

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 146
3362563

BETWEEN	ASSOCIATION OF PROFESSIONAL AND EXECUTIVE EMPLOYEES (APEX) Applicant
AND	CANTERBURY SCL LIMITED, SOUTHERN COMMUNITY LABORATORIES LIMITED, MEDLAB SOUTH LIMITED, SCL OTAGO SOUTHLAND CODE SERVICES LIMITED, SCL OTAGO SOUTHLAND SERVICES LIMITED, WELLINGTON SCL LIMITED, SOUTHERN COMMUNITY LABORATORIES HAWKE'S BAY LIMITED, TARANAKI PATHOLOGY SERVICES LIMITED, NORTHLAND PATHOLOGY LABORATORY LIMITED Respondents

Member of Authority: Sarah Blick

Representatives: Omar Hamed, advocate for the applicant
Diana Hudson, counsel for the respondents

Investigation Meeting: On the papers

Determination: 10 March 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Association of Professionals and Executive Employees (APEX) and the respondents are engaged in bargaining and have not been able to conclude a new collective agreement covering laboratory workers. The respondents are part of the Awanui group of laboratory companies.

[2] APEX has lodged an application for reference to facilitation on the basis:

- (a) During bargaining the employer(s) has failed to comply with the duty of good faith and this failure was serious, sustained and undermined bargaining (s 50C(1)(a));
- (b) In the course of bargaining there have been one or more strikes or lockouts, and the strikes or lockouts have been protracted or acrimonious (s 50C(1)(c)); and
- (c) In the course of bargaining a party has proposed a strike or lockout, and if it were to occur, it would be likely to affect the public interest substantially (s 50C(1)(d)).

[3] APEX has also asked the Authority to give urgency to its application.¹

The Authority's process

[4] The parties consent to Authority proceeding to determine the reference for facilitation on the papers. Information received includes affidavit evidence from APEX, and information provided by the parties' representatives during a case management conference held on 7 March 2025.

Background

[5] Three collective agreements have expired amongst the parties, the first on 30 September 2024 which is between APEX and the first seven respondents. The other two agreements expired on 31 December 2024 and 30 November 2024 which is between APEX and eighth and ninth respondents, respectively.

[6] On 3 September 2024 APEX initiated bargaining with the Awanui group of companies, for a singular multi employer collective agreement with the respondents.

¹ Employment Relations Act 2000, Schedule 2, clause 17.

[7] APEX claims the respondents have since engaged in bad faith tactics in bargaining, which the respondents dispute.

[8] APEX says members to be covered by the collective agreement(s) have taken two full days of strike action on 5 and 7 February 2025. APEX claims the strike action has been acrimonious. While I understand the respondents may dispute that their actions have been the cause of acrimony, it says the grounds in s 50C(1)(c) are met.

[9] Notice has been given on 6 March 2025 of three further full days of strike action, to take place from 25 March to 27 March 2025. Notices of partial strike action have also been given in respect to certain duties in Invercargill and Canterbury laboratories last week.

[10] APEX says the strike action will “paralyse” almost all medical laboratory services south of Wairarapa, and in total impacts diagnostic medical laboratory and pathology services for 13 laboratories across Aotearoa New Zealand. It says the proposed strikes are likely to affect the public interest substantially, including because:

- (a) Hospital and community doctors will have no ability to refer tests, except for in limited life preserving circumstances for three days and this will impact the diagnosis of serious health conditions and diseases, and significantly disrupt patient flow through the public health system;
- (b) Large numbers of elective surgeries are likely to be cancelled and rescheduled, as a result wait times will be impacted;
- (c) Diagnosis and detection of health conditions such as infections, cancer and diseases will be delayed for clinicians impacted by the strike, potentially impacting the ongoing and long term health of many patients; and
- (d) It estimates that across Awanui laboratories, at least 87,000 tests will not be processed during the three-day strike, and after the strike action is completed, this will take weeks to clear once workers return to work.

[11] While the respondents have not confirmed the above statements, they do accept the grounds in s 50C(1)(d) are met.

Findings

[12] The Authority has accorded urgency to this matter.

[13] There have been one or more strikes, and there are three more days of imminent strike action. The laboratory workers covered by the bargaining deliver medical laboratory services to both community and hospital health services. These strikes are likely to increase pressure on these services.

[14] The parties are having serious difficulties in concluding a collective agreement, and I consider that there is a public interest which will be affected substantially by the proposed strike action which is likely to endanger the life, safety, or health of persons. As such the ground in s 50C(1)(d) of the Act is made out. The referral to facilitation is accepted.

[15] The other grounds do not fall for determination given that finding. In any event, the Authority would have required affidavit evidence from the respondents addressing the allegations made by APEX in order to make findings on those.

[16] The parties are attending voluntary further mediation on 12 March 2025 to canvas procedural matters. Both parties oppose further mediation for the purposes of bargaining at this stage. In the circumstances, and given the parties agree as to engagement in facilitation, I do not consider a direction to mediation would contribute constructively given the timing of the strike action and the upcoming mediation.

Next steps

[17] The Authority will communicate with the parties as to next steps, and in accordance with s 50D of the Act, another member or other members of the Authority will facilitate the collective bargaining.

Costs

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

Sarah Blick
Member of the Employment Relations Authority