



M&C Workers News

JOURNAL OF THE MANUFACTURING & CONSTRUCTION WORKERS UNION

Profit before service threatens jobs at Post

New Zealand Post has announced plans to cut up to 2000 jobs over the next two years in addition to the hundreds currently being lost through closures of mail processing centres and consolidation of that work into three sites.

In Postal Delivery the jobs cuts will come about because mail will be delivered every second day rather than every day, 6 days a week. This reduction in the postal service comes on top of the scrapping of the delivery of mail the next day when it is addressed to be sent across town.

There are currently about 2000 Posties in New Zealand. Halving the frequency of delivery will cost about 600 jobs.

Post is a state owned enterprise. The law that it operates under requires profit to take priority over service. The National government has retained the unprofitable 5 day delivery service for their farmer mates. But that is too good for the rest of us who want a reliable mail system. Accordingly, rather than invest in motor vehicles and motor cycles to retain daily delivery, Post has opted to invest nothing and retain cheap low tech walking and bicycle deliveries.



The Postal Workers Union has frequently asked New Zealand Post management, as mail volumes have fallen and delivery rounds have got longer: "How far is too far?" Post has never answered this question. By moving to delivery every second day they don't have to answer.

At the same time as New Zealand Post is proposing to cut mail deliveries, a private company, DX Mail is expanding and putting on more Posties (see their advertisement on page 16).

DX carries about 5% of New Zealand mail and seem

Continued on page 16

Also in this issue...

From the work front... pages 2-3

In the dispute about school bus drivers public holidays Transitzit is found to have breached the requirement to give four weeks annual leave on pay

Collective agreements... pages 4-7

A large number of collective agreements are being settled with the going rate for wages being

2% or more

Health & safety.... page 10

A recent legal opinion suggests urine tests for drugs may breach privacy.

International news... pages 14-15

A petition opposing the secrecy of the Trans Pacific Partnership free trade negotiations is gathering signatures



NZ Bus tries to divide its drivers

New employees of Wellington City Transport - Go Wellington - are all employed on the terms of the collective agreement negotiated by the Tramways Union and M & C Union. No other collective agreement applies.

In October the company invited another union to send an official along to talk to new employees of Go Wellington about joining his union.

PREVIOUS ATTEMPT

A few years ago the company hatched a similar plan to split union representation at the company concluding a collective agreement with Central AWU to cover Go Wellington. The Tramways Union objected to the CAWU collective agreement in the Employment Court and it failed to gain legal recognition.

Given the company's record this new approach was of concern. It appears on this occasion that CAWU did not know what the company was up to. All the new



Kevin O'Sullivan - spoke to NZ Bus

drivers had already joined the Tramways Union by the time the CAWU organiser came to meet them.

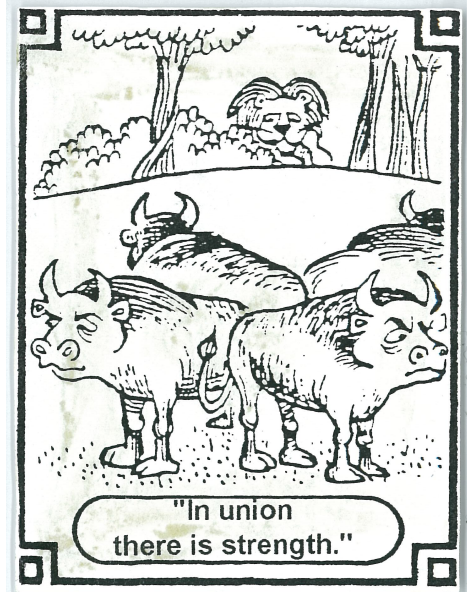
Kevin O'Sullivan from the Tramways Union raised the issue with local NZ Bus management. They were unrepentant about their invitation to CAWU to address new recruits employed by Go Wellington.

SUPPORTING CAWU

They indicated that they wanted to maintain CAWU as a significant presence at Valley Flyer where CAWU has members and a separate collective agreement.

Although CAWU have been invited to work with us in CEA negotiations at Valley Flyer they have so far not done so. This stance weakens their own bargaining position and ours.

While in the last negotiations we negotiated a higher wage rise than the CAWU CEA, there is no doubt if both unions had worked together a better deal than the one we settled on could have been got for everyone. Hence why NZ Bus management are happy to meddle.



From the work front...

Tranzit wins appeal but is found to breach Holidays Act

Bus company Tranzit appealed a decision of the Employment Relations Authority that it must pay its school bus drivers for Christmas and New Year public holidays.

A test case in the ERA about Christmas day 2010, observed on 27 December, decided that a public holiday had to be paid. The employer appealed this decision to the Employment Court.

FULL BENCH

The Employment Court heard the case in July. A full bench of three judges heard the appeal.

The union's lawyer, Peter Cranney, represented the two union members, Paul Morgan and Mei Wilson, who through the union had originally asked a Labour Department inspector if they were entitled to public holidays during the Christmas holidays. The Labour Department Inspector had said that "if" they were on annual leave, then they had to be paid for the public holiday.

Tranzit's appeal said that the school bus drivers were not on annual leave. Tranzit said, because school bus drivers generally didn't work during any school holidays they never completed a year of service and therefore were not entitled to annual leave.

