

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 195  
3216939

BETWEEN

SECRETARY FOR  
EDUCATION  
Applicant

AND

POST PRIMARY  
TEACHERS' ASSOCIATION  
TE WEHENGARUA  
Respondent

Member of Authority: Marija Urlich

Representatives: Bronwyn Heenan, for the Applicant  
Tanya Kennedy, counsel for the Respondent

Investigation Meeting: 17 April 2023 (by audio-visual link)

Determination: 19 April 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Secretary for Education (the Ministry) and the Post Primary Teachers' Association Te Wehengarua (the PPTA), are party to a now expired collective employment agreement – the Secondary Teachers' Collective Employment Agreement 1 July 2019 to 30 June 2022. They are currently engaged in bargaining for a new collective agreement which they have not been able to conclude. The PPTA is a national union with members employed in secondary schools across the motu.

[2] The Ministry has applied to the Authority under s 50B of the Employment Relations Act 2000 for assistance by way of urgent referral to facilitation to resolve difficulties the parties are having concluding bargaining. It says three of the four

grounds for the Authority to accept a reference to facilitation are made out. The Ministry has identified remuneration, hours of work and other unspecified matters as those on which the parties have been unable to reach agreement.

[3] The PPTA opposes the application. It says the grounds are not established at this stage of the bargaining, that the Ministry's approach to settling the agreement appears unreasonably constrained by its view of the Public Service Pay Adjustment (PSPA) and its impact on any pay offer. The PPTA also says the application for reference to facilitation is deficient because it does not identify the matter or matters relating to bargaining for which the referral is sought as required by s 50B of the Act. Notwithstanding, the PPTA will abide a grant of the reference if the Authority is so minded with particular regard to those matters which remain unresolved between the parties.

### **The Authority's investigation**

[4] The application for referral to facilitation was lodged on 7 March 2023. A case management conference was held with the parties on 10 March to progress the application and timetabling directions were made including directing the parties to mediation. The parties subsequently sought to vary the timetabling directions which was granted. On 30 March a further case management conference was held at which timetabling directions were made for an investigation meeting to be held to hear the parties' submissions. The parties have complied with those timetabling directions including filing affidavit evidence. The following affidavits and attachments thereto have been filed with and considered by the Authority:

- (i) affidavit of Grant Fraser affirmed 6 April 2023. Mr Fraser is an employment relations contractor engaged by the Ministry and involved in the current bargaining;
- (ii) affidavit of Joanna Brunskill affirmed 6 April 2023. Ms Brunskill is an advisory officer – industrial for the PPTA and is the PPTA's lead advocate in the current bargaining; and
- (iii) affidavit of Robert Willetts affirmed 14 April 2023. Mr Willetts is also a PPTA advisory officer – industrial and is the second advocate in the current bargaining.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received. In determining this matter the Authority has carefully considered all the material before it, including all evidence of the parties and their submissions.

## **Background**

[6] On 2 May 2022 the PPTA initiated bargaining for a collective agreement. On 2 July the parties entered a bargaining process agreement. Since 6 July bargaining sessions have been held on 14 days (some full and some part days) and the parties have exchanged correspondence regarding and in furtherance of bargaining.

[7] A significant stage in the course of the bargaining was reached on 25 October when the Ministry presented an offer to settle a new collective employment agreement. It was not accepted by the PPTA. No further offers have been made between the parties. The application of the PSPA to this bargaining and the constraint it may have on any pay offer appears to be a key feature of why agreement on remuneration has not been possible to date.

[8] On 1 March 2023 the Ministry proposed mediated bargaining to which the PPTA initially did not consent. On 7 March the Ministry lodged an application in the Authority for facilitation. By direction of the Authority and by consent, the parties attended mediation by 17 March. They then agreed to a further two days of bargaining assisted by a mediator up to 24 March. Since then, they have exchanged further correspondence regarding bargaining. A further full day of strike action has also been taken.

[9] The effected workers have taken a total of two days strike action on 16 and 29 March 2023 and undertaken partial strike action throughout term 1 of this school year. The s 98 record of strike lodged by the Ministry in respect of the one-day strike action taken on 16 March 2023 records 14,883 PPTA members were involved, resulting in 114,454.95 working hours lost by those employees with resulting lost wages and

salaries totalling \$3,274,822.44.<sup>1</sup> While some of the detail on the s 98 record is incorrect, the above quoted numbers are reliable. They demonstrate the strike action is widespread and significant and is likely to have disruptive social and economic effects if further such action is taken.

[10] In terms of next steps for the parties' bargaining, the Ministry apprehends the PPTA will take further industrial action and this will have a disruptive effect. The PPTA says there are no such concrete plans but that a preliminary notice was sent on 3 April to PPTA members and schools.

### **Facilitation**

[11] The purpose of the Authority facilitating bargaining is set out in s 50A:<sup>2</sup>

...to provide a process that enables 1 or more parties to collective bargaining who are having difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[12] In considering a reference for facilitation the Authority must be satisfied that one or more of the grounds set out in s 50C exist.<sup>3</sup> Those grounds reference the statutory framework for collective bargaining established under the Act including the good faith obligations to which parties engaged in bargaining must adhere. The overall circumstances of the bargaining are to be assessed in light of this statutory framework. Whether the assistance of the Authority by way of facilitation is appropriate requires a balancing of all these factors.

### **Discussion**

*Section 50C(1)(b) bargaining unduly protracted and extensive efforts (including mediation) have failed to resolve*

[13] In technical terms the parties' bargaining has been ongoing for almost 11 months. In practical terms, given the number of people involved in the bargaining teams and the supporting mechanisms, school term and holiday breaks and the national application of the outcome of bargaining and its importance to a large number of

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<sup>1</sup> Employment Relations Act 2000 s 98(a).

<sup>2</sup> Employment Relations Act 2000, section 50A.

<sup>3</sup> Employment Relations Act 2000, section 50C.

affected workers and secondary schools, this sort of timeframe could be said to be reasonably expected.

[14] However, the parties' bargaining appears to have reached an impasse from at least October 2022, and despite their extensive efforts to move the bargaining forward, including mediation, this has not proved possible and, I am satisfied has precluded them from entering a collective agreement.

[15] The ground for referral in s 50C(1)(b) of the Act is made out. Having found one ground for referral is established it is not necessary to consider the remaining proposed grounds.

### **Reference for facilitation**

[16] The grounds of s 50C(1)(b) of the Employment Relations Act 2000 relied upon in making the application are met. The Authority accepts the reference for facilitation for matters which remain unresolved in the parties bargaining including the matter of a pay offer. A member of the Authority appointed to provide facilitation will now contact counsel to make the necessary arrangements for facilitation to take place.

### **Costs**

[17] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.<sup>4</sup>

Marija Urlich  
Member of the Employment Relations Authority

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<sup>4</sup> Employment Relations Authority, Practice Note 2, Costs in the Employment Relations Authority Te Ratonga Ahumana Taimahi, 29 April 2022, para 5.