IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2025] NZEmpC 167
EMPC 227/2025

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
ANDI N THE MATTER OF	an application for an interim injunction
BETWEEN	LYTTELTON PORT COMPANY LIMITED Plaintiff
AND	MARITIME UNION OF NEW ZEALAND First Defendant
AND	RAIL AND MARITIME TRANSPORT UNION INCORPORATED Second Defendant

EMPC 275/2025

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	MARITIME UNION OF NEW ZEALAND First Plaintiff
AND	RAIL AND MARITIME TRANSPORT UNION INCORPORATED Second Plaintiff
AND	LYTTELTON PORT COMPANY LIMITED Defendant

Hearing: 14 – 15 July 2025
(Heard at Christchurch)

Appearances: R Wooders and Z Fong, counsel for Lyttelton Port Company Limited
S Mitchell KC and A Drumm, counsel for Maritime Union of New Zealand and Rail and Maritime Transport Union Incorporated

Judgment: 8 August 2025

JUDGMENT OF JUDGE J C HOLDEN

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This judgment resolves two challenges

[1] This judgment resolves two challenges to a determination of the Employment Relations Authority, one brought by Lyttelton Port Company Limited, and the other brought by the Maritime Union of New Zealand (MUNZ) and the Rail and Maritime Transport Union (RMTU).[1]

The background to these proceedings is a restructure proposal

[2] In 2024, Lyttelton Port Company was looking to streamline and optimise the container terminal operations business unit structure. Lyttelton Port Company says

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1 *Maritime Union of New Zealand v Lyttelton Port Company Ltd* [2025] NZERA 231.

that the reason for this was to elevate safety, optimise performance, and develop a contemporary structure that responds to front line staff needs.

[3] Amrita Balaraman was engaged as the chief operating officer, container terminal, at Lyttelton Port Company in September 2024. She is responsible for overseeing all of the container terminal operations at Lyttelton Port Company.

[4] On Ms Balaraman's appointment, staff were advised by the chief executive officer and by Ms Balaraman that she would be reviewing the current structure of container terminal operations and coming up with solutions for better connectivity for the operations team.

[5] Ms Balaraman did not, however, directly engage with the unions or with potentially affected employees when developing the proposal as she did not understand from the collective agreements that she was contractually obliged to do so, and she wanted to come to the table with a baseline proposal on which she could consult with the unions and potentially affected employees. Her evidence was that it was intended that the consultation process would then not only involve discussions regarding the proposal itself, but any alternatives the unions and potentially affected employees wished to put forward.

[6] At a high level, the rationale for the proposal was to:

(a) optimise the organisation structure of container terminal operations to enhance safety;

(b) provide employees with focussed direct leadership whilst creating clear communication and escalation pathways;

(c) increase employee engagement;

(d) create coaching and career development opportunities;

(e) increase diversity; and

(f) drive a performance culture to enable Lyttelton Port Company to meet its strategic aims of being an efficient and innovative maritime gateway.

[7] In addition, Lyttelton Port Company says its analysis of the proposed changes showed they would result in an annual saving of $3.9 million, improving port profitability for financial sustainability.

[8] The proposal included the proposed disestablishment of 35 positions within Lyttelton Port Company, of which:

(a) eight related to individuals employed on individual employment agreements;

(b) one related to a vacant position;

(c) three related to individuals who were covered by the RMTU collective agreement (1.5 per cent of RMTU's total membership at Lyttelton Port Company); and

(d) 23 individuals who were covered by the MUNZ collective agreement (10 per cent of MUNZ's total membership at Lyttelton Port Company).

[9] In addition, it was proposed that 21 new positions would be created and there would also be 20 other suitable redeployment opportunities.

[10] Key changes being proposed were the disestablishment of the foreperson positions (which are covered by the collective agreements) and the establishment of team leader positions (which would be covered by individual employment agreements).

[11] A primary reason for the proposed team leader positions to not be covered by the collective agreements was a concern that there would be a conflict of interest if a union member was in a staff management role dealing with other union members. In effect, collective agreement coverage was a proxy for union membership.

[12] On 25 February 2025, the unions were advised by telephone that Lyttelton Port Company was going to be sending them and potentially affected employees an invitation to discuss Lyttelton Port Company's proposal on 26 February 2025. Gary Horan, from MUNZ, was emailed the names and contact details of potentially affected MUNZ members immediately following the telephone call, given the impact the proposal would have on MUNZ union members.

