

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 1  
5346855

BETWEEN	THE NEW ZEALAND NURSES ORGANISATION (INC) Applicant
AND	AHIPARA HEALTH AND RESOURCE TRUST First Respondent
AND	OTHERS (listed in Schedule 1) Respondents

Member of Authority: P R Stapp  
Investigation Meeting: On the papers  
Determination: 9 January 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This is an application for facilitation bargaining made by The New Zealand Nurses Organisation (Inc) (the Union/NZNO) on the grounds that the bargaining for Te Rau Ko Kiri (a multi employer collective agreement) has been unduly protracted and extensive efforts have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement (s.50C(1)(b) of the Employment Relations Act 2000) (the Act).

**The issue**

[2] Are there grounds under s.50C(1)(b) of the Act to approve facilitation for bargaining?

**The facts**

[3] The Union is a registered Union under Part 4 of the Act.

[4] The Union has members in all areas of the health sector, including members employed in the primary healthcare sector and the DHB sector. The listed respondents are Maori and Iwi primary healthcare employers.

[5] The Union has undertaken a number of industrial campaigns on behalf of its members employed in the primary healthcare sector with the objective (*inter alia*) of pay parity with members employed in the DHB sector.

[6] In 2005 the Union initiated bargaining with a large number of primary healthcare providers, including a number of the respondents, for a primary healthcare multi employer collective agreement (the PHC MECA).

[7] Following the initiation for the PHC MECA, the Union and a number of Maori and Iwi primary healthcare providers reached agreement for separate and specific bargaining for the Maori and Iwi primary healthcare multi employer collective agreement (Te Rau Ko Kiri). That bargaining was initiated in June 2007. The bargaining has, as at the date of the lodging of the statement of problem in the Employment Relations Authority, been ongoing for four years without a conclusion. There have been efforts to resolve the differences between the parties including:

- (a) Bargaining negotiations;
- (b) Department of Labour mediation assistance;
- (c) The parties lobbying Government for more funding.

[8] Despite these efforts the bargaining has not reached a settlement. Some of the respondents have denied the Union's claim that there is an impasse. The respondents who have opposed the facilitation application say that there is scope for further bargaining to occur and that this is supported by issues that will help this.

[9] The Union and the respondents appear to be having difficulties in concluding Te Rau Ko Kiri. The Union has sought a reference for facilitation (s.50B of the Act) on the grounds that:

- (a) The bargaining has been unduly protracted.

- (b) Extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[10] The Union understands that the respondents present at the last bargaining negotiations in late March 2011 were favourably disposed to the Union making an application for referral to facilitation. Indeed some respondents have not opposed the application for facilitation. One submission from a respondent has not opposed and not agreed to the application for facilitation. There are a number of other respondents who are opposed to the application, but say that there is scope for more bargaining.

### **The Authority's process**

[11] A number of the named respondent parties did not reply (in a statement of reply) but were given time to do so before any decision would be made by the Authority. The parties were contacted for this purpose by a Support Officer and notified of the time permitted.

[12] The NZNO was then given an opportunity to reply and provide written submissions on the issues raised by those respondents who had lodged statements in reply in the Authority.

[13] There are mixed positions from the respondents in regard to the application.

[14] Upon receipt of the NZNO's reply and submissions the respondents were given a further opportunity to provide written submissions on the application for facilitation and the NZNO had a final right of reply. Submissions in writing have been received and duly considered.

[15] This matter is being dealt with on the papers. This has been done to save costs and time without any opposition.

### **Determination**

[16] I am satisfied that there have been attempts to bring a conclusion to the bargaining for Te Rau Ko Kiri. Furthermore, I am satisfied that the bargaining that has taken place has reached a point of an impasse. I am also satisfied that the Department of Labour has provided mediation assistance, albeit one session over two days (21 and 22 March). Despite the number of sessions that have occurred I hold

that this meets the threshold of being extensive given the time, effort and extent of the bargaining that has occurred and considering the number of respondent parties and their participation and involvement rates.

