1 Introduction

1.1 IFATCA is a non-political and non-industrial world professional organization. Some of its member associations (MAs) are not only professional federations but they have also the status of a trade union. Other MAs use cooperation with trade unions to improve their working conditions and to realise professional IFATCA policy. In both ways unions have the right to negotiate with employers and to express their views on economic and social issues affecting the occupational interests of ATCOs.

1.2 The question arises as to what "rights" ATCOs have if it comes - due to different reasons - to industrial action, what should be prepared in such a case and what reactions of the ANSP or employers are possible.

2 Discussion

2.1 Industrial action is one of the fundamental methods for workers' organisations to make their right "to organize their ... activities" effective (Article 3 of the Convention of Freedom of Association\(^1\)). It is an essential means for employees to defend their interests. But it can also be used for political or other reasons. The laws governing industrial disputes depend on the political system and vary considerably throughout the world.

\(^1\) ILO C087 Freedom of Association and Protection of the Right to Organise Convention, 1948
2.1.1 If industrial action takes place in private industry it is mainly the company concerned that suffers disadvantages, however the situation in the public sector is different. As a consequence and depending on the legal system applied by the respective State, the right to industrial action for public servants exercising authority in the name of the State and for workers in essential services can be restricted or even excluded. Essential services encompass services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. Agreements on “minimum services” or “minimum operational services” may help to avoid a proscription because during industrial actions these agreements ensure that general public basic needs are met and that facilities operate safely or without interruption. If industrial actions are not allowed, trade unions should seek to protect their interests by appropriate impartial and prompt conciliation and arbitration procedures with binding arbitration decisions for both parties.

2.2 ATCOs and the right to industrial action

2.2.1 Industrial action in ATC can have a major impact on public life and may provoke strong reactions. According to the International Labour Organisation (ILO), the right to industrial action in air traffic control can also be subject to major restrictions or even prohibitions. ANSPs and even governments will try to avoid industrial action by different means. The first means is the form of employment. There are States where ATC is performed by military only. Militaries usually do not have the right to industrial action. In other States ATCOs are civil servants, which sometimes do not have that right either. Another way is to prohibit industrial action in ATC by law. In all those cases strong mechanisms to move collective bargaining forward are necessary. ATCOs should have appropriate guarantees to safeguard their interests: a corresponding denial of the right of lockout, provision of joint conciliation or mediation proceedings and, only where it fails, the provision of joint arbitration machinery.

2.2.2 Even in states where the right to industrial action to ATCOs is given, industrial action should always be the last resort. It should only be planned after intensive negotiations with the employer have provided limited chances to get a result in favour of the ATCOs demands. Then just the announcement of planned industrial action may help to move negotiations forward.

2.3 Minimum services

2.3.1 Because ATC is an essential service, a minimum service in case of stoppage should be granted. Usually minimum services are negotiated with the social partners. But it can also be regulated by Constitution or by law.

2.3.2 IFATCA policy (page 4 1 2 6) is:
“Minimum service is defined as actions confined to operations that are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population.”

2.3.3 On the other hand it is also necessary to ensure that the scope of the minimum service does not, in practice, render action ineffective. Therefore also IFATCA policy (page 4126) is available:

“The minimum ATC service agreed to should not be so great as to render any industrial action ineffective in practice because of its limited impact.”

2.3.4 An example on how minimum service agreements can make industrial actions virtually ineffective are the “Minimum level of air traffic flow management service” approved by The House of Representatives of Cyprus in March 2012 after strike action of Cypriot ATCOs against public-sector austerity measures due to the economic crisis in Europe, including a two-year freeze on pay and pension contributions, which Cypriot ATCOs wanted to be excluded from. It was laid down by law as minimum service that for traffic overflying the territory of Nicosia FIR, three sectors have to be open in the period from May to October and two for the remainder of the year handling in all cases 75 per cent of overflights. For Cypriot airports Larnaca and Paphos strikes in ATC have been allowed not more than once a week and for duration of no longer than two hours each time affecting not more than eight flights. Simultaneous actions at both airports have been prohibited. Furthermore, the government bill has made it a criminal offence for any ATCO to refuse to work when required, and has provided for penalties of up two years in prison and/or a fine of €2550. After this law was published a strike in ATC in Cyprus has been nearly impossible and would have had little effect.

