

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 350
3468924

BETWEEN HEALTH NEW ZEALAND
Applicant

AND ASSOCIATION OF
PROFESSIONALS AND
EXECUTIVE EMPLOYEES INC
Respondent

Member of Authority: Jeremy Lynch

Representatives: Susan Hornsby-Geluk, counsel for the Applicant
Sarah Barker, advocate for the Respondent

Investigation Meeting: On the papers

Date of Determination: 4 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Health New Zealand has lodged an application for referral to facilitation in respect of its collective bargaining with the Association of Professionals and Executive Employees Inc (APEX).

[2] Health New Zealand and APEX are parties to the (now expired) Medical Physicists' collective agreement.

Background

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

- (a) APEX initiated bargaining for a new collective agreement with Health New Zealand on 3 July 2025.
- (b) The parties' collective agreement expired on 31 August 2025.

- (c) The parties first met for bargaining on 30 July 2025.
- (d) Additional bargaining has occurred on:
 - (i) 31 July 2025;
 - (ii) 7 and 8 October 2025;
 - (iii) 11 and 21 November 2025;
 - (iv) 27 January 2026;
 - (v) 17 February 2026;
 - (vi) 12 March 2026;
 - (vii) 22 April 2026.
- (e) In addition, on 27 November 2025, the parties attended a productivity workshop related to the bargaining.
- (f) The parties also attended mediated bargaining on 14 May 2026.
- (g) Strike notices were issued by APEX on 1 and 13 May 2026, but were withdrawn following the 14 May 2026 mediation.
- (h) On 22 and 25 May 2026, APEX issued further strike notices, in respect of planned strike action at a number of Health New Zealand's hospitals, including at Whangarei, Auckland, Waikato, Taranaki, Palmerston North, Wellington, Christchurch and Dunedin.
- (i) The parties have been unable to conclude a replacement collective agreement

Application for facilitation

[4] Health New Zealand has applied to the Authority under s 50B of the Employment Relations Act 2000 (the Act) for assistance by way of urgent referral to facilitation to resolve the difficulties the parties are having in concluding their bargaining. Health New Zealand says that two of the four grounds on which the Authority may accept a reference to facilitation are made out.

[5] Health New Zealand's application for referral to facilitation comprised its statement of problem, an application for urgency, and affidavit evidence in support.

[6] An affirmed affidavit was lodged by Anne Aitcheson, Health New Zealand's National Contingency Planner for Industrial Action, as well as by Angela Castle, Health New Zealand's Principal Industrial relations Expert.

[7] Health New Zealand submits that the ground under s 50C(1)(b) of 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.

[8] In addition, Health New Zealand submits that the ground under s 50C(1)(d) is made out, in that APEX has proposed a strike (or strikes) which, if it were to occur, would be likely to affect the public interest substantially.

[9] A case management conference (CMC) was held with the representatives for the parties on 2 June 2026, at which the Authority granted the matter urgency.

APEX's position

[10] At the 2 June 2026 CMC, APEX advised that it intended to lodge a statement in reply, but did not wish to lodge any affidavit evidence.

[11] APEX advised that it did not oppose Health New Zealand's application for referral to facilitation.

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

[13] In addition, both parties agreed that the Authority could determine this matter without the need for submissions to be lodged.

[14] APEX lodged its statement in reply promptly, on 3 June 2026. In this, APEX accepted Health New Zealand's evidence as to the parties' bargaining dates, as well as in respect of the strike notices issued.

[15] However, APEX disputed Health New Zealand's position that it tabled an offer in August 2025. APEX also disputed the evidence of Ms Castle, that APEX agreed to

speaking positively of the offer Health New Zealand made at the parties' 14 May 2026 mediation.

[16] Other than these areas of dispute, APEX's statement in reply sets out that it supports the application for referral to urgent facilitated bargaining.

Facilitation should be granted

[17] The Authority need only be satisfied that one of the grounds under s 50C(1) of the Act is made out.

[18] For reasons that will become apparent, the ground under s 50C(1)(b) of the Act is considered first.

[19] To meet the requirements of this ground, the Authority must first be satisfied that the bargaining has been unduly protracted.

[20] In *McCain Foods (NZ) Limited v Service & Food Workers Union Nga Ringa Tota Inc*, the Court considered the meaning of unduly protracted and held that "undue protraction... is excessive or disproportionate protraction as opposed to reasonable or expected or common protraction".¹

[21] The parties both agree that there have been 10 days of bargaining, as well as a productivity workshop related to the bargaining, and that bargaining has been ongoing since July 2025.

[22] The Court in *McCain* also held that:²

If... there have been real attempts to bargain and settle, albeit that the parties' strongly held positions have precluded settlement, the bargaining may also be said in that sense to have been unduly protracted.

[23] I am satisfied that the bargaining has been unduly protracted.

[24] In *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited*,³ the Court held in respect of the approach to the interpretation of the bargaining facilitation sections of the Act, that:

¹ *McCain Foods (NZ) Limited v Service & Food Workers Union Nga Ringa Tota Inc* [2009] EMC Wellington WC5/09, 8 April 2009 at [64].

² Above n 1, at [63].

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

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.

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

[26] Given the above finding, it is not necessary for the Authority to consider the ground under s 50C(1)(d) of the Act.

[27] 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

[28] 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.

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

Jeremy Lynch
Member of the Employment Relations Authority

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