

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 250/09
5164235**

BETWEEN UNITE INCORPORATED
 Applicant

AND HMSC-AIAL LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: John Minto, Advocate for Applicant
 Rob Towner, Counsel for Respondent

Investigation Meeting: Consideration on Papers

Memoranda Received: 27 July 2009
 28 July 2009

Determination: 29 July 2009

DETERMINATION OF THE AUTHORITY

The problem

[1] By its statement of problem lodged 2 June 2009 the applicant union Unite Incorporated ("the Union") makes application that the parties be referred to facilitation. By its statement in reply first lodged 17 June 2009 and subsequently amended and lodged on 8 July 2009, the respondent employer HMSC-AIAL Limited ("the Company") does not oppose the application.

[2] The Union has made previous application for facilitation. The parties were referred to mediation and no final determination was made. The parties have been unable to resolve the differences between them by mediation.

[3] I have determined the application having regard to the Company's consent to it, the admitted pleadings and the further memoranda of the representatives.

The facts

[4] The Union is registered union under Part 4 of the *Employment Relations Act 2000* ("the Act").

[5] The Company is a joint venture limited liability company that operates food and beverage outlets in the terminal building at Auckland International Airport. It employs members of the Union.

[6] In 2005, the Union initiated bargaining with the Company but subsequently withdrew from that bargaining.

[7] On 7 March 2006 the Union again initiated bargaining with the Company.

[8] The parties met for bargaining negotiations on 2 May 2006, 18 May 2006 and 8 June 2006.

[9] On 6 July 2006 the parties attended mediation with a Department of Labour mediator.

[10] On or about 14 July 2006 and again on 23 July 2006, the employee Union members engaged in strike action.

[11] On 28 July 2006 the Union made application to the Authority for facilitation. The Authority referred the parties to mediation.

[12] On 29 November 2006 the parties attended mediation with a Department of Labour mediator.

[13] On 24 April 2007, 28 July 2007, 28 August 2007, 24 April 2008, and 29 April 2008 the parties met for further bargaining negotiations.

[14] In June 2008 the employee Union members engaged in two further strikes.

[15] The Union lodged proceedings in the Authority by statement of problem dated 4 July 2008 seeking a declaration that the Company had breached the good faith provisions of the Act. In respect of that application the parties attended mediation on 28 August 2008 and again on 8 October 2008.

[16] The parties have continued to correspond in relation to the differences between them but have been unable to advance the collective bargaining negotiations.

The merits

Facilitation

[1] The Authority may only accept a reference for facilitation where one or more of the grounds set out at section 50C of the Act exist. That section provides:-

50C Grounds on which Authority may accept reference

(1) The Authority must not accept a reference for facilitation unless satisfied that 1 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 1 or more strikes or lockouts; and*
- (ii) the strikes or lockouts have been protracted or acrimonious:*

(d) that—

- (i) in the course of 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.*

(2) *For the purposes of subsection (1)(d)(ii), a strike or lockout is likely to affect the public interest substantially if—*

- (a) *the strike or lockout is likely to endanger the life, safety, or health of persons; or*
- (b) *the strike or lockout is likely to disrupt social, environmental, or economic interests and the effects of the disruption are likely to be widespread, long-term, or irreversible.*

(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.*

[17] The Union has previously made application for facilitation. That application was referred to mediation without a final determination as to whether the parties should be referred to facilitation¹.

[18] This present application is not opposed. The Company pleads that it agrees that the bargaining between it and the Union has been unduly protracted and that extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement. It agrees that bargaining meetings and mediation occurred as described above.

[19] I accept that the negotiations between these parties in relation to a collective employment agreement were commenced in March 2006. For a number of years now the parties have been unable to advance negotiations between them to conclude a collective employment agreement. I am satisfied that the bargaining has, as a matter of fact, been protracted and unduly so.

[20] I accept that there has been extensive correspondence between the parties in relation to the bargaining aimed at resolving the difficulties between them. As well, I further accept the parties have attended mediation sessions together with Department of Labour mediators in an effort to progress matters. I acknowledge too, that this is the second application the Union has made for facilitation and there was also an

¹ Application dated 28 July 2006, 5046369

application in which the Union sought a declaration that the Company was not acting in good faith. I am satisfied that as a matter of fact, extensive efforts have failed to resolve the difficulties between the parties.

The determination

[21] For the foregoing reasons, I determine that the parties are deserving of the Authority's intervention to assist them towards a collective employment agreement. **I therefore grant the application under section 50C(1)(b) of the *Employment Relations Act 2000* and refer these parties and all matters relating to their bargaining for a collective agreement, to facilitation. The parties must commit themselves to that process in good faith.**

[22] The matter is referred to the Chief of the Authority for the necessary arrangements to be made.

The costs

[23] I do not expect to have to address costs having regard to the consent between the parties. However, in the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, a party seeking costs must lodge an application by memorandum within 14 days of the date of this Determination, for my consideration. I will not consider any application or submission lodged outside that timeframe without leave.

Leon Robinson
Member of Employment Relations Authority