

Q & A on the Strengthening of Conciliation-Mediation as Voluntary Mode of Dispute Settlement for All Labor Cases

1. What is conciliation-mediation?

Conciliation-Mediation is a non-litigious, non-adversarial, less expensive and expeditious mechanism in assisting the parties towards voluntarily reaching their own mutually acceptable settlement to the labor dispute. Under this informal set-up, the parties arrive at an amicable settlement without going through legal procedures.

2. Who can avail of conciliation and mediation services?

Any party to a labor dispute, whether an individual, union or management, can avail of the conciliation-mediation services at the National Conciliation and Mediation Board (NCMB) and its Regional Branches thru a request for assistance, notice of preventive mediation or notice of strike/lockout.

3. What is the legal basis of conciliation and mediation?

Article 13, Section 3, of the 1987 Constitution provides:

“The State shall promote xxx the preferential use of voluntary modes of setting disputes including conciliation and shall ensure mutual compliance by the parties thereof in order to foster industrial peace.”

A similar provision is echoed in the Declaration of Policy under Article 211 (a) of the Labor Code, as amended.

4. What are the salient features of the proposed bill amending Article 228 of the Labor Code, as amended?

- a. The Bill proposes to statutorily recognize the mandatory 30-day conciliation-mediation for all labor and employment disputes, under DOLE Department Order No. 107-10 [Single Entry Approach (SEnA)], which was processed through the NTIPC; and
- b. The Bill provides that any or both parties involved in the dispute may pre-terminate the conciliation-mediation proceedings and request referral or endorsement to the appropriate Department of Labor and Employment Agency or

Office which has jurisdiction over the dispute or if both parties so agree, refer the unresolved issues to voluntary arbitration. This is contrary to the Labor Code provision that withdrawal of case from the Conciliation Section shall be mutually agreed upon by both parties.

5. What is Single Entry Approach (SEnA)?

The Single Entry Approach (SEnA) Program is an administrative approach to provide a speedy, impartial, inexpensive and accessible settlement procedure for all issues/complaints arising from employer-employee relations to prevent them from escalating into full blown disputes. Under this approach, all labor and employment disputes shall undergo a 30-day mandatory conciliation-mediation process to effect settlement among the contending parties.

6. What are the issues subject to SEnA?

All issues arising from labor and employment which may include the following:

- a. Termination or suspension of employment;
- b. Claims for any sum of money, regardless of amount;
- c. Intra-union and inter-union issues except petition for certification election, after exhaustion of administrative remedies;
- d. Unfair labor practices;
- e. Closures, retrenchments, redundancies, temporary lay-offs;
- f. OFW cases;
- g. Occupational safety and health standards issues except those involving imminent danger situation;
- h. Issues arising from other labor and related issuances (OLRI)
- i. Any other claims arising from employer-employee relationship; and
- j. Cases falling under the administrative and quasi-judicial jurisdiction of all DOLE offices and attached agencies, including NLRC.

7. What issues are not covered by SEnA?

The following issues are not covered by SEnA:

- a. Notices of strikes or lockouts, or preventive mediation cases which shall remain with the National Conciliation and Mediation Board (NCMB);
- b. Issues arising from the interpretation or implementation of the collective bargaining agreement and those arising from interpretation or enforcement of company personnel policies which should be processed through the Grievance Machinery and voluntary arbitration; and
- c. Issues involving violations of the following permits, licenses or registrations: [Alien Employment Permit (AEP), Private Recruitment and Placement Agency (PRPA) authority or license, Working Child Permit (WCP) and violations of Republic Act No.9231 (Anti-Child Labor Law), Registration under Department Order No. 18-02, POEA issued licenses under the Migrant Workers' Act, as amended, professional license issued by the PRC, TESDA accreditations; and other similar permits, licenses or registrations issued by the DOLE or its attached agencies].

8. Who may file a case under the SEnA?

Any aggrieved worker, union, group of workers or the employer may file a request for assistance.

9. Where to file or request for SEnA?

Request for SEnA or Request for Assistance (RFA), as it is called, can be filed at the Single Entry Assistance Desk (SEAD) in the region where the employer principally operates. In case of a union or federation representing a local chapter, the request shall be made at the regional/provincial/ district office where the union or local chapter is registered.

