



Education International

Study on trends in freedom of association and collective bargaining in the education sector since the financial crisis

2008 - 2013



Report commissioned by Education International

Nora Wintour

SEPTEMBER 2013



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Any errors and omissions are the responsibility of the author alone.

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PREFACE

In many countries, the financial crisis since 2008 has been used by government as a justification to cut education budgets and in particular salaries and benefits of the education workforce. Trade unions have faced unprecedented challenges to maintain existing rights and representation and to uphold and strengthen collective bargaining provisions.

Education International commissioned this study to examine trends in freedom of association and collective bargaining in selected countries throughout the world, both in countries which have been deeply affected by the crisis, such as the USA, Spain and Greece, as well as those countries which have continued to enjoy relatively continuous economic growth, such as Brazil and Ghana.

The study provides a general overview of the extent to which teachers are allowed to form and join trade unions as opposed to professional associations and the framework and scope for collective bargaining where permitted. It seeks to identify and explain the changes that have taken place over the last 4 years since 2008 in the selected countries. Finally, the study identifies a few cases of good practice in relation to strengthened social dialogue and the types of strategies that unions have employed to defend and promote freedom of association and collective bargaining.

Fred Van Leeuwen,
General Secretary
Education International

METHODOLOGY

The study is largely based on a questionnaire sent out to EI members in the selected countries, which was supplemented with individual interviews with key informants in the unions. A first draft of the country report was then referred back to the EI affiliates for comments and final additions. Background information and legal texts were largely accessed through the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO Committee on Freedom of Association and the ILO NATLEX database, together with other ILO reports and the reports on the ILO/UNESCO Committee on the Application of the Recommendations on Teaching Personnel (CEART). In the case of Europe, the European Industrial Relations Observatory On-line (EIRO) representativeness studies of the European social partner organisations in the education sector have also provided valuable background information. The ITUC Annual Surveys on Trade Union Rights and the EI Barometer were also very useful reference sources.

The selection of countries for this study was carried out by the Education International regional and headquarters staff in order to get a representative cross-section of situations throughout the world. Although the original intention had been to include countries from the Middle East and North Africa region, owing to the current political situation, it has not been able to complete the study in that region.



INTRODUCTION

For EI and its affiliates, for the achievement of quality education for all, teachers must be treated as professionals and workers covered by the fundamental rights at work. “The freedom to associate and form representative democratic independent unions should apply to teachers and education employees in all territories, at all levels and in all education institutions, whether public or private. These trade union rights, including the right to strike, should be respected by public authorities... Salaries, working conditions and career structures must be negotiated with unions through a collective bargaining process.”¹

However, in practice, the employment status of teachers varies widely in different parts of the world, as well as their right to associate, bargain collectively and exercise the right to strike. These variations are largely a result of different concepts of the “public sector” and “public employee” and the exclusions and restrictions imposed on public employees by public authorities, whether at central or local level, coupled with changes in the contractual arrangements of teachers, in particular the increasing use of precarious arrangements.

The ILO General Survey concludes: “In recent decades the adoption (and ratification by a large number of States) of Conventions Nos. 151 and 154 has led to a common understanding in the international community that terms and conditions of employment in the public service cannot be determined unilaterally, and that an adequate framework for doing so must include full participation of public employees’ trade unions. As part of this trend, a global tendency may be observed towards widespread bipartite consultation and a marked expansion in the right to bargain collectively on terms and conditions of employment in the public administration in Europe and Latin America, a large number of African countries and a number of countries in Asia and Oceania.”²

Status of teachers

Teachers in publicly funded education are generally appointed as public employees and are thus covered by public sector labour relations legislation. This legislation can either be specific to the teaching profession, or else cover certain categories of public employees, normally those employed in public administration and public services but not public enterprises. In some countries, teachers are recruited as part of the civil service, those engaged directly in the administration of the State, within which category teachers have been included.

¹ *Education International Policy Paper on Education “Building the Future through Quality Education”* p.10

² Para 581 “*Collective bargaining in the public sector: a way forward*”, *General Survey concerning labour relations and collective bargaining in the public sector, Report of the Committee of Experts on the Application of Conventions and Recommendations Report 111 Part 1B 102nd International Labour Conference 2013*

However, in any given country, the employment status of teachers is not always the same. Increasingly teachers are contracted on short-term or fixed-term contracts, which are renewed recurrently, under general labour legislation applicable to the private sector, while waiting for new permanent public employee posts to be opened. Teaching assistants, or teachers without the qualification threshold for appointment as a public employee, may also be employed under general labour legislation. Further in some countries, teachers can have a different contractual status, with the evident example of Germany, where a distinction is made between civil service (*Beamte*) and public employees (*Angestellte*). In addition, teachers in the private sector in some countries are employed under general labour legislation.

In the EU (27) states, the status of teachers as a career civil servant is less widespread than before.³

The Right to Organise

ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise clearly recognises the right to organise of workers in both the private and the public sectors. Article 2 states: “Workers and employers, without distinction whatsoever, shall have the right to establish (...) organisations of their own choosing without previous authorisation.”

However, in some countries, certain categories of teaching staff are excluded from the scope of the legislation governing relations in the public service, usually those in managerial or decision-making roles, as in the case of certain Provinces in Canada. However, the ILO Conventions only limit the application of the fundamental rights to the Police and Army.⁴ The ILO Committee on Freedom of Association and Committee on the Application of Conventions and Recommendations have on a number of occasions specifically cited teachers as having the right to organise.⁵

Further the ILO Convention recognises the right of public employees to form associations, not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests.

³ European Commission Staff Working Document “Supporting the Teaching Profession for Better Learning Outcomes” SWD (Final) 374/Strasbourg 20.11.2012

⁴ ILO, *Freedom of association and collective bargaining, General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), International Labour Conference, Report III (Part 4B), 81st Session, Geneva, 1994, para. 49.*

⁵ *ibid* para. 86.



The Right to Collective Bargaining

Collective bargaining contributes to the establishment of fair working conditions and other benefits, and is integral to the provision of high quality education services. Furthermore, it is the basis for preventing labour disputes and determining procedures for settlements, particularly in the context of economic crisis or other special circumstances.

The ILO Committee on Freedom of Association and Committee on the Application of Conventions and Recommendations have specifically recognised the right of teachers to bargain collectively. It is relevant to cite a recent example from Germany concerning ILO Convention No 98:

“The Committee once again recalls that it is contrary to the Convention to exclude from the right to collective bargaining those categories of public employees who are not engaged in the administration of the State. In this respect, the Committee considers that teachers carry out different duties from officials engaged in the administration of the State, and therefore of the “BUND” and should enjoy the guarantees provided for under Article 4 of the Convention.”⁶

The ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining Convention Article 6 only limits this right to the Police and the Armed Forces and those public servants directly engaged in the administration of the State.⁷ Article 6 states that: “This Convention does not deal with the position of public servants engaged in the Administration of the State, nor shall it be construed as prejudicing their rights or status in any way.”

ILO Convention No 151 (1978) Determination of Terms and Conditions in the Public Service sought to strengthen the right of public servants to negotiate their terms and conditions but also allowed for “other methods as will allow representatives of public employees to participate in the determination of these matters.”⁸ Again the only exclusions were the Police, the Armed Forces and senior managerial positions.

The ILO Convention No 151 allows for a more flexible interpretation than EI and its affiliates would prefer, as it allows for both collective bargaining and for consultations. It considers that “negotiations need not necessarily lead to legally binding instruments so long as account is taken in good faith of the results of the negotiations in question.”⁹ The ILO

⁶ See *inter alia* CEACR report adopted 2009, published 99th Session ILC 2010 Germany ILO Convention 98

⁷ ILO, *Freedom of association and collective bargaining, General Surveys of 1973 and 1983, paras 138 and 155, respectively*

⁸ ILO convention 151, Article 7

⁹ See *idem* CEACR report adopted 2009 Germany

Committee of Experts also considers that a legislative provision, which allows Parliament or the competent budgetary authority to set upper or lower limits for wage negotiation or establish a budgetary package within which the parties may negotiate, is in conformity with the Convention.¹⁰

The Committee on Freedom of Association has also observed that Article 4 of Convention No. 98 offers more favourable provisions to workers than Article 7 of Convention No. 151 in a branch of activity such as that of public education, where both Conventions are applicable, since it includes the concept of voluntary negotiation and the independence of the negotiating parties. In such cases, taking into account Article 1 of Convention No. 151, Article 4 of Convention No. 98 should be applicable in preference to Article 7 of Convention No. 151, which calls upon the public authorities to promote collective bargaining either by means of procedures that make such bargaining possible, or by such other methods as will allow public servants to participate in the determination of their terms and conditions of employment.¹¹

ILO Convention No 154 (1981) Promotion of Collective Bargaining applies both to the private and public sector, again with the only exception of the Police and Armed Forces. The adoption of Convention 154 marked international recognition that collective bargaining is the preferred method of determining terms and conditions of employment in both the public and private sector.¹² However, in the public sector, the Convention again does provide for special modalities to be established by national laws or regulations.

Models of collective bargaining

EIRO has provided the following definition: "Collective bargaining in the genuine sense implies joint regulation of employment terms following negotiations between parties with equal bargaining rights. From a legal perspective, genuine collective bargaining means that the law on collective bargaining which applies to the private sector also applies to the public sector."¹³

There are a wide variety of models whereby trade unions can enter a process of consultation or de facto negotiations with the authorities, while the statutory power to determine the employment terms unilaterally remains with the State authorities. There are also intermediate situations in that legally, there is unilateral determination by the State authorities in formal

¹⁰ Gernigon, Bernard, *labour relations in the public and para-public sector*, Working Paper ILO 2007, p.10

¹¹ *Idem* Gernigon p.13

¹² *Idem* Gernigon p.14

¹³ *European Industrial Relations Observatory On-line (EIRO) representativeness studies of the European social partner organisations in the education sector: comparative study* http://www.eurofound.europa.eu/eiro/studies/tn1001017s/tn1001017s_1.htm accessed 21.11.2012



terms, but this determination has been preceded by de facto negotiations, which are generally regarded as binding in practice.¹⁴

The right to strike and essential services

In the view of the Committee on Freedom of Association and the Committee of Experts, the prohibition of the right to strike is permitted in the case of essential services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and in cases of public servants exercising authority in the name of the State. The Committee considers that teachers do not fall within the category of public servants exercising authority in the name of the State. On the other hand, principals and vice-principals in educational establishments may be considered as exercising authority in the name of the State and their right to strike may therefore be restricted or prohibited.

Some countries have sought to include teachers within the definition of essential services and thus limit their right to strike. In this regard, EI fully supports the ILO position that teachers do not provide essential services in the strict sense of the term and therefore may exercise the right to strike without undue restrictions. However, the ILO has also considered that in certain circumstances the maintenance of a minimum service may be envisaged.¹⁵

Civil and political rights

The ILO has repeatedly noted the inter-relationship between the exercise of civil and political rights and the right to freedom of association. In countries where freedom of expression and assembly are denied, where arbitrary detentions occur and there is no guarantee of a fair trial, there can be neither meaningful exercise of freedom of association nor collective bargaining.

Exceptional economic circumstances

Since the 2008 financial crisis, some governments have argued that because of exceptional economic circumstances, it is necessary to revoke existing collective agreements, impose wage settlements and other terms and conditions through legislation, in some cases retrospectively or for extended periods of time in the future, and adopt back-to-work legislation rather than use existing conciliation and arbitration machinery.

¹⁴ *ibid*

¹⁵ *para 130 p. 52, General Survey on fundamental Conventions concerning rights at work in the light of the ILO Declaration on Social Justice for a Fair Globalization 2008 Report of the Committee of Experts 111 (Part 1B) 2012*

In this regard, in the view of the Committee of Experts, it is not in conformity with the Convention and the principles of free collective bargaining for a Parliament to modify or reject an agreement previously concluded between the public authorities. The Committee has further indicated that priority should be given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector in a context of economic stabilisation.¹⁶

In addition, the Committee considers that restrictions on the content of future collective agreements, particularly in relation to wages, imposed by the authorities because of major economic and social policy consideration are admissible only if preceded by consultations with the organisations of workers and employers and meet the following conditions: they are applied as an exceptional measure, and only to the extent necessary; they do not exceed a reasonable period, and they are accompanied by adequate guarantees designed to effectively protect the standards of living of the workers concerned, particularly of those likely to be most affected.¹⁷

¹⁶ *Idem Gernigon p.19* See also ILO Committee on Freedom of Association 364th Report Case 2821 on Canada where the Committee states: *The Committee regrets that the Government felt compelled to resort to such retroactive measures and trusts that it will refrain in the future from having recourse to retroactive intervention in the collective bargaining process.*

¹⁷ *B. Gernigon, A. Odero and A. Guido: Collective bargaining: ILO standards and principles of the supervisory bodies (Geneva, ILO, 2000), 75–77. [As reproduced in V. Ratnam and S. Tomoda: Practical guide for strengthening social dialogue in public service reform (Geneva, ILO, 2005).]*



AFRICA

GHANA¹⁸

El affiliates

- GNAT** Ghana National Association of Teachers
NAGRAT National Association of Graduation Teachers
TEWU Teachers and Educational Workers Union

Other unions

- University Teachers' Association of Ghana (UTAG)
Federation of University Senior Staff Association of Ghana (FUSSAG)
Polytechnic Teachers' Association of Ghana (POTAG)

Union Density Rate: around 30% of the formal workforce

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1965
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1959
- C. 100 Equal Remuneration (1951) ratified 1968
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1961
- C. 144 Tripartite Consultations (1976) ratified 2011
- C. 151 Labour Relations (Public Service) (1978) ratified 1986

Background

Education Reform

The last major reform of the education system was in 2008 with the new Education Act, which replaced the 1961 Education Act. Universal Basic Education now comprises 11 years up to Junior High School and it is both free and compulsory. The reform included the up-grade of teacher training colleges and improvements to conditions of service. The reforms were designed to refocus resources onto primary education and to address falling educational standards, insufficient teacher training facilities, an inadequate number of qualified teachers and the under-funding of education at tertiary level. The provision and management of basic and second cycle schools was to be devolved onto the District Assemblies, which were

¹⁸ Grateful acknowledgements to Irene Duncan Adanusa, General Secretary, Ghana National Association of Teachers, who provided valuable information and comments for this country study.

to set up a District Education Oversight Committee, with one representative of the teachers' association and a District Education Directorate. However, the implementation of these reforms remains a challenge.

The Ghana Education Service coordinates national education policy for pre-tertiary education. The Ghana Education Service Act 1995 (act 506) recognised the GNAT and TEWU as organisations which may make representations to the Ghana Education Service Council on terms and conditions of service. The Council also grants a check-off system for the collection of membership fees. The National Inspectorate Board inspects schools and evaluates the quality of both the management and teaching; the National Teaching Council sets professional standards, is responsible for the registration of teachers and has a disciplinary committee. The National Council for Tertiary Education has a similar function. The National Council for Curriculum and Assessment includes representatives of teachers' associations on the council.

There is also a Consultative Council of Teachers' Associations which acts as a professional development group for specialised subject teachers.

While access to education has improved, literacy rates for young adults is 80% and the net enrolment rate at primary school is 76%, a continuing challenge is the rate of drop-outs and repetition of years, and learning outcomes, particularly in rural areas. Only 5% of children are reaching the country's mastery level in English and 10% in maths.¹⁹

There remains an acute shortage of qualified teachers. The percentage of qualified teachers at primary level dropped to a low of 46% in 2009 from 65% in 2002, reflecting problems related to recruitment and retention of qualified staff, particularly as a result of migration overseas.

Industrial Relations Framework

Freedom of Association

The 1992 Constitution guarantees freedom of association. The Labour Act 2003 reaffirmed this right, although the ILO has requested amendments, concerning certain exclusions, including the right of workers in managerial and decision-making functions to establish and join organisations of their own choice, the exclusion of security and intelligence staff and a broad definition of the prohibition of the right to strike in essential services.²⁰

¹⁹ *From Schooling Access to Learning Outcomes: An Unfinished Agenda An Evaluation of World Bank Support to Primary Education 2006 World Bank Washington*

²⁰ *CEACR report adopted 2011 and published at 101st Session ILC 2012*



The Labour Act allows for two or more workers to form a trade union if they are in the same undertaking, which has resulted in a proliferation of trade unions. Teachers are part of the public sector workforce and can form and join trade unions freely and have the right to strike. In Ghana, the civil service also have the right to form and join trade unions.

The Ghana National Association of Teachers was established in 1932, and was formally recognised as a teachers' organisation during the government of the First Republic (1957-66). It was not registered as a trade union until the passage of the Labour Act 2003. The other trade unions in the non-tertiary sector are NAGRAT and TEWU. Both TEWU and FUSSAG form part of the Ghana Trade Union Congress.

Collective Bargaining

The 1965 Industrial Relations Act recognised for the first time the right of public sector workers to bargain collectively, although it was limited in scope and level. The Public Services Commission Act of 1994 established the Public Services Joint Standing Negotiating Committee, which exists today although it is now regulated under the provisions of the new Labour Act.

The Labour Act 2003 regulates trade union recognition for collective bargaining purposes and requires that the Chief Labour Officer issues a bargaining certificate to the most representative union organising in that category of workers. The ILO has questioned the discretionary nature of this authority.

GNAT was issued with a collective bargaining certificate in 2006 and is authorised to negotiate salaries and conditions of service on behalf of the other unions in the education sector within the framework of the Public Services Joint Negotiations Committee. The right to strike, granted under the new Labour Act of 2003, has considerably strengthened the position of the teachers' unions.

The National Labour Commission was also established under the Labour Act to facilitate and settle industrial disputes using dialogue. Its mandate includes all employees and workers, with the exception of the Armed Forces, Police and Prison Services and Customs and Excise Services.

The Trade Union Congress, the main trade union centre, is represented on the Fair Wages Commission, National Labour Commission and the Social Security National Insurance Trust (SSNIT). The Ghanaian government ratified the ILO Convention 144 on Tripartite Consultation (1976) in June 2011, an indication of its intention to promote social dialogue at all levels.

The Fair Wages and Salary Commission (FWSC) was set up by a Parliamentary Act in 2007:

- a) to ensure fair, transparent and systematic implementation of the Government public service pay policy;
- b) to develop and advise Government on and ensure that decisions are implemented on matters related to salaries wages, grading and classification.
- c) to undertake negotiations where compensation is financed from public funds.²¹

The Commission is responsible for public service pay policy and was set up to undertake a public sector wide job evaluation in order to transfer public sector workers onto a Single Spine Salary System (SSSS). It is also responsible for the coordination of the public sector collective bargaining processes and “to develop a mechanism within the public service salary system to attract and retain critical skill”.²²

Ghana's Public Sector Job Evaluation Exercise and Single Spine Salary System

The job evaluation exercise was a mammoth task undertaken over a two year period and involving over 470,000 public sector workers from over 80 public sector institutions. The so-called migration of public sector workers onto the new system took place starting January 2010 and was completed in December 2011. Previously, public sector workers had been operating under 100 separate salary structures. The education and health services had been part of the Ghana Universal Salary Structure, but there were many other schemes in place.

The new Single Spine Salary System (SSSS) comprises 25 grades and its aim was not only to enhance the level of objectivity in salary administration but also to ensure that the public sector was a profession of choice through including market or retention premia.

The GNAT participated actively on committees and working sessions to design the placement of teachers on the new salary scale. The GNAT was also able to negotiate a higher (15%) retention premium for all teachers in the pre-tertiary sector as a motivation to keep them in the teaching service.

The CEACR²³ has raised concerns as to the extent to which the job evaluation exercise took into account the principle of equal pay for work of equal value, noting that the September 2008 Ghana Living Standards Survey²⁴ estimated that on average men receive higher wages than women. It has also requested the government to ensure that the principle of equal

²¹ *Fair Wages and Salaries Commission Act, 2007, Act 737* accessed 18.12.2012 via www.fairwages.gov.gh

²² *Idem*

²³ *CEACR report adopted 2008 published 2009*

²⁴ *Ghana Living Standards Survey Report of the Fifth Round (GLSS5) Ghana Statistical Service September 2008*



remuneration for men and women for work of equal value is recognised as an explicit objective in the future public pay policy. The Labour Act refers to the “right to equal pay for equal work” rather than the ILO Convention 100 definition of “equal remuneration for work of equal value”, which is particularly relevant in the context of undertaking substantial job evaluations schemes. The current collective bargaining agreement of GNAT has no clause relating to equal remuneration for work of equal value. The LRS study has computed statistics from 2005/2006 which calculate that in the education sector, men earn 22% more than women.

While the intention of the SSSS was laudable and there have been improved retention of teachers and a reduction in the numbers of workers who migrate overseas, there have been a number of difficulties in getting the electronic payments systems working, delays in negotiating some of the specific allowances, difficulties of interpretation in payment arrears and tensions over which categories of workers are entitled to retention premia.

The Labour Research and Policy Institute has noted that the Ghanaian collective bargaining framework is traditionally limited to issues related to the labour laws and does not address broader issues of work organisation, education and training and the democratic participation of unions or workers in the management of the organisation.²⁶

Collective bargaining agreements are generally for two-year duration and include a “wage opener” clause whereby wages can be re-negotiated annually. In the case of the collective agreement for the teachers, the duration is three-years. Unions operate a closed shop agreement whereby all employees covered by the agreement shall be members of the union on the effective date of the agreement and shall as a condition of employment maintain their membership to the union.

The Public Services Joint Standing Negotiation Committee covers 9 service classifications including Education (Non-Tertiary) and Educational (Tertiary, Scientific and Research).

Collective Bargaining and the Financial Crisis

Following the financial crisis, Ghana's economy was affected by the drop in the world prices for its main exports. The IMF considered that the government public expenditure deficit in 2008 was unsustainable and requested as a condition for further loans that the deficit be cut by 50% over a one year period. Hence in 2009, the government imposed a recruitment and promotion freeze in the public sector and postponed the introduction of the SSSS for a year.²⁷ However, since 2010, the Ghanaian economy has enjoyed strong growth figures, with GDP increase at 13.6% in 2011.

²⁶ *Idem* p.12

²⁷ *Labour Research and Policy Institute “The effects of the Global Economic and Financial Crisis on the Ghanaian Economy and Labour Market” Working Paper 2009/1 November 2009 Kwabena Nyarko Otoo, Prince Asafu-Adjaye p.27*

Apart from 2009, the teachers' organisations have been able to negotiate salary increase above the cost-of-living index:

2009	wage freeze
2010	transfer to the SSSS
2011	15% increase plus the 15% retention premium
2012	18% (Source GNAT media release Nov 5 2012)

Some of the main issues under review for the current collective agreement include:

- a) higher placements or entry points on the SSSS for teachers who have obtained higher qualifications than the initial entry requirements;
- b) special incentives for teachers working in very deprived and challenging geographic environments, which might result in separate pay structures for such employees, provided they stay in such areas for not less than three years;
- c) greater flexibility in career progression, so that some teachers may opt to continue working in the classroom rather than move into managerial positions.

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007: 5.5 %	24.21 %	
2008: 5.7 %	22.42 %	7.3 %
2009: 5.3 %	24.00 %	4.1 %
2010: 5.5 %	24.38 %	5.7 %
2011		13.6 %

Source World Bank /Index Mundi



SENEGAL²⁸

El affiliates

SYPROS	Syndicat des Professeurs du Sénégal
SNEEL-CNTS	Syndicat National de l'Enseignement Élémentaire
SUDES	Syndicat unitaire et démocratique des enseignants du Sénégal
UDEN	Union Démocratique des Enseignantes et des Enseignants du Sénégal
SAES	Syndicat Autonome de l'Enseignement Supérieur

ILO Conventions Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1960
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1961
- C. 100 Equal Remuneration (1951) ratified 1962
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1967
- C. 144 Tripartite Consultations (1976) ratified 2004

Introduction

There is a large informal economy in Senegal, with around two-thirds of the workforce either self-employed or in subsistence agriculture. 95% of the workforce has no social protection. According to the UNDP Human Development Index, Senegal is placed 157th out of 177 countries with a GDP per capita of USD 634 in 2005. Education has a key role to play to promote national development.

Given the high percentage of workers in agriculture and the informal economy, union density is low. The industrial workforce represents only some 4% of the economy. It is estimated 40% of the formal workforce are trade union members.²⁹

Education in Senegal

Education is compulsory for ages 7 to 12. Primary school begins at age 7 and continues for 6 years. At this level, 11% of education is private. The Net Enrolment Rate (NER) is 66% (48% female). Of students who enrol in Grade 1, 72% continue to the last grade of primary school. 13% of students repeat grades. 32,005 teachers (24% female) work at this level, but only 51% of them are trained. The average class size is 43 pupils.³⁰

²⁸ Grateful acknowledgement for the written report from Marieme Sakho-Dansokho, General Secretary of the Teachers Trade Union of Senegal (Syndicat des Professeurs du Sénégal –SYPROS)

²⁹ Dioh, Adien « Relations professionnelles et négociation collective au Sénégal » Document du travail no 26 ILO Geneva. September 2011 p.49

³⁰ El Barometer, Senegal accessed 10.04.2013

Since 1996, there has been a decentralisation of administrative structures and responsibility for health and education were gradually transferred to the regional and local authorities.³¹

Freedom of Association

Freedom of association is recognised by the Constitution and the 1997 Labour Code, with the exception of the Armed Forces, police, customs officers and magistrates and judges and senior civil servants and managers.

However, the Ministry of Interior has discretionary powers to grant or refuse registration of a union, which has been the subject of long-standing request from the ILO to amend the Labour Code.³² Furthermore, unions report that the registration procedures are often very long.

The right to strike is heavily restricted, most notably due to a provision in the 2001 Constitution which stipulates that strike action must not infringe upon the freedom to work or jeopardise the enterprise. The authorities also have broad powers to replace workers who are on strike.³³ SYPROS notes frequent interference on the part of the authorities in the internal affairs of trade unions, violations of the principle of free choice of trade unions, and the lack of application of the check-off system so that membership payments depend on voluntary contributions.

Collective Bargaining

In the private sector, there exists one national inter-professional collective agreement (CCIN82), negotiated in 1982 and revised in 1999 between employers and workers, which covers all branches of economic activity in the formal sector and is of unlimited duration. This collective contract replaced over 20 pre-Independence sectoral collective agreements, which date back to the 1950's and 1960's and which were in force until then.³⁴ The national inter-professional collective agreement was intended as a framework agreement to facilitate new sectoral agreements. However, in practice this has not happened.³⁵

Collective bargaining has been seriously impeded because until recently, there were no agreed mechanisms to determine the representativity of the trade unions and to carry out trade union elections. The ILO CEACR has repeatedly noted the absence of new collective agreements in Senegal.³⁶

³¹ Gernigon . p. 69

³² Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - C087

³³ ITUC Annual Survey on Trade Union Rights 2012 Country Profile Senegal

³⁴ Dioh, *ibid* p. 8

³⁵ Dio, *ibid* p.10

³⁶ Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - C087



In order to achieve greater social cohesion and strengthen collective bargaining in both the public and private sector, and in the informal economy, in November 2002, the government, trade union centres, employers' association and informal sector representatives signed a National Charter on Social Dialogue (*Charte Nationale sur le Dialogue Sociale*). This Charter is intended to strengthen social dialogue machinery (collective bargaining, conciliation and consultations in a bipartite or tripartite context) and also set up a permanent National Social Dialogue Committee in order to promote economic growth, employment opportunities, social protection and solidarity. It was a visionary attempt to establish a sound basis for social dialogue in the country. Unfortunately, for various reasons, including the fragmentation of the trade union movement and inadequate resourcing of the different mechanisms it established, its implementation has not fulfilled initial expectations.

In 2008 the ITUC reported the blocking of bargaining by the authorities in certain sectors, including education, and unilateral changes in the provisions of the National Charter on Social Dialogue of 2002.

Senegal's first union representation elections were finally held in 2010 with the participation of 18 trade union centres. President Wade declared himself in favour of strong unions, calling on the least representative organisations to join the more powerful ones in the interests of social dialogue. Unionists considered the holding of these elections to be crucial, as the fragmentation of the trade union movement on account of personal or political interests has led to many trade union rights' violations.

The Status of Teachers

Teachers are public employees and their terms and conditions of appointment are largely determined by the 1961 General Statute of Public Service (*Statut General de la Fonction Publique*) and the 1977 Decree Statute on Teaching Staff (*Statut Particulier du Cadre des Fonctionnaires de l'Enseignement*). The government has also recruited a large number of voluntary teachers, given the shortage of teaching staff in rural areas. Following a protracted dispute with the teachers' unions, a new category of teachers, known as contract teachers (*maître contractuels*) was created for volunteer teachers who had completed 4 years of service.

Collective Bargaining in Education

There is a collective agreement for private education schools but there is no collective agreement for public education. Conditions of employment are determined in principle by the terms of the 1977 Statute. Public employees' organisations may appeal against regulations affecting the conditions of service of staff and against individual decisions that are prejudicial to the collective interests.³⁷

However, the unions argue that the government has “trampled” on the Statute and the system of recruitment, career advancement and teacher certification, by recruiting large numbers of volunteers, temporary replacements and contract teachers.

As part of the mechanisms of the National Dialogue, sectoral social dialogue committees were formed, which were required to meet at least twice a year and to produce an annual report. It was also envisaged that there should be local level committees. However, the National Social Dialogue for the Education and Training Sector (CDS/SEF) has only met intermittently and not made progress. It is only convened in times of crisis and not to anticipate or prevent conflicts.

Teachers in Senegal are notoriously underpaid. One report indicates that since Independence in 1982 until 2000, wages had only increased by 20%.³⁸ In 2005, a coalition of education unions was able to negotiate additional payments for secondary school teachers, for research and documentation work, and a housing allowance. The agreement was concluded between the Ministers of Education, the Public Service, Labour, Employment and Occupational Organisations, and the Ministry of Finance and a coalition of 14 teachers’ unions. Salary increases were also agreed for the period 2005-2009. However, there have been many delays and difficulties in implementing these agreements.

In 2011, another agreement was signed with the education unions but the agreement has not been respected either. The main issues agreed included:

- limitation of the use of contract teachers;
- end to the practice of recruiting untrained teachers;
- revisions of Decree 61-052 on the bi-partite administrative commissions and disciplinary council;
- improved IT provisions and implementation of agreements on housing provisions.

Syros states “the conflict prevention and mediation systems do not function nor do the mechanisms to follow-up on the implementation of any agreements reached. There is a lack of political will on the part of the authorities and misunderstanding about the importance, place and role of trade unions in the functioning of the education system.”

Key demands

The unions’ key demands include:

- implementation of existing agreements;
- strengthening of social dialogue through the relaunch of the social dialogue committee in the education and training sector;
- strengthening of the trade union movement through its unification and reorganisation;
- Improvements in the conditions of employment and quality of professional training.

³⁸ *Dioh, Adrien op.cit p. 35*



In Higher Education, SAES had to call for strike action in order to pressure the President, Ministry of Education and Ministry of State into signing an agreement. This agreement covered a range of issues, including improved conditions of employment, access to new technology, housing projects for university staff, and improvements to the physical infrastructure of the university buildings, new research facilities and new student accommodation.³⁹

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2008: 19.0%	5.0%	4.8%
2009: 24.0%	5.6%	1.8%
2010:	5.6%	4.2%
2011:		2.6%

Source World Bank /Index Mundi

³⁹ *Accord entre le Gouvernement et le Syndicat Autonome de l'Enseignement Supérieur (SAES), 6 April 2006, as reproduced in Dioh, Adrien op.cit. p. 47*

UGANDA⁴⁰

El affiliates

UNATU Uganda National Teachers' Union
Membership 86,000

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 2005
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1963
- C. 100 Equal Remuneration (1951) ratified 2005
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 2005
- C. 144 Tripartite Consultations (1976) ratified 1994
- C. 154 Collective Bargaining (1981) ratified 1990

Introduction

Uganda has enjoyed stable economic growth over the last decade and was not severely affected by the 2008 financial crisis. However, in 2012, the growth rate has declined and the country has suffered from exceptionally high inflation, estimated at 30%. According to NOTU, one of the two national trade union centres, this high inflation is mainly due to weaker demand for exports, high international fuel prices, and low agricultural supplies as a result of poor weather conditions.⁴¹

Standards of education are poor and the primary school completion rate is only 25% and is dropping. Classroom size at primary level is estimated 83 pupils per class and the teacher pupil ratio is 1:60.⁴²

Teacher pay in Uganda is exceptionally low, and the entry level salary is insufficient for a single persons' basic subsistence. There are continuous problems over non-payment of wages, for example, back wages can be due in some cases for the last 6 months. There is an issue of "ghost teachers", who are paid but never show in class rooms. When the government tried to address the problem, over 30,000 working teachers, including some school head teachers, were inexplicably deleted from the payroll.

⁴⁰ This text is largely based on a written report from James Tweheyo, General Secretary, UNATU, and additional information and comments during an interview with the researcher on 7.03.2013.

⁴¹ Report on Uganda Decent Work Country Programme by Pedison Bbaale, 4th October 2012, submitted during the Trade Union Training on the Promotion of Decent work 8-19th October 2012, ILO Training Centre, Turin

⁴² Statistics provided by UNATU



Structure of UNATU

UNATU represents teaching staff at all levels from primary, secondary and university in public or government supported institutions. It was registered under the Trade Union Act (2000) after a merger of the Uganda Teachers’ Association (UTA) and the Uganda National Union of Teachers (UNUT). It has national wide structures starting at school level, and including sub-county, district, regional and national level. It has a national secretariat headed by the General Secretary, with 40 full time staff, of whom 20 are based at the regional secretariats in the 10 regions. There is a 5 yearly Conference, a National Executive Council and regional, branch, sub-branch and school level committees. The union constitution was amended in 2010 to take into account various structural changes proposed by the leadership. It has strong gender representation provisions.