[13] At the meeting on 26 February 2025, Ms Balaraman outlined the proposal, provided information on the rationale for change, and discussed at a high level each proposed team change, showing proposed organisational charts. She also summarised the roles proposed to be disestablished and the new roles proposed to be established and discussed redeployment options. The purpose of the meeting was to provide the unions and potentially affected employees with relevant information regarding the proposal. Lyttelton Port Company was not expecting anyone to provide feedback at the meeting.

[14] Following the meeting, consultation packs were provided to all staff. That pack was 44 pages long and set out:

(a) the case for change;

(b) the design principles;

(c) the proposed organisational changes;

(d) the current structure;

(e) the proposed structure; and

(f) the consultation process and next steps.

[15] The unions did not attend the 26 February meeting. MUNZ also did not attend a meeting it was invited to on 27 February 2025 and neither union attended a Q and A session that took place on 4 March 2025.

[16] On 5 March 2025, Simon Mitchell KC wrote to Lyttelton Port Company on behalf of the unions, raising their concerns about the change proposal. Concerns were raised about the proposal itself and about the lack of detail; Mr Mitchell said the unions could not respond to the new structure, given that there was no detail as to the job descriptions for the group operations lead, or the new team leader positions.

[17] Mr Mitchell also raised concerns over the process that Lyttelton Port Company had followed. He asserted that the process in cl 2 of the unions' collective agreements required options to be reviewed and analysed, and for the unions and employees to be involved in decision-making for change. The unions objected to what they said was Lyttelton Port Company simply issuing its proposal and seeking feedback. They said they should have been an active participant in the design process for any new structure.

[18] Mr Mitchell advised that the unions were preparing an application to the Employment Relations Authority on the basis that the change proposal was inconsistent with Lyttelton Port Company's obligations under the collective agreements and was in breach of Lyttelton Port Company's obligations of good faith. Mr Mitchell advised that the unions were prepared to attend mediation.

[19] When the matter proceeded to the Authority, the Authority considered whether Lyttelton Port Company's failure to engage with the unions while developing the proposal was:

(a) contrary to its good faith obligations under the Employment Relations Act 2000; and/or

(b) in breach of its obligations under the collective agreements.

Several clauses of the collective agreements are in issue

[20] The collective agreements of MUNZ and RMTU are largely identical. Both relevantly include clauses:

> **2.0 CONTRACTING OUT**
>
> While the employer prefers to utilise their own people and equipment for its on-going business activity, day to day decisions are made in respect to work being undertaken off site or services provided on site.
>
> As a general principle and recognising the employers preference to utilise their own people and equipment, the employer shall when proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an employee, provide the employee and their union relevant information and an opportunity to comment on that information before a decision is made (this is the commencement of the consultation process).
>
> The employer consideration shall not only be reliant on commercial and competitive criteria and shall also give appropriate weight to matters such as customer service, quality, efficiency and flexibility, health and safety of their employees and the impact loss of employment would have on their employees should they become redundant.
>
> The intent of this clause is to provide an agreed basis whereby change and improvement can be achieved, in a manner consistent with the needs and aspirations of all the parties.
>
> The parties agree that consultation used to achieve change is:
>
> - an opportunity to review and analyse options;
> - an opportunity for the involvement of the company, union and employees party to this agreement in decision making for change;
> - to be facilitative of and not a veto or barrier to change but of opinion not negotiation.
>
> In the absence of agreement (which is not mandatory, but encouraged) the parties may reserve their respective rights. Specifically the employer reserves the right to take the final decision on the introduction of changes and the union reserves its right to represent any matters resulting from such changes which they consider adversely affect the employment conditions of the employees.

AND

> **4.0 CONDUCT OF UNION BUSINESS**
>
> **4.1 Right of entry**
>
> **[…]**

4.2 Recognition

[…]

4.3 Participation

[…]

4.4 Co-operation

The parties to this Agreement agree to work co-operatively and in consultation as appropriate on matters of mutual interest e.g., Health and Safety. To improve communication levels within the Company the employer will hold regular informative meetings with the parties to this Agreement.

