

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2018] NZEmpC 83
EMPC 339/2017**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of a challenge to objection to disclosure

BETWEEN KAIKORAI SERVICE CENTRE LIMITED
Plaintiff

AND FIRST UNION INCORPORATED
Defendant

EMPC 41/2018

AND IN THE MATTER of proceedings removed in full from the
Authority

AND IN THE MATTER of a challenge to objection to disclosure

AND BETWEEN KAIKORAI SERVICE CENTRE LIMITED
Plaintiff

AND FIRST UNION INCORPORATED
Defendant

Hearing: On the papers filed 20 & 25 June 2018

Appearances: T Oldfield, counsel for the plaintiff
P Cranney, counsel for the defendant

Judgment: 23 July 2018

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
DISCLOSURE**

[1] In these proceedings, a dispute has arisen over notices requiring disclosure. This dispute was to be dealt with at a hearing on 28 June 2018 but, at the request of the parties, that date was vacated for the matter to be dealt with on the papers.

[2] A brief description of the proceedings is necessary to place into context the required disclosure and the impasse that has been reached. The plaintiff owns a supermarket in Invercargill. The defendant represents some of the plaintiff's employees and, since about December 2015, bargaining for a collective agreement has taken place.

[3] The defendant issued proceedings in the Employment Relations Authority seeking orders under s 50J(3) of the Employment Relations Act 2000 (the Act).¹ The Authority made a finding that there had been a breach of the duty of good faith which was sufficiently serious and sustained so as to significantly undermine bargaining, because the plaintiff had refused to bargain collectively about wages.² Despite that finding the Authority was not satisfied there were no reasonable alternatives for reaching agreement.³ That conclusion meant the Authority could not fix the terms of the collective agreement.

The Proceedings

[4] That determination has given rise to one challenge and a removal of a matter from the Authority. In the challenge to the determination the plaintiff put in issue the decision that it had not bargained collectively in good faith. It sought declarations that it had acted in good faith, any breach was not serious and sustained, and bargaining was not undermined. The declarations sought included that good faith did not require the inclusion of wages in the collective agreement and the defendant had breached the duty of good faith. The defendant denied the claims and supported the determination.

[5] The other proceeding arises from the same bargaining. During protests to support the defendant's bargaining claims an inflatable rat was displayed outside the plaintiff's premises. The plaintiff says this rat was displayed prominently with signs on it drawing attention to the dispute. The plaintiff criticised this tactic not only because of the use of the inflatable rat, but by connecting it to a named director of the company coupled with the distribution of flyers in which he was encouraged to "start paying his way". The plaintiff pleaded that the flyers deliberately misstated the

¹ *First Union Inc v Kaikorai Service Centre Ltd* [2017] NZERA Christchurch 200.

² At [58].

³ At [66].

business' name as PAK'n SLAVE not PAK'n SAVE. The relief claimed is a declaration that the defendant breached the duty of good faith arising from these tactics. The defendant does not accept any breach has occurred.

Notices requiring disclosure

[6] In each of the proceedings the defendant served notices requiring extensive disclosure, seeking all relevant documents, meaning any notes, emails, minutes or other documents relating to or dealing with the bargaining. Having described the documents broadly eight sub-paragraphs elaborated on the documents to be disclosed:

- (a) meeting minutes and notes taken at meetings at which the bargaining strategy or the defendant or employees or members of the defendant were discussed;
- (b) all communications to and from the plaintiff's advocate, Neil McPhail;
- (c) all communications to and from Bryan Dobson (the plaintiff's director) or to or from any other person employed by the plaintiff;
- (d) all communications to or from Foodstuffs South Island Ltd or any person associated with that company;
- (e) any document prepared or provided by Foodstuffs;
- (f) all communications between Neil McPhail and any other party about the bargaining or any aspect of the bargaining, or about any bargaining strategy or approach;
- (g) all papers including any minutes, notes, emails or other documents relating to or dealing with the bargaining or about the defendant or its members or employees; and
- (h) all documents or images associated with surveillance of the defendant or its members or its employees.

Objections to disclosure

[7] The plaintiff objected to the disclosure sought on two bases. First, relying on reg 44(3)(a) of the Employment Court Regulations 2000 (Regulations), it objected to disclosing any document which was the subject of legal professional privilege.

