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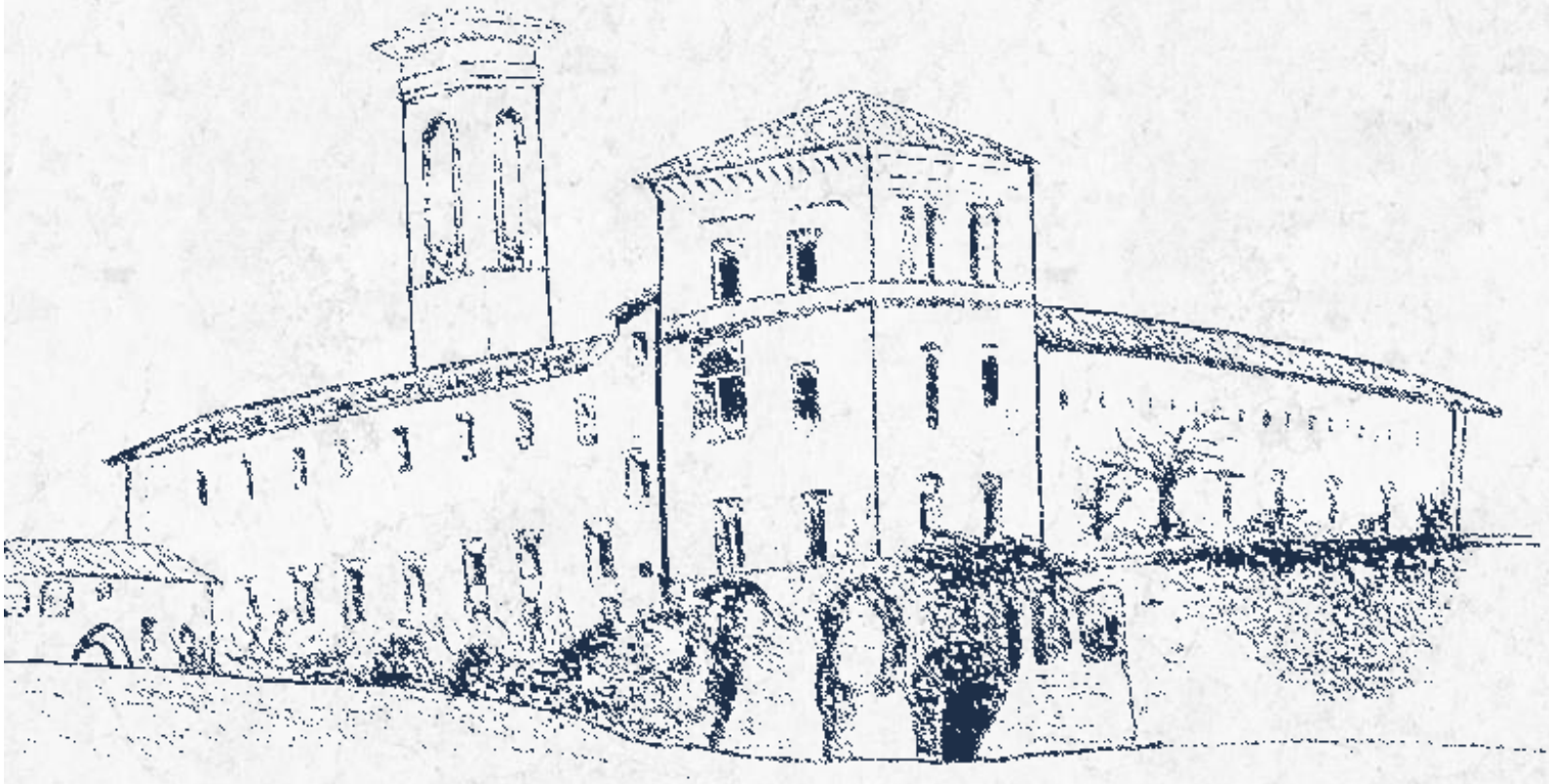

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Technological Transformations of Trade Union Activity in the Italian Public Sector

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Abstract: Even in the public sector, the advancement of new technologies is reshaping the organisation of work, necessitating that trade unions reconsider their role and actions. Social partners are called upon to face new challenges, which aim not only at redefining their roles but also at modelling digital work practices. The proliferation of information and communication technology (ICT) requires, first and foremost, new forms of union participation. However, to an even greater extent, digitalisation affects the very content of unions' actions in protecting workers from the exercise of employer powers. In this context, the public interest upheld by the administration significantly influences unions' actions to some degree.

Keywords: *Trade unions; public sector; workers' rights; digitalisation; public interest; public administration.*

1. Introduction

International bodies such as the United Nations[1], the Organisation for Economic Co-operation and Development[2], and the European Commission actively promote the digitalisation of public services to enhance efficiency as well as to improve their quality and accessibility. As early as 2003, the European Commission advocated for the full-scale

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[1] Recently, United Nations, Department of Economic and Social Affairs, *E-Government Survey 2022, The Future of Digital Government*, 2022, available at *publicadministration.desa.un.org.*

[2] Many reports on the topic are available at *oecd-ilibrary.org.* See OECD e-Government Studies, *Rethinking e-Government Services. User-centred approaches*, 2009; Id., *e-Government for Better Government, 2005*.

implementation of eGovernment, defined as "the use of information and communication technologies in public administrations, combined with organisational change and new skills to improve public services and democratic processes and strengthen support for public policies."[3]
The internal debate in Italy aligns with this perspective. In 2005, the introduction of the Digital Administration Code (Legislative Decree No. 82 of 7 March 2005) systematised the use of ICT in relation to the organisational and procedural aspects of administrative activities[4]. Over the years, numerous governmental documents have emphasised the importance of a modern public administration, equipped to meet the challenges posed by demands for enhanced services from citizens and businesses[5].
However, the increasing digitalisation presents a flip side, as it fundamentally alters the manner in which work is performed. It is commonly asserted that digital technology and automation will improve working conditions, promote work-life balance, and enhance risk management in the workplace. Conversely, technologies associated with artificial intelligence can generate new risks, resulting in excessive workloads, isolation, and insufficient support[6].

