



## **SUBMISSION**

by

**New Zealand Meat Workers  
and Related Trades Union  
Incorporated**

to the

**Education and Workforce Committee**

on the

**Employment Relations Amendment Bill**

P O Box 5543  
Papanui  
Christchurch 8542

30 March 2018

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## **INTRODUCTION**

The NZ Meat Workers and Related Trades Union Incorporated (MWU) largely supports the changes proposed by the Employment Relations Amendment Bill (2018) which are designed to reinstate provisions in the Employment Relations Act pre-2014. However, we have a number of comments to make to ensure the proposals can be most effectively implemented.

Members of the MWU have a lot of experience of the gradual deterioration of decent jobs and we look forward to playing our part in proposals for more innovative changes from the government in the future.

## **APPEARANCE BEFORE SELECT COMMITTEE**

MWU seeks to be heard before the Select Committee.

## **NEW ZEALAND COUNCIL OF TRADE UNIONS SUBMISSION**

MWU is affiliated to the New Zealand Council of Trade Unions (the NZCTU). **The MWU has considered the submission provided by the NZCTU and supports those submissions [Part I and Part II] of the New Zealand Council of Trade Unions.**

## **ABOUT THE NZ MEAT WORKERS AND RELATED TRADES UNION**

MWU is a National Union established pursuant to the provisions of the Employment Relations Act, which represents approximately 23,000 meat industry employees throughout New Zealand.

The National Office of our union is in Christchurch. In addition, there are Branch Offices in:

- **Aotearoa Branch** – Auckland, Northland, Palmerston North and Napier
- **Canterbury Branch** – Christchurch
- **Otago Southland Branch** – Dunedin and Invercargill
- **Wanganui Branch** – Hawera and Whanganui

**Sub-branch offices are based in many sites such as :**

Moerewa, Dargaville, Horotiu, Rangioru, Te Kuiti, Te Aroha, Waitoa, Gisborne, Wairoa, Imlay, Bulls, Hastings, Feilding, Takapau, Dannevirke, Hastings, Rangitikei, Waitotara, Levin, Taylor Preston, Nelson, Marlborough, Belfast, Malvern, Kokiri, Hokita, Pareora, Pukeuri, Finegand, Waitane, Matura, Lorneville, Ashburton and Awarua to name a few of them.

MWU members are primarily employed in smaller towns in regional New Zealand. They are the heart of New Zealand. Their work in the freezing works forms the basis of our second most important export industry. Their work brings security and stability to smaller regional

NZ towns. The local meat works are the basis of the local community, with generations learning the trade and many going on to apply those skills for the benefit of NZ Inc.

Most MWU members are employed by large companies like Talley's Group (AFFCO NZ, South Pacific Meats & Land Meat Ltd) Silver Fern Farms, Alliance Group, ANZCO Foods (CMP, Riverlands, ANZCO) and Craig Hickson (Ovation, Te Kuiti Meat Processors, Progressive Meats and 51% Taylor Preston). These are all covered by Collective Employment Agreements.

The Union has good relationships with the majority of the meat industry employers. Strikes are extremely rare in the meat industry. Lockouts have been more prevalent particularly in regard to one company. There was a 9 week lockout with CMP Rangitikei in 2011, but since then, better relationships with ANZCO, the parent company have been restored.

However, while the 84 day lockout with AFFCO Talley's in 2012 led to the settlement of a collective agreement, workers were very disappointed to experience further unlawful action in 2015, which in our view, directly arose from the changes made to the Employment Relations Act 2014 by the former government.

The meat industry has challenges in recruiting and retaining suitable staff. The work is seasonal, labour intensive and extremely physical. This is increasingly evident by the number of applications through Immigration NZ to bring in Meat Workers. This once core industry in rural communities is being fragmented and MWU is concerned that this work is increasingly seen as contingent and insecure.

We look forward to the opportunity to discuss our submission with the Select Committee.

