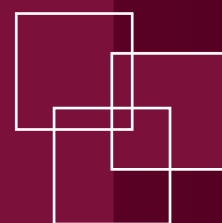




International
Labour
Office
Geneva

Promoting collective bargaining Convention No. 154

Collective Bargaining Convention,
1981 (No. 154)



INDUSTRIAL AND
EMPLOYMENT
RELATIONS
DEPARTMENT
(DIALOGUE)

INTERNATIONAL
LABOUR
STANDARDS
DEPARTMENT
(NORMES)



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INDUSTRIAL AND EMPLOYMENT RELATIONS DEPARTMENT (DIALOGUE)

INTERNATIONAL LABOUR STANDARDS DEPARTMENT (NORMES)

2011

THE ILO AND COLLECTIVE BARGAINING

Collective bargaining is fundamental to the International Labour Organization (ILO). Since the very founding of the ILO in 1919, collective bargaining has been acknowledged as an instrument of social justice. The ILO Declaration of Philadelphia of 1944, part of the ILO Constitution, recognizes the obligation to further “the effective recognition of the right of collective bargaining”.

More recently, the 1998 ILO Declaration on Fundamental Principles and Rights at Work recalls that all member States, from the very fact of their membership in the Organization, have an obligation to respect, promote and realize the principles concerning fundamental rights, whether or not they have ratified the relevant Conventions. These fundamental rights include freedom of association and the effective recognition of the right to collective bargaining.

There are several ILO Conventions and Recommendations that relate to collective bargaining. These are –

- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the Collective Agreements Recommendation, 1951 (No. 91);
- the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92);
- the Labour Administration Convention, 1978 (No. 150);
- the Labour Administration Recommendation, 1978 (No. 158);
- the Labour Relations (Public Service) Convention, 1978 (No. 151);
- the Labour Relations (Public Service) Recommendation, 1978 (No. 159);
- the Collective Bargaining Convention, 1981 (No. 154); and
- the Collective Bargaining Recommendation, 1981 (No. 163).

One of the most well-known and widely ratified Conventions that relate to collective bargaining is No.98 – the Right to Organise and Collective Bargaining Convention, 1949. This fundamental

Convention says that member States should encourage systems of voluntary negotiations in order to regulate terms and conditions of employment through collective agreements. All the other Conventions and Recommendations listed above complement Convention No. 98 through clarifying concepts and supporting the principles that it defines.

Meaningful collective bargaining cannot be conducted without the guarantee of freedom of association. The realisation of the fundamental principle on freedom of association set out in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) is an essential precondition for the effective realization of the right to collective bargaining. On these solid foundations, collective bargaining helps ensure that employers and workers have an equal voice in negotiations and that the outcomes are fair and equitable. Through the process of dialogue, collective bargaining can also contribute to sound industrial relations and help prevent costly labour disputes. Sound industrial relations in turn are the basis for creating effective partnerships based on mutual understanding, trust and respect and promote balanced economic and social development.

The ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration),¹ adopted at the International Labour Conference in June 2008, underscores the significance of the fundamental principles of freedom of association and the right to collective bargaining as both rights and enabling conditions for the realization of the ILO’s strategic objectives – employment, social protection, social dialogue, and rights at work in a global economy.

Strengthened respect for, and use of, collective bargaining is also essential in ensuring an effective response to economic crises and promoting balanced recovery. The Global Jobs Pact (GJP),²

¹ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session, Geneva, 2008. For full text, see ILO web site: www.ilo.org/ilc/ILCSessions/97thSession/texts/WCMS_099766/lang-en/index.htm.

² ILO: *Recovering from the crisis: A Global Jobs Pact*, adopted by the International Labour Conference at its 98th Session, Geneva, 19 June 2009. For full text, see ILO web site: www.ilo.org/ilc/ILCSessions/98thSession/texts/WCMS_115076/lang-en/index.htm

adopted at the 98th Session of the International Labour Conference in June 2009, promotes a range of policy measures that put employment, social protection and incomes at the heart of recovery. Among these, it affirms “respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.” It highlights the link between social progress and economic development, with collective bargaining providing a constructive process through which crisis responses can be best be adapted to the needs of the real economy.

