

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 92
3161921

BETWEEN

ASSOCIATION OF
PROFESSIONALS AND
EXECUTIVE EMPLOYEES
Applicant

AND

PACIFIC RADIOLOGY GROUP
LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Luke Coxon, advocate for the Applicant
Penny Shaw, counsel for the Respondent

Investigation Meeting: 16 March 2022 by Zoom

Date of Determination: 16 March 2022

DETERMINATION NUMBER 2 OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority adjourned an application by the Association of Professionals and Executive Employees (APEX) for reference for facilitation by agreement.¹ This was to enable a resumption of bargaining in early March 2022. Leave was reserved for either party to return to the Authority if the circumstances required.

[2] APEX represents medical imaging technologists- mammographers in the bargaining and PRG is a national imaging and diagnostic business providing radiology services.

¹ *Association of Professionals and Executive Employees v Pacific Radiology Group Limited* [2022] NZERA 33.

[3] The Authority was advised on 8 March 2022 that both APEX and PRG agreed that the matter should return to the Authority. Two further bargaining meetings had taken place and the parties have not been able to reach a settlement. There is agreement from both parties that the matter should be referred for facilitation to assist in resolving the difficulties in entering into a collective agreement.

[4] The Authority heard briefly from Mr Coxon and Ms Shaw about the resumed bargaining and difficulties that prevented the entering into of a collective agreement before it determined the application.

Should the Authority accept the referral for facilitation?

[5] Although the parties have agreed that the matter should be referred for facilitation the Authority must not accept a reference for facilitation unless it is satisfied that one or more of the grounds in s 50C of the Employment Relations Act 2000 (the Act) exist.

[6] The grounds relied on by APEX in its application are as follows:

- (a) During bargaining PRG has failed to comply with the duty of good faith and that this failure was serious, sustained and has undermined bargaining – s 50C(1)(a).
- (b) The bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement - s 50C(1)(b).
- (c) APEX has proposed strikes which if they were to occur would affect the public interest substantially – s 50C(1)(d).

[7] The application for referral to facilitation was opposed by PRG when it was first lodged with the Authority. The focus for the Authority where there is now agreement to a referral for facilitation is on the ground in s 50(C)(1)(b) of the Act that the bargaining has been unduly protracted and extensive efforts including mediation have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[8] Bargaining was initiated by APEX on 9 July 2021. There were some difficulties for PRG in the human resources area due to resignations, a level four lockdown in August and a vaccine mandate announcement. As a result, bargaining was delayed until October 2021. A

bargaining process agreement was agreed shortly before two days of initial bargaining on 18 and 19 October 2021 and a further day of bargaining on 4 November 2021.

[9] There has not been a concluded collective agreement between the parties. Remuneration is a significant issue in the collective bargaining. PRG wanted to undertake an analysis of remuneration against the market. That was anticipated to delay bargaining until late February or early March 2022. APEX was unhappy with that. Mediated bargaining took place on 7 December 2021 and then the application for facilitation was lodged with the Authority on 27 January 2022.

[10] The agreement to resume bargaining was on the basis that in early March 2022 the information from the analysis of the market remuneration would be available and an offer could be made about that. There was also some analysis of the collective agreement of another closely related company that may have provided some alternatives for resolution of bargaining. There were some more efforts therefore that could be made at that time.

[11] Further bargaining took place on 1 and 8 March 2022 but unresolved matters including remuneration, coverage, term and redundancy compensation remain.

[12] In the circumstances given the nature and scope of the bargaining I am satisfied that it has been unduly protracted, notwithstanding some period of inactivity, from the time of initiation of bargaining on 9 July 2021. I am also of the view that the parties have made extensive efforts. These have included several bargaining meetings including one with a mediator, a review over two to three months of market remuneration by PRG which involved engaging external consultants and focus groups and a resumption of bargaining to provide that information from the review for remuneration offers on two separate dates. There still exists serious difficulties that have precluded the parties from entering into a collective agreement.

Conclusion

[13] The ground under s 50C(1)(b) of the Act exists. The bargaining has been unduly protracted and extensive efforts including mediation have failed to resolve the serious difficulties that have precluded the parties from entering into a collective agreement.

[14] The Association of Professionals and Executive Employees and Pacific Radiology Group Limited are referred under s 50B of the Act to the Authority for facilitation to assist them in resolving difficulties in concluding the collective agreement they have been bargaining for.

[15] There is no order as to costs.

Helen Doyle
Member of the Employment Relations Authority