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[3] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. The role of eGovernment for Europe's future*, 26 September 2003, COM(2003) 567 final. See also the subsequent Communication *The European eGovernment Action Plan 2011-2015. Harnessing ICT to promote smart, sustainable & innovative Government and Communication*, COM/2010/743 final and the Communication *EU eGovernment Action Plan 2016-2020. Accelerating the digital transformation of government*, COM/2016/0179 final.

[4] E. De Giovanni, *Il Codice dell'Amministrazione digitale: genesi, evoluzione, principi costituzionali e linee generali*, in *Rassegna avvocatura dello stato*, 2018, 3, 155; B. Carotti, *L'amministrazione digitale: le sfide culturali e politiche del nuovo Codice. Decreto legislativo 26 agosto 2016, n. 179*, in *Giornale di diritto amministrativo*, 2017, 1, 7; S. Gaetano, *Riforma del Codice dell'Amministrazione digitale (CAD), identità digitale, e-payment pubblico: la matrice europea di una nuova stagione dell'e-Government*, in *Rivista elettronica di Diritto, Economia e Management*, 2017, 1, 197; G. Duni, *Principi fondamentali del diritto amministrativo e codice dell'amministrazione digitale*, in *Diritto e processo amministrativo*, 2012, 2, 393; D. De Grazia, *Informatizzazione e semplificazione dell'attività amministrativa nel 'nuovo' codice dell'amministrazione digitale*, in *Diritto pubblico*, 2011, 2, 611; F. Ruggieri, *Comments on the Italian 'Code for the Digital Administration'*, in *Digital Evidence and Electronic Signature Law Review*, 2008, 5, 29.

[5] See the *Piano Triennale per l'informatica nella PA 2024-2026* (Tree-year plan for IT in public administrations), at agid.gov.it/it/agenzia/piano-triennale .

[6] Eu-Osha, *Worker Management through AI: From technology development to the impacts on workers and their safety and health*, 19 March 2024; Id., *Surveillance and Monitoring of Remote Workers: Implications for Occupational Safety and Health*, 9 November 2023, all at *healthy-workplaces.osha.europa.eu/en/tools-and-publications/publications*; C. Valenti, *La destrutturazione*

Needless to say, these evolving changes also impact trade unions, which are required to redefine their roles and actions. While this topic has already gained international attention, in Italy it is primarily discussed in relation to the private sector[7]. The public sector, despite significant digitalisation, still exists in a grey area. The reasons for this gap are difficult to ascertain, likely stemming from the particular cultural and legislative context that characterises Italian public employment. Although the Consolidated Law on Public Employment (Legislative Decree No. 165 of 30 March 2001) aimed to create a working relationship as similar as possible to the private sector, the authoritative dimension remains substantial, undeniably affecting the subsequent role of trade unions[8].
In light of these premises, this paper aims to analyse the Italian approach along two lines. The first aspect to consider is how the implementation of new technological systems has shaped interactions between trade unions and workers. More significantly, a further issue is how new technologies influence the content of unions' actions in protecting workers from the exercise of employer powers[9].

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spazio-temporale del lavoro: quali rischi dalle tecnologie immersive?, in *Diritto della Sicurezza sul Lavoro*, 2022, 2, 102; for a general overview, M. Tiraboschi (ed), *Il sistema prevenzionistico e le tutele assicurative alla prova della IV Rivoluzione Industriale. Volume I. Bilancio e prospettive di una ricerca*, Adapt University Press, 2021, salus.adapt.it/il-sistema-prevenzionistico-e-le-tutele-assicurative-alla-prova-della-iv-rivoluzione-industriale-volume-i/ .

[7] See M. Russo, *Timeless rights, new tools: technological transformations of trade union activity in the Italian private sector*, in this *Journal*; F. Schiavetti, *Diritti sindacali e nuove tecnologie: tra effettività dei diritti e dovere di cooperazione del datore di lavoro*, in *federalismi.it*, 9 August 2023; M. Magnani, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, 2, *labourlaw.unibo.it*. Regarding the public sector, A. Zilli, *Tecnologia e godimento delle prerogative sindacali nel lavoro pubblico contrattualizzato*, *in Lavoro Diritti Europa*, 2024, 2, *lavorodirittieuropa.it*.

[8] G. Pistore, *Il rapporto di lavoro nella Pubblica Amministrazione. Un tentativo di ricostruzione civilistica*, in M. Bianchini, E. Zamuner, E. Pasqualetto (eds), *Percorsi di ricerca del Dottorato in diritto internazionale, diritto privato e del lavoro*, Padua University Press, 2021, 157.

[9] R. Chiarini, *The Reform of Public Employment in Italy between Continuity and Change*, in *Rivista Trimestrale di Scienza dell'Amministrazione*, 2018, 4, at *rtsa.eu*; A. Corpaci, *Public Employment Reform: The Difficult and Controversial Abandonment of the Public Model*, in D. Sorace, L. Ferrara, I. Piazza (eds), *The Changing Administrative Law of an EU Member State. The Italian Case*, Springer, 2021, 257; F. Di Mascio, D. Galli, A. Natalini, E. Ongaro, F. Stolfi, *Learning-Shaping Crises: A Longitudinal Comparison of Public Personnel Reforms in Italy*, 1992–2014, in *Journal of Comparative Policy Analysis: Research and Practice*, 2016, 2, 119; B. Caruso (ed), *Il lavoro pubblico a vent'anni dalla scomparsa di Massimo D'Antona*, *WP C.S.D.L.E. "Massimo D'Antona".Collective Volumes* – 8/2019, in *csdle.lex.unict.it*; M. Esposito, V. Luciani, A. Zoppoli, L. Zoppoli (eds), *La riforma dei rapporti di lavoro nelle pubbliche amministrazioni*, Giappichelli, 2018; L. Fiorillo, A. Perulli (eds), *Il lavoro alle dipendenze delle pubbliche amministrazioni*, Giappichelli, Torino, 2013; F. Carinci, *La privatizzazione del*

2. New Forms of Trade Unions' Participation

The development of information technologies is also impacting how trade unions' prerogatives are exercised. Digital evolution naturally necessitates the exploration of new methods for exercising fundamental rights, while simultaneously posing risks and opportunities for misuse. This is especially evident concerning workers' rights, as traditional legal institutions grapple with technological innovations, thereby undergoing a significant transformation from an evolutionary perspective.

