IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2015] NZERA Christchurch 54
5538444

BETWEEN	NEW ZEALAND MEAT WORKERS UNION INC Applicant
A N D	SOUTH PACIFIC MEATS LIMITED First Respondent
A N D	MICHAEL ANTHONY TALLEY Second Respondent

Member of Authority:	James Crichton
Representatives:	Peter Churchman QC, Counsel for the Applicant Rachel Webster, Counsel for the Respondents
Investigation Meeting:	On the papers
Date of Determination:	30 April 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant union (the Union) alleges that the first respondent (the Company) has unlawfully interfered with the Union's legal rights of access to the Company's workplaces at Awarua and Malvern and further that the Company has breached its obligations of good faith in imposing unlawful conditions on the commencement of collective bargaining with the Union. Moreover, the Union contends that the second respondent (Mr Talley) has incited, instigated, aided or abetted the Company in regard to the alleged breaches of the Union's rights of access to the Company's two named workplaces.

[2] Those allegations are denied by the Company and by Mr Talley respectively.

[3] I held a telephone conference with counsel for the parties on 2 March 2015 wherein the matter was set down for hearing on 30 April and 1 May 2015. Counsel for the Union was to write to counsel for the respondents seeking disclosure of certain documentary evidence which was pertinent to the matter. There was a discussion about the disclosure of that material at the telephone conference; the parties' counsel disagree about the outcome of that discussion but in any event leave was reserved by the Authority for counsel to revert if there were difficulties in the matter.

[4] In the result, by application filed in the Authority on 9 April 2015, the Union sought a direction under s.160(1)(a) of the Employment Relations Act 2000 (the Act) requiring both respondents to forthwith provide copies of all documentation between the directors of the Company and the managers of the Company relating to the exercise of the Union's statutory rights of access to the named workplaces of the Company.

[5] That application was resisted by the respondents, essentially on the footing that the disclosure in question would be likely to expose a party to a penalty.

[6] To canvass that issue, I convened a further telephone conference with counsel on 14 April 2015.

[7] After hearing counsel, I postulated two alternative scenarios. The first was that I gave counsel for the Union an opportunity to file further submissions in response to the notice of objection filed by counsel for the respondents, that I then considered the material before me on the papers and prepared a determination on the preliminary question whether disclosure ought to be granted or not.

[8] The second option I postulated was to take the point made by His Honour Chief Judge Colgan in *Aarts v. Barnardos New Zealand* [2013] NZEmpC 85, where His Honour observed that if this very point came before the Authority again, it might care to remove the issue to the Court as a point of law to be determined properly in that forum.

[9] Counsel for the Union expressed a preference for the matter to be referred to the Court and argued there and counsel for the respondents accepted that proposition although she was equally comfortable with the alternative of having the Authority determine the matter at first instance after the consideration of any further submissions that the Union might choose to file.

Determination

[10] Section 178 of the Employment Relations Act 2000 sets out the basis on which the Authority may remove a matter to the Employment Court. For our purposes, it is important to note that the Authority may remove "… on its own motion…". Moreover, the first ground on which removal may be contemplated is where it is considered an important question of law is likely to arise, other than incidentally.

[11] I am satisfied that it is appropriate to remove the below question to the Employment Court, that I should do that of my own motion, and that such action will facilitate the consideration by the Court of the important issue in this employment relationship problem. In taking that step, I rely on the dicta of the Chief Judge in *Aarts.*

[12] The particular question at issue is the question whether in an application by a party for orders seeking the disclosure of documents which would appear to be pertinent to a proceeding in the Authority, such an order can be granted even although it appears that the granting of such an order may have the effect of putting before the Authority material which could support an application against the party providing the documents, for the imposition of a penalty.

Costs

[13] Costs are reserved.

James Crichton
Member of the Employment Relations Authority