

Tutorial Letter 202/1/2015

Collective Labour Law (LLW2602)

Semester 1

Department of Mercantile Law

PLEASE NOTE:

This tutorial letter contains important information
about this module.

BAR CODE

Dear Student

This is an important tutorial letter. It contains feedback **on Assignment 02** and **information on the examination**. Although the assignment consisted of multiple choice questions that were marked electronically, it is important that you understand why a certain (relevant) option is correct, and why the distractors (incorrect options) are incorrect.

1 FEEDBACK ON ASSIGNMENT 02

QUESTION 1

Statement 5 is correct, because all the statements are correct. A trade union can use section 21 to acquire all the organisational rights and a union that represents 3000 out of 5000 employees acquires the right to elect shop stewards and the right to the disclosure of information. A trade union that represents 3000 out of 5000 employees can also strike to obtain the right to disclosure of information because even though the union meets the threshold, no majority is required for the acquisition of organizational rights through strike action.

[See pages 216, 217 and 218 of the prescribed textbook]

QUESTION 2

Statement 2 is the correct answer, as the **statement is incorrect**. Although Ms A was not a member of the union when the collective agreement was concluded, she is entitled to be paid at least R3 500 per month, because she became a member of the union while the collective agreement (it) was still in operation. A collective agreement applies to members of trade unions that are party to it. Statements 1, 3 and 4 are all correct regarding the binding effect of collective agreements.

[See page 232 of the prescribed textbook]

QUESTION 3

Statement 5 is the correct answer, as section 77 of the LRA does not promote collective bargaining, but grants workers the right to engage in protest action. Protest action takes place in support of socio-economic matters, whereas the purpose of collective bargaining is the regulation of matters of mutual interest (conditions of employment) between employers and employees. The sections of the LRA referred to in statements 1–4 all promote collective bargaining.

[See page 269 of the prescribed textbook]

QUESTION 4

Statement 5 is correct, as both statements 3 and 4 are correct. In both instances there is an issue in dispute regarding a matter of mutual interest between the employer and employees. Statement 3 describes a dispute of interest, on which employees can strike, and a go-slow complies with the definition of a strike. Statement 4 describes a partial refusal to work, which complies with the definition of a strike, although in this case for a limited time only, that is from 15h30 and 17h00 (a partial refusal to work). **Statements 1 and 2** are incorrect. The refusal to work on **statement 1** does not purport to resolve a dispute of a mutual interest as required by the definition of strike on section 64 of the LRA. **Statement 2** is incorrect because disputes relating to the rights in the Basic Conditions of Employment Act cannot be dealt with through collective bargaining.

[See pages 246-248 of the prescribed textbook]

QUESTION 5

Statement 3 is correct. An employer is allowed to use replacement labour in the case of a defensive lock-out. Statements 1, 2, 4 and 5 are incorrect. **Statement 1** is incorrect because the CCMA can conciliate the matter even if there is a bargaining council with jurisdiction in the sector concerned. **Statement 2** is incorrect because a go-slow constitutes a partial refusal to work in terms of section 64 of the LRA. **Statement 4** is incorrect because section 64 only requires that the issue in dispute be taken for conciliation, not advisory arbitration. **Statement 5** is incorrect because a ballot is not a requirement for strike action. The matter must just be referred to the CCMA for conciliation, a certificate of outcome must be issued and a 48 hour must be given to the employer.

[See page 249 of the prescribed textbook]

QUESTION 6

Statement 1 is correct. Senior managers are also employees and therefore have the right to freedom of association. They must, however, balance this right of freedom of association with the common law duty to act in good faith towards the employer. **Statement 2** is incorrect because the court decided that employees have absolute right to hold office in unions. **Statement 3** is incorrect because the court held that although employees who breach duty may still be disciplined, they cannot be disciplined for holding office per se. **Statement 4** is also incorrect because the court remarked that the right to join and hold office in trade unions is not limited to exclude senior managerial employees.

[See *IMATU & others v Rustenburg Transitional Local Council* [1999] 12 BLLR 1299 (LC)]

QUESTION 7

Statement 1 is correct regarding the finding of the court in the case. **Statement 2** is incorrect because the Constitutional Court held that a minority union can strike in support of organisational rights demand. **Statement 3** is incorrect because the applicant in this matter was a minority union, not majority. **Statement 4** is incorrect because the court held that the prohibition on the minority union to strike would constitute a limitation on the constitutional right to strike. Therefore a minority union can strike on its own.

[See NUMSA & others v Bader Bop (Pty) Ltd & another [2003] 2 BLLR 103 (CC)]

QUESTION 8

Statement 4 is the correct answer, as it does not complete the introductory sentence correctly. A contract of employment is reciprocal. Employees must tender their services and the employer must remunerate them. During a strike or lock-out the employer is relieved of the duty to remunerate the employees who are on strike, as they are not providing service. If the remuneration of employees who are on a protected strike or lock-out include payment in kind, however, the employer may not stop this payment during the strike or lock-out, *if the employees request that it continues*. The employer may however recover the monetary value of the accommodation after the end of the lock-out. Statements 1, 2 and 3 will complete the introductory sentence correctly.

[See page 259 of the prescribed textbook]

QUESTION 9

Statement 5 is correct, because it is not a requirement for a protected picket that the employer has to give permission for it to go ahead. (The picket does not have to give permission for a picket to take place.) The permission of the employer is only required for the picket to take place on the premises of the employer. (must give permission in case employees want to picket within the premises of the employer.) Statements 1, 2, 3 and 4 are requirements that have to be met for a picket to enjoy protection. (Options 1-4 all contain statements which are correct with regard to the requirements of a protected picket.)

[See page 266 of the prescribed textbook]

QUESTION 10

Statement 2 is the correct answer, as the statement is incorrect. A dispute regarding the acquisition of organisational rights may be referred for arbitration, but employees may also strike in support of the demand of the trade union. But note that a dispute regarding (if the dispute is with regard to) the *interpretation* of an organisational right, must be referred to the CCMA for conciliation. Statements 1, 3 and 4 are all correct.

[See pages 218 and 221 of the prescribed textbook]

2 INFORMATION ON THE EXAMINATION

The examination paper will consist of **20 multiple-choice questions** (that count 2 marks each) and **40 marks written answers**. The **examination mark** will contribute (a total of) **80%** towards your final mark.

All students who submitted the first compulsory assignment on time (on or before the due date) will be granted admission to the examination. Each of the two compulsory assignments will contribute **10%** (that is, **Assignment 01 (10%) + Assignment 02 (10%)**) towards the final mark.

You need to obtain at least **40%** in the examination before your marks for the assignments (semester mark) may be taken into account.

The duration of the examination is **two (2) hours**.

You have been provided with previous question papers on myUnisa. These papers, together with the assignment questions, should enable you to prepare thoroughly for the examination and should also give you an idea of the type of questions you can expect in the examination. Please do not contact the lecturers for the answers to the question papers on myUnisa.

We wish you success in your studies and in the examination!

The Lecturers
UNISA