Convention No. 154: The promotion of collective bargaining

The Collective Bargaining Convention (No. 154) was adopted by the International Labour Conference in 1981 as an instrument for the promotion of collective bargaining. Convention No. 98, the Right to Organise and Collective Bargaining Convention, 1949 provides that appropriate measures be taken to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers’ organizations and workers’ organizations. However, it does not specify how this might be done. Convention No. 154 and its accompanying Recommendation (No. 163) are key to furthering the promotion and implementation of the basic principles of Convention No. 98. These two instruments show how it can be done in a practical way. They were adopted to complement Convention No. 98 by setting out the types of measures that can be adopted to promote collective bargaining and the aims of these measures. Together they show how the right to bargain collectively can be effectively exercised.

Because it is promotional in nature, Convention No. 154 is very flexible. There are many ways of implementing it, respecting each national context and local preference. It can be implemented in countries with different economic and social situations, in different legislative frameworks, and in a variety of industrial relations systems.

Collective bargaining and social dialogue

Collective bargaining is an important form of social dialogue. Institutions for social dialogue and collective bargaining help protect the fundamental rights of workers, help provide social protection and promote sound industrial relations. Social dialogue, in turn, is an important part of good governance. Because social dialogue involves the social partners (employers’ and workers’ organizations), it further encourages accountability and participation in decisions that affect the lives of all society. These factors directly contribute to better government.

The ILO defines social dialogue as all types of negotiation, consultation or simply exchange of information between representatives of governments, employers and workers on issues of common interest. This definition brings together the elements of various understandings of social dialogue into one inclusive concept. Convention No. 154 and Recommendation No. 163 acknowledge that information, consultation and negotiation are inter-linked and reinforce each other. While focusing on negotiations, both highlight the importance of a common information base for meaningful negotiations, and the role of consultation in deciding measures to encourage and promote collective bargaining.

From the ILO perspective, collective bargaining is an important way for workers, employers and their organizations to reach agreement on issues related to employment. Collective bargaining can be an important means for building trust. This trust can be reinforced through dialogue which continues after bargaining ends. Solutions that are built on trust and enjoy the genuine support of both sides are more likely to be respected. This is due to the sense of participation and ownership inherent in the process. As a result, unnecessary disputes, and disruptions through industrial action, can more easily be avoided.

The practical means that can be used to develop effective collective bargaining as set out in Convention No. 154 and Recommendation No. 163 necessarily promote social dialogue. In so doing they help to develop a broader culture of dialogue, reinforcing better governance, participation and accountability.

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Main elements of Convention No. 154

Promotes collective bargaining

An ILO member State that ratifies Convention No. 154 must take measures to promote collective bargaining. These measures should be adapted to national conditions. According to Convention No. 154, they should be subject to prior consultation, and if possible, agreement between public authorities, employers' organizations and workers' organizations. In promoting collective bargaining, governments should try to facilitate the process. Governments should not intervene so as to unreasonably restrict how collective bargaining operates. The aim of the Convention is to promote collective bargaining that is free and voluntary, and undertaken by parties that represent free and informed organizations. Yet while collective bargaining is inherently a voluntary process, countries need to establish an enabling framework within which it can be encouraged and promoted, both through legislation and the creation of supporting institutions. A balance needs to be found between government intervention to encourage collective bargaining and its smooth functioning, and the freedom of the parties to conduct autonomous and successful negotiations.

Defines collective bargaining

In the Convention the term “collective bargaining” means all negotiations between employers and/or employers' organizations on the one hand, and workers' organizations on the other, for –

- determining working conditions and terms of employment; and/or
- regulating relations between employers and workers; and/or
- regulating relations between employers or their organizations and a workers' organization or workers' organizations.

The ILO supervisory bodies have interpreted the issues that can be included on the collective bargaining agenda as covering “the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation etc.”³ Thus, excluding particular issues relating to conditions of employment from the scope of collective bargaining is incompatible with the right to collective bargaining. The only acceptable restrictions could be a ban on those clauses that are liable to undermine public freedoms (such as discriminatory clauses) or are contrary to the minimum standards of protection set out in law, and matters pertaining primarily or essentially to the management and operation of government and business, including the assignment of duties and appointments.