Graham Cooke

**NATIONAL SECRETARY**

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## **SUBMISSION ON THE BILL**

### **1. Introduction**

MWU is an important player in the NZ Meat industry. MWU has a high level of union density and workers covered by collective agreements in the majority of plants. These vary from the largest (Lorneville 1500 workers at peak) to average (around 400-500 workers at peak).

There are collective agreements in place in most plants or under negotiation, including smaller Related Trades plants.

On the whole, MWU has good relationships with employers in the Meat Industry. This doesn't mean there aren't challenges, and there are many in this industry. But there is at least a willingness to engage by both parties.

Therefore, much of this submission focuses on meat companies owned by the Talley's Group – the major company AFFCO and their smaller meat plants at South Pacific Meats in the South Island and Land Meat in Whanganui and the difficulty workers have faced in exercising their rights to freely join a union and collectively bargain.

The changes made to the Employment Relations Act in 2014, which this bill seeks to largely reverse, facilitated the Talley Group's actions and the consequences for workers and their whanau have been significant.

### **2. Background to AFFCO, SPM and Land Meat disputes**

#### **2.1 AFFCO**

AFFCO Talley's has resisted any role for the MWU in their workplaces. As evidence of this we refer to the numerous Court Cases taken by our union over many years including multiple actions since 2015.

AFFCO workers were locked out for 84 days in 2012, leaving the workers' families impoverished and desperate. It took the involvement of the CTU and Iwi to finally reach a settlement of the collective agreement then.

That AFFCO collective agreement expired in December 2014. By that stage, MWU and AFFCO had been in bargaining for around a year. There had been several mediation sessions.

The first group of AFFCO workers to return to work after a layoff in March 2015 were those at Rangiuru. AFFCO presented union members with individual contracts, with significant changes and reductions to the expired collective agreement.

Most of the workers signed, after an urgent Employment Court injunction hearing ruled that while there was an arguable case in regard to whether the workers were unlawfully locked out, the balance of convenience was in favour of AFFCO.

Then site by site, in Moerewa, in Horotiu, in Wiri, in Manawatu the other sites signed onto the employers IEA, except for Wairoa, where the workers refused to sign and were not rehired. **They were without work for five months.**

In November 2015, the Employment Court<sup>1</sup> found AFFCO Talleys had unlawfully locked their workers out by requiring they sign individual agreements in order to return to work. After that the expired union collective terms and conditions were restored at all plants.

In Wairoa the company tried to put the entire union workforce on night shift. It took several months of further court action to get this resolved. These workers spent Xmas 2015 without jobs, income, and desperate. It was only the financial support of other already struggling AFFCO workers, the community, CTU unions and iwi that got them through.

AFFCO appealed the Employment Court decision and after another year the Court of Appeal and Supreme Court also ruled Talley's actions constituted an unlawful lockout. Despite this, not a single cent in reparation or compensation has been paid to workers, particularly at Wairoa because AFFCO Talley's is disputing the method of calculation. This is now at the Appeals Court stage, and sadly, we little expectation of a settlement anytime soon.

## **2.2 South Pacific Meats (SPM)**

South Pacific Meats (SPM) is owned by the Talley's Group and for several years have limited Union access to their two plants (Awarua and Malvern) in the South Island.

There have been many cases against the Talleys Group for breach of access at the SPM plants, starting with a finding from the Employment Authority in 2012 where it was found there were 10 breaches of access. A penalty of \$30,000 (plus legal costs) was imposed.

On 11 September 2014, a penalty of \$20,000 (plus legal costs) was imposed by the Employment Authority for blocking access at the SPM Awarua plant.

A third Authority ruling on 18 February 2016 awarded penalties of \$144,000 plus legal costs for 18 breaches of access at the Malvern and Awarua plants.

There was another access dispute on the 5th May 2017 when the MWU organiser was assaulted and ordered off the Malvern site. SPM were fined a total of \$28,000 in the Employment Relations Authority for that occasion.<sup>2</sup>

Another case that went to mediation prior to Christmas 2017 is now before the Authority.

