

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 449
3150465

BETWEEN ELECTRICAL UNION 2001 INC
Applicant

AND MERCURY NZ LTD
Respondent

Member of Authority: Andrew Dallas

Representatives: Lou Yukich, advocate for the Applicant
David France, counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 12 October 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Electrical Union 2001 Incorporated (EU 2001) makes an application for referral of its bargaining dispute with Mercury Limited (Mercury) for facilitation by the Authority. Initially, EU 2001 only sought referral on one ground based on its threatened strike action “would be likely to affect the public interest substantially”.¹ However, after discussion with parties, including the convening of a case management conference, EU 2001 lodged an amended application including an addition ground for referral: the bargaining between the parties had become unduly protracted”.²

¹ Employment Relations Act 2000, s 50c(1)(d).

² Employment Relations Act, s 50c(1)(b).

[2] Demonstrating its collective bargaining maturity, Mercury does not oppose either the original or amended application and has advised that if the application is granted it will actively and in good faith engage with the facilitation process.

[3] This matter was investigated by the Authority “on the papers” being the statement of problem, including a notice of intention to strike for two non-contiguous 24 hour periods in October, the statement and amended statement, in reply, various email communications, including with the Authority, a chronology prepared by Mercury for the benefit of the Authority and several settlement proposals. The parties taking the sensible approach that written submissions and formal evidence would only be required if requested by the Authority or in response to material lodged by the other. In the end neither proved necessary to dispose of the matter.

What gave rise to the bargaining dispute?

[4] Mercury is an electricity generator which operates among other things, a number of geothermal plants in the central North Island. Mercury is also an “essential service” as defined in the Employment Relations Act 2000 (the Act).³

[5] EU 2001 and Mercury were party to the “geothermal collective agreement”, which expired on 30 June 2020. Bargaining was initiated by EU 2021 for a renewal of the collective agreement on 12 May 2020 and the collective agreement remained enforceable as such for 12 months. EU 2001’s members are now employed on individual employment agreements based on the expired collective agreement.

[6] During the bargaining, there have been a number of interactions and meetings between the parties. Various documents have been prepared including Mercury’s most recent proposed settlement; which is now in its tenth iteration. During the bargaining the parties also attended mediation. While bargaining did not directly occur during this mediation, I am satisfied it dealt with matters directly relevant to, and connected with, the bargaining.

³ Employment Relations Act 2000, s 90; sch 1.

Referral for facilitation.

[7] Having carefully considered the material before the Authority, I am satisfied that the ground for facilitation set out in s 50(C)(1)(b) of the Act is made out. The bargaining has become unduly protracted and despite their efforts, the parties have been unable to move forward. Clearly facilitation will assist the parties in such circumstances.

[8] For completeness, as I have found one of the grounds for referral for facilitation is made out; it is not necessary to further consider the other ground advanced by EU 2001.

[9] As an act of good faith with the facilitation process, the Authority recommends the EU 2001 withdraws its current strike notice and the parties refrain from threatening and/or taking industrial action during the process.

[10] I refer the bargaining between EU 2001 and Mercury to another Member of the Authority for facilitation.

Next Steps

[11] An Authority Officer will contact the parties to discuss preparation for a facilitation commencing as soon as possible.

Costs

[12] There is no order as to costs.

Andrew Dallas
Chief of the Employment Relations Authority