

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 99
5616438

BETWEEN	AUCKLAND DISTRICT HEALTH BOARD First Applicant
A N D	COUNTIES MANUKAU DISTRICT HEALTH BOARD Second Applicant
A N D	WAITEMATA DISTRICT HEALTH BOARD Third Applicant
A N D	NEW ZEALAND PUBLIC SERVICE ASSOCIATION INCORPORATED Respondent

Member of Authority: Trish MacKinnon

Representatives: Susan Hornsby-Geluk, Counsel for Applicants
Peter Cranney, Counsel for Respondent

Investigation Meeting: By telephone and on the papers 31 March 2016

Date of Determination: 1 April 2016

DETERMINATION OF THE AUTHORITY

Application for facilitation

[1] The three applicant District Health Boards (the DHBs) have applied to the Authority for referral to facilitation under s.50B of the Employment Relations Act 2000 (the Act). The DHBs ask that the application be addressed as a matter of urgency. The New Zealand Public Service Association Incorporated (PSA) represents over 3,000 members who are employed by the DHBs and who fall within coverage of

the current MECA between the parties¹. The PSA has issued notices of strike action commencing 8 April 2016.

[2] The PSA does not oppose referral to facilitation although it disagrees with all but one of the grounds on which the DHBs rely in their application. Nor does it object to urgency, but notes that facilitation is not an alternative to strike action, which is scheduled and can continue regardless of facilitation.

Grounds for facilitation

[3] 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.

[4] The relevant parts of s.50C(1) of the Act provide that a reference for facilitation must not be accepted unless one 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 one or more strikes or lockouts; and*
 - (ii) *The strikes or lockouts have been protracted or acrimonious;*
- (d) *That –*
 - (i) *In the course of the 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.*

¹ Auckland Region District Health Boards/PSA Allied, Public Health and Technical Multi Employer Collective Agreement

Grounds relied on for facilitation

[5] The DHBs rely on all four grounds for facilitation under s.50C(1) of the Act. They request a referral to facilitation on the basis that:

- (a) In the course of bargaining, the PSA has failed to comply with the duty of good faith in s.4 of the Act; and that failure was serious and sustained, and has undermined the bargaining (s.50C(1)(a));
- (b) 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.50C(1)(b));
- (c) In the course of the bargaining, there have been strikes; and strikes have been protracted or acrimonious (s.50C(1)(c));
- (d) In the course of the bargaining, the PSA has proposed further strike action; and the strike, if it were to occur, would be likely to affect the public interest substantially (s.50C(1)(d)).

[6] The PSA agrees that the parties are having serious difficulties in concluding a collective agreement, in that bargaining has been unduly protracted and extensive efforts, including mediation, have failed to resolve this problem. It says that it would agree to facilitation on that ground, i.e. s50C(1)(b). It disagrees with the DHBs over the other three grounds they have relied on. The PSA has elected not to address those other grounds at this stage in light of its agreement with the second ground cited by the applicants.

The bargaining

[7] The PSA initiated bargaining by an undated notice received by the DHBs on 3 March 2015. This was for a multi-employer collective agreement covering the PSA's employees. The MECA between the parties expired on 30 April 2015.

[8] The first bargaining meeting took place on 31 March 2015. There have been 21 days of meetings relating to bargaining since that date. The parties have attended

four days of mediation provided by the Ministry of Business Innovation and Employment in relation to the bargaining.

[9] The DHBs received 53 notices of strike action from the PSA between 23 October 2015 and 17 November 2015. Strike action commenced on 10 November 2015 and continued until 19 November 2015. Strike action has been notified for 8 April 2016 and, since the DHBs' application was made, it says the PSA has issued further notices of strike action for 13 and 14 April.

Should this matter be referred to facilitation?

[10] I have received extensive documentation, including affidavit evidence, from the DHBs in their application. From that documentation and that provided by the PSA in response I formed a preliminary view that the threshold for referring this matter to facilitation had been met.

[11] In the course of a telephone conference with the parties, convened under urgency, I informed the parties of my preliminary thinking and asked if they wished to make further submissions on the matter or whether they were satisfied that I had sufficient information on which to come to a decision. The parties confirmed their agreement to my proceeding on the basis of the information before me.

Determination

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

[13] Accordingly I accept the application for reference to facilitation of the bargaining between the Auckland District Health Board, Counties Manukau District Health Board, and Waitemata District Health Board and the New Zealand Public Service Association Incorporated. Another Member will contact the parties shortly to organise the facilitation process. The parties agree that this should take place as a matter of urgency.

Costs

[14] This application was made by the DHBs without opposition from the PSA. No costs have been sought or will be awarded.

Trish MacKinnon
Member of the Employment Relations Authority