

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 89
5336800

BETWEEN	TERTIARY EDUCATION UNION Applicant
AND	CHIEF EXECUTIVE, WESTERN INSTITUTE OF TECHNOLOGY First Respondent
AND	CHIEF EXECUTIVE, UNITEC NEW ZEALAND Second Respondent
AND	CHIEF EXECUTIVE, WHITIREIA COMMUNITY POLYTECHNIC Third Respondent
AND	CHIEF EXECUTIVE, NORTHLAND POLYTECHNIC Fourth Respondent
AND	CHIEF EXECUTIVE, BAY OF PLENTY POLYTECHNIC Fifth Respondent
AND	CHIEF EXECUTIVE, WAIKATO INSTITUTE OF TECHNOLOGY Sixth Respondent

Member of Authority: Dzintra King

Representatives: Peter Cranney, Counsel for Applicant
Sherridan Cook, Counsel for Respondent

Telephone Conference: 8 March 2011

Determination: 9 March 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The parties have made an application for the matter to be removed to the Employment Court pursuant to s 178 Employment Relations Act 2000 on the grounds that an important question of law is likely to arise other than incidentally.

[2] The questions of law are:

- a. Whether a union is required to continue to bargain with a collective of employer parties after a s 47 (3) ballot has rejected a multi employer collective agreement (“MECA”).
- b. Whether the applicant’s notices amount to an unlawful cross-initiation.

Background

[3] The parties have a dispute regarding bargaining initiation notices.

[4] On 7 December 2010 the respondents initiated bargaining for a MECA.

[5] On 14 December the applicant informed the respondents that it would conduct a ballot of its members as required by s 47(3) Employment Relations Act 2000.

[6] On or around 11 February 2011 the applicant informed the respondents that the ballot was not in favour of a MECA.

[7] On or around 11 February 2011 the applicant initiated bargaining against each of the respondents separately.

[8] By letter dated 23 February 2011 the respondents collectively informed the applicant that in their view the applicant was obliged to continue to bargain pursuant to the 7 December 2010 notice notwithstanding the ballot results and the applicant’s notice amounted to illegal cross-initiation.

[9] By letter to the respondents dated 23 February 2011 the applicant disagreed with the respondents' view and wished to obtain an urgent legal resolution.

[10] By letter dated 4 March 2011 the respondents agreed to have the matter determined urgently.

[11] The parties say the case is of such a nature and has sufficient urgency to warrant removal because:

- The respondents are a significant group of public employers.
- Bargaining rights of the applicant and the respondents cannot be properly exercised until this issue is determined.
- In all the circumstances the Court should determine the matter.

Decision

[12] I am of the opinion that in all the circumstances the Employment Court should determine this matter.

[13] Accordingly I order that the entire matter be removed to the Court.

Costs

[14] Costs are reserved. If either party seeks an order for costs, the party seeking the order shall have 28 days from the date of this determination in which to file and serve a memorandum in this matter. The other party shall have a further 14 days in which to file and serve a reply.

Dzintra King

Member of the Employment Relations Authority