



Public Services International: Comments on the ILO Report “Collective bargaining in the public service: a way forward”

I. Introduction

PSI welcomes the report and the excellent work done by the Committee of Experts, considering that this is the first time that collective bargaining in the public service is being addressed in a General Survey. Trade union rights remain the top priority for public sector unions around the world. This is certainly a timely report that exposes many of the challenges that trade unions face in the public sector.

In 2013, we are experiencing the persistence and worsening of a major crisis of the social and economic model on a global scale. Changes are occurring in a very dynamic and often dramatic way. While in some BRIC countries large groups of the population are improving their lives, the Western world is living the biggest social crisis since the Great Depression, but both are faced with aggressive policies that attack trade unions and workers. All over the world, the gap between the richest and the poorest is widening.

We note a concerted attack on the public sector on a global scale, through austerity measures and privatization weakening trade unions and workers' rights. In fact, while in most of the emerging economies PSI affiliates still have to fight to obtain full recognition of union and workers' rights, in other countries the austerity policies producing cuts in public spending are forcing PSI members into defensive battles against the rise of unemployment, privatization of public services and reduction of welfare provisions (from pensions to health and social services) and wage cuts.

Whereas until recently most European Union countries could boast of best practices on social dialogue and collective bargaining, this trend is now changing rapidly. Governments use the arguments of international financial institutions to dismantle labour relations where it hurts most for future generations: in the public sector.

What happens in the European Union, will affect the future of public service workers all over the world. We must be aware that dismantling the European social model, with a central role played by public sector trade unions, will be a defeat of the global trade union movement, and will weaken union capacity to fight for labour rights all over the globe. Therefore, the protection of the public sector is a common cause.

Instead of using collective bargaining as a means of achieving greater efficiency and better management of the enterprise or public institutions, top-down decisions are pushed through that leave no space for negotiation. Unions in the public sector could have been prepared to accept adjustments in conditions when the public employer demonstrates severe straits; this reflects a mutual commitment to share economic responsibility and to address political reality and build cooperation for the future. Instead we have to point to the practices of the IMF, World Bank and the European Central Bank that impose their conditions for the approval of loans to countries. Cancelling collective agreements is common practice in such cases.

The types of measures adopted by countries include, inter alia: wage freezes or cuts for public servants (25 per cent in some cases and more than 20 per cent in others); reduction in public employment by as much as 15 or 20 per cent, sometimes through redundancies linked to the dissolution of many semi-public enterprises, public bodies and agencies, or through non-replacement of retired public servants; pushing back the retirement age; and freezing or cutting pensions and benefits in the event of redundancy.

More importantly, these cuts have a much wider impact on living standards and the potential of employment of future and current generations, for example by cutting child care for working women. Moreover, privatization and corruption go hand in hand. When services become too expensive for people,

they find other ways to procure them. Indeed, the report notes that collective bargaining can assist effectively in the fight against corruption and in the promotion of equality.

In countries such as Spain, Greece and Portugal, but also in the United Kingdom, large numbers of public sector workers are made redundant. Intensive lobbying for the privatization of water and energy will lead to more jobs being cut and a deterioration of services provided to the public. At the same time, a recent Global survey by the United Nations (Myworld2015) indicates that the priorities of people worldwide are a good education, better healthcare, an honest and responsive government, and better job opportunities.

It is also essential to be prepared to undertake intensive tripartite social dialogue so that exceptional measures which must be only temporary are not consolidated and to review the adjustments made during the crisis, once the economic situation improves. The danger that we are now being faced with is that anti-social decisions are being pushed through opportunistically beyond the scope of anti-crisis measures. The Committee's recommendations, directed at EU, IMF and World Bank, concerning the need for effective consultations with workers' organisations and the need to fully take into account the obligations of States concerning ILO Conventions, are particularly important in this context.

II. Collective bargaining in the public service

At the 102nd International Labour Conference (ILC), the report "Collective bargaining in the public service: a way forward", which has been prepared under articles 19, 22 and 35 of the ILO Constitution will be discussed. It is the first General Survey to be conducted on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), and the Collective Bargaining Recommendation, 1981 (No. 163).

The report thoroughly documents the numerous attempts by governments to water down the provisions of the conventions and recommendations that provide a framework for collective bargaining in the public sector and presents a highly informative analysis of all essential aspects of this process. The context of the economic crisis and others processes is also very well presented.

The report rightly notes that the transposition of fundamental trade union principles and rights set forth in the ILO Constitution of 1919 and the Declaration of Philadelphia into the aforementioned international labour Conventions has been no easy task and has taken a considerable time. Today, these principles remain as relevant as they were a century ago, both for the private and public sector.

The report provides a clear analysis of the advantages of collective bargaining in the public sector, recalling that public service must be effective and efficient to ensure the exercise of rights and improve citizens quality of life by guaranteeing public safety, education, health, social security, culture, access to housing, law enforcement in the numerous areas of competence of the public service, as well as being a vital factor in sustainable economic and social development, the well-being of workers based on fair conditions of employment, and the progress of sustainable enterprises.

