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Employment Relations

ASSIGNMENT COVER PAGE

Assessment Task 2 - Individual Report

Course ID	BUSM4769 - Employee Relations
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1. Introduction

Enterprise bargaining is a vital procedure within Australia's industrial relations system, enabling employers and workers to engage in negotiations over the specific terms and conditions of employment at the company level (Townsend et al. 2013). When Anita Gelato, an “Israeli-born, world-famous gelato shop” (Delicious Australia 2024:1) in Australia, is getting ready for the approaching enterprise bargaining process, it is indeed necessary for the firm to have a strategic and well-planned approach. Advising the newly appointed executive, this paper will provide background information on EA and EA formation within the company, suggestions on how Anita Gelato should be ready for the discussions, the available strategic options, how to implement the proposed strategy in reality, and what actions to take in the event of conflicts.

2. Background & Discussion

Enterprise agreements (EAs) are collective agreements made at the enterprise level between employers and employees about terms and conditions of employment under the Fair Work Act 2009 (Townsend et al. 2013). They are an important feature of Australia's industrial relations system, allowing businesses to tailor employment arrangements to their specific needs while still providing employees with core protections and entitlements (McGrath-Champ 2003). According to the Fair Work Commission (2024), the current agreement governing employment terms at Anita Gelato is the *Anita Gelato Enterprise Agreement 2022 (AG2022/2466)*, which was approved on 4 August 2022 by the Deputy President Dean and has a nominal expiry date of 3 August 2026, which is a single-enterprise agreement.

Two key unions could potentially represent workers at Anita Gelato. Firstly, the Australian Manufacturing Workers Union (AMWU) covers a wide range of manufacturing industries, including food manufacturing, and its coverage extends to production workers, tradespeople, and other non-managerial employees in these sectors (AMWU 2024). As a gelato manufacturer, some of Anita Gelato's employees (those involved in the production process) may fall under AMWU's coverage. Secondly, the United Workers Union (UWU) was formed in 2019 through a merger of the National Union of Workers and United Voice, and its hospitality division represents workers in restaurants, bars, and cafes (UWU 2024). Depending on its exact operations, some of Anita Gelato's employees (e.g. those serving gelato in a retail setting) could potentially fall under UWU's hospitality coverage.

The process of making an enterprise agreement is regulated by the Fair Work Act 2009 and involves several key steps, including notification of intent to bargain, negotiation between the parties, employee approval of the proposed agreement by vote, and final approval by the Fair Work Commission (Peetz 2012). The key steps are explained below:

- Firstly, the employer informs workers in writing, using a specified format called Notice of employee representational rights (NERR), of their entitlement to have a representative present throughout the negotiation process;
- Secondly, the parties engage in discussions, and once negotiations are over, a draft of the enterprise agreement will be created (Fair Work Commission 2023);
- Thirdly, the employer arranges an access period of seven days before a vote to allow workers time to examine the agreement (Fair Work Commission 2023);
- Fourthly, the employer arranges a vote for workers to choose their acceptance or rejection of the agreement (the deal is deemed acceptable when a majority of votes are in favor) (Fair Work Commission 2023);
- Fifth, after the employees vote to adopt the agreement, the employer is required to submit the agreement procedure to the Fair Work Commission for examination and endorsement, which will assess the agreement to verify it follows the rules of the Fair Work Act and determine whether it satisfies the better-off overall criteria (Fair Work Commission 2023).

While the specific history of bargaining at Anita Gelato is unknown, several contextual factors suggest possible areas of heightened tension or danger of conflict in future negotiations.

Historically, enterprise bargaining in Australia has sometimes been characterized by adversarial relationships between employers and unions (Pekarek et al. 2017). In the food services industry specifically, there have been some high-profile industrial disputes in recent years, and “poor behavior from bar, cafe and restaurant owners has earned the industry a reputation for underpaying employees” (Dick 2020:1). In 2018, cooks employed by the restaurant Rockpool were found to be receiving just half of their rightful earnings, while being compensated for 38 hours per week, while in reality working an additional 15 to 20 hours of unpaid overtime (Millar 2018). In 2022, Chinese-styled restaurant Din Tai Fung was found to have under-compensated

17 employees, mostly young immigrants, by an amount exceeding \$157,000 (Marin-Guzman 2022).