[8] The second objection was based on disclosure being injurious to the public interest within the meaning of reg 44(3)(c). Three specific grounds were relied on:

- (a) Bargaining strategy documents and internal bargaining documents do not need to be disclosed before bargaining has concluded, relying on *Julian v Air New Zealand Ltd*.⁴
- (b) Communications between a bargaining advocate and the person the advocate represents are privileged, and privilege can apply to communications between lay advisors and their clients. This ground relied on *Edwards v Board of Trustees of Bay of Islands College*.⁵
- (c) Litigation privilege analogous to s 56 of the Evidence Act 2006 applies to preparatory materials for proceedings created after the defendant filed proceedings seeking an application under s 50J of the Act, which occurred on 22 September 2016.

[9] Finally, the objection challenged disclosure of communication to or from Foodstuffs as not relevant.

The challenges to the objections

[10] By the time the parties requested this dispute be resolved on the papers the outstanding issues had narrowed, so they did not involve any argument about documents being subject to legal professional privilege or communication to or from Foodstuffs. The remaining issues were about communication between the plaintiff

⁴ *Julian v Air New Zealand Ltd* [1994] 2 ERNZ 88 (EmpC).

⁵ *Edwards v Board of Trustees of Bay of Islands College* [2013] NZEmpC 228, [2013] 11 NZELR 506.

and its advocate generally and, specifically, where its bargaining strategy was the subject matter. The defendant's challenge to these objections was that the documents, or classes of documents, sought to be privileged from disclosure did not fall within the exception provided for by reg 44(3)(c)

[11] By agreement the plaintiff provided a schedule of documents noting those where privilege was claimed. Where the reason for the claim was because the document was a communication between the plaintiff and its advocate that was identified by the letter A. Where the claim was that the document was the plaintiff's bargaining strategy, or was related to it, the notation was B. In some cases the documents were identified as both A and B. By agreement the Court was provided with the disputed documents for inspection.

Regulations

[12] Under reg 40 any party may require disclosure and inspection of relevant documents in the opposing party's possession, custody or control.⁶ Disclosure extends to relevant documents no longer in the opposing party's possession, custody or control, in which case what is required is to say when they were parted with and what became of them.⁷

[13] Regulation 44(3) limits the grounds of objection to disclosing documents to the following three categories:

- (a) where legal professional privilege applies;
- (b) if the disclosure would tend to incriminate the objector; or
- (c) if disclosed would be "injurious to the public interest".⁸

[14] The Regulations do not define "injurious to the public interest".

⁶ Regulation 40(1)(a).

⁷ Regulation 40(1)(b).

⁸ Regulation 44(3)(a)-(c) inclusive.

Bargaining strategy

[15] The plaintiff relied on reg 44(3)(c) to resist disclosing all of the disputed documents listed in its schedule touching on its bargaining strategy. The Court's decision in *Julian v Air New Zealand Ltd* was relied on to support this proposition.⁹ In that case the Court considered the words "public interest" in the previous reg 52(3)(c) of the Employment Court Regulations 1991 (now repealed). Its wording was the same as the present reg 44(3)(c). The Court held "public interest privilege" should attach to strategy documents held by the applicant, and/or bargaining representatives of the union, about those matters left unsettled where the parties had agreed to further negotiate. The decision did not describe what qualified a document as being about a strategy, presumably leaving that decision for a subsequent case-by-case analysis.

[16] The parties in that case had agreed strategic documents, concerning negotiations for a collective employment contract, should not be disclosed. The Court said:¹⁰

What the parties may choose informally may not necessarily represent the law on privilege and it should likewise therefore not dictate the answer to the question asked of the Court.

[17] Turning to the issue of public interest in the regulation the Court said:¹¹

The "public interest" referred to in reg 52(3)(c) is not the interest of the whole community in all matters, but is clearly intended to be the interests of more than the immediate parties to a particular dispute. The public interest is that of the public or community engaged in bargaining about, negotiating, and settling employment contracts. Such persons have a justified and legitimate interest in their strategies, as evidenced in documents between themselves and between them and their bargaining agents and advisors, being privileged from disclosure in litigation before contracts are settled or negotiations otherwise concluded.

[18] *Julian* held that this public interest privilege may not be available after the negotiations concluded.¹² The Court declined to allow the documents to be treated as privileged as a class, except where they clearly disclosed a significant element of the

⁹ *Julian*, above, n 4.

¹⁰ At 89.

¹¹ At 89.

¹² At 90.

bargaining strategy.¹³ The balance of the judgment involved a document-by-document assessment of the disputed disclosure.