This objective requires the provision of high-quality services by public institutions – which are often highly complex – as well as sufficiently qualified and motivated staff and a dynamic and politically neutral public management with administrative ethos and deontology, which combat administrative corruption, make use of new technologies and are founded on the principles of confidentiality, responsibility, reliability, transparent management and non-discrimination, both in access to employment and in the provision of benefits and services to the public.

PSI underlines that the right to strike is directly linked to freedom of association. All too often, this right is denied to public sector workers, due to broad definitions of so-called essential services. Governments that willingly thwart negotiations should be held accountable. The Committee emphasizes that the demarcation line between consultation and negotiation is not always clear and that consultation in good faith may result in a more satisfactory outcome than purely formal collective bargaining with no genuine desire to achieve results. It is therefore the spirit in which the parties act that is decisive. The report indicates clearly that in systems that have opted for consultation and where the right to strike is recognized, consultation processes may result in genuine negotiations when trade unions are sufficiently strong since, once a strike breaks out, the dispute has to be resolved. This is a clear indication of the need to extend the right to strike to all workers in the public sector.

Governments have often tried to be “creative” in their interpretation of these standards, by expanding the notion of essential services and others that reduce the impact of collective bargaining or the right to organize, besides committing outright violations of human rights and fundamental workers’ rights. Unions around the world have made use of the supervisory mechanisms of the ILO to fight such violations, protect workers and build a stronger union movement, including in the public sector. In these turbulent times, it is important to remember that lasting peace can only be based on social justice, which is why we need to maintain these institutions and make sure that their authority is not eroded. PSI calls on governments to implement the recommendations of ILO’s supervisory bodies, in cooperation with social partners.

Conventions 151 and 154, whether in unitary or federal States, apply in particular to civil servants engaged in the public administration, such as public servants in ministries and other similar government bodies, as well as their auxiliary staff and all other persons employed by the government. They also apply to all public servants and employees of local authorities and their public bodies. The scope of application of Conventions 151 and 154 also includes employees of public enterprises, municipal employees, employees of decentralized institutions and public sector teachers, whether or not they are considered under the national legislation as being in the category of public servants.

Furthermore, Convention 154 applies, without exception, to all private sector workers. However, recognition in law of the right of public servants to collective bargaining continues to be limited or non-existent in some countries. The right to collective bargaining should cover, as well as employees in the public administration, including but not limited to the following categories of workers: prison staff; fire fighters; seafarers; self-employed and temporary workers; contract or outsourced workers; apprentices, non-resident and part-time workers; port workers; workers in the agricultural sector; workers in charitable and religious organizations; domestic workers, workers in export processing zones and migrant workers, and teaching personnel in educational institutions, as well as those performing technical, managerial and support functions in the education sector.

The report could have dealt with the inclusion of migrant workers’ rights in the public sector in more detail. In many countries, skilled health and social care workers feel they must leave their families behind and work abroad to earn a decent income. They are exploited and discriminated against and their departure weakens health and social services in their home communities. PSI works with unions worldwide to protect migrant workers and make sure that they are not exploited. The public service should lead by example in terms of integration and anti-discrimination policies.

Fighting precarious employment contracts in the public sector is now a priority. Unfortunately, substantial categories of public employees are denied the rights and advantages laid down in these Conventions, or are subject to restrictions of varying degrees of severity. We also see that in many public administrations a significant number, or even the majority, of employees are either under private labour law contracts or excluded from previous statutory regimes. Outsourcing, short term contracts and consultancy contracts are now more and more present in the public sector, breaking the mould of an independent public service that aims to deliver quality public services for inclusive societies.

Although in principle the restrictions that apply to public sector workers do not apply to those hired under private sector law provisions, very often these are temporary labour contracts which create even bigger hurdles for trade union development and collective bargaining. There is also a concern for the protection of trade union representatives with short-terms contracts. As a result there is an urgent need to look at ways to strengthen collective bargaining and freedom of association in the public sector.

Recognition remains a problem for several of our affiliates, due to the unjustified refusal to recognize them as a representative union, or imposing an unreasonably high percentage of density for the recognition of a collective bargaining agent. In a majority of cases, there is no access to an independent body that could provide arbitration or facilitate a dialogue between the parties. For example in South Korea, the KGEU (Korean Government Employees Union) remains unrecognized.

When discussing the application of the conventions and recommendations, we have to note that the report can share a range of good practices. It is encouraging that the report identifies a global increase in bipartite consultation and collective bargaining in the public sector, most particularly in Europe, Oceania and Latin America. The report provides an extensive review of protection against acts of anti-union discrimination among which the burden of proof and the practise to reverse it in case of presumed anti-union discrimination. Such good practices are very much appreciated and we hope that governments will adopt them widely.

However, too many governments either fail to adopt legislation, put it into practice, provide monitoring and adequate grievance mechanisms or go beyond all human rights principles to prevent trade unions from protecting workers' rights by intimidating, exerting pressure, jailing and even killing trade union leaders and members.

