



**RHODES UNIVERSITY**  
*Where leaders learn*



## **LABOUR LAW COURSE OUTLINE**

**2017**



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## **A. Introduction**

Labour Law aims to counteract the inequality of power between employers and employees. This course is aimed at ensuring that students are well equipped with a thorough knowledge of the principles of Labour Law as well as an ability to apply the law in practice.

Topics that will be covered in this course include:

- Origins and development of Labour Law, Sources and Philosophy;
- Individual Labour Law;
- Dispute resolution;
- Unfair Labour Practice, Prohibition of Unfair Discrimination and Affirmative Action;
- Discipline and Dismissal; and
- Collective Labour Law: Freedom of association, organizational rights, collective bargaining, workplace forums, strikes/lock-outs, pickets and protect action.

Students are encouraged to participate in class discussions, which will require prior reading.

## **B. Lecturer**

### **1. Course Co-ordinator and Lecturer**

**Mr. L. Tshingana**

Office: **F4B**

Email: [l.tshingana@gmail.com](mailto:l.tshingana@gmail.com)

### **2. Consultation Hours**

Rhodes University law faculty promotes an open door policy, however, it is advisable that students make prior arrangements with the lecturer via email. This is to ensure that students do not catch lecturers while they are committed to other academic activities.

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## C. Teaching Method

The course is taught by way of two lecturers per week. Students are expected to prepare for lectures by doing the prescribed reading beforehand and are encouraged to engage in lecture room discussions. All the prescribed material will not be addressed directly in lectures. Students are expected to take responsibility for their learning.

Lots of case law will be discussed during lectures.

## D. Assessment

The class component of this course counts to **30%** of the final mark. This will be on the basis of one assignment and one class test, each counting **15%**. There will be a 2-hour **70 marks** examination in June.

The examination will consist of two sections as follows:

- ❖ **Section A (Compulsory): 2 x 15 Marks; and**
- ❖ **Section B: 2 x 20 marks.**
- ❖ In **Section B**, students will answer **only two 20 marks** questions from three that will be given.

The examination mark will count 70% towards the final mark.

Information regarding the assignment will be made available as well as the submission date will be communicated in class and posted on RUConnected before the first lecture of the term. The assignment **must be handed in under the cover** page as provided for by the Faculty. **Please note the new Cover Page with no provision for student's name.**

**Assignment Due Date: Tuesday, 20 March 2017**

**Semester Test: Friday, 7 April 2017**

## **D.     **PRESCRIBED STUDY MATERIAL****

### **❖ Prescribed Textbook(s):**

- A van Niekerk and N Smit eds, MA Christianson et al Law@Work 3<sup>rd</sup> Edition (2015) Lexis Nexis;
- John Grogan Workplace law, 11<sup>th</sup> Edition (2014)

### **❖ Legislation:**

Labour Relations Act 66 of 1995 (LRA) and Amendments;  
Basic Conditions of Employment Act 75 of 1997 (BCEA);  
Employment Equity Act 55 of 1998 (EEA);

### **❖ Codes of Good Practice:**

Code of Good Practice: Dismissal (Schedule 8 to The LRA);  
Code of Good Practice: Who is an Employee;  
Code of Good Practice on Picketing;  
Code of Good Practice on Dismissal Based on Operational Requirements;  
Code of Good Practice: Preparation, Implementation and Monitoring of  
Employment Equity Plans;  
Amended Code of Good Practice on the Handling of Sexual Harassment  
cases in the workplace;  
Code of Good Practice on HIV and AIDS and the World of Work;  
Code of Good Practice on Equal Pay.

## **E.     **RUConnected****

Take note that announcements will be made on RUConnected and that all students must keep up to date with these announcements.

## STUDY UNIT 1 INTRODUCTION TO LABOUR LAW

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### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al.* *Law@Work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 1
  2. The LRA section 1
  3. Grogan, Chapter 1
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### **LEARNING OUTCOMES**

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After you have completed this study unit you should be able to:

- understand the origins and development of Labour Law, Sources and Philosophy;
  - describe the discipline of labour law; and
  - discuss the evolution of labour law with specific reference to the most important pieces of labour legislation.
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## STUDY UNIT 2 INTERNATIONAL LABOUR STANDARDS

### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 2
  2. The LRA section 3
  3. Section 39(1) of the Constitution
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### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- discuss the role that the International Labour Organisation (ILO) played in the development of the South African Labour Law;
  - distinguish between ILO conventions and recommendations;
  - know the core standards of the ILO;
  - know which ILO standards are recognised and applied in South Africa; and
  - name the statutory injunctions regarding international standards.
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## STUDY UNIT 3 THE CONSTITUTIONAL FRAMEWORK

