

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 225
3449965

BETWEEN	THE SECRETARY FOR EDUCATION Applicant
AND	NEW ZEALAND EDUCATIONAL INSTITUTE – TE RIU ROA INCORPORATED Respondent

Member of Authority: Robert Davies

Representatives: Calum Cartwright, counsel for the Applicant
Peter Cranney, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 12 March 2026 from the Applicant
20 March 2026 from the Respondent

Date of Determination: 15 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Secretary for Education has lodged with the Authority a statement of problem applying for referral to facilitation in respect of its collective bargaining with the respondent, NZEI. The grounds of the application are the parties are having serious difficulties in concluding bargaining, which has also become unduly protracted despite extensive efforts to resolve those difficulties.

[2] NZEI accepts the factual matters pleaded by the applicant in its statement of problem, other than specific pleadings in paragraphs 2.11 to 2.14 (inclusive). These paragraphs outline the applicant's views regarding affordability as well as apparent

constraints presented by the Government Workforce Policy Statement. However, these particular factual disputes are not relevant to my disposition of the application.

Background

[3] The statement of problem includes the following undisputed background facts:

- a. The applicant and respondent are party to the *Ministry of Education and NZEI Te Riu Roa Collective Agreement for Field Staff (2023 – 2025)*, which expired on 7 April 2025 (the Collective Agreement).
- b. NZEI initiated bargaining by notice dated 6 February 2025.
- c. The first bargaining meeting took place on 6 March 2025 and there have been five days of bargaining meetings since this date.
- d. Mediation occurred on 28 July 2025 and 1 October 2025.
- e. Direct and privileged settlement discussions have occurred throughout the process to identify options for resolving bargaining.
- f. The applicant has made two settlement offers (31 July 2025 and 9 December 2025). These offers were rejected by NZEI's members.
- g. NZEI's members have taken industrial action:
 - i. Restrictions on work from 23 July 2025 until 22 August 2025;¹
 - ii. Full cessation of work from 7am until 7pm on 23 October 2025.
- h. The parties are at a genuine impasse and have exhausted all reasonable avenues to reach agreement.

Application for facilitation

[4] The applicant's application for referral was only supported by its statement of problem. No affidavit evidence was provided. However, the application is largely supported by NZEI, which "consented" to it. While 'consent' is not a requirement of the Act, the pragmatic approach adopted by the parties has nevertheless enabled the Authority to consider the application on the papers.

[5] The grounds on which the Authority may accept a reference for facilitation are set out in section 50C of the Employment Relations Act 2000 (Act) and include, in s 50C(1)(b), that bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from

¹ For completeness, I note this action was paused on 4 August 2025 while members voted on the applicant's 31 July 2025 settlement offer, and then recommenced on 11 August 2025 and continued until 22 August 2025.

entering into a collective agreement. An additional ground, in s 50C(1)(c), is that in the course of bargaining there has been one or more strikes or lockouts which have been protracted or acrimonious.

[6] Relevant to disposition of this application is that the Authority need only be satisfied that one of the grounds in section 50C is made out.²

Outcome

[7] In *Service & Food Workers Union Nga Ringa Tota Inc. v Sandford Limited*,³ the Employment 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.

[8] I find the application is made out on the ground in section 50C(1)(b). The parties have made extensive efforts, including with the use of a mediator, but have been unable to resolve the difficulties precluding the settlement of their collective agreement. Because I do not also need to be satisfied of the ground in section 50C(1)(c), I make no finding in that regard.

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

Costs

[10] The Authority's presumption with referrals to facilitation is that the parties bear their own costs.⁴

² *New Zealand Educational Institute – Te Riu Roa v Public Service Commissioner* [2026] NZERA 158, at [11].

³ *Service & Food Workers Union Nga Ringa Tota Inc. v Sandford Limited* [2012] NZEmpC 168, at [42].

⁴ Employment Relations Authority, Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi, February 2024, page 5 at [6].

Next steps

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

Robert Davies
Member of the Employment Relations Authority