

not meet the requirements of registration at the time of registration as set out in s 14 of the Act.

The Issue

[5] The issue for determination is whether the registration of Portpro as a union should be cancelled on the basis that its Rules did not comply with s 14(1)(a) of the Act at the time of registration.

Background Facts

[6] MUNZ is a registered union which represents members who are employed by the Ports of Auckland Limited (POAL). MUNZ and POAL are currently engaged in bargaining for a collective agreement, which process is being assisted by facilitation.

[7] Portpro applied to the Registrar of Unions (the Registrar) to be registered as a union on 19 June 2012. Attached to the application were the Rules, clause 4 of which set out the objects of the Portpro:

4. Objects

4.1 Portpro is an apolitical organisation established to further the interests of employees of Ports of Auckland Limited. Without in any way limiting the over-riding object, its primary objects are:

4.1.1. To act as or to facilitate the provision of the services of a Bargaining Agent for but not exclusively for the achievement of a collective agreement for its members.

[8] Mr Mitchell, on behalf of MUNZ, submitted that clause 4.1 in the Rules failed to fulfil the requirement of s 14 (1)(a) of the Act, i.e. that of promoting its members' collective interests.

[9] On 9 January 2013 Portpro amended the Rules in respect of clause 4.1 by the insertion of the words : "*including collective interests*" and the substitution of the word: "*employees of*" for the words: "*its members at*" thus that clause 4.1 read:

Portpro is an apolitical organisation established to further the interests including collective interests, of its members at Ports of Auckland Limited. ...

[10] Mr Mitchell further submitted that the subsequent amendment of the wording of clause 4.1 did not rectify the failure in the Rules to fulfil the requirements of s 14(1)(a) of the Act, thus that the Rules were non-compliant at the time of registration.

[11] Mr Schirnack, on behalf of Portpro, submitted that the Rules were presumed compliant with s 14(1)(a) of the Act at the time of registration and accordingly there is no basis upon which the Authority may issue an order to cancel Portpro's registration.

The Law

[12] A society is entitled to be registered a union in accordance with the requirements as set out in s. 14 of the Act which states:

14 When society is to be registered as a union

(1) A society is entitled to be registered as a union if-

(a) The object or, if the society has more than one object, an object of the society is to promote its members 'collective employment interests; and

(b) The society is incorporated under the Incorporated Societies Act 1908; and

(c) The societies rules are-

(i) Not unreasonable; and

(ii) Democratic; and

(iii) Not unfairly discriminatory or unfairly prejudicial; and

(iv) Not contrary to law.

(d) The society is independent of, and is constituted and operates at arm's length from, any employer.

(2) In deciding whether a society is entitled to be registered as a union, the Registrar of Unions may rely on the statutory declaration made under s 13(2)(c)

[13] Sections 15 (2) and (3) on the Act state:

(2) Immediately after registering a union, the Registrar of Unions must give a certificate of registration in the prescribed form to the union.

(3) The certificate of registration is conclusive evidence that-

(a) All the requirements of this Act relating to the registration of the union have been complied with;

[14] The Authority's ability to make an order for cancellation of a union's registration is set out in s 17 of the Act:

17 Cancellation of union's registration

(1) The Registrar of unions may cancel the registration of a union under this Act, but only if-

...

(b) the Authority makes an order directing the Registrar of Unions to cancel the union's registration.

(2) The Authority may make an order for the purposes of subsection (1)(b) only if the union has ceased to comply with section 14(1).

Determination

[15] This preliminary determination is not concerned with an issue of non-compliance following registration of Portpro as a union. The issue before the Authority is, as submitted by the Applicant, that there is serious deficiency in the Rules of Portpro such that it should not have been registered as a union pursuant to s 14 (1) of the Act.

[16] The Applicant further submits that the word 'may' in s.17(2) provides the Authority with a discretion to cancel the registration of Portpro on the basis of the serious deficiency in the Rules.

[17] In order to determine whether or not the Authority should make an order directing the Registrar to cancel Portpro's registration as a union on the basis submitted by the Applicant, I consider it fundamental to examine the statutory basis for the Authority making such an order.