Tranzit paid the school bus drivers 8% of their earnings at the end of the school year and the school bus drivers remained on call to work if required. Occasionally they did extra work during school holidays. For annual leave to be taken there



has to be agreement between the employee and employer that an entitlement to annual leave exists and that it is to be taken over some mutually agreed weeks. This annual leave the Court said in its judgement, must be "unfettered" by any requirement to work.

The payment of 8% to school bus drivers at the end of the school year has not met the obligation, required by the Holidays Act, to give employees four weeks leave on pay.

Presumably, the obligation to allow this paid leave still exists.

FOUR WEEKS DIFFERENT TO 8%

Four weeks paid leave as required by the Holidays Act is significantly different to 8% of a years earnings.

A school bus driver works about 40 weeks per year. Tranzit pays about \$15.30 per hour. The duties may earn about \$380 per week, or about \$15,200 per year. 8% is worth \$1216, considerably less than four ordinary weeks of pay, worth about \$1520.

The Employment Court alluded to the substantial issues that exist between Tranzit and its employees

about annual leave entitlements. These will now have to be addressed.

It may well have been significantly cheaper for Tranzit to have accepted the original ERA ruling rather than appeal. Peter Cranney, called this "the best case I ever lost".

Price rises up

The rate of price rises has increased. For the year ended September 2013 inflation was 1.4%. For the September quarter it was 0.9%.

In the September quarter petrol prices and vegetables were the main contributors to the price rises. Without these two the quarter's increase would have been 0.3%.

For the year the main contributor to price rises were housing and housing utility prices. This result will ensure the Reserve Bank increases interest rates by March next year. This move will drive up the value of the Kiwi dollar and undermine employment.

Collective agreement negotiations...

Acma claims to have redundant workers help meet robot costs

Collective agreement negotiations at Upper Hutt plastics manufacturer Acma were overshadowed by redundancies.

The company is doing well, it can afford robots to replace workers. The robots had already arrived when the CEA negotiations started.

CLASSIFICATIONS REVIEWED

During the term of the previous agreement wage classifications were reviewed. Previously the company had been covered by the Plastics Industry Collective Agreement and this wasn't particularly relevant to Acma's operations. In view of the situation members wanted a decent pay rise up front



Advocate Monica Tukaki told Acma if they could afford robots they could afford to pay redundancy.

so that the 15 expected to be made redundant would get some benefit. The company also had claims. It sought changes to the redundancy agreement wanting to not pay redundancy compensation to anyone who got another job during the

extended notice period. The company also wanted to delay redundancy payments because it would cause a cash flow problem.

COMPANY TOLD OFF

Monica Tukaki admonished the company for budgeting to buy robots but failing to budget for the workers.

The answer to both company requests was no.

The company didn't agree to the wage increase being paid up front instead offering a 2.2% rise for the first year and a 2.76 % increase for a second 14 month period.

The company's offer was put to members and was ratified by the majority of members of our union and the EPMU which is also a party to the CEA.

Penal rates plus \$1 per hour - a good deal

Negotiations for the Hutt & City Taxis collective agreement produced some significant improvements for members.

The agreement covers union members in the company's call centre in Lower Hutt.

The agreement is for a one year term. Back dating of the \$1 per hour pay rise to the expiry of the previous agreement on 5 October was accepted.

The new agreement will usher in penal rates.

Union members had claimed that overtime rates should be paid for work performed after the completion of each shift. The rate sought for overtime was time and a half. The company agreed to pay time and a half for overtime from 1 April 2014.

The company also agreed to introduce 5 paid personal days per annum although this new entitlement will not be written into the collective agreement.

The terms of settlement were put to a meeting of members in mid November and were ratified.



Long hard road to collective at recycler

The union will soon initiate bargaining with Freeman-tle Enterprises for a collective agreement.

The company has strenuously opposed a collective agreement arguing that its purse strings are tied by Carter Holt Harvey which is the main customer of this recycling company based in Wellington.

The normal range of obstacles has been put in the union's way to stop building the membership over the last two years.

24 hours notice for all organiser visits was instituted by the company. The shop floor supervisor actively discouraged membership. But when the company was forced

to make her redundant to make ends meet organising became easier. The company's owner is, says National Organiser Kevin Aitken, a nice chap and this had encouraged many to stay out of the union because it was felt by them it wasn't needed.

Recycling is low paid work and not the most pleasant occupation so the union has been able to gradually convince staff that dealing with any matters collectively will improve the job even if CHH is effectively calling the shots.

Good pay rise at Tribe

Collective agreement negotiations at Tribe Design in Wellington produced a significant wage rise.

The two year agreement sees wage rates increased by \$1.50 per hour for the first year. For the second year the increase is \$1 per hour.

Tribe Design makes badges and faces overseas competition for its products. Wage rates had been static for some time for that reason.

The significant increase in collective agreement wage rates was appreciated by members.

Trade rate over \$30

Northern District Boilermakers concluded a new collective agreement with McKenzie & Ridley who operate in the Bay of Plenty.

Northern Boilermakers Secretary Ray Mavor reports that the new agreement has a three year term. The pay increase agreed was 5.9%. The new agreement sees the indentured trade rate increase to \$31.20 per hour.

Top rates at UGL

Negotiations with UGL produced a good result for Electrical Union members employed by the company.

The new collective agreement is for a two year term. The agreed wage increase is 3% for the first year and 3% for the second.

