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EDUCATION

# **EASTERN CAPE DEPARTMENT OF EDUCATION**

## **INDUCTION WORKSHOP FOR SCHOOL PRINCIPALS**

### **PRESENTATION BY EMPLOYEE RELATIONS AND ADVOCACY**

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**31<sup>st</sup> MAY 2023**



The role and purpose of Labour Relations is derived from the Constitution of the Republic of South Africa and Labour Relations Act 66 of 1995. All other secondary legislations are meant to give effect to the two Primary Legislations.

- Section 23 of Constitution provides that every employee has the right to fair labour relations
- This means that every manager has to act fairly, just and in pursuance of fair labour relations.
- Labour Relations is about maintaining labour peace in the work place.
- The role players are employer(managers), employees, labour unions and bargaining councils.
- Labour relations is the role of all managers with Labour Relations

**The field of Labour Relations is primarily concerned with:**

- the management of the relationship between employer and employee, through the recruitment phase, the employment relationship itself and the termination of the relationship.
- In most cases this will involve dealing with trade unions acting on behalf of their members

# EMPLOYER – EMPLOYEE RELATIONSHIP

Employer/Manager

Employees/Unions

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## Employer causes

- **Grievances**
- **Disputes**

## Employee Causes

- **Investigations**
- **Misconduct**
- **Disciplining**

- Grievance Procedure
- Disciplinary Procedure
- Dispute Resolution Procedure

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## Definition of Grievance:

**“ An act of omission or commission on the part of the employer which has a potential of affecting the employment relationship”**

# Common Grievances

- Appointments/Promotions
- Salary related (adjustments, allowances)
- Ill treatment/harassment
- Sexual harassment
- PMDS
- Transfers



# GRIEVANCE PROCEDURE (Chapter H of PAM) for Educators AND pscbc Res 14 of 2002

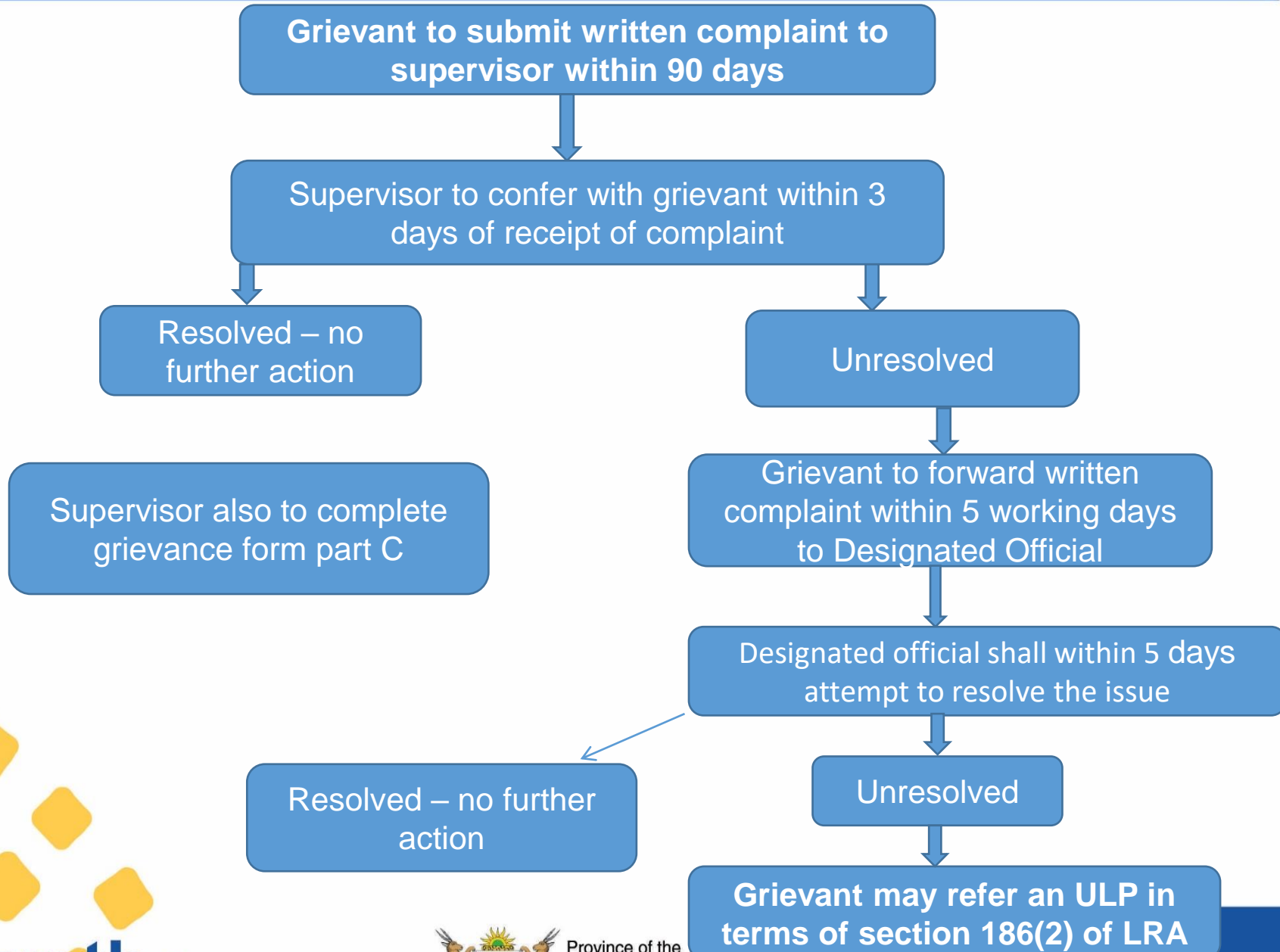
- Purpose is to resolve complaints as quickly as possible.
- A formal grievance form must be filled and submitted to District Director within 90 days.
- A meeting to resolve the grievance must be held within 3 days and 30 days for non – educators.
- Report made to Provincial Office within 5 days.
- If not resolved a dispute may be declared by the aggrieved party.