³ See paragraph 913 of the *Digest of the Decisions of the Committee of Freedom of Association* (2006): www.ilo.org/ilolex/english/digestq.htm

Defines the parties to collective bargaining

The Convention deals with bipartite relations (between two parties). It does not deal with tripartite relations where the Government is also a party. Specifically, the parties to collective bargaining are –

- one or more employers; or
- one or more employers' organizations, on the one hand; and
- one or more workers' organizations, on the other.

For their participation in the collective bargaining process to be effective, these organizations have to be sufficiently representative of the interests they are defending and independent from the other party to the negotiations and of the public authorities.

In some countries, workers' representatives exist separately from workers' organizations or trade unions. Where this is the case, as outlined in the Workers' Representatives Convention, 1971 (No. 135), collective bargaining can apply to negotiations with these representatives as well. How far this extends should be in line with national law or practice. However, when collective bargaining does include negotiations with workers' representatives, measures should be taken to ensure this is not used to undermine the position of the workers' organizations concerned. In other words, the existence of other elected workers' representatives should not be used to undermine the position of trade unions or their representatives.

Aims of promotional measures

In promoting collective bargaining, Convention No. 154 outlines the aims of the measures to be taken by the public authorities after consultation and, whenever possible, agreement with employers' and workers' organizations. The measures taken to promote collective bargaining should not restrict freedom of collective bargaining. Specifically, the aims relate to universality, progressive extension, procedural rules and dispute settlement –

- Collective bargaining should as far as possible be made available to all employers and to all groups of workers. Only a few possible exceptions are listed and they should be consistent with national practice.
- Collective bargaining should be progressively extended to all areas addressed by the Convention. This means that, over time, relations between employers and workers and between their respective organizations can be negotiated collectively, as well as working conditions and terms of employment.

- The measures should also aim to encourage agreement on adequate rules of procedure between employers' and workers' organizations. The framework of procedural rules between them should be sufficient to ensure that collective bargaining can be conducted efficiently. The lack of such rules, or inadequate rules, can make collective bargaining much more difficult. The level of bargaining should not be imposed unilaterally by the authorities.
- Labour dispute settlement bodies and procedures (such as conciliation and mediation bodies) should also help promote collective bargaining (see Box 1). This means they should be designed to encourage the two parties to reach agreement between themselves.

Box 1. Promoting collective bargaining through dispute resolution services in South Africa: Commission for Conciliation, Mediation and Arbitration (CCMA) and Bargaining Councils

Following the political transition to democracy in South Africa in 1994, the new Labour Relations Act of 1995 (LRA) was enacted which included among its objectives the promotion of collective bargaining and the effective resolution of labour disputes. To this end, the LRA established the Commission for Conciliation, Mediation and Arbitration (CCMA), specialised Labour Courts and the Labour Appeals Court. The LRA also makes provisions for private agencies and sectoral bargaining councils to be accredited by the CCMA to resolve disputes through conciliation and arbitration. Private agencies and bargaining councils are supported in these functions through subsidies granted by the governing body of the CCMA.

The CCMA addresses a broad range of labour disputes which include mediation/conciliation of collective bargaining disputes. Should the dispute remain unresolved, or the period for attempting to resolve the dispute elapse, the bargaining partners have the right to strike or to lock out, unless engaged in an essential service. At this point, the bargaining partners can also request the CCMA to establish picketing rules. Apart from its role in both resolving disputes and/or facilitating orderly conduct during a dispute, the CCMA also plays a role in the prevention of disputes through facilitation services, training, the provision of information sheets and codes and the promotion of best practices.

The CCMA accredits and subsidises bargaining councils to conciliate and arbitrate certain categories of disputes. The dispute resolution functions of bargaining councils extend to all employers and employees within their jurisdiction, irrespective of whether or not they are members of the trade unions and employers' organizations that are parties to the council. As of 2010, a total of 31 bargaining and statutory councils are accredited for both conciliation and arbitration and an additional eight for conciliation.

