

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 159/07
5084694

BETWEEN NZ AMALGAMATED
 ENGINEERING PRINTING &
 MANUFACTURING UNION
 Applicant

AND LYTTELTON ENGINEERING
 LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Jills Angus-Burney, Counsel for Applicant
 Grant Harsent, Advocate for Respondent

Investigation Meeting: 24 October 2007 at Christchurch

Determination: 21 December 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This matter is essentially an interpretation dispute between the parties. They have a generally collaborative approach to resolving any differences between them, and clearly have been unable to resolve this particular impasse. Given that situation, they have both sought a determination from the Authority.

[2] There are, in the Authority's view, matters relative to pay rates well known to the parties that do not need to be publicly aired in this determination. Accordingly, the Authority has decided not to make public the details of the rates of various workers engaged by the respondent, but to resolve the matter in question on the basis of evidence put before it without reference to these rates.

[3] This matter arose because the Metals Multi-Employer Collective Agreement (MECA) originally negotiated for a three year term in March 2005 provided for a

wage increase on 1 April 2006 equivalent to the greater of either the consumer price index (CPI) or the Metals MECA.

[4] What caused the difficulty in this case was that the MECA settled for a term expiring on 30 June 2006 not the expected 31 March 2006. The parties met in March 2006 to discuss a mechanism to adjust wages dated at 3 April 2006.

[5] The parties agreed that the CPI of 3.2% would apply, at that time, but if the Metals MECA settled at higher than 3.2%, any increase over that figure would be backdated to 3 April 2006.

[6] Around this time, the respondent faced a recruitment and retention difficulty in respect of qualified trades employees. It decided to lift the hourly rate of such personnel by \$0.80 per hour for the Trades Certificate classified workers. It says the increase was directly related to market conditions only and to avoid loss of, and to attract, trade qualified personnel in a competitive skilled trades market. The company said the increase was specific to the Trade Certificate classified employees and not to any other employees and was solely to address the need to retain and, if necessary, recruit other trade certificate qualified workers.

[7] In late June 2006, the Metals MECA settled with an increase of 4.25%. The company increased the pay rates for non-trade qualified staff by 1.05% and backdated the increase for those employees to 3 April 2006. This was in line with the agreement referred to above.

[8] The Unions then claimed that the 1.05% increase needed to be applied also to the rates of the trade certified staff on top of the \$0.80% increase provided by the company to meet market conditions.

The investigation meeting

[9] At the investigation meeting, the Authority heard, on behalf of the applicant, from Ron Angel, a Regional Organiser for the EPMU, Phil Yarrall, Branch Secretary of the Manufacturing and Construction Workers' Union, Andy Hickling, a delegate for the EPMU and from Ken Rogers, a delegate for the Manufacturing and Construction Workers' Union.

[10] On behalf of the applicant, the Authority heard from Doug Cockerell, the respondent's General Manager and from Bill LeWarne, the respondent's Workshop Manager.

[11] The Authority expresses its appreciation for the assistance afforded by all who appeared at this investigation meeting.

Analysis and discussion

[12] Having heard the firmly, but respectfully, presented views of the parties and having studied the few notes taken in various meetings, it is clear that the move to increase the trade certified qualified staff's rates was done unilaterally by the respondent, which later informed the relevant unions of its decision. There was no evidence that this move was opposed, at the time, by the Unions or by those who received this increment. Nor, it appears, was any query raised as to what would happen in the event the MECA settled above the CPI of 3.2%

[13] It is clear that the respondent, in respect of other staff, honoured its commitments given in respect of the increase in the settled MECA over the CPI.

[14] It was only following the settling of the Metals MECA that the EPMU claimed that the additional margin, that is of 1.05%, should also be applied to the pay rates of the qualified trade staff covered by the collective agreement, excluding the 80cents additional component given to the trade certificated employees earlier.

[15] To resolve this issue, I have looked at the notes available to the Authority of meetings held on 16 March 2006 and those of a meeting on 11 July 2006. Included in the notes for the 16 March meeting there is a note which reads:

*This 80c will **include** the CPI increase and whatever the Metals settlement is.*

[16] Following the settlement of the Metals MECA, Doug Cockerell issued a memo to Payroll on 27 June 2006 instructing staff *please also the pay increase for all those staff **who did not receive the 80c** from 3.2% to 4.25% and back pay the difference to 3 April 2006 when the original increase took effect.* [Emphasis is mine]

[17] These documents clearly indicate that the respondent had attempted to make clear it was not considering a "double dip" by trade qualified staff. To be fair, I think that the company failed to formally clarify that this additional \$0.80 for trade

certificated personnel would result in those personnel not receiving any possible further increase if the CPI came in higher than the estimated 3.2%. Had it done so, the dispute is unlikely to have arisen.

Determination

[18] On the basis of the evidence before the Authority, I find that the trade qualified personnel employed by the respondent are not entitled to an additional increase of 1.05%.

Costs

[19] As this was a matter in the nature of a test case, I am minded to let costs lie where they fall. If counsel disagrees with that proposition, she and the advocate for the respondent are to attempt to resolve the issue of costs between them. Should that not be successful, leave is reserved for Ms Angus-Burney to lodge and file her memorandum. Mr Harsent is to have a further 14 days after date of receipt of counsel's memorandum to file a memorandum in reply.

Paul Montgomery
Member of the Employment Relations Authority