[19] While *Julian* was decided under the Employment Contracts Act 1991 the plaintiff's case was that its principles remain applicable. The argument was that if the plaintiff is required to disclose documents about its strategy that would be injurious to the public interest within the meaning of reg 44(3)(c), because it would undermine future bargaining, and provide an incentive to file proceedings to gain an insight into the other party's bargaining strategy. Part of this argument was that the prohibition on the subsequent use of documents in reg 51 provided no real protection. Once the strategy was disclosed any damage could not effectively be undone. The potential disclosure of a strategy in this way could, therefore, have an unintended outcome by incentivising parties to instruct lawyers to gain access to legal professional privilege to prevent being compelled to disclose documents. Mr Oldfield submitted that would bring an undue amount of "legalism" to the bargaining process but did not explain why such an outcome would be unwelcome or contrary to the public interest.

[20] Rounding out these submissions Mr Oldfield said that approaching the matter on a "case-by-case basis" would not prevent parties to collective bargaining proving claims for a breach of good faith where necessary. He gave as an example the absence of the documents now sought in this challenge not preventing a finding of a breach of good faith by the Authority.

[21] In succinct submissions Mr Cranney sought to distinguish *Julian* because it did not involve "bargaining misconduct". He also relied on the different statutory framework, between that legislation and the Act, as indicating a different approach should now be taken. That was because the Act requires the promotion of collective bargaining,¹⁴ and good faith,¹⁵ neither of which were recognised under the Employment Contracts Act. That analysis allowed Mr Cranney to submit that the circumstances which might be regarded as being in "the public interest" may no longer be the same as they were when *Julian* was decided.

¹³ At 90.

¹⁴ Employment Relations Act 2000, s 3(a)(iii).

¹⁵ Employment Relations Act 2000, s 3(a).

[22] Tempering those submissions was an invitation to look at “public interest” in a different way by narrowing its ambit, from the way it was discussed in *Julian*, to recognise there are only a small number of persons affected by this bargaining and there is no wider public interest in an essentially private dispute.

[23] Mr Cranney’s submissions did not refer to the Court’s subsequent decision in *Lloyd v Museum of New Zealand Te Papa Tongarewa (No 2)*,¹⁶ decided under the Act and Regulations. *Lloyd* was a case involving an intention by the defendant to call as a witness a former union organiser who had provided advice to the plaintiff. The intended witness had provided the defendant with an affidavit exhibiting correspondence with the plaintiff which only came into the witness’ possession because she provided advice to the plaintiff in her capacity as a union organiser.

[24] In *Lloyd*, the Court concluded the documents were created in a situation of trust and confidence and ought not to be disclosed.¹⁷ The decision recorded that the public interest in preserving confidential communications, given the context in which they arose, accorded with the broad principles of the Act.¹⁸ A submission that *Julian* had been wrongly decided was rejected, because the former regulations had been repealed and replaced, but reg 44(3)(c) continued to mirror the former reg 53. The Court concluded an alteration to the Regulation might have been expected if *Julian* was not to be followed.

[25] Despite what was said about *Julian* in *Lloyd*, the decision is open to criticism as having extended what was conventionally seen as falling within the ambit of “public interest” by widening its application into areas which, at least initially, are essentially private disputes. The end result of *Julian* is, perhaps, understandable for the reason identified by Mr Oldfield; the desirability of allowing parties some degree of confidence in the privacy of documents or communications created for the purposes of bargaining. It would be undesirable if parties in bargaining were incentivised to issue proceedings to gain an insight into the other party’s plans (there is no suggestion this approach is being taken here).

¹⁶ *Lloyd v Museum of New Zealand Te Papa Tongarewa (No 2)* [2003] 2 ERNZ 685 (EmpC).

¹⁷ At [43].

¹⁸ At [43].

[26] The circumstances in which this application came before the Court meant that extensive argument about the ambit of reg 44(3)(c) and the meaning of “public interest” did not occur. However, I accept that both parties are entitled to maintain a claim of privilege for documents created for the purposes of bargaining, containing either directly, or indirectly, information about the strategy intended to be used. In a sense this approach is pragmatic because it leads to a similar outcome as was achieved in *Julian* but should not be taken as endorsing the decision itself. This approach means that the objection will be upheld in relation to bargaining strategy documents.

Communication with the advocate

[27] The plaintiff’s second ground of objection was an invitation to treat reg 44(3)(c) as extending the privilege to communications between it and an employment advocate. This claim was an attempt to widen the protection afforded to the plaintiff to avoid disclosing not only those documents containing its bargaining strategy but to apply to all communications with its advocate.