In addition to that the Living Away from Home Allowance (paid on

top of accommodation and meals) was increased to \$60 per day and meal allowance when working overtime to \$14.

Printed wage rates in the agreement, to which penal rates still apply, includes \$42 per hour for Instrument Technicians and \$47 per hour for Control System Technicians.

Collective agreement briefs...

The Wellington Combined Taxis collective agreement was ratified by members. The agreement saw a 2% increase in remuneration and a 1 year term. All other terms and conditions were unchanged.

JJS

Christchurch construction company JJS renewed its collective agreement with the union with a 3% pay rise for a one year term.

TAYMAC

The Taymac group of companies, including Stainless and Airtight, agreed to a 2% wage rise with a further 1% after 4 months.

ASCO CO2

A 2% CEA increase was agreed for the Christchurch based Asco for a 1 year term.

MIGHTY RIVER POWER

MRP agreed to a roll over of the collective agreement with a 1.5% wage increase. The company had 112 claims for the negotiations. It was agreed to review these matters during the term.

CITY CARE

The Tauranga collective agreement was renewed with a 1.65% wage rise and a \$500 ratification bonus. The union intends to push for a 6 plus 2 redundancy provision at the next CEA negotiations.

\$14.15 an hour is too high a pay rate for Converga's liking

Negotiations for a new collective employment agreement at Converga have again been a real grind.

Converga is a wholly owned subsidiary of Datam which in turn is a wholly owned subsidiary of NZ Post. Converga operates in a number of countries.

The collective agreement expires in October. As *M & C Workers News* goes to print the negotiations have not yet finalised a terms of settlement.

NO PAY RISE

The main sticking point is that Converga does not want to pay a wage increase this year.

The bottom start rate at Converga is \$14.15 per hour at present. The company says this is too much, even though the NZ Post collective agreement contains a minimum rate of \$15 per hour.

Converga has two lines of business. One is handling data for clients. This is done by employees in the Technology Centres who are nominally employed by Datam. Converga wants these workers to agree to transfer their employment.

The Technology Centre workers have a skill based pay system that Converga management don't like. They are wanting to review the pay system after one year of employment.

In their opening remarks the company made the point the data management work could be done any-



Advocate David Thomson told Converga after an impassioned address by its manager to negotiators that the members can't live on charisma

where in the world. The company has not answered the question: Why should Technology Centre workers give up a pay system that gives them marketable skills that they will need should you decide to transfer the work overseas?

CONSTRAINT ON COMPANY

The second strand of Converga's business is managing the mail and other services for corporate clients. In their address Converga management said that selling a service to another business put a constraint on what Converga could pay its workers. If Converga paid too much, and charged the client accordingly, the client could always take the work back in-house. Converga has not explained why

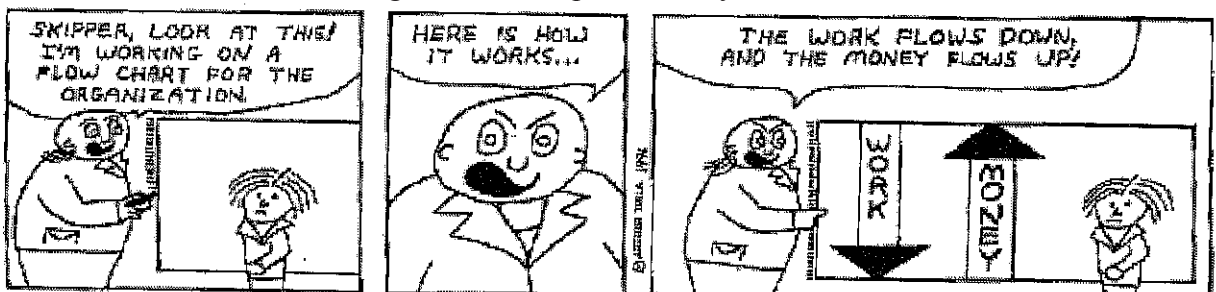
those doing the work should accept a zero pay rise to keep management in a job with Converga at their higher levels of pay. If Converga does lose a contract it could mean a job directly employed by the client at better rates of pay.

In the past Converga and its predecessors have tried to keep a divided workforce by offering performance pay rises to those on individual employment agreements. This has left the union trying to negotiate the pay rates of members without the kind of support required to get reasonable improvements. While the payments to those on individual agreements were dressed up as performance related in large part these payments were to increase the basic rate to take account of inflation. This undercut what the union can achieve.

PROBLEMATIC

The union has been asked to accept a bonus hourly rate payment for good performance. The current arrangements with two different types of pay system appears to be proving problematic for the company.

With the company unwilling to offer a pay rise the union has asked why it should help solve the company's problem. The company has been advised "you get nothing for nothing".



No to inexplicable company claims

City Care collective agreement negotiations started off with the usual exchange of claims 10 days before bargaining.

The company's claims were sent without explanation and seemed to owe a lot to a by-gone era:

- Extend ordinary hours from 45 to 50 hours per week.
- Standby allowance on Statutory Holidays to be paid at the same rate as weekends.
- Redundancy compensation to be reduced from 3 months pay to 1 month.
- Include a minimum tools list for Carpenters, Plumbers and Electricians.
- Introduction of random drug testing.

The unions, CAWU, EPMU and ourselves, had endorsed a pretty standard set of claims. These had been supplied to the company in advance and the company's claims seemed to be some sort of reply.