4.5 Union Meetings

[…]

[21] The RMTU collective agreement includes a further clause:

11.0 ENGAGEMENT

Wider LPC-Unions High Performance High Engagement (HPHE) Charter

RMTU have entered into a joint process with LPC, together with other applicable Unions, and have established a High Performance High Engagement (HPHE) Charter and process encompassing the following:

- Joint commitment to working together in good faith, including honest and forthright interactions, raising issues in a fair and timely manner, treating the other party with respect and giving the other party all relevant information needed for effective engagement;

- Joint commitment to working together to foster a cooperative and inclusive culture where workers are meaningfully involved in making decisions which enhance and/or grow the business and improves results for both the company and the workforce;

- Enhancement of a more engaged and interest-based working relationship with LPC to improve business operational efficiencies, productivity and profitability.

The parties confirm that the HPHE Charter is subject to the Employment Relations Act 2000; the parties' CEAs and any other existing agreements between the parties, which shall remain in full force and effect. The HPHE Charter shall not diminish in any way any of the rights and obligations under existing legislation or agreements.

[22] Both collective agreements have a separate clause later in the collective agreement covering redundancy, which sets out a procedure for the reduction of staff where a redundancy situation has been identified by Lyttelton Port Company.

The Authority found Lyttelton Port Company breached the collective agreements and the Employment Relations Act

[23] The claim made by the unions in the Authority was that Lyttelton Port Company was in breach of cl 2 of the collective agreements, which the unions said required Lyttelton Port Company to work with the unions in developing the proposal for restructuring.

[24] The Authority did not agree with the unions; it found that cl 2 was intended to operate in distinct and narrow circumstances, where Lyttelton Port Company was considering contracting out work; i.e. not using existing employees for particular functions.[2]

[25] Nevertheless, the Authority found that the collective agreements had been breached to the extent that they essentially define the relationship between the unions and Lyttelton Port Company as cooperative and collaborative and that such features were notably absent in the manner by which the restructuring proposal had been developed and presented. The Authority found that Lyttelton Port Company should have developed its restructuring proposal with the unions prior to it being presented for formal consultation with all workers. The Authority member said he reached that view based on the expressed provisions of the applicable collective agreements, and mutual good faith obligations, pointing to sub-cl 4.4 and also to the HPHE Charter, which referenced a joint commitment to Lyttelton Port Company and the unions working together in good faith and fostering a cooperative and inclusive culture.[3]

[26] Also relevant was the nature of the proposal, which the Authority member considered to be out of the ordinary; it was not driven by pressing financial considerations but rather was a comprehensive overhaul aimed at improving operations, safety, performance, and employee experience. To that end, individual

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2 *Maritime Union of New Zealand v Lyttelton Port Company Ltd*, above n 1, at [51].
3 At [57] and [60].

consultation and seeking feedback was, in the member's view, insufficient because the proposal was of a wide scope, operationally complex and marked a major departure from existing practices.[4]

[27] The Authority also found that Lyttelton Port Company's approach was not in accordance with the wider good faith obligation owed of the parties seeking to "be active and constructive in establishing and maintaining a productive employment relationship."[5]

The Authority made a compliance order

[28] As a result of its findings, the Authority made a compliance order. That order required Lyttelton Port Company to immediately halt current direct consultation with the workers subject of union coverage and directed the parties to engage in structured consultation on the proposal entitled "Container Terminal Operations Change Proposal" as soon as practicable, to allow constructive engagement and debate on the efficacy or otherwise of the proposal advanced, including seeking to secure an agreement on any changes to the current coverage provisions and existing collective agreements. The Authority said that compliance with the identified additional collaboration requirements of the collective agreements was to be concluded within 20 working days of the date of the determination.[6]

[29] After the Authority made the compliance order, Lyttelton Port Company and the unions met five times, with the three last meetings being full day sessions using an independent facilitator.

[30] During the course of those meetings, the parties discussed the drivers for the proposal, the proposed changes to vessel operations, and coverage issues. The unions came up with possible solutions to what they saw as issues with the proposal. One of the central issues was the proposed disestablishment of the foreperson role and the introduction of a team leader role. The parties spent some time discussing the proposal that the team leader roles would not be covered by the collective agreements. Those

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4 At [52] and [54].
5 At [57]; see Employment Relations Act 2000, s 4(1A)(b).
6 At [64] and [65].

discussions largely focussed on the conflict of interest issues that were thought to arise if the team leaders were members of the unions.

