IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 157/07
5083922

	BETWEEN	NZ MEAT WORKERS & RELATED TRADES UNION Applicant
	AND	CRUSADER MEATS NZ LIMITED Respondent

Member of Authority:	Leon Robinson
Representatives:	Simon Mitchell for Applicant Julie Hardaker for Respondent
Determination:	24 May 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant the NZ Meat Workers & Related Trades Union ("the Union") makes application to the Authority seeking a reference to facilitation. The respondent Crusader Meats NZ Limited ("Crusader") initially opposed the application but has subsequently adopted a neutral stance, neither consenting nor opposing the application.

[2] The parties were unable to resolve the differences between them by the use of mediation. They have agreed that the Authority should now proceed to determine the application.

The facts

[3] The Union initiated bargaining with Crusader on 20 February 2006. It met with its members on 23 March 2006. On 29 March 2006 it advised Crusader it was ready to commence bargaining.

[4] The existing collective employment agreement expired on 20 April 2006.

[5] On 26 April 2006 the parties signed a bargaining process agreement. They met that day for bargaining where the Union presented its claims.

[6] On 27 April 2006 the parties met again for bargaining and Crusader presented its claims.

[7] Between May and July 2006 the parties continued discussions by correspondence and in particular, in relation to an Attendance Incentive Scheme. The Union advised it was referring the issue to the Authority for investigation.

[8] On 9 May 2006, the Union was advised that Crusader would not negotiate while there was an Authority investigation into the Attendance Incentive Scheme. By letter of 25 May 2006 the Union advised Crusader that it considered negotiations should continue.

[9] On 28 July 2006 the parties attended mediation in relation to the Attendance Incentive Scheme. That matter was not resolved but the bargaining was re-commenced.

[10] The parties attended bargaining meetings together on 16 August, 30 August, 13 September, 19 October, and 7 November 2006.

[11] On 23 January 2007 the Union held a ratification meeting with its members at which the prevailing Crusader offer was rejected.

[12] On 1 March 2007 the parties attended an eighth day of bargaining.

[13] On 14 March 2007 the employee Union members took strike action from 9.30 am to 2.30 pm

[14] On 21 March 2007 the parties attended mediation in relation to the bargaining.

[15] On 28 March 2007 the employee Union members attended a meeting by way of strike action.

[16] On 10 April 2007 the Union suggested a joint application for facilitation.

[17] On 8 May 2007 the parties attended further mediation but matters were not resolved.

Facilitation

[18] The Authority may only accept a reference for facilitation where one or more of the grounds set out at section 50C of the *Employment Relations Act 2000* exist. That section provides:-

> *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:*
>
> *(a) that—*
> *(i) in the course of the bargaining, a party has failed to comply with the duty of good faith in section 4; and*
> *(ii) the failure—*
> *(A) was serious and sustained; and*
> *(B) has undermined the bargaining:*
>
> *(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:*
>
> *(d) that—*
> *(i) in the course of bargaining, a party has proposed a strike or lockout; and*
> *(ii) the strike or lockout, if it were to occur, would be likely to affect the public interest substantially.*
>
> *(2) For the purposes of subsection (1)(d)(ii), a strike or lockout is likely to affect the public interest substantially if—*
>
> *(a) the strike or lockout is likely to endanger the life, safety, or health of persons; or*
>
> *(b) the strike or lockout is likely to disrupt social, environmental, or economic interests and the effects of the disruption are likely to be widespread, long-term, or irreversible.*
>
> *(3) The Authority must not accept a reference in relation to bargaining for which the Authority has already acted as a facilitator unless—*
>
> *(a) circumstances relating to the bargaining have changed; or*
> *(b) the bargaining since the previous facilitation has been protracted.*

[19] The threshold for reference is very high. That is because contractual freedoms are not lightly interfered with. The circumstances must be extraordinary to warrant the Authority's intervention. The section is framed in terms of a presumption against facilitation unless prescribed circumstances are present.

[20] As the Authority has previously stated[1]:-

> *[Facilitation] is to be provided where there are serious difficulties concluding a collective agreement, not simply ordinary difficulties that arise during collective bargaining. It is not enough for the Authority to view that facilitation may be of assistance to the parties, or their collective bargaining because Section 50C(1) provides that the Authority must not accept a reference for facilitation unless satisfied that one or more of the grounds set out in the section exist.*

[21] The Union makes its application relying on section 50C(1)(b), that the bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded them from entering into a collective agreement. Both elements are required.

