CONCILATION OF LABOUR DISPUTES IN ETHIOPIA: A CRITICAL ANALYSIS

ASCHALEW ASHAGRE*

ABSTRACT

Although any society in the world, irrespective of its stage of development, has employed different dispute resolution mechanisms, the movement for the use of modern types of alternative dispute resolution (ADR) mechanisms is a phenomenon of the 20th century, which has now engulfed the whole world. This can be witnessed by the fact that a number of developed as well as developing countries have adopted negotiation, mediation, conciliation, arbitration and so on side by side with their judicial system.

Since the judicial system, any where in the world, is characterized by court congestion and unduly protracted litigation, ADR methods are believed to be excellent panacea to this problem. In addition, ADR methods are believed to be cost effective and expeditious resulting in effective management of civil disputes.

The Ethiopian legal system is not an exception to this general world practice as our system has embraced ADR since the adoption of the 1960s modern codes of the country. As regards settlement of labor disputes using

* **LL.B, LL.M, Lecturer in Law, Faculty of Law, Alpha University College**
Tel 0911122119
P.O Box 150237
E-mail wohabi@yahoo.com.

ADR methods; the Ethiopian labor laws adopted since 1960s have given recognition to conciliation of labor disputes. This has remained the case, since labor relations, as any other social interactions, inevitably entail disputes between workers and employers. Hence, in order to ensure industrial peace and hence productivity and development, disputes that crop up between employers and employees need to be resolved. Resolution of labor disputes is crucial because the parties concerned, the public and the economy as a whole are beneficiaries from it, as the effect of labor disputes is not confined to affecting only the contracting parties unlike other contractual relationships.

This article is, therefore, meant to analyze of the conspicuous features of conciliation of labor disputes in Ethiopia as incorporated under the new Ethiopian Labor Proclamation (proc. No 377/2003. To this end, the author will touch upon the conceptual underpinning regarding conciliation, its distinguishing features, the legal status of conciliation of labor disputes in Ethiopia, the appointment, nature and status of conciliation recognized under the labor law, the procedures that may be employed by the conciliator and the outcome (effect) of conciliation proceedings. Finally, a brief concluding remark will be made.

I. INTRODUCTORY REMARKS ABOUT LABOR CONCILIATION

1.1 Conceptual Underpinnings

The term ADR embraces a number of alternative dispute resolution mechanisms. Among these mechanisms, arbitration, conciliation, mediation and negotiation are the salient ones. Although discussing the features of forms of ADR other than conciliation is out of the ambit of this work, the author strongly believes that few words should be uttered particularly about arbitration and mediation in order to clearly understand conciliation, which is the purpose of this article.

Arbitration, according to Black's Law Dictionary is:

> **"A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding."** [1]

Rene David defines arbitration in the following words:

> **"Arbitration is a device where by the settlement of a question, which is of interest for two or more persons, is**

[1] Bryan A. Garner (Editor-in-chief), Black's Law Dictionary, 8th ed., 2004,p.112.

> **entrusted to one or more other persons – the arbitrator or arbitrators who derive their powers from a private agreement, not from the authorities of a state, and who are to proceed and decide the case on the basis of such agreement.**[2]

From the above definitions, we can understand that arbitration is a dispute settlement mechanism and the power of the arbitrators emanates from the agreement of the parties to the dispute. The other important feature of arbitration, as we can gather from the definitions, is that the decision handed down by the arbitrators is as binding as decision of courts.

When we come to conciliation, according to Black's Law Dictionary, **conciliation is a settlement of a dispute in an agreeable manner; a process in which a neutral third party meets with the parties to the dispute and explores how the dispute might be resolved, especially in a relatively unstructured method of dispute resolution in which a third party facilitates communication between the parties in an attempt to help them settle their differences.**[3]

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[2] **Rene David, Arbitration in International Trade, Kluwer Law and Taxation publishers, Deventor, Netherlands, 1985**

[3] **Cited at note 1, P307**

How about mediation? Mediation, as defined by the above dictionary, is a method of non-binding dispute resolution [mechanism] involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.[4]

When we closely read the above definitions of conciliation and mediation, we may think that mediation is the same as conciliation because there are vivid elements, which are present under both mediation and conciliation. In fact, the difference between conciliation and mediation is difficult to be understood. Because of this, some people consider that mediation and conciliation are one and the same. However, others argue that the two concepts have slight difference although the difference is very much subtle. In this regard, Madhava Menon writes:

> **"While conciliation may be an interchangeable term with mediation, yet on ultimate analysis, there is a subtle difference between the two. While in mediation, the third party neutral intermediary, termed as mediator, plays more active roles by giving in dependent compromise formulas after hearing both parties putting their case and stating their terms of compromise; in conciliation, the third party neutral intermediary's rule is mainly to bring the parties together in a frame of mind to forget their animosities and prepared for an**

[4] Id, P. 1003

> **acceptable compromise on terms mid-way between the stands taken before the commencement of conciliation proceedings."[5]**

A close scrutiny of the above quotation reveals that a mediator is more active than a conciliator. In other words, the difference between the mediator and the conciliator lies in the fact that the former plays active role by suggesting solutions to the disputing parties while the latter is absolutely natural and does not say anything regarding the solutions to the dispute. The sole mission of a conciliator is simply to assist the parties to come up with solutions acceptable to both of them by themselves. However, the difference between mediation and conciliation is understood the other way round.[6]

From the foregoing discussions, it is easy to grasp that there is no clear and understandable difference between conciliation and mediation. Rather, there is confusion.

In line with this assertion, a certain author has to say the following:

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[5] **Madahave Menon, First Advanced Course Mediation Conciliation, Arbitration and Negotiated Settlement of Disputes, Reading Material ,volume One. (2005) P. 150.**

[6] **For instance, Associate professor Tilahun Teshaome, in a note distributed for class discussion in the LL. M programme (200/2006 A.Y) describes conciliation as situation where chosen facilitator settles the dispute by proposing what he feels is the best possible option for settlement. As regards mediation, the same note provides that chosen facilitator helps parties to come to terms acceptable to both. The proposal normally comes from the parties them selves.**

> **"The distinction between mediation and conciliation is widely debatable among those interested in ADR, arbitration and international diplomacy. Some suggest that conciliation is non-binding arbitration, whereas mediation is merely assisted negotiation. Others put it this way: conciliation involves a third parties to help them reconcile their differences, whereas mediation goes further by allowing the third might be resolved. Still others reject these attempts at differentiation and contend that there is no consensus about what the two words mean; they are generally interchangeable. Through a distinction would be convenient, those who argue that usage indicates a broad synohymy are most accurate."[7]**

Dispute the above conceptual wrangle, the Ethiopian legal system, as of 1960s up to now, has employed the term conciliation. Our laws have nowhere used the term mediation. [8] Although the term conciliation has been incorporated under the 1960 Civil Code of Ethiopia, the code has not attempted to define what conciliation is all about except that it provides that "the parties may entrust a third party with the mission of bringing them together

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[7] **Garner, cited above at note, 1, P. 1003.**

[8] **This can be understood by having a look at the title of the 1960 Civil Code dealing with ADR methods (Arts. 3307-3346) and the 1963, 1975, 1993 and the 2003 Labor Proclamations.**

and if possible negotiating a settlement between them[9] which cannot enable us to differentiate mediation from conciliation.

