

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 363/10
5308252

BETWEEN AIR NEW ZEALAND

AND FLIGHT ATTENDANTS AND
 RELATED SERVICES
 ASSOCIATION

Member of Authority: Yvonne Oldfield

Representatives: Andrew Caisley for applicant
 Lisa Keys for respondent

Investigation Meeting: 18 August 2010

Determination: 18 August 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Air New Zealand, asks the Authority to accept a reference to facilitation of bargaining in relation to a new Collective Agreement for the applicant's Flight Service Managers. The application is made pursuant to s 50 C (1) (b) of the Employment Relations Act on the grounds:

“That bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.”

[2] The application was first lodged in June 2010. Shortly after (and within the time for lodging a Statement in Reply) the parties agreed to attempt further mediation before the Authority proceeded further with its investigation.

[3] On 4 August Air New Zealand advised the Authority that it now wished the matter to be set down for an investigation meeting, on the basis that it had little confidence that there was any prospect of real progress in bargaining. At that point the respondent union (FARSA) remained opposed to any reference to facilitation on the basis that it did not consider that efforts to advance the bargaining had yet been exhausted. Over the course of the intervening fortnight the parties have met again in mediation but are not significantly further on. Ms Keys now informs the Authority that the application for reference to facilitation is no longer opposed.

Issues

[4] Counsel for the applicant referred me to *McCain Food (NZ) Ltd v SFWU* 8 April 2009, *Colgan C J, WC 5/09* noting that the Court stated there that:

“There must have been unduly protracted bargaining (the temporal element) and extensive efforts must have been made in the bargaining (the “activity” requirements) that have nevertheless failed to resolve the difficulties that have precluded the parties from entering into a collective agreement. One constituent of those extensive efforts must have been mediation assistance. All elements of the test must have occurred before the grounds under section 50C (1) (b) for a reference to facilitation are established.”

[5] Notwithstanding the withdrawal of the union’s opposition to the application, it remains that the matter cannot be referred to facilitation unless it meets the threshold set in s. 50C (1) (b). That is the sole issue for determination here.

Determination

[6] The parties have advised that the chronology of the bargaining is not in dispute. It can be summarised as follows.

- i. Air New Zealand and FARSA are parties to a collective agreement covering the work done by Flight Service Managers. It came into force on 8 September 2008 and was expressed to

expire on 1 September 2009. It continues in force pursuant to section 53 of the Employment Relations Act 2000.

- ii. On 1 September 2009 FARSA initiated bargaining for a new collective agreement to cover Flight Service Managers.
- iii. In the period 1 September 2009 to 13 August 2010 the parties have had 32 days of scheduled meetings. Seven of these days were conducted with the assistance of a mediator provided by the Department of Labour and have occurred in the latter part of the period.
- iv. Most of the meetings have been for full days.
- v. At this stage, no further mediations are scheduled.
- vi. The parties have been unable to reach agreement on any of the substantive issues between them. Both parties have tabled a number of claims which remain unresolved.
- vii. The applicant considers the provision of facilitation assistance has now become appropriate.

[7] In relation to the first limb of the test (whether the bargaining has been unduly protracted) it is the applicant's position that a long time has passed since November 2009. As to the efforts which have been made to reach agreement it notes that after *"many long meetings...there is no realistic prospect of settlement on the horizon."*

[8] I agree that the statutory threshold has been met. The application for reference to facilitation is granted. The file will now be passed to another member for that purpose.

Yvonne Oldfield

Member of the Employment Relations Authority

