

[2] The parties have been bargaining for the renewal of the Collective Agreement but have not been able to reach agreement.

[3] Health NZ applied for a reference to facilitation on 28 April 2025, relying on the grounds set out at ss 50C(1)(b) and 50C(1)(d) of the Act. Health NZ asserted that:

(a) The bargaining has become unduly protracted and extensive efforts have failed to resolve the difficulties between the parties.

(b) ASMS has proposed a strike which, if it occurred, would be likely to affect public interest substantially.

[4] At the time Health NZ's application was lodged, a strike was pending - ASMS had issued a strike notice on 14 April 2025 for a 24-hour strike on 1 May 2025.

[5] After a case management conference on 2 May 2025, ASMS lodged its statement in reply on 6 May 2025. ASMS consented to a reference to facilitation being made, but only based on the ground in 50C(1)(b) of the Act – ASMS did not accept that the strike action, which had taken place by the time the statement in reply was lodged, was of the nature, extent and effect described by Health NZ.

The Authority's investigation

[6] By agreement, this matter has been investigated on the papers and my determination is based on the statement of problem, statement in reply and affidavit evidence of Health NZ, noting that any facts stated in those documents have not been tested.

Analysis of application

[7] In determining this application I must not accept a reference for facilitation unless I am satisfied that one or more of the grounds in s 50C(1) of the Act exist.

[8] Both parties accept that the ground in s 50C(1)(b) of the Act has been made out; that is:

- (i) that the bargaining has been unduly protracted; and
- (ii) extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[9] This is based on the following summary of bargaining to date:

- (a) Bargaining was initiated by ASMS on 2 July 2024.
- (b) A Bargaining Process Agreement was drafted by ASMS in October 2024, but this was not finalised by the parties.
- (c) Eight formal days of bargaining took place in the period September 2024 – February 2025.
- (d) Three meetings took place between the parties in respect of the bargaining in December 2024, February 2025 and April 2025.
- (e) Urgent mediated bargaining took place on 23 April 2025 in response to the strike notice of 14 April 2025.

[10] In addition, there has now been the 24-hour strike on 1 May 2025.

[11] In terms of the substance of the bargaining a short summary by Health NZ indicates that there is considerable distance between the parties on remuneration related claims and other claims that have a financial impact for Health NZ.

[12] Based on this information, I agree with both parties. I am satisfied that the bargaining has become unduly protracted – it has been over 10 months since bargaining was initiated and there still appears to be significant claims and matters to be resolved. And I am satisfied that there have been extensive efforts, including formal bargaining, meetings, mediation,

threatened strike action, and now actual strike action, which have failed to resolve the difficulties that have prevented the parties from renewing the Collective Agreement.

[13] As I am satisfied that one ground in s 50C(1) of the Act is made out I do not need to address the ground set out in s 50C(1)(d) of the Act.

[14] It follows that I will grant the application for a reference to facilitation.

Conclusion

[15] The ground, for referring a matter to facilitation, under s 50C(1)(b) of the Act is established. The bargaining has been unduly protracted and extensive efforts have failed to resolve the difficulties.

[16] For these reasons, I refer the parties to facilitation and, as required by s 50D of the Act, another Member will provide facilitation of the collective bargaining.

Costs

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

Peter van Keulen
Member of the Employment Relations Authority