In Italian law, trade union rights are governed by Title III of the Workers' Statute (Law 20 May 1970, no. 300), which also applies to public employment in accordance with Article 2, paragraph 2, and Article 51, paragraph 2, of Legislative Decree no. 165/2001, alongside the mandatory provisions established by the decree and other regulations in the field.

In this context, it is crucial to address the peculiarities of public employment, particularly the subtle prominence of the public interest as expressed in law and regulations, or through case law. Recently, the Supreme Court traced back the powers of the administration as an employer to Article 97 of the Italian Constitution, which broadly refers to administrative functions and stipulates that they must be carried out according to "good performance and impartiality."[10] This understanding marks a significant departure from private employment regulations, validating certain shifts, although Article 5, paragraph 2, of Legislative Decree no. 165/2001 provides that measures concerning the management of employment relationships are undertaken "with the capacity and the powers of the private employer." Connected to this aspect is the fact that public administration cannot freely dispose of its assets, given the constraints imposed by the general interest. Hence, it is crucial not to overlook this distinctive framework going forward.

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pubblico impiego alla prova del terzo governo Berlusconi: dalla legge n.133/2008 alla l.d. n.151/2009, WP C.S.D.L.E. "Massimo D'Antona"- 88/2009.

[10] Court of Cassation, United Chambers, 28 December 2023, no. 36197, in *aranagenzia.it/documenti-di-interesse/sezione-giuridica/corte-di-cassazione.html*; in *Rivista Italiana di Diritto del Lavoro*, 2024, 1, 105, with note of E. D'Avino, *L'inconfigurabilità del metus nel pubblico impiego contrattualizzato: i principi costituzionali (sempre) ritornano*; in *Diritto delle Relazioni Industriali*, 2024, 2, 470B, with note of F. Corbo, *La decorrenza della prescrizione dei crediti retributivi del lavoratore pubblico nell'ipotesi di reiterazione di contratti a termine seguita da stabilizzazione presso la pubblica amministrazione*; also in *Giurisprudenza Italiana*, 2024, 10, with note of G. Pistore, *Metus del lavoratore e tutela dei diritti nel pubblico impiego: le Sezioni Unite ribadiscono la decorrenza della prescrizione in costanza di rapporto*; Court of Cassation, Law Chamber, 9 June 2016, no. 11868.

2.1 Traditional Union Law Institutions in an Evolutionary Dynamic

Digitalisation primarily affects trade union dialectics regarding the collection of requests from workers and consensus building[11]. This necessitates a focus on two key areas of analysis. The first concerns the ways in which the traditional institutions envisaged by the Italian Workers' Statute are utilised in the light of new technologies. The second, on a more systemic level, requires reflection on the creation of new methods of dialogue between unions and workers.

From the first perspective, traditional legal instruments must adapt to technological evolution. Trade union law is undergoing a process of adaptation to new technologies, largely left to practical implementation. Both the law and collective bargaining currently lack a "digital" regulation of trade union rights, save for limited provisions. Management of these issues is essentially left to practice, regulations, or agreements at the level of each public body. Nonetheless, the reasoning applicable to public bodies is not dissimilar from that of the private sector, aside from certain specificities that will be elaborated on later.

The following analysis will focus on the prerogatives most influenced by digital evolution, specifically the rights to assembly, the use of noticeboards, and the issuance of union communications.

2.1.1 Right to Assembly

The right to assembly, as per Article 20 of the Italian Workers' Statute, encompasses the ability of employees to meet on the premises where they work, limited to ten hours per year, which can be extended by collective agreements. In the context of digitalisation, all public sector collective agreements stipulate that assemblies may also include those working in "agile" and remote modes[12]. These methods do not replace in-person meetings but certainly facilitate broader worker participation, particularly in fragmented labour settings[13].

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[11] V. Aniballi, *Diritti e libertà sindacali nell'ecosistema digitale*, in *Quaderni de «Il diritto del mercato del lavoro»*, 2022, no. 27

[12] Art. 10, par. 3, collective agreement for Central functions; Art. 13, par. 4, collective agreement for the healthcare sector; art. 10, par. 2, collective agreement for Local functions; art. 31, par. 14, collective agreement for Education and research sector.

[13] See art. 10, par. 1 of the collective agreement for Local Functions; art. 12, par. 1 of the collective agreement for the Healthcare sector; art. 82, par. 2 of the collective agreement for Education and Research. Instead, art. 10, par. 1 of the collective agreement for Central Functions refers to the provisions of the CCNQ. In the Italian public

Questions arise regarding the locations, whether physical or virtual, where assemblies can be held. The law establishes that meetings must take place within the production unit. In terms of public employment, Article 4 of the National Framework Collective Agreement on the use of secondments, leave, permits, and other trade union prerogatives (CCNQ), signed in December 2017, as well as almost all sector contracts, specify that assemblies must be hosted in suitable premises agreed upon with the administration. It is debatable whether the venue may also be virtual, particularly if employees are permitted to connect via digital platforms owned by the administration and/or using the internet connection provided by the authority itself. Currently, public collective agreements do not encompass the option of holding meetings electronically, except in the healthcare sector. However, it should be noted that public administrations typically permit assemblies to be held through their video conferencing systems.