There is a check-off system in place, following lobbying with the government, and dues amount to 1% of the basic salary. UNATU reports that there are problems as a result of delays in setting up the check-off system for new members and the deletion of teachers from the pay roll, because of administrative errors, which greatly affects the members, as well as union income.

Membership

Since 2008, membership of the union has been increasing steadily.

December 2008	December 2009	December 2010	December 2011	December 2012
69,300	77,992	79,069	81,301	83,000

Status of Teachers

Teachers working in public institutions in Uganda have public employee status. Primary school teachers are appointed by the District Service Commission and secondary and post-secondary teachers are appointed by the Education Service Commission. The salary scale is established by the Ministry of Education and Sport, known as the teachers’ scheme of service. Teacher salary increments are included as part of the annual budget adopted by Parliament. Salary payments are made by the Ministry of Public Service.

Freedom of Association and Collective Bargaining

Freedom of association and collective bargaining are constitutional rights. Uganda adopted new labour legislation in 2006, with the Trade Unions Act and the Labour Disputes Arbitration and Settlement Act 2006. The Trade Unions Act provides for the right to organise and to bargain collectively of all workers, whether in the private or public sector, with the exception of the Armed Forces and the right to strike. Under this legislation, it is a criminal offence to obstruct the right to organise. However, organising is still effectively prohibited in the Export Processing Zones. There is also a requirement to give 90 days’ notice of an intention to carry out industrial action.

The Labour Disputes Act provides for the fast resolution of labour disputes and elevates the Industrial Court to the status of the High Court. However, section 27 of the latter Act empowers the Minister of Labour to refer a dispute to the Industrial Court if either side does not comply with the recommendations of a board of inquiry, a procedure that is considered tantamount to compulsory arbitration.⁴³

In 2008, the Public Service Act and the Public Negotiation and Disputes Settlement Act were adopted. The latter provides for the establishment of a National Consultative and Negotiation Council with the mandate to consult, dialogue and negotiate terms and conditions of employment and other issues. However, it has taken a number of years to implement this legislation and the unions have needed to lobby and mobilise consistently, including taking industrial action.

In July 2011, UNATU began a series of strike actions in support of their demands and through the Citizen's Action for Quality Education, presented a petition to the Parliament and President, which addressed a range of issues facing public education, including teachers' pay. An Inter-Ministerial Committee was eventually convened, and the government agreed to a plan, whereby the salary increase would be a total of 50% over a three year period (15%, 20% and 15%.) The teachers had asked for a 100% salary increase, given the extremely low current levels and soaring inflation. However, the government is not respecting all the provisions of the agreement, and although they said they would sign the agreement, they have not done so.

A recognition agreement was signed by 10 public sector trade unions in November 2011, although the Uganda Public Employees Union was excluded. This ended an 18 year stalemate situation. The National Consultative and Negotiating Council was constituted after considerable pressure from the unions and long delays in August 2012. On the government side, the Council members include the Ministry of Public Service, the Ministry of Finance Planning and Economic Development, the Ministry of Education and Sport, and the Ministry of Local Government. UNATU has 2 members on the Council. However, there is as yet no collective agreement with any of the public sector trade unions.

James Tweheyo, General Secretary of UNATU reported in March 2013 that to date, there had only been two unfruitful meetings. The first meeting had been the official inauguration, and the second meeting had been to "harmonise the arrangements", although the unions had presented a list of issues for discussion. "The government as an employer will use delaying tactics but we will mobilise our members to keep the pressure on. At the moment, it is not so much negotiation as coercion."⁴⁴

⁴³ *ITUC Annual Survey 2012 Uganda*

⁴⁴ *Interview with James Tweheyo, General Secretary UNATU, 7 March 2012*



The main issues for consultation and negotiation will be salary increments and special allowances for hardship postings and for science teachers, as well as delays in salary payments, unexplained deletions of teachers from the payroll and government contributions to the teachers' savings and credit schemes.

CITIZENS' ACTION FOR QUALITY EDUCATION

UNATU considers that its relative success so far has been because they have drawn up a well designed strategy and plan of action; used a rights-based framework for their demands; they have adopted multi-stakeholder approach and because of the industrial action which took place in 2011.

The union has conducted mass awareness campaigns on the key issues concerning terms and conditions of employment and the right to collective bargaining, through printing leaflets, through the media such as local radios and through training courses for union leaders and the membership. The purpose of this mass awareness is also to build confidence and minimize the fear factor. They have also developed a communication strategy to support the quick flow of information to all union members and the wider public. They use a bulk SMS texting system which is relatively cheap and very effective.

As part of the coalition that forms the Citizen's Action campaign, UNATU is viewed as a key education stakeholder, putting the child at the forefront. UNATU has strong partners through the campaign, such as Action Aid International Uganda, Uganda Joint Christian Council, the Uganda Muslim Education Association and the Forum for Education NGOs in Uganda, as well as legal resource centres. In this way, when UNATU puts forward issues related to teachers, the coalition as a whole is willing to support them.

In 2010, the Ministry of Education decided to introduce a system of "performance contracts", which were very one-sided. UNATU was able to turn the issue to its advantage by arguing that while teachers had duties and responsibilities, so did the government and that the contracts should become support mechanisms for improving education and that they should be consulted with other stakeholders.

The union demands have been backed by research using careful analysis of the budget, such as the proportion allocated to education compared to other sectors, and the proportion of the GDP allocated to education, and by providing comparisons from other countries and unions.

The union has also carried out lobbying with the relevant Parliamentary committees, and submitted petitions to parliament. There is a cross-party "quality education forum" in Parliament, and the Speaker of Parliament is the Patron. This forum is an important body as it has the potential to influence budgetary decisions.

The government has carried out acts of intimidation, such as demotions, unjustified transfers to remote areas, and, on occasion, imprisonment of union leaders. The government has also promoted the establishment of a parallel union, and placed negative propaganda about the union in the media. Their main tactic is to delay giving responses.

Education expenditure and GDP growth

% GDP spent on education	% public expenditure on education	GDP % Growth
2008: 3.8 %	18.9 %	6.9 %
2009: 3.2 %	15.0 %	5.3 %
2010:		5.2 %
2011:		6.7 %

Source World Bank /Index Mundi



SWAZILAND⁴⁵

El affiliates

SNAT Swaziland National Association of Teachers, www.snat.org.za

The organisation was founded in 1928. It organises teachers from pre-school up to secondary school teachers, including head teachers and also college lecturers. It has 12000 members, about 80% of the total teaching workforce. It affiliated to the newly formed Trade Union Congress of Swaziland in March 2012. Previously it was independent and not affiliated to a trade union centre.

SNAT's mission statement includes: to promote the status and welfare of teachers through the professionalizing of the teaching service and to collectively bargain. Its slogan is "Not by favour but by merit!" SNAT also runs a savings and credit cooperative and a special burial fund.

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1978
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1978
- C. 100 Equal Remuneration (1951) ratified 1981
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1981
- C. 144 Tripartite Consultations (1976) ratified 1981

Background Information

Swaziland is a constitutional monarchy ruled by King Mswati 111. The last Constitution was signed in 2005. There are a number of laws in place which severely restrict freedom of expression and association, including the Sedition and Subversive Activities Act 1938, which is still invoked, the Public Order Act 1963, the State of Emergency dating back to 1973 which suspends constitutional freedoms and effectively prohibits opposition political parties and the Suppression of Terrorism Act 2008, which was last renewed in 2010.

The standard of living in Swaziland and life expectancy is actually dropping as a consequence of a political and economic crisis, compounded by a high incidence of HIV and AIDS infection. Life expectancy in 2011 was 49 years old and 70% of the population live below the poverty line in 2011.⁴⁶ Unemployment in 2011 was put as high as 40%.

⁴⁵ Grateful acknowledgements to Muzi Mhlanga, General Secretary of the Swaziland National Association of Teachers, who provided valuable information and comments for this country study.

⁴⁶ World Bank accessed 5/12.2012

Education system

Education is neither free nor compulsory. The government pays teachers' salaries and parents must pay school fees to cover the costs for books and materials. Orphans and vulnerable children receive financial support for school fees though there are frequent reports of delays in payments. Primary school starts at 6 years and the NER is 77% of which 48% is female. However, only 50% of students enrolling in Grade 1 complete, according to UNESCO, and they may take up to 10 years to do so. By Grade 4, nearly 20% of children enrolled in Grade 1 have dropped out. Secondary school is 5 years from 13-18 years old and the NER is 29%. At tertiary level, the NER is 5% with up to 25% of higher education students opting to study abroad, mainly in South Africa.

Investment in education has decreased since 2008 and the government is employing new teachers on short-term contracts rather than permanent contracts, whereby they are excluded from the pension scheme and other benefits. Some teachers have been on annual contracts for up to 8 years and have still not received their permanent status. In March 2012, the government made 1,200 primary teachers redundant.⁴⁷ For the 2011/2012 academic year, 3000 teachers were on annual contracts. Teachers last received a cost of living adjustment for the financial year 2009/10 year of 4.5%, well below consumer price inflation by any measure. Negotiations for the 2010/11 cost of living adjustment are still on-going.

Teachers in the public education system in Swaziland are public employees. The Teaching Service Act (1982) and the Teaching Service Regulations (1983) establish a Teaching Service Commission, (TSC) under the Ministry of Education. The TCS is responsible for the selection, appointment, termination and disciplinary control of teachers; the formulation of national standards, transfers, terms and conditions of service, a code of conduct and for ensuring payment of wages.

Freedom of Association and Collective Bargaining

"We can't meet, we can't talk, we can't express ourselves, this is the Swaziland we want to change," member of SNAT, quoted in Mail and Guardian April 2011

Teachers have the right to form and join unions and to take strike action. However, in practice, because of a series of restrictions on the right to strike and emergency measures, the right to strike is severely circumscribed. The Industrial Relations Act (Section 40 and 97 (1))⁴⁸ provides for the civil and criminal liability of trade union leaders in the event of strike action to the extent that leaders are exposed to severe penalties. In addition the Public Order Act, which prohibits displaying flags, banners, or other emblems associated with a political organisation, is also invoked in respect of trade union activities, or broader calls for democratic reforms. The ILO CEACR has requested the government to review the Industrial Relations Act so as to ensure there is not a general prohibition on sympathy strikes.⁴⁹

⁴⁷ *El website* (accessed 4.12.12)

⁴⁸ http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_jsn=57331 accessed 2.02.2013

⁴⁹ http://www.ilo.org/dyn/nomlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698715:NO



Up until 2010, SNAT was the only recognised teachers' association in the country. However, as a consequence of a set of amendments to the Industrial Relations Act (2000) adopted in 2010, the membership criteria to register trade unions has been reduced and two smaller teacher unions have now been recognised, which has weakened the bargaining position of SNAT.

Swaziland has been examined by the ILO supervisory mechanisms since 1996 and was the subject of a special paragraph in the conference committee in 2009 and 2010. A second high-level mission was undertaken in 2006. The adoption of the Suppression of Terrorism Act in 2008 marked the beginning of heightened repression of trade union activities, as well as police brutality. The government introduced the Public Service Bill whereby public servants, including teachers, would not be permitted to make statements to the media about the government. As a result of recommendations by the ILO supervisory mechanisms, the government has agreed to review the bill and refer it back to the National Steering Committee on Social Dialogue.

The legislative restrictions on freedom of association and expression have underpinned police actions to disrupt peaceful marches, raid offices, and widespread arrests, and police brutality, which in one case resulted in the death in custody of a trade union demonstrator. SNAT has been at the forefront of the pro-democracy movement and has denounced perceived high levels of corruption and government profligacy. On 12th April 2011, during the 1st Week of Global Action, the SNAT offices were raided by 60 police and 100 people arrested for a short period of time, during the pro-democracy protests on the occasion of the 38th anniversary of the declaration of the State of Emergency in 1973.

Collective bargaining

The Industrial Relations Act (2002) sets up the Conciliation, Mediation and Arbitration Commission (CMAC) and a new procedure of a Joint Negotiating Forum (JCF). There is a joint negotiating council for public employees, including SNAT, the Swaziland National Association of Civil Servants (SNACS), the Swaziland Nurses Association (SNA) and the Swaziland National Association of Government Accounting Personnel (SNAGAP). The JCF comprises the government negotiating team, who are government principal secretaries, the public service unions and an independent chairperson. The JCF's aim is to negotiate the terms and conditions of service which are common to all public employees represented at the forum.⁵⁰ SNAT reports that there are difficulties because the government representatives need to refer back to the cabinet on most issues to get a mandate, that the chair who should be an independent person is a government appointment and that the secretariat to the JCS is provided by the government and is not always impartial.

In principle, a collective agreement is negotiated by the JCF and the text is then registered with the industrial court. The last full collective agreement was signed for the April 1st 2008–March 31st 2009 fiscal year for a five year period. It allowed for a salary review every year and provided a 10% cost of living adjustment for 2008/9, which was in line with inflation.

Since then, however, as a consequence of the political and economic crisis, social dialogue with the government has become much more difficult. SNAT's main focus in the JNF has been to ensure that teachers' salaries keep up with the cost-of-living. The cost of living adjustment for the fiscal year 2009/10, was 4.5% adjustment (although inflation was over 7%). The last agreement was signed in July 2010 for 2010/2011 fiscal year, again for 4.5% adjustment (although inflation was over 6%). The agreement reads:

“The Joint Negotiations Forum observed and appreciated that the state of the Swaziland economy was adversely affected by the global economic downturn and as such it would not be sustainable to peg the cost of living adjustment with the average inflation rate”.⁵¹

Since then, SNAT has demanded a 4.5% adjustment for 2010/2011 (although inflation was over 6% or higher) but the government's position is that there should be a wage freeze until 2014. A dispute has been declared and it has been referred to the CMAC. SNAT has resorted to strike action in support of their demands and also to support pro-democracy actions.

“While teachers are really struggling to live, as their salaries have dropped in value by over 25% since 2010, they have no option but to stay as there are few job opportunities in the private sector”, reports Muzi Mhlanga, General Secretary of SNAT.

In June 2012, SNAT carried out strike action against the continued deadlock in negotiations in the JNF in support of their demand for 4.5% cost-of living increase. The only agreed amendment to the collective agreements was in July 2012 and referred to setting up a special burial fund for teachers. While the government continued to insist on a wage freeze for the public sector, MPs were awarded a 30% pay rise. The strike defied an industrial court ruling that it would be illegal, and the government instructed the TSC to proceed with the termination of a large number of teachers. This situation is still pending.

Social Dialogue on Education

The Ministry of Education and Training issued a new Education and Training Policy in April 2011. While the policy refers to a broad consultation process both within and outside the

⁵¹ *Collective Agreement Between The Government Negotiations Team (Gnt), The Swaziland National Association Of Teachers (Snat), The Swaziland National Association Of Civil Servants (Snacs), The Swaziland Nurses Association (Sna) And The Swaziland National Association Of Government Accounting Personnel (Snagap) On The Cost Of Living Adjustment For The Year 2010/11, July 15th 2010*



Ministry, SNAT reports they were not consulted in its development, only invited to the launch. The new policy has a number of important aspirational goals, including the “equitable access to inclusive life-long quality education and training” and the provision of “free and compulsory access to primary education within walking distance (5-7km) for all learners of primary school age”. It also aims to reduce the proportion of unqualified teachers, noting particularly the shortage of maths and science teachers, by increasing the numbers of teacher training scholarships and by “calculating the required intake to teacher training courses to provide the necessary output allowing for drop-out, HIV and AIDS attrition, migration and other factors”.⁵² It seems a lost opportunity that SNAT was not consulted on these issues.

On the other hand, SNAT reports that they have been closely consulted about the terms of reference of a new proposed Council of Educators Bill. SNAT was sent a questionnaire about the different clauses in the bill which has been largely based on its own Code of Conduct. The Council of Education will be responsible for registration of teachers and the regulation of teachers’ training and in-service training to meet Commonwealth standards.

SNAT is also represented on the National Curriculum Centre and the Examination Council Board. However, SNAT notes that generally speaking trade unions are consulted in form rather than in practice as decisions have already been made and the different bodies are seeking endorsement rather than genuine consultation. In the past, the union has put forward proposals for reforms but in the present climate, they consider that any initiatives on their part would not be welcome.

Education expenditure and GDP growth		
% GDP spent on education	% public expenditure on education	GDP % Growth
2008: 7.5 %		2.7 %
2009: 7.1 %		0.4 %
2010: 7.4 %	15.95 %	2 %
2011:		0.3 %

Source World Bank/IndexMundi/SNAT (CPI figures)

⁵² p.43 Education and Training Sector Policy, Ministry of Education and Training, Mbabane April 2011

THE AMERICAS

BRAZIL⁵³

El affiliates

- CNTE** (*Confederação Nacional dos Trabalhadores em Educação*) National Confederation of Workers in Education : 44 affiliated organisations with 1,036,600 members in public primary and secondary education.
- PROIFES** (*Federação de Sindicatos de Professores de Instituições Federais de Ensino Superior*) Federation of Trade Union of Teachers in Federal Institutions of Higher Education
- CONTEE** (*Confederação Nacional dos Trabalhadores em Estabelecimentos de Ensino*) National Confederation of Workers in Education Establishments

Ratification

- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1952
- C. 100 Equal Remuneration (1951) ratified 1957
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1965
- C. 144 Tripartite Consultations (1976) ratified 1994
- C. 151 Labour Relations (Public Service) (1978) ratified 2010
- C. 154 Collective Bargaining (1981) ratified 1992

Major Investments in Public Education

The National Confederation of Education Workers (CNTE) of Brazil has campaigned on quality public education for all since the 1st World Education for All Conference in 1990. Brazil adopted a 10-year Education for All Plan (1993-2000) and became firmly committed to the goal of universal primary education. Through a range of Central and decentralised programmes, substantial investment and civil society mobilisation, primary school enrolment rates rose dramatically, particularly in the poorer States, and by 1999, it had reached 96%.

In 2007, the Brazilian government set up a new Fund (FUNDEB) to guarantee public funding from early childhood until middle school. In 2009, a further step was taken with the Constitutional amendment which made education compulsory between the ages of 4-17 years with the provision of free, public education. The proportion of GDP earmarked for education rose from 3.9% in 2001 to 5.1% in 2010.⁵⁴

⁵³ This text is largely based on a paper written by Eduardo Ferreira, CNTE Brazil, sent to the research coordinator on 24.01.2013 and with grateful acknowledgements to Juçura Vieira, CNTE Brazil, who provided additional information and comments.

⁵⁴ Juçura Vieira, El Vice-President from National Confederation of Education Workers



Law on national minimum salary for teachers in public education

The posts, categories and qualifications as well the salary scale and number of working hours for teachers in public education are established by Law. There is one career plan at Federal level for the federally maintained technical schools, 27 State career plans and 5,568 Municipal career plans. According to the Federal Constitution, the career plans for public employees are the responsibility of the States and Municipalities. There is a national council of Secretaries of Education which keeps a data base of the current career plans and salary scales, and the State education plans for comparative purposes.⁵⁵

One of the Workers Party (PT) government priorities has been a major endeavour to improve the quality of public education by improving conditions of employment and attracting qualified personnel. In July 2008, the Law 11.738 on the national minimum salary for teachers in public basic education (*Lei Nacional do Piso do Magistério*) was adopted which provided for a national entry level salary of R.950 (around Euros 300 at that time), a maximum working week of 40 hours of which a only two-thirds of the time would be class hours. The minimum salary was to be revised on an annual basis in January and all relevant public authorities were to up-date their career plans and salary scales to conform to the new national minimum at the latest by January 2010.⁵⁶

However, at State and Municipal level, there was considerable resistance to the introduction of the national minimum salary and in the absence of other mechanisms of dialogue, the CNTE teachers' unions needed to mobilise and take strike actions to demand that the law be implemented.

During 2011 and 2012, the CNTE have recorded the following most significant strike actions:

- 2011:** Minas Gerais, 112 days; Rio Grande do Norte 82 days; Maranhão 77 days; Ceará 63 days; Santa Catarina 61 days; Pará 54 days;
- 2012:** Bahia 115 days; Piauí 80 days; Federal District 52 days; Goiás 51 days;

One illustrative example of the reasons behind these strikes is in Minas Gerais where the salary adjustments for 2010 were sent to the Legislative Assembly in March without any consultation with the union (Sindicato Único dos Trabalhadores em Educação de Minas Gerais-Sind-Ute), which only found out about the proposal through the media.⁵⁷ The proposal was well below the national minimum which by Federal Law should have been in force by January 2010. Minas Gerais, which is one of the wealthiest States in Brazil, with a GDP growth of 10.9% in 2010, was paying the 8th lowest teachers' salaries in the whole country.

⁵⁵ <http://consed.org.br/rh/resultados/2012/>

⁵⁶ http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11738.htm

⁵⁷ *Sindicato Único dos Trabalhadores em Educação de Minas Gerais* <http://www.sindutemg.org.br/novosite/conteudo.php?MENU=18&LISTA=detalhe&ID=124> accessed 7.02.2013

Freedom of Association and Collective Bargaining in the Public Sector

The 1988 Constitution and labour code protect the right to form unions in the private and public sector, with the exception of certain State employees (the military, uniformed police and fire services). Unions are registered by the Ministry of Labour with one union for each economic or occupational sector within a territory, a system known as “unicidade”. The government has not yet ratified Convention 87. The Constitution stipulates that the right to strike for public employees will be regulated by a special law, although this law has yet to be established. The Constitution further stipulates that public employees’ salaries will be established by law, and does not provide for the right to collective bargaining.⁵⁸

The ILO CEACR has called on the government to take steps to allow collective bargaining for public employees and has also noted the limitations on the right to collective bargaining in the private sector in that an agreement can be declared void if it goes against the economic or financial policies of the Government.⁵⁹

At Federal level, since 2003, there have been some advances in social dialogue between the government and Federal public employees. Under the Minister of Planning, a new position of Secretary for Work Relations in the Public Sector was created, which has acted in the role of mediator between government and employees. A working group was established in 2007 with a view to making recommendations on how to institutionalise collective bargaining in the public sector, regulating the right to strike and setting up a system of permanent negotiations in federal public administration.⁶⁰ For example, PROIFES negotiated a three year salary agreement in 2012 with the Ministries of Planning and Education, which was then transposed into a Bill and sent to the National Congress for enactment.⁶¹

President Lula ratified ILO Convention 151 in 2010, thereby re-affirming the right to form trade unions in the public sector, the principle of non-intervention of public authorities in their internal affairs and opening the possibility of collective bargaining in the public sector. However, to date, the government has not drawn up a Bill to regulate collective bargaining for public employees, largely because of difficulties in reaching consensus on the regulation of the right to strike in the public sector and the lack of consensus among the Trade Union Centres on the issue of “unicidade” and the trade union tax,⁶² which the CNTE and CUT do not support.⁶³

⁵⁸ *Rights of public employees* Cap. 7-11; http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

⁵⁹ Observation CEACR Report adopted 2011 and published 2012

⁶⁰ <http://www.sindutemg.org.br/novosite/conteudo.php?MENU=1&LISTA=detalhe&ID=844>

⁶¹ <http://www.planejamento.gov.br/noticia.asp?p=not&cod=8715&cat=26&sec=11>

⁶² The trade union tax (*imposta sindical*) is an obligatory deduction from a worker’s wages, paid once a year and equivalent to one day’s work. Established in 1943, it is distributed as follows: 60% to the local union; 15% to the federation; 5% to the confederation; 10% to the trade union centre; and 10% to Special Employment Fund of the Ministry of Labour.

⁶³ *Idem* Report by Eduardo Ferreira, p.1



No legal protection for collective bargaining at State and Municipal level

At State and Municipal level, the forms of negotiation with public employees' unions depend largely on the political views and democratic inclinations of the elected governments as there is no legal protection for collective bargaining. There are many governments which therefore still refuse to consult or limit negotiations with the public employees unions, including the teachers unions.

The lack of regulation has created considerable political and legal uncertainty, in particular in relation to strike actions. Before October 2007, the State judiciary generally declared strikes by State or Municipal employees illegal on the grounds that there was a legal vacuum. Then, CUT took a test case to the Federal Supreme Court, with the result that the coverage of the law regulating strikes in the private sector was extended to the public sector, so that now all strikes in Brazil are regulated by the same Federal law no 7,783 of 1989.⁶⁴

In practice, the right to freedom of association of public employees is largely respected until a strike situation develops when the judicial authorities normally declare the strike illegal. However, there are cases when the government intervenes in trade union affairs, as for example in the case of Minas Gerais, where the government has sought to prevent trade union elections and the State Judiciary has taken no action against any public authority.⁶⁵

Because of the lack of collective bargaining, or other forms of consultation, there are often quite extensive strikes in the public education sector and trade unions or individual trade union leaders can be fined for not respecting the judicial decision. A notorious case in this respect concerned the President of APEOESP⁶⁶ in Sao Paulo who was fined almost USD 2 million for not respecting a judicial decision to end an action which was termed a General Assembly of the trade union. The Civil Code can also be used to ban or restrict pickets on the grounds of safeguarding property.⁶⁷

Impact of the Financial Crisis

Although Brazil has not suffered from the financial crisis to the same extent as the United States or the European Union, it has been necessary to sacrifice some public policies in order to compensate for the drop in exports and to maintain employment levels. Brazil is currently enjoying the lowest level of unemployment in its post-industrialisation history at 5.2%. The Government has reduced or waived various taxes in exchange for agreements with certain key economic sectors to maintain employment levels and consumer demand.

⁶⁴ *idem*

⁶⁵ *Idem Report by Eduardo Ferreria idem p. 2*

⁶⁶ *Sindicato de Professores do Ensino Oficial do Estado de São Paulo*

⁶⁷ *ITUC Annual Survey on Trade Union Rights 2012 Brazil* <http://survey.ituc-csi.org/Brazil.html#tabs-3>

GOOD PRACTICE: THE NATIONAL CONFERENCES ON EDUCATION

One of the key strategies of the Workers' Party government has been to open channels of dialogue with civil society. In 2007, there was the National Conference of Basic Education, in 2009, the National Conference on Technical-Professional Education and in 2010, the National Conference on Education (CONAE). Each National Conference was preceded by Municipal, regional and State level conferences. The Conferences are discussion forums and also influence and guide public policies.

Another success of CONAE has been the creation of the National Forum on Education, which coordinates the Conference and is representative of the education community. The Forum meets regularly and its operating costs are covered by the Ministry of Education. The plan is to replicate this system at State and Municipal level in order to encourage debate and participation in the development of Education Plans.

CNTE has been an active proponent of the new 10-year National Education Plan, which is currently in the Senate. Of the 3000 amendments presented to the Bill on the National Education Plan, more than 2000 originated in the CONAE, including the key proposal to earmark the equivalent of 10% of GDP to public education. Among the objectives are to guarantee adequate public funding for the education system for children from 4-17 years old, together with provisions for those children and adults who did not access education at the appropriate age. The plan also calls for the provision of sufficient nurseries to meet the demand, and programmes to increase the numbers of 15-17 years old in secondary education, which is only 50% of the age group currently. Another key demand is to reach equivalence between the average salaries of teachers and other professionals because at the moment a teacher earns about 40% less than other professions with similar levels of training.

CNTE has mobilised support for the National Education Plan and the implementation of the national minimum teachers' salary. They have carried out marches in the Federal capital, Brasilia, an occupation of the National Congress, and protests in the different States. The struggle continues with a planned 3 day national strike in April 2013 during the National Action Week for Quality Education.

For the CNTE, the main priority in the near future will be to work to ensure the adoption of legislation to regulate collective bargaining in the public sector.

Education expenditure and GDP growth

% GDP spent on education	% public expenditure on education	GDP % Growth
2008: 5.5 %	17.4 %	5.1 %
2009: 5.6 %	16.8 %	-0.2 %
2010:		7.5 %
2011:		2.7 %

Source World Bank/IndexMundi/SNAT (CPI figures)



CANADA⁶⁸

El affiliates

CTF/FCE	Canadian Teachers Federation
CSQ	Centrale des syndicats du Quebec
FQPPU	Fédération québécoise des professeures et professeurs d'université
CAUT/ACCPU	Canadian Association of University Teachers
FNEEQ-CSN	Fédération nationale des Enseignantes et Enseignants du Québec

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1972
- C. 100 Equal Remuneration (1951) ratified 1972
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1964
- C. 144 Tripartite Consultations (1976) ratified 2011

Education System

In Canada, there is no federal department of education and no integrated national system of education. Within the federal system, Canada's Constitution Act of 1867 provides that each provincial legislature exclusively make laws in relation to education. In the 13 jurisdictions — 10 provinces and 3 territories, departments or ministries of education are responsible for the organization of education from elementary through to post-secondary education and skills training.⁶⁹

Each province and territory has one or two departments/ministries responsible for education, headed by an elected Minister and a deputy Minister who belongs to the civil service, and is responsible for the operation of the departments. The ministries and departments provide educational, administrative, and financial management and school support functions, and they define both the educational services to be provided and the policy and legislative frameworks.

Local governance of education is usually entrusted to school boards or school districts. The funding and curriculum guides are provided by provincial education ministries. Education is free from age 4 to 6 until 18 and is compulsory until the age of 16 years.

In Canada, religious schools may be included within the public system; the right to Roman Catholic Schooling is guaranteed in the British North America Act. Some provinces once had separate religious education systems but have opted out. In the provinces of Ontario,

⁶⁸ Grateful acknowledgements to Myles Ellis, Acting Deputy General Secretary, CTF/FCE who provided valuable information and comments for this country study.

⁶⁹ Council of Ministers of Education: Education in Canada: an Overview <http://www.cmec.ca/299/Education-in-Canada-An-Overview/index.html> accessed 2.02.2013

Alberta and Saskatchewan, and the 3 territories, provisions have been made for denominational minorities to operate separate school systems, the majority of which are Roman Catholic. In addition, there are a number of private schools – both denominational and non-denominational, as well as schools which operate under the jurisdiction of the Aboriginal bands on reserves located within the provinces and territories.⁷⁰

In 2006, Canada's elementary and secondary school systems employed over 430,000 educators, most of whom had four or five years of postsecondary study. They are licensed by the respective provincial and territorial departments or ministries of education.

Freedom of Association and Collective Bargaining

Freedom of association is guaranteed by the Charter of Rights and Freedoms in both the public and private sector. In 2007, the Supreme Court ruled that collective bargaining was included within the meaning of the term “association” in Canada's charter of rights and freedoms, effectively establishing collective bargaining as a charter right. The parameters around that ruling are still being debated.

In Canadian labour law, there is an automatic check-off system whereby the payment of trade union dues is mandatory in workplaces covered by collective agreement. This system is known as the Rand formula in Canada, named after the Supreme Court justice who made the ruling in 1946 in the arbitration of a strike where one of the issues involved the company (Ford Motor Company) refusing to collect the dues of union members in the closed shop.

Over the past three decades, both at Federal and Provincial levels, there has been a serious attempt at eroding basic labour rights. This has occurred through legislation which determines exclusions and restrictions on the effective right to organise, and in relation to categories of workers without the right to organise. According to the Canadian Foundation for Labour Rights, the Federal and Provincial governments passed 199 pieces of legislation since 1982 that have restricted, suspended or denied collective bargaining rights.⁷¹

Every Province has established collective bargaining provisions for teachers- in four Provinces there is a specific teacher bargaining or general education statute which regulates the process; in other Provinces, there is a public sector or general labour relations statute. In Alberta and British Columbia, and most recently Ontario, teachers' right to collective bargaining is covered under legislation that also applies to the private sector. While seven provinces engage in some form of local bargaining, the most common model is bargaining for all public schools in a Province/Territory with a single organisation to represent teachers.⁷² Manitoba is unique in that it follows totally local bargaining with the locals holding the bargaining certificate.

⁷⁰ *Canadian Teachers' Federation – the Canadian Educational System* <http://www.ctf-fce.ca/TIC/Default.aspx?sid=626066> accessed 2.02.2013

⁷¹ *Summary of Legislation Restricting Collective Bargaining and Trade Union Rights in Canada 1982-2012 Canadian Foundation for Labour Rights Fact Sheet September 2012* <http://www.labourrights.ca/> accessed 4.02.2013

⁷² *Joint ILO – UNESCO Committee of Experts on the Application of Recommendations concerning Teaching Personnel (CEART) Social dialogue in education: national good practices and trends, Background Paper for the 11st CEART Session, by Bill Ratteree CEART-R-[WGS1-2012-08-0014-1]-En.docx/v4 p.49*



In most Provinces, the Government determines the basic formulas for class sizes and some Provinces specifically preclude issues of staffing and class sizes from collective bargaining. Collective agreements generally cover salaries and other benefits, and procedures for individual grievances. Most contracts include provisions for dental and supplementary medical insurance, supplementary benefits for maternity leave, sick leave and leave on other grounds, disability insurance and retirement gratuities (which are increasingly coming under attack). Teachers are covered by the Federal Social Security Insurance (Employment Insurance) and Public Sector Pension Plan (CPP Canada Pension Plan age 60 and OAS Old Age Security age 65 gradually moving to age 67) and each Province has established a specific Teachers' Pension Plan.

