

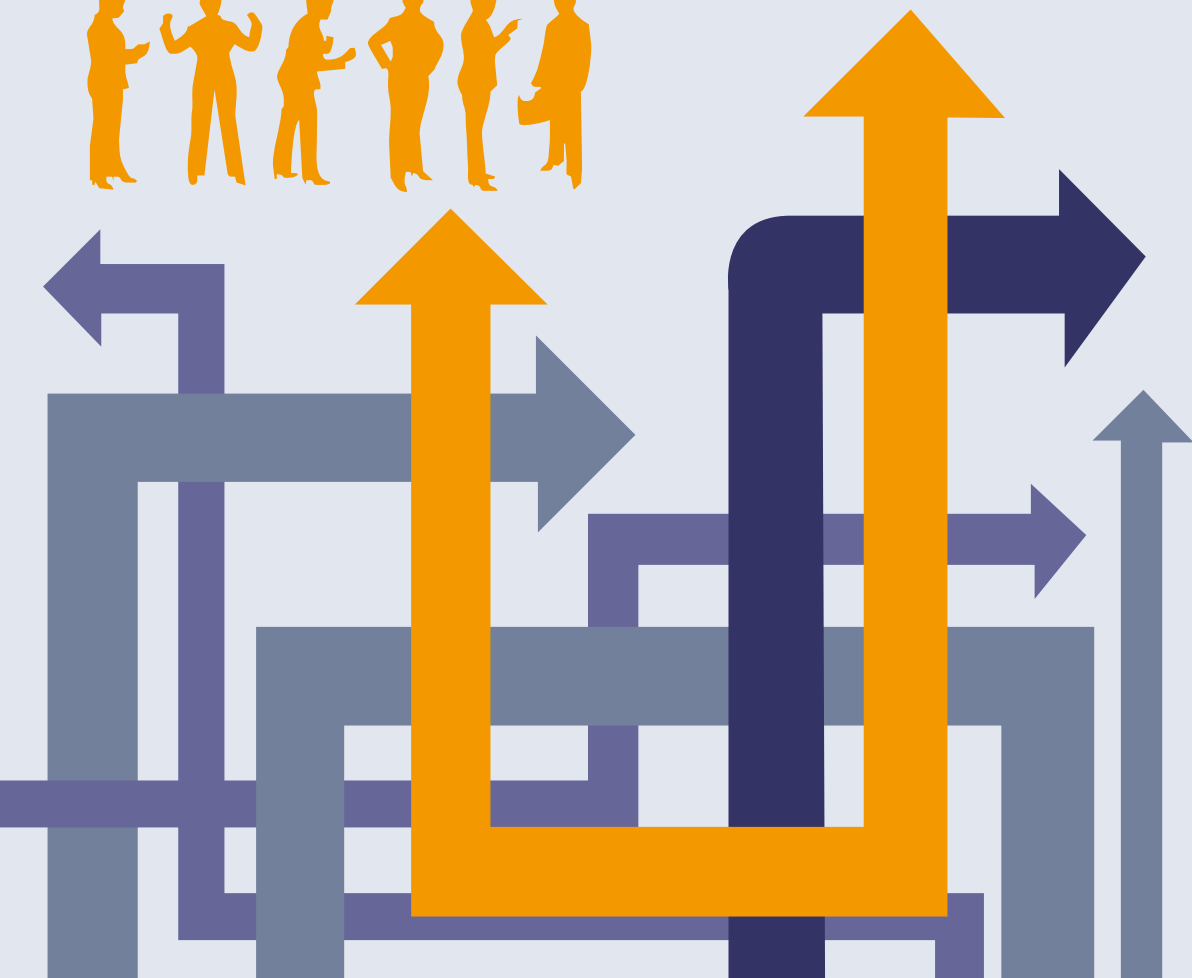


International  
Labour  
Office  
Geneva

# Promoting constructive approaches to labour relations in the public service



## EXAMPLES FROM COLLECTIVE AGREEMENTS





# **Promoting constructive approaches to labour relations in the public service:**

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## **EXAMPLES FROM COLLECTIVE AGREEMENTS**

A Supplement to the Manual  
on Collective Bargaining and Dispute Resolution  
in the Public Service

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## Preface

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Social dialogue, including collective bargaining, is a founding pillar of the ILO and a strategic objective of the ILO's Decent Work Agenda. It should form part and parcel of the regulation of labour relations in the public sector. Dialogue and bargaining can and should be key contributors to public sector efficiency, performance and equity. However, because competing interests are involved, neither is conflict-free. If governments and public sector unions are to be encouraged to bring these dynamics into public sector work, where industrial peace carries a special premium in the public mind, then considerations of conflict management must be uppermost. This is more relevant than ever in times of fiscal consolidation and austerity measures.

The *Manual on Collective Bargaining and Dispute Resolution in the Public Service* (2011) (the Manual) sought to offer a compilation of good practices in dispute prevention and dispute resolution in public services. Its intention was to showcase an array of mechanisms, mostly interconnected, that governments and social partners around the world have developed to minimize and resolve disputes – and especially interest disputes in collective bargaining – in the public services. Specifically, the Manual aimed to identify approaches and practices around the world which have enabled unions and public sector employers to engage in negotiations regarding wages and conditions of work on a fair footing and with minimal disruption to public services, implementing Articles 7 and 8 of the ILO Convention on labour relations in the Public Service, No. 151 (1978). It has been received warmly in the ILO and among constituents, being translated to 10 languages so far.



The Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service, held in Geneva on 2-4 April 2014, concluded with a recommendation that the Office carry out research on the diversity of practices in social dialogue, in particular collective bargaining, in different countries. Such research should provide countries with knowledge to improve their own practices, enable improved responses to situations of crisis and to address obstacles in the ratification of Conventions Nos 151 and 154.

In order to build upon this foundation and comply with the mandate of the Forum, SECTOR presents a selection of good practices in collective agreements in the public service, mainly public administration. This selection shows how the principles explained in the Manual have been implemented by the negotiating parties through collective agreements. There is no better way to show the contribution of collective bargaining to social peace and progress than the parties' freely agreed propositions.

The Supplement seeks to provide examples for negotiators and public service labour relations practitioners of ways to achieve coherent and constructive agreements that will promote the quality and independence of the public services, as expressed by the Committee of Experts on the Application of Conventions and Recommendations in its Report to the International Labour Conference in 2013 and reiterated by the participants to the Global Dialogue Forum. SECTOR trusts that these pages will contribute to a constructive engagement of worker organizations and government employers in this regard.

The selected clauses include several compiled by SECTOR, and others submitted by affiliates of Public Services International (PSI) and extracted from the website of the Wage Indicator Foundation. This supplement has been compiled by Carlos Carrion-Crespo of SECTOR. We would like to express our appreciation to ILO consultant

Andrea Betancourt and PSI officer Jürgen Buxbaum for their assistance in this endeavour. We would also like to thank Minawa Ebisui and Sarah Doyle from the Governance and Tripartism Department, to Peter Fremlin from the Gender and Equality Department, and to Juan Lucero from SECTOR for their extensive comments on the draft.

Alette van Leur  
Director, Sectoral Policies Department



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# List of Acronyms

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|                 |  |
|-----------------|--|
| <b>ACAS</b>     | UK Advisory, Conciliation and Arbitration Service                                    |
| <b>AGE</b>      | Spanish General State Administration   |
| <b>CEACR</b>    | ILO Committee of Experts in the Application of Conventions and Recommendations       |
| <b>CIVEA</b>    | Comitee on the Interpretation, Vigilance, Study and Application (Spain)              |
| <b>CoPAR</b>    | Argentinian Permanent Committee on Application and Labour Relations                  |
| <b>EUPAE</b>    | European Union Public Administration Employers                                       |
| <b>FYROM</b>    | Former Yugoslav Republic of Macedonia  |
| <b>MMNB</b>     | UK Middle Managers Negotiating Body for the Local Authority Fire and Rescue Services |
| <b>NAPEMA</b>   | NAPOLCOM Employee Association (Philippines)  |
| <b>NAPOLCOM</b> | Philippine National Police Comission   |
| <b>NJC</b>      | UK National Joint Council for Local Authority Fire and Rescue Services               |
| <b>ILO</b>      | International Labour Organization  |
| <b>OSH</b>      | Occupational Safety and Health   |
| <b>TUNED</b>    | Trade Unions' National and European Administration Delegation                        |
| <b>UGAWU</b>    | Uganda Government and Allied Workers Union   |
| <b>UNA</b>      | National University of Costa Rica  |

# Introduction

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In 2013 the Committee of Experts on the Application of Conventions and Recommendations pointed out that social dialogue and collective bargaining can help public services to maintain:

“... a qualified and motivated staff and a dynamic and depoliticized public management and administrative culture, with an ethical focus, 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 to the public.<sup>1</sup>

Collective bargaining contributes to social peace, adaptation to economic and political change, the fight against corruption and the promotion of equality.<sup>2</sup> To that effect, the Committee of Experts reminded constituents that the aim of Convention No. 151 “is not to constantly challenge the stability of the fundamental rules and principles applicable to public servants (often enshrined in legal provisions) – which would not make sense – but to ensure that the determination and amendment of such rules is carried out through a process of social dialogue, as necessary, when the parties so agree.”<sup>3</sup> The participants in the Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service, held in Geneva on 2-4 April 2014, agreed that collective bargaining “should aim to deal not only with technical conditions of work, but also to strive to create conditions that allow public service workers to carry out their duties in a motivated and efficient manner . . . creating transparent conditions in which the public service develops an ethical culture that prevents corruption.”

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1 ILO: *General Survey concerning labour relations and collective bargaining in the public service*, Report III (Part 1B), International Labour Conference, 102nd Session, Geneva, 2013 (hereinafter, General Survey), para. 224.

2 Ibid, paras 227–229.

3 Ibid., para. 268.

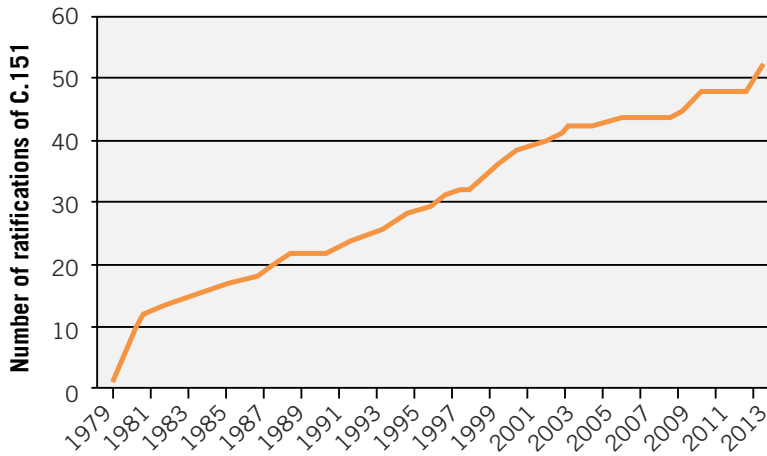


ILO research shows that the main anti-crisis measures approved before 2011 were consulted with the social partners in 51 countries out of 131 countries with data (39 per cent).<sup>4</sup> Social dialogue actually increased the speed with which new measures were adopted.<sup>5</sup> Several European municipalities and workers' representatives had flexibility to respond to austerity measures at the local level.<sup>6</sup> In these cases, the principles of Convention No. 151 have helped the parties reduce or overcome potentially volatile obstacles. Indeed, there has been increased interest in strengthening consultation and negotiation mechanisms in the public service: since 2008 Botswana, Colombia, Mozambique, Turkey and Uruguay have adopted measures granting collective bargaining for government workers. In addition, Costa Rica, Dominican Republic and Republic of Korea have adopted other consultation mechanisms.

By March 2015, 53 member States had ratified Convention No. 151. Only in 2013-15, the Governments of Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Morocco, the Russian Federation and Tunisia ratified the Convention. In the case of Morocco, ratification followed the signing in 2011 of a tripartite agreement in the public service which included pay increases in public service, training and qualifications, transparency, retirement, pensions, freedom of association and the right to strike.<sup>7</sup>

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- 4 ILO: "Employment protection and industrial relations: Recent trends and labour market impact", in *World of Work Report 2012* (Geneva, International Institute for Labour Studies, 2012), pp. 35–57. See also ILO: 'Social unrest index 2010-13' (Geneva, ILO, 2013), and European Commission: *Industrial Relations Report in Europe 2014* (2015), p. 83.
  - 5 Vaughan-Whitehead (ed.), *Public Sector Shock* (Edward Elgar, 2013); Y. Ghellab et al.: "Social dialogue and social security governance: A topical ILO perspective", in *International Social Security Review* (2011, Vol. 64, No. 4, Oct.–Dec.), pp. 39–56.
  - 6 P. Leisink et al.: *Are there possibilities to make the best of the economic crisis? A comparative study of social dialogue in local government in Italy, the Netherlands and the UK*, [http://ilera-europe2013.eu/uploads/paper/attachment/278/Leisink\\_et\\_al\\_Austerity\\_Paper\\_Ilera\\_ID\\_215\\_v2\\_060613.pdf](http://ilera-europe2013.eu/uploads/paper/attachment/278/Leisink_et_al_Austerity_Paper_Ilera_ID_215_v2_060613.pdf),\_paper presented to the 2013 ILERA European Conference.
  - 7 ILO: *Final Report of the Discussion, Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service* (Geneva, ILO, 2014), para. 16.

## Progress of ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151) since 1978



The governments of Benin, the Czech Republic, Kenya and the Syrian Arab Republic have included the Convention in their tripartite consultation agendas. Also, the Decent Work Country Programmes for Benin, Bosnia and Herzegovina, Dominican Republic, Lesotho, Madagascar, Namibia and Serbia include Convention No. 151 as a priority; and those for Cambodia, Lao People’s Democratic Republic, Republic of Moldova, Mozambique and Ukraine include support for collective bargaining in the public service. The Philippines Labor and Employment Plan 2011–16 and the 2011 Resolution of Southern African Development Community Labour Ministers also include it as a priority. The report of the General Survey of 2013 included requests for technical assistance by the governments of Benin, the Plurinational State of Bolivia, Chile, Costa Rica, the Czech Republic, Jordan, Paraguay, Senegal, Seychelles, Viet Nam, and Zimbabwe. This assistance may take varied forms but, as the Committee emphasized in the report, “the key factor in the implementation of Conventions Nos. 151 and 154 is not the form of the collective agreement or its legal force, or whether it should be



integrated into a legal enactment to be effective, or whether it can be applied directly without having been approved by another body, but rather whether it is being applied in practice (principle of effectiveness).”<sup>8</sup> This supplement aims to provide concrete examples that can contribute to this goal.

This Supplement seeks to support the efforts being carried out to improve labour relations and to ratify the Convention in these and other countries, by showing ways to implement it effectively through social dialogue and collective bargaining. To that effect, the supplement includes clauses from collective agreements in the public administration around the world, which fulfil several of the following criteria:

1. affinity with the objectives and requirements of Convention No. 151;
2. high level of social dialogue between the parties, where representatives of all or most workplace stakeholders are involved;
3. the collective bargaining process itself (as opposed to external forces, agencies and processes) regularly produces agreements;
4. create supportive institutions and measures for the bargaining process such as facilitation, mediation and, selectively and where appropriate, arbitration;
5. high degree of success in resolving collective bargaining disputes with a minimum of disruption to services;
6. acceptability to the parties and sustainability over the agreements’ intended lifespan, and that strengthen the relationship between the parties; and
7. contribution to public sector performance.

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8 ILO: *General Survey* (Geneva, ILO, 2013), para. 266.

Just like the Manual before it, the supplement does not advocate any particular country's system, although some systems are referenced more often than others. The supplement seeks to package and represent the idea of dispute prevention and resolution to those considering redesigning their own systems. Dispute prevention and resolution endeavours are never complete, never perfect and not all changes represent progress. But some approaches are better able to reconcile policy objectives of social justice, social inclusion, economic progress and effective service delivery, and this supplement points to examples the parties' joint, autonomous and voluntary expressions of how to deliver them.

However, a system that works well cannot simply be transferred to another context. The elements behind a system are of the utmost importance and should be taken into account. Institutions, policies and practices are truly products of their homes and histories, and are not meant for exact replication elsewhere. For example, functioning of special labour relations institutes can be understood only if they are put in the context of a specific country. And because of the political context of the public service, collective bargaining is sensitive to government policy. But before adopting any mechanisms of their own, negotiators and mediators can find and extract workable designs and ideas from other systems, particularly when they are agreed upon through inclusive consultative processes. This Supplement is intended to provide such examples of good practices.

## **The arrangement of the Supplement**

This Supplement is presented in two parts. It opens with a set of framing propositions for the material that follows, including collective agreements that embody them and the statements made by the Committee of Experts in its 2013 Report to the International Labour Conference regarding Conventions No. 151 and 154. Social dialogue between the key par-



ties on the very foundations of the relationship features as the main point of departure. Then, moving from the more general to the more specific, the supplement deals with autonomy in the bargaining process, other features of the bargaining process, approaches and formulas for dispute prevention and finally, in the short second part, approaches and formulas for dispute resolution. This supplement is not meant to replace the Manual or to provide guidance on negotiation or conciliation skills, which are addressed in several ILO publications. For example, Social dialogue and collective bargaining institutions will be elaborated here only insofar as collective agreements establish them.



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## The goals and the context

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Social conflict is less likely in a supportive industrial relations environment where there is a strong commitment to policy concertation, as opposed to contestation. The main characteristic of concertation is the co-determination of policy by governments, employers and trade unions, as well as a strong commitment to employee involvement. This supplement builds the argument that cooperation through social dialogue and collective bargaining can assist in changing organizational culture, as shown in the work of Professor Peter Turnbull, and improve the odds for successful reforms.

Organizational development can be defined as an attempt to improve organizational effectiveness by revitalizing and renewing the organization's technical and human resources. The focus of these activities is on planned (as opposed to ad hoc) change. The process can be "top-down", "side-to-side" or "bottom-up". Directive change (top down) is widely used and is often very effective when it comes to changing people's behaviour in an organization. Process re-engineering (side-to-side) often makes people aware of the inter-connections between different processes and can lead to changes in attitudes as well as behaviour. But if an organization wants to change its culture, it needs to empower the workforce.

