

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 57
3164542

BETWEEN	CAPITAL AND COAST DISTRICT HEALTH BOARD Applicant
AND	19 OTHER DISTRICT HEALTH BOARDS [named in Schedule 1] Second to Twentieth Applicants
AND	THE NEW ZEALAND PUBLIC SERVICE ASSOCIATION TE PŪKENGĀ HERE TIKANGA MAHI Respondent

Member of Authority: Michele Ryan

Representatives: Susan Hornsby-Geluk, Counsel for the Applicant
Peter Cranney, Advocate for the Respondent

Investigation Meeting: On the papers

Date of Determination: 25 February 2022

DETERMINATION

Employment relationship problem

[1] Capital and Coast District Health Board and 19 other District Health Boards (the DHB's) have applied, under urgency, for a referral for facilitated assistance with respect to bargaining with the New Zealand Public Services Association (the "PSA").¹

[2] The bargaining concerns two Multi-Employer Collective Agreements ("MECAs"). The MECAs cover staff who work in Allied Health, Public Health, Technical and Scientific services within the applicants' hospitals and associated facilities. One applies to the three Auckland Health Boards, the other involves the

¹ The application was received by the Authority on 22 February 2022.

remaining 17 District Health Boards.² It is said the DHBs (collectively) employ 15,700 staff (or thereabouts) who fall within the broad coverage of one or other of the MECAs, and that 50-60% of this group are represented by the PSA.

[3] The Employment Relations Act (the Act) sets out four separate and discrete grounds by which the Authority may refer parties to facilitated bargaining. The DHBs refer to s 50C (1)(b) and (d), as applicable to the parties' circumstances, as follows:

“that” - (pursuant to s 50C (1)(b):

- (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.”

And

“that” - (pursuant to s 50C (1)(d):

- (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] The DHBs say the bargaining has been unduly protracted despite extensive efforts to conclude negotiations (including attendance at mediation). They have also received notice of impending strike action (by PSA members covered by the one or other of the MECAs). The DHBs say if the strike occurs, it would likely affect the public interest.

[5] The PSA does not challenge the DHBs position regarding the duration of bargaining. It does not accept the second ground (at s 50C (1)(d)) is made out.

The bargaining to date

[6] Bargaining was initiated on 1 September 2020.

[7] Over the past 18 months (or thereabouts) the parties have attended 16 days of bargaining to settle the two MECAs.

² Both MECAs expired on 31 October 2020, but each remains in force under s 53 of the Act as extended by the Epidemic Preparedness (Employment Relations Act 2000 – Collective Bargaining) Immediate Modification Order 2020 (“EP(CB)IMO”).

[8] An offer of settlement was made by the DHBs in October 2021 but was not accepted by the PSA. The parties have recently attended mediation on that matter but have been unable to reach agreement.

[9] On 17 February 2022, the PSA, issued notices of strike action on behalf of its members to each of the DHBs. These foreshadow a 24 hour withdrawal of labour beginning 0600 on Friday 4 March 2022 at each of the applicants' locations. The DHB's say they anticipate further strike notices will be issued in the near future in respect of 18 March 2022.

The Authority's investigation

[10] With the consent of the parties, this matter has been determined "on the papers" comprising; an application for urgency, a statement of problem, and affidavit on behalf of the DHBs, and a statement in reply from the PSA.

[11] As permitted by s 174E of the Act, this determination has not referred to every item of information forwarded to the Authority but all material received has been considered.

Conclusion

[12] The Act does not allow the Authority to refer parties to facilitation assistance simply because the parties assert bargaining has become fraught. However the length of time over which the parties have bargained and the number of occasions on which they have met to do so, supports the parties' assertions that bargaining has been unduly protracted. Their efforts to resolve their difficulties can be characterised as extensive, but have not been successful.

[13] I find the criteria set out in s 50C(1)(b) has been met and it is appropriate to refer the matter for facilitation. The DHBs' application is granted.

[14] The above conclusion means I need not consider the other ground claimed in the original application as only one ground needs to be satisfied to secure the referral.

Next steps

[15] This file will be referred to another Member of the Authority for facilitation, to assist in resolving the difficulties which have prevented renewal of the MECAs

currently at issue between them. An Authority Officer will contact the parties to discuss preparation for urgent facilitation without delay.

[16] Costs do not appear to be at issue where neither party has sought corresponding orders. In any event, the nature of this application leads me to conclude costs in this instance should lie where they fall.

Michele Ryan
Member of the Employment Relations Authority

Schedule 1
Second to Twentieth Applicants

Auckland District Health Board

Northland District Health Board

Waitemata District Health Board

Counties Manukau District Board

Waikato District Health Board

Bay of Plenty District Health Board

Tairāwhiti Lakes District Health Board

Tairāwhiti District Health Board

Taranaki District Health Board

Hawkes Bay District Health Board

Whanganui District Health Board

Mid-Central District Health Board

Hutt Valley District Health Board

Wairarapa District Health Board

Nelson Marlborough District Health Board

West Coast District Health Board

Canterbury District Health Board

Southern Canterbury District Health Board

Southern District Health Board