

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 324/07
5102281

BETWEEN

PORTS OF AUCKLAND
LIMITED
Applicant

AND

MARITIME UNION OF NEW
ZEALAND
Respondent

Member of Authority: Marija Urlich

Representatives: Richard McIlraith, Counsel for Applicant
Simon Mitchell, Counsel for Respondent

Investigation Meeting: 15 October 2007

Determination: 17 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ports of Auckland apply to the Authority for reference for facilitation in respect of its bargaining with Maritime Union of New Zealand for a collective employment agreement. It relies on grounds under subsections 50C(1)(b),(c) and (d) of the Employment Relations Act 2000 which provide:

The Authority must not accept a reference for facilitation unless satisfied that 1 or more of the following grounds exist:

...

(b) that—

(i) the bargaining has been unduly protracted; and

(ii) extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement:

(c) that—

(i) in the course of the bargaining there has been 1 or more strikes or lockouts; and

(ii) the strikes or lockouts have been protracted or acrimonious:

(d) that-

(i) in the course of the bargaining, a party has proposed a strike or lockout; and

(ii) the strike or lockout, if it were to occur, would be likely to affect the public interest substantially.

[2] In support of the application Jon Baxter, Group Human Resources Manager for Ports of Auckland, filed an affidavit. Submissions in support were presented at the investigation meeting.

[3] MUNZ does not oppose or support the application for facilitated bargaining. It will abide by the decision of the Authority. MUNZ attended the investigation meeting and a witness statement was filed by James Denis Carlisle setting out some issues of fact. Mr Carlisle is the President of the Auckland Branch of MUNZ¹ and the lead negotiator for MUNZ in these negotiations. No submissions were made on behalf of MUNZ other than to restate its neutral position toward the facilitation application

Bargaining

[4] The collective employment agreement between the parties expired on 30 November 2006². A notice initiating bargaining pursuant to section 42 Employment Relations Act 2000 was lodged on 19 December 2006 by MUNZ. Since then the parties have been closely engaged in bargaining for a new collective employment agreement, strike action has been taken and mediations attended along with ongoing communications with the mediation service. There is no concluded collective agreement.

¹ Local 13

² Collective Agreement between the Ports of Auckland Limited and the Maritime Union of New Zealand Local 13, term 24 months from 1 December 2004

[5] The key events in this bargaining history, to date, are:

MUNZ initiates bargaining	19 December 2006
Parties negotiate a bargaining process agreement	February 2007
Parties enter a bargaining process agreement	28 February 2007
Parties meet for bargaining	December 2006, January, February, March, 3, 19 April, May, June, July and August 2007
Parties attend mediation	25, 26 July, 2 August 2007
Ports of Auckland write to union members	23 August 2007
Pay increase implemented	24 August 2007
MUNZ lodges breach of good faith proceedings	27 August 2007
1 st strike notice issued	28 August 2007
Mediation	27, 31 August, 4, 5, 6 and 8 September 2007
1 st strike 3.5 hours	12 September 2007
Mediation	13 September 2007
2 nd strike notice	17 September 2007
Mediation	17 September 2007
Discussions with Mediation Service	25 September – 1 October 2007
2 nd strike (48 hours)	2 – 4 October 2007
3 rd strike notice	24 September 2007
4 th strike notice	1 October 2007
Mediation	5 October 2007
Private mediation	3 – 4 October 2007
5 th strike notice issued	5 October 2007
3 rd strike	9 October 2007
Application lodged in Authority	9 October 2007

[6] Over the 10 months of bargaining a proposal to combine terminal services along with supporting information was presented, the proposal negotiated and later withdrawn by Ports of Auckland. MUNZ's claims for a new cea were tabled and negotiated. Ports of Auckland presented a package offer to settle the new cea and wrote to union members' outlining the offer. The offer was declined. The offer was

revised and outlined to members. Bargaining continued. Ports of Auckland wrote again to staff and later presented a further revised settlement offer. This offer was declined on 20 August. Ports of Auckland wrote to union members again, a pay increase was actioned and an application for breach of good faith lodged in the Authority. Strike action has been notified and taken and, as required by statute³ the parties have attended mediation prior to that strike action taking place. The parties have been engaged in Department of Labour and private mediation sessions through July, August, September and October.

