IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 331/07
5098623 and 5099188

	BETWEEN	SCA HYGIENE AUSTRALASIA LIMITED ("the Company") Applicant in 5098623 and Respondent in 5099188
	AND	THE PULP AND PAPER INDUSTRY COUNCIL OF THE MANUFACTURING AND CONSTRUCTION WORKERS' UNION INC ("the Union") Respondent in 5098623 and Applicant in 5099188

Member of Authority:	Robin Arthur
Representatives:	David France, Counsel for the Company Kathryn Beck, Counsel for the Union
Investigation Meeting:	25 and 26 September 2007 at Kawerau
Determination:	18 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Two disputes have arisen out of restructuring proposals at the tissue paper production mill at Kawerau owned by SCA Hygiene Australasia Limited ("the Company").

[2] The Company seeks declarations about the validity of its proposal to require paper machine operators to conduct additional testing of paper products in the control rooms adjacent to the machines, referred to as On Machine Testing ("OMT").

[3] The Pulp and Paper Industry Council of the Manufacturing and Construction Union ("the Union") opposes the Company's application, in part because OMT involves a net loss of five jobs for laboratory workers who currently do the tests. It also says have machine operators do OMT is a substantial change of their duties and requires renegotiation of current wage rates for those jobs.

[4] The Union brings its own application seeking findings that the Company has not properly and fully consulted over proposals to reduce the number of laboratory staff jobs, the introduction of OMT, and how to select staff affected by these proposals for redeployment or redundancy. At issue on the last point is interpretation of the redundancy provision found at clause 22 ("clause 22") of the current collective employment agreement ("CEA") between the parties. The Union applies for compliance orders to remedy the alleged breaches of statutory and contractual obligations.

The issues

[5] The issues for determination are:

(a) Is OMT within the scope of the current job description and duties of paper machine operators?

(b) Is the change to OMT a substantial alteration to duties of operators that requires a renegotiation of pay rates?

(c) Is it lawful and reasonable for the company to instruct operators to undergo training on OMT and to carry out OMT?

(d) Has the company met its contractual and statutory good faith obligations in consulting, or attempting to consult, with the Union and its members over proposals:

(i) To reduce jobs in the laboratory; and

(ii) Require operators to do OMT; and

(iii) To carry out redeployment and redundancy obligations under clause 22?

(e) Does the Company's proposal for selection of employees to be redeployed or made redundant meet the requirements of clause 22, or if the circumstances are such that they are not provided for under the terms of clause 22, is the Company's proposal on selection criteria and its subsequent actions otherwise within the scope of its obligations to its employees (that is, to act in good faith and fairly and reasonably and within the terms of the CEA)?

(f) Dependent on the answers to the questions asked, what declarations or orders are needed, if any?

The investigation

[6] Before the Authority's investigation the parties had met in mediation on three occasions to discuss aspects of the issues in this matter without resolving them.

[7] An investigation meeting over two days was held at the mill in Kawerau. Written witness statements were provided – for the Union – by the senior site delegate and lead hand on one machine, Dennis Fahey; laboratory worker Alan Cottrell; and lead hand on another paper machine, Bruce Neal; and – for the Company – by Kawerau Manufacturing Manager Murray Lucas; Technical Manager Brian Fahey; Employment Relations Manager Susan Gibbs and Resource Support Manager Roy Ormiston. The Union's local secretary, Harold Appleton, and the Company's Human Resources Manager, Doug Longdill, also attended the investigation meeting as witnesses. All witnesses gave additional oral evidence, under oath or affirmation, in response to questions from the Authority. Counsel for the parties had the opportunity to ask additional questions of the witnesses and presented oral closing argument along with helpful written synopses of their submissions.

[8] The investigation included a site tour accompanied by representatives of the Company and the Union to assist my understanding of references to the site in general, the paper machines, their adjacent control rooms and the small laboratory facility within the plant.

[9] The witness statements prepared by the Company and Union witnesses provided considerable detail on the work done by machine operators and laboratory staff and the methods or techniques used for various tests of paper products during the production process. Along with two comprehensive bundles of background

documents, the witness statements set out the detail of the dealings between the parties about the issues which resulted in their respective applications for investigation by the Authority. While this determination does not set out the detail of all of the thorough evidence and legal submissions provided, I have given careful consideration to all that material in preparing this determination but confine its contents to that necessary to state relevant findings of fact and law in order to express conclusions on the issues identified.

