

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 65  
3439764

BETWEEN	ASSOCIATION OF PROFESSIONALS AND EXECUTIVE EMPLOYEES Applicant
AND	ORANGA TAMARIKI – MINISTRY OF CHILDREN Respondent

Member of Authority: Jeremy Lynch

Representatives: Omar Hamed, advocate for the Applicant  
Susan Hornsby-Geluk, counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 10 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Association of Professionals and Executive Employees (Apex) has lodged an application for referral to facilitation in respect of its collective bargaining with Oranga Tamariki - Ministry of Children (Oranga Tamariki). The bargaining covers psychologists, therapists and team leaders (psychologists) comprising approximately 55 employees working within Oranga Tamariki's clinical services team.

**Background**

- [2] In summary, the background to the parties' bargaining is:
- (a) Apex and Oranga Tamariki are party to a (now expired) collective agreement, for the period 21 June 2023 to 1 December 2024.
  - (b) On 19 November 2024, Apex initiated bargaining with Oranga Tamariki

for a replacement collective agreement.

- (c) A bargaining process agreement was entered into by the parties on 21 May 2025.
- (d) Since the initiation of bargaining 14 months ago, the parties have met for bargaining on five days, between April and November 2025.
- (e) In addition, the parties have also attended mediated bargaining on two occasions.

### **Application for facilitation**

[3] Apex's application for referral to facilitation was supported by an affidavit affirmed by its bargaining negotiator, together with an application for urgency.

[4] Apex 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.

### **Oranga Tamariki's position**

[5] A case management conference was held with the representatives for the parties on 2 February 2026. The Authority granted the matter urgency.

[6] Oranga Tamariki advised it did not oppose Apex's application for referral to facilitation.

[7] Oranga Tamariki advised that it did not wish to lodge an affidavit in support of its position. Rather, Oranga Tamariki advised it intended to lodge solely a statement in reply. Oranga Tamariki agreed to an abridged time period for its statement in reply, which was lodged on 8 February 2026.

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

[9] In addition, both parties agreed that the Authority could determine this matter on the basis of the statement of problem, and statement in reply, without the need for the parties to lodge submissions, or any further evidence.

[10] In its statement in reply, Oranga Tamariki accepts that the parties are having serious difficulties in concluding a collective agreement, and accepts that facilitation would assist in resolving these difficulties.

### **Facilitation should be granted**

[11] 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.

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

[13] 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**

[14] 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.

[15] 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>1</sup> *Service & Food Workers Union Nga Ringa Tota Inc v Sanford Limited* [2012] NZEmpC 168 at [42].

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