Submission of the Canterbury Branch of the New Zealand Meat Workers Union

To The

Transport and Industrial Relations Select Committee

On the

Employment Relations Amendment Bill 2013

24 July 2013

1 The New Zealand Meat Workers Union nationally has some 23,000 members in both its major meat processing plants and related trades sites such as fertiliser plants, poultry processing plants, and tanneries. The Union has four branches in New Zealand being the Aotearoa Branch, the Otago Southland Branch, the Wanganui Branch, and the Canterbury, Marlborough, Nelson, and Westland Branch. Each Branch has its own elected union officials and local Executive Committee however is governed by National rules which apply to all Branches and a National Executive committee. Each major plant has a Secretary and most departments have a delegate. The Canterbury Branch has approximately 4000 members and its geographical coverage extends from north of the Waitaki river to the top of the South Island including the West Coast. In this geographical area the Canterbury Branch has approximately 40 sites.

2 The meat industry is mostly a seasonal industry and the work carried out by its members is extremely physically demanding. Most of the union's members are paid by way of piece rate which means that they are often working very fast and putting an enormous amount of stress on their bodies.

3 There are several large meat processing company's nationally where the union has members. These include Silver Fern Farms Limited, Alliance Group Limited, AFFCO and ANZCO. With at least two of these companies there are what could be termed national or companywide collective agreements which the Canterbury Branch is involved in negotiating. In addition with those companies, on the larger plants, there is also second tier collective agreements which cover a particular plant or department within a plant.

4 The Canterbury Branch of the Union is so extremely concerned over the proposed amendments to the Employment Relations Act 2000 (The Act) that it has decided to provide submissions in addition to those provided by the CTU and the Meat Workers Union National office . The Canterbury Branch has serious concerns with respect to the impact that these amendments will have on its members particularly its more vulnerable members and we have consulted with our membership in the compiling of this submission. The Canterbury Branch of the New Zealand Meat Workers Union strongly opposes all the proposed amendments to the Employment Relations Act 2000 except Clause 61 of the Bill which would require the Authority to issue a written determination within 3 months of the hearing or when it last received information or evidence from the parties.

5 In addition the Canterbury Branch submits that the Employment Relations Act 2000 should be strengthened as opposed to weakened which is what these amendments do.

6 The Canterbury Branch is a member of the CTU and fully supports the submissions put forward by it with respect to the proposed amendments to the Act. The Canterbury Branch also fully supports the submissions provided by the other Branches of and the National Office of the New Zealand Meat Workers Union and Related Trades Incorporated.

Submissions

7 Amendments to Section 4 of the Employment Relations Act 2000 – Clause 4 of the Bill

(i) The proposed amendments to Section 4 of the Act in effect remove the requirement of the Employer to provide access to what it deems to be confidential information relevant to the continuation of an employee's employment and allows an employer to withhold access (on certain grounds) to such information where an employee's employment is at risk.

(ii) The Canterbury Branch opposes this amendment as it will disadvantage employees when they are at their most vulnerable. This will be especially so for non-union members who may not have (and cannot afford the cost) of representation or have support available. Having the ability to be provided with confidential information enables workers to compare their treatment or assessment with other employees in the same or a similar situation. This is especially so in situations where there had been a restructuring or redundancy has occurred. Workers in these situations are often required to apply for positions where there has been a reduction in the number of positions available and they are competing for the remaining positions. Often in these situations there is a selection criteria and interview process and access to the confidential information or assessment ensures that the process is transparent, fair and reasonable and all the workers applying for the remaining positions are being treated and assessed equally. An employer in this type of situation is required to undertake a full consultation process with the affected employees. This proposed amendment undermines this right and the protection it affords an employee in this situation. After all employers and their representatives are only human and can be subjective in their assessment and selection particularly if the worker in question has had a previous conflict with the person making the selection/decision or the worker is assertive. The ability to access confidential information assists to ensure the process is fair, transparent, and everyone involved in the process is accountable. It also ensures irrelevant matters are not taken into consideration.

