

# Employment Relations Authority

Te Ratonga Ahumana Taimahi



15 November 2012

To: Ports of Auckland Ltd

And to: Maritime Union of New Zealand

## **COLLECTIVE BARGAINING BETWEEN PORTS OF AUCKLAND LTD AND MARITIME UNION OF NEW ZEALAND - REPORT OF FACILITATOR**

[1] The following is my report as the member of the Employment Relations Authority facilitating collective bargaining between Ports of Auckland Limited (POAL) and the Maritime Union of New Zealand (MUNZ).

[2] Given the passage of several months over which facilitation has taken place in private, as required by the Act, and given the high degree of publicity and public interest the collective bargaining dispute between POAL and MUNZ had generated before facilitation began, this report is intended to give some information about the process undertaken by the parties and progress made to date.

[3] Facilitation provided under the Employment Relations Act 2000 commenced with the employer and the union on 8 May 2012. The process has continued since then, with regular meetings of the parties and with other communications between them and me.

[4] While the parties have identified many of the terms and conditions of employment on which agreement can be reached, several key issues remain unresolved in that regard. Facilitation has now reached a stage where to assist them the parties have sought from me as facilitator, "recommendations" in terms of the Act.

[5] Both POAL and MUNZ remain willing to continue with facilitation, the statutory object of which is to assist parties to resolve difficulties in concluding a collective agreement.

[6] Bargaining for a new collective agreement was initiated in August 2011 and extensive mediation assistance was provided to POAL and MUNZ by the Mediation Service. From December direct industrial action was taken, in the form of strikes by members of MUNZ employed by POAL and lockouts by the company of those employees.

[7] Mediated bargaining continued into 2012. Steps taken by POAL to contract out some of the work being performed by the employees and to declare their positions redundant as a consequence, were the subject of an application by MUNZ to the Employment Court which has not yet been finally decided by the Court. Further direct action was taken in February and March before POAL and MUNZ jointly applied to the Authority, in April, for access to facilitation. This was sought by them on the ground under the Act that there had been protracted strikes and lockouts during the course of their bargaining for a collective agreement.

[8] In granting facilitation the Authority noted the importance of the matter to POAL and the union, the wide public concern or interest in the employment relationships covered by the bargaining and the effects on the wider economic and social interests of all who are affected by the difficulties in concluding the collective agreement.

[9] During facilitation, broadly POAL has sought changes to the terms and conditions of members of MUNZ' employment. The employer considers that improvement in labour utilisation and productivity from stevedoring work in particular is necessary for POAL to deliver better financial returns and allow closer performance to its competitor, Port of Tauranga. Labour flexibility was identified by POAL as a key component of any collective agreement to be entered into, needed if the volume of containers handled through the Port of Auckland is to be maintained and improved without compromising price.

[10] POAL also considers that there are terms of the former collective agreement now under renegotiation that constrain or restrict its ability to respond quickly enough to meet customer demand and that these have led to a loss of volume handled by the container terminal. Limitations on flexibility and productivity were identified by POAL particularly in relation to the system of allocating hours of work in its 7 day-24 hour shift work operation.

[11] Broadly, the approach of MUNZ at the beginning of facilitation was to express willingness to consider improvements to the way the Port operated so as to allow greater efficiency to be achieved. The stevedoring operation was identified by the union as critical to the bargaining. MUNZ considers that any change to the hours of employment of stevedores needs to be made with professional advice taken as to the health and safety implications of any significant alterations to the rostering system. MUNZ has proposed a number of changes to operations which it considers will help achieve the objectives of POAL while balancing employees' needs for security and time with family.

[12] A further important matter raised by MUNZ at the outset of facilitation was a need to provide in a new collective agreement protection of employees' terms and conditions of employment against the consequences of POAL contracting out any of the work.

[13] MUNZ considered from the outset that the central debate has needed to be whether POAL could agree to restraints against contracting out. This issue is viewed by the union as a main obstacle to entry into a collective agreement, while it remains outstanding.

