



International and national frameworks for labour relations in the Public Service

International labour standards and the ILO Supervisory Mechanisms: a webinar for Caribbean Trade Unions with a focus on the public sector

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Overview

- ILO Convention No. 151: purpose
- Guarantees
- Articles of the Convention and related Int. Labour Standards
- CEACR comments
- Examples
- ILO publications

► ILO Convention on Labour Relations in the Public Service, 1978 (No. 151)

- Adopted by ILC plenary on 27 June 1978 (23 June, day of ILC sitting adopting the Convention, is public service day)
- Entered into force on 25 February 1981

PURPOSE

- Expansion of public-service activities
- need for sound labor relations between public authorities and public employees' organizations
- To complement ILO Convention on Collective Bargaining, 1949 (No. 98)

57 Ratifications of C151

1978-2019



► Ratifications in the Caribbean

1980- Cuba

1980- Montserrat (Not applicable)

1983- Guyana

1999- Belize

2002- Antigua and Barbuda

2016- Curaçao (acceptance)

ILO Technical assistance: DR



► Guarantees

C151 has five types of guarantees:

- **Protection of the right to organize,**
- **facilities to be afforded to public employees' organizations,**
- **procedures for determining terms and conditions of employment,**
- **Settlement of disputes arising in connection with the determination of terms and conditions of employment.**
- **Civil and political rights**

Article 1: Scope, Exclusions and Exemptions

Applies to all persons employed in the public service.

Art. 1(2): it is possible to exclude “high-level employees whose functions are normally considered as policy-making or managerial” or “employees whose duties are of a highly confidential nature”.

- The ILO supervisory bodies have restricted which officials may be excluded.**
- No distinction between permanent and temporary or contract staff**

► **Non-excludable workers**

taxation and local governance offices
(prefectures)

inspectors and guards in juvenile detention
centers and customs

permanent representatives and deputy perm.
reps. of Directorate-General for Migration

customs administrators

assistant customs administrators and their
secretaries

public servants occupying the positions of
directors

deputy directors and directors' secretaries
managers

heads of department and section

collectors

treasurers

cashiers

administrators

warehouse security staff

warehouse personnel and auditors in any public
institution department

those who manage public or municipal funds or
other assets held in custody of the State or
deposited with the State

those obliged to give an account to the treasury
as part of duties

Those responsible for the processing of payment
orders

Prison supervisory and security staff

► Exclusions

It is allowed to bar civil servants in senior positions to hold trade union office.

Art. 1(3): the Government may determine, through national laws or regulations, the extent to which C151 applies to the armed forces and the police, like in C98.

Being white-collar employees does not automatically mean they are engaged in the administration of the State

► **Articles 4 and 5: Protection of the Right to Organize**

- **Guarantees provided to public employees and their organizations:**
- **Adequate protection against acts of anti-union discrimination in respect of public employees' employment (Article 4(1)) and**
- **Adequate protection against any acts of interference by a public authority in their establishment, functioning or administration (Article 5 (2)).**

Protection of the Right to Organize

These are null and void:

- **Agreements, provisions or acts that subject employment or conditions of work to being or becoming a member of a trade union or to renouncing membership, even during recruitment.**
- **Requirement of prior governmental authorization to affiliate to organizations outside the country.**

Laws or regulations should provide rapid and effective remedies and sufficiently dissuasive sanctions, which includes concrete penal provisions for cases of interference.

► Recommendation 159

As with many ILO instruments, C151 is accompanied by a non-binding, but highly useful Recommendation.

Recommendation No. 159 provides guidance about recognition of public employees' organizations for bargaining purposes,

If a preferential or exclusive agent system is preferred, objective and pre-established criteria on its representative character.

Article 6: Facilities to be Afforded to Public Employees' Organizations

Representatives of recognized public employees' organisations should have access to facilities that enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

These shall not impair the efficient operation of the administration or service concerned.

R 159: the Workers' Representatives Recommendation, 1971 (No. 135) provides guidance on the nature and scope of the facilities.

Facilities to be Afforded to Public Employees' Organizations

Government should examine with the social partners how to promote the facilities to be granted to workers' representatives.

R 159: the Workers' Representatives Recommendation, 1971 (No. 135) provides guidance on the nature and scope of the facilities.

Examples:

- **Transport/ communication**
- **Time off for union duties**
- **Access to management**
- **Right of assembly, to attend mtgs**
- **Ability to collect trade union dues regularly on the premises**
- **Authorization for union notices**
- **Capacity to denounce violations to competent authorities.**

Convention No. 151, Article 7: Procedures for Determining Terms and Conditions of Employment

Art. 7 urges member States to “promote the full development and utilization of machinery for negotiation of terms and conditions of employment . . . or of such other methods as will allow representatives of public employees to participate in the determination of these matters.”

