

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 195  
5477221

BETWEEN ASHBURTON DISTRICT COUNCIL  
First Applicant

SOUTHERN LOCAL  
GOVERNMENT OFFICERS UNION  
Second Applicant

Member of Authority: Helen Doyle

Representatives: Neil McPhail, Advocate for First Applicant  
Joe Davies and Nigel Wombwell, Advocates  
for Second Applicant

Investigation Meeting: 21 November 2014 at Christchurch

Submissions Received: On the day

Date of Determination: 26 November 2014

---

**DETERMINATION OF THE AUTHORITY**

---

**A The joint application of the parties for reference for facilitation by the Authority of the collective bargaining is accepted.**

**Employment relationship problem**

[1] Ashburton District Council and the Southern Local Government Officers Union have applied jointly for a reference to facilitation. They rely on the ground under s 50C(1)(b) of the Employment Relations Act 2000 (the Act) which provides:

(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:*

[2] The Authority must not accept a reference for facilitation unless it is satisfied that 1 or more of the grounds in s 50C of the Act exist.

### **Unduly protracted bargaining**

[3] It is 18.5 months since the bargaining was initiated in this case. Chief Judge Colgan in *McCain Foods (NZ) Limited v Service & Food Workers Union Nga Ringa Tota Inc* [2009] ERNZ 28 at [64] stated that undue protraction (the statutory test) is *excessive or disproportionate protraction as opposed to reasonable or expected or common protraction*.

[4] In *Service and Food Workers Union Nga Ringa Tota Inc v Sanford Ltd* [2012] ERNZ 525 the Court had research undertaken of the 21 recorded cases in which the Authority has accepted referrals for facilitation under s 50C(1)(b). It stated at [46] that the period from initiation of bargaining to the Authority's investigation meeting ranged from nine months to 54 months with the average period being 19.6 months and the median being 19.5 months.

[5] I find that bargaining that has continued for 18.5 months has become *unduly protracted* particularly when it is considered that since June 2014 there has only remained one issue that the parties have serious difficulty about. This supports that there has been bargaining of a sufficient quality over the 18.5 month period including with the assistance of a mediator. The period of bargaining as Mr McPhail submitted is not out of step with other cases where the Authority has accepted referral for facilitation.

### **Extensive efforts to resolve difficulties**

[6] There have been six bargaining meetings along with informal discussions and numerous emails and two mediated bargaining sessions.

[7] This joint facilitation application aside there have been three sets of proceedings related to bargaining which have been lodged with the Employment Relations Authority.

[8] Finally, I record that both parties are of the view that facilitation will help them resolve the current difficulties and on that basis I am further satisfied that this is bargaining which is appropriate to refer to facilitation.

[9] There is now one issue which the parties have failed to resolve in order to conclude a collective agreement. I am satisfied that, as set out above, bargaining has been unduly protracted and there have been extensive efforts to enter into a collective agreement but they have failed to resolve the difficulties and this has precluded the parties from entering into a collective agreement. The criteria set out in s 50C(1)(b) is met and the Authority must now accept the application for facilitation and assist the parties to resolve the difficulties in concluding a collective agreement.

### **Determination**

[10] The joint application of the parties for reference to facilitation by the Authority of the collective bargaining is accepted and another Member will provide facilitation of the collective bargaining.

### **Costs**

[11] There are no issues as to costs.

Helen Doyle  
Member of the Employment Relations Authority