

COURSE CODE: SOCI 426

COURSE TITLE: INDUSTRIAL SOCIOLOGY II

**SESSION NINE: THIRD PARTY INTERVENTIONS IN INDUSTRIAL RELATIONS:
MEDIATION, CONCILIATION AND ARBITRATION**

LECTURER: DR. SAMSON OBED APPIAH

DEPARTMENT: SOCIOLOGY

(Contact Information: soappiah@ug.edu.gh)



UNIVERSITY OF GHANA

College of Education

School of Continuing and Distance Education

2017/2018 – 2018/2019 ACADEMIC YEAR

Course Information

Provide the following information:

Course Code:

Soci 426

Course Title:

Industrial Sociology II

Course Credit

3 Credits

**Session Number &
Session Title:**

Session 9
Third Party Interventions in Industrial Relations:
Mediation, Conciliation and Arbitration

Semester/Year:

Second Semester Slide 2
2017/2018/2018/2019

Course Information (contd.)

Provide the following information:

Lecture Period(s)

Insert Lecture Period(s): *(Online how many online interactions per week)*

Prerequisites

Soci 425: Industrial Sociology I

Teaching Assistant

Insert Teaching Assistant's Information: *(where applicable, provide name and contact information)*



Course Instructor's Contact

Provide the following information:

**Course Instructor(s)
Name**

Dr. Samson Obed Appiah

Office Location

Department of Sociology

Office Hours

Tuesdays: 1.30pm – 3.30pm

Phone

0205066293

E-mail

soappiah@ug.edu.gh

Session Overview

- **Overview**
- Third Party Interventions in Industrial Relations are useful when negotiations between employers and employee breakdown;
- These are usually state institutions that are designed to assist in the smooth working of industrial relations;
- This Session examines third party interventions such as Mediation, Conciliation and Arbitration and how they work in Industrial Relations.

Session Learning Objectives

- ❑ **Objective:** At the end of this session, the student will be able to:
 - Define Mediation, Conciliation and Arbitration;
 - Identify the differences among these processes;
 - Identify the conditions under which these processes are used;
 - Provide the legal definition of Strikes; and types of Strikes;
 - Identify the conditions under which Strikes are legal;

Session Outline

The key topics to be covered in this session are as follows:

- Topic One: Third Party Interventions in Industrial Relations
- Topic Two: The Mediation Process
- Topic Three: The Conciliation Process
- Topic Four: The Arbitration Process
- Topic Five: List of Mediators and Arbitrators
- Topic Six: Industrial Strike: Legal Definitions and Types of Strikes

Session Activities and Assignments

This week, complete the following tasks:

- **Log onto the UG Sakai LMS course site:**
 - <http://sakai.ug.edu.gh/XXXXXXXXXX>
- **Read Recommended Text Ghana Labour Act, 2003, Act 651
Read Specific Sections 153-171 of the Labour Act.**
- **Watch** the Videos for Session 9 – Mediation and Arbitration
- **Review** Lecture Slides: Session 9 – Mediation and Arbitration
- **Visit the Chat Room** and **discuss** the **Forum question** for Session 9
- **Complete** the **Individual Assignment** for Session 9

Reading List

- Refer to students to relevant text/chapter or reading materials you will make available on Sakai
- Harry C. Katz and Thomas A. Kochan (2000). **An Introduction to Collective Bargaining and Industrial Relations** (2nd Edition) USA: McGraw-Hill Companies.
- Obeng-Fosu, P (1991), **Industrial Relations in Ghana: The Law and Practice** Accra: Ghana Universities Press.
- **Ghana Labour Act, 2003, Act 651.**

Topic One: Third Party Interventions in Industrial Relations

- These are usually state institutions that are designed to assist in the smooth working of industrial relations;
- They are supposed to function as independent institutions and are not intended to interfere with the existing procedures for negotiations and resolutions of disputes;
- They are to provide intervention services at the invitation of one of the parties or the two disputing parties;

Third Party Interventions in Industrial Relations Cont.

