IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 12/10
5286364

BETWEEN	SERVICE AND FOOD WORKERS UNION NGA RINGA TOTA Applicant
AND	SANFORD LIMITED Respondent

Member of Authority:	Philip Cheyne
Representatives:	Peter Cranney, Counsel for the Applicant Brent Keelty, Advocate for the Respondent
Investigation Meeting:	19 January 2010 at Christchurch
Determination:	22 January 2010

DETERMINATION OF THE AUTHORITY

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[1] Sanford Limited operates a fish processing plant in Timaru. Some of its employees at the plant belong to a union called Sanford Workers Association Timaru Incorporated (SWAT), others belong to the applicant union (SFWU) and some do not belong to a union. Each union has a collective employment agreement with the company. The SFWU agreement expired in June 209 and during bargaining to renew this collective agreement SFWU asked the company to provide a copy of the current SWAT collective agreement and applicable wage rates. Sanford Limited refused to provide this information. SFWU says that the company is in breach of s.34 of the Employment Relations Act 2000 and seeks orders from the Authority requiring the company to provide the requested information.

[2] To resolve this problem I will explain a little more fully what happened before considering the application of the Employment Relations Act 2000 to those facts.

What happened

[3] The SWAT collective agreement expired on 31 May 2009 and the parties negotiated and settled a new collective agreement.

[4] The previous SFWU collective agreement expired on 30 June 2009. SFWU initiated bargaining for a new agreement and the parties met for that purpose on 17 June 2009. Sometime earlier a SFWU member had found a copy of what appears to be the SWAT collective agreement that expired on 30 May 2009. Later was found a single sheet of paper headed *SWAT* which appears to show new pay rates for levels 1 – 5 and grades 1 -5. It is not apparent whether the single sheet represents a claim, an offer or the settlement; nor is it apparent who created it.

[5] Chas Muir is SFWU's organiser for its Sanford members. Brent Keelty is Sanford's branch manager. During the negotiations on 17 June Mr Muir asked Mr Keelty for a copy of the latest SWAT agreement and rates of pay. He did this because of members' suspicion that they were being disadvantaged compared to the SWAT members. Mr Keelty refused to provide this information saying that it was not part of their (Sanford & SFWU) bargaining. The bargaining did not produce a settlement.

[6] There was further bargaining on 19 August 2009. Mr Muir told Mr Keelty that SFWU members wanted pay parity with SWAT members and he again asked for the SWAT agreement and pay rates. Mr Keelty again declined. He said that different clauses in the different contracts meant that a comparison of pay rates only was not *apples for apples*. Again, the bargaining did not produce a settlement.

[7] On 26 August 2009 Mr Muir wrote to Mr Keelty requesting a copy of the latest SWAT agreement and the current rates of pay under that agreement. The request was made pursuant to s.34 of the Act in relation to the claim for wage increases and Sanford's *rationale behind offering workers of similar ability and experience being paid at different rates*. That was a reference to the exchanges between the two men during the bargaining.

[8] When Sanford's did not provide the requested information SFWU instructed solicitors who wrote to Mr Keelty on 14 October. Mr Keelty replied on 19 October saying *As previously stated, we shall not be providing the information as it is confidential to S.W.A.T members. Besides which, it is not relevant to the negotiations. Different agreements with different conditions will have varying benefit, as to what suits its members*.

[9] These proceedings were initiated and in its reply Sanford repeats the assertions about confidentiality and relevance. The parties' bargaining has not progressed in the meantime.

Statutory outline

[10] The principle operative statutory provisions are s.4, s.32(1)(e) and s.34. They must be construed and applied in keeping with the object of the Act set out in s.3, the object of *Part 5 Collective Bargaining* of the Act set out in s.31 and in the context of other provisions concerning good faith and collective bargaining.

[11] Relevantly, s.4 says that the parties to an employment relationship must deal with one another in good faith. That includes not misleading one another and requires them to be active and constructive in maintaining a productive employment relationship in which they are, amongst other things, responsive and communicative. S.4(1A) includes a specific provision about the supply of information but it is not relevant to the present circumstances. S.4 does say that employment relationships include those between an employer and a union and that the duty of good faith applies to bargaining for a collective agreement.

[12] S.32 stipulates a number of things which the duty of good faith requires a union and an employer bargaining for a collective agreement to do. Relevantly, they must consider and respond to proposals made by each other and they must provide to each other on request and in accordance with s.34 *information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining*. Requests and responses are subject to the detailed provisions of s.34.

[13] In this case there is no dispute that the SFWU letter dated 26 August 2009 complied with s.34(2). The information sought was specified sufficiently to enable it to be indentified. The letter specified the claim and the response to the claim in respect of which information was sought, as mentioned above. The letter asked for the information to be provided within 14 days which I find to be a reasonable time. As noted, the company simply declined to provide the information.

Sanford's position

[14] The first argument made is that the information sought is confidential. I accept counsel's submission that confidentiality is not a valid basis for refusing to provide the information requested. Confidentiality not providing a ground for refusing information is made clear by s.34(7) which limits the use and dissemination of all information provided, including confidential information. If requested information is reasonably considered to be confidential, the recipient of the request *must provided the information requested – to an independent reviewer …* pursuant to s.34(3)(b) (emphasis added). The independent reviewer is a person appointed by mutual agreement and s.34 has detailed provisions for that person to apply, including deciding whether the information should be treated as confidential. It is not necessary to canvass those provisions here since the company has not taken any steps to appoint an independent reviewer despite its entitlement to do so for confidential information.

[15] The second argument made by the company is that the requested information is not relevant to the SFWU negotiations. I agree with counsel's submission that the issue is not *relevance* per se but whether the information is *reasonably necessary to support or substantiate claims or responses to claims made for the purpose of bargaining*.

[16] SFWU is claiming wage parity with the SWAT agreement. The company response to that claim is an offer of hourly rates that are apparently lower than the SWAT rates supported by the rationale that there are differences between the two agreements that must be considered as well as hourly pay rates. I find that the current SWAT agreement (including pay rates) is information *reasonably necessary to support or substantiate* Sanford's response to SFWU's claims. This information should have been supplied to SFWU or a mutually agreed independent reviewer and Sanford is in breach of s.34 in not doing so.

Remedies

[17] I am asked to make a compliance order.

[18] S.137 empowers the Authority by order to require a party to do any specified thing to prevent further non-compliance with any provision of Part 1 or Parts 3 to 7 of

the Act. These Parts include the provisions relevant to this matter. As noted above I find that Sanford has not complied with these Parts of the Act.

[19] Where the Authority makes a compliance order, as I do here, s.137(5) permits the Authority to adjourn the matter without making a final determination to enable the compliance order to be complied with while the matter is adjourned. I anticipate that the company will now comply with s.34, its obligations having been made clear in this determination. Accordingly I will adjourn these proceedings for 14 days to allow Sanford the opportunity to meet its obligation to respond to the information requested in accordance with the Act.

[20] Costs are reserved.

Philip Cheyne
Member of the Employment Relations Authority