

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 419
3183219

BETWEEN PULP AND PAPER WORKERS
UNION KAWERAU INC.
Applicant

AND ASALEO CARE NEW
ZEALAND LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Timothy Oldfield, counsel for Applicant
David France, counsel for Respondent

Submissions received: 23 and 24 August 2022

Consideration of papers: 25 August 2022

Determination: 29 August 2022

DETERMINATION OF THE AUTHORITY

A. The Authority accepts the applicant union's reference for facilitation of collective bargaining with the respondent employer.

B. Costs are reserved.

Employment relationship problem

[1] The Employment Relations Act 2000 (the ER Act) provides a process which enables parties to collective bargaining who are having serious difficulties in concluding a collective agreement, to seek the assistance of the Authority in resolving those difficulties.

[2] The Pulp and Paper Workers Union Kawerau Inc. has applied to Authority, under s 50B of the ER Act, for that assistance to be given to bargaining for a collective

agreement it initiated with Asaleo Care New Zealand Ltd at the beginning of December 2021.

[3] The Union asserts it is having serious difficulties concluding an agreement and seeks a reference to facilitated bargaining as a means of overcoming the difficulties. The application is supported with affidavit evidence of the union's secretary, Tane Phillips.

[4] He explains that in short, the union seeks the intervention of the Authority as a circuit breaker to try get the parties back around the negotiating table and see where there might be enough give and take to allow them to reach agreement.

[5] The ground on which the application has been made under the ER Act is that during the bargaining there has been one or more strikes or lockouts which have been protracted.

[6] Six strikes have occurred on dates in July and August 2022. They were continuous and a total withdrawal of labour.

[7] A lockout was imposed on 9 August, and it is continuous and on-going.

[8] The direct action is affecting the supply of toilet paper, in the production of which Asaleo Care and members of the union are engaged. The employer is the sole manufacturer in New Zealand of this essential product.

Unopposed application

[9] The employer does not oppose the application and neither does it dispute the union's characterisation of the strikes and lockout as 'protracted', as that term is used in s 50C(1)(c). The union in its submissions has provided statistical data and a number of decided cases on the application of 'protracted' to the circumstances. This information lends support to the application.

[10] Although previous cases of protracted strikes or lockouts where the Authority has granted facilitation may only be a guide, the employer accepts that in the instant

case the direct action has been maintained to the same or similar degree as that found in the earlier cases.

[11] The measurement of the protracted nature of any direct action is not intended to be precise. The Authority notes the observation of the Employment Court in *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd*¹ regarding the balance that should be applied when assessing an application

Whilst the Authority must ensure that the statutory grounds exist, it should not be astute to find reasons to refuse a reference to facilitation where a common sense assessment of the overall position indicates its desirability in light of the statutory scheme for collective bargaining and collective agreements.

[12] As a matter of impression to be gained from the circumstances put forward by the union and which are not viewed differently by the employer, the Authority considers the strikes and the lockout can properly be labelled as protracted. It is also desirable given the importance of toilet paper, for the parties to receive the assistance sought to conclude bargaining as quickly as possible and with minimum distraction from pursuing other important objectives the union and the employer both have.

Reference for facilitation

[13] The grounds of s 50C(1)(c) of the ER Act relied upon in making the application, are therefore met. The Authority accepts the reference for facilitation.

Facilitation process

[14] A member or members of the Authority appointed to provide facilitation will now contact counsel Mr Oldfield and Mr France to make the necessary arrangements for facilitation to take place as quickly as possible.

Alastair Dumbleton
Member of the Employment Relations Authority

¹ [2012] NZEmpC 168, at [42].