The Ethiopian labor laws, past and present, try to give definition to the term conciliation. To begin with, proclamation No 210/1963 provides that conciliation pertains to the activity carried on [by the Labor Relation Board] or any other third party for the purpose of learning together the parties to a labor dispute and attempting to arrange settlement between them.[10] Again, the 1975 Labor Proclamation provides that conciliation [is] the activity conducted by a trade dispute committee or a conciliator designated by the [Ministry of labor and social Affairs] for the purpose of bringing the parties together and seeking to arrange between them a voluntary settlement of the dispute which their own efforts alone may not produce.[11] By the same token, Art. 136 of the 1993 Labor Proclamation stipulates that "conciliation is the activity conducted by a private person or persons appointed by the Ministry of Labor and Social Affairs (MOLSA) at the joint request of the parties for the purpose of bringing the parities together and seeking to arrange between them voluntary settlement of labor disputes which their own efforts do not produce" What was provided above has been repeated by Art. 136 of the

[9] **The Civil Code of the Empire of Ethiopia,Proclamation No 165/1960, Negarit Gazazeta., Year 19, No2, Art. 3318(1).**
[10] **Labor Relations Proclamation, Proc. No 210/1963,Art.2(e)**
[11] **Labour proclamation, Proc.No 64/1975, Negarit Gazeta,Year 35,No 11,Art.2(7)**

current labor proclamation since Art. 136 of Proc. No 42/1993 is a verbatim copy of Art. 136 of the 1993 Labor Proclamation.

To sum up, as the above discussions show the difference between a mediator and a conciliator pertains to the role played by the third party neutral. As we can understand by reading this article in its entirety, nothing prevents a conciliator of labor disputes to remain absolutely neutral (only assisting the parties to come to terms) or suggesting possible solutions to the dispute.

1.2 An Overview of Conciliation of Labor Disputes

Conciliation is a process of peace-keeping. As a human institution, it is probably as old as man's interest in the peaceful resolution of conflicts. It has certainly been used since time immemorial to settle disputes and adjust differences between private persons. It has been most usefully employed to smooth out serious disagreements which threatened the rupture of established relationships, such as those between husbands and wives, among associates and friends, and among partners in common endeavors.[12] Conciliation and mediation, together with good offices, have always been important in the field of international relations for the peaceful settlement of conflicts between states and for the maintenance of international peace. In the world today, as writers in the field assert, there is probably only one other field where conciliation is of comparable importance, for nations and

[12] **International Labor Office, Conciliation in Industrial Disputes(1973),p.3.**

the human community, in the field of industrial (labor) relations. It is in this field that this method of settling disputes has been "most frequently and intensively used and has thus achieved the highest degree of development and refinement."[13]

As a process of peace-making in labor relations, conciliation aims at bringing about the speedy settlement of disputes without resort to strikes or lock-outs, and to hasten the termination of work stoppages when these have occurred. The steps that a conciliator may take to bring about an amicable settlement varying from country to country, but always his function is to assist the parties towards a mutually acceptable compromise or solution.[14]

A unique and essential characteristic of the conciliation process is its flexibility, which sets it apart from other methods of settling labor disputes. A conciliator cannot follow the same procedure in every case. He must adjust his approaches, strategies and techniques to the circumstances of each dispute. It is probably for this reason that it has sometimes been said that **"conciliation is an art and the conciliator is a solitary artist recognizing at most a few guiding stars and depending mainly on his personal power of divination."**[15]

A practice of conciliation in labor disputes has developed mainly in connection with disputes arising from the failure of collective bargaining – the negotiations

[13] Id, P.4
[14] Id,
[15] Ibid

between the parties with a view to the conclusion of a collective agreement. Conciliation has, thus, been described as an extension of collective bargaining with third party assistance, or simply as assisted collective bargaining. The representatives of the parties in collective bargaining will usually also be their representatives at the conciliation proceedings. On the two sides, at the bilateral negotiation stage, these representatives constitute each party's "negotiating committee." At the conciliation stage, the parties continue to have their negotiating committees. It is, therefore, usual to speak of joint discussions between the parties in conciliation proceedings as negotiations.[16]

The voluntary settlement (which is the aim of conciliation) is nothing more or less than the parties' reaching an agreement, which is as much a collective bargaining agreement as one resulting from unaided, direct negotiations between the parties. Viewed from another angle, collective bargaining is a process of joint decision making. Essentially the same process is involved in conciliation, and although the conciliator participates in it, the joint decision which is aimed at is one made by the parties themselves. The view of collective bargaining as a process of joint decision making makes it easier to understand the dynamics and complexity of conciliation.[17]

In the preceding pages, the word "conciliator" has been generally used to mean the neutral third party assisting in

[16] Id, Pp. 4-5
[17] Ibid

the voluntary settlement of labor disputes. Under the practice in large number of countries, this third party is very often a government official functioning as a conciliator in an individual capacity. In fact, the methods and techniques of conciliation of labor disputes have been largely developed on the basis of the experiences of individual conciliators; it has indeed been often pointed out that conciliation is a one-man job.[18]

Conciliation may also be undertaken by a body consisting of several members, variously called a board, a council or a committee of conciliation. It generally consists of an independent chairman together with employers' and workers' members, and it is the board, the council or the committee as a whole which is usually given the task of promoting the settlement of a dispute referred to it. The procedure of such body is more formal than that followed by an individual conciliator, and the two procedures also differ in other respects.[19]

In spite of these differences, there is an essential similarity in the conciliation process as carried out by an individual conciliator and by a board, council or committee. In the case of the latter, the work of conciliation usually devolves mainly on the chairman, who really functions on the aforementioned body as a neutral third party. In performing this task, he may use the methods and techniques of an individual conciliator,

[18] Ibid

[19] R.M. MacIver, "Arbitration and Conciliation in Canada." Annals of the American Academy of Political and Social Sciences Vol. 107(1923) P.298

although the manner in which he does so will vary according to the role of the employers' and workers' members.[20]

1.3 The Legal Status of Conciliation of Labor Disputes in Ethiopia

In Ethiopian legal history, modern ADR methods have been introduced in the country concomitant to the 1960's codification process. The 1960 Civil Code of Ethiopia incorporated compromise, conciliation and arbitration as alternative forums of dispute resolution.[21] As regards conciliation, the Civil Code has devoted a few provisions regulating some aspects of conciliation of disputes. The provisions of the Civil Code are of general application and deal with appointment of conciliator, powers and duties of the conciliator, the time-limit within which the conciliator must discharge his obligation as laid down in the contract or by the law, the duties of the parties and conciliator's expenses and remuneration.[22]

When we come to the Labor Laws of Ethiopia, the 1960s also saw the promulgation of relatively modern labor laws in Ethiopian legal history. The first of such laws was the 1960 Civil Code which contained several provisions on employment relationship.[23] However, the Civil Code provisions did not deal with alternative means of resolution of labor disputes in general and conciliation of labor disputes in particular. Rather it was the 1962 Labor

[20] Ibid
[21] Cited at note 9, Arts. 3307-3346
[22] Id, Arts. 3318-3324
[23] Id, See Arts. 2512-2609

