

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 267  
3295539

BETWEEN      TE WHATU ORA  
Applicant

AND              NEW ZEALAND RESIDENT DOCTORS  
ASSOCIATION INCORPORATED  
Respondent

Member of Authority:      Andrew Dallas

Representatives:              Susan Hornsby-Geluk, counsel for the Applicant  
Omar Hamed, advocate for the Respondent

Investigation Meeting:      On the papers

Determination:              6 May 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]      This afternoon Health New Zealand – Te Whatu Ora (HNZ-TWO) lodged an urgent application for referral to the Authority for facilitation pursuant to s 50B of the Employment Relations Act 2000 (the Act) in relation to its stalemated collective bargaining with the New Zealand Resident Doctors Association (NZRDA). The NZRDA represents “Resident Medical Officers” (sometimes referred to as “Junior Doctors”) in public hospitals across New Zealand.

[2]      The parties are seeking to replace the NZRDA and Twenty District Health Boards Multi-Employer Collective Agreement, 17 May 2021 to 31 March 2024 (CA).

## **Background**

[3] Since that CA came into force, the Twenty District Health Boards have been disestablished and been replaced by HNZ-TWO. There is no dispute between the parties that HNZ-TWO is now the employer of the NZRDA's members and the proper respondent to the Notice of Initiation (of bargaining) dated 2 February 2024.

[4] It is clear all other procedural bargaining steps have been completed by the parties including the negotiation of a bargaining process agreement.

[5] Since bargaining was initiated, the parties have engaged in six days of bargaining involving complete bargaining teams, and three days of bargaining involving what is known in New Zealand as, and probably only so, a "short lineout".<sup>1</sup>

[6] On 22 April 2024, the NZRDA issued a notice of strike action for a 25-hour complete withdrawal of labour commencing at 7.00am on 7 May 2024.

[7] On 30 April 2024 and 1 May 2024, the parties attended a mediated bargaining session convened by the Employment Mediation Service of the Ministry of Business, Innovation and Employment.

[8] On 1 May 2024, the NZRDA issued further notice of strike action for a 49-hour complete withdrawal of labour commencing at 7.00am on 16 May 2024.

[9] For completeness, the parties have reached agreement over the provision of life preserving services (LPS) under the *Code of Good Faith for the Public Health Sector*<sup>2</sup> to cover the period of the first strike notice. Negotiations are ongoing between the parties as to provision of LPS to the cover the period of second strike notice.

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<sup>1</sup> A smaller representative group from each bargaining side.

<sup>2</sup> Employment Relations Act, schedule 1B

### **Application for facilitation**

[10] HNZ-TWO asserts two grounds under s 50C of the Act for referral. These are, in summary:

- (i) notified strike action by the NZRDA would likely impact the public interest substantially (s 50C(1)(d)); and
- (ii) (dependant on timing) one or more strikes by the NZRDA will have occurred in circumstances where the bargaining was protracted or acrimonious (s 50C(1)(c) of the Act).

[11] The NZRDA supports HNZ-TWO's applications for urgency and referral to facilitation.

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

[12] In considering all the circumstances, including hearing from the parties, and taking a commonsense assessment of the overall bargaining difficulties between them, I find the ground set out in s 50C(1)(d) is made out. As this determination has been issued before the period covered by the first strike notice and as only one proven ground is necessary for referral for facilitation under the Act, it is not necessary to consider the additional ground set out in s 50C(1)(c) at this time. Consequently, it is appropriate to order that the parties now engage in facilitation to assist them in a pathway to settlement of their differences, including potential ratification of a replacement CA.

### **Next steps**

[13] As an act of good faith with the facilitation process, the Authority recommends the NZRDA withdraws its current strike notices and the parties refrain from threatening and/or taking industrial action during the process. However, the Authority has no power under the Act to require the cessation of industrial action between the parties. Indeed, absent same, it is clear Parliament anticipated that facilitation and industrial action could co-exist, albeit, and most likely, uncomfortably.

[14] The Authority will convene a case management conference with the parties tomorrow morning to discuss arrangements for urgent facilitation including the timing and the venue of such.

## **Costs**

[15] There is no order for costs.<sup>3</sup>

Andrew Dallas  
Member of the Employment Relations Authority

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<sup>3</sup> See, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>  
at [5]