There are a wide range of collective dispute resolution procedures (mediation, conciliation, fact-finding and voluntary arbitration). Strikes are also allowed in the majority of provinces. The Canadian Labour Code also allows for the introduction of replacement labour during industrial disputes. The restrictions or exclusions have been the subject of long-standing cases before the ILO supervisory mechanisms.⁷³ Apart from limitations on the right to organise of certain professionals, agricultural workers and domestic workers in some Provinces, there are also the following categories of workers in the education sector who face restrictions:

- a) Principals, vice-principals in educational establishments and community workers (Ontario) although these restrictions are under review as a result of a recent Memorandum;
- b) Public colleges' part-time employees (Ontario), although again these restrictions are under review;⁷⁴
- c) post-secondary academic staff (Alberta).

There are also three Provinces (Nova Scotia, Ontario and Prince Edwards' Island), where the bargaining agent for teachers and educators is specified by law.

Some provinces restrict or exclude strikes in the education sector: In Manitoba, the Public Schools Act Section 110 (1) prohibits teachers from taking strike action. In recent years legislatures in Quebec, BC, Alberta, New Brunswick, Newfoundland, and most recently Ontario have shown a willingness to intervene with legislation that limits collective bargaining, imposes settlements, and limits industrial action.

Financial Crisis and the Ideological Shift to Neo-liberal Policies

Canada had a relatively strong fiscal position when the financial crisis hit, with less exposure to the sub-prime mortgage market and a relatively strongly regulated banking system, all of which mitigated the negative impact of the financial crisis. In January 2009, the government introduced a C. \$40 billion stimulus package over a two-year period.⁷⁵

In May 2011, a Conservative Party majority government was elected which marked a radical ideological shift to the right. The strategy has been to create fear and resentment of public sector workers and to gain public support for weakening labour laws generally. The government brought in a programme of reductions in personal income tax and corporate income tax, and implemented cuts to public services and jobs and fiscal austerity. The result was a sharp rise in unemployment and inequality levels. Statistics Canada reported in May 2012 that 13% of Canadian youth were not in school or employment and that there was 7.4% official unemployment in Canada in October 2012, although many consider the figure should be nearer 10%.⁷⁶

The 2012 federal government's budget released in late March includes further major cuts to public services including some 19,000 job cuts⁷⁷ and the increase of the pension age from 65 to 67 years. The CTF has identified several negative trends and pressures occurring across the country. This includes applying a business/market approach to education, the powerful impact of the test-driven accountability agenda on curriculum and other aspects of education, the use of public debt and the austerity agenda to justify cost-cutting at the expense of program needs".⁷⁸

Collective Bargaining since the Financial Crisis

Both at Federal and Provincial level over the last few years, new legislation has been introduced, or is in the process of adoption, designed to limit or deny collective bargaining rights and to undermine unions capacity to operate.

"The main reason for these trends has been the ideological shift towards the right at Federal, Provincial and Territorial level designed to undermine bargaining rights through draconian legislation. It is a clear attack on unions".⁷⁹ Myles Ellis Acting Deputy General Secretary Canadian Teachers' Federation

Federal level

At the Federal level, the government has used back-to-work legislation to impose settlements, as in the case of postal workers and Air Canada. The Canadian government continues to implement legislation introduced in conjunction with the 2009 Federal Budget, which fixes the level of wage increases for all federal public service employees. Federally, MP Pierre Pollièvre has launched a campaign to introduce changes that would preclude the collection of union dues from federally-regulated employees in unionized workplaces (Geddes, 2012).

⁷⁶ Myles Ellis and Bernie Froese-Germain, AERA *The Changing Context Facing Teacher Unions in Canada*

⁷⁷ the Canadian Centre for Policy Alternatives estimates that the total number of federal core public service job losses over the next three years will be closer to 30,000 see Gergin, Maria (April 6, 2011). <http://www.policyalternatives.ca/publications/commentary/silencing-dissent-conservative-record>

⁷⁸ Fraser, Calvin (Oct. 2012). "CTF AGM attendees discuss education as a public good." *CTF Perspectives*. <http://perspectives.ctf-fce.ca/en/9/Default.aspx>

⁷⁹ Interview with Myles Ellis, Acting Deputy General Secretary CTF 23.01. 2012



The Private Member's Bill C-377 – *An Act to Amend the Income Tax Act* (requirements for labour organizations) would amend the *Income Tax Act* to require that labour organizations provide financial information to the Minister for public disclosure. The Bill passed the lower house in December 2012. Unions would be required to provide information on a range of activities including union organising, collective bargaining, education and training, and political action, all of which would be made available online on the Canada Revenue Agency (CRA) website.

CTF has expressed concerns regarding this proposed legislation because of the costs to the unions and taxpayers and privacy issues. Most provinces already require that financial statements of unions be provided to members so it would create an additional, unnecessary and costly work, when staff should be employed elsewhere. By framing the proposal as an amendment to income tax law, which falls under the federal powers in the Constitution, the reporting requirements cross the usual constitutional barrier which prevents the federal government from passing legislation which regulates unions under provincial jurisdiction.

Provincial and Territorial Level

*"At Provincial and Territorial level, some governments have used legislation to impose settlements and engage in a systematic process of contract stripping, with increments spaced over longer periods of time, reductions in benefits and increasing signs that current pension plans will be scaled back."*⁸⁰ Myles Ellis Acting Deputy General Secretary, Canadian Teachers' Federation

In March 2012, the British Columbia Liberal government passed legislation known as the Bill 22 "Education Improvement Act" which prohibited strike action by the British Columbia Teachers Federation, imposed a "cooling off period", and put in place a mediator with a mandate to negotiate the new agreement on the understanding there would be a "net zero" comparison to the previous agreement. Effectively, this was legislation that the government could determine the content of the collective agreement, and it prevented teachers from bargaining on issues which had previously been included, such as class sizes, composition and staffing levels.⁸¹ The British Columbia Supreme Court has ruled against this legislation but despite the ruling, the collective bargaining rights of teachers continue to be curtailed.⁸²

In August 2012, the Ontario government passed legislation known as Bill 115 "Putting Students First Act"⁸³ to set rules that local school boards must adhere to when negotiating with local

⁸⁰ Interview with Myles Ellis, *idem*

⁸¹ BCTF News Release June 27 2012 BCTF concludes agreement with government but continues to challenge Bill 22 and assert teachers' labour rights

⁸² ITUC Annual Report on Trade Union Rights <http://survey.ituc-csi.org/Canada.html#tabs-4> accessed 4.02.2013

⁸³ <http://www.policyalternatives.ca/publications/monitor/putting-students-first-doesnt-mean-putting-teachers-last> by Misha Abarbanel October 1st 2012 for a detailed explanation of the implications of this law.

unions, and allow the provincial government to impose a collective agreement on the board and the employee bargaining agent if negotiations were not completed by December 31, 2012. This bill required that contracts for 2013 and 2014 include a two year pay freeze, delay salary grid promotions for younger teachers, substantially reduce short-term sick leave plan,⁸⁴ long-term disability payments, maternity provisions and other issues. The bill further stated that none of the terms and conditions included in the act can be questioned or reviewed in any court and it limits the legality of teachers' unions and support staff going on strike. In January 2013, elementary and secondary teachers who had planned protest walk outs were informed by the Labour Relations Board that their action would be considered illegal and that they would face heavy individual and collective fines.

The CTF has filed a complaint to the ILO concerning Bill 115 on behalf of the Ontario Elementary Teachers' Federation, which has resulted in imposed collective agreements in over 200 schools. The President of CTF has stated that Bill 155 is an "unprecedented attack on collective bargaining rights" and expressed "grave concern at the unilateral and draconian actions of the current government of Canada."⁸⁵

In post-secondary education, there are also examples of universities refusing to negotiate in good faith. The Canadian Association of University Teachers (CAUT) issued an alert, for the first time in a decade in October 2012, in the case of the Concordia University College, Alberta, accusing the employer of seriously impeding the negotiation process.⁸⁶

However, in other Provinces, there remains a strong and effective collective bargaining system, such as in Manitoba where the Manitoba Teachers' Society has continued to negotiate reasonable contracts with annual increments and the government is committed to funding education on or above the rate of economic growth in the Province, even though the right to strike is denied.⁸⁷

Also in Saskatchewan, despite a right-wing government, the Saskatchewan Teachers Federation was able to conclude an agreement with the Provincial government and the Schools Board Association after a long stand-off, which included a one-day strike action. The STF organised a one-day study day and rally in May 2011, using the time to volunteer in the community in order to galvanise public support. The previous contract expired in August 2010 and following the day of action, a mediation process was set up, leading to an agreement for a further three year period until 2014. The new Contract was signed at the end of September 2011. It had been a very matter of fact and patient campaign.

⁸⁴ *previously teachers had the right to bank up to 200 sick leave days over a career in return for an additional payment on retirement which has been reduced to 10 days entitlement per annum which cannot be banked.*

⁸⁵ *Letter from President Sam Hammond, CTF and Gene Lewis, General Secretary Elementary Teachers' Federation of Ontario to Fred Van Leeuwen, Education International General Secretary January 17th 2013*

⁸⁶ <http://www.caut.ca/pages.asp?page=1109> accessed 4.02.2013

⁸⁷ See <http://www.mbteach.org/collective-bargaining/collective-agreements.html> accessed 2.02.2013



CTF's response

Unions have mobilised and called for new partnerships and models of cooperation. CTF has sought to involve parents and the community to promote education as a public good and to enhance legitimacy as they challenge the restrictions on collective bargaining rights and cuts to pay and benefits. It launched a campaign designed to promote the voice of teachers and to call on members of parliament at Federal and Provincial level to listen to teachers' concerns. Research on the situation of teachers using focus groups and on-line surveys highlighted the challenges that teachers faced to reach their own aspirational teaching goals.⁸⁸ Together with Canadian Foundation of Labour Rights and other allies, they organised a conference on "labour rights are human rights" in March 2013 to build momentum to regain and affirm collective bargaining rights. The CTF focus is to work with teachers, parents and students, the progressive school boards and education institutions; and to build strong alliances within the community, progressive business, post-secondary institutions, NGOs, arts and cultural groups as well as the broader labour movement.⁸⁹

Education expenditure and GDP growth		
% GDP spent on education	% public expenditure on education	GDP % Growth
2008: 4.8 %		0.4 %
2009: 5.0 %		-2.5 %
2010:		3.1 %
2011:		2.5 %

Source World Bank/IndexMundi

⁸⁸ "Teaching the Way We Aspire to Teach: Now and in the Future"; Canadian Education Association and Canadian Teachers' Federation July 2012.

⁸⁹ Fraser Calvin idem

COLOMBIA⁹⁰

El affiliates

- FECODE** Federación Colombiana de Educadores
Colombian Federation of Teachers
- ASPU** Asociación Sindical de Profesores Universitarios
Trade Union Association of University Lecturers

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1976
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1976
- C. 100 Equal Remuneration (1951) ratified 1963
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1969
- C. 144 Tripartite Consultations (1976) ratified 1999
- C. 151 Labour Relations (Public Service) (1978) ratified 2000
- C. 154 Collective Bargaining (1981) ratified 2000

Introduction

El's affiliate in Colombia, Federación Colombiana de Educadores (FECODE), has been one of the organisations most affected by the long-standing violence against the trade union movement. The numbers of trade unionists assassinated, forcibly disappeared and threatened remains as a scar on the nation. Over the last two decades, FECODE has documented the killing of 968 teacher unionists, highlighting a pattern of deadly violence targeting teachers and their union.⁹¹ Since President Juan Manuel Santos came to power in June 2010, 32 teacher unionists have been killed and over 500 have received death threats.

The ITUC reports that some progress has been made to end the longstanding violence and to investigate these crimes, although the great majority of the cases reported by trade union organisations remain in impunity. The Vice President of the Republic, speaking on behalf of the government, has recognised the scale of the violence, something previous governments have never done.⁹²

Over and above the violations of fundamental human rights, successive government have imposed reforms and budgetary cuts which have impacted on the quality of education and damaged the status of teachers. El and its affiliate have firmly opposed the Education Law that has facilitated the privatisation of public schools. Under the 'concession' model, public funds have been redirected to private schools, leading to the loss of 30,000 public education teaching jobs in the last 15 years and displacing over 40,000 children from public to private schools.

⁹⁰ Grateful acknowledgements to Senen Nino Avendano, General Secretary, and Bertha Rey Castelblanco, Secretary of Gender, Equality and Inclusion, FECODE, who provided valuable information and comments for this country study.

⁹¹ El http://www.ei-ie.org/en/news/news_details/2319 World Teachers' Day 5 October 2012

⁹² ITUC Annual Report 2012



Right to Freedom of Association and Collective Bargaining

In such circumstances of violence and impunity, freedom of association is self-evidently jeopardised and union membership is very low. It is estimated that only 4% of the work force are union members, with approximately 55% of trade union membership concentrated in the public sector.⁹³

Freedom of association is recognised in the Constitution and Labour Code, with the exception of the Armed Forces and Police. There are, however, various types of contract arrangements, which effectively prevent workers from setting up or joining trade unions by disguising the employment relationship. These include associated labour cooperatives (CTA), service contracts and civil and commercial contracts.

The right to collective bargaining is recognised in the Constitution but the widespread practice of concluding “collective pacts” undermine the position of the trade unions. Since 2011, reforms and measures designed to end the practice of associated labour cooperatives and the use of collective pacts have been introduced although effective implementation remains limited. The Constitution recognises the right to strike, but prohibits federations and confederations from calling strikes. The Constitution prohibits strikes in essential public services as defined by the law. However, the law has not yet been adopted, leaving the concept open to a broad interpretation.

Status of Teachers

Teachers are public employees appointed on merit through a process of competitive exam and their conditions of employment are governed by two statutes. Decree Law 2277/1979 was negotiated with FECODE and provides teachers with a permanent employment, sets out the salary scale and career progression, disciplinary measures and a special pension fund. Decree Law 1278/2002 was imposed by the government and it changed the employment conditions for all new teachers, introducing a new career progression, based on performance evaluation and dependent on budgetary possibilities. Teachers could be dismissed on grounds of poor performance and the pension arrangements were also reduced.

By 2012, the ratio of teachers appointed under the “old” and “new” statutes, was approximately 2:1.⁹⁴ FECODE has opposed this situation consistently and in June 2011, the government agreed to set up a Tripartite Commission (Congress, Ministry of Education and FECODE) in order to discuss a new Single Statute.

However, there are also many teachers with provisional contracts who are not appointed under the provisions of the Statute.

⁹³ *Escuela Sindical Nacional*

⁹⁴ *TribunaMagisterial* 18/4/2012 <http://www.tribunamagisterial.com/2012/04/antiguos-y-nuevos-docentes-batallar.html>

Right to collective bargaining in the public sector

Until 2012, there was no right to collective bargaining in the public sector, and public sector unions could only present “respectful petitions” which could not concern salaries and benefits. The right to collective bargaining in the public sector has been a long-standing demand of the trade union movement. Colombia ratified Convention 151 in 2000 although it was not until 2009, that the government set up a commission to examine the issue. A new Decree (No. 1092) regulating the right to collective bargaining in the public administration was adopted on 24 May 2012.

The Decree provides for the right to collective bargaining for all public employees, apart from the Armed Forces and national police and high-level officials. It sets out the procedures and annual timetable for negotiations and a mediation process in case of disputes. Negotiations on the list of demands take place over a period of 20 days which can be extended by agreement for a further 10 days.

It also provides for an awareness-raising programme:

“Article 8: the Ministry of Labour, in coordination with the trade union confederations, shall, within six (6) months following the promulgation of this Decree, carry out an awareness-raising programme consisting of television and radio broadcasts, publication of a document, and national and regional seminars, to provide background information and as a prerequisite for the implementation of this Decree.”

FECODE and other public sector trade unions are highly critical of the decree as it was issued unilaterally by the government and its provisions are very weak. There is no right to sign a collective agreement, only the possibility of submitting a list of demands (pliego de peticiones) and the Decree only allows for a mediation process without the right to strike.

In 2012, FECODE presented a list of demands which were “negotiated” in these conditions but the government has not implemented the points which were agreed. One issue concerns trade union permits, or the right to paid leave for trade union representatives to carry out their work. In many regions, these permits have been denied.

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2008: 14.9 %	3.9 %	2.8 %
2009:	4.7 %	0.8 %
2010:	4.8 %	4.3 %
2011:	4.5 %	5.9 %

Source World Bank/IndexMundi

UNITED STATES⁹⁵

El affiliates

- AFT** American Federation of Teachers
NEA National Education Association

Ratification

C. 144 Tripartite Consultations (1976)

Introduction

In the USA, there is a high union density rate in the education sector. The National Education Association (NEA) and the American Federation of Teachers (AFT) are among the largest unions in the country and hold significant political influence. Teachers are employed by local education agencies (LEAs)/local school districts. Depending on the State, geographic boundaries may be by county, municipality and other geographic and structural divisions unique to a particular state. According to an ILO/UNESCO report, about one third of public employees are employed in primary and secondary education and over 70% of public-school teachers are union members.⁹⁶

Public sector education employees' rights are determined at State level and at the local level either by collective bargaining or in the absence of collective bargaining by the employer. States either through state legislation or state policy determine much of what happens on the local level with regard to education and education employees. The education system in the USA is highly decentralised and is almost exclusively the responsibility of local (county or municipal) school districts. There is no federal right to education in the United States. While there may be legislation governing labour relations of public employees, there is often specific legislation covering labour relations between public education authorities and teachers' unions in many States. Moreover, it is not unusual for States to enact separate public employee legislation for state workers, teachers, firefighters and police, however it is not absolute. Educators who work for Department of Defense schools, either on U.S. military bases or overseas, are federal employees, and their bargaining rights are determined by federal law.

Freedom of Association

The First Amendment to the Bill of Rights provides that Congress shall make no law abridging the right of the people to peaceful assembly. This right, extended to the States by the 14th Amendment, has been interpreted as according public employees the right to freedom of association and the right to organise.

⁹⁵ Grateful thanks to Carolyn York, Director of Collective Bargaining and Daaiyah Bilal-Threats, Director, Center for Governance, NEA, and to Nancy Van Meter, Deputy Director Research and Strategic Initiatives, and Pat Keefer, Director International Affairs, AFT for their valuable report and additional comments and contributions.

⁹⁶ "International Survey on social dialogue in education: information sharing, consultation and negotiations," Report for the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel 10th Session 28th September- 2nd October 2009, Paris, p. 33

Under the Federal Service Labor Management Relations Statute, federal employees have the right to form or join a union, with the exception of the uniformed services, senior managers, employees of the Foreign Service, various police and intelligence services, and the Departments of Agriculture, and Commerce.⁹⁷

The State Statutes for public employees are modelled in general on the Federal National Labor Relations Act (NLRA) 1935, which provides private sector employees with rights to unionise, bargain collectively and the right to strike.⁹⁸ The major difference between the State Statutes and the NLRA is the prohibition of the right to strike. However, in some States teachers do have the right to strike but for the vast majority of teachers and their unions any strike activity is explicitly prohibited. In the private sector, the National Labor Relations Act 1935, the Taft-Hartley Act, 1947 and the Landrum-Griffin Act 1959 still provide today the main legislative framework.

Collective Bargaining

In 34 States and the District of Columbia, State laws provide K-12 public teachers, with the right to bargain collectively. Ten other States provide for collective bargaining, but only if the employer agrees, which is known as permissive collective bargaining rights. The weakest region for public sector union rights is in the South. Georgia, North Carolina, Texas and Virginia prohibit collective bargaining by legislation and in South Carolina, the State Supreme Court ruled that public employees do not have the right to bargain. Tennessee withdrew bargaining rights in 2011, although there is a new process called “collaborative conferencing” that provides some rights to teachers. Primary, secondary, and higher education support staff have the right to collective bargaining in 32 States and the District of Columbia and faculty at most public higher education facilities can bargain in 26 States plus the District.⁹⁹

Collective bargaining covers a broad range of subjects, including compensation, benefits, and working conditions, known as “mandatory” subjects. Depending on state law, some education policy issues can be bargained in some states. However, most education policy is either legislatively or judicially defined as an exclusive prerogative of the employer. Tenure systems are legislated not bargained. In some States, unions have been able to broaden the agenda to typically include issues improving learning conditions for students, such as class size, teacher training and evaluation, and health and safety issues.¹⁰⁰

⁹⁷ Gemigon, Bernard “Labour Relations in the public and para-public sector” *International Labour Standards Department, Working Paper No. 2, ILO Geneva 2007, p. 80*

⁹⁸ *Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection”. NLRA 29 U.S.C. §§ 151-169 1935.*

⁹⁹ *Information provided by NEA valid at December 2011*

¹⁰⁰ *NEA Brochure “Collective bargaining: what it is and how it works” available at <http://www.nea.org/home/16375.htm> and accessed 12.03.2013*



In order to be recognised as a bargaining agent, the union needs to meet a threshold of 50% plus one of the workers in the bargaining unit in the case of a card check and 50% plus one of those voting, in the case of a ballot.¹⁰¹

However, card check is not universally recognised and most unions are recognised through a ballot election. Once the union is recognised, it negotiates a collective agreement for all employees in the bargaining unit. In 19 States, the unions can charge an agency fee, in 6 States and the District, there is no legal provision and in 25 States, the agency fee is prohibited.¹⁰²

In the absence of the right to collective bargaining, public sector employees may use the legislative process to put forward issues that collective bargaining typically addresses, such as wages, benefits, and other conditions, and in some states, they may enter into binding agreements with willing employers. A federal appeals court found that the prohibition on collective bargaining by public employees in North Carolina does not extend to a union's advocacy work.¹⁰³

Charter schools, which are publicly funded but managed by private groups rather than school districts, are largely not organised. There are often poorer work conditions in the charter schools. There has been an increasing trend towards unionisation in these schools.¹⁰⁴ In 2010, approximately twelve percent of charter school educators were represented by a union.¹⁰⁵

Faculty at private higher education institutions have been denied collective bargaining rights by a decision of the National Labor Relations Board.¹⁰⁶

A significant number of States prohibit strikes by public employees and impose fines or similar penalties. In the absence of the right to strike, there are sometimes mechanisms for compulsory arbitration, mediation and fact finding. For example, in Connecticut, the Teacher Negotiation Act (1979) appoints an arbitrator who is guided by a certain number of criteria, such as financial capability of the school district, cost of living, salaries and other conditions of employment prevailing in the labour market.¹⁰⁷ In States where public employees are authorised to strike, certain conditions need to be respected, such as the certification of a bargaining unit, the exhaustion of the dispute settlement procedures, the

¹⁰¹ "Collective bargaining in the public service: a way forward," ILO 102nd Session 2013 General Survey concerning labour relations and collective bargaining in the public service Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) p. 100

¹⁰² Information provided by NEA valid at December 2011 and see charts at end of section⁹⁹ Information provided by NEA valid at December 2011

¹⁰³ Gernigon, Bernard *op. cit.*, p. 81

¹⁰⁴ International Survey on Social Dialogue in the Education Sector *op.cit.*, p. 34

¹⁰⁵ National Alliance for Public Charter Schools <http://dashboard.publiccharters.org/dashboard/schools/page/union/year/2010>

¹⁰⁶ Ratteree, Bill "Social dialogue in education: national good practices and trends", Background Paper for discussion at 11th Session of CEART, Geneva 8-12 October 2012, p. 9

¹⁰⁷ Gernigon, Bernard, *op. cit.*, p. 85

expiration of the current collective agreement and due notice to the employer. In many of these States, however, workers in essential services cannot strike, and in most cases, teachers are included in this category.

At the end of 2012, 68% of States legally permitted teacher collective bargaining while only six States prohibited it. Over two-thirds of the States made provision for dispute resolution mechanisms. Collective bargaining was thus well established and an effective form of social dialogue in thousands of local school districts throughout the country. AFT represents over 1 million educators working in early childhood, K12 schools, colleges and universities and the majority of them have collective bargaining rights. NEA represents 3.2 million educators in approximately 14,000 local school districts and institutions of higher education and the majority of those also have the right to collective bargaining.

Trends since the financial crisis in 2008

Beginning in 2011, following the mid-term elections, there was a clear trend to restrict collective bargaining rights and scope for teachers, and indeed all public sector employees, as a consequence of the election of very conservative governors and state legislatures. In Tennessee, the legislature simply repealed the law giving teachers the right to bargain and declared, “no local board of education shall negotiate with a professional employees’ organization or teachers’ union concerning the terms or conditions of employment.”¹⁰⁸

The CEART 2012 report notes: “State fiscal difficulties and the costs of teacher pensions, health care and other benefits have usually been cited as the prime reasons for often drastic changes in bargaining scope and capacity. However, evidence points instead to a political/ideological agenda among right-wing politicians, think tanks, private foundations and business leaders advocating a reduction across the board in public sector bargaining power, and by extension, weakening the engagement of teacher unions in the political process.”¹⁰⁹

The NEA has identified some of the most egregious changes as:

- Enactment of legislation prohibiting the right to have union dues deducted from the pay check in Michigan, Alabama, Arizona, and Wisconsin ; this prohibition is under legal challenge in Arizona, Michigan, and Alabama;
- elimination of most collective bargaining rights for most public employees in Wisconsin (public educators can only bargain wages up to the rate of inflation);
- elimination of collective bargaining rights for teachers in Tennessee. It has been replaced with a still undefined process called “collaborative conferencing” .

Other changes have included:

- restricting the scope of collective bargaining to teacher salaries, excluding in the process according to the State legislation, issues such as: placement of teachers; teachers’ discipline

¹⁰⁸ Information provided by NEA and see charts at end of section

¹⁰⁹ Ratteree, Bill *op.cit.* p. 9



and dismissal procedures, including staffing decisions when reducing the number of teachers due to financial constraints; teacher evaluation and performance management criteria; performance based compensation; hours of work and working days; restructuring options, including outsourcing and public-private partnerships (Indiana, Michigan, Tennessee, Wisconsin);

- reduced dispute resolution procedures (Indiana and Tennessee);
- prohibition or extended union member approval requirements for strikes (Illinois, Wisconsin);
- imposition of unilateral rejection, modification or termination of the collective bargaining agreement if school district is under the control of an appointed emergency manager under fiscal accountability legislation (Michigan).

Another issue has been that employers have demanded that employees pay more for health care benefits or introduce plans with lower benefits. While public employees do not bargain pension benefits as they are determined at the State legislative level, there have been repeated, strong attempts to close public employee pension plans and replace them with defined contribution plans.

Union Strategies

In the face of these prohibitions and restrictions on collective bargaining, the unions have needed to re-engage with their membership and the wider community, in particular to counter views that unions are in some way responsible for the economic crisis or preventing the country recover from it. They have worked extensively to promote views about the central role of collective bargaining in ensuring quality education through addressing the needs of both teachers and students.

“Rethink and re-build”

The decision to withdraw automatic check-off of union dues from educators’ salaries in Michigan, Alabama, Arizona, Wisconsin and North Carolina (later overturned in North Carolina) has obviously posed a major challenge to the unions. However, it has also been seen as an opportunity to rethink and rebuild the membership base.

NEA has organised one to one discussions with teachers and support professionals and have been conducting membership surveys to review their programmes and services. NEA has also embarked on an ambitious agenda to transform the teaching profession through the NEA Three-Point Plan.¹¹⁰ The plan declares, “If we want to create an education system for the students of the 21st century, we must transform that system, including the teaching profession. Since teachers know best about what we do, teachers should take responsibility for leading the transformation of our profession.” After listening to the advice of its members and leaders, NEA identified three areas where it believes steps can and should be taken to transform the profession: 1) Raising the bar for entry into the profession; 2)

¹¹⁰ “Leading the Profession: NEA’s Three-Point Plan for Reform”. Statement by NEA President Dennis Van Roekel, December 8, 2011. http://www.nea.org/assets/docs/NEA_3point_plan_for_reform.pdf

Ensuring that those who are in the classroom maintain a high standard of practice through programs such as peer assistance and review; and 3) Developing and empowering member leaders to transform our profession.

The AFT has launched numerous campaigns to counter the systemic dismantling of public education by the so called "education reformers". These efforts have included AFT's initiative to adopt "solution driven" unionism in local communities across the US; proposals to enhance the professionalization of teaching by raising the bar in the teacher preparation process; campaigns to limit the stakes attached to standardized testing, and expanded and deepened alliances with parents' groups and other community partners.

Good Practice : "We are Ohio" Campaign

Senate Bill 5 was signed into law by Governor John Kasich in March 2011 and would have prohibited collective bargaining for public employees in the State. There had been no consultation with public sector employees before it was first presented in the Senate. Both AFT and NEA were key players in the "We are Ohio Campaign", which was formed as a citizen-driven, community based, bi-partisan coalition to stop the bill becoming law and which was supported by labour organisations across the state. The coalition needed to collect over 230,000 signatures in 90 days to call for a referendum and block the law from coming into effect. A State-wide People's Petition was organised, which collected more than a million signatures. The coalition recruited over 17,000 volunteers who carried out a massive canvassing drive with union members and the general public and to get them to vote against the bill. NEA provided 177 staff members from 22 states and members of the Cleveland Teachers Union, affiliated to AFT, made over 300,000 calls in phone bank centres. The campaign developed a sound media strategy and was supported with polls and surveys to see where the voting stood. The referendum was a resounding defeat for the proposal with an exceptionally high voter turnout giving a 68-32 majority against in November 2011.

The vote, which marked the first time that the collective bargaining rights of public employees have been upheld on a statewide ballot, sent a clear signal that the public in Ohio would not sit idly by while politicians scapegoat hard-working public employees for an economic crisis they did not create.

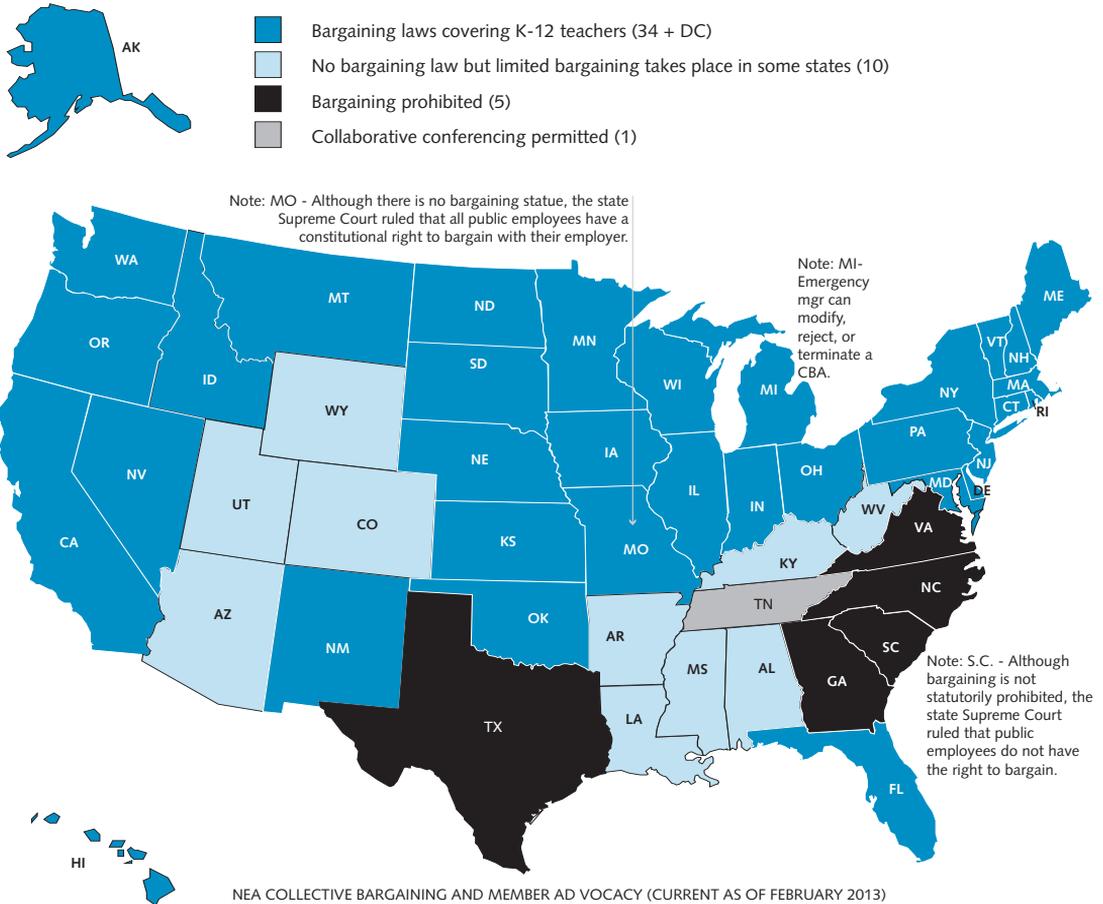
"Those who would dare try to strip collective bargaining rights away from hard-working citizens will now think twice," said President Randi Weingarten on the night of the vote. "Ohio voters made it clear to them that there is a price to pay for turning your back on the middle class."