# How to conduct Grievance Meeting

A grievance meeting is mainly a conflict management meeting and must be handled thus:

QUALITY	DESCRIPTION
Be Calm	Conflict usually engenders strong emotions and even anger but, if calm, you are likely to be rational or in the mood for compromise.
Always show respect	However much you disagree with someone, attack the argument, not the person. <b><i>Play the ball, not the man</i></b>
Be considerate	Most conflict is over matters of little substance and often it is mostly pride or status that is at stake. Consider conceding the point to your opponent.
Discuss or debate	So often, conflict is created and/or maintained because there is no real discussion or debate.
Acknowledge emotions	It's no good denying acknowledge their emotions before endeavoring to move beyond them.
Consider sequencing	Much conflict is created and/or aggravated by lack of trust. Building trust takes time and proof of goodwill. So consider introducing an agreement in stages whereby each action is dependent on another action.

# GRIEVANCE MANAGEMENT



# DISCIPLINARY PROCEDURE

RES 1 OF 2003 AND Employment of educators act

# PURPOSE OF DISCIPLINARY PROCEDURE(Chapter 5 of Employment of Educators Act)

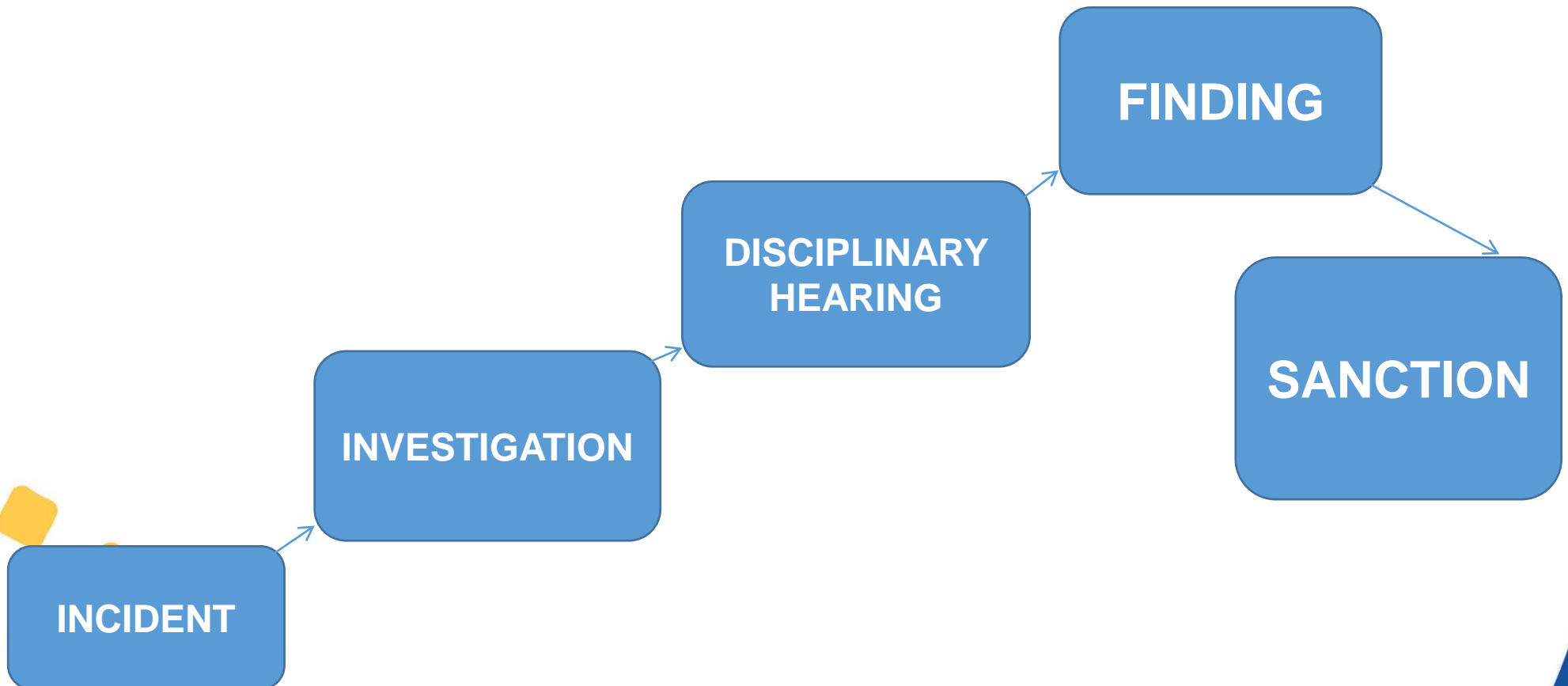
- To support constructive labour relations
- To promote mutual respect
- To ensure common understanding of misconduct and discipline
- To promote acceptable conduct
- To avert & correct unacceptable conduct
- To prevent arbitrary actions by employer

# PRINCIPLES OF DISCIPLINING

- Corrective
- Prompt, fair, consistent and just