[14] In many meetings and discussions that have taken place since facilitation began, much detailed work has been done by POAL and MUNZ to try and devise a system of rostering and allocating hours of work that will meet the requirements of both employer and union and form part of the collective agreement they seek.

[15] The union and the company have worked closely on rostering proposals, which have been computer modelled to see what results can potentially be delivered, but a mutually acceptable rostering system has not yet been found.

[16] MUNZ has also proposed that rosters be given a trial for a period of time to measure what can actually be delivered through them. In response POAL considers that trials are not practicable or feasible within the limitations of time and the needs for its operations to continue.

[17] Considerable differences remain between MUNZ and POAL as to the features they each seek for an acceptable roster design and system of allocating hours of work. Those features and the differences between the parties about them are now likely to be the subject of recommendations the Authority is able to give in facilitation under the Act.

[18] Another matter that may become the subject of recommendation by me is contracting out. In relation to this issue significant progress was made in June at an early stage of facilitation, when POAL announced that it had rescinded its earlier decision to appoint contractors. MUNZ acknowledged this change of approach by POAL as a significant move forward in the bargaining. As well the company advised it was willing to discuss a moratorium on contracting out for a period during the term of a collective employment agreement to be concluded, provided operational KPIs, as yet un-detailed, could be met. Since that announcement by POAL the company has remained prepared to enter into a collective agreement that restricts it from contracting out for a period of time, subject to goals being met in performance and productivity.

[19] The health and safety concerns, raised initially by MUNZ, have been the subject of a report by an expert the union commissioned for that purpose, Dr Kathleen Callaghan. POAL also provided a report from its own expert, Mr Andrew Loader, who reached different conclusions. Given the prominence and high importance of this issue and differences between the parties as to the ways in which rostering and allocation of hours may conform to health and safety requirements in this particular workplace, the Authority engaged a recognised health and safety in employment expert, Associate Professor Sally Ferguson. Early in October she produced a report after considering detailed information provided by the parties and taking a view of stevedoring operations at POAL, and after hearing from the parties and conferring with their experts Dr Callaghan and Mr Loader. Professor Ferguson's report is viewed as instructive and helpful to the facilitation process.

[20] The parties intend to meet again shortly to discuss the recommendations they seek and the delivery of those to them by me.

[21] In concluding this report I have appended to it summaries prepared by POAL and MUNZ of their respective positions reached to date and their current proposals to settle the collective agreement.

[22] This report is provided to POAL and MUNZ for wider circulation, as they may wish to give it, to members of the union, employees of the company, or any other persons or bodies who may have a particular or general interest of any kind in the collective bargaining that has occurred and is continuing in facilitation.



Alastair Dumbleton

**Member of the Employment Relations Authority -  
as Facilitator under Section 50A to I of the Employment Relations Act 2000**

15 November 2012

# POAL Collective Bargaining Proposal

29 October 2012



Ports of Auckland

## Introduction

This paper was submitted to the Authority as a summary of Ports of Auckland's (POAL) collective bargaining position under facilitation.

The contents of this paper reflect POAL's view that the parties to the bargaining should continue to use the facilitation process to settle a new collective agreement.

## Context

On 21 May, POAL presented in facilitation its Revised CA Proposal 11 and accompanying draft collective agreement. This presentation contained POAL's offer to settle the collective agreement on the basis of 4 key points as summarised:

1. Retain current collective agreement Main Document with minimal change to present terms and conditions of employment plus include some new provisions.
2. Consolidate and amend current work arrangements into two appended schedules - the Terminal Operations Schedule and the Engineering Schedule.
3. Introduce a Code of Practice for Work Allocation to manage the company's daily operational requirements.
4. Re-table and review the Operations Redundancy Proposal dated 20 December 2011 as the basis for considering an agreed number of voluntary redundancies.

