

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 112
5389031

BETWEEN NEW ZEALAND PUBLIC
SERVICE ASSOCIATION INC
Applicant

AND REFUGEE SERVICES
AOTEAROA NEW ZEALAND
INC
Respondent

Member of Authority: G J Wood

Representatives: Peter Cranney for the Applicant
Richard Dagger for the Respondent

Investigation Meeting: On the papers

Submissions Received: By 24 September 2012

Determination: 27 September 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant union (the PSA) claims that bargaining between it and the respondent (Refugee Services) has been unduly protracted and extensive efforts have failed to result in a collective agreement.

[2] For the PSA, Mr Cranney submitted that the parties had been bargaining for over two years and that Refugee Services acknowledge that bargaining has been “lengthy”. He submitted that the parties were having serious difficulties in concluding a collective agreement. Those serious difficulties relate to the nature of the different proposals for a variation clause in the collective agreement. The issue is over whether employees may be engaged outside of the terms of the collective agreement for the first 30 days of employment, by use of the variation clause. The PSA considers that to allow this would be contrary to the intent of the Act.

Mr Cranney submitted that the parties had made extensive efforts to resolve this difficulty, including mediation, but without success. It was therefore submitted that the matter should be referred to the Authority for facilitation.

[3] Refugee Services elected to make no submissions.

[4] In the ordinary course of events, given that only one mediation has been held, I would direct parties in such a situation to further mediation. However, given that the sole issue in dispute is so narrow, and given that there are potentially legal issues as to whether or not Refugee Services' position is consistent with s.62 of the Act, then I determine that further mediation would not constructively contribute to resolving matters.

[5] Section 50C provides the grounds on which the Authority may accept a reference to facilitation. It states:

- (1) *The Authority must not accept a reference for facilitation unless satisfied that one 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.*

[6] In the context of collective agreements whose duration cannot exceed three years, I accept that more than two years of bargaining without settlement constitutes bargaining that has been unduly protracted.

[7] I accept from the statement of problem that bargaining (or other meetings related to bargaining) have occurred on five occasions together with email exchanges. I also accept that a second formal mediation was declined by Refugee Services.

[8] There is no doubt that the parties have reached an impasse in the bargaining. It is also clear that they have had mediation.

[9] The sole issue for determination therefore is whether or not the parties' efforts to settle have been extensive. Given the length of time involved, the fact that there have been a number of meetings and that there is only one issue unresolved, I am

satisfied on the balance of probabilities that the efforts have been sufficiently extensive as to qualify under s.50C(1)(b)(ii).

[10] There is, however, still a residual discretion for the Authority to exercise, when determining whether or not to refer a matter to facilitation. I conclude that facilitation is appropriate, particularly as further mediation is unlikely to be constructive.

[11] I therefore accept the application for reference to facilitation in relation to the bargaining between the New Zealand Public Service Association Inc and Refugee Services Aotearoa New Zealand Inc. Another Member will soon contact the parties to organise the process of facilitation.

[12] Costs are reserved.

G J Wood
Member of the Employment Relations Authority