- Responsibility of employer
- A code is necessary to ensure fair treatment.



# STAGES IN DEALING WITH MISCONDUCT



# INVESTIGATION

All misconduct must be thoroughly investigated to determine the appropriate course of action.

## STAGES OF INVESTIGATION

STAGE OF INVESTIGATION	AUTHORITY
Initial Investigation	Supervisor
Specialized Investigation	Labour Relations/Risk Management, Law Enforcement, SIU, Forensic

## PRINCIPLES OF INVESTIGATION

- The investigator(s) must be impartial.
- The investigation must consider all the versions of the matter under investigation
- Investigation report must be written with clear recommendations and all the necessary attachments.
- The recommendations must be approved(by relevant authority) before implementation.
- Once approved the recommendations must be implemented.

# PRECAUTIONERY SUSPENSION

## **The employer may suspend the employee on full pay if:**

- The employee has committed serious misconduct
- If the employer believes the presence of the employee may jeopardise the investigation.
- If the employer believes that the presence of the employee may endanger the safety of any person or state property.
- This suspension is a precautionary measure that does not constitute judgment and must be on full pay.
- The disciplinary hearing must be finalised within 60(30) days of the date of suspension. Any further postponement can be decided by the Presiding Officer but must not exceed (60) 90 days
- Employer may, after allowing representations from the educator, direct that further suspension be without pay.

