

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 495  
3396624

BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION TE PŪKENGA HERE TIKANGA MAHI Applicant
AND	PHARMAC TE PĀTAKA WHAIORANGA Respondent

Member of Authority: Shane Kinley

Representatives: Caroline Mayston, counsel for the applicant  
Rachael Brown and Andrea Pazin, counsel for the  
respondent

Investigation Meeting: On the papers

Information received: 6 August 2025 from the applicant  
14 August 2025 from the respondent

Determination: 15 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (PSA) is engaged in collective bargaining with Pharmac Te Pātaka Whaioranga (Pharmac). The PSA and Pharmac agree they are having serious difficulties in concluding a collective agreement, as required under s 50A(1) of the Employment Relations Act 2000 (the Act) for an application for referral to facilitation to be accepted.

[2] The PSA's application for reference to facilitation under s 50B of the Act was based on the grounds set out in both ss 50C(1)(a) and (b) of the Act:

**50C Grounds on which Authority may accept reference**

(1) The Authority must not accept a reference for facilitation unless satisfied that 1 or more of the following grounds exist: ...

(a) that—

(i) in the course of the bargaining, a party has failed to comply with the duty of good faith in section 4; and

(ii) the failure—

(A) was serious and sustained; and

(B) has undermined the bargaining;

(b) that—

(i) 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:

[3] Pharmac accept the grounds in s 50C(1)(b) of the Act have been met and support the application for reference to facilitation on these grounds. Pharmac does not accept it has breached the duty of good faith or support the application for reference to facilitation based on the grounds in s 50C(1)(a) of the Act.

[4] The PSA have also sought urgency in relation to this matter, which Pharmac does not support.

**The Authority's investigation**

[5] The Authority held a case management conference on 11 August 2025 on this matter where it was agreed that it be investigated and determined on the papers, based on the PSA's application, Pharmac's statement in reply and supporting affidavits.

[6] The PSA provided an affidavit from a union organiser and Pharmac provided an affidavit from a manager involved in the collective bargaining.<sup>1</sup>

[7] At the conference Pharmac indicated its position on the application for reference to facilitation, summarised at paragraph [3] above. By agreement between the parties, the application has been considered based on the grounds in s 50C(1)(b) of the Act only

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<sup>1</sup> I have chosen not to name the individuals who provided affidavits as I do not consider naming them is necessary for the purposes of this determination or in the public interest.

and Pharmac have not substantively addressed the grounds in s 50C(1)(a) of the Act beyond the statement it does not accept it has breached the duty of good faith.

[8] I granted urgency to the application for reference to facilitation during the conference.

[9] As permitted by s 174E of 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 evidence and submissions received.

### **Relevant law**

[10] Section 50C(1) of the Act specifies four grounds on which an application for reference for facilitation may be accepted, if I am satisfied that one or more of the grounds exist. The PSA says the ground at s 50C(1)(b) of the Act (set out at paragraph [2] above) is met.

[11] The measurement of whether bargaining has been unduly protracted or that there have been extensive efforts to resolve the issues is not intended to be precise. The Court has observed:<sup>2</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.

[12] The timeline and key activities in bargaining are agreed by the parties, with the PSA initiating bargaining on 4 June 2024 to replace a collective agreement which expired on 31 July 2024. A bargaining process agreement was entered on 13 September 2024. Eleven in-person bargaining meetings occurred between the parties between October 2024 and June 2025, with two full days of mediated bargaining on 3 and 18 July 2025. A one-hour strike occurred on 9 July 2025. The collective agreement between the parties lapsed on 31 July 2025. There has been direct correspondence between senior representatives of the parties in relation to both substantive bargaining matters and the approach to bargaining, with both parties raising concerns about the others' approach.

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<sup>2</sup> *Service and Food Workers Union Nga Ringa Tota Inc v Sanford Ltd* [2012] NZEmpC 168 at [42].

[13] The PSA says that the parties are at impasse and “The key impediments to agreement related to remuneration and the ongoing tabling of clawbacks by Pharmac”. The PSA organiser’s affidavit states they believe all reasonable options for resolving the impasse have been exhausted and urgency is required because of the unduly protracted bargaining, with the collective agreement having lapsed and Pharmac had indicated it intended to bargain directly or discuss remuneration with PSA members and non-member employees.

[14] Pharmac stated “While Pharmac considers that referral to facilitation is appropriate, it does not consider that the timetable for facilitation or the facilitation itself should be granted urgency”. Pharmac also advised “Whilst the parties are in bargaining for a new collective agreement, Pharmac does not intend to offer PSA members a new individual employment agreement or to discuss remuneration with them relating to their current roles”.

[15] The Court has said where “... it is shown that there have been real attempts to bargain and settle, albeit that the parties’ strongly held positions have precluded settlement, the bargaining may also be said in that sense to have been unduly protracted”.<sup>3</sup>

### *Finding*

[16] I have carefully considered the material before the Authority, including supporting affidavits and correspondence in relation to bargaining.

[17] For the following reasons I find the ground under s 50C(1)(b) of the Act for accepting the referral to the Authority for facilitation has been met, as the bargaining has now become unduly protracted and extensive efforts, including mediation, have failed to resolve it.

[18] Section 53(3) of the Act indicates that 12 months should suffice to replace a collective agreement. The last collective agreement between the PSA and Pharmac expired on 31 July 2024 and the continuation period has now lapsed. The parties have had a reasonable number of bargaining interactions including two full days of mediated bargaining. I consider that the timeframe over which bargaining has occurred and the

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<sup>3</sup> *McCain Foods (NZ) Ltd v Service and Food Workers Union Nga Ringa Tota Inc* (2009) 6 NZELR 426 at [63].

nature of the impasse that appears to have emerged supports a finding that this bargaining has become unduly protracted.

### **Outcome**

[19] I am satisfied that the grounds for referral in s 50C(1)(b) of the Act have been established.

[20] The referral to the Authority for facilitation is accepted.

### **Next steps**

[21] 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. The timetable for facilitation and whether the facilitation itself should be granted urgency will need to be determined by the Member responsible.

### **Costs**

[22] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.<sup>4</sup> Accordingly there is no order as to costs.

Shane Kinley  
Member of the Employment Relations Authority

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<sup>4</sup> Employment Relations Authority, *Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi*, February 2024, page 5, paragraph 6, available at: <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.