Consider these different types of change:

- Behavioural – these changes concern how specific tasks and procedures are performed, with success judged by changes to established metrics such as performance indicators. People will often change what they are required to do if the employer or the government tells them (i.e. they respond to direction, top-down processes of change).
- Attitudinal – changes are aimed at changing people's awareness or understanding of a situation or process, with



changes to attitudes leading to new behaviours. Process re-engineering often makes employees aware of how their actions interact with those of other people in the organization, and this appreciation can lead to a change in attitudes.

- Cultural – attempts to achieve system-wide changes in assumptions, values and norms, leading to attitudinal and behavioural change, require more deep-seated changes.

Organizational culture has been defined as “the pattern of basic assumptions that a given group has invented, discovered or developed, in learning to cope with its problems of external adaptation and internal integration. These have worked well enough to be considered valid and are therefore taught to new members as the correct way to perceive, think and feel in relation to these problems”.<sup>9</sup> The culture of an organization is relatively enduring over time and is often “taken for granted” – it becomes so much part of how people behave and the attitudes they embrace that they are often unaware of it, until or unless it comes into conflict with another culture.

There is considerable debate about whether organizations can change their culture – Karen Legge likens this process to riding a wave, where the key is to understand the pattern of currents and winds, which is clearly not the same as changing the tides or basic rhythms of the ocean.<sup>10</sup> The proverbial tides of Legge’s image are the workplace dynamics, which may be in conflict or not with the actions that the proverbial wave rider, in this case the reformers, take to manage change. Social dialogue and collective bargaining can contribute by bringing out workers’ interests; building trust between the parties and in the change process itself; and empowering them to contribute to the goals of the organization. This empowerment has been cited as the main goal of several collective bargaining statutes.

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9 E. Schein: *Organizational Culture and Leadership* (John Wiley & Sons, 2006), p. 17.

10 K. Legge: *Human Resource Management: Rhetoric and Realities* (Macmillan, London, 1995).

As will be seen in this supplement, social dialogue and collective bargaining can also strengthen the effort to professionalize public employees by institutionalizing the bidirectional exchange of information and mutual agreement to establish collaboration mechanisms for the improvement of the services, as well as through clauses for recruitment and selection, performance management, career development and training, among others. Social dialogue has the potential of harnessing the expertise that workers develop through their engagement with the public, which is the same expertise that courts defer to when reviewing decisions made by executive branch agencies. In this regard, the guarantees established by Convention No. 151 (1978) can be turned into tools for participation and empowerment that may translate into an enduring commitment by workers and management to organizational development.



# PART I. Dispute Prevention

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## The Framework

### Social dialogue as the starting point

A 2009 study suggested that restricting the scope of collective bargaining may have adverse effects on reform, by driving unions to a defensive position on the few areas they can influence rather than cooperating on furthering the quality of the services.<sup>11</sup> The reader is encouraged to refer to other ILO publications on social dialogue in the context of the public service, but we incorporate here some of their observations and conclusions:

- “ No universally agreed definition of social dialogue exists. Social dialogue can take place at different levels and in various forms, depending on national contexts.
- “ According to ILO’s broad working definition, which reflects the wide range of processes and practices that are found worldwide, social dialogue includes all types of negotiation, consultation or information sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy.
- “ Social dialogue is both a means to achieve social and economic goals and an objective in itself, as it gives people a voice and stake in their societies and workplaces. It can be bipartite, between workers and employers (referred to by the ILO as “the social partners”) or tripartite, including government. Social dialogue can improve the design of policy measures; it can contribute to their effective implementation and it can improve the quality of the outcomes.<sup>12</sup> . . .

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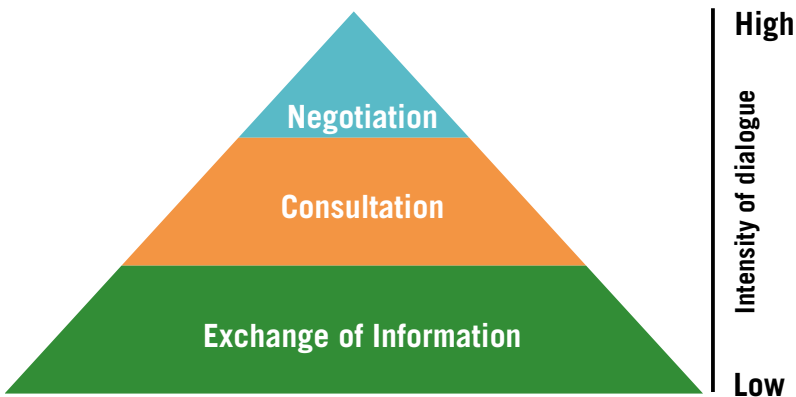
11 M. H. Malin: “The Paradox of Public Sector Labor Law,” *Indiana Law Journal*: Vol. 84 No. 4 (2009), p. 1369.

12 ILO: *Guidebook on national tripartite social dialogue* (Geneva, ILO, 2013), p. 12.

A major lesson is that reforms can be successful only if they are designed and implemented with the cooperation of, and in consultation with, all the stakeholders who will be affected.<sup>13</sup>

Social dialogue includes the sharing of all relevant information, consultation and negotiation between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policies. Social dialogue has broad and varied meanings worldwide: it should take place at all appropriate stages of the decision-making process; it should not be overly prescriptive; it should be adapted to circumstances, and it should include particularly those affected by the changes/decisions.<sup>14</sup>

### Social dialogue triangle



Source: J. Ishikawa: *Key features of national social dialogue: A social dialogue resource book* (Geneva, ILO, 2003) p. 3.

13 V. Ratnam and S. Tomoda: *Practical guide for strengthening social dialogue in public service reform* (Geneva, ILO, 2005), p. iii. See also paragraph (2) of the Labour Relations (Public Service) Recommendation, 1978 (No. 159), in the Appendix.

14 *Ibid.*, p. 3.



Exchange of information is the most basic process of social dialogue. It implies no real discussion or action on the issues concerned, but it is an essential starting point towards more substantive social dialogue. Consultation is a means by which the social partners not only share information, but also engage in more in-depth dialogue about issues raised. ... Collective bargaining and policy concertation can be interpreted as the two dominant types of negotiation. Collective bargaining is one of the most widespread forms of social dialogue and is institutionalised in many countries. It consists of negotiations between an employer, a group of employers or employers' representatives and workers' representatives to determine the issues related to wages and conditions of employment.<sup>15</sup>

The ILO recognizes that the definition and concept of social dialogue vary over time and from one country to another. Social dialogue can be informal and ad hoc or institutionalized and formal – or even a mixture of these. Social dialogue can also be carried out with the involvement of worker and employer organizations and the government (tripartite); bi-partite (for example, in collective bargaining) and “tripartite plus”, which may include other organizations.<sup>16</sup> The informal processes can be as important as the formal ones.<sup>17</sup> For example, in Brazil, a large number of bipartite conferences have been organized in past years to address labour relations issues through social dialogue.<sup>18</sup> In Namibia, trade unions work in close collaboration with the government, and before any new legislation related to labour issues can be imposed, the unions receive a draft of the new act.<sup>19</sup>

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15 J. Ishikawa: *Key Features of National Social Dialogue: a Social Dialogue Resource Book* (ILO, 2003), p. 3.

16 ILO: *Guidebook on national tripartite social dialogue* (2013), pp.15-17.

17 Ibid.

18 J. Drummond and D. Paiva Ferreira: *Report on public sector labour relations in Brazil*, presented at the validation workshop of the Manual, Turin, Italy, 28 July 2011.

19 H. Hangula and M. Linane: *Report on public sector labour relations in Namibia*, presented at the validation workshop of the Manual, Turin, Italy, 27 July 2011.

The Committee of Experts has identified “different consultation systems and methods in accordance with their national circumstances and cultural and legal traditions”. It emphasized “the importance of in-depth, frank, full, detailed and free consultations with the most representative organizations on terms and conditions of employment and any related legislation or measure,” and stressed that the parties “should make sufficient efforts to reach joint solutions as far as possible.” It has also highlighted the importance of consultations taking place in good faith, confidence and mutual respect, and of the parties having sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Committee also highlighted that

“it should be possible to hold consultations on all matters relating to terms and conditions of employment, at all levels – national, sectoral, local and public entity – with the representative organizations at each level. . . . mere consultation on administrative measures or draft legislation on public employees’ general conditions of employment does not fully meet the objectives and requirements of Convention No. 151, . . . it should also be possible to hold consultations at the different levels so as to cover the specific terms and conditions of employment of public employees at each level.

The Committee added that countries which have ratified the Collective Bargaining Convention, 1981 (No. 154) should engage in full collective bargaining, not merely consultations, regarding wages and other terms and conditions of employment, while taking into account budget constraints inherent in the sources of funding.<sup>20</sup> Finally, the Committee recommended that consultations transcend terms and conditions of employment, and also deal with “issues of common concern, including personnel policy in the public administration and human resources and management issues such as those arising from new forms of work organization or restructuring.” This process “can often help prevent collective disputes and

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20 ILO: *General Survey* (Geneva, ILO, 2013), para. 324.



achieve solutions that are more acceptable to the public employees or public authorities concerned.”

Collective agreements are a viable vehicle to express these lofty goals. In the Philippines, the government and labour signed in 2004, a Memorandum of Undertaking for Quality Public Service and Performance where both parties agreed to institutionalize policies of participation of unions in among others, policy formulation, working conditions of government employees at various levels. These policies would strengthen the participation of workers in policy making (in relation to working conditions) and thus in solving and preventing conflicts, together with the government. In 2008, the Public Services Labour Independent Confederation, the Departments of Health and Education, and the Civil Service Commission of the Philippines established technical working groups to promote the institutionalization of social dialogue for improved delivery and quality of public services with the support of the Danish government and Trade Union Council. The evaluation report of the pilot project identified occupational safety and health as an entry point for social dialogue; found that solidarity, participation, responsibility, accountability, and effectiveness were the grounds for learning the significance of social dialogue for quality public health and education services; and that initial experiences of social dialogue established interpersonal communication that led to a “participatory process of concerted decision making.”

On similar terms, the General Collective Agreement for of the National Civil Staff of Argentina includes a commitment by the State to provide all the information, including budget data, that the Union may need to bargain with full knowledge, making an express reference to the ILO’s Collective Bargaining Recommendation, 1981 (No. 163). For the same purpose, the State also committed to providing a statistical report on the social and family characteristics of the staff, its wages and educational level, as well as the rate of absences, voluntary



transfers and disability. This collective agreement covers 2.8 million workers. Similarly, the Collective Negotiation Agreement between Sultan Kudarat State University and Sultan Kudarat Polytechnic State College-Faculty Association (2011-2014) of the Philippines provided that the employer may provide, upon request, a report of the financial status of the university to ensure the availability of funds for all agreed provisions, including data on annual savings, the projected allocation of funds for faculty and staff benefits, faculty hiring, promotions, transfers, scholarship programs, accumulated leave and service credits and other benefits and incentives, as well as copies of reports submitted to the government on the projected annual budget allocations of the University. In exchange, the union would provide financial status reports.

Other agreements provided incentives for communication and joint supervision of the working conditions. In France, the collective agreement for government-run home care work recognizes the need to maintain local social dialogue within each enterprise/company. For this, the agreement lays out a mechanism of time credit to ensure that workers are provided with sufficient time per year to exercise their union rights and participate in social dialogue institutions, financed with 0.01% of the payroll. Each sectoral federation is entitled to a credit of 60 days yearly, and the remainder can be distributed by the national federations in the proportion of their comparative representation of workers.<sup>21</sup> The industrial agreement between the government of the Bahamas and the Bahamas Public Service Union (2012)<sup>22</sup>, in turn, affords the union officers direct communication with the high responsible government officials, for matters not covered by the grievance procedure, and schedules quarterly consultative meetings to discuss matters of mutual interest. The representatives of the parties that are stationed in various areas were

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21 France: Collective Agreement for the Aid, Company, Care and Home Services Branch (2010), Article 25.

22 Available at: [http://bpsubahamas.org/files/BPSU\\_2012\\_Industrial\\_Agreement.pdf](http://bpsubahamas.org/files/BPSU_2012_Industrial_Agreement.pdf).



expected to conduct inspection tours of the work areas jointly on a quarterly basis. In addition, the Employer agreed to appoint a Working Conditions Health and Safety Committee of seven members, including three Union-nominated representatives.

Finally, a word must be said about social dialogue framework agreements, which have been negotiated in the European Union. The European Social Dialogue Committee for central government administrations was established in 2010 to participate in consultations on all European Commission projects with an impact on public services. This committee also has the objective of promoting social dialogue both at the European and national levels.<sup>23</sup> In 2009, the committee facilitated a very detailed European Framework Agreement on Prevention from Sharp Injuries in the Hospital and Healthcare Sector, signed by the European Public Services Union (EPSU) and the European Hospital and Healthcare Employers' Association, as well as a more general European Framework Agreement for a Quality Service in Central Government Administrations (2012), signed by the European Union Public Administration Employers<sup>24</sup> and the Trade Unions' National and European Administration Delegation (TUNED).<sup>25</sup> This agreement contains 20 specific commitments regarding the quality of public services and of working life.

## Changing mindsets

The Declaration of Philadelphia explicitly provides for “the collaboration of workers and employers in the preparation and application of social and economic measures”. To fur-

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23 Rules of Procedure for the European Social Dialogue Committee for Central Government Administrations, 17 December 2010, Clause 3.

24 Full members: Italy, France, Luxemburg, Czech Republic, Belgium (as founders) UK, Spain, Greece, Romania, Slovakia, Lithuania; and as observers, Hungary, Malta, Austria and Germany. Valerio Talamo, Presentation before the 2014 EUPAN Troika Secretariat meeting, Rome, September 2014.

25 TUNED is a coalition between EPSU and European Confederation of Independent Trade Unions.

ther this aim, the Manual encouraged the parties to recognize the role of each other in the advancement of quality public services. While governments should fully recognize trade unions for collective bargaining and related engagement purposes, government worker unions must also move beyond their traditional “defender” role to incorporate also a “contributor to the organization” role, and then be able to manage the dualism successfully.<sup>26</sup> This requires a careful balance in the drafting of collective agreements, to recognize the interests of both parties.

Several collective agreements have provided general frameworks that promise to carry out this endeavour. The Collective Agreement between the Bahamas Public Service Union and the Government, for example, established that “[t]he successful economic operation of the Employer’s working is hereby declared to be of mutual interest to both parties who desire to preserve, promote and improve the industrial and economic relationships, safety, efficiency and productivity of the organization.”<sup>27</sup> Likewise, the collective agreement for the public health sector in Quebec, Canada, manifested the will of the parties to collaborate in the quality of the services through the employer’s commitment to fairness and the union’s support for adequate performance by staff.<sup>28</sup> In Uganda, the agreement recognized that such goals should be met “within the limited resources of the Country”.<sup>29</sup>

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26 See T. Huzzard, D. Gregory, and R. Scott (eds.): *Strategic unionism and partnership: Boxing or dancing?* (Houndmills, Hampshire, UK, Palgrave Macmillan, 2004); also, Amalgamated Engineering, Printing & Manufacturing Union y Dairy Workers’ Union of New Zealand: *Building high performance workplaces: The union approach* (New Zealand, Centre for High Performance Work, 2010).

27 Bahamas: Industrial Agreement between the Government and the Bahamas Public Services Union, Art. 3 (“Statement of Policy”).

28 Canada: National Provisions agreed between the Alliance of Professional and Technical Personnel of Health and Social Services (APTS) and the Quebec Employers Negotiating Committee of the Health and Social Services Sector (CPNSSS), Art. 2 (“Object”).

29 Recognition Agreement between the Government and the Uganda Government and Allied Trade Workers Union (2012), Art. 5 (“General Principles”).



The Collective Agreement covering public servants in Argentina, in turn, establishes the principles of collaboration, ethics, merit, employment stability, continuous improvement at the professional and institutional level, efficiency and hierarchy. These principles must also guide sectoral negotiations.<sup>30</sup> The workers, in turn, commit to carry themselves with a collaborative and courteous attitude towards their colleagues and the public.<sup>31</sup> Finally, the unions agreed to collaborate with the State in determining the permanent and non-permanent personnel needs.<sup>32</sup>

A related policy statement can be found in the collective agreement covering staff of the Mwanza Urban Water Supply and Sanitation Authority of Tanzania, where the parties agreed to put in place good job programs and provide education to employees of all levels about best practices of how employees work together and how they play a major role to increase efficiency and productivity within the authorities and the general public. The parties also agreed to negotiate criteria for selecting competent personnel, efficiency standards and incentives.<sup>33</sup>

## Bargaining representatives

It is worth recalling that the Manual invites the parties involved to recognize one another for the purpose of negotiating. This recognition may be voluntary, as is the case in some countries where it is based on agreements or a well-established practice. Some countries have adopted legislation obliging government employers to recognize trade unions for

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30 Argentina: Collective Agreement between the Civil Administration and the Union of the National Civil Staff (2006, in force), Art. 16 (“Nature of the Employment Relationship”).

31 Id., Art. 36. Similar text was found in the Collective Agreement for the Finance Ministry in El Salvador (No. 11, “Mutual Respect and Obedience”) and in Madagascar: Collective Agreement for the Agency for the Development of Rural Electrification (Art. 3, “Provision of Service”).

32 Id., Art. 159.

33 Collective agreement between the Mwanza Urban Water Supply and Sanitation Authority and the Tanzania Union of Government and Health Employees (2015), Art. 12.0.

collective bargaining purposes, subject to certain conditions. On the other hand, the enabling legislation might assist trade unions to identify who represents the government in negotiations. Simple legal provisions can spell out who is responsible for carrying out collective bargaining, thereby assisting the parties involved to recognize one another. Collective agreements may identify the specific areas of work that are covered,<sup>34</sup> or refer to legal documents that spell out the composition of bargaining units and other forms of recognition, which avoid the repetition and the need to accommodate to any changes, and the government may commit to abstaining from negotiating with individual employees regarding wages, hours and working conditions,<sup>35</sup> to ensure uniformity of working conditions throughout the government. This should not be interpreted as precluding the employing government entities from supervising their employees, although changes to work processes may require prior agreement.<sup>36</sup>

An agreement can include commitments to enact legal documents recognizing the unions, such as the centralized collective agreement signed in May 2013 by the Colombian government and the unions representing its workers. In this agreement, the government committed to issue a decree extending such recognition, in November 2013. The Colombian government also committed to issuing two decrees to ensure that the National Commission of Civil Service consults with unions and federations before adopting a performance evaluation tool or before modifying it. Since 2013, forty national level agreements, 80 regional agreements and 165 municipal level collective agreements improving working conditions for public service workers were reached. In February 2014, the government expanded the scope of bargaining through Decree No. 160.

