

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 96
3358425

BETWEEN MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Applicant

AND NEW ZEALAND PUBLIC
SERVICE ASSOCIATION TE
PŪKENGĀ HERE TIKANGA
MAHI INCORPORATED
Respondent

Member of Authority: Marija Urlich

Representatives: Anna Jackman, counsel for the Applicant
Jock Lawrie, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 20 February 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Ministry of Business, Innovation and Employment (MBIE) and the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Inc (PSA), are party to a now expired collective employment agreement. They are currently engaged in bargaining for a new collective agreement which they have not been able to conclude.

[2] The parties have jointly applied to the Authority under sections 50B, 50C(1)(b) of the Employment Relations Act 2000 for assistance by way of urgent referral to facilitation to resolve difficulties the parties are having concluding bargaining. They say a ground for the Authority to accept a reference to facilitation is made out -

bargaining has become unduly protracted and extensive negotiations have failed to resolve the issues between the parties.

The Authority's investigation

[3] The application for referral to facilitation was lodged on 19 February 2025. Attached to which was information relevant to the referral question including a detailed timeline of the parties' bargaining, the expired collective employment agreement, the bargaining process agreement and relevant policy statements and communications. The parties were provided an opportunity to file further information in support of the application.

[4] 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 provided by the parties.

Background

[5] Bargaining for a new collective agreement was initiated by the PSA on 3 January 2024. A draft bargaining process agreement was signed on 20 August.

[6] Bargaining first took place 30 and 31 January and continued on 9 days through February. On 29 February MBIE presented a remuneration position which did not address all the PSA's claim. The bargaining continued over several days in March which included the PSA tabling a settlement proposal. The bargaining then resumed in May and continued into June. A further settlement proposal was made by the PSA. In August the MBIE bargaining team was required to seek further approval following publication of updated government policy.¹ The bargaining continued during 10 and 11 September.

[7] On 5 November the parties attended mediation and the parties exchanged further offers in that month.

¹ New delegations were issued on 20 December.

[8] On 13 November the PSA conducted a ratification vote and on 3 December it notified MBIE the offer had been rejected. Strike notices were issued on 16 December and between 17 December and 20 January 2025 industrial action took place.

[9] Bargaining reconvened on 30 January where the PSA tabled a third proposal for settlement. MBIE presented a further offer on 17 February.

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

Facilitation

[11] The purpose of the Authority facilitating bargaining is set out in s 50A:²

...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.

[12] In considering a reference for facilitation the Authority must be satisfied that one or more of the grounds set out in s 50C exist.³ 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.

[13] 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:⁴

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

[14] The background shows the parties have engaged in detailed and intensive bargaining over a number of months. This has not been able to resolve matters between them and the bargaining has reached a stage of undue protraction where the extensive

² Employment Relations Act 2000, section 50A.

³ Employment Relations Act 2000, section 50C.

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

efforts the parties have used to move the bargaining forward, including mediation, have not been successful.

[15] 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

[16] 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.

[17] 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

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

Marija Urlich
Member of the Employment Relations Authority