IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 231
3362763

	BETWEEN	MARITIME UNION OF NEW ZEALAND First Applicant
	AND	RAIL AND MARITIME TRANSPORT UNION Second Applicant
	AND	LYTTELTON PORT COMPANY LIMITED Respondent

Member of Authority:	David G Beck
Representatives:	Simon Mitchell KC and Angus Drumm, counsel for the Applicants Rosemary Wooders, counsel for the Respondent
Investigation Meeting:	15 April 2025 in Christchurch
Submissions Received:	2 April and 17 April 2025 from the Applicants 2 April and 22 April 2025 from the Respondent
Date of Determination:	29 April 2025

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

[1] The Maritime Union of New Zealand and the Rail and Maritime Transport Union (MUNZ and RMTU collectively referred to as the Unions) have raised an employment relationship problem concerning a consultation process the Lyttelton Port Company Limited (LPC) has adopted to restructure its container terminal operations business unit. The Unions

are disputing the extent to which LPC can advance a proposal to disestablish 35 positions without involving the Unions in the formulation stage of the proposal.

[2] The Unions assert that directly advancing a restructuring proposal to a consultation stage without their prior input breaches specific and identical clauses of their collective employment agreements currently in force. These agreements (CEAs) are between MUNZ and LPC for the term 5 March 2023 to 5 March 2026, and between RMTU and LPC for the term 10 March 2023 to 10 March 2026. In addition, the Unions contend that they have previously agreed with LPC on the nature of how the parties interact with each other that includes a good faith commitment that change proposals only proceed to an implementation stage once initial input is sought before a proposal is finalised.

[3] As a remedy an order of compliance with the CEAs and other obligations, pursuant to s 137 of the Employment Relations Act 2000 (the Act), is sought by the Unions.

[4] LPC oppose the application asserting that they have at all times complied with the terms of the relevant CEAs and statutory obligations in advancing their proposal to restructure their container terminal operations and that the cited CEA provisions; statutory obligations and any ongoing agreement on cooperation or collaboration, do not require LPC to develop a restructuring proposal in consultation with the Unions.

The Authority investigation

[5] The Authority convened an investigation meeting on 15 April 2025, heard evidence, and was able to question the following people on provided affidavits: Jason Campbell, a MUNZ impacted Union delegate; Michael Shrimpton, RMTU impacted Lyttleton Union branch president; Belinda Baird, LPC Head of People and Industrial Relations; and Amrita Balaraman, the container terminal's Chief Operating Officer and author of the restructuring proposal. The Authority was also provided with submissions from the parties' counsel and an affidavit from Nigel Foster LPC's Chief People and Capability Officer. While I was not able to question Mr Foster, I admitted the affidavit as useful background information on the past relationship between LPC and the Unions.

[6] The Authority is acutely aware that the employment relationship problem involves finely balanced interests of the parties including the uncertainty of the workers involved in the proposed restructuring who face having their current roles disestablished.

[7] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issue and make orders. I have carefully considered the submissions received from both parties and refer to them where appropriate and relevant.

What has caused the employment relationship problem?

[8] Upon being appointed as the container terminal, Chief Operating Officer in September 2024, Ms Balaraman says she was primarily tasked by LPC's Chief Executive Officer, with reviewing the organisational set up of the terminal's operations. Ms Balaraman explained her brief was to seek "to elevate safety, optimise performance and develop a contemporary structure that responds to front line staff needs". [1] Ms Balaraman says that since October 2024 the workers at LPC were aware that she was reviewing the container terminal operations team structure with an emphasis on better connectivity between cargo handlers and their immediate reports.

[9] Ms Balaraman says she familiarised herself with the operational environment by getting around her team and amongst other methods, running regular monthly huis that led to a 'brainstorming' workshop in January 2025. Ms Balaraman says a consistent feedback theme was "a need from cargo handlers to understand who their direct leader is, and have one consistent management touchpoint".[2] From her own observations and in consultation with Ms Baird, Ms Balaraman put together a document entitled "Container Terminal operations Change Proposal" that was finalised on 26 February. When asked why the proposal had not been developed with Unions' input, Ms Balaraman suggested this would have been impractical and Ms Baird expressed a view that LPC had no specific legal obligation to do this and she had sought legal advice to reinforce this stance.

[1] Affidavit of Amrita Balaraman, 21 March 2025.
[2] Ibid.

