

# Port of Auckland Dispute Fact Sheet

Prepared by NZCTU and MUNZ  
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## What has happened in this dispute?

The Maritime Union of New Zealand (MUNZ) and Ports of Auckland Limited (POAL) have been negotiating to renew the collective agreement at the port since 6th September 2011. The previous collective agreement was reached on the 01/07/09 and expired on the 30th September 2011.

The Port has now said that it wants an agreement where workers concede almost complete flexibility in hours of work and rosters. In exchange management has offered a 10 % pay increase over 30 months. But port management have also said that if the workers will not accept this agreement then the employer will sack all 330 workers and replace them with contract workers.

The Port workers already have incredible flexibility in their collective agreement. They can be rostered to work any shift, night and day, seven days a week. While fifty three percent of them are at least guaranteed five shifts a week, twenty seven percent are only guaranteed three shifts per week and twenty percent are entirely casual with no guarantees. But this is not enough for the Port. They want everyone to work like the casuals. Their proposed new agreement completely changes the way that workers in the Port are rostered. The company is saying it will give it flexibility. The workers are saying it effectively reduces security of employment altogether.

Union members are committed to the success of the company, and to building on the performance improvements already achieved and recognised in the company's annual review. Such improvements do not require the casualisation of work demanded by the company.

In mediation on 12<sup>th</sup> January, the union agreed to major changes in working conditions. These include more flexibility in rosters, changes to overtime rosters, and greater use of part timers. Port management said these offers addressed major concerns and were "big" in terms of costs savings. But then they said they didn't want to settle the agreement. Why not? This is highly irresponsible.

The union has also agreed to extend the use of the productivity tool 'TRACC' which is already working successfully in some parts of the Ports to assess how productivity improvements in the stevedoring sector can continue to be achieved at the Port.

Retaining the conditions is primary to the union especially as during the term of the previous collective the Port Company attempted to contract out substantial areas covered by the collective agreement (Crane driving, Straddle driving, lashing).

In regards to this, a major outstanding issue between the parties was the union's concern that management, during the term of the last agreement, did succeed in contracting out the jobs for driving four shuttles used for moving containers in the port. Management did so with a predetermined agenda and a farcical consultation period with the union. The Shuttles move containers between berths. The work of these shuttles has been contracted to a company Conlinxx which is 90% owned by the Ports of Auckland. Port Company management sit on the board of this company.

The union wants POAL to agree that stevedores employed by it and covered by the collective agreement will operate the shuttles and not be disadvantaged by the contracting model. This issue led to the union's first strike notice.

Munz have proposed that the existing container shuttles on the Ports of Auckland waterfront to be operated on a 24/7 basis by Port employees. The union accepts that arrangements for the handling of any "overflow" can be negotiated.

Munz have also proposed:

- A realistic wage increase (2.5%).
- AA's to have access to overtime in the lash as per previous policy.
- The Company will not contract out jobs during the term of the agreement.
- The Company agrees to negotiate a schedule into the Collective Agreement that covers the planners, controllers and cargo officers.
- The Union will agree a drug and alcohol policy that is based on Saliva testing in line with its "Not at Work Mate Policy".
- Casuals will not be used to drive machinery.

### **How much do these workers get paid?**

The company says workers are getting \$90,000 per year for 26 hours work. This is simply wrong, and management has not provided any supporting data to back up this claim.

The basic pay rate is \$27.40 an hour although not all workers are paid this much.

A stevedore's guarantee for 40 hours per week is \$1,090.40 = \$56,700.80 per annum @ 260 shifts per year. To earn \$90,000, stevedores would have to complete an extra 1,377 hours or 26 weeks a year!

Stevedores are required to work days or nights, weekends, public holidays – basically any shifts 24/7 often 16 hour shifts. Much of the work is skilled, and many staff have multiple qualifications. It is dangerous, cold and tiring work. Workers regularly work many hours of

overtime. As one worker pointed out in a letter to the Herald recently, in a “good” week he worked 64 hours. For this he got \$2000 gross. A week of 64 hours is more than 1.5 jobs.

