

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 633  
3079764

BETWEEN	CAPITAL AND COAST DISTRICT HEALTH BOARD First Applicant
AND	19 OTHER DISTRICT HEALTH BOARDS Second to Twentieth Applicants
AND	ASSOCIATION OF PROFESSIONAL AND EXECUTIVE EMPLOYEES Respondent

Member of Authority:	Michael Loftus
Representatives:	Susan Hornsby-Geluk, counsel for Applicants Bill Manning, counsel for Respondent
Investigation Meeting:	On the papers with input up to and including 4 November 2019
Determination:	4 November 2019

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**DETERMINATION OF THE AUTHORITY**

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[1] The District Health Boards (DHBs) seek an urgent reference to facilitation pursuant to ss 50A to 50I of the Employment Relations Act 2000 with respect to bargaining with the Association of Professional and Executive Employees (APEX) for the renewal of a collective agreement covering Medical Imaging Technicians.

[2] To be accepted a request for facilitation must meet one or more of the criteria specified in s 50C(1). Those criteria are:

(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.

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

[4] The DHBs rely on three of the above grounds. They say bargaining has been unduly protracted despite extensive efforts to resolve the issues; that there have been strikes which were either protracted or acrimonious and more, which are likely to affect the public interest, are proposed.

[5] A joint memorandum from the parties advises APEX supports the application on the grounds bargaining has been protracted but denies the other grounds can be satisfied.

[6] Notwithstanding the fact the now expired collective agreement's term ran till 3 February 2019 the parties, in anticipation of that event, first met to discuss a replacement on 10 December 2018. Since then negotiations have continued for another 13 days. There have been three days of mediation. Notwithstanding that the parties have been unable to agree with the DHB's most recent offer recently being rejected.

[7] Given these numbers and the length of time involved I agree with the parties that bargaining has been protracted and their efforts to address the issues can be

considered extensive. In doing so I also note the period over which the collective remains in force pursuant to s 53 of the Act is rapidly shortening and this will be further affected by the fact the Christmas/New Year period will deprive the parties of a portion of the remainder.

[8] The above conclusion means I need not consider the other grounds claimed in the original application as only one has to be made out to secure the referral.

### **Conclusion**

[9] Accordingly I refer to facilitation the current bargaining between the country's 20 District Health Boards and the Association of Professional and Executive Employees for the renewal of a collective agreement covering Medical Imaging Technicians.

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

[11] The nature of the party's joint memorandum, along with the fact costs were not originally sought, leads me to conclude they should lie where they fall.

Michael Loftus  
Member of the Employment Relations Authority