[10] As further context an agreement with the unions on supervisory role descriptions at the container terminal termed a 'forepersons accord' had concluded in 2017 after significant negotiation including mediation. In mid-2023, there was a trial to establish a further level of oversight of cargo handlers by creating roles deemed group forepersons (GFPs). The trial involved four GFP positions drawn from existing workers and it concluded in early 2024. A positive review of the GFP trial dated 20 March 2024, asserts its purpose was to "establish 'responsive and visible' leadership. [3] However, at the end of the trial the establishment of four new GFP positions floundered with an insistence by LPC that they be taken outside of collective employment agreement coverage and the trialists not accepting the roles offered for this reason.

[11] In formulating a fresh approach in late 2024, Ms Balaraman says she was aware of the GFP trial and had seen the review report. However, Ms Balaraman says she did not specifically consult on reviving the trial model with the GFP involved that included Mr Campbell. Mr Campbell's evidence was the GFP trial worked and that it supplemented existing levels of supervision.

Presentation of change proposal

[12] Ms Baird contacted the Unions respective presidents by phone around 8:30 am on Tuesday 25 February. Ms Baird advised it was LPC's intention to soon forward an email inviting all impacted container terminal workers to a meeting on 26 February to discuss a change proposal. At this point in time the detailed proposal had not been shared with the Unions but Ms Baird, shortly after the call, emailed the Unions the names of potentially impacted union members.

[13] At around 10:30am on the same day Ms Balaraman emailed the unions and all impacted workers, that she had been reviewing their operating structure and activities and was now in a position to share a proposal for change. Ms Balaraman indicated she would like to discuss her proposal the following day and suggested the workers prioritise a meeting of around 90 minutes. The email noted individuals were likely to feel uncertainty and they were entitled to have a

[3] *GFP Review*, Laurane Devery, Head of Capability and Development, 20 March 2024.

support person or representative present at the envisaged meeting and Ms Balaraman encouraged workers to approach her directly with any concerns.

[14] Both unions' presidents responded to Ms Balaraman mid-afternoon on 25 February, to indicate insufficient meeting notice had been provided and both expressed concern that the proposal had not been discussed with the Unions prior to its envisaged presentation. The Unions also asked whether the proposed changes fell within the CEAs' terms and whether a formal variation was required (as the proposal took a number of their members outside existing CEAs' coverage). They suggested LPC should consult with the Unions before the proposal went out and expressed a confidentiality concern that the envisaged proposal sharing meeting would involve both union and non-union workers. Both union presidents made it clear their members would not be encouraged to attend the meeting.

[15] In a follow up email at 4:40 pm on 25 February Ms Baird justified LPC's approach suggesting it was in line with the CEAs' specific redundancy clauses and that the invitation to meet to discuss the LPC change proposal was the "commencement of consultation". Ms Baird suggested the Unions would have suitable time to discuss the proposal with their members after it was presented and it was appropriate that LPC initially meet with all impacted workers. Ms Baird concluded her email: "We consider it important that individual members hear first-hand and unfiltered, the details of the proposal. **We urge every invited member to attend."**

[16] In the event, LPC did not resile from the scheduling of the meeting on 26 February but no union members attended. Attempts to reschedule the meeting were rebuffed by the Unions. Ms Baird in an email to the Unions of 26 February, noted:

> You have not engaged with either opportunity, therefore we will deliver today by LPC email and by hand delivery, the change proposal consultation pack to those potentially affected employees. We can agree to meet next Tuesday at 1pm to take questions on the change proposal.

[17] The Container Terminal operations Change Proposal document was provided to the Unions around noon on 26 February and circulated to impacted workers after the initial meeting with Ms Balaraman and Ms Baird . Ms Baird's email to all workers impacted of 26 February explained the change proposal document was attached and that a consultation pack would be

hand delivered when the worker was next on shift and that: “Information will be provided throughout the consultation period via different forums including in-person updates”.

[18] The Change Proposal circulated is 44 pages and comprehensive. Of significant concern to the Unions was a proposal to disestablish forepersons’ positions and replace them with team lead and team leader roles outside of CEA coverage.

The Unions’ response

[19] In a letter of 5 March, the Unions’ counsel set out what they saw as serious concerns about the Change proposal’s generalised rationale and the process adopted. By this stage, initial consultation with union members had stalled. Counsel suggested the change proposal lacked sufficient detail, citing there was “no detail as to the job descriptions for the group operations lead, or the team leader positions” and they were unconvinced the suggested changes would change the duties already undertaken by occupant forepersons.