(iii) Other situations where workers could be disadvantaged are disciplinary situations. An employer is required to treat workers equally and fairly. The courts have recognised that workers should not be treated in a disparate manner. For example, if a worker is being disciplined for lateness or absenteeism and is dismissed and other workers in the same or similar situations attract a lesser penalty such as a warning then the worker who is dismissed is able to question their dismissal on the basis they have been treated in a different or disparate manner. If workers are unable to obtain confidential information, how can they prove that they have been treated differently and could result in an unfair and unreasonable dismissal. This is a situation we have dealt with recently at a meat plant in the South Island and we are proceeding to mediation on the issue. The inability to access the required information would mean this person (the person proceeding to mediation) would clearly be disadvantaged.

(iv) In addition this amendment to Section 4 of the Act would mean that both the identity and possibly a copy of the written complaint against a worker could be withheld from that worker. This would be particularly harmful where for example the complainant is a fellow worker and may hold some sort of grudge against the worker he/she is complaining about, the complainant is a 'serial' complainer in the workplace, or there has been some type of altercation or disagreement previously between the complainant and the worker being complained about. In my experience I have previously dealt with all 3 situations outlined in the previous sentence. Further this clearly erodes and undermines the ability of a worker to fully and comprehensively defend themselves against a complaint and it also erodes the principles of procedural fairness which have been put in place to protect workers in the employment jurisdiction. From a practical point of view in a disciplinary process this could create major issues relating to what other information could be disclosed to the accused person with respect to witness statements which may identify the complainant. In addition this amendment could erode the ability of a an accused worker to know the identity of witnesses whom have provided statements or information to an employer in an investigation or disciplinary matter and the same issues and objections are raised with respect to those persons (witnesses) potentially having their identity withheld.

(v) With respect to the principles of procedural fairness and the right of an accused person to know the case against them we refer to and quote Lord

Denning in the famous Privy Council decision of Kanda v Government of Malaya [1962] AC 322 (PC) at 337:

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

We would add that this includes the identity of a complainant and witnesses. This amendment severally erodes that right and the ability of an employee to defend themselves and challenge the evidence put forward against them.

(vi) In our submission the amendment to Section 4 of the Act will lead to more employees (union members) challenging the decision in the above situations on the basis that there has been an unfair process and substantially more personal grievances being raised and pursued.

8 Amendments to Part 5 of the Employment Relations Act 2000 – Clauses 7, 9, 12, 13, of the Bill

(i) These amendments remove the obligation on parties to collective bargaining to conclude that bargaining unless there are genuine reasons based on reasonable grounds not to. The current provisions set a high threshold which encourages parties to continue to bargain. Pursuant to the proposed amendments the parties with respect to the good faith obligation are not required to enter into a collective agreement or agree on any matter to be included in a collective agreement. Further pursuant to the proposed amendments the Authority could determine on application that the bargaining has broken down. In our submission this puts the balance of power in favour of the employer and clearly disadvantages vulnerable workers who have chosen to be represented by a union and bargain collectively. The Canterbury Branch strongly opposes this amendment.

(ii) The Meat Workers Union is perhaps one of the most fortunate Unions in that we primarily bargain with three large meat companies across the county whom we have a reasonable on-going relationship with. What assists this relationship is that the Companies in question and the Union (Canterbury

Branch) act reasonably and fairly. In most of the large meat plants in the South Island we have on the whole 100% coverage i.e. most workers are members of the Union (Canterbury Meat Packers (ANZCO), Alliance Group and Silver Fern Farms).

(iii) However, what can only be described as a "rogue" employer has entered the industry. This company is a large family owned corporate in New Zealand with multi-millionaire owners. This company operates a number of meat plants across the country including one in the Canterbury region and one in the Southland region.

(iv) In our submission this employer has entered the meat industry with an agenda to reduce the terms and conditions of employees across the industry in New Zealand. This can occur because the large employers in the industry are aware of the lower rates and conditions this company offers and when negotiations take place with them (the large employers) they attempt to also reduce their wage rates and conditions to that lower level.

(v) This rogue company also targets union members and puts undue influence and pressure on them to withdraw their membership of the Union. So much so that these members are called into meetings with management and advised they will be dismissed or not called back for the upcoming season if they do not withdraw their membership of the Union. This company goes so far as to have 'opt out of the Union' forms printed on its letterhead and pressures members to sign them. The Canterbury Branch is currently taking a number of personal grievances against this company on behalf of its members where they have been dismissed because of their union membership. The Canterbury Branch is currently considering a case against this company pursuant to Part 3 of the Act (Freedom of Association).