"As teachers, we appealed to parents and explained what the consequences could be for the quality of education, for class sizes and other issues. We wanted to "put a face" on the law as teachers' views are trusted in the community. The campaign was conducted over 9 months and it was a real investment of time and resources. Yet we all kept true to the process, contributed and shared resources." Daaiyah Bilal-Threats, Director, Center for Governance, NEA¹¹¹

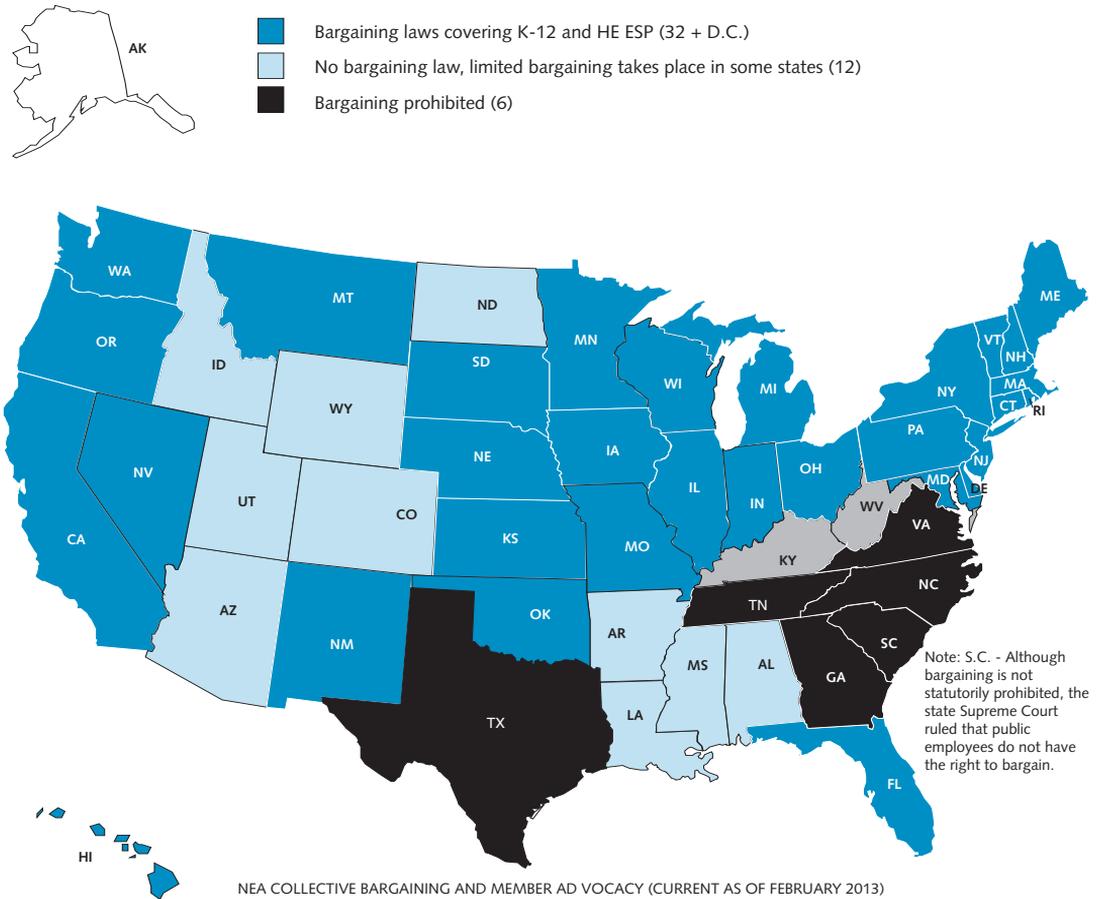
¹¹¹ Interview with the researcher, January 30th 2013

Right to Collective Bargaining in the USA

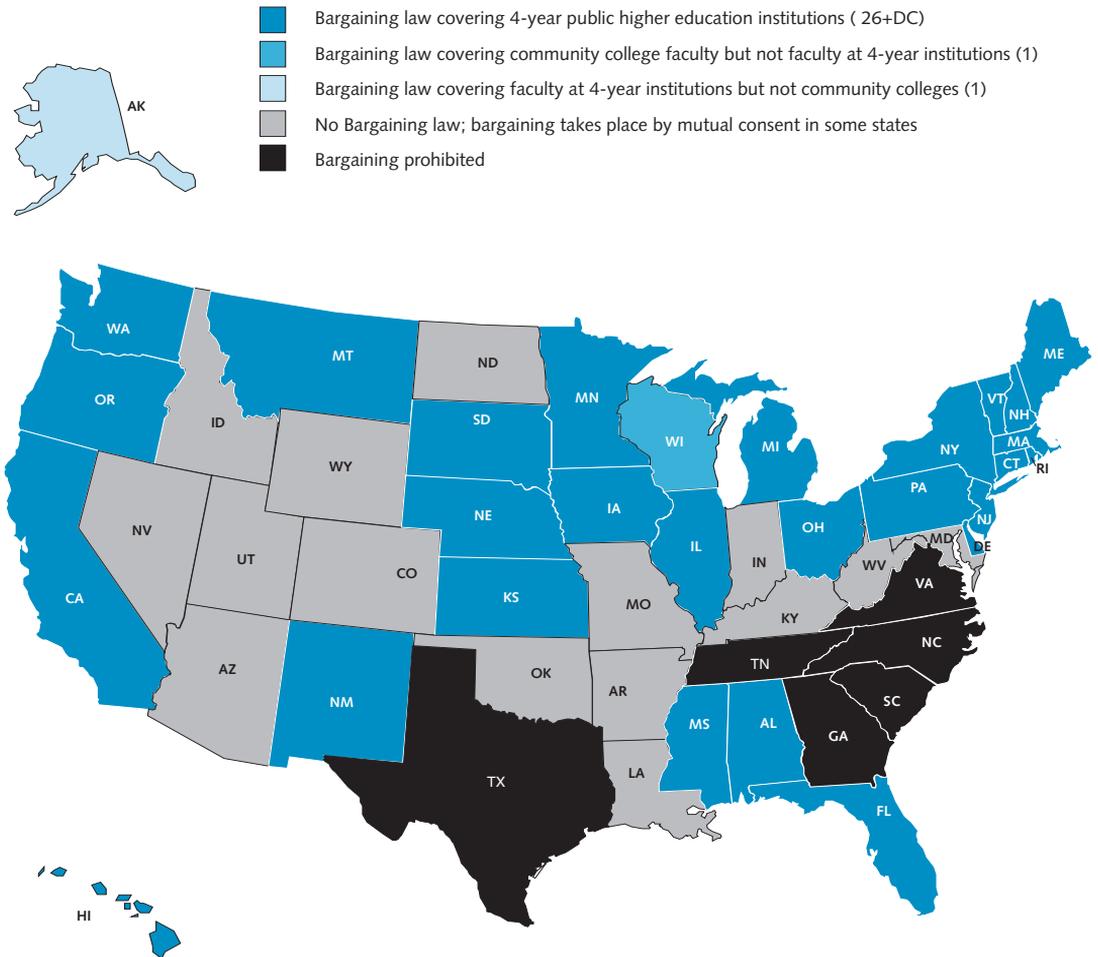
Status of K-12 Public School Teacher Bargaining



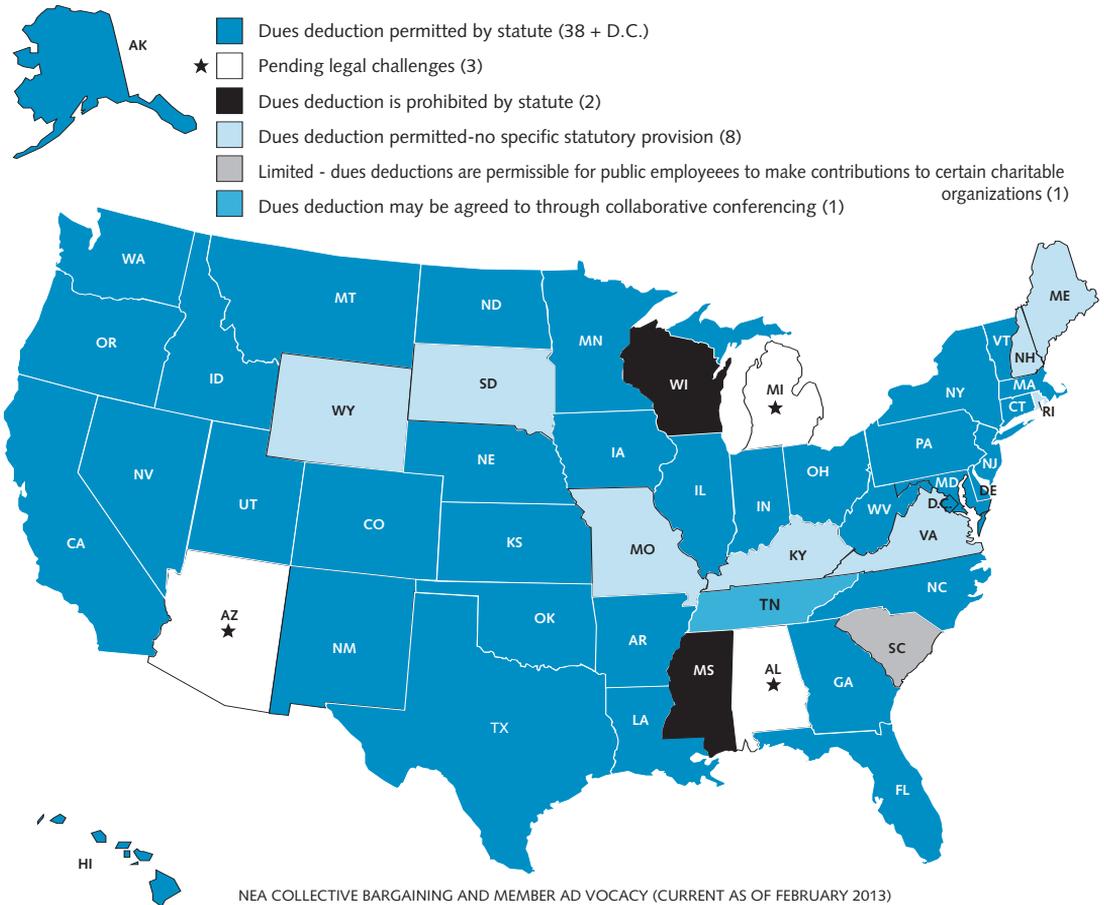
Status of Education Support Professionals Bargaining Laws for K-12 and Higher Education Support Professionals



Status of Collective Bargaining for Public Higher Education Faculty at Community Colleges and Four-Year Institutions

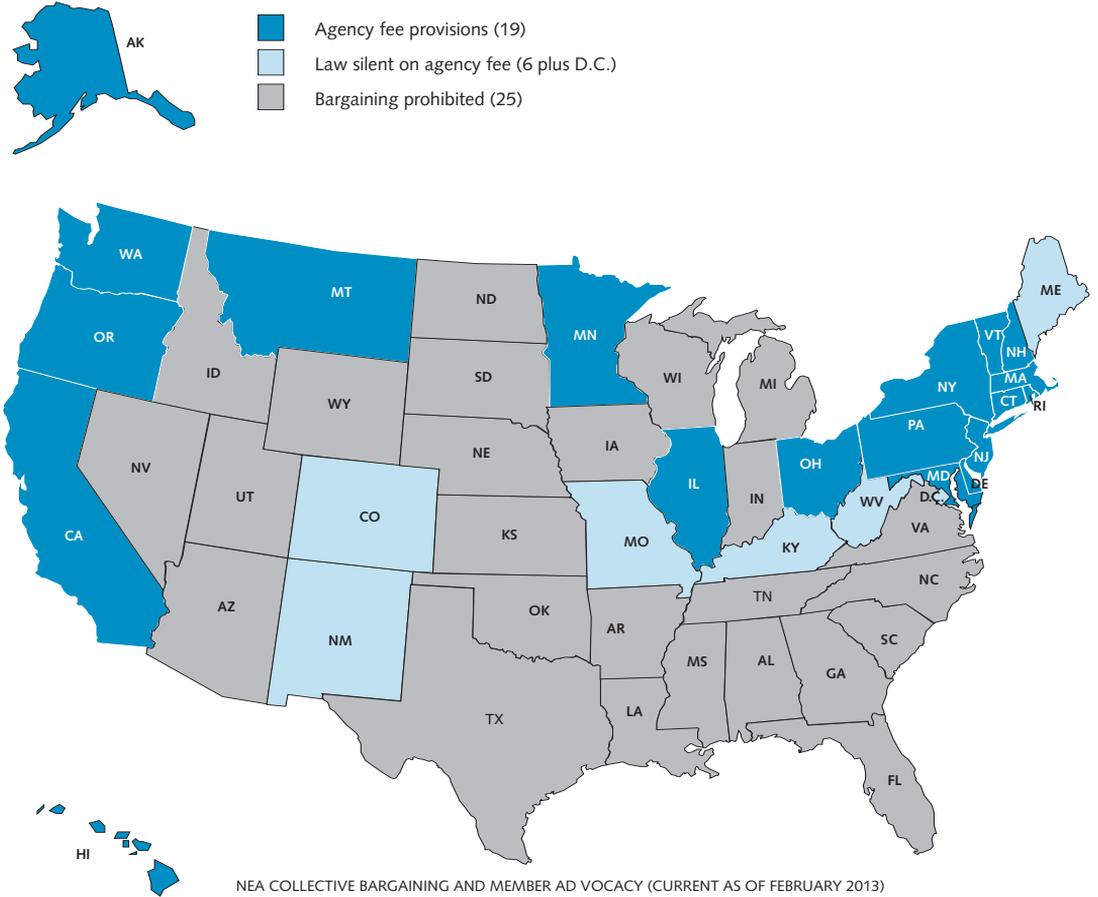


Summary of Statutory Dues Deduction Provisions





Summary of Agency Fee Provisions



Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2008: 13.8%	5.5%	1.1%
2009: 13.1%	5.4%	-2.6%
2010		2.8%
2011		1.7%

Source World Bank/IndexMundi

ASIA/PACIFIC

AUSTRALIA ¹¹²

El affiliates

- AEU** Australian Education Union, 190.000 members
- NTEU** National Tertiary Education Union, 25.000 members
- IEU** Independent Education Union of Australia, 68.000 members

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1973
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1973
- C. 100 Equal Remuneration (1951) ratified 1974
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1973
- C. 144 Tripartite Consultations (1976) ratified 1979

Introduction

Australia has a federal system of government with a federal, Commonwealth government together with a further 8 provincial, state or territory governments.

Under the Commonwealth Constitution, provision of public education at the school and vocational education and training level remains a state government responsibility. However under complex federal-state financial arrangements, funding is increasingly being provided to state governments through national initiatives to promote national goals.

There are both federal and state government statutes to regulate trade unions. Registration systems apply to provide registered trade unions with separate legal and corporate identity, to provide them with 'standing' in industrial relations matters and to enable government to oversee registered union internal financial, administrative and democratic accountabilities. The federal system for the registration of trade unions applies where trade unions operate in industries where the Employer is a trading corporation or where state governments have referred their 'industrial relations powers' to the Commonwealth. There are also, for the most part, state systems of trade union registration. Such state-based trade unions may be a state branch of a nationally registered trade union.

¹¹² Grateful acknowledgement for the written report by David Colley, Federal Industrial Officer, AEU and additional contributions. This text is largely based on his report.



There are also both federal and state laws that govern industrial relations, including collective bargaining and freedom of association, generally. The federal laws operate predominantly in the Commonwealth public sector and for the private sector generally, with state laws operating predominantly for state public sector enterprises. However, State governments are increasingly divesting from direct service provision and instead establishing or encouraging corporations to take over the role of service provision. Due to the constitutional underpinnings of the federal industrial relations statute being based on what is called the 'corporations power' rather than the more traditional 'conciliation and arbitration power', whenever or wherever employment occurs through a corporation, the resultant terms and conditions of employment are subject to federal and not state industrial relations laws.

Status of teachers

Teachers in public education are typically engaged as State level public employees. Even where an individual government school council or board employs some categories of teaching staff, such staff are 'public' employees in the sense that the councils/boards are established by or under a statute of the parliament for state or public purposes, are accountable to and regulated by the minister of state and primarily funded from government sources.

Around 30% of early childhood education, primary and secondary education services are private sector, although receiving public funding, mainly from the Federal government.

Freedom of Association

Freedom of association is guaranteed for both private and public sector workers; however, employers can seek 'representation orders' in the workplace tribunal, which can dictate which classes of employee the union can (or cannot) represent. The Armed Forces and a small number of senior civil servants, such as those appointed to statutory posts, are prohibited from forming or joining a union.¹¹³

At the national level, following the election of a new 'Labor' government in 2007, the Fair Work Act 2009 ('the FW Act') came into operation with marked changes to freedom of association and collective bargaining. The previous conservative government's principal industrial relations legislation, the Workplace Relations Act 1996 (the 'WR Act'), introduced and gave primacy to statutory individual employment contracts which ousted the operation of awards and collective enterprise agreements. In its regulation of trade unions, the previous legislation also adopted a conception of freedom of association as a sort of 'competitive unionism' which encouraged the development of smaller unions which competed for members with already established unions. It also put considerable restraints upon union 'right of entry' to the workplace provisions.

The FW Act prohibited statutory individual contracts, gives primacy to collective employment agreements and loosens but retains constraints on union right of entry to a workplace. It has not removed the provisions concerning the registration of trade unions and so the current dominant paradigm for freedom of association remains one of an individual 'personal' right to choose to join or refuse to join a union.

Right to strike

Strikes are only permitted in respect of enterprise bargaining and only when undertaken in the process of bargaining for an agreement, i.e. only when an existing agreement has expired. Strikes are also only permitted if the union is genuinely trying to reach agreement (the employer's conduct is not assessed) and only after a ballot has taken place and due notice has been given of the action to be taken. In this way, the FW Act effectively prohibits protected industrial action in the case of multiple business agreements, pattern bargaining, and sympathy strikes and secondary action in general.

In addition, the FW Act permits the suspension or termination of protected industrial action and the imposition of compulsory arbitration, where it is regarded as liable to cause significant economic damage, or harm to life, safety or welfare of the population or part of it. Industrial action is also prohibited if it threatens trade or commerce with other countries, or results in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade. The ILO CEACR considers these limitations on the right to strike are not in full conformity with the ILO Convention 87.¹¹⁴

At the federal level and in some states, limited industrial action is permitted in the context of bargaining for a new enterprise agreement. All jurisdictions have a mechanism for dispute resolution before a workplace tribunal. This includes where a dispute involves industrial action. Somewhat separately all jurisdictions have 'essential services' legislation which enables the government to proclaim specific services or industries as 'essential' and thereby to issue regulations prohibiting specified behaviour, eg, industrial action and prescribing other behaviour, eg, extended working hours. Proclamations under essential services legislation are rare. However, in some States public sector workers are prohibited from taking industrial action. For example, in New South Wales (NSW), public employees, including teachers, police and nurses, are prohibited from striking. Instead, there is an independent workplace tribunal to arbitrate wage claims.

Collective bargaining

The FW Act has a number of provisions which contribute to undermining the principles of collective bargaining. Enterprise Bargaining Agreements (EBAs) are seen as industrial

¹¹⁴ ILO CEACR report adopted 2011 published ILC 2012 Australia Convention 87



instruments made between an employer and its employees rather than between a union and an employer (or industry body). Under this scheme, unions are simply agents bargaining on behalf of their members. However, any employee may choose their own representative in the bargaining process. The relevant union is the 'default bargaining representative' in the absence of any choice by the employee of another bargaining representative. The WR Act and now the FW Act thus remove the status unions had had since 1904 of being 'parties principal' in their own right in industrial matters although the FW Act does enable a union to have a collective agreement cover and apply to itself and not only to employees per se. The bargaining process can be undermined by any subsequent 'proliferation' of bargaining representatives.

In the education sector, most collective bargaining is conducted at State level. There are common terms and conditions of employment for the public sector, including superannuation (pensions) and Long Service Leave, and a series of EBAs, signed normally between the AEU State level Branch and with the State level Education and Training Directorate (ETD).

Typically in each State/territory, there is:

- (a) One EBA for government schools teachers and principals;
- (b) One EBA for the teaching staff in all Technical and Further Education (TAFE) institutes. Non teaching staff have separate EBAs. Where these are located at institute level, they still must be approved by the State government.
- (c) One EBA for administrative and support staff in government schools; or alternatively, this EBA will apply across the 'public service sector' of which the administrative and support staff are part.

At tertiary level, the EBAs are signed between the university management and NTEU although the union draws up a national set of claims, which is then adapted to local conditions and extended to include other specific issues. The NTEU produces a monthly "Bargaining State of Play" during the negotiations period.

The main issues covered in the public schools agreements include types of employment; selection and advancement, hours of work; pay and classifications; professional development; teaching loads and classroom hours; workload management; workforce planning; workplace behaviour, dispute and appeals mechanisms; facilities for unions, redundancy procedures; leave entitlements and allowances. The FW Act removed earlier prohibitions under the WR Act, concerning trade union subscriptions, trade union training leave and union involvement in dispute settlement procedures and consultations with unions about workplace changes.

The standard EBAs now include provision for setting up school or training institute consultation committees. Composition of these committees can vary from equal management and union representation to including specifically elected staff representatives. These Committees meet as required and are charged with reviewing the long-term planning and operations of the school, including class size and working hours arrangements. However, the FW Act

still prohibits the inclusion of bargaining service fees for non-members in an EBA and some other issues can be considered unlawful, creating a confusing and inconsistent situation.¹¹⁵ In addition, the AEU negotiates with the ETD on guidelines and procedures concerning appointments and other issues.

In the private sector, there is a State level award which provides a set of minimum conditions and the IEU negotiates with individual employers to sign an enterprise or certified agreement.

Social dialogue

There are a number of advisory or consultative mechanisms, which are usually tripartite where consultation with stakeholders occurs over proposed legislative change to industrial laws. The education unions are not represented on an 'ex officio' basis as such but may be involved as a nominee of Australian Council of Trade Unions.

The AEU is also represented on a variety of federal or national 'professional' bodies such as the Australian Institute for Teachers and School Leaders which develop and oversee matters such as professional standards.

Trends since the Financial Crisis in 2008

The enactment of the FW Act in 2009 provided that enterprise agreements could cover a greater range of subject matters. The previous WR Act had restricted that content to only those matters which directly pertained to the employer-employee relationship. The FW Act, while maintaining that requirement, extended it to also include matters pertaining to the relationship between a union and an employer.

The result has been that collective enterprise agreements from late 2009 onwards have various provisions that enable unions to access workers in their workplaces and to provide various entitlements to union workplace delegates. This has led to a significant extension in the scope or coverage of collective enterprise agreements in the period 2008-2012.

However, on the other hand, since 2010, the election of conservative state governments with substantial majorities has emboldened such governments, at least in the one state which has a unicameral parliamentary system, to enact statutes removing from collective agreements matters which have been agreed between employers and employees and approved by the relevant industrial relations regulatory authority.

There have been considerable constraints placed upon the content of EBAs in the state of Queensland, such as the removal of consultation rights, including in relation to introduction of change and redundancy, and of security of employment provisions. In the state of New South Wales there has been an attempt to promote registration of trade unions with overlapping membership rules (subsequently confined to one specific industrial sector – medical and

¹¹⁵ ILO CEACR Report adopted 2011, published ILC 2012 Australia Direct Request ILO convention 98



allied health professionals). In New South Wales also, increased financial penalties imposed for the taking or organising industrial action, including strike action, are pending. The AEU NSW branch has previously had such penalties imposed on it. Conservative state governments have also imposed stringent conditions on the bargaining process which effectively place a limit or maximum cap on wage increases in state public sector employment unless there is a demonstrable 'productivity trade-off' in working conditions.

Some states have even amended the relevant industrial law to require the industrial regulator to give effect to, as distinct from taking account of, state government wages or economic policy. For example in New South Wales, the conservative government passed a law dictating that the tribunal could not award a pay increase greater than 2.5% per annum, in line with the government's wages policy. This allows the government to dictate the wages of over 300,000 workers, without the obligation to bargain and without the right to strike.

Good practice

The AEU has long campaigned and bargained for the inclusion in industrial regulatory arrangements or agreements of provisions relating to class sizes, actual teaching hours and related professional duties. It also negotiates on arrangements to ensure that education and training workplaces, be they early childhood centres, schools or TAFE institutes, have the required qualified professional and other staff irrespective of the geographic location or socio-economic status.

This work of the AEU is based on its fundamental tenet that teaching and learning conditions are dynamically and inextricably linked.

This work is especially crucial in the light of current government policy prescriptions which are aimed at devolving to the local workplace the authority to make decisions concerning such matters including the right or power to employ or dismiss staff.

The Victorian Government Schools Agreement, a legally enforceable industrial instrument formally approved under the federal FW Act, contains express objectives or commitments recognising the fundamental tenet referred to above as well as provisions regulating class sizes and teaching hours.¹¹⁶ This agreement also contains a set of industrial relations principles and provision for the consultation committees referred to above.

AEU Industrial Relations Principles: (which receive widespread Management support at a policy level)

The parties commit to the following industrial relations principles:

- (1) Cooperative and consultative relationships between management, employees and the union;

- (2) Management, employee and union relationships based on mutual respect, trust and preparedness to consider alternative viewpoints;
- (3) Negotiations involving a mutual problem solving approach focusing on long-term gains for all parties;
- (4) To work within a progressive industrial relations culture to create a system of highly effective schools with effective workplace practices;
- (5) Recognition of an appropriate role for workplace representatives.

In tertiary education, in the 2012 bargaining round, claims presented by NTEU included provisions for a review and improvement of the indigenous employment strategy, including setting new binding targets, and incorporation of these in the Agreement.

The union also presented clauses concerning domestic violence, stating that the agreement should:

- a) Include an agreed statement of principle about domestic violence, and provide for the joint development of policies and protocols to address circumstances where an employee is dealing with matters arising from or as a result of domestic violence; which shall include appropriate referral arrangements to relevant agencies, and the promulgation of the policies to staff and especially supervisors.
- b) Provide that no employee will be disadvantaged in her/his employment because of the consequences of his/her dealing with matters arising from or as a result of domestic violence; and
- c) Provide for the granting of sufficient special leave for an employee to deal with matters arising from or as a result of domestic violence, including but not limited to:
 - Seeking safe housing;
 - Attending medical/counselling appointments;
 - Attending court hearings and access legal advice;
 - Organising alternate care or education arrangements for children; and
 - Rebuilding support networks with children, family or others.¹¹⁷

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2008: 13.5%	4.6%	2.3%
2009:	5.1%	1.2%
2010		2.7%
2011		2.0%

Source World Bank/IndexMundi

¹¹⁷ see NTEU website http://www.universitybargaining.org.au/key_claims/key_claims/domestic_violence accessed 21.03.2013



FIJI¹¹⁸

EI affiliates

- FTU** Fiji Teachers Union f. 1929 and affiliated to Fiji Trade Union Congress
- FTA** Fijian Teachers' Association (formerly Fiji Native Teachers' Association) registered as a trade union in 1961; Affiliated to the Fiji Islands Council of Trade Unions
- FTC** The Fiji Teachers Confederation was formed after Independence as an umbrella body to represent teachers.
- AUSPS** Association of the University of the South Pacific Staff

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 2002
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1974
- C. 100 Equal Remuneration (1951) ratified 2002
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 2002
- C. 144 Tripartite Consultations (1976) ratified 1998

Union Density Rate

28% (according to Permanent Secretary 2012)

Background

Following a military coup in 2006, the Constitution was abrogated 10th April 2009. Currently the Head of State is Commodore Frank Bainimarama. Fiji has been suspended from the Commonwealth and the Pacific Islands Forum, the EU has withdrawn all but emergency aid.

Since 2009, the government has ruled by executive decrees which have restricted trade union and labour rights in the public and private sectors, and "have deprived Fijian workers of fundamental rights guaranteed by ILO Conventions 87 and 98, eliminated access to judicial review and disallowed the right to question the legality of the decrees".¹¹⁹ Unions face harassment, threats, arbitrary arrest, travel restrictions and members suffer violence and beatings by the authorities.

The ILO Governing Body at its November 2012 meeting declared Fiji among the 5 countries in the world with the worst record on freedom of association. The CEARC and the CFA have examined the case of Fiji (based on a complaint no 2723 dating back to July

¹¹⁸ Grateful acknowledgements to Maika R M Namudu, General Secretary, FTA and Govind Singh, Secretary General, Council of Pacific Education, who provided valuable information and comments for this study.

¹¹⁹ ILO Governing Body Resolution November 2012

¹²⁰ ILO CFA Report GB 309/8 paras 523 -528

2009¹²⁰ submitted jointly by Fijian Teachers Association, Fiji Islands Council of Trade Unions, the Fiji Trade Union Congress, the International Trade Union Confederation and Education International).

Education System

Education is compulsory between ages of 6-16. While universal primary education had been achieved by 2006, since then, there has been an increase in children dropping out of school, between primary and secondary levels, particularly in remote areas. While access to education is good, quality is often poor because of the use of junior or less experienced teachers. Basic secondary level is compulsory in theory alone. Education is centrally administered by the Ministry of Education. The majority of schools are partnerships between community based or religious organizations together with the Ministry of Education. Each school has an operations committee which manages funds and maintenance while the government pays teachers' salaries. Curriculum and policy is centrally developed.

Education standards are considered to have fallen over the last 6 years because of the emigration of teachers. Teachers leave Fiji due to low pay, lack of continuing educational opportunities and training, poor working and living conditions, particularly in remote areas. It is estimated that teachers comprise one third of the total skilled migrant population.¹²¹ In recent years, the poor economic climate and political situation has resulted in increased migration rates.

Teachers salaries have failed to keep up with steep inflation. Since 2008, the increase has only been 3%. The 2012 education budget was reported to be USD 25.7 million, an increase of USD 9 million over 2011. According to the former President of the FTA, President, *Tevita Koroi*, over 90% of the government education budget goes on teachers' salaries.¹²²

The Education Act adopted in September 1966, was amended in 1976 to establish an Education Forum, an advisory board on education facilities, education policy, and other matters as submitted by a member of the Forum or by the Permanent Secretary. It includes the FTU, the FTA, the President of the Fiji Principals' Association and 10 representatives of the controlling authorities of registered schools.

Teachers in public education are public employees. The Public Service Commission, established in the Act of 1999, is responsible for setting employment terms and conditions, including salaries. It established a Public Services Appeal Board to hear individual cases.

¹²¹ *Asia Pacific Viewpoint Vol 44 Issue 2 August 2003 pp 163-175 "Fijian teachers on the move: Causes, implications and policies".*

¹²² *Fiji Times Online May 5th 2010 speaking at the 80th Annual Conference in May 5th 2010*



Social Dialogue before the Military Coup

In April 2006, the Confederation of Public Sector Unions (Fiji Public Service Association, the Fiji Teachers Union and the Fiji Nurses Association) signed a partnership agreement with the Public Service Commission (PSC) and Prime Minister Laisenia Qarase, the last democratically elected leader of the country. The agreement contained a 5 year Memorandum of Understanding and an Industrial Relations Framework 2006-2008. This agreement, according to the FNA, resolved a number of outstanding issues dating back to 2003, concerning back payments, salary increments, and cost-of-living adjustments, as well as a proposal to carry out a systematic job evaluation system. It had been a long and closely negotiated process.

Situation after the Military Coup

Following the military coup in 2007, the partnership agreement was unilaterally nullified. The interim administration then imposed a 5% across the board pay cut for all public employees and reduced the compulsory retirement age from 60 to 55 years. Although FICTU requested the Minister of Labour to refer the dispute to arbitration, the government ignored the request and FICTU then lodged a notice of strike action. On 25th July 2007, FNA went on strike, joined by FTA and Fiji Public Employees Union and Fiji Civil Servants Association. However, other unions did not join the strike and when the interim government threatened to deduct pay, the strike crumbled. The legal challenges to these unilateral decisions are still pending.

In April 2008, the Employment Relations Promulgation (ERP) established a new set of mechanisms, including Mediation Services, the Employment Tribunal and the Employment Relations Court. The Employment Relations Advisory Board was established in May 2009. The ILO CEARC declared it was generally satisfied with this new legislation.

However, persecution of trade unionists was stepped up in 2009, following the abrogation of the Fiji Constitution on April 10th. The FTA President, Terita Koroi, was dismissed on April 30th from his position as a school principal by the Public Service Commission. He was also removed from his positions on the Education Forum, the Fiji Teachers' Registration Board, the Joint Consultative Committee (JCC) and Staff Board (CSB). He was charged with breaching the public service code of conduct. This accusation was based on a statement by Koroi in December 2008 in his capacity as a trade union leader when he called for a coordinated campaign to return Fiji to parliamentary democracy. His dismissal was widely condemned as a violation of the right to freedom of expression and the FTA's freedom of association. The case was submitted to the ILO Committee on Freedom of Association which has urged the government to ensure that Mr. Koroi's is reinstated and fully rehabilitated.

The Public Emergency Regulations (PER) of 2009, which made meetings of more than 3 people illegal, were repealed in 2012 and replaced by the Public Order (Amendment) Decree (POAD). The POAD essentially requires organisations to seek the consent of the authorities prior to holding meetings and gives police and military wide powers to use force in breaking up groups of people. A sub-section (5) of Section (8) lists a sweeping range of reasons why permission to hold a meeting can be withheld.

At the same time, other decrees limited or terminated the possibilities of collective bargaining or appeals procedures for public sector trade unions.

Decree No 6 of 2009 (State Services) abolished the Public Service Appeal Board and terminated all cases before it.

Decrees 9 and 10 of 2009 (Administration of Justice) terminated dozens of existing and pending grievances filed by public sector employees. The decree also prevented public sector unions from negotiating any changes or up-grading the benefits of workers via collective bargaining.

Since 2009, the PSC has ceased to respond or negotiate with public sector trade unions, over employment conditions, including cost-of-living adjustments, according to the FICTU. However, it was possible for individual cases to be referred to procedures under the Employment Relations Promulgation (ERP) of April 2008.

Decree 21 of 2011 (Employment Regulations) amended the Employment Regulations Promulgation effectively closing this avenue of appeal for public sector workers. A subsequent Decree 36 of 2011 is intended to restore the protection of public sector workers against discrimination, including anti-union discrimination.