[20] Overall, counsel asserted that LPC had not followed a process set out in the CEAs pertaining to contracting out (cl 2), that in the Unions’ view had broader applicability and required LPC to engage in reviewing and analysing the need for change in a “facilitative process”. The Unions’ concern was summarised as:

> What in fact has occurred is that the company has simply issued its proposal and sought feedback. The Union should have been involved in the design of any new structure and been an active participant in the process.

[21] The letter concluded that the Unions were urgently preparing an application to the Authority that would allege LPC had not acted in accord with the CEA obligations and that the adopted change process breached good faith obligations. Mediation was sought without an offer to halt the Authority application proceeding.

[22] LPC’s Ms Baird responded by letter of 6 March setting out a contrary view that first noted job descriptions had been provided to the Unions and then asserted that the change proposal document in LPC’s view contained sufficient detail for the Unions to respond on. Ms Baird contended that the contracting out provisions were inapplicable and that LPC was otherwise meeting redundancy and good faith process requirements by seeking feedback on a circulated proposal.

[23] In concluding the letter Ms Baird indicated LPC thought the Authority application was premature and in the alternative, LPC was willing to meet and discuss the Unions' assessment that the change proposal was being advanced in a manner inconsistent with the applicable CEAs and then if concerns were not resolved, LPC was "open" to attending an urgent mediation.

[24] In response by letter of the same day counsel for the Unions indicated that mediation was their preferred discussion forum and if unresolved there, the matter be brought before the Authority. An application was made by the Unions to the Authority on 7 March.

[25] Ms Baird in a further letter of 7 March expressed a view that LPC had not yet received an explanation on how the Unions considered their change proposal was inconsistent with CEA provisions or why it breached good faith obligations (impliedly I accept Ms Baird was referring to how the proposal was being advanced by LPC). Ms Baird reiterated LPC's view that a meeting prior to any mediation was more suitable and that after such a meeting if mediation was still necessary, a private mediator be engaged. Ms Baird again expressed LPC belief that the application to the Authority was premature and then stated LPC: "Beyond issues of procedure" remained committed to active engagement with "affected parties and Unions as per the consultative process".

[26] The Authority held an urgent teleconference on 12 March 2025 to initially deal with the application from the Unions seeking an interim restraining order preventing LPC's restructuring from proceeding. At the teleconference, LPC agreed to extend their period of consultation to allow a pre-planned private mediation to proceed. In return given the Authority had signalled early availability to convene an investigation meeting to deal with substantive matters, the Unions withdrew the application for an interim restraining order and the remaining issue became the Unions' contention that LPC was not advancing their restructuring in accord with the CEAs.

[27] The parties then attended an unsuccessful mediation and exchanged further correspondence of 26 March from the Unions and LPC's response of 31 March on the unresolved dispute about how consultation on the change proposal should proceed. In the Unions letter they posited that they were not convinced the change proposal would lead to a safer working environment and they asked why a restructure was necessary while advancing a

view that minor position description changes could achieve the same desired outcome. Alternatively, the Unions questioned why the proposed new positions fell outside of CEA coverage and/or why a variation to the existing position descriptions was not utilised as a way forward.

[28] LPC's letter of response reiterated that an appropriate consultation process, consistent with the CEAs, was being pursued and addressed how they considered the proposed new structure would enhance health and safety outcomes. LPC emphasised a view that this was a "substantial departure from the current structure" and not amenable to changing existing position descriptions. It was then asserted by LPC that the proposed roles fell outside CEA coverage and the justification for this position was outlined (mainly conflicting reporting/decision making obligations).

[29] The change proposal was summed up as an "overhaul of the operations team" and essentially LPC signalled they wished to proceed to direct consultation with workers on their tabled proposal but they did include an offer to meet with the Unions to engage with LPC's stated responses (impliedly including the coverage issue) and consideration of any further options, the Unions wished to advance. The discussion between the parities did not progress any further prior to the Authority investigation meeting.

The issues

[30] The Authority must determine the following issues:

(i) What is the scope and extent of the CEAs and statutory obligations governing the relationship between LPC and the Unions in a potential redundancy situation?

(ii) Have any of the latter obligations been breached or ignored?