Relations Decree (Decree No. 49/1962) which gave recognition to the resolution of labor disputes by ADR methods in general and conciliation in particular.[24] This law was later changed into proclamation No.210/1963 which will be cited as such hereinafter. According to this proclamation, labor disputes would be resolved by conciliation by the then Labor Relations Board or any other third party. The Board or the third party conciliator would bring together the parties to a labor dispute and attempt to arrange settlement between them.[25] In particular, the Board was required to endeavor to settle by agreement [conciliation] all labor disputes submitted to it, and to this end it would employ and make use of all such means of conciliation as it deemed appropriate.[26]

The 1963 Labor Proclamation was repealed and replaced by the 1975 Labor Proclamation. The latter also gave recognition to ADR methods as labor dispute resolution mechanisms in general and conciliation in particular.[27] Under this proclamation, a trade dispute committee was established and one of the functions of this committee was to resolve labor disputes using conciliation as an alternative forum. The Trade Dispute Committee was empowered to settle both collective[28] as well as

[24] Labor Relations Decree, No 49/1962, Negarit Gazeta, Year 21, No 18, Art. 2(e)

[25] **Cited at note 10, Art. 2(e)**

[26] **Id, Art. 12(a) cum. Art. 16**

[27] **Cited at note 11, Art.2(3 & 7) and Arts. 179-104**

[28] **Collective Labor dispute refers to any claim arising out of the interpretation or improvement of the existing provisions or benefits contained in laws or regulations or collective agreements**

individual[29] labor disputes by conciliation. In this regard, Art. 85(1(a) of the proclamation provides:

> ***"When a grievance is presented to [the Trade Dispute Committee] by both or one of the parties, the committee shall, in the case of collective trade dispute make every effort by using all reasonable and lawful means to bring the parties to come to a fair and amicable solutions. ..., in the case of individual trade dispute ... adjudicate the dispute if it fails to the parties to an amicable settlement ..."***

As the above quotation reveals, when the dispute was a collective labor dispute, resorting to conciliation was a compulsory one although this does not mean that the disputing parties would be compelled to agree. If the parties failed to reach an amicable settlement, the Trade Dispute Committee would send a complete report to the Ministry of Labor and Social Affairs (MOLSA) setting

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or work rules or accepted practices and any dispute involving questions of representation by the workers or the undertaking or in the course of collective negotiation.

[29] Individual labor dispute pertains to a claim of an aggrieved worker arising from the violation or alteration of provisions contained in laws, regulations, work rules or individual contracts of employment or the non-application of established practices by the undertaking.

forth the circumstances relating to the dispute and the steps taken by the committee.[30] In this case, the ministry would assign a conciliator so that the collective labor dispute would be resolved by such conciliator.

The conciliator assigned by the ministry would endeavor to bring about settlement by all reasonable and lawful means.[31] When settlement was reached by conciliation, the agreement would be signed by the parties and registered by the ministry and the registered agreement would be binding upon the parties.[32]

The 1975 Labor Proclamation was replaced by Proclamation No.42/1993. Conciliation, as a means of labor dispute resolution, was incorporated under this proclamation. However, unlike the previous labor proclamation, this proclamation declared voluntary conciliation of labor disputes. Under this proclamation, conciliation proceedings might be conducted by a conciliator appointed by the disputing parties,[33] conciliator assigned by the Ministry of Labor and Social Affairs[34] and the Labor Relations Board acting as a conciliator.[35] The ministry would assign a conciliator for resolution of collective labor disputes when such disputes

[30] **Id, Art. 85(1(a)2)**
[31] **Id, Art. 90**
[32] **Id, Art. 93**
[33] Labor Proclamation, Proc. No 42/1993, **Negarit Gazeta, Year 52,** No 27, Art, 143.
[34] Id, Art. 141
[35] Id, Art. 147

arose and when same was communicated to it by either of the disputing parties.[36]

In spite of this, the parties themselves might appoint a conciliator, irrespective of the nature of the dispute i.e. whether it is an individual or collective labor dispute, who would settle the dispute amicably in accordance with the appropriate law.[37]

The other organ which would settle labor disputes by conciliation was the Labor Relations Board.[38] The Board was empowered to conciliate any collective labor disputes and it was expected to endeavor to settle by agreement such disputes submitted to it. To this end, it was authorized to employ and make use of all such means of conciliation as it deemed appropriate. In doing so, the Board might, in appropriate circumstances, consider not only the interest of the disputing parties immediately concerned but also the interest of the community of which they were a part and the national interest and the economy as well. In such circumstances, it would grant a motion to intervene by the government as **amicus curiae**.[39]

The 1993 Labor Proclamation was repealed by the current proclamation, Proclamation No.377/2003. As regards conciliation of labor disputes, the current proclamation has not taken a different gesture. Just like its predecessor, the current proclamation has stipulated

[36] Id, Art. 142
[37] Id, Art. 143
[38] Id, Art. 147
[39] Id. Art. 150

that labor disputes may be resolved by conciliators appointed by the disputing parties themselves, conciliators assigned by MOLSA and the Labor Relations Board acting as a conciliator.[40]

In sum, on the basis of the previous discussions, we can conclude that resolution of labor disputes using conciliation as an alternative forum has remained the national labor policy of Ethiopia and such policy has been translated into law since the dawn of the 1960s.

II. THE PROCESS OF CONCILIATION OF LABOR DISPUTES

The Process of conciliation of labor disputes undergoes some important steps and involves certain procedures and techniques that must be followed by conciliators so that the outcome of the conciliation proceeding will be satisfactory to the disputing parties. The following sections of this part will be devoted to the discussion of appointment of conciliators and labor disputes subject to conciliation, the conciliator's qualifications and the conciliation proceedings.

2.1 Conciliators of Labor Disputes in Ethiopia

In Ethiopia, appointment and assignment of conciliators varies depending upon the labor laws which have been promulgated since the 1960s. However, because of scarcity of space and time, the writer will confine himself

[40] Labor Proclamation, Proc. No 377/2003, Federal Negarit Gazeta, Year 10, No 12, See Arts. 141, 143 and 147

to the discussion and analysis of the relevant provisions of the current proclamation (Proclamation No.377/2003). Under this proclamation, conciliation of labor disputes may be conducted by conciliators appointed by the disputing parties, conciliators assigned by MOLSA and the Labor Relations Board acting as a conciliator.

2.1.1 Conciliators Assigned by MOLSA

Labor disputes that are to be settled by a conciliator assigned by MOLSA are collective labor disputes.[41] It assigns a conciliator for the resolution of such disputes when one of the disputing parties reports to MOLSA that a collective labor dispute has arisen. This means that MOLSA may not assign conciliators before disputes have arisen. In other words, the conciliators to be assigned by MOLSA are temporary conciliators who are appointed by the same when disputes have already cropped up. However, the proclamation under consideration has given the discretion to this organ of government to assign permanent conciliators at the national or woreda level.[42]

As we have said previously, the conciliator assigned by MOLSA is ordered by law to endeavor to bring about a settlement by all reasonable means as may seem appropriate to that end.[43] However, when the conciliator fails to settle a labor dispute within thirty days, he is required to report with detailed reasons thereof to

[41] **Id, Art. 142**
[42] **Id, Art. 141**
[43] **Id, Art. 142(2)**

MOLSA and shall serve the copy to the parties involved.[44]

2.1.2 Conciliators Appointed by the Parties

Previously, we have said that when collective labor disputes arise between the parties, MOLSA may assign a conciliator when it is requested by either of the parties. However, this does not prevent the disputing parties from appointing a conciliator of their choice without seeking the assistance of MOLSA.