3. Recommendations

3.1. How should the employer prepare?

To prepare for enterprise bargaining, Anita Gelato's employers, especially international managers, must have a thorough grasp of Australia's Labor Law. The company should conduct a thorough situational analysis to understand the bargaining context at the national, industrial, and also organizational levels, and the interests of key stakeholders (ASPC 2018). It is the responsibility of the employer to examine the present EA, identify the factors that contribute to disputes between the firm and its workers, and then develop a plan to address these concerns. Consultation with internal stakeholders, such as senior leaders, line managers, and HR, is crucial for aligning the bargaining position with business objectives and operational realities (ASPC 2018). Employee surveys or focus groups can also provide valuable insights into workforce priorities and concerns (Gahan et al. 2018). From then on, Anita Gelato should develop clear, measurable objectives for the bargaining process, supported by credible evidence.

3.2. What are the strategic approaches to negotiation?

There are two main strategic approaches to bargaining: (1) traditional bargaining and (2) interest-based bargaining (IBB). Traditional (or distributive) bargaining sees the parties as adversaries competing over fixed resources, with each side seeking to maximize their share of the pie through positional offers and concessions (Batra 2017). In contrast, IBB focuses on understanding underlying interests, sharing information openly, and finding mutually beneficial solutions that expand the pie (Barrett and O'Dowd 2006).

I recommend Anita Gelato adopt an IBB approach for several reasons. Firstly, IBB has been found to foster greater trust, efficiency, and satisfaction with outcomes compared to distributive bargaining (Cutcher-Gershenfeld 2015). By emphasizing collaboration and creative problem-solving, IBB can help the parties find win-win solutions that meet both business and employee needs (Paige 2015). Secondly, engaging in good faith, transparent negotiations can help build trust and buy-in for changes, reducing the risk of conflict or opposition during implementation (Eaton and Kochan 2014). However, IBB does not mean abandoning bottom lines altogether, as negotiations still need to have clear priorities and walk-away positions informed by rigorous

analysis and stakeholder consultation (Williams and Peters 2018). Therefore, the key for Anita Gelato is, essentially, to focus on interests rather than positions and remain open to alternative proposals that meet the company's core needs.

3.3. How is IBB applied?

In applying an IBB approach, Anita Gelato should start by sharing relevant information with employee representatives, such as the business case and workforce metrics (Cutcher-Gershenfeld 2015), which is a sign of transparency that can build trust and a shared understanding of the challenges and opportunities facing the company. The bargaining team should then engage in active listening and questioning to understand the interests and concerns underlying employee claims (Barrett and O'Dowd 2006), meaning exploring the "why" behind positions and looking for common ground or complementary needs that could form the basis for joint problem-solving (Castagnera 2014). Throughout the process, the company should maintain open and respectful communication with employees, providing regular updates on progress and seeking feedback on proposed changes (Paige 2015).

3.4. What if the parties disagree?

Even with an IBB approach, disagreements are likely to arise during enterprise bargaining (Paige 2015). In these situations, Anita Gelato should first seek to understand the reasons for the impasse and explore whether there are any unmet interests or concerns that could be addressed through further dialogue or creative option generation (Williams 2018). If the parties remain deadlocked, Anita Gelato could consider engaging the assistance of an independent third party, such as a mediator or conciliator from the Fair Work Commission, which offers free dispute resolution services that can help the parties work through contentious issues in a structured and impartial manner (Zack and Kochan 2019). In mediation, a neutral third person facilitates the parties' ability to communicate constructively with one another to resolve the dispute in a way that is acceptable to all parties (Latreille and Saundry 2014). At the same time, conciliation is a process wherein the disputing parties seek to resolve their differences by agreeing on the guidance of impartial third parties who offer suggestions on how to make the agreement legally binding (Limborg et al. 2019).

4. Conclusion

In conclusion, Anita Gelato can boost the possibility of achieving an agreement that is advantageous to both parties by adopting a negotiation strategy that is centered on “win-win” common interests. When there are problems between the parties involved, it may be beneficial to seek the aid of a neutral third party, such as a mediator or conciliator from the Fair Work Commission. Ultimately, the goal should be to maintain a collaborative, problem-solving mindset throughout the bargaining process to support the long-term success of the business and its workforce.

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