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### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 3
2. The Constitution of South Africa section 23

### **TEXTBOOK**

3. *SA National Defence Union v Minister of Defence* (1999) 20ILJ 2265 (CC)
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### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- know and discuss the importance, scope and application of section 23 of the Constitution regarding labour relations;
  - discuss the meaning of 'everyone' and 'worker'; and
  - know and discuss the scope and content of 'labour practices' and 'collective bargaining' in section 23.
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## STUDY UNIT 4

### Individual Labour Law: The elusive employee and non-standard employment

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#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al.* *Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 4
2. Grogan, Chapter 2 & 3
3. The LRA section 213, definition of 'employee'; section 200A
4. Section 198 LRA
5. Section 198A LRA
6. Section 198B LRA

#### **Prescribed Cases**

7. *Smit v Workmen's Compensation Commissioner* 1979 (1) SA 51 (A)
  8. *Wyeth SA (Pty) Ltd v Manqele & others* [2005] 6 BLLR 523 (LAC)
  9. *Kylie v CCMA & others* [2010] 7 BLLR 705 (LAC)
  10. *Station Information Technology Agency (SITA) (Pty) Ltd V CCMA & others* [2008] 7 BLLR 611(LAC)
  11. *Discovery Health Limited v CCMA & others* [2008] BLLR633 (LC)
  12. *Assign Services (Pty) Ltd v CCMA and Others* (JR1230/15) [2015] ZALCJHB 283 (8 September 2015)
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#### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- define the concept 'contract of employment';
- interpret the definition of an 'employee';
- distinguish between a contract of employment and a contract of an independent contractor;
- discuss the presumption of employment;
- discuss unauthorised and illegal work;
- discuss the concept 'fixed term employee'; and



- discuss the justifiable reasons for a fixed term contract exceeding three months.

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## Study Unit 5:

### Individual Labour Law: Common-law and statutory conditions of employment

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#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al.* *Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 5
  2. Grogan, Chapter 4 & 5
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#### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- discuss the different common-law obligations of the employee and employer respectively;
  - discuss the purpose and scope of the Basic Conditions of Employment Act (BCEA) 75 of 1997; and
  - know and apply the different basic conditions of employment granted by the BCEA such as working time, leave, payment of remuneration, termination of employment etc.
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## Study Unit 6:

### The Right to Equality in the Workplace

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#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2012) Ch. 6 & 7
2. Grogan, Chapter 7 & 8
3. The Employment Equity Act 5 of 1998 sections 2, 5 & 6

#### **Prescribed Cases**

4. *Dudley v City of Cape Town* [2008] 12 BLLR 1155 (LAC)
5. *Swart v Mr. Video (Pty) Ltd* (1998) 19 ILJ 1315 (CCMA)
6. *Independent Municipal and Allied Workers Union v Greater Louis Trichardt Transitional Council* (2002) 21 ILJ 1119 (LC)
7. *Solidarity obo Barnard v SAPS* [2010] 5 BLLR 561 (LC)
8. *Woolworths (Pty) Ltd v Whitehead* (2000) 21 ILJ 571 (LAC)
9. *Minister of Finance & another v Van Heerden* [2004] 12 BLLR 1181 (CC)
10. *University of South Africa v Reynhardt* (2010) 31 ILJ 2368 (LAC)
11. *Independent Municipal & Allied Workers Union & another v City of Cape Town* (2005) 26 ILJ 1404 (LC)
12. *SA Police Service v Solidarity obo Barnard* (2013) 34 ILJ 590 (LAC)
13. *South African Police Service v Solidarity obo Barnard* 2014 (6) SA 123 (CC) (2 September 2014)
14. Gaibie "The Constitutional Court Decision in Barnard: A Sequel to the Van Heerden Judgement" (2015) ILJ 80



## **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- illustrate the nature and meaning of 'equality';
  - describe the purpose and scope of the Employment Equity Act (EEA) 55 of 1998;
  - discuss the issue of 'unfair discrimination';
  - discuss the concept 'harassment' as a form of unfair discrimination;
  - distinguish between direct and indirect discrimination;
  - identify the specific defences against unfair discrimination;
  - discuss the purpose and application of Chapter III of the EEA with reference to employment equity, designated employers and the beneficiaries of affirmative action measures;
  - explain what is meant by the concept 'affirmative action measures'; and
  - know the different duties of designated employers.
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## Study Unit 7:

### Unfair Labour Practices



#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch 8
2. Grogan, Chapter 6
3. The LRA section 186(2)

