FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

ASSIGNMENT 1

INDUSTRIAL AND LABOUR RELATIONS

ILR811S
INDUSTRIAL AND LABOUR RELATIONS (ILR811S) - 2019

MEMORANDUM

TOTAL MARKS: 50 X 2 = 100

PART A

Tracing the history of collective bargaining in Namibia and South Africa under following headings: History, Meaning, Importance, what it involves - responsibilities of parties and How the law says it should carried-out.

Introduction

Please note that Namibia has been under South Africa labour laws until 1990 when it gained independence from South Africa. So, what happened in SA on this subject also happened in Namibia, a South African Protectorate.

History

- Allude to efforts to move away from Apartheid discriminative labour at the dawn of independence in 1990 (dealing with racial disparities and inequalities of the apartheid era).
- Labour Act of 1992 - introduced to replace colonial oppressive labour laws such as South Africa's Wage and Industrial Conciliation Ordinance No. 35 of 1952; the Conditions of Employment Act No. 12 of 1986, never applied uniformly and excluded black workers. Introduction of Labour Act of 1992 was therefore a big milestone towards an inclusive work environment supported by tripartite consultative forums.
- Labour Act of 1992 - a significant improvement from pre-independence legislation as it provided for collective bargaining, basic workers and trade union rights, strike guidance as well as protection against unfair labour practices.
- (Check in Labour Act Number 11, of 2007) Since the promulgation of the Industrial Conciliation Act in 1924, Centralised Collective bargaining has served as the principal bargaining approach when bargaining at industry level
- ICA of 1924 allowed the establishment of industrial councils (Changed to bargaining councils by the Labour Act and the Labour Relations Act of 1995).
• Other bargaining platforms to a lesser extend include statutory councils as well decentralised plant level bargaining, and non-statutory centralised bargaining, e.g. with the case of Chamber of Mines.

Meaning

• First coined by Beatrice Webb in 1891. Refers to workers acting together rather than individually to achieve an advantage when negating with their employer- however individual bargaining also in existent (Explain).
• A mechanism for organized groups of workers and their employers to resolve conflicting interests and to pursue agreement over common interests.

Importance

• Plays a role in building harmonious employment relations. Its premised on the joint regulation of the employment relationship through negotiation between employer and employee, and their elected representatives.
• Positive role in building of constructive labour relations through the identification of mutual goals and the realization of common interests.
• Collective bargaining is a central aspect of any labour relations system – is very important in the determination of wages and conditions of work.
• It is an important means to the solving of disputes
• It serves precursor to industrial action- is the first thing that occurs before industrial action is resorted to.

What it involves -responsibilities of parties

• Failure to bargain by any party constitute an unfair labour practice under SA labour law (Prior to promulgation the Labour Relations Act, of 1995)
• Good faith bargaining considered important in reducing the spate of industrial unrest that dogged SA Labour Relations in 1980s, as a result courts imposed the duty to bargain.
• Unions used duty to bargain as well as the organisational rights to gain recognition.
• 1995 LRA makes no provision for general duty to bargain but codifies many of the concessions sought by unions under the old law by extending a number of organisational rights to unions – these various rights act as a pretext to collective bargaining.
• Workplace forums attempt to effectively institutionalise bargaining at plant level by making it a must that employers and employees consult over certain matters in workplaces where a forum has been established.

How the law says it should carried-out

• As a pre-cursor to collective bargaining, the LA and the LRA organisational rights are granted to parties especially trade unions (Representativity – a necessary precursor for a registered trade union acquiring the rights). Three levels of representation (Section 86 of the Labour Act– Sufficient (significant proportion of workers which may fall short of majority – enjoy organisational rights); Majority representation (represent the majority of workers 50% + 1- has several entitlements such as form closed-shop or agency-shop agreements; establish workplace forum; require employer disclose certain information; appoint workplace representatives; provide paid leave for employee representatives; conclude collective agreements that specify minimum and maximum number of employees they represent in
workplace). **Thirty present membership** (Can establish a statutory council and only need to represent 30% of the workers in a particular industry – as in above example, two or more trade unions may collaborate to achieve this level of representation).

- The Labour Act of 2007, Number 11 and the South African Labour Relations Act of 1995, creates a framework that promotes constructive collective bargaining by extending organizational right trade unions, e.g. right to access to an employer’s property, check-off facilities, leave, workplace reps; access to information for trade unions, and

- Establishing various bargaining forums, e.g. bargaining councils, statutory councils and workplace forums.

