

**APPLICATION FOR DECLARATION TO END BARGAINING - S 42H
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2020 WAIRC 00269

CORAM : PUBLIC SERVICE ARBITRATOR
SENIOR COMMISSIONER S J KENNER

HEARD : WEDNESDAY, 29 APRIL 2020

DELIVERED : WEDNESDAY, 29 APRIL 2020

FILE NO. : PSAC 13 OF 2019

BETWEEN : WESTERN AUSTRALIAN POLICE UNION OF WORKERS
Applicant

AND

WESTERN AUSTRALIA POLICE FORCE
Respondent

Catchwords : Industrial Law (WA) - Application for declaration to end bargaining
- Commission satisfied statutory requirements met - Declaration
terminating bargaining period issued

Legislation : *Industrial Relations Act 1979* (WA) ss 42G, 42H
Industrial Relations (General) Regulations 1997

Result : Declaration issued

Representation:

Counsel:

Applicant : Mr M Ritter SC and with him Mr D Stojanoski of counsel
Respondent : Mr J Carroll of counsel

Solicitors:

Applicant : Slater and Gordon
Respondent : State Solicitor's Office of Western Australia

*Reasons for Decision**Ex Tempore*

- 1 The substantive application in this matter relates to bargaining between the applicant and the respondent for a replacement industrial agreement to replace the Western Australia Police Industrial Agreement 2017. That agreement had a nominal expiry date of 30 June 2019.
- 2 The notice to initiate bargaining for the making of a new industrial agreement was served by the applicant on the respondent under the *Industrial Relations (General) Regulations 1997* on 2 April 2019. The record shows that the respondent responded to the effect that it wished to bargain for a new industrial agreement and notice to that effect dated 3 April 2019 was filed on 26 April 2019. I am therefore satisfied that formal bargaining under the terms of the Act and the Industrial Relations General Regulations commence at that time.
- 3 I should observe, however, that despite formal bargaining having commenced at this time, informal negotiations for a replacement industrial agreement, in fact, commenced sometime earlier, in about late February 2019. On 19 June 2019, the applicant made application to the Commission for assistance in bargaining for the making of a new industrial agreement. Since the commencement of the bargaining process, the record reflects that firstly, there have been eight compulsory conferences convened by the Commission between July 2019 and March 2020. Secondly, the parties have met for the purposes of negotiating a new industrial agreement at least 15 times.
- 4 Thirdly, there have been five offers made by the respondent to the applicant for a new industrial agreement. All five offers have been rejected, including the fifth and last offer, which was made on 8 November 2019, which offer was put to a ballot of members of the applicant Union on 6 February 2020. That ballot closed on 5 March 2020. On 11 March 2020, the applicant informed the respondent and the Commission that the 65 per cent majority support requirement under the applicant's rules had not been met, and therefore, the offer was taken to have been rejected. Additionally, to these matters, the Commission has made a number of suggestions to the parties for the resolution of the dispute. It has issued a formal recommendation and has also endeavoured to assist the parties to reach agreement for a partial arbitration under s 42G of the Act. Regrettably, despite these endeavours by the parties and the Commission, the parties are no closer to reaching agreement.
- 5 The Commission is empowered under s 42H(1) of the Act to declare bargaining between the parties has ended. Under subsection (1) the Commission can do so if it is satisfied as to a number of matters. An application was made on 4 October 2019 by the applicant for such a declaration, but that application was adjourned on 29 October 2019, on the basis of there being further discussions between the parties, and conciliation conferences in the Commission, which, in fact, ultimately led to the fifth offer. I record at this point that the application to terminate the bargaining period under s 42H of the Act is not opposed by the respondent.
- 6 The matters for the Commission to consider under s 42H are firstly, that the applicant has bargained in good faith. Secondly, that bargaining between the applicant and the other negotiating party has failed. And thirdly, there is no reasonable prospect of reaching an agreement. As I have already mentioned, the parties have helpfully filed an agreed statement of facts which sets out the factual background to-date, key aspects of which I have summarised in these reasons thus far.

- 7 For the purposes of s 42H(1)(a) of the Act, as to the meaning of good faith, some indication of the matters that may be considered by the Commission are set out in s 42B of the Act. This requires, by s 42B(1), that parties in negotiations for an industrial agreement do so in good faith. It is clear by s 42H(2) that the concept of good faith is not to be limited in meaning. However, some indication of what Parliament intended that the Commission could have regard to is set out in ss 42B(2)(a) to (h).
- 8 There can be no suggestion, in my view, that in this case, the applicant has not at least met its obligations under s 42B(2), and therefore I am satisfied that the requirements of s 42H(1)(a) is met. Self-evidently, as no industrial agreement has been concluded between the negotiating parties, this must mean, axiomatically, that bargaining between the negotiating parties has failed. There may be other circumstances in which it is open for the Commission to conclude that bargaining between negotiating parties has failed for the purposes of s 42H(1)(b), but it is not necessary to explore that further in the present matter.
- 9 Finally, is the issue of whether, in the Commission's view, there is any reasonable prospect of the negotiating parties reaching an agreement. I see no reason to not give these words their ordinary and natural meaning. In accordance with the Shorter Oxford Dictionary, "reasonable" means, relevantly:

"Not irrational, absurd or ridiculous. Not extravagant or excessive. Moderate."

- 10 "Prospect" is defined to relevantly mean:

"A mental looking forward, expectation, or reason to look for something to come. That which one has to look forward to."

- 11 From these meanings, in the context of s 42H and Division IIB of the Act as a whole, I consider that a test or a question to be asked can be whether there is at least a moderate expectation of the parties reaching an agreement. From the history of this matter, and the positions most recently adopted by the parties, I do not consider that I am able to conclude that a moderate expectation exists that the parties will reach an agreement. Accordingly, for these reasons, the Commission will issue a declaration under s 42H(1) of the Act that bargaining has ended between the negotiating parties.