

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**5280907**

BETWEEN                      TRANSPORTATION  
   AUCKLAND CORPORATION  
   & CITYLINE ( NEW  
   ZEALAND) LTD

AND                                NZ TRAMWAYS AND  
   PUBLIC TRANSPORT  
   EMPLOYEES UNION; THE  
   AKARANA BUS DRIVERS  
   ASSN; THE NATIONAL  
   DISTRIBUTION UNION AND  
   THE EP&M UNION INC

Facilitator                      James Wilson

Date:                                16 October 2009

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**MINUTE OF FACILITATOR  
RE PUBLICATION OF RECOMMENDATION**

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**Background**

[1] On 14 October 2009 I issued a recommendation in terms of section 50H of the Employment Relations Act (the Act) which included the following statement:

***Publication of recommendation***

*[6] While section 50H(2) does provide that the Authority may give public notice of a recommendation resulting from facilitation I have indicated to the parties that it is my intention that this recommendation remain confidential to the parties unless or until I consider that it would be useful for the recommendation to be made public.*

*[7] In terms of section 50H(2) of the Act this recommendation is confidential to the parties unless or until I determine otherwise. By way of clarification; it is appropriate for the Unions to disseminate to, and discuss this recommendation with, their members and for NZ Bus to discuss its*

*contents with the appropriate managers of the constituent companies. Should either party consider that it would be useful for this recommendation to be made public they should make a formal request to me. The other party will then be given an opportunity to make submissions on such request before I make any further decision as to publication.*

[2] On 15 October 2009 NZ Bus formally requested that I make my recommendation public. In response to this request the Unions have indicated that they do not oppose the publication of the recommendation but have requested that I make minor amendments to it to clarify some factual matters. Having considered the respective submissions I have decided that is appropriate to allow publication of my recommendation in a slightly amended form.

**[3] An amended recommendation is attached and my previous recommendation is hereby withdrawn. In accordance with section 50H(2) the restriction on publication included in that recommendation at paragraph [7] is now removed and the parties are free to publicise the recommendation, as amended, as they see fit.**



James Wilson

Member of the Employment Relations Authority

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   DISTRIBUTION UNION AND  
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Facilitator                      James Wilson

Date:                                14 October 2009

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RECOMMENDATION OF FACILITATOR  
(As amended 16 October 2009)

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**Background**

[1] On 18 September 2009 Transportation Auckland Corporation Ltd and CityLine (New Zealand) Ltd (referred to in this recommendation collectively as NZ Bus) applied for *facilitation* in terms of s.50B of the Employment Relations Act (the Act). The Unions listed above (the Unions) did not oppose this application and in a determination dated 8 October 2009 the Authority referred the parties to facilitation on the grounds that *the public interest* (was likely to be) *substantially affected* (section 50C(2) of the Act.)

[2] Section 50B of the Act suggests that the objective of facilitation is to assist (the parties) in *resolving difficulties in concluding (a) collective agreement*.

[3] Section 50H of the Act says:

***Recommendation by Authority***

*(1) While assisting the parties to bargaining for a collective agreement, the Authority may make 1 or more recommendations about --*

*(a) the process the parties should follow to reach agreement; or*

*(b) the provisions of the collective agreement the parties should conclude;*

[4] Over the past few days I have spent a good deal of time discussing their respective positions with the parties and attempting to assist them in concluding a collective agreement by negotiation. Unfortunately despite both parties demonstrating a good deal of flexibility in their positions it has not been possible for them to reach an agreement. It is therefore now appropriate that I provide them with a recommendation as to *the provisions of a collective agreement*. I am aware that this recommendation may not find favour with the parties and in any event will not address all of the outstanding issues. For that reason I also intend to provide a recommendation as to the *process the parties should follow to reach (full) agreement*

**The factors leading to recommendation**

{5] In considering my recommendation I have taken into account a number of relevant issues including:

(i) I have expressed to both parties that I have a great deal of respect for the work of bus drivers and the conditions under which they provide extremely valuable service in often trying and occasionally dangerous circumstances. It is arguable that when compared to similar occupations or occupations of similar worth, bus drivers are underpaid. However given all of the other circumstances surrounding the current negotiations I do not consider that now is the appropriate time, nor collective bargaining the appropriate forum, to address a long-standing deficiency in the pay structures of bus drivers. Such movement would have wide ranging implications on such issues as the cost and funding of public transport and are well beyond the scope of a single, albeit large, employer to address in the course of a single bargaining round.

(ii) I am satisfied from figures that have been provided to me that NZ Bus is not in a financial position to meet a major realignment of buses bus drivers wages at the current time. I am also satisfied that while it has been an increase in patronage changes in the make up of that patronage (for example an increase in Super Gold Card users) and an increase in costs, has resulted in NZ buses net operating income for the current financial year being substantially less than forecast and as compared to the previous year.