[31] At the conclusion of the structured meetings, Ms Balaraman advised that she would consider all feedback and announce her decision on the proposal on 9 June 2025, first to the unions and then to staff. She also advised that electronic copies of the decision document and individual letters would be emailed to staff following the decision meeting.

[32] As anticipated, on 9 June 2025, Ms Balaraman communicated her decision on the proposal to the unions, sharing the final decision document and the decision presentation.

[33] The unions continue to be dissatisfied with the final decision; they do not consider that the restructure was safer than the present arrangements. They say that, although there were some minor changes to the draft proposal, ultimately Lyttelton Port Company was still proceeding with the removal of the foreperson role and excluding the new team leader role from coverage of the collective agreements.

[34] Lyttelton Port Company moved forward with its decision, inviting affected employees to apply for the new roles or indicate that they were interested in voluntary redundancy, or to be redeployed into a cargo handler role.

[35] It moved forward with those matters despite filing the challenge in the Court. In Court, this was said to be in part because the collective agreement provided that four weeks after giving notice to the union(s) (or earlier if agreed between the parties), Lyttelton Port Company was to call for volunteers for severance from the identified employee groups. That clause, however, sets a minimum period before Lyttelton Port Company could call for volunteers, not a maximum; it does not require Lyttelton Port Company to call for volunteers precisely four weeks after giving notice to the unions.

[36] The evidence from Lyttelton Port Company was that it found the facilitated structured consultation sessions particularly useful and productive, and that it had

intended to engage in structured consultation with the unions during the original consultation period, but that this did not happen because of the unions' refusal to meet.

Lyttelton Port Company and the unions filed challenges

[37] Notwithstanding its engagement in this apparently useful process, Lyttelton Port Company filed a non-de novo challenge to the determination in respect of the Authority's findings:

(a) that the collective agreements had been breached, in that Lyttelton Port Company should have developed its change proposal with the unions prior to it being presented for formal consultation with all affected employees; with that view being based on:[7]

(i) the expressed provisions in the collective agreements between Lyttelton Port Company and each of the unions; and

(ii) statutory mutual good faith obligations;

(b) that a compliance order be issued, and that as a condition of the compliance order issued, the Lyttelton Port Company be directed to:[8]

(i) immediately halt current direct consultation with the affected employees, subject of union coverage; and

(ii) engage in structured consultation on the change proposal as soon as practicable; to:

(a) allow constructive engagement and debate on the efficacy or otherwise of the change proposal; and

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7 At [54], [57] and [60].
8 At [63] and [64].

(b) seek to secure an agreement on any changes to the current coverage provisions in the existing collective agreements between Lyttelton Port Company and each of the unions.

[38] Lyttelton Port Company said that its challenge was moot in respect of the present restructuring as it had complied with the Authority's compliance order, but that it sought clarification for the future.

[39] The unions also filed a non-de novo challenge, after being successful in their application for leave to file a challenge out of time.[9] The unions' challenge relates to the finding of the Authority that the provisions of cl 2 in the collective agreements apply only to contracting out and do not include general provisions setting out an agreed basis for change and improvement.[10]

[40] In addition, the unions contend that the compliance order issued by the Authority did not go far enough; they say it should have required Lyttelton Port Company to withdraw its proposal and commence a blank slate approach, contrary to the structured consultation directed by the Authority.[11]

[41] Where a person challenges a determination on a non-de novo basis, the Court is to direct, in relation to the issues involved in the matter, the nature and scope of the hearing.[12] This is usually specified in a minute following a directions conference. The way this matter has progressed meant that did not occur. However, with both parties challenging parts of the determination, all the findings of the Authority are in issue. It was agreed that both parties would call evidence and there was cross-examination. Effectively, and appropriately, the hearing was on all fours with a de novo hearing. The Court must now make its own decision on the matters before it, and that decision will stand in place of the determination of the Authority.[13]

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9 *Maritime Union of New Zealand and Anor v Lyttelton Port Company Ltd* [2025] NZEmpC 127.
10 *Maritime Union of New Zealand v Lyttelton Port Company Ltd*, above n 1, at [31]–[34] and [47]–[51].
11 At [61], [64] and [65].
12 Employment Relations Act, s 182(3)(b).
13 Section 183.