[10] For reasons explained below, I have come to the view that the Company is entitled to ask the operators to perform additional testing of paper products without renegotiating pay rates and the operators may be asked to undertake training for that purpose.

[11] I have also concluded that the Company met its obligations of consultation on all proposals, including those regarding selection criteria for potential redeployment and redundancy of positions. However, I do identify some questions on whether the selection criteria developed by the Company for the purposes of all decisions about voluntary redundancy, redeployment and compulsory redundancy are entirely consistent with the terms of Clause 22 of the CEA.

[12] During the investigation meeting it emerged that, due to a number of applications for voluntary redundancy made by various mill staff in recent weeks, the Company is now most likely to be able to redeploy all other existing staff affected by restructuring proposals and there was no immediate need for compulsory redundancies or selection for redeployment which would have otherwise required the immediate use of the Company's recently developed selection criteria.

On Machine Testing

[13] At present the machine operators routinely perform two tests on samples of paper taken from each reel of paper as it is made. There are tests for weight (on a set of electronic scales) and thickness (on a micrometer testing device). These tests are done on a small bench in their control room. They enter results of both tests into a data base on computers in the control room. Some additional tests for whiteness, freeness and pH of particular paper grades are done for some papers on some machines but not all.

[14] Other tests are conducted by the laboratory staff in a small laboratory room situated a few minutes walk away from the machines. These tests comprise processes to check for the strength and stretch of the paper, whiteness, brightness, colour, colour 'bleed', absorbency, and 'hand feel' (the latter being an assessment of its softness or otherwise). The tensile tests – on stretch and strength – involved cutting and placing sample strips in an automated testing machine. Whiteness, brightness and colour are tested using an electronic data colour meter. The bleed tests – checking the colour fastness of the paper – also uses an electronic data meter. Absorbency is tested by dropping water onto a dry sample and timing its absorption. Ovens are used to dry some samples before testing. The tests need to be carefully performed. Some require precise observation and timing. The resulting data must be accurately collected and recorded in the computer system.

[15] On 15 March 2007 the Company announced a range of proposals to change staffing arrangements for the paper machines and the laboratory. These included the OMT proposal. It would enable the Company to reduce the number of laboratory staff from eight to three, a net loss of five jobs, and have the remaining laboratory staff working only day shifts rather than also rostering them for night shifts as presently required.

[16] This OMT proposal was developed after Company managers compared processes in the Kawerau mill with other paper mills owned by the Company's parent corporation elsewhere in the world. Most overseas mills were said to have tests done on an OMT basis rather than using a laboratory with separate staff.

[17] Implementation of OMT at Kawerau would require installation of additional testing equipment in each control room and training the operators to use the equipment, carry out the tests and record the data.

[18] How much time would be required to carry out the tests was a matter of hot debate between witnesses for the Company and the Union. Denis Fahey, for the Union, said early information supplied by the Company suggested as much as 80 minutes out of every eight hour shift might be necessary on testing work. Company witnesses suggested that, once the new processes were bedded in, around 10 minutes every two hours might be required – that is around 40 minutes in every eight hour shift.

[19] The length of time required to train operators to carry out the additional tests was also disputed. The Company's best estimate – through Brian Fahey – suggested a two hour training session was needed, with a further two hour 'refresher' session just before full OMT was introduced.

[20] Union members were concerned at what they saw as the loss of specialised laboratory staff, increased work pressures on operators already required to carry out a wide range of duties and keep the paper machines operating at internationally-competitive levels of productivity, and unrealistic expectations of the time that operators would need to train to do the new tests and how much time doing the tests would take each shift.

Current scope of the job

[21] As submitted by Mr France, the Company's managerial prerogative includes the right to reorganise its Kawerau business for efficiency, subject to the limitations of:

a) the provisions of the CEA; and

b) its duties of good faith, including fair treatment and consultation; and

c) the extent to which an employer may change duties and responsibilities of a position without first requiring agreement.