2.3.5 Obviously this Cypriot regulation was mainly influenced by the effects on the public that the preceding industrial action in ATC had. But exactly this should be avoided as stated by the ILO Committee of Experts. Negotiations about the conclusion of a minimum service should not take place during a labour dispute but rather at a time when the parties are more objective and detached. It is also ILO’s view, that workers’ organisations be involved as well as employers and public authorities in negotiations on minimum services and the number of workers needed to provide them. That includes a careful exchange of the viewpoints of the relevant employers and employers’ and workers’ organisations. It is IFATCA policy (page 4216) that:

“… Member Associations establish a policy on minimum ATC service that their individual members should provide when engaged in an industrial dispute.

… Member Associations seek agreement with the appropriate authorities on the minimum ATC service ATCOs will provide when engaged in an industrial dispute.”
2.3.6 The legislation should provide an independent body to settle possible disagreements between the involved parties about the number and duties of the workers in the minimum service. Neither the ministry of labour nor the ministry of public enterprise concerned should be part of such a body. It may also be useful if the parties establish a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of a minimum service and empowered to issue enforceable decisions.

2.4 Industrial action in ATC

2.4.1 Industrial action in ATC is not really a rare event. Especially in Europe because of the economic crisis, a lot of States have been faced with industrial action in ATC in recent times.

2.4.2 Depending on the legal system the government may try to extend the minimum service to make the strike ineffective as at the example of Cyprus has shown. Another option is to declare a national crisis and to subordinate civil ATCOs to military law. That happened in Spain in December 2010 when an alleged controller "sickout" or other reasons, led to partial closing of Spanish airspace and the closing of eight airports. The background was that a lot of the Spanish ATCOs had already reached their yearly maximal working time. In addition, relationship between AENA and the ATCOs had worsened during 2010 due to changes imposed by new regulations from the Government aimed to deteriorate both working conditions and operations management.

2.4.3 A famous example of how an industrial action in ATC can move in a completely wrong direction happened in the US in August 1981 when PATCO, the union of ATCOs declared a strike. They were seeking better working conditions, better pay and a 32-hour workweek and they no longer wanted to be included within the civil service clauses. With this walkout PATCO members violated a law that banned strikes by government unions. US President Ronald Reagan declared the PATCO strike a "peril to national safety" and ordered ATCOs back to work. Only 1,300 of the nearly 13,000 controllers returned to work. Subsequently, Reagan demanded those remaining on strike return to work within 48 hours, otherwise their jobs would be forfeited. But they refused and as a consequence 11,345 striking air traffic controllers were fired.

2.4.4 In States where the legitimate use of collective action is based on precedents, not on legislation, very often courts are used to prohibit industrial actions. Employers, ANSPs go to court claiming parts of the demands of the trade union would be illegal. Airlines try to prevent a sympathy action of ATCOs by judicature because this would be disproportionate since it would have more impact on aviation than the initial industrial action.
2.4.5 And it can also happen that airlines or airports or passengers, which had losses because of industrial action, sue trade unions or their members for compensation.

2.4.6 All this shows that industrial action in ATC are not without any risk for involved employees.

2.4.7 It is IFATCA policy (4 2 1 4) that:

“The settlement of disputes should be through negotiation followed by mediation, consultation or arbitration on whichever may be appropriate to national conditions.”

2.4.8 Before a strike will take place in ATC all other means should be exhausted. The organisation of industrial action needs thorough preparation. Lawyers or legal experts should verify whether the action in itself and also the demands are legal. An agreement to provide minimum services should exist. Usually this includes flights in emergency situations, flights of air defence, flights on search and rescue missions, flights carrying sick or injured persons requiring immediate medical assistance and government flights. In addition, other flights - for example flights to connect islands - can be part of the minimum service if they are of fundamental importance to the public. It can also be agreed to handle a certain amount of the daily traffic. But if there is not a common understanding of figures, the ANSP can use this to increase traffic numbers. To avoid an impact on safety, action should never be applied without a previous announcement. It can be included in the minimum service agreement how many hours beforehand a strike will be announced. Furthermore it is necessary to negotiate with the ANSP how many ATCOs are required for the agreed minimum services.