The dangers inherent in such working hours are obvious and the union believes the Port needs more workers and that overtime should not be a regular requirement. Moreover, when workers have refused to do overtime, turmoil has ensued and ships have been delayed. The union has long believed that the current overtime based model is unsustainable, and looks to management to recognise this problem and act to resolve it.

### **How does the rostering work in the current agreement?**

The current collective agreement is very flexible and makes provisions for the Port to employ:

- full time permanent employees (they are entitled to 40 hours per week of work over 7 days, and to stipulate at least one preferred week day off per week, but otherwise must work any day 24/7 on duties which can include those outside their normal role where this is all that is available).
- P24's – these are permanent employees but who are only guaranteed 24 hours work per week (3x8 hour shifts any day 24/7, again to any role except crane driving which is highly specialised. The agreement requires that when the P24 crew are found to be virtually working full time for prolonged periods – a number are ungraded to full time – this avoids the company misusing these roles by leaving them part time when they are really full time workers). The number of P24 workers is agreed to be no more than 27.5% of the total workforce to protect full time work.
- Casuals – the agreement provides for up to 25% of workers to be employed as casuals. These casual workers are employed shift by shift and the only requirement is that the shift be at least 8 hours minimum. These positions give the Port huge flexibility as there is no guarantee of work at all. They are not however to be used to drive cranes and permanent workers get priorities for up to 2 or 3 extra shifts per week before the work is offered to casual workers.

The current agreement is therefore designed to provide a mix of good, stable, reliable work but also meet the needs of a Port where ships are unpredictable. The rest of the current agreement is very simple with flat rates of pay being set out in recognition of the 24/7 nature of work, and these rates applying in most working situations.

And as pointed out already, on 12<sup>th</sup> January in mediation the union agreed to further flexibility in rosters and labour utilisation.

### **What is in the new agreement being sort by the Port?**

The new collective being demanded by the Port has a range of unacceptable elements.

- It completely removes any restrictions on the employment of permanents, casuals or part timers and provides for no guaranteed shifts, hours, days off or stable work.

- It provides no protection for workers required to work consecutive shifts.
- The employer can change the status and duties of an employee unilaterally, can allocate any worker to any task (port workers are very concerned that driving work in particular is carried out by permanent skilled workers).
- It creates incentives for the Port to employ casuals because of the much lower rates of pay for these workers, and it changes the requirements for casuals to be at least employed for 8 hour minimums to 3 hours.
- It gives workers no choice at all about any days off, introduces random drug testing and body and bag searches.
- It reduces break times to the minimums provided in the ERA regardless of how many shifts a worker has worked or how long that shift might be.
- It delays entitlement to sick leave until 6 months after commencement of work.
- It removes the obligations for transfer of workers when work is contracted out.
- It reduces the agreed number of union meetings to the minimum in the ERA and a number of other negative changes.

It is a massive attack on permanent decent employment on the Port and is unjustified and unwarranted. It will make work dangerous and insecure.

### **What does the current workforce look like?**

There are approximately 530 FTE staff at the Port of Auckland, working in a 24/7 operation. Around  $\frac{3}{4}$  of all staff are on shifts. The majority (around 380 FTE) work in the container terminal. Because the existing Collective Agreement makes provision for the ebb and flow of shipping demands, it includes provision for the Port to employ workers on a range of terms aimed at balancing security and flexibility as described above. There is in the existing arrangements ample opportunity for management to engage staff on a flexible basis. And more flexibility has been offered by the union.

### **How much strike action has been taken?**

The Port is an essential industry. For a strike to be legal, 14 days notice must be given. The union has given 7 notices and carried out 8 days strike action in total to date. Two days of notified strikes have been withdrawn by the Union.

The seventh strike notice covers the one week period from 0700 15 February 2012 until 0700 on 22 February 2012. The strike action would not be continuous, but would involve members refusing to work containers that had been delivered to or moved around the Ports of Auckland by Conlinxx (see previous notes on Conlinxx).

These are the first strikes in the Port of Auckland in approximately 4 years. The Port also locked out workers for a day. Business has feigned outrage at these workers exercising their right to strike as the employer tries to completely alter their terms of employment.

In contrast, on 23 December, a 65 day lockout at CMP/ANZCO ended following the settlement of a collective agreement. There the company locked these workers out in pursuit of a 20% pay cut. Not one voice of concern was expressed by the business community or its friends in the NZ media at this ruthless employer behaviour. In fact the owner, Sir Graeme Harrison was awarded Wellington Businessman of the Year during the lockout!

