

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 38/08  
5073205

BETWEEN                      NZ Tramways & Public  
   Passenger Transport Authorities  
   Employees IOUW (Wellington  
   Branch)  
   Applicant

AND                              Cityline (New Zealand) Ltd  
   trading as Cityline Hutt Valley  
   First Respondent

And                                Wellington City Transport Ltd  
   Second Respondent

Member of Authority:        Denis Asher

Representatives:             Paul McBride and Melanie Brewer for the applicant  
   Andrew Caisley for the Companies

Investigation Meeting:        Wellington, 30 & 31 January 2008

Determination:                8 April 2008

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**CONSENT DETERMINATION OF THE AUTHORITY**

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- [1] This employment relationship problem has its origin in a statement of problem filed by the Union on 30 November 2006 in which, amongst other things, it challenged the status of a purported collective agreement known to the respondents as the WUBCA (Wellington Urban Bus Collective Agreement).
- [2] By way of a decision dated 19 September 2007 (WC 23/07) the Employment Court confirmed the Authority had jurisdiction to declare a collective employment agreement void *ab initio* and that such a declaration was not precluded by s. 163 of the Employment Relations Act 2000.
- [3] Arising out of discussions initiated during the Authority's resumed investigation in January of this year the parties advised they had reached a settlement of all matters associated with this problem.
- [4] They asked that the settlement, as set out in the attached joint submissions of the parties dated 10 March 2008, be incorporated into a consent determination by the Authority.
- [5] The parties have also provided the Authority with a memorandum recording terms of partial settlement dated 14 March 2008: it is not part of this consent determination and has been drafted for signing off by a Department of Labour mediator.
- [6] A condition of my agreement to the parties' joint request was written confirmation from the unions – namely the Central Amalgamated Workers Union (CAWU) and the Hutt Valley Society of Independent Drivers (HVSID) – who were parties to the WUBCA, but who declined the invitation extended to them under ss. 129 (2) of the Act to participate in the Authority's investigation – that they had seen and agreed with the parties' joint submissions.
- [7] Written confirmation was received from the two unions in identical letters dated 28 & 31 March 2008 stating that they have no objection to the Authority issuing the proposed determination.
- [8] The effect of this consent determination, as set out in the attached joint submissions of the parties, and with the agreement of the other relevant parties to it, is that the WUBCA in respect of the second respondent, the CAWU and the HVSID, and its employees, is declared void *ab initio*.

[9] The parties are to be commended for settling this complex and frustrating problem on their own terms.

**Denis Asher**

**Member of the Employment Relations Authority**

***Before the Employment Relations***

***Authority at Wellington      WEA 5073205***

**Under** the Employment Relations Act 2000

**In the matter of**      an application for declarations and penalties

between

**NZ TRAMWAYS & PUBLIC PASSENGER TRANSPORT AUTHORITIES EMPLOYEES  
IUOW (WELLINGTON BRANCH)**

Applicant

and

**CITYLINE (NEW ZEALAND) LTD trading as CITYLINE HUTT VALLEY**

First Respondent

And

**WELLINGTON CITY TRANSPORT LTD**

Second Respondent

**JOINT SUBMISSIONS OF THE PARTIES**

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**Dated:    10 March 2008**

**MAY IT PLEASE THE AUTHORITY:**

The parties are making good progress towards finding a way to resolve the Employment Relationship Problem between them in a manner that will give certainty, avoid any appeals, and create a better working relationship for the future, and in particular for the next round of collective bargaining which will begin shortly between the Tramways Union and WCTL.

To progress matters further, Counsel respectfully request the opportunity to meet with the Authority to discuss whether the Authority would be willing to issue a determination in line with the following.

**1. Introduction**

- 1.1. CLHV and WCTL between them employ approximately five hundred bus drivers in the Wellington region and provide passenger bus services in Hutt Valley and Wellington City.
- 1.2. The respondents' driver employees are represented by three unions, namely the Tramways Union, the CAWU and what the respondents refer to as HVSID.
- 1.3. The current proceedings have been brought by one of the unions (Tramways):
  - a. Challenging the validity of the collective agreement (known by the Respondents as the WUBCA) negotiated by the other two unions;
  - b. Challenging the validity of the WUBCA as a MECA; and
  - c. Challenging certain actions of the respondents, which are alleged to have unfairly promoted the WUBCA over the collective agreements negotiated by the Tramways Union; and
  - d. Challenging certain actions of the respondents, which are alleged to have unfairly made it easier for other unions to recruit members and more difficult for the Tramways Union to recruit members.

