

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 123
5415269

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
 K Dunn, Counsel for Respondent

Investigation: On consideration of the papers

Determination: 12 April 2013

DETERMINATION OF THE AUTHORITY

Application for Removal of a Matter to the Employment Court

[1] On 28th March 2013, the Authority received an urgent application from the Maritime Union of New Zealand (the Union). The *Statement of Problem* states that:

“1.1 The Applicant and the Respondent are bargaining for a Collective Agreement.

1.2 The Respondent has breached its obligations of good faith to the Applicant and acted in a manner undermining of the bargaining.”

[2] The *Statement of Problem* relates the Union’s view of the facts that give rise to the above allegations, as they relate to the current bargaining for a collective employment agreement. The Union says that during the bargaining, Ports of Auckland Limited (POAL) has acted in breach of its obligations of good faith under the Employment Relations Act 2000 (the Act) as follows:

- “2.2.1 By resolving in November 2011 to contract out the work covered by the Collective Agreement, and failing to disclose this to the Applicant;
- 2.2.2 Deliberately failing to raise the issue of contracting out so the that Plaintiff [Applicant] would not be aware of the Respondent’s intentions;
- 2.2.3 Entering into discussions with potential contractors without advising the Plaintiff [Applicant];
- 2.2.4 Putting in place a plan to undermine the union and remove it from the port without disclosing the plan to the Applicant;
- 2.2.5 During the course of the bargaining, the Respondent has required the Applicant to accept a Rostering Proposal that it cannot be satisfied is safe, and is likely not to be safe, thereby breaching its obligation of good faith;
- 2.2.6 The Respondent has undermined bargaining by requiring the Applicant to enter into a Rostering Proposal that is unsafe;
- 2.2.7 The Respondent has undermined the bargaining by engaging contractors in it [sic] Engineering division without providing notice as required by an injunction made by the Employment Court on 27 March 2012¹ and thereby undermining the bargaining.”

[3] The Union asks the Authority to provide the following remedies:

- “3.1 A finding that the actions of the Respondent are in breach of its obligation of good faith to the Applicant;
- 3.2 Finding that the actions of the Respondent are likely to undermine, having [sic] undermined and will undermine the bargaining;
- 3.3 A Compliance Order requiring the Respondent to comply with its obligation of good faith;
- 3.4 A Compliance Order requiring the Respondent not to undermine bargaining in breach of the obligations of Section 32 of the Act.”

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

The grounds for the removal

[5] The power of the Authority to remove a matter to the Court emanates from s.178 of 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

¹ [2012] NZEmpC 52

- (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.”

The Union’s application for removal relies on all four of the above grounds.

[6] Following a conference call with counsel for the parties, convened by the Authority on 3 April 2013, and upon Ms Dunn receiving instructions from POAL, the Authority received an email from Ms Dunn on 11 April 2013; this confirmed: [“...that Ports of Auckland does not oppose the removal of this matter to the Employment Court.”]

[7] As discussed with the parties during the conference call on 3 April 2013, it is accepted that given the protracted bargaining between the parties, including ongoing and prolonged facilitation under the auspices of the Authority, mediation will not contribute constructively to resolving the issues² that have now been brought to the Authority.

[8] While the application for the Union does not identify in any detail the important issue/s of law that are likely to arise in this matter other than incidentally,³ given the tortuous nature of the bargaining between the parties and the respective litigation that has arisen at various times (also connected to the current matters), it seems to be quite likely that there are important issues of law that will require examination and determination by the Employment Court.

[9] As to s.178(2)(b), it is questionable whether this matter is of such urgency that it is in the public interest that the problem should be removed immediately to the Court. But in any event, I am satisfied that the ground under ss(2)(c) is met in that the Court currently has before it proceedings which are between the same parties and which involve the same or similar related issues. Additionally, pursuant to ss(2)(d), the Authority is of the opinion, that in all the circumstances, the Court should determine the matters that are the subject of this particular application.

² Section 159(1)(b)(i) of the Act.

³ Section 178(2)(a).

Determination

[10] I conclude that it is appropriate that the proceedings in the Authority related to file number 5415269: Maritime Union of New Zealand v Ports of Auckland Limited, should be removed to the Court pursuant to s.178 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