

Submission of Eric John Mischefski

To The

Transport and Industrial Relations Select Committee

On The

Employment Relations Amendment Bill

P O Box 6645

Wellington

2013

.....

This submission is made by Eric John Mischefski a duly elected representative of the Aotearoa Branch of the New Zealand Meat Workers and Related Trades Union (Inc.) on behalf of members whose interests I represent.

1. In order to make these submissions opposing the proposed changes to the Employment Relations Act 2000, as provided for in the Employment Relations Amendment Bill 2013, it is relevant that I chronicle recent history relating to the conduct of two different NZ meat industry employers and their approach to collective bargaining.

2. The nature of these submissions is to provide factual historic events during collective bargaining between the NZ Meat Workers and Related Trades Union (Inc.) (MWU) and AFFCO NZ Ltd on one hand and the MWU and Silver Fern Farms Ltd on the other, and to reinforce the need to reject these proposed changes to Employment Relations Act 2000. These submissions also attempt to identify what impact the proposed new law changes could have on collective bargaining into the future.

3. Both of the aforementioned meat companies compete with each other in the procurement of livestock stock and marketing of their processed products.

4. Both of these meat companies also own processing plants in the North and South Islands of New Zealand and have a mix of multi plant employment agreements and site specific agreements.

5. The processing plants owned by these companies have varying degrees of union density and also have a mix of collective and individual employment agreements.

AFFCO NZ Ltd

6. AFFCO is a company privately owned by the Talley's family and is part of the Talley's Group Ltd (TGL). This is one of the biggest privately owned companies in New Zealand. The Talley's Group have interests in meat, dairy, fish and horticulture. Combined it employs up to 4500 New Zealand workers.

7. Since 1992 the AFFCO meat and by products processing plants in the North Island have been covered by a collective employment agreement which provides for base terms and conditions of employment.

8. There is also provision in this agreement for second tier employment agreements which were, up until 2012 negotiated at each individual work site.

9. These site agreements provided for things like hours of work, staffing levels, production speeds and job security provisions.

10. In the first week of November 2011 the NZ Meat Workers and Related Trades Union initiated bargaining for the renegotiation of an existing Collective Employment Agreement (the CEA) covering all of the AFFCO North Island meat and further processing plants situated at Moerewa, Horotiu (near Hamilton), Rangiuru (near Te Puke), Wairoa, Imlay, (near Whanganui) Feilding and leather processing plants in Wiri (Auckland) and Napier.

11. The first formal bargaining meeting between the union and AFFCO took place toward the end of November 2011 where claims were exchanged and the respective parties outlined the rational and objectives surrounding those claims.

12. A further bargaining meeting took place in December 2011, then again on the 14th and 15th February 2012.

13. On the 14th of February 2012 AFFCO withdrew all of their original claims and presented a whole new set of claims in the form of a new collective agreement. They did this despite previously declaring that the totality all their claims were on the table. It is generally accepted that new claims are not brought to the bargaining table during bargaining except by agreement of the parties.

14. At this point the union requested a mediator from the department of labour be engaged in the talks to try and assist in finding common ground on which to continue to bargain.

15. The union was able to secure a mediator at short notice enabling the talks on the 15th of February to continue in the presence of that mediator.

16. Unfortunately during negotiations on the 15th February the employer adopted the position that they would not continue to meet with the union in the presence of a mediator unless the union discontinued all pending legal challenges against AFFCO being heard in the Employment Authority and Employment court.

17. The union was not prepared to agree to give up the right to contest employment agreement breaches and to defend workers statutory rights through these legal channels. As a consequence the talks ended abruptly on that day.

18. On the 24th of February 2012 senior union officials were lured by AFFCO to Nelson to meet with senior management and one of the owners of the company. The union understood that the purpose of this meeting was to create a smaller group of representatives (a short lineout) to further progress the talks.

19. It became apparent to the union officials at that meeting that the real purpose of luring the union officials to Nelson was to serve lockout notices on the union for 770 of its members.

20. During this short meeting in Nelson the AFFCO representatives continued to “surface bargain” with the union. This is evidenced by the fact that the company, while appearing to bargain around the issues on the table, had prepared a list of each of the union member’s to be locked out (of work) and the various processing plants that they were employed at.

21. The selection of those members to be locked out was based on a number of factors with a view to ensuring that the company still had enough union members (and non-union workers) remaining at work, with the skills to enable processing at each plant to continue.

