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▶▶ Cochlear fails to narrow AMWU's proposed bargaining order

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The AMWU told FWA today that high-tech hearing product manufacturer Cochlear had engaged in surface bargaining and stymied negotiations through its "rigid adherence" to bargaining protocols it forced on the union, while the company failed to derail the union's bid for a bargaining order.

Meanwhile, prior to the hearing of the competing bids for bargaining orders from the company and union, the parties agreed to resume negotiations, with five meetings over ten weeks scheduled to begin next month.

Opening the case for the AMWU, barrister Claire Howell told Commissioner Helen Cargill in Sydney this morning that after the union won a majority support determination in August 2009, it took the company nine months to develop a "bargaining protocol" (which the union said it was effectively forced to accept to ensure no further delays) and then a further eight months to respond to the claims it put on the table at the first negotiation.

She argued the [amended order](#) sought by the union (see [Related Article](#)) was justified because the protocol was a "roadblock to progress" in bargaining that "ties us up in legalistic knots".

Contrary to the company's claims that the protocol was essential to provide rules for bargaining, Howell said the rules were "found in the Act" and that sensible, mature parties should be able to negotiate under its framework.

Further, she claimed, Cochlear had engaged in capricious and unfair bargaining conduct by delaying negotiation by its inadequate response and by failing to respond to requests by the union for paid meetings with members.

She said the order for paid meetings isn't one the tribunal would frequently grant, but should be considered in the context of three years of negotiation, along with evidence about the conduct of the parties and their adherence to good faith bargaining obligations.

The union sought the order after it gave notice to the company that it intended to no longer be bound by the bargaining protocol, with Howell today saying the union objected to the "highly restrictive and formalistic" way in which Cochlear applied it, fashioning it "as a stick [with which] to beat the AMWU".

The company responded with its own bargaining order application, arguing that the union's repudiation of the bargaining protocol is a breach of good faith bargaining obligations (see [Related Article](#)). FWA is hearing both the union and company applications together, and treating evidence in one as evidence in the other.

Stuart Wood, SC, for Cochlear and the AiG, told Commissioner Helen Cargill this morning that the company's concessions ahead of the hearing, such as agreeing to a schedule of meetings and to provide a further response to the union's claim before negotiations resumed, meant the union could substantially narrow its bargaining order application.

He accused the union of having an "ulterior motive" in seeking to "rake over" every aspect of the history of its interactions with the company in a bid to obtain an "irrelevant order".

Wood warned that if the union persisted with seeking to sideline the bargaining protocol and other elements of its proposed order, then "we will be here for a long time".

He emphasised he wasn't making a threat but addressing matters of "practical case management", given the company maintained that the only matters left for the tribunal to resolve were whether there should be paid meetings for AMWU members and arrangements for the union to meet workers in their lunchroom.

The company didn't want the case (which is scheduled for five days) to descend into "legal trench warfare" and extend into next week and said it was up to FWA to "truncate" the case given that the

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union wasn't willing.

Howell, for the union, opposed the company's bid to have FWA narrow the basis of the case.

Commissioner Cargill acknowledged that she understood the argument Cochlear was putting to the tribunal but ruled that the AMWU was entitled to run the case as it saw fit.

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