### **Companies leaving the Port**

The dispute takes place against a background well-understood by the union. Numerous reports conclude that the structure of inter port competition has led to overinvestment in capital by many ports in the hope to win new business (e.g. The Port of Taranaki dug a deep water trench at great cost in the hope of attracting bigger ships, mainly yet to arrive).

The union sees this as a failure of industry planning. There are only so many ships coming and going and while that number may vary, the competition between ports has allowed ship owners, and the major companies that use them, to become price setters.

They are able to force down the rate per container while the infrastructure is being subsidised by tax and rate payers, or by workers operating under powerful competitive pressures on work organisation and pay.

The union has consistently called for port reform and co-operation between port operations. The failure to achieve these goals rests, not with the workers, but with government policy settings and management decision-making across the sector.

Government has failed to develop and introduce appropriate port reform. Equally, management has often preferred to introduce change without addressing the genuine concerns of workers. The results are plain to see in the current dispute.

And now a Government body has released a flawed and biased report. The Productivity Commission's draft report into International Freight Transport sadly fails to address the most important issues. Its focus is port profitability and employment relations – yet its own data shows the big problems lie in high prices charged by the shipping lines.

This is a critical mistake at a time when tensions over port management are so high. It results from thinking which has not sufficiently moved on from the 1980s. It misses the opportunity to address shipping company dominance and provide constructive advice to port management and staff on further increases in productivity.

The weight of the report's recommendations is to commercialise the ports: their principal objective should be to be a successful commercial business; partial privatisation; removing local government representatives and staff from their boards; and more contracting out of operations.

Governance and legislative changes are all aimed at strictly commercial management and tougher attitudes to employees. That leaves little room for regional development aspirations, more productive employment relationships, and the non-commercial aspects of a port.

### **The Port of Tauranga model**

What of the much-vaunted Port of Tauranga (PoT) employment model? The PoT is privately owned. In around 1989 after a bitter prolonged industrial dispute, the Port was successful in dividing up its workforce into competing units. To do this, the Port uses a variety of companies to meet its stevedoring requirements. It owns a stevedoring company, it employs some of its own stevedores and it has four private companies also available to carry out the stevedoring work on the Port.

The workers at the Port of Tauranga know that they are in competition with each other. Those prepared to take less pay, to cut corners, to be more “flexible” (that is, turn up as and when required with no guarantee of work) get the work. Two of the companies even formed their own unions to ensure MUNZ were kept out. Workers join the in-house union rather than joining MUNZ or the (Rail and Maritime Transport Union) RMTU, for fear of adverse employment consequences.

The rates of pay for watersiders in Tauranga are estimated by Munz to be substantially lower than those in Auckland due to this model and many workers report being too afraid to join the union. Much has been written about this Port in academic and industry journals – all praising the flexibility and the reduced union influence (read de-unionisation). Little is said about the level of wages, security of employment or the accident record.

### **Walter Crosa – 49 – father – 15 Aug 2011**

*“It was believed Mr Crosa was working for a contractor at the port doing some roading works at the time of the accident. The Department of Labour is investigating and the matter has been referred to the coroner, he said. The Allied Workforce employee was working for another contracted company when the accident happened. It is the third fatality at the port within the past 15 months.”*

### **Brian Shannon – 61 – June 2010**

*“In June this year, two Bay companies were fined a total of \$55,000 after a forklift ran over and killed stevedore Brian Kevin Shannon, 61, of Otumoetai at the port on June 2010. Mr. Shannon worked for Independent Stevedoring Limited (ISL) loading and unloading cargo from ships. ISL and on wharf logistics company C3 Limited, whose employee was driving the forklift, were both fined over the death after pleading guilty to charges in court.”*

### **Chinese seaman – not named 35 – December 17th 2010**

*“A 35year old Chinese seaman died after falling from the side of the logging ship Green Hope and into the water in Tauranga Harbour. Attempts to resuscitate him after he was pulled from the water by workmates were unsuccessful.”*

There was also a death at the port in 2003.

