

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN NUPE (Applicant)

AND Legal Services Agency (Respondent)

REPRESENTATIVES Andrew McKenzie, Counsel for Applicant
Tim Bowron, Advocate for Respondent

MEMBER OF AUTHORITY Helen Doyle

CONSIDERATION OF PAPERS Applicant:
Statement of problem and annexures
Affirmation of John Kerr and further statement of John Kerr
Submission on behalf of NUPE

Respondent:
Statement in reply from Legal Services Agency
Further statement from Legal Services Agency

DATE OF DETERMINATION 30 March 2006

DETERMINATION OF THE AUTHORITY

[1] The National Union of Public Employees (“NUPE”) is a registered union under the Employment Relations Act 2000.

[2] NUPE applies to the Authority for reference for facilitation in respect of its bargaining with the Legal Services Agency for a collective employment agreement. It relies on the ground under 50C (1)(b) of the Employment Relations Act 2000 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.*

[3] The Legal Services Agency (“the Agency”) is a Crown entity established by the Legal Services Act 2000. It has offices throughout New Zealand. The Agency administers, funds or sponsors a range of legal activities. Its employees are currently on individual employment agreements.

[4] NUPE has about 20 members at the Agency out of about 90 Grants staff whose work could potentially be covered by a collective agreement. The 20 members are located in legal aid offices in

Wellington, Christchurch, Invercargill and Whangarei. The Agency has several other offices where there are no NUPE members.

[5] Staff from the Agency joined NUPE in late June 2004 with a view to bargaining for a collective agreement. An organiser with NUPE, John Kerr, initiated bargaining on 2 July 2004. On the same day Mr Kerr wrote to the Corporate Affairs Manager, Tim Bowron, at the Agency introducing NUPE and outlining how NUPE saw its role in the work place. Since 2 July 2004 there have been meetings, correspondence and offers, mediations and some low level industrial action but no concluded collective agreement.

[6] When the application was initially lodged with the Authority in October 2005 both parties agreed to return to mediation. Mr McKenzie advised the Authority on 20 December 2005 that no settlement had been reached at mediation.

[7] After further telephone conferences in early 2006 both parties agreed that I should proceed to determine the application on the basis of the extensive documentation I was provided with and any submissions that the parties wished to make.

[8] Mr McKenzie made brief written submissions and Mr Bowron, whilst acknowledging receipt of the applicant's submissions, indicated that the Agency had no wish to reply to them or make any further submission.

The Background

[9] After the initiation of bargaining a good faith bargaining process agreement was signed by the parties on 27 July 2004. The agreement provided amongst other matter that the venue for negotiations would be in Wellington.

[10] The key events were helpfully set out in a timeline by Mr Kerr. Mr Bowron has not indicated that he has any issue with the record of timeline events. In addition to the key events listed the parties communicated in writing and by telephone calls.

2 July 2004	NUPE initiates bargaining.
27 July 2004	Bargaining process document signed.
11 and 12 August 2004	Parties meet for bargaining – initially the Agency did not see a collective agreement as appropriate given the small proportion of staff it would cover. It did though during negotiations agree in principle to enter into a collective agreement.
6 October 2004	Mediation concerning bargaining held in Wellington.
3 February 2005	Parties meet for bargaining.
24 February 2005	Mediation concerning bargaining held in Wellington.
19 April 2005	Industrial Action.
4 May 2005	Industrial Action.
11 May 2005	Parties meet for bargaining.

1 June 2005	Parties meet for bargaining. Agency tables further proposal for settlement.
15 June 2005	1 June proposal for settlement rejected – members vote for a continued campaign of industrial action.
23 June 2005	Nupe puts forward another proposal for settlement.
28 June 2005	Agency does not accept the proposal, puts forward an alternative proposal on term of agreement and calls for clarification on another part of the proposal.
12 August 2005	Email from NUPE to the Agency proposing a joint application for facilitation.
19 August 2005	Email from the Agency that it was not accurate to suggest that extensive efforts have been undertaken to resolve differences or that all avenues have been explored. The email also pointed out that information had been sought to clarify part of the proposal.
27 August to 6 October 2000	John Kerr away on annual leave and extended sick leave.
25 October 2005	Application for facilitation lodged with the Authority.
14 December 2005	Further mediation concerning bargaining held in Wellington

[12] Mr Kerr in a statement provided to the Authority said that he believed all outstanding matters were canvassed by the parties at the December 2005 mediation but the positions could not be reconciled to the extent that settlement could be arrived at. Mr Bowron did not disagree with that part of Mr Kerr's statement in the statement that he provided to the Authority.

Analysis

[13] The purpose of facilitating collective bargaining is set out in section 50A (1) which provides:

50A Purpose of facilitating collective bargaining

(1) The purpose of sections 50B to 50I is to provide a process that enables 1 or more parties to collective bargaining who are having serious difficulties in concluding a collective agreement to seek the assistance of the Authority in resolving the difficulties.

[14] I need to be satisfied under section 50C (1)(b) that the bargaining between NUPE and the Agency has been unduly protracted and that extensive efforts which include mediation have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement. I accept Mr McKenzie's submission that there needs to be consideration in that assessment of both the nature and the scope of the bargaining between the parties.

[15] A collective agreement had not previously been bargained for and concluded between the Agency and NUPE. Where there is no existing relationship it may take longer for the parties to conclude a collective agreement. Balanced against that there are only about 20 NUPE members

employed at the Agency. There are also limited occupational groups of members who could potentially be covered. These are the senior grants officers, grants officers and clerical support officers.

[16] The parties attended mediation fairly early on in the bargaining after an initial two day meeting. The Agency then made it clear that it agreed in principle to a collective agreement. There was a further meeting and then further mediation took place. There was some low level industrial action and another meeting. There were proposals and counter offers.

[17] The thrust of the Agency's email in August 2005 to NUPE was that it thought there were other efforts to be made and other avenues to explore. I would in all likelihood not have been satisfied at that point in time that all efforts to attempt to resolve the difficulties had been exhausted.

[18] However the parties then attended mediation again in December 2005 for a third time in the knowledge that there was before the Authority an application for reference to facilitation. I accept with the assistance of the mediator the parties did make a real effort to resolve the difficulties that had to that time precluded them from entering into a collective agreement. They could not do so. Mr Kerr did not believe there were any matters from that mediation that required reply from NUPE.

[19] In the particular circumstances of this case given the nature and scope of the bargaining I am satisfied that bargaining has been unduly protracted, notwithstanding some period of inactivity, from the time of initiation on 2 July 2004. I am of the view that when assessed against the nature and scope of the bargaining for a collective agreement covering about 20 employees the parties have made extensive efforts which have included mediation on three separate occasions but that there still exists some serious difficulties between them in concluding a collective agreement.

Determination

[20] I find that the grounds set out under section 50C (1)(b) of the Employment Relations Act 2000 exist. I find that the bargaining between NUPE and the Agency has been unduly protracted and extensive efforts that include mediation have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[21] The National Union of Public Employees and the Legal Services Agency are referred under section 50B of the Employment Relations Act 2000 to the Authority for facilitation to assist them in resolving difficulties in concluding the collective agreement they have been bargaining for.

[22] Both parties agree that the suitable venue for facilitation in accordance with the good faith bargaining process is Wellington.

Costs

[23] The parties agree that costs should lie where they fall.

Helen Doyle
Member of Employment Relations Authority