

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 239  
3288679

BETWEEN                      AUCKLAND  
INTERNATIONAL AIRPORT  
LIMITED  
Applicant

AND                              E TŪ INCORPORATED  
First Respondent

Member of Authority:      Eleanor Robinson

Representatives:           Emma Peterson, counsel for the Applicant  
Emily Griffin, counsel for the Respondent

Investigation Meeting:    24 April 2024 by Audio Visual Link  
Submissions:                22 April 2024 from the Applicant and from the  
Respondent

Determination:              24 April 2024

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]      This is an application for facilitation pursuant to s 50B of the Employment Relations Act 2000 (the Act), in respect of the collective bargaining currently underway between the Applicant, Auckland International Airport Limited (AIAL) and E Tū Incorporated (E Tū Inc).

[2]      AIAL claims pursuant to s50A(1) of the Act, that the parties are having serious difficulties in concluding a collective agreement and facilitation would assist in resolving these difficulties.

[3]      AIAL's application for facilitation is made relying on the following grounds pursuant to s 50 C(1)(d) of the Act:

- i. In the course of bargaining, a party has proposed a strike or lockout; and
- ii. The strike or lockout, if it were to occur, would be likely to affect the public interest substantially.

[4] Section 50C (2) of the Act sets out that a strike or lockout is likely to affect the public interest substantially if:

- (a) The strike or lockout is likely to endanger the life, safety, or health of persons; or
- (b) The strike or lockout is likely to disrupt social, environmental, or economic interests and the effects of the disruption are likely to be widespread, long-term or irreversible.

[5] E Tū Inc consents to the application for facilitated bargaining.

### **Background**

[6] AIAL operates Auckland's international and domestic airport.

[7] AIAL is a certified aerodrome operator duly authorised by the Director of Civil Aviation in accordance with the Civil Aviation Act 1990. It is accordingly required to comply with the Civil Aviation Rules (the Rules).

[8] Part 139 of the Rules (November 2023) sets out some of the regulatory requirements relating to the certification and operation of aerodromes:

- a. AIAL must establish and maintain an aerodrome emergency plan that is designed to minimise the possibility and extent of personal injury and property damage at, or in the vicinity of, the aerodrome in an emergency.
- b. AIAL must maintain an adequately equipped emergency operations centre and command post for each type of emergency.
- c. If AIAL is unable to comply with the emergency services requirements of Part 139, which would be the case arising out of any strike action, it must cease all air services in accordance with Part 139.125 of the Rules due to unsafe conditions.

[9] As part of its airport operations, AIAL has an Emergency Services team (AES). The AES perform the following work:

- a. aviation rescue services, including marine emergency rescue duties;
- b. firefighting services; and
- c. medical, safety and security emergency services.

[10] AIAL employs 63 employees in its AES. All are members of E Tū Inc.

[11] The work performed by AES employees is critical to the operation of AIAL. If this work is not able to be performed, the airport must close to all flights (inbound and outbound).

### **Bargaining for a new collective agreement**

[12] AIAL and E Tū Inc are parties to a collective agreement covering the AES Employees. This collective agreement was in force from 1 October 2021 to 30 September 2023 and remains in force pursuant to s 53 of the Act.

[13] On 7 August 2023 E Tū Inc sent AIAL a notice initiating bargaining for a new collective agreement covering the AES Employees. This bargaining covers all work done by the Emergency Services team.

[14] Since bargaining was initiated, AIAL and E Tū Inc have attended:

- a. four full-day and one half-day collective bargaining sessions; and
- b. three mediated collective bargaining sessions with the assistance of a mediator from the Ministry of Business Innovation and Employment.

[15] The bargaining for a new collective agreement remains ongoing.

[16] During the course of bargaining E Tū Inc has proposed strike action. In particular:

- a. On 8 December 2023 E Tū Inc's then lead negotiator told AIAL's Chief Operations Officer that union members had told him that if the parties could not make progress, they wanted E Tū Inc to hold a round of

meetings about what industrial action looks like and what type of industrial action they could take.

- b. On 24 January 2024 AES Employees and E Tū Inc delegates told AIAL's Chief Operations Officer that they do not want to take industrial action (rather, they want to look at ways to avoid industrial action), but if the parties cannot agree on a wage increase that gets them towards the level they want, then strike action may be the outcome they are left with.

