

“A”  
**CONSTITUTION and RULES of  
THE NEW ZEALAND MERCHANT SERVICE GUILD INDUSTRIAL UNION OF WORKERS**

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These are the replacement rules marked “A” referred to in the annexed declaration of Ian Lindsay Gardner made before me this .....day of .....1999.

.....*Signed by Solicitor.*

## **SECTION 1: GENERAL**

### **1. Name**

The name of the Union shall be "THE NEW ZEALAND MERCHANT SERVICE GUILD INDUSTRIAL UNION OF WORKERS INCORPORATED".

### **2. Registered Office**

The registered office of the Union shall be 6<sup>th</sup> floor, 94 - 96 Dixon Street, Wellington, or such other place as may be decided upon by the Committee of Management of the Union. Notice of change in location of office shall be given by the General Secretary to the Registrar of Incorporated Societies.

### **3. Objects**

The objects of the Union shall be:

- 3.1 To watch over and help to promote the best interests and welfare of all members in regard to the conditions of employment and to seek by all reasonable means to effect a proper understanding between employers and members of the Union.
- 3.2 To help in reforming any abuses which may exist in the conditions of employment of members.
- 3.3 To provide legal assistance for members who may meet with accident or mishap in connection with their employment provided the member is in benefit and subject to any limits or conditions the Committee of Management may impose..
- 3.4 To affiliate with National and International organisations which, in the opinion of the Committee of Management, advance the professional and general welfare of the members.
- 3.5 To provide welfare benefits for members and their dependants.
- 3.6 To exercise all powers and obtaining of all and any benefits, privileges and rights under the prevailing labour legislation.
- 3.7 To participate in training and education of members.
- 3.8 Generally to exercise all powers incidental to a body corporate, subject to the provisions of the Incorporated Societies Act.

## SECTION 2: MEMBERSHIP, SUBSCRIPTIONS AND LEVIES

### 4. Membership

Any person employed in any of the following categories may become a full member of the Union upon making application to the General Secretary.

- 4.1 Any person who possesses a Master's, Mates's or Engineer's Certificate of Competency, recognised by the New Zealand Maritime Safety Authority employed or seeking to be employed aboard a ship as a Master, Deck Officer or Engineer.
- 4.2 Any person who possesses a Certificate of Competency recognised by the New Zealand Maritime Safety Authority, employed or seeking to be employed aboard a ship as a Radio and/or Electronics Officer.
- 4.3 Any other person employed or seeking employment aboard a ship in a supervisory capacity.
- 4.4 Any person employed or seeking employment aboard a ship who is responsible for the safety of passengers or cargo.
- 4.5 Any person employed or seeking employment as a Harbour Pilot, Marine Officer or such other maritime positions in and around ports.
- 4.6 Any person employed or seeking employment in a shore position who is required to possess the qualifications in 4.1 above.
- 4.7 Any person employed or seeking employment or engaged to be employed in the management of cargo handling operations and sea cargo movements through ships and shore installations in any port.
- 4.8 Any person employed or intending to be employed in the shore establishment by a shipping company, stevedoring company, shipping agent or shipping firm.
- 4.9 Any employee or group of employees may be admitted to membership at the discretion of the Committee of Management.
- 4.10 Trainee Members:
  - 4.10.1 Any person who is a trainee deck officer may become a trainee member. A trainee member shall be entitled to make representations to the Union on industrial and technical matters affecting his/her welfare. A trainee member may attend any meeting of members and speak thereat. He/she shall have no voting rights nor shall he/she be eligible for election to the Committee of Management.
  - 4.10.2 Any person employed otherwise as a trainee in the maritime industry may become a trainee member.
- 4.11 Associate Members:

Any member who qualifies for membership under Rules 4.1 to 4.9 but who is not eligible for industrial representation by the Union may become an associate member. He/she may attend meetings of members and participate in any discussion excepting industrial matters.
- 4.12 Honorary Members:

Any member who retires from active employment may upon giving written notice to the General Secretary of having retired, become an honorary member. Such members shall have no voting rights nor take part in any discussion on industrial matters.

