higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

LABOUR RELATIONS N6

21 NOVEMBER 2016

This marking guideline consists of 12 pages.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	C		
	1.1.2	C		
	1.1.3	C		
	1.1.4	D		
	1.1.5	D	(5 x 2)	(10)
1.2	1.2.1	Integrative bargaining		
	1.2.2	Lock-out		
	1.2.3	Go-slow action		
	1.2.4	Union recognition		
	1.2.5	Mediation		
	1.2.6	Arbitration		
	1.2.7	Distributive bargaining		
	1.2.8	Substantive agreement		
	1.2.9	Retrenchment procedure		
	1.2.10	Bargaining Council agreement		
			(10 x 1)	(10)
1.3	1.3.1	False. This is an economic factor found in the external environment.		
	1.3.2	False. If the State is the employer then 7 days' notice must be given.		
	1.3.3	False. A disciplinary investigation must take place.		
	1.3.4	False. It depends on the kind of dispute, whether it is a dispute of right or interest.		
	1.3.5	True		
	1.3.6	True		(10)
1.4	1.4.1	Economic system		
	1.4.2	Statutory Law/Acts/Legislation		
	1.4.3	Political system		
	1.4.4	Social system		
	1.4.5	Substantive agreements		
	1.4.6	Working conditions		
	1.4.7	Pension fund (any example of a fringe benefit)		
	1.4.8	Procedural Agreements		
	1.4.9	Dismissals (or any other applicable answer)		
	1.4.10	Loss of productivity (or any other applicable answer)		
			(10 x 1)	(10)
				[40]

TOTAL SECTION A: 40

SECTION B (Candidates must answer any FOUR questions.)

QUESTION 2

2.1
- Conflict is an interaction between two or more persons or groups,
- dynamic in nature (meaning that it changes constantly to accommodate the changing environment and the input of the role players)
- with a competitive negative element as the available means and resources cannot be divided equally.
- It reflects negative emotional qualities.
- Interaction can be either verbal or non-verbal or both. (Any 4 x 2) (8)

2.2 This means that both parties must be willing to sacrifice something.
Means meeting each other in the middle. (4)

2.3 Wages
Housing subsidy
(Please note: Only these two – answer must come from the article.) (2)

2.4 2.4.1
- It is a process where an independent third party is called in to assist the parties to reach an agreement.
- The mediator makes suggestions, facilitates communication and encourages settlement.
- A mediator does not make a decision.
- Therefore a mediator has no adjudicative power (Any 3 x 2) (6)

2.4.2 A mediator should …
- have a proven record of success.
- create trust and acceptance.
- have the qualities of intelligence and practicality.
- be able to identify problems.
- be able to offer solutions.
- have up-to-date knowledge of labour legislation and collective agreements.
- have knowledge of the political and economic environment.
- be a good communicator. (Any 5 x 1) (5)

2.5 2.5.1 OPEN MEMO: THERE CAN BE MORE ANSWERS.

- It means the suspension of normal working arrangements.
- It can be initiated unilaterally by either the employee (trade union) or management (the employer).
- The objective is to exercise pressure.
- This is done within the collective bargaining relationship.
- The most visible example is an organised strike.

(Any 2 x 2) (4)

2.5.2
- Strike
- Go-slow actions
- Picketing
- Product boycotts (Any 3 x 1) (3)

2.5.3 If there is no agreed dispute resolution procedure, the procedures of the LRA must be followed, which are:

- The issue in dispute must be referred in writing to the CCMA or to a bargaining or statutory council.
- The CCMA or council must try to settle the dispute by conciliation within thirty days.
- If this fails, the CCMA/council must issue a certificate stating that the dispute has not been resolved.
- At least 48 hours' notice in writing of the proposed lock-out must be given to the trade union, or seven days if the State is the employer. (4 x 2) (8)

[40]

QUESTION 3

3.1

Establishing the rules of the workplace✓	Both the employer and employees should determine the rules of the workplace. This will build trust between the parties and will eliminate the employees' fears of exploitation. Any ONE✓✓
Determining the form of compensation✓	Employees can express their feelings about payment and benefits during collective bargaining. Unions also contribute indirectly to pension funds, health insurance and paid leave. Changes indicate the desire of workers for more security. Any ONE✓✓
Standardising compensation✓	The bargaining process establishes a standard wage rate and benefit package for employees in the same product market. Unions believe in economic uniformity to avoid conflict that may arise because of one employee being paid more than another for doing the same work. Employers in high competitive industries may benefit from uniform wages as this protect them against uncertain wage rate competition. Any ONE ✓✓
Determining priorities on each side✓	Collective bargaining assist parties in resolving differences. It helps them to reach concensus. Parties must establish their priorities before the negotiation process starts. Important issues will receive high priority on the bargaining list. Any ONE ✓✓
Restructuring the arrangements of bargaining✓	Redesigning the bargaining arrangements is vital for the economic, social and political conditions that change constantly. Old agreements need to be re-shaped from time to time in response to new emerging problems and a forever changing external environment. Any ONE✓✓