Sources: Development Policy Research Unit: *Measuring the efficiency of the CCMA's dispute resolution service – An analysis of CMS data between 2007 and 2009* (2010); *CCMA Annual Report 2009/2010*; *LEP y NALEDI: Support for bargaining councils and centralised bargaining* (2010).

Principle of good faith

The preparatory work for the adoption of Convention No. 154 emphasised the importance of good faith. Collective bargaining can only function efficiently if it is conducted in good faith by both parties. While the legislative framework can encourage employers and trade unions to bargain in good faith, ultimately it is the commitment of the parties to negotiate in good faith that ensures the harmonious development of labour relations. Good faith bargaining implies genuine and persistent efforts by both parties to reach an agreement, that the negotiations are constructive and avoid unjustified delays, and that the terms of the agreement be respected and complied with. In some countries, labour legislation outlines detailed requirements of what is expected from employers, employers' organizations and trade unions and may even deem the failure to meet these requirements an unfair labour practice. In others, while the legislation may not explicitly refer to the principle of good faith, it may encourage this through requirements to provide information necessary for negotiations.

Applies to all branches of economic activity

The Convention applies to workers and employers in all branches of economic activity. However, a member State may exclude the police and armed forces from its application. The Convention also acknowledges that the public service operates in special circumstances but should not be excluded. Rather, different approaches (or “special modalities”) to collective bargaining can be applied to this group of workers and employers (see Boxes 2 and 3).

Changes in the world of work pose a number of challenges to the effective realization of the right to collective bargaining. The social partners are faced with finding ways through which collective bargaining can also apply to and address the needs of those in part-time and temporary employment – who tend to fall outside of its scope or who are confronted with significant obstacles to its effective exercise. Through collective bargaining, employers and/or their organizations and trade unions are also addressing a wider range of workplace issues, including employment security, work organization, productivity, equal opportunities, HIV and other issues.⁴

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⁴ ILO: *Freedom of association in practice: Lessons learned, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report of the Director-General (2008); ILO: *Report of the High-level Tripartite Meeting on Collective Bargaining, Negotiating for Social Justice* (2010): www.ilo.org/public/english/dialogue/ifpdial/events/tripartitemeeting.htm.

Box 2. Convention No. 154 and the public service

The Convention acknowledges that collective bargaining in the public service may need to be addressed differently from other branches of economic activity. This is because its conditions of service are usually designed to achieve uniformity. These conditions are usually approved by parliament and apply to all public servants. They often contain exhaustive regulations covering rights, duties and conditions of service that leave little room for negotiation, and may require laws on conditions of service to be amended. Negotiations are, therefore, often centralized.

The unique situation of the public service in collective bargaining also results from its financing. Wages and other employment conditions of public servants have financial implications that must be reflected in public budgets. The budgets are approved by bodies such as parliaments, not always the direct employers of public servants. Negotiations with financial implications regarding the public service are, therefore, frequently centralized and subject to directives or the control of external bodies, such as the finance ministries or inter-ministerial committees.

These aspects are compounded by other issues such as the determination of the subjects that can be negotiated, the jurisdiction of the various state structures, as well as the determination of negotiating parties at different levels.

Special modalities

Based on these issues, Article 1(3) of the Convention allows for “special modalities” of application that might be fixed by national laws or regulations, or by national practice for the public service, provided the employers’ and workers’ organizations can express their views through consultations. Special modalities could include –

- parliament or the competent budgetary authority setting upper or lower limits for wage negotiations, or establishing an overall budgetary package within which parties may negotiate monetary or standard-setting clauses;
- legislative provisions giving the financial authorities the right to participate in collective bargaining alongside the direct employer;
- harmonization of an agreed bargaining system with a statutory framework, as is found in many countries;
- the initial determination by the legislative authority of directives regarding the subjects that can be negotiated, at what levels collective bargaining should take place or who the negotiating parties may be. As noted, the determination of directives should be preceded by consultations with the organizations of public servants.

