

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 540  
3319240

BETWEEN                      NEW ZEALAND NURSES  
   ORGANISATION  
   INCORPORATED  
   Applicant

AND                              ACCESS COMMUNITY  
   HEALTH CARE LIMITED  
   Respondent

Member of Authority:      Sarah Kennedy-Martin

Representatives:            Machrus Siregar, counsel for the Applicant  
   Chloe Luscombe, counsel for the Respondent

Investigation Meeting:     On the papers

Determination:              6 September 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      New Zealand Nurses Organisation Incorporated (NZNO) seeks a reference to facilitation under s 50B of the Employment Relations Act 2000 (the Act). NZNO and Access Community Health Care Limited (Access) are engaged in bargaining and have not been able to conclude a collective agreement. In accordance with s53 of the Employment Relations Act 2000, the Collective Agreement between the parties<sup>1</sup> has now lapsed.

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<sup>1</sup> Access Community Health, Hauora Tara a Whare Nurses Collective Employment Agreement 1 July 2022 – 30 June 2023.

[2] On 23 August 2024, NZNO lodged the application relying on the grounds set out in s 50C(1)(b), (c) and (d) of the Act. On 4 September 2024 Access lodged a statement in reply. Access do not oppose the application.

### **Background**

[3] Access provides nursing, personal care, rehabilitation, social support and household assistance to people in their own homes. The work is funded almost entirely by Te Whatu Ora. The client is the person that care is delivered to, but in the majority of cases Access received payment from the funder for the service delivered. The funding model is fixed, based on an hourly rate. The expired Collective Agreement covered NZNO members who are Registered Nurses and Enrolled Nurses. A significant portion of these employees are District Nurses.

### **Application for facilitation**

[4] The current collective agreement expired on 30 June 2023. Since bargaining commenced on 1 May 2023, the parties have engaged in six days of bargaining including 3 additional days of mediated bargaining. While three strike notices were issued only two took place. NZNO withdrew the second strike notice so it could present an offer from Access to its members. The offer was rejected and the second strike went ahead on 5 August 2023.

[5] On both occasions the strike action involved complete withdrawal of labour and for completeness agreement was reached over life preserving services to cover the period of both strikes.

[6] Three grounds are relied on under s 50C of the Act for referral:

(b) Bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement; and

(c) There have been one or more strikes and the strikes have been protracted; and

(d) The strike action by NZNO would be likely to affect the public interest substantially.

[7] There have been two strikes involving a complete withdrawal of labour. Strike notices were issued for strikes on 15 July, 26 July and 5 August 2024. The parties attended mediation on 3 July 2024 ahead of the first strike but were unable to reach agreement. The first strike went ahead on 15 July. On 22 July the parties attended mediation again and the strike notice for the second strike was withdrawn so NZNO could present an offer to its members. The offer was not accepted and on 5 August 2024 another strike went ahead.

[8] A variation was entered into at the start of bargaining that provided an increase in pay rates. Two further offers have been rejected by NZNO during the course of bargaining.

### **Referral to facilitation**

[9] I have considered the material before the Authority. Remuneration is the remaining issue in dispute. Both parties are in agreement that further bargaining and/or mediation will not resolve this issue in the circumstances.

[10] I find the ground set out in s 50(1)(b) to be made out. The Collective Agreement has now lapsed, the parties have been engaged in bargaining since May 2023 and used mediation on more than one occasion to assist. Bargaining has become unduly protracted and extensive efforts have failed to assist the parties in reaching agreement.

[11] On the basis that I consider at least one of the grounds for facilitation to be made out, it is appropriate that the parties now engage in facilitation.

[12] 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**

[13] The Authority will convene a case management conference with the parties to discuss arrangements for facilitation 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**

[14] There is no order as to costs.<sup>2</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>2</sup> See, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf> at [5].