[22] Provided the company complies with statutory and contractual duties in introducing additional or different duties, it is entitled to do so provided the change does not significantly or substantially alter the nature of responsiblities or focus of the position. As the Employment Court stated in *McCulloch v NZ Fire Service* [1998] 3 ERNZ 378, 392:

> *Not infrequently, an employer needs to require its staff to increase the level of their technical competence in the skills for which they are employed; so long as the nature and extent of the improvement or other change in method is adequately explained and the employees are assisted to attain the required standard by the provision of reasonably adequate training and sufficient time, issuing such a requirement under these conditions is well within the rights of an employer. Ordinarily, the acquisition of the new or different skills would lead to some compensatory recognition but that is not an essential pre-requisite where, of the employee's range of skills, some are being acquired in the place of others that are no longer to be used or used as much.*

> *The issue whether the job is the same with a change of focus/emphasis or a different position is a question of fact and degree determined exclusively and conclusively by the evidence.*

[23] Clause 17 of the CEA provides a pay rate for the respective grades of operators described as "*in full satisfaction and discharge of all normal working conditions that may arise in the performance of the normal and expected duties of the Employees concerned*". There is no clause of the type often found in employment agreements providing a requirement to carry out whatever duties the employer may direct but clause 17 does have this note:

> *It is understood that the rate of a designation may be subject to alteration should the duties or job content of any designation be substantially altered during the term of this agreement.*
>
> *(my emphasis)*

[24] The clause and this note recognise that duties and job content may be changed or altered, but only where such alterations are substantial are they to be subject to changes in rates of pay.

[25] Clause 22 provides that:

> *When the company requires timely change to improve efficiency and competitiveness it will, prior to any implementation of the change, seek to reach agreement with the Union through timely and businesslike consultation. The Union will not slow the process.*

[26] It continues with a provision that mediation assistance will be sought where the parties are unable to agree within 30 days of starting consultation.

[27] This clause must be read in conjunction with the Company's statutory obligations at s4(1A) and (4)(c) and (d) of the Employment Relations Act 2000 ("the Act").

[28] Although more will be said of the consultation process below, having reviewed all the documents and witness statements provided, I am satisfied that the Union and its members likely to be affected by the OMT proposals were provided with numerous and all necessary contractual and statutory opportunities to comment on and influence that change. This included mediation after it was clear that reaching agreement between the parties was proving difficult.

[29] However, though desirable, the Company was required by neither the CEA nor the Act to *reach* agreement through its consultation. It was required to act in good faith – that is openly and without intending to mislead – and to *seek*, not necessarily achieve, agreement before progressing its implementation of change.

Is OMT a substantial change of duties?

[30] The real hurdle for the Company in establishing its freedom to exercise the managerial prerogative to introduce OMT is whether the change is a substantial alteration of duties, of the type contemplated in the note to clause 17 of the CEA. This is to be assessed in relation to the work currently done – either as described in job descriptions or as actually carried out – and is an objective inquiry as to the fact or degree of any change that would be apparent to a reasonably informed observer.

[31] Machine operators do not have a written job description exhaustively setting out the duties and responsibilities of their position. Rather there is a list of such duties and tasks set out in a training checklist. Union and Company witnesses agreed this checklist generally reflected the actual range of their work although not the proportions of time spent on each item when working. From time to time items are added to this list and others are removed. It was described as a 'living document'.

[32] The Union witnesses regarded the OMT proposal as a significant shift in focus in the level of responsibility machine operators must take for each reel of paper produced on the machines they operate. It is clear from the Company's proposal that it sees OMT as a means of increasing focus on machine performance and enhancing the sense of 'ownership' that operators have for the output. However it was apparent from the evidence of the union witnesses that this emphasis on 'ownership' is already a feature of existing arrangements. Operators literally put their name on the label of each reel of paper produced and are encouraged to see it as their work. While OMT may increase that sense of ownership, I do not apprehend any such increase to be a substantial alteration of their responsibilities.

[33] The operators also already use all the existing test results – whether those they already do for weight and thickness, or those in the suite of tests presently conducted by laboratory staff – to make adjustments to their machines. They already have an understanding of the meaning and application of the data generated by the tests.

[34] Similarly there in no essential difference in the nature and process of the tests presently done by the operators from those done by the laboratory staff. Operators presently prepare the sample, place it on a piece of measuring equipment, observe a result and record that result for the weight and thickness tests. That is – again, in essence – the same process that is followed by laboratory staff in carrying out the tests that they do. It is true that there are some differences – one being careful observation of timing on some tests, and another being use of new or different electronic equipment.

[35] The Company estimates that acquiring the skill to carry out the processes required for the additional tests included in OMT would take up to two two-hour sessions. I was satisfied from the evidence of Roy Ormiston and Brian Fahey that this estimate was made with some care. Even if they have significantly underestimated the training time needed for operators to familiarise themselves with the test processes and skills needed to carry them out, and, say, as much as eight hours in total was required, I do not consider additional testing processes that can be learned within that short a period amounts to a substantial alteration of their skills and abilities to carry out their range of duties.