In this regard, Article 143(1) of the Labor Proclamation provides that:

> ***"Notwithstanding the provisions of Art.141 [the provisions dealing with assignment of conciliators by MOLSA] of this proclamation, parties to a dispute may agree to submit their case to ...conciliators, other than the Minister for settlement in accordance with the appropriate law."***

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The above quotation makes it clear that the disputing parties are at liberty to appoint their own conciliator irrespective of the nature of the dispute. In other words,

[44] **Id, Art. 142(3)**

parties to both collective as well as individual labor disputes are free to appoint their own conciliators without resorting to the assignment of conciliators by MOLSA. In fact, the law has made it clear that MOLSA will involve itself in assigning conciliators, when it is approached by the disputing parties provided, however, that the disputes are collective labor disputes.

2.1.3 The Labor Relations Board as a Conciliator

The 1963, 1993 and the current proclamation have established Labor Relations Board whose function is settlement of labor disputes using ADR methods and adjudication of such disputes. The current Labor Proclamation, Proclamation No.377/2003 (as amended by Proclamation No.466/2005) has established a Labor Relations Board. The boards established under this proclamation are of two types: Permanent Board and **Ad hoc** Board each having its own sphere of competence in resolving labor disputes. Because our concern here is conciliation of labor disputes, let us concentrate on the role of each type of boards in settling labor disputes by conciliation.

A. The Permanent Board

Art.144 of the proclamation under consideration (before it was amended) provides that one or more labor relation boards may be established in regional states whose function is to entertain collective labor disputes.

Now, by way of amendment, it has been provided that a separate board shall be established in Addis Ababa to hear and decide cases involving undertakings owned by the Federal Government. In the course of doing this research, the researcher has witnessed that a separate board (permanent) has, in fact, been established and has commenced its normal function. In order to know whether or not the Board has started to entertain labor disputes by conciliation, the writer put questions to the chairman of this Board[45] and he responded that although the Board has been approached by disputing parties seeking conciliation, the it has not yet involved in conciliation of labor disputes. Rather, he said, the Board gives its recommendation to the parties to the effect that they can settle their differences by negotiation without the interference of the Board.[46]

Having in mind the above types of the permanent Board, let us now proceed with the discussion of the power of the permanent Board in relation to conciliation of labor disputes.

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[45] **Interview with Ato Getachew Barhanu, chairman of the permanent Labour Relations Board established to entertain labor disputes arising in undertakings owned by the Federal Government, May 26, 2006.**

[46] **The writer wants to inform the readers that the interview was conducted on the 26th of May 2006. Hence, the board may currently engage in settlement of labor arising in undertakings owned by the Federal government. Therefore, the conclusion that the said permanent board is not engaged in conciliation proceedings may not hold true today.**

Now the query worth raising at this juncture is as to what type of labor disputes are to be conciliated by the permanent Boards. The permanent Board is empowered to conciliate collective labor disputes which are mentioned under Art.142 of the Labor proclamation. We can understand this from Art.147(1) the proclamation which stipulates that the permanent Board shall have the power to hear labor disputes on matters specified in sub-article one (1) of Art.142 except for (a), to conciliate the parties and to give orders and decisions. Now in order to fully understand the message conveyed by Art.147(1) of the proclamation, we have to first see the contents of Art.142 of the same proclamation. According to the latter article, collective labor disputes are the following:

(a) wages and benefits

(b) establishment of new conditions of work

(c) the conclusion, amendment, duration and invalidation of collective agreements

(d) the interpretation of any provisions of the proclamation, collective agreements and work rules

(e) procedures of employment and promotion of workers

(f) matters affecting the workers in general and the existence of the undertaking

(g) claims related to measures taken by the employer regarding promotion, transfer and training

(h) claims relating to the reduction of workers

Therefore, as we have mentioned above, the permanent Board has been empowered to treat all the above labor disputes and other similar collective labor disputes by conciliation. However, because the law clearly provides that the permanent Board cannot adjudicate collective labor disputes involving wages and benefits, some people including board members strongly argue that the permanent Board has been debarred from conciliating disputes involving wages and benefits in spite of their collective nature. For instance, Ato Enyew Amare and Ato Taddesse G/Medhin, members of the permanent Board, maintained that the Board cannot conciliate disputes of collective nature.[47]

However, a close reading of Art.147(1) of the Labor Proclamation does not warrant to forward the above argument. As far as the understanding of this writer is concerned, the Board is prevented from adjudicating labor disputes concerning wages and benefits. To use the provision of the law as it is, Art.147(1) states that "the permanent Board shall have the power to hear labor disputes in matters specified in sub-article (1) of Art.142, except for (a), [wages and benefits], to conciliate the parties ... ." From this, therefore, it is not difficult to understand that the exception provided only applies to adjudication; it does not apply to conciliation. Therefore, the writer believes that the permanent Board is

[47] **The writer understood this from an interview conducted with Ato Enyew Amare and Ato Taddesse G/Hiwot, members of the Labor Relations Board, May 25, 2006.**

empowered to conciliate all collective labor disputes except those disputes reserved to the ad hoc Board under Art.136(2) by virtue of Art.147(1) of the proclamation.

The law requires the permanent Board to endeavor to settle by agreement labor disputes submitted to it and to this end it has been empowered to employ and make use of all such means of conciliation as it deems appropriate.[48]

B. The Ad hoc Boards

The ad hoc Labor Relations Board is established to settle collective labor disputes which are enumerated under Art.136(2) of Proclamation No.377/2003 (as amended) and disputes involving wages and benefits. According to Art.136(2) of the proclamation collective labor disputes involving essential public services undertakings such as air transport, undertakings supplying water and carrying out city cleaning and sanitation services, undertakings supplying electric power, urban bus services, hospitals, clinics, dispensaries and pharmacies, fire brigade services and telecommunication services are to be resolved by the ad hoc Boards.

Like the permanent Board, the ad hoc Boards are divided into two categories. (Those which treat the above labor disputes involving undertakings owned by the Federal Government and the other category treat the above types

[48] **Cited at note 40, Art. 150**

of labor disputes not involving undertakings owned by the Federal Government).[49]

When we come to the power of conciliation of the ad hoc Boards, Art.147(2) of the proclamation provides that the ad hoc Board shall have the power to conciliate parties. Art.150(1) of the same proclamation further states that the permanent or ad hoc Board shall endeavor to settle by agreement labor disputes submitted to it, and to this end, it shall employ and make use of all such means of conciliation as it deems appropriate.

C. Has Conciliation Been Really Practiced by the Board?

The foregoing discussions have revealed that both the permanent and the ad hoc Boards are empowered to conciliate collective labor disputes. However, the issue that remains to be addressed is whether the Labor Relations Board (permanent as well as ad hoc) has engaged itself in conciliation of labor disputes. In order to obtain a response to this query, the writer interviewed legal professionals who have been board members.