[42] The unions also sought and obtained an interim injunction restraining Lyttelton Port Company from confirming successful applicants for new positions, or taking any other steps to implement the proposed restructuring after 7 July 2025 pending further order of the Court.[14] That order was considered further in the course of the fixture commencing on 14 July 2025, but no further order was made, so the interim injunction remained in place.

The Employment Relations Act requires parties to act in good faith

[43] The object of the Employment Relations Act 2000 includes to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship by recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour.[15] One of the recognised employment relationships is that between an employer and a union covering employees of the employer.[16]

[44] Pursuant to s 4(1A) of the Act, the duty of good faith requires unions and employers to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative. This includes that, when an employer is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of one or more of their employees, it must provide to the employees affected access to information, relevant to the continuation of the employees' employment, about the decision; and an opportunity to comment on the information to their employer before the decision is made.

The Act is not prescriptive on steps

[45] Good faith is an essential component of employment relationships. The duty to act in good faith underpins the Act and infuses the obligations of parties to

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14 *Maritime Union of New Zealand and Anor v Lyttelton Port Company Ltd* [2025] NZEmpC 131.
15 Employment Relations Act, s 3(a)(i).
16 Section 4(2)(b).

employment relationships. It is flexible, contextual, and includes the concepts of cooperation, honesty, openness, and absence of ulterior purpose or motivation.[17]

[46] While s 4(1A)(c) required Lyttelton Port Company to provide employees with access to information and an opportunity to comment on that information, s 4 does not otherwise set out any prescriptive steps for consultation, nor does it elevate the employment relationship between the employer and the union in terms of the engagement required in a restructuring situation.

[47] Lyttelton Port Company provided a detailed proposal to its employees and then invited comment. The process it followed complied with s 4 of the Act; the lawfulness of its actions turns on whether it has acted in accordance with the collective agreements.

[48] The Authority's finding on this issue is set aside and the Court's finding stands in its place.[18]

Collective agreements are interpreted in context

[49] While the principles that apply to the interpretation of a commercial contract apply when constructing employment agreements, the statutory and common law context in which employment agreements are entered into and operate is relevant to the interpretive exercise.[19]

[50] The approach is an objective one, with the aim being to ascertain the meaning the written agreement would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties at the time of the agreement. This objective meaning is taken to be that which the parties intended. The context provided by the agreement as a whole and any relevant background informs meaning. Nevertheless, while context is a necessary element of the interpretive process, and the focus is on interpreting the document as a whole rather than particular

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17 *Carter Holt Harvey Ltd v National Distribution Union Inc* [2002] 1 ERNZ 239 (CA) at [55].
18 *Maritime Union of New Zealand v Lyttelton Port Company Ltd*, above n 1, at [57].
19 *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] ERNZ 428 at [74]–[78]; and *Vulcan Steel Ltd v Manufacturing & Construction Workers Union* [2022] NZEmpC 78, [2022] ERNZ 304 at [27]–[31].

words, the text remains centrally important. If the language at issue, construed in the context of the whole agreement, has an ordinary and natural meaning that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one, and may also assist in determining the meaning intended in cases of ambiguity or uncertainty.[20]

[51] Collective agreements, however, are not commercial in the way that business contracts usually are. They are not drafted, negotiated, and settled by practising lawyers, and the people covered by the collective agreement are not party to the negotiations. Collective agreements represent the development of a particular employment relationship between an employer and a union (and its members) over a long period that is confirmed and altered from time to time in the collective agreements between them, which must and do expire and are renegotiated. They are the product of compromise and opportunism.[21]

[52] Unlike arms' length business contracts, and consistent with the theme of the Act, collective agreements are relational;[22] they involve people and human interactions (not the economic exchange of money for goods) and occur within the framework of multi-faceted obligations, both statutory (such as mutual obligations of good faith) and common law (such as the obligation of fidelity and fair dealing).[23]

[53] This unique context in which collective agreements are negotiated and operate is reflected in the statutory limit on appeals; an appeal to the Court of Appeal cannot be made in respect of the construction of a collective agreement.[24]

[54] This is the framework in which the provisions of the collective agreements entered into between Lyttelton Port Company, MUNZ, and RMTU must be assessed.