[36] Standing back and looking at the evidence on this point as a whole and considering the changes required as a matter of fact and degree, I do not consider them to amount to a substantial alteration of duties. Accordingly, I find it is a change that is open for the Company to seek without first renegotiating rates of pay.

[37] I note in passing however that this is an assessment solely for the purposes of the issues presently before the Authority. It is not an assessment of the value and overall skill of the work required or the benefits of efficiency and effectiveness of the changes being made. That is, no doubt, something, among other factors, that will be considered during eventual re-negotiation of the CEA and the pay rates provided under it but is a bargaining matter beyond the scope of this determination and the role of the Authority under the Act.

[38] There were other objections by the union witnesses about how effective the change to OMT might really be. They gave evidence regarding their existing workloads and range of duties and question whether the additional tests can properly be carried out while continuing to maintain standards of operation and output across their jobs. The Company, by contrast, was confident, relying on overseas studies and

visits made by its managers, that the changes sought operated well in similar mills without causing the problems apprehended by the Union witnesses.

[39] I have not discounted the Union witnesses' concerns but, as discussed at the investigation meeting, consider they fall into the area of the Company's "right to be wrong". The risk that OMT might be a 'bad call' is part of managerial prerogative. If the implementation of OMT is not as effective as anticipated, the Company and its managers must account for that and the Union and its members cannot be said to have failed to have met any obligation to warn of potential problems.

Lawful and reasonable instruction

[40] In light of the conclusions reached above I am satisfied that the Company may take the steps contemplated to introduce OMT, including requiring operators to undertaking the training necessary for them to carry out the additional tests.

[41] The instructions to do so are within the scope of the operators' contractual obligations, do not require performance of illegal acts and are not impossible or dangerous. In short, they are lawful and reasonable instructions.

Consultation

[42] From 15 March 2007 the Company embarked on an extensive consultation process on proposals for change, including those to reduce jobs in the laboratory, require operators to carry out OMT and, four months later, selection criteria for staff to be retained, redeployed or made redundant as a result of any changes implemented.

[43] Employee Relations Manager Susan Gibbs produced a folder containing 355 pages of copies of the notices, presentations and meeting notes which confirm that a thorough process of consultation over various proposals was planned and attempted by the Company in the period from March through to August 2007.

[44] The extent and content of consultation on some proposals – such as changes to an arrangement for additional staff (the utility pool) and staffing in the plant's yard – were not at issue in the present matters.

[45] In other areas – such as the Company's decision to reduce the number of jobs in the laboratory – the Union did not agree with the decision but took no issue its final

submissions with the process of consultation and how it was carried out. And the Company's original proposals on staffing arrangements for all three paper machines were changed following alternative proposals being made by the workers on those machines, demonstrating some openness and flexibility in the process and the outcomes sought.

[46] However there are two areas where both parties – for different reasons – say that consultation went awry and the obligations were not met. The Union says the Company's attempts at consultation on OMT and redundancy selection criteria were premature as the situation with the jobs of laboratory staff had not first been resolved. The Company, in turn, complains that the Union and its members did not properly take part in those processes but that their refusal to participate cannot be used to deny that consultation was attempted and carried out to the best of its ability.

[47] On both points I find for the Company. It is clear that extensive opportunities were provided for workers on whom the proposals might have an adverse effect to have their say. At a formal or official level the Union, through the person of senior delegate Denis Fahey, attended a series of consultation meetings on the OMT proposal and the selection criteria. However the process was stymied, to some extent, by operators not attending a number of meetings called for the purpose of consultation. By what was probably informal agreement between themselves, the operators appear to have taken the view that by not participating they could slow down or prevent the prospect of a reduction in the number of laboratory jobs and the introduction of OMT. It was, I consider, an approach which any impartial observer would recognise as a concerted campaign of passive resistance by those Union members. Whether that breached any requirements of good faith – to be active, constructive, responsive and communicative – I need not decide but I am satisfied that the Union cannot claim the process of consultation was consequently inadequate or needs to be repeated.

Selection criteria

[48] The outstanding issue is whether the selection criteria for redeployment and redundancy developed by the Company are consistent with the terms of clause 22 of the CEA. The Union argues that the criteria adopted do not apply what it considers as the customary practice of selection on the basis of seniority but rather would allow the Company to use the process to select people to be retained in remaining jobs

according to the Company's assessment of who is the 'best person'. The Company considers the criteria are consistent with clause 22 and its provision for selection for redundancy to be based on "*a lawful selection methodology*".

