

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 171/10  
5308640

BETWEEN                      NEW ZEALAND  
   PROFESSIONAL FIRE  
   FIGHTERS UNION INC  
   Applicant

AND                              THE NEW ZEALAND FIRE  
   SERVICE COMMISSION  
   Respondent

Member of Authority:      P R Stapp

Representatives:            Peter Cranney, Counsel for the Applicant  
   Karen Spackman and David Traylor, Counsel for the  
   Respondent

Chambers Meeting:         26 October 2010 at Wellington

Determination:              28 October 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant has filed a statement of problem (dated 10 June 2010) in the Authority requesting the Authority to determine whether strike action was lawful. The respondent filed a statement in reply (dated 28 June 2010). It has challenged the matters raised by the Union.

[2]     Further, the respondent, in an application by dated 19 October 2010, has requested the Authority to remove the matter to the Employment Court under s.178 of the Act.

[3]     The grounds relied on are:

- (a)     An important question of law is likely to arise from the applicant's claims other than incidentally;

- (b) That the nature of the case is in the public interest:
- (i) That there is significant public interest in ensuring that the basis upon which the Fire Fighters may lawfully take strike action on safety and health grounds is clear to both parties;
  - (ii) The issues have a crucial importance to the respondent and public knowledge of fire fighting operations;
  - (iii) And the matter involves the use of public money.

[4] Both parties agree that there is no urgency.

[5] Both parties have relied on a number of circumstances that would support the Court determining the matter.

[6] The Union has not opposed and supports the application to remove the matter.

### **The issues**

- Is there an important question of law likely to arise other than incidentally?
- Is the nature of the case in the public interest and of such urgency for it to be removed to the Court?
- What are the circumstances that support the matter being removed for the Court to fully determine the matter?

### **Determination**

[7] I am satisfied that there is the likelihood of an important question of law arising other than incidentally in regard the positions taken by both parties. First, for the respondent, which has relied on matters arising out of the statement of problem filed by the applicant/Union, suggests the parties will cover in their cases the tests that apply to the reasonableness of strike action being taken on health and safety grounds. Second, that there is a matter of “imminent risk” being raised for consideration that could likely come into issue in revisiting the tests of reasonable grounds.

[8] Turning to whether the case is of such a nature that it is in the public interest and of such urgency for it to be removed, a problem does arise. There may be matters

of public interest, but both parties agree that there is no urgency. That being the case I support the submission made by Mr Cranney that s 178(2) (b) of the Act cannot apply in this instance.

[9] Moving on to whether there are any other circumstances for the matter to be removed for the Court to determine, I find:

- (a) That there are a number of issues in this matter that are important to the parties and I accept that there is a very high likelihood that the matter would be challenged if it was heard in the Employment Relations Authority in the first instance;
- (b) That both parties are looking for certainty in regard to any issues that arise and seek to consider previous decisions of the Employment Court regarding strike action on health and safety grounds and for the Court to revisit the tests applied. I am satisfied that certainty is a factor based on the issues likely to arise and that both parties consider that this merits the loss of their rights to challenge an Authority determination and save costs and time.
- (c) Also, the hearing is likely to take a number of days and possibly involve expert evidence.
- (d) The parties are represented by experienced counsel and they agree that the matter should be heard in the first instance in the Employment Court.

### **Order of the Authority**

[10] I am satisfied that an important question of law is likely to arise other than incidentally and I am of the opinion that in all the circumstances the Court should determine the matter. I remove the entire application to the Employment Court to hear without the Authority investigating the matter in the first instance.

**Costs**

[11] Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority