

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 25  
5412290

BETWEEN	SERVICE & FOOD WORKERS UNION NGA RINGA TOTA INC Applicant
AND	CCS DISABILITY ACTION NELSON MARLBOROUGH INC & 16 others listed in Schedule One Respondents

Member of Authority: Trish MacKinnon

Representatives: Alastair Duncan, for the Applicant  
Laura Dempsey, for the Respondent

Investigation Meeting: 14 March 2013

Determination: 18 March 2013

---

**DETERMINATION OF THE AUTHORITY**

---

**Application for facilitation**

[1] The Service and Food Workers Union Nga Ringa Tota Inc (SFWU) has applied to the Authority for reference to facilitation under s. 50B of the Employment Relations Act 2000 (the Act). SFWU is a trade union registered under Part 4 of the Act.

[2] CCS Disability Action Nelson Marlborough Inc and 16 other regional CCS Disability Action groups (CCS Disability Action) support the application. Each group operates independently, providing support services to disabled people and communities in their region.

[3] The parties rely on two grounds for reference to facilitation. Firstly, that bargaining for a collective agreement has become unduly protracted due to a complex document coverage issue. Despite extensive efforts, including mediation, the parties have failed to resolve the issues preventing them from concluding a collective agreement. They are having serious difficulties concluding a collective agreement.

[4] Secondly, that strikes have been proposed in the course of bargaining by employees in 2 regions. If those strikes proceed, the impact of a withdrawal of services from the service user groups would be likely to affect the public interest substantially.

### **Grounds for Facilitation**

[5] The Act provides that, where parties to collective bargaining have serious difficulties in concluding a collective agreement, one or more of them may apply to the Authority for reference to facilitation to help them resolve those difficulties.

[6] The relevant parts of s. 50C (1) of the Act provide that I must not accept a reference for facilitation unless I am satisfied that 1 or more of the following grounds exist:

- (a) *that—*
  - (i) *in the course of the bargaining, a party has failed to comply with the duty of good faith in section 4; and*
  - (ii) *the failure—*
    - (A) *was serious and sustained; and*
    - (B) *has undermined the bargaining:*
- (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:*
- (c) *that—*
  - (i) *in the course of the bargaining there has been 1 or more strikes or lockouts; and*
  - (ii) *the strikes or lockouts have been protracted or acrimonious:*
- (d) *that—*
  - (i) *in the course of bargaining, a party has proposed a strike or lockout; and*
  - (ii) *the strike or lockout, if it were to occur, would be likely to affect the public interest substantially.*

[7] S. 50C (2) provides that a strike or lockout is likely to affect the public interest substantially if-

- (a) *the strike or lockout is likely to endanger the life, safety, or health of persons; or*
- (b) *the strike or lockout is likely to disrupt social, environmental, or economic interests and the effects of the disruption are likely to be widespread, long-term, or irreversible.*

### **The Bargaining**

[8] Since bargaining was initiated by SWFU on 6 March 2012 to replace an expired collective agreement, the parties have had 5 days of meeting for bargaining, at least once with the assistance of a mediator. That, however, tells only part of the story of the extensive efforts made by them away from the formal negotiation meetings. The parties provided me with some of the emails and other documents evidencing those efforts over more than twelve months.

[9] The expired collective agreement covered SFWU members working for Disability Action in regions south of Hawkes Bay. The parties are currently in bargaining for a new collective agreement that will cover SFWU members working for all Disability Action employers nation-wide.

[10] Both parties agree on the desirability of a national collective agreement. The achievement of it is not easy because of regional funding differences and the impact of recent and ongoing changes in the sector. While the union seeks by and large to extend the terms and conditions of the expired collective agreement nationally, a number of the employers in regions not previously covered have different requirements and are concerned about the application to new employees.

[11] The sticking point of the bargaining has been the extension of the coverage clause in the expired collective agreement to new employer parties in the regions north of Hawkes Bay, and the extent to which current terms and conditions will be offered to new employees.

[12] I am satisfied from the evidence and submissions of the parties that the bargaining, which has now exceeded twelve months, has been unduly protracted. I

also accept they have made extensive efforts, including mediation, to resolve the difficulties that have precluded them from entering into a collective agreement.

[13] That being so, it is not strictly necessary for me to consider the second ground relied on in this application, but I will do so for completion.

### **Proposed strikes**

[14] SFWU members in Timaru, who were covered by the expired collective agreement, and Rotorua, who were not, voted to take strike action in February 2013. Their work is not part of the *essential services* listed in Part A of Schedule 1 of the Act, and they are not required to give notice of strike action.

### **Public interest**

[15] The parties submitted that if members in Timaru and Rotorua were to strike, the impact on those affected would be significant. It would be particularly severe in Timaru where a majority of employees of the local Disability Action employer are union members.

[16] Approximately twenty five clients in supported living environments in Timaru would suffer considerable disruption to their normal services in the event of a strike. They would not receive the assistance they normally have with, for example, their medication, transport to medical appointments or work, their grocery shopping, or the preparation of their meals.

[17] For some clients the effects of a strike could be simply inconvenience. For others the lack of assistance with medication or meals could endanger their lives, safety and health. However, I am not satisfied it is *likely* to do so, which is the test under s. 50C (2) (a) of the Act.

[18] It is more likely the employer would employ or engage another person to assist those clients with their medication or meal requirements as it would be entitled to do under s. 97 (3) or (4) of the Act.

[19] While the effect of a strike would be likely to affect the social and environmental interests of those clients, I am not satisfied the effects are likely to be widespread, long term or irreversible as would be required to satisfy the test under s. 50C (2) (b) of the Act.

[20] For these reasons I do not accept that a strike, as currently mandated by SFWU members in Timaru and Rotorua, would be likely to affect the public interest substantially if it were to occur.

### **Determination**

[21] I am satisfied from the submissions and evidence of the parties that grounds exist under s. 50C (1) (b) of the Act which enable me to accept their application for reference to facilitation. I am also satisfied it is appropriate for me to do so.

[22] Accordingly I accept the application for reference to facilitation of the bargaining between the SFWU and CCS Disability Action. Another Member will contact the parties shortly to organise the facilitation process.

### **Costs**

The application was made by SFWU with the support of CCS Disability Action and therefore no issue arises as to costs.

Trish MacKinnon  
Member of the Employment Relations Authority

**Schedule One – List of Respondents**

CCS DISABILITY ACTION CANTERBURY & WEST COAST INC  
CCS DISABILITY ACTION SOUTH CANTERBURY INC  
CCS DISABILITY ACTION WAITAKI INC  
CCS DISABILITY ACTION OTAGO INC  
CCS DISABILITY ACTION SOUTHLAND INC  
CCS DISABILITY ACTION WAIRARAPA INC  
CCS DISABILITY ACTION WELLINGTON INC  
CCS DISABILITY ACTION NORTH TARANAKI INC  
CCS DISABILITY ACTION SOUTH AND CENTRAL TARANAKI INC  
CCS DISABILITY ACTION MANAWATU/ HOROWHENUA INC  
CCS DISABILITY ACTION TAIRAWHITI HAWKE'S BAY INC  
CCS DISABILITY ACTION GISBORNE INC  
CCS DISABILITY ACTION BAY OF PLENTY INC  
CCS DISABILITY ACTION WAIKATO INC  
CCS DISABILITY ACTION NORTHLAND INC  
CCS DISABILITY ACTION AUCKLAND INC