BARGAINING AGREEMENT

When the negotiations started the first item was to sign off the bargaining process agreement. A draft had been supplied by the company and this stated that all claims had to be supported by an explanation. The company had failed to carry out this term so the first response to the company's claims was that they could not be discussed as to do so would breach the bargaining agreement.

City Care didn't like that suggesting that the negotiations might have to be delayed to allow them to resubmit their claims. The unions' advocates initialed an amendment to the bargaining process agreement to allow the company's claims to be discussed.

All the company's claims were rejected except for that relating to tools. On this matter the company said that the union had agreed to tool lists in 2010 and it was only an error that it hadn't gone into the agreement.

Union advocate Graeme Clarke undertook to check the union's records because "a deal is a deal", albeit when it came to the bargaining process agreement that the company had not wanted to play by the same rules.

NOT AGREED

A check of the records showed that the extensive tool list proposed in 2010 had not been agreed. While the company put it in the terms of settlement at that time it had been crossed out and the alteration initialed by the parties.

On the unions' claims the company's offer was for a 2.5% pay rise if the unions would accept the company's redundancy claim to be applicable to all new staff. This proposal was rejected. Creating better conditions that apply to current over new staff by giving away a current entitlement causes divisions amongst union members that ultimately weaken the union as a bargaining unit.

Solidarity between all workers is what makes a union strong and effective. Ditching the interests of new workers to get a few cents more on the pay rate undermines solidarity.

Without their redundancy claim the company offered a 2% pay rise, except for those on the lowest rates who will get a higher 45 cents per hour increase on their hourly rate.

Other issues addressed included

- clarification on requests to swap duties between water and drainage



Graeme Clarke reminded City Care a deal is a deal

- redundancy to be paid to someone banned from a site by the client where no alternative work exists at City Care if the employee is not guilty of serious misconduct
- the company to investigate and supply water heating facilities for Wellington staff unable to access the new Hutt depot
- alterations to time sheets to allow for the meal allowance to be claimed and for a meal allowance to be paid when someone qualifies for it on a public holiday or weekend
- reasonable costs of safety glasses over \$500 to be accommodated.

NO IMPROVEMENT

The two major claims that again failed to secure any improvement were for overtime to apply after 8/40 hours are worked and for a service pay scale so that employees on the printed rates in the agreement could catch up with the rates of those hired earliest. Those taken on at the end of the last construction boom got higher rates than those hired during the construction slump. The first CEA was negotiated during the construction slump.

The company offer was ratified at a combined union stopwork meeting.

Centenary of 1913 great strike significant for our union

It is one hundred years since the great strike of 1913. This is the biggest sustained strike the country has ever seen, and a strike where the state repression of strikers was most extreme.

The great strike started in Wellington but soon spread to Auckland and Christchurch. At the heart of the dispute were shipwrights working on the Wellington wharves. The NZ Shipwrights Union became a part of our union when it was formed in 1987.

The great strike was triggered by the sacking of trade unionists at Huntly, and a separate dispute over shipwright's conditions on the Wellington wharves.

The shipwrights asked their employer, the Union Steamship Company, for a traveling allowance to get from the Wellington wharves to the company's new patent slip in Evans Bay. The employer locked out the Shipwrights over this claim and Wellington's Waterside Workers Union took solidarity strike ac-

tion in their support.

Under New Zealand labour law at the time a union could either be registered under the IC&A Act, or the Trade Union Act. The Shipwrights had been under the IC&A Act which meant that it could not legally strike. The Shipwrights decided to register under the Trade Union Act that gave them the right to strike. At the same time the Shipwrights Union joined the United Federation of Labour (UFL) to which Watersiders, Seamen and

Miners Unions also belonged.

As the dispute spread to other Wellington unions and throughout the country, it was no longer about a traveling payment but workers seeking to take control over their own working lives through direct negotiation with employers, including strike action if required, rather than having their issues heard in the Arbitration Court and abiding by the decision of the Court.

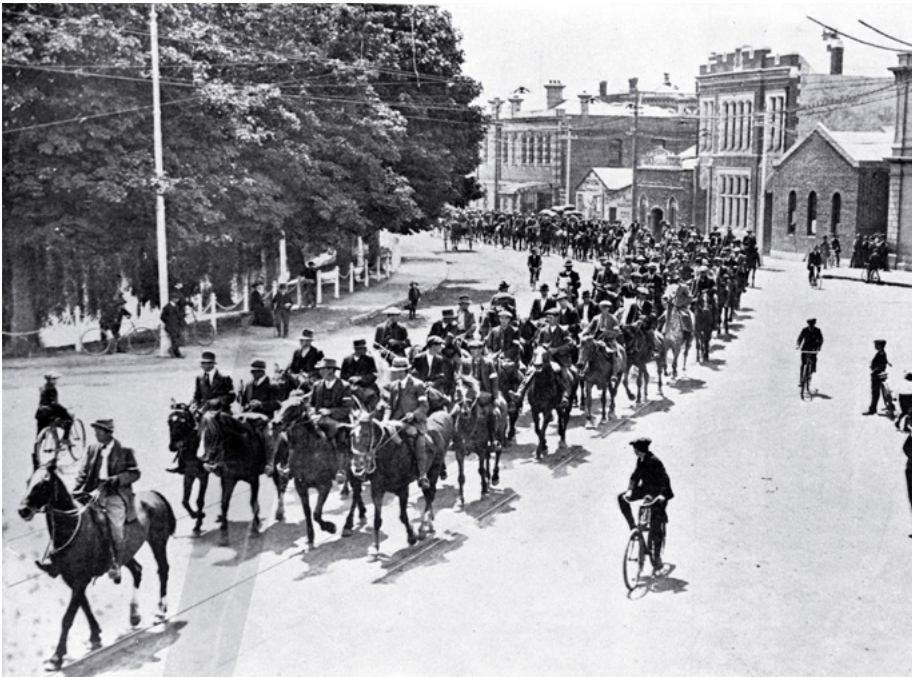
The trade unionists united under the banner of the UFL were confronted by employers, farmers and the state forces commanded by the conservative government of William Massey.