The MWU initiated bargaining for collective agreement negotiations on 9 October 2014, but

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<sup>1</sup> NZEmpC204 EMPC 152/2015

<sup>2</sup> 2017 NZERA Christchurch 121 3010331

progress has been stalled, with the company's insistence the MWU provide evidence of membership, even though this is not required by the law.

### **2.3 Land Meat New Zealand Ltd**

Land Meat signed an 8-month Collective Agreement with MWU in November 2013, which expired 1 July 2014. It appeared to the MWU that Land Meat management expected the Employment Relations Amendment Bill to become law by that date.

MWU initiated bargaining with Land Meat on the 5th May 2014 and progress has been difficult. Land Meat failed to agree on a Bargaining Process Agreement which stalled negotiations. The MWU applied to the Employment Authority on 30 November 2015 and Land Meat was issued with a compliance order to begin mediation within six weeks of the Employment Authority decision of 22 September 2016. Land Meat was ordered to pay a penalty of \$15,000 and pay MWU costs of \$6,057.00.

To this day, no collective agreement has been settled. One of the barriers to reaching agreement is Land Meat's proposal to change minimum rest and meal breaks that gives the company flexibility, but which MWU members feel are unsafe.

### **3.0 Comments on proposed changes in the Bill**

#### **3.1 Union delegates entitled to reasonable time off to represent members (clause 4)**

**We welcome the inclusion of this section in the Bill. However, we recommend some changes.**

- (a) The section needs to clarify that delegate involvement relates to both on and off-site representation duties.
- (b) Any qualifications need to be treated with caution ; for example, the provision that says the activities would not "unreasonably disrupt the employer's business or the union delegate's performance of their employment."

These could be used by AFFCO and SPM as means to deny delegate time off. Similarly, the notice requirements could be used as an excuse for a blanket denial.

The AFFCO / MWU Collective Agreement provides for recognition of a limited number of delegates and time off. However, this is at the "employer's discretion." Management does allow union delegates to represent workers in disciplinary action, but there is a narrow focus on "representation".

The involvement of delegates and union members in any other way has been curtailed. The company usually argues that they cannot be released because of production requirements.

Here are some examples to illustrate the barriers we face in lawful recognition of union delegates/representatives.

1. Attendance for elected delegates at AFFCO collective agreement negotiations and mediation, (which is frequent) is unpaid and MWU has to compensate workers for lost wages.
2. Last year's ratification of the MWU/AFFCO collective agreement meant many workers had to attend after their shift finished. The company did not pay these workers and delegates also had to attend in their own time.
3. The provision in the Employment Relations Act for two paid stop-work meetings per year have been meaningless to most AFFCO workers. Similarly, the provisions for paid education leave to educate delegates. Requests are usually met with a response that production requirements mean they can't be released. Consequently, few, if any, AFFCO delegates have been able to attend paid education leave.

This means that all union discussions are held outside of work time, off-site, in workers' homes or in community halls. This included meetings with AFFCO members who in 2015 were faced with the toughest of decisions about signing an individual agreement or not returning to work.

One AFFCO delegate who came into work in her own time to settle members down who were upset about an issue was sacked. When she was finally reinstated, she was put to work in the tripe room, despite being a long serving qualified butcher. The tripe room is where the animal's stomachs are opened and processed. It is not a pleasant job.

An example of AFFCO's attitude to delegate release is in a letter to our Moerewa Shed Secretary, Laurie Nankivell dated 9 March 2018 who applied for unpaid leave to attend the MWU Aotearoa branch executive meeting (of which he is a member) in March 2018. While the company declines leave saying the time is not suitable, they finish by saying :

*"Had we known you wished the time off during this period we could have included you in those who were laid off, as such your leave request is not approved due to plant processing requirements."* (Signed Keith Gibson, AFFCO HR Head Office).

There is a clear implied threat in the letter. Laying our delegate off early because he asked for leave to attend a union decision making meeting would no doubt have led to more litigation.

We would argue that the treatment of existing delegates right to paid education leave, to members meetings and other provisions, while being accepted and applied by most meat companies, are being undermined by one company (AFFCO), SPM and Lean Meat.

