

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 78  
3346460

BETWEEN                      NEW ZEALAND PUBLIC  
   SERVICE ASSOCIATION TE  
   PŪKENGĀ HERE TIKANGA  
   MAHI INCORPORATED  
   Applicant

AND                              TE ROOPU TAURIMA O  
   MANUKAU TRUST  
   Respondent

Member of Authority:      Marija Urlich

Representatives:            Peter Cranney and Kathleen Gawe, counsel for the  
   Applicant  
   Joseph Williams and Bridget Craig, counsel for the  
   Respondent

Investigation Meeting:      12 February 2025

Determination:              14 February 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (PSA) and Te Roopu Taurima O Manukau Trust (the Trust), are party to a now expired collective employment agreement.<sup>1</sup> They are currently engaged in bargaining for a new collective agreement which they have not been able to conclude. The Trust is a kaupapa Maori service that supports people of all ethnicities with

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<sup>1</sup> Public Service Association – Te Roopu Taurima o Manukau Trust collective employment agreement 31 August 2023 – 29 February 2024.

intellectual impairments across New Zealand. The PSA members are covered by the bargaining work in kaitaataki and poutaataki roles.

[2] The PSA has applied to the Authority under sections 50B, 50C(1)(a) and/or 50C(1)(b) of the Employment Relations Act 2000 for assistance by way of referral to facilitation to resolve difficulties the parties are having concluding bargaining. The PSA says two of the four grounds for the Authority to accept a reference to facilitation are made out – (i) in the course of bargaining the Trust has failed to comply with the duty of good faith in section 4 and the failure is serious and sustained and has undermined the bargaining and (ii) the bargaining has become unduly protracted and despite these extensive efforts the parties have failed to resolve the bargaining.

[3] The Trust opposes facilitation. It says it has not breached the duty of good faith, facilitation is not appropriate at this time because the parties remain engaged in bargaining and the requirements of s 50C(1) are not met.

### **The Authority's investigation**

[4] The application for referral to facilitation was lodged on 13 December 2024. For completeness, the application also includes an alternative claim for fixing under s 50J, an arrears of wages claim arising from the lockout which are opposed by the Trust. The PSA has put those claims on hold pending the Authority's consideration of the reference to facilitation.

[5] On 31 January 2025 by consent a case management conference was held with the parties' representatives to progress the application. The delay was occasioned by the holiday period and counsel availability. The parties have complied with the timetable for filing information as directed at the case management conference including affidavit evidence of Jocelyn Pratt, a PSA organiser and the union's bargaining team lead and David Cotter, the Trust's Chief People Officer who leads the Trust's bargaining team.

[6] As permitted by s 174E of the Employment Relations Act 2000 (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

information received. In determining this matter the Authority has considered all the material before it, including all evidence and the submissions presented at the investigation meeting.

## **Background**

[7] Bargaining for a new collective agreement was initiated by the PSA on 3 January 2024. A bargaining process agreement was entered into and signed by the parties on 5 August 2024.

[8] Bargaining first took place between 14 and 15 August and continued on 29 and 30 August, 19 and 20 September, 24 October and 1 November.

[9] On 20 November the PSA issued strike notices for escalating industrial action by way of a partial withdrawal of labour consisting of a ban on answering phone calls and text messages on work phones during set times, a ban on undertaking work duties during the 30-minute unpaid meal break from 5 to 12 December 2024 and a complete withdrawal of labour for one hour on 12 December.

[10] On 25 November the parties resumed bargaining.

[11] On 4 and 5 December the Trust issued partial lockout notices to the PSA for effected members in place from 19 December. The lockout, as notified is continuous and involves the Trust declining to offer additional hours of work beyond the ordinary hours of work.

[12] On 5 December, the PSA's solicitors wrote to the Trust challenging the lawfulness of the lockout notice and advised the union's view with regard to two terms proposed by the Trust in bargaining – allowing 90 day trial periods and allowing the Trust to withhold consent to secondary employment – could not be imposed by way of lockout and could not be included in the collective agreement because "...the statutory scheme requires pre-employment agreement with the individual employed, and in each case special rules and requirements apply".

