

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 840
3431064

BETWEEN	TERTIARY EDUCATION UNION INCORPORATED Applicant
AND	AUCKLAND UNIVERSITY OF TECHNOLOGY Respondent

Member of Authority:	Simon Greening
Representatives:	Peter Cranney, counsel for the Applicant Susan Hornsby-Geluk, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and other information received:	12 December 2025 from the Applicant 19 December 2025 from the Respondent
Determination:	22 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Tertiary Education Union Incorporated (TEU) seeks a reference to facilitation under section 50B of the Employment Relations Act 2000 (the Act).

[2] The parties have been engaged in bargaining since May 2025. To date the parties have been unable to conclude a collective employment agreement.

[3] TEU's reference for facilitation relies on three grounds. The statutory grounds are set out in section 50C of the Act.

AUT's response to the application for reference to facilitation

[4] Auckland University of Technology (AUT) does not oppose the reference to facilitation on the ground that bargaining has been unduly protracted and notes that extensive efforts by the parties have failed to resolve the issues. AUT resists the other two grounds advanced by TEU.

Grounds on which Authority may accept reference

[5] AUT and TEU agree there is one ground on which the Authority should accept a reference for facilitation. This ground is set out in section 50C(1)(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:

...

(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.

Bargaining has been unduly protracted

[6] The meaning of undue protraction is excessive or disproportionate protraction as opposed to reasonable or expected protraction.¹ Six bargaining sessions and a mediation have failed to resolve the issues precluding the parties from concluding a collective employment agreement.

[7] AUT's position is that whilst the time period within which bargaining has occurred is not unduly lengthy, there has been extensive engagement both in bargaining meetings and correspondence between the parties. From AUT's perspective the parties appear to genuinely be at an impasse.

[8] I accept that bargaining has been unduly protracted.

¹ *McCain Foods (NZ) Limited v Service and Food Workers Union Ngā Ringa Tota Incorporated* [2009] NZEmpC 24 at [64].

Extensive efforts by the parties have failed to resolve the difficulties

[9] When considering difficulties and the efforts made by the parties, the focus of the Act is on the achievement of a collective agreement, not on the bargaining process alone.²

[10] In *Service and Food Workers Union Ngā Ringa Tota Inc v Sanford Limited* the Employment Court discussed the meaning of “extensive efforts” and said it refers to the nature and quality of attempts made by one or both parties to achieve settlement of a collective agreement.³

[11] Although the material I have considered focuses on the substantive issues between the parties, it is also clear extensive efforts have been made by the parties to overcome the obstacles which are hindering them from concluding a collective agreement.

[12] I have also considered the fact the parties have attended mediation.⁴

[13] For the above reasons I find the ground set out in section 50C(1)(b) of the Act to be made out. The reference to facilitation is accepted.

[14] It is appropriate the parties now engage in facilitation.

Next steps

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

² *Service and Food Workers Union Ngā Ringa Tota Inc v Sanford Limited* [2012] NZEmpC 168 at [70].

³ Above n 2 at [72].

⁴ Above n 1 at [66].

Costs

[16] There is no order for costs.

Simon Greening
Member of the Employment Relations Authority