

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 1981¹. 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

¹ 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)

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.

<end>

ANNEX 1: Texts of ILO Conventions C151 and C154

C151 - Labour Relations (Public Service) Convention, 1978

Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (Entry into force: 25 Feb 1981)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Noting the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Workers' Representatives Convention and Recommendation, 1971, and

Recalling that the Right to Organise and Collective Bargaining Convention, 1949, does not cover certain categories of public employees and that the Workers' Representatives Convention and Recommendation, 1971, apply to workers' representatives in the undertaking, and

Noting the considerable expansion of public-service activities in many countries and the need for sound labour relations between public authorities and public employees' organisations, and

Having regard to the great diversity of political, social and economic systems among member States and the differences in practice among them (e.g. as to the respective functions of central and local government, of federal, state and provincial authorities, and of state-owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships), and

Taking into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument, owing to the differences in many countries between private and public employment, as well as the difficulties of interpretation which have arisen in respect of the application of relevant provisions of the Right to Organise and Collective Bargaining Convention, 1949, to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight the following Convention, which may be cited as the Labour Relations (Public Service) Convention, 1978:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.
2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.



3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Article 2

For the purpose of this Convention, the term **public employee** means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term **public employees' organisation** means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 4

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;

(b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

Article 5

1. Public employees' organisations shall enjoy complete independence from public authorities.

2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

PART III. FACILITIES TO BE AFFORDED TO PUBLIC EMPLOYEES' ORGANISATIONS

Article 6

1. Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.

3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

PART IV. PROCEDURES FOR DETERMINING TERMS AND CONDITIONS OF EMPLOYMENT

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.



PART V. SETTLEMENT OF DISPUTES

Article 8

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

PART VI. CIVIL AND POLITICAL RIGHTS

Article 9

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

PART VII. FINAL PROVISIONS

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.



Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

C154 - Collective Bargaining Convention, 1981

Convention concerning the Promotion of Collective Bargaining (Entry into force: 11 Aug 1983)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June 1981, and

Reaffirming the provision of the Declaration of Philadelphia recognising "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining", and noting that this principle is "fully applicable to all people everywhere", and

Having regard to the key importance of existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Collective Agreements Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, the Labour Relations (Public Service) Convention and Recommendation, 1978, and the Labour Administration Convention and Recommendation, 1978, and

Considering that it is desirable to make greater efforts to achieve the objectives of these standards and, particularly, the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949, and in Paragraph 1 of the Collective Agreements Recommendation, 1951, and

Considering accordingly that these standards should be complemented by appropriate measures based on them and aimed at promoting free and voluntary collective bargaining, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Collective Bargaining Convention, 1981:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all branches of economic activity.
2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 2

For the purpose of this Convention the term **collective bargaining** extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 3

1. Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term **collective bargaining** shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term **collective bargaining** also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned.

PART II. METHODS OF APPLICATION

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

PART III. PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Article 7

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.



PART IV. FINAL PROVISIONS

Article 9

This Convention does not revise any existing Convention or Recommendation.

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

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2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

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The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:



(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

ANNEX 2: Ratifications of ILO Conventions C151 and C154

Country	C 151	C 154	Country	C 151	C 154
Albania			Luxembourg		
Antigua and Barbuda			Mali		
Argentina			Mauritius		
Armenia			Moldova		
Azerbaijan			Morocco		
Belarus			Netherlands		
Belgium			Niger		
Belize			Norway		
Benin			Peru		
Botswana			Poland		
Brazil			Portugal		
Chad			Romania		
Chile			Russian Federation		
Colombia			Saint Lucia		
Cuba			San Marino		
Cyprus			Sao Tome and Principe		
Denmark			Seychelles		
El Salvador			Slovakia		
Finland			Slovenia		
Gabon			Spain		
Georgia			Suriname		
Ghana			Sweden		
Greece			Switzerland		
Guatemala			Tanzania		
Guinea			Turkey		
Guyana			Uganda		
Hungary			Ukraine		
Italy			United Kingdom		
Kyrgyzstan			Uruguay		
Latvia			Uzbekistan		
Lithuania			Zambia		
			Total ratifications	48	43