

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2013] NZEmpC 63
CRC 16/13**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN PACT GROUP
Plaintiff

AND SERVICE AND FOOD WORKERS'
UNION NGA RINGA TOTA
INCORPORATED
First Defendant

AND THE PUBLIC SERVICE
ASSOCIATION TE PUKENGA HERE
TIKANGA MAHI INCORPORATED
Second Defendant

Hearing: On the papers and by memorandum filed on 12 April 2013

Appearances: Barry Dorking, counsel for plaintiff
Peter Cranney, counsel for first defendant
Catherine MacNamara, counsel for second defendant

Judgment: 15 April 2013

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] By consent, there is an order staying execution of the Employment Relations Authority's determination¹ on condition that the plaintiff pays the sum of \$10,000 to the Registrar of the Employment Court at Wellington, which sum is to be placed on interest bearing deposit and paid out only by written consent of the parties or by order of the Court.

¹ [2013] NZERA Christchurch 41.

[2] The plaintiff has also applied for a stay of the Authority's direction to the parties to mediation. The defendants do not consent to a stay of that order. I decline to order a stay of that direction to mediation on the following grounds.

[3] The issues between these parties, who are in ongoing employment relationships, relate to allegedly unlawful preferences given to non-union employees. Those are questions that are amenable to settlement directly between the parties. In addition, s 188 of the Employment Relations Act 2000 (the Act) requires the Court to both consider whether an attempt has been made to resolve the matter by use of mediation, and to direct that mediation or further mediation be used before the Court hears the matter unless any one or more of three quite stringent and limited tests under s 188(2)(b) of the Act is met.

[4] I am not satisfied that any of those three tests is met in this case so I am obliged to direct the parties to mediation in any event. That will be, in effect, the same mediation as the Authority directed. Counsel for the parties must now arrange with the Mediation Service of the Ministry of Business, Innovation and Employment, or such other mediator as they may agree upon, to implement this order.

[5] The defendants should file and serve their statements of defence but any further step in the proceeding should await the outcome of the mediation directed in this judgment. If that is unavailing, any party may approach the Registrar to arrange a telephone directions conference with a Judge.

[6] There will be no order for costs on this application for stay.

GL Colgan
Chief Judge

Judgment signed at 2 pm on Monday 15 April 2013