The legislation must ensure there are strong and prompt enforcement tools available for unions and in the law for the worst of companies. For most, it won't be a problem.

### **3.2 Duty to conclude bargaining reinstated – clauses 9 – 11 and 14 and 15**

We support the restoration of the duty to conclude bargaining along with Clause 10 Restoration of the duty to continue bargaining.

AFFCO Talley's was the first company to file in the Employment Authority to have the bargaining concluded just two months after the 2014 law came into effect.

This tied up MWU with months of costly legal action in defending this. Eventually, MWU and AFFCO were directed to Judge-led mediation. It took another six months to settle a collective agreement and MWU members had to agree to :

- Increase the working day to 8.5 hours
- Grandparent entitlements for long service and cap redundancy
- Remove set times for rest and meal breaks
- Reduce the weekly minimums which give workers security on the shoulders of the season.
- A 0.8% pay increase each year.
- Reduce the number of recognised delegates.

The AFFCO agreement expires in March 2019. SPM continues with individual agreements, despite initiation of bargaining in 2014. Lean Meat has now been in bargaining for three years.

### **3.3 Restoring Rest and Meal Breaks – Clauses 35 - 37**

**MWU supports the return of minimum statutory breaks for all meat workers. We would be concerned if there were any loopholes that allowed employers to argue they have special circumstances that enable them to schedule different breaks.**

Rest and meal breaks were changed in the AFFCO Collective Agreement under the difficult circumstances endured during collective bargaining. MWU tried to find many ways of meeting the company's demands for more flexibility around breaks but did not succeed.

In some sites and on some shifts, AFFCO has reduced workers' breaks on an 8.5 hour shift from three to two. At AFFCO Manawatu, the management carried out a "vote" of all workers. All union members voted no to change because they are well aware of the risks to health and safety that fewer breaks and longer production runs mean.

Many individual agreement workers voted yes, though the full vote tally was never provided, despite requests from site delegates. When it was raised again with management through a petition and a more transparent process asked to be conducted, that was refused.

Fewer breaks for meat workers means longer hours on the production chain, standing on concrete in gumboots, doing repetitive and strenuous movements. Workers work in freezing temperatures in the chillers, or extreme heat in the slaughter and boning rooms. Over the recent summer, temperatures were sky-high. Arms and hands are held above



their heads for hours on end and in some departments, heavy lifting for three hours without breaks means many in our industry have shorter working lives. The taking of anti-inflammatory drugs for stiffness and pain is endemic. Some workers have permanent eczema because of the increasing requirement to wear gloves and other MPI directed equipment.

Toilet or water breaks are discouraged because it means stopping the chain. In past agreements, AFFCO members used to have a process of agreeing the speed of the chain. That was removed in 2012.

The outcome for the workers is fatigue, more risk and more injuries. It gets worse as the day wears on, with overuse damage to backs, shoulders and wrists and increased risk of knife wounds.

### **3.4 90-day trial periods – Clause 29**

**We support the removal of the 90 day provisions for large employers but would prefer to see a total removal for all employers.**

AFFCO and many other Meat Companies have a 90-day trial period in their collective agreement and individual agreements. The meat industry already has maximum flexibility ; with casual and seasonal work, where workers are subjected to lay-offs as stock declines.

Re-engagement is largely at the determination of the company, apart from the rules the union has managed to implement that provide some security of employment. This works in high union density meat plants, but it's a subject of on-going litigation and concern in AFFCO plants.

At SPM, workers get a double whammy, being employed on three month contracts that may be rolled over, and for the first 90 days of the three-month contract, the trial period also applies.

A common view in AFFCO plants is that workers should wait until the 90 days are up before they join our union because they believe they will be fired. MWU has also been told this is the view even in highly unionised sites of other meat companies. The 90-day trial period is being seen as a barrier for joining a union.

The so-called protections against union discrimination in the 90-day trial period are almost unenforceable.

