

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 379
5335852

BETWEEN	TERTIARY EDUCATION UNION Applicant
AND	VICE CHANCELLOR UNIVERSITY OF AUCKLAND Respondent

Member of Authority: R A Monaghan

Representatives: P Cranney, counsel for applicant
P Muir, counsel for respondent

Investigation Meeting: 30 August 2011

Determination: 1 September 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an application for a reference to the Authority for facilitation by the Authority of the parties' bargaining for two collective employment agreements. The application has been made on a ground specified in s 50C of the Employment Relations Act 2000. Relevant provisions, including the ground relied on, read as follows:

50C Grounds on which Authority may accept reference

- a. *The Authority must not accept a reference for facilitation unless satisfied that 1 or more of the following grounds exist*
 - (a) ...
 - (b) *that –*
 - (i) *the bargaining has been unduly protracted; and*
 - (ii) *extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement:*

[2] The Vice Chancellor of the University of Auckland (the university) did not oppose the application.

[3] Since I must not accept a reference for facilitation unless I am satisfied that the ground relied on exists, I now turn to consider whether both of the limbs of s 50C(1)(b) (being the ground relied on) have been met.

Protracted nature of bargaining

[4] On 14 May 2010 the Tertiary Education Union (TEU) initiated bargaining with the university for the University of Auckland General Staff Collective Agreement, the Academic Staff Collective Agreement and the Faculty of Education Staff Collective Agreement, all of which expired on 30 June 2010. Agreement was reached in January 2011 on the first of these, so it is not included in the present application.

[5] A bargaining process agreement was agreed on 19 August 2010.

[6] Between August and December 2010 there were 8 bargaining meetings or meetings related to bargaining, and three attendances at mediation.

[7] The present application was lodged in the Authority on 25 February 2011, and was opposed at the time. However the parties agreed to return to mediation, and there were four further attendances at mediation in April, May and June 2011. In addition the parties have conducted numerous informal discussions. The bargaining was not concluded and the university no longer opposes a reference to facilitation.

[8] It has now been over a year since bargaining commenced, and I accept the bargaining has become unduly protracted.

Extent of efforts to resolve difficulties

[9] A pivotal point in the parties' difficulties is the university's wish to remove specified conditions or policies from the agreements. The TEU has made offers in

return for retaining the conditions or policies in the agreements, while the university has made offers in return for the removal from the agreements of these conditions or policies and their transfer to the university's policy register. Incorporated in both of these approaches has been bargaining about the amount of any wage increase.

[10] An impasse has been reached in these respects.

[11] There is also a dispute about the terms, conditions and coverage of a new teaching role.

[12] Finally, that there has been industrial action is relevant to the extent of the parties' efforts to resolve their difficulties although there has been no suggestion that the industrial action meets one of the grounds for a reference to facilitation in itself. Accordingly I take into account that such action has been engaged in, although I also record that the action has been suspended in association with the present application.

[13] Overall I accept that extensive efforts, including mediation, have been made to resolve the difficulties that have precluded settlement.

Conclusion

[14] For the above reasons the application for a reference to facilitation is accepted.

Costs

[15] The parties have agreed that costs lie where they fall. Accordingly there will be no order for costs.

R A Monaghan

Member of the Employment Relations Authority