(iii) If any breaches are established what remedies are appropriate including consideration of s 137(2) of the Act.

(iv) How costs are to be dealt with.

The disputed CEA provisions

[31] The Unions predominant submission is that the relevant CEAs already have a clause that should govern a restructuring situation prior to a fully formed proposal being issued to impacted workers. This is an identically worded provision (clause 2) in each CEA headed "Contracting Out" and worded as follows:

> While the Employer prefers to utilise their own people and equipment for its ongoing business activity, day-to-day decisions are made in respect to work being undertaken off site or services provided on site.
>
> As a general principle in recognising the Employer's preference to utilise people and equipment, the Employer shall when proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an Employee, provide the Employee and the Union relevant information and an opportunity to comment on that information before a decision is made (this is the commencement of the consultation process).
>
> The Employer consideration shall not only be reliant on commercial and competitive criteria and shall also give appropriate weight to matters such as customer service, quality, efficiency and flexibility, health and safety of their Employees and the impact of loss of employment would have on their Employees should they become redundant.
>
> The intent of this clause is to provide an agreed basis whereby change and improvement can be achieved, in a manner consistent with the needs and aspirations of all the parties.
>
> The parties agree that consultation used to achieve change is:
>
> - an opportunity to review and analyse options;
> - an opportunity for the involvement of the company, union and employees party to this agreement in decision making for change;
> - to be facilitative of and not a veto or barrier to change but of opinion and not negotiation
>
> In the absence of agreement (which is not mandatory but encouraged) the parties may reserve their respective rights to take the final decision on the introduction of changes and the union reserves its right to represent any matters resulting from changes which they consider adversely affect the employment conditions of the employees.

[32] In contrast, LPC contend that the only CEAs' provisions governing a redundancy situation that they have adopted and complied with so far, are to be found at the identically worded clause 25 of the MUNZ/LPC CEA and clause 26 of the RMTU/LPC CEA. In summary

these clauses above the heading "REDUNDANCY" contain the following definitional elements and process guidance (with my emphasis):

- An **Objectives** introduction indicating the purpose of the sub-clauses are to "provide a procedure for the reduction of staff numbers where a redundancy situation has been identified." It then mentions the need for an outcome ensuring a "balanced staff structure;" advocates a voluntary severance approach; references a compensatory formula being provided and support mechanisms for redundant employees.

- A **Definition of Redundancy** with emphasis on the standard common law position that a redundancy situation exists "where a worker's employment is terminated by the employer" due "wholly or mainly, to the fact that the position filled by the worker is, or will become, superfluous to the needs of the employer".

- An eight-part **Procedure** provides that:

    i. "If the employer considers it may be necessary to implement a redundancy or redundancies, it will meet with the affected employee(s) and the union to discuss the situation." The union is to be advised of "any impending redundancy situation at least six weeks prior to issuing notice of termination to the affected employee (s)."

    ii. When informing the union "the employer shall provide in writing full details of the redundancy situation(s) it has identified including the positions involved."

    iii. Where the union seeks a discussion this will focus upon "the redundancy situation and the procedure for reducing staff numbers."

    iv. Four weeks after giving the union notice, the employer must seek volunteers in the affected groups and amongst other groups if insufficient volunteers emerge.

    v. Selection for severance amongst excess volunteers is guided by age and/or length of service factors.

    vi. After six weeks from informing the union and exhausting voluntary options the employer may declare employees redundant in the affected group.

    vii. Unless agreed by parties to the CEA, voluntary redundancy numbers should not exceed the employer identified numbers.

    viii. Employees get two weeks' notice of termination if "declared redundant."

[33] The remaining sub clauses cover matters for dealing with volunteers and the factors to take into account; a compensatory payment schedule; the rights of employees during and on conclusion of the process; how annual and long service leave is dealt with and a "**Technical Redundancy**" clause covering what compensatory measures are or are not available should the business be sold.

[34] In broad terms, the dispute is that the unions are insisting that no restructuring proposal should have be presented to their members without prior discussion on its content and scope and LPC is asserting that they have the right to develop a proposal without union input and they are meeting their CEAs' and statutory obligations by engaging in consultation with all impacted workers and the Unions on their fully formed proposal.

Other obligations governing the relationship arising from the CEAs.

[35] In addition, the Authority has examined the CEAs and asked the parties to make submissions on what they see as factors governing the past and ongoing employment relationship.

