



A factsheet produced by the International Transport Workers' Federation

ATS WORKERS AND THE RIGHT TO STRIKE

The right to strike under attack

At the International Labour Organization (ILO) annual conference in 2012, employer representatives launched an attack on the right to strike.

They brought the whole Committee on the Application of Standards (CAS) to a standstill. Putting forward legal arguments at odds with decades of employer recognition of ILO findings, they stopped the 2012 ILO Conference from hearing cases of severe, and in some cases life-threatening, violations of workers' rights. The same happened in 2013 and 2014.

ILO conventions and the Committee on the Application of Standards

Since it was established in 1919, the ILO has adopted 190 conventions. If these conventions are ratified by an appropriate number of governments, they are enforceable. However, ILO conventions are considered international labour standards, regardless of ratifications. When a convention comes into force, it creates a legal obligation for ratifying nations to apply its provisions.

Every year the ILO's CAS examines a number of alleged breaches of international labour standards. Governments are required to submit reports detailing their compliance with the obligations of the conventions they have ratified. Conventions which have not been ratified by member states have the same legal force as recommendations.¹

During the last days of February 2015, at a special ILO meeting, trade union and employer representatives finally reached an understanding to end this ongoing impasse. This understanding is based on recognition of the right to take industrial action, backed by explicit recognition from governments of the right to strike, and linked to ILO Convention 87 on Freedom of Association (ILO meeting outcome http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_346764.pdf).

The agreement came after a hugely successful international union mobilisation, which involved more than 100 actions in over 60 countries in support of the right to strike.

During the crisis period, the International Trade Union Confederation (ITUC) produced a 122-page legal

report, confirming that the right to strike is protected under international law (http://www.ituc-csi.org/IMG/pdf/ituc_final_brief_on_the_right_to_strike.pdf). The report is a very valuable resource for trade unions from all industries.

Although the February 2015 crisis was resolved, attacks against workers' rights have been continuing globally for the last three decades. The ITUC's Global Rights Index (<http://survey.ituc-csi.org/?lang=en>) shows that the right to strike is frequently restricted in law and violated in practice around the world. As a result, unions lose strength and influence.

The right to strike and air traffic services

Air Traffic Services (ATS) employees and their unions are not immune to such attacks. For the last five years they have been one of the most targeted group of workers.

¹Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals. The ILO provides technical assistance if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a convention they have ratified.





In many countries, ATS workers either don't have the right to strike or their right to take industrial action is severely limited. Even worse, in a number of countries ATS workers are specifically banned from gaining trade union protection. More recently, some governments - including democratic countries - have attempted to take steps towards militarisation of their national airspace.

This online publication aims to provide ITF affiliated ATS unions with the knowledge of the minimum service levels and the right to strike in their sector. With this knowledge, unions can better defend and improve their members' rights at the workplace and within their national legal framework.

What is the basic principle of the right to strike?

Strike action is fundamental to workers' and their organisations' ability to promote their economic and social interests.

The right to strike is recognised by the ILO's supervisory bodies as an intrinsic corollary of the right to organise, which is protected by Convention No. 87. It derives from the right of workers' organisations to formulate their programmes of activities to further defend the economic and social interests of their members.

However, according to the ILO, the right to strike is not absolute. It may be subject to certain legal conditions or restrictions, and may even be prohibited in exceptional circumstances - Freedom of Association and

Protection of the Right to Organise Convention, 1948 (No. 87), Article 3; and General Survey on Freedom of Association and Collective Bargaining, para. 151.

In most cases, a work stoppage is deemed to be a strike. Other forms of action which paralyse or reduce the economic activity of an enterprise, such as go-slows or work-to-rules, may or may not be comparable to strike action and be protected under the law. The ILO's supervisory bodies view legal restrictions on such forms of action as justified only where they cease to be peaceful.

Possible exclusions from the right to strike

In some countries, both public and private sector workers enjoy the right to strike, irrespective of whether a work stoppage in their establishment impacts on the public interest. In other countries, the right to strike is denied to public servants or to employees in essential services. In many countries, strikes can be prohibited in emergency situations. [See, digest 2006].

Public servants

Public servants, like other workers, are entitled to exercise the right to organise. However, it is recognised in the principles of freedom of association that high-level public servants who are exercising authority in the name of the State may be denied the right to strike (General Survey, para 158). This prohibition of the right to strike may include members of the

judiciary and officials working in the administration of justice, but may not be extended to cover public servants in general or public employees engaged in state-owned commercial or industrial enterprises (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body, paras 537, 532).

In some countries ATS workers are public service workers and they are denied the right to strike on this basis. Such a legislative restriction goes against the ILO principles concerning the right to strike, as it concerns a group of public employees engaged in a state-owned commercial or industrial enterprise.

Essential services and emergency situations

National legislation frequently places some form of limitation on the right to strike in certain activities, usually defined as essential services. In this respect, the ILO's supervisory bodies have taken the position that it is admissible to limit or prohibit the right to strike in essential services, where service interruption would endanger the life, personal safety or health of the whole or part of the population (General Survey, para. 159).

In this regard, legislation may establish a general definition of essential services and leave its interpretation in specific cases to a public authority or the courts. Or it may establish a procedure for determining whether an activity should be deemed to be an essential





service, sometimes with the participation of employers' and workers' organisations. In some cases, the legislation includes a list of activities deemed to be essential services in which work stoppages are not permitted.

The determination of which services are to be considered essential in each case is a delicate matter. For example, the interruption of a specific activity in many countries might not be considered such as to endanger the life, personal safety or health of the whole or part of the population, while such a service may be essential in other countries in view of their particular conditions. By way of illustration, port or maritime transport services might be considered essential on an island that is heavily dependent on them for basic supplies, whereas they would not be considered essential in most countries.