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# LESS FORMAL DISCIPLINARY PROCESS

TYPE OF DISCIPLINE	PROCESS
Informal Advice & correction	This occurs internally and informally. No record of the process is kept
Counselling	The employer must bring the misconduct to the educator's attention, give the educator an opportunity to respond to the allegation, consult with the educator, decide on a method to remedy the conduct and implement the decision
Verbal Warning	The employer must convene a meeting and the educator may be represented by the educator's trade union representative who is based at the institution. Reasons should be given to the educator as to why it is necessary to initiate the procedure. The educator/educator's representative is heard on the misconduct in issue. The employer may counsel the educator or issue one of the three warnings set out in the column to the left hereof. Written warnings are on form A and final written warnings on form B. Warnings are valid for six (6) months. A sanction is filed in the educator's personal file and the educator has a right to object to the sanction. The objection is not an appeal and the objection is simply filed together with the sanction.
Written Warning	
Final Written Warning	



# Conducting a Formal Disciplinary Hearing

- Approved investigation report must be submitted to Labour Relations
- Charges formulated in Labour Relations and served on the employee between 5 and 10 days before the hearing.
- Employee expected to sign acknowledgement of the charges.
- Employee has to be represented by self, colleague or union representative. May be represented by a legal representative if Presiding officer allows in educators.
- For non-educators neither the employer nor the employee may be represented by a legal person unless the employee is a legal practitioner or the representative of the employer is a legal practitioner and the director supervisor of the employee charged with misconduct or the disciplinary hearing is conducted in terms of paragraph 7.3(c) of Res 1 of 2003.



## PARAGRAPH 7.3(C) OF RES 1 OF 2003

- For PSA employees the employer and the employee charged may agree that the hearing be chaired by the arbitrator from the relevant council.
- The decision of the arbitrator will be final and binding and open to review in terms of section 145 of LRA.
- All provisions applicable to disciplinary hearings in terms of this code will apply.
- The employer will be responsible to pay the costs of the arbitrator.
- The parties may be represented by the legal person

# Conducting a Disciplinary Hearing(cntd)

## POSSIBLE SANCTIONS

- Counselling
- A verbal warning
- Written warning
- Final written warning
- Fine not exceeding one month salary(for educators)
- Suspension without pay not exceeding 3 months.
- Demotion
- Combination of the above
- Dismissal

# Appeal Procedure

- **Any party has the right to appeal to Minister or the MEC within 5 days of receipt of the outcome of the disciplinary hearing**
- **Can appeal the finding and/or the sanction**
- **The outcome of the appeal is binding and must be implemented immediately.**
- **If not happy with the outcome of the appeal employee can declare a dispute.**

- **Section 14 of Employment of Educators' Act for Educators**
- **Section 17 of PSA for PS employees/non-educators.**
- **Procedure in Circular 21 of 2005**

# Definition of Abscondment(EEA)

## 14. Certain educators deemed to be discharged

(1) An educator appointed in a permanent capacity who -

(a) **is absent from work for a period exceeding 14 consecutive days without permission of the employer;**

(b) while the educator is absent from work without permission of the employer, assumes employment in another position;

(c) while suspended from duty, resigns or without permission of the employer assumes employment in another position; or

(d) while disciplinary steps taken against the educator have not yet been disposed of, resigns or without permission of the employer assumes employment in another position, Page 15 of 45

Shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct,

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# Provisions of Circular 21 of 2005

- DBE must be informed about absence within FIVE days in writing.
- Tracing of employee starts then.
- On the 14<sup>th</sup> day a letter is sent to last known address of employee.
- On expiry of five days a recommendation for termination is made to Provincial Office.
- Can be finalized within 3 weeks.
- Prompt action necessary from Managers



## Section 14(2) of EEA

If an educator(employee) who is deemed to have been discharged under paragraph (a) or (b) of subsection (1) at any time reports for duty, the employer may, on good cause shown and notwithstanding anything to the contrary contained in this Act, approve the reinstatement of the educator in the educator's former post or in any other post on such conditions relating to the period of the educator's absence from duty or otherwise as the employer may determine.

# DISPUTE RESOLUTION

In terms of LRA

# Common Disputes

- Unfair Dismissal: Section 191 of Labour Relations Act(LRA)
- Termination of contract of employment
- Non-renewal of contract
- Employee terminated contract of employment because employer made employment intolerable
- Refusal to allow an employee to resume duties after maternity leave

# Types of Disputes(cntd)

## Dispute of Interest:

- “matter is of interest to both employees and employers,
- The employees have no entitlement to the demand but would like to be entitled.
- for example; wages and hours of work”

# Common Disputes(contd)

- **Unfair Labour Practice:** Section 186(2) of LRA.
- Unfair conduct by employer relating to promotion, demotion, probation, training, provision of benefits, unfair suspension, unfair disciplinary action, refusal to reinstate in terms of agreement.

