

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 656  
3197359

BETWEEN FORBO SIEGLING LIMITED  
Applicant

AND E TŪ INCORPORATED  
Respondent

Member of Authority: Marija Urlich

Representatives: Michael Dabelstein, for the Applicant  
Emily Griffin, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 12 December 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Forbo Siegling Limited and E tū Incorporated (the Union), are engaged in bargaining and have not been able to conclude a collective agreement.

[2] Forbo has applied to the Authority under s 50B of the Employment Relations Act 2000 for assistance by way of facilitation to resolve difficulties the parties are having concluding bargaining. It says bargaining has been unduly protracted, that extensive efforts have been made by the parties to conclude a collective agreement and there has been extended strike and lockout action. The Union does not oppose this application and consents to facilitation.

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

[4] The parties have been engaged in bargaining since March 2021 including four days of bargaining and extensive exchange of correspondence regarding bargaining. They attended mediation on 23 September 2022. The effected workers have taken a total of 16 days industrial action since September 2022 and Forbo has issued three lockout notices. The industrial action or threat of industrial action appears ongoing.

## **Findings**

[5] The measurement of the protracted nature of any direct action is not intended to be precise. In *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* the Employment Court observed regarding the balance that should be applied when assessing an application:<sup>1</sup>

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.

[6] I have carefully considered the material before the Authority and accept that the bargaining has been unduly protracted and that extensive efforts, including mediation, have failed to resolve it. I also accept the strike and lock out action relating to this bargaining has been protracted. The grounds for referral in s 50C(1)(b) and (c) of the Act are made out. The referral to the Authority for facilitation is accepted.

[7] I have considered referral to mediation. It is not clear on the material before the Authority why the parties have not sought further mediation assistance having attended once however, 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.

## **Reference for facilitation**

[8] The grounds of s 50C(1)(b) and (c) of the Employment Relations Act 2000 relied upon in making the application are met. The Authority accepts the reference for facilitation.

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<sup>1</sup> *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* [2012] NZEmpC 168, at [42].

[9] A member or members of the Authority appointed to provide facilitation will now contact Mr Dabelstein and Ms Griffin to make the necessary arrangements for facilitation to take place.

### **Costs**

[10] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.<sup>2</sup> No order for costs has been sought.

Marija Urlich  
Member of the Employment Relations Authority

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<sup>2</sup> Employment Relations Authority, Practice Note 2, Costs in the Employment Relations Authority Te Ratonga Ahumana Taimahi, 29 April 2022, para 5.