[28] The starting point for this ground of objection was an attempt to establish a special relationship between the plaintiff and its advocate by referring to representatives being recognised by the Act, such as in ss 32(1)(d)(ii) and (iii), and 236(2). The former section requires a union and employer to recognise the role and authority of each other’s representative as an aspect of good faith. Section 32(1)(d)(ii) prevents attempts to circumvent the representative’s authority. Subparagraph (iii) requires that authority not to be undermined.

[29] Sections 236(1) and (2) allow a representative of choice in the Authority, and the Court, without that person being a lawyer. Clause 2(1)(b)(ii) of sch 3 to the Act allows any party to proceedings before the Court to be represented by an agent.¹⁹

[30] Throughout bargaining the plaintiff engaged an employment advocate, Neil McPhail. He has acted for the plaintiff in employment matters for many years. His experience as an advocate was gained over 40 years, the last 23 of which was as a shareholder in his company providing employment-related services and advice.

¹⁹ An officer or member of the union and a barrister or solicitor are separately dealt with in cl 2(1)(b)(i) and (iii) respectively.

[31] Mr McPhail is not a lawyer, having qualified with a degree in zoology and a certificate and diploma in industrial relations from Victoria University. He began working in industrial relations at a time when lawyers were barred from acting in Conciliation Councils. Over time his role changed especially after the passing of the Employment Contracts Act. From then on he was often involved in matters where he was opposed by lawyers in day-to-day employment disputes. The services provided by Mr McPhail, and his company, were drafting employment agreements, collective bargaining, and advocacy in employment relationship problems including attendances at mediation, in the Authority and in the Court. He explained that there are other businesses, like his, providing similar services.

[32] Mr McPhail explained that this bargaining was the first occasion on which the plaintiff was involved in attempting to conclude a collective agreement. His role was to “come up with a bargaining strategy” and to represent the plaintiff during bargaining meetings with the defendant. He regarded his relationship with the plaintiff as confidential. No officer of the plaintiff confirmed that is how it regarded these dealings, but Mr McPhail said he had been involved in “both strategic and legal advice in regard to day to day employment relations issues” including what he referred to as “particular advice on the legal and strategic aspects of bargaining”.

[33] Against that background Mr Oldfield submitted communications between a lay advocate and a person who seeks advice, including in relation to collective bargaining, may be privileged. He relied on *Edwards v Board of Trustees of Bay of Islands College*, as well as *Woolf v Kelston Girls High School Board of Trustees* and *Lloyd*.²⁰ All those cases were personal grievance claims where the Court excused representatives from giving evidence where to do so might involve breaches of confidence arising from the circumstances in which they came into possession of relevant information.

[34] As an example, in *Woolf*, a teacher sought advice from her union’s field officer about an employment relationship problem she had involving the principal of her school. The principal was a member of the union and on its national executive. The plaintiff in that case was conscious of the potential for a conflict of interest because of

²⁰ *Edwards*, above n 5; *Woolf v Kelston Girls Board of Trustees* EmpC Auckland AC28B/00, 24 July 2000; and *Lloyd*, above n 16.

the senior union position held by the principal. When advice was requested an assurance about confidentiality was sought and given. An attempt was made to call the field officer as a witness who, because of his reluctance to give evidence, was to be subpoenaed.

[35] The Court decided it was proper to excuse the field officer from giving evidence, because otherwise he would be compelled to produce documents breaching the confidence expressly sought and provided. The Court considered s 35 of the Evidence Amendment Act (No 2) 1980 (repealed), conferring a discretion to excuse a witness from giving evidence in certain circumstances. There is a similar provision in s 69 of the Evidence Act 2006.

[36] *Edwards* was about disclosure of an email requesting advice from the New Zealand School Trustee Association at a time when no personal grievance existed although there was an employment relationship problem. The Court accepted that the association was an organisation to which many schools turned for strategic and/or legal advice about employment relationship problems. Having noted that reg 44(3) refers to only three grounds of objection the Court said that this indicates it is not open to expand these statutory categories of objection. Any privilege asserted in a particular case must, therefore, fall within one or all of them. The Court observed that few of the previous cases involved a claim of privilege for legal advice by people who are either not practicing lawyers or, in many cases, have no legal training or qualifications. That observation led the Court to say:²¹

Just because one expects confidentiality of a communication does not guarantee that this will be maintained in all circumstances. Confidentiality is not necessarily absolute in the sense that a confidential communication cannot be disclosed to anyone else in any circumstances. For example, an expectation or even an assurance of confidentiality cannot override a statutory or regulatory requirement for disclosure of that confidence. In this case, it is a question for the Court to decide whether, and if so to what extent, information that may have been passed...must be disclosed...in litigation.