#### 4.13 Life Members:

For special services rendered to the Union, the Committee of Management may confer on a member honorary life membership. He/she shall remain entitled to all the benefits of membership but shall not be liable to pay any subscription or levy.

### **5. Subscriptions**

- 5.1 Each member shall pay a subscription (calculated at a rate not exceeding 1% of each member's annual gross income from salary, wages and overtime and taxable payments). The amount of such subscription shall be fixed by the Committee of Management.
- 5.2 The subscriptions shall be payable in such manner (but not exceeding one year in advance) as the Committee of Management may from time to time decide.
- 5.3 The method of payment and the amount payable shall be recorded in the minutes of the meeting of the Committee of Management at which such method of payment and the amount payable are so fixed.
- 5.4 All subscriptions shall be paid to the General Secretary.

### **6. Arrears of Subscriptions**

- 6.1 No member who is unfinancial shall take part in or vote at any meeting or in any ballot nor shall he/she be entitled to any benefits of membership; provided that any special case may be referred to the Committee of Management for consideration and decision.
- 6.2 A member shall be deemed to be unfinancial when any subscription or other dues shall remain unpaid for a period of more than two months.
- 6.3 Any member in arrears may resume financial membership by paying the arrears due
- 6.4 Subscriptions and other moneys owing to the Union and in arrears may be sued for and recovered by the General Secretary or any officer appointed in that behalf by the Committee of Management.
- 6.5 A financial member is any member of the Union who is not in arrears for more than two months with the payment of any fee, subscription, levy or contribution required to be paid under these rules.

### **7. Levies**

The Union may make a levy upon the members or any specified group of members to raise funds to carry out the objects and rules of the Union provided that no levy shall be made except in accordance with a resolution passed by a majority of the valid votes cast at a secret postal ballot of the financial members of the Union who are the subject of the proposed levy, taken on a proposal to charge such levy; provided further that no member shall be called upon to pay any levy during the first month of membership.

### **8. Termination of Membership**

#### 8.1 Withdrawal

A member may withdraw from the Union by giving notice in writing to the General Secretary of his/her intention so to do. All contributions and other dues owing by any member must be paid in full to the date of such notice, and until such contributions and dues are paid, such member shall continue to be a member of the Union. Upon payment of such contributions and dues as

aforesaid, such member shall cease to be a member of the Union and shall have no interest in, and no claim upon, the property and funds of the Union in respect of his/her membership.

8.2 A member in arrears for more than two months shall be deemed no longer a member.

### **SECTION 3: MANAGEMENT OF UNION**

#### **9. Committee of Management**

9.1 The control of meetings of the Union, the general management of the affairs of the Union shall be in the hands of a Committee of Management (also referred to as "the Executive").

9.2 The Executive shall consist of 8 members made up of panels of representatives consisting of:

9.2.1 Four members employed in sea-going ships, and;

9.2.2 Four members employed in the waterfront/ports/shorebased shipping industry including members employed in restricted limits vessels.

9.3 In the case of an election, each financial member shall vote only for his/her own respective panel.

9.4 In each even year a new Executive is to be constituted. The procedure for calling of nominations and for elections shall be as set out in Rule 10.

9.5 Members of the Executive shall, subject to Rule 17, hold their offices or positions until they die, resign, or are no longer involved within the industry covered by the relevant panel, or their successors are elected, whichever shall first occur, but they shall be eligible for re-election for a further term or terms. Only financial members shall be eligible for election to the Executive.

9.6 Subject to these Rules, the Executive shall have power by resolution to authorise payment of such expenditure incurred in connection with the objects of the Union as it may think fit.

9.7 At any meeting of the Executive, four shall be a quorum, one of whom must be a principal officer.

9.8 The Executive may at any time appoint a sub-committee or sub-committees to perform such functions as the Executive thinks fit. Sub-committees shall be subject to directions of the Executive and shall report to the Executive when called upon to do so.

