

INTERNATIONAL LABOUR CONFERENCE

FIFTY-EIGHTH SESSION
GENEVA, 1973

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
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giving place to participation according to a wider concept which also seems to have been adopted by the Committee of Experts when it recognised the importance of participation of employers' and workers' organisations in national and international life.

24. The question of collective bargaining by public servants was a matter of particular interest in view of the practical problems encountered. The Workers' member of Canada pointed out that the right to collective bargaining might become meaningless in the case of budgetary limitations or when the declared policy of a government is to limit the wages of workers in the public sector to the average wages for the whole of the country or when workers are not allowed to strike. He considered that the ILO should give further consideration to the question of how to ensure that workers in the public sector could bargain collectively on an equal footing with other workers. The Workers' member of Sierra Leone considered that Article 6 of Convention No. 98, which permits the exclusion of civil servants engaged in the administration of the State, ought to be changed so as to endorse the right of collective bargaining for this category. The Workers' members in general were of the opinion that the situation had evolved greatly since the adoption of Convention No. 98 in 1949 and that the time was ripe to clarify and to study the trade union rights of public servants. They expressed the hope that it would be possible to convene at an early date the technical tripartite Conference provided for the Programme and Budget for 1974-75 to discuss the question of freedom of association and procedures for determining conditions of employment in the public service.

Right to Strike

25. One matter which gave rise to lengthy discussion was the right to strike, particularly in the public sector. With regard to the right to strike in general, the Workers' members considered that this weapon must be available to workers, and be expressly recognised in a Convention. They indicated that wherever the right to strike did not exist there were strike movements outside trade union organisations and even against these organisations, thereby creating a danger of anarchy. The Workers' member of Pakistan added that if the workers were to have the right to negotiate on terms and conditions of employment under Convention No. 98, the right to strike was a necessary complement. In his own country, where the workers now had the right to strike there had nevertheless been an important increase in production. Workers preferred to negotiate and the right to strike helped them to reach a settlement with the employers.

26. With regard to the settlement of disputes in the public service, the Workers' member of Japan considered that the position should be understood in the light of the 1963 report of a meeting of experts on the public service and of the report of the 1971 Joint Committee on the Public Service, both of which had called for application of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), to industrial relations in the public sector. He indicated that while it was often stated that the right to strike was not protected by international labour Conventions, Convention No. 87 did provide for the right of trade unions to organise their activities and formulate their programmes, and thus implicitly guaranteed the right to strike. The Government member of Japan replied that, as pointed out in the report of the Fact-Finding and Conciliation Commission on Freedom of Association relating to the case of Japan, there was no

Convention or Recommendation or other decision of the International Labour Conference defining the extent of the right to strike in the public sector. The Employers' member of Japan added that in no case had the Committee on Freedom of Association ever referred to the right to strike as an absolute right, particularly in essential services and in the public service, and stated that the same Committee had recognised that strikes of a political nature were not legitimate.

27. The Government member of Switzerland declared that under Convention No. 87 public servants were guaranteed the right to organise but that the right to strike was not covered. He referred in this connection to the preparatory work leading to the adoption of Convention No. 87. The Government member of Cyprus considered that if the right to strike of public servants was rejected, an alternative should be provided, as indicated by the Committee of Experts, in the form of compulsory arbitration, but that the position of a number of governments on this matter was that they could not relinquish the sovereignty of the State. His own conclusion was that the Conventions on freedom of association were now inadequate as far as public servants were concerned and that they should be re-examined with a view to up-dating them.

28. The Workers' and the Government members of Canada and Costa Rica referred to specific issues relating to the right to strike in their countries and, in particular, to the question of penal and disciplinary sanctions against strikers in the public sector (see Annex B).

29. The Workers' members were of the opinion that the right to negotiate and to strike of public servants should be the subject of special examination. It might be necessary to provide for procedures of voluntary negotiation, conciliation, or arbitration, but all the workers considered that the right to strike must remain as an ultimate weapon.

30. It was pointed out that the situation concerning public employees under Conventions Nos. 87 and 98 gave rise to three main questions. First, concerning the right to organise itself, Article 2 of Convention No. 87 was clear: "Workers and employers, without distinction whatsoever, shall have the right, . . .". This provision was intended to apply to all workers whether in the private sector or the public sector. Second, neither Convention No. 87 nor Convention No. 98 expressly dealt with the right to strike, but the Committee on Freedom of Association and the Committee of Experts (in paragraph 107 of the general survey) considered that the provisions of Article 3 concerning the right of workers' organisations freely to organise their activities included implicitly the right to strike as one of their activities which constituted for workers a weapon of last resort. A general prohibition on the right of strike would constitute a limitation on the right of workers to organise their activities. However, these bodies had recognised that certain limitations on the right to strike did not affect application of the Conventions. In particular, this applied to the civil service and to essential services. However, if the workers in these categories were deprived of the right to strike, they ought to have recourse to other means of settlement of disputes, notably by arbitration procedures. The third aspect of the question concerned the situation of public employees regarding the right to collective bargaining recognised in Convention No. 98. When this Convention was drawn up, it was considered that it ought not to apply to the position of public servants engaged in the administration of

the State, because in many countries civil servants had statutory working conditions. Ideas had evolved greatly since then and the problem had recently been examined by the Joint Committee on the Public Service.

Studies on Freedom of Association

31. The Employers' members supported the suggestion made by the Committee of Experts in the general survey that studies should be undertaken on a certain number of concrete problems connected with occupational organisations and their functioning. They indicated that having regard to the fact that the ILO was a tripartite body, the organisations of employers and workers should be associated in these studies.

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32. Having concluded its consideration of the Conventions on freedom of association and collective bargaining, the Committee as a whole wishes to place before the Conference some of the broader findings which have emerged. There was general agreement that observance of the ILO's standards in this field is essential to the achievement of the Organisation's

aims and purposes and that all governments should ratify the Conventions and ensure their full application as a matter of the utmost importance. The Committee considered that its tripartite discussions at the present session concerning both general principles and specific cases had thrown light on the continuing existence of a number of problems and had helped to clarify some issues and given impetus for future action. Without in any way underestimating the serious problems which, in all too many cases, continue to exist, the Committee is convinced that the existence of generally accepted standards and the efforts made by the ILO to promote their implementation will enable an increasing number of countries to realise that freedom of association, the right to organise and collective bargaining provide the surest guarantee for the achievement of social and economic progress.

Geneva, 22 June 1973.

(Signed) G. M. J. VELDKAMP,
Chairman.
D. VOLKER,
Reporter.