## POAL position on collective agreement provisions under facilitation

POAL supports retaining the current terms & conditions in the Collective Agreement (Main Document), subject to the proposed amendments as specified in the revised draft agreement dated 19 October 2012 (some proposed amendments have already been partially or wholly accepted by MUNZ, as noted - see attached).

Key aspects of POAL's proposed collective agreement provisions, as first presented in its 12 April 2012 Revised CA Proposal 10 and updated for this paper, are as follows:

- Pay rate increases of up to 10% e.g. \$30:00p/hr when straddle driving
- Up to a further 10% straddle performance bonus e.g. \$3:00p/hr if in top 10%
- A new permanent role of container lasher
- Agreement to 'fair & safe' terms and conditions of employment (updated)
- Carryover of superannuation, shift leave and grandfathered entitlements
- Guaranteed minimum hours per 4-week roster cycle of:
  - 160 hours for fulltime staff (rostered maximum of 60 hours per week)
  - 96 hours for part-time staff (unless agreed otherwise on individual basis)
- Seamless transfers between shifts (updated; reinserted from current agreement)
- Minimum 10-hour break between shifts (updated; currently 7½ hour minimum)
- Deletion of consecutive shifts clause (updated; inconsistent with POAL H&S policy)

- Rosters providing for 24 hours minimum notice for shift changes; 8 hours minimum notice for shift cancellations
- Whole of shift construed as being worked on the day the shift ends (updated)
- Deletion of Visual Display Units (updated; covered by statute and code of practice)
- Re-inclusion of Picnic Day as an annual leave day (updated)
- Amendment to Right of Access clause (updated; linked to provision under ER Act)
- Addition of 'other activities' to Conflict of Interest clause (updated)
- Deletion of union agreement to redundancy compensation for employees who resign (updated)
- Agreement to 'reasonable' company policies (updated)
- 30 month term from 1 December 2012 to 31 May 2015 (updated)

Also as specified in the revised draft documents, POAL continues to seek to:

- i) Combine the current schedules for Stevedoring, Ancillary, Rail & Shuttle, Road Office, and Casual Employees into a single Terminal Operations Schedule;
- ii) Retain the current Engineering Schedule (with changes mainly to Hours of Work);
- iii) Delete the Fergusson Grandparented Leading Hand and Axis Pack Schedules (as no longer relevant or necessary); and
- iv) Shift all grand-fathered service pay and redundancy entitlements into individual personal-to-holder Letters of Employment under section 61 of the Act (to date, MUNZ have accepted none of the proposed amendments to current schedules).

POAL makes no further offer to MUNZ on its remaining claims concerning the collective agreement, including those claims that seek to:

- Extend collective agreement coverage
- Make Christmas Day a non-working day (should Christmas Day need to be worked, the company would call for volunteers before rostering employees)
- Give part time employees priority to extra shifts before casuals engaged
- Negotiate operational aspects of the Conlinxx contract
- Exclude or make subject to mutual agreement the right to contract out

All other POAL claims not referred to above to remain as per Revised CA Proposal 11 dated 21 May 2012.

## **POAL position on non-contractual elements under discussion**

### ***Key operational issues***

In addition to its collective agreement proposals, POAL has used the facilitation process as an opportunity to present to MUNZ the following non-contractual elements of its position:

1. The introduction of a Code of Practice for Work Allocation encompassing the policies and procedures for shifts, rosters and task allocation that it has developed and presented in facilitation.
2. The re-tabling of its Operations Redundancy Proposal dated 20 December 2011, made on the assumption that achievement of the anticipated key performance indicators could possibly create a surplus staffing situation and/or a number of existing stevedores seeking voluntary redundancy in response to personally

disruptive future shift arrangements.

3. The rescinding of its 6 March 2012 decision to contract out its stevedoring and certain engineering operations.
4. An invitation to MUNZ to discuss the prospect of a moratorium on contracting out following commencement of the collective agreement, subject to the achievement of specified key performance indicators.