RESTORING "ORDER"

The government organised large numbers of special police mounted on horseback recruited from farmers and other rural volunteers. They came to town to "restore order", by which they meant to reopen the wharves so that they could ensure cargo was loaded and unloaded.

The mounted specials, dubbed Massey's Coassacks, were assisted by middle class citizens of Wellington, and the armed forces including naval ships and troops armed with rifles, bayonets and machine guns. The specials numbered about a thousand in Wellington.

A series of street battles took place in Wellington with mounted specials baton charging strikers. The strikers fought back. Both sides of the conflict were armed and shots were fired on a number of occasions. Miraculously, no-one was killed, but many were injured.



Specials - Massey's coassacks - ride through the streets of Christchurch

Most of Wellington's population took one side or the other. Tram drivers, for example, used trams to block the charges of the mounted specials against the ranks of striking and picketing workers.

The great strike began in October and was not finally defeated until December 1913.

Many of the leaders of the great strike were imprisoned for sedition during the struggle including Harry Holland, Bob Semple, and Peter Fraser. Later they helped to form the Labour Party in 1916 to give workers a socialist political voice.

IMPRISONED

Other leading trade unionists were also imprisoned along with rank and file workers such as 28 firemen from the British ship Opawa. They refused to work cargo that had been loaded by scab labour.

There were efforts made to broaden the strike movement, in particular in Auckland where a general strike was organised for a brief period in November.

As the weight of state force brought to bear on the strikers got picket lines removed from the wharves



"If blood be the price of your cursed wealth, good god we have bought it fair" - a 1913 demonstration of trade unionists in Auckland during the general strike.

and allowed cargo to be loaded the strike faltered and eventually was called off in December.

The militant UFL unions were replaced by new unions registered under the IC & A Act. To work again the strikers had to join the new unions. But in many cases the strikebreakers who founded the new unions were replaced by the strikers from 1913.

LESSONS FOR OUR FUTURE

Total trade union membership fell over the last year, but the government plans to make it harder for workers to bargaining collectively by weighting the law in favour of employers.

This law change will be short lived. When it is replaced we need to consider what type of law we want.

Some will promote a return to national multi-employer industry agreements (formerly known as awards) and a form of arbitration.

These were the principles of the IC & A Act and were called "labour's leg irons" by unions, like the Shipwrights, who found that this system restrained the outcome of collective bargaining reducing living standards.

There is no substitute for workers being able to directly negotiate with their employer.



Armed soldiers stand guard at Buckle Street in Wellington to defend Specials from strikers

Health & safety

Do you have to pee in a bottle when the company says?

A number of union members working for a variety of employers have been dismissed, or threatened with disciplinary action, over employer demands about medical examinations and treatment.

Employers generally seem to think if they have a policy on medical examinations then they can impose that on their employees. Any failure to do what the company wants, such as peeing in a bottle for a drug test, results in warnings and or dismissal.

TWO LAWS

There are at least two laws that may be applicable to any request for an employee to submit to a medical examination

- The New Zealand Bill of Rights Act; and,
- The Health and Disability Commissioner Act.

The Bill of Rights Act states: "Everyone has the right to refuse to undergo any medical treatment." Medical treatment includes a medical examination.

The Bill of Rights Act also prohibits unreasonable search and seizure which could include the requirement to submit to a drug or alcohol test.

The Health and Disability Commissioner Act has a Code of Consumer rights. The rights include:

- The right to privacy.
- The right to be treated with respect.
- The right to express a prefer-

ence as to who will provide services and have that preference met where practicable.

The most common reason for an employer to want an employee to undergo a medical examination is for a drug test.

RANDOM

In one recent case the employee required to undergo the drug test was chosen at random. Random drug testing is not something that an employer should be able to require unless there is a compelling reason, such as public safety. It may be OK to require airline pilots to undergo random tests, but it isn't needed for the accounts clerk in an office.

In many cases employers have given themselves the right to require employees to be drug tested by writing it into their policy, and by including a provision in employment agreements that employees will comply with company policies. Until these employment agreement requirements are

changed the employer may be able to rely on these policies. But the Employment Court has already ruled that these policies must be followed scrupulously and any deviation from them will not be accepted in the Court.

The rights under the Health and Disability Commissioner Act can't be ignored by an employer because any medical treatment provider is bound by them.

The company can't choose what doctor you must go to. The only exception to this is if they want a second opinion about a work injury. The company can't require your doctor to disclose information that you want kept private. Within the last few months there have been cases of employers trying to ignore these laws with regard to union members.