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20 *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60]–[63]; and affirmed in *Bathurst Resources Ltd v L &M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696 at [43]–[46].

21 *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2014] NZEmpC 168, [2014] ERNZ 709 at [14]–[18], cited with approval in *Le Gros v Fonterra Co-Operative Group Ltd* [2023] NZEmpC 193, [2023] ERNZ 193 at [19].

22 *FMV v TZB* [2021] NZSC 102, [2021] ERNZ 740 at [46].

23 *Television New Zealand Ltd v E Tū Incorporated* [2024] NZEmpC 93 at [12].

24 Employment Relations Act, s 214(1).

The parties made submissions on the requirements in the collective agreements

Lyttelton Port Company says the clauses are not applicable

[55] Lyttelton Port Company submits that none of cls 2, 4, or 11 (or the HPHE Charter) are applicable to the process carried out by Lyttelton Port Company in relation to the restructuring proposal.

[56] It says the plain and ordinary meaning of cl 2 places obligations on Lyttelton Port Company when it is considering making a decision to outsource its functions to other third-party providers; it does not apply to proposals that do not relate to outsourcing. It says its interpretation of cl 2 is supported by the following:

(a) the title of the clause – "Contracting Out";

(b) the references within the clause to outsourcing concepts, for example where it acknowledges that "day-to-day decisions are made in respect of work being undertaken off-site or services provided on-site";

(c) the recognition that the preference of the employer is to use its own people and equipment; and

(d) references that are weighed towards an outsourcing scenario such as "commercial and competitive criteria".

[57] It points to what it says are relevant contextual factors, essentially being documentation that suggests that the unions specifically proposed the inclusion of cl 2 in 2008 to address "the contracting out of company work".

[58] Lyttelton Port Company also points to previous restructurings where it says cl 2 was not relied on. Finally, it notes that there are specific clauses in the collective agreements that deal directly with redundancy (being cl 25 of the MUNZ collective agreement and cl 26 of the RMTU collective agreement), which points away from cl 2 being directed to restructuring generally.

[59] It says that there is nothing in the wording of sub-cl 4.4, that suggests that it applies to restructuring proposals and notes its position in cl 4: "Conduct of Union Business", which restructuring does not relate to.[25]

[60] Again, it says that sub-cl 4.4 has never previously been relied on by the unions to suggest that separate early engagement with the unions is required. It points out that the unions did not rely on sub-cl 4.4 when they commenced these proceedings; rather, the Authority proactively raised sub-cl 4.4 as being applicable.

[61] In relation to cl 11 of the RMTU collective agreement and the HPHE Charter, Lyttelton Port Company submits that it applied to day-to-day operational/business as usual issues, policies, and procedures, and has never been applicable to workplace restructure processes. In any event, Lyttelton Port Company says that the HPHE charter is no longer in force.

[62] In the alternative, Lyttelton Port Company says that neither cl 2 nor sub-cl 4.4 would require Lyttelton Port Company to develop a proposal with the unions prior to commencing consultation on that proposal, even if either or both clauses were applicable. It submits that Lyttelton Port Company complied with their requirements.

The unions say a relational approach is needed

[63] The unions submit that the special features of the employment jurisdiction, in addition to the broad wording of cl 2, convey a broad and purposive interpretation of the collective agreements.

[64] They submit that cl 2 is to be interpreted with reference to the statutory nature of collective agreements, the agreement in its entirety, the objects of the Act, and the good faith obligations of the parties.

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[25] Lyttelton Port Company notes that only 1.5 per cent of RMTU's total membership and 10 per cent of MUNZ's total membership at Lyttelton Port Company are affected by the restructuring. However, it acknowledges that 100 per cent of the forepersons, which is the most impacted position, are union members.

[65] The unions say that the Court must interpret the clauses objectively, with reference to wording used in the collective agreements in their totality, and that the background to the insertion of cl 2 in 2008 provides little assistance.

[66] The unions say that taking that relational approach to the interpretation of the collective agreements, it is abundantly clear that the objective intention was to have a higher engagement model when it comes to making workplace decisions and changes.

[67] The unions submit that, read in the context of the collective agreements as a whole, cl 2 and sub-cl 4.4 demonstrate that the relationship between Lyttelton Port Company and the unions was one of cooperation and collaboration.