Box 3. Creating an enabling legal and institutional framework: the Argentinean experience

In Argentina, the 1992 Law on Labour Collective Agreements (Act No. 24.185) established the standards for collective bargaining in public administration at the national level. Under Act No. 24.185, unions are proportionally represented in collective bargaining, depending on the number of members. In practice, this means that more than one union can represent the same constituency. Under the Act, separate negotiating commissions carry out general and sectoral negotiations in the public services. They consist of state and worker representatives, coordinated by the Ministry of Labour. Some sectoral agreements currently in place cover the National Lottery, Teaching, Food Safety, Park Security, and National Arts workers. The parties have a duty to bargain in good faith. This means, among other things, exchanging relevant information and undertaking diligent efforts to reach an agreement.

The first National-level Collective Bargaining Agreement was negotiated in 1999, and the current one was signed in 2006. This agreement contains regulations and general principles which are applicable to all the public services, and delegates specific issues to be negotiated by the sectoral negotiating commissions. It establishes rules for payment of wages, workers' duties, prohibitions and disciplinary procedures. In addition, the agreement provides for continuing education and training, allowances and subsidies. It also incorporates recruitment issues and career advancement. The sectoral negotiating commissions may also negotiate regarding subjects that are not covered by the national agreement.

The 2006 national collective agreement on public services also provides for a Standing Committee on Labour Relations (Comisión Permanente de Aplicación y Relaciones Laborales, CoPAR). It consists of representatives of the State and trade unions. All decisions made by the CoPAR have to be taken unanimously. Under the agreement, the CoPAR has the power to interpret the agreement and participate in the resolution of disputes. It may also intervene in potential conflicts about proposals to modify working conditions or wages. These features help to avoid recourse to third-party dispute resolution mechanisms, thus strengthening the stability of the labour relations system.

Sources: A. Cardoso and J. Gindin: "Industrial relations and collective bargaining: Argentina, Brazil and Mexico compared", Working Paper No. 5 (ILO, Industrial and Employment Relations Dept., 2009); J. Bonifacio and G. Falivene: *Análisis comparado de las relaciones laborales en la administración pública latinoamericana: Argentina, Costa Rica, México y Perú* (Banco Interamericano de Desarrollo, Centro Latinoamericano de Administración para el Desarrollo, 2002); M. Wegman: *Aportes a la profesionalización del servicio civil en el gobierno federal de la República Argentina a través de la negociación colectiva* (V Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública Santo Domingo, República Dominicana, 9-12 Nov. 2010).



Adapted to national conditions

Because the measures to promote collective bargaining are to be adapted to national conditions, no one set of measures is required. The Convention respects different national conditions, including various industrial relations systems. National law and practice also apply to collective bargaining in the public service, as well as to the role of workers' representatives in the process. The Convention also expressly does not preclude collective bargaining within the framework of voluntary conciliation or arbitration procedures.

Progressive application of the Convention

The Convention states that collective bargaining should be progressively extended to all the matters set out in the Convention. The matters are the following: determining working conditions and terms of employment; regulating relations between employers and workers; and regulating relations between employers or their organizations and workers' organizations. Ratifying the Convention, therefore, means that machinery for promoting collective bargaining should at least apply to some of these areas initially and can be progressively extended to all of these areas over a reasonable period of time.

Ways of giving effect to the Convention

There are several ways to give effect to the Convention. The Convention gives priority to its application through collective agreements, arbitration awards, or "such other manner as may be consistent with national practice". To the extent that the Convention is not applied through these means, it is to be given effect through national laws or regulations. This is consistent with the central principle of the Convention: as far as possible, collective bargaining should be the province of the parties involved. Complementary measures set out in Recommendation No. 163 provide practical guidance for promoting collective bargaining (see Box 4).



Box 4. Ways of promoting collective bargaining: Recommendation No. 163

Recommendation No. 163 outlines in more detail measures the Government and the parties might take to promote collective bargaining. As an initial matter, these measures should aim at creating a framework for objectively verifiable representation of workers and employers by the organizations that undertake collective bargaining and the empowerment of such organizations to engage in effective collective bargaining. The goal of such measures is to –

- facilitate the voluntary establishment and growth of free, independent and representative employers' and workers' organizations;
- ensure that such employers' and workers' organizations are recognized for the purposes of collective bargaining; and
- determine, where procedures for recognition exist, the organizations to be granted the right to bargain collectively on the basis of pre-established and objective criteria in respect of their representative character, established in consultation with representative employers' and workers' organizations.