[49] Headed "*Redundancy*" clause 22 sets out over four-and-a-half pages its intention, general principles, definitions, consultation requirements, process, and redundancy compensation provisions. It need not be set out in full here.

[50] Relevant principles stated include commitments to prefer voluntary redundancy, use redeployment opportunities, and "*to ensure that people who remain with the Company have the appropriate skills to meet the future needs of the business*".

[51] The redundancy process is set out in sub-paragraphs numbered a) to m). As submitted by Ms Beck, it sets out a six-step sequence for considering voluntary redundancy, redeployment, other alternatives and, finally, selection for remaining roles if compulsory redundancies are required.

[52] Voluntary redundancies are allowed for in two ways – firstly in the affected area and secondly in other areas. The second provision allows for the possibility of freeing up positions elsewhere in the company where a person being made redundant in the directly affected area might be redeployed.

[53] Where there are more volunteers than needed in either a directly affected area or another area, the Company is stated by the terms of clause 22 to be able to make a choice between those volunteers "*on the basis of work area skill requirements and individual circumstances*" and then "*all other things being equal, first on first off will apply*". I take these provisions to mean that provided a volunteer for redundancy does not have particular work skills that cannot be dispensed with and no special, individual circumstances (whatever that might mean), all volunteers are to be ranked for voluntary redundancy on the basis of seniority ("*first on*") with the effect that the Company will generally have to make the person with the largest redundancy compensation entitlement redundant before others.

[54] The point to note from these provisions is that they entitle the Company to assess the skill requirements of the "*work area*" but not individually assess the skills and attributes of all the workers. The hypothetical example used during the investigation meeting was that of an electrician and two trade assistants in a

maintenance department which needed to reduce its positions from three to two. Work area skill requirements would not allow for the electrician to volunteer for redundancy – because the department could not operate without those skills – but both trade assistants could volunteer, and the one with the longest service would have priority for voluntary redundancy.

[55] In deciding redeployment of workers to other areas – described as "work area transfers" – the terms of clause 22 allow for the Company to consider "*whether employees to be redeployed meet the selection criteria for the vacant position and are able to achieve a satisfactory level of competence within an agreed timeframe*". Here the Company is authorised to make an assessment of the worker's present skills, experience and attributes against whatever selection criteria are set for the vacant position and also his or her capacity to become competent if further training is required.

[56] The last step in the process occurs where all voluntary redundancy, redeployment and retraining options have been exhausted. At that point – where the company is requiring 'compulsary redundancy' – two scenarios are allowed for. Where the redundancies result from closure of an asset or cessation of a service, it is the workers remaining in those positions who are to be made redundant. Where the redundancies result from "*partial demanning*" in a work area, the Company is simply required to adopt an unspecificed "*lawful selection methodology*".

[57] Doug Longdill explained that the selection criteria developed by the Company – and on which it had endeavoured to consult with staff – were envisaged as being such a "lawful selection methodology" that the Company could apply it to any necessary choices to be made between workers throughout the process, including earlier decisions about selection for voluntary redundancy and "work area transfers".

[58] The criteria developed are set out in five key headings: Technical, Problem solving, Values, Teamwork and Communication. Each involves a self assessment by the worker and an assessment by his or her supervisor. The technical area includes "an appropriate proficiency test". The other areas include an interview. The worker is to be provided with all supervisors' assessments – based on answers to 15 questions set out under the key headings – and an opportunity to discuss and comment on them in interviews. The worker's employment record, including attendance, disciplinary issues and health status would also be considered.

[59] The Values heading – with questions about the worker's honesty, respect for others, empathy, self-expectations, reliability and carefulness and thoroughness in performing tasks – highlights the subjective nature of some of the criteria set out. However the Company witnesses defended this as being an open and transparent process of evaluating inevitably subjective considerations, and one which the worker would know of – through being provided the supervisor's comments – and be given a proper and fair opportunity to comment on and challenge in interviews.

[60] Harold Appleton for the Union accepted that, while skills were the priority in such decisions, values could be a relevant consideration – with the Company being entitled to prefer workers who "turn up on time and don't steal your tea".

[61] However what remains at issue is whether the Company, in the circumstances of reducing number of positions, can properly use such criteria to identify the 'best person' from among those it must choose to either retain or make compulsorily redundant. That, the Company says, is consistent with the principle in clause 22, noted above, that those remaining after a redundancy process should have "*the appropriate skills to meet the future needs of the business*".