PRIVACY RIGHT

The right to privacy should extend to being able to refuse to be drug

Continued opposite



It is impossible to have privacy respected when the NZDDA van pulls up at work for a drug test to be done there and then.

tested in an NZDDA van parked at the employer's premises. Where testing has occurred in this manner previous experience is that the word of the test quickly spreads. The most important thing union members can do with regard to any dispute with their employer about these issues is to check your rights with the union before you do what the employer is asking. Workers have a right to make informed choices and have support. This includes information and support from the union.

LAW EVOLVING

The law on issues of drug and alcohol testing is still evolving. There is a huge variety of circumstances that can occur (see the report on a recent Court case taken by the union against Mighty River Power on page 12). No employer or union can be guaranteed to get it 100% right - everyone makes mistakes. If a union member follows mistaken advice from the union and the employer relied on that to justify dismissal they would find that legal precedent would not uphold their action. *Brownless v. Tasman Pulp and Paper* is one case where a court reinstated an employee who was dismissed for following mistaken advice given by the union.

Now there is out of work hours drug testing!

Drug testing of union members hit a new low in Christchurch recently.

An apprentice member was at home after work when an NZDDA vehicle drew up outside his home. It was 7.30 at night.

SAMPLE DEMANDED

The NZDDA tester demanded a urine sample be given by the member so that he could be drug tested. The demand for a urine sample for a drug test out of hours cannot provide the employer with any evidence of impairment at work. What someone does in their own

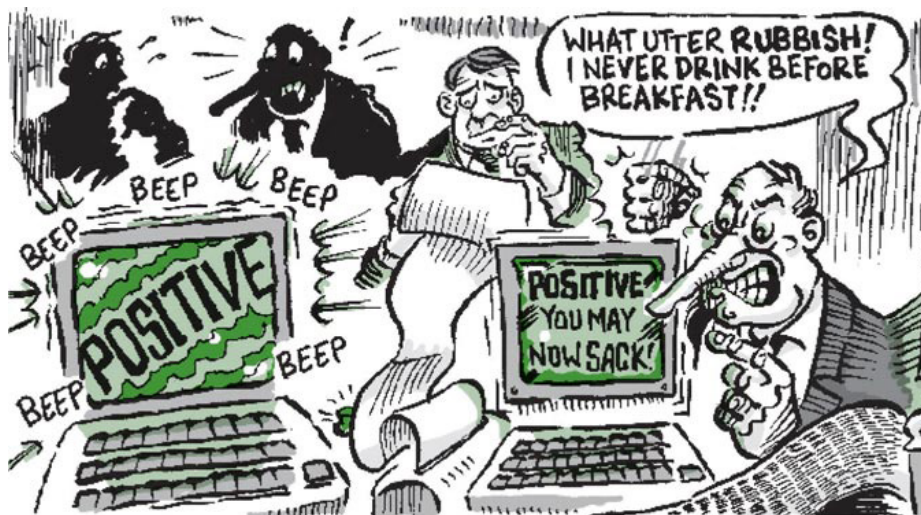
time is no business of the employer's.

ILLEGAL

No one should submit to a drug test outside of working hours. Such a demand is illegal. In the union's view urine testing may be inaccurate in determining impairment for some drugs.

Swab testing is available in Christchurch and should be used on all occasions, but only during work time.

Before agreeing to any kind of test members are urged to contact the union.



PRIVACY BREACH

The law firm Chen Palmer has suggested that collection of urine specimens for workplace drug testing may breach employee rights.

Urine testing Chen Palmer say may contravene the Privacy Act because of its intrusive nature, and because it provides evidence of historic drug use in which the employer can have no legitimate interest in knowing on health and safety grounds.

"If less intrusive testing methods become available it makes the use of more intrusive methods unreasonable and possibly (legally) actionable." the law firm said on its website.

JUSTICE OF THE PEACE SERVICES

Union members in Christchurch requiring the services of a Justice of the Peace can contact

**Amanda
Stephens
039811995**

Court rules collective stops MRP having random drug tests

An Employment Court decision about random drug and alcohol testing has provided new insights on employee rights.

A challenge to a determination of the Employment Relations Authority was taken by the Electrical Union, a member of the M & C Union, about Mighty River Power imposing random drug and alcohol testing.

The union was represented in the Employment Court by organiser Lou Yukich.

RANDOM TESTING

The union took MRP to task over its introduction of a policy of random drug and alcohol testing after advising a member that he did not have to submit to a random drug test request.

Rather than take disciplinary action against the employee, MRP asserted its right to introduce random testing in the ERA and Court. The case was heard by Chief Judge Colgan who praised the company for this stance. "All parties are to

be complimented on their decision to resolve a genuine dispute about this question without MRP taking any steps against Mr Cowell personally for refusing to comply with its direction. That is a course that this Court has long endorsed. Where there is a genuine dispute about employment rights or obligations, there are statutory mechanisms that should be used, especially where, as here, the affected employment relationships can continue in the meantime."

The MRP collective agreement included references to the Privacy Act and the New Zealand Bill of Rights Act. The Court said that including the references to these laws in the CEA meant that they had to be considered in relation to the employer's request that the employee submit to a random drug test in the face of potential disciplinary action for refusing.

BILL OF RIGHTS ACT

The Bill of Rights Act would not normally be relevant to an employment dispute, the Court said,



Lou Yukich represented the union in the Employment Court

because of its terms. But in this case the CEA had made it a factor. Likewise the reference in the CEA to the provisions of the Privacy Act had a bearing on what the employer could ask of any employee with regard to random testing.