#### **10. Election of Committee of Management**

10.1 In the year in which elections are to be held the Executive shall as soon as practicable in February decide:

10.1.1 the date on which nominations shall open.

10.1.2 the date on which nominations shall close, which shall be at least four weeks after the date that nominations open.

10.1.3 to appoint a Returning Officer and a Deputy who shall not be officers, or candidates for office in the Union.

10.2 As soon as these decisions are taken, the General Secretary shall, by notice sent to every financial member defined in Rules 4.1 to 4.9, advise the date of opening of nominations, the time and date of closing of nominations, and the place at which nominations are to be received by him/her.

10.3 Nominations shall be made in writing. A member may nominate himself/herself or be nominated by another member or members. In the latter case the nominee shall add his/her consent. Nominators shall be financial members.

- 10.4 Should the Returning Officer be of the opinion that a nomination does not comply with these rules, he/she shall reject it and notify the member concerned immediately.
- 10.5 Upon nominations closing, the Returning Officer shall determine if an election is necessary. If it is not, he/she shall advise the Executive, which shall declare the nominees duly elected.
- 10.6 If an election is necessary the Returning Officer shall arrange for the preparation of ballot papers containing the full names of the nominees for each position, stating the method of voting and a time within which such ballot papers are to be returned to him/her at a specified address, and arrange for the posting of the ballot papers to each eligible member at the last known address.
- 10.7 The Returning Officer shall be supplied by the General Secretary with a list of the names and addresses of all persons entitled to vote in the ballot.
- 10.8 Each candidate may in writing appoint a scrutineer, who shall be a financial member, to watch the ballot on his/her behalf.
- 10.9 Only financial members shall be eligible to vote in the ballot.
- 10.10 When a member has recorded his/her vote he/she shall seal up his/her ballot papers in an addressed prepaid envelope which shall be supplied to him/her and which he/she shall personally be responsible for posting.
- 10.11 Immediately the ballot closes, excepting weekends or public holidays, the Returning Officer shall open the ballot box and count the ballot with his/her Deputy and any scrutineers that have been appointed in accordance with Rule 10.8.
- 10.12 The Returning Officer shall declare the candidate or candidates having the greatest number of votes elected, and in the event of two or more candidates for the same position receiving the same number of votes, he/she shall decide the issue by lot.

## **11. Meetings**

### 11.1 Of Union:

#### 11.1.1 General Meetings:

A general meeting of the Union shall be held at such time and place as shall be decided upon by the Executive from time to time.

#### 11.1.2 Annual General Meetings:

The Annual General meeting of the Union shall be held in Wellington or Auckland. The Report and Balance Sheet shall be presented. Such meeting shall be held in the month of June, July or August each year.

#### 11.1.3 Special Meetings:

- (a) All special meetings of the Union shall be called by the President or the General Secretary by notice to members in any practicable manner so as to ensure that there is at least three days' notice of the meeting. The notice shall state the time and place of the meeting and the nature of the business to be transacted. No business shall be transacted at such meeting other than that specified in the notice: Provided that if the President or the General Secretary so decide an emergency special meeting of the Union may be convened at not less than four hours' notice, such notice to be given in any practicable manner.

- (b) If anything is required to be decided at a special meeting of the Union such requirement shall be deemed to be satisfied if in the discretion of the Executive, the proposal that, would be placed before such meeting is submitted to and decided by a majority of the valid votes cast at a secret postal ballot of the financial members of the Union taken in accordance with Rule 19. Any decision of the Union expressed in this manner shall be deemed to be the decision of a special meeting of the Union.
- (c) Special General Meetings shall be called at any time on the requisition in writing of fifteen financial members, such requisition shall advise the port or ports in which the meeting shall be held and the nature of the business to be transacted. Within 30 days of receipt of such requisition the President or the General Secretary shall call a Special General Meeting in the manner specified in this Rule. (Rule 11)
- (d) Except as may be otherwise expressly provided in these rules, at all meetings of the union the quorum shall be five.