[62] The Union's position is that such a qualitative assessment is not consistent with the general approach of clause 22 – particularly where it ultimately allows for selection on the basis of seniority in cases of voluntary redundancy and redeployment.

[63] Essentially the debate between the parties is a long-standing one between unions and employers. Obviously a company in circumstances of having to reduce job numbers wants to keep its most able and enthusiastic staff. Equally a union will endeavour to ensure all workers are treated equally and reduce the prospect that any selective process by an employer might allow for favouritism or vendetta in making decisions on who stays and who goes.

[64] This determination cannot resolve that ongoing debate, to the extent that it is present in the tension between these particular parties and any ambiguity in the wording of the present CEA. That is a matter only they can definitively resolve in the terms they agree in any future collective agreements. The Authority's role is to construe the wording of the present agreement, primarily on the plain meaning of the words used, as here in Clause 22.

[65] On that basis I accept the Union's submission that the provisions for voluntary redundancy and work area transfers refer to work area skill requirements and not what were described as "people requirements". The evidence was that the level of training and experience present throughout workers at the mill is such that they will all generally meet work area skill requirements, and are usually trained to be able to perform at the grade or level above which they presently work. They would all be expected to meet the minimum requirements and standard competencies of their positions. In that situation – and assuming any choices are between workers all doing the same job type at the same level – there is no issue of selection, expect on the seniority basis set out in the respective voluntary redundancy and transfer provisions.

[66] It is only in the area of compulsory redundancy that the selection criteria recently developed by the Company could be applied, should it need to do so at any time while the present provisions of clause 22 are in force. Those provisions on compulsory redundancy do not require such selection to be based on the seniority basis expressly required for voluntary redundancies and work area transfers.

[67] The absence of such an express reference – and the inclusion of a much less specific requirement that any selection methodology simply be "*lawful*" – confirms that interpretation.

[68] To be lawful the methodology must not be inconsistent with the CEA. As construed here, having a selection methodology that does not give preference to seniority in deciding compulsory redundancies is not inconsistent with the CEA. Further the selection methodology and its application must not offend against other requirements of the law, such as prohibitions against discrimination found at s104 and s105 of the Act. On its face the present selection criteria developed by the Company – including the questions set out in the "assessment score sheet" – do not. If they were used in a way which was discriminatory, such an action would be unlawful (and could be the subject of an unjustified disadvantage grievance) but it would not make the methodology itself unlawful.

[69] Having reached that point – and by the time of the investigation meeting, there being no immediate need for the use of the selection criteria developed – it seems likely in any event that the parties will look more closely at the terms of Clause 22 in upcoming negotiations on renewing the present CEA, due to expire in January 2008. It is apparent that clause 22's present wording is not as clear or uncontroversial

about the process as both parties may earlier have thought. If changes are agreed, the selection criteria developed by the Company and applicable to at least part of the process may require adjustment, which in turn would provide a further opportunity for input from the Union and its members. All parties benefit from having a clear understanding of what is to happen and the criteria to be applied at each step of the process from voluntary redundancy through to redeployment and retraining and, as a last resort, mandatory redundancy.

Determination

[70] In respect of the issues identified earlier, the following summarises the answers reached in this determination:

(a) OMT is within the scope of the current role of paper machine operators and is not a substantial alteration to their duties.

(b) The Company may lawfully and reasonably instruct operators to undertake training on OMT and to carry out OMT.

(c) The Company has met its contractual and statutory good faith obligations in consulting, or attempting to consult, with the Union and its members over proposals to reduce laboratory jobs, require operators to do OMT and to develop a selection process for redeployment and redundancy.

(d) The Company's selection criteria are within the terms of clause 22 of the CEA in respect of provisions for compulsory redundancy, but do not oust the contractual terms regarding selection for voluntary redundancy or work area transfers.

(e) No other declarations or orders are needed.

Costs

[71] Both parties' statements of problems included claims for costs on their applications. My preliminary view, in the circumstances of the disputes dealt with here, is that costs would best lie where they fall, however if either party has a contrary view and wishes to pursue costs, they may do so in the following way. The parties are first encouraged to resolve the matter between themselves. Each has experienced counsel familiar with the Authority's usual approach to costs. If they are not able to

agree and want the Authority to determine costs, either party may lodge and serve a memorandum on costs within 28 days of this determination. The other party may then lodge and serve its memorandum as to costs within 14 days.

Robin Arthur
Member of the Employment Relations Authority