IN THE EMPLOYMENT COURT
AUCKLAND

[2011] NZEmpC 24
ARC 19/11

IN THE MATTER OF	proceedings removed from the Employment Relations Authority
BETWEEN	JOHN MATSUOKA Plaintiff
AND	LSG SKY CHEFS NEW ZEALAND LIMITED Defendant

Hearing:	21 March 2011 (in Chambers) (Heard at Auckland)
Counsel:	Robert Towner, counsel for plaintiff Garry Pollak, counsel for defendant Timothy Oldfield, counsel for Service & Food Workers Union Nga Ringa Tota Inc as applicant for leave
Judgment:	21 March 2011

JUDGMENT OF CHIEF JUDGE G L COLGAN

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[1] The Service & Food Workers Union Nga Ringa Tota Inc (the Union) applies under cl 2(2) of Schedule 3 to the Employment Relations Act 2000 (the Act) for leave to be heard and represented in this proceeding. Although the defendant agrees, the Union's application is opposed adamantly by the plaintiff. The Court has given a priority fixture to the proceeding which has been removed urgently for hearing at first instance in this Court under s 178 of the Act.

[2] Mr Matsuoka's proceedings are for compliance orders in essence requiring the defendant to comply with the relevant provisions of Part 6A of the Act by employing him upon a transfer of undertaking which took place about one month ago. Mr Matsuoka says he was an employee of a commercial entity which lost an

aviation services contract (the supply of catering services to Singapore Airlines at Auckland International Airport) to the defendant. Mr Matsuoka says that he qualified and elected to transfer his employment to the defendant but that it has refused to engage him as an employee. The defendant says that Mr Matsuoka's circumstances do not meet the statutory requirements for a transfer under s 69 of the Act. Although a number of other employees (many, but not all, of whom are members of the Union) have transferred to the defendant, LSG disputes the entitlement of the plaintiff and several other persons to do so.

[3] The case is scheduled to go to trial on 11 April 2011 and will be timetabled today. Whether the union is entitled to be an intervener will affect that timetabling and so needs to be decided now. But for the urgency of the hearing and the substantial factual disputes that will occupy hearing time, I would have wished to sit a full Court of three judges on the case pursuant to s 209 of the Act. That is not possible for those reasons.

[4] The Union's case for being heard and represented under cl 2(2) of Schedule 3 is based upon what the Union says was its agitation for, and close involvement in the promulgation of, Part 6A to protect its members' employment during restructurings. It says that its membership covers all of the occupations listed in Schedule 1A of the Act and its members are frequently affected by restructurings including that which took place in this case. The Union says that the questions of law identified by the Authority pursuant to s 178 will impact on its members affected by the restructuring and more broadly. The Union wishes to contribute to submissions about the interpretation of the statute and, in particular, is in a position to assist the Court about the legislative history of Part 6A, its purpose, and how the questions for decision might impact on employees covered by Schedule 1A in a wider context.

[5] The plaintiff's opposition to the Union's involvement in the case is based on what he says is a recent history of antagonism between Mr Matsuoka's employer and the Union, including about, but not limited to, this transfer of undertaking and litigation about it in the High Court and in the Employment Relations Authority. I have read and heard what the parties and the Union have to say about these events but they are not before the Court for decision on their merits. I consider, however,

that the orders I propose to make will assist the Court in this case but will not allow any rehearsal of those other disputes.

[6] The test under cl 2(2) is whether, in the opinion of the Court, the Union "is justly entitled to be heard". That is a very broad test to be determined on the particular circumstances of the case.

[7] The legislative provisions for interpretation and application in this case are novel and the judgment will affect others including Union members. Subject to limiting participation strictly to submissions on questions of interpretation of the statute, I consider that the Union's participation may assist the Court. Although such intervention would normally be allowed to the Council of Trade Unions (CTU), I would not be prepared to allow both the Union and the CTU to participate. No doubt the CTU can contribute to the Union's submissions as it is unlikely that there will be any conflict of interest between the two on the proper interpretation of the statute. I also consider it equitable to allow Business New Zealand (BNZ) to make submissions to the Court if it wishes to do so and the Registrar should send a copy of this judgment to BNZ's Paul Mackay to enable it to advise the Registrar as soon as possible whether it will make submissions. Although there is a risk that, in allowing up to two interveners, the hearing will be lengthened somewhat, the potential value of considered submissions on the law will outweigh any increased time taken.

[8] The Union (and BNZ if it elects to do so) may make submissions to the Court on the final day of the hearing. These must deal with questions of statutory interpretation raised by the case and should not deal with the merits of the parties' claims and defences. It or they must file and serve on the parties and the other intervener a synopsis of the submissions to be made no later than the start of the hearing on 11 April 2011.

[9] Other directions to the hearing will issue following tomorrow's telephone conference with counsel.

GL Colgan
Chief Judge

Judgment signed at 4.20 pm on Monday 21 March 2011