{iii) I am conscious that, despite recent statistics which indicate that the difficult economic circumstances are showing signs of improvement financial commentators are guarded in their predictions of continued recovery. In particular unemployment is likely to continue to grow over the next year. Over the past couple of years many New Zealanders have had to show restraint; not least many collective agreements have been settled at levels which are substantially less than has been the case over previous years in a more buoyant economy. Any increase in drivers wages will put pressure on costs which sooner or later, and inevitably, will be passed on to the consumer either via increased fares and/or increased subsidies.

(iv) I am also conscious that the New Zealand inflation rate, as recently announced, is a less than 2% per annum. My recommendation is equivalent to an immediate increase in rates of bus drivers of approximately 4.2%, followed by a similar increase in 16 months time, and provides the opportunity for the drivers to renegotiate the collective agreement in a little over two years.

(v) It is difficult to compare total remuneration rates as between bus drivers employed by different Company's and acknowledge the Unions assertion that other Companies' Agreements have been for a shorter term and include a more advantageous overtime structure and higher hourly rates than the current NZ Bus Collective Agreement. However, my recommendation takes account of recent settlements with other bus companies in the Auckland region (approximately 70 cents and 55 cents per hour for a term expiring late 2011) and would give drivers employed by NZ Bus a slightly better increase in hourly rate over a similar term to that agreed in other bus drivers collective negotiations.

(vi) While I accept the company's reluctance under all the circumstances to backdate any increase in wages it is not productive to attempt to "lay blame" for the delay in reaching an agreement. Both parties must accept some responsibility for the delays. My recommendation is that the first increase be backdated to the expiry of the previous collective agreement.

(vii) The company have indicated that any new collective agreement must provide stability and certainty up to and beyond the Rugby World Cup in October 2011. A similar term has been agreed with other bus companies in the Auckland region and seems sensible. The unions have indicated that they are not opposed to the 2 1/2 year term that this provides but have indicated that some "premium" should be payable. The term I am recommending is for a collective agreement which expires at 31 December 2011. In my view this expiry date provides the stability required by the company while, as with the other bus company settlements provides an increase in rates which is greater than might otherwise have been agreed in the current economic climate.

#### **Publication of recommendation**

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[7] **In terms of section 50H(2) of the Act this recommendation is confidential to the parties unless or until I determine otherwise.** By way of clarification; it is appropriate for the Unions to disseminate to, and discuss this recommendation with, their members and for NZ Bus to discuss its contents with the appropriate managers of the constituent companies. Should either party consider that it would be useful for this recommendation to be made public they should make a formal request to me. The other party will then be given an opportunity to make submissions on such request before I make any further decision as to publication.

## **Recommendation**

[8] This recommendation addresses only the issue of wages, effective dates and term of the collective agreement. It is my understanding that the parties are close to agreement on a number of other issues and that these agreed changes will be incorporated into a final agreement or, if agreement is not possible will be withdrawn.

**I recommend that the parties agree to a collective employment agreement:**

**Term:**

**5 July 2009 to 31 December 2011**

**Wage rates**

**5 July 2009: hourly rates increased by 70 cph**

**5 November 2010 rates increased by a further 70 cph**

**Payment for lockout**

[9] I note that NZ Bus has steadfastly refused to consider the payments to drivers for the time drivers were locked out and unable to work, pointing out that the withdrawal of the ARTA subsidy means that the bus company's income was also dramatically reduced during the period of the lockout. However the Unions are equally adamant that as their members were ready and willing to work during the lockout the company should pay the drivers for that period. Even if the parties except my recommendation as set out above the question of payment for the lockout could prove a serious stumbling block to eventual settlement of a new collective agreement. While I have no specific recommendation regarding whether or not the company should pay the drivers **I would strongly recommend that the parties hold further discussions on this point, if necessary with the assistance of a third party, in an attempt to reach a satisfactory arrangement in regard to payment period for the period of the lockout.**

**Ongoing negotiations**

[10] Should the parties not accept my recommendation I have urged them to consider, as a matter of public interest, mutually withdrawing their respective notices of industrial action and returning to negotiations in an attempt to reach a settlement, without the need for further disruption to the public. By way of a supplementary recommendation:

**[11] I recommend to the parties that, in the event they are unable to accept my recommendation as drafted they:**

- **mutually and immediately agreed to withdraw all notices of industrial action**
- **immediately recommence negotiations, with the assistance of a Department of labour mediator, in attempt to reach a settlement of the differences.**



James Wilson

Member of the Employment Relations Authority