FITNESS FOR WORK

The CEA said that an employee had to provide evidence of fitness for work on "reasonable just cause" where the request was in writing. Consent had to be given on a case by case basis.

In his decision the Judge said the provisions in the CEA meant that consent to a random drug test could not be obtained under threat of disadvantage in, or dismissal from, employment. The provisions of the collective agreement as a whole meant that MRP could not introduce random testing.

In one interesting passage the Court observed that the Bill of Rights Act Section 21 prohibits unreasonable search and seizure. Where the Bill of Rights Act is relevant to an employment agreement it would potentially restrain random drug testing.



"The union forced him to raise wages another 10¢ an hour. I think he needs a grief counselor."

40 hours worked but Viridian think they should pay no wages

Work for no wages. That is the idea of Viridian Glass for an injured employee needing to be rehabilitated at work.

Union member Kane Wallace injured himself because the company required him on his own to handle heavy panes of glass for customers during his deliveries without assistance.

INJURY REPORTED

The day the injury occurred Kane reported his injury. After visiting his doctor he filled in the company's incident report form.

Viridian gave Kane a written warning for failing to fill in the incident report the same day. There is no requirement to do so in the collective agreement.

After 7 days off work Kane resumed working as he was cleared for light duties by his doctor.

Kane continued to at work for 40



Drivers who distribute the company's glass to customers have been expected to handle heavy loads without assistance.

hours and was able to complete 70% of his duties. For the remainder of his duties involving heavy lifting Kane needed assistance. The company engaged a temp.

VIRIDIAN REFUSED TO PAY

ACC continued to pay Kane 80% of his earnings while he worked, but Viridian refused to pay anything. Instead it asked Kane to

agree that, as he needed a temp to complete the work, he should work for nothing. They refused to top up his wages by paying the remaining 20%.

The collective agreement does not provide for working without payment of wages under any circumstances. Kane was happy for any ACC contribution to his wages to be topped up to his full rate. When the union insisted Kane be paid the company stood him down from work.

Service honoured

Harold Appleton, longstanding Secretary of the Pulp & Paper Industry Council of the union was farewelled by the Industry Council members and delegates in early November.

Harold is retiring and will spend some of his time fishing using a new fishing rod given to him to mark his long service to pulp and paper workers.

Thanking the Council Members and delegates Harold said that it would be very important over the next few years for the Council and members to stay true to union principles and to follow through on their decisions. The

next few years could be tough ones with employers in the industry seeking to reverse the gains of past generations.



Harold Appleton

REHABILITATION OBJECTIVE

The collective agreement provides that the union and the company agree that rehab should be the parties objective. In spite of having an Occupational Therapist's plan by this time Viridian refused to carry out the plan unless Kane would agree to work for no wages.

The union sought urgent mediation. The company attended but the mediation failed to secure any agreement.

Proceedings have been filed in the Employment Relations Authority seeking an urgent hearing.

Anti TPP secrecy petition launched

A meeting of the Trans-Pacific Partnership (TPP) was held in Bali in October attended by representatives of the 12 countries negotiating the new trade deal. The talks continued with the secrecy that marked earlier sessions, but publicly strong commitments to completing the trade deal sooner rather than later were expressed.

A public on-line petition has been launched to oppose the secret negotiations. It is rapidly gaining signatures. The petition can be signed at www.itsnotright.org.nz

The countries involved in TPP include a number that New Zealand has current free trade agreements with, such as Australia, Singapore and Chile. It also includes the USA and Japan and other countries on the Pacific rim.

The TPP commenced negotiation in 2010 at the instigation of US President Obama. 16 formal rounds of negotiation have been conducted since.

EMPOWERS BOSSES

TPP goes far beyond the realm of tariff reduction (New Zealand has virtually no tariffs anyway) and trade promotion. It is thought to empower corporations over trade union, consumer and environmental interests.

Concern is being expressed about the "intellectual property" provisions of an agreement. For example, in New Zealand it is thought this will increase the price of medicine by forcing the purchase of brand name drugs instead of cheaper generic medicines.

In the future development of generic medicines could be restricted by the patent rights of drug companies.

Other items said to be under discussion include

- land use
- food and product standards

- natural resources
- government procurement
- energy, and
- healthcare

Increasing the rights of global corporations in these areas could be at the expense of the democratic rights of Kiwi's to change laws in the future without the interference of courts and large damages claims from affected corporations. While the secrecy of the negotiations continues these concerns have been dismissed in the usual arrogant manner of the current government. Trade Minister Tim Groser, for example, labeled opponents as "fools".

CONCERNED

Those concerned with the secretiveness of negotiations are prominent citizens and politicians, and organisations. 23 organisations wrote to President Obama in February 2012 urging him to end the secrecy. In May 2012 a group of 30 US legal scholars critical of the "biased and closed" TPP negotiation process called negotiating texts to be released to

public scrutiny.

While citizens of all countries are being kept in the dark, according to US Senator Ron Wyden, "representatives of US corporations - like Haliburton, Chevron, PHRMA, Comcast and the Motion Picture Association of America - are being consulted and made privy to the details of the agreement".

