

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 87  
5602341

BETWEEN                      FIRST UNION  
   INCORPORATED  
   Applicant

AND                                BUNNINGS LIMITED  
   Respondent

Member of Authority:      Vicki Campbell

Representatives:            Peter Cranney for Applicant  
   David France for Respondent

Investigation Meeting:      On the papers

Submissions Received:      29 February 2016 from Applicant  
   14 March 2016 from Respondent

Determination:                17 March 2016

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] First Union Incorporated (“the Union”) has applied for a reference for facilitation on the grounds that:

- a) 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; and/or
- b) in the course of the bargaining there have been strikes and the strikes have been acrimonious.

[2] Bunnings Limited (“Bunnings”) does not oppose the application and has acknowledged that bargaining has been ongoing since June 2015, that there has been strike action and certain strike action has given rise to allegations of breaches of good faith.

[3] By consent this matter has been decided on the papers.

### **Grounds for referral to facilitation**

[4] Under section 50C of the Employment Relations Act 2000 (“the Act”) the Authority must not accept a reference for facilitation unless satisfied that one or more of the statutory grounds under section 50C(1)(a), (b), (c) or (d) of the Act exists. The union relies only on sections 50C(1)(b) and (c) of the Act.

[5] Bargaining was initiated by the Union on 1 May 2015 followed by a bargaining process agreement being signed on 5 June 2015. Claims were exchanged and the parties met for bargaining on 24, 25 and 26 June , 17 July, 17 August 2015, 13 November and 15 December 2015.

[6] The parties have met in mediation over three days in July and October 2015.

[7] Strike action commenced on 24 September 2015 which became acrimonious and led to allegations by Bunnings that the Union had breached its obligations of good faith. Those allegations form the basis of an application lodged on 20 October 2015 which is currently before the Authority but which has not yet been set down for investigation.

[8] This was followed by allegations by the Union that Bunnings have breached the terms of the employment agreement and its obligations of good faith. Those allegations are set out in an application lodged on 20 November 2015 and which is currently awaiting the applicants intentions before being allocated to an Authority Member.

[9] The parties have been unable to reach a concluded agreement despite meeting as recently as 5 February 2016 in a further attempt to discuss the claims.

[10] I have concluded that the ground under section 50C(1)(b) of the Act is established. The bargaining has been unduly protracted. The bargaining has extended

over a nine month period involving 11 days in bargaining. Extensive efforts, including four bargaining sessions with the assistance of a mediator employed by the Ministry of Business Innovation and Employment, have failed to resolve the difficulties.

[11] The grounds under section 50C(1)(c) relating to strikes which have been protracted and acrimonious is also established. There has been strike action carried out over 12 days which are ongoing. Both parties have commenced proceedings in the Authority alleging breaches of good faith and breaches of the employment agreement. Bunnings has acknowledged that the strikes have been acrimonious.

[12] For the reasons set out above, the Authority shall accept the reference to facilitation and, as required by section 50D of the Act another Member will provide facilitation of the collective bargaining.

Vicki Campbell

Member of the Employment Relations Authority