Although not directly affecting teachers, the **Essential National Industries Decree 2011** has severely curtailed freedom of association and collective bargaining in key economic sectors, including finances, telecommunications, civil aviation, all foreign banks and the public utilities.

Recent Developments in 2012

The government has suspended POAD to allow for consultations to take place convened by the recently created Constitutional Commission. The government has outlined a road map in order to hold Parliamentary elections by 2014.

A recent High Court decision recognizes its jurisdiction over cases from public sector workers who wish to challenge government or the PSC, including on issues related to termination of employment or suspensions. The PSC has also established a new internal grievance system. The government also reported to the ILO Committee on Freedom of Association that a sub-committee of the ERAB is undertaking a review of all existing government decrees relating to the public service in terms of their conformity to international labour standards.



The government of Fiji has informed the ILO that its recommendations in the case of the dismissal of the FTA President, Tevita Koroi, will be referred to the Employment Relations Advisory Board for its consideration.¹²³

In September 2012, the ILO sought to conduct a fact-finding mission to Fiji. While the government had originally agreed to the mission and its terms of reference, there was a change of opinion and the mission was requested to leave the country.

March 2011 FTA Update:

“The current political climate is not conducive to good and fair labour practices and industrial relations. Negotiation with the government is no longer interesting and forthcoming. They do whatever they think is right and workers are regarded as tools and the human element seems to be deliberately excluded from the whole equation.”

Education expenditure and GDP growth

% GDP spent on education	% public expenditure spent on education	GDP % Growth
2006		3.4%
2007: 5.8%		-6.6%
2008: 4.2%	15.6%	0.2%
2009: 4.5%	14.4%	-0.5%
2010: 6.2%		

Source World Bank/IndexMundi

¹²³ Report of the ILO CFA to Governing Body November 2012 para 783(b)

JAPAN¹²⁴

El affiliates

Japan Teachers Union (JTU)

Other unions

ZENKYO All Japan Teachers and Staff Union

ZEN-NICHIKYOREN National Teachers' Federation of Japan

Union Density Rate

around 30% of the formal workforce

Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1965
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1953
- C. 100 Equal Remuneration (1951) ratified 1967
- C. 144 Tripartite Consultations (1976) ratified 2002

Introduction

The Japan Teachers Union covers approximately 30% of teachers and education employees of national, public and private kindergartens, primary, secondary and higher education institutes. The membership also includes employees of other education related institutions, such as the hospitals which are operated directly by the Mutual Aid Association of Public School Teachers.

The JTU was founded in 1947 and is certified by the Central Labour Relations Commission. Its aims are to:

- (1) secure the social, economic and political status of teachers and education employees;
- (2) democratise education and achieve academic freedom;
- (3) contribute to building a democratic state that respects peace and freedom.

The JTU has a biennial Congress, a Central Committee and a Central Executive Board. JTU has the following divisions: the kindergarten division; the disabled children education division; the youth division; the women's division; the clerical staff division; the school nursing teachers division; the non-clerical workers division; the nutrition teachers/staff division; the interns division; the secretaries and employees of JTU division; the school library ad-hoc committee and the temporary teachers and education employees ad-hoc committee.

¹²⁴ Grateful acknowledgements to Hiroaki Akaike, director Japan Teachers' Union and Tamaki Terazawa, International Affairs Department, who provided valuable information and comments for this country study



Status of teachers

Teachers in the State sector are local public employees. At elementary and middle school level, the municipal education board supervises the profession, while prefectural authorities appoint teachers and other staff and pay their salaries.

Freedom of Association

The Constitution recognises the right to organise and to collective bargaining but these rights are restricted in the case of public employees, state-owned industry workers and in private companies which are considered to provide essential services. The police, prison staff, fire services, Coast Guards and Armed Forces do not have the right to organise. National and local public sector workers do not have the right to strike. Public workers, who incite others to strike, are subject to fines, imprisonment or other disciplinary measures.

The Local Public Service Employee Act has a trade union registration system, whereby a separate public employee trade union must be established in each administrative district. Hence, teachers' organisations can only be composed of teachers and the related clerical or administrative staff from a given local authority. The Special Act for Education Personnel specifies that separate teachers' organisations can be formed on a municipal and a prefectural basis.

Collective bargaining

Wages and working conditions are established based on the annual recommendations of the National Personnel Authority and local personnel commissions. Based on these recommendations, the prefectures negotiate with unions to decide the details of the wages. National government provides one third of the wages and each prefecture two-thirds. Teachers in the public sector only have the right to participate in negotiations but they do not have the right to sign collective agreements. In order to take part in negotiations with the local authorities, the following conditions must be met:

- There is a legal Constitution;
- the accounts and accounting system is in order;
- official elections have been carried out;
- The union members all come from the same municipality.

Negotiations cover the following issues:

- wages and bonuses; working hours and rest periods; holiday leave;
- criteria for promotion; job transfers; temporary leave; disciplinary procedures and dismissals;
- occupational health and safety and accident compensation;
- other working conditions.

Teachers in the private sector are covered by the basic labour rights as other private sector workers, including the right to collective bargaining. However, in practice, there are more than a few schools which do not follow the labour laws.

Social dialogue

Social dialogue on education policies is not well-developed. The CEART carried out a fact-finding mission to Japan in 2008 and reported that consultation processes were limited. For example, issues related to teachers' performance appraisals and merit assessments were defined as management and operational matters, as stipulated in the Local Public Service Law, and were therefore not subject to consultation. CEART noted that the unions considered that consultations were often "pro-forma hearing with no intention to alter policies or decisions." They also noted a widespread feeling of frustration and marginalisation attributed to the lack of information sharing.¹²⁵

In 2002, the Japanese trade unions filed a complaint to the Committee on Freedom of Association¹²⁶ concerning the lack of collective bargaining rights for public employees, which is still on-going.

Trends since the 2008 financial crisis

Since 2008, there have been no major changes in the right to freedom of association and collective bargaining for teachers, although there have been a series of proposals concerning reforms to the civil service and other public employees.

In 2008, the Civil Service reform law was enacted, with the intention of expanding the scope of public employees with the right to conclude collective agreements. Based on the provisions of the Reform Law, the Headquarters for Promoting Civil Service Reform was established in the cabinet of the Prime Minister, and an Autonomous Labour Employer Relations Reform System draft proposal released in 2010. Four bills related to Civil Service Reform were drafted together with a Basic Concept of the Labour–Employer Relations System for Local Public Service Employees.

In 2010, the government also announced that it would consider granting the right to organise to fire services workers but the proposal was subsequently laid aside.

In November 2012, following the inauguration of the Democratic Party government, a bill for the provision of the right to conclude collective agreements for public employees was introduced into the Lower House. However, when there were new elections, the Liberal Democratic Party came back to power, and the bill was withdrawn.

¹²⁵ Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) Report of the Fact-finding mission to examine allegations of non-application of the Recommendation concerning the Status of Teachers in Japan 20-28 April 2008 p. 26

¹²⁶ ILO Committee on Freedom of Association Case No 2183 Japan



The JTU and other public sector unions continue to seek to obtain basic labour rights. In June 2012, the ILO Committee on Freedom of Association repeated its earlier recommendations to the Japanese government, requesting them to take measures with respect to:

- (i) granting basic labour rights to public servants;
- (ii) granting the right to organise to firefighters and prison staff;
- (iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;
- (iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and
- (v) the scope of bargaining matters in the public service.¹²⁷

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		2.0%
2008: 9.4%	3.4%	-0.7%
2009:		-5.2%
2010:	3.8%	3.9%
2011		-0,7%

Source World Bank/IndexMundi

¹²⁷ see *Interim Report Case No 2183 Japan Report no 363 March 2012* http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3057186

EUROPE

DENMARK¹²⁸

El affiliates

BUPL	Danish National Federation of Early Childhood and Youth Educators
GL	Gymnasieskolernes Laererforening (National Union of Upper Secondary Schools)
DLF	Danish Union of Teachers
DM	Dansk Magisterforening (University Teachers' Union)
UED	Union of Education Denmark

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1951
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1955
- C. 100 Equal Remuneration (1951) ratified 1960
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1960
- C. 144 Tripartite Consultations (1976) ratified 1978
- C. 151 Labour Relations (Public Service) (1978) ratified 1981

El affiliates

There are several teachers' organisations in Denmark, with one union for kindergarten teachers (BUPL), one for teachers in primary and lower secondary (DLF), one for teachers in upper secondary (GL) and so on. The teachers' unions are thus not in mutual competition and there is an agreement stipulating which union organises which teachers.¹²⁹

Danmarks Lærerforening (DLF): DLF represents primary and lower secondary teachers in the public sector – along with the school principals in these schools. DLF is organised in 78 local branches. The DLF members in each school elect a school representative, who represents the DLF at school level. The 309 congress delegates meet at least once a year to lay down the framework policy. Membership is voluntary and subject to a subscriptions fee.

¹²⁸ Many thanks to Hjalte Meilvang Danish Union of Teachers and Hans Laugesen, National Union of Upper Secondary School Teachers who contributed with this case study.

¹²⁹ Paragraph based upon draft of DLF speech for El congress 2011. See <http://www.eurofound.europa.eu/eiro/studies/tn1001017s/dk1001019q.htm> for select date on the other Education Unions in Denmark.

MEMBERSHIP ¹³⁰			
Type	Female	Male	Total
1 (Teachers)	40.026	16.474	56.500
2 (Kindergarden class teachers)*	3.152	147	3.299
3 (School principals)	1.887	2.320	4.207
4 (Retired members)	11.789	7.821	19.610
5 (Teacher Students)	4.485	2.242	6.727
6 Special members	453	251	704
Total members	61.792	29.255	91.047

Updated as of 20.03.2013

Evolution in active* members ¹³¹					
2008	2009	2010	2011	2012	2013
69.173	68.228	67.748	67.037	64.819	64.006

* Excluding students, special members and retired teachers.

This decreasing trend is due to a reduction in the number of teaching positions. Coverage remains high at an estimated 97% of potential membership.¹³²

Danish primary and lower secondary education system

The Danish Constitution gives all children in the school age the right to free schooling in 'Folkeskolen'. The constitution also provides for the option of home schooling. Denmark thus has compulsory education – but not compulsory school attendance. The school age is defined by Parliament which has extended it over the years. Most recently 'Børnehaveklassen' – a preschool Kindergarten year – was made mandatory in 2009.¹³³ This year had previously been optional. With this change Denmark has 10 years of compulsory schooling, consisting of one year of Kindergarten class and 9 years of primary and lower secondary school. It is also possible to attend an optional 10th Folkeskole year. The Danish Folkeskole is comprehensive without early tracking. It is the responsibility of the municipalities within a legal framework (The Folkeskole Act) set by Parliament.¹³⁴

¹³⁰ DLF website (Danish only): <http://www.dlf.org/files/DLF/Danmarks%20L%C3%A6rerforening%20mener/Tal%20og%20analyser/Statistik%20om%20l%C3%A6rere/I%20C3%A6rer-tab%203-medl-fraktion.pdf>

¹³¹ DLF website (Danish only): <http://www.dlf.org/files/DLF/Danmarks%20L%C3%A6rerforening%20mener/Tal%20og%20analyser/Statistik%20om%20l%C3%A6rere/I%20C3%A6rer-tab%204-udvikl%20antal.pdf>

¹³² <http://www.eurofound.europa.eu/eiro/studies/tn1001017s/dk1001019q.htm>

¹³³ <http://www.folkeskolen.dk/50630/boernehaveklassen-bliver-obligatorisk-fra-2009>.

¹³⁴ This paragraph is based on: Danish Ministry of Children and Education factsheet "Folkeskolen". http://eng.uvm.dk/Factsheets/~media/UVM/Filer/English/Fact%20sheets/080101_fact_sheet_the_folkeskole.aspx

The primary and lower secondary system consists of 1,318 public schools and 538 private and free schools with 84.68 % of the children attending public school.¹³⁵ 85 % of the expenses of the private schools are borne by the state.¹³⁶

Danish collective bargaining in general (the Danish model)

Denmark has a long tradition of collective bargaining. Ever since the late 19th century, the Danish labour-market has been characterised by collective bargaining agreements between employers and employees. The right to collective bargaining and industrial action has generally been respected since the 'September Settlement' of 1899, which founded the Danish model. This also holds for the public labour-market and therefore also for teachers. The model of a negotiated labour market depends on strong organisations both for employees and for employers.¹³⁷

There has traditionally been a clear division of responsibilities between the government and the social partners (in Denmark often called the labour market partners). The social partners have regulated wages and working conditions through collective bargaining and the government has regulated the welfare system through legislation, although the social partners traditionally are involved in policy formulation and implementation through social dialogue.

The labour market conflict resolution system builds on a distinction between 'conflicts of rights' and 'conflicts of interests'. The former arise where the matter in dispute is already covered by a collective agreement. In the event of a conflict of rights there is generally no right to resort to industrial action. This is often referred to as a peace obligation.¹³⁸ Breaches of agreement are generally resolved by the Labour Court – although differences in interpretations of the agreement is settled through the industrial arbitration tribunal (*Faglige voldgiftsretter*).

A 'conflict of interests' occurs in periods and areas when and where there are no collective agreement in force. In these instances, industrial action, such as strikes or lockouts can occur. These rights apply to both employees and employers.¹³⁹ When the partners fail to come to agreement on their own, the conciliation boards mediate the search for a compromise. If this fails, a precedent of government intervention has developed. However, this intervention is seen as a last resort; the bargaining process has generally been conducted in a consensual manner where the parties try to reach a compromise acceptable to both sides.

¹³⁵ DLF figures via the Danish ministry for Children and Education.

¹³⁶ DLF brochure: <http://www.dlf.org/files/DLF/English/EngelskPjece1.pdf>

¹³⁷ Paragraph based upon draft of DLF speech for EI congress 2011.

¹³⁸ www.eurofound.europa.eu/eiro/country/denmark_4.htm. See also: Working in Denmark - a guide to the Danish labour market: 2. Danish Ministry of Foreign affairs: http://uk.bm.dk/~media/BEM/Files/English/workingindk_english.ashx

¹³⁹ www.eurofound.europa.eu/eiro/country/denmark_4.htm



Another important aspect of collective agreements in Denmark is the obligation of an employer covered by a collective agreement to offer the terms of the agreement to all employees working within the area of the collective agreement. An employee who is not a member of a trade union must nevertheless be offered the same pay and working conditions as other employees.¹⁴⁰

Collective bargaining in education

Like many other countries since the 1970's, Denmark has experienced a general move in the public labour- market away from civil servant employment relation towards something more akin to the contractual employment of private labour markets. Industrial relations and collective bargaining have thus increased in significance.¹⁴¹ Around one fifth of teachers in Folkeskolen still have civil servant status and thus do not have the right to strike. However those teachers starting employment within the past two decades are on contracts covered by the collective agreement and the above summary for the general Danish model therefore applies to them. There has been a tendency for relations in the public sector to be less conflictual than in the private sector. The employers have notably always refrained from initiating lockouts except as a defensive measure after the announcement of union industrial action.¹⁴²

In Denmark the main dividing line in education collective bargaining is between those negotiations taking place with the central state as employer – and those where this role is taken by the municipalities. The former applies for the Gymnasium (GL) and University teachers (DM) as the state is responsible for upper secondary and tertiary education, whereas the latter is the case for the Folkeskole teachers in DLF.

Structure of the collective bargaining for DLF

Collective bargaining to determine wages and working conditions is the accepted norm in the municipal education sector. The general framework agreement for the municipal areas – covering cross-cutting issues for municipal employees such as number of paid holidays and maternity leave – is negotiated by KTO (Association of Local Government Employees Organisations), in which DLF participates through its membership of LC (the central organisation for teachers). Within this framework more teacher specific issues – working conditions, teaching time etc. – is negotiated by LC.¹⁴³ In both of these negotiations the employer side is represented by LGDK (Local Government Denmark – the Association of Danish Municipalities). As all 98 Danish municipalities are members of LGDK and the negotiation competence on the employee side is structured hierarchically as described above, the negotiations

¹⁴⁰ Working in Denmark - a guide to the Danish labour market: 3. Danish Ministry of Foreign affairs: http://uk.bm.dk/~media/BEM/Files/English/workingindk_english.ashx

¹⁴¹ See the recent European-Commission report *Industrial Relations in Europe 2012*.

¹⁴² FAOS (Copenhagen University Employment Relation research center). *Med lockouter skal land bygges*.

¹⁴³ <http://www.eurofound.europa.eu/eiro/studies/tn1001017s/dk1001019q.htm>. Also input from

are very centralised and structured. Although LGDK is both notionally and practically responsible for the employer side during the negotiations, they do not act completely independent from the central state: there is on-going coordination with the Ministry of Finances Department of Modernisation.¹⁴⁴ This makes for a very centralised and undifferentiated bargaining structure, but the previous collective agreement, *OK 2008*, nevertheless allowed for local agreements to be concluded between individual municipalities and the local branches of DLF. This option has been widely used and provides for both flexibility to meet local needs and opportunities for school development. It is the DLF impression that also many participating municipalities were quite satisfied with this possibility.

The 2013 collective bargaining process

The negotiation process with regard to the new 2014 collective agreement represents a radical departure from past trends in several ways.

In Autumn 2012, the Danish government tabled a proposal for reform of the Danish Folkeskole focusing on the so called “whole day school” which was to increase the number of hours children spend in school. In a break with the established tradition of “division of responsibilities” where working conditions are determined by collective bargaining, the financing of this reform seems to require what the municipal negotiators have taken to calling a “normalisation” of teacher working time. This “normalisation” entails putting an end to all agreements on how to allocate teacher working time – most notably the ceiling on how many hours a week a teacher can be assigned to spend in the class room. Under the LGDK proposal, the individual school principals would gain wide discretion in allocation of tasks to teachers – with no guarantee for adequate time for class preparation etc.

The Danish government has denied any coordination of their reform proposal with LGDK, but they have also failed to show convincingly how the reform could be financed without making the teachers spend more time in class (making the same number of teachers teach more class hours). This impression is further strengthened by the fact that the central government as employer has presented virtually similar demands to other teacher groups as those LGDK presented to DLF.

The LGDK has made school principal discretion in allocating working time a non-negotiable demand. DLF presented various compromise proposals, but LGDK refused to negotiate on the central issue of working time. From the employer side, the only solution was for DLF to accept the demand unconditionally.

In a public campaign in support of their proposal, employers at all levels stressed the objective of more teaching, more teacher presence in the class room and more flexibility in the allocation

¹⁴⁴ FAOS (Copenhagen University Employment Relation research center): *Hierakiet i det offentlig aftale system*.



of working time. The Danish Minister for Children and Education, Christine Antorini, repeatedly talked about her deep respect for the fine teachers of Denmark and their excellent work— but always with the caveat that the quality of their work was negatively affected by overly rigid limitations on working time. The general rhetoric was one of pitting the “good” individual teachers against a rigid collective agreement negotiated by a union ‘refusing’ to let the school principals make management decisions to set free the potential of the teachers. While the economic crisis did not feature prominently in this discourse, it was nevertheless present in the implicit premise that the increase in the time students spend in school (and consequently the amount of hours teachers need to teach) could not be financed by increasing budgets.

Unwilling to engage in any serious negotiations, LGDK gave notice of a ‘lockout’ on the 28th February 2013. At the same time, the central government (specifically the Ministry of Finance Department of Modernisation) issued a similar notice to those LC represented teachers working in the state education sector (primarily Private and Free Schools). This represents the first time public employers in Denmark have used ‘lockout’ as an offensive weapon in a collective bargaining process.¹⁴⁵ LGDK and DLF spent the next three weeks trying to reach a compromise in the Conciliation Board, with LGDK still unwilling to seriously negotiate the matter. On the 23th March, the Conciliator declared that the negotiations had collapsed. From the 1st April all non-civil servant LC represented teachers were locked out from the Danish schools and their pay withheld.¹⁴⁶ During the lockout, DLF made several overtures to LGDK, but were rebutted every time. Meanwhile the media campaign continued along the lines described above.

With a well-financed strike fund, DLF was in a position to hold out for some time and the employer side gave up trying to wear down the union and the government intervened. Normally political interventions in Denmark are based upon the compromise proposal of the Conciliator, but due to the lack of real negotiations in the Conciliation Board, there never was a real proposal from the Conciliator. The government thus publically claimed to base its proposal on the new collective agreement for GL, which was quite similar to LGDK’s demands. The proposal (Law 215) was presented on the 25th April and rushed through Parliament using the urgent matters procedure, without consulting DLF or any other employee organisation. In contrast LGDK was involved in the formulation of the legislative proposal. The government presented the intervention as a ‘balanced’ solution, taking account of both employer and employee interests in equal measure. This is an outrageous misrepresentation: on 25th April, DLF President Anders Bondo Christensen described Law 215 as not an “intervention” in the conflict but rather a “subjugation”¹⁴⁷ of the teachers, as

¹⁴⁵ FAOS (Copenhagen University Employment Relation research center). *Med lockout skal land bygges.*

¹⁴⁶ On the chronology of events: see <http://www.dlf.org/english/teachers%27+lock-out+2013>

¹⁴⁷ Not a “indgreb” (intervention) but a “overgreb” (abuse, subjugation).

the law quite obviously met the main LGDK demands with only meagre compensation for the teachers. The intervention was also condemned by EI in a letter to the Danish Prime Minister.¹⁴⁸

This series of events underlines a problematic aspect of industrial relations in the public sector: the government has played an unfair double role. It has been involved in conducting the negotiations – directly as employer on the state level, indirectly in the municipal area – while simultaneously it was responsible for the political intervention that ended the conflict. This is obviously a structural dilemma in public industrial relations, since the government will always have the ultimate ability to intervene in a conflict. This situation requires the government to show restraint in its demand and tactics if the labour-market relation is going to function properly. However, in the present case it failed to do so. LGDK felt certain of government backing during the entire process which gave them very few incentives to engage in real negotiations.

Special negotiations for the general upper secondary teachers

GL, the National Union of Upper Secondary Schools, organises all teachers in the non-vocational upper secondary schools. The number of members has increased, from about 10,500 members for many years to more than 14,000. GL organises about 95% of all general upper secondary school teachers. All have university diplomas with at least 5 years studies. GL is part of the Academic Confederation (AC).

At the beginning of the collective bargaining process every two or three years, each organisation in AC decides whether they want to negotiate on their own, or they want to be part of the negotiations headed by the confederation. If you join, you have the support of the whole confederation in a conflict, as it would involve all unions in the confederation. On the other hand, the majority in the confederation will decide if the result of the negotiation should be accepted, or if they will opt for a labour conflict. If a union decides to join with the AC, they can decide if they want to keep an option open to leave the confederation negotiations, if certain key issues are not solved to its satisfaction. Then they can continue to try to negotiate a better result on their own or call a strike. However, this decision must be made before the negotiations start.

GL has a strike fund of €100 million, but it only makes sense to use the money if there is a chance of getting a better result by calling a strike. GL had decided this time to take part in the negotiations with the confederation, without asking for the option to be able to leave in the middle of the process. The reason for this decision was an evaluation of the situation.

¹⁴⁸ EI letter to the Danish Prime Minister: http://www.dlf.org/files/DLF/English/Lock-out/Denmark_EIProtestLetter.pdf



The Ministry of Finance, the head of the negotiations of all state employees, including all GL members, had very clearly required not only an increase in teachers' class time but also the removal of all negotiated regulations of the working time of the teachers. GL decided that the best chance of an acceptable result was to call on the solidarity of the other unions in the confederation – including have to accept, when AC decided in the end that the outcome was the best possible given the situation.

In the negotiations this year, the Ministry of Finance showed no intention of negotiating their two key requirements, and in the end AC accepted a result on behalf of GL removing all negotiated regulations of teachers' working time. From 1st August 2013, the school principal will decide how the teachers' workload of 37h/week on annual average will be spent, and unless other arrangements are agreed upon by the principal, all hours should be spent at school. There are two differences between the result for the non-academic teachers described above and the AC result for GL: GL-members got a salary compensation four times as large – about € 4,000/year, and were granted a system whereby teachers register the time they spend in total on their job as a teacher. There is a simple registration arriving in the morning and leaving in the afternoon plus the time spent at home preparing and correcting assignments, if the principal has agreed that some functions can be done at home. All this registered time is work hours, and it is then up to the principal to monitor the total time spent by the individual teachers at regular intervals and change teachers' assignments so as to keep their annual workload within the average of 37h/week.

A referendum on the result of these negotiations was held, with 85% of GL members voting no to the negotiated result, but as a majority of the total votes within AC was in favour of the result, it was also accepted on behalf of the GL-members.

Future Perspectives

The negotiation process has received great attention in the rest of the trade union movement. It became clear that the conflict was not a normal industrial relations conflict and the support for DLF and the other LC unions increased markedly. The slogan "Teachers first- who's next?" was widely used by a number of trade unions. There was a growing recognition that the conflict was the expression of a previously unknown style of top-down management of the public sector, with government and parliament backing non-negotiable employer demands.

The course of events can be seen as a break with a public administration policy where social dialogue – including genuine collective bargaining – has been used as a tool for an effective development of public services. It is thus an occasion for extensive analysis of the future strategy of both DLF in particular and the trade union movement in general.

time, one can conclude that new challenges are emerging for collective bargaining in Denmark, especially in the public sector.

Total public expenditure on education as share of total public expenditure		Expenditure (public and private) on education as a share of GDP	
2007	13.3 %	1995	6.2 %
2008	13.4 %	2000	6.6 %
2009	13.7 %	2005	7.4 %
2010	14.0 %	2009	7.9 %



GERMANY¹⁴²

El affiliates

BLBS Bundesverband des Lehrerinnen und Lehrer an Beruflichen Schulen (German Association of Vocational Schools)

GEW Gewerkschaft Erziehung und Wissenschaft (German Union of Education and Science)

VBE Verband Bildung und Erziehung (Association for Education)

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1957
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1956
- C. 100 Equal Remuneration (1951) ratified 1956
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1961
- C. 144 Tripartite Consultations (1976) ratified 1979
- C. 151 Labour Relations (Public Service) (1978) not ratified
- C. 154 Collective Bargaining (1981) not ratified

Introduction

There is a Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* which coordinates education policy at Federal level and a Federal commission which guarantees standardised programmes. However, the education system (from primary to higher and adult education) is under the jurisdiction of the 16 *Länder*, and kindergardens are under the responsibility of municipalities within a legal framework given by the respective *Länder*.

Status of teachers

Teachers are employed either as civil servants (*Beamte*) or public employees (*Arbeitnehmer des öffentlichen Dienstes*). There are around 660,000 teachers with civil servant status and 200,000 teachers with public employee status. The civil servants have a lifelong appointment which also covers a specific pension arrangement and a privileged health care coverage. Legally, they receive maintenance allowances and not salaries.

The proportion of teachers contracted as public employees varies from 100% in Mecklenburg-Vorpommern to under 10% in Baden-Württemberg.¹³⁰ There were no civil servant status teachers in the former GDR, which is why most teachers in the new *Länder* formed after 1990 have public employee status. However, some of the new *Länder* have opted to appoint

¹⁴⁹ Grateful acknowledgements for the written reports, additional contributions from and interviews with Gesa Bruno-Latcha, GEW and Gitta Franke-Zöllmer, VBE on 12.02.2013.

¹⁵⁰ See Annex 1 Chart of the Percentage of Public Employees in the Teaching Workforce in the German *Länder*

some teachers, such as the school leaders, as civil servants, because in the short-term it is financially more advantageous, as civil servants are outside the general health insurance and social security systems. At the moment, this change is spreading through Thüringen, Brandenburg, Sachsen-Anhalt, and Mecklenburg-Vorpommern. In Berlin, before 1990, teachers in West Berlin had civil service status and teachers in former East Berlin were public employees. Since the late 1990's, all new teachers are recruited as public employees.

Freedom of Association and Collective Bargaining

Freedom of association is guaranteed by the German Basic Law and collective agreements are governed by the Act on Collective Agreements. There are no statutory regulations concerning certification of unions as bargaining agents, as German labour law is mostly case law. Civil servants are not permitted to strike nor bargain collectively. However, the umbrella organisations of the civil servants' unions (Deutscher Gewerkschaftsbund DGB and Deutscher Beamtenbund dbb) must be consulted on the general regulations on civil servant law at the federal level under section 118 of the federal law on civil servants (BBG), and in the Länder under section 53 of the law on the status of civil servants. In the case of the recent laws to the public service law (*Dienstrechtsneuordnungsgesetz*) and the law on the status of civil servants (*Beamtenstatusgesetz*) there were consultations with the trade union confederations.¹⁵¹ But there is no provision a consensus must be reached before the regulations come into force.

The exclusion of teachers with civil servant status from the right to strike and the right to collective bargaining has been the subject of a long-standing examination within the ILO. The Government argues that the "legislative regulation of the civil service is a constitutionally endowed traditional principle of the civil service under article 33(5) of the Basic Law, and derives from the civil servants' duty of allegiance and obligation to fulfill their duties .."¹⁵² and therefore collective bargaining and the right to strike are incompatible with these principles. The EI affiliate, GEW argues that the status of civil servants should be modernised to comply with the legal environment of the 21st century, though this view is not shared by all unions.

Teachers with public employee status and teachers in the private sector can conclude collective agreements. Teachers with public employee status are covered by the provisions of the Framework Collective Agreement for the Public Service of the Länder, which is negotiated jointly by the trade unions organizing in the public sector under the leadership of the United Services Union (ver.di.) Teachers are approximately one third of the employees covered by this collective agreement. They negotiate agreements with the Employers Association of the German Länder (TdL) with the exception of Hesse.¹⁵³ In Hesse, there is a separate

¹⁵¹ *Observation Germany ILO CEACR Report adopted 2011, published 2012 Convention 98*

¹⁵² *Observation Germany ILO CEACR Report adopted 2011, published 2012 Convention 87*

¹⁵³ *EIRO Representativeness Study of the European Social Partners; Education Sector-Germany DE 1001019Q Birgit Kraemer and Sandra Vogel Institute of Economic and Social Research and Cologne Institute for Economic Research 21.04.2011; from January 1st 2013, Berlin has rejoined the Employers Association of the German Länder.*

collective agreement, which is very similar. In the case of kindergardens, day care centres, and youth welfare, the public sector unions negotiate with the Municipal Employers' Association (VKA). The agreements are for a two year period and are negotiated in alternate years.

However, since the reforms to the Federal system, it was agreed that each of the Länder would establish their own terms and conditions for civil servants. It was further established that regardless of their employment status, teachers' pay would be regulated in line with civil servants terms and conditions.

Hence, the collective agreements exclude two fundamental issues: teachers' working hours and teachers' assignments to pay groups (Eingruppierung), which determine actual wages. Both EI affiliates, the GEW and VBE have been campaigning since 2006 to include these issues in collective agreements. GEW has put forward a demand that there should be federal negotiations on teacher remuneration leading to a collective agreement.¹⁵⁴ However, this has not been successful in the 2013 pay negotiation round again. But the unions have stated they will continue to put forward this demand. Issues covered by the framework collective agreements in the public sector include wage levels, wage groups, general working conditions, holidays, part-time arrangements, special payments, payment in the event of illness, qualifications, and working hours (except for teachers).

Bargaining parties ¹⁵⁵	SCOPE OF THE AGREEMENTS		
	Sectoral	Type of employees	Territorial
ver.di, dbb ,VBE ¹⁵⁶ , GEW – VKA, federal government	Public sector, federal and local level, municipalities	All sector-related employees employed by the federal state or local municipalities	Germany
ver.di, dbb,VBE, GEW – TdL	Public sector Länder level	All sector-related employees employed by the Länder (apart from Hesse and Berlin)	Germany apart from Hesse
ver.di, dbb, VBE, GEW – Hesse	Public sector level	All sector-related employees employed by Hesse	Hesse
ver.di; GEW Training – BBB The collective agreement is extended by the federal government and covers only minimum working conditions.	Continuous training establishments and organisations working for the labour market policy agencies	Employees in continuous training institutions and organisations	Germany

Collective agreements cover all public employee status teachers. The level of coverage in the private sector is hard to estimate and there are some private schools which refuse to negotiate collective agreements.

¹⁵⁴ Germany: Teacher unionists on a warning strike over working conditions (28 November 2012) http://www.ei-ie.org/en/news/news_details/2380 accessed 3.03.2013

¹⁵⁵ idem EIRO Representativeness Study of the European Social Partners; Education Sector-Germany

¹⁵⁶ VBE forms part of the bargaining committee although dbb is the official bargaining partner.

Trends since the financial crisis

There were major financial restrictions on the education sector since the early 1990s (following German unification) with a major restructuring of the public sector, and a general stagnation in public sector wage levels. After 2008, the German economy recovered relatively quickly from the financial crisis and has been quite stable, and employment and tax revenues have developed favourably. Germany was one of the few countries that adopted a stimulus package which included a school building programme and human resource training. However, the situation may well change in the near future, as a new Constitutional provision has now imposed binding legal restrictions on the Länder public deficits, which will result in public expenditure reduction, as the Länder do not have the right to introduce higher income tax or VAT rates. The Länder have to reach a zero public deficit level by 2020. As education represents a high proportion of Länder expenditure, it is anticipated that this will impact education funding.

In 2009, when the VKA agreement on social services (including pre-primary education) was renegotiated, it was necessary to stage high-profile strike action in order to obtain a new wage grading system to provide for higher wages and better occupational health and safety protections.¹⁵⁷

Over the last few years, there has been an increasing wage differential for civil servant teachers in different Länder. The wage differentials between Länder are now about 12%, which has also led to “competition” between Länder to recruit teachers. Some Länder have also increased working hours, which as mentioned above is also regulated by law and legal ordinance.

