

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY AUCKLAND OFFICE**

BETWEEN Greenlea Premier Meats Ltd (Applicant)
AND New Zealand Meat and Related Union Aotearoa Branch
(Respondent)
REPRESENTATIVES Mark Hammond
Graham Cooke
MEMBER OF AUTHORITY Yvonne Oldfield
INVESTIGATION MEETING Monday 8 May 2006
DATE OF DETERMINATION Monday 8 May 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Very late this afternoon the Authority received a statement of problem seeking:

"An order granting an injunction against the respondent preventing it from conducting union meetings on the applicant's site in Hamilton and with the applicant's employees on Tuesday, 9 May at 9.10am and 6.10pm."

The statement of problem went on to explain that the applicant and the union had been unable to agree a mutually suitable time for the meeting and the union had very recently declined to attend mediation on the issue. The applicant now sought relief on the basis that the union was not complying with Section 26 of the Employment Relations Act which provides that the union:

"must make such arrangement with the employer as may be necessary to ensure that the employer's business is maintained during any union meeting..."

The applicant submitted in favour of the granting of an injunction that:

- i. There is an arguable case in favour of the applicant and a serious question to be tried;
- ii. The balance of convenience favours the applicant;
- iii. There are no other remedies available if the injunction is not ordered. The loss of production will outweigh the inconvenience to the respondent of rescheduling its meetings.

The applicant, through Counsel, advised that it had faxed papers to the respondent also late this afternoon but did not know if they had been received. Evidently Mr Hammond had not been able to contact the secretary of the respondent union, Mr Graham Cooke.

Given the extremely urgent nature of the relief sought Mr Cooke's unavailability posed a serious problem for the Authority. However I identified another and more serious problem: the question whether the Authority had jurisdiction to deal with an application for injunctive relief

of this sort. With an Authority support officer for assistance I advised Mr Hammond that given the High Court's conclusions in *BDM Grange Ltd v Parker* [2005] 1 ERNZ 343 I did not feel able to proceed and considered this a case which should be dealt with by referral to the Court pursuant to s.177 for determination of the jurisdictional issue.

Mr Hammond responded by saying that he would prefer that the matter be removed pursuant to s.178 rather than referred pursuant to s.177 and that he would file an application for removal immediately.

He has done so, citing the following grounds for removal:

1. *"An important question of law is likely to arise in the matter other than incidentally, namely whether the respondent's actions will result in an unlawful strike by the applicant's employees if the respondent's meetings proceed."*
2. *"The case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court and in normal circumstances it is a matter that should be determined by the Court."*

Mr Cooke has also been located and I have been able to conduct a teleconference with both parties. Mr Cooke has indicated that he would prefer the matter to remain with the Authority and has noted that he is disadvantaged by the short notice which had left him unable to seek legal advice.

Determination

Mr Cooke's concerns are very valid ones and if this were a case where the Authority's jurisdiction was clear then notwithstanding the urgent nature of the application I would have been very reluctant to proceed before he had taken advice. However as I have already indicated, I have serious concerns regarding whether the Authority has jurisdiction to grant the injunctive relief sought. At paragraph [93] of *BDM Grange*, p.369, the High Court stated:

"In the present case the proceedings were brought to secure Anton Piller orders giving injunctive relief and made in the exercise of the inherent jurisdiction of the High Court. There is nothing in the ERA expressly conferring such jurisdiction on the Authority..."

In light of this, I remain of the view that it is unsafe for me to consider the application for injunctive relief. The question whether I have this jurisdiction is itself an important question of law and justifies the removal of this matter to the Court.

I order that this matter be removed to the Court in its entirety.

Yvonne Oldfield
Member of Employment Relations Authority