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| <u>FACULTY</u> | : LAW |
| <u>DEPARTMENT</u> | : LABOUR LAW |
| <u>CAMPUS</u> | : APK |
| <u>MODULE</u> | : ABR0021/ LLW41B0 |
| <u>SEMESTER</u> | : SECOND SEMESTER |
| <u>EXAM</u> | : SUPPLEMENTARY 2018 |

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| <u>DATE</u> | : | <u>SESSION</u> | 1 ST SESSION: |
| <u>ASSESSOR(S)</u> | : | DR ES FOURIE PROF MM BOTHA | |
| <u>MODERATOR</u> | : | (UP) | |
| <u>DURATION</u> | : | <u>MARKS</u> | : 80 |

NUMBER OF PAGES: 4 PAGES

INSTRUCTIONS:

1. PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWERS ACCORDINGLY
2. ANSWER ALL THE QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY. REFER TO ANY RELEVANT AUTHORITY

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QUESTION 1

DUSWO, a registered trade union, seeks organisational rights. DUSWO only represents 18 out of 75 employees. It had represented 35, but due to the employer's restructuring, its membership had been reduced dramatically. DUSWO seeks organisational rights as a sufficiently representative trade union, however, the employer, Group 4 Falck (Pty) Ltd, refuses to grant DUSWO any organisational rights.

Consider the above facts and critically evaluate the provisions of organisational rights in labour legislation, with reference to majority and sufficiently representative trade unions.

[15]

QUESTION 2

The deregulation of the wheat and milling industry after 2016 exposed the larger well-established companies in this industry to increasing competition from foreign companies, as well as small and medium-sized operations within South Africa. One of the largest companies affected by these developments was Premier Food Industries Ltd (PFI). By April 2018, investors in PFI were unhappy with its financial performance and consultants were called in to increase its competitiveness.

After a number of unsuccessful attempts to increase its competitiveness, PFI contemplated retrenching some 2000 employees and contacted the Food and Allied Workers' Union (FAWU) in this regard.

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MODULE: ABR0021/ LLW41B0 – LABOUR LAW

Consider the above set of facts and develop an advisory document (advice to Premier Food Industries Ltd) in which you evaluate the following:

- 2.1 the procedural requirements that the above retrenchment must meet in order to be fair;
- 2.2 should the employer not comply with fair procedure, the remedies available to FAWU;
- 2.3 the selection of employees for retrenchment; and
- 2.4 the obligation to pay severance pay in these instances.

[25]

QUESTION 3

Big Enterprises (BE), a motor car manufacturer, has concluded a recognition agreement with the National Union of Mineworkers (NUM).

In terms of this agreement, NUM is recognised in respect of its members in a defined bargaining unit – all weekly paid employees. Sixty (60) per cent of the employees in the bargaining unit are members of the union; the other forty (40) per cent of the employees in the bargaining unit are either not represented by any union whatsoever or they are represented by the Alternative Union of Mineworkers (AUW). Even so, the company always extends whatever wage increase it agrees with the union to all employees in the bargaining unit, irrespective of their union membership.

The current wage agreement expired at the end of August 2018 and the parties are in dispute over wages for 2018/2019. The dispute has been referred to the CCMA by NUM and conciliation failed. A certificate of non-resolution of the dispute has been issued by the CCMA.

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Consider the above and answer the following questions:

- 3.1 NUM intends to strike about the above issue. Advise the union of the substantive limitations in respect of a strike. (5)
- 3.2 Employees of Apollo Tyres, a tyre company, give seven days' notice of their intention to embark on industrial action in support of the employees of BE. Apollo Tyres wants to approach the Labour Court for an interdict prohibiting the employees from striking. Evaluate whether the proposed industrial action by the employees complies with the relevant legislative provisions. (6)
- 3.3 Distinguish between protest action and the right to picket. (4)

[15]

QUESTION 4

Ms North was employed as a secretary at Liberty Group Limited. She alleges that her manager, Mr West, harassed her on four separate occasions during 2018. This took the form of inappropriate comments and physical contact. During this time, she was also experiencing financial difficulties. She discussed this with Mr West. At this stage, she did not report the harassment as she feared that she might lose her job. However, the harassment continued and on 25 August 2018 she contacted Mr Soller, the human resources consultant, and disclosed the sexual harassment by Mr West. No steps were taken to investigate the claim and Ms North submitted her resignation. Ms North seeks your advice in respect of this matter.

Critically analyse the legal position of Ms North and advise her of any possible remedies that she may have under applicable labour legislation. In your answer you must also consider the concepts of discrimination, harassment and the onus of proof in this dispute.

[25]

TOTAL MARKS: [80]