#### **Prescribed Cases**

4. *NEWU v CCMA & others* [2004] 2 BLLR 165 (LC)
  5. *Schoeman v Samsung Electronics SA (Pty) Ltd* [1997] 10 BLLR 1364 (LC)
  6. *Dlamini v Toyota SA Manufacturing* (2004) 25 ILJ 1513 (CCMA)
  7. *Piki v Development Action Group* (2002) ILJ 609 (CCMA)
  8. *Ned v Department of Social Services & Population Development* (2001) ILJ 1039 (BCA)
  9. *Apollo Tyres SA (Pty) Ltd v CCMA & Others (unreported case DA1/11 [2013] ZALAC)*
  10. *Law@work* paragraph 9: Occupational Detriment on Account of a Protected Disclosure
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#### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- define and distinguish a dispute of right from a dispute of interest;
- define an 'unfair labour practice' in terms of section 186(2) of the Labour Relations Act (LRA) 66 of 1995;
- discuss the scope and content of section 186(2) of the LRA;
- establish who can claim an unfair labour practice; and

- briefly discuss the functioning of the Protected Disclosures Act

## Study Unit 8: Unfair Dismissal



### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al.* *Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 9; 10; 11; 12
2. The LRA sections 5; 186(1); 187; 188; 189(1) -(3); 189(7); 192; 193(1) & (2); 194
3. Item 2; 4; 7; 8; 9; and 10 of the Code of Good Practice: Dismissal
4. Grogan, Chapter(s) 9, 10, 11, 12, 13, 14, 15 & 16

### **Prescribed Cases**

5. *SA Rugby (Pty) Ltd v CCMA & others* [2006] 1 BLLR 27 (LC)
6. *Murray v Minister of Defence* [2008] 6 BLLR 513 (SCA)
7. *Fry's Metals (Pty) Ltd v National Union of Metalworkers of SA & others* (2003) 24 ILJ 133 (LAC)
8. *SA Metals & Machinery Co (Pty) Ltd v Gamaroff* [2010] 2 BLLR 136 (LAC)
9. *Avril Elizabeth Home for the Mentally Handicapped v CCMA* (2006) 27 ILJ 1644 (LC)
10. *Semenya v CCMA & others* [2006] 6 BLLR 521 (LAC)
11. *Porter Motor Group v Karachi* [2002] 4 BLLR 357 (LAC)
12. *NEHAWU & others v University of Pretoria* [2006] 5 BLLR 437 (LAC)
13. *Brereton v Bateman Industrial Corporation Ltd & others* (2000) ILJ 442 (LC)
14. *University of Pretoria v CCMA & others* (2012) 33 ILJ 183 (LAC)



## LEARNING OUTCOMES

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### ❖ **Unfair Dismissal – Preliminary Topics** **Grogan, Chapter 10**

After having studied the literature you should be able to:

- define the meaning of 'dismissal';
- list and describe the various forms of dismissal;
- distinguish between dismissal and termination of an employment contract; and
- identify the remedies available for unfair dismissal.

### ❖ **Automatically Unfair Reasons for Dismissal** **Grogan, Chapter 12**

After having studied the literature you should be able to:

- define and identify when a dismissal would be automatically unfair and distinguish it from other forms of dismissal; and
- list the forms of automatic unfair dismissals.

### ❖ **Conduct and Capacity: Fair reason and fair procedure** **Grogan, Chapter 13 & 14**

After having studied the literature you should be able to:

- list the conduct that may justify dismissal;
- distinguish between substantive and procedural fairness;
- indicate the requirements for substantive fairness for dismissal based on conduct and capacity; and
- indicate what the requirements are for procedural fairness for dismissal based on conduct and capacity.

### ❖ **Dismissal for Reasons Based on an Employer's Operational Requirements** **Grogan, Chapter 16**

After having studied the literature you should be able to:

- define the concept 'operational requirements';
- indicate the requirements for substantive fairness for dismissal based on operational requirements;

- describe the selection criteria that is acceptable for dismissals based on operational requirement; and
- indicate what the requirements are for procedural fairness for dismissal based on operational requirements.

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## Study Unit 9:

### Freedom of Association and the Right to Organise

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#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al.* *Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 14
2. The LRA sections 4; 6; 7; 11;12; 13; 14; 15; 16; 21; 25; 26

#### **Prescribed Cases**

3. *IMATU & others v Rustenburg Transitional Local Council* [199] 12 BLLR 1299 (LC)
4. *NUMSA & others v Bader Bop (Pty) Ltd & another* [2003]2 BLLR 103 (CC)
5. *SACTWU v Marley* (2000) 21 ILJ 425 (CCMA)
6. Kruger & Tshoose "The Impact of the Labour Relations Act on Minority Trade Unions: A South African Perspective" (2013) *PELJ* 285.