## 11.2 Of the Committee of Management:

### 11.2.1 General Meetings

- (a) General meetings of the Committee of Management shall take place at such times and places as the President and General Secretary decides.
- (b) Every member of the Executive, where possible, shall attend each meeting of the Executive

## 11.3 Provisions Common to Union and Executive Meetings:

- 11.3.1 Every question before a meeting shall be decided by a majority of those members present and voting thereon. Unless otherwise provided by these rules the voting at all meetings shall be by show of hands: Provided that a meeting of the Union or of the Executive may by resolution decide that any question be determined by a postal ballot of all members or the section of members affected.
- 11.3.2 Any financial member who is unable to be present at any meeting may be represented by a proxy, being a financial member of the Union: Provided that such proxy is appointed in writing on the form set out in the Schedule to these rules and it is delivered to the Minute Secretary prior to the commencement of the meeting.

## 12. Officers

- 12.1 The Executive Officers of the Union shall be the President, and Vice President who shall be elected by secret ballot of the Committee of Management from among its members as soon as possible after its election. They shall, while they remain members of that Committee, hold office subject to these rules or until their successors are elected.
- 12.2 Immediately upon the election of the representatives of the Committee of Management, the General Secretary shall send a list of the members elected to each of them, at the same time calling upon them to vote for the filling of the positions of the Executive Officers by choosing a name from the list as President and a name as Vice President and in due form advising the General Secretary. The notification shall stipulate a final date, not more than four weeks after the date of the notification, for receipt of votes. After this final date has passed the General Secretary shall count the ballot and in respect of each office declare the member having the greatest number of votes elected.

- 12.3 In the event of two or more members receiving the same number of votes for office, those members will be resubmitted for another ballot.

### **13. General Secretary and Staff**

The General Secretary and such staff as are necessary shall be appointed or removed by or with the authority of the Committee of Management and appointed upon such terms and conditions and such remuneration as the Committee shall decide. Any removal shall be without prejudice to any rights of redress.

### **14. Duties of Officers**

14.1 The President when present shall preside over all meetings, sign all minutes of proceedings and generally preserve order and safeguard the interests of the Union. The President shall have a casting vote only.

14.2 A Vice President shall in the absence of the President possess all the powers and fulfil all the duties of that office. If the President and the Vice President are absent for five minutes after the appointed time of a meeting, a chairman may be appointed by the meeting and the business proceeded with, such chairman to fulfil the duties and to have all the powers for the time being of the President.

14.3 Where practicable, the General Secretary shall attend all meetings of the Union, and of the Committee of Management and record minutes of same. He/she shall answer all correspondence, lay the same before the Union, and perform such other duties as may be necessary to carry out the objects and rules of the Union. He/she shall, within 48 hours after application, allow the books to be inspected by any person having an interest in the funds of the Union. When retiring, he/she shall immediately deliver all books and papers connected with the Union to his/her successor in office. The Union's bank account shall be operated by the General Secretary provided that at each executive meeting he/she shall schedule for approval the transactions made since the previous Executive meeting.

14.4 The General Secretary shall be responsible for the following duties:

14.4.1 To collect and receive all monies due to the Union, and to give a receipt in a form approved by the executive, and in no case to hold any such monies without the authority of the executive for any period exceeding one month, and to bank all such monies in the name of the Union in a bank approved by the executive.

14.4.2 To prepare immediately prior to the annual meetings, a balance sheet and a statement of income and expenditure for the preceding twelve months and to present such documents to that meeting, duly audited in accordance with the rules of the Union and to send a copy to the Registrar of Incorporated Societies subsequent to the Annual General Meeting.

14.4.3 To prepare immediately prior to the annual general meeting, an annual report on the business and proceedings of the Union during the preceding twelve months, and to present such report to that meeting.

14.4.4 To keep a register of the names, occupations, and addresses of members, with the date of their joining the Union.

### **15. Funds**

The control of the property and the investment of the funds of the Union shall be in the hands of the Committee of Management.