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34 See, e.g., Contrato Colectivo de trabajo 2014-16, Comisión Federal de Electricidad de México, Cláusula 4.

35 Ibid., Cláusula 6.

36 See, e.g., Contrato Colectivo de trabajo 2014-16, Comisión Federal de Electricidad de México, Cláusulas 6 and 14.



## Union security clauses

It is crucial that governments respect the independence of the public servants' organizations, under article 5 of Convention No. 151. To such effect, the General Collective Agreement for the public sector in the the Former Yugoslav Republic of Macedonia (FYROM) states that “the activity of the trade union and its representative cannot be restricted by an act of the employer”.<sup>37</sup> The agreements may also guarantee that the employer will not unilaterally transfer union leaders who remain on the job, which could be construed as retaliation for union activity or a separation of the leadership from the rank and file.<sup>38</sup> A feature that rewards participating in social dialogue was included in the Swedish Basic Agreement, which considers union representation not only as an official function but also as a means for staff to acquire competencies that will be considered for career development.<sup>39</sup>

## Cordination mechanisms for employee representation

It is important to establish clear rules for collaboration between the different levels of management and unions in the public service, which tends to have several layers of labour relations management. For example, Article 85 of the General Collective Agreement for the Spanish General Administration designates shop stewards as employee representatives for workplaces with less than fifty employees, but enterprise committees shall represent staff in larger workplaces. Their election will be carried out at the provincial level in each entity, and the composition of the enterprise committees will be determined by law. In cases where more than one union represents employees, some agreements have included complex

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37 Art. 35.

38 See, e.g., the Industrial Agreement between the Government of Bahamas and BPSU, Article 5.

39 Sweden: Basic Agreement for the Civil Service, Section 32 (“Exercise of official duties as a union representative”), para. 6.

arrangements to ensure equitable distribution and flexible arrangements to adjust to changes, like the following example from the United Kingdom.

**UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009)**

*Changes in the composition of the Employees' Side*

15. Any independent certified trade union represented on the NJC [National Joint Council] or MMNB [Middle Managers Negotiating Body], or any independent certificated trade union that is not represented, may initiate a review of the composition of the Employees' Side of either the NJC or MMNB. Following such a request the NJC will commission an independent audit of membership levels.

16. In order to gain recognition and a seat on the NJC or MMNB, any independent certified trade union must demonstrate, through an independent audit commissioned by the NJC, that it has in its membership at least one fourteenth of the number of employees covered by either the NJC or MMNB as appropriate.

17. In order to gain an additional seat, or to retain any seat, on the NJC or MMNB, a recognised trade union must demonstrate, through an independent audit commissioned by the NJC, that it has in its membership at least one fourteenth of the number of employees covered by either the NJC or MMNB as appropriate, in respect of each seat.

18. In the case of both the NJC and MMNB the total Employees' Side membership at any time shall not exceed 14.

19. The organisation initiating the review process shall meet all the relevant costs, including those of the independent audit.

20. No trade union can be the subject of a review within three years of it last being the subject of review.

The Committee of Experts, in the 2013 report on the General Survey, indicated that “mechanisms involving representatives of the State at the highest level and the most representative confederations of workers and employers should be established without delay in the event of serious crises, in order to address their economic and social impact in a united approach, pay-



ing special attention to the most vulnerable groups.”<sup>40</sup> In this regard, recent experience has been mixed. On one hand, some European governments have reduced the role of collective bargaining in the determination of wages and working conditions as an urgent measure to deal with the financial and economic crisis.<sup>41</sup> On the other hand, the recent budget reductions have not affected all local governments in the same way. For example in France, recent massive state administration reorganizations lacked social dialogue, but some cities held continuous negotiations about public service reorganizations and work conditions.<sup>42</sup> A 2013 study concluded that municipalities as well as workers’ representatives still have some choice in terms of how they respond to austerity measures at local level.<sup>43</sup>



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40 Para. 601.

41 Vaughan-Whitehead (ed.), Op. Cit.

42 Jeannot Gilles, *Public sector restructuring and employment relations in France*, <http://ilera-europe2013.eu/uploads/paper/attachment/56/amsterdamfinal.doc>.

43 Eva Knies, Peter Leisink, Stephen Bach, Lorenzo Bordogna, Ian Kessler, Alexandra Stroleny, and Ulrike Weske, Are there possibilities to make the best of the economic crisis? (Paper presented to the ILERA Conference for Europe in 2013). Available at: [http://ilera-europe2013.eu/uploads/paper/attachment/278/Leisink\\_et\\_al\\_Austerity\\_Paper\\_Ilera\\_ID\\_215\\_v2\\_060613.pdf](http://ilera-europe2013.eu/uploads/paper/attachment/278/Leisink_et_al_Austerity_Paper_Ilera_ID_215_v2_060613.pdf).



## Respect for Civil and Political Rights

Article 9 of Convention No. 151 states that “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.” This principle was enshrined in the Resolution Concerning Trade Union Rights, adopted by the International Labour Conference in 1970, which recognizes that the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

The following civil liberties are essential for the normal exercise of trade union rights: the right to freedom and security of person and freedom from arbitrary arrest and detention, freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, freedom of assembly, the right to a fair trial by an independent and impartial tribunal and the right to protection of the property of trade union organizations.

Collective agreements can serve to protect these rights. In Chile, the national-level agreement protocol contains the government’s commitment to enact legislation regarding the protection of non-labour rights of public servants like privacy, honour and freedom of expression.<sup>44</sup> In Argentina, the first

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44 Chile: Protocol of Agreement (2014), para. 8. Act No. 20.087 of 3 January 2006 defines these rights and establishes the legal rule that alleviates the burden of proof of a worker who suffers an injury from the behavior of the employer. This protection had been extended to public servants by the Supreme Court in April 2014, and this agreement seeks to implement this doctrine.



national agreement covering the University Professors provides that the exercise of management rights will not affect the employees' personal rights nor can the employer force staff to reveal neither their political, religious or labour views nor their sexual orientation.<sup>45</sup> This agreement also guarantees their right to run for political office.

Although these rights and limitations of public employees are usually established in law, collective agreements can set out additional conditions. For example, the Maltese Collective Agreement for Employees in the Public Service compels workers to observe the confidentiality that is part of their duties, as long as it does not contravene relevant legislation.<sup>46</sup> On the same token, the collective agreement covering electric utility staff in Madagascar guarantees freedom of expression, but does not allow political discussions during working hours.<sup>47</sup>

## Facilities afforded public servant organizations

Article 6 of Convention No. 151 requires ratifying states to afford to the representatives of recognized public employees' organisations facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.<sup>48</sup> According to the Committee of Experts, collective agreements that implement this Article of the Convention "should apply to a large number of workers and ensure in practice a substantial number of facilities."<sup>49</sup> The Committee of Experts has clarified that these facilities could be granted to trade union represent-

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45 Argentina: Collective Agreement covering the Faculty of the National University Institutions (2014), Arts. 17 to 19.

46 Article 10.1.

47 For example, Madagascar: Collective Agreement for the Agency for the Development of Rural Electrification, Art. 5 ("Freedom of Association and Expression").

48 Albania, DR re C.151, CEACR 2004/75th Session.

49 ILO: General Survey (Geneva, ILO, 2013), para. 572.

atives and to representatives elected for public institutions as a whole, “provided that the existence of elected representatives cannot be used to undermine the position of the workers’ organizations concerned.”<sup>50</sup> In any case, the Government should examine with the social partners how to promote, on a broader basis, the facilities to be granted to workers’ representatives.<sup>51</sup>

The Workers’ Representatives Recommendation, 1971 (No. 143) should be used for guidance on determining the nature and scope of the facilities which should be afforded to representatives of public employees. Those listed in Recommendation No. 143 are not the only ones possible, but at least one or two of the most important among those mentioned in this Recommendation should be granted by law or in practice. Also, the size and specific characteristics of each public institution should determine their number and nature. The most important facilities are the granting of time off for workers’ representatives without loss of pay or benefits, the collection of trade union dues, access to the workplace and prompt access to management. Other examples for such facilities which may be regulated by legislation or collective agreements or other means<sup>52</sup> are: transport and communication<sup>53</sup>, access to the management of the enterprise, the right of assembly, the possibility of collecting trade union dues regularly on the premises of the enterprise, authorization to post trade union notices, the right to attend meetings, or such other material facilities and information as may be necessary for the exercise of their functions.<sup>54</sup> This could also include the capacity to denounce to the competent authorities any failure to comply with the provisions of the administrative rules and other texts establishing the rights and obligations of public officials.<sup>55</sup>

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50 ILO: General Survey (Geneva, ILO, 2013), para. 142.

51 El Salvador, DR re C.151, CEACR 2009/80th Session.

52 Chad, DR re C.151, CEACR 2005/76th Session.

53 Republic of Moldova, DR re C.151, CEACR 2005/76th Session.

54 Belarus, DR re C.151, CEACR 1999/70th Session.

55 Chile, DR re C.151, CEACR 2005/76th Session.



The following examples illustrate ways in which collective agreements provide for these facilities, which guarantee that the union will count on these resources during the life of the agreement. The size of the undertaking and the type of service on the agreement influences the choice of measures.

### **Union dues payroll deduction**

The collective agreement signed in 2013 by the Colombian government and the representative unions, mentioned above, provide for a one-time deduction of one per cent of the normal dues of union members covered by the collective agreement to contribute to the cost of bargaining, and the government committed to invite those not affiliated to the unions to voluntarily authorize such a deduction. The government also agreed to issue a decree ordering the dues deduction from affiliated employees, and to jointly explore the possibility of legislative action to authorize the deduction of a service fee from unaffiliated staff covered by the collective agreement. Since the agreement covers 1.2 million workers, such deduction saves the unions a substantial amount of time that may be spent on implementation activities.

Other measures found in large undertakings and others are access to bulletin boards, access to certain facilities and the distribution of both union and employer literature, as well as time off for union officials, all with employer approval and not disruptive to the services—for example, by fixing the officials' time off depending on the size of their constituencies.<sup>56</sup> However, the employer's decision should not be based on the contents of the communications.

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56 See, e.g., Canada: Agreement between the Treasury Board of Canada and the Association of Canadian Financial Officers, Article 7, and Bahamas: Industrial Agreement between the Government of Bahamas and BPSU, Article 5; also, III Convenio Único de la Administración General del Estado (Spain, UGT-AGE, updated 2013), Art. 86.

## Time off for union activities

Also, union members' participation in meetings may be facilitated through time off, since it would be unmanageable for the union to visit each member in their homes, and ensures uniform communication. For example, the Collective agreement for the French branch for social assistance, guidance, care and home services, which employs 223,000 persons in 5,230 structures nationally, grants each employee 6 hours per year for this purpose, which the parties consider an essential part of the freedom of expression and association.<sup>57</sup> In addition, all covered enterprises must provide them the opportunity to collect union fees, distribute union information, use the company's bulletin boards to make union announcements, have access to a specific room (facility) for union operations, and legally binding employment protection, in particular to union representatives. Moreover, union representatives at the departmental, regional and national levels can arrange absences in advance with the company in order to attend union activities, such as conferences and meetings.

The collective agreement covering the workers of the National University of Costa Rica (UNA) provides paid time off for workers to attend union-related courses and conferences within or outside the country up to six months, upon a reasoned request by the union leadership. The time extension may be extended by the University Council, but may not exceed two full-time staff during twelve months. This arrangement allows workers to gain knowledge of workplace issues, which may result in a reduction of conflict and transaction costs for the employer.

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57 France: Collective Agreement for the Aid, Company, Care and Home Services Branch (2010), Title II, Chapter 3 ("Industrial relations at the entreprise level").



## Access to workplaces

Collective agreements can regulate access to the workplaces in order to strike a balance of interests. For example, the FYROM General Collective Agreement for the public service provides that the trade union representative shall be enabled to communicate without any obstructions with the employer, or a person authorized by the employer, and with all trade union members at that employer, when it is necessary for the functioning of the trade union.<sup>58</sup> The employer will enable the authorized representative of a trade union at a higher level of organization to communicate freely and carry out the trade union activities without any obstructions.

Similarly, the representatives of the Uganda Government and Allied Workers Union (UGAWU) have full access to workplaces with the condition that register previously as union visitors. The rules for such access are spelled out in an appendix of the agreement, but the union's nominations do not require official approval. Meetings need to be coordinated with the officer in charge of the staff, but the rules do not grant the employer the right to verify the contents of the meeting and the union regulates its own procedure. In any case, union officials need to address only union affairs.<sup>59</sup> The Ugandan public service employed 271,854 persons in 2011, most of which had the right to join UGAWU.<sup>60</sup>

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58 Article 36, paragraph 2, as reported by T. Kalamatiev and A. Ristovski, "Comparative Analysis of the Labour Relations (Public Service) Convention, 1978 (no. 151) and the National Legislation, Regulations and other measures concerning Protection of the Right to Organise and Procedures for determining conditions of employment in the public service" (2012).

59 Uganda: Recognition Agreement between the Government and the Uganda Government and Allied Trade Workers Union (2012), Art. 3 ("Union Officials' Right of Access") and Appendix 1 ("Rules Governing Access of Officials and Representatives to Employing Units").

60 According to the National Organization of Trade Unions, the UGAWU organizes most categories of Uganda government public sector workers in government ministries except the armed forces under the Ministry of Defence; District Local Government Public Servants in all the 101 districts of Uganda; Municipal and Town Councils; Uganda Revenue Authority; Uganda Forestry Authority; Public Service Commission; Judicial Service Commission; and Human Rights Commission.

In a similar vein, the Collective Negotiation Agreement between Sultan Kudarat State University and Sultan Kudarat Polytechnic State College-Faculty Association provides time off, financial support and facilities for a specified number of meetings which the union must schedule at least three days in advance, and training events.<sup>61</sup> In smaller workplaces like the Philippine Municipality of Bislig, the agreement guarantees that the union will be able to provide orientation to new staff about its by-laws, programs and benefits.<sup>62</sup> In those workplaces, the union may organize meetings with and training to all staff at the same time, in the employer's premises, while ensuring that the services will continue to be provided.<sup>63</sup>



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61 Article III, Sections 3, 4 and 7.

62 See, e. g., Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Article IV, Sec. 6.

63 See, e. g., *id.*, Article XII.



## Office space and equipment

Other public agencies are not as populated but may comprise several workplaces, and office space acquires more importance. The NAPOLCOM Collective Negotiation Agreement grants the Association office space and basic office equipment (including maintenance) in the central and sixteen regional offices, which are necessary for union officials to represent employees and for their regular activities. The Peruvian Ministry of Culture (with 23 regional offices and three dependencies), in turn, granted the union the use of meeting rooms within its facilities four times a year to deliver training regarding issues subject to collective bargaining, without charge but subject to availability. The collective agreement covering the workers of the National University of Costa Rica (UNA) even specifies the number of offices and bathrooms that the house or building provided to the union in the main campus must have and that it must have telephone access, a classroom and security guards; also, that the union must have an office in each of its seven campuses and regional sections.<sup>64</sup>

The UNA collective agreement also provides access to publishing equipment, computers and audiovisual equipment, subject to availability and to the established rules regulating their use. Additionally, the University will lend their equipment, instruments/tools through a flat rate fee.<sup>65</sup>

## Levels of bargaining and coordination between levels

The ILO's Collective Bargaining Recommendation, 1981 (No. 163), states that member States should endeavour to

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64 IV Convención Colectiva de Trabajo UNA-SITUN, between the National University (UNA) and the Union of Workers of the National University (SITUN), Art. 171.

65 IV Convención Colectiva de Trabajo UNA-SITUN, Arts. 155, 172 and 173.



make collective bargaining possible at all levels, “including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels”. In those states that establish several levels of bargaining, “the parties to negotiations should seek to ensure that there is coordination among these levels”. The Committee of Experts has stated that “the choice of bargaining level should normally be left to the discretion of the parties themselves since they are in the best position to decide on the most appropriate bargaining level. Consequently, the bargaining level should not be imposed by law or by a decision of the legislative authority.”<sup>66</sup> It added the following:

“ The Committee accepts both systems that leave it to collective agreements to determine the means for their coordination (which is the best solution) and systems characterized by legal provisions that stipulate the areas to be covered by the agreements concluded at the various levels.<sup>67</sup>

The example of the Argentinian legal frameworks was cited in support of these statements. This supplement follows this example, since the collective agreement contains the spirit of the legislation.

### **Centralized definition of the scope sectoral and local agreements**

The Argentinian general collective agreement for all the public service, which covered 115,945 workers in 2012, binds sectoral collective agreements to the Law, regulations, to the general collective agreement itself and the rulings of the Permanent Commission on Application and Labour Relations (CoPAR). Sectoral Collective Agreements may deal with issues delegated or not addressed by the general collective agreement, as well as any sectoral issues emerging from the

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66 ILO: General Survey (Geneva, ILO, 2013), para. 351.

67 Ibid., para. 353.



general collective agreement.<sup>68</sup> In Spain, bargaining “tables” (mesas) are established consisting of representatives of the public administration, on the one hand, and those of the most representative unions, on the other. In particular, a general bargaining “table” is established for the general state administration, for each autonomous community and for each local authority.

These general bargaining tables negotiate the common terms and conditions of employment of the covered public employees. Upon agreement by these general bargaining tables, sectoral tables may be established to cover the specific terms and conditions of employment in a particular sector. The Framework Conditions of Service for health service personnel, adopted in 2003, confirm their right to collective bargaining.<sup>69</sup>

### **Decentralized, coordinated bargaining tables**

A second form of coordination can be seen in the Collective Agreement for the Permanent Negotiating System of the Municipality of Sao Paulo (Brazil), which employs 3.5 million service and public administration workers. The agreement establishes a Central Negotiating Table with the participation of representatives selected by the Forum of Representative Entities of the Municipal Public Service and from five municipal secretariats, which will negotiate through a previously agreed participative methodology. The agreement specifies the unions’ representation by sector and that the government’s participation will be coordinated by the Planning Secretariat.<sup>70</sup> The agreement also establishes Sectoral Tables (with Health and Education as priorities), located in Municipal Secretariats, and Local or Regional Tables, located in the service providing units, which will only address those issues

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68 Collective Agreement between the Argentine Civil Administration and the Union of the National Civil Staff, 2006 (in force), Arts. 7-9.