***Other operational matters***

Operational matters not covered by the collective agreement or non-contractual issues identified above will continue to be managed by POAL by way of its good faith obligations to consult MUNZ where potential change may affect union members.

This includes (but is not limited to) the matters specified below which, following the coming into force of a new collective agreement, will cease to have any effect as prevailing 'custom & practice' arrangements:

- Task allocation by rotation (refer to the proposed Code of Practice for Work Allocation).
- Manning levels, especially in relation to terminal equipment.
- Straddle driving times and equipment allocation.



A M (Tony) Gibson  
Chief Executive

## **MUNZ proposals to settle the POAL Collective Agreement**

Over 12 months the Union has sought the renegotiation of a fair collective agreement that balances the need for employment security, flexibility and continuing improvements to productivity in a way that does not negatively impact on health and safety and the family life of union members.

The union's position has moved considerably during the bargaining, including putting up numerous options regarding work organization, attempting to address what the Port has identified as the key issues. We have offered solutions such as a trial in order to build understanding and make progress. We strongly rejected the Port's attempts to dismiss the workforce and contract out the work – we now strongly reject the continued refusal of the Port to agree a collective employment agreement that protects permanent employment at the Port.

We believe there is a settlement possible based on the following points:

### **Rostering**

#### **1. Hours of Work**

The union seeks a balance between reasonable predictability and flexibility. We have offered flexibility in many areas including 12 hour shifts, overtime at extra time without penalty rates before and after shifts, removal of roster restrictions, reduced breaks, reduced briefing time etc.

#### **2. Duties and Utilisation**

The union has offered changes to duties and utilization of staff including increasing the use of part-time permanent workers, reduced briefing times and reduced breaks, etc.

Our proposal retains restrictions on the employment of casuals and the career path and safety assurances of using those most experienced and permanently employed workers to drive cranes and straddles.

We seek availability of full time work for permanent part-timer's before casual workers are utilised. Up to 20% of port employees can be employed as casuals and this would continue under the unions proposals.

#### **3. Time Off**

The union seeks to preserve the little control workers have over time off. This includes one guaranteed day off per week and one weekend off in three.

### **Health and Safety**

Authority appointed Health and Safety expert Associate Professor Fergusson's advice is that working time arrangements should be designed within a set of good practice rostering principles.



The main safety risk identified by the report was that of fatigue. The union believes its proposals enable a roster to be developed that addresses fatigue. Regular start times enables sleep planning, breaks and maximum drive times ensure time on tasks are moderated, and roster predictability and time off provisions enable worklife balance. The union seeks to work with the company to develop a balanced roster framework and believes the boundaries it is proposing for the collective agreement will allow it to be developed, trialled and adjusted within boundaries that balance safety, productivity and decent work.

We seek an outcome that limits changes to rostering provisions to those offered by the union with all other current elements being retained and that wages in the collective be raised to meet like rates being paid on the port to workers on IEAs or in the new Port Pro collective agreement.

### **Contracting Out**

It is the union's view that a collective agreement should be agreed that is fair and sustainable and secures a commitment to continued direct employment of workers covered by this agreement. The collective agreement should contain a provision preventing contracting out. The union also seeks the return of work previously contracted out in a mutually acceptable way over a reasonable timeframe.

### **Productivity**

It is our desire to see the Port performing well and running a fair dividend to the rate payers of Auckland. This has been demonstrated by the co-operation of MUNZ in the TRACC initiative at the Port to date and the excellent performance of engineering where it has been utilized, and by the significant increase in productivity at the Port over the year in stevedoring operations.

We want to continue to use cooperative tools such as TRACC to continue improving the performance at the Port within a decent work framework. We do not accept that the Port of Auckland is unproductive or unprofitable. We have always co-operated to bring about continuous improvement and our members regularly get performance bonuses (not provided for in our collective agreement) in recognition by the Port of high performance.

### **Other Matters**

We seek the retention of one day – Christmas day – where unlike the other 364 days per year, work will not be required.

We are flexible around the term of the collective agreement.