The first board member approached by the writer is Ato Enyew Amare, a legal professional working at the Commercial Bank of Ethiopia. He responded that there were attempts to conciliate disputing parties immediately following the adoption of the 1993 Labor Proclamation. In spite of that, however, employers in general were not interested in resolving labor disputes by conciliation and

[49] **Id, Art. 144**

the efforts that were exerted in this regard were fruitless. Because of this, the board considered that endeavoring to conciliate the disputing parties was waste of time and energy. Hence, the Board has not been engaged in conciliation of labor disputes. Rather, the Board, according to Ato Enyew, urges the disputing parties to settle their disputes by themselves without the intervention of a third party. If they fail to settle the dispute by themselves within a specified period of time defined by the Board, Ato Enyew said, it would embark upon adjudicating the case and giving its decision in accordance with the law.[50]

Another board member interviewed by the writer is Ato Getachew Berhanu, chairman of the permanent Board established for the settlement of labor disputes involving undertakings owned by the Federal Government. He responded that because this board has been established only recently, it has not started to settle labor disputes by conciliation except advising the disputing parties to settle their disputes by themselves-negotiation.[51]

The third Board member consulted by this writer is Ato Taddesse G/Hiwot. This man responded that only few labor cases have been resolved by conciliation. In addition, he said that when the disputes are of such a nature that they can easily be resolved by the parties

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[50] Interview with Ato Eneyew Amare, Member of the permanent Labour Relations Board, May 17, 2006.

[51] Interview with Ato Getachew, cited at note 45.

themselves, the Board advises the parties to settle such disputes by themselves.[52]

In order to evaluate the conciliation procedures used by the Board, the writer tried to get cases resolved by the Boards. However, this was impossible since such cases are not properly kept. However, the individuals interviewed recounted to the writer that the Boards have not yet developed their rules of procedure to be followed during adjudication as well as conciliation[53] although the Boards are required to issue their own rules of procedure and evidence.[54]

2.2 Qualities of Conciliators of Labor Disputes

A basic aspect of the work of a conciliator is his personal relationship with the parties to disputes in which he is involved. In order to be effective, he must have their trust and confidence. It is very important to appreciate fully the position of the ordinary conciliator in this regard. We may compare his position with that of a private conciliator selected by the parties or that of a senior government official who occasionally acts as a conciliator in disputes. A private conciliator or a senior government official may not succeed in conciliating a particular dispute, but they enjoy advantages which make it likely

[52] **Interview with Ato Taddesse G/Hiwot, cited at note 47.**
[53] **Ibid**
[54] **Cited at note 40, Art, 148.**

that they will be effective in leading the parties to a settlement.[55]

When the parties to a labor dispute agree to utilize the services of a private conciliator, they select a person for his qualifications and experience, which they know well; they choose him precisely because they both believe in his ability to help them. In conciliating a dispute a minister of labor or a senior government official does not have this advantage of having been selected by the parties. He may have, however, his own wealth of experience, his personal prestige, and the authority of his office. These make his intervention generally welcome by the parties.[56]

The ordinary conciliator does not enjoy these advantages. He is thrust by the government into a dispute, whether the parties like it or not. Unless they believe that he can be of real help to them, his efforts are almost always bound to fail. To be able to win their trust and confidence and to be effective in his work, a conciliator must possess certain personal qualities and qualifications.[57]

It is perhaps difficult in describing the personal qualities which a conciliator should possess to avoid creating the impression that he must be a "superman". This is not of course the case, but there are basic characteristics essential to the work of conciliation which he should possess. Some of these characteristics are primarily a matter of attitude, which it would be inexcusable for a

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[55] **Cited at note 12, P.23**
[56] **Ibid**
[57] **Ibid**

conciliator not to develop in himself. Some other characteristics are inborn traits which the average person possesses to a greater or lesser degree. A person may exceptionally be gifted with these traits and have a natural aptitude and talent for conciliation. Generally, a conciliator is expected to have the following personal qualities.[58]

- ***Independence and Impartiality***

Independence and impartiality are the two attributes which every conciliator should possess regardless of other qualities and qualifications. It is essential that he should not only possess these qualities but also be clearly seen to possess them. To appear independent and impartial is no less important than actually to be so. In this regard, a conciliator must be above suspicion.[59]

The moment that one party is led to suspicion, by any word or gesture on his part, that he is biased in favor of the other party, he (the conciliator) loses his value because it is essential that both sides should have confidence in the conciliator's integrity and neutrality. In developing countries, there are usually differences in the social status or prestige of the parties, negotiators and in the strength of the organizations they represent. A conciliator should be independent enough not to be swayed or influenced by these factors. He should be able

[58] **Ibid**
[59] **Ibid**

to resist undue pressures or persuasion from powerful employers or trade unions.[60]

Through his handling of various cases, a conciliator should be able to establish a reputation for himself, and make both sides of the dispute accept that he is a completely unbiased and reliable conciliator. Even a single incident in which his independence and impartiality becomes suspect to one party can adversely affect his reputation for a long time afterwards and indeed he may not succeed in regaining it.[61]

- ***Commitment***

Conciliation in certain cases means an arduous work. A conciliator should be physically and psychologically fit for the rigors of his task. He has to do a certain amount of desk work, but his cases will require him to work outside the confines of an office. He does not have the same working days as most government servants, and conciliation meetings may last for hours on end. For this reason, among others, a personal factor calling for particular emphasis, therefore, the fundamental need for a conciliator to have a positive attitude towards his work. He must have a strong and deeply held conviction of the importance and usefulness of conciliation, and he must like or learn to like the work.[62]

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[60] **Ibid**

[61] **M.C. Mariasinghe, "The use of conciliation of Dispute Settlement. The Sri Lanka Experience," The International and Comparative Law Quarterly, vol. 29, No 2/3(1980)Pp. 400-403.**

[62] **Ibid**

Unfortunately, the condition of employment of government conciliators in certain countries may be discouraging for them. They may think that their pay and other conditions of service are not commensurate with the importance of their functions and responsibilities. Material inducement is probably as important for the motivation of a conciliator in performing his duties as it is in the case of other public servants, and it would be difficult to blame a conciliator for not doing his best if he feels that he is not sufficiently rewarded. Nevertheless, conciliation is fertile in non-material rewards which can be sources of boundless satisfaction for the person engaged in it.[63] Some of the conciliators assigned by the government at the sub-city levels in Addis Ababa whom the writer interviewed subscribed to this fact and they said that it would give them enormous satisfaction seeing that the disputes arising between workers and employers are settled by their efforts and commitment.[64]

- ***Other Personal Qualities***

It goes without saying that because of the nature of his work, a conciliator must have the ability to get along well with people. He must, to a certain extent, be a specialist in human relations – in relations between the parties when they come face to face, and in his relations with them. He must be honest, polite, tactful, self-confident, even-tempered, and patient in trying to accomplish results. He should have the patience to listen to what the

[63] **Ibid**
[64] **Cited at note 12, Pp. 23-24**

parties say and want to say. He should obviously have power of persuasion, including a good command of language and facility of expression, and should be able to communicate with the parties in a language they understand.[65]

