on which it may be normal to consult the teachers' organizations, 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 n°1951) (Para 315)

7. The range of issues dealt with in collective bargaining has expanded over the years and can now include protection of fundamental rights and individual privacy, dignity at work, gender and parity issues, anti-harassment measures, protection of the workplace, family responsibilities, maternity, and prevention of occupational risks. Issues relating to transfer, dismissal and reinstatement, check-off systems for union dues collection and other facilities for union representatives can also be included and should not be determined solely by law. (Para 317)

8. The Committee emphasises that when the public authorities and trade unions conclude a collective agreement on wage increases in the public administration or other clauses with budgetary implications, it is essential that the legislative assembly ratifies the outcome of collective bargaining. (Para 336)

9. The Committee is concerned that certain practices which are contrary to the Conventions appear to be quite common:

- the slowness of judicial procedures in cases of anti-union discrimination;
- requirements for trade unions to represent an excessively high proportion of workers to be recognised or to engage in collective bargaining, which is an effective denial of the right to bargain;
- the exclusion of certain subjects from collective bargaining;
- restrictions on the right to determine the level of bargaining;
- prohibition of collective bargaining for specific categories of workers or by federations and confederations. (Para 552)

10. The Committee criticises the increasing use of precarious forms of employment in the public sector, such as:

- private law, short-term or temporary contracts which are repeatedly renewed;
- civil or administrative contracts for the provision of services in order to perform permanent statutory tasks.

These types of contracts impact on the right to freedom of association and collective bargaining. They avoid Constitutional requirements regarding recruitment procedures in public administration and can deny workers access to freedom of association and dissuade workers from joining trade unions and impede collective bargaining. (Para 235) The Committee

recommends that member States concerned examine, within a tripartite framework, the impact of precarious forms of employment on the exercise of trade union rights. (Para 560)

11. The report refers to the issue of collective bargaining in times of severe economic crisis. In this context, "fully aware of the implications of their position", the Committee states 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. (Para 342) The Committee also states 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 meet the following conditions:

- they are applied as an exceptional measure;
- they are limited to the extent necessary;
- they do not exceed a reasonable period; and
- 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. (Para 341)

12. On the basis of the ILO missions to Greece, the Committee appeals to the EU, IMF and World Bank to hold "effective consultations" at the national level with workers' and employers' organisations. When drawing up economic stabilisation plans, all international organisations should take fully into account the obligations of States, arising from their ratification of ILO Conventions, and particularly those concerning collective bargaining. (Para 346)

13. The report includes a section on country examples of existing bargaining systems, with studies from South Africa, Argentina, Australian Federal Services, Canada, Spain, USA, Finland, France, Japan, New Zealand, Philippines, and Senegal. (Part II Section XIV)

14. The report lists an extensive range of possible measures to promote collective bargaining in the public sector, including knowledge sharing on the Conventions, national legislation and practice; training on negotiating techniques, preparation of labour statistics and economic data to inform bargaining, and tripartite review mechanisms and strengthening of dispute resolution machinery. (Para 387);

15. The report notes that the ILO also offers mediations services, at the request of the government, in those countries where it is intended to submit a case to the Committee of Freedom of Association or where the case has already been submitted. (Para 496)

More technical points

16. Conventions 151 and 154 grant the right to consultation and/or collective bargaining to public servants engaged in the administration of the State, who could be excluded from the right to collective bargaining in the context of Convention 98 (Right to Organise and Collective Bargaining Convention, 1949) (Para 254). Convention 98 offers more favourable provisions to

workers than Convention 151 in sectors such as public education where both conventions are applicable, since Convention 98 Article 4 includes the concepts of voluntary negotiation and the independence of the negotiating parties. (Para 59)

17. Legislation on anti-union discrimination and interference in the public sector generally exists, but sanctions are often weak, and threats, transfers or dismissals of trade union officials are common. Law enforcement services should be given specific training regarding freedom of association in order to avoid violence and arbitrary arrests. (Para 82)

18. Legislation that allows removal or dismissal "without cause" is not compatible with the Convention, but it is a particular problem in the case of contractual employees in the public administration. (Para 112) There is an example of good practice where some national jurisdictions have reversed the burden of proof in cases of presumed anti-union discrimination. (Para 109)

19. Trade union representatives should be granted the following key facilities:

- right to collection of trade union dues (for example, through the check-off system);
- time off without loss of wages or benefits to allow representatives to perform their functions;
- access to the workplace and prompt access to the management.

The Committee has requested the granting of additional facilities when it considers they are not sufficient (§143, 145). It also notes that union security clauses are compatible with the Convention when voluntarily agreed between the parties. (Para 121)

20. Where a system of union recognition exists, decisions should be based on objective and pre-established criteria and should not encourage the proliferation of organisations covering the same categories of employees. (Para 221)

21. Some developing countries have opted for compulsory systems of conciliation or mediation, and in many cases compulsory arbitration. Compulsory arbitration is only compatible with the Convention as an exception, in cases of disputes in the public service involving public servants engaged in the administration of the State, in the case of the conclusion of a first collective agreement, in essential services in the strict sense of the term, or in the event of an acute crisis. (Paras 480, 481)

22. Convention 151 does not cover the right to strike. If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to impartial and rapid dispute settlement.

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[i] Labour Relations (Public Service) Convention, 1978 (No. 151), Collective Bargaining Convention, 1981 (No. 154), Labour Relations (Public Service) Recommendation, 1978 (No. 159), Collective Bargaining Recommendation, 1981 (No. 163)