[36] A starting point is the MUNZ/LPC CEA has a cl 4 headed "**CONDUCT OF UNION BUSINESS**" that while covering union delegate recognition and delegate participation time off and union meetings, has a general clause headed "**Co-operation"**. It states:

> The parties to this Agreement agree to work co-operatively and in consultation as appropriate on matters of mutual interest e.g., Health and Safety. To improve communication levels withing the Company the employer will hold regular informative meetings with the party to this agreement.

[37] The RMTU/LPC CEA has an identical 'co-operation' provision as above but also an additional general clause headed "**ENGAGEMENT Wider LPC-Unions High Performance High Engagement (HPHE) Charter**." This clause details a process that RMTU and other unions (including MUNZ) had entered into and then describes it "encompassing the following" principles and process:

- Joint commitment to working together in good faith, including honest and forthright interactions, raising issues in a fair and timely manner, treating the other party with respect and giving the other party all relevant information needed for effective engagement.

- Joint commitment to working together to foster a cooperative and inclusive culture where workers are meaningfully involved in making decisions which enhance and/or grow the business and improves results for both he company and the workforce.

- Enhancement of a more engaged and interest-based working relationship with LPC to improve business operational efficiencies, productivity and profitability.

> The parties confirm that the HPHE Charter is subject to the Employment Relations Act 2000; the parties CEAs and any other existing agreements between the parties, which shall remain in full force and effect. The HPHE charter shall not diminish in any way any of the rights and obligations under existing legislation or agreements.

[38] In submissions and in evidence the MUNZ delegate (Mr Campbell) informed the Authority that MUNZ had withdrawn from the HPHE Charter engagement process in February 2024 due to concerns it was ineffective. Mr Shrimpton for RMTU noted while the HPHE charter was referenced in their CEA it had ceased to operate.

[39] Mr Foster's affidavit for LPC described the HPHE Charter history and noted it had been reviewed in July 2024, and found to be an overwhelmingly negative experience and it was replaced by a "Collaboration Model" which he suggested covered the "same matters that were discussed as part of HPHE". Mr Foster expressed a view that neither process was intended by LPC to cover organisational change proposals (not being used during a past restructuring) and it was confined to discussion of day-to-day operational matters and any policy initiatives. [4] However, Mr Foster while emphasising the narrowness of the collaboration model's purported remit, noted generally: "We recognise that the best way of working is if we can have the unions at the table at an early stage."

[40] Mr Foster's affidavit also acknowledged that after the review of the HPHE charter the RMTU indicated they disagreed with the proposed replacement and "wanted to ensure they were involved in making decisions by consensus." Mr Foster says in July 2024 LPC confirmed to the Unions they were withdrawing from the HPHE charter and they would henceforth be applying their Collaboration Model.

Good faith

[41] The provisions of s 4(1A) of the Act and case law related to redundancy processes do little to assist the question of when consultation should commence beyond emphasising the importance of information sharing (s 4(1A)(c)) and consultation where an employer is "proposing to make a decision that will, or is likely to have an adverse effect on the continuation of employment".[5] However, s 4(1A)(a) describes the duty of good faith as not being a limited

[4] Affidavit of Nigel Brian Foster, 22 April 2025
[5] Employment Relations Act 2000, s 4(1A)(b)&(c).

concept as it is "wider in scope than the implied mutual obligation of trust and confidence" and s 4(1A)(b) "requires" the parties to be "active and constructive" in maintaining a productive employment relationship. A duty that runs both ways. The challenge for the Authority is to objectively examine the parties' actions and obligations to ascertain if they meet the requirements of the Act in context. A part of that exercise is to interpret to what extent the CEAs' provisions assist and whether they affirm existing established principles or call for a wider or limited reading of mutual expectations on the scope and timing of consultation.

Discussion

[42] I am not assisted by the parties failing to explicitly incorporate reference in the CEAs to how they should approach a situation where it is concluded that internal organisational change may be necessary. The Unions' counsel in submissions drew attention to the recent Employment Court decision *Television New Zealand Ltd v E Tu Incorporated.* [6] This case, despite finding the parties had an "uncommon" process provision in their CEA requiring the union and company to take a collaborative approach to a restructuring process, upheld a view that the redundancy provisions under scrutiny differentiated between the development stage of a proposal and its consultation/implementation stage. As a result, the court ordered the employer under s 137 of the Act, to comply with the relevant CEA provision that had the practical effect of halting an advanced restructuring process and requiring the proposal at issue to be 'parked' for 20 working days to allow the union an input on its design in a collaborative fashion.

