

Government of St. Maarten



ANNUAL REPORT 2013

MEDIATOR SINT MAARTEN

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Attachments

-list of known trade unions on Sint Maarten

-list of registered Collective Labour Agreements valid in 2013

I. Foreword

Collective labour disputes - such as strikes can be very costly. Such labour disputes lead to loss of productivity and production, with all coherent financial consequences of such.

Collective labour disputes can also have long-term consequences on the relation between stakeholders in the same company, large or small. In some cases it is possible that the relation between employer and workers, or that between the workers mutually, is seriously damaged. The employer can feel the negative consequences of a drawn out labour dispute long after it has ended. After all, damaged relations may lead to high absenteeism and as a result, to loss of productivity.

In short, it is clear that Sint Maarten can only benefit by having and maintaining very good and healthy labour relations between employers and workers. This helps to secure the tranquility needed on the labour market. Moreover, it will also help to promote foreign investments. Since my appointment as Mediator in 2013 it has been my task and responsibility to help promote and maintain, in a proactive and independent manner, good labour relations in the Country.

This first annual report of the Mediator is a requirement as laid down in the National Decree on Labour Peace I. This decree states that the Mediator must submit an annual report to the minister (of VSA) concerning his activities.

This report offers a general picture of:

- what mediation is, and what it is not;
- the legal framework, jurisdiction and tasks of the Mediator;
- the organization, the activities and the results;
- And, last but not least, some general observations and a glance into 2014.

I also wish to extend a word of thanks and appreciation to my devoted staff members, Miss. Marcellina Loblack, assistant mediator, and Mr. Levinus (Len) Dijkstra LL.M, secretary. I also wish to extend words of gratitude to the Minister of Public Health, Social Development and Labour, the Honourable dr. V.H. Cornelius de Weever for his support throughout 2013 and his strong belief in Social Dialogue and “Putting People First”.

Rafael A. Boasman
Mediator

II. Legal framework

The role of the Mediator is not without legal basis. The legal framework within which the Mediator has to operate consists of several levels. The highest level consists of (1) the Treaties / Conventions, thereafter (2) National Law, and finally (3) Rules and Guidelines with a civil law legal framework.

ILO

The most important strategic objectives of ILO are:

- the promotion of the fundamental rights of workers;
- creating (appropriate) employment, both for men and women;
- improving social protection and;
- reinforcing the Tripartism and the social dialogue.

The ILO is the global center with regard to knowledge in the field of labour and labour related matters. The ILO is also the platform on which the member states engage in the global tripartite debate and negotiations concerning the international labour and social policy. In the context of this report two fundamental ILO treaties are of utmost importance, namely treaties 87 (Freedom of Association) and 98 (Freedom of Collective Bargaining). The Mediator has as task to secure that these fundamental rights are adhered to.

National legislation

The jurisdiction, tasks and responsibilities of the Mediator is anchored in law. This is regulated in a national ordinance¹ and three national decrees², the so called “Arbeidsvredebesluiten”. Besides these pieces of legislation, other legislation, such as the one regulating Collective Labour Agreements³ is of importance for the Mediator in the execution of his tasks and responsibilities.

Penalty Clause

Those violating the clauses of the national legislation are punishable by law. Depending on which article is violated, the violation can be considered a misdemeanor or a felony.

Civil law framework

During the year under review a number of guidelines and rules of order for the Mediator as well as for the parties involved have been developed and available in draft form. Formal approval is expected in 2014.

¹ Arbeidsgeschillenlandsverordening (AB 2013, GT no. 344)

² Arbeidsvredebesluit I, II and III (AB 2013, GT no.436, AB 2013, GT no. 437 and AB 2013, GT no. 353)

³ Landsverordening Collectieve arbeidsovereenkomst (AB 2013, GT no. 230)

These are:

- Code of Conduct for the Mediator
- Mediation Regulation/Rules
- Mediation Agreement
- Mediation Settlement Agreement

These draft documents are presently only available in the Dutch language. Upon final approval they will be translated into the English language.

