

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 423/10
5319632

BETWEEN EASTERN BAY
INDEPENDENT
INDUSTRIAL WORKERS
UNION INC.
Applicant

AND NORKSE SKOG TASMAN
LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Lou Yukich for Applicant
Kylie Dunn for Respondent

Investigation Meeting: 28 September 2010

Determination: 29 September 2010

DETERMINATION OF THE AUTHORITY

[1] The Eastern Bay Independent Industrial Workers Union (“EBIIWU”) makes an application for facilitation regarding the collective bargaining currently occurring between the EBIIWU and Norkse Skog Tasman Limited (“Norske Skog”) pursuant to section 50C of the Employment Relations Act 2000 (“the Act”).

[2] EBIIWU and Norske Skog were parties to a collective agreement covering employees working in the Control Systems area. The term of the collective agreement was 15 December 2004 to 7 February 2007.

[3] The bargaining for a new collective agreement started in December 2006. On 5 November 2008 Norske Skog applied for facilitation in relation to this bargaining which was accepted on 19 November 2008.

[4] On 20 November 2008 the parties agreed to “roll over” the expired collective agreement for the period 20 November to 7 February 2009. This arrangement was

conditional on the parties returning to the bargaining, including facilitation of the bargaining by the Authority.

[5] The parties participated in facilitation on 13 and 14 January 2009 with recommendations being provided by the Authority in July 2009. Bargaining has continued.

[6] EBIIWU has made the request on the grounds that:

- pursuant to s 50C(3) of the Act the circumstances relating to bargaining have changed; or
- the bargaining has become protracted.

[7] In the alternative, EBIIWU says if the Authority determines this is a new facilitation then the tests in s 50C(1)(b) or (c) have been met. Norske Skog opposes to the application for facilitation.

Grounds on which the Authority may accept a reference

[8] The grounds on which the Authority may accept a reference for facilitation are set out in section 50C of the Act.

- (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 lockouts have been protracted or acrimonious:
 - ...
- (3) The Authority must not accept a reference in relation to bargaining for which the Authority has already acted as a facilitator unless-
 - (a) circumstances relating to the bargaining have changed; or
 - (b) the bargaining since the previous facilitation has been protracted.

Reference under s 50C(3)

[9] There are two limbs to section 50C(3) of which, only one must be satisfied. Either the circumstances relating to bargaining have changed, or the bargaining since the last facilitation has been protracted.

Changed circumstances

[10] Facilitation was provided to the parties in January 2009 with written recommendations being presented in July 2009. Those recommendations were accepted by EBIIWU but were not accepted in their entirety by Norske Skog on the basis that its circumstances had changed. It is the notice by Norske Skog that its circumstances had changed that EBIIWU relies on for its application under s 50C(3).

[11] It is more likely than not that during the period from February 2009 to July 2009 the circumstances of Norske Skog had changed. In support of his submissions Mr Yukich referred the Authority to the fact that Norske Skog had restructured in June 2010 which saw the implementation of a new role. Mr Yukich's example however, does not relate to the bargaining per se, but rather to an issue he has with the offer of employment made to the individual taking up appointment in the new role.

[12] The EBIIWU has not established that the circumstances relating to the bargaining have changed.

Protracted bargaining

[13] The test under this subsection of the act has a different threshold than section 50C(1)(b). Under s 50C(3) the bargaining only needs to be protracted and not "unduly" protracted.

[14] The bargaining has continued since July 2009. The parties have met on numerous occasions but not with the assistance of a mediator as recommended by the facilitator. The parties have exchanged proposals and counter-proposals and industrial action has been taken on more than one occasion.

[15] The information provided to the Authority about the number of bargaining meetings held, and the extent of proposals and counter proposals put by the parties, has led me to conclude that the bargaining has become protracted.

[16] The application for facilitation is granted. The file will now be passed to another member for that purpose.

Vicki Campbell
Member of Employment Relations Authority