



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

[2] This is the second such application made by the applicant party, the Meatworkers Union, in relation to bargaining with the respondent company Crusader Meats Ltd. In a determination dated 24 May 2007 (AA 157/07) the Authority found that the negotiations between the parties had not been unduly protracted and that there had not been extensive efforts to resolve the issues between the parties. The determination concluded:

*“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.”*

[3] The union now says that despite further attempts to progress the matter the parties have been unable to resolve the impasse between them. It says that the situation has got markedly worse since the last facilitation application.

[4] In addition the respondent Company supports the current application for facilitation. Its General Manager, Anne Marie Kelly, who has been involved with the bargaining from its inception, told the Authority that the company believes the parties have exhausted attempts to agree to the terms of a collective agreement.

[5] The issues for determination now are whether, in the interval since the earlier application was declined, the bargaining can be said to have become unduly protracted and whether extensive efforts have been made to resolve the difficulties that have precluded agreement.

### **Has the bargaining been unduly protracted?**

[6] Bargaining was initiated in February 2006. At paragraphs [3] to [17] of determination AA 157/07 is set out a chronology of the events which followed, up until the date of that determination. The parties had convened talks on eight occasions

and had also met with a mediator two or three times more. There had also been two days of strike action. No agreement was reached.

[7] I have now been provided with an agreed update to this chronology, as follows.

- i. 20/6/07: tenth bargaining meeting, at which company tabled offer and supporting information;
- ii. 4/7/07: eleventh bargaining meeting; company offers further proposals;
- iii. 23/7/07: union ratification meeting, company offer rejected;
- iv. 31/8/07: company puts revised final offer by email;
- v. 24/10/07: notice of strike action for 30/10/07;
- vi. 26/10/07: company issues suspension notices for 30/10/07;
- vii. 30/10/07: notices of strike action for 5/11/07 and 6/11/07;
- viii. 1/11/07 telephone conference with mediator re proposed mediation, strike notices withdrawn and replaced with strike notices for 6/11/07 and 7/11/07;
- ix. 2/11/07 lockout notices issued for periods between 6/11/07 and 9/11/07.
- x. 5/11/07, unsuccessful mediation.
- xi. 5/11/07 lockout notices issued for periods from 27/11/07 to 21/12/07;
- xii. 6/11/07 lockout;
- xiii. 9/11/07 annual two week shutdown for plant maintenance.

[8] In short, there have been revised offers, further bargaining meetings, further mediation, and industrial action in the period since May 2007, and notice has been given of further lockouts in the run up to Christmas.

[9] What constitutes “unduly protracted” bargaining may depend on the circumstances in which bargaining is taking place. The nature of the industry concerned, the complexity of the document being negotiated, the extent of its coverage, its past history, and the level of union membership are just some of the

factors which may impact on the scope of the task facing negotiators, and hence on what constitutes a reasonable timeframe for the completion of the bargaining process.

[10] I have been told by Ms Kelly that the company employs 172 staff. Approximately 10% are members of the applicant union. Nearly two years have now passed since bargaining was initiated on behalf of this relatively small group of workers. I am satisfied that in these particular circumstances it can now be said that the bargaining has become unduly protracted.

**Have extensive efforts been made to resolve the difficulties that have precluded the parties from entering into a collective agreement?**

[11] Both parties have advised me that they have no further offer to table at this time. Both consider they have reached deadlock. This is materially different from the situation in May 2007, when a Company witness “*presented a confident outlook*” and told the Authority that “*the parties can continue to negotiate to conclude a collective.*”<sup>1</sup>

[12] I conclude that since May 2007 the parties have expended additional time and effort to resolve this matter and that it now satisfies the threshold in s.50 C (1) (b). The matter is referred to facilitation.

Yvonne Oldfield

Member of the Employment Relations Authority

---

<sup>1</sup> Paragraph [29] AA157/07