Nonetheless, certain challenges must be addressed. The platforms, or even the internet connection, are public assets. Therefore, a concern arises regarding whether, in the absence of specific provisions, the use of these resources is permissible for trade union purposes. A civil servant who temporarily misuses a public asset for personal reasons could be penalised under Article 314, paragraph 2, of the Penal Code. According to some case law, albeit controversial, this situation may also include instances where an employee utilises the administration's technological resources, such as web browsing, even in the absence of economic detriment[14]. Under Article 11-bis, paragraph 4, of the Code of Conduct for Public Employees (Presidential Decree 16 April 2013, no. 62), workers may use IT resources for personal tasks, provided such activity is brief and does not impede institutional duties.

An evolutionary interpretation of Article 20 of the Workers' Statute suggests that any legitimacy concerns must exclude virtual venues for meetings as suitable premises. Furthermore, the Agency for the Negotiating Representation of Public Administrations (ARAN – Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni) has recently clarified that "although the method of holding meetings on an IT

employment, there are four areas (named "comparti") of collective bargaining: Funzioni centrali (Central Functions), Funzioni Locali (Local Functions); Sanità (Healthcare); Istruzione e Ricerca (Education and Research). All the contracts can be read at *aranagenzia.it/contrattazione/comparti.html* .

[14] Court of Cassation, Criminal Chamber, 5 October 2023, no. 40702; *contra* Id., 16 March 2017, no. 26297.

platform is not regulated by the CCNQ, it is believed that the platform itself can be considered an agreed virtual venue and, therefore, analogously falls within the scope of the contractual provision. In any case, the assessment of feasibility must be sought at a local level, considering the peculiar characteristics of the administration and paying attention to the need to identify the connected participants in monitoring the amount of hour permits assigned to each employee."[15]

However, this practice still encounters limits, given the necessity not to disrupt the employer's organisation. Evidence in this regard, though somewhat dated, can be found in Directive no. 2/09 of the Department of Public Function, which pertains to the use of the internet and institutional email accounts in the workplace[16]. This Directive clarifies that employees' use of ICT resources must not compromise the security and confidentiality of the information system. Additionally, it can be argued that such use must be deemed legitimate only if strictly associated with the union assembly itself, not for generic union communications. Otherwise, it may be classified as private use, which is prohibited not only by criminal provisions but also according to Article 11, paragraph 3, of the Code of Conduct, which states that "The employee uses the material or equipment at their disposal for office reasons, and the office's telematic and telephone services, in compliance with the constraints imposed by the administration."

From the workers' perspective, another consideration concerns the protection of confidentiality and the seclusion of meetings from the employer. In this regard, the employer cannot interfere in any manner; otherwise, such action would be liable under Article 28 of the Workers' Statute.

2.1.2 Noticeboards

The development of digital union noticeboards has also evolved, though this remains subject to agreements or regulations specific to each public body, thereby preventing widespread adoption to date. Article 25 of the

[15] Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni (ARAN), Application criterion CQRS192, 13 May 2024, *aranagenzia.it/contrattazione/contratti-quadro/relazioni-sindacali/prerogative-sindacali/orientamenti-applicativi.html* .

[16] Dipartimento della Funzione Pubblica, *Direttiva n. 2/09 relativa all'utilizzo di internet e della casella di posta elettronica istituzionale sul luogo di lavoro*, in *funzionepubblica.gov.it/articolo/dipartimento/26-05-2009/direttiva-n-209-relativa-allutilizzo-di-internet-e-della-casella-di* .

Italian Workers' Statute states that "company-level delegates have the right to post publications, texts, and press releases pertaining to trade union and labour issues in designated spaces that the employer is obliged to ensure are accessible within the production unit." Outside of this, there are no collective bargaining provisions on the matter, aside from Article 5 of the 2017 CCNQ, which acknowledges that RSU (company-level delegates) and union managers belonging to representative organisations are entitled to post information through any available IT system. ARAN's Application Guidelines on the CCNQ delve into this issue by stating it is possible to provide trade unions with additional tools beyond those outlined in collective agreements (question 2.2), such as the establishment of a window on the administration's intranet. However, it is also stipulated that the administration cannot incur increased costs or inconveniences[17]: "Therefore, the methods by which [digital] instruments are employed must be agreed upon at the workplace, in line with the aforementioned principle" (question 2.3).

Upon reviewing the contractual provisions concerning this matter[18], union noticeboards are generally envisaged as a space, identified by a specific icon on the home page of the administration's website, made available to trade unions and company-level representatives for sharing information in a manner analogous to traditional noticeboards. Sometimes, trade unions are required to designate a contact person, with training for managing the digital tool provided by the administration.

Such a framework raises concerns about potential employer interference, such as blocking postings, tampering with noticeboards, or removing material, all of which would be banned under Article 28 of the Workers' Statute[19].

2.1.3 Union Communications

When considering the right to send communications, questions arise regarding the use of institutional email accounts for union purposes,

[17] In the same way, the note CQRS33, *aranagenzia.it/orientamenti-applicativi/contratti-quadro.html* .

[18] These experiences are mainly developed in the Education sector and in the Healthcare one. For an example, see the *Regolamento sull'utilizzo della bacheca aziendale e RSU online* (*Regulation on the use of the online union noticeboard)* of the Azienda per l'assistenza sanitaria 5 Friuli occidentale, at *asfo.sanita.fvg.it/it/amministrazione_trasparente/01_disposizioni_generali/02_atti_generali/atti_amministrativi_generali/?path=/categoria2/* (date of consultation, 12 September 2024).

[19] Court of Cassation, Labour Chamber, 23 March 1994, no. 2808.

specifically whether union representatives could send messages through the same account they utilise as public officers to employees' institutional addresses.

This matter has been clarified by recent decisions of the Supreme Court, although regarding the private sector. These practices are legitimised under Article 25 of the Workers' Statute, alongside Article 26, which entitles workers to "proselytise on behalf of their union organisations within the workplace, without prejudice to the ordinary course of the employer's activities"[20].

It is noted that the use of company email accounts by union representatives falls within certain constraints. Specifically, this practice is prohibited if the employer establishes a channel solely for trade union information, employing technical solutions at their expense, such as email accounts allocated to each organisation or a virtual noticeboard. Indeed, some administrations have specified that trade union organisations must distribute content exclusively from the email addresses assigned to them and not through the address designated for use by union representatives in their capacity as employees, which is intended solely for service-related purposes[21].