69 ILO: General Survey (Geneva, ILO, 2013), para. 364.

70 Collective Agreement for the Permanent Negotiating System of the Mayoralty of the Municipality of Sao Paulo, 2013, Chapter IV (Deliberative instances).

that emerge within their jurisdiction. Since each table is coordinated by a two-member joint Executive Coordination, the participation of each side of the tables could be coordinated by its central leadership. The Central table will, in turn, be responsible for drafting the rules, and coordinating and providing for the decentralized tables. The Central table, for example, provides “protocols” for reporting the decisions of the decentralized tables.<sup>71</sup> Finally, other entities from civil society can establish Consultative bodies which will work independently and may be invited to participate in the competent negotiating table.<sup>72</sup>

A third form of coordination can be achieved through sectoral tables which include the actors from more decentralized levels in the central negotiating instances and authorizing them to establish their own working conditions within established parameters. The Protocol of Agreement signed by the Chilean Government, the Single Workers Confederation and twelve public service workers organizations, for example, provides for the participation as direct employers of university chancellors in the Negotiating Tables for state-run universities, and of municipal associations for professors and educational assistants.<sup>73</sup> This Agreement establishes a particular outcome for this participation in each table.

### Regulation of bargaining at the level of the undertaking

Other systems recognize a wide discretion to the decentralized negotiation bodies, while regulating them in the central collective agreement. For example, the Swedish Basic Agreement for the Civil Service provides for separate “adjustment”

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71 Internal Rules of the Permanent Negotiating System of the Mayoralty of Sao Paulo, Eighth clause.

72 Id., Chapter VII.

73 Chile: Protocol of Agreement (2014), paragraphs 12 and 13. Three organizations of public sector workers did not sign the agreement.



agreements “in matters where the working situation of employees in a number of agencies is significantly affected.”<sup>74</sup>

“If agencies under several separate ministries are affected, the agreement shall be drawn up between the Ministry and the confederations. The agreement shall clarify the question of who shall represent the parties. Beyond this, the designated parties should themselves be free to decide on practical arrangements within the [scope of bargaining clause].

This agreement sets out in detail how these agreements should be drawn. First, “[e]mphasis shall be given to arrangements whereby the employees, through their unions, are able to exercise genuine codetermination at the different levels of the agency and in such a way that they are able to participate in the decision-making process as early as practically possible.”<sup>75</sup> Second, it includes an exhaustive list of mandatory subjects.<sup>76</sup> Third, the resulting agreement must “lie within the employer’s sphere of authority” and “within the framework of the budget resolution . . . or within the framework of [the employer’s] budget authorit[y],” as well as “subject to and in accordance with the regulations or the priorities laid down for the agency by the competent ministry or, by authority, by the agency itself.”<sup>77</sup> Fourth, the basic agreement establishes deadlines for the commencement of bargaining and the ability of one party to demand it be concluded

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74 Sweden, Basic Agreement for the Civil Service, Section 1 (“Purpose and intentions”)

75 Ibid., Chapter 2, Section 3 (“The planning of codetermination in individual agencies”).

76 Mandatory subjects of bargaining include budget proposals; redefinition of posts; building projects; the agency’s plans and plans for disposition of an adopted budget (plan of operations); options relating to procurement and distribution of equipment and utilities involving all forms of capital goods, including the requirements specification on which an offer is based; the implementation of adopted training plans for which money has been granted; setting up of work plans (duty sheets, duty rosters and the like); matters subject to section 7-2 (2) of the Work Environment Act, which will be the subject of discussion pursuant to the Basic Agreement and which the parties to the adjustment agreement agree shall be dealt with according to the rules laid down in these agreements; reallocations between salary costs and other operational costs; and any other subject if one of the parties requests discussions arguing that it has a significant impact on working conditions. Ibid., Section 12 (“Discussions”).

77 Ibid., Section 13 (“Negotiations”).

in one week; that minutes will be taken of the negotiations; how to resolve disputes; and how to conduct strikes (see the section on Industrial Action, below).<sup>78</sup>

A similar example can be found in the UK, where the Scheme of Conditions of Service for the National Joint Council for Local Authority Fire and Rescue Services (2009) proposes model consultation and negotiation procedures to be used at the local level in order “to establish relationships and interactions that promote joint solution seeking to resolve differences between management and recognised trade unions that may arise from time to time” including, among others, the issues prescribed in the European Union Information and Consultation Directive, which will be discussed in the section on Consultations. When the local parties cannot agree on a mandatory subject of bargaining, the parties may refer the issue to the NJC Joint Secretaries, ACAS; and/or the NJC Resolution Advisory Panel.<sup>79</sup> The parties also established a protocol that outlines the JNC’s expectations of the local bargaining teams, including commitment to “encourage and support a joint approach to maintaining and improving upon good industrial relations within the fire and rescue service as a whole.”<sup>80</sup> Through this mechanism of downward delegation of authority and upward referral of disagreements, the national and local bargaining mechanisms establish a communications channel that allows for coherence.

Finally, the Finnish General Collective Agreement for Government specifies the instances in which the agency-level collective agreements may deviate from the agreed working conditions.<sup>81</sup>

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78 Ibid., Chapter 5 (“Administrative Processing”).

79 Appendix A, Part C (“Local Consultation and Negotiation”).

80 Ibid., Appendix C (“‘Working Together’: A Joint Protocol for Good Industrial Relations in the Fire and Rescue Service”).

81 Sections 3 and 12.



## Getting to Yes<sup>82</sup>

### Bargaining approaches and models

The Manual discusses the distinction between two approaches to collective bargaining: positional and mutual gains. The Manual concludes this section with the following statement:

“Public sector bargaining sometimes falls short. Predetermined monetary positions, established by ministers of finance and treasury officials who have set numbers according to a different cycle and a different dynamic, might be presented at the table. It aggravates matters when positions are declared publically; in other words entrenched to be defended. It encourages unions to respond in kind, with mass-mandated and inflated demands that must then be bargained down aggressively to be affordable.

Wide-ranging research and experience show that great workplaces – productive, high-performance organizations where people want to work – are characterized by relationships of trust and respect amongst all stakeholders.<sup>83</sup> Therefore, the level of trust that characterizes the relationship between the parties can determine the choice of approach. To illustrate this, the discussion that follows was developed by Professor Peter Turnbull from Cardiff University in the UK, whom the ILO commissioned to carry out research on the role that trust plays in collective bargaining, as part of the work to promote the Manual.

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82 This title is a reference to W. Ury, R. Fisher and B. Patton: *Getting to Yes: Negotiating Agreement Without Giving In* (1992), which has contributed greatly to promote mediation.

83 See, among many sources, J. Rogers and W. Streeck (eds.): *Works councils: Consultation, representation, and cooperation in industrial relations* (Chicago, University of Chicago Press, 1995); G. Leminsky: “Everything you always wanted to know about Mitbestimmung”, in *Die Mitbestimmung* (Düsseldorf, Hans Böckler Foundation, 1999), pp. 46–50; D. Hull and V. Reid: *Simply the best workplaces in Australia*, ACIRRT Working paper No. 88 (Sydney, University of New South Wales, 2003); T. Kochan and P. Osterman: *The mutual gains enterprise* (Boston, Harvard Business School Press, 1994); J. Gittel: *The Southwest Airlines way* (New York, McGraw-Hill, 2003); D. Weiss: *Beyond the walls of conflict* (Toronto, Irwin, 1996); and the Great Place to Work Institute, <http://www.greatplacetowork.com> (accessed 27 Oct. 2011).

## Trust and bargaining

The key concepts for an understanding of trust are:

- *Uncertainty* – we only need to depend on trust if (i) we do not have all the information about a person or situation that we need to anticipate the outcome and (ii) if we cannot control the outcome.
- *Risk* – when we trust a person or an organization, we assume that the benefits of our relationship with them will outweigh any costs to us. Indeed, trust is only necessary if the cost of a loss will be greater than the possible gains – so we are only willing to tell the boss bad news if we trust her not to “shoot the messenger”, and we only give employees confidential information that enables them to make better decisions if we trust them not to give that information to our rivals/competitors/media.
- *Perception* – we need trust when we do not have complete knowledge of another person’s intentions. Therefore, our trust in someone is based in large part on our perceptions of that person’s trustworthiness. The latter is based on such factors as reputation, prior experiences with the person, stereotypes about identity group members (e.g. race, sex, religion, nationality) and/or organizational group membership (e.g. political party, profession, trade union, etc). We often rely more on stereotypes when we are under pressure of time, and our perceptions often turn into self-fulfilling prophecies as we tend to look for, or focus on, information that confirms our prior perceptions about a person’s trustworthiness (and/or ignore any contrary evidence).

In general, our assessment of another person’s trustworthiness, especially those in authority, is based on:

- *Competence* – is the person effective in her/his work?
- *Consistency* – is the person’s behaviour predictable over time and across situations?



- *Integrity* – is the person honest, does s/he tell the truth, keep her/his promises?
- *Reliability* – does the person follow through on his or her commitments?
- *Fairness* – does the person make decisions based on fairness, rather than favouritism, and treat you with respect?
- *Communication* – is the person open, willing to listen, transparent in her or his dealings, and willing to provide an explanation for decisions, etc?

Government officials, and union leaders, tend to focus on their technical skills and competence to build trust – especially when they first start a new job or become involved in “new public management”<sup>84</sup> initiatives – rather than develop the other determinants of trustworthiness. Employees, in contrast, want much more than a competent boss. Citizens want much more than a competent representative. Union members want much more than competent officials. Employees, citizens or members tend to focus on integrity, reliability, fairness, and effective communication when deciding whether or not a person can be trusted.

### Participative methodologies

Collective agreements can provide for processes that satisfy either the position-based or mutual-gains approach or a blended model. For example, the following mechanism instituted

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84 The “new public management” includes a redrawing of the boundaries between the private and public sectors, both by transferring services from public ownership to private hands and by subcontracting or outsourcing processes; various forms of organisational restructuring aimed at subdividing large, bureaucratic structures into smaller, independent units with devolved managerial authority, in order to make them closer to citizens’ demands and more transparent in costs and results; a shift from management by hierarchy to management by contract, through the introduction of market or market-like mechanisms of governance into the financing and provision of public services, such as compulsory competitive tendering, market testing and internal markets; strengthening the powers and prerogatives of managers, subject to tighter financial controls and the promotion of management techniques typical of private sector companies; and the reform of personnel policies and labour relations.



by the Municipality of Sao Paulo (already described in the section on levels of bargaining), establishes a “participative methodology” as follows:

### **Permanent Negotiation System of the Municipality of Sao Paulo (SINP)**

Reintroduced in 2013 as a “participative methodology” to improve labour relations as well as the professional valorization of public servants, the SINP hopes to improve efficiency, participation, transparency, and freedom of association, through ethics, mutual trust, good will and honesty, as well as flexibility in terms of negotiation. This mechanism includes three instances of social dialogue: permanent negotiation, consultation and a self-regulated Trade Union Forum. The agreement outlines the following objectives:

- a. To make proposals, suggest guidelines, discuss and contribute to achieve the purposes of the municipal public service, subject to constitutional principles and guarantees;
- b. To contribute to develop functional and work relationships, providing the treatment of conflicts that may arise while the SINP is in force;
- c. To promote the value, dignity, motivation and professional qualifications of staff;
- d. To contribute to improve the professional performance of staff, the problem-solving capacity and productivity in the delivery of municipal public services;
- e. To contribute to the improvement of the quality and efficiency of the public services offered;
- f. To contribute to democratize management and administrative procedures relevant to the area of human resources, democratizing the decision-making process in this field;
- g. To democratically regulate the organized participation of employees in dealing with conflicts, through the direct action of their class-based entities;
- h. To establish mechanisms for civil society to monitor the improvements to the quality of services provided.

Either party can consult the civil society consultive instances, but the parties can also agree to refer an issue to them for mediation or decision.

The parties shall meet to evaluate, consolidate and institutionalize this agreement every 6 months. The SINP covers a full range of interests, operates independently and has the power both to intervene in conflict resolution and to monitor and evaluate progress.



Another example is the National Joint Council for Local Authority Fire and Rescue Services (the NJC) and the Middle Managers' Negotiating Body (MMNB) of the United Kingdom, created through collective agreement.<sup>85</sup> These bodies attempt to secure the largest measure of joint co-operation and agreement on conditions of service of those persons within its scope, and the settlement of differences between fire and rescue services and employees within their scope. Both bodies can take any appropriate action that falls within this definition.

Given the particular characteristics of public sector labour relations, the search for new models is always welcome. For example, the Agreement Protocol signed by the Chilean Government, the Single Workers Confederation and twelve public service workers organizations commits the Government Programme to establish a space within the Permanent Negotiating Table for the Public Service to study ways to institutionalize efficient modalities of collective bargaining, with technical assistance from the ILO<sup>86</sup>

## Consultation and bargaining

The Committee of Experts discussed the process of consultation in the public service, indicating that “it should be possible for consultations to be held on any administrative or legislative measure concerning the terms and conditions of employment of public employees. This means in particular that relevant draft legislation should be subject to consultations.”<sup>87</sup> Also, “the parties must make every effort to arrive, to the fullest possible extent, at agreed solutions . . . in good faith, confidence and mutual respect and for the parties to have sufficient time to express their views and discuss them

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85 UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009).

86 Chile: Protocol of Agreement (2014), para. 9.

87 ILO: General Survey (Geneva, ILO, 2013), para. 222.

in full with a view to reaching a suitable compromise.”<sup>88</sup> The Committee also observed the following:

“ [I]t is in the mutual interest of both the authorities and public employees’ organizations not to limit consultation to terms and conditions of employment and to extend the subjects covered by consultation to include issues of mutual interest, including the establishment of personnel policies in the public administration and managerial and human resource problems that may arise following a new form of organization of work or restructuring. Indeed, consultation on these subjects, at the initiative of the authorities or of public employees’ organizations, is in many instances a means of preventing the occurrence of collective disputes and finding solutions that are more likely to be accepted by the public employees concerned and the public authorities.<sup>89</sup>

The Committee added that “Consultation should be meaningful, effective and undertaken in good faith, and should not be merely a token gesture, but should be given serious attention by the competent authorities. . . . [T]he outcome of the consultations should not be regarded as binding, and . . . the ultimate decision must rest with the government or legislature, as the case may be.”<sup>90</sup>

Accordingly, the Committee identified the example of Namibia, where the Government and the most representative public employees’ trade union (the Namibia Public Workers Union) signed an agreement in 2006 providing for “a division between the subjects covered by bargaining and those that are subject to consultation. The subjects for bargaining are the level of wages and other benefits, housing and social security; and the subjects of consultation are recruitment procedures, working hours, health and safety measures and essential services.”<sup>91</sup>

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88 ILO: General Survey (Geneva, ILO, 2013), para. 171.

89 ILO: General Survey (Geneva, ILO, 2013), para. 223.

90 ILO: General Survey (Geneva, ILO, 2013), para. 168.

91 ILO: General Survey (Geneva, ILO, 2013), para. 180.



## Topical consultations

Professional development and occupational safety and health (OSH) issues are perhaps the most common subjects for these consultation mechanisms, in order to promote better working conditions. The Agreement between the Treasury Board and the Association of Canadian Financial Officers, for example, binds the parties to consult on professional development at the departmental level through existing Joint Consultation Committees, and at the interdepartmental level through the National Joint Professional Development Committee.<sup>92</sup> Either party can initiate these consultations, and both parties will jointly define the subjects that will be dealt with by the provisions of collective agreement and the subjects that will be discussed in consultation.

The agreement also commits the employer to “welcome suggestions on [OSH] from the Association, and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury.”<sup>93</sup> In exchange, some collective agreements require that employees follow health and safety guidelines and wear protective equipment, provided that such equipment is furnished and adequate.<sup>94</sup>

At the European level, the Framework Agreement on Prevention from Sharp Injuries in the Hospital and Healthcare Sector includes a commitment that “Employers and workers’ representatives shall work together at the appropriate level to eliminate and prevent risks, protect workers’ health and safety, and create a safe working environment, including consultation on the choice and use of safe equipment, identifying how best to carry out training, information and awareness-raising processes.”<sup>95</sup>

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92 Canada: Agreement between the Treasury Board and the Association of Canadian Financial Officers, Sec. 16.04 (“Joint Consultation”).

93 Section 15.01.

94 See, for example, Contrato Colectivo de Trabajo Único CFE-SUTERM (México, 2014) Cláusula 20(IV.); Malta, Collective Agreement for Employees in the Public Service, Sec. 3.8.4.

95 Clause 4.7 (“Principles”).

In Denmark, the so-called MED framework agreement established Co-determination Committees that incorporate the health and safety system. It is a one-tier (as opposed to two-tier) system with cooperation committees and health and safety committees. The president of these Committees is usually the director of the municipality or county, while the vice-president is the joint shop steward.<sup>96</sup>

Other examples of consultation mechanisms established in collective agreements shed light on this procedure. In the general collective agreement for the Colombian Public Service, for example, the government commits to guarantee due process in any workforce reductions by reference to the ILO's Termination of Employment Convention, 1982 (No. 158). Convention No. 158 requires "consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment."<sup>97</sup> The government also agreed to consult with unions and employees any processes to restructure and reform the payroll, and to incorporate in national legislation the Conventions on Workers' Representatives, 1971 (No. 135), which complements Article 6 of Convention No. 151; the Nursing Personnel Convention, 1977 (No. 149), which mandates consultations to establish a policy concerning nursing services and nursing personnel and on other decisions concerning them; and the Maternity Protection Convention, 2000 (No. 183), which requires consultations regarding the duration of maternity leave and the amount or rate of cash benefits. These commitments will be fulfilled through decrees or directives.

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96 Eurofound, Denmark: *Industrial relations profile* (2013), p. 10. Available at: [http://www.eurofound.europa.eu/sites/default/files/ef\\_files/eiro/country/denmark.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_files/eiro/country/denmark.pdf).

97 Art. 13.1(b), Convention No. 158, referred to in Art. 18 of *Acta final de acuerdo de la negociación colectiva pliego unificado estatal entre la Central Única de Trabajadores de Colombia, Confederación de Trabajadores de Colombia y Confederación General de Trabajo y sus Federaciones Estatales: FENALTRASE, FENASER, FECOTRASERVIPÚBLICOS, UTRADEC, ÚNETE y FECODE* (Colombia, 2013).