**16. Auditor**

The annual general meeting held in each year shall appoint one auditor, who shall hold his/her position subject always to Rule 17 until he/she dies or resigns or his/her successor is appointed whichever shall first occur, but shall be eligible for reappointment. He/she shall audit the books of the Union at least once in each year, and all books and vouchers must be submitted to him/her for that purpose.

**17. Removal of Officers and Position-holders**

17.1 Should any member desire that any officer or other member of the Executive or the Auditor, be removed from office or position, or that any number of such persons should be so removed such member may move at any meeting of the Union that a special meeting be called to consider the matter.

17.2 Should this motion be passed, the General Secretary shall thereupon call a special meeting for the purpose in accordance with Rule 11, and should such special meeting pass a resolution that such officer or other member of the Executive, or Auditor, as the case may be, should be removed from his/her office or position, or that any number of such persons should be so removed no such resolution shall be or become effective, unless and until it is confirmed by a secret postal ballot of the financial members of the Union.

17.3 The Officer or other member of the Executive, or auditor as the case may be shall be advised of the charges against him/her and be informed when and where the special meeting will be held, and be given the opportunity to be heard at that meeting.

**18. Casual Vacancies**

Should any office or position on the Executive or Auditor, as the case may be, become vacant for any reason, such office or position shall be filled by the next highest polling candidate from the panel in which the vacancy occurs. In the event that there is no candidate the Executive shall fill the vacancy for the rest of the elective period. Any persons so elected or appointed shall subject always to Rule 17 hold his/her office or position only for the unexpired period of his/her predecessor's term, but shall be eligible for re-election or re-appointment.

**19. Ballots and Ballot Procedure**

19.1 Whenever a secret ballot of Union members is required to be held, the General Secretary will prepare the question to be decided.

19.2 The Executive and any other member or members directly concerned in the result of the ballot, may each appoint a scrutineer to watch the ballot, and the General Secretary shall afford each scrutineer all reasonable facilities for so doing.

19.3 The General Secretary shall as soon as possible cause to be delivered or forwarded to each member whose name appears on the list of voters a ballot paper showing clearly the question to be voted on and stating the method of voting and a time within which such ballot paper is to be returned to him/her at an address which shall be specified thereon.

19.4 As soon as possible after the expiry of the time fixed in accordance with Rule 19.3, the General Secretary shall count the votes and shall declare the state of the voting, and the question shall be deemed to be carried or lost according as the requisite majority of valid votes are cast.

19.5 All secret ballots of union members shall be decided by a simple majority and in the event of a tied vote the status quo will prevail.

**SECTION 4: MISCELLANEOUS**

**20. Custody and Use of Seal**

There shall be a Seal of the Union which shall be kept locked in a box of which the General Secretary shall retain the key. It shall not be affixed to any documents except official letters, agreements and authorities to appear, or instruments required by law to be sealed.

The affixture of the Seal shall be attested by any two Officers. The Seal shall not be altered or renewed except by resolution of the Union at a special meeting.

**21. Agreements and Instruments**

The Union may enter into agreements with any employer or employers relating to any matter or thing affecting any industrial matter or in relation thereto, or for the prevention or settlement of an industrial dispute between the Union and any employer.

**22. Proceedings before a Tribunal or the Court**

The Union may be represented in any proceedings before a Tribunal or the Court or other formal proceedings only by an agent duly authorised by the Executive.

**23. Alteration of Rules**

23.1 Should any member desire that these Rules should be amended such member may move at any meeting of the Union that a special meeting be called to consider the matter, and should the motion be passed the General Secretary shall thereupon call a special meeting for the purpose.

23.2 Should the proposed amendment be passed at such special meeting, the General Secretary shall forthwith forward an application to the Registrar for the registration thereof.

23.3 The amendment shall come into operation when and not until it is registered by the Registrar.

**24. Rule Books**

A copy of the rules of the Union as for the time being amended shall be supplied to all members without charge.