(vi) Further, this company makes access to their sites extremely difficult. When access is granted under the Employment Relations Act 2000, that access is limited, for example, the Union Organiser being confined to a specific room, a specific desk and are forbidden from moving more than several metres from the allocated desk. Several cases have been taken against this company with respect to it denying access to the Union which have been successful. However initiating and pursuing litigation on a regular basis against such companies is time consuming, costly, and uses many other union resources.

(vii) The Canterbury Branch of the NZ Meat Workers and Related Trades Union had initiated bargaining at the site in their area. However, we are having difficulties even obtaining access for claims meetings with the small numbers of members we have been able to maintain as they are frightened that they will lose their jobs if they remain in the Union and will not be able to provide for their families. The remaining workers know that this will happen as they have seen it happen to other staff and their workmates.

(viii) The Amendment to Part 5 of the Act which removes the requirement of the parties to conclude collective bargaining would, when dealing with this rogue employer, be devastating for the workers (members) at that plant. It would in essence mean that no collective agreement would ever be concluded with that company and the union could be involved in continuous litigation before the Authority as to whether the bargaining had concluded. The Union representing its members would be the proverbial rat in the wheel continuously running in a circle but never achieving a collective agreement on behalf of its members.

(ix) In addition this amendment if enacted would mean that if the Authority did determine that the bargaining had broken down then the Union (and employer) is unable to further initiate bargaining for 60 days and the workers and members are unable to take any industrial action in that 60 day period. This is another provision which would erode the right of workers and further put the balance of power in favour of employers. It further disempowers workers in New Zealand.

(x) Further, if the Authority determined that bargaining had broken down or ended then workers covered under the collective agreement would be automatically transferred to individual agreements and lose many benefits and protections that they had enjoyed under the collective agreement. In the current legislation a collective agreement does not expire for a period of up to 12 months providing the collective bargaining is continuing. This would end with proposed amendments. It would mean that employers could then offer union members individual agreements which are incompatible with the previous or proposed collective agreements. Again, this would be disadvantageous to workers who had chosen to be covered under a collective agreement and enjoy those benefits. They would be unilaterally deprived on those benefits. This erodes their individual choice and is unfair and

unreasonable. It is in effect an attack on the regime of collective bargaining. A regime which has worked extremely well since its introduction in 2000 and has seen a record low for industrial action taken by workers since records have been kept being 1985.

9 Amendments to Sections 59B, 62, 63, 63A, 65, 67A of the Employment Relations Act 2000 – Clause 14,15,16,17,18,19 of the Bill.

(i) Proposed amendments to these sections of the Act remove the requirement for employers to apply and provide the terms and conditions of the collective agreement in their worksite to new employees for the first thirty (30) days of their employment. The Canterbury Branch strongly opposes this amendment.

(ii) The removal of these provisions in effect means that workers may not be made aware that there is a Union on site and more importantly would allow an employer to pay new workers less than the Collective Agreement and apply conditions that are less than in the Collective Agreement. This can and will create division amongst the workers on that site. This proposed amendment will have the effect of undermining the collective and weakening the bargaining position of unions in future negotiations. In reality employers will aim to reduce the terms and condition of the Collective Agreement down to the lowest denominator being the level of those on lowest wages and with the least favourable term and conditions.

(iii) In addition workers are at their most vulnerable when they are either applying for a job or new to a job, particularly given that the level of unemployment in unskilled and semi-skilled industries is extremely high at the moment. For example, Progressive Enterprises Limited recently advertised 150 positions in Auckland and received 3,000 applications. Further if those 'new' workers have a provision in their individual agreement with respect to 90 trial periods pursuant to section 67A of the Act it is highly unlikely they will opt to join the union as they will fear being dismissed by the employer.

(iv) This high unemployment rate in unskilled and semi-skilled positions also means a prospective worker would not feel confident in attempting to negotiate a higher rate of pay or better terms and conditions of employment because an employer will simply say, that given the high unemployment rate

that they will offer the job to another person whom is willing to accept what has been offered without question. This again substantially lessens the bargaining power of the worker and puts the balance of power firmly with the employer.

(v) The offering of the terms and conditions of the Collective Agreement in the first thirty (30) days of employment also make the workers aware of the terms, conditions and wage rates that are being paid on that worksite and an indication that they should not accept less. This is particularly so for young workers who are very vulnerable, naïve, and open to being manipulated by an employer.