[37] In *Edwards*, the Court drew a distinction between what was thought of as privilege attaching to documents about collective bargaining strategies, and documents where an employment relationship problem between an individual and an employer, which may result in a personal grievance, or other litigation, was concerned.

²¹ At [16].

Julian was distinguished and the case was held to be more in line with *Woolf* and *Lloyd*.

[38] Mr Oldfield drew together the strands of his references to passages from the Act, and *Edwards*, by saying that communication between a lay advocate and a person who seeks advice may be privileged, but acknowledged such a conclusion would have to be reached on a case-by-case basis. He then went on to explain the circumstances in which it was argued the relationship between the plaintiff and Mr McPhail should be seen as creating a confidence deserving of protection.

[39] He sought to establish a relationship of confidence justifying protection relying on the following:

- (a) the plaintiff having a long-standing association with Mr McPhail;
- (b) that Mr McPhail is an employment advocate of considerable experience whose advice was relied upon and given in confidence;
- (c) employer advocates are an important part of New Zealand's employment relations landscape; and
- (d) legal proceedings about the bargaining were filed at an early stage.

[40] In response Mr Cranney's position was that there is a qualitative distinction between personal grievances and collective bargaining. Referring to *Edwards* he said the Court held there was no blanket rule granting protection. He also submitted Mr McPhail is prohibited by statute from providing legal services relying on s 21(1)(a) of the Lawyers and Conveyancers Act 2006 which has a bearing on whether or not privilege should be available.

[41] While it is apparent from cases such as *Woolf* and *Edwards* that the Court has previously accepted a relationship of trust and confidence may emerge from dealings between a party and an advisor, which could be the foundation for excusing a witness from giving evidence, or documents being disclosed, the mere fact that confidentiality is expected is not sufficient, by itself, to justify such a result. As was discussed earlier, in *Edwards*, the Court noted that an expectation or even an assurance of confidentiality

may not override a statutory or regulatory requirement for disclosure regardless of that confidence.

[42] In this case the grounds relied on to establish a confidence of such a degree and nature that the plaintiff should be excused from producing documents, goes no further than pointing out that there has been a long-standing business relationship between it and Mr McPhail. The long-standing association between them does not, by itself, give rise to the confidence sought to be established. Mr McPhail had not previously been retained by the plaintiff to assist with collective bargaining so that must mean the advice given over the years of their association was about other employment-related matters. He did not explain what types of employment matters he has been involved in for the plaintiff previously, or how frequently he has acted, or for that matter when he was last retained. This association is not enough to get over the threshold required to excuse the plaintiff from disclosing documents.

[43] The second and third grounds rely strongly on Mr McPhail's experience providing strategic and legal advice in industrial relations. Mr McPhail was circumspect in what he said about providing legal advice and he may have been referring to previous cases where he was engaged to appear relying on s 236 of the Act. Otherwise any advice would contravene the Lawyers and Conveyancers Act and should, therefore, not be the foundation to excuse disclosure.

[44] His experience, and the role played by employment advocates generally, does not automatically create the type of confidence which would excuse the disclosure of relevant documents. As is apparent from the cases referred to earlier, there needs to be something particular about the relationship, the exchange of information which occurred, and the advice that was provided, which would excuse a witness from giving evidence (or in this case the plaintiff from disclosing documents). The only part of these grounds that might potentially qualify as creating such a confidence is the assertion that Mr McPhail provided advice about the bargaining strategy in confidence. The only evidence he did so came from him.

[45] What the plaintiff is seeking to achieve is not just the protection of identified documents that might disclose its strategy for bargaining but blanket coverage for all

documents created during its relationship with Mr McPhail. If granted that would be indistinguishable from legal professional privilege. That cannot have been the intention behind reg 44(3)(c). The limited right to be represented by a lay advocate, and the corresponding limit to privilege extended by the Act and Regulations to parties who make that election, is a clear indication Parliament did not intend to provide the extensive privilege sought by the plaintiff in this case.²² Had the intention been to provide an all-encompassing privilege from disclosure where an advocate has been retained an express statement to that effect might have been expected in the Act or Regulations.

Conclusion

[46] Earlier in this decision a conclusion was reached that some protection should be afforded to documents that might disclose the plaintiff's bargaining strategy. It must follow that the plaintiff is to be excused from disclosing documents, which directly or indirectly, contain or describe its bargaining strategy.