[68] Specifically, in respect of cl 2, the unions submit that, notwithstanding its title and its opening paragraphs, the clause has a broader application to include restructurings such as the present one. They point to the statement of intent within the clause, which they say is broad, and references to change and decision-making. They say that following the actual wording of the clause requires Lyttelton Port Company to involve the unions in decision-making about any changes or improvements in the workplace that may have an adverse effect on the continuation of employment, with agreement being the aim (although not mandatory).

[69] They also say cl 2 applied here as this was a situation where Lyttelton Port Company was seeking to outsource work that is currently covered by the collective agreements to a role that is not covered by the collective agreements on account of it being new.

[70] In respect of sub-cl 4.4, and again despite the narrow title of cl 4, they say Lyttelton Port Company and the unions are required to work cooperatively and in consultation as appropriate on matters of mutual interest, which would include a restructuring such as this one.

[71] The unions also submit that the history of the HPHE provision supports the view that the parties generally intended a cooperative approach to change, requiring heightened engagement between Lyttelton Port Company and the unions.

The unions point to TVNZ v E Tū

[72] In making their submissions, the unions put particular weight on the recent decision of the Court in *Television New Zealand Ltd v E Tū Inc*.[26] The clause in issue in that case placed specific obligations on TVNZ when developing the organisation and when considering changes to workplace practices. It prescribed a sequential, stepped approach, first requiring participation and, second, requiring consultation. Staff were required to be involved in the developmental stages of decision-making processes, and in the business planning of the organisation throughout, with all relevant information to be discussed openly and honestly, to reach agreement and make recommendations to management. The participation process was required to be followed first and then, if TVNZ identified it had a surplus staffing situation, it had to advise the employees concerned and the union and undertake consultation.[27] The Court recognised that the clause was "uncommon".[28] The relevant clauses here are quite different.

[73] Accordingly, although the general principles that the Chief Judge applied in interpreting the relevant clause apply equally here, the Court's findings on what the clause required does not assist in the present case.

[74] I turn now to the clauses under issue here, interpreted in the context of the collective agreements as a whole.

Clause 2 concerns proposals to contract out work

[75] I agree with the Authority that cl 2 relates specifically to proposals to contract out. First, there is the heading "Contracting out" and the first three paragraphs of the clause are in respect of Lyttelton Port Company looking to use external providers in respect of work being undertaken off-site or services provided on-site. In that context, the clause recognises that Lyttelton Port Company generally prefers to use its own people and equipment. The reference in the third paragraph to the "employer consideration" is a reference back to the preceding paragraphs.

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26 *Television New Zealand Ltd v E Tū Inc,* above n 23.
27 At [7].
28 At [8].

[76] The reference to "The intent of *this* clause" (emphasis added) in the opening to the fourth paragraph informs the paragraph, i.e. it refers to when Lyttelton Port Company is considering the contracting out of work.

[77] The fifth paragraph, then picks up the expression "change", again linking back to the intent of the clause, being to provide an agreed basis whereby change and improvement through contracting out can be achieved. In that context, consultation is to be used to review and analyse options and to involve Lyttelton Port Company, the unions and employees party to the collective agreements, in decision-making for change, but in a way that is facilitative of, and not a veto or barrier to change; a sharing of opinion not negotiation.

[78] The final paragraph of the clause confirms that, in that context, the parties are encouraged to try to reach agreement but recognises that Lyttelton Port Company is entitled to make the final decision on the introduction of change, with the unions reserving their right to represent any matters resulting from such changes that the unions consider adversely affect the employment conditions of the employees.

[79] As noted, Lyttelton Port Company says that, even if cl 2 was engaged, it has complied with it. Certainly cl 2 does not set out a prescriptive process, the way the clause in the TVNZ collective agreement did. The key points of cl 2 are that there will be consultation between Lyttelton Port Company, the unions, and employees, which will enable there to be a review and analysis of options and for opinions to be advanced.

[80] There are many cases on the meaning of consultation. In short, consultation is not a negotiation and does not require agreement. It involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses, and then deciding what will be done. The party being consulted must be adequately informed so as to be able to make intelligent and useful responses. Consultation also must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. It is implicit that the party obliged to consult, while

entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh.[29]

[81] Accordingly, even if cl 2 was applicable, developing a proposal without input from the unions would not be in breach of its requirements. Rather, it would be important that the proposal was not final, and that the opportunity to review and analyse options and provide opinions was done with an open mind from Lyttelton Port Company.