A conciliator deals with the leading figures in the world of industry in his country, and has to preside over their joint meetings in conciliation proceedings. Therefore, he not only needs tact and ability to guide and control their joint discussions, he must also have an impression of experience, responsibility, clear-headedness and mature judgment. It may also be especially noted that he deals with practical men of affairs, and must be able to show them that he possesses enough plain common sense and practical-mindedness.[66]

Besides, a conciliator must have other qualities. For instance, in the informal atmosphere of conciliation a friendly personality is a distinct asset. A sense of humor can be helpful on the same account specially for relieving the tension of joint discussions. A special alacrity of mind will enable a conciliator to grasp quickly and analyze rapidly the main elements of controversy. But it would be totally unrealistic that he must possess all these qualities.[67]

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[65] **Aschalew Ashagre, Arbitration and Conciliation of Labor Disputes in Ethiopia, Faculty of Law, A.A.U Masters Thesis, unpublished, 2006, P.146.**

[66] **Ibid**

[67] **Ibid**

A conciliator should also possess certain professional qualities. This is because, in principle, he must see himself as a repository of knowledge and experience. If he is to discharge his responsibility to its fullest extent, the parties must look upon him with high regard for his professional competence.[68]

Needless to say, a conciliator should be fully familiar with the law and regulations concerning labor relations and the settlement of labor disputes. He should also be familiar with the practical side of the labor relation system such as the development and structure of trade unions and employers' associations, the prevailing methods of collective bargaining, negotiating procedures and practices, the operation of agreed negotiating bodies set up by the parties, and the main causes and patterns of disputes.[69]

Where the prevailing system of collective bargaining includes or is largely based on negotiation at the plant level, or where conciliation service deals with disputes arising at that level, a conciliator needs also to be familiar with the conduct of labor relations within individual undertakings. He should have some knowledge of personnel management, the functioning of trade unions within undertakings, the role of shop stewards or local trade union representatives, any other system of workers'

[68] **Ibid**
[69] **Cited at note 12, P.28.**

representation, grievance and disciplinary procedures and joint consultation machinery.[70]

It is important that this basic training includes a general background of industrial experience which enables the conciliator to understand the management process. He should have some knowledge of the products and services, the production methods, practices and nomenclature of the industries with which he is concerned. This can enable him to make an easier approach to the parties, and experience in other countries shows that it is helpful for a conciliator to be able to speak their language and not to be a complete novice to their world.[71]

A closely related concomitant to knowledge of industry is knowledge of the occupation and employment practices within the industry. Questions of permanent, temporary and causal employment, occupational advancement and transfers, manning arrangements and workloads are some of the matters that come in for their share of workers' demands and complaints. It is quite obvious that the conciliator can make little if any contribution to a settlement if he has no knowledge of the matters under discussion.[72]

Naturally, since most disputes concern wage rates and other financial matters, a conciliator should be familiar with economic questions and financial considerations. In certain industries questions of technological change,

[70] **Ibid**
[71] **Ibid**
[72] **Id, Pp. 28-29**

productivity, incentive schemes or other highly technical questions arise fairly often, and in that case a conciliator should arm himself with some background knowledge of these questions as part of his basic technical qualifications.[73]

In societies that are in the course of industrialization, some of the factors that generally influence relations between employers and workers are not normally encountered in industrially advanced countries. It is, therefore, important for conciliators in developing countries to have some understanding of those factors, especially traditional outlooks and cultural peculiarities, and of the way in which they affect labor relations.[74]

2.3 Preparations Made by the Conciliator

Before embarking on the actual conciliation proceedings, a conciliator will need to make necessary preparations. The preparations made are generally of two kinds: general preparations and specific preparations.

The purpose of a conciliator's general preparations is to enable him to be ready at any time to intervene in any dispute, and to facilitate his specific preparations for it. Such pre-dispute readiness is essentially a matter of having readily at hand information that the conciliator may need when he has to intervene in a dispute, and knowing where to obtain information. General preparations are, therefore, mainly concerned with the

[73] **Id, P.29**
[74] **Ibid**

keeping of files, records, and documentation. When these are well kept and systematically arranged, the time spent in locating any desired information is considerably reduced.[75]

A conciliator is also expected to make specific preparations. The effectiveness of a conciliator in his handling of a case depends to a very great extent on the way he prepares himself for it. Case preparation involves taking all possible steps to be ready to cope with whatever may occur in the conduct of the conciliation proceedings. It should be realized that no two disputes are ever alike in every material respect. There can be important similarities between the dispute in which a conciliator is involved at any given time and one has handled before, and experience in the previous dispute may be useful for the current one. However, he should guard against being misled by the similarities. He may think that because substantially similar issues are involved he can afford to be lax in making his preparations for the current dispute. This would be dangerous if the parties to the two disputes are different, but it would be no less dangerous if they are the same. In the latter case, even if the issues appear similar, there will invariably be differences in certain circumstances. The most prudent course for a conciliator to follow is to start from the premise that each dispute is unique, and to make the most complete preparations for it.[76]

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[75] **Cited at note 5, P. 133**
[76] **Ibid**

Part of the work of case preparation is done on the basis of available office files and records. It is continued in the initial or preliminary contacts with the parties, and may involve seeking out further information by other means where necessary. It should be emphasized that all this preparatory work can be started when it is known that negotiations are taking place between the parties and when the dispute is still at an incipient stage, or before it comes into the open.[77]

2.4 The Conciliator's Entry into a Dispute

The active intervention of a conciliator in a labor dispute takes the form of holding conciliation meetings for substantive discussion of the issues. There are, however, certain preliminary steps to be completed before a conciliator begins: a decision has to be taken to submit a dispute to conciliation, a conciliator has to be assigned to the case, and he must make his preparations for it, very often including the establishment of initial or exploratory contacts with the parties.

In general, the conciliation procedure in labor disputes may be set in motion on the initiative of any of the parties to the dispute or **ex officio** by the conciliation authority. In various countries the law requires reports of disputes or advance notice of proposed strikes, or lockouts to be given to the conciliation authority. Such reports or notices may provide the basis for intervention, but even where they have not been given, the conciliation authority is

[77] **Id, P. 137**

generally empowered to take cognizance of the disputes that arise.[78]

The timing of intervention is normally no problem, except if no request has been received from the parties and if conciliation is not prescribed by law. Where a government conciliation service nevertheless exists, it must then decide whether assistance should be offered; and that is a matter of judgment.[79]

If the dispute is one that affects or threatens to affect some vital public service, the conciliation service may have little alternative to intervention. In certain circumstances, however, it is important to avoid intervening prematurely. In this regard, an author writes:

> ***"In certain countries, the government encourages the parties to establish agreed procedures for the prevention and settlement of disputes through collective bargaining. Where such an agreed procedure exists, it should be followed and exhausted before a dispute is reported to the government conciliation service. Any attempt by one of the parties to by-pass the procedure will undermine its authority and***

[78] **Cited at note 12, P.39**
[79] **Ibid**

> ***eventually leads to its falling into disuse. A conciliation service should, therefore, resist any attempt to make it intervene prematurely. A conciliator should, however, be available to assist the parties where there has been a break down of the procedure, not by going into the merits of the dispute by proposing ways and means of reverting to the procedure that is established."***[80]

