

Nonetheless the union does not oppose the application for referral to facilitation, noting only that it does not consider there is any need for urgency.

[3] On the issue of urgency, I note that it is the usual practice of the Authority to proceed as soon as possible to determine applications for reference to facilitation. There appears to be no reason in this case to depart from that usual practice. The matter has therefore been determined on an urgent basis and (by agreement) on papers.

[4] In one of the first determinations on the effect of Section 50C¹ it was noted that the Authority could not refer parties to facilitation simply by their agreement. At least one of the grounds in the section must first be made out. I proceed therefore to consider the history of bargaining to date and to determine whether the grounds set out in Section 50C (1) (b) have been made out.

The bargaining to date

[5] Bargaining was initiated by the union on 11 December 2006, approximately one month before the expiry of the previous collective agreement (CEA) on 7 January 2007. In the months that followed, the parties met in all on 40 separate occasions, and in addition held a further seven meetings with other on site unions also present. Two days were spent in mediation on issues connected with the bargaining and on-going help was provided after that by the mediator concerned. The parties also drew on the assistance of the Labour Department's Partnership Resource Centre and a private mediator.

[6] Three separate sets of proceedings in the Employment Relations Authority (related to the bargaining) have also been undertaken during that time, and members of the respondent union have withdrawn their labour on two occasions. Despite all this, after 23 months, the CEA has not been settled.

[7] The union's members are now on individual agreements. In the meantime, Norske Skog has settled three other collective agreements covering other staff. Norske

¹ Service and Food Workers Union Inc v Air NZ Ltd 19/1/05, A Dumbleton (Member) AA11/05.

Skog believes further mediation would not be of assistance at this stage and wishes to proceed to facilitation.

Conclusions

[8] Section 50C (1) (b) provides:

“The Authority must not accept a reference to facilitation unless satisfied...

(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.”

[9] I am satisfied, given the number of meetings between the parties and the length of time since bargaining was initiated, that bargaining has been unduly protracted and that extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[10] The grounds in Section 50C (1) (b) have been met.

[11] This matter will now be referred to the Chief of the Authority in order for facilitation to be arranged.

Yvonne Oldfield

Member of the Employment Relations Authority