

continues as a collective agreement during the bargaining for its renewal. The agreement covers stevedores who are members of MUONZ and are employed by POAL. Aspects of the bargaining have resulted in litigation of which this application and the matters on which it is based form a part.¹

[3] The Authority's file number 5364007 concerns an application by MUNZ for orders that:

- (a) the POAL comply with its obligation of good faith, and in particular not to communicate with employees in a manner which is misleading and deceptive;
- (b) the POAL comply with its obligation of good faith by not undermining bargaining by incentivising employees to be employed under individual employment agreements; and
- (c) the POAL pay penalties under s 4A of the Employment Relations Act 2000 for its breaches of good faith.

[4] The POAL replied to the application denying the allegations. It included a counterclaim alleging that MUNZ had breached its obligations of good faith by making misleading and deceptive comments in the circumstances it particularised. The counterclaim also sought compliance orders and a penalty, mirroring the MUNZ application.

[5] With one exception the removal of these matters is not sought. The exception concerns part of the POAL counterclaim in which it detailed statements allegedly made by MUNZ' walking delegate Dave Phillips while on the POAL site. Mr Phillips is not a POAL employee, but had access to the site as a representative of MUNZ. The POAL says Mr Phillips' statements were intended to incite disharmony between MUNZ members and the stevedores employed on individual employment agreements, and amounted to a breach by MUNZ of its duty of good faith.

[6] The Authority's file number 5365366 concerns an application by MUNZ which arises out of Mr Phillips' alleged conduct and the POAL's reaction to it.

¹ Other associated matters were removed to the Employment Court in *MUNZ v POAL* [2012] NZERA Auckland 17.

[7] By letter to Mr Phillips dated 1 December 2011 the POAL set out its understanding of an incident which occurred in a mess room on its site the previous day, being the same incident with which the above counterclaim is concerned, and expressed its concern about the incident. The letter ended by saying:

I must therefore inform you that I am ordering you to leave Ports of Auckland premises forthwith. Furthermore I am warning you to stay off such premises for a period of two years, as provided for under the Trespass Act 1980. ...[trespass notice attached]

[8] MUNZ sought a finding that this action was a breach of the obligation of good faith, and a compliance order requiring the POAL to act in accordance with its obligation of good faith and not to deny access to Mr Phillips.

[9] The removal of this matter in its entirety was sought.

The grounds for removal

[10] The parties say an important question of law arises in terms of s 178(2)(a) of the Act, in that the above circumstances call for a weighing of the union right of access on the one hand, and the employer's rights in respect of conduct engaged in on its premises on the other. As the parties have put it, the question concerns the interface of the right of access and rights under the Trespass Act.

[11] The parties also say that s 178(2)(b) applies in that the question of law is likely to be of general importance to other employers and unions.

[12] I agree with the parties. Accordingly that part of the matter relating to Dave Phillips which is contained in the Authority's file 5364007, and entire matter contained in file 5365366, are removed to the Employment Court.

Costs

[13] Costs are reserved.

[14] Any party seeking an order for costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have a further 14 days in which to file and serve a memorandum in reply.

R A Monaghan

Member of the Employment Relations Authority