**PART B**

**ARTICULATION OF ORGANISATIONAL RIGHTS EXTENDED TO PARTIES ENGAGED IN COLLECTIVE BARGAINING AND MOTIVATION OF WHY WITHOUT THESE ORGANISATIONAL RIGHTS LABOUR RELATIONSHIPS AND COLLECTIVE BARGAINING PROCESSES WOULD BE VERY DIFFICULT TO MANAGE IN THE WORKPLACE.**

**Introduction**

Organisational rights are afforded registered representative (in the three forms of representation described above) trade unions that have established a threshold of representativity. The organisational rights includes access to an employer’s premises; deduction of union dues; the appoint of representatives; leave for trade union activities, and access to information; as well as right to conclude collective agreements that extend other rights.

**Access to an employer’s premises**

Allowed access in order to recruit new members and to hold meetings with the idea of representing the interests of members. They can also access the premises to hold elections of new office bearers. However, this right is subject to conditions of what times union can enter premises but usually they encouraged to do so outside working hours to protect the property and not to disrupt operations.

**Motivation:**

A very important provision, if it was not provided for by the Labour Act, the employer would deny the trade union access into the workplace which affords it to have meetings and elections with the employees. Access into the workplace also affords the trade union an opportunity to have a feel of the organisational atmosphere.

**Deduction of union dues**

Employers authorised in writing to deduct union dues -levies and subscriptions from the salaries of members. Employees who may want to stop this order can do so by giving employer one month’s notice (In the Public Service three months’ notice is given). Employer must furnish employer with a breakdown of employees from whose salaries the levies were deducted, the amounts and revocations.

**Motivation:**

This a very important provision since a trade union is a body corporate with needs that need finances and the only way a trade union get finances is through these levies. From the levies the union is able
to buy or rent property from which it operates, pay salaries to its employs and buy vehicles and also buy office equipment which a body corporate requires.

**Appointment of trade union representatives**

Where an employer employs 10 or more members of a trade union that represent the majority of employees in the workplace, the members may elect workplace representatives from among themselves. Elected members perform such functions as: assisting and representing members in grievance and disciplinary procedures; monitoring employer's compliance with the law inclusive collective agreements; reporting any contraventions to the relevant authorities; and any other functions agreed upon by the trade union and the employer.

**Motivation:**

This is a very important provision; a trade union needs watchdogs on the ground to check whether the employer is operating according to the law and also render any services that employees on the ground may need. For example, if an employee is being disciplined, he/she may need representation. And the fact that workers representatives are in the factory makes the employees feel safe and protected and the employer will also be aware that he/she is being watched and will abide by the law.

**Leave for trade union activities**

Granting trade union members paid leave by the employer in order to perform their functions as well as attend training relevant their functions as trade union members. What constitute reasonable time-off jointly determined between employer and trade union.

**Motivation:**

A good provision in the sense that in its absence trade union representatives would find it very difficult to fulfil their trade union duties such as attending training and symposiums which benefits both the employer and the employees. The employer would just deny the trade union this privilege and comprise the employees and the employer herself or himself the benefits accruable from such activities.

**Access to information**

Employer obliged to disclose all information considered relevant and necessary to enable trade union representatives to perform their functions and allow a representative union to engage effectively in conclusion and collective bargaining. This excludes legally privileged information; would if disclosed, contravene a prohibition imposed by law or a court order; confidential information, if disclosed is considered to cause harm to the employee or employer; and information is private and personal and relating to employee and employee should give consent to the disclosure.

**Motivation:**

A good provision in the sense that when there is a deadlock or when an employer is adamant that he/she cannot meet the demands of workers for example in a wage dispute, the employer should supply authentic evidence in the form of financial to show that the company cannot meet the
demands of the employees. If this provision was not there it would have been difficult for the trade union to demand for disclosure since the employer would refuse to disclose as the law would not require him or her to do so. Furthermore, if this provision was not there, some disputes would have been difficult to resolve and would go on for lengths of time and this would affect the economy and employers would insist that they cannot afford to meet the demands of employees even if they could.

**Right to conclude collective agreements**

As long as the trade union is registered and is representative of the workers, sufficient, majority or 30% representation, in all cases alone or in combination with other trade unions to meet the threshold of representative, has a right to conclude collective agreements with employers.

**Motivation:**

This is a good provision, it forces trade registered and meet all the necessary requirement according to the law which makes them eligible to conclude collective agreements. The provision has the effect of weeding out fake trade unions because as long as they are unable to produce concrete evidence of their being registered and representativeness, then they cannot be recognised by an employer, and removes confusion in the arena in which trade unions and employers operate and interact.

**NB:** Students can motivate each provision extended by the Labour Act in their own way or words, as long as it is relevant.