[43] I am not convinced that the current CEAs between LPC and the Unions contain explicit reference to how a restructuring proposal should be developed akin to the *Television New Zealand* case, as the provision in question was detailed and focussed specifically on a potential restructuring and the clause, although headed "Workforce Participation", is placed sequentially before a sub-clause dealing with redundancy. [7]

[6] *Television New Zealand Limited v E Tu Incorporated* [2024] ERNZ 356.
[7] Ibid at [7].

[44] However, the Authority must deal first with the contention by the Unions that their cited contracting out clause has the same effect. To do so requires an interpretive approach as discussed below.

The law

[45] In *Television New Zealand Limited v E tu Inc* the Employment Court drawing on extensive case law precedent [8] summarised the principles to be adopted when interpreting CEAs.' These include overall that an objective approach must be adopted with an aim to:

> Ascertain the meaning which the agreement would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were in at the time of the agreement. This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by context. A provisional conclusion as to meaning is to be cross checked against the context provided by the agreement as a whole, and any relevant background. [9]

[46] The court went on to explain, referring to an earlier decision [10], that the statutory and common law context in which CEAs are entered into and operate in is also relevant in an interpretative exercise. [11]

The natural and ordinary meaning of the contracting out clause?

[47] In assessing a natural and ordinary meaning of the clause from an informed objective standpoint I first have to examine its placement and title or heading.

[48] The clause sits in the "General Provisions" part of the CEA which is an odd positioning as it deals with a situation that would better sit alongside the statutorily required 'employee protection' provision at cl 27.4 of the CEA which defines a specific restructuring situation by reference to the Act. This being narrowly concerned with "the sale transfer, or contracting out of all or part of the Employer's business to another entity." The CEAs' 'restructuring' definition is consistent with s 69OI (Interpretation) of the Act, however, it does not when defining

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[8] Including the Supreme Court decision *New Zealand Air Line Pilots Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111, ERNZ 428 and a full Employment Cour bench decision *Vulcan Steel v Manufacturing & Construction Workers Union* [2022] NZEmpC 78, [2022] ERNZ 304.
[9] At n 6 [11].
[10] *Le Gros v Fonterra Co-operative Group Ltd* [2023] NZEmpC 193, [2023] ERNZ 800.
[11] Above n 6 at [12].

restructuring in the context of ‘contracting out’, include reference to an internal reorganisation of an employer’s own business staffing structure. [12]

[49] The wording of cl 2 is exclusively directed to potential staffing decisions that involve a proposal to not utilise existing employees of LPC. This is consistent with the clause title of ‘contracting out.’ The purpose of the clause on a plain and ordinary reading is clearly to deal with a specific matter. Ms Baird reinforced the latter point in her evidence by recalling that the said clause was introduced by the Unions as a claim in 2008 against a backdrop of LPC considering outsourcing work to third-party providers.

[50] The Unions did not contend Ms Baird’s recollection and accepted that clause two was intended to cover contracting out proposals. The Unions submission however, tried to persuade that the contracting out clause was of broader application and that it could encompass any general “change” proposal.

[51] I conclude as a first step in my analysis, that cl 2 of the CEAs was objectively intended to operate in distinct and narrow circumstances.

[52] However, I need to also check my initial view against relevant contextual factors. These include the two additional CEA provisions I have cited being the co-operation clause and the expectations that the parties have set for each other arising out of the HPHE charter. In addition, one overarching unique feature of this dispute is the nature of the restructuring proposal. This is not an ordinary restructure driven by pressing financial considerations or constraints. It is best described in Ms Baird’s affidavit as:

> At a high level, the rationale for the Proposal is to optimise the organisation structure of Container Terminal; Operations to enhance safety, provide employees with focussed direct leadership whilst creating clear communication and escalation pathways, increase employee engagement, create coaching and career development opportunities, increase diversity, and drive a performance culture to enable LPC to meet its strategic aims of being an efficient and innovative maritime gateway. [13]

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[12] Employment Relations Act 2000, Part 6A, s 69OI.
[13] Affidavit of Belinda Baird, 21 March 2025 at [9].

[53] Ms Baird went on to note that while thirty-five positions were proposed to be disestablished, twenty-one positions would be created and there were a separate twenty other potential redeployment options for those impacted.