**25. Register of Members and Inspection of Books**

A register containing the names and occupation and addresses of members and the dates of their joining the Union and of their withdrawal or death as the case may be shall be kept by the General Secretary and such register as well as any other books of the Union may be inspected at all reasonable times by any member or previous member having an interest in the funds.

**26. Winding Up of the Union**

26.1 The Union may at any time be wound up by majority vote of members by a ballot at a special meeting of the Union called for the purposes of discussing the proposed winding up. If the majority of the members vote in favour of winding up the Union, not less than 30 days after the special meeting, a further special meeting shall be called by the General Secretary to confirm the earlier decision of the members. If the majority of members vote in favour of confirming the original resolution, the Union shall then be wound up accordingly.

26.2 Before the winding up the Executive shall realise all the assets and pay all liabilities of the Union, and the surplus funds shall be disposed of in such a manner in pursuance of its objects as the Union may think fit.

**27. Secret Ballot on Question of Strike**

If the members of the Union or of any section thereof are concerned in any dispute and there is a proposal that there shall be a strike, the lesser of 15 members or 50% of those members of the Union who would become parties to the strike may by requisition in writing request a secret ballot under Rule 19 on the question to strike.

**28. Retention of Ballot Papers**

The Union and every officer of the Union shall take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with, or relevant to, any ballot conducted by the Union are preserved and kept at the registered office of the Union for a period of at least two months after the completion of the ballot or, where an inquiry is instituted in relation to the ballot, until at least one month after the determination of the inquiry.

**29. Supply of Amendment to Rules**

A copy of all Amendments to Rules of the Union shall be supplied to all financial members without charge within 30 days after the day on which the amendment is recorded by the Registrar.

**30. Supply of Resolutions**

A copy of any resolution passed at any general or special meeting of the Union or at any meeting of the Executive of the Union shall be supplied without charge to each financial member who requests a copy of that resolution.

**31. Supply of Annual Report, Annual Accounts and Auditors Certificate**

A copy of the Annual Report, Annual Accounts and Balance Sheet together with the Auditors Certificate shall be forwarded to each financial member not less than 7 days prior to the Annual General Meeting of the Union.

.....**PRESIDENT** .....day of 1999

.....**MEMBER** .....day of 1999

.....**MEMBER** .....day of 1999

**SCHEDULE  
FORM OF PROXY**

**THE NEW ZEALAND MERCHANT SERVICE  
GUILD INDUSTRIAL UNION OF WORKERS INCORPORATED**

I.....of  
.....being a

Member of the Union hereby appoint.....

.....

.....

of.....

.....

or failing him/her.....of

.....

as Proxy to vote for me on my behalf at the

.....Meeting

of the Union/Executive to be held on the

.....day of.....19...

and at any adjournment thereof.

Signed this.....day of.....19.....

.....(Signature).

**THE NEW ZEALAND MERCHANT SERVICE  
GUILD INDUSTRIAL UNION OF WORKERS INCORPORATED**

**"A"**

**THE NEW ZEALAND MERCHANT SERVICE GUILD INDUSTRIAL UNION OF WORKERS  
INCORPORATED**

**AMENDMENT NUMBER 1 TO RULE 3**

Add a new rule 3.9

3.9 *To promote the collective employment interests of members.*

**AMENDMENT NUMBER 1 TO RULE 4**

Rule 4.9 is repealed and replaced by the following:

4.9 *Any employee of an enterprise operating under the Maritime Transport Act 1994 or its successors.*

4.9.1 *Any shorebased employee of an enterprise operating under the Maritime Transport Act 1994 or its successors.*

These are the alterations to the Rules marked "A" referred to in the annexed declaration of Paul Aidan McBride made before me this .....day of ....., 2000.

\_\_\_\_\_  
**SOLICITOR**

\_\_\_\_\_  
**MEMBER**

\_\_\_\_\_  
**MEMBER**

\_\_\_\_\_  
**MEMBER**

**CONSTITUTION & RULES**

**OF**

**THE NEW ZEALAND MERCHANT SERVICE GUILD  
INDUSTRIAL UNION OF WORKERS INCORPORATED**

