Virgin Australia seeks “intractable bargaining” declaration in first test of Labor’s new anti-strike laws

Martin Scott
29 June 2023

Virgin Australia has applied to the Fair Work Commission (FWC) for an “intractable bargaining” declaration in a dispute with 60 maintenance engineers at its West Australian subsidiary, Virgin Australia Regional Airlines (VARA).

If such a declaration is made, workers will not legally be able to strike or take any form of industrial action. Instead, they will be obliged to wait for the FWC to impose a new agreement. Hearings on the application will begin on July 21.

The workers have twice decisively voted down wage-slashing offers from the company during the more than two-year dispute, which has already featured 21 union-management bargaining meetings and seven FWC conferences.

Virgin’s move is being watched closely by big business, as it is the first test of the new anti-strike measures that came into effect on June 6, after being rushed through parliament late last year by the federal Labor government.

In other key disputes around the country, including at University of Sydney and Svitzer Australia, management and union bureaucrats have already used the threat of the “intractable bargaining” provisions to urge workers to accept rotten deals.

The comments of Fair Work Commissioner Bernie Riordan in the Svitzer case should serve as a stark warning for workers at VARA and more broadly. He warned workers that an agreement arbitrated by the FWC would “deliver what I believe will be an inferior result,” than the wage-slashing offer already on the table.

Under the new laws, the pro-business FWC can declare an industrial dispute “intractable” if an enterprise agreement has not been accepted by workers after nine months of bargaining.

Labor’s industrial relations laws, which were enthusiastically supported by the unions, were aimed at exactly what VARA is now trying to achieve—stripping workers of any legal right to oppose attacks on their wages, working conditions and jobs, in order to boost “productivity,” i.e., corporate profits.

VARA flies a small fleet of Fokker F100s and Airbus A320s, transporting fly-in-fly-out workers to mines through charter arrangements with BHP and Rio Tinto, and providing passenger and freight service to Christmas Island and the Cocos Islands on a federal government contract. These operations are a significant profit source for Virgin and were largely unaffected by border closures and other travel restrictions that grounded ordinary passenger flights in the early stages of the COVID-19 pandemic.

VARA also operates scheduled passenger flights on behalf of Virgin, mostly to remote parts of Western Australia (WA).

The airline is seeking to impose a massive cut to real wages, offering workers a 14.75 percent nominal pay rise over the next four years. This is far short of what is needed to keep up with the current official inflation rate of 7 percent, let alone make up for past losses, with workers having endured a pay freeze since their previous enterprise agreement expired in February 2021.

In response, the Australian Licensed Aircraft Engineers’ Association (ALAEA), which covers 43 of the 60 workers, has issued a meagre claim for just 3 percent per annum, backdated to 2021, still a substantial pay cut in real terms.

While the ALAEA is ostensibly opposing VARA’s intractable bargaining application, the union has worked throughout the dispute to limit industrial action by workers and minimise disruption to the airline’s

operations.

Since workers voted to strike in August, the ALAEA has issued eight notices of protected industrial action. The first action, on October 5, was a farcical one-minute stoppage, a practice that the union had previously employed at Qantas and other airlines before ramming through wage-slashing deals.

Following the one-minute stoppage at VARA, no action was called by the union until January 23, when the ALAEA announced weekly full-shift stoppages beginning on February 8. These continued until March 29 and have been followed by other sporadic strikes and work bans.

On May 31, the ALAEA announced full-shift stoppages for all night shifts from June 12, but assured the company that these actions will only proceed as long as enough workers make themselves available to work these shifts as overtime when they are not otherwise rostered on.

ALAEA secretary Steve Purvinas told workers this was about delivering "a financial hit against Virgin whilst not disrupting services." In fact, what it amounts to is the union casualising the entire workforce in the name of industrial action and compelling its members to break their own strike.

ALAEA members at Virgin Tech (VT), which handles maintenance for Virgin Australia's mainline operations across the country, began similar action on Tuesday, but this was called off early yesterday.

Purvinas gave no explanation for the sudden cancellation, merely noting it was "the best approach for now after discussions progressed yesterday." He dismissed workers' inquiries about "meetings and offers," evasively declaring, "Because of the unusual way Virgin go about things, it is not really like that."

Virgin Tech workers have been offered a nominal pay rise of just 3 percent, following a two-year wage freeze enforced by the ALAEA. The union brokered an enterprise agreement with the company in early 2021 that nullified a pay increase due that year and locked in 2020 pay rates for two years.

The deal also allowed the company to bring workers back on reduced hours during an unspecified "COVID recovery" period. The fact that the engineers could be summarily stood down in the first place was the product of an existing union-brokered clause that granted Virgin Tech "the right to stand a Team Member down with or without pay for any cause for which Virgin Tech cannot reasonably be held responsible."

Labor's new "intractable bargaining" laws are a major expansion of the FWC's already sweeping powers to shut down strikes based on the mere possibility of "significant economic harm."

These powers were introduced in the 2009 Fair Work Act by the Rudd Labor government, in close collaboration with the unions. This built upon harsh measures implemented by the Hawke and Keating Labor governments, including the limitation of strikes to enterprise bargaining periods.

Now, the draconian anti-strike powers of the FWC have been strengthened again, because Labor and the unions are aware they sit atop a powder keg. In order to suppress working-class opposition to Labor's wage-slashing austerity agenda, amid the skyrocketing cost of living, the unions will need to rely more heavily on the industrial courts.

The Albanese government's industrial relations changes have substantially lowered the bar for the FWC to intervene and shut down disputes. Companies will no longer be required to demonstrate the potential for "significant economic harm," but merely that "there is no reasonable prospect of agreement being reached if the FWC does not make the declaration."

The effect of this change can be seen in the VARA dispute. At the same time as the company applied to the FWC for the "intractable bargaining" declaration, it also sought a temporary suspension of industrial action until the hearings, under the pre-existing laws. This was rejected by the FWC, in part because the industrial action called by the ALAEA was only "moderate in severity," a consideration that is not relevant to the new measures.

The basic industrial rights of the Australian working class are under attack from Labor's new anti-strike laws. To fight for real wage increases and decent conditions, workers will need to wage a political struggle against Labor, the unions and the industrial courts, which all defend capitalism and serve the interests of the wealthy elite.

This means new organisations of struggle will need to be built in every workplace. Rank-and-file committees, democratically controlled by workers themselves, are the only means through which workers can break the stranglehold of the union apparatus and begin a fight for their own independent interests.