

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 199/09  
5157852**

BETWEEN      NEW ZEALAND AMALGAMATED  
ENGINEERING PRINTING &  
MANUFACTURING UNION  
INCORPORATED  
Applicant

AND              APN PRINT NEW ZEALAND LIMITED  
Respondent

Member of Authority:    Leon Robinson

Representatives:        Anne-Marie McInally, Counsel for Applicant  
Phillipa Muir, Counsel for Respondent

Investigation Meeting:    19 June 2009

Determination:            22 June 2009

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1]    The applicant Union the New Zealand Amalgamated Engineering Printing & Manufacturing Union Incorporated (“the Union) claims the respondent APN Print New Zealand Limited (“APN”) has breached its obligation of good faith in the context of collective bargaining. APN denies the claim.

[2]    APN has given notice of its intention to introduce a new roster on 29 June 2009. The Union objects and asks the Authority to assist. APN did not oppose the Union’s request. Accordingly, the Authority granted urgency and this Determination deals with the discrete issue in relation to the proposed new roster.

[3]    The Authority has heard evidence from Union organiser Ms Louisa Jones (“Ms Jones”), Union delegate employee Mr Steven Junge (“Mr Junge”), employee Mr Glen Walker (“Mr Walker”), APN’s General Manager Mr Daniel (Dan) Blackbourn (“Mr Blackbourn”) and Ms Joyce Wallace, APN’s Finance Manager.

## **The facts**

[4] The Union and APN are parties to the *APN Print Ellerslie 2007 – 2009 Mechanical and Electrical Collective Employment Agreement* (the “CEA”). The CEA expired on 1 April 2009. The parties continue to bargain for a substitute collective agreement.

[5] APN produces the daily newspaper publication the *New Zealand Herald*. The CEA covers about 14 or 15 mechanical and electrical plant trades’ people employees at APN’s Coldset<sup>1</sup> plant at Ellerslie who are primarily involved in maintaining the mechanical and electrical plant and equipment and attend to breakdowns (“the employees”)

[6] In late March this year, Mr Blackbourn commenced discussions by way of consultation with the employees about a change to the existing shift arrangements. The change is necessary, according to APN, to ensure the reliability of equipment and plant, to ensure that all planned, unplanned and project work is completed in a suitable time frame, and to ensure that maintenance is not hindered by production. APN says it is also necessary to ensure better work efficiency. The proposed shift pattern revision involves treating Saturday and Sunday shifts as part of the 7 day working week, with the same cover in the weekends as during the week. Mr Blackbourn tells the Authority this will permit more preventative maintenance work on plant over weekends. These objectives are not challenged.

[7] The employees were provided an opportunity to comment on what APN proposed. They provided feedback and suggested other possible proposals. Mr Blackbourn says the employees’ proposal(s) involved payment for overtime for weekend work and insufficient weekend coverage and manpower to achieve APN’s desired objectives.

[8] The proposed revised shift pattern has evolved through various iterations as Proposal “A”, “B”, “C” to what has ultimately become known as “Proposal Z”. There have been full discussions between the parties in relation to each iteration. Proposal Z retains the existing 8 week rotating shift pattern but each employee will work 4 out of

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<sup>1</sup> Coldset printing presses print on uncoated paper such as newsprint. Heatset presses print on both coated (slick) and non-coated papers.

every 8 full weekends, 2 out of every 8 partial weekends (either Saturday or Sunday) and will have 2 weekends off. Every 8 weeks there will also be a rostered 5 day break between finishing the night shift and starting the day shift. At present there is a 7 day break between shifts.

[9] There was a discussion between Mr Blackbourn, Mr Junge and Mr Walker on 27 May 2009. The evidence before the Authority is that there was a further discussion on 28 May 2009 where Mr Blackbourn had a discussion with Mr Junge about Proposal Z. Mr Junge raised concern about Friday evening cover. In response to the matter Mr Junge had raised, Mr Blackbourn amended the Proposal Z to show a changed Friday evening shift commencing from 4pm instead of 2pm. I call that amended revised shift pattern Proposal Z1.

[10] The Authority accepts that the Union rejected APN's request to discuss the various proposals with the employees directly. The Union did not wish those direct discussions during contemporaneous bargaining.

