

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 726
3265842

BETWEEN	TE WHATU ORA – HEALTH NEW ZEALAND Applicant
AND	ASSOCIATION OF PROFESSIONAL AND EXECUTIVE EMPLOYEES (APEX) Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Susan Hornsby-Geluk, counsel for the Applicant
Abbey Trewavas, advocate for the Respondent

Investigation Meeting: On the papers and case management teleconference 6
December 2023

Determination: 6 December 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Te Whatu Ora - Health New Zealand (TWOHNZ) and the Association of Professionals and Executive Employees (APEX) are engaged in bargaining and have not been able to conclude a collective agreement. The parties agree they are having serious difficulties in concluding their collective agreement and facilitation would assist in resolving those difficulties.

[2] TWOHNZ has lodged an application for facilitated bargaining based on the grounds set out in s 50C(1)(b) and (c) of the Employment Relations Act 2000 (the Act). On 6 December 2023, APEX lodged a statement in reply and does not oppose the

application although they disagree with aspects of the information lodged by TWOHNZ. APEX takes a different view as to the impact of the strike action and disputes there have been challenges in settling the life preserving service negotiations. APEX agrees that an impasse has been reached.

[3] TWOHNZ has also made an application to the Authority to give urgency to its consideration and investigation under clause 17 of schedule 2 of the Act, on the basis that it is necessary and just to do so.

[4] The current collective agreement expired on 26 July 2023. The parties have been engaged in bargaining since bargaining was initiated on 11 June 2023 and have also attended mediation on more than one occasion.

[5] At the case management teleconference, the parties provided further information to the Authority and agreed with the Authority that the referral could be determined on the documents provided to the Authority.

Discussion

[6] The collective agreement covers employees employed as a registered physiotherapist or physiotherapy assistant and any employee substantially employed as a physiotherapist or physiotherapy assistant but who from time to time uses different titles, and who are employed by the former Bay of Plenty District Health Board or the Waikato District Health Board.

[7] I have considered the material before the Authority. Remuneration is the remaining key issue in dispute. A series of three offers from TWOHNZ were rejected by APEX. A pay equity claim was settled in between the second and third offer. While the final offer was rejected by APEX, it accepts that offer was what it referred to as a standard offer. The impasse is instead that APEX wishes its members to have parity with other non-APEX members who have had access to a financial benefit by virtue of the timing of the expiry dates of various collectives (both the APEX and other union and non-union agreements) in the lead up to this round of bargaining. Both parties are in agreement that the sticking point is remuneration and further bargaining or mediation will not resolve this issue.

[8] There have been strikes involving withdrawal of services commencing on 18 August 2023 across the two different locations (Waikato and Bay of Plenty). A further strike notice was issued on 1 December 2023 which is a continuation of the current strikes and not an escalation. It extends the existing strike action by one week ending on 24 December 2023.

[9] TWOHNZ says maintaining service delivery in the face of the strike action has taken other health professionals away from their work and the direct impact is being felt. There was evidence of tensions between striking and non-striking workers and concerns that these impacts will be further exacerbated over the Christmas and New Year period when staffing levels are lower. The ability to support students is also said to be limited.

[10] APEX disagrees that inter-professional relationships are breaking down or that strike action is affecting the employability of physiotherapy students.

[11] With regard to a written life preserving services agreement and the parties' bargaining process agreement, it is accepted these have not been formalised in writing, but through a series of negotiations they have reached agreement in principle.

Findings

[12] Despite the amount of time spent in bargaining, it appears the remaining issue in dispute was unlikely to be able to be resolved until the pay equity claim was settled. There is, however, a fundamental sticking point with regard to the remuneration claim that both parties are agreed on and progress has stalled.

[13] There is also evidence that the hospital system in those areas is under pressure now. I accept TWOHNZ's evidence that because the nature of the strike action undertaken has differed from notice to notice and between different regions and facilities, it has been difficult to manage. I also note the evidence that there is a nationwide shortage of physiotherapists.

[14] While there are several variables creating this pressure, any strikes in this workforce at this time will add to that situation. The impacts are on both other health

professionals and the general public accessing the health system. It was noted also that the impacts of Covid-19 are still in existence.

Referral for facilitation

[15] On that basis I consider that there is a public interest which will be affected substantially by the ongoing strike action and that the strikes have been protracted. As such I consider that the grounds in both s 50C (c) and (d) of the Act are made out. The referral to facilitation is accepted.

[16] I have considered the application for urgency and have accorded urgency to this matter given the impact on the health system in these areas of ongoing strike action and the upcoming Christmas and New Year period.

[17] I have also considered further referral to mediation. In the circumstances, and given the parties agree as to engagement in facilitation, I do not consider a direction to further mediation would contribute constructively to resolving the matter.

Next steps

[18] The Authority will communicate with the parties as to the convening of a case management conference and in accordance with s 50D of the Act, the member of the Authority who facilitates collective bargaining will not be the member who accepted the reference for facilitation.

Costs

[19] There is no order as to costs.¹

Sarah Kennedy-Martin
Member of the Employment Relations Authority

¹ [Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi](#), August 2023.