

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 562  
3403184

BETWEEN	THE NEW ZEALAND PUBLIC SERVICE ASSOCIATION   TE PŪKENGĀ HERE TIKANGA MAHI INCORPORATED Applicant
AND	ACCIDENT COMPENSATION CORPORATION   TE KĀPOREIHANA ĀWHINA HUNGA WHARA Respondent

Member of Authority: Natasha Szeto

Representatives: Luke Manning, counsel for the Applicant  
Richard Dagger, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 11 September 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 Incorporated (PSA) seeks a reference to facilitation under s 50B of the Employment Relations Act 2000 (the Act). The PSA and Accident Compensation Corporation | Te Kaporeihana Āwhina Hunga Whara (ACC) are engaged in bargaining and have not been able to conclude a collective agreement.

[2] On 2 September 2025, the PSA lodged an application for reference to facilitation under s 50B of the Act, relying on the grounds set out in ss 50C(1)(b) and (c) of the Act. The PSA also lodged an application for urgency. I held a Case Management Conference call with the parties on 4 September and set timetabling directions. On 8 September ACC lodged a statement in reply. On 9 September the PSA lodged an affidavit and further supporting information.

[3] Also on 9 September, I accorded urgency to consideration of the application for reference to facilitation because I was satisfied it was necessary and just to proceed to determine the reference application as soon as possible. ACC then confirmed it did not wish to file any additional material.

[4] The parties consent to the Authority determining the reference to facilitation on the papers. Information received includes affidavit evidence and supporting information from the PSA, information provided at the case management call, as well as submissions from both sides in the form of a statement of problem, memoranda, and a statement in reply.

## **Background**

[5] ACC and the PSA are parties to a collective agreement signed in June 2024 which expired on 31 March 2025 (the collective). The collective covers 1,100 permanent and fixed-term PSA members excluding the Chief Executive, those covered by another collective agreement, those with direct reports and those in the People and Culture function.

## **Application for facilitation**

[6] The PSA initiated bargaining for a new collective on 3 February 2025 and the parties signed an agreed bargaining process arrangement on 11 February 2025. Since that time, there have been seven in-person bargaining meetings, four online bargaining sessions and the parties have attended one in-person mediated bargaining session. There have also been two discussions between a PSA National Secretary and ACC's Chief Executive on 18 June and 15 July, as provided for in the bargaining process arrangement when bargaining ceases to make progress.

[7] Following an unsuccessful mediated bargaining session on 14 July and the second of the discussions between a PSA National Secretary and ACC's Chief

Executive on 15 July, a strike took place on 16 July 2025. A further strike took place on 12 August 2025. Each strike involved a total withdrawal of labour for one hour. Simultaneously with the strikes, nationwide pickets have taken place.

[8] The PSA relies on two grounds under s 50C of the Act for reference to facilitation as follows:

- a. Bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement (s 50C(1)(b)); and
- b. In the course of bargaining there has been one or more strikes and the strikes have been protracted with acrimonious pickets (s 50C(1)(c)).

[9] The PSA organiser's affidavit states that the parties have exhausted all reasonable options for resolving the impasse in the bargaining and the assistance of the Authority is needed to resolve the differences. They say the bargaining has been unduly protracted and there are multiple impediments to agreement including proposed clawbacks by ACC that have been accompanied by offers of remuneration that the PSA and its members consider to be unacceptable. In terms of its urgency application, the PSA says ACC has commenced a restructure of a remuneration band as part of a change management process which the PSA considers should be part of bargaining.

[10] ACC does not oppose the request for facilitation but does not support a joint application because it considers the statutory grounds are not made out. ACC does not dispute the chronology presented by the PSA. However, ACC says while bargaining has been ongoing for approximately eight months, it has proceeded in good order without undue delays and communication between the parties has remained professional and constructive. In relation to the second ground, ACC does not agree that strike action has been protracted or acrimonious.

[11] In the event the reference is made, ACC opposes urgency being granted for the facilitation process. It says the proposed change process relating to restructure of the remuneration band is a legitimate part of managing business operations notwithstanding the ongoing bargaining. The timing of the change process, ACC says, has been driven by business needs.

## Reference to facilitation

[12] The assessment of whether bargaining has been unduly protracted and whether there have been extensive efforts to resolve the issues is not intended to be precise. The Court has observed:<sup>1</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.

[13] 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>2</sup>

[14] Guidance from the Court also provides:<sup>3</sup>

Although the term of a collective agreement does not of course determine a reasonable period of time to bargain for it, collective bargaining that is stalled after 34 months, when compared to the maximum term of any agreement (36 months) may be seen to be unduly protracted.

[15] I have considered all the circumstances, including the information from the parties. Stepping back to make a common sense assessment of the overall bargaining difficulties between them, I am satisfied the ground in s 50C(1)(b) of the Act is made out. The parties have now been engaged in bargaining for over seven months. In that time, the parties have made a dozen attempts to settle the collective which have included in-person bargaining meetings, online bargaining sessions and in-person mediated bargaining. There have been two meetings between the Chief Executive of ACC and a national secretary of the PSA to explore problem-solving approaches because the bargaining had ceased to make progress. Based on the information provided to the Authority, I accept the PSA organiser's evidence that there has been "considerable communication and correspondence between the parties".

[16] The timeframe over which bargaining has occurred, and the nature of the impasse that appears to have emerged supports a finding that bargaining between the parties has become unduly protracted. I am also satisfied that the intensity of bargaining

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<sup>1</sup> *Service and Food Workers Union Nga Ringa Tota Inc v Sanford Ltd* [2012] NZEmpC 168 at [42].

<sup>2</sup> *McCain Foods (NZ) Ltd v Service and Food Workers Union Nga Ringa Tota Inc* (2009) 6 NZELR 426 at [63].

<sup>3</sup> Above n2.

demonstrates that extensive efforts by the parties have failed to resolve the difficulties that have precluded them reaching agreement.

[17] On the basis that I find the ground set out in s 50C(1)(b) to be made out, the other ground raised in s 50C(1)(c) does not require determination. It is appropriate that the parties now engage in facilitation and the reference to facilitation is accepted.

### **Next steps**

[18] The Authority will convene a case management conference with the parties to discuss arrangements for facilitation and in accordance with s 50D of the Act, the member of the Authority who facilitates collective bargaining will not be the member who accepted the reference for facilitation.

### **Costs**

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

Natasha Szeto  
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>.