[11] Ultimately there was no agreed revised shift pattern and so Mr Blackbourn sent by email to Ms Jones Proposal Z1 attached to a letter dated 29 May 2009 which materially stated:-

*7. As we have been unable to reach agreement about the change to start and finish times and days worked, and it is critical that we move to increased preventative maintenance and weekend work as soon as possible, please treat this as one months' notice of the implementation of Proposal Z, in accordance with clause 4.3 of the CEA.*

*8. We will be putting a copy of this letter on the M&E noticeboard, and will be holding a meeting with all M&E employees in the next few days to discuss this roster, (and who will initially be allocated to which shift), with the commencement date being Monday 29 June 2009.*

[12] The letter of 29 May 2009 and Proposal Z1 were placed on the workplace notice board.

[13] A copy of that advice and Proposal Z1 was also placed on the notice board for all staff. The Proposal Z1 roster is to take effect from 29 June 2009.

[14] A notice of *New shift Roster* was also posted on the workplace notice board on 12 June 2009. The notice identified individual employees and assigned each to particular shifts under the Proposal Z1 shift roster.

## **The merits**

### ***Is Agreement required?***

[15] The first issue for determination is whether APN is able to require the employees work a new roster without their agreement. The Union argues that “*the current shift pattern has been “agreed” at the time it went into the current collective agreement, and that it requires agreement for this pattern of work to be changed*”.

[16] The resolution of this dispute lies in the correct interpretation and application of the relevant contractual provisions. The Authority has heard evidence tracing the historical evolution of the CEA. That evidence is helpful in terms of establishing the parties’ intentions. However, it is my view the dispute is resolved by interpreting and applying the relevant contractual provisions according to their plain natural meaning. In the absence of any ambiguity, it is unnecessary to look beyond the words the parties chose to use<sup>2</sup>.

[17] I reproduce the salient contractual provisions. They are these:-

#### *4. Hours of work*

*4.1 Employment shall be on a weekly basis and the minimum wages prescribed shall be paid for 40 hours. (NB: The attention of the parties is drawn to the provisions of clause 5 (Shifts), which set out the shift definitions and the methods of calculating the ordinary weekly wage.)*

*4.2 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 4.6 (Meal Intervals).*

*4.3 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 months notice of the alteration to times.*

*4.4 When the Employee is required to transfer to another shift in an emergency he or she shall have at least twelve 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.*

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<sup>2</sup> Cited to the Authority are *ASTE v Chief Executive BOP Polytechnic* [2002] 1 ERNZ 491, *Gibbons Holdings Ltd v Wholesale Distributors Ltd* [2008] NZLR 277 (SC), *Lowe Walker Paeroa Ltd v Bennett* [1998] 2 ERNZ 558 and *NZ Tramways Public Transport Employees Union Inc & Others v Transportation Auckland Corporation Ltd & City Line (NZ) Ltd* [2006] 1 ERNZ 1005 (EC).

4.5 *Notwithstanding sub-clauses 4.1 and 4.2 the ordinary hours of work and/or conditions may be varied by agreement between the Company and any Employee(s)*

4.6 *Meal Intervals*

*Each Employee shall be allowed one half hour meal interval per shift, provided that the Company may roster meal intervals so as to maintain continuous production.*

5. *Shifts*

5.1 *Shifts may be worked as and when required to suit the needs of the business, or as otherwise agreed by the parties from time to time. Such agreement will not be unreasonably withheld.*

5.1.1 *A “day shift” is one in which the starting time is not earlier than 6.00 am and the finishing time is not later than 6.00 pm.*

5.1.2 *A “night shift” is one in which the starting time or the finishing time is between 6.00pm and 6.00am*

5.1.3 *The present “rotating shift” which may need to change from time to time is one in which the shifts are worked on an 8 week cycle:*

*Present Roster*

7. *Sunday Coverage Guarantee*

*Employees covered by this agreement will provide guaranteed manning levels on Sundays and will work full production shifts as required. The nature of the work will vary depend on operational requirements and may include maintenance.*

[18] This dispute is principally concerned with a roster shift pattern. Clause 5 of the CEA deals with shifts. The clause stipulates how shifts of work are scheduled over a period of days. The operative part of the clause is that “*Shifts may be worked as and when required to suit the needs of the business, or as otherwise agreed by the parties from time to time*”. There are two enabling mechanisms. The first is according to needs of the business. That I find is the employer’s prerogative, as APN may determine consistent with its management prerogative. The second, is where the parties both agree.