III. Task and responsibilities of the Mediator

Unfortunately for many it is not clear what the role of the Mediator is. Many are of the opinion that when mediating the settlement of a dispute, the Mediator acts as a Judge. Nothing is further from the truth. The Mediator has a facilitating role during the conciliation/mediation process. It is up to the parties involved in the dispute themselves to reach and agree to a mutual settlement of the dispute.

It is very important that all parties understand their role in the mediation process. During this process the Mediator attempts to bring parties closer to each other by advising, guiding and facilitating.

Tasks

- To mediate in labour disputes between employers and workers representatives;
- To assist parties involved in CLA negotiations with all means available to him;
- To organize referenda in companies with regard to the recognition of unions to represent the workers;
- To advise the Minister upon request or out of own initiative, with regard to matters of socio-economic nature;
- To provide advice and/or information to employers, unions and workers with regard to labour related matters.

Responsibilities

- To promote Collective Bargaining and recognition of representation of workers as the norm for making agreements between employer and workers;
- To develop the science, art and practice of mediation;
- To develop healthy and stable labour relations;
- To prevent or minimize work stoppage by assisting employers and workers with resolving disputes by means of mediation.

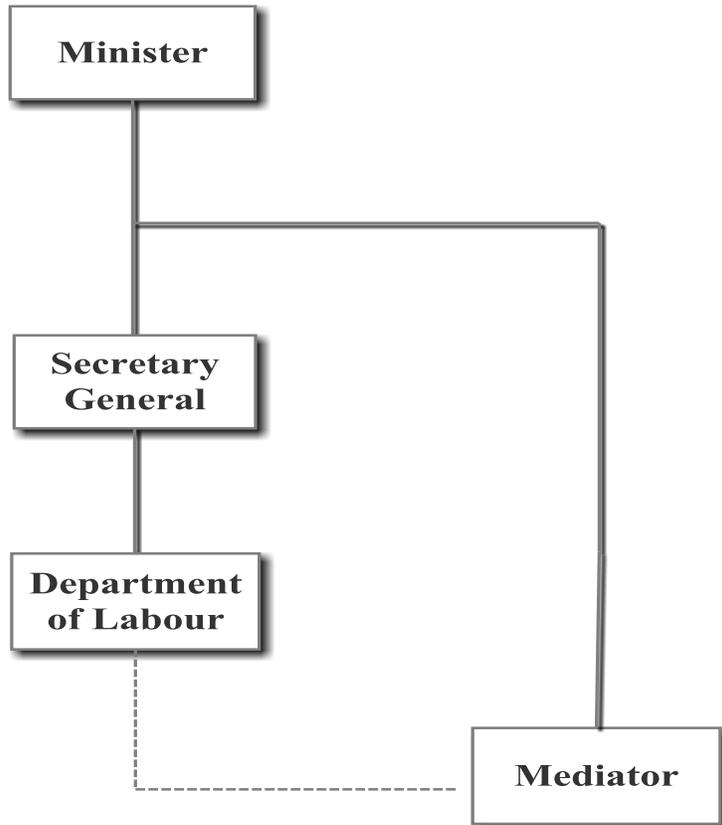
The Mediator can offer (unrequested) his mediation⁴ to parties, taking into consideration the stipulations of the articles 5 and 19.⁵

⁴ Art. 4A Arbeidsgeschiedenlandsverordening (AB 2013, GT no. 344)

⁵ Arbeidsgeschiedenlandsverordening (AB 2013, GT no. 344)

IV. Organizational structure

The Mediator is an official on the Department of Labour of the Ministry of Public Health, Social Development and Labour. He is however independent in performing his duties and reports directly to the Minister.



Staffing

The Mediator is assisted by

- An Assistant Mediator, Miss Marcellina Loblack who is charged with the administration including statistics and with the organizing of referenda.
- A Secretary, Mr. Levinus (Len) Dijkstra LLM who provides legal advice.



Left to right: L. Dijkstra, M. Loblack, R. Boasman

V. Activities 2013

Backlog

The start of 2013 was very tense. Labour relations were not at their best. Many pending cases were left not handled and unresolved. The larger labour Unions Windward Islands Civil Servants Union/Private Sector Union (WICSU/PSU), Workers Institute for Organized Labour (WIFOL), and United Federation of the Antilles (UFA) were all embroiled in heated disputes with several companies. Some of these companies are very strategic and crucial for the economy of Sint Maarten such as Menzies N.V.