The Union's position

[22] For the Union, the Aotearoa Branch Secretary Mr Graham Cooke ("Mr Cooke") tells the Authority the negotiations have reached a serious road block and the relationship between the Union, its members and Crusader are deteriorating as a consequence.

[23] Particularly contentious is an Attendance Incentive Scheme. Mr Cooke maintains this aspect of matters has made negotiations more difficult and contributed to a lack of progress and the length of time in negotiations.

[24] Mr Cooke points to what he says is an unusual feature of this case being the difficulties experienced in convening meetings of members. He says Crusader has been obstructive in that regard, so much so that he has had to issue a strike notice to meet with members. He says Crusader has permitted meetings of members only at lunchtime. He also says he has had difficulties getting management to the negotiating table.

[25] Mr Cooke points to March 2007 correspondence in which Crusader particularly notes the 11 months of negotiations have continued with no resolution pending and says this demonstrates Crusader too has no confidence in a resolution in the short term.

[26] Mr Cooke is concerned that one year after the expiry of the former collective, Union members will lose the benefits of collectivity, and new employees will be offered individual employment

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[1] *PMP Print -v- The NZ Amalgamated Engineering Printing and Manufacturing Union Inc* [2005] NZEL 697, 778

agreements which will serve to undermine Union membership. He laments that despite earnest negotiations unsuccessfully over a year, the parties now require assistance to break the impasse.

[27] Mr Cooke has written to Crusader outlining his disappointment with the state of negotiations and recording his view the situation appears to be "going backwards" because of Crusader's accusation the Union is not acting in good faith and the Union's members are frustrated sufficiently to strike.

[28] Mr Cooke does not dwell on the minutia of the negotiations in making this application. The application focuses overall on the broader position the parties now find themselves. He says Crusader's evidence makes clear there is a lack of confidence in the Union and that bargaining has been difficult and contentious.

Crusader's position

[29] Mr David Wackrow, Crusader's Human Resources Manager, presents a more confident outlook. He tells the Authority Crusader considers the parties can continue to negotiate to conclude a collective. He denies that Crusader has been hardnosed. He denies being obstructive.

[30] Mr Wackrow says that half of the bargaining meetings have been about obtaining information from the Union to support its claims. He refers to a noticeable tension in the relationship since the Union's first involvement at Crusader's plant, but that the last round of negotiations resulted in a concluded collective. He says Crusader believes it can achieve a concluded agreement in the present round as well.

Determination

[31] I accept that these parties are experiencing difficulties in their negotiations, particularly in relation to the implications of the Attendance Incentive Scheme and rates of pay. But difficulties alone are not enough. Only "serious difficulties" will warrant the Authority's intervention.

[32] Irrespective of the nature of the difficulties, I note that bargaining has occurred over a period of some 11 to 12 months without a collective agreement being concluded. The Union and Crusader have met for bargaining on eight occasions as well as two or three mediation sessions. There have also been two days of strike action.

[33] The Act requires that the negotiations be unduly protracted. In this instance there have been eight days of bargaining. I understand those bargaining days to be full days of actual negotiation. Certainly, it is not suggested or submitted that there have not been genuine efforts to engage and conclude an agreement.

[34] I accept that eight days of bargaining meetings over a period of 11 or 12 months is "protracted" at least in a temporal sense. But the legislation requires more than mere protraction, it must be unduly so. That qualification I take to mean excessively, in an inappropriate, unjustifiable, or improper manner. I am not persuaded there is anything in the circumstances of these negotiations with such a quality. I conclude that these negotiations have not been unduly protracted.

[35] Having reached the immediately foregoing conclusion, it is unnecessary for me to deal with the second element. But I am not persuaded of that element either. There have been at least two mediations in relation to this bargaining. I do not consider such efforts "extensive". Nor do I appreciate any other effort being made. But I am not persuaded there is anything "extensive" apparent.

[36] In my view, this present application is premature at the present time and on the grounds that are sought. There is more discussion and negotiation to be had. I trust that as a matter of priority the parties will do so in good faith. I decline to refer these parties to facilitation.

Leon Robinson
Member of Employment Relations Authority