

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 32
5528777

BETWEEN THE NEW ZEALAND PUBLIC
SERVICE ASSOCIATION
INCORPORATED
Applicant

AND ANGLICAN FAMILY CARE
CENTRE INCORPORATED
Respondent

Member of Authority: Christine Hickey

Representatives: Caroline Mayston, Counsel for the Applicant
Rachel Brazil, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 2 February 2015 from Applicant and 5 February 2015
from Respondent.

Determination: 6 March 2015

DETERMINATION OF THE AUTHORITY

**A. The joint application for reference for facilitation by the
Authority of the collective bargaining is accepted.**

Employment relationship problem

[1] The New Zealand Public Service Association Incorporated (the PSA) and the Anglican Family Care Centre Incorporated¹ (the AFC) have applied jointly for a reference to facilitation. The Authority must not accept a reference to facilitation unless it is satisfied that one of the grounds set out in s.50C of the Employment Relations Act 2000 (the Act) applies.

¹ This is the correct legal name of the entity that has made the application and as such I have substituted the correct name for the name Anglican Family Centre in whose name the joint application was made.

[2] Section 50A sets out the purpose of facilitating bargaining as providing a process by which:

parties to collective bargaining who are having serious difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[3] The parties rely on the ground set out in s.50C(1)(b) which provides:

... 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.*

Factual background

[4] Bargaining was initiated by the PSA on 4 May 2014. At that time 26 out of AFC's 44 staff were union members covered by the bargaining.

[5] A Bargaining Process Agreement was entered into on 14 August 2014. However, prior to that, bargaining meetings began and have taken place on 10 July 2014, 14 August 2014, 2 September 2014 and 22 September 2014.

[6] Extensive correspondence has been entered into including requests for and provision of information about AFC's financial position.

[7] There are two key issues that the parties remain unable to agree on:

- a remuneration / percentage increase in wages for union members, and
- an increase in the amount of sick leave.

[8] The PSA initiated industrial action including by way of working to rule, banning overtime, a ban on training new staff and it organised picketing of the workplace and Board meetings, and a two hour stop work meeting on 3 November 2014. This was announced by way of a press release to the Otago Daily Times on 17 October 2014. The action was to commence on 27 October and finish on 14 November inclusive.

[9] The PSA says that on 17 October 2014 when AFC issued its own press release, and circulated it to staff, without first providing the PSA with a draft copy,

that was a breach of the bargaining process. I understand that the AFC later apologised to the PSA for doing so.

[10] I accept that relations between the PSA members and Ms Nicola Taylor, the AFC's Chief Executive, broke down significantly during the course of the industrial action and have continued to do so since then. Ms Taylor has been involved in the bargaining.

[11] In November 2014 PSA members voted for further industrial action to take place from 17 November 2014 until 12 December in similar terms to the previous industrial action.

[12] The parties agreed to attend mediation and the PSA suspended industrial action while they attended mediation which took place over 5 hours on 26 November 2014. At that mediation some progress was reached in the sick leave issue but the wage increase issue was not resolved.

[13] On 1 December AFC appears to have agreed to add two days sick leave in addition to the ten days already in the collective agreement.

[14] On 2 December 2014 the PSA offered to suspend industrial action if further mediation could take place. On 3 December 2014 the AFC through its advocate apparently advised that it did not:

... see any benefit coming out of another mediation. Our client therefore declines the offer for a second mediation.

[15] The PSA members voted to advise the AFC that it rejected its position of refusal to attend mediation and the industrial action recommenced.

[16] On 15 December 2014 when the PSA members attended work they were presented with suspension notices. They returned to work the following day. The PSA members' pay was initially docked for the period of their suspension but they were paid for that time prior to Christmas.

[17] AFC also alleges that the PSA has intentionally misled the public and others, including other unions.

[18] There has been extensive coverage in the local and national media and on social media and the AFC says that Ms Taylor has received hate mail and inappropriate responses over social media.

Has there been unduly protracted bargaining and have extensive efforts, including mediation, failed to resolve the (serious) difficulties?

[19] I accept that there are serious difficulties with the collective bargaining between the parties.

[20] Although prior to this application bargaining had only been underway for some 9 months I accept that the bargaining has been unduly protracted in the sense that was described in *McCain Foods (NZ) Limited v Service and Food Workers' union Nga Ringa Tota Incorporated*:²

[63] If, as here, it is shown that there have been real attempts to bargain and settle, albeit that the parties' strongly held positions have precluded settlement, the bargaining may also be said in that sense to have been unduly protracted.

[64] "Protracted" bargaining is allowed for by the legislation although this cannot constitute a ground for a reference to facilitated bargaining. Undue protraction (the statutory test) is excessive or disproportionate protraction as opposed to reasonable or expected or common protraction.

[65] Similarly, the "efforts" required by s 50C(1)(b)(ii) that have failed to resolve the difficulties and have precluded the parties from entering into a collective agreement, must meet the qualification of having been "extensive". This implies having a wide scope, being far-reaching or comprehensive, covering a large area or time range of activities.

[21] I consider bargaining has been unduly protracted and the parties' strongly held positions have prevented settlement to date despite real and extensive bargaining efforts, including using mediation. In the process of bargaining to date serious difficulties have been exposed, including arising out of the industrial action exercised by the PSA and the suspension put in place by AFC. These serious difficulties cemented the parties in negative views of the other's position in relation to the bargaining.

[22] The Authority should be slow to reject a joint application by the parties who have identified that facilitation will be a productive way forward in their bargaining for a collective agreement.

² Employment Court [2009] NZERA 28.

[23] I understand the outstanding issue to be resolved is the PSA claim for a wage increase.

[24] The joint application of the parties for reference to facilitation by the Authority of the collective bargaining is accepted. Another Member will provide facilitation of the collective bargaining.³ An Authority officer will arrange a telephone directions conference between the allocated Member and the parties soon.

Costs

[25] I do not understand there to be any issues as to costs. In any event, it is my view that costs should lie where they fall as this is a joint application.

Christine Hickey
Member of the Employment Relations Authority

³ Section 50D of the Act.