[17] This application is unusual in that it does involve political lobbying by the parties for more funding from Government. This is a background factor and as such is a factor in assessing the test of “unduly protracted bargaining” and “extensive efforts” being made by the parties to make progress and to try and endeavour to come to an outcome. There nevertheless remains a marked divergence between the parties over certain key issues and the inclusiveness of the respondents in the process to conclude a MECA. The difficulties that have occurred in regard to the attendance of parties at negotiations could be overcome by facilitation whereupon all issues will be able to be further canvassed. The costs and time in attendance are factors of a residual nature that support a referral to facilitation.

[18] The evidence supports the Union initiating bargaining for a MECA. I am satisfied that the Union has made strenuous efforts to notify all respondents of bargaining and to notify all respondents of progress in the negotiations and that it continues to seek a MECA with the respondents.

[19] The opposition by some respondents to ongoing bargaining is indicative of serious difficulties facing the parties.

[20] Taking into account the factors presented in the written submissions, it is my conclusion that the application meets the requirement for a referral to facilitation.

[21] The application is granted.

[22] Costs are reserved.

[23] This file will now be handed on to Mr G J Wood Member of the Authority to action facilitation.

**SCHEDULE 1**

Ahipara Health & Resource Trust  
Arai Te Uru Whare Hauora Limited  
Ha O Te Ora O Wharekauri Trust  
He Puna Hauora Incorporated  
Kahungunu Executive Ki Te Wairoa Charitable Trust  
Kahungunu Health Services  
Ki A Ora Ngatiwai Trust  
Kokiri Marae Keriana Olsen Trust  
Korowai Aroha Trust  
Maraeroa Marae Health Association  
Nga Kaitiaki Hauora O Waikaremoana Trust  
Nga Kete Matauranga Pounamu Charitable Trust  
Ngati Hine Health Trust  
Ngati Pahauwera Incorporated  
Ngati Ruanui Tahua Trust  
Ngati Whatua O Orakei Health  
Papakura Marae Society Incorporated  
Piki Te Ora Nursing Services Limited  
Piritahi Hau Ora Trust  
Rangitane O Tamaki Nui-A-Rua Incorporated  
Rata Te Awina Trust  
Raukawa Charitable Trust  
Raukura Hauora O Tainui Trust  
Te Atiawa Health Runanga Medical Trust  
Te Ha Oranga  
Te Hauora O Ngati Rarua Limited  
Te Hauora O Te Hiku O Te Ika Trust  
Te Hauora O Te Wheke A Nuku  
Te Hauora O Tauranganui A Kiwa  
Te Ho Nonga O Tamaki Me Hoturoa  
Te Kohao Health Limited  
Te Korowai Hauora O Hauraki Incorporated  
Te Kupenga Hauora-Ahuriri  
Te Manu Toroa Trust  
Te Oranganui iwi Health Authority  
Te Puawaitanga Ki Otautahi Charitable Trust  
Te Puna Hauora O Te Raki Paewhenua Society Incorporated  
Te Runanga O Ati Awa Ki Whakarongotai Inc

Te Runanga O Ngati Apa Inc  
Te Runanga O Ngati Pikiao Trust  
Te Runanga O Raukawa Incorporated  
The Runanga O Toa Rangatira Incorporated  
Te Tai O Marokura Charitable Trust  
Te Taiwhenua O Heretaunga Trust  
Te Wakahuia Manawatu Trust  
Te Whanau O Waipareira Trust  
Te Whatuiapiti Trust Incorporated  
Tu Kotahi Maori Asthma Trust  
Turuki Health Care Charitable Trust  
Tuwharetoa Health Charitable Trust  
Waiwhetu Medical Group Limited  
Whaiora Whanui Trust  
Whakatu Marae Committee Incorporated  
Whakatu Te Korowai Manaakitanga Trust  
Whakawhiti Ora Pai Incorporated Society