

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN NZ Amalgamated Engineering, Printing & Manufacturing Union Inc.
(Applicant)

AND APN Print NZ Ltd (Respondent)

REPRESENTATIVES Anne-Marie McNally, for Applicant
Susan Hornsby-Geluk, for Respondent

**MEMBER OF AUTHORITY
INVESTIGATION MEETING** Marija Urlich
9 February 2007

DATE OF DETERMINATION 21 February 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] APN has given notice to day shift employees of a change in start time from 7am to 6am. The EPMU seeks an urgent determination in its favour of the following issues:

- (i) a dispute about the necessity of securing agreement to change day shift start time to begin outside the span of ordinary hours provided by the collective agreement; and
- (ii) if it is held that APN is able to effect the change it desires by giving the 30 days notice, a determination that effective notice has not yet been given.

[2] By agreement of the parties the remaining questions posed in the statement of problem will not be dealt with.

[3] APN says that it has engaged in an extensive consultation process with the EPMU and that it was entitled to give notice of the intended change when agreement was unable to be reached. APN says that following consultation and notice it is contractually entitled to change start and finish times and existing shift patterns.

The CEA

[4] The relevant terms of the collective employment agreement provide:

"3. HOURS OF WORK

- 3.1 *Employment shall be on a weekly basis and the minimum wages prescribed shall be paid for 40 hours which shall be on any five days of the week. (NB: The attention of the parties is drawn to the provisions of clause 4 (Shifts) and sub-clause 2.1, which set out the shift definitions and the methods of calculating the ordinary weekly wage.)*
- 3.2 *The ordinary hours of work shall be counted continuously each day from the time of starting work, excluding one meal interval as provided for in clause 3.6 (Meal Intervals).*
- 3.3 *The Company may from time to time alter the Employee(s) times for starting and finishing work according to the requirements of the business. Prior to altering the times the Company will consult*

the Employee(s) directly affected. If no agreement is reached the Company will give at least one month's notice of the alteration of times.

3.4 *When the employee is required to transfer to another shift in an emergency he or she shall have at least ten hours off work before recommencing his or her normal shift. The total week's wages shall not be less than the Employee's ordinary weekly wage for forty hours.*

3.5 *Notwithstanding sub-clauses 3.1 and 3.2 the ordinary hours of work and/or conditions may be varied by agreement between the Company and any Employee(s) (e.g. the introduction of a new shift roster where employment shall be on a monthly basis and the minimum wages prescribed for 160 hours which shall be worked over any days of the week.)*

...

4. SHIFTS

4.1 *Shifts may be worked as and when required by the Company. The ordinary hours of work shall be defined as follows:*

4.1.1 *A "day shift" is one in which the starting time is not earlier than 7.00am and the finishing time is not later than 6.30pm.*

4.1.2 *An "afternoon shift" is one in which the starting time and the finishing time is between 12.00 midday and 11.30pm.*

4.1.3 *A "night shift" is one in which the starting time and the finishing time is between 8.30pm and 8.00am.*

4.2 *The Company may from time to time introduce new or vary existing shift patterns as provided for in sub-clause 4.1 or transfer the Employee(s) between shifts. Prior to altering the shift patterns the Company will consult the Employee(s) directly affected. If no agreement is reached the Company will give at least one month's notice of the alteration to the shift patterns."*

The mechanism for change

[5] Ms Hornsby-Geluk submits that clauses 3.3 and 4.2 entitle APN to change start and finish times and existing shift patterns, including ordinary hours of work. She submits that under these provisions APN has a very wide discretion to transfer employees between shifts and create new shifts. She submits that if APN is enabled under the collective agreement to make such changes then the EPMU's argument as to the inviolability of the span of hours is not sustainable. Ms Hornsby-Geluk submits that clause 3.5 applies to a change to the number of hours worked per week rather than the pattern in which those hours are worked.

[6] Ms McNally submits that the specific definitions of ordinary hours of work must be read down against the general provisions for change of hours contained in clauses 3.3 and 4.2. She submits that the mechanism for change of the ordinary hours of work is clearly stated in clause 3.5 and is by agreement only. She submits that the consultation and notice provisions in clauses 3.3 and 4.2 can not apply to the definitions of ordinary hours of work because the clear wording of clause 3.5 provides the mechanism for change of those definitions.

[7] The parties have agreed, by way of their collective agreement, a mechanism for changing the ordinary hours of work (clause 3.5) and defined those ordinary hours of work (clause 4.1). Clause 4.2 provides a mechanism to introduce new shifts and vary existing shift patterns. The core dispute between the parties is whether clause 4.2 enables a variation outside the span of ordinary hours of work, specifically can APN change, by consultation and notice, the start of the day shift from 7.00am to 6.00am.

[8] Clause 3 expressly sets the ordinary hours of work outside changes to start and finish times (clause 3.5 "*Notwithstanding sub-clauses 3.1 and 3.2...*"). The parties have expressly defined shifts and their accompanying spans of hours as "*ordinary hours of work*" (clause 4.1). To maintain the integrity of the parties' expressed intention that those ordinary hours of work are to be changed by agreement it must be that "*existing shift patterns*" refers to shift patterns within the span of ordinary hours of work as defined in subclauses 4.1.1, 4.1.2 and 4.1.3.

[9] Any changes outside the span of hours set out in subclauses 4.1.1, 4.1.2 and 4.1.3 must be by agreement of the parties. The notice of change of start time is invalid.

Costs

[10] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If they are unable to Ms McNally should file and serve a memorandum within 21 days of the date of determination and Ms Hornsby-Geluk should file and serve a reply within a further 14 days.

Marija Urlich
Member of Employment Relations Authority