

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 409/08
5140672

BETWEEN SCA HYGIENE
 AUSTRALASIA LIMITED
 Applicant

AND INDEPENDENT
 ELECTRICAL WORKERS
 UNION
 Respondent

Member of Authority: R A Monaghan

Representatives: D France, Counsel for Applicant
 L Yukich, Advocate for Respondent

Submissions received: 24 November 2008 from Applicant

Determination: 2 December 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is a request for an order that the Authority refer the parties' bargaining for a collective agreement to facilitation under s 50A - I of the Employment Relations Act 2000.

[2] SCH Hygiene Australasia Limited ("SCA Hygiene") has made the request on the grounds that:

- a. bargaining has continued over an unduly protracted period, and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded entry into a collective agreement;
- b. there has been more than one strike, and the strikes have been protracted or acrimonious.

[3] The Independent Electrical Workers Union (“the union”) advised SCA Hygiene in an emailed message dated 15 September 2008 that it was instructed to advise agreement to facilitation assistance. It advised the Authority that the present application was not opposed save for comments it wished to make on limited aspects, and that the chronological outline provided by the company was accepted.

[4] By agreement with the parties, the matter has been determined on the papers.

Grounds on which the Authority may accept a reference

[5] Section 50C (1) of the Employment Relations Act reads:

- (1) The Authority must not accept a reference for facilitation unless satisfied that 1 or more of the following grounds exist:
 - (a) ...
 - (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 lockout have been protracted or acrimonious.”

[6] Accordingly while the request for facilitation here has cited two grounds, the existence of one of them will be sufficient for a reference to facilitation. If neither is met, the Authority cannot accept the request.

Reference under s 50C(1)(b)

[7] Section 50C(1)(b) of the Act has two limbs, both of which must be met in order for the ground to be established.

1. Whether bargaining unduly protracted

[8] The parties’ collective employment agreement (“cea”) expired in January 2007. The union gave SCA Hygiene a notice initiating bargaining dated 8 February 2007, and the parties concluded a bargaining process agreement on 13 March 2007.

[9] Since then:

- a. negotiation meetings were held on two dates in March 2007, two dates in April 2007, two dates in May 2007, one date in October 2007, three dates in December 2007, two dates in February 2008, two dates in May 2008, one date in July 2008, and informal discussions at local level occurred in August 2008;
- b. the parties attended mediation in March 2007 and April 2008;
- c. written settlement proposals were made and responded to by each party in March 2007, October 2007, December 2007, February 2008, April 2008, May 2008, July 2008 and August 2008.

[10] Bargaining has been protracted, having commenced some 20 months ago. The combination of this length of time, the number of bargaining sessions, and the number of proposals and counterproposals made lead me to conclude the bargaining has become unduly protracted.

2. Whether extensive efforts have failed to resolve difficulties precluding settlement

[11] The difficulties precluding the parties from entering into a collective agreement concern their inability to agree on particular claims, which were identified as:

- a. SCA Hygiene's wish to remove references to electrical isolations;
- b. with reference to the Electrical Joint Working Party clause, SCA Hygiene's wish to remove conditions under which changes to training, work scope and skill utilisation must be managed;
- c. a term for the cea, or to a wage movement; and
- d. an employment protection provision.

[12] Written summaries of the parties' proposals and counter-proposals confirm that attempts have been made to resolve the first three of the above claims from the outset of the bargaining, but no agreement has been reached. The fourth claim was raised in July 2008, with no progress being made in respect of it.

[13] In August 2008 the union advised that the company's latest offer was rejected, withdrew all of its previous offers and sought a rollover of the existing agreement for a specified term and with a specified wage movement. SCA Hygiene did not accept this, and replied saying it was essential that progress be made in all four of the outstanding areas listed above.

[14] The company's manager - human resources, Doug Longdill, says neither party is willing to vary its position. The union has not disagreed with this assessment.

[15] Accordingly I am satisfied both that there are difficulties precluding the parties from entering into a collective agreement, and that extensive efforts (including mediation) have failed to resolve the difficulties.

[16] Both limbs of s 50C(1)(b) are met. This is sufficient to base a referral to facilitation.

Reference under s 50C(1)(c)

[17] Section 50C(1)(b) of the Act also has two limbs, both of which must be met in order for the ground to be established.

1. Existence of strike action

[18] There was a 24-hour strike on 14 March 2007, a further four days of strike action began on 13 December 2007, and a 48-hour strike began on 28 May 2008.

2. Whether strike action protracted or acrimonious

[19] I am not persuaded that the strike action has been protracted. Further, in terms of the alternative contained in this limb, there was no evidence of acrimony.

[20] I would therefore conclude that only one of the limbs of s 50C(1)(c) has been established. This is not sufficient to establish the strike action as a ground for referral to facilitation.

Conclusion

[21] I have found that s 50C(1)(b) is met. I refer the parties' bargaining to facilitation accordingly.

R A Monaghan

Member of the Employment Relations Authority