Note that two of these workers were contractors and the third a seafarer. The contracting model appears to have relieved the port from any potential liability for these deaths. There have been no deaths at the Port of Auckland during this period.

The contracting out model applying at the Port of Tauranga is now not just being used to create competition between workers on that Port – it is being used to threaten workers at the Port of Auckland – it has to stop

### **Who owns the Port and why is this an issue?**

The Port is owned by the people of Auckland through their Council. The creation of the Supercity resulted in the Port being set up as a company owned by the Council but managed by a Board at arm's length. The Supercity legislation removed the requirement for Aucklanders to agree to any privatisation by referendum – clearly reflecting the Governments preference for privatisation of this asset.

The clamour by Auckland business to declare the Port dysfunctional suggest strongly an agenda for privatisation of POAL. With it would be lost not only a major piece of Auckland infrastructure and the income that goes with it (more than likely to overseas investors), but also a beautiful piece of Auckland coastline which could be developed for Aucklanders of the future in co-operation with a Council-owned Port.

### **Is the company productive and getting a fair return on capital?**

The Ports own Annual Report notes that the container and bulk cargo volumes were up in the 2010/2011 year despite the economic situation. It brags of the all time best crane rates that were achieved in the year, up 4.1% on the previous best quarter. It notes the continued productivity improvements and raises no challenges to finding more.

The 2011 Annual Review of the Port notes that they had ‘a pleasing year’ with a ‘new record high’ of container volumes. In a Port magazine for customers (Interconnect, September 2011) they said “POAL’s staff hours per container have decreased 16%” since 2007”. Yet now we are told the port is in a crisis.

A recent investigation by the Ministry of Transport into container rate productivity of New Zealand ports said that the rate “appears at least comparable with, and in some cases better than, Australian and other international ports.”

It said Tauranga did better in some areas but was comparable to Auckland in others and concluded that:

*“There is a mixture of container productivity results for New Zealand’s six main container ports, reflecting the differing situations for each port. Overall, the top three container operations appear to be Auckland, Tauranga and Otago...”*

*“Overall, container productivity at the six New Zealand ports appears adequate. No doubt there is room for improvement, but container productivity in general is not poor.”*

The union is aware of pressure over many years for privatisation. The pressure takes two forms – first, an attack on productivity, and then, when that fails (see data above), second, the argument that the return to assets offered by POAL is inadequate. The union recognises that the second argument is usually produced by private sector commentators who have a vested interest in gaining access to the Port’s assets. (that is, muddy the water in the absence of a hard alternative analysis).

### **A wider agenda on employment rights?**

It is clear from the report by the Productivity Commission that major employment law changes are being put on the political agenda. These include restricting the role of the Employment Court, changing the Incorporated Societies Act to limit who can represent workers, changing rights to collective bargaining (by arguing that under the Commerce Act workers should not be allowed to combine in this way).

The right to strike is an internationally recognised right but only used by workers as a last resort. It is one of the few effective ways for workers to protect their terms and conditions when employers behave as the POAL is doing currently. However the Government has been quick to punish workers that seek to protect their employment rights (e.g. the dispute over the filming of the Hobbit).

It is not clear if a dispute like this would be used by the Government and business lobby to drum up anti-strike rhetoric in order to reduce these rights including the use of replacement labour – something not allowed during a strike. This space will be interesting to watch – if by provoking unnecessary conflict on the waterfront, business and the Government manages to privatise the Port and change strike laws – the real drivers behind the curious resistance of Port management to settle this dispute will be very apparent.

### **Conclusion**

In the end, this dispute is about two things – whether the workers on the Port of Auckland will be dismissed to be replaced by a casualised workforce (along the same lines as Tauranga where there have been 3 deaths in 15 months) and whether Auckland rate payers are losing the value of their Port by stealth to those that simply want to make more and more profit out of our assets through privatisation.

The Board and Chief Executive of the Port are now on a very damaging course of action. They need to take stock of the situation and return to bargaining with a reasonable position.

Otherwise there will be months of disruption if not longer. There will be huge loss of goodwill, years of bitterness about the port, loss of confidence among exporters and shippers – and who knows what else. One thing is for sure. It will be extremely damaging to all concerned

We are asking for the people of Auckland to support these workers and save the Ports.