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Truth and a Good Story

A commentary on the proposed employment law amendments by Tony McKone – 16 September 2014

In the lead up to New Zealand's general election on 20 September, I have been reading with interest the views and comments of the political parties on what they would do with employment legislation.

It is interesting that there still appears to be a degree of what I call misrepresentation about the proposed changes to the employment legislation, which are currently on hold until after the election.

The unions in particular still continue to say that the amendment bill gives the employer the power to "walk away" from bargaining. This is not a true representation of the Bill. The proposed change would take away the current requirement that a collective agreement must be concluded unless there is a genuine reason not to. The Bill says that where either party (that means the union not just the employer) believes that they have done all they can and are no longer making progress, they can apply to the Employment Relations Authority (ERA) to make a determination on whether or not bargaining has concluded.

This is an important aspect that the unions have failed to point out. They, just as much as the employer, have the right to seek such a determination.

The second misrepresentation is that the unions are implying that employer can make the decision to end bargaining. This is not correct. Under the Bill, the employer cannot make any decision that bargaining is over. The ERA is the only party that can make a determination that bargaining is over, and even then, only after they are convinced that the parties have attempted every avenue to try and conclude a collective. The ERA can refer the parties back to bargaining or to mediation to try and resolve their impasse.

It is often said that the truth gets in the way of a good story, and when it comes to New Zealand's employment law this is often the case. Employers and unions will often have their own version of "the facts". This does not mean that either side is necessarily being mischievous; rather how they use the information they have is often guided by their particular view point on a topic.

Unions for example will imply employers are being tight fisted by not sharing profits with their workers. The employer on the other hand will say low modest increases are all that can be

afforded in these economic times. Both want to see employees paid well. However they each have a different point of view of what “paid well” means.

So, going back to the main topic of this commentary, employment legislation, the unions are implying that employers do not want to have collective agreements, when they say the proposed amendments give the employer the “power” to walk away from bargaining. In my experience employers are generally not opposed to collectives. However, employers do not see a need to have protracted bargaining talking around in circles in an attempt to conclude bargaining. They see sense in having a “circuit breaker”, the ERA, to make a determination on whether or not they have done enough talking and bargaining is at an end.

I do not see the amendments making a huge difference to the way collectives are currently negotiated between most employers and unions. There will be some bargaining sessions that will inevitably end up, under the proposed changes, going to the ERA. In most cases I expect that these will either be referred back to the bargaining table or to mediation.
If we turn back the clock to 1999, there was a lot of angst amongst employers about the doom and gloom the new Employment Relations Act was going to bring upon employers. This turned out to not be the case.

Should the current government be returned after the 2014 general election, and the proposed changes make their way into law, I do not see these changes being the “end” to bargaining as we know it today.

If you need assistance with addressing workplace bullying in the workplace, contact us today.