

- (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.*

[4] Section 50C(3) specifies circumstances in which the Authority is precluded from granting an application for facilitation but those circumstances do not exist here.

[5] In this instance the bargaining has been ongoing for some months and I accept the process may be considered protracted (s 50C(b)(i)). Extensive effort has also been made to resolve the issues which includes at least 20 days of bargaining and mediation (s 50C(b)(i)).

[6] There have been strikes and more are planned. Furthermore I am convinced by the information imparted by the parties in their papers that such strikes would be likely to have a substantial effect on the public and its interests (s 50C(d)(ii)) in that there is likely to be widespread disruption to social and, in all probability, economic interests.

[7] The papers convince me there are multiple grounds for accepting the application.

Conclusion

[8] Accordingly I refer to facilitation the current bargaining between the Secretary of Education and the New Zealand Educational Institute Te Riu Roa relating to primary school teachers and principals.

[9] Another Member will contact the parties shortly to organise the facilitation process.

[10] The joint nature of the application and the subject material convinces me there should be no order as to costs (and none has been sought).

M B Loftus
Member of the Employment Relations Authority