From the perspective of recipients, case law equates the sending of emails to leaflet distribution, which falls within the realm of trade union freedom if it relates to labour issues and is reasonably measured to avoid inundating mailboxes[22]. Consequently, some authorities, within their email usage regulations, emphasise the material scope of these communications, alongside a prohibition against behaviours that could convert the IT system into a forum for debate[23].

However, this openness raises concerns regarding the protection of employees' privacy and their right to abstain from receiving any communications. Such factors seem not to be adequately recognised in judicial perspectives or in the management of employment relationships across administrations. Refusal to receive union communications has

[20] Court of Cassation, Labour Chamber, 7 March 2023, no. 7799; Id. 5 December 2022, no. 35644; Id., 2 June 2019, no. 16746.

[21] See the communication of the National Social Security Institute prot. no. INPS.0003.10/04/2018.0009195; likewise art. 8.12 of the Ministry of Environment *Regulation on the use of emails and the internet*, which can be read at *mase.gov.it* .

[22] Court of Cassation, Labour Chamber, 5 December 2022, no. 35643.

[23] In this way, art. 8.11 of the Ministry of Environment Regulation.

seldom been referenced in collective agreements[24], while matters of privacy do not appear to be considered at all.
From this standpoint, employees' email addresses constitute "common personal data"[25], whose disclosure outside the employer's organisation is permissible only if grounded in a viable legal basis under Article 6 of EU Regulation no. 2016/679 - General Data Protection Regulation (GDPR). If the worker is a union member, this relationship could legitimise the data exchange, thereby identifying legal bases in the "consent of the data subject to the processing of their personal data for one or more specific purposes" (Article 6, paragraph 1, letter a, GDPR), coupled with the necessity of processing for the performance of a contract to which the data subject is a party (Article 6, paragraph 1, letter b, GDPR).
However, complications arise in attempting to share the personal data of workers who are not union members. A potential legal basis may be identified in collective agreement provisions; however, in the absence of such provisions, references must be sought elsewhere. Two options can be considered. The first is ascribed to Article 6, paragraph 1, letter c, GDPR, concerning "compliance with a legal obligation to which the controller is subject." This obligation originates from Article 26 of the Workers' Statute, which permits union proselytism in the workplace. The second option stems from Article 6, paragraph 1, letter f) GDPR, which stipulates "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data", necessitating a balancing test.

2.2 New Forms of Trade Union Dialogue

Digital technologies also lead to a decentralisation and informalisation of the spaces and methods through which trade union action is executed, creating what has been described as the "emergence of parallel places (...) where collective willpower is formed."[26] For instance, within the CGIL

[24] A specifical provision is settled in art. 1 of the agreement between the Italian National Statistics Institute and trade unions on the use of email accounts, signed on 26 of July 2011, available at *istat.it/wp-content/uploads/2011/08/accordo-posta-elettronica.pdf* .
[25] Garante per la protezione dei dati personali (Italian Data Protection Authority), 31 July 2002, doc web no. 1065798, *garanteprivacy.it* .
[26] L. Imberti, *La nuova "cassetta degli attrezzi" del sindacato tra spazi fisici e luoghi digitali: l'esperienza di Toolbox Cgil di Bergamo*, in *Labour & Law Issues*, 2019, 2, 5.

Public Service union, each sector has established specific groups on platforms such as WhatsApp and Telegram, gathering workers, union managers, and the RSU. In these groups, news, decisions, documents, and negotiations are shared in real time, following a two-way flow: from the "centre" to the worker and vice versa, engendering a dynamic of information, discussion, and immediate action that would have been deemed "unthinkable" until recently[27]. This innovation helps to bridge the perceived disconnect between the exercise of unionists' mandates and grassroots demands.

Nevertheless, questions arise regarding how these new tools interact with the legal frameworks outlined in the Workers' Statute; for example, how might a survey conducted via WhatsApp be appraised in comparison to the outcomes of a traditional referendum regulated by Article 21?

In addition, the utilisation of new technologies necessitates a reconsideration of policies that could guide trade unionists in performing their duties through instant communication channels and social media. Beyond the interactions among union members, the unique nature of public employment requires further and more complex considerations, particularly regarding potential limits both to the right to express dissent and to the interactions of public employees on social media.

Regarding the implementation of such policies, all major confederations have established them across both public and private sectors. Indeed, the dynamics of internal expression remain consistent across the board.

More problematic is the use of social media, which is accessible to a vast audience, especially as a means to express dissent against the administration-employer[28].

Concerning the right to criticism, the prevailing jurisprudential stance asserts that a unionist, as a worker, is subject to the same constraints as any other employee, whereas in relation to trade union activities, they are on an equal footing with the employer[29]. This latter activity is indeed guaranteed under Articles 21 and 39 of the Italian Constitution, which address freedom of thought and expression, and the right of trade unions to organise and execute their activities, respectively. However, even criticism, no matter how robust, must remain within the bounds of formal

[27] G. Saccoia, *Il sindacato digitale, prove tecniche di un nuovo modo di fare comunicazione*, in *bollettinoadapt.it* .

[28] Court of cassation, Labour Chamber, 10 July 2018, no. 18716; in the same way, Court of appeal of Rome, 1 October 2021, no. 3261.