## General consultations

General consultations can also be agreed in collective agreements. The 4<sup>th</sup> Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association (Philippines) provides for a joint Labour-Management Consultative Council that will engage in “regular consultations and dialogue to achieve healthy, just and sound labour-management relations”, discuss and agree on issues related to programs relative to productivity, and advise the City Mayor and other concerned local executives on any matter affecting the terms and conditions of employment covered or included in the collective negotiation agreement. The Council meets at least every two months, has binding powers upon approval by the Local Chief Executive, and is fully funded by the employer.<sup>98</sup>

As discussed in the section about coordination between levels, the UK Fire and Rescue Service agreement implements the European Union Information and Consultation Directive.<sup>99</sup> The collective agreements for the public sector in Denmark, Italy and Sweden also incorporate it, and 75% of European public employees were represented by unions and/or works council-type bodies in implementing institutions in 2009.<sup>100</sup>

This Directive requires consultations on the following:

- the recent and probable development of the undertaking’s or the establishment’s activities and economic situation;

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98 Article 13. This Agreement expires in March 2016.

99 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, Available at: <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&int-Pageld=210>.

100 Eurofound, National practices of information and consultation in Europe (2013). Available at: [http://www.eurofound.europa.eu/sites/default/files/ef\\_files/pub-docs/2013/29/en/3/EF1329EN.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_files/pub-docs/2013/29/en/3/EF1329EN.pdf). In contrast, the overall European average was 37% (63% of employees) for all establishments, 34% (60% of employees) for industry and 30% (52% of employees) for private services.

- the situation, structure and probable development of employment within the undertaking or establishment and any anticipatory measures envisaged, in particular where there is a threat to employment
- decisions likely to lead to substantial changes in work organisation or in contractual relations.

### Participation of workers' representatives in management meetings

The following three Collective Negotiation Agreements from the Philippines have also included the participation of workers' representatives in management meetings:

- The NAPOLCOM Employees Association can actively participate with voting rights in the Staff Meetings, Quarterly Central and Regional Directors' Conference and in the preparation of the Commission's Operations, Plans and Budget, as well as in the Boards or Committees that affected, among others, organizations restructuring, staffing modification, selection, promotion, placement, personnel development, employee's rights, obligations, privileges and welfare benefits, sports, cultural, recreational, anniversary and Christmas celebration.<sup>101</sup>
- The Sultan Kudarat Polytechnic State College Faculty Association was offered a seat in management meetings where the budget was discussed.<sup>102</sup>
- The Bislig City Employees Association may participate in the formulation of policies, plans and programs policies directly affecting the rights, career development, welfare and benefits

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101 Philippines: CNA between the National Police Commission (NAPOLCOM) and the NAPOLCOM Employees Association.

102 Philippines: Collective Negotiation Agreement between Sultan Kudarat State University and Sultan Kudarat Polytechnic State College-Faculty Association (2011-2014), Sec. III.13 ("Participation during Financial/Budget Deliberation").



of employees, as well as in a number of agency committees. In exchange, the union recognized the Local Government as the entity in charge of implementing laws, policies and regulations related to the working conditions and welfare of workers, and accepted agreements reached in committees where it failed to send a representative.<sup>103</sup>

## Duty to bargain in good faith

Effective collective bargaining involves encouraging dialogue and promoting consensus, not only through collaborative processes but also in adversarial bargaining. In the preparatory work for Convention No. 154, the Committee of Collective Bargaining stated that “collective bargaining could only function effectively if it was conducted in good faith by both parties” and “emphasised the fact that good faith could not be imposed by law, but could only be achieved as a result of the voluntary and persistent efforts of both parties.”<sup>104</sup> The Committee of Experts expounded, stating that the principle of good faith:

“takes the form, in practice, of the duty or obligation of the parties to recognize representative organizations, but also implies: (i) endeavouring to reach agreement (including a certain number of meetings and discussions); (ii) engaging in genuine and constructive negotiations, including through the provision of relevant and necessary information; (iii) avoiding unjustified delays in negotiation or obstruction thereof; (iv) taking into account the results of negotiations in good faith; and (v) mutually respecting the commitments entered into and results achieved through bargaining. . . . The principle of mutually respecting the commitments entered into in collective agreements is recognized expressly by the Collective Agreements Recommendation, 1951 (No. 91) (Paragraph 3), which provides that “collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded”.<sup>105</sup>

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103 Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Art. I.

104 International Labour Conference: *Record of Proceedings* (1981), p. 22/11.

105 ILO: General Survey (Geneva, ILO, 2013), paras. 588 and 281.



Although these principles are frequently spelled out in laws and regulations, collective agreements can include clauses where the parties commit to them. The Collective Agreement for the Argentinian Civil Service, for example, explicitly commits the parties to hold and attend meetings, designate bargaining teams with sufficient authority, provide each other the necessary information and make relevant proposals in written form, in order to reach a fair and equal agreement.<sup>106</sup> In Sweden, the government agreed that its representatives will have the necessary authority to bind the employer, even after changes in representation. Furthermore, “collegiate governing bodies should grant the director, manager or equivalent person or a negotiation delegation the authority to discuss and/or negotiate.”<sup>107</sup>

## Research

With a view to a more informed bargaining process, it is essential that the parties are able to access quality research. The CEACR has underscored the role of consultative bodies of general competence in this regard,<sup>108</sup> and its usefulness to understand the working environment and the operation of collective bargaining.<sup>109</sup> The basic element is the exchange of information, which is a form of social dialogue and facilitates the research by one of the parties. In the UK’s higher education sector, the employers’ association and the national trade unions have cultivated productive relationships through field of joint working and joint research on major areas of contention.<sup>110</sup> In addition, the European Federation of Public Service Unions

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106 Convenio Colectivo de Trabajo del Sector Público Nacional (Argentina), Art. 10 (“Good Faith Bargaining”).

107 Sweden, Basic Agreement for the Civil Service, Chapter 3, Section 8 (“The employer party in individual agencies”).

108 ILO: General Survey (Geneva, ILO, 2013), para. 195.

109 *Id.*, para. 387.

110 Geoffrey Keith White, “Employers’ Organisation in UK Higher Education”, paper presented to the Inequality in the 21st Century at the London School of Economics & Political Science, 2 July 2015.



has embarked in joint research projects with employers' organisations involved in the European sectoral social dialogue.<sup>111</sup>

### Before bargaining

The Federation of Free Workers of the Philippines defined the scope and sources of research that a union should carry out before engaging in interest-based bargaining. It is detailed in the following box:

Collective Bargaining involves three interrelated processes: research and preparation, negotiation, and contract administration and evaluation.

#### **Research and preparation**

There are at least two things to prepare prior to negotiation: the research component, which provides objective and tangible information necessary in the negotiation; and the definition of basic negotiation strategies based on the analysis of the people, structure and context of the negotiation.

#### **Content of Research**

Collective bargaining proposals are based on the following indicators:

*Standard of living* – The ideal standard of living is specifically how much an average family should earn to reasonably live a decent human life. It is also used to determine the effect of prices on the real value of wage.

*Ability to pay* – The financial ability of the company to satisfy union demands, it indicates whether the company is gaining or losing.

*Comparative-norm principle* – The assumption that the economics of a particular bargaining relationship should neither fall substantially behind nor be greatly superior to that of other employer-union relationships. Generally, it is good practice to keep up with the crowd, or to lead it if necessary.

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111 European Federation of Public Service Unions, "Research" (web site, <http://www.epsu.org/r/539>).

### *Sources of data*

- The Company's accounting department
- Companies in the same industry
- National Census and Statistics Office
- Wage Commission
- Foods and Nutrition Research Center
- Central Bank
- National Economic and Development Authority
- Center for Research and Communication
- Securities and Exchange Commission
- Department of Labor and Employment
- U.P. School of Labor and Industrial Relations
- IBON Foundation: Data gathering Data for Collective Bargaining

**Purposes** can be classified into primary and secondary.

### *Primary data*

These are facts gathered by the union directly from its members. They pertain to income, expenditures, size of family and other similar information. Interviews and questionnaires can be administered to gather this information.

### *Secondary data*

These are data gathered by agencies and published in periodicals or statistical bulletins.

### *Data analysis*

After gathering data, the union analyzes them in relation to the other elements of the negotiation: communication, relationships, commitments, criteria, option, alternatives and interests. Data analysis complements the determination and crafting of the Best Alternative To Negotiated Agreements (BATNA) and the negotiation strategies.

*Source: Federation of Free Workers Philippines, "Interest-based bargaining", undated.*

This research can be carried out by one party or jointly. In 2003, the Joint Compensation Advisory Committee of the Canadian government and its unions finalized a study of the labour market in relation to skilled trades, unskilled labourers, firefighters and other operational group members for the Operational Services and the Foreign Service (FS) bargaining units, as well as the the Aircraft Operations (AO) group,



which helped the parties reach collective agreements.<sup>112</sup> Similarly, the Public Water Supply Enterprise of Lambayeque (EPSEL, Perú) and the union that represents its staff (SUTSELAM) agreed in 2013 to conduct joint research to review the levels of remuneration based on the value of the work performed by each workers, with the support of the ILO.<sup>113</sup>

Another joint device to achieve this purpose is creating committees to monitor compliance and changes. The Collective Agreement for the Personnel of the Community of Madrid, for example, creates a Joint commission to monitor, interpret and solve disputes, and either one of the parties may request from the government any information that is relevant to discharge its functions.<sup>114</sup> In February 2015, the Public Service Collective Bargaining Council (PSCBC) of South Africa issued terms of reference for a joint study on outsourcing and agentization practices and the implementation of decent work, the latter in partnership with the ILO.<sup>115</sup>

### Single-issue joint research

The collective agreement between the Administrative/clerical Division of the British Columbia (BC) Housing Management Commission and the BC Government and Service Employees' Union (BCGEU) establishes a joint advisory committee to consider and make recommendations to the bargaining Principals on all matters related to the effective administration of the Short-Term Illness and Injury and Long-Term Disability Plans.<sup>116</sup> The collective agreement covering the home care workers in France also creates a Joint Commissions on Employment and Career Development at the national and

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112 Trasury Board of Canada Secretariat: Expenditure Review of Federal Public Sector - Volume One - The Analytical Report and Recommendation (2004).

113 Perú: Acta de Entendimiento, signed by EPSEL and SUTSELAM (2013).

114 Spain: Collective Agreement for the Personnel of the Community of Madrid (2005), Art. 4 ("Comisión paritaria de vigilancia, interpretación y desarrollo del convenio").

115 PSCBC, Resolution 1 of 2015, Arts. 5 and 6.

116 Part III ("Joint Advisory Committee").

regional levels.<sup>117</sup> The Commissions are tasked with exploring the quantitative and qualitative evolution of the jobs and professional qualifications and elaborate general guidance tools. In addition, the Commissions will:

- Assess employment needs in light of sociological and demographic changes and the economic state of the industry, study their effects on classifications and make any necessary proposals;
- Participate in studies of existing training facilities, professional development and rehabilitation for different skill levels, and seek measures to ensure their full use, adaptation and development, together with the government and interested organizations;
- Propose to the social partners the priorities and guidelines for vocational training in the light of legal and regulatory requirements, and of related provisions of the Agreement; and
- Monitor the implementation of agreements concluded at the end of the three-sector negotiations on the objectives, priorities and means for vocational training.<sup>118</sup>

### Research on existing agreements

The parties can also conduct their own research that will enable them to bargain more effectively. In 2012, Public Services International Trade Union Rights Philippines published a comparative study of 94 collective agreements in the public sector, with the support of the Trade Union Solidarity Centre of Finland.<sup>119</sup> The document identified the common and unique provisions in order to guide future negotiations and

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117 France: Collective Agreement for the Aid, Company, Care and Home Services Branch (2010), Art. 15.

118 Id., Art. 16 (“Joint Commissions on Employment and Career Development”).

119 PSITUR: Comparative Analysis of Selected CNAs and CBAs of Unions in the Philippine Public Services (2012).



to assess compliance with the provisions of Executive Order No. 180 of 1987, which established the collective bargaining procedures in the public service. The author concluded that the mindsets and competencies of the key players and implementers in government agencies affected the process, which resulted in different bargaining outcomes, confused the unions and caused low levels of recognition and bargaining coverage. She also concluded that there was a low level of awareness and skills on the part of unions. She called for strengthening this awareness and skills, and for levelling the mindsets of the agency implementers to avoid conflicting interpretations of the policies and guidelines.

This kind of research may assist the parties in developing a mature and uniform labour relations system. But the parties need to be aware of the frustrations that can surface when research is perceived as slowing down negotiations: to prevent such impatience, it has been advised that “[t]he methodology of identifying and prioritizing problems, uncovering interests and generating options to meet mutual interests cannot be ‘side-stepped’ in an attempt to find the answer too quickly.”<sup>120</sup>

## Active facilitation of negotiations

Collective agreements can introduce measures to improve the parties’ prospects of achieving agreed (and qualitatively better) outcomes in negotiations, thus also preventing the emergence of disputes. The emphasis is on positive dispute prevention rather than reactive dispute resolution. For instance, the representatives of the Prefecture of Sao Paulo (Brazil) and representatives of its municipal workers agreed to appoint jointly a facilitator (Ombudsman) entrusted with the smooth functioning of the Permanent Negotiation System (SINP) by

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120 M. Kushon, “Lessons on Interest-Based Negotiations, problem Solving and organizational Change”, p. 3 (1997).

ensuring that the rules of engagement are applied correctly.<sup>121</sup> The Agreement expressly bars the facilitator from intervening in the contents of the discussions. Likewise, the UK's local fire and rescue authority and the unions representing its workers establishes a jointly nominated independent Chair for the two bargaining mechanisms, to ensure that all voices will be heard, to establish effective communications and to build consensus. The Chair also reports to each body about agreements reached in the other, and liaise with the appropriate government bodies.<sup>122</sup> The independent Chair serves no more than two three-year terms and has no vote.

## Gender

Beyond the usual protections of maternity and against discrimination, the Manual promoted the equal participation of women in collective bargaining structures and underscored that men were affected by the outcomes as well.

### Equal treatment

Collective bargaining agreements may contain clauses which promote the goal of gender equality. For example, the Collective Agreement covering the Health Sector in Quebec forbids the issuance of bulletins or posters with sexist contents.<sup>123</sup> The 2014 Protocol of Agreement covering the Chilean public servants included a commitment by the government to invest in child care infrastructure in the agencies and to include representatives of the Public Sector Bargaining Table in the Labour Ministry's work in this area. The government

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121 BRAZIL: Collective Agreement for the Permanent Negotiating System of the Municipality of Sao Paulo, Clause no. 25.

122 UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009), Art. 7 ("Independent Chair")

123 Canada: National Provisions agreed between the Alliance of Professional and Technical Personnel of Health and Social Services (APTS) and the Quebec Employers Negotiating Committee of the Health and Social Services Sector (CPNSSS), Sec. 6.04.



also agreed to propose legal amendments to provide the right to child care to either parent, if both are public servants, and to expand post-natal leave. Finally, the parties agreed to jointly explore legal amendments that will promote equality of opportunities and remuneration.<sup>124</sup>

### Equal opportunities

Other agreements also set out mechanisms to achieve this goal. In the Philippines, the Collective Negotiation Agreement covering the faculty members of the Sultan Kudarat State University commits the employer to support and implement joint gender sensitivity to promote better understanding and awareness of gender issues among the employees.<sup>125</sup>

The Basic Agreement for the Swedish civil service compels the parties in lower-level agreements to establish “competence-building measures, for example measures to ensure that women are assigned tasks of a competence-building character on an equal footing with men, particularly with a view to managerial responsibilities, and measures to ensure gender-neutral criteria for fixing of salaries and such practice of these criteria as promotes gender equality.”<sup>126</sup> This includes a conscientious drafting of the advertisement text for posts in order to recruit applicants of both sexes and to invite persons of the underrepresented sex to apply, after comments by union representatives. It also includes giving priority to a candidate of the underrepresented sex if two candidates are similarly qualified for a post.<sup>127</sup>

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124 Chile: Protocol of Agreement (2014), 2014, Arts. 2.5-2.7 (“Other Matters”).

125 Philippines: Collective Negotiation Agreement between Sultan Kudarat State University and Sultan Kudarat Polytechnic State College-Faculty Association (2011-2014), Sec. III.9 (“Gender development”).

126 Sweden: Basic Agreement for the Civil Service, Section 21.2 (“Gender equality”).

127 *Id.*, Secs. 21.3 and 21.4.



## Joint Commissions

Other agreements provide a higher level of delegation to joint bodies. The General Collective Agreement covering the Spanish public servants establishes a joint Commission for Equality, with equal representation from both parties, to monitor the development and implementation by the parties of legislation related to equality and to prevent discrimination on the basis of birth, race, religion, opinion or any other personal or social circumstance. This Commission has the ability to propose changes to this legislation, participate in consultations and issue reports regarding the implementation of the agreement in these areas, as well as receive complaints from covered staff.<sup>128</sup>

Finally, it is worth reminding the Committee of Experts has repeatedly called for governments to encourage the use of gender-neutral language in collective agreements, notwithstanding the efforts that legislative bodies make to include such language in statutes.<sup>129</sup>

## Workers with disabilities

Collective bargaining can also be used as a means to address issues concerning distinct categories of workers. This section will focus workers with disabilities. A recent study found that collective agreements in the public service in the United States reflect “greater depth than the obvious divide between medical and social models of disability.”<sup>130</sup> The author adds that focussing on disability issues is a way to reimagine and recreate workplaces, worker-employer relationship and workers’ and employers’ relationship with work.

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128 Spain: II Collective Agreement for the General State Administration, Art. 5.

129 See, e.g., Observation (CEACR), Convention No. 111 - Ireland (2014); Direct Request (CEACR), Convention No. 100 – Sudan (1999).

130 C. Griffin Basas: “A Collective Good: Disability Diversity as a Value in Public Sector Collective Bargaining Agreements”, in *St. John’s Law Review*, Vol. 87, No. 793 (2013).



The study summarized the prevailing approaches as follows:

“They reveal expressions of workplace values that conceive of disability as an individual workplace injury and family concern (Industrialist), an issue subject to workplace review and consensus (Community Stakeholder), a legal compliance issue (Compliance Officer), and an opportunity for new wave workplaces that include disability as an essential component of a larger diversity agenda (Idealist).<sup>131</sup>”

Some collective agreements provide examples of several of these approaches, at times combined. The “Industrialist” approach is quite common and focusses around compensation for workplace injury.