2.4.9 Arbitration may be a means to avoid industrial action because as soon as one of the involved parties asks for arbitration, industrial action is not allowed up to the end of arbitration. Usually that call should only be possible if collective bargaining has failed.

2.4.10 Depending on the legal system arbitration can be voluntary or compulsory. However any system should be truly independent and the outcomes should not be predetermined by legislative criteria. The whole procedure shall be based on clear regulations accepted by all involved parties. That shall include when the right to call for arbitration is given, appointment of the members of arbitration tribunal, duration of procedure and how to handle the results.

2.5 Public relations during industrial actions in ATC

2.5.1 Just the announcement of a strike in ATC fosters a lot of reactions by the public. News will focus on passengers who are annoyed because they fear that their flights will be delayed or even cancelled. Statements like: “It is unacceptable that the skies over Europe are repeatedly closed or flights
delayed by the unjustified strike action of tiny numbers of air traffic controllers.”

And; “These public servants are among the most overpaid and protected in Europe and yet they repeatedly opt for the strike weapon as a first, rather than a last resort.” Made by the Ryanair spokesperson Stephen McNamara try to influence the opinion of the public in such a way that it is directed against striking ATCOs.

2.5.2  Fostering a close relationship to the media in times when there is no conflict may be a good strategy to avoid a public atmosphere hostile to ATCOs. Air traffic control has been a hidden profession for a long time, being in the focus only in cases of accidents or industrial action. This is slowly changing. It is a task of the MAs to inform the public about the professional aspects of ATCOs including their working tasks and working conditions. It has to be explained that changes in working conditions very often also have an impact on safety in aviation. MAs should have - like ANSPs - a permanent contact to the media. In a conflict the media in all their forms (TV, newspaper, radios, social networks, and blogs) should be used to explain the main motives of the dispute. Media agencies may help to spread the information in a professional way to achieve intended effects.

2.5.3  The public relations during a five day strike of Portuguese ATCOs in May 2012 – against the austerity measures adopted by the Portuguese government to control the country's budget deficit in 2012 and 2013 – were very well organized by the Portuguese ATCO trade union SINCTA. With a media agency and a service keeping a constant watch on all the activities in blogs, social networks and media (TV, newspaper, radios) they tried to manage the media. The service made it possible to react very quickly to any news about the strike and helped to stop hostile comments in the main social networks and newspapers. That was achieved with commentaries in the networks focusing on main motives of the strike and linking them to a website specially created by the union to deliver all information regarding this strike. Also journalists were extensively supplied with background knowledge and information. All this helped to influence the view of the general public so that passengers in TV-interviews were complaining much more about bad information by airports and airlines than about ATCOs and their walkout.

3  Conclusions

3.1  Because of the impact on society, ILO considers air traffic control as an essential service where the right to industrial action can be subject to major restrictions or even prohibitions. However where that right is given to ATCOs it should normally be used as the last resort. Settlements of disputes should follow clearly described procedures including arbitration as a means to prevent industrial action.
3.1.1 Agreements should be negotiated when there is no conflict. They should include the number of workers needed to provide the minimum service and the prior notification before the industrial action commences.

3.1.2 Since governments and ANSPs will try to prevent industrial action in ATC with different means, legal experts should examine in the interest of ATCOs and their union, whether the demands and proposed action are legal.

3.1.3 Good public relation work when there is no conflict may help to prevent strong public and media reactions in the case of (upcoming) industrial action. Well-organized media campaigns about the background of a dispute can make it easier to achieve some acceptance in the public.

4 Recommendation

4.1 It is recommended that on IFATCA page 4 2 1 6

Agreements should be negotiated when there is no conflict. They should include the number of workers needed to provide the minimum service and the prior notification required before the industrial action commences.

Shall be added after

It is recommended that Member Associations seek agreement with the appropriate authorities on the minimum ATC service ATCOs will provide when engaged in an industrial dispute.