

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 221A/08
5120622

BETWEEN BRIAN WEBB and BYRON
 KNIGHT
 Applicants

AND NEW ZEALAND
 TRAMWAYS AND PUBLIC
 PASSENGER TRANSPORT
 EMPLOYEES' UNION
 INCORPORATED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Paul Carrucan, advocate for Applicants
 Peter Cranney, counsel for Respondent

Consideration of Papers: 31 July 2008

Determination: 31 July 2008

DETERMINATION OF THE AUTHORITY (No 2)

[1] In a determination dated 27 June 2008 (under AA 221/08), the Authority ordered the Tramways Union to comply with its registered Rules and in particular the rule requiring a National Council of the union to be elected every four years. The Rules require that Council to have an annual meeting in November to approve the annual audit, appoint an auditor, receive the annual report, and to conduct any other business.

[2] The Authority in its determination held that the Tramways Union had failed for 10 years or more to provide for and maintain a National Council. The last election to the positions of National Council office were apparently held at some time before 1992.

[3] By injunction the Tramways Union was ordered by the Authority to comply with the requirements of Rule 21 in relation to the election of National Council

officers and to do so in time to allow an annual meeting of the Council in November of this year, 2008.

[4] The Authority ordered that, in accordance with Rule 21(d), nominations are to be called for by notice posted on workplace and other noticeboards which are accessible to all members of every branch of the Union, stating the time, manner and conditions by which candidates for election may be nominated.

[5] Further in its determination the Authority fixed 30 September 2008 as the closing date for nominations. These are required to be called for no less than seven days before the closing date.

[6] The Authority directed Mr Peter Cross, Secretary of the Auckland Branch of the Tramways Union, and Mr Perry Davis, Auckland Branch Vice President, to jointly act until the election has been held, as the National Secretary of the Tramways Union. They are to carry out the functions required of that office under Rule 21(d).

[7] Mr Cross and Mr Davis were directed to appoint a suitable person to be Returning Officer for the purposes of the election.

[8] They were also directed to ensure that nominations are called for and the voting is held and completed in time to allow an AGM of the National Council in November 2008.

[9] By memorandum of 28 July 2008 counsel for the Tramways Union, Mr Cranney, advised the Authority that Mr Cross and Mr Davis had appointed the President of the New Zealand CTU, Ms Helen Kelly, as Returning Officer for the election.

[10] Mr Cranney sought a variation to the Authority's orders to allow nominations to close at the earlier date of 8 August 2008, rather than 30 September.

[11] In this latter regard Mr Cranney referred to the ability of the National Council at an AGM held in November this year constitutionally to consider and adopt any proposals made for changes to the Union's rules. They were last amended in 1990 and are clearly now long overdue for revision.

[12] Rule 44 requires proposals for amendment to the rules to be made by remit to the next AGM of the Council, the remit having been forwarded to the Secretary of the Union no later than two months before the date of the AGM.

[13] If the meeting of the National Council anticipated for 30 November 2008 is to allow consideration to be given to rules changes, any remits will need to be forwarded to the National Secretary of the Union no later than 30 September 2008. That was the date fixed by the Authority for nominations to close for the positions of officers of the Council. For proposals to change the rules to be before the Council at its AGM in November 2008, a date earlier than 30 September must be set for the closing of nominations.

[14] In response to Mr Cranney's memorandum, on behalf of the applicants Mr Carrucan has advised that they are opposed to any CTU involvement in the restoration by election of the National Council, as ordered to take place. Mr Carrucan also advised that the applicants are opposed to a close off date of 8 August 2008 for nominations. Their objection is that 8 August (now only one week away) will not allow enough time for anyone to prepare and circulate statements to the wider membership or to disseminate information to the Union constituency about the Union and its officers and any of their activities that might be of interest or concern to anyone taking part in the election.

Returning Officer

[15] As to the nomination of Ms Kelly as the Returning Officer, the Authority declines to make any directions in that regard. Mr Cross and Mr Davis were given the discretion to nominate the returning officer, although the Authority did suggest that the CTU and/or the Registrar of Unions might be approached by the parties for assistance. The CTU was not involved in the investigation of the matters brought before the Authority by Mr Webb or Mr Knight and any assistance it gives will be on a voluntary basis only.

[16] In any event the CTU itself has not been nominated as the Returning Officer, it is Ms Kelly who is to discharge that responsibility. No reasons have been given by the applicants as to why the Authority should interfere in the nomination of Ms Kelly as Returning Officer. The applicants' dislike or distrust of the CTU is not a reason.

[17] As stated in its determination of 27 June 2008, the Authority should intervene as little as possible in the governance and management of the Union and should leave the Rules as far as possible to provide guidance and direction to union members and officers.

Closing date for nominations

[18] I agree with the applicants' objection that the date of 8 August 2008 for the closing of nominations for the National Council election will allow only an unreasonably short timeframe for any campaigning to take place in the build up to the election.

[19] A revised timetable submitted by the Tramways Union is much more reasonable in this regard and will now become the basis for the following directions given by the Authority:

Nominations for National Council are to open 10 August and close 22 August 2008;

Ballot to open 1 September and close 13 September 2008;

Remits for AGM of National Council, to open 14 September and close 30 September 2008;

AGM to be held 30 November 2008.

[20] Under the above timetable there will be at least seven days for nominations to be made for the positions of National Council officer, a two month period before the AGM, allowing notice to be forwarded of remits, and the AGM to be held in November as required by the Rules.

[21] The relevant dates given in the Authority's determination of 27 June 2008 are amended accordingly and the timetable is now as set out above.

A Dumbleton
Member of the Employment Relations Authority