- 1.4. The original statement of problem was filed by the applicant on 30 November 2006. On 18 December 2006 the Respondents filed Statements in Reply. On or around 2 April 2007 the Tramways Union (Wellington Branch) filed an Amended Statement of Problem in the Employment Relations Authority.
- 1.5. On 4 April 2007 the parties attended mediation. Mediation did not resolve the matters at issue.
- 1.6. On 11 April 2007 the parties attended a preliminary hearing in the Employment Relations Authority to consider certain preliminary issues raised by the Respondents. The Authority issued a determination on 16 April 2007. The Tramways Union (Wellington Branch) challenged that determination successfully in the Employment Court.
- 1.7. As a result, the matter returned to the Employment Relations Authority for a substantive investigation. That investigation was scheduled for 29 and 30 January 2008.
- 1.8. The CAWU and the HVSID were advised of the proceedings and invited to participate, but each Union separately advised the Authority that they did not wish to be heard.
- 1.9. As is often the case in dynamic industrial matters, there have been significant developments in the period between November 2006 when the proceedings were filed, and January 2008 when the substantive investigation meeting eventually began.
- 1.10. In part as a result of these developments, and in part in response to the nature of the matters at issue, the Authority met with the parties in the afternoon of the first day of the investigation and again strongly encouraged them to consider settling the proceedings.
- 1.11. In suggesting this to the parties, the Authority noted that even if the WUBCA were held to be void *ab initio*, as the applicant contends, any practical outcome might be limited.
- 1.12. On the other issues, which particularly centred on the way in which the unions are given access to new employees, it appeared that (while recognising past breaches by the respondents – which were admitted) the parties had moved a long way towards settlement of future matters in any event. The Authority has since been advised that settlement of these issues has been reached and no determination from the Authority in respect of those matters is now sought.

- 1.13. In light of the Authority's comments, and the evidence that had been heard up to that point, the parties adjourned the investigation to further consider options for settlement.
- 1.14. The parties were able to reach agreements on a number of the matters at issue, in a way that will:
- a. Ensure that the Tramways Union has an opportunity to introduce itself to new employees in a manner which meets the requirements of good faith, and also the requirements of the collective agreement between the Tramways Union and WCTL; and
  - b. Resolve the Tramways concerns about the WUBCA and provide all parties with certainty about the status of that document prior to the commencement of the next round of negotiations between Tramways Union and WCTL.
- 1.15. The parties jointly invited the Authority to resolve the Employment Relationship Problem between them by issuing a determination recording the agreements reached in respect of the WUBCA.
- 1.16. Prior to doing so, the Authority discussed the proposed determination with the CAWU and the HVSID. Each of them confirmed to the Respondents that the proposed determination was acceptable to them and they consented to it being issued.

## **2. The WUBCA**

- 2.1. The applicant has challenged the process by which the WUBCA was created and was initially seeking an order that the WUBCA be declared void *ab initio*.
- 2.2. By way of a decision dated 19 September 2007 (WC 23/07) the Employment Court has confirmed that the Authority has jurisdiction to declare a collective agreement void *ab initio*, and that such a declaration is not precluded by s163 of the Employment Relations Act 2000.
- 2.3. Following the discussions between the parties referred to above, and as one facet of a settlement, the applicant has now withdrawn its application against CLHV to have the WUBCA declared void *ab initio*. As a result, the WUBCA will remain in full force and effect as between the CLHV and the CAWU and HVSID.

- 2.4. The Tramways Union are however pursuing their application against WCTL to have the WUBCA declared void *ab initio* in so far as it relates to WCTL and its employees.
- 2.5. From the evidence provided to the Authority prior to the investigation being adjourned, it appeared clear that there were deficiencies in the processes required to be carried out to create a valid collective agreement. Those include:
- a. the absence of a secret ballot of WCTL employee members of CAWU/HVSID, prior to initiation of bargaining ;
  - b. the absence of advice about the initiation of bargaining by WCTL to its employees about the initiation of bargaining as required by s43 of the Act;
  - c. the absence of a proper ratification vote undertaken by any employees of WCTL.
- 2.6. WCTL, CAWU and HVSID have each indicated that they are not opposed to the declaration being sought by the applicants *vis a vis* WCTL.
- 2.7. In these circumstances, the Authority considers it appropriate to issue a declaration that the WUBCA is void *ab initio* as between WCTL and CAWU and HVSID.
- 2.8. For the sake of clarity, the Authority notes that the employees of WCTL who, up until this declaration have been treated as being employed on the WUBCA, will (subject to the Act, union membership, and coverage of the Tramways CEA) continue to be employed on IEAs based on the terms and conditions of the WUBCA. They are at liberty to initiate bargaining for a new collective agreement through their union at any time, provided they follow the required statutory processes.
- 2.9. WCTL has advised the Authority that it will now amend its appointment letters, processes and procedures to reflect the fact that the WUBCA no longer exists in respect of WCTL. The Respondents accept that as part of this, the identity of the employer will need to be made clear to employees and to the Tramways union at the outset. No orders regarding this are necessary at the present time, although in the event that the applicant considers required changes have not been adequately made, leave is reserved to it to refer the matter back to the Authority.

- 2.10. Insofar as WCTL has been acting up till now in the belief that the WUBCA has been in force, it has made various statements, issued various communications and taken various actions that can now be seen to be incorrect. Since WCTL did not know at the time that the WUBCA would be declared void *ab initio*, no issues of lack of good faith are being pursued in connection with those statements, communications and actions. The applicant does not seek any declarations, orders or remedies in this regard.
- 2.11. For the avoidance of doubt however, leave is also reserved for the applicant to refer matters back to the Authority in the event that it considers that WCTL fails to take appropriate corrective action to reflect the declaration contained herein.