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Court makes representative order to halt waterfront "community protest"

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The Victorian Supreme Court has today granted a rare [representative order](#) against VTHC secretary Luke Hilakari, ordering him not to participate in or organise a picket at a new "robo" stevedore in the Port of Melbourne.

Justice Michael McDonald continued orders against the MUA over the picket and a 100-metre "exclusion zone" from the gates of the Victoria International Container Terminal at Webb Dock, while declining to enlarge the "no go" zone.

He also issued an injunction against the CFMEU attending or organising the picket after finding its construction and general division Victorian branch secretary, John Setka, encouraged unionists and the public to support a protest rally at the VICT site last Friday.

Justice McDonald accepted evidence that Hilakari attended the site in a leadership capacity before the picket began, which was followed by "We Are Union" banners appearing and attendance by a grouping of "hard" activists.

He said there was also evidence the Trades Hall Council had run an "active campaign" against VICT, promoting attendance at the picket on Facebook and with Hilakari acting as "MC" of last week's rally.

The picket started on November 27 and the court on December 1 issued an injunction against the MUA organising it (see [Related Article](#)).

"Compelling" inference that MUA outsourced unlawful picket: Judge

"The inference is compelling that since 1 December 2017, the MUA has outsourced to other unions coordinated by the Victorian Trades Hall Council, the task of maintaining an illegal picket," Justice McDonald said.

He accepted that making a representative order was a "very serious step" but, based on what had happened since the court's injunction on December 1, the unlawful picket would continue if such an order was not issued.

Without representative orders "fixing potential liability" on the individuals engaging in that conduct, it would continue.

He noted the Victorian Supreme Court has previously issued representative orders in earlier cases involving pickets – in [Super A Mart v NUW](#) in 2014 (see [Related Article](#)) and [Viva Energy Refining Pty Ltd v the AWU](#) last year (see [Related Article](#)) – and said the key element was common purpose rather than identification.

Serious issue as to whether VTHC leader party to conspiracy

In the VICT case, the evidence raised a serious issue to be tried as to whether Hilakari was "party to a conspiracy to injure the plaintiff by unlawful means, namely picketing activity which constitutes a nuisance".

The judge said he refused to issue an injunction against a CFMEU on December 1 because at that time there was little evidence tendered against the union, but VICT had since tendered considerable evidence that was not challenged by the unions.

He said no truck had entered the site since November 27 when there would normally have been 150 to 200 trucks movements per day.

The "immediate cause" of the dispute was the termination of an employee and MUA member, with VICT saying he did not hold a mandatory security clearance and the MUA claiming he was "victimised" due to his union membership.

But there was clearly a "more fundamental dispute" between the parties, with the MUA arguing that the new player to the local industry, VICT, had struck an enterprise agreement that undercut existing stevedoring pay and conditions by about 40%.

The court heard that speakers at last week's rally blamed the VICT HR and IR manager, Mick O'Leary, for negotiating the new agreement.

O'Leary is a former senior MUA official (see [Related Article](#)).

The judge said the CFMEU had made or endorsed comments on social media that VICT's parent company, International Container Terminal Services, Inc (ICTSI) was a "scourge" that was not welcome in Australia and that O'Leary was a "rat" who betrayed Australian workers and jobs.

"Community protest" description no distraction from unlawful nature of conduct

Justice McDonald said the MUA's Victorian branch secretary, Joe Italia, admitted on ABC radio the union had sought to negotiate the passage of some containers holding medical supplies and this was consistent with the MUA "exercising control over the picket."

The judge said that describing the picket as a "community protest/peaceful assembly" did not distract from the unlawfulness of the conduct.

Members of the public had the right to peaceful assembly and to voice their opposition to the management practices but they did not have the right to preventing VICT "going about its lawful business."

The picket had been marked by a "high degree of organisation" and had been run continuously since November 27, with chairs and cars sometimes being used to block the gates.

It now had features of permanence such as chairs, marquees, portaloos, a caravan, tents, a generator, and even a post box.

In a hearing yesterday, union lawyers argued that Friday's rally did not breach the injunction because the stage was erected 120 metres from the VICT gate, meaning they were outside the exclusion zone.

But the judge found that CCTV footage and photographs showed the entrance being blocked by large numbers of people just before the rally began.

Speakers at the rally included Hilakari, ACTU secretary Sally McManus, John Setka, MUA deputy national secretary Will Tracey, WA branch secretary Chris Cain, Victorian branch secretary Joe Italia, Victorian ETU secretary Troy Gray and TCFU national secretary Michele O'Neil.

But the judge said there was little evidence of community involvement beyond unions apart from Catholic priest and social campaigner, Father Bob McGuire.

Justice McDonald said Setka was recorded as telling the rally that, looking at the numbers present, he "almost" felt sorry for VICT.

"You know what, youse are in big trouble," Setka reportedly said.

"We fundamentally do not have the right to take strike action which effectively makes us slaves, that's the way the laws in this country are going."

Setka reportedly said the union had decided in to take on these "shit laws" that were "designed to never let you win".

"Why would you play by them?"

"So we have chosen not to play by them and we have been fined millions of dollars by some of these judges."

"You know, who sit there, they've probably never done a day's work in their life and they pass all these comments on us. "

Setka claimed that employers who broke the law got "total silence" from judges and that union members were to be congratulated for attending the rally.

He said that "everything we have today was won by breaking the law and taking industrial action", and that unions had "big pots of gold" to support their fight.

The judge said the MUA's Tracey told the rally that O'Leary had "orchestrated" an enterprise enterprise agreement to cut wages and conditions, and that automation in stevedoring was a "cancer in our industry in terms of the jobs that it destroys."

The MUA's Cain reportedly said that "all around Melbourne today the docks have closed down".

In granting his orders, the judge said they made no reference to contested evidence that was heard yesterday regarding a truck driver allegedly having his teeth knocked out in the day before Friday's rally.

He said questions had been raised over admissibility and he was treating it as evidence of entrance to the site being blocked, rather than whether or not the incident occurred.

Justice McDonald is yet to issue his reasons.

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