

[4] MUNZ relies on s 50C(1)(b) of the Employment Relations Act 2000 (the Act) as the ground for facilitation:

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.

[5] In support of its application for facilitation, MUNZ lodged an affidavit from Joseph Gallagher, a maritime negotiator employed by MUNZ.

[6] QPNZ does not support or oppose the reference for facilitation.

[7] The expired collective agreement included a provision colloquially known as the 'Four Day Rule'.

[8] The Four Day Rule provides that a stevedore cannot be required to work more than four consecutive shifts without a 36-hour break.

[9] On 27 August 2024, MUNZ initiated bargaining for a new collective agreement.

[10] On 9 October 2024, QPNZ presented a bargaining claim to MUNZ which included a claim to remove the Four Day Rule from the new collective agreement.

[11] The inclusion of the Four Day Rule in the new collective agreement is at the heart of the dispute between the parties.

[12] The dispute over the inclusion of the Four Day Rule in the new collective agreement has given rise to a complaint to Maritime New Zealand, the issuing of two improvement notices, an appeal to the District Court, an application to the Authority which has been determined, and subsequent proceedings filed in the Employment Court.

[13] The parties agree that the sole issue preventing a new collective agreement being concluded is the inclusion of the Four Day Rule in the new collective agreement.

Bargaining has been unduly protracted

[14] The meaning of undue protraction is excessive or disproportionate protraction as opposed to reasonable or expected protraction.¹

[15] Bargaining has been unduly protracted because of litigation between the parties, the investigation by Maritime New Zealand, and subsequent appeal.

[16] The underlying issue giving rise to the litigation, which has caused bargaining to become unduly protracted, is the parties respective positions regarding the inclusion of the Four Day Rule in the new collective agreement.

Extensive efforts by the parties have failed to resolve the difficulties

[17] 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

[18] In *Service and Food Workers Union Nga 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

[19] Although there are complexities regarding this case due to third party litigation involving Maritime New Zealand and QPNZ, I am satisfied the parties have made extensive efforts to overcome the obstacles which are hindering them from concluding a collective agreement.

[20] The parties attended mediation on 17 March 2025 and 23 January 2026.⁴ The parties also attended a judicial settlement conference on 17 July 2025.

[21] Therefore, I find the ground for facilitation set out in section 50C(1)(b) of the Act to be made out. The reference to facilitation is accepted.

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

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

³ Above n 2 at [72].

⁴ Above n 1 at [66].

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

Next steps

[23] 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.

Costs

[24] There is no order for costs.

Simon Greening
Member of the Employment Relations Authority