

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 240/07
5095026

BETWEEN

BRIAN WEBB
Applicant

AND

NZ TRAMWAYS AND
PUBLIC PASSENGER
TRANSPORT EMPLOYEES
UNION (AUCKLAND
BRANCH)
Respondent

Member of Authority: Dzintra King

Representatives: Paul Carrucan, Advocate for Applicant
Perry Davies, Advocate for Respondent

Investigation Meeting: 9 August 2007

Determination: 9 August 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Webb, filed a Statement of Problem alleging that the Tramways Union was disregarding its Rules, specifically Rule 27 which relates to ballots and the National Council.

[2] Four unions, including Tramways, have been engaged in negotiating a MUCA.

[3] Ratification was to take place by means of a postal ballot. The ballot took place and ratification was not achieved. Further negotiations are in train and the unions wish to carry out a further postal ballot.

[4] Mr Webb says that Rule 27 means that a postal ballot can only be conducted if it is approved by the National Council.

[5] Rule 27 states:

a) A secret ballot of the membership of the union may be taken nationally or in an area if the council so decides...

b) Such secret ballot may be conducted at a round of meetings of members called in accordance with rule 39 on a national or area basis as appropriate, or may be a secret postal ballot. The method of ballot may be determined by the council.

[6] Rule 39 relates to Branch meetings. This is different to a ratification.

[7] Rule 29 enables the formation of branches whose business is to be managed by a management Committee consisting of Branch Officers, namely the President, Vice President, Secretary or Treasurer – Rule 32.

[8] Rule 32 provides for the Management Committee to discharge various duties set out in Rule 34 (which includes the ability to “supervise the business and affairs of the Branch” by the Branch President) “and such other lawful duties and things as the Branch or the Committee may lawfully require, at such time or in such manner as the Branch or Committee may lawfully require”. I accept the submission that the Committee of the Auckland Branch may lawfully require a ratification ballot to be conducted by means of a secret postal ballot.

[9] Rule 22 provides that Branches shall:

- I. *Have the authority to deal with all matters relating to the Branch, and the Union from the point of view of the Branch;*
- II. *Have the power to enter into negotiations with local employers to obtain a collective agreement or award and to deal with any matter directly relating to conditions of employment*
- III. *Deal with any matter to achieve the objects of the union within the law and these rules*

[10] Rule 42 is headed Industrial Agreements and states:

Each Branch shall have the authority to negotiate directly with their employer representatives in their particular area and any agreements shall be executed under the Branch Seal and shall be signed by the Branch President and Branch Secretary.

[11] The Rules have not been updated to refer to the Employment Relations Act 2000 and its bargaining provisions. However, given that the Branch Secretary and the Branch President have the authority to negotiate I agree with the Tramways Union that they must also have the authority to enter into agreements regarding the process that will be applicable to the bargaining, which would include the method of ratification.

[12] There is no express prohibition regarding a postal ballot. Give that branches can enter into negotiations and sign any resulting agreement Branch Officers must also be able to determine related matters such as the ratification process.

[13] The Tramways Union has not had a functioning National Council for many years. In any event, the functions of the National Council as listed in Rule 22 a do not provide for any involvement in negotiating employment agreements. That function is expressly given to the Branches. It would make no sense, therefore, for the National Council to determine the ratification method.

[14] During the course of the Investigation I asked Mr Carrucan and Mr Webb to consider, given the fact that the National Council has not functioned for a very lengthy period, how any decision could be made regarding the ratification method if it required, as they contended, the involvement of the National Council.

[15] Mr Carrucan then asked me to consider Rule 39 (g) Meetings of the Branch. However, this is a circular argument because Rule 39 (g) refers back to Rule 27.

[16] I appreciate that Messrs Webb and Carrucan would prefer an all up stopwork meeting. However, in the circumstances, I cannot direct the method of ratification.

[17] The Tramways Union Rules do not prohibit a postal ballot and charge the Braches with negotiating employment agreements.

[18] Costs are reserved.

Dzintra King

Member of the Employment Relations Authority