“Negotiation” under C 98 is “any form of discussion, formal or informal, that was designed to reach agreement.”

Procedures for Determining Terms and Conditions of Employment: relevant principles

- **Minority organizations should be able to take part in determining conditions of employment, or at least make representations on behalf of their members and represent them in the event of individual grievances.**
- **The parties need to negotiate in good faith and make every effort to reach an agreement.**
- **Genuine and constructive negotiations are necessary to establish and maintain a relationship of confidence between the parties.**

► Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Does the Convention regulate the status of civil servants?

NO. Convention No. 94 is about procurement contracts in the public sector, not about the employment contracts of public employees.

- **Public contracts are those concluded between a government and a private contractor for the construction of public works, the manufacture of goods or the supply of services, globally known as public procurement.**
- **However, Convention No. 94 deals with employment conditions in that it regulates the wages and working conditions applicable to the employees engaged by the private contractor for the execution of the public contract.**

Disputes of Rights

General Survey 2013:

“procedures for settling conflicts of interpretation . . . by agreement . . . or [by] laws and regulations are compatible with Conventions Nos 151 and 154, if these procedures – judicial or otherwise – provide guarantees of independence and impartiality and ensure the confidence of the parties.”



Public servants in state-owned commercial or industrial enterprises

- **The CFA is of the opinion that these public employees should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike . . .**
- **provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population.**

Article 8: Settling Interest Disputes

The settlement of disputes arising *in connection with the determination of terms and conditions of employment* shall be sought through:

- **negotiation between the parties or**
- **independent and impartial machinery, such as mediation, conciliation and arbitration.**
- **Voluntary approach (choice) essential**

► **Convention No. 154**

Article 5 (e): bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6: The provisions . . . do not preclude . . . collective bargaining . . . within the framework of conciliation and/or arbitration machinery or institutions, . . . [if] the parties to the collective bargaining process voluntarily participate.

► Recommendation No. 92

Recomm. on Voluntary Conciliation and Arbitration

- **Article 3(1): Procedure should be free of charge and expeditious; time limits fixed in advance and kept to a minimum.**
- **Article 5: All agreements reached during or through conciliation should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.**

► **Settlement of Interest Disputes**

- **General Survey 2013: “Whether a system or dispute settlement body can guarantee the impartial and independent settlement of disputes, . . . depends on its capacity to ensure the confidence of the parties *in practice*.”**
- **Arbitration imposed by the authorities at the request of one party is contrary to the principle of voluntary negotiation and the autonomy of the bargaining partners.**
- **Referral to judicial instances only on request by both parties.**
- **Compulsory arbitration only in impasse involving public servants exercising authority in the name of the State or in essential services in strict sense of term.**

► Right to Strike

May only be restricted or prohibited in the public service for public servants exercising authority in the name of the State or in essential services in the strict sense of the term:

- **Those services which, if interrupted, would endanger the life, personal safety or health of the whole or part of the population.**
- **the determination of which services are essential in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country.**
- **Concept is not absolute: a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope.**

► **Essential Services in the strict sense of the term (case-by-case review):**

- **hospital sector**
- **electricity services**
- **water supply services**
- **telephone services**
- **police and armed forces**
- **air traffic control**
- **fire-fighting services**
- **Public/private prison services**
- **nutrition to pupils**
- **cleaning services of schools**

▶ Minimum services

In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified, a minimum service could be

- **agreed upon between the parties or establishment by an independent body**
- **“where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that the public’s basic needs are met or that facilities operate safely and without interruption.”**

Article 9: Civil and Political Rights

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

The rights conferred must follow the Universal Declaration of Human Rights the International Covenants on Civil and Political Rights.

The absence of these civil liberties removes all meaning from the concept of trade union rights.

► **Civil liberties essential to exercise union rights, under the Resolution Concerning Trade Union Rights adopted by the ILC in 1970:**

- **Freedom and security of person**
- **Freedom from arbitrary arrest and detention**
- **Freedom of opinion and expression**
- **Freedom to hold opinions without interference**
- **Freedom to seek, receive and impart information and ideas through any media and regardless of frontiers**
- **Freedom of assembly**
- **Right to fair trial by independent / impartial tribunal**
- **Protection of the property of worker organizations**

► **Convention No. 190: Violence and harassment in the workplace**

- **Growing reports of violence against public servants for political reasons in a polarized world, and in the context of the pandemic**
- **Definition: “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”**
- **Definitions in national laws and regulations may provide for a single concept or separate concepts**
- **Convention protects workers in all sectors, in the formal and informal economy, and in urban or rural areas**

ILO Publications on Convention 151



▶ **Thank you!**

Further reading:

www.ilo.org/SECTOR

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