Compliance in accordance with s 14(1) of the Act

[18] It is clear from s.14(2) of the Act that the Registrar is entitled to rely upon the statutory declaration made by a society pursuant to s.13(2)(c) of the Act when deciding whether it is entitled to be registered as a union.

[19] Having made his or her decision, the Registrar must, in accordance with s.15(2) of the Act, immediately issue a certificate of registration to the union. As set out in s.15(3) of the Act, the certificate of registration is 'conclusive proof' that there has been compliance with all the requirements of the Act.

[20] I find that in accordance with the wording of s.14(1) there is a statutory presumption of compliance at the point at which registration takes place.

[21] I find support for this finding in the Employment Court case *Meat & Related Trades Workers Union of Aotearoa Incorporated v Te Kuiti Beef Workers Union Incorporated*¹. In that case, the Employment Court considered the scope of a challenge to registration under s 17(2). The Employment Court, regarding the registration process and the avenues available for challenge, stated:²

The legislative scheme for registration and cancellation of registration of unions has the following features. It was intended by Parliament that there be a low threshold requirements for registration of unions. That is, although the statutory requirements of s 14(12) had to be met, these would be established by a statutory declaration of compliance upon which the Registrar of Unions is entitled to act s 14(2). Parliament has assumed that it will be members of incorporated societies and/or unions who may raise issues of non-compliance. These persons, and others, may bring those issues to the attention of the Registrar before registration is effected. If, however an incorporated society is registered as a union, there is a statutory presumption of compliance with s 14(1) at that time.

¹ AC 71/01, 8 November 2011

² Ibid at para [26]

Cancellation of registration pursuant to s 17(2) of the Act

[22] The Authority may make an order directing the Registrar to cancel a union's registration pursuant to s.17 (2) of the Act, however the subsection stipulates that this is the case: "*only if the union has ceased to comply with section 14.1 of the Act*".

[23] Mr Mitchell argues that the Rules are non-compliant with the requirements of s.14(1)(a) and submits that it is possible to interpret s.17(2) of the Act as stating that, as Portpro has never complied with s.14 of the Act, it cannot cease to comply with the registration requirements.

[24] The extension of the preceding argument is that if the Authority were to determine that Portpro did not comply with the requirements of registration at the time of registration, the Authority may exercise its discretion to order cancellation pursuant to s.17(2) of the Act .

[25] I find myself unable to adopt the interpretation advanced by Mr Mitchell that the discretion provided to the Authority by the word '*may*' in s 17(2) of the Act encompasses the act of registration itself.

[26] In examining the wording of s 17(2) I find that the discretion of the Authority to order cancellation of registration arises only in the situation in which there has been non-compliance **subsequent** to the fact of registration

[27] In *Meat & Related Trades Workers Union of Aotearoa Incorporated v Te Kuiti Beef Workers Union Incorporated*³ the Employment Court stated:⁴

Although the requirements of s14 had to be met by the defendant as an incorporated society for registration to validly take place, the fact of registration by the Registrar creates a statutory presumption of compliance with s14(1) at that point. That is the effect of ss 14(2) and 15 (3). Although the registration of a union may be challenged, that is not by application under s 17(1)(b) as here. It follows that the plaintiff must establish that since registration, the defendant union has ceased to comply with the requirements of s 14(1).

[28] I find that the Registrar, by the fact of registration, had presumed that the objects in the Rules were compliant at the time of registration. I further find that the subsequent amendment in Rules 2013 did not affect that presumption.

³ AC 71/01, 8 November 2011

⁴ Ibid at para [27]

[29] Accordingly I determine that the Rules of the Respondent having been deemed to be compliant at the time of registration by the Registrar, there are no grounds for the Authority to make an order in accordance with s 17(2) of the Act directing the Registrar to cancel Portpro's registration as a union on the basis that the Rules are not compliant with s 14(1)(a) of the Act.

Costs

[30] Costs are reserved pending the final determination of the matter.

Eleanor Robinson
Member of the Employment Relations Authority