[13] On 6 December the Trust's chief executive wrote to all staff regarding the progress of bargaining and concerning the lockout included:

This was not a decision made lightly but a necessary step given the current status of our collective bargaining negotiations. The decision to implement the lockout was made with the intention of addressing this specific obstacle, enabling us to refocus on the broader issues at hand. This measure is not punitive but rather a step toward fostering a productive environment that encourages meaningful dialogue and progress.

[14] On 13 December the Trust's solicitors replied to the 5 December letter – the Trust did not accept the lock out notices were deficient or inconsistent with its good faith obligations or intended to intimidate or impose improper pressure, as described by in the 5 December letter, and would proceed as notified.

[15] On 16 December the PSA issued a further strike notice to take effect from 1 January 2025 and to continue until 31 January. The nature of the strike was a ban on any policy or term of employment which prevented any public communication in relation to the parties' bargaining and strike action.

[16] The parties attended further bargaining on 17 January 2025.

[17] The parties have been unable to reach agreement on remuneration and other matters.

## **Facilitation**

[18] The purpose of the Authority facilitating bargaining is set out in s 50A:<sup>2</sup>

...to provide a process that enables 1 or more parties to collective bargaining who are having difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[19] In considering a reference for facilitation the Authority must be satisfied that one or more of the grounds set out in s 50C exist.<sup>3</sup> Those grounds reference the statutory framework for collective bargaining established under the Act including the good faith obligations to which parties engaged in bargaining must adhere.

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<sup>2</sup> Employment Relations Act 2000, section 50A.

<sup>3</sup> Employment Relations Act 2000, section 50C.

[20] In *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* the Employment Court observed regarding the balance that should be applied when assessing an application for referral to facilitation:<sup>4</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.

## **Discussion**

[21] The Trust opposes the facilitation on a range of grounds including how the PSA has engaged with the bargaining sessions to date which has raised a question for it that the union may not be committed to the bargaining and is focussed on facilitation and fixing. It also says the industrial action on both sides has been minor and with respect to its lockout, it says the purpose was not to intimidate or bring improper pressure on members to accept unlawful demands. It says that the parties have only attended one mediation session and this is a significant factor weighing against the grant of referral.

[22] The Trust has raised concerns about the PSA's commitment to the bargaining. This indicate the parties, though engaging in bargaining on a significant number of days and over a number of months, have not been able to resolve matters and may be at risk of forming views which could further impede resolution of the bargaining. In the context of the parties' work environment, including the nature of the work performed and the vulnerability of those for whom care is provided, it is difficult to see how the industrial action cannot be viewed as serious. A further significant issue is the possibility of legal action as foreshadowed by the application. Removing this employment relationship problem to a legal decision making process may risk further delay concluding the bargaining.

[23] Given all these factors my view is the bargaining has reached a stage of undue protraction and the attempts the parties have used to move the bargaining forward, including mediation, have not been successful. The parties need a circuit-breaker and, considering the circumstance of this employment relationship and the employment environment, including the parties' commitment, as expressed in the expired collective

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<sup>4</sup> *Service and Food Workers' Union Nga Ringa Tota Inc. v Sanford Ltd* [2012] NZEmpC 168, at [42].

agreement to a "fair, constructive and harmonious relationship" the commonsense next step is facilitation.<sup>5</sup>

[24] The ground for referral in s 50C(1)(b) of the Act is made out. Having found one ground for referral is established it is not necessary to consider the remaining proposed grounds.

### **Reference for facilitation**

[25] The ground of s 50C(1)(b) of the Employment Relations Act 2000 relied upon in making the application is met. The Authority accepts the reference for facilitation for matters which remain unresolved in the parties' bargaining including the matter of a pay offer and the claims regarding 90-day trials and secondary employment.

[26] A Member or Members of the Authority appointed to provide facilitation will now contact counsel to make the necessary arrangements for facilitation to take place.

### **Costs**

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

Marija Urlich  
Member of the Employment Relations Authority

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<sup>5</sup> No 1 at page 3.