A–Z OF EMPLOYING

Multi-employer Collective Agreements

Our guide for Employers and Managers

SUPPORTING, FACILITATING & REPRESENTING BUSINESS

BusinessCentral

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This is only a guide. It should not be a substitute for professional advice.

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Overview

- A MECA it is a single collective agreement that can cover more than one employer and can cover more than one union. A MECA is binding on those parties and the employers' employees who are members of the union and whose work is covered by the coverage clause of the agreement.
- Before bargaining for a MECA can be initiated the union must ballot its members to ensure that a majority of its members are in favour of bargaining for a single collective agreement with two or more employers.
- Employers may initiate bargaining with a union for a MECA in some circumstances; if the union believes that its members would not be in favour of bargaining for a single collective agreement then it must conduct a ballot.
- The negotiation of MECAs involves specialist skill in collective bargaining and multi-party representation.

Introduction

MECAs under the Employment Relations Act 2000 bind only the parties to the MECA.

The Act protects the right to bargain collectively and the right to bargain for multi-employer collective agreements in so far as there is a majority support of union members employed by each employer before the bargaining for a MECA is initiated. Strike action in support of collective bargaining, including bargaining for MECAs, is permitted by the Act.

This **A-Z Guide** covers the process of bargaining in respect of MECAs as set out in the Employment Relations Act 2000 and provides guidance as to the Authority's or Court's interpretation of the process as applicable.

Other topics covered in the **A-Z Guide** that will provide useful supplementary information are:

- Bargaining Arrangements
- Bargaining
- Communication during Bargaining
- Undue Influence and Duress
- Good Faith
- Strikes and Lockouts
- Union Rights

Collective Agreements

Often referred to as enterprise collective agreements or single-party agreements, these are agreements between one employer and one union. By the addition of other parties, either before or after agreement, a single collective agreement may become a multi-party agreement.

Refer to the **A-Z Guide** on **Collective Agreements** for information on what these agreements must cover and the general rules of bargaining for a collective agreement.

The majority of collective agreements are single collective agreements rather than multi party agreements.

The parties to a collective agreement are required under section 59 of the Employment Relations Act 2000 to deliver a copy of the agreement to the chief executive of the Ministry of Business, Innovation and Employment. w

MECAS

The legislative position of a MECA was examined in the case of *Toll New Zealand Consolidated Limited v Maritime Transport Union Inc* (AC 36/04). Amongst other issues, this case concerned a dispute between the parties in respect of a MECA in the context of a redundancy scenario. In considering the position of MECAs under the Employment Relations Act 2000 compared to collective agreements generally, the Employment Court stated the following:

"*… a collective agreement is a collective agreement and its character as such is not altered by the circumstance that it may have two or more employer parties or, for that matter, two or more union parties to it. What the Act has achieved is to permit and facilitate bargaining for Multi-Party Collective Agreements but, insofar as MECAs are concerned, what comes out at the other end of that bargaining is a collective agreement which, in character, does not differ from a collective agreement between one union and one employer.*"

Although union members see considerable benefits in securing a MECA, the Court noted that the only legislative advantage afforded to a MECA was that once a ballot has been successfully conducted there is no need to repeat it whenever an expiring MECA is replaced with a new one affecting the same employees.

Sections 40 to 51 of the Employment Relations Act 2000 (ERA) specify the rules in respect of the process for initiating bargaining through to the process for ratifying collective agreements. It is relevant to consider the process for initiating bargaining for both the union and the employer.

Initiation of Bargaining

Unions and employers may initiate bargaining.

Only a registered union can negotiate a collective agreement with an employer.

When initiation of bargaining occurs

If no collective agreement is in force

If there is no collective agreement in force, a union can initiate bargaining at any time. An employer can initiate bargaining where there is no collective in force only if the proposed agreement will cover work that was covered by another collective agreement to which the employer was a party.

If an applicable collective agreement is in force

If there is an applicable collective agreement in force, a union can initiate bargaining no earlier than 60 days before the expiry of the collective. An employer can initiate bargaining no earlier than 40 days before the expiry of the collective.

If more than one applicable collective agreement is in force

In this instance, the union cannot initiate bargaining before the date that is 120 days before the expiry date of the last applicable collective agreement and the date that is 60 days before the expiry date of the first applicable collective agreement. The employer cannot initiate bargaining before the date that is 100 days before the expiry date of the last applicable collective agreement and the date that is 40 days before the expiry date of the first applicable collective agreement.