10. What are the benefits of making conciliation-mediation mandatory in dispute settlement?

Conciliation-mediation provides non-litigious/non-adversarial, expeditious and inexpensive settlement services for unresolved issues/complaints arising from employer-employee relations. Under this informal set-up, the parties find it more expedient to fully ventilate their respective positions without running around with legal technicalities and, in the course thereof, afford them a wider latitude of possible approaches to the problem.

Moreover, conciliation-mediation maybe considered as an impartial dispute settlement procedure as disputes are settled through parties' mutually-agreed arrangements that came into existence as a result of painstaking efforts among the union, management, and the Conciliator-Mediator. In this regard, the parties are bound to honor any agreement entered into by them.

11. From the time of its implementation, what are the accomplishments made under SEnA?

SEnA took effect on 26 October 2010. From the time of its implementation, a total of **50,577** RFAs had been filed in the DOLE Regional Offices and its Attached Agencies as of June 2012. 24,533 of these RFAs were settled garnering a total of Php 1,214,920,484.07 in monetary benefits with 36,767 workers covered.

Taking the 30-day mandatory conciliation-mediation, the average number of days to settle cases is 19 days. Single Entry Approach Desk Officers (SEADOs) were able to settle RFAs as early as within the day of filing.

True to its principle of providing inexpensive settlement services, technology has been utilized by SEADOs in terms of conducting conferences. The use of Skype and other networking sites made possible the dialogue between parties when their time does not permit them to appear in the DOLE office/attached agency.

12. Is conciliation-mediation still possible during actual strike or actual lockout?

Yes. Conciliation-mediation can still continue even during an actual strike or lockout to exhaust all possible remedies and explore solutions mutually acceptable to both parties in resolving the labor dispute.

13. Is conciliation-mediation still possible even if the dispute has already been assumed or certified?

Yes. The duty to bargain collectively continues until all issues involved in the dispute have been resolved and at any point during the pendency of the case at the Office of the Secretary or at the National Labor Relations Commission (NLRC), the parties can still submit the dispute to voluntary arbitration.

DOLE has issued Department Order No. 40-G-03, series of 2010 as an interim regulation relating to assumption of jurisdiction. Its application in actual cases has been on the use of extensive conciliation-mediation rather than resort to the Secretary’s assumption power. The percentage of labor cases where the Secretary has assumed jurisdiction out of the total number of labor cases has decreased, as demonstrated in the table below.

The	Statistics on Assumed Jurisdiction Cases Year	Total Cases Handled	Total Cases Assumed Jurisdiction	Percentage to Total Cases
	2007	939	26	2.77%
	2008	984	15	1.52%
	2009	863	12	1.39%
	2010	809	7	1%
	2011	859	5	0.58 %

innovation to use continuous conciliation-mediation conferences to explore options for settlement, which was introduced in July 2010, in the handling of assumed cases or those with request for assumption has been amplified with the use of tripartite conciliation-mediation or “third party plus” approach with Region IV-A as the pilot area. A “third party plus” conciliation-mediation is triggered by a request from either parties, the employer or workers/union/labor federation, for the Regional Tripartite Industrial Peace Council to convene a tripartite team (with labor and employer representatives) for cases that reached a deadlock or after the strike balloting stage, or has become too complicated.

The five (5) assumed cases by the Secretary were settled through conciliation, benefitting some 2,201 workers with CBA economic benefits amounting to P215,204,564.

Since 2010 and up to the end of 2011, a total of 40 cases with petitions for assumption of jurisdiction were settled through marathon conciliation-mediation rendering unnecessary the issuance of assumption orders. The amicable settlement of these cases generated monetary benefits amounting to P291,358,957 to 3,993 workers.

HOW DID THE SEnA DE-CLOG THE DOCKETS IN NLRC?

Since the implementation of SEnA, the Regional Offices skillfully use conciliation-mediation to prevent labor disputes from escalating into labor cases. The number of unsettled Requests for Assistance (RFAs) being referred to NLRC **decreased by 57.1%** from 2,724 in the first semester of 2011 to 1,168 in the first semester of 2012.

The NLRC had a **6.5% decrease** in the number of cases filed before its office since SEnA was implemented from 32,958 in 2010 to 30,812 in 2011. For the first semester of 2012, there are a total of 15,657 cases filed before the office.