In addition, the promotion of collective bargaining by government and the parties, as outlined in Recommendation No. 163, should involve measures adapted to national conditions to promote collective bargaining and provide for the independent resolution of labour disputes. The goal of such measures is to –

- allow collective bargaining to take place at any level, from single workplaces, the organization or firm, the occupation, the industry, or at the regional or national levels;
- ensure that both parties have access to the information required for meaningful negotiations; and
- establish, if necessary, procedures for the settlement of labour disputes that help the parties find a solution to the dispute themselves.

As indicated in Recommendation No. 163, the parties to collective bargaining should also promote collective bargaining by –

- ensuring coordination between the various levels of bargaining, where collective bargaining occurs at multiple levels;
- ensuring that their negotiators have the opportunity to obtain appropriate training, including by requesting that public authorities assist in the provision of such training; and
- ensuring that their negotiators have the necessary mandate to conduct and conclude negotiations.

Governments also play a key role in promoting collective bargaining through providing a legislative framework and establishing supportive institutions. This includes dispute resolution machinery that facilitates bargaining. Initiatives taken by a number of countries include the following:

- maintaining public databases on agreements concluded, thus providing a valuable source of information for the social partners;
- maintaining statistics on the number and type of collective agreements and their coverage;
- providing training on collective bargaining and dispute prevention and settlement;
- offering dispute resolution services by labour authorities; and
- providing information on the economic and social situation of the country and the branch of activity concerned.

Points to consider when ratifying and applying Convention No.154

Convention No. 154

- Is flexible and respects different traditions of collective bargaining.
- Acknowledges the potential need for a different approach in the public service.
- Provides practical means of promoting collective bargaining.
- Respects the autonomy of the bargaining parties.
- Acknowledges the unique and important role of trade unions vis-à-vis other workers' representatives.
- Demonstrates government commitment to the effective realization of the right to collective bargaining.

Convention No. 154 may

- Support both enterprise competitiveness and the aspirations of the workers.
- Provide a way for workers to negotiate a fair share for their work with due respect to the financial position of the enterprise or State.
- Promote collaborative efforts to raise productivity and conditions of work.
- Provide an effective means for addressing difficult issues jointly by identifying common interests.
- Promote dispute prevention and resolution through dialogue.
- Contribute to the better application of other Conventions, since many can be implemented through collective agreements.
- Promote a greater acceptance of change.
- Promote gender equality.
- Strengthen social dialogue.
- Promote sound industrial relations.
- Promote good governance.

Frequently asked questions

Are there different ways of promoting collective bargaining?

There are many ways to promote collective bargaining, as listed in Recommendation No. 163 (see Box 4). Convention No. 154 does not require all of these means to be used, nor any specific combination of them. Each country should decide, in consultation with the workers' and employers' organizations, which are the most appropriate measures to promote collective bargaining.

Must collective bargaining result in the signing of a collective agreement?

The aim of collective bargaining is to reach a collective agreement. However, the Convention addresses the process of bargaining and not the outcome. If bargaining is undertaken in good faith but an agreement cannot be reached, this complies with the Convention.

Does application of the Convention require the enactment of a law?

Convention No. 154 can be applied through many different means. These include collective agreements, arbitration awards or any other manner consistent with national practice. Or it can be given effect by national laws or regulations. In undertaking to ratify the Convention, the Government should always examine the existing legal framework to ensure that free collective bargaining is not made difficult due to an absence of rules, or by inadequate or unsuitable rules.

How can dispute settlement bodies and procedures contribute to the promotion of collective bargaining?

Dispute settlement procedures, such as conciliation and mediation, involve a neutral third party. This third party can help those involved in collective bargaining understand where they may have common interests and help them to re-establish communications where negotiations have broken down. In this way parties can find a solution to the dispute themselves and continue the bargaining process. Arbitration also involves a third party. Convention No. 154 implies that arbitration bodies and procedures should also seek to support collective bargaining where agreement between the parties is possible.