(vi) The removal of the Collective Agreement being offered to new workers for the first thirty (30) days of employment also means that the employer can enter into agreements which undermine the provisions of the Collective Agreement, for example rostering and seniority. Most Collective Agreements require notice and consultation to take place before a roster can be changed.

(vii) Of particular relevance to the Meat Industry is the system of seniority especially given its seasonal nature. This system recognises a workers length of service with the employer whereby their start and finish dates for a particular season are determined based on their service i.e. workers with longer service will be given an earlier start in the season than those with lesser service and will work longer toward the end of the season. This system of seniority has existed in the meat industry for over seventy (70) years.

(viii) However, the "rogue" employer referred to earlier in these submissions has already attempted on several occasions to erode the seniority system in its plants and removing these provisions from the Act and enacting the proposed amendments will only give it more scope to undermine the collective terms and conditions in the Meat Industry. These attempts by the 'rogue' employer to negate seniority provisions include the "rogue" employer refusing to re-employ workers based on seniority pursuant to the provisions of a Collective Agreement. On these occasions the Union has had to take the matters to both the Employment Relations Authority and the Employment Court. Although the Union was successful with these cases they involved a significant amount of union time and resources. One case in particular involved the "rogue" employer employing non-union workers on Individual

Employment Agreements ahead of those workers covered by the Collective Agreement and whom had seniority over the new workers. The Court held that the company was required to employ and lay off seasonal workers based on their seniority or initial start dates.

(ix) In another case the union on behalf of a worker took a personal grievance where the worker was not re-employed based on the seniority provisions of the collective agreement. The Authority ordered her reinstatement and reimbursement of lost wages. The enactment of these proposed amendments will only encourage and allow the further undermining of collective provisions such as seniority.

10 Amendments to Sections 69ZC, 69ZE, 69ZF, 69ZG, 69ZH of the Employment Relations Act 2000 – Clauses 43,44,45,46 of the Bill

(i) These amendments remove the statutory right to ensure that employees can take a rest or meal break during their working day and remove the guaranteed minimum breaks specified in the Act. In addition the proposed amendment allows an employer to determine when such breaks are taken. This could mean that regular breaks (say every 4 hours) are not permitted by the employer depending on production or other considerations. We strongly oppose these amendments as it is blatantly obvious that such guaranteed regular breaks are important for health and safety reasons and it is widely accepted that if workers are not permitted regular breaks then the incidence of workplace accidents increase dramatically. In addition, it can seriously affect the ability to a worker to do their job property and effectively which in turn can impact on productivity in the workplace. Further, the proposed amendments allow an employer to pay (compensate) a worker to not take a break. This entices low paid, young, and vulnerable workers to forgo their breaks and ultimately compromise their health, safety and wellbeing for a monetary reward. Such a system must be strenuously opposed especially as New Zealand has a concerning rate of accident and injury in the workplace.

(ii) There are particular concerns for the Meat Industry in this respect given that most workers are paid by way of piece rate i.e. the higher volume of stock that is processed means the faster the processing becomes and the more a worker is paid. This motivates workers to work harder and process more

stock which in turn makes them more vulnerable and likely to injure themselves. Most chains (processing lines) process 8-10 carcasses per minute. These workers are using high risk equipment such as large circular saws used to cut whole fresh or frozen lamb carcasses, bone and meat cutting bandsaws, chainsaw type equipment used to flay beef carcasses, hock cutters which are used to cut through the leg bone of an animal and of course extremely sharp knives. The work is very physical and the meat industry has an aging workforce so in order to avoid serious accidents such as the severing of limbs and fingers guaranteed breaks are essential. In addition, such breaks are highly important in the prevention of gradual process injuries to shoulders, wrists, elbows and backs which are prevalent in the Meat Industry due to the physical, forceful, and repetitive nature of the work. On this basis, the ability of an employer to 'buy out' breaks must be viewed as highly dangerous and harmful and would inevitably contribute to an increase in workplace injuries in the Meat Industry.

(iii) The "Injury Statistics – Work-related Claims: 2011" report released by Statistics New Zealand states that for the 2011 calendar year the overall rate of injury claims was 97 claims for every 1,000 full-time equivalents (FTE's). However, agriculture and fishery workers (Which includes meat processing workers) had the highest incidence rate, with 211 work-related injury claims per 1,000 FTE's in 2011. It is the Canterbury Branch's view that if these amendments were introduced there would be a substantial increase in injuries in our industry particularly at the non-union sites. Workers who are not permitted regular breaks are at an increased risk of injuring themselves.

