



Stop-work or strike?

Two unions and their members were required to pay damages in a recent Employment Court case.

In *Radius Residential Care Limited v the New Zealand Nurses Organisation Inc* the nurses and service workers unions were found to have acted in bad faith, misled and deceived, and incited unlawful strikes.

While an unlawful strike judgment against a union is not unusual, a judgment for damages is.

The unions had been bargaining for a collective employment agreement with rest home operator Radius Residential Care.

After several months' bargaining the parties reached an agreement, signed terms for the collective agreement, and were waiting on the unions to ratify the agreement when a political announcement derailed the process - the Government announced an increase in funding for rest home beds.

The unions felt the increased funding should be applied to staff wages, and reacted to the announcement by deciding not to ratify the agreement.

They then organised a series of stop-work meetings.

Under the Employment Relations Act unions are permitted two stop-work meetings per year in any workplace, where members may attend to discuss matters relating to their employment and union business. Union members receive their normal pay for the period of such meetings.

However these stop-work meetings went beyond what is permitted under the Employment Relations Act, and were used to stage public protests outside Radius premises.

Union members, some in Radius uniform, gathered outside the rest homes, waving placards, shouting and seeking toots of support from passing cars.

In the Employment Court case that ensued, the Court ruled that these actions had not been stop-work meetings but unlawful strikes.

A stop-work meeting may be used to discuss strike action, but may not itself be used for strike action, the Court noted.

The Court found that the unions had deceived Radius about the nature of the meetings, trying to obtain their members' entitlement to lawful paid stop-work meetings when the meetings were actually unlawful strikes.

The unions' actions while bargaining, and generally, were found to have been in bad faith.

The Court found the unions were liable to Radius for damages for financial losses including repayment of earnings paid to those who participated in the strikes. Some individual union members were also found liable for repayment of wages paid for the alleged stop-work meetings.

A judgment for damages against a union is a rare event – employment lawyers cannot remember an instance of it in recent years. That it should happen under a union-friendly act such as the Employment Relations Act makes it even more notable.

The judgment sends a strong message to both unions and employers about the importance of maintaining good faith in employment relations.

Paul Mackay pmackay@businessnz.org.nz