- Examples of third party interventions are:
 - Mediation,
 - Conciliation and
 - Arbitration;

Topic Two: The Mediation Process in IR

□ Mediation

- Within this approach one of the disputing parties may invite a mediator, an independent third party to intervene on his behalf regarding the issue at stake;
- Or one party may bring in a mediator to explain the issues to the other party in order to appreciate why certain decisions and action have been taken;
- The main responsibility of the mediator is to help the two parties to reach a compromise;
- The Mediator is to offer suggestions and advice but not to impose any decisions or awards on any of the party.

The Mediation Process in IR

Cont.

- The mediator must be accepted by both parties and must have a substantive knowledge on the field of work or issue at stake;
- The mediator's work has no legal binding because it is only to facilitate in the decisions to be made;
- According to Section 154 (1) of the Labour Act:
- “If the parties to a dispute fail to settle a dispute by negotiations within seven days after the occurrence of the dispute, either or
- Both parties by agreement may refer the dispute to the National Labour Commission and seek assistance of the Commission for the appointment of a mediator”.

The Mediation Process in IR

Cont

- When the Labour Commission is satisfied that;
 - The parties have exhausted the negotiation process;
 - The parties have failed to settle the disputes and;
 - None of the parties has sought its help;
- The Commission shall request the parties to settle the dispute by Mediation within three days of it becoming aware of the non-resolution;
- The settlement agreement shall be binding on all;
- Where no agreement is reached, the mediator shall declare the dispute unresolved and refer the dispute to the Commission.

Topic Three: The Conciliation Process

- Conciliation is guided by the principle of discovering facts about labour disputes in order to promote the flow of information between the two parties;
- This becomes necessary when there is a deadlock and none of the parties are prepared to take the blame thereby requiring a third party to reconcile the two parties;
- The conciliator tries to calm down the disputing parties by carefully removing the anger and;
- Mistrust between the parties to enable them regain their initial friendly feeling and good will to each other.

The Conciliation Process Cont.

- In Conciliation, the conciliator supports the direct negotiation process by assisting both parties to identify the causes and the extent of their differences to establish alternative solutions;
- The Conciliator acts as a medium for the continuation of the dialogue because it is a friendly process;
- The responsibility for making decisions and reaching solutions still remains a joint one between management and unions and not the Conciliator;
- If the Conciliators are unable to reach any consensus, the Labour Act recommends that they report to the Chief Labour Officer who sends the dispute to arbitration.

Topic Four: The Arbitration Process.

□ The Arbitration Process

- When mediation or conciliation fails, under Section 154 (6) of the Labour Act, the dispute is referred to the National Labour Commission;
- The Commission shall with the consent of the parties refer the dispute to an arbitrator or an arbitration panel;
- This is Voluntary arbitration with the two parties voluntarily with the help of the Labour Commission get the assistance of an arbitrator to resolve the dispute.

The Arbitration Process Cont.

- Arbitration goes beyond discovering facts to investigating documentary proofs and offering an award or makes a judgment on the dispute;
- In arbitration, the direct negotiation between management and union is replaced with a process of adjudication which involves the third party making a decision or award;
- The arbitrator is empowered to take a decision which disposes off the dispute;
- Hence, he is not required to seek a direct reconciliation between the two parties.

The Arbitration Process Cont.

- In this regard, the two parties lose the power over the settlement of the dispute entirely;
- It is the arbitrator's decision rather than a joint decision of the two parties which determines the settlement of the dispute;
- The arbitrator may take the following actions:
 - Request for an examination of the economic position of the organization and any books/documents that can provide him or her with information that will enable him to take a decision;
 - Summon any person before the arbitration tribunal to be examined on oath or to produce a document in his or her possession.

The Arbitration Process Cont.

