

## Newsletter March 2012

### Ports of Auckland Dispute: Welcome to the Jungle



The NZCTU is doing a heroic job helping MUNZ try to save the jobs and working conditions of 300 Ports of Auckland dock workers, but according to the port company, the law is on its

side in this dispute.

The law of contract, with its fundamental principles such as the “sanctity of agreement”, and freedom of the parties to negotiate whatever subject matter and with whomever they choose etc, is still the legal foundation of our employment relationships. Its roots lie in 19<sup>th</sup> century laissez faire capitalism, but in NZ the introduction of the Industrial Conciliation and Arbitration Act in 1894 began almost a century of far more ‘statutory-type’ agreements in the form of national awards. The award framework was gradually eroded over time, and by 1991 Jenny Shipley’s comment “Welcome to the jungle”, recorded for all time in Hansard, heralded in the Employment Contracts Act and a firm return to the contractual basis of employment. Our current legislation, the Employment Relations Act 2000, whilst trying to address the natural inequality of bargaining power between employee and employer, and strengthening the status of collective agreements, still retains the contractual foundation.

But if a contract is the basis of our employment, surely that means that any change to its terms can only be made by mutual agreement? Normally, yes. But if your employer decides it wants to do things cheaper, by, for example, offloading you from its expenditure sheet to avoid ‘high cost items’ like your superannuation, seniority pay, or superior sick leave, then no. In that case your employer can remove all your decent conditions by selling you to another employer for a bargain price. Then it can effectively buy back your ‘raw’ labour without having to worry that, apart from eating and keeping dry, workers also need things like recreation, sanity, and to negotiate their kids through childhood. The law describes these changes without agreement as: ‘an employer organising its business in the way it thinks best’. Generally it will not interfere in that process, except to make sure that the niceties of consultation have been observed, such as saying things like: “I need to rob you; do you think you’ll be ok?” instead of “Hand over all your weekends!”

But the current Act also brought in a new set of principles, namely Good Faith Bargaining. The extent to which the court will allow good faith principles to temper or even restrict employers’ restructuring freedoms is the subject of today’s court hearing. Surely it is time for the law to insist on more balanced rights when dealing with employers looking to make savings from their employees’ livelihood.

Because without any restraints, if an employer says its objective is to increase profit, all those “free” contract principles championed by Jenny Shipley, simply fall down to the jungle floor.

### Collective Agreements

Settlements have been reached in negotiations with Port of Napier for tugs and launch. Bargaining is underway or due to commence with Silver Fern Shipping for *Kakariki* and *Torea*; Kiwirail Interislander for *Aratere*, *Arahura* and *Kaitaki*; C3 Tauranga, and PB Sea-tow.

### New Qualifications Info on Maritime NZ website

Information recently posted to Maritime New Zealand’s website about the [transition process from old and existing qualifications to new qualifications](#) on the proposed new Qualifications and Operational Limits (QOL) Framework. **Please note this information does not address the requirements for STCW 10, if any. Maritime NZ advises they are still working on this issue.**

The information details the qualifications to be confirmed in the new framework and those that will need to be transitioned, along with the transition process and timetable.

MNZ says it will be regularly updating the QOL pages on website over the next few months as new guidelines are added and we move closer to full implementation of the new framework in April 2012. If you would like to be notified when new information is posted, you can subscribe to our QOL programme updates by [completing a form](#) to add your email address to our database. Or just check in regularly at [www.maritimenz.govt.nz/qol](http://www.maritimenz.govt.nz/qol)

### New employees

The law still requires that new employees must be covered by the collective agreement for the first 30 days of employment and thereafter must not automatically change. But this provision has already been identified for removal by the government. Members are reminded to remain vigilant about new employees at their worksites, and to ensure those employees have exercised their choice to join the Guild. Maintaining our very high membership numbers at all worksites provides maximum bargaining power and is vital in the current industrial climate.

**Auckland meeting dates:** 4 May, 1 June, 6 July, 3 August, 7 September, 5 October; 2 November; 7 December  
**NB: No Auckland meeting in April due to Easter**

**Wellington meetings dates:** 9 March, 13 April, 11 May, 8 June, 14 July, 10 August, 14 September, 12 October, 9 November, 14 December.