ANAESTHETIC Technicians
APEX
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WHERE ARE WE AT?

Lakes

Lakes DHB has made an application for facilitation: This process is described below. We can either oppose the application on the grounds the criteria have not been met, or we can allow the Authority to rule. Either way, if the Authority allows facilitation we would then have to go and argue our case, receive the determination and then decide if we wish to accept it or not, as would the employer party.

Northland

And we are thinking about seeking facilitation with Northland DHB, where the dispute has been more protracted and more acrimonious. Both Northland and Lakes ATs have different claims on the table and have made (and received) substantially different offers in settlement (which of course have been rejected by both DHBs) so the two processes would not automatically be linked.

We have had a chat with the reps about this today and will make some decisions about what to do shortly.

Hawke's Bay and Canterbury

And at other bargaining, the employers tack appears to have changed. In Hawke's Bay and Canterbury this week, our ATs have been offered a worse deal (percentage-wise) than the nurses or PSA deal – to drag their current better rates back down to the PSA's level. Apart from the fact that the ATs we represent left the PSA to get better rates, and have done so, how dragging us all back down will help our recruitment and retention issues heaven only knows.

A moving feast

It is indeed a moving feast and the next couple of weeks will undoubtedly be critical. Well done to all the ATs for weathering this storm and out there fighting for what is not just right but also fair.

WHAT IS FACILITATION?

What, exactly, is it?

Facilitation is a provision of the Employment Relations Act (ERA) that is rarely used but allows for parties to a dispute to have a third-party determination about a bargaining outcome. The determination, however, is not binding: the parties may, or may not, accept it.

Why is it not often used?

1. A basic focus of the ERA is on the parties. The provisions of good faith, direct bargaining etc all provide a platform underpinned by the responsibility lying with the parties to resolve issues and progress the employment relationship. Mediation supports that focus but facilitation, where a third party offers up a settlement, does not.
2. And, in fairness, most parties agree with this focus. When a third party settles an agreement, neither party "owns" it, which in turn means the deal often isn't cemented in and the same issues arise again on renewal. Arbitration (a binding decision on the parties) is the ultimate "third party intervention" for which there is no provision in the ERA.
3. Primarily because of (1), the ability to get to facilitation, even if the parties want it, is not easy. The ERA must first assess whether the criteria that allow facilitation have been met. These are:
   - That during bargaining, a party has failed to comply with the duty of good faith, and that failure is serious, sustained and has undermined the bargaining.
   - That the bargaining has been unduly protracted and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.
   - That during bargaining there has been 1 or more strikes or lockouts; and that they have been protracted or acrimonious.
   - That a party has proposed a strike or lockout; and if it were to occur, it would be likely to affect the public interest substantially.

If the Authority allows facilitation, a second adjudicator must be appointed to hear the matter. During this process the parties can continue to bargain, strike, etc, in an endeavour to reach settlement without a determination.

Should any determination be rejected by either party, the dispute continues. If one party gets a determination they like (and the other party rejects it), undoubtedly the "successful" party will claim a moral victory, but ultimately if one party rejects the determination, that's it.