How bargaining is initiated

Bargaining is initiated when a union or an employer gives the intended party or parties written notice that identifies all intended parties to the collective agreement, and the intended coverage clause of the agreement.

Notification of bargaining to employees

As soon as possible, but not later than 10 days, after bargaining has been initiated the employer must draw to the attention of all employees (whether union members or not) whose work would be covered by the intended coverage clause if the collective agreement was entered into to the existence and coverage of the bargaining and the intended parties. In the case where 2 or more employers are identified as intended parties to the bargaining the period is not later than 15 days.

Consolidation of bargaining

If more than one union initiates bargaining with an employer and the intended coverage covers the same type of work, then the employer can request that the unions consolidate bargaining. This request must be made within 40 days of receiving the first notice of bargaining. Any union to whom the request to consolidate bargaining is made, must respond within 30 days either agreeing to the request or withdrawing its notice of bargaining. If a union fails to respond within the 30-day period it will be shut out of the bargaining. All unions that agree to the consolidation of bargaining will bargain for a single collective agreement.

Opting out and good faith to conclude a collective agreement

Employers are no longer able to opt out of bargaining for a new multi-employer collective agreement, or bargaining to become a party of an existing multi-employer collective agreement.

From 6 May 2019 in respect of the requirement to conclude a collective agreement, employers will be required to conclude a multi-employer collective agreement unless they have genuine reasons, based on reasonable grounds, not to. Opposition to concluding a multi-employer collective agreement will be a genuine reason, if that opposition is based on reasonable grounds.

Collective agreements and subsequent parties

In *Epic Packaging Ltd v NZ Amalgamated Engineering, Printing & Manufacturing Union Inc* (AC 39/06) the full Employment Court found that a s42 notice initiating collective bargaining cannot be used as a means of joining a subsequent party employer to an already settled collective agreement. The union appealed the decision in *EPMU v Witney Investments Ltd (formerly Epic packaging Ltd)* (CA 282/06) and in December 2007 the Court of Appeal overruled the findings of the Employment Court.

The Court of Appeal concluded "*that the statutory bargaining provisions can be used to persuade an employer to join an existing collective agreement is supported both by the words of the statutory bargaining provisions themselves and the scheme and purpose of the ERA with its emphasis on good faith collective bargaining. In our view, any statutory indications to the contrary are not strong enough to lead to a different conclusion*".

MUMECAs

Multi-union multi-employer collective agreements involve more than one union and more than one employer.

The Employment Relations Act 2000 facilitates the bargaining for MUMECAs in the same way as it does MECAs; the members of each union seeking the MUMECA must be balloted to get their agreement to proceeding.

MUMECAs are more likely to feature in the public sector where there are large clusters of employees doing the same kinds of work for different employer organisations; university employees and nurses are examples. In this environment MUMECAs may be referred to as national agreements.

Negotiating MECAS

Depending on the number and size of employer parties to a MECA, the employer parties may decide to be represented by one person or organisation in the negotiation with the union. It is possible for this representative to be fully briefed by, and in turn fully brief, the employers it represents so that it can advocate and negotiate on their behalf collectively. Often this representation saves time and frustration because the representative will generally be a skilled negotiator who has had significant experience in dealing with unions on a variety of matters.

Facilitation of bargaining

Parties bargaining for a MECA who face serious difficulties in concluding an agreement are now able to seek the assistance of the Employment Relations Authority to facilitate bargaining. The Authority will only accept a reference for facilitation if one or more of the following grounds exist:

1. There has been a serious and sustained breach of the duty of good faith which has undermined the bargaining.
2. The bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties.
3. In the course of bargaining there have been one or more protracted or acrimonious strikes or lockouts.
4. A party to the bargaining has proposed a strike or lockout that would be likely to affect the public interest substantially.

If one or more of the grounds are established the Authority would refer the parties to another Authority member to provide facilitation. For a more detailed discussion on the above grounds and the process for facilitating bargaining it is recommended that the A-Z chapter on **Bargaining** be read.

Representation

Business Central have a history of representing employers' interests in respect of collective bargaining and continue to represent the interests of members in negotiations for MECAs today. If you are interested in representation of this kind contact your Employment Relations Consultant or Lawyer or visit the Business Central website: www.businesscentral.org.nz

[Reviewed: June 2019]