Even in cases where there is no agreed procedure for settling disputes, the parties should be encouraged to achieve a settlement by themselves. This suggestion is based on the general conception that is preferable to the parties to reach agreement by their own efforts and to have resort to outside assistance only when they have failed to do so. This is particularly true where the parties have already had some experience of collective bargaining, and when it may be expected that their negotiations can lead to some concrete results without a third party.[81]

The timing of intervention may be affected by strikes and lock-outs. It is a great temptation to conciliators, when a

[80] **Id, Pp. 39-40**
[81] **Ibid**

serious stoppage of work has actually started, to rush into the arena and endeavor to bring about immediate peace. Although it may seem paradoxical, immediate intervention may be entirely appropriate when a strike is not imminent but not effective when one has just begun. It is impossible to lay down rigid rules in this respect because so much depends on the circumstances of the case and the decision is one which can be taken only in the light of those circumstances, and of experience and knowledge of the parties involved.[82]

2.5 Types and Conduct of Meetings

The conciliation proceeding necessarily involves conducting of meetings with the disputing parties. In pursuing his objective of promotion of the settlement of a dispute, a conciliator performs a number of procedural functions relating to the scheduling, arranging and conduct of meetings with the parties.[83]

When we come to types of meetings, there are normally two types of meeting which a conciliator may hold with the parties to a labor dispute: joint conferences attended by both parties and separate meetings with only one party. The joint conference, at which the conciliator acts as chairman, is a stage of the conciliation proceedings at which the parties discuss their differences with each other. It is marked by the alignment of the parties' representatives on the opposite sides of the conference

[82] **I bid**
[83] **Cited at note 65, P. 151**

table. A joint conference is usually attended by the full membership of the two negotiating committees.[84]

The fact that all of each party's representatives are present, the alignment of the negotiating committees on opposite sides of the table and the presence of the conciliator in the formal-capacity of chairman – all these sectors contribute to an air of formality, with its attendant features. In this situation, and especially if the negotiating committees are large, it is generally desirable that each side communicate with the other side and with the conciliator (as chairman) through a single spokesman. The conciliator will have suggested this arrangement to the parties during his initial contacts with them, and should have obtained information about the identify of the Parties' spokesmen before the beginning of the first joint conference. However, he may be spared the trouble of himself arranging for the designation of spokesmen when the parties are represented by experienced negotiators.[85]

The chief characteristic of joint conferences is the fact that the parties are usually very conscious of their positions as adversaries. At this type of meeting, the parties play their antagonistic roles much more determinedly and purposefully than in separate meetings.[86]

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[84] **Ibid**
[85] **Ibid**
[86] **Ibid**

Each party will usually state its position on an issue in a defensive manner while making an intense assault on the opposing view. Words are carefully measured, in terms of offence and defense, and pointedly delivered. The members of each negotiating committee will strive to maintain an appearance of solid and an unflinching unity.[87]

The joint conference provides an outlet for aggressive feelings on the part of either party. In many instances, there may be no suitable way of easing hostility except direct confrontation between the parties. However, if a feeling of hostility is allowed to linger, there is a risk that it may cause irreparable damage to the negotiations or future relationships. The same danger may arise if the two sides are allowed to engage in bitter or harsh exchanges. But such exchanges may also purge them of their hostility. This is one of the most difficult problems the conciliator has to deal with as chairman of the joint conference and in scheduling meetings.[88]

The joint conference also provides an opportunity for the conciliator to observe the participants in their relationships with each other. In this regard, the conciliator should understand whether there is a clash between personalities between any members of the negotiating committees on the two sides, whether there are harsh comments from one side directed to any one in particular on the other side, whether certain members of a committee tend to provoke from the other side less angry

[87] **Ibid**
[88] **Cited at note 12, P.49**

responses than the other members, whether some issues are only mildly emphasized while others occupy more attention.[89]

These are only few examples of the use by the conciliator of his powers of observation with regard to the parties' behavior at the joint conference, which can give him important clues about their attitudes to which he has to adjust his approach.[90]

One of the main purposes of joint conference is to set out the unresolved issues that separate the parties. This alone may be ample reason for the conciliator to schedule such a meeting. When the conciliator takes up the case, the unresolved issues will be those remaining after the parties' preceding bilateral negotiations. These issues will be spelled out at the first joint conference. When the issues are numerous or particularly complex, there is no substitute for a join conference to obtain a clear statement of the issues that remain to be resolved.[91]

A conciliator may hold a separate meeting with one of the disputing parties. Such separate meeting can arise in three ways. The most common occurrence is for such a meeting to take place in connection with a joint conference. As a general rule, the initiative for holding a separate meeting is taken by the conciliator himself. At some stage of the joint meeting, the conciliator may find it useful to suspend the debate between the two parties

[89] **Id, Pp. 48-49**
[90] **Ibid**
[91] **Id, P. 49**

and to meet them separately. He will then call a recess or adjourn the meeting, and will meet them in separate rooms, one after the other, but separate meetings may also be arranged at the request of the parties, after closed meetings of each of the negotiating committees.[92]

Of the two forms of separate meeting, one occurs when the conciliator has meetings with the parties at different times, but not in connection with a joint conference. The other occurs when the two parties refuse to come together in a joint meeting but are willing to be present at the same time in the same building, though in separate rooms, as part of the process of continuous negotiation through the conciliator, who goes from room to room. This form of separate meeting is thus rather like a separate meeting held in connection with joint conference, except that there is no joint meeting at all.[93]

At a separate meeting the conciliator does not act as a chairman, rather he has a personal dialogue with the party present. The atmosphere is relatively free from the tensions of a joint meeting as it is more relaxed and informal. The party present does not address its words to an opponent on the opposite side as in a joint meeting. It does not exhibit the same combative attitude as it tends to assume in the presence of an adversary.[94]

The separate meeting provides the conciliator with opportunities that are not present he can express views and other suggestions and advice which could not, or

[92] **Ibid**
[93] **Id, P.50**
[94] **Ibid**

only at the risk of arousing resentment on the part of one or the other at a joint meeting. It is a separate meeting that the parties may be willing to give him, in confidence, information which will advance the negotiations but which they will not divulge in each other's presence.[95]

Another advantage of a separate meeting is that it gives the conciliator an opportunity to become acquainted with the people he is dealing with, and to obtain a more or less intimate view of each negotiating committee as a group. Although a committee may have its principal spokesman, he will not necessarily be its most influential member; the discussions within the committee may reveal the member or members whose views count more than do those of the others.[96]

There are also disadvantages to the separate meeting. Perhaps foremost among these is the absent party's suspicion of what is taking place without its knowledge. The slightest act or word of the conciliator after a meeting with one party is carefully screened by the other party to detect any sign of siding with the former. In this case, particular care must be taken by the conciliator at that state to protect and maintain his impartiality. Another possible disadvantage of the separate meeting is that if there is internal conflict in a negotiating committee it may flare up, at the meeting and hold up the discussion of the subjects that are at issue between the parties to the labor dispute. The members of each negotiating committee will

[95] Ibid
[96] Ibid

seek to maintain an image of complete unity when the two committees are face to face; they will try to maintain the same appearance of unity in a separate meeting with the conciliator, but there will be occasions when differences or rivalry within the group will rise to surface. Although it is useful for him to know of those rivalries, the conciliator must try to direct the members' attention to the main purpose of the meeting.[97]

To sum up, the purpose of conducting the previous types of meetings is to bring the disputing parties to a sort of agreement. In any case, the conciliation proceedings (the meetings) do have outcomes – either agreement or disagreement between the disputing parties. Now it is time to discuss the outcome of conciliation.

