

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 379
3240639

BETWEEN	TRANSPORTATION AUCKLAND CORPORATION LIMITED Applicant
AND	NEW ZEALAND TRAMWAYS & PUBLIC PASSENGER TRANSPORT EMPLOYEES UNION, AUCKLAND BRANCH First Respondent
AND	FIRST UNION Second Respondent

Member of Authority: Andrew Dallas

Representatives: Andrew Caisley, counsel for the Applicant
Gary Froggart, advocate for the First Respondent
Ken Tenamu, advocate for the Second Respondent

Investigation Meeting: On the papers

Date of Determination: 18 July 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Transportation Auckland Limited (TACL), the New Zealand Tramways & Public Transport Employees Union and First Union (Combined Unions) are currently in bargaining for the renewal of the NZ Bus, NZ Tramways Union – Auckland and First Union Collective Agreement, 1 April 2020 – 31 March 2023.

[2] While the parties have engaged in a number of informal and formal discussions, including seeking mediation assistance, since the Combined Unions initiated bargaining 7 February 2023, they have not yet managed to reach mutually acceptable terms for a new collective agreement. The most recent offer being made TACL to the Combined Unions on 14 July 2023. The bargaining between the parties has also been punctuated by industrial action by the Combined Unions, with the prospect of further strike action to come.

[3] TACL has now made an urgent application for referral of the bargaining dispute extant to the Authority for facilitation under s 50B of the Employment Relations Act 2000 (the Act).

[4] The grounds advanced by the TACL for referral are summarised as:

- (a) during the course of the bargaining there have been one or more strikes (s 50C(1)(c) of the Act); and
- (b) in the course of bargaining there has been a proposed strike that substantially affects the public interest (s 50C(1)(d)).

[5] It was made clear during a brief case management conference convened late yesterday afternoon that the Combined Unions support TACL's application for urgency and generally, the application for referral to facilitation.

[6] So then, upon the grant of urgency this matter was heard "on the papers", being the statement of problem and several subsequent email communications from the parties, one of which attaching relevant documents.

Referral for facilitation

[7] Having carefully considered the material before the Authority, I am satisfied that, at the least, the ground for facilitation set out in s 50(C)(i)(c) of the Act is made out. Therefore, I refer to the bargaining between the TACL and the Combined Unions to Authority for facilitation.

[8] There is no doubt the parties will benefit from intervention by Authority in the bargaining given the nature of their current difficulties.

[9] Finally, while not a consideration for the grant of referral of contentious collective bargaining to the Authority, it would be a highly desirable demonstration of good faith with the facilitation process, if the parties would refrain from threatening or issuing notices for strikes or lockouts during its course. Such refrenation would no doubt also come as a relief to the travelling public of Tāmaki Makaurau.

Next steps

[10] The Authority will convene a case management conference with the parties this afternoon to discuss arrangements for a facilitation commencing on Thursday morning in Auckland.

Costs

[11] As this is an application for referral to facilitation, there is no order as to costs.

Andrew Dallas
Chief of the Employment Relations Authority