[47] The accompanying schedule identifies all of the documents for which privilege was claimed (other documents not in dispute have been omitted). The schedule has been annotated by "Yes" for those documents in dispute where the challenge to the objection is successful and disclosure is required. Likewise, "No" means disclosure is not required and the challenge is unsuccessful.

[48] Leave is reserved to apply for further orders about disclosure if required.

[49] Costs are reserved.

K G Smith

Judge

Judgment signed at 4:55pm on 23 July 2018

²² See, Employment Relations Act 2000, sch 2 cl 3.

Schedule of Documents

Document Number	Date	Description	To Be Disclosed
6	23-Nov-15	Email Dobson – McPhail (<i>Dobson forwards email from union organiser regarding claims meetings to McPhail and seeks advice from McPhail about the lawfulness of the union's approach</i>)	Yes
7	24-Nov-15	Emails between Dobson – McPhail with BPA attached (<i>McPhail emails draft BPA to Dobson with suggested changes, Dobson responds with comments</i>)	Yes (but not the attached BPA)
16	15-Dec-15	Email Dobson – McPhail (<i>Dobson responds to McPhail with information about various matters raised by the union in collective bargaining</i>)	No
17	15-Dec-15	Email Dobson – McPhail (<i>Dobson emails McPhail with information about an individual union member in response to matters raised by the union in collective bargaining</i>)	Yes
18	16-Dec-15	Emails between Dobson – McPhail (<i>McPhail emails Dobson draft response to union regarding matters raised by the union in collective bargaining and Dobson responds</i>)	Yes
19	16-Dec-15	Emails between Dobson – McPhail (<i>Dobson seeks advice from McPhail regarding a pay review for a union member</i>)	Yes
20	16/17 Dec 2015	Emails between Dobson / Parker- McPhail (<i>McPhail emails Dobson with a draft email to the union regarding a pay review for a union member and Dobson responds</i>)	Yes
21	1-Feb-16	Email McPhail – Dobson with attachment (<i>McPhail emails Dobson with draft response to union about bargaining matters</i>)	Yes
22	2-Feb-16	Email Dobson – McPhail (<i>Dobson emails McPhail regarding response to union about bargaining matters</i>)	Yes
25	1-Mar-16	Emails between Dobson – McPhail (<i>McPhail emails Dobson draft response to access request from union scheduled to occur during picket</i>)	Yes
27	4-Mar-16	Email McPhail– Steve Parker (<i>McPhail emails Parker with scripts to use if union accesses during picket</i>)	Yes
28	30-Mar-16	Emails between Dobson – McPhail (<i>Dobson emails McPhail with draft communication regarding pay reviews, including reviews for union members</i>)	Yes
31	15-Apr-16	Email Dobson – McPhail (<i>Dobson emails McPhail regarding pay reviews for union members</i>)	Yes
32	19-Apr-16	Emails between Dobson – McPhail (<i>McPhail emails Dobson with suggested draft regarding pay reviews for union members and Dobson responds</i>)	Yes
34	3-Aug-16	Emails between Dobson – McPhail (<i>McPhail emails Dobson with draft response to union organiser regarding union request for information, Dobson responds</i>)	Yes