[54] While I accept that LPC has the ultimate prerogative organise its business as it sees fit, it must adhere to wider CEA based 'relational' obligations that point to a need to develop such major departures from existing practices in a more collaborative manner that recognises the centrality of the Unions' collective approach. This 'recognition' has so far been limited to a narrow approach of what amounts to individual consultation or seeking feedback on a proposal of wide scope and operational complexity. The scope of the proposal that also includes taking a significant group of union members outside of CEA coverage, does not lend itself to such a simplistic approach.

[55] I have carefully considered that the parties need to advance this matter with a degree of certainty and I recognise that the prolonged process is time consuming, frustrating, and not conducive to a positive or constructive ongoing relationship. In addition, the workers involved are likely to be anxious about their future and entitled to a degree of certainty of outcome.

[56] Unlike typical applications to the Authority, I have had no convincing submission or evidence that a further delay will commercially disadvantage LPC or cause immediate business difficulties.

Finding

[57] While I do not consider cl 2 of the CEAs (contracting out provisions) applicable to these circumstances, I do find that the CEAs have been breached to the extent that the relationship between the Unions and LPC is essentially defined as co-operative and collaborative and such features have been notably absent in the manner by which the restructuring proposal has been developed and presented. LPC's approach is also in the narrow circumstances described, not in accord with the wider good faith duty owed of the parties seeking to "be active and constructive in establishing and maintaining a productive employment relationship." [14]

[14] Above n 5. n

[58] I have heard some evidence of the breakdown of the parties' previous attempts to engage more collaboratively arising from expressed CEA clauses but this does not give a green light for LPC to simply embark on a exclusionary path and as suggested take a narrow approach to what they define as legitimate union business. Input into a major restructuring is a core union function as it involves a fundamental issue of their members' job security. Pragmatically, for LPC it would assist in reaching agreement and consensus on organisational change if they took the time to persuade the Unions of the need for changes and rebuilt trust through constructive engagement.

[59] I have resisted describing the Unions' 'non-engagement' in the consultation process so far, on the ground that I have found they have a legitimate cause to advance.

[60] In answering an issue put by LPC in submissions that I have to determine – I do find that LPC should have developed their restructuring proposal with the Unions prior to it being presented for formal consultation with all workers. This view is based on the expressed CEAs' provisions and mutual good faith obligations.

Remedy – is a compliance order appropriate?

[61] Given the Authority's finding that a breach has occurred of stated contractual obligations a compliance order is an appropriate remedy; this will mean that the parties must find a better way to engage in consultation on the restructuring proposal advanced by LPC. I, however, recognise it would be impractical to direct LPC to withdraw their proposal and commence a 'blank slate' approach.

[62] I am mindful that the parties have engaged in mediation albeit while a dispute existed as to their respective entrenched positions. I have also considered LPC's submission that they do not, at this point in time, intend to dismiss any workers impacted by their proposals and that work has gone into preserving options for workers not being re-assigned to new roles. Nevertheless, if at any time during the currency of the compliance order detailed below, either party wishes to return to mediation they are welcome to apply to the Authority seeking an urgent direction.

Orders

[63] Taking all the contextual factors into account and the Authority finding that breaches of CEA obligations have occurred I find it just that a compliance order pursuant to s137(2) of the Act be issued.

[64] As a condition of the compliance order, I direct Lyttelton Port Company Limited to immediately halt current direct consultation with the workers subject of Union coverage and direct the parties to engage in structured consultation on the proposal entitled "Container Terminal Operations Change Proposal" as soon as practicable, to allow constructive engagement and debate on the efficacy or otherwise of the proposal advanced, including seeking to secure an agreement on any changes to the current coverage provisions in existing CEAs'.

[65] Given the need for the parties to resolve a way forward in a reasonably timely manner I order that compliance with the identified additional collaboration requirements of the cited collective employment agreements of the parties is concluded within twenty working days of the date of this determination being issued.

Costs

[66] An Authority Practice Direction, effective 1 February 2024, has examples of circumstances where the parties are expected to bear their own costs. One of those circumstances is as here, where the predominant issue in dispute involves the interpretation of a collective employment agreement provision.[15] Consequently, it is the Authority's view that costs should not be awarded to either party.

David G Beck
Member of the Employment Relations Authority

[15] For further information about the factors considered in assessing costs see: *www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1*