22. These lockout notices were served after only 10 hours of negotiations for a new Collective Agreement.

23. AFFCO gave the MWU notice of an indefinite lockout for 770 of its 1300 members employed by AFFCO while leaving the remaining union members to continue working.

24. The MWU subsequently issued a number of limited days of strike action for those members remaining in the AFFCO plants.

25. A further 50 workers were then indefinitely locked out with an additional 470 locked out over Easter. These workers were told by the employer they were locked out because they took part in strike action in the week prior to the Easter break. Legally a lockout can only occur if it is in pursuit of a collective employment

agreement. These “Easter lockout” workers did not receive statutory holiday pay for the Easter break.

26. Following Easter 2012 AFFCO intended that the 470 “Easter lockout” workers would return to work while the remainder of their union colleagues remained locked out.

27. Finally after an eleven week struggle a settlement was reached with AFFCO which included the retention of the company wide collective employment agreement and the site specific agreements.

28. It is acknowledged that settlement of this dispute was only achievable because the workers were supported by IWI leaders and the NZ Council of Trade Unions.

The social impact

29. In the years leading up to and during the 2012 AFFCO lockout many of the MWU members ended their employment with AFFCO and sought employment elsewhere.

30. The net effect of this migration away from AFFCO (and in many cases away from the meat industry altogether) has been varied with small rural communities suffering the most.

31. The Wairoa community on the East coast of the North Island has probably suffered the most due to AFFCO, from 2007, adopting an agenda to attack terms and conditions of employment at the Wairoa plant.

32. These attacks are now a matter of public record as evidenced in rulings from the employment Relations Authority and the Employment Court where a very high percentage of these rulings were in favour of the workers.

33. As a consequence of these on-going attacks by the employer many revealing negative statistics relating to Wairoa were researched and reported in the print media during the 2012 dispute.

34. For example it was reported in the Hawkes Bay Today newspaper on 1.5.2012 that school rolls in Wairoa had declined by 13% since 2007 and that the local economy had suffered significantly. The decline was touted as being caused by the lack of job security and declining incomes (derived from the towns’ largest employer AFFCO) which resulted in a steady migration of meat workers and their families away from Wairoa. Many shifted to Australia.

35. Equally real estate statistics revealed that one house for every 34 people was for sale in Wairoa compared to one in 79 for sale in Napier/Hasting during the same sample period.

36. It was of huge significance and no doubt a contributing factor that AFFCO, in 2010, decided to lay off the entire Wairoa plant earlier than usual and for a protracted period of 5 months to try and force lower rates of pay and conditions of work. At that time AFFCO was on public record as stating that the plant was short of stock but if a new agreement could be secured the plant would then reopen.

The proposed new law

37. The proposed Employment Relations amendment Bill 2013 is intended to make **changes** to (amongst other things) **the duty of good faith** to conclude an agreement. It will allow employers to surface bargain (act out bargaining) with no real attempt or desire to settle an agreement (as was the case with AFFCO in 2012 **but the current law required a settlement be reached**).

38. This Bill will **remove the requirement** on employers to employ new workers on the same terms and conditions of employment as other workers employed at the same workplace, for the **first 30 days of their employment**.

39. This **current** provision at **law ensures** that a relevant **collective agreement is not undermined** by inferior provisions applicable to new individual workers and should not be changed.

40. The **current employee protection** provisions of the Employment Relations Act 2000 ensures that workers and their wellbeing are taken into consideration when a business is sold, taken over, or merged.

41. There is **currently a statutory obligation** to acknowledge and **protect the rights** of long serving workers and to place significance on their contribution to their employer in past years and should not be changed.

42. This current obligation acknowledges that an employment relationship is an investment of capital **on the employer's part** and labour on the part of the worker.

43. To **invest one's life** by working for an enterprise **is as valuable to the individual as investing money in a business**.

44. **Rest and meal breaks** are more than a time to light a cigarette or take on sustenance. They are also a time to take comfort stops, recognising that each gender has their own specific needs and in varying degrees and sometimes of a cyclic nature.

45. **Rest breaks** are also necessary for some workers who suffer with various health issues. A diabetic for example has certain needs that occur on a regular basis.

46. It is **often not possible** for workers with these types of needs to be **relieved from continuous on line production work**, which is synonymous with the meat and related trades industry, in order to attend to personal needs.

47. Allowing employers to **veto rest breaks** will put huge pressure on those workers who are unfortunate to be affected by health issues, if they cannot rely on regular planned comfort stops. The current law should remain intact and not be altered.

