

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON BRANCH**

<b>BETWEEN</b>	Service & Food Workers Union Inc. (applicant)
<b>AND</b>	Spotless Services (NZ) Limited (respondent)
<b>REPRESENTATIVES</b>	Luci Highfield for the applicant Peter Jennings for the respondent
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>SUBMISSIONS</b>	5 May 2005
<b>DATE OF DETERMINATION</b>	6 May 2005

**DETERMINATION OF AUTHORITY AND DIRECTION**

**Employment Relationship Problem**

1. By way of an urgent, but not interim, application received on 5 May 2005 the Union sought facilitation in respect of a collective employment agreement: ss 50A – 50I of the Act. The grounds on which the application is made are those set out in s. 50C (1) (b) and/or 50C (1) (c).

2. The Company neither supports nor opposes the application but made clear there was – in its opinion – further room for negotiation in respect of the collective agreement: oral advice received from the Company on 5 May.
3. The parties have made use of mediation in their efforts to conclude the collective agreement but settlement has not been forthcoming.
4. The parties agree the Authority should proceed to issue a determination on the papers and oral submissions made during the telephone conference call convened on 5 May.

### **The Facts**

5. The applicant is a registered national union of employees and an incorporated society. It is authorised to act for and represent in bargaining its members who are employed by the Company. The latter provides domestic, orderly and food services to the Mid Central District Health Board, at Palmerston North and Horowhenua Hospitals, and at Kimberley and Cleveley Centres.
6. Bargaining was initiated by the Union in July 2004. Since September 2004, when they agreed to a bargaining process, the parties have been involved in extensive efforts to conclude a new collective agreement, including mediation in March 2005. They have met on numerous occasions for the purpose of bargaining, the last being on 29 April.
7. On two occasions a settlement of the collective bargaining was reached, subject to ratification. On each occasion the relevant Union members rejected the proposed settlements.
8. There have been five days of strike action. The Company has threatened lockouts although was not permitted to act by reason of an interim injunction issued by the Employment Court (parties as above, unreported, WC 9/05, Shaw J, 22 April 2005). Neither party has filed further notice of industrial action or lockout at this time.

## Union's Position

9. The Union says its members are not willing to hold off further industrial action indefinitely. It sees,

i. *“a reasonable degree of heat and polarisation in the employment relationship in relation to the collective bargaining, all of which is getting greater ... as time goes by. ... A facilitation by the Authority within the next month is more likely to have the most beneficial outcome. The applicant is of the view that the employment relationship and the collective bargaining will not benefit from leaving this matter longer.”*

ii. (Application for Urgency)

10. In particular, and in terms of ss. 50(1) (b) the Union says the bargaining has been unduly protracted (over 10 months) and shows no sign of settling. Extensive efforts, including mediation, have failed to resolve the differences and the parties are becoming more polarised. In terms of ss. 50(1) (c), strike action has occurred and lockouts have been threatened: the industrial action has been acrimonious and is likely to continue to be so. Further litigation is likely.

## Company's Position

11. The Company declined the opportunity to file written submissions, being content to make oral submissions which are summarised in part in par. 2 above. It also made the point that it had made a fresh offer as recently as Friday 29 April (and which would remain on the table for two weeks), that it did not see the parties' positions as polarised, that they had on two occasions reached the point of being able to refer a settlement back to the membership, that facilitation was for the end of the line – a position the Company did not see as having been reached as yet – and further mediation could assist.

12. I inferred from the Company's representative, Mr Peter Jennings', comments that the Company had not exhausted its negotiating position.

## Discussion

13. The grounds of this application for facilitation, reflecting those set out in the Act, are:

***“50C Grounds on which Authority may accept reference***

*(1) The Authority **must not accept** a reference for facilitation unless satisfied that 1 or more of the following grounds exist:*

*...*

*(b) that---*

*(i) the bargaining has been unduly protracted; and*

*(ii) extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement:*

*(c) that---*

*(i) in the course of the bargaining there has been 1 or more strikes or lockouts; and*

*(ii) the strikes or lockouts have been protracted or acrimonious.”*

(emphasis added)

14. The collective bargaining process is typically robust, as illustrated by the fact that the Act provides for lawful strikes and lockouts as part of that process. The facilitation process is clearly intended for situations of serious difficulty (the Authority, *“must not accept a reference unless satisfied”*) and not the ordinary difficulties that typically characterise collective bargaining.

15. In this instance bargaining has extended over 10 months. I am not satisfied that period is *“unduly protracted”* (compare with the limited strike action over 17 days described in *PMP Print Ltd & Anor v New Zealand Amalgamated Engineering Printing and Manufacturing Union Inc*, CA 162/04, H Doyle, 22 December 2004) any more than I am satisfied the strikes or proposed lockout have also been protracted, or acrimonious: the strikes occurred over an interrupted period of 10 days at different work sites – no express evidence exists of them being acrimonious.

16. When compared to other instances of collective agreement negotiations, the bargaining period cannot be said to be uncommonly long. When compared to other instances of strike action, the period and nature of strike action taken to date cannot be said to be uncommonly protracted or acrimonious, the injunction notwithstanding. No lockout has yet occurred. While not relied on by the Union in its application, I can see no evidence of industrial action impacting substantially on the public – s. 50C (1) (d).
17. At present, neither party have served current notice of industrial action on the other. While extensive efforts including mediation to date have failed to result in a new collective agreement, one side – the employer – is of the view that its negotiating position is not exhausted and is not opposed to further negotiation aided by mediation. Its latest offer remains on the table in the meantime: that is an opportunity for the Union to review its position and respond promptly, with or without the assistance of a mediator. Facilitation may be appropriate at a future date, but not at present.
18. In all the circumstances I am satisfied it is appropriate to exercise the Authority's discretion against facilitation and instead direct the parties to further mediation: s.159 of the Act applied. The Authority's support staff will contact the Mediation Service and advise the parties in turn of the availability of early dates for mediation.

**Denis Asher**

**Member of Employment Relations Authority**