# Structures to handle disputes

- CCMA
- Bargaining Councils: PSCBC, GPSBC and ELRC
- Dispute referred by filling a referral form.

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# Time Frames to refer

- .Differs from bargaining council to bargaining council.**
- .Unfair Dismissal: ELRC = 30 days**
- .Unfair Labour Practice: ELRC = 45 days**

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# Dispute Resolution Process

## • Arbitration

- Dispute is adjudicated after evidence has been led
- Outcome is an award and may not be appealed against
- Award may be reviewed.

## • Conciliation

- Process includes mediation, conducting fact finding exercise,
- Parties endeavour to find each other with a view to settle the dispute
- Outcome is settlement agreement

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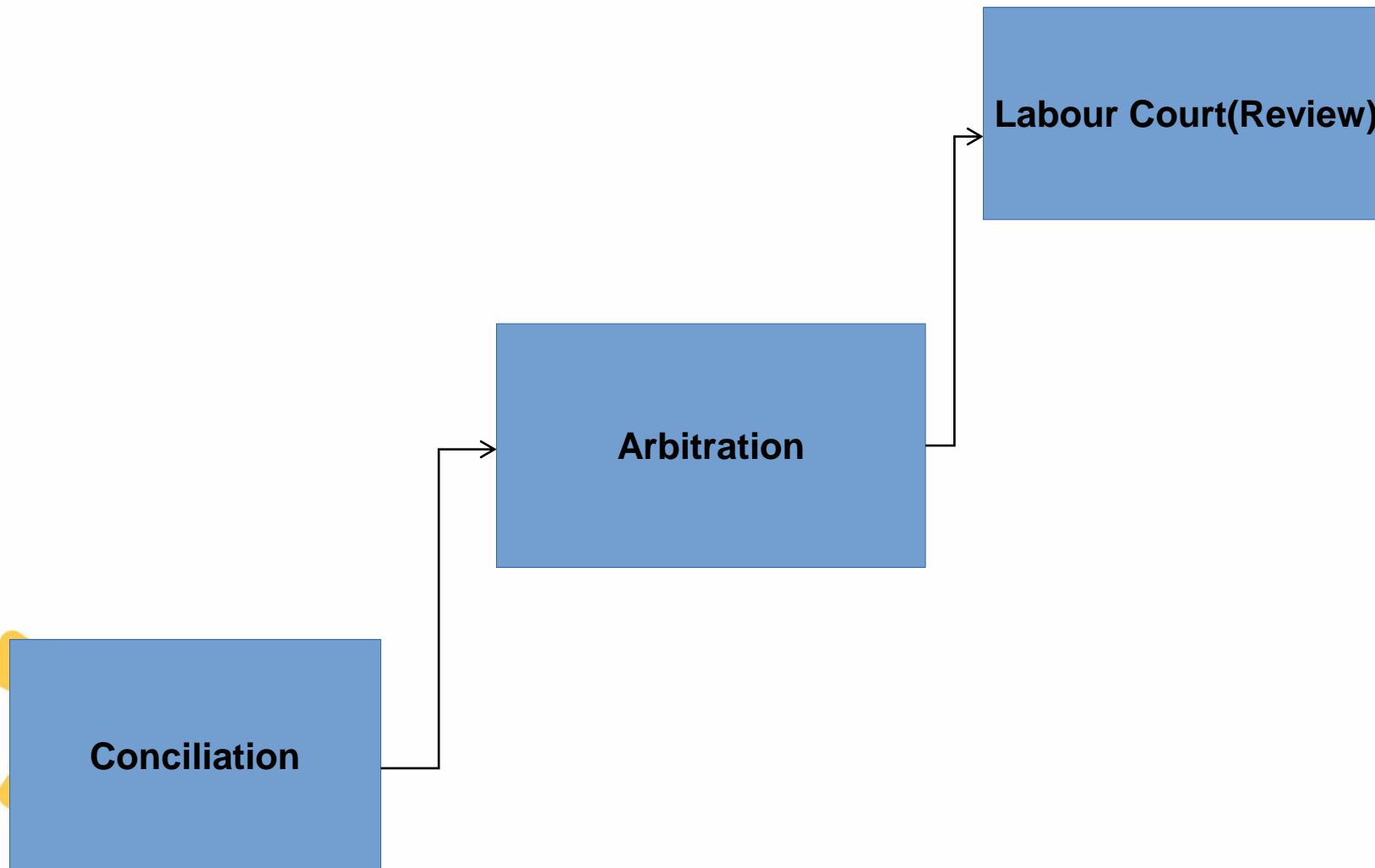
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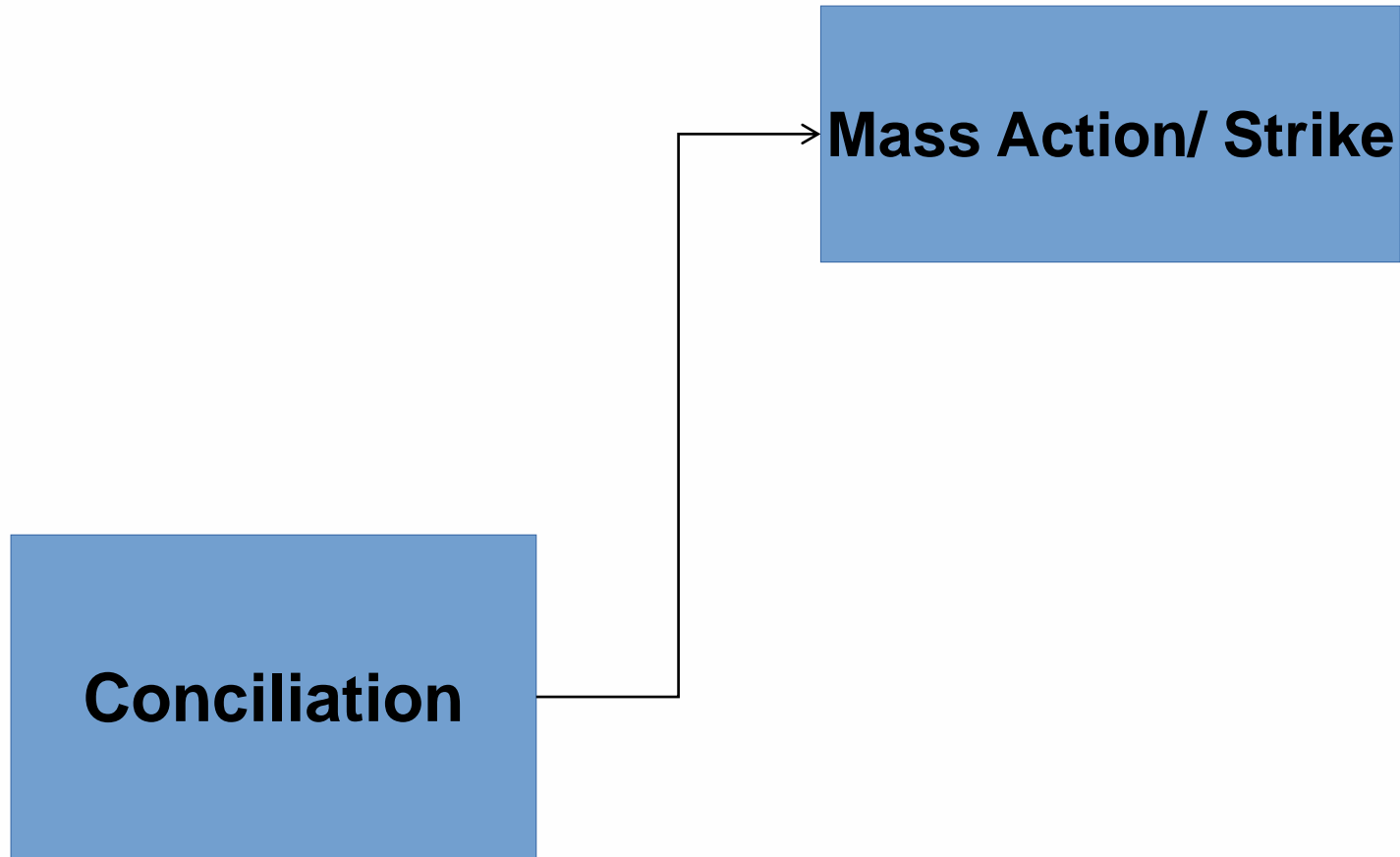
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# Disputes of Right Process



# Dispute of Interest Process



# THANK YOU

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