35	8-Aug-16	Emails between Dobson – McPhail (<i>McPhail emails Dobson with draft response to union organiser regarding union request for information, Dobson responds</i>)	Yes
39	24-Aug-16	Email Dobson – McPhail (<i>McPhail emails draft response to union organiser to Dobson, Dobson responds</i>)	Yes
42	26-Oct-16	Emails between Dobson – McPhail (<i>McPhail emails draft response to union organiser to Dobson, Dobson responds</i>)	Yes
44	22 / 23 Nov 2016	Emails between Dobson – McPhail (<i>McPhail emails draft communication to union organiser to Dobson regarding individual pay review, Dobson responds</i>)	Yes
46	8-Mar-17	Email Dobson – McPhail (<i>Dobson emails McPhail regarding individual pay reviews</i>)	Yes
56	30 Nov / 1 Dec 2017	Emails between Dobson – McPhail (<i>McPhail emails Dobson draft letter regarding bargaining, Dobson responds</i>)	Yes
58	20-Dec-17	Emails between Dobson – McPhail (<i>McPhail emails Dobson regarding individual pay review for union member, Dobson responds</i>)	Yes
59	21-Dec-17	Emails between Dobson – McPhail (<i>McPhail forwards email from Ken Young regarding individual union member's pay review, Dobson responds</i>)	Yes
60	1-Mar-18	Emails between Dobson – McPhail with attachment (<i>Email from McPhail to Dobson with draft wage review letter, response from Dobson</i>)	Yes
61	6-Mar-18	Email Dobson – McPhail (<i>McPhail emails Dobson with SBM invoice, Dobson responds regarding wage review for individual union members</i>)	Yes (excluding the fee note)
62	4-Nov-15	Email Steve Parker – McPhail (<i>Parker emails McPhail with draft response to union request for meeting</i>)	Yes
63	5-Nov-15	Emails between Steve Parker – McPhail (<i>McPhail emails Parker with suggested response to union, Parker responds</i>)	Yes
66	9-Nov-15	Email Steve Parker – McPhail (<i>Parker forwards email from union organiser to McPhail and seeks advice</i>)	Yes
67	13-Nov-15	Email Steve Parker – Dobson / McPhail (<i>Parker emails Dobson and McPhail with update, seeks advice from McPhail on one point</i>)	Yes
82	17-Nov-15	Email Neil McPhail – Bryan Dobson 2.20pm (<i>Dobson forwards email to McPhail, McPhail responds with advice</i>)	Yes
83	17-Nov-15	Emails between Neil McPhail – Bryan Dobson 4.15pm (<i>Dobson emails McPhail with proposed response to union organiser seeking advice, McPhail responds</i>)	Yes
85	23-Nov-15	Emails between Neil McPhail – Bryan Dobson (<i>Dobson emails McPhail with a couple of questions, McPhail emails back advice with draft response</i>)	Yes
86	23-Nov-15	Email Neil McPhail – Bryan Dobson with attachment (<i>McPhail emails Dobson with suggested changes to BPA</i>)	Yes

89	26-Nov-15	Email Neil McPhail – Bryan Dobson 6.57pm (<i>email from McPhail to Dobson commenting on union organiser email about BPA</i>)	No (6.59 email only)
90	30-Nov-15	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson forwarding union organiser email with suggested response about BPA</i>)	Yes
91	30-Nov-15	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson with suggested response to union organiser about BPA</i>)	Yes
92	30-Nov-15	Email Neil McPhail - Bryan Dobson (<i>email from McPhail to Dobson forwarding union organiser email with advice about BPA</i>)	Yes
93	1-Dec-15	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson with suggested response to union organiser about BPA</i>)	Yes
94	2-Dec-15	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson forwarding union organiser response about BPA with comment</i>)	Yes
95	3-Dec-15	Email Neil McPhail – Bryan Dobson with attachment (<i>McPhail email to Dobson with suggested draft collective agreement</i>)	No
98	9-Dec-15	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>email from McPhail to Dobson / Parker with questions regarding issues arising in the bargaining</i>)	No
99	16-Dec-15	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>email from McPhail to Dobson with draft response to union organiser</i>)	Yes
101	15-Dec-15	Email Neil McPhail – Bryan Dobson (<i>Dobson emails McPhail with information about an individual union member in response to matters raised by the union in collective bargaining. McPhail acknowledges</i>)	Yes
102	16-Dec-15	Emails between Neil McPhail – Bryan Dobson (<i>emails regarding draft response to union</i>)	Yes
103	16-Dec-15	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>McPhail emails draft response to union organiser regarding bargaining to Dobson / Parker for review</i>)	Yes
104	17-Dec-15	Email Neil McPhail – Bryan Dobson (<i>McPhail acknowledges Dobson instruction regarding draft response to union</i>)	Yes
106	21-Dec-15	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>McPhail forwards letter from union organiser with comment</i>)	Yes
108	1-Feb-16	Email Neil McPhail – Bryan Dobson / Steve Parker with attachment (<i>McPhail emails Dobson / Parker with draft response to union organiser</i>)	Yes
110	1-Mar-16	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>McPhail emails Dobson / Parker with draft response to union organiser</i>)	Yes
112	1-Mar-16	Email Neil McPhail – Bryan Dobson / Steve Parker with attachment (<i>McPhail emails draft memo regarding picket</i>)	Yes

