

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 428  
5402964

BETWEEN                      MARITIME UNION OF  
   NEW ZEALAND  
   Applicant

AND                              PORTS OF AUCKLAND  
   LIMITED  
   Respondent

Member of Authority:        K J Anderson

Representatives:             S Mitchell, counsel for applicant  
   R McIlraith, counsel for respondent

Investigation:                On consideration of the papers

Determination:                30 November 2012

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**DETERMINATION OF THE AUTHORITY**

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**Application for Removal of a Matter to the Employment Court**

[1]     On 22<sup>nd</sup> November 2012 the Authority received an urgent application from the Maritime Union of New Zealand (the Union). The *Statement of Problem* alleges that:

- 1.1     The Respondent has breached its obligation of good faith to the Applicant in its dealings with another registered union, Portpro [sic] Incorporated. The Respondent has entered into a Collective Agreement with Port[P]ro Incorporated.
- 1.2     The Applicant alleges that the Respondent was obliged to:
  - 1.2.1    Consult with the Applicant at the time bargaining with Port[P]ro Inc commenced;
  - 1.2.2    Consult with the Applicant as to the effect of the Port[P]ro Inc bargaining between the Applicant and the Respondent;
  - 1.2.3    Not enter into a collective agreement with Port[P]ro Inc, without consultation with the Applicant.

[2]     The *Statement of Problem* relates the facts that give rise to the above allegations and then sets out the remedies sought:

- 3.1 A finding that the actions of the Respondent were a breach of the obligation of good faith to the Applicant;
- 3.2 The award of a penalty pursuant to Section 4A for breaches of good faith that were deliberate, serious and sustained and intended to undermine bargaining.

[3] Accompanying the *Statement of Problem* is an *Application for Removal of a Matter to Employment Court*.

### **The grounds for the removal**

[4] The power of the Authority to remove a matter to the Court emanates from s.178 of the Employment Relations Act 2000 (“the Act”) whereby under subsection (2), the Authority may order the removal of the matter or any part of it, to the Court, if:

- (a) an important question of law is likely to arise in the matter other than incidentally; or
- (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or
- (c) the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
- (d) the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[5] The Union’s application for removal relies on the grounds available under s.178(2)(c) and (d).

[6] Via an email to the Authority dated 26<sup>th</sup> November 2012, the respondent informs that it will “... *abide the decision of the Authority.*” Both parties have indicated that they are desirous of this matter being dealt with promptly in order that it can be processed by the Court, relative to another matter that is scheduled to commence in the Court on 7<sup>th</sup> February 2013.

### **Determination**

[7] In regard to the ground that the Court already has before it proceedings that which are between the same parties and which involve the same or similar or related issues, the Union refers the Authority to the unsigned and undated witness statement

of Carl Gordon Findlay, apparently prepared for a matter before the Employment Court (ARC 3/12). Also produced is a judgment of the Court pertaining to this matter ([2012] NZEmpC 197). Without further explanation, the production of the witness statement and the judgment do not assist much in regard to clarifying the specific nature of the proceedings before the Court that supposedly, involve the same or similar or related issues relating to the current application before the Authority. Nonetheless, I accept that there is a mention in the Court's judgment, of submissions advanced for the Union, seeking to obtain leave to file a "second amended statement of claim" based on the alleged actions of POAL in October 2012, in entering into a collective agreement with PortPro Incorporated. The Court declined leave to file a further statement of claim but at para [10] Judge Travis notes: ["... the advantage of hearing all causes of action relating to allegations of undermining and breaches of good faith during the current collective bargaining together ..."] Albeit, that as of the date of the judgment (23 November 2012), the matters in question had not previously been before the Authority. Presumably, the current application is a response to the observations of Judge Travis.

[8] While the evidence in support of satisfying the ground, under s.178(2)(c) of the Act, is somewhat tenuous, I take it into account in exercising the discretion available to the Authority under s.178(2)(d) in reaching a conclusion that in all the circumstances, the Court should determine the matters contained in the current application before the Authority.

[9] I conclude that it is appropriate that the proceedings in the Authority related to file number 5402964: Maritime Union of New Zealand v Ports of Auckland Limited, should be removed to the Court pursuant to s.178(2)(d) of the Employment Relations Act 2000. It is so ordered.

**Costs:** Given the nature of the proceedings related to the application for removal, it is appropriate that costs should lie where they fall. It is so ordered.

**K J Anderson**  
**Member of the Employment Relations Authority**