In Saxony, where salaries are among the lowest in the country, there was strike action in 2012 to demand wage increases, improved early retirement arrangements and better staffing levels.¹⁵⁸ In all Eastern German Länder, 90% of teachers are over 40 years old, 40% are over 55 years old.

One of GEW's main concerns has been the need to modernise the status of civil servants, and through federal legislation, extend the scope of collective bargaining to include remuneration and working hours for all teachers. GEW has also supported legal cases in the German courts concerning the right of teachers with civil service status to participate in strike actions, with the aim of processing the case to the European Court for Human Rights in Strasbourg. In a case concerning disciplinary measures against a teacher with civil service status, who had participated in a teachers' strike, the Dusseldorf Administration Court in North Rhine-Westphalia, ruled in December 2010 that the general strike prohibition for civil servants was probably contrary to the European Convention on Human Rights because the civil servant in question was not exercising authority in the name of the State. This view was supported by the ILO CEACR¹⁵⁹. Since then, several other courts have ruled on

¹⁵⁷ “New package of agreements for social and child care workers” EIRO DE 09090191 Heiner Dribbusch, Institute of Economic and Social Research 29.09.2009

¹⁵⁸ *idem* Germany: Teacher unionists on a warning strike over working conditions (28 November 2012)

¹⁵⁹ ILO CEACR Germany Observation Convention 87 adopted 2011 and published ILC 2012



similar cases, some in favour and some against striking teachers. The cases are now to be decided by the Federal Administrative Court and the German Constitutional Court.

The VBE focuses more specifically on lobbying the Länder parliaments and the ministries which regulate the working conditions of the civil service on the following main issues:

- attractive employment offers
- part-time possibilities for older teachers
- employment for all trainees
- pay-rise for trainees
- no worsening regulations for holidays
- investment in education
- further training for teachers

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		2.5%
2008: 10.4%	4.6%	1.0%
2009: 10.5%	5.1%	-4.7%
2010:		3.5%
2011:		3,1%

Source World Bank/IndexMundi

GREECE ¹⁶⁰

El affiliates

DOE Greek Primary Teachers' Federation

OLME Greek Federation of Secondary School Teachers

POSDEP Pan-Hellenic Confederation of Associations of Teaching and Research Personnel

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1962
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1962
- C. 100 Equal Remuneration (1951) ratified 1975
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1984
- C. 144 Tripartite Consultations (1976) ratified 1981
- C. 151 Labour Relations (Public Service) (1978) 1996
- C. 154 Collective Bargaining (1981) 1996

Introduction

Greece is facing an unprecedented austerity programme imposed as part of the bailout conditions drawn up by the Troika (IMF, European Commission and European Central Bank). OLME describes the tragic consequences for education and society as a whole. Fiscal austerity measures are a combination of steep increases in direct and indirect taxes, wage cuts and pension and social security reductions. "These cuts are effectively destroying the welfare state. It's not the employees, much less the teachers, that caused this public debt, yet it is they who have to bear the burden of austerity."¹⁶¹

The economy has shrunk by about 20% since 2008 – the deepest recession since World War II-and is expected to shrink further by about 25%-30% over the coming years. Unemployment stands at 21% and the total number of unemployed exceeds one million, with youth unemployment at 51.1%.¹⁶² The government has undertaken to reduce the public deficit from 13.6% in 2009 to less than 3% in 2014.

The Status of Teachers

Teachers in public education are appointed as career civil servants. In 2006, a new Law was adopted on the selection, appointment and career structure of primary and secondary school teachers.

¹⁶⁰ Grateful acknowledgements for the written report and additional contributions from Themis Kotsifakis, General Secretary, OLME

¹⁶¹ cited in El news article Greece: Teachers on strike against austerity (12 October 2011) www.ei-ie.org accessed 12.03.2012

¹⁶² Greece; ITUC Annual Survey on Trade Union rights 2012



Before the Financial Crisis

Union density is placed variously at between 22% and 30%. While union density in the private sector is now less than half the level it was in the mid 1980s, in the civil service it is now 50% higher than it was 20 years ago. ADEDY is the confederation of civil service unions, and is organised based on Ministries and includes the teachers' unions as well as employees in Ministries and local authorities.

Freedom of Association

The Constitution includes references to the right of collective association, trade union freedom and strike action as well as collective bargaining, with the exception of the Armed Forces. Twenty members are required to form a trade union, which constitutes an effective restriction on the right to organise given the prevalence of small enterprises in the Greek labour market (approximately 90 per cent of the workforce).

Public sector workers have the right to strike although they must give four days notice. The police forces have the right to organise and to hold demonstrations, but not to strike. In the private sector, the equivalent notice period is 24 hours. A strike must be declared legal, and there is considerable judicial discretion in interpreting the very general criteria. Minimum staffing levels must be agreed during strikes affecting essential services.

Collective bargaining

• Private sector

Following the signing of a Social Pact in 1990, the Law 1876 on "Free Collective Bargaining" has been in force, which established a system of collective bargaining in the private sector. Collective bargaining takes place at national, industry and company level, and in the past, the national cross-sectoral agreement, known as the NCGA, normally negotiated every two years, included a national minimum wage and other employment conditions. It provided a basis from which improvements could be negotiated. Conciliation, mediation and arbitration were given an important role, through the Organization for Mediation and Arbitration (OMED).

• Public sector

Greece ratified Convention 154 in 1996 and then passed Law no 2738 on 6th September 1999, which introduced the right to collective bargaining in public administration for the first time. Collective bargaining was to include issues like working time and leave, transfers and posting, education and training, health and safety, social insurance, except for pensions and trade union fees.

While in a few Ministries it has been possible to establish collective agreements, in the case of teaching, the Government has not implemented the Law 2738/1999 although OLME on an annual basis proposed a collective agreement plan to the Ministry of Education.

Salaries were never included in the issues to be a subject of negotiations and instead were to be regulated by Ministerial Decision. While on occasion there has been some level of informal consultation on salaries, OLME reports that in the case of teachers, decisions were made by the Government unilaterally, without any agreement

Employees under private law contracts in the public sector are subject to the general framework concerning collective bargaining set by Act No. 1876/1990. The number of employees working under private law contracts had dramatically increased during the past ten years and they currently represent one third of all workers in the public sector.

Impact of the financial crisis on public sector workers and collective bargaining

Changes introduced following the financial crisis and imposed as part of the conditionalities for Troika financial support, under the terms of the Memorandum of Economic and Financial Policies (MEFP) and its subsequent revisions, have fundamentally altered the bargaining structure, dismantling the system which had evolved since 1990.¹⁶³

• Private sector

The first loan agreement with the Troika was agreed in May 2010, and in the immediate aftermath, in July 2010, the unions were able to negotiate a new national collective agreement for the private sector, after lengthy discussions. Because of the difficult economic situation, the GSEE union confederation agreed that pay would be frozen until July 2011 and that increases after that date until July 2012 could not exceed the average inflation forecast for the whole of the EU. Further this agreement was set as a binding ceiling, which unlike in the past, could not be improved at industry or company level.

However, in December 2010, the government reneged on this agreement and adopted Act No. 3899/2010, known as the Act on special enterprise collective agreements, which undermined the national collective bargaining system. The act stipulated that at company level, agreements could contain conditions which were less than those of the national agreement.

There has also been a weakening in the system of arbitration and mediation¹⁶⁴ and a series of measures designed to weaken protections against dismissal, a reduction in severance pay and an increase in periods of probation and temporary agency work.

Law 4024/2011 further “deconstructed” the industrial relations system by abolishing the principle of favourability, whereby if there is a plurality of agreements, the most favourable conditions apply. It also introduced legislation to determine pay scales in public sector

¹⁶³ For details of the terms of the Memorandum, see ILO Report on the High Level Mission to Greece (Athens, 19-23 September 2011) pp.6-8 and subsequent legislation pp 10-15

¹⁶⁴ <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece>

utilities as well as providing the right to conclude enterprise agreements with non-elected “associations of persons”, thus undermining the principle of collective representation.

With Law 4046/2012, following the signing of a new memorandum of understanding with the Troika, the Government undertook to abolish the NGCA itself and has explicitly legislated to decrease the wage rates in the NGCA by 22%, with a further reduction for young workers (15-25 years old) of 32%, known as a sub-minimum wage. The new minimum rates will be subject to a wage freeze for 3 years until 2015. Furthermore, in the future, minimum wages will be regulated by administrative authority as from April 2013 after consultation with social partners.¹⁶⁵

In addition, there were major cuts to pensions and increases in employee pension contributions as well as the abolitions of the Labour Housing Organisation and Workers' Social Fund.

- **Public sector**

In the public sector, austerity measures started well before the country's first bailout package in the spring of 2010. Before the conclusion of the first loan agreement, reform of employment relations for workers in central government and the broader public sector was implemented through a series of statutory interventions.

Law 3833/2010 on the “Protection of the national economy – Emergency measures to tackle the fiscal crisis” was adopted by the Greek Parliament on 5 March 2010. This law imposed major reductions in the wages of all public employees and for workers under private law contracts, employed in the public and broader public sector (such as public enterprises). The law also called for a freeze on recruitment and cancelled all clauses in the collective agreements which were superseded by this legislation and prohibited the negotiation of wage increases.

Law 3845 in December 2010 further reduced wages in the public sector. Subsequent measures include: the imposition of a temporary freeze in career advancement premiums; the imposition of a “labour reserve” with workers paid 60% of their salary, concealing collective dismissals of thousands of workers in the public and broader public sector without any negotiation; and the imposition of further unilateral wage and salary reductions through the establishment of a special solidarity contribution of 2% on regular pay to combat unemployment and other special contributions.

Law 4024/2011 introduced a new pay scale in the public sector. According to this law, salaries were again reduced dramatically. A new performance evaluation system for salaries and grade advancement was introduced.

The reform of the pension system has led to an abrupt and drastic increase in the retirement age, particularly of women, including mothers of minors who could in the past take early retirement. Within a very short period of three years (from 2010 to 2013), 15 years of contributory period had been added in order to qualify for retirement on full benefit.

OLME outlines the major impact of the financial crisis for teachers as follows¹⁶⁶:

- wage cuts in some instances of up to 45% for teachers¹⁶⁷;
- any salary increases are now related to subjective evaluation of performance;
- continuous pension reductions for all workers, including increases in the pension age;
- reduction of public spending on education of 33% (2009-2013);
- further reduction are planned of 14.2% (2013-2016);
- new measures planned include the closure of some universities, technological institutes and the introduction of graduate programme tuition fees.

Public employees: government propaganda¹⁶⁸

The government is planning to reduce the number of public employees by 150,000 by 2015. They will recruit only one out of 5 posts which fall vacant and there will be a major re-evaluation downwards of existing pay scales. The government, according to OLME, has waged a massive propaganda battle in order to persuade people to accept the austerity measures, blaming public employees for the financial crisis. As the Deputy Prime Minister stated "we ate money together". The government presents a picture of a bloated number of public employees, while in fact the percentage of public employees in the overall workforce is 16.1%, while in Belgium it is 22.5%, in Finland 26.7%, and in USA 16.4%. The government tries to convince the population that Greece somehow works less than other European countries. However, according to EuroStat, the average working week in Greece is 44.3 hours, which the EU average is 41.7 hours.

The Independent Policy Group on Education

Under the terms of the Memoranda 3 and 4 with the Troika, an independent task force on education policy was set up with the obligation to provide a report every three months on measures taken to reduce expenditure. The Ministry of Education will be required to implement the recommendations of the policy group. In this way, the Greek government is being forced to introduce a new concept of "the market-oriented school", guided by the principles of cost effectiveness and economies of scale. These policies lead to the devaluing of free, public, education and the opening of education to the strategic investments of

¹⁶⁶ See Kotsifakis Themis, "The Consequences of the Government-EU-IMF-Policies on labour and Education in Greece, December 2012"

¹⁶⁷ ILO reports at least 20% cut in public sector wages 2010 to mid-2011. para 311 High Level Mission Report

¹⁶⁸ Report from Themis Kotsifakis, General Secretary, OLME

commercial companies. The decrease in public expenditure on education will be 1,436 million or a 19.2% reduction between 2009 and 2015.¹⁶⁹ There will also be further reductions in the public investment programme earmarked for education infrastructure.

The Impact on Schools

There has been a 60% decrease in the funding of school committees and parents are being called upon to contribute more financially. Many schools will not be able to purchase heating oil in the winter, given the huge increases in prices. Almost 2000 school units in both primary and secondary education will be merged, without any prior dialogue with the teaching profession and local communities. There will be further closures and mergers in the future. Many other education support and special education services, including sports schools, libraries, special support schools, youth centres, art, civic education and ICT courses have been closed.

While class sizes and teaching hours are increasing, the number of teachers has declined. Between 2010 and 2011 school years, there has been a 12% reduction in the teaching workforce and there are now 16,000 fewer teachers. Many unemployed teachers are now signing service contracts with educational NGOs and their services are then 'contracted' by the municipalities.

The response of OLME and the Greek union movement

Teachers and other employees have organised demonstrations, protests and carried out weekly occupations of key government buildings to protest against the austerity measures and the imposition of the Troika policies. During 2011, there were more than 12 strikes in the public and private sectors, which the government sought to end by using police violence. During the demonstration in February 2012 when the government was to adopt the new memorandum, police were particularly repressive.

Unions are seeking to:

- develop solidarity networks with social movements and young people;
- develop internet based communication networks;
- organise joint actions with teachers, parents and students;
- unmask the mass media propaganda about "lazy" civil servants;
- develop coordinated strategies across Europe to protect the welfare State and public education in Europe.

The ILO's response to collective bargaining reforms in the context of economic crisis in Greece

Since 2010, the ILO Committee of Experts and the Committee on Freedom of Association has examined the legislative reforms in Greece, on the basis of a complaint against the Greek

government for violations of Convention 87 and Convention 98, submitted by the Greek General Confederation of Labour (GCSE), the Civil Servants Federation, (ADEDY) and other unions. The ILO organised a High-Level Mission to Greece in September 2011, which subsequently met with representatives of the European Commission and the IMF in Brussels and Washington DC in October 2011. The Mission noted that the “ILO must, as a matter of priority, be in a position to assist social partners in discussing the future model for social dialogue and collective bargaining so that they can retain their institutional role, particularly in the context of sectoral collective bargaining.”

In November 2011, the ILO Committee of Experts examined the new legislative reforms and the ILO held a follow-up mission to Greece in April 2012. The Committee of Freedom of Association in November 2012 further examined the case and in its report called for “the social partners to be fully involved in the determination of any further alterations within the framework of the agreements with the European Commission, the IMF and the European Central Bank that touched upon matters core to the human rights of freedom of association and collective bargaining which are fundamental to the very basis of democracy and social peace.”¹⁷⁰

The Committee of Experts requested that the Government and the social partners fully discuss the time limitations of the measures imposed and to consider any further measures that may need to be taken in relation to the wages of public servants or the imposition of labour reserves in a manner so as to privilege as far as possible the determination of such matters through collective bargaining.¹⁷¹

Finally, the Committee of Experts in its General Survey report reiterates that if, as part of its stabilisation policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards. It further noted, specifically in the context of Greece, the need for effective consultation at the national level with workers’ and employers’ organisations and for those organisations to be consulted by EU, IMF and World Bank authorities when such crisis situations occur.¹⁷²

¹⁷⁰ *Greece: Case No. 2820 complaint first submitted 29 October 2010, Report No. 365, November 2012, ILO Committee on Freedom of Association para 1002*

¹⁷¹ *Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) C154 - Collective Bargaining Convention, 1981 (No. 154) Greece (Ratification: 1996)*

¹⁷² *Para 346 “Collective bargaining in the public sector: a way forward”, General Survey concerning labour relations and collective bargaining in the public sector, Report of the Committee of Experts on the Application of Conventions and Recommendations Report 111 Part 1B 102nd International Labour Conference 2013*

SPENDING OF THE MINISTRY OF EDUCATION AND RELIGIOUS AFFAIRS, CULTURE AND SPORTS				
YEAR	2009	2013	DIFFERENCE 2009-2013	
TOTAL	7,480,000,000	6,988,000,000		
REGULAR BUDGET ON EDUCATION	6,890,544,946	4,592,943,000	-2,297,601,946	-33%
TOTAL REGULAR BUDGET+PUBLIC INVESTMENT PROGRAMME ON EDUCATION	7,239,544,946	5,086,943,000	-2,152,601,946	-30%
GDP	235,017,000,000	183,049,000,000		
EDUCATION SPENDING AS A PERCENTAGE OF REGULAR BUDGET/GDP	2.93%	2.51%		-0.42%
EDUCATION SPENDING AS A PERCENTAGE OF REGULAR BUDGET&PUBLIC INVESTMENT PROGRAMME/GDP	3.08%	2.78%		-0.30%

	Secondary Education Teachers			
	6/30/10	12/31/12	Reduction	% reduction
Permanent Teachers	94264	83012	-11252	-12%
Substitute Teachers-Part time Teachers	9785	3858	-5927	-61%
Total	104049	86870	-17179	-17%

The reduction was mainly due to retirement. Also, the memorandum imposed restrictions on recruiting new teachers.

Source: Ministry of Education Data Processing: Themis Kotsifakis, General Secretary, OLME

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		4.0%
2008:		2.9%
2009:		-2.0%
2010:		-4.5%
2011:		-6.9%

Source World Bank/IndexMundi

HUNGARY¹⁷³

El affiliates

PSZ	Trade Union of Teachers, affiliated to SZEF
PDSZ	Democratic Trade Union of Teachers, affiliated to LIGA
FDSZ	Trade Union of Employees of Higher Education, affiliated to ÉSZT
TDDSZ	Democratic Trade Union of Scientific Workers

Other unions

MKSZSZ	Hungarian Trade Union of Employees in Public Education and Vocational Education and Training member of MSZOSZ
AOKDSZ	Trade Union of Agrarian Research and Education, affiliated to ÉSZT
MKKSZ	Trade Union of Hungarian Civil Servants and Public Service Employees, affiliated to SZEF and CESI

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1957
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1957
- C. 100 Equal Remuneration (1951) ratified 1956
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1961
- C. 144 Tripartite Consultations (1976) ratified 1994
- C. 151 Labour Relations (Public Service) (1978) ratified 1994
- C. 154 Collective Bargaining (1981) ratified 1994

Union Density

Union density in the education sector is around 25%¹⁷⁴ (source PSZ)

Union density total 16.1% (Labour Force Survey of Central Statistical Office 2004)

Introduction

Hungary is a Parliamentary Republic and a Member of the European Union since 2004. The 1949 Constitution was amended in 1997 to provide for Parliamentary and local elections. Following the 2010 election of a majority right-wing Fidesz government, a new Constitution and new Labour Code were introduced, in January 2012, together with radical changes to the organisation and management of the education system and the role of unions. Unions were not consulted about these reforms and there has been considerable protest and opposition and the implications of these reforms are still being worked out.

¹⁷³ Grateful acknowledgements to Dr. Horváth Péter, PSZ expert and Tünde Vajne, PSZ International Relations Secretary who provided valuable information and comments for this study

¹⁷⁴ Written report Dr. Horváth Péter and Tünde Vajne, PSZ International Relations Secretary 17. 12.2012



The Hungarian Constitution states that education is compulsory and it is the government's responsibility to ensure that every child has the right to education up to the age of 18 years. Education is compulsory from the ages of 6-18 years. The 1993 Law on Public Education sets out the public education system and provides for the principle of professional independence. The Act on Higher Education was adopted in 2006 whereby the Ministry of Education and Culture is responsible for general policy, regulation and control.

Decentralisation has been a key feature of the administration of public education. The system of public education is aligned to the system of local government, at municipal and county level. There are 19 counties, 7 statistical regions and Budapest, the capital. Since 2004, local municipalities have had the possibility of creating "multi-purpose regional associations of local government" which also have the possibility of founding schools.

The role of the Ministry of Education and Culture is limited to general regulation and curriculum and determining the final secondary exams. It is the county and municipal authorities who control the schools, although in turn the schools have considerable autonomy. Since 1990, private foundations and Churches have the right to found and operate schools, and in the case of Church schools, the government has committed to providing them with the same level of subsidy as the public schools.

The annual Budgetary Act, which is passed through Parliament, determines the State subvention for education, known as "normative support". The sum of normative support and other financial support granted to local authorities and other school maintainers, such as the Church, must be the same as the previous year, taking into consideration the actual numbers of students enrolled.¹⁷⁵ Hungary's population has been declining for the last two decades. From 2000/2001 to 2008/2009 academic years, there has been a 17.7% drop in the size of the primary school age group. The State allocation covers 50% of the school costs and the local authority or private foundation must match the funds.

Teachers' salaries are low and not commensurate with other professions. Teaching is considered a low status profession. A new law on public education was adopted in 2011 and foresees a major restructuring of the education system, beginning in 2013.

Freedom of Association and Collective Bargaining

The new Constitution provides a statutory right to bargain and conclude agreements and to take joint action or hold strikes in defence of their interests.¹⁷⁶ However, the new Labour

¹⁷⁵ *Structures of Education and Training Systems in Europe, Hungary 2009/2010 prepared by Judit Juhasz, Judit Lannert, Edit Sinka, Eva Tot, Eurydice, Cedefop and European Training Foundation p.10*

¹⁷⁶ http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=HUN&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY ILO NATLEX accessed 15.01.2012

Code has weakened previously acquired rights in relation to the protection of trade union officials and the right to collective bargaining and appears to severely restrict the right to freedom of expression.¹⁷⁷

The Law 33/1992, on the legal status of public employees, determines the public employee status of all employees of Ministries and local government, including teachers. The law covers working time, annual leave, severance pay, salary scale, and career progression and performance evaluation systems.

The law determines the role of unions, referred to as “interest protecting organisations of public employees”, and their right to participate in the formulation of working conditions, including working time, promotion systems and training. The law states that a public employees’ trade union having at least a 50 per cent support may conclude a collective bargaining agreement.

A further Law 73 /2009 established a National Public Officials Interest-Conciliation Council (OKÉT) with a broad remit to discuss living and working conditions, including budgets, long-term wage policies and annual wage policy. Under this umbrella, there were specific sectoral social dialogue committees for public and higher education, known respectively as the National Interest Reconciliation Council in Public Education and the National Interest Reconciliation Council in Higher Education, with the counter-part social partner represented by alliances of cities, regions and local authorities.

While this does not amount to formal collective bargaining, in the past there have been de facto negotiations or “quasi-bargaining” whereby the percentage annual increment for public officials is agreed, although the government issues the final decision.

This is in contrast to the private sector whereby the 1990 Act on the Right of Association, obliges employers to engage in collective bargaining with the recognised trade unions. The National Interest Reconciliation Forum is a tripartite consultative body for sectoral social dialogue in the private sector, with the power to recommend the national minimum wage and other minimum rates.

At local level, prior to the recent reforms, collective contracts were signed between the schools and the PSZ with approximately 80% of schools covered by a collective contract.

Trends in freedom of association and collective bargaining 2008-2012

Even prior to the October 2008 financial crisis, Hungary was experiencing a period of slow

¹⁷⁷ ITUC Annual Survey on Trade Union Rights 2012 Hungary accessed 15.01.2012 <http://survey.ituc-csi.org/Hungary.html#tabs-3> and ILO CEACR adopted 2011 and published 2012 http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698651:NO



growth and austerity measures, designed to reduce public sector expenditure as the country sought to address its budget deficit in order to meet the macro-economic conditionalities to enter the Euro. The financial crisis therefore compounded an already difficult situation, with a vulnerable economy dependent on FDI, a credit crisis and a sharp drop in consumer demand. The State debt reached 73.9% of GDP and Hungary was forced to agree a bailout package with the IMF, World Bank and European Commission (known as the Troika) and devalue the Forint.

The socialist government of Ferenc Gyurcsány (2002-2009) was forced into a coalition with the liberals under György Matoksy and in 2010 the centre-right party Fidesz won the parliamentary elections to form a government under Prime Minister Viktor Orban in coalition with the Christian Democrat Party (KDNP).

As indicated in the introduction, Fidesz has introduced a large number of new laws, notably a new Labour Code, restrictions on the rights of public employees and a new law on the media and a new law on public education. The new Labour Code which came into force in 2012 has been heavily criticised by the trade unions and Hungary's 6 trade union confederations have addressed a joint letter to the ILO, particularly for the restrictions on tripartite social dialogue. The National Interest Reconciliation Council (OÉT) which has been functioning since 1988 and in its present form since 2002, was replaced in January 2012 by the National Economic and Social Council (NGTT). This body will not have decision-making rights, it can only draft proposals. The cabinet can now decide unilaterally on wage and employment related matters.¹⁷⁸

The government has also sought to introduce changes to the way that public officials are paid and their rights. The dismissal of employees without cause will be allowed and in the case of mass redundancy, employers will no longer have to notify the employment authority or consult with employee representatives. At the same time, the pay system in the public services will change from the previous strict payment table to a system of remuneration based on individual performance. No objective criteria have yet been set for how this will be judged. On 5 April 2011, the Constitutional Court ruled that dismissing public servants without cause was against the Constitution and blocked the new law.¹⁷⁹

The last major wage increase for the public sector was in 2002 and since then, salaries have not kept pace with inflation. In terms of pay levels, Hungary is placed 27th out of 31 OECD countries.¹⁸⁰ Since 2006, there has been a public sector wage freeze and measures

¹⁷⁸ EIRO Published 31 January 2012 Unions slam new Labour Code HU 11110111 Author Máté Komiljovics

¹⁷⁹ EIRO Extension of governmental power in Hungary 8th July 2011 HU10120111 Márton GerCE and Zsuzsa Rindt

¹⁸⁰ PSZ "The Impact of the economic crisis on public education in Hungary" Power point presentation, Budapest, October 2011

designed to reduce public expenditure. In 2008, public sector salaries were frozen for a year and the right to a 13th salary was abolished. Other working conditions also deteriorated (such as hours of contact, pupil teacher ratios and a new unfavourable method of calculating overtime). The PSZ union calculates that teachers' salaries in real terms have lost 25% of their value since 2008. They further calculate it would be necessary to increase teachers' pay by 50% to reach the level of other professionals in Hungary, which in turn would require an increase of 38%-40% in the budget allocation for public education based on 2010 figures.¹⁸¹

The education sector has been additionally affected because of the decline in pupil numbers which form the basis for the budgetary calculations each year. As the union argues, education costs are not directly proportional to pupil numbers, as maintenance costs and other charges are not affected. However, the education budget has been cut consistently from 2008 onwards. In addition, other charges, like the health costs of teachers have now been transferred to the education budget .

Since 2010, the government has allowed local authorities to transfer schools to the Church while no longer requiring that they continue to provide 50% of the funds. This has resulted in a large number of schools being handed over to Churches. Over the last 4 years, 85 schools with a total of 20,000 pupils have become Church schools. The government has also required primary schools which do not provide the full 8 grades of education to close and be integrated into a larger catchment area.

A new law on public education has recently been adopted in 2012 together with a new system of local government. The new law on education separates teachers from other public employees and foresees setting up a new salary scale and career progression specifically for teachers either from September 2013 or September 2014. Under the supervision of the Ministry of Human Resources, the Klebelsberg Centre (KIK) will become the employer of the teaching workforce. The law also stipulates the number of obligatory teaching hours as 22 per week but the KIK can require a teacher to work up to 32 hours per week.

From 2013, local government will be based on districts, a territorial division which existed historically but was abolished in 1972. New school management systems will be set up and it is planned to have 176 management centres based on the districts and counties and 23 in the capital city. The KIK will be responsible for managing all the primary and secondary schools, upper secondary and professional colleges. The KIK will also be responsible for the management of schools in communities with less than 3000 inhabitants but the local authorities will be responsible for the building maintenance and security.

The PSZ considers that there is now the possibility of establishing a national collective agreement for the education sector with Ministry of Human Resources. In order to adjust its own organi-

¹⁸¹ *idem*



sational structure to this new situation, PSZ held a working congress to review the changes and propose a new structure. It is holding local elections over the period December 2012 June 2013 and its Statutory Congress in June 2013.

According to PSZ, the new education reforms have been badly prepared and the new education districts are not yet in place.

“The restructuring proposals are in perpetual flux and the division of responsibilities and tasks is not clear. The maintenance and upkeep of the schools has been separated from the educational responsibilities, such as curriculum and manuals, employment and class hours, except in the case of the pre-schools. The PSZ signed an agreement with the Minister in order to save 22,000 jobs but we have always opposed the new Law.”¹⁸²

Dr. Horváth Péter, PSZ Adviser

Education expenditure and GDP growth

% GDP spent on education	% public expenditure spent on education	GDP % Growth
2007: 5.4 %		1.7%
2008: 5.1 %	10.4 %	0.6%
2009: 5.1 %	10.0 %	-6.3%
2010:		1.2%
2011:		1.7%

Source World Bank/IndexMundi

¹⁸² Report from PSZ dated 04.02.2013 and interview with Tünde Vajna, International Relations Secretary, PSZ

POLAND¹⁸³

El affiliates

NSZZ Solidarność	Education Section of Independent and Self-governing Trade Union Solidarity
NSZZ Solidarność	Science Section of Independent and Self-governing Trade Union Solidarity
ZNP	Polish Teachers' Union part of All Poland Alliance of Trade Unions (OPZZ)
	Polish Academy of Sciences Trade Union, part of All Poland Alliance of Trade Unions (OPZZ)
WZZ Solidarność-Oświata	Education Section of the Free Trade Union Solidarity

Union Density Rate

16% of total workforce and 39% of education workforce (EIRO December 2008)

Education Sector has 470,000 trade union members, representing 25% of the total unionised workforce. Approximately 70% of trade union members in the education sector are women.

Birth rate

The birth rate is falling and is one of the lowest in Europe and the lowest in the EU.

Background

Poland has a decentralised system of government and is divided into 16 regions (*województwo*), 380 districts (*powiat*), and 2,413 communes (*gmina*). The Polish Constitution, adopted in 1997, provides for compulsory education up to the age of 18 years. The Education System Act of 1991, and subsequent legislation, regulates education and provides for the functioning of private schools for the first time. Education responsibilities are divided between the three levels of territorial government and are financed within the framework of a general subsidy from the State Budget.

Teachers in public education are appointed as public employees under the terms of the Teachers' Charter 1982. The Charter regulates the rights and duties of teachers but it covers the public sector only. It regulates teachers' qualifications and promotions, working conditions, remuneration and training, financial aspects of continuing education and training for teachers, as well as health care standards and pensions and disciplinary measures. The Charter

¹⁸³ Grateful acknowledgements to Dorota Obidniak, ZNP and Monica Konczyk, ONET, who provided valuable information and comment on this country study.



guarantees a maximum of 18 teaching hours per week and a minimum wage for each category of teacher. The Charter was amended in 2009 whereby the obligation to negotiate annually with local authorities was removed and the method of calculating wages was also amended.

The Higher Education Act (2005) covers tertiary level lecturers and university staff. NSZZ Solidarność and the ZNP represent teachers at the tertiary level. The administrative and technical staff are covered by collective agreements negotiated at local level.

Freedom of Association and Collective Bargaining Rights

Teachers have the right to form and join trade unions and are covered by the provisions of the 1991 Trade Union Act. In practice there are 3 trade union federations (OPZZ, FZZ and NSZZ –Solidarność), which all have education sections or a specific union for teachers.

Trade unions are considered representative when they have at least 300,000 members industry-wide as a federation or confederation, or if they are members of a representative association at enterprise level and organise at least 7 % of the workforce. Enterprise trade unions that do not belong to a representative association must organise 10 % of the workforce. The trade unions are currently calling for this to be raised to 20% in order to simplify negotiations.¹⁸⁴

Through their respective Federations, the teachers take part in the Tripartite Commission for Social and Economic Affairs, which is the primary institution dealing with social dialogue in Poland. It is composed of government representatives, nominated by the Prime Minister, and representative employers' and workers' organisations.

Its aim, among other things, is to participate in the preparation of the Budgetary Act through reviewing macro-economic indices and presenting proposals on levels of remunerations in the national economy, including public and private sectors, as well as the minimum wage and pension contributions for the National Insurance System.

Within the Tripartite Commission there are 12 subject work groups, including 5 tripartite trade groups. There is also a specific Commission for Social Dialogue at regional level.

Teachers are not covered by collective agreements as the main terms and conditions of employment for teachers in the public sector are determined by the Teachers' Charter. However they do conduct negotiations at central and local levels.

The annual Budgetary Act determines the total amount available for teachers' salaries. The Ministry of Education then issues a regulation which determines the increase in the basic minimum wage for teachers. The draft of this regulation, in particular the table containing the salary rates for the different teachers' grades, is negotiated between the Ministry and trade unions. Depending on what is agreed in the Budgetary Act, the increases can start on 1st January or 1st September. The salary levels for the four categories in the teaching career are regulated by the Teachers' Charter (Article 30, Paragraph 3). The salary level is calculated as a percentage increase above the teachers' basic pay in the following way:

- 1) trainee teacher - 100%,
- 2) contract teacher - 111%,
- 3) appointed teacher - 144%,
- 4) diploma teacher - 184%

The other terms and conditions, including allowances for seniority, difficult working conditions and performance related pay, as well as over-time, are determined at local authority level, either districts or communes depending on the type of school, following a process of consultations with the unions. There are some exceptions, such as medical schools which are managed by the regional self-government bodies and the schools under the management of different Ministries.

