

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 702
3257619

BETWEEN	CANTERBURY SCL LTD, SOUTHERN COMMUNITY LABORATORIES LTD, MEDLAB SOUTH LTD, SCL OTAGO SOUTHLAND CODE SERVICES LTD, SCL OTAGO SOUTHLAND SERVICES LTD, WELLINGTON SCL LTD Applicant
AND	ASSOCIATION OF PROFESSIONAL AND EXECUTIVE EMPLOYEES Respondent

Member of Authority:	Helen Doyle
Representatives:	Diana Hudson for the Applicants David Munro for the Respondent
Investigation Meeting:	On the papers and case management conferences 24 October 2023 and 23 November 2023
Determination:	24 November 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Canterbury SCL Ltd, Southern Community Laboratories Ltd, Medlab South Ltd, SCL Otago Southland Code Services Ltd, SCL Otago Southland Services Ltd and Wellington SCL

Ltd are a group of companies providing medical laboratory services across the Wellington region, Hawkes Bay and the South Island. I will refer to the group of companies from hereon as the Companies.

[2] The Association of Professional and Executive Employees (APEX) is a Union with about 500 members employed by the Companies in a number of roles including medical laboratory scientist, medical laboratory technician, medical laboratory preanalytical technician, mortuary technician and phlebotomist.

[3] The Companies and APEX are parties to a collective employment agreement which expired on 30 June 2023. APEX initiated bargaining for a renewal of the collective agreement covering its members on 3 May 2023.

[4] On 17 October 2023 the Companies applied to the Authority under s 50B of the Employment Relations Act 2000 (the Act) for assistance by way of urgent referral to facilitation to resolve difficulties they are having in concluding bargaining. It was set out that the main difficulty in concluding a collective agreement arose from the remuneration claim.

[5] The Companies rely on the ground in s 50C(1)(c) of the Act that:

- (i) in the course of the bargaining there has been 1 or more strikes or lockouts; and
- (ii) the strikes or lockouts have been protracted or acrimonious:¹

Investigation process

[6] APEX opposed the referral for facilitation at the time of the first case management conference with the Authority on 24 October 2023 on the basis that the application was premature and that there was more room to resolve the bargaining. The Companies considered further bargaining somewhat pointless. The Authority observed there had been limited

¹ The Authority concluded after hearing from Ms Hudson and Mr Munro that the focus was more on protracted than acrimonious.

bargaining to that point of time of about two and a half to three days with some mediation assistance and that APEX was hopeful that some further progress could be made.

[7] There was agreement, albeit reluctantly, on the Companies' behalf to a further bargaining meeting on 15 November 2023. The Authority scheduled a further case management conference on 16 November 2023 to see if there had been further progress and, if necessary, consider again the application for referral to facilitation.

[8] On the morning of 16 November 2023 the Authority received an email from Ms Hudson advising that the parties had met the previous day for a full day of bargaining and that some constructive progress had been made towards resolution. There was to be further communication between the parties early the following week and Ms Hudson asked if the case management conference could be rescheduled for later the following week.

[9] The Authority agreed to this and scheduled a further case management conference for 23 November 2023. At that case management conference the Authority heard from Ms Hudson and Mr Munro. Ms Hudson wanted the bargaining to be referred for facilitation. Mr Munro no longer opposed the referral for facilitation.

[10] It was agreed that the Authority could proceed to determine the reference for facilitation on the papers it had before it and the information from the case management conference.

Discussion

[11] I am satisfied that notwithstanding real efforts, including the full day of bargaining on 15 November 2023 and subsequent email exchanges, there remains serious difficulties between the parties in concluding a collective agreement.² These difficulties arise from the remuneration claims about which progress has stalled.

² Section 50A of the Employment Relations Act 2000 – purpose of facilitating collective bargaining.

[12] The Authority must not accept a reference for facilitation unless satisfied the ground relied on by the Companies exist.³ The ground relied on is that in the course of bargaining there have been 1 or more strikes and they have been protracted.

[13] There has been strike action since 12 July 2023. This has continued for August, September, October, and November 2023. Mr Munro advised the Authority that 45 notices of partial strike action have been issued commencing 5 December 2023 until Christmas. The nature of the strike action has varied over this time and could be, at times, as Mr Munro describes it complex. It has however included full and partial withdrawal of labour over the period from July 2023 and is continuing.

[14] There can be no dispute that there has been strike action.

[15] Ms Hudson and Mr Munro agree that the strike action is protracted. I weigh when evaluating whether the strike action is protracted its continuing and variable nature with the important services that the parties provide to members of the public in the health environment. I accept that the strikes have been protracted.

[16] I conclude that the ground for reference for facilitation in s 50C(1)(c) of the Act is made out.

Reference for facilitation

[17] The Authority has found the ground relied on in s 50C(1)(c) of the Act is made out and accepts the reference for facilitation of bargaining in respect to the issues that have prevented a settlement being concluded between the Companies and APEX.

[18] I shall refer the matter to the Chief of the Employment Relations Authority for a Member of the Authority to be appointed as facilitator to enable that facilitation to begin as soon as possible. A Member of the Authority will contact Ms Hudson and Mr Munro so that arrangements for facilitation can be made.

³ Section 50C(1) of the Employment Relations Act 2000.

Costs

[19] The Authority's presumption with referral for facilitation is that parties bear their own costs.⁴

Helen Doyle
Member of the Employment Relations Authority

⁴ Employment Relations Authority, Practice Note 2. Costs in the Employment Relations Authority Te Ratonga Ahumana Taimahi, 29 April 2022 at [5].