113	30-Mar-16	Emails between Neil McPhail – Bryan Dobson (<i>McPhail emails suggested changes to email regarding individual pay reviews</i>)	Yes
114	31-Mar-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails Dobson regarding union organiser email and makes suggestion regarding future bargaining</i>)	Yes
115	4-Apr-16	Email Neil McPhail – Bryan Dobson / Steve Parker (<i>McPhail emails draft response to union organiser</i>)	Yes
118	18-Apr-16	Emails between Neil McPhail – Bryan Dobson (<i>Dobson emails regarding individual pay reviews, McPhail responds with advice</i>)	Yes
119	18-Apr-16	Emails between Neil McPhail – Bryan Dobson (<i>McPhail emails draft communication to union organiser</i>)	Yes
121	19-Apr-16	Email Neil McPhail – Bryan Dobson (<i>email from McPhail with draft response to union organiser</i>)	Yes
123	19-Apr-16	Emails between Neil McPhail – Bryan Dobson (<i>emails with draft response and advice</i>)	Yes
128	21-Jul-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
129	29-Jul-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
130	29-Jul-16	Emails between Neil McPhail – Bryan Dobson (<i>McPhail emails advice to Dobson</i>)	Yes
132	3-Aug-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union to Dobson</i>)	Yes
133	4-Aug-16	Email Neil McPhail – Bryan Dobson (<i>McPhail forwards email from union organiser with comment</i>)	Yes
134	8-Aug-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
135	23-Aug-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
136	24-Aug-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
141	28-Sep-16	Email McPhail – Dobson (<i>McPhail forwards email from union legal organiser with comment</i>)	Yes
150	26-Oct-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
151	21-Oct-16	Email Neil McPhail – Bryan Dobson (<i>email forwarding copy of costs application in Authority made by McPhail with comment</i>)	Yes
152	26-Oct-16	Email Neil McPhail – Bryan Dobson (<i>McPhail emails draft response to union organiser to Dobson</i>)	Yes
154	11-Nov-16	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson regarding mediation with comment</i>)	Yes
157	22-Nov-16	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson with draft communication to union organiser regarding individual pay review</i>)	Yes
158	23-Nov-16	Email Neil McPhail – Bryan Dobson (<i>email from McPhail forwarding union application to Authority with comments</i>)	Yes
168	7-Dec-17	Email Neil McPhail – Bryan Dobson (<i>email from McPhail to Dobson with signed BPA and comment</i>)	Yes

169	8-Dec-17	Email Neil McPhail – Bryan Dobson with attachment (<i>McPhail emails Dobson with draft marked up collective agreement</i>)	No
170	18-Dec-17	Email McPhail – Dobson with attachment (<i>McPhail emails Dobson with summary of bargaining</i>)	No
170A	18-Dec-17	Email McPhail – Dobson (<i>McPhail emails Dobson with draft letter to go to union</i>)	Yes
171	20-Dec-17	Email McPhail – Dobson (<i>McPhail emails Dobson seeking instructions before writing to union</i>)	Yes
172	21-Dec-17	Email McPhail – Dobson (<i>McPhail emails Dobson with advice regarding individual pay review</i>)	Yes
173	23-Dec-16	Email McPhail – Dobson (<i>McPhail emails Dobson regarding individual pay review</i>)	Yes
174	23-Dec-16	Email McPhail – Dobson (<i>Email McPhail to Dobson forwarding email from union organiser with comment</i>)	Yes
177	31-Jan-17	Email McPhail – Dobson (<i>email McPhail to Dobson forwarding costs determination with comment</i>)	Yes
179	27-Feb-17	Email McPhail – Dobson (<i>email McPhail to Dobson with draft response to union</i>)	Yes
180	27-Feb-17	Email McPhail – Dobson (<i>email McPhail to Dobson regarding inflatable rat</i>)	Yes
181	8-Mar-17	Emails McPhail – Dobson (<i>Dobson emails McPhail with communications from union, McPhail acknowledges receipt</i>)	Yes
183	10-Mar-17	Emails McPhail – Dobson (<i>emails regarding how to progress bargaining</i>)	Yes
184	15-Mar-17	Email McPhail – Dobson (<i>McPhail emails draft communication to union</i>)	Yes
186	16-Mar-17	Email McPhail – Dobson (<i>McPhail emails with advice regarding availability provision</i>)	Yes
187	28 / 29 Mar 2017	Emails McPhail – Dobson (<i>McPhail emails Dobson with advice</i>)	Yes
191	19-May-17	Email McPhail – Dobson with attachment (<i>McPhail emails Dobson with advice</i>)	Yes
192	30-Jun-17	Emails McPhail – Matthew Dobson (<i>emails regarding communication from union organiser</i>)	Yes
199	24-Nov-17	Email McPhail – Dobson (<i>McPhail forwards communication from union organiser with comment</i>)	Yes
200	30-Nov-17	Email McPhail – Dobson (<i>McPhail emails draft letter to Dobson</i>)	Yes