

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 242  
3140082

BETWEEN	FIRST UNION INC Applicant
AND	DS and CM HOWARD LIMITED Respondent

Member of Authority:	Andrew Dallas
Representatives:	Oliver Christeller, counsel for the Applicant David Appleton, advocate for the Respondent
Investigation Meeting:	On the papers
Date of Determination:	4 June 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] First Union (First) has made application for referral of its bargaining dispute with DS and CM Howard Limited (Howard Limited) to facilitation. Howard Limited does not oppose the application.

[2] The bargaining dispute between the parties, which has a rich and colourful history, relates to a proposed collective agreement covering employees at the “Pak’nSave” supermarket in Richmond, Nelson.

[3] By agreement with the parties this matter was investigated by the Authority “on the papers” with reference to the statement of problem and statement in reply and without the provision of submissions or further information.<sup>1</sup>

### **What gave rise to the bargaining dispute?**

[4] Bargaining was initiated by First on 16 November 2015. Despite the parties, presumably, using their best endeavours to enter into a bargaining process agreement, this was not achieved. Claims were eventually exchanged between the parties and a series of bargaining meetings occurred, including with one assisted by a mediator, between January 2016 and May 2019.

[5] However, not only was the bargaining between the parties plainly protracted it has also been extremely acrimonious. There has been various forms of industrial action including a complete withdrawal of labour, picketing, which included the presence of a giant inflatable rat, a living wage petition and media and political campaigns orchestrated by First. But yet, the struggle nought availeth a collective agreement.

[6] Of particular note, First contends, and this was not disputed, that Howard Limited initially refused to bargain over the inclusion of wage rates in the proposed collective agreement. Of some difficulty for First, such an approach to bargaining was found not to be a breach of good faith by the Employment Court in the circumstances of another bargaining dispute involving it.<sup>2</sup> However, Parliament subsequently amended the Employment Relations Act 2000 (the Act) to explicitly require the inclusion of the rates of wages or salaries payable to employees in the collective agreement to which they were bound.<sup>3</sup>

[7] Evidently in response, Howard Limited agreed to include wage rates in the proposed collective agreement. However, First contended that such rates were no more than its members were already being paid and therefore the bargaining over wages was “meaningless”. This was disputed by Howard Limited. In any event, the obviously entrenched position of the parties’ means that little, if any, actual progress towards settling a collective agreement has been made.

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<sup>1</sup> Statement of Problem dated 20 May 2021 and Statement in Reply dated 2 June 2021

<sup>2</sup> See, *Kaikorai Service Centre Limited v First Union* [2018] NZEmpC 160 at [72]

<sup>3</sup> Employment Relations Act 2000, s 54(3)(a)(ii)

## **Referral for facilitation**

[8] The purpose of facilitation is to provide a structured process, which is often lacking amid bargaining dysfunction, which enables parties involved in bargaining who are experiencing significant and often very serious difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving those difficulties. The Authority has a long and successful track record in assisting parties who find themselves in such predicaments.

[9] Having carefully considered the material before the Authority, I am satisfied the grounds for facilitation set out in s 50(C)(i) of the Act are made out in all respects. Therefore, I refer the bargaining between First and Howard Limited to another Member of the Authority for facilitation.

## **Next Steps**

[10] An Authority Officer will contact the parties to discuss preparation for a facilitation in Nelson commencing as soon as possible.

## **Costs**

[11] First sought costs. This was opposed by Howard Limited. However, as this matter relates to a protracted collective bargaining dispute and the obvious need for the Authority to consider intervening to assist the parties through facilitation costs, appropriately, should lie where they fall.

Andrew Dallas  
Chief of the Employment Relations Authority