Please note: 1 mark for the function and 2 marks for an explanation of the function (only 1 fact) (5 x 3) (15)

3.2 3.2.1 Parties will get involved in industrial action, for example a strike. (2)

3.2.2 Cost for SADTU – image may suffer a loss if negotiations is unsuccessful
– Members may leave the trade union (loss of membership fees)
– Costly exercise to organise a strike. (Any 2 x 2) (4)

Cost for teachers – Loss of income
– Possibility of being dismissed
– Loss of credibility amongst learners
(Any 2 x 2) (4)

3.2.3 Government may be blamed for chaos in education caused by the strike. (2)

3.3

Alienation✓✓	Poor time keeping, absenteeism✓✓ and labour turnover are indicators of the employee's desire to distance him from the work.✓✓ This should be monitored to determine the climate of the organisation.
Information distortion✓✓	Rumours are a workplace phenomenon✓✓ and almost always signify a negative emotion or perception of the subject of the rumour, which in turn implies the potential for conflict.✓✓
Deterioration of work relations✓✓	Disciplinary action and grievances are part of employer-employee communication.✓✓ The frequency and intensity, and the resolution or not of disciplinary action and employee grievances act as an indicator of the nature of relations and underlying conflict.✓✓ Continuous monitoring is therefore imperative.

PLEASE NOTE: ANY TWO, MARKED AS FOLLOWS:
- two marks for the naming of the conflict indicator PLUS
- (2 x 2) marks for any two facts (OPEN MEMO) (2 x 6) (12)

3.4 Centralised level. (1)
[40]

QUESTION 4

4.1 4.1.1 NO (1)

4.1.2 **GUIDELINES FOR CONDUCTING THE DISCIPLINARY INTERVIEW**

- Employee must be given the opportunity to state his case.
- Ask open-ended questions.
- Concentrate on facts.
- Be calm, realistic and avoid an outburst.
- Ask the employee for suggestions for possible solutions.
- Discuss the pros and cons of all possible solutions.
- Try to reach an agreement with a specific solution.
- Set a date for a future follow-up interview.
- Further the self-image of the employee.

(Any 5 x 1) (5)

4.2 NO (1)

4.3 **NOTICE TO ATTEND A DISCIPLINARY HEARING**

TO: **Lucinda**

JOB TITLE: **Administrative Clerk**

Please take note that your services have been suspended with full pay pending the outcome of this disciplinary hearing.

You are hereby instructed to attend a Disciplinary Hearing to be held

in the Boardroom of *The Daily Post*

on 15 July 2016

at 11:00

The alleged transgressions are as follows:

Late coming for the third time

You are entitled to:

- be represented by a fellow employee or trade union representative
- call witnesses
- bring an interpreter
- appeal against the outcome.

HR MANAGER any signature DATE 12 July 2016

ACKNOWLEDGEMENT OF RECEIPT Lucinda DATE 12 July 2016

PLEASE NOTE: NO SPECIFIC FORMAT

The following must be on the notice:

- Heading
- Addressed to Lucinda
- Alleged transgression
- Date
- Time
- Place
- Right to bring representative
- Right to call witnesses
- Right to appeal
- Right to interpreter
- Signature and date of HR manager
- Signature and date by employee (Any 10 x 2) (20)

4.4 4.4.1 No

- Notice not in writing.
- No reasonable time given
- Lucinda was not allowed to put mitigating factors on the table.
- She was not informed that she could bring a representative.
- She was not informed that she could call witnesses.

(Any 4 x 2) (8)

4.4.2

- The reason for the sanction is not fair.
- Also inconsistently applied. (2 x 2) (4)

4.5 Appeal procedure or
Take matter to the CCMA. (1)

[40]

QUESTION 5

5.1 5.1.1

- Proper notice to the union must be given.
- Negotiation with the union over the need to retrench must take place.
- Alternatives to retrenchment must be put on the table.
- The selection criteria should be fair.
- Severance pay should have been discussed.
- There should be an undertaking by the enterprise to re-employ retrenched workers if positions should become available again.

(Any 5 x 2) (10)

5.1.2 Employees (1)

5.2 Freezing the recruitment of new workers.
Requesting older workers to take an early retirement.
Normal disciplinary action leading to dismissals.
Dismissal after strikes.
Retraining workers to fill gaps in the workforce.
Refraining from making use of temporary workers.
Temporarily closing down certain sections of the enterprise.