[29] Amendments have been made by the Presidential decree 13 June 2023, no. 81.

propriety, thereby rendering a unionist liable for disciplinary action should they exceed these limits and defame the employer.
Additionally, there is a more nuanced question regarding the extent to which a public employee can engage with unions or union social media accounts. In this regard, recent changes to the Code of Conduct for Public Employees must be considered.
Specifically, the newly introduced Article 11-ter regulates the use of information technology and social media, mandating that employees exercise extreme caution to ensure that any statements made cannot be attributed to the public administration. In all circumstances, the employee is obliged to refrain from making comments that might undermine the prestige, dignity, or image of their administration or of public service in general. Furthermore, to uphold confidentiality, service-related communications must not be openly shared on digital platforms or social media, with the exception of those tied directly to an institutional necessity. Moreover, public administrations, within their codes of conduct, may implement a "social media policy" for each type of digital platform, aiming to adapt general provisions found in the Code according to their specific characteristics. These "social media policies" must delineate harmful behaviours based on employees' hierarchical levels and responsibilities, and to conclude, employees must not disclose or disseminate documents for reasons unrelated to their employment.
The law enshrines pervasive limits, which may pose challenges to employees' freedom of association. The right to freely express oneself appears significantly restricted, if not wholly inhibited, particularly considering that the use of private accounts appears to fall within this scope[30]. Moreover, additional inquiries arise. Can a report or communication about trade union matters be construed as "any intervention or comment that could damage the prestige, dignity, or image of the administration"? Furthermore, what are the implications of the prohibition stating that "communications directly or indirectly related to the service must not normally occur in public discussions using digital platforms or social media," given that interactions regarding trade unions' matters inherently pertain to the service?

[30] In general, on public employees' freedom of expression, V. Tenore, *La libertà di pensiero tra riconoscimento costituzionale e limiti impliciti ed espliciti: i limiti normativi e giurisprudenziali per giornalisti, dipendenti pubblici e privati nei social media*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2019, 2, 83; C. Bologna, *La libertà di espressione dei «Funzionari»*, Bononia University Press, 2020.

This scenario is likely explained by the weight of the public interest, which, as noted above, continues to exert significant influence. However, it is essential to highlight that the Council of State expressed a negative opinion on these recent changes, citing concerns regarding the obligations imposed on the protection of the administration's image in relation to the use of information technologies and social media[31].
In a press release dated 26 September 2023, the FLC CGIL union announced its intention to file legal action against the amendments, asserting that they would contravene Articles 21, 25, and 97 of the Constitution. Quoting the union's declarations, "There is no doubt that workers must pursue the public interest that the employing administration intends to achieve through their labour, yet fundamental constitutional freedoms, such as freedom of thought and its free expression, must not be stifled. This is particularly true since the public employment relationship has now been governed by legislation regarding its contractual conditions."[32] However, the complaint was dismissed by the Regional Administrative Court of Rome on 27 October 2023[33]. The ruling concluded that the contested provisions do not possess an immediately harmful nature, as their actual enforcement is left to the discretion of each administration.

3. New Contents for Trade Unions' Action

3.1 A Premise: The Spaces Available for Trade Unions in the General Framework of Italian Public Employment Law

In recent years, public administrations have increasingly relied on digital procedures to deliver their services. Effectively managing the impact of technological changes is therefore a primary objective in which social partners could play a pivotal role.
To begin with, the first point worthy of discussion is the definition of work performance itself, particularly in relation to the skills required of workers and the necessary training initiatives[34]. The second issue at hand

[31] Council of State, Legislative Activities Section, 19 January 2023, no. 93.
[32] The text of the release can be read at *flcgil.it* .
[33] T.A.R. (Tribunale Amministrativo Regionale) Lazio, Chamber Fourth-*Ter*, 27 October 2023, no. 15978.
[34] T. Ciarli, M. Kenney, S. Massini, L. Piscitello, *Digital technologies, innovation, and skills: Emerging trajectories and challenges*, in *Research Policy*, 2021, 7, 104289; G. Brunello, Désirée Rückert, C. T. Weiss, P. Wruuck, *Advanced Digital Technologies and Investment in Employee*

is how trade unions can influence the exercise of employer-related powers, especially concerning workload distributions and the drafting of automated decision-making procedures.

However, trade unions' efforts are hampered by various constraints due to the unique nature of the employment relationship, which, as previously highlighted, exhibits a significant emphasis on public interest. This context also impacts the tools that unions possess to influence labour relations, particularly regarding collective bargaining. A brief overview of the overall legislative framework is therefore beneficial to understand the scope of trade unions' actions.

In the private sector, the contractual model is governed by rules established autonomously by industrial relations, with limited legal impact, in accordance with the protection of union freedoms granted by Article 39 of the Italian Constitution. Conversely, the public sector operates within a framework formalised by law, which significantly constrains unions' actions.

In summary, under Article 40, paragraph 1, of the Consolidated Law, collective bargaining is excluded from numerous issues relating to work organisation, which are under the purview of management[35]. Consequently, the effectiveness of unions' actions is greatly diminished and often relegated to non-binding initiatives, the implementation of which is ultimately determined by the administration. Social dialogue, which exists and can sometimes be contentious, is legally overshadowed by the presumption of correctness attributed to the employing administration under Article 97 of the Constitution. Notwithstanding this, unions have long advocated for a broader use of collective bargaining and co-management methods, albeit with little success.

Training: Complements or Substitutes?, IZA Discussion Paper Series no. 15936, February 2023, *bollettinoadapt.it/wp-content/uploads/2023/02/dp15936.pdf* .

[35] See E. C. Schiavone, *Art. 40 D. Lgs. 30 marzo 2001, n. 165 – Contratti collettivi nazionali ed integrativi*, in D. Garofalo (ed), *Codice del pubblico impiego commentato*, in *Banca dati One PA*, *onepa.wolterskluwer.it*; U. Gargiulo, *La contrattazione integrativa nelle pubbliche amministrazioni: cronache dal bradisismo*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2019, 2, 57; F. Carinci, *Contrattazione e contratto collettivo nell'impiego pubblico "privatizzato"*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2013, 3/4, 493; E. Menegatti, *L'amministrazione del contratto collettivo nel pubblico impiego "privatizzato": lo stato dell'arte*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2012, 1, 57; G. Ianniruberto, *Il contratto collettivo nel lavoro pubblico dopo la legge Brunetta*, in *Rivista Italiana di Diritto del Lavoro*, 2010, 2, 221.

