Determination Number: AA 4/07
File Number: 5074518

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN	NZ Amalgamated Engineering Printing & Manufacturing Union Inc (Applicant)
AND	Air New Zealand Limited (Respondent)
REPRESENTATIVES	Kathryn Beck for Applicant P A Caisley
MEMBER OF AUTHORITY	Ken Raureti
INVESTIGATION MEETING	Determined by confernce consultation and on the papers.
DATE OF DETERMINATION	10 January 2007

DETERMINATION OF THE AUTHORITY

Application for removal of matter to the Court.

[1] The NZ Amalgamated Engineering Printing and Manufacturing Union (EPMU) have made an application for removal of its employment relationship problem to the Employment Court. The Application is made pursuant to s.178 of the Employment Relations Act 2000 on the grounds that the proceeding is of such a nature and of such urgency that it is in the public interest that it be moved to the Court and in all the circumstances the Court should determine the matter.

[2] It says that important questions of law have arisen or are likely to arise in this matter other than incidentally.

[3] In October 2006 Air New Zealand tabled a proposal to outsource certain parts of its ground handling operation which, if it goes ahead will affect approximately 1700 employees. The NZ Amalgamated Engineering Printing & Manufacturing Union and the Service and Food Workers Union allege that Air New Zealand has failed to comply with its obligations of good faith towards the Unions and its employees in the following ways:

(i) By failing to act in a way that is constructive in establishing and maintaining a productive employment relationship (s.4 (1A) (b));

(ii) By refusing or failing to provide all relevant information with regard to the business and change strategy to the unions and its employees (s.4 (1A) (c) (i));

(iii) By refusing or failing to provide the Unions and its employees an opportunity to comment on the business and change strategy (s.4 (1A) (c) (ii));

(iv) By refusing or failing to provide the Unions or its employees an opportunity to comment on the categorisation of airport services as non core before a decision was made on the

categorisation of airport services as non core, and a decision being made to propose contracting out of the ground handling work (s.4 (1A) (c) (ii));

(v) By engaging in conduct that mislead or deceived the Unions and its members and/or was likely to mislead or deceive the Unions and its members (s.4 (1) (b)) and by engaging in conduct that undermined or was likely to undermine the Unions as bargaining agents for its members.

(vi) By failing to genuinely consult with the Unions in regard to the review of ground handling and the subsequent process under the applicable collective employment agreement.

[4] The EPMU also allege that Air New Zealand has breached various terms of the Collective Agreement and the Settlement Agreement dated 18 May 2006 in the following ways:

(a) By attempting to negotiate new terms and conditions of employment other than through the process set out at clause 5.

(b) By failing to manage employees through a management structure and responsible policies which promote involvement of staff and which are responsive to their whole hearted contributions (Collective Agreement clause 7).

(c) By failing to meet its commitment to prefer employing its own employees in its core and most of its non core operational functions (Collective Agreement clause 8).

(d) By failing to be guided by the objectives set out in clauses 7 and 8 in the collective Agreement (Collective Agreement clause 9).

(e) By failing to provide all relevant information to the Unions (Collective Agreement clause 9)

(f) By failing to ensure that all relevant information was available at the outset of the clause 10 process. (Collective Agreement clause 10 and schedule A paragraph 11 (c) Settlement Agreement)

(g) By having predetermined that the only acceptable in house solution in the alternative to contracting out ground handling work, is one that significantly changes the terms and conditions of the affected employees, thus failing to give full and fair consideration to the Unions proposal, responses or enquiries during the Review process and the clause 10 process.

[5] The EPMU and the Service and Food Workers Union have filed proceedings in the Employment Court seeking interim injunctions and certain other remedies. The Employment Court has dealt with the application for interim injunction by way of a Judicial Settlement conference and consent orders were issued. The Court has set the matter down for a substantive hearing for 7 days commencing 8 February 2007.

Air New Zealand supports the application for removal to the Court.

[6] Air New Zealand says the company has been conducting a consultation process with its staff and the relevant unions including the EPMU. It says the problem that has been filed with the Authority raises exactly the same issues, both legally and factually as the proceedings that are already before the Court and as a result the company supports the application of removal to the Court on the grounds set out in s.178 (2) (c) in that the Court already has proceedings before it between the parties that involve the same or similar or related issues.

[7] Air New Zealand does not oppose the application pursuant to s.178 (2) (a) and (b).

Determination.

[8] It is my view that an important question of law is likely to arise in the matter other than incidentally surrounding the duty of good faith particularly in s.4 (1A) of the Act. The Court already has before it proceedings which are between the parties, and the factual and legal issues arising are interrelated and in many instances substantially similar. I am of the opinion that in all the circumstances, removal of the proceeding is appropriate and the Court should determine the matter.

[9] Therefore, pursuant to s.178 of the Employment Relations Act 2000, the application for removal of the whole matter to the Court is granted.

Ken Raureti
Member of Employment Relations Authority