[17] The parties have not agreed a remuneration increase in the course of the bargaining.

[18] E Tū Inc submits that over the course of bargaining it became clear that the parties were far apart in terms of agreeing increased remuneration rates and increases to allowances and other issues. Its members are concerned about retention of experienced personnel and with remuneration in relation to similar workforces.

[19] During the course of bargaining, it is submitted that E Tū Inc's members have conceded several claims in an attempt to settle and agree a collective agreement, but if unable to resolve their differences, in regard to remuneration and other matters, they will be forced to take strike action.

[20] The Applicant submits that in the circumstances in which all AES Employees are E Tū Inc members, strike action would likely mean that all AES Employees went on strike. In that case, no one would be available to perform the work of the Emergency Services team.

[21] Without employees able to perform Emergency Services work (especially medical, firefighting and aircraft rescue work), AIAL would be required, under Part 139 of the Rules, to close the airport to both inbound and outbound flights and cease all aviation services for the duration of the strike.

*Section 50C(1)(d): Public Interest Affected Substantially*

[22] AIAL submits that given the critical nature of their work, if the AES Employees were to go on strike, this would affect the public interest substantially with no airlines able to operate from the airport. Many international carriers may simply choose not to

fly to New Zealand if there is any risk of industrial disruption and other aerodromes in New Zealand would not have sufficient capacity to absorb significant diversions.

[23] Even a short discontinuance of operations would have a significant and widespread effect on the general public. It is noted that the airport would be closed to all flights, domestic and international for the duration of the strike. This would significantly affect 27 airlines and their passengers, with a flow-on effect following the strike in regard to flights being rescheduled, cancelled or diverted.

[24] There would additionally be an impact of airport related services run by third parties, including ground handling and vendors at the airport.

[25] There would be an associated impact on freight services which manage the import/export of goods.

[26] It is submitted that strike action would be likely to affect the public interest substantially and that it will be likely to disrupt social and/or economic interests. The effects of the disruption are likely to be widespread, in that a large number of businesses and individuals would be affected.

### **Should facilitation be granted?**

[27] AIAL has applied for facilitation on an urgency basis.

[28] It is accepted by the parties that the threshold for facilitation to be granted is high, but they believe it is met in this case.

[29] The Authority may accept a reference for facilitation if satisfied that one or more of the grounds set out in s 50C(1) of the Act apply. In this case, AIAL has made an application under s 50(1)(d) of the Act which states:

#### **Grounds on which Authority may accept reference**

(1) The Authority must not accept a reference for facilitation unless satisfied that 1 or more of the following grounds exist:

...

(d) that-

(i) in the course of bargaining, a party has proposed a strike or lockout; and

(ii) the strike or lockout, if it were to occur, would be likely to affect the public interest substantially

[30] I have fully considered all the submissions filed in this matter.

[31] In regard to s 50C(1)(d)(i), E Tū Inc submits industrial action including strike action is under serious consideration and is likely of the parties are unable to resolve their differences.

[32] AIAL acknowledges that the parties are now at a point where no agreement on a suitable remuneration increase has been reached, and that therefore strike action would be the next step.

[33] In this case, E Tū Inc consents to the application for facilitation and it has confirmed that its members will be intending to take strike action to overcome the impasse between the parties.

[34] I am satisfied that the first limb of the grounds in s 50(1)9d) of the Act has been met.

[35] In regard to s 50(1)9d)(ii) of the Act, it is submitted by AIAL the proposed strike would substantially affect the public interest on the basis that there would be widespread disruptions to social and economic interests. Further, that the effects of the disruption are likely to be widespread, long-term, or irreversible.

[36] I observe that all AES employees are E Tū members and therefore likely to participate in strike action.

[37] E Tū Inc submits that its members are dedicated but are of one mind concerning the intention to take strike action if facilitation is not granted. It concerns with AIAL as to the likely impact and widespread disruption affecting the public interest should facilitation not be granted and strike action ensue.

[38] It is my view that the two limbs of the requirements on which facilitation may be granted under in s 50(1)(d) of the Act have been met. In all the circumstances I grant the application for facilitation which I believe will assist the parties.

[39] The parties will shortly be contracted by an Authority Officer to make arrangements for the facilitation to occur shortly.

**Costs**

[40] There is no order for costs.

Eleanor Robinson

Member of the Employment Relations Authority