Union involvement revolves around three instruments: Information, Discussion, and Joint Bodies for Innovation[36]. Information, recognised as a "prerequisite for the proper exercise of trade union relations," pertains to the transmission of relevant data regarding the issues being evaluated, allowing trade unions to provide their observations. Through Discussion, "in-depth dialogue is established to enable trade unions to express comprehensive observations and to participate in drafting measures that the administration is set to adopt on specified matters." The Joint Body for Innovation is the venue where "open and interactive relationships are consistently fostered concerning organisational and innovation projects, improvement of services, promotion of legality, quality of work, and organisational well-being," with the aim of formulating proposals for the administration or negotiating parties in collective bargaining.
As it stands, in many sectors, trade union dialogue is constrained to a preliminary phase prior to the adoption of the employer's decision. In the event of dissent, unions may only assert their positions through self-defence, given that the matters in question are non-negotiable.

3.2 New Skills for "Digitalised" Work Performances and Trade Unions

The performances of public employees are characterised not only by their internal dimension within the synallagmatic relationship with the administration but also by an external dimension concerning the services provided to citizens. Today's citizens are accustomed to quicker, simpler, and more satisfying experiences. As one of the largest employers, public administration plays a crucial role in fostering a well-functioning society and must accelerate the transformation of its workforce to create long-term value for citizens. Advanced technologies, such as analytics and artificial intelligence, have long been integrated into administrative tasks. Article 12 of the Digital Administration Code already emphasises the utilisation of information technologies. Recently, Article 30 of the Procurement Code (Legislative Decree 31 March 2023, no. 36) mandates the automation of decision-making processes, including the use of AI. A bill concerning artificial intelligence and administrative activities is currently under discussion (DDL no. 1146 of 2024) [37].

[36] For a more detailed analysis, G. Pistore, *Art. 9 D. Lgs. 30 marzo 2001, n. 165 – La partecipazione sindacale*, in D. Garofalo (ed), *Codice del pubblico impiego commentato*, in *Banca dati One PA*, *onepa.wolterskluwer.it*.
[37] The proceedings can be read at *senato.it/leg/19/BGT/Schede/Ddliter/58262.htm* .

Digital tools can be fully effective when employed by skilled and adaptable employees who are committed to continuous improvement. This opportunity was emphasised by the Pact for Public Work Innovation and Social Cohesion[38], signed by the Ministry of Public Administration and the three main union confederations, CGIL, CISL, and UIL. The restructuring of Public Administration depends significantly on valuing human resources, facilitating professional development paths, and reskilling efforts, combined with ongoing, effective, and continuous modernisation to meet the challenges of digital transition. Conversely, as noted by the European Public Service Union in a 2018 report, digital change can also benefit workers by relieving them of some of the standardised and repetitive aspects of their work that can be performed by machines[39]. Unions could serve as an intermediary between the administration's demands and those of the employees, aggregating needs, fostering consensus for digitalisation processes, and working on the training initiatives necessary for effectively executing new tasks.

Several challenges arise from the composition of the workforce. As highlighted by research presented at the Public Administration Forum in 2021[40], critical issues stem from the high average age of public employees, which is around 50 years. Individuals over 60 constitute 16.3% of employees, while those under 30 make up only 4.2%. This situation follows a well-known hiring freeze, now partially addressed, which continues to generate a significant generational gap and a serious shortage of staff. Additionally, a decline in investments can be observed. According to the State Accounting Office, the total expenditure in 2019 – the last year analysed – was €163.7 million, €110 million less than a decade ago, equating to an average of 1.2 days of training per year per employee. In

[38] *Patto per l'innovazione del lavoro pubblico e la coesione sociale*, at *funzionepubblica.gov.it/articolo/dipartimento/11-03-2021/patto-linnovazione-del-lavoro-pubblico-e-la-coesione-sociale*.

[39] European Public Service Union, *How Trade Unions Can Use Collective Bargaining to Uphold and Improve Working Conditions in the Context of the Digital Transformation of Public Services*, in *epsu.org*. The Report outlined many possible instruments to face digitalization: using collective bargaining and social dialogue to develop frameworks for the digitalization of public services; the development of the collective bargaining model and of training programs to support trade unions in regulating new technologies, the establishment of a regular process to evaluate the impact of digitalization. The Report was adopted following a conference held in Berlin on 26-27 June 2018, which saw 55 representatives of 35 public service unions from 15 countries, including Italy, debate the topic.

[40] FPA Data Insight, *Lavoro pubblico 2021*, in *forumpa.it/riforma-pa/ricerca-fpa-lavoro-pubblico-2021-mai-cosi-pochi-dipendenti-pubblici-ma-la-pa-torna-ad-assumere/* .

contrast, collective agreements express a general commitment to training, particularly in relation to digital transformation[41]. The collective agreement for the healthcare sector (Article 64) emphasises that "within the framework of reform and modernisation processes, staff training plays a crucial role in changing strategies aimed at achieving greater quality and effectiveness" of public action (paragraph 1) and that training activities aim, among other objectives, to "ensure professional updating concerning the use of new working methodologies or new technologies, as well as the continual adaptation of work practices to innovations that may have arisen, including those stemming from new legislative provisions" (paragraph 3). The same holds true for the collective agreement concerning "Local Functions" (Article 54).

Trade unions' actions, however, are largely limited to mere principles during negotiations, as they are not subsequently involved in training initiatives. Where initiatives do exist, they are often advisory and non-binding. The 2021 Pact for Public Work Innovation recognised a workers' right to training, yet the associated policies remain solely within the realm of discussions between the administration and trade unions.

For instance, Article 31, paragraph 13, of the collective agreement for "Central Functions" stipulates that within the Joint Innovation Body, "a) elements of knowledge relating to the training needs of staff can be acquired; b) proposals may be made to the administration (...); c) monitoring initiatives can be undertaken regarding the implementation of training plans and the usage of allocated resources."

This aspect frequently emerges when examining the various collective provisions on the matter. Another example is Article 52 of the collective agreement for "Central Functions," concerning strategic knowledge planning. The first paragraph states that "the parties recognise the importance of initiating courses tailored to specific target groups, aimed at addressing skill gaps across strategic areas common to all employees included in particular accreditation systems that ensure high qualification." Thus, responsibility should be shared by both unions and the administration. However, the article further establishes that the arrangement of these courses is solely at the discretion of the administration, with no provision for trade union involvement.

