

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 457
3184779

BETWEEN	ASSOCIATION OF PROFESSIONAL AND EXECUTIVE EMPLOYEES (APEX) Applicant
AND	TE WHATU ORA Respondent

Member of Authority: Sarah Kennedy

Representatives: Luke Coxon, advocate for the Applicant
Kevin McFadgen, advocate for the Respondent

Investigation Meeting: on the papers

Determination: 13 September 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Te Whatu Ora and the Association of Professionals and Executive Employees (APEX), are engaged in bargaining and have not been able to conclude a collective agreement.

[2] APEX has lodged an application for facilitated bargaining based on the grounds set out in s50(1)(b) and (c) of the Employment Relations Act 2000 (the Act) and Te Whatu Ora do not oppose this application.

[3] APEX has also made an application to the Authority to give urgency to its consideration and investigation under clause 17 of schedule 2 of the Act, on the basis that it is necessary and just to do so.

[4] The parties have been engaged in bargaining since December 2021 including seven days of bargaining and one day of mediation.

[5] The parties have agreed with the Authority that the referral could be determined “on the papers” on the documents provided to the Authority.

Findings

[6] I have considered the material before the Authority. Two key issues remain in dispute (with some additional issues at the periphery). Te Whatu Ora agrees with Apex that further bargaining or mediation will not resolve these two issues.

[7] The parties have not spent a lot of time in bargaining, but I understand that the nature of those two issues and the context of this dispute, including the fact that most hospitals have a mixture of PSA and APEX members as well as non-union members, is causing an impasse between the parties.

[8] There have been one or more strikes and there are ongoing strikes. There is also evidence that the hospital system is under pressure now. While there are several variables creating this pressure, any strikes in this workforce at this time will add to that situation.

[9] Given the amount of time spent in bargaining, I am not satisfied that bargaining on these issues has been unduly protracted or that there have been extensive efforts to resolve the issues. However, I consider that there is a public interest which will be affected substantially by the ongoing strike action. As such I consider that the grounds in s 50(c) and (d) of the Act are made out. The referral to facilitation is accepted.

[10] I have considered the application for urgency and have accorded urgency to this matter.

[11] I have also considered referral to mediation. In the circumstances, and given the parties agree as to engagement in facilitation, I do not consider a direction to mediation would contribute constructively to resolving the matter.

Next steps

[12] The Authority will communicate with the parties as to the convening of a case management conference and in accordance with s 50D of the Act, the member of the Authority who facilitates collective bargaining will not be the member who accepted the reference for facilitation.

Costs

[13] There is not order as to costs.

Sarah Kennedy
Member of the Employment Relations Authority