

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 784
3412684

BETWEEN	FIRE AND EMERGENCY NEW ZEALAND Applicant
AND	NEW ZEALAND PROFESSIONAL FIREFIGHTERS' UNION INC Respondent

Member of Authority:	Jeremy Lynch
Representatives:	Guido Ballara, counsel for the Applicant Peter Cranney and Kathleen Neo, counsel for the Respondent
Investigation Meeting:	14 and 25 November 2025 by audio visual link
Submissions Received:	25 and 27 November 2025 for the Applicant 26 November 2025 for the Respondent
Determination:	4 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Fire and Emergency New Zealand (FENZ) and the New Zealand Professional Firefighters' Union Inc (the union) are party to a now expired collective employment agreement for Uniformed and Communications Centre Employees (the collective agreement), operational from 1 July 2021 to 30 June 2024.

[2] The union gave notice initiating bargaining with FENZ on 9 May 2024.

[3] The parties remain engaged in bargaining for a new collective agreement, which they have not yet been able to conclude.

The parties

[4] FENZ is the national combined urban and rural fire and emergency services organisation. Its website lists its main functions as (inter alia) promoting fire safety, firefighting, fire prevention, responding to incidents involving hazardous substances, rescuing trapped people as a result of transport accidents, and urban search and rescue.

[5] The union represents approximately 2040 FENZ employees. The collective agreement covers a variety of roles including firefighters and officers, 111 emergency communications centre dispatchers, trainers, volunteers support officers, advisers in community readiness and recovery, and risk reduction. The union says its membership comprises around 80 per cent of FENZ employees

Application for the assistance of the Authority

[6] FENZ has applied to the Authority under s 50B of the Employment Relations Act 2000 (the Act) for assistance by way of urgent referral to facilitation to resolve the difficulties the parties are having in concluding their bargaining. FENZ says that three of the four grounds on which the Authority may accept a reference to facilitation are made out.

[7] The union opposes the application currently before the Authority. It says that none of the grounds provided for under s 50C of the Act are established at this stage of the bargaining, and that the Authority should decline to accept FENZ's reference for facilitation.

[8] The union says that granting of a reference for facilitation may increase rather than decrease the frustration between the parties.

The Authority's investigation

[9] The application for referral to facilitation was lodged on 7 October 2025, together with an application seeking urgency. A case management conference was held with the parties on 13 October 2025 for directions to be made, including as to the abridgement of time for the lodging of the union's statement in reply, together with timetable dates for the remaining evidence to be lodged.

[10] The nature of the services provided by FENZ (including those with a public safety element), and the nature of the application itself, meant that it was appropriate for the Authority to grant urgency to the matter.

[11] Ordinarily an application of this nature would be determined 'on the papers', with affidavit evidence and written submissions lodged. However, the union sought an investigation meeting in this matter so that witnesses could be cross-examined.

[12] The Authority offered a number of dates for investigation, however the earliest date that the parties and their witnesses were available was 14 November 2025.

Investigation meeting and adjournment

[13] The investigation meeting was conducted remotely, by audio visual link (AVL) on 14 November 2025.

[14] At the start of the meeting, the union sought an adjournment of the Authority's investigation, in order that the parties could keep bargaining. The union advised that it was heartened by a recent change to FENZ's bargaining team, which it saw as constructive. The union said that for the first time during the course of this bargaining, the parties were finally speaking constructively, and had a number of bargaining meeting dates blocked out for the following week. The union said that as a result of what it perceived to be a significant change to FENZ's approach to the bargaining, it had withdrawn some upcoming notified strike action.

[15] The union submitted that any interruption of momentum (as a result of facilitation) would be highly disruptive to the bargaining, and therefore an adjournment was appropriate.

[16] After hearing from FENZ (who for a variety of reasons opposed the union's request), the Authority granted an adjournment.

[17] A timetable was put in place for the parties to lodge updating witness statements after the further bargaining meetings, which were scheduled for 17 and 18 November 2025. In addition, a further investigation meeting (to be held via AVL) was scheduled, should the further bargaining not result in a concluded collective agreement.

[18] In accordance with an agreed timetable, updating witness statements were lodged by the parties following their further bargaining meetings.

[19] A resumption investigation meeting was held, again via AVL, on 25 November 2025.

[20] The following affidavit and/or witness statement evidence, and attachments thereto have been considered by the Authority:

- (a) affidavit of Ronald Devlin affirmed 7 October 2025. Mr Devlin is FENZ's Region Manager Te Hiku, and the Assistant National Commander;
- (b) witness statement of Joanne Watson dated 23 October 2025. Ms Watson is the National Secretary for the union;
- (c) witness statement of Ronald Devlin dated 30 October 2025;
- (d) witness statement of Joanne Watson dated 21 November 2025;
- (e) witness statement of Ronald Devlin dated 21 November 2025.

[21] Under affirmation, Ms Watson gave oral evidence at the 14 November 2025 investigation meeting. Under affirmation, both Mr Devlin and Ms Watson gave oral evidence at the 25 November 2025 investigation meeting.

[22] Submissions, and reply submissions were lodged in accordance with timetable directions, on 25, 26, and 27 November 2025.

[23] As permitted by s 174E of the Act, this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[24] The Authority has carefully considered all the material provided, including the evidence of the parties and their submissions.

Background

[25] The union initiated bargaining for a new collective agreement by notice dated 9 May 2024.

[26] Despite a number of discussions and efforts (including mediation in July 2024), the parties have been unable to agree on a bargaining process agreement (BPA).

[27] FENZ says that the parties have had a total of 43 days of bargaining talks since bargaining was initiated some 18 months ago. The union disputes this, and says that the real number is 36 or 37 days of bargaining, as the meetings in relation to the BPA are separate from the bargaining itself.