III. Outcome of Conciliation Proceedings of Labor Disputes

When a conciliator's effort to settle a dispute comes to an end he must take certain steps to wind up his handling of the case. In particular, he will participate, to varying extent, in the drafting of any agreement reached – he will write a final report on his intervention, and he will assist the parties, and in some cases the authorities, in initiating further proceedings if his conciliation has not been successful.[98]

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[97] **Id, P.51**

[98] **16 International Encyclopedia of Comparative Law, Labor Law: Prevention and Settlement of Labor Disputes Other Than Rights (1978) P. 30**

If the conciliation succeeds in settling the labor dispute, the settlement is generally set out in a memorandum which is signed by both parties. It is equivalent to a collective agreement the status of which varies according to the law of the country concerned. In Australia, for instance, the memorandum of agreement reached by the parties may be certified by the Federal Conciliation and Arbitration Commission or by the conciliation commissioner and it has the same authority as an arbitral award. In Zambia, settlements of collective disputes reached by negotiation or conciliation are referred to the Industrial Relations Court which shall, subject to the settlement not being contrary to any written law or public policy in the Republic, approve the settlement and make it an award which shall be final and binding upon the parties thereto for such period as the court may specify in the award.[99]

In certain countries, for instance in Sri Lanka, the conciliator is requested to set out in his report the recommendation he has made to the parties for the settlement of the dispute and they are called upon to state whether they accept or reject the settlement so recommended.[100]

When we come to the Ethiopian Labor Laws, the repealed ones and the existing one, the 1963 labor Proclamation did not specify any thing regarding the outcome of conciliation except that it stipulated that the

[99] **Ibid**
[100] **Ibid**

Labor Relations Board would endeavor to settle labor disputes by conciliation using appropriate means.[101] On the contrary, the 1975 Labor Proclamation had a provision which provided that settlement reached by conciliation would be signed by the parties and registered by MOLSA and the registered agreement would be binding upon the parties.[102]

Coming to the 1993 Labor Proclamation, although it did not expressly state the outcome of the conciliation proceeding, it is possible to understand that the ultimate objective of conciliation is to bring the disputing parties to a settlement. However, the status of the settlement is not clearly understood since the law is silent in this regard. As to the current labor proclamation (Proclamation No.377/2003), since the provisions of this proclamation in relation to conciliation are the verbatim copies of the previous proclamation, nothing new can be said concerning the outcome of conciliation and the status of conciliation agreement.[103]

In order to understand what the practice looks like,[104] the writer tried a lot to consult conciliators of labor disputes and looking at conciliation agreements. In so doing, the writer found few conciliation agreements which have been signed by the disputing parties and the conciliator. Hence, it is possible to observe that conciliation agreements are the same as any contractual agreement

[101] **Cited, at note 10, Art. 12(a(i)**
[102] **Cited at note 11, Art. 93**
[103] **Cited, at note 40, Arts. 141, 147 and 150**
[104] **Cited at note 65 P. 155**

which is binding as between the contracting parties. This was reaffirmed by the conciliators whom the writer interviewed in the course of doing this research work.[105]

The last question pertains to the situation when the conciliation proceeding of labor disputes results in failure to bring about agreement. If the conciliator fails to bring about a settlement, he is normally called upon to report to his superior. Sometimes, this report is a mere certificate of failure, in other cases, as in India, it has to be a full report, setting forth the steps taken by the conciliator in ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, a settlement could not be arrived at.[106]

In Ethiopia, whenever a conciliator of labor disputes assigned by MOLSA fails to settle a labor dispute within thirty days, he is required to report, with detailed reasons thereof, to the same organ and shall serve the copy to the parties involved.[107]In the case of a conciliator appointed by the disputing parties, the law does not require the conciliator to report to MOLSA except that the disputing parties who have failed to reach agreement are entitled to

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[105] **The author had the opportunity to have a look at conciliation agreements reached between Ras Hotels Enterprise and the Trade Union, Louis G. Construction Enterprise and the Trade Union and Ethiopian Electric Light and Power Corporation and the Trade Union**

[106] **Cited at note 98, P.36**

[107] **Cited at note 40, Art. 142(3)**

take their case either to the Labor Relations Board or to the appropriate court.[108]

When labor disputes are brought to the Labor Relations Board for conciliation and the Board fails to settle the dispute, it may invite the government to intervene as amicus curiae. The Board is required to do this when the circumstances indicate the settlement of such labor dispute is not only in the interest of the disputing parties but also in the interest of the community of which the disputing parities are part.[109]

IV. CONCLUDING REMARKS

It is not debatable that courts of law have been the ideal institutions for the settlements of legal disputes. Despite this, the attitude towards courts began to change due to the fact that litigation in courts is not efficient, cost effective and expeditious resulting in backlog of court cases. Because of this, what is called the ADR movement was started in the 20th century campaigning for the adoption of modern ADR methods such as negotiation, conciliation, arbitration, mediation and the like. This movement spread all over the world irrespective of ideological differences and level of economic development.

As we know, our country Ethiopia embarked on modernizing its laws and engaged in massive codification process in the second half of the 20th century. Along with

[108] Id, Art. 143(2)
[109] Id, Art. 150(2)
109 Id, Art. 150(2)

this, the country incorporated compromise, conciliation and arbitration under the 1960 Civil Code. Following the footsteps of the 1960 Civil Code, the country has made resolution of labor disputes by ADR methods one element of its national labor policy. To this end, Ethiopian labor laws, past and present, have embraced conciliation for the resolution of labor disputes.

Conciliation of labor disputes necessarily involves the interference of a third party neutral called a conciliator whose function is assisting the parties to reach an agreement. The process involves some key steps and procedures that need to be followed by the conciliator and the parties to the dispute. The ultimate effect of conciliation, provided that parties have reached agreement, is that the agreement reached between the disputing parties is binding upon them as any other contractual agreement.

Although conciliation is an expeditious means of resolution of labor disputes particularly in Ethiopia where court congestion is a serious problem, it is fraught with certain problems and it is extremely underutilized.

Despite the fact that the labor law has recognized conciliation as a means of labor dispute resolution, it has not defined the status of conciliation agreements casting a shadow on the efficacy of conciliation.
Therefore, there must be a clear provision of law which unequivocally defines the status of agreement.

In the course of writing this work, the author has realized that the Labor Relations Board which is empowered, **inter alia**, to conciliate collective labor disputes is reluctant to resolve such disputes by conciliation. Hence. the author recommends that this organ be urged by the government and other stakeholders to exert its effort to conciliate labor disputes before it resorts to adjudication. Besides, although the board is obliged by the labor law to come up with its own rules and procedures to facilitate its conciliation proceedings, it has not yet come up with these rules and procedures. Consequently, it cannot be in a position to conduct conciliation proceedings appropriately. Hence, it is recommendable that this organ adopt its rules and procedures as ordered by the law to make use conciliation of labor disputes.