

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 158  
3449544

BETWEEN                      NEW ZEALAND  
   EDUCATIONAL INSTITUTE –  
   TE RIU ROA INCORPORATED  
   Applicant

AND                              PUBLIC SERVICE  
   COMMISSIONER  
   Respondent

Member of Authority:        Jeremy Lynch

Representatives:             Peter Cranney, counsel for the Applicant  
   Bronwyn Heenan and Matthew Maitland, counsel for the  
   Respondent

Investigation Meeting:      On the papers

Date of Determination:      17 March 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The New Zealand Educational Institute - Te Riu Roa Incorporated (NZEI) has lodged an application for referral to facilitation in respect of its collective bargaining with the Secretary for Education, acting under delegation from the Public Service Commissioner (the PSC).

[2]     NZEI and the PSC are parties to the (now expired) Primary Teachers' collective agreement.

**Background**

[3]     In summary, the background to the parties' bargaining is:

- (a)     NZEI initiated bargaining for a new collective agreement with the PSC on 8 May 2025.

- (b) The parties' collective agreement expired on 2 July 2025.
- (c) The parties met for bargaining on 24 and 25 June 2025.
- (d) In addition, the parties have had bargaining interactions on 10, 15, 16 and 29 July 2025; 14 and 15 August 2025; 5, 9 and 10 September 2025; 15 October 2025; 19 and 25 November 2025; 9 and 11 December 2025.
- (e) The parties also attended mediated bargaining on 25, 26 and 27 February 2026.
- (f) The parties have been unable to conclude a replacement collective agreement

### **Application for facilitation**

[4] NZEI's application for referral to facilitation comprised solely its statement of problem (which included a request for urgency). No affidavit evidence was provided by NZEI.

[5] NZEI submits that the ground under s 50C(1)(a) is made out, and that the PSC is in the process of committing a serious breach of the duty of good faith.

[6] In addition, NZEI submits that the ground under s 50C(1)(b) of the Employment Relations Act 2000 (the Act) is made out:

- (b) that –
  - (i) the bargaining has been unduly protracted; and
  - (ii) extensive efforts (including mediation), have failed to resolve the difficulties that precluded the parties from entering into a collective agreement.

[7] A case management conference (CMC) was held with the representatives for the parties on 16 March 2026, at which the Authority granted the matter urgency.

### **The Public Service Commissioner's position**

[8] The PSC did not lodge a statement in reply. Instead, its Manager of Workforce and Employment Relations provided an emailed response. In this email, the PSC advised it accepted that the bargaining had been unduly protracted, and that as such the ground under s 50C(1)(b) of the Act was made out.

[9] During the CMC, the PSC confirmed it supported the reference to facilitation being granted by the Authority in reliance on the ground under s 50C(1)(b). It also

confirmed that the parties' bargaining dates as listed in NZEI's statement of problem were accurate.

[10] However, in its emailed response the PSC made it clear that it did not consider that the ground under s 50C(1)(a) was made out, and that it did not accept that its actions amounted to a serious and sustained breach of good faith.

[11] The Authority need only be satisfied that one of the grounds under s 50C of the Act is made out. During the CMC, NZEI accepted that the Authority could determine its application using the material lodged to date, solely in reliance on the ground under s 50C(1)(b) of the Act.

[12] The PSC advised that it did not wish to lodge affidavit evidence.

[13] Both parties agreed that the matter could be investigated on the papers, without the need for an in-person investigation meeting.

[14] In addition, both parties agreed that the Authority could determine this matter without the need for the parties to lodge submissions, or any evidence.

### **Facilitation should be granted**

[15] In *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited*,<sup>1</sup> the Court held in respect of the approach to the interpretation of the bargaining facilitation sections of the Act, that:

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

[16] Having fully considered the material placed before the Authority, I find the ground under s 50C(1)(b) of the Act is made out. The parties have made extensive efforts (including with the use of a mediator for three days), but have been unable to resolve the difficulties precluding the settlement of their collective agreement.

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

[17] Consequently, it is ordered that the parties now engage in facilitation to assist them in a pathway to settlement of a new collective agreement.

**Next steps and costs**

[18] The Authority will convene a case management conference with the parties as soon as possible to discuss arrangements for urgent facilitation, which will be undertaken by a different Authority Member.

[19] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.<sup>2</sup>

Jeremy Lynch  
Member of the Employment Relations Authority

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<sup>2</sup> Employment Relations Authority, *Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi*, February 2024, page 5 at [6].