### **3.4 Restoration of the 30-day rule – clause 18**

**MWU supports this change and also proposals to provide union information to new employees.**

In some meat companies, union delegates are able to attend inductions so incoming workers can have explained to them the difference between the individual and collective agreement by a fellow worker.

However, where there is a hostile employer, the provision of information and a free choice to join or not join an existing collective agreement is critical for a new worker. Our preference would be a standardised form workers are presented with that is part of the statute or regulations.

AFFCO and SPM will not even allow members, organisers or delegates to put union information up on noticeboards. They demand to see what is being distributed by organisers as well and usually confiscate any union information left around.

Last year, the management at AFFCO Rangioru would not allow a notice of an election for the site officials (ie delegates) to be put up on the noticeboard.

In 2016 MWU won a case for Katrina Murray, an employee at SPM Awarua, where the Employment Authority found she had been subjected to unjustified actions by SPM that caused her disadvantage and was also unjustifiably dismissed. Katrina was accused of serious misconduct for passing a copy of an MWU union newsletter to other union members at the plant. She was suspended without pay, received a formal written warning and not re-engaged for the bobby calf season.<sup>3</sup>

The Authority also found that another SPM Awarua worker, Cliff Kruskopf had been unjustifiably disadvantaged after he received a written warning for picking up and posting a union newsletter to the canteen staff noticeboard.<sup>4</sup>

### **3.5 Union access – clauses 5 - 8**

**We support these changes which restore the settings before the 2014 changes.**

Union access for our paid officials has been difficult at AFFCO and SPM sites. At AFFCO the process is that union officials have to email the “HR Manager” at Head Office to request access. SPM follows the same process.

Last year, despite fulfilling the requirements of “HR Head Office” one of our organisers was denied access because the company required him to take a drug test.

On another occasion, our organiser was denied access to the AFFCO onsite office because she was wearing a union t-shirt. On that occasion, the disciplinary meeting she was there for took place in a carpark across the road.

The National Secretary was denied access to AFFCO Horotiu (a plant that he had worked at from 1968 – 1989) because he did not email the manager of his visit though Mr Cooke

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<sup>3</sup> 2016 NZERA Christchurch 59 5585915

<sup>4</sup> 2016 NZERA Christchurch 60 5585842

provided his business card to the receptionist and was prepared to wait until the manager was available.

Having MWU organisers on site and available to members is vital for the smooth running of employment relations. It is critical when there is change happened, such as when AFFCO workers were being asked to sign individual agreements and needed advice.

### **Access issues at SPM**

Wayne Ruscoe, an MWU organiser for the Meat Workers Union in Canterbury says :

*“Over the past two years. I have visited, or attempted to visit, the SPM meat plant near Burnham roughly twenty times in that time.*

*I’ve been denied access, been ejected after being allowed on site, been assaulted and on those occasions when I am allowed to visit, I am shadowed by a management representative who carries a clipboard or notebook. This shadowing is unlawful and the carrying of the writing pads is clearly intended to intimidate workers.*

*Every visit has been hindered by management. The regular fines SPM receive appear to be seen as just a cost of doing business and as a low paying, un-unionised work site, SPM profit from breaking the law in this way.*

*Workers tell me that they know that if they join the union they will be fired. Not directly, because that would be too obvious. SPM employ most of their staff on rolling 3 month contracts which they call ‘seasonal’. If a worker annoys them, they are simply not called back for the next contract period.*

*Additionally, SPM Malvern employ large numbers of migrant workers. These workers tell me that they are constantly living in fear of deportation if they upset management.*

*I also organise other meat plants, owned by meat companies such as Silver Fern Farms, Alliance etc along with my colleagues. As far as I am aware, there has never been an issue of access.*

*Strengthening union access rights will help SPM workers live better, less fearful working lives. In the long run, it will also help these workers receive pay that comes closer to the industry standard rates, rather than closer to the Adult Minimum wage.” Wayne Ruscoe.*

### **Summary**

While we have not commented on some of the amendments, we have highlighted those that have had the most impact on Meat Workers.

**We look forward to discussing these matters with the Select Committee.**