Unions were not happy that so many cases were left unhandled as their members were getting very impatient and difficult to reason with.

The Mediator also had a difficult task as he works part-time and the Assistant Mediator was out due to illness for the first half of the year. Besides the abovementioned situation it was also detected that no records of mediation activities (2011 and 2012) were kept by the previous Mediator, making it very difficult, if not impossible, to verify the different claims being made by the different parties involved in disputes, as to what was already agreed upon. An annual report was prepared in 2011 by the Labour Department containing some available statistics pertaining to the Mediators activities and the Mediators conference held that year.

Referenda

St. Maarten Cable TV.

Until now the intervention of the Mediator has been able to resolve practically all disputes to the satisfaction of the parties involved. With one exception, namely, the case concerning a referendum held among the workers of St. Maarten Cable TV N.V. This referendum was requested by both parties (employer and union). In the case of St. Maarten Cable TV, the Mediator has taken a fundamental position, that all workers are entitled to take part in a referendum unless the specific nature of the case would require and allow for a different decision.

The Mediator has invoked and maintained this fundamental position in the abovementioned case. In practice this meant that all workers of St. Maarten Cable TV N.V. should be allowed to participate in the referendum. Virtually all workers made use of this possibility and eventually unanimously voted for and thus electing the St. Maarten Communication Union (SMCU) as their sole bargaining agent to negotiate a CLA on their behalf with their employer St. Maarten Cable TV N.V.

St. Maarten Cable TV N.V. did not agree with this decision and filed an appeal petition with the Courts, a so called LAR⁶ proceeding. In a verdict rendered on November 18, 2013, the

⁶ Landsverordening Administratieve Rechtspraak

Court of First Instance declared St. Maarten Cable TV N.V. inadmissible in its appeal against the decision of the Mediator. Clearly a victory for the Mediator and by extension for the workers of St. Maarten Cable TV N.V.

However, the dispute is not yet settled as St. Maarten Cable TV N.V. has filed an appeal against the decision of the Court in First Instance. Moreover Caribbean Teleview Services (CTS) N.V. has filed civil proceedings against the Country, where they ask for a legal declaration stating that the Country has acted unlawfully, and is claiming damages for that unlawful act.

The Union SMCU filed an injunction with the Courts against CTS and won this case. The Judge ordered CTS to start CLA negotiation with SMCU for the non disputed workers. This decision of the Courts was also appealed by CTS. In short this dispute is long from being over. Fortunately this case is an exception to the rule as all other referenda were conducted in an amicable and professional manner by all parties involved.

Referendum meetings 2013⁷

| Union | Company | Date | Time Started | Time Ended |
|--------------|---|------------------|---------------------|-------------------|
| UFA | Trimerit N.V. d.b.a. Diamond Casino | January 7th 2013 | 2:00 AM | 3:00 |
| SMCU | St. Maarten Cable TV | March 27 2013 | 10:10 | 11:30 |
| WICSU/PSU | T.C.B. Enterprises N.V. d.b.a. Tantra | December 6 2013 | 9:09 | 9:31 |
| WIFOL | Gift Imports NV d.b.a. Little Switzerland | December 5 2013 | 11:00 | 12:10 |

Disputes

Most disputes were related to stalled CLA negotiations. The ability to negotiate a CLA differs substantially from union to union. Many unions were able to negotiate a CLA with the employer with little involvement of the Mediator. This speaks well for labour relations. Many disputes are also cases regarding individual situations and require proper servicing of the CLA by the union rather than the involvement of the Mediator.

⁷ Not all meetings were recorded. As many walk in meeting were held.

Trust

Many unions also choose the route to the Courts before requesting Mediation. This is believed to be because of the lack of trust that existed thus far in the ability of the Mediator to resolve the issue within a reasonable period of time.

Also a noticeable lack of trust exists between employer and union in many cases. Efforts are being made to help resolve this phenomenon. An example is where parties agree not to discuss the issue in the media while negotiations are taking place. The confidentiality rule is also strictly enforced.

