Frequently asked questions

1. Who are we?

The Commission for Conciliation and Mediation (C.C.M) was established under the Employment Relations Act 2008 (ERA) thereby replacing the Industrial Relations Commission (I.R.C) which was established under the repealed Industrial Relations Act 1973.

The State has through the Employment Relations Act 2008 created an important legal framework (C.C.M) by which employers, trade unions and employees are assisted through conciliation and mediation techniques to regulate their own relations and resolve their disputes.

The ERA has given prominence to alternate dispute resolution (ADR) methods as an alternative to adjudication or litigation.

2. What is conciliation and mediation?

Conciliation

To conciliate is to reconcile or bring together, especially opposing sides in an industrial dispute. Conciliation appears to be an umbrella term to include a range of processes designed to bring about consensus and which reserve ultimate decision-making for the parties, not the conciliator. It may range on the one hand from facilitating discussion or chairing a meeting in which the conciliator is merely a peace-keeper, to far more intrusive processes on the other, in which the conciliator advises parties to settle on terms recommended by the conciliator.

Mediation

Mediation is primarily a process in which parties in dispute are helped by a neutral person to isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs.

It is a flexible process whose essential features are that –

- it is an extension of bilateral engagement in which the disputing parties control the outcome;
- participation is voluntary even if a party is compelled to initiate it;
- the process is confidential; and
- the mediator has no power to advise, recommend, decide or negotiate on behalf of any disputant or party.

3. What is a labour dispute?

Labour dispute means a controversy between a worker, or a recognized trade union and an employer concerning the terms or conditions of employment, or representation of those who negotiate or seek to negotiate the terms or conditions of employment.

According to the Employment Relations Act 2008, a labour dispute

(a) means a dispute between a worker, or a recognized trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of

work between workers and group of workers, reinstatement or suspension of employment of a worker;

(b) does not, not withstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations in the report of the Pay Research Bureau in relations to remuneration or allowances of any kind.

4. When can I report a dispute?

A labour dispute is reported to the President of the Commission for Conciliation and Mediation after meaningful negotiations have taken place between the parties and a stage of deadlock has been reached (Section 64(2) of the Employment Relations Act).

5. How to report a dispute?

Any labour dispute may be reported to the President of the Commission by or on behalf of any party to the dispute.

Nevertheless, it is the responsibility of the party reporting the labour dispute to furnish all particulars regarding parties to the dispute, terms of reference, explanation about how the dispute arose, summary of the facts, actions taken, if any, to resolve the dispute and documents relating to the dispute.

To facilitate the party reporting the dispute on the above particulars, the Commission has a designed form.

Hence it is an obligation on the disputant to report a labour dispute on the designed form available at the Commission or on its website.

6. What kind of disputes are reported to the Commission for Conciliation and Mediation?

Labour disputes may be categorized into "*disputes of rights*" and "*disputes of interest*".

Disputes of right refer to specific terms and conditions of employment relating to the contract of employment, other agreements or awards, and labour laws. Non-compliance of such provisions should be referred to enforcement institutions and authorities such as the Labour Office or the Industrial Court.

Dispute of interest refers to all such demands which may not be considered as disputes of rights, necessitating negotiation between parties with a view to find a win-win solution.

Such dispute, if not settled after meaningful negotiations, are reported to the Commission.

7. When is conciliation and mediation not possible?

On the one hand, conciliation and mediation is not possible if the dispute does not fall within the meaning of "labour dispute" as per the Employment Relations Act 2008 (ERA 2008), and on the other hand where meaningful negotiations have not taken place between the parties and where a stage of deadlock has not yet been reached.

Conciliation and mediation is also not possible where:-

(a) the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court;

(b) the report is made by or on behalf of a party who is not entitled to be a party to the labour dispute;

(c) the report does not contain sufficient particulars of the issues giving rise to the labour dispute;

(d) the party reporting the dispute has failed to comply with the dispute procedures specified in ERA 2008 or provided for in a procedure agreement;

(e) the dispute relates to a collective agreement which is in force, except where there has been a substantial change in circumstances.

Conciliation and mediation is also not possible where the labour dispute reported relates either to Fire Services or the Mauritius Prisons Services in which case, the President of the Commission forthwith refers those disputes to the Employment Relations Tribunal (ERT) for an award.

8. Who can I bring to the Commission for Conciliation and Mediation?

According to paragraph 18(1) of the Second Schedule, in any conciliation and mediation proceedings, a party to a labour dispute may, in case of a worker may be assisted by a co-worker or by an officer of the trade union of workers or in the case of management, by a representative of management or by such other persons at the discretion of the Commission.

9. Do I need a lawyer?

The Act makes it clear that during conciliation and mediation proceedings a party to the dispute may only be represented by a **co-**worker or by an official of a trade union in case of a worker, and a management representative in the case of management. The Act does not mention legal representation.

Without specifically excluding the right to legal representation, the Act confers discretionary powers on the Commission to allow representation "by such other persons at the discretion of the Commission." This provision of the legislation has technicalities which are left to the wisdom of the Commission to decide as to who could be "such other persons". Perhaps the Commission may have to look at the merit of each case, its legal technicalities, parties' level of awareness and competency to deal with labour law related matters etc. However, the main issue is that whoever that "such other persons be" he should be able to assist the Commission in resolving the dispute rather than taking an adversarial approach which is quite contrary to the conciliation and mediation processes.

10. Is mediation private and confidential?

The conciliation and mediation process is private, confidential and privileged. Parties should have trust in the process and communicate openly without fear of compromising their case. Information discussed can never be used as evidence in a court of law.

In order to help to ensure this privacy and confidentiality:

1. the conciliation and mediation meetings are conducted behind closed doors;

2. outsiders can only observe proceedings with the permission of both parties and consent of the Conciliator and Mediator;

3. no recording of the proceedings are allowed by either parties.

11. Is the settlement agreement at the end of conciliation and mediation binding?

Where a labour dispute is reported to the President of the Commission for Conciliation and Mediation under Part V Sub-part A (64) of the ERA 2008, conciliation and mediation meetings are held and in the event the dispute is resolved by an agreement, same shall –

(a) be in recorded writing;

(b) be signed by the parties;

(c) be registered with the Supervising Officer of the Ministry and the Tribunal; and

(d) have the effect of a collective agreement as specified in Sections 55 and 56.

Any collective agreement shall be registered by all parties signing the agreement within 30 days of signing of the agreement.

Hence an agreement signed at the end of conciliation and mediation shall bind the parties to the agreement and all the workers in the bargaining unit to which the agreement applies and an employer shall comply with the provisions of a collective agreement.

12. Where can I bring my case if conciliation and mediation breaks down?

The Commission shall complete its proceedings within 30 days from the date of receipt of the labour dispute (Section 69(3)).

The Commission may extend the period of 30 days where the circumstances so require at the request of the parties to the labour dispute (Section 69(4)).

Where no agreement has been reached after 30 days or after the expiry of such extended period, the Commission shall

(a) within 7 days submit a report to that effect for the parties to the dispute;

(b) advise the parties to refer the labour dispute to voluntary arbitration.

Where no agreement is reached in the case of a labour dispute reported by an individual worker, the Commission may within 7 days, with the consent of the worker, refer the labour dispute to the Tribunal for arbitration.