

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 168/08  
5139645

BETWEEN                      SERVICE AND FOOD  
   WORKERS UNION NGA  
   RINGA TOTA INC  
   Applicant

AND                                MCCAIN FOODS (NZ)  
   LIMITED  
   Respondent

Member of Authority:        P R Stapp

Representatives:              Tim Oldfield for Applicant/Union  
   Rob Towner for Respondent/Employer

Investigation Meeting:       5 December 2008 at Napier

Determination:                15 December 2008

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**DETERMINATION OF THE AUTHORITY**

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**Application for facilitation under s50B and s50C (1) (b) (i) and (ii) of the  
Employment Relations Act**

[1]     The application from the union has been made on the grounds that serious difficulties exist to conclude a collective agreement, the bargaining has been unduly protracted and extensive efforts, including mediation, have been made to try and resolve a collective employment agreement between the union, and the employer, McCain Foods (NZ) Limited.

[2]     The application has been opposed by the employer and it has contended that the grounds for facilitation do not exist at this time.

**The issues**

[3] Are the parties having serious difficulties in concluding a collective employment agreement? Are the negotiations unduly protracted? Have there been extensive efforts that have failed to resolve any serious difficulties?

[4] Do the grounds for facilitation relied upon by the union exist?

**The facts**

[5] The parties have been negotiating for a collective employment agreement to apply to the employer's site in Hastings. There has never previously been a collective agreement with the union at the site. The negotiations were initiated by the union on 7 June 2006.

[6] Negotiations have taken place at meetings between the parties on 26 July and 18 August 2006 (without the employer's advocate, Mr Paul Weaver) and 24 August 2006, 12 September 2006, 2 November 2006 and 22 March 2007. The parties bargained with the services of a mediator from the Department of Labour at meetings held on 15 April 2008, where a bargaining process agreement was reached, 2 May 2008 and 16 July 2008. The company's "best offer" was rejected by the union. Nothing further has happened. The union has not involved its organisers gaining access to the site upon being given a judgment for access by the Employment Court.

[7] The delays between the meeting dates have been due to administrative issues being discussed at the early meetings, agreed adjournments, a new person being appointed to the site's plant manager's position, and annual leave being taken by members of both bargaining teams before Christmas 2006. The union did not respond to an offer from the company made on 22 March 2007 and no further meetings occurred for a year until 15 April 2008.

[8] Agreement was reached on a classification issue on 12 September 2006. But the remaining issues were not resolved on the basis of the union's claims and the company's position. The company put up a suggested draft collective employment agreement embodying draft clauses for consideration and revised the draft in response to a number of union concerns, including inserting a proposed union fees deductions

clause and an access to work place clause. The matters that remained unresolved include:

- Definitions clause.
- Consultation clause.
- Wage rates.
- Increased holiday pay for shift workers.
- Shift rosters and systems.
- Meal allowances.
- Call outs.
- Savings and coverage.

[9] During the negotiations further modifications were made to the draft collective employment agreement, including the definitions clause, the overtime clause, the call out clause, the rest breaks clause, the meal allowance clause, the consultation clause and the savings clause. Thomas O'Neill, the union's organiser, told me that there were various proposals that the union, with the assistance of a mediator, has made, but the proposals were rejected by the employer. Mr O'Neill says that since the bargaining was initiated the number of union members on the site has decreased.

[10] The union rejected the draft collective employment agreement. The union's claim has been for a collective employment agreement that mirrors another site agreement existing in Timaru. In addition the union is seeking a 5% pay increase. The employer is seeking an agreement based on the circumstances for the Hastings site, including performance pay.

[11] Following the negotiations held on 2 May 2008 the company agreed to up date the draft employment agreement (version 6) to reflect a number of concessions. The up date was rejected by the union on 16 July 2008.

### **Are there serious difficulties between the parties?**

[12] There are serious difficulties between the parties concluding a collective agreement. This is supported by:

- The parties' different approaches to the bargaining that has created a core issue to resolve and led to an impasse.

- The employer has put its “best offer” forward and this has been rejected by the union’s members.
- There have been no further attempts to negotiate because of the positions the parties have reached. There is nothing foreseeable going to occur in the near future.

### **Are the negotiations unduly protracted?**

[13] A number of reasons exist for why there has been a delay between negotiation dates. On its own the lapse of time from the date the negotiations were initiated until the last meeting on 16 July 2008, does not mean that the negotiations have become unduly protracted because there are reasons why there have been various delays between the bargaining meetings and some of those delays are unrelated to the bargaining.

[14] However the length of time including the meetings actually held and the negotiations becoming stalled over the employer putting forward its best offer and the union rejecting the draft employment agreement (version6) are relevant factors.

[15] There has been evidence given from both parties over what they consider has happened during the course of the meetings held to negotiate. McCain Foods holds the view that the meetings have been meandering and lacking any intensity. The union considers it has nowhere to go because the company has put forward its best offer that the union has rejected and there is an impasse. The meetings have ended with the parties having agreed to a bargaining process agreement and the parties stalling over the core issue on the method of pay relating to the Hastings site. This is impacting on the parties being able to make any further move on negotiating the outstanding clauses not yet agreed in version 6 of the draft employment agreement.

[16] I conclude that the combination of events and the situation reached where there have been 6 draft versions of the proposed employment agreement mean that the negotiations have become unduly protracted.

**What efforts have been made by the parties that have failed to resolve the difficulties?**

[17] There have been at least seven meetings between the parties to negotiate, including using the services of a mediator from the Department of Labour on four occasions. These have failed to resolve the difficulties and there appears to be an impasse.

[18] Mr Weaver explained the bargaining was not extensive. No momentum and no progress had been made on fundamental issues for a long time, many of which await a response from the union, and no concessions were made in any event.

[19] Mr O'Neill says the union has nowhere to turn given the core issue between the parties, declining union membership, and that in the food industry this situation is comparably protracted. He was supported by the experience of Mr Donaldson and Mr Wall, union officials.

**Determination of the Authority**

[20] I determine that there is a serious difficulty over a core issue on the approach to pay (performance or percentage) that is hindering progress being made on the issues to negotiate a collective employment agreement. The negotiations have stalled.

[21] I conclude that the negotiations are unduly protracted because:

- The parties have reached a point where there is a draft employment agreement being used in the negotiations and worked on as the basis of the parties' offers, but the latest version has been rejected by the union.
- There are many issues, besides the core issue discussed earlier, that are probably capable of being settled because they seem to be reasonably standard clauses, but settlement is being hindered because there is such a fundamental difference between the parties on the core issue.
- The employer has put up its "best offer" and the union has rejected it.
- There have been 6 versions of the draft employment agreement.
- Nothing further has happened between the parties to negotiate. The negotiations have therefore stalled.

- There has been a series of meetings, including mediation.

[22] I order that the negotiations for a collective employment agreement between the Service and Food Workers Union Nga Ringa Tota Inc and McCain Foods Limited be facilitated in the Employment Relations Authority.

[23] The company is not seeking costs. Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority