

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 561
3062912

BETWEEN BAY OF PLENTY REGIONAL
COUNCIL
Applicant

AND BAY OF PLENTY REGIONAL
COUNCIL STAFF
ASSOCIATION
INCORPORATED
First Respondent

AND NEW ZEALAND PUBLIC
SERVICE ASSOCIATION TE
PUKENGĀ HERE TIKANGA
MAHI INCORPORATED T&T
FASHIONS LIMITED
Second Respondent

Member of Authority: Eleanor Robinson

Representatives: Peter Crombie & Tania Waikato, Counsel for the
Applicant

Bill Lawson & Gabrielle Coleman, Counsel for the First
Respondent

Peter Cranney & Catherine McNamara, Counsel for the
Second Respondent

Submissions: 24 September 2019 from the Applicant
10 September 2019 from the First and Second
Respondent

Determination: 30 September 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 27 August 2019 ([2019] NZERA 502), the Authority found that the Applicant, The Bay of Plenty Regional Council, (the Council), had breached its good faith duty towards the First and Second Respondents, Bay of Plenty Regional Council Staff Association Incorporated (the Staff Association), and, New Zealand Public Service Association Te Pukenga Here Tikanga Mahi Incorporated.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. I also indicated that I considered it appropriate that costs should lie where they fell in this matter. However the Respondents have filed submissions in respect of costs.

Costs Award

[3] The Authority's power to award costs is at the discretion of the Authority pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[4] The principles the Authority applies in respect of costs are well-settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹. The principles include that costs generally follow the event and that costs will be modest and reasonable.

[5] The Applicant in this matter had applied to the Authority for a determination on whether or not it had breached its duty of good faith and the extent of its good faith obligations during bargaining. I find this to have been a responsible manner of proceeding.

[6] I also note that the Respondent's argument around what proved to be a significant basis for the determination was not presented in the initial stages of the investigation procedure. Had it been, this may well have assisted in the resolution of matters prior to the investigation.

[7] In all the circumstances, I consider that costs of \$2,000.00 are appropriate.

¹*PBO v Da Cruz* [2005] 1 ERNZ 808

[8] The Bay of Plenty Regional Council is ordered to pay First Respondent, Bay of Plenty Regional Council Staff Association Incorporated (the Staff Association), and the Second Respondent, New Zealand Public Service Association Te Pukenga Here Tikanga Mahi Incorporated, the sum of \$2,000 costs to be split between the two Respondents, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson

Member of the Employment Relations Authority