

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 9
3003852

BETWEEN TAYLOR PRESTON LIMITED
Applicant

AND NEW ZEALAND MEAT
WORKERS AND RELATED
TRADES UNION
INCORPORATED
Respondent

Member of Authority: M B Loftus

Representatives: Johanna Drayton, Counsel for Applicant
Peter Cranney, Counsel for Respondent

Investigation Meeting: On the papers and telephone conference of 28 February
2017

Determination: 28 February 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an application matters relating to bargaining for a collective agreement be referred to facilitation pursuant to s 50B of the Employment Relations Act 2000 (the Act).

Background

[2] The applicant, Taylor Preston Limited, operates a meat export processing plant in Wellington. It employs some 850 people of whom approximately 270 are members of the New Zealand Meat Workers and Related Trades Union Incorporated (the union) whose terms and conditions of employment are specified in a collective agreement which expired on 14 May 2016.

[3] Bargaining for a replacement was initiated on 16 March 2016. It is continuing with Taylor Preston saying the parties are now unable to make progress due to an inability to agree fundamental monetary provisions. These include wage rates and effective dates, overtime criteria and night shift allowances.

Grounds for facilitation

[4] The Act provides that where parties to collective bargaining have serious difficulties in concluding a collective agreement one or more may apply to the Authority for reference to facilitation to help them resolve those difficulties.

[5] The relevant parts of s.50C(1) of the Act provide a reference for facilitation must not be accepted unless one or more of the following grounds exist:

- (a) *That –*
 - (i) *In the course of the bargaining, a party has failed to comply with the duty of good faith in section 4; and*
 - (ii) *The failure –*
 - (A) *was serious and sustained; and*
 - (B) *has undermined the bargaining;*
- (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 one or more strikes or lockouts; and*
 - (ii) *The strikes or lockouts have been protracted or acrimonious;*
- (d) *That –*
 - (i) *In the course of the bargaining, a party has proposed a strike or lockout; and*
 - (ii) *The strike or lockout, if it were to occur, would be likely to affect the public interest substantially.*

[6] Section 50C(3) specifies circumstances in which the Authority is precluded from granting an application for facilitation but those circumstances do not exist here.

Grounds relied on for facilitation

[7] Taylor Preston relies on the following grounds in making its application:

- (a) The 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 (s.50C(1)(b)); and
- (b) In the course of the bargaining, there have been strikes which have been protracted or acrimonious (s.50C(1)(c)).

[8] The union agrees the circumstances pleaded by Taylor Preston as warranting a referral to facilitation exist and supports the application.

Determination

[9] The parties agree I determine the application on the papers and comments made during today's telephone conference. Those papers include affidavit evidence from Taylor Preston supported by extensive documentation.

[10] The papers, along with the union's response, convince me the threshold for referring this matter to facilitation have been met.

[11] It is very clear there are grounds for referral under s.50C(1)(b) of the Act. The bargaining process commenced a year ago. That is a protracted period of time during which the parties have met fifteen times. Three of those meetings were conducted with the assistance of a mediator. That, I conclude, fulfils the requirement the parties efforts be extensive.

[12] Furthermore there have been strikes and the fact they are ongoing and of indefinite duration mean they are potentially protracted. There are also grounds for facilitation under s 50C(1)(c).

[13] Accordingly I accept the application for reference to facilitation of the bargaining between Taylor Preston Limited and the New Zealand Meat Workers and Related Trades Union Incorporated.

[14] Another Member will contact the parties shortly to organise the facilitation process. The parties agree this should take place as a matter of urgency.

Costs

[15] The application was made by Taylor Preston without opposition from the union. No costs have been sought or will be awarded.

M B Loftus
Member of the Employment Relations Authority