

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN National Distribution Union (First Applicant)
AND NZ Amalgamated Engineering, Printing Manufacturing Union (Second Applicant)

AND General Distributors Limited (First Respondent)
AND The Supply Chain Limited (Second Respondent)

REPRESENTATIVES Peter Cranney for Applicant
Stephen Langton for Respondent

MEMBER OF AUTHORITY Y S Oldfield

CONSIDERATION OF PAPERS 15 September 2006

DATE OF DETERMINATION 15 September 2006

**DETERMINATION OF THE AUTHORITY ON AN APPLICATION FOR
REMOVAL**

Employment Relationship Problem

[1] The applicants claim that their members employed by General Distributors Limited and The Supply Chain Ltd have been unlawfully locked out. They have initiated proceedings in the Employment Court, seeking a declaration that the lockout is unlawful and seeking injunctive relief.

[2] In addition, on behalf of their members, they claim the losses those members have sustained as a result of this allegedly unlawful strike. Because of what Mr Cranney describes as the “split jurisdiction” between the Court and the Authority, these claims for damages for lost wages and arrears of wages have been lodged here. Accompanying the application for damages and arrears was an urgent application, pursuant to S.178 (2), to remove those matters to the Court.

[3] Section 178(2) provides as follows:

“The Authority may order the removal of the matter, or any part of it, to the Court if-

- (a) an important question of law is likely to arise in the matter other than incidentally; or*
- (b) 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; or*
- (c) the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*
- (d) the Authority is of opinion that in all the circumstances the Court should determine the matter.”*

[4] Removal is sought on the following grounds:

“4.1 The Court already has before it proceedings which are between the same parties and which involve the same issues and/or similar issues and/or related issues (ERA section 178(2) (c))...

4.2 Important questions of law are likely to arise other than incidentally (ERA section 178 (2) (a)), namely:

4.2.1 Whether... an employer can lock out employees in situation where the lockout does not related to the bargaining within the meaning of section 83 of the Employment Relations Act 2000 and when instead the lockout and participation is directed instead at the Applicants’ right to bargain pursuant to... section 42.

4.2.2 Whether when a lockout is conducted with a view to compelling the locked out employees to be bound by three separate agreement depending on location, it is unlawful on the ground that none of the three separated agreement will bind each of the employees concerned as required by section 83(b)(i) of the Employment Relations Act 2000.

4.3 The case is of such a nature and urgency that it is in the public interest that it be removed immediately to the Court (ERA section 178 (2) (b)).”

[5] In relation to the last point, Mr Cranney states that 600 employees who are involved in distribution to 200 supermarkets are locked out and are being subjected to “unconscionable pressure”

[6] Mr Langton has advised that the respondents do not agree that this matter of such as nature and urgency that it is in the public interest that it be removed immediately to the Court. However, they agree that it does meet two of the other criteria for removal. There is no dispute that the current Court proceedings between these parties involve related issues, and both parties agree that the question whether the lockouts are lawful will involve important questions of law.

Determination

[7] I am satisfied that the question whether the lockout is lawful is an important one and involves consideration of what Mr Langton has described as “novel interpretation” of section 83 (b) (i). The matter concerns a protracted dispute and is the subject of proceedings which are already before the Court.

[8] I am satisfied that in this case all of the grounds set out in section 178(2) are met. The matter of the claims for damages and arrears off wages is removed in its entirety to the Court.

Yvonne Oldfield

Member of Employment Relations Authority