### “Community Stakeholder” model

An example of this model is the collective agreement covering the Salvadorean Finance Ministry employees, which provides that the Ministry will monitor the routes of the buses that provide free transportation to employees to, among others, ensure that they are accessible to employees with disabilities. The Collective Agreement for Employees in the Public Service in Malta, in turn, commits the employer to “support and encourage initiatives that . . . enhance as far as possible the status of disabled employees and through reasonable accomodaton continue to facilitate their entry and opportunities for advancement in the public service. Government departments will endeavour to ensure that all premises are accessible to disabled employees.” Furthermore, it refers to an Employee Support Programme for Public Employees that “will provide support on psycho-social ar disability issues that may affect employees by identifying and responding to the needs of employees experiencing . . . any other disability issues, and will provide confidential assessment and referral as well as short-term support.”<sup>132</sup>

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131 Id.

132 Malta: Collective Agreement for Employees in the Public Service, Art. 11 Sections-

The Swedish Basic Agreement adopts another approach to this model, in which the parties commit to discuss the measures that must be implemented to enable employees with temporary or permanent disability to be assigned or to retain responsibility for appropriate tasks; measures that must be implemented in order to enable vocationally handicapped persons to be employed by the agency; measures that must be implemented in relation to employees who abuse drugs or alcohol; measures that must be implemented in order to prevent bullying or harassment and encourage social inclusion at the workplace; and arrangements to enable employees to perform other functions in the agency if they experience difficulty in adapting to a new working situation or new technology to.<sup>133</sup>

### Mixed approaches

The Collective Agreement for the Argentinian Civil Service adopts simultaneously all the approaches listed in the study. On one hand, it calls for vacancy announcements to include the “psycho-physical” requirements of the post, to facilitate the application process for disabled candidates;<sup>134</sup> on the other hand, it promotes specific policies and affirmative actions for the effective integration of agents with disabilities, “so as to enable the development of their administrative careers by providing the means and conditions in the workplace for the execution of assigned tasks and training that are suitable for the deployment of their potential”.<sup>135</sup> Furthermore, the agreement creates joint Commissions of Equality of Opportunity and Treatment (CIOT) at the central and local level, “to promote compliance with the foregoing provisions and the principle non-discrimination, equality of opportunity and treatment and actions aimed at the prevention and eradication

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Secs. 11.2 and 11.4 (“Improved Conditions”).

133 Sweden: Basic Agreement for the Civil Service, Section 25 (“Adaptive measures”).

134 Art. 57.

135 Art. 123.



of workplace violence.”<sup>136</sup> The Commission enacts policies, promotes awareness of the related issues and monitors compliance, with the power to investigate complaints and refer them to the appropriate officials and to the regular dispute resolution mechanisms.<sup>137</sup> In addition, it creates a Technical Standing Advisory Committee composed of representatives from the National Council of Women, the National Rehabilitation Service and the Ministry of Labour, Employment and Social Security.<sup>138</sup>

## Coordination between agreements and applicable law

Since public employers are usually empowered by law to act as such, many aspects of the employment relationship also are dictated by statutes. Therefore, collective agreements can include references to laws, as was discussed in the section about bargaining representatives. This is also true about benefits and working conditions, and collective agreements can require the coordination with these laws or regulations. For example, the general collective agreement for the Maltese public service establishes that “the benefits stipulated in this agreement are not additional to any similar benefits stipulated by Law, or by the enactment of legislation or as provided by the respective Sectoral Agreement during the period of validity of this Agreement provided that the employee shall receive the benefit which is more favourable to the employee.”<sup>139</sup> On the other hand, the collective agreement covering the staff of the Costa Rican National University specifies the duty of the employees to follow the laws regarding safety in the workplace.<sup>140</sup> Both of these examples express the acquiescence of the parties to legislative will and avoid the need to return to the bargaining table if the laws change.

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136 Art. 125.

137 Art. 126.

138 Art. 128.

139 Malta: Collective Agreement for the Employees of the Public Service (2011), Section 2.4.

140 Costa Rica: IV Collective Labour Agreement between the National University and the Union of Workers of the National University, Art. 99.

# Maintaining Agreements

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In this section, we will discuss seven ways to ensure that collective agreements can balance the interests of planning, adaptation and fairness: the clear drafting of the clauses; the duration of the agreements; the joint implementation of the agreements; joint problem solving; the resolution of differences in its interpretation or application; the peace obligation; and dealing with changes in the negotiated outcomes. These mechanisms can assist the parties in their effort to develop an atmosphere of mutual trust, as defined in the Introduction.

## Clarity of agreements

Clarity in agreement-writing is an important partial antidote to later disagreement. The agreement should be easy to read and clearly express the intent of the parties, and not cause any conflicts. A 1990 paper summarized a technique for achieving this purpose, as follows:

“What do I mean “improving” collective agreements?

I mean writing collective agreements so that they can be more easily understood.

I mean getting rid of unnecessary and archaic language. I mean getting rid of tangled mind bending streams of words. I mean breaking up the text:

- into short sentences
- creating organised paragraphs
- making informative headings
- creating better organization within the document.

In short, I mean writing with the reader in mind.

I do not mean that every negotiating session can create crystal clear language. Nor do I mean that longstanding hard fought articles, or articles that have been the subject of arbitral awards or judicial decisions, can be easily rewritten.

But much can be done without treading in sensitive areas.<sup>141</sup>



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141 D. Elliott: “Writing Collective Agreements in Plain Language”, paper presented to the 8th Annual Labour Arbitration Conference (1990), p. 4.

Even after the agreement is finalized, there are several ways to make the texts easier to understand. One tool is to use illustrations of complex arrangements. For example, the Spanish General Workers' Union presents the following image in its web page to explain the types of paid leave that are established in the General Agreement covering Public Administration:



Source: FSP-UGT. Federación de Servicios Públicos de la Unión General de Trabajadores.

Another tool is to publish Practical Guides, similar to the following one from the Collective Agreement covering the staff of the Public Universities of Andalucía, in Spain. The Guide matches the articles to the questions that staff may have, rather than in the order in which they were drafted:

## **Collective Agreement for the Staff of the Public Universities of Andalusia- Practical Guide**

1. Who is affected? Article 3
2. What is its effect? Article 6
3. How do I access fixed staff status? Articles 18 and 22
4. What is the procedure for promotions? Article 20
5. How do I access substitutions? Article 24
6. How are transfers carried out? Article 19
7. How are adjustments made? Article 26
8. What are my working hours? Article 27,28 and 29
9. How is work on Saturdays, Sundays and holidays paid? Article 30
10. What leaves can I take? Articles 32 and 33
  - 10.1 How many vacation days can I enjoy?
  - 10.2 How many days can I take for my wedding?
  - 10.3 How many days can I take for the birth of a son / daughter?
  - 10.4 How many days can I take in case of illness, hospitalization or serious accident of a family member?
  - 10.5 How many days can I take in case of the death in the family member?
11. How I can request leave? Articles 35,36 and 37
12. What rights do women have during pregnancy? Article 47
13. What is the salary structure? Articles 51 to 63 and ANNEX I (Wage Table)
14. When and how can I retire? Articles 64 and 65
15. Social Security (Benefits, criteria, etc).
16. Professional categories and groups (Definition of functions) ANNEX II
17. What are the rules of discipline? ANNEX III
18. Agreement regarding wage supplement to level working conditions: ANNEX V
19. Agreement regarding wage supplement for productivity and improvement. ANNEX VI
20. What is the table of family relationships?



A similar tool that can be useful in very long agreements is the use of alphabetic subject indexes, like in the British Columbia (Canada) Health Services & Support Facilities Subsector Collective Agreement. This index lists every area covered in the agreement in alphabetical order and identifies the Section and page where it is covered.

## Duration of agreements

Collective bargaining is an activity that consumes resources and carries risks. That being the case, negotiated agreements would benefit from a longer duration. The Committee of Experts has noted that collective agreements “generally stipulate the duration of their application or the manner in which they may be terminated; it is up to the parties to specify these matters.”<sup>142</sup> Recognition and framework agreements may often be for an indefinite period, and can be terminated on reasonable notice in the event of changed circumstances. Some collective agreements include clauses allowing for the automatic renewal of the contracts, but such clauses are widely discouraged and should not prevent the parties from adapting the terms of the agreement to the actual conditions of the workplace. A limited lifespan may allow the parties to track, predict and perhaps even influence developments in the labour market and wider economy when it comes to substantive matters, most notably pay.

One way to stimulate continuous bargaining is to extend the life of the agreement only until a new agreement is reached, to allow time for negotiating without pressure,<sup>143</sup> either through automatic but conditioned renewals or through periodic revisions. Under the first model, the agreements

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142 ILO: General Survey (Geneva, ILO, 2013), para. 381.

143 Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Article XIX (“Miscellaneous Provisions”), Sections 1 and 3.



may extend for two or three years, and will be extended for one year at a time unless terminated by one of the parties with two or three months' prior notice.<sup>144</sup> Under the second model, the contract has a similar duration, but can be revised and modified every year, to respond to changes or controversies that may arise. All modifications and additions will be discussed and approved jointly by the government and union representatives.<sup>145</sup> In some of these cases, the parties agree not to denounce the agreement.

Two examples illustrate the second model. The current Collective Agreement for Employees in the Public Service in Malta, which will expire on 31 December 2016, establishes that the negotiation of a successor agreement will begin in March 2016, and extends the effectiveness of the current one until the next one is signed.<sup>146</sup> In Finland, the broad income policy agreement between the government and all relevant social and economic actors sets limits for acceptable wage increases in each economic sector, including the national service and the local public service sector. Salary negotiations follow. As a result, on June 2015 the Trade Union Confederations agreed to extend the 2013 national agreement (covering both Municipal and Central Government sector) on pay for another year, and settled also to keep the latest pay rises at a very low level so as to boost the Finnish economy.<sup>147</sup>

Agreements operate in dynamic environments, and therefore should themselves have dynamic features. This is particularly so if they have life spans of longer than a year. Several areas

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144 See, e.g., Sweden: Agreement covering the staff of the municipalities, county councils and regions, and Spain: Collective Agreement for the General State Administration.

145 See, e.g., Cuba: Collective Labour Agreement between the Tourism School of the University of Havana and the Union Section of the Tourism School, Art. 1 ("Scope"), and Costa Rica: IV Collective Labour Agreement between the National University and the Union of Workers of the National University, Art. 185.

146 Art. 5.2.

147 H. Jokinen: "JHL reaches accord on new collective agreements in Municipal and Central Government sectors", 1 July 2015. Available at: [http://www.jhl.fi/portal/en/jhl\\_info/news/?bid=5369](http://www.jhl.fi/portal/en/jhl_info/news/?bid=5369).



of contention arise almost inevitably during the life of any collective agreement. Success in implementing and maintaining agreements depends greatly on whether the parties negotiate in good faith and then take on obligations in good faith. Thus, it is recommended that agreements contain provisions dealing with resourcing implementation issues. Individuals and perhaps steering committees should be charged with delivering on commitments, with review intervals built in.

## Joint implementation of the agreements

Collective agreements can promote collaborative labour relations schemes based on a policy of joint problem solving and collaboration at the national, regional or local level, to update the agreements as the demands change. Union-Management consultative or monitoring committees are frequently used to implement the provisions of the agreement; monitor and evaluate such implementation; resolve any disputes regarding this implementation; and carry out consultations regarding proposed institutional policies and regulations affecting conditions of work that are not covered by the agreement.<sup>148</sup> Particular attention can be paid to specific subjects like employment and vocational training.

Since negotiation is a skill that requires insight, structure and a great deal of practice, a collective agreement can provide for joint training that enhances the ability to maintain collaborative bargaining environments. This may include continuous follow-up and training that will allow managers and union representatives to arrive at a common understanding of the

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148 See, e.g., Philippines: Collective Agreement NAPOLCOM, Article XII (“Implementing & monitoring scheme”); Collective Negotiation Agreement between Sultan Kudarat State University and Sultan Kudarat Polytechnic State College-Faculty Association (2011-2014), Article XI (“Implementing and Monitoring Scheme”), Section 4; and France: Collective Agreement for the Aid, Company, Care and Home Services Branch (2010), Art. 13.

intentions of the agreement.<sup>149</sup> The parties to some agreements also hold annual appraisal meetings to exchange experiences concerning their cooperation and to monitor the application of the agreement and adjustment agreements in the different levels, which can be combined with training sessions.

## Joint problem solving

The Manual introduced this subject by stating that joint problem solving “can be seen as an alternative to conventional bargaining or as a dimension of interest-based bargaining. The essential difference is that problem-solvers tackle the issue in a collaborative way whereas positional negotiators may be more focused on advancing their respective positions. In other words, negotiators tend to be ranged against one another, whereas problem-solvers work together.” Collective agreements present great opportunities to advance these goals, as the following examples illustrate.

The collective agreement covering the civilian employees of the Philippine National Police Commission creates a labour-management consultative committee to maintain continuous communication, consultation and dialogue between the parties. The Committee is mandated to meet every two months and seek compromise on issues related to the implementation of the agreement and to productivity programs, as well as to provide advice to officials in charge of implementing the terms and conditions of employment.<sup>150</sup>

Two other examples create similar bodies in specific branches of the public service. The standard Education Bargaining Agreements in Australia, according to a recent study by Education International, “now include provision for setting

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149 Sweden: Basic Agreement for the Civil Service, sec. 11 (“Follow-up and training”).

150 Philippines: Collective Negotiation between the National Police Commission (NAPOLCOM) and the NAPOLCOM Employees Association, Article X (“Labor management consultative committee”).



up school or training institute consultation committees, . . . [which] meet as required and are charged with reviewing the long-term planning and operations of the school, including class size and working hours arrangements.<sup>151</sup> The collective agreement covering the employees of the Mexican Electricity Commission also establishes National, Regional and Local Joint Productivity Committees that establish policies to fulfil the employer's commitments to increase productivity and competitiveness, implement new work processes, approve changes in organizational structures and workforce, monitoring systems, productivity-based promotion, training and performance evaluation programmes, and promote individual initiatives to improve productivity and safety.<sup>152</sup>

Local governments can also benefit from these joint initiatives. For example, the agreement covering the Bislig City employees in the Philippines proposes a model of employee empowerment and shared responsibilities and accountability by the Local Government and the union in decision making. The parties will conduct activities that will allow employees to discuss the programs and the projects of the City, and quarterly employee meetings. Union representatives are also expected to promote participation in these meetings and participate in the deliberations of employees' working conditions and benefits. Likewise, both parties will jointly promote team work and discipline. Both parties will address the issues brought by staff and seek solutions jointly.<sup>153</sup>

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151 N. Wintour: Study on Trends in Freedom of Association and Collective Bargaining in the Education Sector since the Financial Crisis, 2008-2013 (Education international, Brussels, 2013), p. 63.

152 México: Collective Labour Agreement between the Federal Electricity Commission and the Single Union of Electrical Workers (2014), Clause No. 24 ("Mixed Productivity Committees").

153 Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Sections 5 to 13.

The General collective agreement covering Spanish civil servants also establishes a joint commission (CIVEA) to monitor compliance with its terms. The members of the Commission elected among civil servants serve on a full-time basis and have full access to the workplaces under legal conditions. The CIVEA has the power to interpret and enforce the terms of the agreement, and make proposals to the higher-level bargaining teams, request information about working conditions, and participate in the drafting of general criteria for all processes that may change working conditions, including changes in the classification systems. Most importantly, the CIVEA can update the terms of the agreement to adapt to any changes derived from amendments to laws or regulations, as well as channel information about foreseen changes to programmes and projects by the government. The agreement establishes a subcommission on equality and subcommissions for each covered entity, but the CIVEA can create other subcommissions to carry out specific, time-bound duties.<sup>154</sup> Similar bodies have been created in the agreements covering government staff at local and regional governments in Spain,<sup>155</sup> since before the 1973 Law on Collective Agreements mandated them.<sup>156</sup>

Finally, the major collective agreement covering local government workers in Sweden introduces “a common approach to how collaboration can work and to how effective operations can be combined with a sustainable working life in the local authorities, county councils and regions. . . to

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154 Spain: III Collective Agreement for the General State Administration (Renewed November 2014).

155 See, e.g., Spain: Agreement for the “Gran Teatro” Municipal Institute of Performing Arts of Córdoba (2014), Art. 4; I Collective Agreement for the Faculty and Research Personnel with Labour Contracts in the Public Universities of Andalucía; Spain: Collective Agreement for the Personnel of the Consortiums of the Employment, Local and Technological Development of Andalucía, Art. 5.

156 F. Cavas Martínez: “Las Comisiones Paritarias y la solución de los conflictos laborales derivados de la interpretación y aplicación del convenio colectivo”, *Revista del Ministerio de Trabajo y Asuntos Sociales* (2007), p. 68.



provide inspiration for new ideas and development.”<sup>157</sup>  
The system is described in the following box.

### ***The Collaboration System***

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The creation of an alternative model of negotiation, the collaboration system, was the result of a goal/objective that was commonly set by all parties involved in this agreement. The system is based on the agreement that all parties are interdependent and that issues will be discussed and solved through clear communication in collaboration groups at all levels of the collaboration system. This model targets the wellbeing of all parties through collaborative problem solving, joint work and shared interests, and by valuing the process of collaboration.

#### ***Workplace meetings***

The purpose of workplace meetings is to create a forum for a dialogue between employees and managers so that they can work jointly with development, planning and the follow-up of work in their own areas. Health and work environment aspects should be integrated into operations. The meetings should also provide the preconditions for personal and professional development and to increased individual self-determination and responsibility for all employees.

If workplace meetings are to be effective they must be regular and comprise a natural part of the operations.

#### ***Collaboration groups***

Collaboration groups should be linked to the decision-making levels in the operations concerned and be connected to the line organisation. The aim is to create a forum for a dialogue between the employers and the representatives of the trade unions in which the parties have a joint responsibility to bring up questions relating to operational development, health and the work environment.