Is ratification of Convention No. 98 a prerequisite to ratification of Convention No. 154?

It is not a prerequisite, even though both Conventions address voluntary collective bargaining. Convention No. 98 is a fundamental Convention and one of the most widely ratified. It underlines not only a commitment to the promotion of voluntary collective bargaining, but also the protection of workers against discrimination. Free collective bargaining is only possible if there is real protection against anti-union discrimination. For negotiations to be meaningful, they must take place in an environment where workers' and employers' organizations can express their views in full freedom. All member States, whether or not they have ratified Convention No. 98, are bound to respect the principle of freedom of association and the

effective recognition of the right to collective bargaining, by virtue of ILO membership. The 1998 ILO Declaration on Fundamental Principles and Rights at Work reaffirms this. Once Convention No. 98 is ratified and applied, however, ratification of Convention No. 154 is made even easier. Ratification of Convention No. 154 would further demonstrate government commitment to the principle of the right to bargain collectively, and at the same time provide practical means of promoting it.

What is the difference between negotiation and consultation?

Convention No. 154 is aimed at collective negotiations. Negotiation means discussions between parties with a view to reaching a formal agreement. It goes beyond consultation which does not necessarily have the aim of leading to an agreement. Consultation involves ensuring that the voices of those concerned on a matter are given due consideration before a decision is taken. Successful negotiation, however, means that the parties concerned become partners in a decision-making process on matters of common interest.

What is the reporting requirement?

Ratifying countries need to report only every five years on the measures taken, in law and in practice, to apply the Convention.

Is recognition of representative workers' and employers' organizations required?

Measures to ensure that representative organizations are recognized for the purpose of collective bargaining can be an important means of promoting collective bargaining. Recommendation No. 163 sets out various means of promoting collective bargaining, including the recognition of representative workers' and employers' organizations in paragraph 3(a). Recommendation No. 163 says that in countries where procedures for recognition are established, these should be based on pre-established and objective criteria with regard to the organizations' representative character. It further says that the procedures should be established in consultation with representative employers' and workers' organizations (paragraph 3(b)).

Can a trade union be given exclusive bargaining rights?

Yes, if it is the most representative union, based on objective and pre-established criteria. However, where a distinction is made between the most representative trade unions and other trade unions, minority unions should not be prevented from functioning, and should have the right to make representations on behalf of their members and to represent them in individual grievances.

What are the rights of federations and confederations under the Convention?

Federations and confederations should be able to participate in negotiations and conclude collective agreements.

At what level should bargaining take place?

Parties to the collective bargaining should be able to choose the most appropriate levels at which collective bargaining takes place. Recommendation No. 163 says that measures adapted to national conditions should allow collective bargaining at any level whatsoever, including that of the “establishment, the undertaking, the branch of activity, the industry, or the regional or national levels”. There is no one best level of collective bargaining. Each level has its own characteristics, and the choice should be made by the parties themselves.

How is the public service treated differently?

The Convention allows special approaches for the public service, fixed by national laws or regulations or national practice. Box 2 gives more details on this.

How can ratification of Convention No. 154 promote gender equality?

Ratification of Convention No. 154 demonstrates a commitment to collective bargaining, and collective bargaining can be an important way to promote gender equality. Collective bargaining in many countries is a key means of determining terms and conditions of employment, including all aspects of gender equality at work. Equal pay, overtime, hours of work, leave, maternity and family responsibilities, health and the working environment, and dignity at the workplace are all examples of issues for collective bargaining that could promote gender equality in the workplace. The issues for negotiation depend on the social and legal context, and on what women themselves choose as priorities. For collective bargaining to be truly effective and equitable, the concerns of men and women must be understood and be given credence. Consultation with women workers and ensuring that women are represented on negotiation teams are good ways to do this.

What is the role of training in collective bargaining?