Non intervention of the Mediator⁸

The Mediator must refrain from involvement or further involvement in a dispute:

- In the event that it becomes obvious to him that parties have their own Mediators, unless it can be concluded from the circumstances that these Mediators will not be recognized in the dispute or that the involvement of these Mediators will not lead to the resolution of the dispute;
- In the event that it becomes obvious to him that the dispute is a legal dispute.

The above apply as long as negotiations are ongoing and in the opinion of the Mediator can lead to resolving the dispute. If the above only apply to part of the employers and workers involved in the dispute, then the Mediator will decide according to the circumstances or to what extent he will get involved in the dispute

Public sector⁹

The stipulations of the ordinance regulating the tasks and responsibilities of the Mediator, does not apply to persons who, other than by labour agreement, are employed by a public entity (e.g. civil servants). Persons working for a public entity who have an individual contract according to Civil Law are covered.

Disputes meetings 2013¹⁰

| Union | Party | Date | Time Started | Time Ended |
|--------------|----------------------|-------------------|--------------|------------|
| | | | | |
| SMCU | Post NV | May 14 2013 | 3:05 | 4:30 |
| | St. Maarten Cable TV | May 5 2013 | 3:11 | 5:30 |
| | | | | |
| WICLU | Mediator | May 30 2013 | 2:17 | 3:50 |
| | | | | |
| UFA | Mediator | September 12 2013 | 11:00 | 12:10 |

⁸ Article 5 Arbeidsgeschillenlandsverordening (AB 2013, GT no. 344)

⁹ Article 19 Arbeidsgeschillenlandsverordening (AB 2013, GT no. 344)

¹⁰ Not all meetings are recorded. Walk in meetings were not recorded.

CLA negotiations meetings 2013

| Union | Company | Date | Time Started | Time Ended |
|--------------|---|-------------------|--------------|------------|
| | | | | |
| UFA | DIVI Little Bay Resort | March 3 2013 | 10:05 AM | 11:00 |
| | | | | |
| | Menzies, DIVI Little Bay Resort, Atrium Resort, SOL | May 16 2013 | 9:55 a.m. | 11:08 a.m. |
| | | | | |
| | Menzies | May 20 2013 | 10:05 | 10:52 |
| | | | | |
| | Menzies | July 5 2013 | 10:35 | 11:48 |
| | | | | |
| | SOL | July 11 2013 | 3:30 | 4:15 |
| | | | | |
| | Atrium | July 15 2013 | 2:30 | 3:15 |
| | | | | |
| | Menzies | July 22 2013 | 11:21 | 12:15 |
| | | | | |
| | Sol | July 22 2013 | 12:19 | 13:00 |
| | | | | |
| | Menzies | December 11 2013 | 3:15 | 3:40 |
| | | | | |
| WICSU | Philipsburg Jubilee Library / Juliana Handlers | September 12 2013 | 10:00 | 10:30 |
| | | | | |

Request for Mediation UFA

The Mediator received a request from the UFA for mediation of eighteen (18) cases. Most of these cases have been pending for many years and causing much frustration among the workers who started threatening industrial actions. Some of the companies involved are, Menzies N.V. and SOL and Guiana's N.V. and SOL N.V. These companies are very strategic and industrial action can cause serious damage to the economy of Sint Maarten. The Mediator worked with the union and assured them that all of these cases will be handled. A priority listing (see below) was

prepared to serve as a guide how to proceed. Much progress is being made. A CLA was signed with Menzies N.V. and one final sticking point regarding a long pending dispute on payment of a cost of living adjustment is almost resolved.

Request for mediation UFA

| <u>PRIORITY LIST 1</u> | | | |
|-------------------------------|------------------------------|------------------|----------------|
| - | | | |
| Union | Company | Completed | Ongoing |
| UFA | DIVI Little Bay Resort | | X |
| | Menzies | x | |
| | SOL | | X |
| | Atrium | | X |
| | Sol | | X |
| | | | |
| | | | |
| <u>PRIORITY LIST 2</u> | | | |
| | | | |
| Union | Company | Complete | Ongoing |
| UFA | Babitbay NV dba Westin | | X |
| | Funtime NV dba Rouge et Noir | | X |
| | Jump Up Casino | | X |
| | Carengla NV dba Carl & Sons | | X |
| | Goddard Catering | | x |

Registration of completed and signed CLA's

A number of CLA's were signed in 2013, with or without the involvement of the Mediator. Although the law¹¹ dictates that each party bound to a CLA has the obligation to deposit a certified copy of said CLA at the office of the Minister, this is very seldom done. The Mediator has started a campaign by first talking to the workers representatives to cooperate with this matter. Many have complied but not quite to the satisfaction of the Mediator. A formal registration system is being developed and will take effect by second quarter 2014. This report will thus not contain a listing of all CLA's registered. Below is a listing of all CLA's signed in 2013?