[41] Legal and contractual provisions in the field have been analysed by A. Impronta, M. Tiraboschi, *Il diritto soggettivo alla formazione nel lavoro pubblico: una rassegna ragionata delle previsioni legali e contrattuali*, *CNEL, Casi e materiali di discussione: mercato del lavoro e contrattazione collettiva* 2024, 16, in *bollettinoadapt.it*.

A representative instance of this approach is the 2022 plan "Ri-formare la PA. Persone qualificate per qualificare il Paese" (Re-training the P.A. Qualified People to Qualify the Country)[42]. The aim of the plan was to provide extraordinary training for 3.2 million public employees and was divided into two strands: the first focused on enhancing workers' skills and encouraging enrolment in university programmes; the second envisioned the launch of specific training programmes to support transitions in accordance with the National Recovery and Resilience Plan, starting with digitalisation. Notably, trade unions were not formally consulted.

Indeed, unions are often not included in the development of new digital procedures employed by employees. The design of work processes and the adaptation of new technologies to existing services is frequently addressed through direct worker involvement, without any intermediary or engagement from the unions.

3.3 The Involvement of Trade Unions in the Administration's Powers as an Employer

Digitalisation also opens up other avenues for trade union action, primarily from two perspectives. Firstly, there is the need to negotiate with the employer regarding the content of work performances, ensuring that the use of digital technologies does not result in undue burdens for workers. Secondly, there is a requirement for oversight concerning the exercise of the employer's powers, particularly in relation to artificial intelligence and, more specifically, algorithms.

As seen above, in the Italian public sector, trade union involvement is primarily restricted to non-binding activities, while decisions regarding the organisation of work predominantly lie with the administration.

Regarding workloads, one example includes the regulation of what is termed "agile work," as outlined in the "Guidelines for the Organisational Plan for Agile Work and Performance Indicators" prepared by the Public Function Department[43]. Agile work is characterised as a performance model that extends beyond traditional employer oversight, operating as an agreement of trust between the administration and the worker. Consequently, digital technologies necessitate a transformation in organisational culture, which should assume a strategic role in

[42] Further information is available at *funzionepubblica.gov.it/articolo/ministro/10-01-2022/parte-il-piano-strategico-%E2%80%9Cri-formare-la-pa-persone-qualificate*.

[43] Dipartimento della Funzione Pubblica, *Guidelines on the organizational plan for agile work and performance indicators*, in *funzionepubblica.gov.it*.

establishing, measuring, and evaluating work performance in new ways. In this context, Article 14, paragraph 1, of Law 7 August 2015, no. 124, mandates public administrations to develop an Agile Work Organisational Plan (POLA) as a specific component of the Performance Plan concerning necessary innovation processes to be implemented for work planning and management. Nevertheless, the decisions in this regard rest solely with the authority, as no references are made to trade unions.

The same applies to the second point mentioned earlier, regarding digital decision-making processes via algorithms. In this context, jurisprudence has established that the administration must clarify the criteria through which the algorithm has been designed, adhering to the principle of "algorithmic legality"[44]. This rule encompasses the "knowability of the algorithm," ensuring "the non-exclusivity of algorithmic decisions and the avoidance of discrimination."[45].

Administrative transparency implies that individuals affected by the relevant power must be fully informed about the decision-making framework utilised and the criteria applied. This knowledge should pertain to all characteristics of the algorithm: its authors, the development process undertaken, and the decision-making mechanism, including any priorities assigned in the evaluation process. Moreover, transparency requires that the algorithm be articulated in an intelligible manner, simplifying its multidimensional complexity through explanations of the technical, IT, and statistical aspects in line with the applicable legal provisions.

These guidelines enhance and complement the obligations set out in Article 1-bis of Legislative Decree 26 May 1997, no. 152, subsequently amended by Legislative Decree 27 June 2022, no. 104, which states that workers, including through trade union representatives, may request information regarding the use of automated decision-making systems.

Unions could certainly play a significant role in identifying the critical areas of algorithmic systems, despite the fact that existing experiences in this field have been hard to come by, primarily serving an advisory function. A notable case involved the allocation of fixed-term contracts to school teachers, which ultimately led to rulings affirming the principle of

[44] See G. Marchianò, *La legalità algoritmica nella giurisprudenza amministrativa*, in *Il diritto dell'economia*, 2020, 3, 229; E. Carloni, *I principi della legalità algoritmica. Le decisioni automatizzate di fronte al giudice amministrativo*, in *Diritto amministrativo*, 2020, 1, 273; S. Sassi, *Gli algoritmi nelle decisioni pubbliche tra trasparenza e responsabilità, in Analisi Giuridica dell'Economia*, 2019, 1, 109.

[45] Council of State, Chamber VI, 13 December 2019, no. 8474; Id., 13 December 2019, no. 8472; Id., 8 April 2019, no. 2270.

"algorithmic legality." This resulted in a meeting being convened between the Ministry of Education and Merit and trade unions to discuss the workings of the algorithm responsible for contract assignments.

4. Conclusions

Undeniably, digitalisation is having a significant impact on the functioning of public services for both users and public service workers, presenting new challenges for trade unions. The manner in which governments manage the digitalisation process will be crucial. It is imperative "to establish an adequate regulatory framework for the introduction and use of digital technologies in public services and their workplaces. Such regulation must be developed in close dialogue with public service workers and their trade unions through meaningful participation, information, and consultation, and by negotiating relevant wording in collective agreements."[46]

However, the development of a new role for trade unions is still in its embryonic stages, necessitating a shift in perspective regarding both how unions conceive their actions and the very structure of public employment.

[46] Rosa Pavanelli, General Secretary of Public Services International, Introduction to E. Voss, R. Rego, *Digitalization and public services: a labour perspective*, Public Services International, 2019.

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