Appropriate training in negotiation skills and key bargaining issues can be essential for fruitful collective bargaining. Recommendation No. 163 recognizes the importance of such training, and says that measures should be taken by the parties so that negotiators have the opportunity to obtain appropriate training. At the request of workers’ or employers’ organizations, public authorities may provide assistance for training, but there is no obligation on governments to do so.

What information should be made available in the bargaining process?

Without a common base of information, it is difficult to have meaningful negotiations. Recommendation No. 163 stresses the importance of access to information. Measures adapted to national conditions can be taken so that the parties have access to information required for meaningful negotiations. This should include information on the economic and social situation of the negotiating unit and the undertaking as a whole. The public authorities should make available all needed information on the overall economic and social situation of the country and the branch of activity concerned, as long as it is not prejudicial to the national interest.

How the ILO can help

The ILO can help constituents interested in the ratification and application of Convention No. 154 in a number of ways. The ILO can –

- provide employers' and workers' organizations and governments with a better understanding of the substance of Convention No. 154 through promotional materials, workshops and discussions;
- offer a diagnosis of the functioning of an existing collective bargaining system;
- provide technical assistance in establishing and strengthening the collective bargaining framework;
- help design and execute technical cooperation projects to strengthen collective bargaining;
- provide advice and assistance in labour law reform as a foundation for collective bargaining processes and machinery;
- give technical support to government officials for the purpose of ratification of Convention No. 154;
- help the Government in meeting its reporting requirements under the ILO Constitution;
- provide or help design training for workers' and employers' representatives in negotiation skills and issues for collective bargaining;
- provide information and training to help make collective bargaining more responsive to gender issues; and
- share the ILO's international experience on the implementation of the Convention with member States.

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Further information

International Labour Office publications

The role of collective bargaining in a global economy: Negotiating for social justice, S. Hayter (ed.), ILO and Edward Elgar, Geneva, 2011

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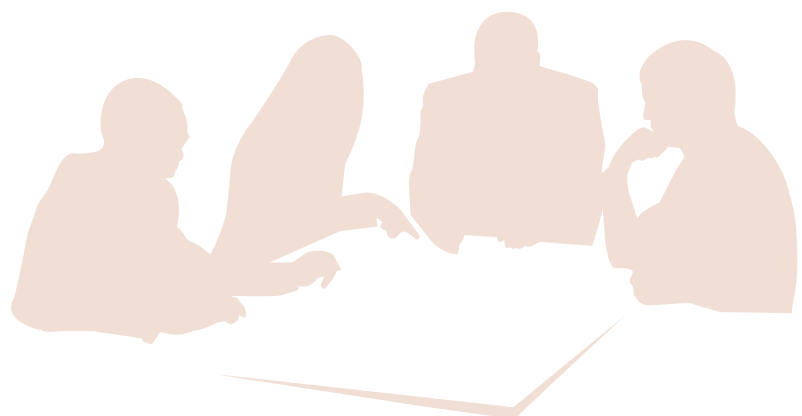
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Texts

- CONVENTION
No. 154
- RECOMMENDATION
No. 163

Convention No. 154

COLLECTIVE BARGAINING CONVENTION, 1981

[...]

PART I. SCOPE AND DEFINITIONS

Article 1

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

Article 2

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

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 3

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

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

PART II. METHODS OF APPLICATION

Article 4

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

PART III. PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.
2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:
 - (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
 - (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
 - (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
 - (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
 - (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

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

Article 7

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

Article 8

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

[...]

Recommendation No. 163

COLLECTIVE BARGAINING RECOMMENDATION, 1981

[...]

I. METHODS OF APPLICATION

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

II. MEANS OF PROMOTING COLLECTIVE BARGAINING

2. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

3. As appropriate and necessary, measures adapted to national conditions should be taken so that:

- (a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining;
- (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations.

4. (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

5. (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities may provide assistance to workers' and employers' organisations, at their request, for such training.

(3) The content and supervision of the programmes of such training should be determined by the appropriate workers' or employers' organisation concerned.

(4) Such training should be without prejudice to the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining.

6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

7. (1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose:

(a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;

(b) the public authorities should make available such information as is necessary on the overall economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

8. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

[...]

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ISBN 978-92-2-125416-4



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