Moreover, the impact of a strike may depend on its length. A stoppage of a few days may pose few problems, while one of several weeks or months may cause serious problems for the population concerned (for example, in household refuse collection services).

In view of the above, in some countries a specific authority is entrusted with the power to declare a service to be essential, or to prohibit a strike in a service or activity when its length has created a situation that is akin to an emergency for the whole or part of the population.

The most recent and detailed guidance from the International Labour Office, (2012 General Survey on Fundamental Conventions), says:

It should be possible for strikes to be organised by workers in both the public and private sectors [in] air transport services and civil aviation.

This statement was based on eight cases examined against eight countries in the past two years.

Civil aviation is not considered an essential service by the ILO.

Moreover, the Freedom of Association Committee of the governing body of the ILO attaches specific importance to the protection of rights of international airlines' workers as follows:

The prohibition of trade union activities in international airlines constitutes a serious violation of freedom of association. [See, digest 2006].

According to the ILO the following may be considered to be essential services:

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and

- the cleaning of schools
- air traffic control [See, digest 2006]

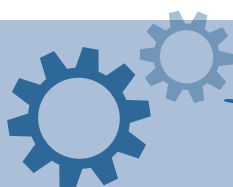
On the other hand, the ILO's supervisory bodies have taken the position that where the right to strike is subject to restrictions or a prohibition, the workers concerned should be afforded compensatory guarantees in the event of deadlock, such as conciliation and mediation procedures seen to be reliable by the parties concerned.

In such cases, it is essential that the parties are able to participate in determining and implementing the procedure, which should provide sufficient guarantees of impartiality and rapidity.

Moreover, arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely (General Survey, para. 164).

In a nutshell, for essential services the ILO requires compensatory guarantees. These guarantees include an arbitration system - parties must have confidence in this system, meaning it must be, and appear to be, impartial, and the organisations involved should have power to select members.

Without establishing these compensatory guarantees, any limitations brought on the right to strike would be against the ILO principles concerning





the right to strike. In countries where ATS unions enjoy the right to strike, simply withdrawing it will be against the ILO principles concerning the right to strike.

In many instances in air navigation services, governments have threatened to restrict or remove the right to strike during the course of a strike.

The ILO's view of changes to the right to strike during a strike is as follows:

If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified. [See, 330th Report, Case No. 2208, para. 601].

Minimum service

A provision may be made for the maintenance of a minimum service to ensure that the basic needs of the population are met during a strike in a public

utility. An interruption of such a minimum service would not be so prejudicial to the public as to justify a total ban on strikes. A minimum service could also be required, instead of a total ban on strikes, in essential services in the strict meaning of the term (General Survey, paras. 160-162).

The freedom of association digest referred to above states in paragraph 606:

The establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance.

The same document further states in paragraph 612:

The determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also

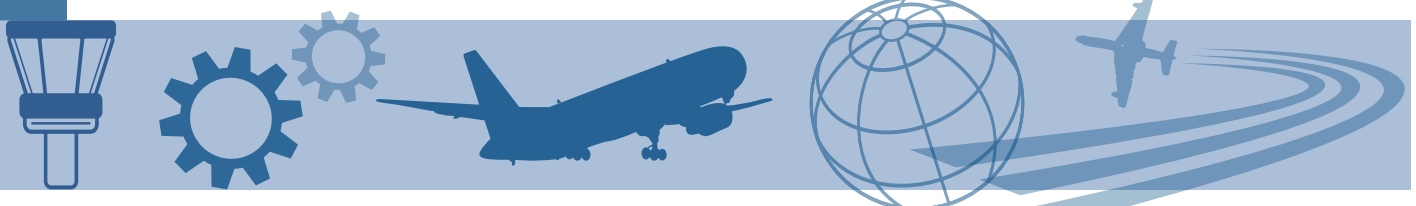
contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services.

These two paragraphs make it clear that minimum services should only be applied if one of the three conditions set out above are met. And if minimum services are to be introduced, they should not completely negate the effect of industrial action and there should be an attempt to negotiate on what the levels of minimum service are.

In some countries (including democratic ones) minimum service provisions in the ATS sector mean an effective ban on the right to strike. Such misuse of minimum service is against the ILO principles concerning the right to strike.

Moreover, if your union wishes to participate in defining such a service, along with employers and the public authorities, it should be able to do so. Denying such a demand from the union is a breach of the ILO principles concerning the right to strike.

Finally, negotiations on the definition and organisation





of the minimum service must not be held during a labour dispute, so that the parties can examine the matter with objectivity and detachment.

What should unions do?

Based on the bitter experiences of ITF ATS affiliates in different parts of the world, there are many issues to be careful of.

- Always seek sound, local legal advice before you take any action. If you need any information regarding the international situation, do not hesitate to contact the ITF civil aviation section at aviation@itf.org.uk
- In many developing countries and even in some

industrialised countries, lack of adequate ATS infrastructure and maintenance goes hand-in-hand with disputes over working conditions. However, be very careful about going public regarding safety concerns, as it is an extremely sensitive issue for employers, governments and the public. Over the last few years, some air navigation service providers have reacted to such union statements by dismissing union leaders and activists. Develop a well-thought-out strategic plan to tackle the problems related to safety.

- When you make any public statements, keep in mind that everything must be accurate and legal. Once again, receive local advice and have a legal representative check your wording.

- Whatever you choose to do, don't forget to inform the ITF Civil Aviation Section when you anticipate that a major dispute could arise. Send us complete background information before a crisis begins. Too often requests for action and support are made after the conflict is already so advanced that the possibilities for effective global intervention are limited.