## **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- explain the right to freedom of association;
  - discuss ways in which the right to freedom of association could be limited;
  - distinguish between closed shops and agency shop agreements;
  - explain the right to organise;
  - discuss the requirements that must be met for unions to qualify for statutory organisational rights;
  - explain what is meant by the terms 'sufficiently representative' and 'majority representative';
  - advise in the context of a practical scenario with reference to the provisions of the LRA and case law whether or not a trade union would be considered sufficiently representative;
  - discuss under which circumstances trade unions would be entitled to the various organisational rights;
  - analyse the content of the various organisational rights; and
  - explain under what circumstances an employer is not obliged to disclose information.
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## Study Unit 10: Collective Bargaining

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### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015)  
Ch. 15
  2. Grogan, Chapter(s) 18, 19, 20, 21 and 22
  3. The LRA sections 31; 32; 213 and the definition of '**trade union**';
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### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- define the concept 'collective bargaining';
  - distinguish between the different levels of bargaining;
  - define the concept 'collective agreement'; and
  - discuss the binding effect of collective agreements.
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## Study Unit 11:

### Strikes and Protest action (Picketing and Lock-outs)

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#### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015) Ch. 16
2. Grogan, Chapter 23, 24 & 25
3. The LRA sections 213 (definition of '**strike**' and '**lock-out**'); 64(1); 65(1); 66(1);

#### **Prescribed Cases**

4. *Simba (Pty) Ltd v FAWU* [1997] 5 BLLR 602 (LC)
  5. *SALGA v SAMWU* [2008] 1 BLLR 66 (LC)
  6. *Modise v Steve's Spar Blackheath* [2000] 5 BLLR 496 (LAC)
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#### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- define a strike, lock-out, protest action and secondary strike;
  - explain the circumstances when strikes are prohibited (s 65 of the LRA);
  - understand the requirements (substantive and procedural) in order for a strike to be protected;
  - understand the consequences of an unprotected strike;
  - explain the remedies available to an employer where the strike is unprotected;
  - discuss which action an employer may take if the strike is protected;
  - understand substantive and procedural requirements for the fair dismissal of strikers; and
  - know the requirements that must be complied with in order for a strike to be regarded as a secondary strike.
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## Study Unit 12: Dispute Resolution

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### **PRESCRIBED READING MATERIAL**

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1. Van Niekerk *et al. Law@work* 3<sup>rd</sup> Edition (LexisNexis Butterworths 2015)  
Ch. 17
  2. Grogan, Chapter 26
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### **LEARNING OUTCOMES**

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After having studied the literature you should be able to:

- describe the processes of conciliation or mediation, arbitration and adjudication;
  - highlight the differences between conciliation, arbitration and adjudication; and
  - identify which forums and what dispute resolution procedures are applicable for different kinds of disputes.
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## Abbreviations

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- **LRA:** Labour Relations Act
- **BCEA:** Basic Conditions of Employment Act
- **ILO:** International Labour Organization
- **EEA:** Employment Equity Act
- **SDA:** Skills Development Act
- **COIDA:** Compensation for Occupational Injuries and Diseases Act
- **UIA:** Unemployment Insurance Act
- **OHSA:** Occupational Health and Safety Act
- **NEDLAC:** National Economic Development and Labour Council
- **CC:** Constitutional Court
- **CCMA:** Commission for Conciliation, Mediation and Arbitration
- **LC:** Labour Court
- **LAC:** Labour Appeal Court
- **SCA:** Supreme Court of Appeal

## FAMOUS LABOUR LAW QUOTES

- ❖ *In the old days all you needed was a handshake. Nowadays you need forty lawyers. — Jimmy Hoffa*
- ❖ *We are not complaining about the work. We want to see our hard work reflected in our pay. —Emmett J. Bogdon, President NALC Branch #116 (IN)*
- ❖ *Silence never won rights. They are not handed down from above; they are forced by pressures from below. —Roger Baldwin*
- ❖ *Better to starve fighting than to starve working. -- A slogan of the Lawrence, Massachusetts "Bread and Roses" strike of 1912*
- ❖ *Those unions that enjoy the right to strike have no guarantee that sacrificing their jobs and their livelihood will result in victory but they nevertheless engage in lengthy strikes, not because they are assured of winning but because they are determined to fight. —William Burrus, 1998*