

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 767  
3348020

BETWEEN NEW ZEALAND PUBLIC  
SERVICE ASSOCIATION TE  
PŪKENGĀ HERE TIKANGA  
MAHI INCORPORATED  
Applicant

AND CHIEF OF DEFENCE FORCE  
Respondent

Member of Authority: Marija Urlich

Representatives: Fleur Fitzsimmons, advocate for the Applicant  
Bronwyn Heenan and Mike Mercer, counsel for the  
Respondent

Investigation Meeting: 20 December 2024

Determination: 20 December 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (the PSA) and the Chief of the Defence Force (NZDF), are party to a now expired collective employment agreement. They are currently engaged in bargaining for a new collective agreement which they have not been able to conclude.

[2] The parties have jointly applied to the Authority under sections 50B, 50C(1)(b) and/or 50C(1)(c) of the Employment Relations Act 2000 for assistance by way of urgent referral to facilitation to resolve difficulties the parties are having concluding bargaining. They say two of the four grounds for the Authority to accept a reference to

facilitation are made out - bargaining has become unduly protracted and extensive negotiations have failed to resolve the issues between the parties and in the course of bargaining there have been numerous strikes that are ongoing and protracted.

### **The Authority's investigation**

[3] The application for referral to facilitation was lodged on 19 December 2024. This morning a case management conference was held with the parties' representatives to progress the application. During the conference the representatives spoke to the issues including the matter of urgency and grounds of referral. I indicated the Authority had sufficient information before it to make a determination on the application which includes the expired collective agreement, the initiation of bargaining notice dated 30 April 2024, the bargaining process agreement signed 18 June 2024, a detailed timeline of the parties' bargaining and extensive documentation including strike notices.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all information received. In determining this matter the Authority has carefully considered all the material before it, including all evidence of the parties and their submissions.

### **Background**

[5] Bargaining for a new collective agreement was initiated by the PSA on 30 April 2024. A bargaining process agreement was entered into and signed by the parties on 18 June 2024.

[6] Bargaining first took place between 18 and 20 June 2024 and the parties met in advance of bargaining being formally initiated to discuss matters related to the bargaining including exchanging and exploring claims. A second round of bargaining occurred between 10 and 12 July 2024. Bargaining was unable to be concluded.

[7] The parties then discussed an intention to seek mediation and other ways to progress the bargaining including tabling an offer and further bargaining dates.

[8] On 16 September 2024, the PSA issued a strike notice for industrial action from 18 September to 31 October 2024 and 14 days' notice of industrial action occurring at a specific work site from 2 October to 31 October 2024.

[9] The parties participated in mediation again on 26 September 2024. Further bargaining took place on 9 and 10 October 2024.

[10] NZDF made an offer to settle the new collective agreement 18 October 2024, which was not accepted, and PSA members subsequently voted for escalated industrial action.

[11] On 5 November 2024 the PSA issued 16 notices of escalated industrial action to NZDF from 6 November 2024 to 31 January 2025, and for a specific site from 20 November 2024 with the same end date.

[12] It was necessary for the Minister of Defence to authorise the use of Armed Forces to cover duties undertaken by the Defence Security Guard Force and NZDF Airfield Fire Fighters. On 18 November the Minister made further authorisations and on 20 November 2024 the House of Representatives passed a resolution extending all the authorisations made by the Minister of Defence to 14 February 2025.

[13] The parties participated again in mediation on Wednesday, 27 November 2024. Following mediation, further the attempts to progress the bargaining were unsuccessful. A further notice of escalated industrial action was issued by the PSA on 29 November 2024 for industrial action from 9 December to 31 January 2025 and a 14 days' notice of industrial action at a specified site was issued from 16 December to 31 January 2025.

[14] The parties have been unable to reach agreement on remuneration and other matters.

## **Facilitation**

[15] The purpose of the Authority facilitating bargaining is set out in s 50A:<sup>1</sup>

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<sup>1</sup> Employment Relations Act 2000, section 50A.

...to provide a process that enables 1 or more parties to collective bargaining who are having difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[16] In considering a reference for facilitation the Authority must be satisfied that one or more of the grounds set out in s 50C exist.<sup>2</sup> Those grounds reference the statutory framework for collective bargaining established under the Act including the good faith obligations to which parties engaged in bargaining must adhere.

[17] In *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* the Employment Court observed regarding the balance that should be applied when assessing an application for referral to facilitation:<sup>3</sup>

Whilst the Authority must ensure that the statutory grounds exist, it should not be astute to find reasons to refuse a reference to facilitation where a common sense assessment of the overall position indicates its desirability in light of the statutory scheme for collective bargaining and collective agreements.

## **Discussion**

[18] The background shows the parties have engaged in detailed and intensive bargaining over a number of months. This has not been able to resolve matters between them and the bargaining has reached a stage of undue protraction and the attempts the parties have used to move the bargaining forward, including mediation, have not been successful.

[19] The ground for referral in s 50C(1)(b) of the Act is made out. Having found one ground for referral is established it is not necessary to consider the remaining proposed grounds.

## **Reference for facilitation**

[20] The ground of s 50C(1)(b) of the Employment Relations Act 2000 relied upon in making the application is met. The Authority accepts the reference for facilitation for matters which remain unresolved in the parties' bargaining.

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<sup>2</sup> Employment Relations Act 2000, section 50C.

<sup>3</sup> *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* [2012] NZEmpC 168, at [42].

[21] A member or members of the Authority appointed to provide facilitation will now contact counsel to make the necessary arrangements for facilitation to take place.

**Costs**

[22] As this is an application for facilitation, there is no order for costs.

Marija Urlich  
Member of the Employment Relations Authority