(Any 5 x 1) (5)

5.3 There is conflict about wages.✓✓ The conflict occurs in the internal environment.✓✓
The conflict needs to be resolved, with the main role-players the employer and trade unions.✓✓
The parties should bargain collectively✓✓ (a process under conversion) to try and resolve the conflict.✓✓
When negotiating the parties need to take into account the external environment,✓✓ for example the economic situation in the country. An example is the economic growth or inflation rate.✓✓
Bargaining will take place via the bargaining council (a structure).✓✓
If successful, it will lead to a substantive agreement✓✓, namely a new wage agreement (the output). ✓✓
This output will serve as new input via the feedback process. ✓✓

PLEASE NOTE: THE ABOVE IS ONLY TO BE USED AS A GUIDELINE AS EVERY STUENT'S VERSION IS GOING TO DIFFER. REFERENCE MUST BE MADE TO THE INTERNAL AND EXTERNAL INPUT, THE CONVERSION AND THE OUTPUT IN THE DISCUSSION.

(Any 8 x 2) (16)

5.4

Dispute of right
Party is entitled to it by - Law - Contract - Agreement - Established practice.✓✓ Rights are ensured by - Common law - Statutory labour legislation - The contract of employment - Legally enforceable agreements - Customary practices at the workplace.✓✓ A dispute of right involves a 'right' of the employee that has been interfered with or that had been ignored. **A dispute of right can be settled by adjudication or arbitration**.✓✓ It cannot be settled with negotiation.✓✓ Dispute of right usually centres around issues like: - The failure of one party to adhere to the contract of employment. - Failure to implement legally determined conditions, like minimum working hours. - The non-implementation of an arbitration award or wage determination. - Failure to implement the terms of a legally enforceable agreement. - Interference with freedom of association or the prohibition of victimisation.

(Any 4 x 2) (8)
[40]

QUESTION 6

6.1 6.1.1 Communication should be a two-way process, where the employer communicates with the employee (downward communication), but also including upward communication, where the employee is given the opportunity to communicate with the employer.

Communication takes many forms. Anything a person or organisation does, transmits a message. This takes place through various channels, normally linked to the organisational structure.

The organogram of an organisation determines the lines of communication, both upward and downward.

This ensures that all employees know exactly which lines need to be followed, for example the registering of a grievance (upward communication).

Briefing takes place via line management which is indicated in the organogram. (Any 2 x 2) (4)

6.1.2
- It provides an effective method for individual employees to voice a grievance (communication channel).
- It ensures that complaints are effectively dealt with by management.
- To prevent a grievance developing into more serious consequences such as strikes, increasing absenteeism, high labour turnover, increase in accidents and a decrease in group spirit and teamwork et cetera.
- To develop a culture wherein problems between management and employees can be solved internally.
- It creates the opportunity for upward communication from employees. (Any 4 x 2) (8)

6.1.3
- To promote the interests of all employees.
- To increase efficiency in the workplace.
- To be consulted on certain matters (section 84 of the LRA).
- To be part of joint-decision making with regard to certain matters (section 86 of the LRA). (4 x 2) (8)

PLEASE NOTE: TOTALLY AN OPEN MEMO (USE THE ABOVE AS GUIDELINES ONLY)

6.2 6.2.1 Negotiation is a form of verbal communication.
Voluntary
Used to try and resolve a problem or conflict.
A situation of giving and taking used to reach an agreement.
(Any 3 x 2) (6)

6.2.2 Arbitration is the intervention of a third party.
The arbitrator is involved in making a decision to determine a solution and to terminate the dispute between the parties.
Intervention can be voluntary (parties give up their rights to make their own decisions).
Or compulsory (where parties are ordered by court to appoint an arbitrator.) (Any 3 x 2) (6)

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6.3 *Sufficient representation*:✓ Only a registered union which is sufficiently representative of employees at a particular workplace may demand organisational rights, for example access to the workplace and stop-order facilities. Sufficient representation has not been defined, but it seems that a membership in the region of 30% will in the majority of cases be considered sufficient.✓

Numbers:✓ 'Majority' indicates a 50 % + one of the employees have joined a specific union. In such a case this union will be able to demand statutory rights with regard to an agency-shop agreement, a closed-shop agreement and workplace forum arrangements.✓

Influence:✓ The leaders must be able to mobilise their members.
Sufficient power in service delivery: The union should have sufficient power in the service delivered to the employer as well as ensuring solidarity amongst members.✓

Registration✓– It is better to deal with a registered trade union as these unions are protected by both the Labour Relations Act and the common law. An unregistered trade union is only protected by the common law.✓

(4 x 2) (8)
[40]

TOTAL SECTION B: 160
GRAND TOTAL: 200

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