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157 Sweden: Collective agreement between the Federation of Swedish County Councils, the Swedish Association of Local Authorities, and the Employers' Association for Local Federations of Local Authorities and Enterprises (PACTA) and the Swedish Municipal Workers' Union, the General Local Government Operations, Health and Medical Care and Medical Practitioners' branches of the Public Employees Negotiating Council and their affiliated organisations, the Co-operation Council of the Swedish Teacher's Union and the National Union of Teachers, and the Alliance of Professional Associations and its national affiliates, Introduction ("Promoting Collaboration and Points of departure").

The aim is also to enable joint participation in the planning and decision-making process and to make it possible to oversee and follow up operations. Employers' representatives are responsible for ensuring that issues are dealt with by the collaboration group before decisions are made. Issues which require special measures can be dealt with in project form following consultation in the collaboration group. After consultations have taken place, a consultant working on behalf of the employees or a specialist may be called in.

The collaboration group is an essential part of the model; it is made up of employers and the representatives of the trade unions and is the medium through which all parties discuss and resolve policy issues related to operational development, health and work environment, before decisions are made. The collaboration group is responsible for carrying out consultations when needed, and may bring in a consultant/specialist. It also plans, monitors and provides information and training on health and work environment conditions.

### *Decisions made in collaboration*

The employer is responsible for making and executing decisions on all matters relating to operations.

An agreement on the working method applied at workplace meetings and in collaboration groups should be reached through consultation before decisions are made.

This clause reinforces the need to solve issues, reach agreements and make decisions collaboratively among all parties, using workplace meetings, collaboration groups and consultations.

### *Organization-management collaboration*

Determining the form and structure of work on the work environment is a task performed within the framework of the collaboration system. Decisions on objectives, means, distribution, powers and resources are made by the employer, but must take the intentions of the collaboration system and relevant legislation and agreements into account.



## Resolving Differences in the interpretation or application of agreements

Together with the proactive resolution of differences in interpretation, the bodies cited above may also intervene in the disputes arising from such differences, which helps maintain the trust of the parties. Individual rights disputes are not covered by Convention No. 151 but by Article 6 of the Collective Agreements Recommendation, 1951 (No. 91); by the Examination of Grievances Recommendation, 1967 (No. 130); and by Art. 8 of the Collective Bargaining Recommendation, 1981 (No. 163).

The above-mentioned Recommendation No. 130 calls for participation of workers and employers on an equal footing in dispute resolution systems as a cornerstone of their effective governance. This research found examples of agreements that establish joint committees to interpret the agreement and attempt to resolve collective disputes related to the interpretation by the parties of the agreement,<sup>158</sup> which are considered rights disputes.<sup>159</sup> The commissions' rulings must be based on the text of the agreements. Some of these agreements establish the following:

- equal union and employer representation in the committees;
- the terms, roles, and privileges of the members, and rules of conduct;
- facilities for the committee to operate;

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158 See, e.g., Benin: Collective Labour Agreement regarding the General Regulations and Personnel Statutes of the National Centre of Road Security (2012); Costa Rica: IV Collective Labour Agreement between the National University and the Union of Workers of the National University, Chapter IV ("Labour Relations Board") ; Niger: Interprofessional Collective Agreement (1972), Art. 71, signed *inter alia* by the representatives of the contractual personnel in public administration; Senegal: Interprofessional Collective Agreement (1982); Togo: Interprofessional Collective Agreement (2011).

159 See, CEACR (2013), paras. 413-425.



- time limitations for the parties to submit complaints and to reply to them;
- the person(s) authorized to submit and receive them; and
- the effect that the final decision will have (for example, the decision may constitute part of the collective agreement for future reference or resolve only the particular issue presented).

The collective agreement for the staff of the National University of Costa Rica also provides that the Committee's conclusions will be published in the university's journal or another internal communication mechanism.<sup>160</sup>

The City of Bislig (Philippines) and the employees association agreed to jointly formulate and implement the grievance machinery, following the guidance provided by the national government.<sup>161</sup> Some other agreements covering several undertakings establish joint committees at each undertaking, which may attempt to reach agreement on collective rights disputes and refer unresolved disputes to the higher level negotiating body or appropriate national dispute resolution body.<sup>162</sup> If the committee has the power to adjudicate the dispute, an agreement may require a majority of the representatives of each party; provide arbitration in case of a tie; and contemplate an appeals process before a higher body.<sup>163</sup> In order for the procedure to succeed, parties may commit in

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160 Costa Rica: IV Collective Labour Agreement between the National University and the Union of Workers of the National University, Art. 86 (b).

161 Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, referring to the Presidential Decree No. 807 and the implementing Rules of Executive Order No. 180.

162 See, e.g., Benin: Collective Labour Agreement regarding the General Regulations and Personnel Statutes of the National Centre of Road Security (2012), Article 89 ("Pré-conciliation").

163 See, e.g., Costa Rica: IV Collective Labour Agreement between the National University and the Union of Workers of the National University, Art. 87, and Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Art. XIII (1); and Sweden: Basic Agreement for the Civil Service, Section 6 ("Disputes concerning interpretation of the adjustment agreement -legal disputes").



writing to provide training on the use of the grievance mechanism and ensure that the procedure is communicated to the employees.

Collective agreements may also establish rules on the handling of grievances, and provide previous conciliation efforts through informal meetings at the level closest to the controversy, while guaranteeing the right to assistance by the union. In case of disagreement, the parties in the UK's Local Authority Fire and Rescue Services agreed that a grievance may be referred to arbitration only after exhausting available mechanisms before the competent departments within the employing entity, including an initial discussion between the grievant and the direct supervisor; in later steps, the grievant will have the right to representation by the union or a fellow employee.<sup>164</sup> Complaints of discrimination, harassment and other sensitive cases “require a further hearing to be conducted by the corporate level of the employing authority . . . which both appreciates the wider importance and significance of the issue and has the authority to deal with it.”



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164 See, e.g., UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009), Section 6A (“Grievances”). This procedure is consistent with Part III of Recommendation No. 130.

The following box presents two examples of grievance examination mechanisms.

### **Industrial agreement between the government of the Bahamas and the Bahamas Public Service Union (2012)**

#### *Article 9- Complaints and Grievances*

9.2. Stage I: A Union representative or grievant shall, in the first instance, discuss the grievance with the immediate supervisor. The supervisor will be given five (5) working days in which to give his formal reply.

9.3. Stage II: If a satisfactory solution is not arrived at, the Union may within three (3) working days following the receipt of the reply, request a meeting with the Head of Department (as specified in Part II of the Public Service Commission Delegation of Powers (Order)). (Details of the request follow.) The decision of the Employer's representatives shall be confirmed in writing to the Union within five (5) working days of the last of the said meetings.

9.4. Stage III. If the matter is not satisfactorily resolved, the union may within five (5) working days of the receipt of such decision, request that the Officer responsible for Industrial Relations schedule a meeting with the under Secretary within two (2) working days to discuss the matter further.

The Union and the Employer's representatives at such meeting shall not exceed six (6) in number from each side. The final decision of the Employer shall be confirmed in writing to the Union within two (2) working days of the last of the said meetings.

Notwithstanding the provision of the procedure outlined above, every employee who has disciplinary action taken against him or her shall have the right to appeal to the Permanent Secretary. *[Note: this alternative is at the discretion of the grievant]*

9.5. Stage IV: If the matter is still not satisfactorily resolved, the Union may take such steps as are available under the provisions of the Industrial Relations Act, [Ch.] 321, and/or any subsequent legislation or the Public Service Commission regulations.



[The latter section refers to Part VI of the Industrial Relations Act, Ch. 321, which allows either party or an employee to refer a dispute to the Minister responsible for Industrial Relations, who will either (a) refer the matter to the corresponding dispute resolution body or (b) endeavour to conciliate the dispute. In essential services or if the dispute cannot be resolved, the Minister may refer the dispute to the Industrial Tribunal.]

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*Article 42- Binding Authority and Interpretation*

42.2: The Employer or the Union may refer any question or difference arising from the interpretation or application of the provisions of this Agreement to the Industrial Tribunal for final settlement.

**Canada: Collective Agreement of professional Staff, between the Government of Quebec and the Union of Public Service Workers (2010-2015), Section 9-1**

Chapter 9 of this agreement has the purpose of solving misunderstandings regarding the interpretation and application of the agreement, reduce litigiousness, provide space to expose each party's views and accelerate the conflict resolution process.

*Handling of collective grievances*

In order to resolve a conflict, the employees must present a grievance before the Industrial Relations Directorate of the Secretariat of the Council of the Treasury, which functions as the employer's representative with the ability to settle grievances. Its decisions are binding only upon the workers' agreement. The following steps are mandatory:

- a. Both parties will meet to exchange information on their respective positions.
- b. The Direction decides whether it will accept the grievants' proposed remedy.
- c. Once the grievance is treated and resolved, the Union will confirm whether it withdraws the grievance.
- d. If the Industrial Relations Directorate does not respond in due time, the meeting of information exchange does not take place.

If the decision does not meet the interests of the employees, they can choose to take the case to arbitration.

**Canada: Collective Agreement of professional Staff, between the Government of Quebec and the Union of Public Service Workers (2010-15)**

*Handling of individual grievances*

Individual employees should submit any grievances to their immediate supervisors within 30 days of the dispute. The parties encourage each employee to seek assistance from a union representative during the process, and the supervisors to obtain sufficient information to resolve the dispute. The union and employer representatives should meet to discuss the grievance within 180 days, and exchange all the pertinent information and documentation that may lead to a mutual understanding of the parties' positions and enable them to seek possible solutions.

The union can request arbitration within seven days if not satisfied with a decision of the employer's representative or if 180 days have passed without a meeting or a decision, by notifying the employer's representative and the clerk of the arbitration tribunal. The grievant must present a summary of the facts, any preliminary objections and any other issues of rights that should be discussed, and attach copies of any evidence that the grievant intends to introduce.

The multi-employer Collective Agreement covering the Venezuelan judicial workers, in turn, establishes a detailed initial conciliation stage initiated in the Human Resources Office of the corresponding employer. The agreement requires that the request include a list of subjects and establishes a ten-day deadline for processing it; a range of five to twelve conciliation meetings, with no more than a week between each one; and a presumed waiver if one meeting does not take place within ten days. If conciliation fails, the parties can choose to turn to the Ministry of Labour, to the judicial authorities, to a mediation process or to voluntary arbitration established by law, with an equally detailed process. The Unions commit to provide the minimum necessary services even if conflicts are not resolved through these



methods.<sup>165</sup> The collective agreement covering Spanish civil servants also provides the parties the option of referring the grievance to a mediator or to the courts if mandatory conciliation efforts by the above-mentioned CIVEA fail.<sup>166</sup>

The collective agreement covering the Quebec health sector provides a similar calendar for processing grievances, but the process differs. If the parties do not agree on a mediator, the grievance will be submitted to regular or summary arbitration, depending on the subject. Local parties, in turn, may negotiate the specific modalities for mediation. The parties will share the mediation expenses, and proposals exchanged during mediation cannot be used in the arbitration hearings.<sup>167</sup> In contrast, the collective agreement covering other Quebecois public service workers requires that the arbitration service receive copies of all grievances, and establishes a more formal mediation whereby the mediator will submit a report and conclusions in writing to the parties.<sup>168</sup> Its equivalent agreement in Spain also mandates the jointly chosen mediator(s) to submit written recommendations, but also requires any party that declines to follow them to justify the refusal in writing.<sup>169</sup>

The Quebec health sector agreement allows either party to file for arbitration by notifying the other party, if they do not agree in the previous steps or if they agree not to conciliate.

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165 Venezuela: Collective Agreement for Judicial Workers between the Executive Directorate of the Magistracy, the Regional Administrative Office, the Public Defender Unit, the Inspectorate General of Courts and the National Judicial School (Employer) and the Union Organizations of Workers (2011), Clause 3 (“Procedure for the resolution of differences and conflicts”).

166 Spain: Collective Agreement for the General State Administration, Sec. 92.1 (“Resolution of collective disputes”).

167 Canada: Collective Agreement, Quebec Interprofessional Federation of Health, Sections 11-31 to 11-37 (“Mediation”).

168 Canada: Collective Agreement of professional Staff, between the Government of Quebec and the Union of Public Service Workers (2010-15), Secs. 9-1.17 and 9-2.09 (“Médiation”).

169 Spain: Convenio Colectivo de la Administración General del Estado, Sec. 92.1 (“Resolution of collective disputes”).

The filing party should propose the name of an arbitrator and the respondent must agree or propose an alternative; if they cannot agree on a name, either one can request the Minister responsible for implementing the Labour Code to name an arbitrator. However, at the local level the parties can jointly establish a list of arbitrators who will serve during the life of the agreement. In either case, the parties can agree to name advisers to assist the arbitrator at their own expense, in which case the unjustified lack of appearance by one of the advisers will not delay the process. The first hearing must take place in the workplace where it is filed, unless there is no suitable facility, within 30 days of the appointment of the arbitrator.

In grievances involving disciplinary suspension, dismissal, discrimination or harassment, the parties must hold a preparatory telephone conference with the arbitrator to discuss the procedure, evidence, witnesses, expert testimony, duration of the hearing and other formal elements of the hearing, in order to expedite the process. In these cases, the arbitrator may sustain the employer's action, modify it or reinstate the grievant, but will also have any other powers granted by the Labour Code. Besides, a local grievance can be elevated to the provincial level, in which case the award will apply to all workplaces covered by the grievance throughout Quebec.<sup>170</sup>

Finally, it should be clarified that grievance mechanisms are not necessarily limited to employee complaints against the employer, but may also include intra-union disputes<sup>171</sup> or grievances filed by the employer.<sup>172</sup> This is intended to provide space for resolving differences within the workplace at different levels.

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170 Canada: Collective Agreement of professional Staff, between the Government of Quebec and the Union of Public Service Workers (2010-15), Art. 9-2.00 ("Arbitration").

171 See, e.g., Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association.

172 See, e.g., the Industrial Agreement between the Government of Bahamas and BPSU, Art. 6. In this case, the grievance must be filed with the union before proceeding to arbitration.



## Peace obligation

One of the key conditions that parties may agree to allow collective bargaining to determine the terms and conditions of employment in the public sector is the peace obligation.

Not all collective agreements establish peace obligations, since countries differ on their treatment of the right to strike: some, like Venezuela, consider that this right cannot be waived; others like Spain consider that the peace obligation is inherent in every collective agreement; and yet others consider that the will of the parties should be the only control mechanism. Therefore, collective agreements address the issue in different ways.

This measure binds both negotiating parties to avoid strikes in two contexts:

**(i)** In the agreement-making process, where disputes of interest (economic disputes) regularly arise.

For example, the parties may commit to “resolve disputes through friendly negotiation and both sides shall ensure the continuity of work until all points in dispute shall have been discussed and settled.”<sup>173</sup> The parties should at least follow the ILO’s Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) and commit not to engage in industrial actions while voluntarily engaged in conciliation or mediation, and some agreements require written notice when the party considers that the mediation has been terminated. One Swedish agreement states that the parties will only engage in industrial actions in the undertakings where the conflict takes place; only the workers affected by the conflict may participate in the action; and the parties should show good faith when bargaining before initiating the action.<sup>174</sup>

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173 Philippines: 4th Collective Negotiation Agreement between the Local Government of Bislig and the Bislig City Employees Association, Art. V. (“Grievance and Machinery”).

174 Sweden: Main Municipal Agreement (1999), Ch. V (“Industrial Action”).



(ii) After the agreement has been signed, if the parties have disagreements over the interpretation and application of the concluded agreement (disputes of right), or if a party wishes to press additional economic claims because of changed circumstances notwithstanding the existence of a collective agreement (disputes of interest), the parties to many collective agreements commit not to engage in work stoppages during the life of the agreements. However, the approach differs according to national circumstances.

For example, the agreements covering the British Columbia Housing Management Commission staff and the Finnish Government staff simply commit the parties to abstain from industrial action during the life of the agreement.<sup>175</sup> The Collective Agreement covering the attorneys employed by the Puerto Rican workplace accident and illness compensation fund, in addition, includes a mutual commitment to channel all disputes through the established mechanisms, and several other measures to guarantee labour peace: the employer agrees not to subcontract any work performed by union members nor to change working conditions during the length of the agreement, and the union agrees to take measures to put an end to any unauthorized strikes or slow-downs.<sup>176</sup> Several public service agreements in Spain, in turn, specify that the agreements will continue in force until denounced, and do not contain express peace obligation clauses. However, the parties agree that the peace obligation will not bind them after an agreement expires because one of them has denounced the agreement.<sup>177</sup>

In Finland, the agreements distinguish between classes of employees, as can be seen in the following examples.

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175 Canada: Collective Agreement between the B.C. Housing Management Commission (Administrative/Clerical Division) and the B.C. Government and Service Employees' Union (BCGEU), Sec. 1.9 ("No Interruption of Work During Agreement"); Finland: General Collective Agreement for Government (2010, updated 2012), Sec. 57 ("Industrial Peace").

176 Puerto Rico: Collective Agreement, State Insurance Fund Corporation and State Insurance Fund Corporation Lawyers Union, Art. 54 ("No strike, no lockout and maintenance of working conditions clause").

177 See, e.g., Spain: II State Collective Agreement for Juvenile Rehabilitation and Protection of Minors, Art. 7 ("Denunciation and Extension").



## **Specified Collective Agreement for State Civil Servants and Employees Under Contract of Finland (2006)**

### **4 § Industrial peace obligation**

#### *Collective Agreement for State Civil Servants*

For the duration of this agreement, no party to the agreement is permitted to engage in industrial action on matters concerning the duration and content of the agreement, or in order to establish a new agreement before the expiry of the existing agreement. Disputes must be settled as stipulated in the contract, not through industrial action. In addition, any union signatory to this agreement is obliged to ensure that sub-associations or personnel covered by the agreement breach neither the industrial peace obligation nor other terms of the agreement. This obligation means that unions must not support precluded industrial action or in any other way influence such action, and is obliged to try to prevent such action from occurring.

#### *Collective Agreement for Employees Under Contract*

For the duration of this agreement, strike action, lock-outs and other similar actions which are directed against this agreement or the stipulations in the appendices or are aimed to change this agreement or the stipulations in the appendices, are not permitted.

## **Collective Agreement Concerning Compensation for Travelling Expenses (2014)**

### **Article 23. Industrial peace**

#### *Public servants*

During the period of validity of the present Agreement persons bound by it must not resort to industrial action for the purpose of resolving disputes concerning the validity, the applicability, the actual content or claims based on the agreement, nor for the purpose of modifying the agreement in force, or for concluding a new one. Furthermore, associations bound by the present agreement are liable for controlling that subordinated associations and the public servants concerned do not break the industrial peace obligation set out in the preceding paragraph, nor otherwise contravene the contract clauses. This obligation of the associations concerned also means that they must not support or give their assistance to prohibited industrial action, nor otherwise promote such action. On the contrary, the associations shall make all endeavours to stop industrial action.

