

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 170/10  
5313881

BETWEEN                      SERVICE AND FOOD  
   WORKERS UNION NGA  
   RINGA TOTA INC AND NEW  
   ZEALAND NURSES  
   ORGANISATION INC  
   Applicants

AND                              AUBERT HOME OF  
   COMPASSION WANGANUI  
   LIMITED  
   Respondent

Member of Authority:      P R Stapp

Representatives:            Tim Oldfield and Jock Lawrie for the Applicants  
   Leile Sims for the Respondent

Investigation Meeting:     On the papers

Submissions received by : 20 October 2010

Determination:              28 October 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The New Zealand Nurses Organisation (NZNO) and the Service and Food Workers Union (SFWU) and the Aubert Home of Compassion Wanganui Limited (AHOC) are involved in collective bargaining. There have been difficulties and no settlement since that time. The applicants' have requested the Authority to make a reference to facilitation. The applicants claimed that there has been a breach of good faith by the respondent.

[2]     The unions filed this application on 29 July 2010. A telephone conference was organised quickly for case management (2 August 2010). An undertaking was

made for a statement in reply to be filed in 5 days and in the meantime a timetable was set for submissions from all parties on the facilitation application. A further telephone conference occurred on 6 August 2010. The unions agreed to withdraw the claims about a breach of good faith upon receiving the respondent's support for the application for facilitation. This is supported by an email dated 6 August from Ms Sims and recorded in a file note I made. There has been no statement in reply filed, which may be an oversight and or the respondent may have been left to believe that its letter in the form of a submission would do. No problem arises from this situation because a letter from Ms Sims will suffice, I hold. The Authority has subsequently received affidavits in support of the application for facilitation from the applicants. The applicants' submissions were made in writing dated 10 September 2010. The applicants genuinely believed that the respondent would support the application without any qualification. The respondent has replied by letter dated 13 October 2010.

[3] The respondent does not oppose, but neither does it support, the application (13 October 2010 position).

[4] Further mediation was considered by me under s 159 of the Employment Relations Act, but rejected in favour of the approach taken by all the parties and where experienced practitioners believe that another step may be more useful.

### **Issues**

[5] Does this application meet the requirements for referral to facilitation under the Act?

### **The facts**

[6] The applicants initiated bargaining on 20 May 2009. The parties met on 15 July 2009 for the first time. They have not been able to agree on a bargaining process agreement. On 25 November 2009 and 18 February 2010 the parties met again with a mediator present. Attempts to settle after this failed and caused the mediator to intervene with expressing a point of view on the bargaining. On 30 March 2010, 28 April 2010 and 11 May 2010 the parties met with the mediator present, but without

getting a settlement. A final offer made by the respondent on 11 May 2010 was rejected by members of the applicants.

[7] The parties requested the mediator to make a non binding recommendation in an endeavour to try and settle. On 28 May the mediator released his recommendation. Subsequently the applicants' members voted to accept the recommendation, but on 21 June 2010 the respondent rejected the recommendation. The bargaining has since reached a stalemate. No further progress has been made.

### **Determination**

[8] This is an application made under s 50 C (1) (b) and or s 50 C (1) (c) of the Employment Relations Act (the Act).

[9] There are serious difficulties in this collective bargaining. The parties have not been able to reach an agreement on a bargaining process agreement. Despite meeting with a mediator present on a number of occasions there are still issues outstanding. The parties agreed for a mediator to provide non binding recommendations that have been rejected by the respondent. There are serious complaints from the applicants about the respondent's conduct in going back on its offers during the bargaining. This has been referred to by deponents as regressive bargaining, and as such would be truly concerning. I note that the respondent has denied this claim.

[10] These serious difficulties have been underscored by unduly protracted bargaining considering that the bargaining was initiated on 20 May 2009, that the first meeting occurred on 15 July 2009, and thereafter the parties met with a mediator on 25 November 2009, 18 February 2010, 30 March 2010, 28 April 2010 and 11 May 2010. Despite these meetings and the attempt by the mediator to get a settlement with a non binding recommendation the bargaining has come to a stalemate on the remaining issues.

[11] I am satisfied that there have been extensive efforts that have failed to resolve the issues with the meetings and where the mediator has been present. Also, this is exacerbated by the novel attempt to get the mediator to make a non binding

recommendation. All of this means that there have been extensive efforts made between these parties and come to a stalemate.

[12] The test under s 50 C (1) (b) of the Act has been met, I hold. That is the bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement (s 50 C (1) (b) (i) and (ii) of the Act).

[13] Since the application has established under s 50 C (1) (c) of the Act it is not necessary for me to make any determination on the alternative raised by the unions that during the course of bargaining there has been 1 or more strikes or lockouts and the strikes or lockouts have been protracted and acrimonious. Suffice for me to say that there has been a strike which was held on 6 April 2010 and that there have been difficulties.

#### **Orders of the Authority**

[14] I accept the reference for facilitation under s 50 C (1) (b) of the Act.

[15] Costs are reserved.

P R Stapp

Member of the Employment Relations Authority