



Express Search



▶ NEWS ▶ HR STREAM ▶ IR/HR JOBS ▶ WHAT'S ON ▶ RESOURCES ▶ ABOUT US ▶ FREE TRIAL ▶ SUBSCRIBE ▶ CONTACT

Latest News

SESSION ACTIVE

▶▶ Visy seeks to suspend strike under "cooling off" provisions

29 September 2009 1:20am

Visy's food packaging division is seeking to use the Fair Work Act's cooling-off provisions to stop about 100 workers at its factory in Melbourne's north striking for three months.

AMWU members at the Coburg packaging plant started an indefinite protected strike on September 17 in response to a three-day lockout by the employer.

Fair Work Australia yesterday heard Visypak Operations' application to put that strike on hold for three months under the Act's [s425](#), which allows the tribunal to suspend industrial action if it would assist in resolving a bargaining dispute or is in the public interest.

The plant's manager, Robert Street, told the tribunal that the strike had created "stress" and "ill-feeling" among the bargaining representatives (which also includes the CEPU) and that a suspension would help them revisit their positions and provide "a fair and reasonable chance to negotiate".

For the union, AMWU (Victorian branch) secretary Steve Dargavel gave evidence that despite the strike the parties had managed to reach agreement on some issues and come closer to resolution on others, including the key issue of consultation on contract staff and their pay rates.

Commissioner John Lewin asked the employer whether he should make the orders given that the Act, in establishing an enterprise bargaining system, was premised on the notion that industrial parties should be able to exert "economic coercion" on each other in seeking to reach a favourable agreement.

Given that employees were currently going unpaid on strike, they "may well decide that the point is fast approaching to accept what is on offer and start receiving wages," he said.

He continued that Parliament would have understood in passing the legislation that tension and conflict would commonly be associated with industrial action.

It therefore might be expected that there should be greater than the usual levels of stress and ill-feeling, sufficient to create an obstacle to bargaining, before a s425 order should be made, he said.

Barrister Stuart Wood, representing the employer, said the tribunal was in "virgin territory" because s425 and its predecessor in the Workplace Relations Act had not been the subject of a court or tribunal decision.

It required the tribunal to draw upon its expert industrial judgement to decide whether a cooling-off period would help the employer and unions reach agreement, he said.

He said he accepted that s425 is at odds with the broader dynamic of the Act, but said a suspension could be appropriate where, even though they are acting lawfully, parties were too deeply entrenched in a dispute to negotiate properly or where the losses from ongoing industrial action heavily outweighed the gains sought in bargaining.

In this case, while the parties had made progress, they were now "dug-in" to their positions and by intervening the tribunal might be able to assist them in bridging the remaining issues in contention, he said.

AMWU national project officer Tim McCauley in opposing the application said this was simply a situation where the employer would feel more comfortable – and possibly have a superior bargaining position – if the strike was stopped.

"We have had evidence from one bargaining representative that they would prefer to negotiate without industrial action – that is unsurprising, it is the nature of the beast – but that doesn't go to the matters at issue," he said.

He pointed out that if the order were made it would have a grievous impact on the employees in

LOGOUT ▶▶

SETTINGS ▶▶



Job vacancy:
Workplace
Relations Adviser
- BIZassistInfoline

Workplace Relations
Adviser -
BIZassistInfoline -
Melbourne

Job vacancy:

[Click here to see more jobs](#)

removing their right to strike and potentially exposing them to the serious legal sanctions associated with unprotected action.

If anything, further progress had been made since the strike commenced and suspending the action would not assist in resolving the matters in dispute, he said.

The Act required that suspending the industrial action must benefit all the bargaining representatives, and that case had not been made out, he said.

Commissioner Lewin reserved his decision.

PRINT PAGE 

 **Advanced Search**

Search for

Within From: Jan 01 1999

To: Sep 29 2009

Display 10 25

Words All words

Articles All Articles

SEARCH 



The source for IR/HR news

 RSS 1.0

[Latest News](#) | [HR Stream](#) | [IR/HR Jobs](#) | [What's On](#) | [Resources](#) | [About Us](#)
[Free Trial](#) | [Subscribe](#) | [Feedback](#) |  RSS 1.0

Specialist News

© Specialist News 2009