48. This Bill promotes that employers must compensate workers who are not provided with rest breaks. This is a crock. The proposed law change **does not recognise** the specific **needs of an individual**. The “extra remuneration” in lieu of paid breaks (as provided for in this bill) could be **fabricated into the rate for the job** and be presented to a worker on a **take it or leave it basis**.

49. The conduct of the AFFCO meat company as described earlier in this submission identifies that the **original intention of that employer** was to frustrate the bargaining process then inflict hardship on workers who were loyal to their union and to force them into submission.

50. The **Talley’s group** are **notoriously anti-union** which is not permissible under the current law. This new bill if it passes into law will validate the type of conduct used by the AFFCO Company during the 2012 dispute.

51. In fact one could say that **this proposed bill is tailor made for AFFCO** and will give this employer licence to repeat the same conduct as in 2012 with seriously different possible outcomes.

How will employers take advantage of seasonal workers under the proposed new law?

52. The NZ meat industry is predominately a seasonal industry with highs and lows experienced in the supply of animals for slaughter and market access and fluctuations.

53. It is not uncommon for work to be intermittent and the duration of such work being variable.

54. Therefore security of work from one season to another is of vital importance to these workers. The relative standing (ranking or seniority) of a worker is the glue that binds a worker to an employer.

55. Seniority give's the worker the surety of on-going work from one season to another and when starting at the bottom of a seniority list then progressing up through the ranks, as it were, provides that worker with a sense of achievement and confidence of future employment.

56. It is also the measure (in most collective agreements) by which redundancy compensation is calculated should a worker be unfortunate to lose their job.

57. It is also of vital importance when workers are dealing with financial institutions. The ability of a seasonal worker to service a mortgage is dependent on available work and some surety of income. **Without seniority** provisions enshrined in an employment agreement many seasonal workers could **become second class citizens**, reconciled to a lifetime of renting accommodation and never owning a home of their own due to financial instability.

58. Job security is relevant because this bill will allow **seasonal employers** to enter into bargaining for a collective employment agreement with the intention of **surface bargaining** until a strategic point in that bargaining process when it could then declare an **end to the bargaining** and petition the employment Authority to endorse that the bargaining is at an end.

59. An employer could do this simply **by seasonally laying off staff** and declaring that the bargaining must be at an end because the employer **no longer has any employees** to which a collective agreement could apply to.

60. If the provisions of this bill succeed into law employers will be able to **offer new terms and conditions** of employment to previous employees returning to the same workplace and the same job. Such new terms could and would most likely include the deletion of all reference to any previous employee ranking. In fact, looking into the future, this single issue (deleting seniority obligations) **could possibly be the modus operandi** of a company like AFFCO, given that the current AFFCO Core Collective agreement will be up for renegotiation later this year and is due to expire on 31.12.2013.

Silver Fern Farms (SFF)

61. What follows is a commentary on successful collective bargaining between Silver Fern Farms Ltd and the NZ Meat Workers and Related Trades Union (Inc.) in both the North and South islands of NZ and is a testimony to how the current good faith provisions in the ERA 2000 work and why they should be retained.

62. Earlier in 2013 the MWU initiated bargaining for the renewal of an existing collective agreement with Silver Fern Farms Ltd covering six south Island meat processing plants. The MWU were represented by 12 people and the employer by 2 people.

63. Bargaining took place over a total of **16 hours** of actual negotiations. An amicable settlement with renewed and improved terms and conditions of employment was achieved in this relatively short period of time.

Silver Fern Farms (Pacific Plant Hastings)

64. The SFF Pacific Beef Plant situated at Whakatu Hastings is a processing plant that is steeped in history and has had a succession of owners since 1973. Notably, Dawn Meats, Richmond, and PPCS subsequently rebranded as Silver Fern Farms.

65. The advent of the Employment Contracts Act in 1991 marked the beginning of a long dispute between the owners Richmond and the New Zealand Meat Workers and Related Trades Union.

66. At that time this workforce was 100% unionised.

67. The dispute centred on the unions desire to negotiate a companywide agreement across all of the Richmond Plants in the North Island. As opposed to the company desire to have site specific agreements only.

68. After 7 weeks of strikes and lockouts the matter was referred to the Employment Court for determination. The court ruled that the employer had the right to introduce new terms and conditions of employment at the commencement of each new season. The Court also ruled that despite this the Employer must recognise the seniority provisions of the agreement by offering work to previous employees as per those seniority provisions.

