

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 113
5347730

BETWEEN

NEW ZEALAND
PROFESSIONAL
FIREFIGHTERS UNION
Applicant

AND

NEW ZEALAND FIRE
SERVICE COMMISSION
Respondent

Member of Authority: P R Stapp

Representatives: Peter Cranney Counsel for Applicant
Geoff Davenport Counsel for Respondent

Employment relationship
problem lodged on: 17 June 2011

Telephone Conference
held: 17 June 2011

Determination: 17 June 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority has been requested to remove to the Employment Court an urgent employment relationship problem for a declaration. The respondent has indicated that it opposes removal on the matters within the Authority's jurisdiction that it is equipped to decide.

[2] A telephone conference has been held in which I have been given the positions of the parties, albeit a brief outline of the respondent's position. The parties have been attempting to arrange mediation but mediation has become conditional based on their positions. Given that the application for urgency has been made in respect of an

issue for a declaration and the possibility of other legal issues arising in the Court I consider that an order to attend mediation would not be constructive at this time. Given the urgency I have decided to proceed in issuing a determination.

Issues

[3] The issue is whether the employment relationship problem should be removed to the Employment Court?

The facts

[4] The parties have been in negotiations for a collective employment agreement. They have a bargaining process agreement.

[5] On 16 June 2011 the applicant issued strike notices on the respondent. On 17 June 2011 the applicant became aware that the respondent intends to dispute the legality of the proposed strikes on grounds referred to in an email dated 16 June 2011 from the respondent. The applicant has no intention of lifting the strike notice by the time the respondent has given it to do so. The applicant has asked for a declaration that nothing in the bargaining process arrangements would render the proposed strike unlawful. There is a matter for interpretation in regard to the parties' rights and obligations and some urgency to address this given the strike notice is for 1 July 2011.

Determination

[6] I am satisfied that the employment relationship problem falls within the jurisdiction of s 161 (1) (f) and s 161 (1) (l) of the Employment Relations Act for a declaration involving the interpretation of the bargaining process arrangements between both parties.

[7] Also, I am satisfied this involves a matter of such urgency that it is in the public interest that it be removed to the Court immediately. This is because there is a very short period before the strike is due, and there is a deadline of 5 pm Monday 20 June 2011 on the union to lift the notice, which it is not going to do. Furthermore, there is the likely prospect that the respondent will lodge an application in the Court

which has the potential for overlapping issues to arise, and which should ideally be avoided should the Court need to take any urgency. It does appear that both parties are wrestling for a position to be heard first on different causes of action.

[8] As I am satisfied the application meets the requirements of s. 178 (2) (b) of the Act to be removed as a matter of urgency, and public interest because the matter involves an essential industry, I so remove the employment relationship problem to the Court to determine in its entirety including any further consideration on mediation.

Orders of the Authority

[9] I hereby remove the application of the employment relationship problem in file 5347730 in its entirety to the Employment Court to hear and determine.

[10] Costs are reserved.

P R Stapp

Member of the Employment Relations Authority