[82] While Lyttelton Port Company had a developed proposal, the evidence did not prove that the structured consultation that took place following the issuing of the compliance order by the Authority was done with a closed mind.

Sub-clause 4.4 is of broad application

[83] While cl 4 is in respect of the conduct of union business, sub-cl 4.4 is broad enough to include the involvement of unions in change proposals that affect their members. This can be seen in sub-cl 4.4's express reference to matters of health and safety, which demonstrates that the sub-clause is not intended to be limited to union business in a narrow sense; for example, restricted to the matters covered by part 4 of the Act.

[84] To that end, I consider that matters of mutual interest would include a restructuring that affected the coverage of collective agreements and the potential redundancy of a layer of the workforce that comprised union members.

[85] While sub-cl 4.4 is broadly framed, and does not drill down to processes such as those recognised in the TVNZ case, it comprises two obligations on the parties; first to work cooperatively, which is a mutual obligation, and second to work in consultation as appropriate on matters of mutual interest, which in the current context would be an obligation that rested with Lyttelton Port Company. The inclusion of the mutual obligation to work cooperatively reinforces that the parties must put in genuine

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[29] *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA) at 675; as discussed in *Communications and Energy Workers Union Inc v Telecom NZ Ltd* [1993] 2 ERNZ 429 (EmpC) at 445 and 446.

effort and approach matters with an open mind. It does not, however, require engagement prior to the development of a proposal.

[86] To the extent the Authority made a different finding,[30] it is set aside, and this judgment stands in its place.

HPHE charter is not engaged

[87] While cl 11 remains in the RMTU collective agreement, there was common ground that the HPHE charter was no longer applicable. In any event, the scope of the HPHE charter was that it applied only to topics and initiatives which Lyttelton Port Company and participating unions agreed to work on together, and that it was voluntary. Further, it was not applicable to initiatives that could lead to involuntary redundancy of employees.

[88] I do not consider it is applicable to the change proposal advanced by Lyttelton Port Company.

[89] Having said that, the HPHE charter provides useful guidance as to what a cooperative working arrangement might look like. Notably, it includes early notice to the other affected party of issues and potential changes, preferably before the issue is fully defined or solutions are developed. The purpose of that early notice was to provide an opportunity to discuss the issue before decisions are made or action is taken, with the underlining principal being one of "no surprises".

[90] The unions gave evidence that they have historically enjoyed a more collaborative approach to managing change in the workplace, which was in part why Lyttelton Port Company's approach to this restructuring proposal came as a shock. Lyttelton Port Company distinguished the examples given of such a collaborative approach as not concerning restructuring issues, but there is strength in the view that a similar approach would usefully extend to such issues.

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30 *Maritime Union of New Zealand v Lyttelton Port Company Ltd*, above n 1, at [57].

Engagement occurred after the compliance order was made

[91] It is notable that the compliance order covered all parties. It required Lyttelton Port Company to immediately halt direct consultation, and then directed both Lyttelton Port Company and the unions to engage in structured consultation.

[92] The evidence was that, at the time the compliance order was made, there had been no structured consultation, in part because the unions were dissatisfied with the process up to that time and therefore declined to meet with Lyttelton Port Company.

[93] Based on the evidence, I consider that the compliance order has been complied with by all parties, and it is now defunct.

Injunction lifted

[94] It follows from the conclusions in this judgment that the interim injunction made on 1 July 2025 is lifted; Lyttelton Port Company may proceed with its restructuring proposal.

Costs are reserved

[95] There is no current agreement with respect to the appropriate costs classification for this matter.[31] Given that it involved a moot point brought by Lyttelton Port Company for the purposes of obtaining guidance for the future, it may be that this case is one where it is appropriate for costs to lie where they fall. If Lyttelton Port Company wishes to apply for costs, however, it may do so by way of memorandum filed within 28 days of the date of this judgment. The unions then have a further 21 days within which to file and serve a memorandum in response. Any

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[31] "Employment Court of New Zealand Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

memorandum in reply from Lyttelton Port Company is to be filed and served within a further seven days. The Court then will deal with costs on the papers.

J C Holden
Judge

Judgment signed at 11.30 am on 8 August 2025