#### *Employees*

During the period of validity of the present Collective Agreement strikes, lockouts and other similar industrial action against the provisions of the present agreement, or for the purpose of amending it, are prohibited.

## Dealing with change in negotiated outcomes

The Manual indicates that “new technologies, new social needs, old unmet needs and evolving public expectations – to name just a few factors – mean that the organization of work in all public services is a continuing endeavour. Terms and conditions of employment and indeed employment relations may constantly change.” The Committee of Experts has identified collective bargaining as “an effective instrument which facilitates adaptation to economic and technological change and to the changing needs of administrative management, often in response to demands from society.”<sup>178</sup> Like in the previous section, permanent consultative committees have been the favoured mechanism for this purpose. The main difference is that the preceding examples addressed the parties’ proposals to adapt to new proposals, the following ones address changing conditions of work brought about by employer’s initiatives to incorporate new technologies. These conditions of work are commonly considered mandatory subjects of bargaining.

While an employer has the prerogative of taking measures to adapt to the changes in technology and evolving models of service delivery, the impact of these changes on working conditions not covered by the agreement are often the subject of meaningful consultations upon request of either party, the scope of which the parties may determine.<sup>179</sup> Agreements may define the contours of such prerogative by defining the conditions under which the employer should negotiate with the union, as well as the appropriate forum for such negotiations and other arrangements: in the Spanish General Public Administration, for example, it will take place in a specialized commission and within fifteen days of the proposal for

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178 ILO: General Survey (Geneva, ILO, 2013), para. 227.

179 See, e.g., Canada: Collective Agreement between the Treasury Board and the Association of Canadian Financial Officers, Secs. 16.01 and 16.02 (“Joint consultation”).



change, if it affects individual working conditions. If it affects collective working conditions, the employer will initiate consultations as indicated by law, and notified to all those affected at least 30 days prior to implementation.<sup>180</sup> The Bahamian agreement provides that the notification by either party of an intended change in working conditions will trigger a timed exchange of proposals and counterproposals, followed in case of impasse by dispute resolution by the Minister responsible for labour relations.<sup>181</sup> The 2015 Irish public service agreement also contains a commitment to negotiated changes, and to submit any disagreements to the Labour Relations Commission and, if necessary, to the Labour Court or, alternatively, to other agreed machinery.<sup>182</sup>

### Scope of bargaining for intended changes

The Swedish agreement for the civil service contains a more detailed explanation of the scope of bargaining regarding intended changes.<sup>183</sup> Political decisions are not subject to bargaining, but unions may dispute such classification by the employer. The manner of implementation is subject to bargaining unless it is a political decision itself. The impacts of a decision on working conditions will be consulted through a codetermination mechanism, which may include the appointment of specialized joint bodies. This includes prompt notification and full disclosure by the employer of relevant budgetary information, and affected employees will be briefed in a coordinated manner. Unions may request negotiations regarding the creation of new posts and changes in organization charts that will last more than six months and entail reallocation of personnel or equipment. Unions may

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180 See, e.g., Spain: III Collective Agreement for the General State Administration (Renewed November 2014), Art. 20.

181 Bahamas: Industrial Agreement between the Government and the Bahamas Public Services Union, Articles 6.3-6.7.

182 Ireland: Public Service Stability Agreement for 2013-2018, known as the Lansdowne Road Agreement (2015).

183 Sweden: Basic Agreement for the Civil Service, Secs. 3, 4, 5, 11 and 12.

also request the employer to discuss (as opposed to negotiate) issues related to budget proposals, redefinition of posts, building projects, plan of operations, procurement and distribution of equipment and utilities, funded training plans, setting up of work plans, provision of personal protective equipment, reallocations between salary costs and other operational costs, and other matters “which one of the parties considers to be significant to the employees’ working situation”. However, all agreements must lie within the employer’s sphere of authority, within the framework of the budget allocation, and within the regulations or the priorities laid down for the agency.

### Dealing with impact of the financial crisis

In countries that have suffered from the aftermath of the financial crisis, the parties have had to assume additional responsibilities in this regard. For example, the parties to the Swedish Basic Agreement have recognized the “demands for changes in working methods, roles, organization and rules” and commit to use the agreement as “an instrument for restructuring, efficiency improvement and renewal of the government sector”. To succeed, the agreement requires both managers and union representatives to exercise “sound common strategic knowledge” and “to communicate the need for changes and methods for bringing them about in such a way that they are understood and accepted by the employees”, to ensure “the greatest possible predictability in relation to the content of, reasons for and directions of these processes.”<sup>184</sup> The employees, in turn, “are expected to put forward proposals for measures to enable the agency to achieve the best possible results.”<sup>185</sup>

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184 Sweden: Basic Agreement For The Civil Service (“Purpose Of The Agreement And Intentions Of The Parties”, para. 4, “Instrument for restructuring”)

185 Id., para. 7 (“Duties of elected union representatives”)



# PART II. Dispute Resolution

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## Dispute resolution mechanisms

The Manual emphasized dispute prevention over dispute resolution, and this supplement follows this practice. The Manual included the following statements:

“ Just like the broader collective bargaining system of which it is a part, the effectiveness of a dispute resolution system turns substantially on its legitimacy. That legitimacy flows from the participation of the interested parties in its creation: ‘When the system’s stakeholders are involved collaboratively in the design process, they become true partners in identifying, understanding, and managing their disputes – and have a more vested responsibility for the successful operation of the conflict management system.’<sup>186</sup>

The manual presented examples of how this could be done through legislation, but collective agreements also provide appropriate avenues for such an endeavour.

The nature of collective interest disputes lead them to be regulated mostly in laws and regulations. However, centralized collective agreements that provide for negotiation at other levels, or those which regulate the negotiation of successor agreements, have the ability to establish such mechanisms. For example, the parties may agree to refer disputes to existing formal dispute resolution processes provided for example through specialized bodies or within labour administration agencies created by law, or establish internal rules or procedures under collective agreements.<sup>187</sup> These rules may include

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186 ILO: Manual on Collective Bargaining and Dispute Resolution in the Public Service (2011), p. 102. The inside quote is taken from C. Constantino and C. Sickles Merchant: *Designing conflict management systems* (San Francisco, Jossey-Bass, 1996), p. 54.

187 See, e.g., UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009), Arts. 30 and 31.

a commitment to collaborate in good faith and to comply with the resulting award or ruling, which is called a “pre-dispute” agreement to use arbitration. The parties may also agree on the jurisdiction of the adjudicating person or body.

In countries where collective agreements are conducted at several levels, any coordination mechanisms established in the national collective agreement<sup>188</sup> or an *ad hoc* committee (which may be established by the parties at either the national or decentralized level)<sup>189</sup> may resolve disputes regarding the negotiation of the decentralized agreements. The constitution and procedure of the committees may be established in the agreement, like the matters that can be brought to the attention of the committee, the election or not of a chairperson or facilitator, the application or not of mediation rules, or the representation of the parties to the decentralized negotiating table.

## Joint secretariats

Similar to the active facilitation of negotiations, some agreements have introduced support measures aimed at improving the parties’ prospects of achieving agreed outcomes in negotiation, thus also preventing the recourse to third-party adjudication. One such case is the joint secretariats, such as the one established by the National Joint Council for Local Authority Fire and Rescue Services to assist parties at local levels after they have exhausted consultation or negotiation processes.<sup>190</sup> The local parties must request the secretariat’s intervention jointly with a summary of the discussions and the parties’ respective positions, and should commit to participate in the process actively and in good faith. The NJC can also provide specific assistance in the form of the Technical Advisory Panel and the Resolution Advisory Panel, as appropriate.

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188 This is the case of the CoPAR established by the Argentinian collective agreement for the civil service.

189 As in the case of the Swedish Basic Agreement for the Civil Service, Section 5.

190 UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009): “NJC assistance to local parties”.



## Conciliation and mediation

Conventions No. 151 and 154 and Recommendation No. 92 strongly encourage voluntary conciliation and mediation mechanisms for disputes arising from the negotiation of collective agreements. Collective agreements are an appropriate vehicle to establish such mechanisms, particularly in the public service. For example, the Argentinian general collective agreement covering civil servants introduce three distinct procedures: first, the parties negotiate a solution within the CoPAR. Second, if the parties cannot reach an agreement within 15 days, the CoPAR selects a mediator in agreement with the parties. Third, if the parties still cannot reach agreement, the conflict can be subsequently taken to arbitration or to the Justice system. These three mechanisms operate as legitimate, independent and professional forms to resolve disputes before reaching the formal court system.<sup>191</sup>

## Arbitration

As we have seen, several collective agreements in our sample include arbitration as a last recourse to resolve disputes. The CEACR has stated that “except in the case of essential services in the strict sense, compulsory arbitration imposed by the authorities or at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements”.<sup>192</sup> As stated in the Manual, in voluntary arbitration the parties to the dispute voluntarily agree to place the issues dividing them before an independent third party. The arbitrator is empowered either by contract (the deed of submission to arbitration, which may be captured in a broader collective agreement) or by statute to consider evidence and

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191 Argentina: Collective Agreement between the Civil Administration and the Union of the National Civil Staff (2006, in force), Arts. 82 to 94 (“Mechanisms to solve labour collective conflicts”).

192 CEACR (2015). Observation on the application of Convention No. 98 by Lebanon.



arguments and then make a final and binding determination on the matters in dispute.<sup>193</sup> As a consequence, the following collective agreements in the public service contain clauses regulating this procedure.

The general collective agreement covering Argentinian civil servants requires that both parties need to voluntarily agree to enter the arbitration process and comply with the resulting award, after having presented the specific issues, positions and arguments on which they wish to have an arbitration process. The CoP.A.R. will select the arbitrators from the names suggested by the parties, and will seek their agreement. Within a particular timeframe, the arbitrators will need to present an award to the corresponding authorities within the national public administration.<sup>194</sup> In a different approach, the Agreement between Canada Post Corporation and the Canadian Union of Postal Workers (2012-16)<sup>195</sup> establishes a list of arbitrators for each Canadian province which will adjudicate disputes arising out of the consultations at the local level. This entails that the arbitrators are appointed by mutual agreement before the dispute arises. The agreement covering health sector workers in Quebec, in turn, establishes summary proceedings for subjects of negotiations reserved by law to the local level. In these cases, the hearings must take place within 15 days after the controversy has been brought and last no more than one day; also, all documents must be submitted within five days after the hearing. Besides, the arbitrator must reserve the resolution of procedural issues after hearing the merits of the grievance, unless they can be resolved during the hearing.

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193 See paragraph 6 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No.92): "If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award."

194 Argentina: Collective Agreement between the Civil Administration and the Union of the National Civil Staff (2006, in force), Arts. 95 to 105 ("Arbitration").

195 Secs. 8.10 ("Reference of Disagreement") and 9.37 to 9.42 ("Lists of Arbitrators").



Under the mutually agreed Scheme of Conditions of Service covering the UK firefighters, in turn, the NJC or MMNB must refer collective interest disputes to ACAS for conciliation; if conciliation fails to produce a settlement, either side of the NJC may request arbitration through the services of ACAS. Both sides should fully participate, and have agreed in advance to be bound by the decision of the arbitrator.<sup>196</sup>

## Industrial action

In his 2003 article “Decent work statistical indicators: strikes and lockouts statistics in the international context”, Igor Chernyshev indicated that “[o]ne measure of the failure of social dialogue is the recourse to strike or lockout. Industrial action – strike and lockout – is perhaps the most high profile aspect of social dialogue, at least in terms of media coverage and public impact and attention.” During the preparatory work for Convention No. 151, ILO constituents agreed that the Convention did not deal in one way or the other with the question of the right to strike. However, many countries do recognize such a right,<sup>197</sup> and the ILO only considers its limitation legitimate in the case of public servants exercising authority in the administration of the state and in the essential services in the strict sense of the term. It is important to note that industrial action can also take the form of refusing to work overtime or to perform missions outside the ordinary working schedule, among other withdrawal of work by either side.

As the example of the Swedish central and local level agreements illustrate, collective agreements can regulate the right to strike and to initiate a lockout. They specify that advance notice be given with sufficient time, indicating the specific

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196 UK: Scheme of Conditions of Service for the National Joint Council for Local Authority Fire and Rescue Services, Sec. 30 (“Settlement of differences”).

197 See ILO: General Survey (Geneva, ILO, 2013).

undertakings that will be affected and the number of employees, and even their names.<sup>198</sup> These agreements also limit the staff who may participate in a strike by excluding the chief executives and chief of personnel of agencies, and others through negotiations after the notice of industrial action has been served, or when an affected employer requests it because of their managerial or confidential functions, because they are considered minimum or essential services, or other special circumstances.<sup>199</sup> If the parties cannot agree, a bipartite Board has the power to determine who is excluded from the industrial action at the local level, provided that it rules on the matter promptly so as not to prejudice the rights of the moving party.<sup>200</sup>

## Putting it all together

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Some collective agreements contain comprehensive expressions of the principles at stake as well as the understanding that the agreements constitute an integrated and sequenced package. For example, the National Joint Council for Local Authority Fire and Rescue Services of the UK declared that its aim is “to support and encourage the delivery of high quality services by a competent, well-developed, motivated, and diverse workforce, with security of employment.” . . . [based on] [s]table industrial relations achieved by consultation and negotiation between fire and rescue authorities as employers and recognised trade unions.”<sup>201</sup> The parties established a Joint Protocol, as seen in the following box:

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198 Sweden: Basic Agreement for the Civil Service, Section 43 (“Collective notice”); Sweden: Main Municipal Agreement (1999), Ch. V (“Industrial Action”).

199 Sweden: Basic Agreement for the Civil Service, Section 44 (“Employees who shall not be involved in a strike”).

200 Sweden: Main Municipal Agreement (1999), Ch. V (“Industrial Action”).

201 UK: National Joint Council for Local Authority Fire and Rescue Services, Scheme of Conditions of Service, Sixth Edition 2004 (updated 2009), Preface.



## A JOINT PROTOCOL FOR GOOD INDUSTRIAL RELATIONS IN THE FIRE AND RESCUE SERVICE

The National Joint Council (NJC) recognises that Fire and Rescue Service managers and trade union representatives must work together for the benefit of the service, its employees, and local communities. To this end the principles below will apply both at national and local level.

### *Principles*

- Joint commitment to the success of the Organisation
- Joint recognition of each others legitimate interests and responsibilities
- Joint focus on the quality of working life
- Joint commitment to operating in a transparent manner
- Joint commitment to continuously improve industrial relations
- Joint commitment to reaching agreement within appropriate time-scales
- Joint commitment to ongoing dialogue and exchange of views including face-to-face meetings
- Joint commitment to a ‘no surprises’ culture

In support of the above principles, employer representatives will:

- Engage trade union representatives early in consultation or negotiation (as appropriate) on issues which have workforce implications
- Share full and appropriate, and timely information e.g. on finance and employment matters to trade union representatives in order to enable effective consultation or negotiation to take place
- Take on board trade union views, providing full and frank feedback on how that process has influenced their subsequent position
- Put in place reasonable trade union facilities in accordance with statutory requirements and ACAS good practice guidance in order to support this inclusive approach

Trade union representatives will:

- Take an active and constructive part in discussion at an early stage to facilitate reaching agreement within the appropriate timescale
- Provide a considered response to proposals, including alternative options, in accordance with a locally developed timescale or those contained in the national model procedures, as appropriate
- Share with managers relevant and appropriate information to assist discussions

All parties:

- Recognise their common interests and joint purpose in furthering the aims and objectives of the Organisation and in achieving reasonable solutions
- Will behave respectfully towards each other at all times
- Accept the need for joint consultation or negotiation in securing their objectives
- Will identify at the outset the appropriate timescale for discussion
- Respect the confidential nature of the, at times, sensitive information exchanged
- Actively work together to build trust and a mutual respect for each other's roles and responsibilities
- Ensure openness, honesty and transparency in communications
- Provide top level commitment to the principles outlined in this protocol
- Take a positive and constructive approach to industrial relations
- Commit to early discussion of emerging issues and to maintaining dialogue in order to ensure a 'no surprises' culture
- Commit to ensuring high quality outcomes
- Where appropriate, seek to agree public positions.



## Concluding remarks

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In the foregoing pages, we have seen how collective agreements can support the development of mature labour relations in a controversial arena like the public service. The texts that have been cited promote the establishment of frameworks for dialogue and collaboration to promote as much the welfare of public service workers as the quality of public services, while reducing the possibilities of labour strife. This can be done through a variety of means that may help build trust by reducing uncertainty and perceptions of risk while increasing the amount of information available to the parties.

This supplement has purposely avoided discussions of concrete negotiated outcomes and concentrated on clauses of collective agreements that establish processes that contribute to build relationships. The parties are better positioned to decide on the outcomes of these processes, and our role has been to provide examples that could motivate a creative, interest-based search for solutions to the many challenges that public services face. It is our hope that parties will see these pages as inspiration to strive for quality public services in a collaborative environment.

# Collective Agreements consulted

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Argentina: Collective Agreement between the Civil Administration and the Union of the National Civil Staff (2006).

Argentina: Collective Agreement covering the Faculty of the National University Institutions (2014).

Australia: TAFE SA Enterprise Agreement (2013).

Bahamas: Industrial Agreement between the Government and the Bahamas Public Services Union (2012).

Benin: Collective Labour Agreement regarding the General Regulations and Personnel Statutes of the National Centre of Road Security (2012).

Brazil: Collective Agreement for the Permanent Negotiating System of the Mayoralty of the Municipality of Sao Paulo (2013).

Canada: Agreement between the Treasury Board of Canada and the Association of Canadian Financial Officers (2011).

Canada: Collective Agreement between the B.C. Housing Management Commission (Administrative/Clerical Division) and the B.C. Government and Service Employees' Union (2014).

Canada: Collective Agreement of Professional Staff, between the Government of Quebec and the Union of Public Service Workers (2010-2015).

Canada: National Provisions agreed between the Alliance of Professional and Technical Personnel of Health and Social Services and the Quebec Employers Negotiating Committee of the Health and Social Services Sector (2011).



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