

Dialogue, Negotiation and Mediation

- the how's and why's



What kind of dispute do we have?

	Individual	Collective
Interest	<u>No effect on rules</u> Ex.individual negotiation on employment conditions	<u>Setting new rules</u> Ex Negotiations of Collective Agreement -Negotiation -Mediation -Industrial action
Right	<u>Application of existing rules</u> Ex individual or collective dismissals or disputes over negotiated rules -Negotiation -Mediation -Arbitration/Industrial Court	

The parties of a mediation
Who are the stakeholders?

- Employee representatives
 - Shop steward at company level; Trade Union
 - PARTIAL - representing the employees interest
- Employer representatives
 - The company itself (management); Employer's organisation.
 - PARTIAL - representing the employer's interest
- The Mediator
 - IMPARTIAL - needs to see the issue from both sides

EMPLOYEES AND EMPLOYERS

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

First: who do you represent?

- The members of the union
- The shop? steward
- The organization itself
- The owners of the company
- Management?
- The organisation

From whom do you need a mandate?

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

Second: Get hold of the facts of the dispute!

Interview the subjects of the dispute. For example a dismissal.

- What happened?
- What was the reason of the dismissal?
- What has occurred before the actual dismissals?
- Is there a way to avoid the dismissals?

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

Third: Define and use relevant labour law/case law or other rules

- Get an overview of which labour law and case law you can use to support your case and your arguments.
- Prioritize your legal support. Which labour law and case law supports your case best, which labour law and case law supports your case the next best and so forth.

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

Fourth: Present your case

1. Start with the facts of the case - as you see them
2. Use the relevant labour law/ case law and other relevant rules in prioritized order: your best argument, your second best argument and so forth.

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

Best alternatives

- When prioritizing your arguments and the legal support for your arguments, you automatically also determine your Best Alternatives.
- Best alternatives: what can you live with, if you don't get the primary result, you want.
- This exercise is crucial to a credible conciliation!
- At first: keep your Best Alternatives to yourself!

The parties' internal preparation of the dispute

Duties of employees and the employer when negotiating/ mediating

Important exercise

Put yourself in your opposing party's position.

- What is his/hers position?
- Why is it his/hers position? - this is an absolute key knowledge you must obtain!
- Try to understand your opposing party's point of view - put yourself in his/hers shoes - even though they are not your style!

The parties' internal preparation of the dispute
**Duties of employees and the employer
when negotiating/ mediating**

- Try to determine your **opposing party's** Best Alternative!
- What can he/ she live with?
- What will opposing party do if he/ she doesn't achieve his/ her goal?
- Is there a situation on the edge of the problem, which will satisfy your opponent?
- This procedure will help you in developing your own BA.

CONCILIATOR

Duty of the Conciliator

Keyword and crucial to a conciliation process:

CREDIBILITY!

The parties' internal preparation of the dispute

Duties of the Conciliator/Arbitrator

- This means that the conciliator must know the “world and the environment” in which the dispute has risen.
- The active conciliator must to a very large degree understand the labour and industrial relations.
- The conciliator must know the dynamics of the sector, the politics of the sector, the infrastructure of the sector etc.

Remember!

- **Conciliation:** not binding and not empowered to tell the parties what to do! But to facilitate a dialogue!
- **Arbitration:** Binding!

The party's internal preparation of the dispute:

Duties of the Conciliator/Arbitrator

Formal duty

Not only be but also appear IMPARTIAL.

Both parties have to be convinced that the conciliator has no personnel interest in the dispute AT ALL

The parties' internal preparation of the dispute

Duties of the Conciliator/Arbitrator

Be well prepared!

This means:

- read both parties' submitted statements.
- Know the law - written and case law.
- Ensure a safe and neutral environment which can create a feeling of security for both parties.
- Maybe both private and joint meeting sessions

The parties' internal preparation of the dispute

Duties of the Conciliator/Arbitrator

Personal qualifications of the Conciliator:

- Self-awareness
Both parties may see you as a “judge” even though you are NOT!
- Empathy
You have to put yourself in the shoes of both parties.
- Motivation
You want to succeed as a conciliator. “You want to win”.

The parties' internal preparation of the dispute

Duties of the Conciliator/Arbitrator

Many functions as a conciliator:

- Keep the discussion on track.
- A communication link between the parties.
- Persuader - *“try to look at the dispute from a different point of view.”*
- A reality checker: *“What will actually happen, if you do this?”*
- Advocate for solutions: *“This is the best offer on the table - just so you know. Why don't we try to work with this?”*

The parties' internal preparation of the dispute

Duties of the Conciliator/Arbitrator

Conciliators' process

- Consider your questioning! Open questions? (*"How do you consider the dispute?"*) Closed questions? (*"Did you react to the accusation?"*) Hypothetical questions? (*"If you should consider this solution, what would happen?"*)
- Neutral active listening and neutral (body)language.
- Summarising.
- Clear and concise communication.

Arbitration

- Binding decisions!
- They will have a relevance for future cases of the same kind.
- One shot deal!
- The chairing representative must enjoy the respect and faith from both parties.
 - Judge?
 - Representative from the legal academia environment, e.g. a professor?