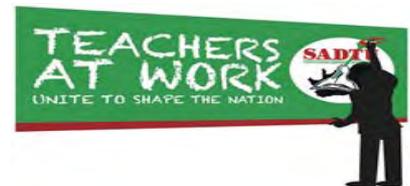




# Conciliation

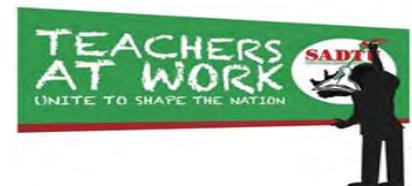
Dispute resolution procedure  
Basic Education and TVET





# What is conciliation?

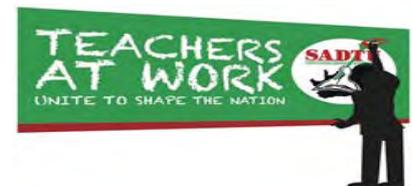
- Conciliation is a process where a **commissioner** meets with the **parties** in dispute, and explores ways to **settle** the dispute by **agreement**.
- At conciliation **a party** may appear in **person** or only be represented by a **director or employee of that party** or any **member, office bearer or official** of that **party's registered trade union** or **registered employer's organisation**.
- The meeting is conducted in an **informal way**.
- It is **without prejudice**
- **No records** are kept
- What is discussed in conciliation **cannot be used as fact in arbitrations**





# The Process of conciliation

- The commissioner must determine points in limine
- Jurisdictional issues must be dealt with:
- *Phera v Education Labour Relations Council and Others (JR568/09) [2009] ZALCJHB 47 (22 September 2009 – Is the applicant an employee*
- *City of Johannesburg v SAMWU and others - numeration ito of the BCEA*
- *Joy Global Africa (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others (JA 119/13) [2015] ZALAC 1 (15 January 2015)]- who has jurisdiction to hear the matter.*
- *Phenithi vs Minister of Education and Others (2006) deemed dismissal*
- *WRM Mothoa & Mpumalanga Department of Education (2007) (ELRC ARB) deemed dismissal when the member has returned to work*





# The Process of conciliation ?

- The commissioner may begin by **meeting jointly** with the parties and asking them to **share information about the dispute**.
- **Separate meetings** between the commissioner and each party may also be held.
- Parties are encouraged to **share information** and to come forward with **ideas** on how their **differences can be settled**.
- The **commissioner** may also put **forward suggestions**.
- The commissioner may determine a **process** which may include **mediation, facilitation or making recommendations in the form of an advisory arbitration award**.
- A commissioner may cause persons and documents to be **subpoenaed**, and has the power to enter and inspect premises and seize any book, document or objects that are rerelevant to the dispute.



## What happens?

- Commissioner welcomes
- Determine points in limine
- Determine onus
- Dismissal – employer start
- ULP- Employee start
- Parties present case and facts
- No witnesses



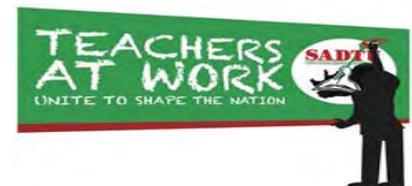
# How do a party request conciliation ?

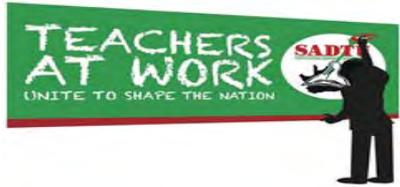
- Any party can refer a dispute to the council for conciliation by delivering a completed **ELRC form E1**.
  - The form must be **signed**
  - The form must be **served** on the other party
  - **Question: What does it mean to serve it on another party?**
  - If the referral is out of time, there must be an application for **condonation**
  - The General Secretary of the ELRC must be satisfied that all requirements have been met.



# Timeframes

- The disputes must be referred within the correct timeframes
- The council must appoint a panellist to resolve the dispute **within 30 days** conciliation period
- The **date, time and venue** of the conciliation meeting must be communicated
- Parties to the dispute must be notified **at least 14 days prior to the scheduled dates**, unless parties to a shorter period.





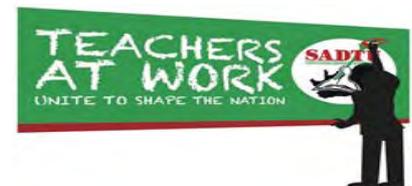
## Appointment of Conciliator

- If parties agree on panellist they should inform the General Secretary at within **4 days of such agreement** of the date the council had received the referral.
- The disputes must be conciliated **within 30 days** unless the parties agree to an extension.
- Should the parties **not agree** about the panellist within 4 days the General Secretary shall appoint a panellist to conciliate.
- The **council may seek to resolve the dispute before conciliation,**
  - The General Secretary, delegated staff members or panellist may contact the parties telephonically before conciliation commence to resolve the dispute.



## Who may attend ?

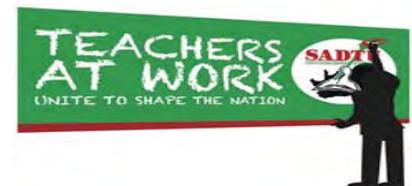
- Parties to the dispute
- A member, an official, an office bearer of that parties registered trade union in the case of the employee
- An employee of the party in the case of the employer.
- Question: **Are lawyers allowed at conciliation?**



# What happens if parties fail to attend a conciliation?



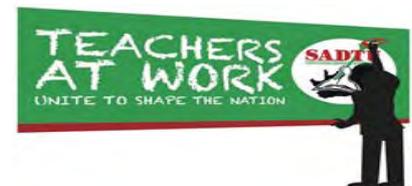
- The panellist may continue with the proceedings and issue a certificate
- Adjourn the proceeding for another date within the 30 day period.
- Issue a certificate the dispute is unresolved
- The panellist must consider the following factors
  - Whether the party had failed to attend a previous conciliation
  - Any reasons given for the non attendance
  - The likely prejudice the other party will suffer by a ruling
  - Any other factors





# The duties of the conciliator

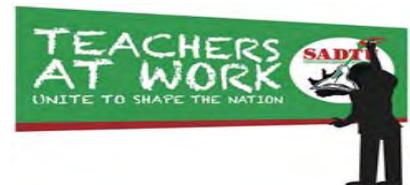
- Mediate the dispute
- Conduct a fact finding exercise
- Make recommendations to the parties
- Arbitrate the disputes immediately if the parties request so in writing.
- Do in loco inspection is required
- Have separate discussion with each party in an attempt the resolve the dispute
- Determine from each party what can and cannot be shared with the other party from the separate sessions.





# Outcome

- If the dispute is resolved, draw up a written agreement between the parties
- If the dispute remains unresolved, issue a E3 form
- the panellist must determine the true nature of the dispute referred to conciliation
- If the panellist classification of the dispute differs from that of the applicant, the panellist must make a ruling.
- There can be further conciliation if a dispute remains unresolved
- If all parties agree for further conciliation if the time period has lapsed.
- In cases of mutual interest disputes the council will process the matter further, unless is mutual agreement by the parties to further conciliation or voluntary arbitration.
- An advisory award may be issued to parties within 14 days.
- After conciliation remains unresolved in rights disputes, pre arbitration will commence.
- There need to be a request for arbitration since it s no longer automatic.





# Conclusion

- END
- THANK YOU