QUESTIONS

A Citizen's Trade Campaign has provided a list of questions that have yet to be answered:

- Will labour rights based on International Labour Organisations conventions be included and enforceable in TPP?
- Will individual corporations be allowed to challenge environmental, consumer and public interest policies as barriers to trade?
- Will governments be able to prefer local suppliers?
- Will governments get affordable generic medicines?
- Will dumping of agricultural products be stopped?





Progress on safety

The factory collapse in Bangladesh that caused thousands of deaths and injuries prompted international discussions that have gave rise to an Accord.

The Accord on Fire and Building Safety in Bangladesh was made public in October. It listed 1,600 factories covered by the pact, employing over 2 million workers.

Key data points of the list include: factory name and address, the number of stories of each structure, whether a building includes multiple apparel factories and houses other types of businesses, the number of workers at each factory, and the number of Accord signatories using each factory. Accord leaders note that additional data will be disclosed as more information is gathered from signatories and, with some companies that have joined recently still to disclose their lists, the total number of factories will grow.

Sean Ansett, for the Accord said "This is not merely a list of factory

names; it includes crucial information on the physical structure of factories. These data points provide an unprecedented map of the Bangladesh apparel industry covered by the Accord and are playing a key role in... safety inspections."

LEGALLY BINDING

The Accord on Fire and Building Safety in Bangladesh is a legally binding agreement between apparel brands and retailers and trade unions. It has been signed by over 90 apparel corporations from 19 countries in Europe, North America, Asia and Australia; two global labor federations, IndustriALL and UNI; and numerous Bangladeshi unions. Non government organisations are witnesses to the Accord. The International Labour Organisation (ILO) acts as the independent chair.

The Accord also indicated that it will announce the hiring of the Chief Safety Inspector who will oversee the initiative's factory inspection and renovation program.

"It's the same the whole world over..."

The Turkish textile union Teksif took 12,000 of its members on strike for 9 days in August to secure a new collective agreement.

The CA sees wages increase 20% over 3 years, a bonus payment increases by 60%, penal rates have been increased and no sub-contracting of work is allowed.

MINERS STRIKE

80,000 South African gold miners went on indefinite strike in September rejecting an employer pay offer of 6.5%. The average miner's wage is \$180 per week. A few days into the strike the employers quickly increased their offer to 7.5 - 8% which was accepted by the union.

COMPENSATION

The ILO convened a meeting of clothing retailers whose brands had been made in the collapsed Rana Plaza in Bangladesh where 1200 were killed. Of the 29 retailers involved 20, including Benetton and Walmart, failed to attend.

PAY RISE

German union IG Metall negotiated agreement with two employer associations covering temporary workers. The agreement provided for a minimum wage of 8.5 Euro and a 9.6 - 12.8% pay rise. The agreement also prohibits the use of temporary workers to act as strike breakers.

PROFIT BEFORE SERVICE THREATENS JOBS AT POST

to do so at a profit. New Zealand Post, by slashing their service will divert more mail towards DX. The Government has created the conditions to increasingly privatise mail delivery at no cost to DX.

DX is subsidised by New Zealand Post and its Posties. DX does not have to undertake to provide a universal service. Anything that is unprofitable for them to deliver they simply give to NZ Post to deliver. The price DX pay to send a letter via NZ Post isn't 70 cents. They get a discount that is provided to all "bulk" customers. NZ Post is required to carry all mail at a universal price maximum of 70 cents. Some items will cost more

than this to deliver and are effectively subsidised by the mail that is profitable to deliver. So DX delivers its profitable mail and NZ Post delivers the high cost mail at a reduced price!

It is no wonder that DX is offering to keep next day cross town mail, and to deliver 5 days a week, when the rules imposed by the Government require NZ Post to take the rest regardless.

Ultimately the cost of the Government's largess to DX Mail is borne by the Posties who work for NZ Post. When it comes to a pay rise NZ Post says that it can't afford it - but if it carried 100% of the mail it could afford it.

The Postal Workers Union (its Southern District is a member of the M & C Union) is discussing how to respond to the proposal to slash the postal service.

Some elements of a campaign to retain the postal service and employment could include

- seeking to put a 5 day delivery guarantee into the collective agreement
- requiring NZ Post to look after the health and safety of Posties by providing more motorised equipment and retraining to use it if required
- seeking to halt the subsidy of DX Mail.

*Don't let Overnight Across-Town Mail go the way of the dinosaurs...

DX Mail can offer a range of options to get your local mail delivered next day.

- DX Mail Postal Delivery Networks
- DX Box to DX Box Nationwide Network

Give us a call to discuss an option that fits your requirements on **0800 800 230**

Or visit us at www.dxmail.co.nz

Now extinct:

Dinosaurs - 65 million years ago

Dodo Bird - 17th Century

Overnight Across-Town - 2013



*Your business relies on the integrity of the mail service so across-town street addressed mail should be delivered next day as a standard service at a standard price.

Scan the QR code or go to www.dxmailextras.co.nz/info to get the full story.



Postal Mail
DX Box to Box Mail
International Mail
International Courier

Proudly Printed by



APN Print - Wanganui
Phone 0800 111 500
www.apnprint.co.nz

Issue number 98 of "M & C Workers News" was prepared by the National Office of the Manufacturing & Construction Workers Union.

The union may be contacted at PO Box 6287 Wellington New Zealand. Phone (04) 3858264, Fax (04) 3848007, email to m.c.union@TradesHall.org.nz

The articles published in M & C Workers News are not necessarily the same as the policies of the union