Impact of the financial crisis

• Teaching staff levels

Some local authorities have sought to reduce the number of teachers. The declining birth rate is also used as a justification for the need to reduce the number of teachers. The unions have argued that the demographic slump has been used as a pretext to make excessive cuts.

• Salary levels

Nearly all Polish teachers have a university diploma (97% have a BA and 92% have an MA). Trade unions have highlighted the low levels of salaries for teachers and the need to adjust pay to match other starting salaries in comparable professions. Prior to the 2007 elections, the Civil Platform candidate, Donald Tusk, had committed to increasing teachers' pay.

In the face of the economic crisis in 2008, the unions were active in organising demonstrations, strike actions and protests in front of the Ministry of Education to ensure that this commitment was respected.

Because of the levels of mobilisation, the unions were able to reach a major agreement with the Ministry of National Education concerning a wage guarantee scheme, which was finalized in 2009. A national report calculates the average salary of a teacher including allowances in each category, and teachers who are found to have less than the average salary in each category are compensated. This new system was considered a major victory for the trade unions.



- **Base Salary Increases 2009-2013**

2009: 5% in January and 5% in September
2010: 7%
2011: 5% in January and 5% in September
2012: 3.8%
2013: 0%

- **Working Hours**

While the Teachers' Charter stipulates that a teacher must spend 18 hours class time per week, in 2010, these hours were extended so that at primary and lower secondary level, teachers were required to spend 2 hours extra per week with students, with remedial classes or on development of extra-curricular interests. In upper secondary, teachers were required to spend 1 hour extra per week.

During 2012, the Ministry of National Education tabled proposals for further changes to the teaching hours and also to holiday and sabbatical entitlements. Currently, teachers are entitled to one year sabbatical after 7 years at school.

The teaching unions often find it difficult to reach consensus on issues such as working hours' reforms, with some unions putting forward proposals unilaterally and therefore making it easier for the government to impose their positions.

The trend towards privatisation

The economic crisis from 2008 has been used as a new argument to accentuate the process of decentralisation further, and to facilitate the transfer of schools from local authorities to private institutions. A legal act in 2005 set a limit of permitted debt for local government at 60% of annual income so local authorities are forced to make savings. For fiscal year 2011/12, the Ministry of Finance has set a target of 4% reduction in the budget deficit. As education represents up to 70% of local government budgets, some local authorities are seeking to implement cuts to education budgets and transfer of schools to the private system.

In 2010, the Educational System Act was reformed so that it became easier for schools with less than 70 pupils to be privatised and the responsibility handed over either to parents' associations or private foundations. All the unions opposed this move. Schools run by parents' associations do not have to employ teachers under the conditions stipulated by the Teachers' Charter and the central government can therefore also provide them with a lower subsidy. Teachers are also concerned that the numbers of teachers on short-term contracts which are not subject to the Labour Code will increase.

Curriculum reform

It is obligatory for the Ministry of Education, under the terms of the Teachers' Charter, to consult the unions about curriculum reform proposals. A curriculum reform was introduced in 2009 to be implemented 3 years later in 2012. The main unions hold varying opinions about these reforms.

Pre-Kinder Education

Another area of reform concerns the lowering of the age of obligatory education to 5 years and the increase in provision of pre-school facilities. The government wanted to introduce this reform in 2011 but following concerns that conditions were not properly prepared, the government had to agree to postpone the plan until 2014. Solidarność 6, together with parents' associations, organised a movement called "Save the Kids" with demonstrations and petitions.

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2006		
2007: 11.8 %	4.9 %	6.6 %
2008: 11.4 %	5.1 %	4.8 %
2009: 11.4 %	5.1 %	1.7 %
2010:		3.8 %
2011		4.4 %

Source World Bank/IndexMundi



SPAIN¹⁸⁵

El affiliates

FECCOO	Federation of Education of the Trade Union Confederation of Workers' Commissions
FETE-UGT	Federation of Education Workers of the General Workers' Confederation
CIG-Ensino	Federation of Education of the Galician Trade Union Confederation
ELA-GIZALAN	Federation of Public Services of the Basque Workers' Solidarity
Enseñanza CSI-F	Education Sector of the Independent Trade Union Confederation of Public Servants
STEs-Intersindical	Confederation of Education Workers' Unions
FE-USO	Federation of Education of the Workers' Trade Union Confederation

Others

National Association of Education Teachers (ANPE);
Confederation of Independent Education Trade Unions

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise(1948) ratified 1977
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1977
- C. 100 Equal Remuneration (1951) ratified 1967
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1967
- C. 144 Tripartite Consultations (1976) ratified 1984
- C. 151 Labour Relations (Public Service) (1978) ratified 1984
- C. 154 Collective Bargaining (1981) ratified 1985

The Status of Teachers

In Spain, teachers in the public sector are either employed as civil servants, with a guaranteed permanent appointment, or as public employees, with a work contract. The Basic Statute of Public Employees (*Estatuto Básico de los Empleados Públicos-EBEP*), adopted in 2007, recognises the increasing proportion of workers in the public sector without civil service status, and sets out a national framework for the rights and responsibilities of public sector workers, regardless of their employment status and at all levels of government. Public employees with a work contract are also covered by the Statute of Workers (*Estatuto de los Trabajadores - ET*), adopted in 1980 and last amended in 2012. In the private sector, employment of teachers is only governed by the Statute of Workers (*Estatuto de los Trabajadores*).

¹⁸⁵ Grateful acknowledgement of the written report and additional comments from FECCOO

Freedom of Association

Freedom of association, including for migrants and undocumented workers, and the right to strike are fundamental rights as provided by Article 28 of the 1978 Spanish Constitution, the Organic Law 11/1985 on freedom of association, Royal –Decree Law 17/1977 on work relations, and Law 7/2007 on the Basic Statute of Public Employees (EBEP). The Constitution provides for special modalities to apply for public employees. Members of the armed forces, as well as judges, magistrates and public attorneys, do not have the right to strike. Special provisions also apply to the State police and, in certain cases, to the police forces of the autonomous communities.

Collective bargaining

The right to collective bargaining is provided for in Article 37.1 of the 1978 Spanish Constitution and the Royal Legislative Decree 1/1995 on the Statute of Workers and the EBEP.

Collective bargaining in private education institutions is similar to the collective bargaining of other private sectors. It takes place, predominantly, at the national level, with several sub-sectoral collective agreements (pre-primary school, primary and secondary school, universities, vocational training, etc.). For primary and secondary education institutions, there are different collective agreements for private institutions with State subsidy (*centros concertados*) and for fully private institutions.

The EBEP is a progressive reform designed to facilitate social dialogue for all public sector workers. It establishes the right of all public sector workers, whether civil servants or public employees, to negotiate collectively and to participate in the determination of work conditions. Collective bargaining is subject to the principles that it must be lawful, its outcomes are covered by the budget and that it is compulsory, undertaken in good faith and is in the public domain and is transparent.

However, collective bargaining in public education is quite complex and fragmented, reflecting the different contractual arrangements of teachers according to their status and also regional differences, given the considerable devolution of powers onto the Autonomous Communities. The situation is also evolving, and the practice can be different from the law.

Broadly speaking, the EBEP establishes that negotiations takes place at both general and sectoral negotiation “tables” (*mesas*) at the three administrative levels: national, Autonomous Communities (regional) and local. Public employees but not civil servants have the additional right to bargain and sign collective agreements as set out in the Workers’ Statute (Estatuto del Trabajador ET). In this system, one of the challenges is to ensure that



there is coordination between the different negotiating bodies.

National level

The general negotiations table of public administration (Mesa General de Negociación de las Administraciones Públicas) sets a framework and it negotiates the common terms and conditions of employment of all public sector workers. Its mandate includes the negotiation of new legislation, regulations or decrees affecting all civil servants and public employees, and the overall annual average salary increases to be included in the General Budget Law every year.

There are two sectoral bargaining tables related to the education sector at national and also typically at regional level although they have not been formally constituted but work on a non-formal basis, and thus are dependent on the good will of the Ministry of Education:

- teaching staff of public education institutions (excluding universities);
- teaching staff at public universities;

Within the framework of the basic statute for public administration workers, the national sectoral tables can define the salary structure and career structure for teaching staff and some salary components. Working hours as a whole have been fixed for all civil servants by EBEP but teaching hours are established at regional level without negotiation.

Autonomous Community (Regional) Level

The same system of a general negotiation table for all public administration and sectoral negotiation tables exist.

The system of negotiating tables

In non-University education, the status of non-civil servant teachers is assimilated to those of civil servants, though with some exceptions. The working conditions of the administrative staff with public employee status are negotiated through the general collective agreement for the public administration (at national or regional level). At regional level non-University education staff is paid directly by the Autonomous Community (Regional Government) so the non-university regional table is the last step in the cascade of bargaining tables. National education laws enable some degree of freedom in the class size, and number of hours and subjects taught in the different official languages (there are 5 autonomous communities with two official languages) and regional salary complements. Also several regions have a Regional Education Law. All these issues can be negotiated in the sectoral regional tables. While there is a national act which determines the general system and criteria, education staff selection takes place regionally and the selection processes are organised regionally and, in theory, negotiated in the regional tables.

In universities, the main aspects of working conditions are negotiated at the national

level for teaching staff. The proposed Statute of University Teachers and Researchers "*Estatuto del personal docente e investigador*" was negotiated at the national sectoral table but was not finally adopted. Regions organise their regional system, and create universities (public or private) and determine the campuses, faculties and programs. Several regions have their own University Law. In the case of public universities, the main part of the budget is allocated by the regions. Regions can also regulate certain aspects of the public employee teaching staff, for example refining the teaching categories based on those defined in the Spanish University Law. Additional salary components can also be negotiated regionally. These and other aspects could be negotiated in a regional university negotiating table. There can also be university level negotiation tables, which can define the number of positions needed in different departments or faculties or for the non-teaching staff services.

Collective bargaining for the university teaching staff with public employee status takes place predominantly at regional level (the collective agreement covers all the universities).¹⁸⁶ There are generally different collective agreements for the teaching staff and the administrative staff. Collective bargaining for the administrative staff with public employee status is predominantly at university level.

In the negotiating tables, unions are represented through elections of delegates to the Personnel Committees (*Juntas de Personal*). These elections are carried out only by those union members with civil servant status. Generally, if a union achieves 10% of delegates, they are represented in the negotiating tables. At national level, for both the general and sectoral negotiation tables, however, there are provisions that unions, which have a strong regional base but do not reach 10% of the delegates at national level, can be allocated representatives. The Personnel Committees do not have the right to establish collective agreements, though they may establish informal agreements, without the force of law.

Public employees elect union delegates onto works councils (*comités de empresa*), which are similar in structure to the private sector. The works council then negotiates the collective agreements, which have the force of law. Also unions can negotiate collective sectorial agreements.

Formally the workplace representation structure of employee delegates and works councils does not depend on union involvement, but in practice the composition of the works council depends on the union election results and the unions play a central role. The vast majority of elected representatives are proposed by the unions and around three quarters of them

¹⁸⁶ Section based on *Representativeness study of the European social partners: Education Sector-Spain Section 4: The system of collective bargaining/regulation*

come from the CCOO and the UGT.

Spanish trade unions also have separate legally recognised structures within the workplace with a range of legal rights. These trade union sections bring together all the members of a particular union in the workplace.

COLLECTIVE BARGAINING IN THE EDUCATION SECTOR					
	NON-UNIVERSITY			UNIVERSITY	
		Private	Public	Private	Public
Teaching staff	Civil servants	-	Negotiation tables	-	Negotiation tables
	Employees	Collective agreement for teaching and administrative staff	As civil servants (with some exceptions)	Collective agreement	Mixed: Collective agreement for teaching staff As civil servants (with some exceptions)
Administrative staff	Civil servants	-	Negotiation tables	-	Bargaining tables
	Employees	Collective agreement for teaching and administrative staff	Collective agreement for public administration	The same collective agreement as teaching staff	Mixed: Collective agreement for administrative staff As civil servants (with some exceptions)

Social dialogue

Over the last decade, there has been a strengthening of social dialogue institutions at national and regional and autonomous community levels.

Since 2002, in the private sector, the articulation of collective bargaining and the criteria for pay reviews in Spain have been governed by the recommendations and guidelines laid down in the Multi-Sector Agreements for Collective Bargaining (*Acuerdos Interconfederales para la Negociación Colectiva, AINC*s). The content of collective bargaining has also been extended to include an increasingly wide range of subjects, due to new legislative reforms and their development through the following framework agreements: control of temporary recruitment, prevention of occupational risks and promotion of gender equality. The last framework agreement was signed in January 2012 covering the period 2012-2014.¹⁸⁷

In the public sector, there have been a series of agreements, notably the Government-Trade Union Agreement on financial measures and public sector employments for 2006 (*Acuerdo Administración-Sindicatos sobre medidas retributivas y de Oferta de Empleo Público para el año 2006*) Government-Trade Unions Agreement for the Public Sector in the framework of social dialogue for 2010-2012, (*Acuerdo Gobierno-Sindicatos para la función pública*

en el marco del diálogo social) and the Social and Economic Agreement for growth, employment and pension guarantees (2011) (*Acuerdo social y económico para el crecimiento, el empleo y las garantías de las pensiones*) and the Law 27/2011 on reforms to the social security system (*Ley 27/2011 sobre actualización, adecuación y modernización del sistema de Seguridad Social*).

The State School Council (*Consejo Escolar*) is an administrative body with national scope for the participation of sectors involved in the education system. The Council carries out consultations on bills and regulations that affect educational levels prior to university and is able to elaborate proposals to the Administration.

The Council includes representatives from:

- parents' and students' associations;
- owners of private education centres;
- employer associations and trade unions;
- State Education Administration;
- universities;
- women's organisations ;
- individual appointments of well-known persons.

The Impact of the Financial Crisis

Until 2007, the Spanish economy was growing at relatively steady rates, largely fuelled by domestic consumption and the construction sector but then began to lose momentum. The global economic crisis had a particularly devastating impact because of Spain's high level of foreign debt. Spain currently suffers from one of the highest unemployment rate in the European Union, now at 26.6% in January 2013, and youth unemployment is 56.5%.¹⁸⁸ Poverty and inequality indices continue to rise. It is calculated that 27% of the population is living below the poverty line.

During the government of Jose Luis Rodriguez Zapatero (PSOE), significant austerity measures were only introduced in May 2010, with budgetary cuts of Euro 15.6 billion to reduce the deficit with a 5% cut in public sector salaries in 2010 (7-8% cut in salaries for teachers) and a wage freeze in 2011. Since the Constitutional reforms of September 2011, and most dramatically, following the election of the conservative government of Mariano Rajoy (PP) there have been major changes in the political, economic and social model of the State, in part imposed by international financial institutions, focusing on the dismantling of the welfare State and the privatisation of public services. There have been a vast swathe of reforms, designed to deregulate labour relations, and reduce overall labour costs. The trade union movement as a whole has responded with substantive mobilisations, protests

¹⁸⁸ Eurostat January 2013

and general strikes.

While there have been no legislative changes to the right to freedom of association and its regulation, the PP government has made statements to the effect that they think it is necessary to introduce new regulations concerning the right to strike but no specific proposals have been put forward to date. In practice, however, because of the multiple restrictions on the right to collective bargaining, the right to freedom of association has also been affected. Furthermore, since the PP government came to power in December 2011, and before that in the case of some of the Autonomous Communities under the control of right wing parties, there has been an increasing repression against demonstrators and strikers by the police, with many persons detained and even wounded.

Royal Decree-Laws (RDLs) are approved by the Government and come into effect immediately the day after their publication in the State Official Bulletin and must be validated by the Congress of Deputies within a period of 30 days. This procedure was designed to be used in exceptional circumstances although it has been used frequently over the last few years, particularly by the conservative government of the Popular Party (PP).

Cuts and reforms in the public sector have been legislated as follows:

- RDL 8/2010, of 20 May- extraordinary special measures are adopted to reduce the public deficit;
- RDL 20/2011 of 30 December- extraordinary budgetary, fiscal and financial measures to reduce the public deficit;
- RDL 14/2012, of 20 April, urgent measures to rationalise public expenditure in the education sector;
- RDL 16/2012, of 20 April, urgent measures to guarantee the sustainability of the national health system and to improve service quality;
- RDL 20/2012, of 13 July, measures to guarantee budgetary stability and to encourage competitiveness;
- RDL 5/2013 of 15th March, measures to favour continuity in work for older workers and to promote active ageing.

In the private sector, and public sector employees, there have been a series of labour reforms and reforms to collective bargaining:

- Law 35/2010 of 17 September – urgent measures to reform the labour market;
- RDL 7/2011 of 10 June on urgent measures to reform collective bargaining;
- RDL 3/2012 of 10 February –urgent measures to reform the labour market.

been convened since 2010. The governments have justified this decision because Article 38.10 of the EBEP provides for the breach of agreements in exceptional and serious situations of public interest, because of substantial changes in the economic situation. In the case of some public employees, this has resulted in the revocation of some of the collective agreements in force. RDL 20/2012 has weakened collective bargaining still further as it allows for the unilateral suspension or modification of a collective contract in part or its entirety, without any prior consultation with workers' representatives, and without any prior procedures before any autonomous conflict resolution body, or any tripartite body. It is only necessary to inform the concerned trade union organisations. RDL 3/2012 allows for the revocation of an existing collective contract if negotiations for the renewal continue for more than two years, in which case the sectoral collective contract will apply, or in its absence, the provisions of the ET. The unions are therefore under pressure to conclude a new agreement and the employers to delay.

At the same time, the government has limited the number of persons granted trade union leave in the public sector and the number of working hours they can take off to carry out trade union work thereby drastically reducing the number of trade union delegates. In the case of education, over a two-year period, the number of delegates has been reduced by two thirds.¹⁸⁹

These reforms have also given the government new and wide powers to carry out collective dismissals of public employees for reasons which have been very broadly defined, as economic, technical, organisational and productive. Collective dismissals were not possible before 2012.

Cuts to Education Budgets

Since 2010, cuts in education budgets have amounted to 4.5 billion Euros and it is estimated that there will be a further 3 billion Euros of cuts, having a devastating impact on the quality of state education, as a consequence of cuts in staffing levels, increased class sizes, closure of smaller rural schools, fewer scholastic services such as free school meals, the increasing privatisation of education services, increased university fees and many other consequences.

In 2011, the Spanish government agreed in its Fiscal and Financial Policy Council to set new goals to try to reduce the average public deficit of all the autonomous communities (regions) from 3.9% to 1.3%. Regional governments have responded by cutting education

¹⁸⁹ *Spain: unprecedented attack on union representation 5.10.2012* www.ei-ie.org accessed 15.02.2012

¹⁹⁰ *Estudio Comparativo de los recortes en educación aprobados en los diferentes planes económico-financieros de las comunidades autónomas 2012-2014 Gabinete Técnico junio 2012, UGT-FETE Enseñanza*

budgets further, which are within their competencies.¹⁹⁰

The government has committed to reducing public spending to 3.9% of GDP by 2015.¹⁹¹

Overall, for the 2012-2013 school year, it is estimated there will be between 80,000-100,000 fewer teachers in the Spanish educational system. Regional governments have all increased teaching hours. New sick leave arrangements have also been put in place so that if a teacher is on sick leave for less than 10 school days there will be no replacement teacher, unless the school funds it from its own resources.¹⁹² In addition, a teacher who is on sick leave only receives 50% of their salary for the first 3 days.

A coalition to protest at the dismantling of State education has been formed, known as the Nationwide Platform for State Education (Plataforma Estatal por la Escuela Pública) comprising unions affiliated to Education International (education unions FECCOO, FETE-UGT, STEs and CSI-CSIF), as well as students' organisations, parents' associations and educational reform groups.

Education expenditure and GDP growth

% GDP spent on education	% public expenditure spent on education	GDP % Growth
2008: 4.6 %	11.2 %	1.2%
2009: 5.1 %	10.8 %	-3.7%
2010: 5.1 %		-0.1%
2011		0.7%

Source World Bank/IndexMundi

¹⁹¹ ACTUALIZACIÓN DEL PROGRAMA DE ESTABILIDAD, REINO DE ESPAÑA. 2012 – 2015. página 49, Cuadro 3.3.5 Cambio en la estructura del gasto por funciones) http://ec.europa.eu/europe2020/pdf/nd/sp2012_spain_es.pdf

¹⁹² UGT/FETE Comunicado de Prensa 21st June 2012

SWEDEN ¹⁹³

Trade Unions in the Education Sector

- Swedish Teachers' Union (**Läraryrsklubben**); Teachers and head of schools, from pre-primary to tertiary education in both the public and private sectors, affiliated to the Swedish Confederation for Professional Employees (TCO) and Education International.
Membership 230,000 (82% female)
- National Union of Teachers in Sweden (**Lärarnas Riksförbund**); Certificated teachers and counsellors employed in pre-school, primary, secondary and adult education in both the public and private sectors, affiliated to Swedish Confederation of Professional Associations (SACO) and Education International.
Membership 87,000 (70% female)¹⁹⁴
- Swedish Association of University Teachers (**Sveriges Universitetsläraryrsklubben SULF**); University teachers, researchers and doctoral candidates within the public sector, affiliated to Education International.
Membership 20,000 (48% female)¹⁹⁵
- Swedish Association of School Principals and Directors of Education (**Skolledarförbundet**); Principals, assistant principals and other persons with leading positions within the school system in both public and private sector.
Membership 7000 (54% female)¹⁹⁶

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1949
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1950
- C. 100 Equal Remuneration (1951) ratified 1962
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1962
- C. 144 Tripartite Consultations (1976) ratified 1977
- C. 151 Labour Relations (Public Service) (1978) ratified 1979
- C. 154 Collective Bargaining (1981) ratified 1982

¹⁹³ Grateful acknowledgement of the written report and additional contributions from Jörgen Lindholm, International Relations Secretary, Läraryrsklubben.

¹⁹⁴ according to latest figures 31 December 2012 <http://www.saco.se/Nyheter--debatt/Aktuellt-frac-Saco/Pressmeddelanden/saco-fortsatter-att-vaxa/> and <http://www.saco.se/Global/Dokument/Forskning%20och%20Kunskap/Statistik/Medlemsstatistik%202011-12->

¹⁹⁵ Representativeness study of the European social partners: Education Sector -Sweden SE 001019Q, Matts Kullander, Elinor Håggebrink 21.04.2011 EIRO

¹⁹⁶ see references in note 1.



Education System

The Education Act 2011,¹⁹⁷ which is a consolidation of earlier laws, provides for compulsory free education from 7-16 years and sets out the responsibilities of the municipalities and county councils and the framework for the national curriculum, the guaranteed tuition time and length of each academic year, and the qualifications required for appointment as a teacher. A teacher cannot be given permanent status unless they have a teacher training qualification. The municipality is responsible for providing education within this framework. Independent or free schools were introduced as part of the 1992 education reforms and they must follow the national curriculum. In 2010, about 10% of the schools were independent or privately run.

The central government allocation for primary and secondary education is less than 50% of the municipal education budget, and the rest is raised through municipal taxation. Before 1995, the allocation was specifically earmarked for education and was linked to the number of teaching hours and teaching contracts required at each school. This system has now been replaced so that the municipalities receive a generic allocation and the local authorities decide on the budget for schools, which is generally about 42% of its total budget. In some cases, the distribution of the municipal education budget is discussed with the unions.

There are an estimated 450,000 employees in the education sector.²⁰⁰

Freedom of Association

The Nordic model of industrial relations is characterised by the major role given to national collective bargaining and there is a high union density and membership of employers' organizations. However, since 2006 there has been acceleration in the decrease in union membership in both the public and private sectors as a consequence of the removal of the tax exemption on trade union dues and because the unemployment insurance funds, which are managed by the unions, became much more expensive. By 2008, the overall union density rates had dropped to 72% and only 52% of young workers (16-24 years old) were trade union members.²⁰¹

There is a constitutional recognition of the right to freedom of association. The Co-Determination in the Workplace Act (MBL) of 1976 is the main instrument which sets out the industrial relations system in Sweden and provides for a positive right to freedom of association. Its provisions cover both public and private sector employees. Workers can form and join unions of their choice, without prior authorisation or excessive requirements. The law

¹⁹⁷ <http://www.government.se/content/1/c6/02/15/38/1532b277.pdf> accessed 20.01.2013

¹⁹⁸ *Facts about Sweden: Education; the Swedish Institute p. 4* www.sweden.se accessed 1.02.2013

¹⁹⁹ [http://www.skl.se/kommuner_och_landsting/om_kommuner/kostnader_och_intakter\(A+B+C+D\)](http://www.skl.se/kommuner_och_landsting/om_kommuner/kostnader_och_intakter(A+B+C+D))

²⁰⁰ *Idem EIRO Representativeness Study p.1*

²⁰¹ *EIRO On-Line "Trade Unions take action to counter membership decline" Paul Anderson and Thomas Brunk, SE0806029, 09-07-2008*

allows unions to conduct their activities without interference. There is no registration requirement or minimum membership. There are no legal barriers preventing workers, including foreign workers, from joining a union.

The industrial relations system is largely self-regulating and there is no State agency that deals with matters such as union recognition, or certification of bargaining agents or certifies union elections.

“The right of association may not be infringed. Infringement of the right of association shall be deemed to have occurred where an employer or employee, or the representative of either, takes action that is detrimental to the other party as a consequence of such party's exercise of its/her/his right of association or where an employer or employee, or the representative of either, takes action directed at other party for the purpose of inducing that party not to exercise its/her/his right of association. Such infringement shall also be deemed to have occurred notwithstanding that the action was taken for the purpose of fulfilling an obligation towards a third party.” (Section 8)

Teachers in the public sector also fall within the terms of the 1994 Public Employment Act, which is a consolidation of earlier laws. The law is of general applicability and concerns qualifications to be considered in hiring, occupation outside of working hours, termination of employment, disciplinary proceedings, labour disputes, health examinations and related matters. Public sector employees have the right to strike, provided public health and security are ensured.

The Employment Protection Act 1982 is also of general applicability and covers both public and private employees. It regulates employment and termination of contracts and protects employees from dismissal without due reason.

There is framework legislation on occupational health and working time (the Work Environment Act 1977 and Working Time Act 1982) and the Swedish Work Environment Authority is responsible for monitoring their implementation. This framework legislation is reflected in the sectoral collective agreements.

The national pension system safeguards a basic pension for all workers and an additional pension is defined by collective bargaining in each sector.

Collective Bargaining

The Co-Determination Act also gives trade unions the right to negotiate with employers; in turn, employers have the duty to enter into collective agreements. Hence, collective bargaining is a strong and well-developed tradition in Sweden. The coverage rate of collective agreements for all sectors was 98% in 2008.²⁰²



Furthermore, collective bargaining agreements also include the right of co-determination for employees in matters regarding the conclusion and termination of contracts of employment, the management and distribution of work and the operation of the activity in general (Section 32). Collective bargaining is conducted at three levels: national, sectoral or industry-wide and local level, in the case of education at municipal level or with the independent school. At national level, the framework, which dates back to the 1930's, defines the roles of the parties. There are also cross-sectoral agreements on pensions and other collective insurances, an employment transition fund so that a percentage of the wage is paid into a fund to help workers made redundant.

The sectoral agreements define the minimum average pay levels and general working time provisions as the framework for procedural rules for dialogue at the local municipal level. In the public sector, Lärarförbundet and Lärarnas Riksförbund negotiate jointly in a special cooperation council called the Teachers' Negotiation Council (*Lärarnas Samverkansråd*), with the most important employers' organisation, which is the Swedish Association of Local Authorities and Regions (SALAR). The SALAR represents 290 municipalities, 18 county councils and 2 regions. In this cooperation, the unions have agreed not to recruit each other's members, which eliminates some competition as they organise some of the same members. Coverage of collective bargaining agreements in the public sector in education is 100%.

In the independent or "free school" education sector, collective agreements cover about 85% of the employers.²⁰³ There is a national collective agreement with each national employers' association and there are between 10-15 employers' associations with interests in free schools. It is the responsibility of the union Branch office to identify private employers and to recruit members. There are an estimated 3000 collective agreements with the free schools.

During the 1980s and 1990's, there was a gradual process of government decentralisation and one important step took place in 1995, with the "municipalisation" of the school system to give more autonomy to the local authorities and schools. A system of management by objectives was introduced and schools and local authorities were required to prepare quality statements against which their performance was evaluated. The unions issued a joint declaration supporting this transition and emphasising their role as partners in the promotion of school development.²⁰⁴

At the same time, the system of wage setting and working time was decentralised. Instead of a centrally agreed national salary scale, with a fixed progression, an individualised pay

²⁰² *EIRO Industrial Relations Profile: Sweden July 2009*

²⁰³ *EIRO: Representativeness study of the European Social Partners Organisations: Education Sector-Sweden SE 1001019Q 21.04.2011 Matts Kullander and Elinor Häggebrink*

²⁰⁴ *Teacher Policy Reforms in Sweden: The Case of Individualised Pay, Annelie Strath, Swedish Ministry of Education and Science, December 2004 International Institute for Educational Planning, UNESCO, Paris, December 2004*

system was introduced. Thus, the collective agreements beginning in 2000-2005 set minimum wage levels for entry point teachers and an agreed minimum after 5 years of employment. The working time system was divided into an agreed regulated time when the teacher was at school and an unregulated working time, to give a more flexible approach to pupil learning.

At local level, the individualised wage negotiations are usually carried out in two phases. There is first a dialogue between the school principal and the teacher based on a review of performance, when the school principal presents a wage proposal. The teacher can then ask for advice from the union. The role of the union here is to ensure that the pay review is conducted in a fair manner and on the basis of agreed criteria. The second phase consists of negotiations between the local municipality and the local unions concerning the proportion of the municipal budget to be allocated to teachers' salaries and how it should be distributed across schools and individuals. The proportion of the municipal budget allocated to teachers' salaries is approximately 22%.²⁰⁵

It was expected that these reforms would lead to greater wage differentials in the teaching profession but actually the reverse has happened. Because of shortages of qualified teachers, municipalities have needed to raise the salaries for entry point teachers and the raises for experienced teachers have flattened. Thus salary differentials remain relatively small and do not reflect individual teachers' achievements. Teachers and unions hoped that the individualised system of pay determination would lead to an upwards wage drift and would collectively increase beyond what was previously agreed at central level.

While the spread of salaries has not evolved in the way expected, the individual teachers appreciate the system as it gives a regular opportunity for dialogue between the teacher and the school principal. A survey conducted for Lärarförbundet in 2004, found that 60% were in favour of the reforms.²⁰⁶

Collective Bargaining since the financial crisis

Sweden underwent a major banking and real estate crisis in the early 1990's when the country suffered from a large budget deficit and economic downturn and large-scale unemployment. Since then, Sweden has reformed its banking system and built up a budget surplus so it was better able to confront the 2008 financial crisis than many other European countries. It also benefitted from being outside the Euro zone. By the second half of 2009, the economy was again showing export led growth and the high unemployment rate of 2009, which reached 8.6%, dropped back to 7.4% by December 2012. Hence the financial crisis has not had a major impact on education apart from in 2009.

²⁰⁵ calculations provided by Jörgen Lindholm

²⁰⁶ Hur ska lönen ;sättasen attitydundersökning bland lärare, augusti 2004, Lärarförbundet, Stockholm



Partly as a consequence of the financial and economic crisis, but mainly because of demographic factors and decreasing numbers of pupil numbers, two-thirds of municipalities reduced their investment in education in 2009 and there were cuts amounting to Kr. 1 billion or USD 140 million. 1500 teachers were given notice of termination.²⁰⁷

At the March 2010 conference of EI affiliates from the OECD, Eva-Lis Sirén, President of Lärarförbundet highlighted the need to convey a simple message, through simple methods with the campaign slogan 'Don't let the children pay for the crisis!' This managed to reach new groups and supporters, focusing their attention on the need for funding and resources. The Union worked with other NGOs and also corporations to raise awareness of the problems of education during the moment of crisis. The union relied on the mobilization of different strata of society to support continued investment in education is the way out of the crisis – "Everything starts with a good teacher"!

The teaching profession has been losing its status and teacher training courses are only just being filled. Teachers' salaries in Sweden have increased more slowly than in comparable professions²⁰⁸ and are below the OECD average. The only exceptions are in cases where there have been acute shortages of teachers, as in the case of early childhood teachers in Stockholm where there were substantial rises.

In May 2010 and again in September 2012, new collective agreements were signed which sought to address this problem "and why they obviously did not satisfy all the demands from the trade union side, they cannot be described as negative or affected by the crisis".²⁰⁹ However, the two teachers' unions had needed to threaten strike action and the agreement was only reached through mediation.

There is a tradition in Sweden that the wage agreements in the export-based industries are used as a benchmark for other sectors. In 2012, the industry norm was 2.6% but the teachers were finally able to negotiate a new 4- year agreement with an increase of 4.2% backdated to April 2012, which is the highest increase for any sector, plus an agreed increase in 2013 which would at least meet the industry norm. In 2014 and 2015, no fixed percentage raise was negotiated leaving wage increases to be agreed at local level.

One of the union's main focus since the start of the financial crisis has been to carry out a public awareness campaign about the value of education and the role of teachers in ensuring quality education. Lärarförbundet launched the campaigns "*Do not let the children pay for the crisis*" and "*It all starts with a good teacher*", which they consider have

²⁰⁷ Report of EI Conference of Affiliates in the OECD 8-10 March 2010 New York p. 4

²⁰⁸ EIRO: SE12090191 19.10.2012 Elimia Johansson and Hjalmar Eriksson

²⁰⁹ Report to author from Jörgen Lindholm, International Relations Secretary, Lärarförbundet, January 18th 2013

influenced the political leadership of the municipalities and helped reach a successful outcome to the 2012 negotiations.