Analysis

[7] Section 50A(1) provides the purpose of facilitating collective bargaining:

(1) The purpose of sections [50B](#) to [50I](#) is to provide a process that enables 1 or more parties to collective bargaining who are having serious difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[8] I must be satisfied that the bargaining between Ports of Auckland and MUNZ has been:

- (i) unduly protracted and extensive efforts have failed to resolve the difficulties between the parties including mediation;
- (ii) in the course of the bargaining there have been one or more strikes or lockouts which have been protracted; and
- (iii) a strike has been proposed which would be likely to affect the public interest substantially.⁴

[9] Facilitation is reserved for situations of the most serious bargaining difficulties.

³ Section 92 Employment Relations Act 2000

⁴ Section 50C (1)(b), (c) and (d) Employment Relations Act 2000

(i) ***Bargaining unduly protracted and unresolved despite extensive efforts***

[10] Ports of Auckland says the bargaining has been unduly protracted despite extensive efforts, including mediation (both provided by the Department of Labour and private), to move forward.

[11] The parties have attended 20 formal bargaining meetings over the last 10 months without the assistance of a mediator. There have been 12 days of Department of Labour assisted mediation, numerous other discussions with the mediation service and 3 full days of bargaining assisted by a private mediator.

[12] In its application to the Authority alleging breaches of good faith in the bargaining by Ports of Auckland MUNZ stated:

“The parties are currently deadlocked as to the terms of the Agreement.”

[13] Over a considerable period of time the parties have actively engaged in substantial negotiation with the intention of reaching settlement. Proposals to settle the cea have been made and rejected and those proposals revised. When the negotiations have stalled the parties have made extensive use of the mediation services provided by the Department of Labour and have used private mediation services to redouble their attempts to reach settlement. An application has been made by MUNZ to the Authority to address concerns it has about the conduct of Ports of Auckland in the bargaining.

[14] I am satisfied that the bargaining has been unduly protracted and that extensive efforts have failed to resolve the difficulties between the parties.

(ii) ***Protracted strikes***

[15] Ports of Auckland do not say the strike action to date has been acrimonious. It says there have been 3 separate strike actions to date and that this strike action, in itself, is protracted.

[16] The strike action has involved 3 strikes of 3 ¼ hours duration, a form of stop work meeting, and a 48 hour strike. Notice for a further strike of 3 ¼ hours on 22 October has been given and MUNZ has authorisation from its Local 13 members to give notice of further strike action.

[17] This is not protracted strike action in the sense of long duration. Neither is the strike action protracted in the sense of numerous rolling strikes aimed at creating chaos. The evidence was that the “stop work” strikes have been managed and taken when MUNZ needed to speak with its 265 members on site. Likewise the evidence was that the 2 day strike was accommodated with goodwill on both sides.

(iii) Strike to substantially affect the public interest

[18] This ground of facilitation anticipates proposed strike action that will have a substantial affect on the public interest. The next notified strike action is for 3 ¼ hours on 22 October. This form of strike has been managed between the parties. There was no evidence that it would have any substantial affect on the public interest. A lot of media commentary was provided in support of this ground of the application. While the opinions expressed are valid they fall short of evidence of *widespread, long-term or irreversible disruption*⁵.

Determination

[19] I find that the grounds set out in section 50C(1) (b) of the Employment Relations Act 2000 exist.

[20] Ports of Auckland and Maritime Union of New Zealand are referred under section 50B of the Employment Relations Act 20000 to the Authority for facilitation to assist them in resolving the difficulties in concluding the collective agreement for which they have been bargaining.

⁵ Section 50C(2) Employment Relations Act 2000

Costs

[21] No issue as to costs have been raised by either party.

Marija Urlich

Member of the Employment Relations Authority