[19] I find that APN exercised its prerogative according to the first part of clause 5.1. The prerogative is unqualified and does not require agreement.

[20] APN did in fact consult the employees. I find it did so in a meaningful way. But consultation does not require agreement. There was no contractual requirement under clause 5.1 for APN to consult. When it did so, I find that APN consulted in accordance with its statutory obligation to act towards the employees in good faith.

[21] APN’s various proposals involved both a re-scheduling of work shifts over the week and also a re-scheduling of work hours over the day. That latter situation is an

alteration of the employees' start and finishing times. That is the situation contemplated by clause 4.3 of the CEA. That clause provides that APN will first consult with the employees. If the employees do not agree, APN is permitted to implement its proposal if it gives at least one month's notice of alteration to times. The clause does not expressly stipulate whether that notice is to be given to the employees individually.

[22] The consultation actually carried out was effective and had extended over many weeks. Despite all efforts, agreement was not forthcoming. Consequently, APN gave one month's notice of the implementation of what I have referred to as Proposal Z1, by letter dated 29 May 2009 pursuant to clause 4.3 of the CEA.

[23] The employees also particularly refer to clause 4.5 of the CEA in further support of their argument that variations require agreement. My view of that clause is that it relates only to the definition of "ordinary hours of work". In the definition section of the CEA, "ordinary hours of work" means a 40 hour week. The reference to agreement in clause 4.5 concerns varying the number or quantity of what constitutes "ordinary hours", presently 40 hours. The provision has no application to the scheduling of work hours as this dispute involves.

[24] I regard other contractual provisions corroborative of the conclusions I have reached. I refer to clauses 21.7, 21.8 in this regard. These clauses emphasise APN's management prerogative in very explicit terms.

[25] I also consider the views I have reached are consistent with the intention of the parties as is established by the evidence before the Authority of the historical bargaining discussions leading to the successive collective agreements.

***Effective notice?***

[26] The Union argues the notice of 29 May 2009 was not effective because "it lacked the necessary clarity and this was not provided until 12 June 2009, making that the earliest date from which notice could run".

[27] I find that the Union had prohibited APN from direct communications with individual employees. That was because there was contemporaneous bargaining and

the Union did not wish such direct contact in the particular circumstances. APN respected that request and in doing so, it was precluded from consultation with the employees individually. As a result APN consulted with the employees as a collective group via their Union. I find the arrangement also relieved APN if giving notice to the employees individually too.

[28] I agree that Proposal Z was amended to Proposal Z1. That amendment came at Mr Junge's suggestion. Proposal Z1 was the subject of real consultation. I find that the amendment was not material and so there had been effective consultation in relation to Proposal Z1 for an effective period.

[29] Was there effective notice here? The notice required must logically be the subject matter of the consultation. The subject matter of the consultation is of general variations to shifts and not in relation to individual employees and variation of their individual "times". There was never consultation about individual employees' "times" and nor was that ever contemplated as the point of the exercise. In such circumstances, I conclude it is notice of a varied shift roster that is required to be given. I decline to read into the provision that notice of altered start and finish times as it affects each individual employee, is required to be given to each individual employee. I find that the notice given by APN's letter of 29 May 2009 was effective notice in terms of the CEA.

### **The determination**

[30] The contractual provisions of the CEA expressly permit APN to amend shift rosters when required to suit the needs of the business. The employees' agreement is not required. The variation of shift rosters is not a variation of the CEA itself but rather, the operation of the CEA. The parties agreed that APN would have that licence.

[31] For the reasons outlined above, I now determine that:-

- (i) agreement is not required in order for APN to implement the shift changes in the 29 May 2009 and 12 June 2009 notices for the purposes of clause 5.1 of the CEA; &

- (ii) the notice of 29 May 2009 constitutes effective notice for the purposes of clause 4.3 of the CEA.

### **The costs**

[32] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Ms Muir is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms McInally is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application or submission lodged outside that timeframe without leave.

Leon Robinson  
**Member of Employment Relations Authority**