

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

3257619

BETWEEN

CANTERBURY SCL LTD,  
SOUTHERN COMMUNITY  
LABORATORIES LTD, MEDLAB  
SOUTH LTD, SCL OTAGO  
SOUTHLAND CODE SERVICES  
LTD, SCL OTAGO SOUTHLAND  
SERVICES LTD, WELLINGTON  
SCL LTD  
Applicants

A N D

ASSOCIATION OF  
PROFESSIONAL AND  
EXECUTIVE EMPLOYEES  
Respondent

Members of Authority: David G Beck

Representatives: Diana Hudson counsel for the Applicants  
David Munro advocate for the Respondent

Submissions Received: 2 February 2024 from the Applicants  
2 February 2024 from the Respondents

Date of recommendation: 13 February 2024

---

**RECOMMENDATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] The Applicants are a private sector, employers' collective providing laboratory testing services in the health sector and are known as the Awanui Group. Awanui operates pathology laboratories in the South Island, Wellington and Hawke's Bay and the various contracts it has for services provide, are funded by Te Whatu Ora. The respondent's (APEX) are a union

representing laboratory scientists and technicians. This ongoing dispute concerns the renewal of a collective employment agreement between the parties that expired on 30 June 2023. Bargaining has been protracted since May 2023 and has been the subject of a successful application by the Awanui under s 50(1)(c) Employment Relations Act 2000 (the Act), to have the bargaining referred to facilitation by the Authority.<sup>1</sup>

[2] The Authority subsequently provided bargaining facilitation services for the parties commencing in Wellington on 13-14 December 2023 and this led to an offer being placed before APEX that was deemed sufficient for the union to postpone planned industrial action in favour of an indicative ballot of members. However, the 19 December ballot result did not resolve the bargaining impasse as the offer was rejected by a significant majority of participants.

[3] A further Authority led facilitation was held on 16 January 2024, where the APEX tabled a settlement offer that the Awanui agreed to consider in the following week. In the interim, the Authority signalled that if there was a lack of timely progress to achieve a settlement, then a recommendation pursuant to s50H of the Act would be made. This led to a counteroffer by Awanui and an AVL meeting between the parties on 24 January. The counteroffer was rejected by APEX's bargaining team on the day, without them being confident enough of putting it out to a members' ballot. Following the impasse both parties asked the Authority to proceed to make a recommendation and have provided submissions on 2 February to assist the Authority in formulating a recommendation.

[4] Despite the difficulties, the Authority records that significant progress has been made in facilitated bargaining. Each party identified their respective positions and I am satisfied that both parties bargained robustly to explore potential settlement solutions.

[5] The significant and continuing impediment to settlement, is the parties' inability to agree on the level and composition of a general pay increase, including backpay and the term of the eventual renewed employment agreement. There are no other pressing disputed issues, with both parties willing to have all existing terms essentially continue 'as is'.

---

<sup>1</sup> [2023] NZERA 702.

[6] A further settlement impediment is APEX members continuing strike and limited industrial action that has been occurring since July 2023, with the most recent action being a 24-hour stoppage on 5 February 2024 (their eleventh strike day) coupled with an indication phlebotomists will only take blood samples by allocated appointment times up until 20 February 2024 (with an exception for urgent doctors' requests). Clearly ongoing disruption to the public and private health care system is inevitable if the dispute remains unresolved.

### **A way forward**

[7] Due to the bargaining impasse, the Authority has resolved pursuant to s 50H Employment Relations Act 2000 (the Act), that it is necessary to issue a recommendation to assist the parties in concluding the collective employment agreement in dispute and aid the settlement of the expired collective agreement. Both parties accept that this is an appropriate way forward given that the gap between them in bargaining positions is relatively narrow.

[8] In issuing this recommendation, I am guided by observations made during facilitated bargaining and the helpful submissions provided by both parties. For brevity and to protect the sanctity of bargaining, I do not refer in detail to all respective positions of the parties or the reasons for each adopting such.

[9] In view of the ongoing media and public interest the Authority has decided to make this recommendation publicly available.

### **Summary of submissions**

#### *Apex*

[10] APEX is essentially seeking to preserve the purchasing power of its members' wages against increasing cost of living pressures and secure a backdated pay increase.

[11] APEX is citing the pressure of a recent pay equity settlement for directly comparable positions in the public sector (employed at Te Whatu Ora run labs) that delivered pay increases between 25% - 30% from 1 June 2023. While APEX has agreed to work with Awanui and Te Whatu Ora on measuring the pay gap created by the pay equity settlement with a view to seeking additional government funding, they consider existing funding to Awanui must be expended to

address a cost of living increase and they cite a need to narrow the gap between their pay and public sector counterparts to avoid potential recruitment and retention problems (a ‘catch up’ payment).

[12] In seeking an above inflation increase and back pay, APEX says its members also want an acknowledgment of their additional mahi undertaken during the COVID-19 lockdown period that kept crucial testing services operating throughout Aotearoa and they cite a significant dividend payment Awanui was able to provide its shareholders.

[13] APEX has sought to resolve matters by advancing a combination of lump sum and a varying percentage increase in rates that delivers more to their lower paid members. A shorter term for the agreement (12 months) than earlier envisaged by both parties has also been mooted.

#### *Awanui*

[14] By contrast, Awanui assert while they are in a reasonably sound market position with little or no competition for their current and ongoing funding contracts, there is not sufficient funding to meet APEX pay expectations without making such contracts commercially unattractive. Awanui point to the current December 2023 CPI figure of 4.7 % and contend their last offer is attractive in comparison with general wage growth. This offer includes a flat \$5,000 or 5.5% increase to all salary rates backdated to 30 June 2023 and a ‘one off’ \$750 payment to all who are party to the APEX collective agreement as of 24 January 2024. The term proposed for the agreement is 15 months up to 30 September 2024. Awanui are of the view that while their offer has no element of a “down payment for, or not to pay parity” both parties have agreed to pursue such in a separate forum.

#### **Assessment**

[15] Having considered the parties’ positions and listened to and balanced their respective needs and considered the intent of the statutory provision, I consider a fair compromise on relatively close bargaining expectations, is as follows. The Authority believes this recommendation if accepted, will end the current dispute, and go some way to creating a more settled future employment relationship and ensure continuity of what is essentially a well-functioning public/private sector partnership delivering a key public service. Having spent time

with both parties in bargaining I did not get the impression that APEX while agreeing to forgo progress in the interim toward pay parity also sought additional recognition now of that stance. I observe that there is some validity to this stance as putting off addressing the emerging pay gap may prove counter-productive and inefficient if Awanui staff leave to seek employment elsewhere. However, the pay increase offered by Awanui is overall comparable to the rise in public sector and private sector hourly earnings to December 2023 (7.4% and 6.6% respectively) and the backdating offer is a crucial element of the offer.

[16] Accordingly, I have structured my recommendation with a lump sum payment being made at the expiry of the current collective employment agreement as an incentive for APEX members to remain employed by Awanui. With this in mind, I recommend the term of the agreement be 15 months.

### **Recommendation**

[17] A recommended way forward that the Authority makes pursuant to s 50H of the Act, is that the renewal of the existing APEX/Awanui collective employment agreement on a 'full and final' basis provides for:

- An employment agreement term up to 30 September 2024.
- A five thousand dollar or a 5.5% increase to all existing salary rates (whichever is the greater) backdated to 30 June 2023.
- A \$3,000 lump sum (pro-rata for part-timers) 'retention' payment to be paid to all covered by the collective agreement on 30 September 2024.

David G Beck  
Member of the Employment Relations Authority