CLA's signed in 2013

| Union | Company | Date Started | Date Expired | Total Years | Remarks |
|-----------|----------------------------------|-----------------|------------------|-------------|-----------------------|
| ASEWI | GEBE | January 1 2013 | December 31 2015 | 3 years | |
| WIFOL | Burger King | January 1 2013 | December 31 2014 | 1 year | |
| | Sonesta Great Bay Hotel & Casino | January 1 2013 | December 31 2014 | 1 year | |
| | Resort Cleaning Services | January 18 2013 | December 31 2017 | 4 years | |
| | GEBE Line Workers | January 18 2013 | December 31 2015 | 2 years | |
| WICSU/PSU | Boby's Marina | May 28 2007 | May 27 2010 | 3 years | Roll over May 27 2013 |
| | DHL | January 1 2013 | December 31 2013 | 1 year | Roll over |
| | Juliana Handlers | December 1 2013 | December 1 2015 | 2 years | |
| | Casino Royale | January 29 2013 | January 29 2016 | 3 years | |

¹¹ Article 23 Landsverordening Collectieve Arbeidsovereenkomst (AB 2013, GT no. 230)

| | | | | | |
|------------|---------------------------------|-------------------|---------------------|---------|--|
| | | | | | |
| UFA | Menzies Aviation St. Maarten | January 1 2013 | December 31 2015 | 3 years | |
| | | | | | |

VI. General observations and a brief look ahead in 2014

Advantages of Mediation

Mediation offer many advantages. It is in most cases voluntary. It is usually simple, transparent and efficient. There are no fees attached and the professional services of the Mediator and his staff is at the disposal of the parties involved in the dispute.

Mediation can only be successful if parties involved play an active role in trying to resolve the dispute. They must want to reach a solution.

It is evident that the services of the Mediator fills a real void when parties negotiate CLA's and for the organizing of referenda. Many such requests are presently being processed

Employers - and workers organizations

There are no employer's organizations that negotiate conditions of work with workers organizations on behalf of their individual members. They are more business organizations that champion the business cause of the individual businesses that are associated with them.

On the other hand we do have workers representatives (unions) who represent and negotiate CLA's on behalf of their members.

It should be said that in accordance with the national ordinance regulating collective labour agreement¹², an association of employer or workers organization may only enter into collective labour agreements if this authority is specifically mentioned in their articles of incorporation (statutes).

Workload

Presently the Mediator and the secretary are full time members of the Labour Department and are doing the Mediators work to the best of their ability. This is becoming more and more difficult as the demand for the services of the Mediator is increasing. The trust in the institution of Mediator and the respect of the parties involved for the process has increased tremendously. This contributes to attaining the ultimate goal of labour peace and a healthy labour market.

More structural approach

A more structural approach must be sought for the organization of the Mediator and his team. We are presently still in a transition phase and should find a solution during 2014.

¹² Article 2

VII. Conclusions

1. Labour Mediation is fulfilling a socio-economic need on Sint Maarten;
2. More information regarding labour mediation should be parted with the stakeholders and the general public in order for them to be fully informed;
3. Labour Mediation places high demands (legal framework, knowledge of the stakeholders etc.) on the Mediator and the parties involved;
4. The tasks should be performed accurately and carefully, after all the social and financial interest are often very high;
5. The amount of request for mediation and referenda are expected to increase significantly;
6. The present composition of the mediation team is working fine;
7. Due to the expected increase in workload it should be seriously considered to have a separate bureau for the Mediator and his team, rather than being a part of the Labour Department. This will also boost the image of impartiality of the Mediator.

Attachments

- list of known Trade Unions on Sint Maarten
- list of registered CLA's valid in 2013