- The arbitrator can institute commissions or committees for examination of witnesses;
- The arbitration panel makes an award or a decision that has legal backing but such award must be endorsed by the authorizing body (NLC);
- Conciliation/Mediation and Arbitration are means of intervening in the negotiation process by a third party to assist the two parties resolve a dispute;
- However, the main difference between the two is that while's Conciliation/Mediation is an assisted continuation of negotiation; Arbitration involves the imposition of a binding award on both parties.

Topic Five: List of Mediators and Arbitrators

- The Labour Commission shall maintain a list of qualified persons who are knowledgeable in industrial relations to serve as mediators or arbitrators for each group;
- Appointments of mediators or arbitrators may be made from the list of mediators or arbitrators;
- A person appointed as an arbitrator or a member of an arbitration panel is not qualified to serve if;
- The person has any financial or other interest in the undertaking or employers' or workers' organization involved in the dispute.

Topic Six: Industrial Strikes and Lock Outs

□ Industrial Strikes and Lock Outs

- Strikes and Collective Bargaining are used by workers unions to achieve their aim;
- A strike is a consented and a simultaneous stoppage of work by workers until some demand is granted;
- Lock Outs are used by employers or management, where workers are prevented from entering the workplace;
- Strikes and Lock Outs are weapons used by both Unions and Management to protect their interest respectively.

Legal Definition of a Strike

- According to the Labour Act, a Strike is the act of any number of employees who are in the employment of the same employer or different employers undertaking any of the following:
 - Discontinuing that employment whether wholly or partially;
 - Breaking their contract of service;
 - Refusing or failing after any such discontinuous to resume or return to their employment;
 - Refusing or failing to accept engagement for any work in which they were or are usually employed;
 - Reducing their normal output or normal rate of work.

Conditions under which a Strike is Justified

- A Strike may be justified on the following grounds:
 - When the demands are believed to be just;
 - When the other more reasonable means of resolving the problem such as mediation, conciliation and arbitration have been exhausted;
 - Where there are reasonable probability of success as well as achieving ones goals;
 - When the benefits to be obtained in the long run exceeds the harm or inconvenience which will follow.

Notice for Intention to Resort to Strike or Lock Out

- Where the parties fail to agree the dispute to voluntary arbitration or;
- Where the dispute remains unresolved at the end of arbitration proceeding;
- Then either party intending to undertake a Strike or Lock out, shall give written notice of this to the other party and;
- The NLC, with seven days after failure to agree to refer the dispute to voluntary arbitration or the termination of the proceedings.

Notice of Intention to resort to Strike and Lock out Cont.

- A party to an industrial dispute who has given notice of intention to resort to a strike;
- Or lock out may do so only after the expiration of seven days from the date of the notice;
- If the dispute remains unresolved within seven days from the start of the strike or lock out,
- The dispute shall be settled by Compulsory arbitration;

Notice of Intention to resort to Strike and Lock out Cont.

- In a Compulsory arbitration, the decision of the majority of the arbitrators shall constitute the award and shall be binding on all the parties;
- A compulsory arbitration shall be composed of three members of NLC, one each from gov't, organized labour and employers' association;
- A party to an industrial dispute shall not resort to strike/lock out during the period of negotiation, mediation or arbitration.

Types of Industrial Strikes

- **Economic Strike:** It involves the use of union power over its members to secure economic advantages like wages, bonuses, retirement benefits, sick leave etc;
- **General Strike:** It involves all trade unions striking at the same time thereby completely dislocating the economy of a country;
- **Sympathetic Strike:** It occurs when a trade union which is not concerned in a dispute calls a strike in support of another union whose members are on strike;

Types of Industrial Strikes

Cont.

- **Sit Down Strike:** It is one in which workers are on strike but do not leave their place of work rather they remain in the workplace in control of production facilities;
- **Slow Down or Go Slow Strike:** This is usually not a strike in the usual sense since the workers do not seize production, as they rather limit their output whiles remaining on the job;
- **Wild-Cat Strike:** It is initiated by a group of workers in violation of a contract and without the consent of the mother union and without warning.

Assignment

- Industrial Strikes are necessary evils in Industrial Relations. Discuss.