69. Subsequent to the dispute, plant agreements were negotiated at each of the Richmond Plants.

70. One effect of the dispute was that many previous union members left the Union and continued working at the plant under the provisions of the new collective employment agreement, on an individual basis.

71. Two decades on the SFF Pacific Plant continues to operate on a plant specific document with departmental sections which cater for provisions relating to staffing scales, production throughputs, wage rates, performance expectations and security of employment provisions (seniority).

72. In September 2011 the Union initiated bargaining for a new collective employment agreement for the SFF Pacific Plant.

73. The existing agreement expired on November 1st 2011 but continued on according to its tenor because the parties to the agreement were still in negotiations for a new Collective Agreement.

74. The parties were bargaining in a difficult environment given that a dispute between AFFCO and the MWU happened mid-way through the Pacific negotiations. This created some uncertainty because meat processing companies, including SFF, were trying to second guess what concessions, if any, AFFCO achieved from their Settlement.

75. The Employers position during these negotiations became a moving fest due to industry dynamics at that time, including same day killing options to farmers.

76. SFF was also concerned about the escalating processing costs at the Pacific plant. Leading up to 2011 the night shift operation at Pacific was operating short time due to stock availability and the cost competitiveness of all of the Silver Ferns Farms processing plants.

77. Also during this period (of negotiations) the SFF Te Aroha plant was destroyed by fire.

78. Arising out of those ashes the Pacific plant welcomed workers from Te Aroha plant to work on its night shift at Whakatu, thus enabling a wider spread of skills available to that shift and on-going employment opportunities for these displaced workers.

79. Previously due to the intermittent nature of work on the night shift the Company had difficulty recruiting new workers for that night operation.

80. After a succession of meetings between the parties over 9 months an agreement was struck which provided the following settlement features:

- All existing workers retained their wage rates and conditions of employment.
- Wage increases were achieved for all workers including a back pay arrangement which recognised the length of time that negotiations took.
- The Employer was able to maximize throughputs.
- Contain and improve costs.
- Productivity across all departments increased to new heights with production targets being met on a consistent basis to such a degree that realising 100% of production targets have become the norm.

- The on-going success of the new agreement has provided for scores of new jobs at the Plant.
- Above all, the working relationship between the Company, Union and its members is one of mutual respect and a greater understanding of the ingredients that are required to operate a modern Plant in a volatile NZ Meat Industry.

In conclusion I ask that this Transport and Industrial Relations Select Committee seriously consider the contents of this submission and reject the proposed changes to law that this bill promotes.

The bill is flawed to the extent that it promotes an environment which will seriously undermine the current good faith provisions that respective interest groups rely upon to assist in entering and concluding collective bargaining.

The potential for social fall out arising as a consequence of this Bill passing into law is potentially huge, and is particularly more probable to occur in communities where a seasonal industry such as the New Zealand meat industry operate.

I produce this submission in the absolute belief that this bill will cause serious damage to the current working relationships that exist between employers and trade unions in NZ.

I urge the committee to report back to parliament and recommend that this bill be scrapped because it is designed to be divisive and will lead to industrial unrest of huge proportions if passed into law.

E.J Mischefski
Area Organiser
Aotearoa Branch of
The NZ Meat Workers and
RelatedTrades Union (Inc.)

30.8.2013

**To the Clerk of the transport and Industrial Relations Select Committee on
the Employment Relations Amendment Bill 2013**

The following paragraphs relating to the Eric John Mischefski Submissions to the above Bill are amended as follows:

9. These site agreements **provide/d** for things like hours of work, staffing levels, production speeds and job security provisions.

13. On the 14th of February 2012 AFFCO withdrew all of their original claims and presented a whole new set of claims in the form of a new collective agreement. They did this despite previously declaring that the totality all their **clams/claims** were on the table. It is generally accepted that new claims are not brought to the bargaining table during bargaining except by agreement of the parties.

29. In the years leading up to and during the **2012 AFFCO** lockout many of the MWU members ended their employment with AFFCO and sought employment elsewhere.

35. Equally real estate statistics revealed that one house for every 34 people was **sold/for sale** in Wairoa compared to one in 79 for sale in Napier/Hasting during the Same sample period.

56. It is also the measure (in most **collect/collective** agreements) by which redundancy compensation is calculated should a worker be unfortunate to lose their job.

65. The advent of the Employment **Contract/s** Act in 1991 marked the beginning of a long dispute between the owners Richmond and the New Zealand Meat Workers and Related Trades Union.

E. J. Mischefski

End