(iv) The rogue employer referred to earlier also unilaterally shortens breaks whilst compelling workers to work shifts up to 14 hours per day. Hence if this amendment is enacted it will only allow it (this company) to further determine when breaks will occur, if at all and legitimise their ability to shorten breaks. In our submission those workers employed by this employer will suffer greatly as a result of this amendment. In conjunction with (as a result of) the shortened breaks or non existent breaks the Canterbury Branch is aware that a high number of accidents have occurred on this employers sites including the Canterbury site. When the Canterbury Branch has sought to address these safety concerns the company has initially refused to meet with us and then minimised and failed to deal with the safety concerns raised by the Union

(v) These proposed amendments also further seriously undermine the rights of all workers regardless of whether they are union members. The proposed amendments allow the employer to determine and impose when rest and meal breaks will be taken if there is no agreement. This clearly is inequitable, unfair and unreasonable and with respect to this issue puts the power firmly and clearly in the hands of the employer. Surely such an amendment cannot be viewed as complying with the concept of 'good faith' which underpins the current legislation.

11 Amendments to Sections 80, 86, 90, 91, 93, 94, 95, 100 of the Employment Relations Act 2000 – Clauses 47,48,49,50,51,52,53,56 of the Bill

(i) These amendments allow employers to unilaterally deduct a fixed or estimated amount of wages from an employee for partial strikes and would require written notice for all strikes in all industries. The latter amendment will mean that all strike action will be subject to the complex jurisprudence with respect to notices given in essential services and will clearly see in increase in litigation. We strongly oppose this amendment.

(ii) With respect to written notification of all strikes, this will only result in resources from both Unions and employers being used to determine whether a strike notice has been worded to the letter of the law. Whilst this may not affect the large employers in the Meat Industry who process meat it may affect smaller related trades operations whom can least afford to put resources into such an exercise. It is for these reasons that this amendment is strongly opposed.

(iii) Interestingly, New Zealand currently has the lowest number of work stoppages since current records began in 1986. Despite this, proposed amendments to these provisions of the Act make it even more difficult for workers to take industrial action. Again, the balance of power in the employment relationship is being tipped further in favour of the employer. The committee must examine these proposed amendments in the context of the current low statistics which clearly display no need for further restrictions on industrial action. There are no overwhelmingly high strike rates or industrial action being taken that requires such amendments to the current legislation. Rather, these amendments appear to be attempting to deal with an issue that is simply non-existent.

(iv) The proposed amendment which allows an employer to deduct an estimated or fixed amount from an employee's wages will also result in increased litigation with the Authority being called upon to determine if the amount deducted is in fact correct.

(v) In addition this proposed amendment is an attack on and will seriously affect and disadvantage low paid, young and vulnerable workers whom can least afford to have up to 10% of the wages unilaterally deducted by the employer. Low paid workers already struggle on a regular basis to feed, clothe, and send their children to school having had breakfast and with a lunch. This amendment will make that task even more difficult.

12 Amendment to Section 174 of the Employment Relations Act 2000 – Clause 61 of the BillS

(i) This proposed amendment requires the Employment Relations Authority (the Authority) to either give its decision orally at the conclusion of a hearing or an indication of its preliminary findings on the matter and deliver a written decision within 3 months after the hearing or within three months after the last evidence/information has been provided by the parties.

(ii) At the outset the Canterbury Branch acknowledges the effort and determination demonstrated by our Authority members in the Canterbury region in trying circumstances since the February 2011 earthquake and acknowledges that it caused and contributed to the delays in this region.

(iii) We strongly oppose the amendment which would require the issuing of either oral decisions or preliminary findings at the conclusion of a hearing. The issues that come before the Authority from the meat industry are more often than not complex, detailed and lengthy. Accordingly they require some detailed consideration and thought by the Authority member before a determination is issued and the requirement for an oral immediate decision or preliminary finding in our view is dangerous, could result in erroneous determinations, and could lead to increased and on-going litigation by way of appeal to the employment Court of the determination.

(iv) We agree with the proposed amendment to the Act that an Authority member will be required to issue a written determination within 3 months from the date of the hearing or within 3 months of the last evidence/information being received from the parties.