One of the future challenges remains how to increase the attractiveness of the profession and to create a more positive public debate as to how to raise the quality of education through increasing the salaries and status of the profession. With this in mind, Lärarförbundet have launched a new campaign "Ten thousand Swedish Kroners More".

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		2.7 %
2008: 13.1 %	6.8 %	-0.4 %
2009: 13.2 %	7.3 %	-5.1 %
2010: -		5.5 %
2011	5.1 %	4.0 %

Source World Bank/IndexMundi

²¹⁰ Education International, *Synthesis Report of Conference for Affiliates in OECD Countries*, New York, 8-10 March 2010 p.4



UNITED KINGDOM²¹¹

El affiliates

UTU-UK	Ulster Teachers' Union
SSTA	Scottish Secondary Teachers' Association
EIS	Educational Institution of Scotland
NUT	National Union of Teachers
ATL	Association of Teachers and Lecturers
NASUWT	National Association of Schoolmasters Union of Women Teacher
UCU	University and College Union

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1977
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1977
- C. 100 Equal Remuneration (1951) ratified 1967
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1967
- C. 144 Tripartite Consultations (1976) ratified 1984
- C. 151 Labour Relations (Public Service) (1978) ratified 1984
- C. 154 Collective Bargaining (1981) ratified 1985

Introduction

The UK education system is devolved into 3 education authorities: Scotland, Northern Ireland and England and Wales. Slightly over a quarter (27%) of UK employees are union members, although union density is much higher in the public sector (57%) than the private sector (15 %).²¹² There is only one union confederation in the UK, the TUC, and individual unions are fully independent. Around 60% of all UK trade unionists in the TUC are in the three largest unions, which have grown through mergers. Overall collective bargaining coverage is around 33% although it is much higher in the public sector.

Freedom of Association

The right to join and form unions is secured in law, as is protection against anti-union dismissal and reprisal. However, there are certain limitations and restrictions which have been the subject of long-standing complaints before the ILO supervisory mechanisms. Unions do not have the right to access workplaces, and the statutory procedure for recognition allows an employer to prevent recognition of an independent union by setting up a company union and extending to it recognition rights. The right to strike is limited. For a strike to be lawful,

²¹¹ Grateful acknowledgement of the written report by Amanda Brown (NUT) Darren Northcott (NASUWT) and for their other contributions to this study.

²¹² Labour Force Survey 2009

the underlying dispute must be fully or mainly about employment related matters. Political and solidarity strikes are prohibited, as are sympathy strikes or secondary picketing. The procedures for calling a legal strike are long and very technical, and the employer can seek an injunction against a union before a strike has even begun if the union fails to properly observe the required steps. A worker may not be dismissed within 12 weeks after taking part in a legal strike. The ILO has called for a revision of this provision²¹³ and noted that adequate safeguards and immunities from civil liability are necessary to ensure respect for the right to strike.²¹⁴

Collective bargaining

Collective bargaining in the UK in both the private and public sectors is basically a voluntary system with very few specific legal rules about how it is carried out, which organisations can negotiate and the status of the agreements concluded. Collective agreements are not legally binding; however trade unions have traditionally supported this voluntary approach. A law setting out regulations on trade union recognition for the purposes of collective bargaining only took effect in 2000. Before then it was possible for employers to refuse to recognise and negotiate with trade unions even if they had majority support within the workplace. There is no national bargaining at inter-sectoral level and there are now very few national sectoral collective agreements. Most collective bargaining is carried out at company level in the private sector. There has been some decentralisation in the public sector but there are still major national agreements in local government and health and a national agreement covering firefighters.

Collective bargaining in the education sector

■ ENGLAND AND WALES

The Burnham Committee was set up in 1919, comprising teachers, the Local Education Authorities and government representatives. It was to remain the negotiating forum for teachers' pay and conditions until the Conservative government abolished it in 1987. Since then, collective bargaining on teachers' pay and hours of work has not existed. The School Teachers' Pay and Conditions Act 1991 gave the responsibility for fixing pay and hours of work, to the Secretary of State for Education. Today, the School Teachers' Review Body (STRB) is a consultative body advising the Secretary of State.

Membership of the STRB is determined by the Prime Minister. The secretariat is provided by the Office of Manpower Economics. The annual cycle for the Review Body starts with a series of directions (a remit) from the Secretary of State. The Review Body then calls for evidence from employers (including the National Employers' Organisation for School Teachers (NEOST)), trade unions and governors' representatives before making its

²¹³ ILO CEACR C. 87 United Kingdom Direct Request adopted 2012, published ILC 2013

²¹⁴ ILO CEACR C. 87 United Kingdom Observation adopted 2012, published ILC 2013



recommendations to the Secretary of State. The Secretary of State is empowered to accept, amend or reject recommendations from the Review Body and then issues a “guidance” to which those concerned must have regard. The School Teachers’ Pay and Conditions Document (STPCD), commonly known as the Blue Book, is updated on an annual basis. Whilst the STRB system clearly is not collective bargaining, it does provide terms of employment which are statutory in nature, and therefore more easily defended legally at local level.

The STRB system applies to fix relevant terms for teachers in all traditional local authority schools in England and Wales ie community schools and also voluntary aided schools. Other terms are fixed through collective bargaining, either at national level through a national collective agreement called the “Burgundy Book”, which covers dates of resignation and notice, sick leave and pay and maternity leave, collective disputes procedures, which allow for conciliation only, and facilities for recognised trade union representatives. In practice there has been little active national bargaining relating to the Burgundy Book terms in recent years due to fears by the unions that existing provisions might be undermined.

The terms in the national collective agreement can be added to at individual employer (local authority) level, for example, for improved maternity benefits. While this bargaining still continues, in the current climate, it has slowed or stopped, other than for employers seeking to renegotiate terms to decrease benefits.

In practice, the consultation process with the unions has been quite limited. In May 2012, the NASUWT and the NUT launched a joint campaign “protecting teachers, defending education”, as a response to pay freezes and pension contribution increases, which had cut the value of teachers’ pay by 15% in real terms, and new proposals to place a ceiling on pay below inflation levels. They have also opposed Government plans to break up the national teacher pay structure. Incremental progression will be replaced with a system of performance related progression.

New academies and free schools

The newer form of state independent schools, called academies and now also free schools, operate only in England, not Wales. By statute these schools can fix their own terms of employment, so, ironically there is now more collective bargaining in England than in Wales. The new environment with a multiplicity of employers, not coming together within an overall structure for bargaining machinery, causes new issues for trade unions due to the number of employers and complexities of promoting collective bargaining with them. Many of these schools are forced to apply the national terms of the STPCD and Burgundy Book, either by the operation of TUPE (Acquired Rights Directive) or due to their maintained willingness to remain part of the national system of terms and conditions. At the very least, the STPCD and Burgundy Book terms remain the basic framework which some employers may choose to divert from on eg pay to some extent.

There is also now the emergence of new non-union privatised forms of 'teacher representation', which appear to be promoted by the Government. A privatised human resource service called EDAPT²¹⁵ is offering services to employees as an alternative to membership of a trade union. It also offers its services to employers, and in fact urges employers to purchase access to advice services for its employees as part of its employers' package.

■ SCOTLAND

The machinery for collective bargaining has remained relatively stable since 2008. Recognised trade unions in Scotland are represented on the Scottish Negotiating Committee for Teachers (SNCT), together with the Convention of Scottish Local Authorities (COSLA) and the Scottish Government. This body, established in 2001, is the principal means by which negotiation and consultation is undertaken on the terms and conditions for teachers in Scotland. It issues a National Scheme of Salaries and Conditions of Service for Teachers and Associated Professionals.

The Committee's remit is to consider salaries and conditions of service for registered teachers, music instructors, educational psychologists and advisers who are employed by Council Authorities in Scotland. The objectives of the negotiating body are:

- to create a salaries and conditions of service structure that contributes to a highly motivated teaching profession and underpins the delivery of a quality education service;
- to ensure that the outcome of negotiations secures, and maintains, appropriate levels of remuneration for the profession to enhance professional status; and
- to ensure that salaries and conditions of service reflect professional status, including the commissioning from time to time of research on the comparative external position in order to inform its deliberations.

The Committee has 22 members appointed annually and drawn from the Convention of Scottish Local Authorities, the Scottish Government and organisations representing teachers. The Committee may establish sub-groups, working parties or commission research and investigations to serve whatsoever relevant purpose provided there is agreement to do so. The SNCT has a range of functions, including:

- negotiating sustainable collective agreements on salaries and conditions of service which contribute to the development of a highly skilled and motivated teaching profession;
- supporting and promoting the application of these agreements in Scottish local government and the education service in particular, for the benefit of teaching staff, pupils and communities;
- promoting co-operation between the Scottish Government, employers and recognised teaching organisations;

²¹⁵ <http://www.edapt.org.uk/for-teachers>

- supporting the promotion of equality and the avoidance of discriminatory practices in employment;
- supporting the promotion of Continuing Professional Development;
- providing advice and assistance to education authorities, recognised teaching organisations and employees on salaries and conditions of service matters;
- providing a national conciliation service for the resolution of disputes that cannot be resolved locally; and
- settling, ultimately, differences of interpretation and/or application of the national agreement that cannot be resolved locally.

The SNCT also allows certain devolved matters to be negotiated at local level through Local Negotiating Committees for Teachers (LNCTs).

National and devolved matters are defined as follows:

NATIONAL MATTERS	DEVOLVED MATTERS
Pay (including related allowances)	Other allowances
The working week and working year	Cover agreements
Annual leave entitlement	Appointment procedures
Class size	Particulars of employment
Sick leave	Expenses of candidates for appointment
Maternity/family leave	Transfer of temporary teachers to permanent staff
National and local recognition procedures	Promotion procedures
Disciplinary and grievance framework	Staff development arrangements
Main duties	Specific duties and job remits
Staff development framework	Arrangements for school based consultation
	Other leave and absence arrangements
	Notice periods
	Housing
	Indemnification procedures
	Disciplinary and grievance procedures

Other official bodies in Scotland, such as the General Teaching Council, as well as the Scottish Government, may also convene advisory groups on specific topics on which trade unions are represented.

■ **NORTHERN IRELAND**

The negotiating machinery for school teachers in Northern Ireland has also remained relatively unchanged since 2008. The main system-wide body for negotiation of the remuneration and terms of conditions for teachers in grant-aided schools is the Teachers'

Salaries and Conditions of Service Committee (Schools). The Committee is the main vehicle for consultation by the Department of Education on matters relating to teachers' superannuation.

The Committee comprises representatives of employing bodies, the central Department for Education and representatives of recognised trade unions, known as the Northern Ireland Teachers' Council. Arrangements for negotiation and consultation with individual employing organisations are also in place. Other official organisations also have machinery for consultation and discussion with recognised trade unions. The Department for Education also consults with trade unions with matters that fall outside the remit of the Teachers' Salaries and Conditions of Service Committee (Schools).

In November 2007 the NASUWT submitted a claim for substantial improvements in pay and conditions of service to secure parity with teachers in England and Wales.

The Union initiated a "Parity Now! Campaign" in Northern Ireland and undertook a national industrial action in 2009, which achieved some gains. Further industrial action in 2012 took place to consolidate these gains.

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		3.1 %
2008: 11.1 %	5.4 %	0.7 %
2009: 11.3 %	5.6 %	-5.0 %
2010:		1.3 %
2011:		0.7 %

Source World Bank/IndexMundi



SUMMARY OF FINDINGS

1. This study provides a valuable insight into the situation with regard to freedom of association and collective bargaining of EI members over the last four years. In retrospect, it might have been useful to invest more time in a preliminary phase in order to establish a common understanding as EI affiliates of indicators of freedom of association and collective bargaining. In particular, there is a varied interpretation of the meaning of collective bargaining among affiliates, in part, supported by the flexible interpretations provided by ILO jurisprudence but largely because of complex and evolving national situations.

THE IMPACT OF THE FINANCIAL CRISIS

2. The extent to which changes, where they exist, can be attributed to the financial crisis varies considerably, and obviously is inter-connected to the level of impact of the financial crisis on the economy of the country concerned.
3. In countries where the financial crisis has had the greatest impact, the response of governments, in very broad terms, has been to support stimulus investments or to take fiscal austerity measures; in the case of the latter, sometimes imposed by the terms of financial rescue packages. Generally speaking, the stimulus packages have not focused on investment in teachers and education but rather infrastructure and job creation in the private sector. On the contrary, the fiscal austerity measures have resulted in often severe reductions in public expenditure, affecting all public sector employees. In particular, in countries where caps on local authority expenditure have been introduced, or are being discussed, education budgets are very exposed as they make up such a large proportion of local expenditure.
4. EI affiliates in countries affected by public expenditure cuts and reduction in education budgets share a very similar perspective in that they consider that a pro-market, neo-liberal government ideology has been the key factor in driving the cuts, and that financial constraint has largely been used as a convenient justification. In such cases, a central part of the government agenda has been to put emphasis on individual competitiveness and limit regulatory intervention in what is viewed as an essentially 'private' relationship between an employer and employee. In doing so, trade union rights have been considerably weakened or undermined.

THE STATUS OF TEACHERS

5. Teachers are either appointed as civil servants (as is the case in parts of Germany and in Spain and Greece) or as public employees, often appointed under the provisions of a legal Statute or Charter. Most EI affiliates have not identified any change in the legal

status of teachers but in practice, there has been a considerable increase in the use of temporary or fixed term recurrent contracts, in public education, which effectively disguise the permanent nature of the employment. These temporary contracts are private sector employment contracts. In some countries, teachers on temporary contracts are excluded from the provisions of the general terms and conditions of the permanent workforce. In Senegal, the government has recruited large numbers of volunteer and contract teachers. Such situations, while obviously undermining both the quality and continuity of the education service, also impact on the representativity of the trade unions. Workers on temporary contracts are more likely to be dissuaded from joining or participating actively in a trade union, and if they do become active in a union, they are more vulnerable to acts of anti-union discrimination through the non-renewal of contracts.

6. There is also a clear trend towards the privatisation of the provision of basic education in some countries, and teachers in private schools are on general employment contracts, many of them fixed term contracts. This trend has been variously described as the increasing "*commoditisation*" of the employer-employee relationship, coupled with the marketisation of all forms of government or public service provision.

FREEDOM OF ASSOCIATION

7. In some countries, the denial of civil and political liberties has effectively restricted freedom of association, and the situation has dramatically deteriorated over the four year period. The obvious examples are Swaziland and Fiji where authoritarian regimes have introduced a series of emergency measures designed to limit freedom of expression and association, and have used violence and intimidation to repress dissent, including against teacher union leaders. In Colombia, human rights violations still persist although not to the extent of previous years. However, these situations of political crisis and human rights violations have been exacerbated by the economic situation, not caused by it, and should not be considered as indicative of a global trend.
8. In other countries, such as Spain and Greece, unions argue that the severe restrictions on the right to collective bargaining have in effect impacted on the right to freedom of association. In some cases, demonstrations where teachers' unions have participated have been met with increasing use of violence by the police, with many persons detained and even wounded.
9. In other cases, there are reports of State interference in the internal affairs of trade unions. In the case of Minas Gerais (Brazil), the State government has sought to prevent trade union elections for the CNTE affiliated teachers' union and the State Judiciary has taken no action against any public authority. In Colombia, many trade union officials are denied leave to carry out their duties.



10. There have been other circumstances which have led to a weakening in the level of representativity of the unions in some countries. EI affiliates have reported that reforms to the labour code and the registration requirements for establishing trade unions have resulted in the proliferation of new unions in the education sector, which could have the potential to undermine the bargaining strength of the education workforce as a whole (Ghana and Swaziland).
11. In addition, as noted above, the increasing use of short-term or fixed-term teacher contracts undermines the capacity of the unions to recruit new members and their long-term representativeness (Swaziland, Fiji). Union density rates have also been affected by privatisation (Poland and Hungary) and there are challenges in recruiting the new generation of young teachers (Sweden).
12. In some countries, the facilities and leave entitlements provided for trade unions to carry out their work have been drastically cut back (Spain).

COLLECTIVE BARGAINING

13. From the findings of this study, genuine collective bargaining in the sense of “joint regulation of employment terms following voluntary negotiations between parties with equal bargaining rights” is not widespread in the public sector generally, or for teachers specifically. In most countries, terms and conditions of employment for public employees, including teachers, are covered by special legislative provisions, which combine an element of government determination of the budgetary allocation and salary scales, within which negotiations, or in some cases, consultations, may take place. These negotiations or consultations can often take place in a two or even three -tier system at national, State/Provincial level and at municipal or school district level. In countries where there are multiple tiers of bargaining, the articulation and coordination between the different levels can prove challenging.
14. In the majority of countries, the consultations or negotiations are largely focused on percentage wage increases, different bonus entitlements working hours, class teaching time, class size and various social benefits and different leave provisions, including study leave. In some cases, they include supplementary pension benefits. Individual grievance procedures, dismissal and termination of employment procedures, together with dispute prevention and settlement machinery are generally included in the public employment statutes and other regulations. Measures to address equal pay for work of equal value, discrimination, harassment at work or the reconciliation of family and working life have been included in negotiated agreements in a few cases (Spain). In some countries, there are measures to improve recruitment of indigenous peoples (Canada, Australia). Proposals concerning treatment of victims of domestic violence have been put forward in the context of tertiary education in Australia.

15. While it is difficult to draw overall conclusions, it appears that in some countries at least the range of issues addressed in collective bargaining has widened.
16. The extent of collective bargaining in the private sector varies but generally it is less than in the public sector, and the trend towards privatisation has reduced the coverage of collective bargaining in some countries (Hungary, Poland).

RESTRICTIONS AND PROHIBITIONS ON COLLECTIVE BARGAINING IN SOME COUNTRIES

17. Many of the countries in this study have faced substantive government imposed restrictions on collective bargaining rights over the 4 year period (some States in Australia, in some Provinces in Canada, USA, Greece, and Spain). These restrictions range from:
 - (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 with a “zero impact” outcome;
 - (d) The adoption of new government powers to suspend or modify existing collective agreements in part or in their entirety without any obligation to negotiate previously with the unions concerned 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 teachers.
18. In countries where the main terms and conditions of employment are established by national legislation, or other provisions, in some instances the role of the tripartite negotiation or consultation bodies has been weakened (Hungary).

NO MAJOR CHANGES IN OTHER COUNTRIES

19. In other countries, in particular those relatively protected from the financial crisis, there has been no major changes in the collective bargaining system. In Sweden, the national collective agreement defines the minimum average pay levels and general working time provisions as the framework for dialogue at the local municipal level and coverage in the public sector is 100% and in the private sector around 85% of employers. In Germany, there have been no changes to the existing framework.



SOME LEGAL DEVELOPMENTS TO INTRODUCE COLLECTIVE BARGAINING

20. In Hungary, as a consequence of a major restructuring of local government and the education system, it is anticipated that it will be possible to establish a national collective agreement in the future, although the wage scales and working hours will be determined by law.
21. In Brazil, the government of President Lula ratified ILO Convention 151 in 2010, thereby re-affirming the right to form trade unions in the public sector, the principle of non-intervention of public authorities in their internal affairs of unions and opening the possibility of collective bargaining in the public sector. However, to date, the government has not drawn up a Bill to regulate collective bargaining for public employees and the legal "limbo" creates considerable obstacles for teachers' unions.
22. In Uganda, following years of lobbying for labour legislation reforms, in 2008, the Public Service Act and the Public Negotiation and Disputes Settlement Act were adopted. The latter provides for the establishment of a National Consultative and Negotiation Council with the mandate to consult, to dialogue and negotiate terms and conditions of employment and other issues. However, it has taken a number of years to implement this legislation and the unions have needed to lobby and mobilise consistently, including taking industrial action. There have been two preliminary meetings of the council in 2012, including the teachers' union, UNATU, although there have been no substantive discussions.
23. In Colombia, new legislation to allow limited collective bargaining in the public sector was adopted in May 2012 but the legislation was not negotiated with the unions concerned. Unions are highly critical of the procedures and the government's failure to implement even on issues which were agreed during the first round of negotiations.

SOME GOOD PRACTICE EXAMPLES

24. There have been some collaborative initiatives between the teachers' unions, public authorities, and governments, largely focused on issues related to increasing the quality of public education, and the attraction and retention of professional teachers. There have also been a range of government measures, often a result of consultations or previous negotiations with the unions, or in response to mass actions. Some but not all of these examples are from countries which have not been severely affected by the financial crisis.
25. Ghana: Job Evaluation and New Salary System for the Public Sector: In order to redress serious problems of recruitment and retention in the public sector in Ghana, a new Single Spine Salary System (SSSS) was drawn up. Its aim was not only to enhance the level of

objectivity in salary administration but also to ensure that the public sector was a profession of choice through including market or retention premia. In the case of teachers, there have been important retention premia which have made the profession more attractive to young graduates. The EI affiliate, GNAT, participated actively on committees and working sessions to design the placement of teachers on the new salary scale. In addition, there were a series of stakeholders meetings for union leaders and education authorities, designed to explain the new job evaluation system. While there have been reservations expressed as to the extent to which the system addressed gender bias in job evaluation and a series of serious implementation and technical problems, the SSSS and the establishment of a Fair Wages and Salaries Commission have generally been welcomed. Governments in other West African countries have expressed interest in the job evaluation system and it would be important that public sector unions were involved in discussions on the introduction of any new system, right from the initial stages.

26. Brazil: National Minimum Salary for Teachers and National Education Conference: One of the Workers Party (PT) government priorities has been a major endeavour to advance the quality of public education by improving conditions of employment and attracting qualified personnel. In July 2008, the Law 11.738 on the national minimum salary for teachers in public basic education (*Lei Nacional do Piso do Magistério*) was adopted which provided for a national entry level salary of R.950 (around Euros 300 at that time), a maximum working week of 40 hours of which only two-thirds of the time would be class hours. The minimum salary was to be revised on an annual basis in January and all relevant public authorities were to up-date their career plans and salary scales to conform to the new national minimum at the latest by January 2010.²¹⁶ Salary setting for teachers is mainly a State level responsibility and salaries for teachers were well below other comparable professions. Teachers unions have needed to take mass action in many States in order to enforce the new minimum salary, while at the same time calling for legislation to transpose the provisions of ILO Convention 151, which Brazil has ratified, and to establish collective bargaining in the public sector.
27. One key strategy of the Workers' Party government has been to open channels of dialogue with civil society. In 2007, there was the National Conference of Basic Education, in 2009, the National Conference on Technical-Professional Education and in 2010, and the National Conference on Education (CONAE). Each National Conference was preceded by Municipal, regional and State level conferences. The Conferences are discussion forums and also influence and guide public policies. The new 10-year National Education Plan, which is currently in the Senate, reflects the proposals put forward by the Conferences, including a proposal to earmark the equivalent of 10% of GDP to public education.

²¹⁶ http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11738.htm



28. Poland: the National Minimum Wage Guarantee Scheme: The unions were able to reach a major agreement with the Ministry of National Education concerning a wage guarantee scheme, which was finalised in 2009. A national report calculates the average salary of a teacher including allowances in each category, and teachers who are found to have less than the average salary in each category are compensated. This new system was considered a major victory for the trade unions. The teachers' trade unions had highlighted the low levels of salaries for teachers and the need to adjust pay to match other starting salaries in comparable professions.

SOME UNION STRATEGIES

29. Neo-liberal or Conservative governments, where in power, have sought to create fear and resentment of public sector workers and to gain public support for weakening labour laws generally. In order to counter these ideas, and to promote EI's policies on quality education generally, unions have been mobilising new partnerships and models of cooperation, so as to enhance their own legitimacy and win support where necessary for challenging restrictions on collective bargaining and cuts to pay and benefits.
30. Canada: New community partnerships based on human rights: The CTF focus is to work with teachers, parents and students, the progressive school boards and education institutions; and to build strong alliances within the community, progressive business, post-secondary institutions, NGOs, arts and cultural groups as well as the broader labour movement. CTF launched a campaign designed to promote the voice of teachers and to call on members of parliament at Federal and Provincial level to listen to teachers' concerns. Research on the situation of teachers using focus groups and on-line surveys highlighted the challenges that teachers faced to reach their own aspirational teaching goals.²¹⁷ Together with the Canadian Foundation of Labour Rights and other allies, they organised a conference on "labour rights are human rights" in March 2013 to build momentum to regain and affirm collective bargaining rights.
31. Sweden: Lärarförbundet has carried out a public awareness campaign about the value of education and the role of teachers in ensuring quality education. It launched the campaigns "Do not let the children pay for the crisis" and "It all starts with a good teacher", which they consider have influenced the political leadership of the municipalities and helped reach a successful outcome to the 2012 negotiations.

PARTNERSHIP AGREEMENTS

32. Over the last decade, there have been initiatives to develop partnership agreements between unions and governments on the development of quality public services or quality education. These are tripartite initiatives which bring together unions, public employers and Government in the state sector. They have had a dual focus on improving both the quality of service to the public and the quality of employment. They also grew out of a more generalised concern, aided by technological changes, to increase public access to and participation in government. The New Zealand 'Partnership for Quality' agreement with the Public Service Association (PSA) in 2000 was one of the first such agreements.

In this study, there are two cases concerning Fiji and Spain where such initiatives were undertaken:

- In the case of Fiji, the 2006 agreement contained a 5 year Memorandum of Understanding with the main public sector unions, and an Industrial Relations Framework 2006-2008. It resolved a number of outstanding issues dating back to 2003, as well as a proposal to carry out a systematic job evaluation system and joint commitments on quality service delivery. It had been a long and closely negotiated process, which was unfortunately unilaterally revoked following the 2007 military coup.
- In the case of Spain, the Education Pact (Pacto por la Educación) was an ultimately unsuccessful but nevertheless interesting attempt to achieve cross-party agreement to protect and strengthen education delivery in the face of the financial crisis, which had support from the education unions.

INITIAL RECOMMENDATIONS

A human rights approach

1. Situate freedom of association and collective bargaining within a human rights framework;
2. Clearly and visibly integrate collective bargaining rights within campaigns for quality public education;
3. Mobilise union members and the education workforce through participative research projects and community outreach;
4. Establish broad alliances rooted in the community and reaching out to public authorities, progressive business and the general public.

National strategies

1. Produce accessible written or electronic materials for members explaining the current national legislative framework and consultation or bargaining system, listing a few key demands to strengthen the current system and promote collective bargaining;



2. Where not in place, carry out membership training programmes or convene consultative forums to develop demands to strengthen the current system;
3. Provide web-based, up-dated information for consultation on terms and conditions of employment and where they exist, the collective agreement(s) and keep members informed of bargaining outcomes on a regular basis;
4. Depending on national circumstance, seek to strengthen bi-partite mechanisms to promote collective bargaining rights for teachers, for example by establishing joint bargaining forums at national, regional/Provincial or local level;
5. Seek to broaden the collective bargaining agenda to include issues related to:
 - a) Limitations on the use of precarious, short or fixed term forms of employment contract or service contracts;
 - b) Participation in the design and strengthening of the overall consultation or bargaining framework and dispute settlement mechanisms;
 - c) union-management consultation mechanisms on overall planning and operations at school or other levels;
 - d) Measures to promote equality, prevent discrimination and harassment, and to reconcile work and family life and support victims of domestic violence;
 - e) Training and human resource issues; occupational health and safety and environmental sustainability issues;
6. Where possible, propose a partnership for quality education approach, with guaranteed levels of funding for education based on a proportion of GDP – the EI recommendation is at least 6% of GDP and linking delivery of quality education with strong collective bargaining and social dialogue mechanisms.
7. In times of exceptional economic circumstances, recall that the ILO holds the position that collective agreements in force should be respected and that any stabilisation measures should be consulted with the relevant unions, limited in extent and time, and protect the salaries of the lowest paid education workers;
8. Depending on national circumstance, advocate for the ratifications of ILO Conventions 87 and 98; and 151 and 154.

Regional strategies

1. Facilitate sub-regional workshops to develop collective bargaining materials and share union strategies;
2. Organise a study tour to Ghana for interested trade unions in the region to learn about the purpose and implementation of the Single Spine Salary System (SSSS) and its successes and challenges and the collective bargaining framework.

3. Invite interested trade unions in Latin America or the PALOPS to participate as observers in the Brazilian process of social dialogue in education, (the CONAE) whether at regional or national level.

International strategies

1. Set up an electronic collective bargaining information exchange facility on the EI website;
2. In follow-up to the ILO 2012 General Survey on collective bargaining in the public service, lobby for an ILO programme of action to promote collective bargaining in the public sector.²¹⁸ The proposed programme may encompass all major sectors with a public service component, including education, health, media, postal services and transport, but it should have a strong focus on sector specific activities.
3. Explore ways to anchor the right to freedom of association and collective bargaining for teachers and the public sector generally, within the post 2015 - development agenda as integral to the attainment of quality education and public services for all.

²¹⁸ available at : http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205518/lang-en/index.htm



ANNEX 1

Summary of ILO principles on the right to collective bargaining

The standards and principles emerging from the ILO Conventions, Recommendations and other instruments on the right to collective bargaining, and the principles set forth by the Committee of Experts and the Governing Body Committee on Freedom of Association on the basis of these instruments may be summarized as follows:

1. The right to collective bargaining is a fundamental right which States, on account of their membership of ILO, have an obligation to respect, promote and realize, in good faith (ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up).
2. Collective bargaining is a right of employers and their organizations, on the one hand, and organizations of workers on the other (first-level trade unions, federations and confederations). Only in the absence of these latter organizations may other types of representatives of workers concerned conclude collective agreements.
3. The right to collective bargaining should be recognized by all private and public sectors, and only the armed forces, the police and public servants engaged in the administration of the State may be excluded from the exercise thereof (Convention No. 98).
4. When a State ratifies the Collective Bargaining Convention, 1981 (No. 154), the right to collective bargaining is also applicable in the context of public administration, for which special modalities of application may be fixed in accordance with the provisions. The Labour Relations (Public Service) Convention, 1978 (No. 151) provides a lower level of international protection for collective bargaining, since it permits, in the context of public administration, the possibility of opting between collective bargaining and other methods of determining the terms and conditions of employment.
5. The purpose of collective bargaining is the regulation of the terms and conditions of employment, in a broad sense, and the relations between the parties.
6. Collective agreements should be binding. It must be possible to determine terms and conditions of employment that are more favourable than those established by law. Preference must not be given to individual contracts over collective agreements, except where more favourable provisions are contained in individual contracts.
7. To be effective, the exercise of the right to collective bargaining requires that workers' organizations are independent and not "under the control of employers or employers' organizations", and that the process of collective bargaining can proceed without interference by the authorities.

8. A trade union that represents the majority, or a high percentage, of the workers in a bargaining unit may enjoy preferential or exclusive bargaining rights. However, in cases in which no trade union fulfils these conditions, or such exclusive rights are not recognized, workers' organizations should, nevertheless, be able to conclude a collective agreement on behalf of their own members.
9. The principle of good faith in collective bargaining implies recognizing representative organizations, endeavouring to reach an agreement, engaging in genuine and constructive negotiations, avoiding unjustified delays in negotiation and mutually respecting the commitments entered into.
10. Collective bargaining is voluntary in nature and it must be possible for bargaining to take place at any level.
11. The imposition of compulsory arbitration in cases in which the parties do not reach an agreement is generally contrary to the principle of voluntary collective bargaining and is admissible only: (1) in essential services in the strict sense of the term (those whose interruption would endanger the life, personal safety or health of all, or part, of the population); (2) with regard to public servants engaged in the administration of the State; (3) when, after prolonged and inconclusive negotiations, it is clear that the deadlock will not be overcome without an initiative by the authorities, and (4) in the event of an acute national crisis. Arbitration accepted by both parties is always preferable.
12. Interventions by the legislative or administrative authorities that have the effect of annulling or modifying the content of freely concluded collective agreements, including wage clauses, are contrary to the principle of voluntary collective bargaining. Restrictions on the content of future collective agreements, particularly in relation to wages, which are imposed by the authorities as part of economic stabilization or structural adjustment policies on account of major economic and social policy consideration are admissible only in so far as such restrictions are preceded by consultations with the organizations of workers and employers and meet the following conditions: they are applied as an exceptional measure, and only to the extent necessary; they do not exceed a reasonable period, and they are accompanied by adequate guarantees designed to effectively protect the standards of living of the workers concerned, particularly of those likely to be most affected.

Source: B. Gemigon, A. Odero and A. Guido: *Collective bargaining: ILO standards and principles of the supervisory bodies* (Geneva, ILO, 2000), 75–77. [As reproduced in V. Ratnam and S. Tomoda: *Practical guide for strengthening social dialogue in public service reform* (Geneva, ILO, 2005).]

International labour standards guarantee freedom of association and collective bargaining to all workers, including teachers employed in both the public and private sectors. However, this EI study focusing on 19 countries, describes how difficult it can be for teacher unions to realise these rights. In many countries, the economic crisis has been used to take draconian measures against unions. As a consequence, working conditions in the education sector are increasingly precarious, with widespread use of short-term, interim or fixed-term contracts, impacting the quality and continuity of education services.

But the study also identifies cases of good practice where social dialogue is strong. It illustrates strategies used by teacher unions to defend and promote collective bargaining and concludes with a set of recommendations for EI and its affiliates to consider. The study clearly reaffirms EI's position that the exercise of fundamental rights at work through strong unions is integral to the achievement of quality education for all.



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