



Support to the Collegial Bodies Office

The exercise of the right to strike in essential public services

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1. The regulation of the right to strike between the IT Constitution and EU regulations

- ✓ Art. 40 Italian Constitution: *"The right to strike is exercised within the laws which regulate it"*.
- ✓ The Charter of Fundamental Rights of the European Union (adopted in 2000, but became binding for EU Countries as a result of the **Treaty of Lisbon** in December 2009), provides in Art. 28 :

"Right to negotiation and collective action"

"Workers and employers, or their respective organizations, have, in accordance with Community law and national laws, the right to negotiate and conclude collective agreements at the appropriate levels, and, in cases of conflicts of interest, to take collective action to defend their interests, including strike."



2. Why a law to regulate the exercise of strike

✓The law 12.06.1990, n. 146 on the exercise to strike in essential public services (modified and integrated by subsequent law 11.4.2000, n. 83) was born with the aim to temper the right to strike with the following **personal rights** protected by the Constitution:

- to life;
- to health;
- to freedom and security;
- to freedom of movement;
- welfare and social security;
- to education;
- to the freedom of communication.



3. The functioning of essential public services in case of strike

- ✓ For each of the fundamental rights protected by the Constitution (see previous page), the Law 146/1990 sets out the **essential public services** to be guaranteed in case of strike.
- ✓ The exercise to strike in essential services must be exercised with **a minimum of 10 days notice**.
- ✓ Public administrations that perform functions related to protection of fundamental rights provided by the Constitution have to identify, in their collective bargaining agreements, the **indispensable services** whose functioning is assured in case of strike.
- ✓ In collective bargaining agreements are also identified, for each administration concerned, the **minimum staffing contingents** to ensure the functioning of essential services in case of strike.



4. Procedures to prevent the strike in essential services

- ✓ Law 146/1990 on the exercise of the right to strike in essential services establishes a **frame of rules** to be transfer in collective bargaining agreements.
- ✓ In this way, the **logic of sharing** of a collective necessity prevails over that of the limitation of a subjective right (**typical view of the '90s**, that is found in many other aspects of social and economic Italian life of that period).
- ✓ The agreement Government-Trade Unions 31.5.2001 has defined the guidelines for mandatory **conciliation** procedures to be adopted in all administrations before calling a strike.
- ✓ Where it is not possible to resolve the conflict, before proclaiming the strike the parties ask for the intervention of an **external authority**: Prefecture or Municipality (if the strike concerns public services at local relevance), or the Ministry of Labour (if the dispute has national significance).



5. Who decides whether the measures laid down in collective agreements are adequate?

- ✓ The Law 146/1990 has established a **national authority** responsible for monitoring the proper implementation of the rules on the exercise to strike in essential public services (so-called "Guarantee Committee").
- ✓ The Committee **examines and valid collective agreements** establishing the list of essential services covered by each Public Administration and adopt procedures to ensure their functioning in case of strike.
- ✓ If this deviates from the directions of the law, the Committee rejects the agreements and **indicates the changes** to be made.
- ✓ The Committee continually update and make public the calendar of strikes proclaimed in the whole national territory.



6. Behaviors required in case of strikes in essential services

- ✓ Before calling a strike involving essential public services, Trade Unions need **to consult the calendar** prepared by the Guarantee Committee.
- ✓ The first strike can not exceed **the maximum duration** of an entire day (24 hours).
- ✓ Subsequent strikes to the same dispute may not exceed the maximum duration of 48 hours.
- ✓ The strikes lasting less than 24 hours must be conducted in a **single period** of consecutive hours at the beginning or end of each turn.
- ✓ In the event of a succession of strikes for the same service incurred in the same catchment area, between the conduct of a strike and the proclamation of the next there is **a minimum interval** of at least 48 hours (plus the next 10 days notice).



7. Behaviors required in case of strikes in essential services

- ✓ The proclamation of a strike or **revocation** must be communicated to the Guarantee Committee and, in the case of national disputes, to the Prime Minister (Public Administration Department).
- ✓ Public administrations concerned by the strike are required **to notify users** at least 5 days before the start of the strike, explaining the manner and time in which it will be ensured the delivery of essential services.
- ✓ Public administrations are required to make public the number of **workers who participated** in the strike.
- ✓ The criteria for participation in strikes of employees workers in essential services, outside of the minimum mandatory quotas, are defined by collective bargaining agreements.



8. Social dialogue as a tool for conflict prevention

- ✓ The CNEL has no specific tasks concerning the control on the exercise of the right to strike.
- ✓ As the site of confrontation and **social mediation** on issues of labour, employment and development, the CNEL performs a useful function to prevent the emergence of conflicts, in particular on the major disputes of national interest (labour market, social security, etc.).
- ✓ Agreements that define the essential public services and the procedures to be taken in the event of a strike shall be deposited with the National Archives of collective bargaining agreements.



9. Importance of setting clear rules on union representation

- ✓ The right to go on strike (by the part of Trade Unions) calls into question the need to measure their level of representativeness.
- ✓ In the public sector, since 1998 there is a system to measure the trade union representativeness. The measurement is obtained through a calculation (so-called "**weighted average**") that takes into account the number of workers registered with the various Unions and the number of votes obtained in the elections of Union representatives (RSU) in each administration.
- ✓ The CNEL was identified as a **certification body of the Trade Union representative** in the private sector companies (Interconfederal agreement 10/01/2014). This involves complex organizational problems.
- ✓ Many private companies are engaged in public utility services that are among those that are defined "essential" by law 146/1990.



10. Some examples of essential public services in accordance with Law 146/1990

- ✓ Health and public hygiene
- ✓ Civil protection
- ✓ Collection and disposal of waste
- ✓ Customs (limited to the control of animals and perishable goods)
- ✓ Supply of energy and essential goods
- ✓ Administration of justice
- ✓ Urban and suburban public transport (rail, planes, airport and ferry crossings with the islands)
- ✓ Provision of the amounts (including through banks) related to social assistance and national insurance
- ✓ Public education and university
- ✓ Environmental protection services and supervision of cultural heritage
- ✓ Post and Telecommunications
- ✓ Information transmitted by radio and public television