Legislation generally provides for protection against acts of interference and anti-union discrimination, as well as facilities for workers' representatives and bilateral collective bargaining mechanisms – although some legal gaps remain in certain countries – many trade unions report difficulties in having such provisions applied in practice. Applicable sanctions are all too often insufficiently dissuasive, and threats, transfers or dismissals of trade union officials are common.

As regards the facilities afforded to workers' representatives, the main problems are inadequate legislation on time off for trade union officials, and difficulty of obtaining such leave, which is often refused without valid reason and unilaterally reduced by the employer despite the collective agreements in place; difficulty of access to the workplace; difficulty of obtaining the deduction of trade union dues by the employer and numerous obstacles to access to financial information of public institutions or government bodies.

In some countries, there does not appear to be a formal mechanism for collective bargaining in the public service. In others, the content of bargaining is considerably limited, with the Government exercising its prerogative to regulate many matters unilaterally, including wages in many cases. When collective bargaining does take place and agreements are reached, trade unions face difficulties in obtaining recognition of their binding force and securing their application. In some countries, the authorities have ruled out collective bargaining with representative organizations on grounds of delays in renewing the executive committees of those organizations – such delays being the result of interference by state bodies in the elections.

The absence or poor functioning of dispute settlement procedures is another important issue. Sometimes restricted access or the time needed to receive judgment is an effective denial of justice. At the international level, some of our affiliates demand a substantial increase in the capacity of the ILO's Administrative Tribunal, so that it can continue to provide justice within a reasonable timeframe.

Unions often have little confidence in dispute settlement mechanisms, as they are not impartial given the fact that they are often set up or managed by public institutions. A lack of remedies, i.e. the lack of judicial review, runs against the basic guarantees of a fair procedure and is often not foreseen. In any case, PSI strongly encourages its affiliates to use all legal resources available.

Moreover, some governments flout the principle of trade union representativeness for purposes of collective bargaining, giving preference to organizations close to the government. We have to point out that this is also reflected in the composition of some tripartite delegations to the ILC, where this report will be presented.

The report notes that the examination of the substance of the many allegations of violations of trade union rights submitted to the Committee on Freedom of Association since its inception in November 1951 shows that the restriction of civil and political freedoms is one of the major causes of freedom of association violations. All such acts of violence and violations also affect public employees.

Building democracy and social justice is one of the priorities of our affiliates in countries where union rights are attacked, or where the changes of regime foster the hope of democratic reforms and peoples' participation, such as in large parts of the MENA region. Civil and political rights are undeniably interlinked with trade union rights and no social justice can prevail without democracy which is what our members in Algeria and Egypt demand.

In a number of countries, governments persist in interfering in trade union activities by arresting trade union leaders and members, such as in Turkey, using the pretext of criminal activities and locking up more than one hundred trade unionists at a time, for undefined pre-trial periods. This is utterly unacceptable and a major violation of human rights. Even worse, we have to recall the violent repressions of unions in other countries, such as Guatemala and Columbia, where murders of trade unionists are occurring on a monthly basis and remain unpunished. The impunity of such aggression must stop. Independent judicial investigations should be carried out without delay with a view to establishing the facts and violations and determining responsibilities, punishing the perpetrators and instigators and preventing the recurrence of such acts.

III. The way forward

Taking all of the issues above into account, it seems more than appropriate to broaden the scope of ILO programmes to promote collective bargaining in the public sector, so that these many challenges can be addressed by targeted action, including in Decent Work Country Programmes that include monitoring and dispute resolution mechanisms. We call on the ILO to address the impact of precarious work in the public sector as a matter of priority. PSI also requests to review all the conventions that serve to define essential services. Furthermore we request more attention for public sector issues in all of the sectors of the ILO.

The role of public services in terms of monitoring labour conditions in all sectors of the economy is also pivotal. Labour administration, labour inspection and all other control bodies need to be strengthened to that effect.

Equality issues could have been covered in a more extensive manner in this review. Collective agreements in the public sector should and often do address equal pay issues, based on a public gender policy that aims to promote equality across the board. Similarly, LGBT workers' rights should be included in public sector agreements. Not only as an employer, but also as a service provider, the public sector should be exemplary.

We also have to draw attention to the importance of creating opportunities for young workers. Around the world, youth employment is soaring. Part of the solution to this crisis is surely generating more employment for young people in the public sector, as well as an enabling environment for their skills development. We request the ILO to work closely with PSI on migration issues, since the public sector plays a leading role in anti-discrimination policies as well as assisting migrant workers in their integration in the labour market. The equality dimension of collective bargaining in the public sector thus requires more attention in future ILO work.

Public Services International joins the Committee in making a strong appeal for the ratification of Conventions 151 and 154 which constitute together with Conventions 87 and 98 crucial instruments for the governance of democratic societies regardless of their level of development, for a greater efficiency and effectiveness of the public service and for the purpose of overcoming discrimination in many countries between the private and public sectors as regards the recognition and promotion of collective bargaining. We also insist that countries that have ratified the conventions review how social dialogue in the public services is implemented, with the objective of strengthening their institutions and mechanisms.