[28] Both parties gave evidence that the bargaining had been “tense and fraught”. There have been accusations of “dishonest conduct”, lack of transparency, and breaches of the duty of good faith.

[29] In addition, over the course of the bargaining, there has been strike action, including ongoing partial strikes, as well as full withdrawal of labour strikes for one hour in October 2025 and again in November 2025.

[30] The union has also given notice of further full withdrawal of labour strikes.

[31] For these reasons, FENZ says the grounds under s 50C(1)(b), (c) and (d) of the Act are met.

Facilitation

[32] The purpose of the Authority facilitating bargaining is set out at s 50A of the Act, which provides:

The purpose of sections 50B to 50I is to provide a process that enables 1 or more parties to collective bargaining who are having serious difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[33] In considering a reference for facilitation, the Authority must be satisfied that one or more the grounds in s 50C exists.¹ Those grounds reference the statutory framework for collective bargaining established under the Act and the good faith obligations to which parties engaged in bargaining must adhere. The overall circumstances of the bargaining are to be assessed in light of this statutory framework. Whether the assistance of the Authority by way of facilitation is appropriate, requires a balancing of all these factors.

[34] In *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited*, the Court held in respect of the approach to the interpretation of the bargaining facilitation sections of the Act, that:²

The bargaining facilitation sections are therefore to be seen as part of a scheme that allows, encourages and assists collective bargaining and the timely and orderly settlement of collective agreements. This will inform the approach of the Employment Relations Authority to a reference under s 50B. 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

¹ Employment Relations Act 2000, s 50C(1).

² *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited* [2012] NZEmpC 168 at [42].

assessment of the overall position indicates its desirability in light of the statutory scheme for collective bargaining and collective agreements.

[35] In addition, s 3 is also relevant, with the object of the Act stated to include the building of productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship, but also (inter alia) promoting collective bargaining.³

Discussion

[36] Section 50C(1)(b) of the Act provides as a ground on which the Authority may accept a reference for facilitation 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:

[37] For reasons that will become apparent, this ground is considered first.

[38] To meet the requirements of this ground, the Authority must first be satisfied that the bargaining has been unduly protracted.

[39] In *McCain Foods (NZ) Limited v Service & Food Workers Union Nga Ringa Tota Inc*, the Court considered the meaning of unduly protracted and held that "undue protraction... is excessive or disproportionate protraction as opposed to reasonable or expected or common protraction".⁴

[40] FENZ says the parties have had 43 days of bargaining. The union says the real number is 36 or 37 days. There is no dispute between the parties that bargaining was initiated over 18 months ago.

[41] The Court in *McCain* also held that:⁵

If... 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.

[42] FENZ provided a chronology together with its submissions. The union did not dispute the accuracy of this chronology. The chronology is consistent with the

³ Section 3(a)(iii); see also *Sanford Limited*, above n 3 at [32].

⁴ *McCain Foods (NZ) Limited v Service & Food Workers Union Nga Ringa Tota Inc* [2009] EMC Wellington WC5/09, 8 April 2009 at [64].

⁵ Above n 4, at [63].

witnesses' evidence. From the information contained in the chronology, and the evidence given by both witnesses, it is clear that the parties have made real attempts to bargain and settle. I am satisfied that the bargaining has been unduly protracted.

[43] The union submits that the application for facilitation under s 50C(1)(b) must fail because mediation has not occurred. The union accepts that mediation occurred in respect of the BPA in July 2024. In addition, the union accepts that further mediation (directed by the Authority) occurred in October 2025, in respect of FENZ's application for facilitated bargaining.

[44] However, the union submits that mediation has only occurred in respect of the BPA, and in relation to the application for facilitation, but not in respect of the 'bargaining proper'.

[45] FENZ's evidence is that it invited the union to attend mediation on other occasions, but on each occasion, this was declined. FENZ submits that:

...it cannot be that a party can somehow avoid a direction to facilitation, notwithstanding repeated requests because (as here) this is needed due to difficulties in the bargaining, by simply refusing to attend on every occasion it is requested.

[46] There is force in this submission.

[47] In *McCain*, the Court held:⁶

the reference to mediation as part of the extensive efforts to resolve the difficulties referred to in s 50C(1)(b)(ii) refers to the mediation services conducted under ss 144 to 154 of the Act. In relation to collective bargaining in particular, this is dealt with by s 144(2)(e) that provides expressly that mediation services may include "services that assist persons to resolve any problem with the fixing of new terms and conditions of employment".

[48] There are no additional conditions in terms of the requirement to have attempted mediation. In the course of this matter, the parties have attended mediation on two occasions, and over the course of an 18 month period, have had 43 days of bargaining (including the parties' unsuccessful attempt to agree on a BPA). I am satisfied that this is extensive.

[49] I am satisfied that in the course of this matter, extensive efforts including mediation, have failed to resolve the difficulties that have precluded the parties from

⁶ Above n 4, at [66].

entering into a collective agreement.

[50] The grounds under s 50C(1)(b) for a reference to facilitation are established.

[51] Having found one ground for referral is established, it is not necessary to consider the remaining proposed grounds.

Reference for facilitation

[52] The ground under s 50C(1)(b) of the Act relied upon in making the application is met. Consistent with the object of the Act, and with regard for s 3(a)(iii), the Authority accepts the reference for facilitation for matters which remain unresolved in the parties' bargaining.

Next steps

[53] The Authority will convene a further case management conference to make the necessary arrangements to progress this matter.

[54] In accordance with the provisions of 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

[55] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.⁷

Jeremy Lynch
Member of the Employment Relations Authority

⁷ Employment Relations Authority, *Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi*, February 2024, page 5 at [6].