

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 313
3461984

BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION TE PUKENGA HERE TIKANGA MAHI INCORPORATED Applicant
AND	RESCARE MANAGEMENT LIMITED Respondent

Member of Authority: Jeremy Lynch

Representatives: Angus Wilson, advocate for the applicant
Vincent Xu for the respondent

Investigation Meeting: On the papers

Date of Determination: 22 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The New Zealand Public Service Association Te Pukenga Here Tikanga Mahi Incorporated (PSA) has lodged an application for referral to facilitation in respect of its collective bargaining with Rescare Management Limited (Rescare).

[2] The PSA and Rescare are parties to a (now expired) collective employment agreement (collective) covering Community Support Workers, Team Leaders, Enrolled and Registered Nurses, Cleaners, Gardeners, and Grounds Persons.

[3] There are approximately 200 employees whose roles may fall under the coverage clause of the collective, of which 77 are members of the PSA.

Background

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

- (a) The PSA initiated bargaining for a new collective agreement with Rescare on 18 November 2024.
- (b) The parties' collective agreement expired on 31 December 2024.
- (c) The parties signed a bargaining process agreement on 23 May 2025.
- (d) The parties met for bargaining on 29 May 2025.
- (e) A 'Problem Solving' bargaining meeting was held on 19 September 2025.
- (f) The parties attended a full day mediated bargaining session on 29 January 2026.
- (g) Bargaining interactions have occurred outside of the above dates, in which the parties have rationalised claims, and responded to each other's position.
- (h) The parties have been unable to conclude a replacement collective agreement.

Application for facilitation

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

[6] The PSA 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 5 May 2026.

[8] At this CMC, the Authority granted the matter urgency.

[9] The Authority directed the parties to attend further mediated bargaining.

[10] Unfortunately, despite some progress being made at mediated bargaining, the

parties have been unable to conclude a new collective agreement.

Rescare's position

[11] Rescare lodged a statement in reply. It did not lodge affidavit evidence.

[12] Rescare's position is that it does not oppose the PSA's application for reference to facilitation on the ground set out under s 50C(1)(b) of the Act.

[13] Both parties agreed that the matter could be investigated on the papers, solely on the basis of the statement of problem, and statement in reply, and 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 submissions or evidence to be lodged.

Facilitation should be granted

[15] In *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited*,¹ 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] I have considered the parties' bargaining dynamic, and note that in the circumstances of this matter, *protraction* comprises more than a purely temporal element. If something is described as 'protracted', in addition to the temporal aspect, it can often describe something 'difficult', such as a lengthy process. In a bargaining setting, 'protraction' can include an element of 'difficulty'.

[17] 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 bargaining has been unduly protracted. The parties have made extensive efforts (including with the use of a

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

mediator), but have been unable to resolve the difficulties precluding the settlement of their collective agreement.

[18] 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

[19] 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.

[20] The Authority's presumption with referrals to facilitation is that parties will bear their own costs.²

Jeremy Lynch
Member of the Employment Relations Authority

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