

[5] I am satisfied that it is appropriate for the Authority to exercise its discretion and make a recommendation, on the following grounds:

- (i) the parties have been engaged in unduly protracted bargaining and have used extensive efforts to resolve that bargaining including two days of facilitation;
- (ii) both parties have expressed a strong desire to conclude a collective agreement
- (iii) the bargaining is deadlocked; and
- (iv) a recommendation may break that deadlock.

Recommendation

[6] Pursuant to section 50H of the Act I make the following recommendation:

- (i) that the parties settle a collective employment agreement on current terms;
- (ii) that the term of that collective agreement be one year from 30 May 2010;
- (iii) that a term of the collective agreement requires each employer party and the TEU to address by way of working party the issues relating to discretionary leave and total working days as contained in the ITPs' proposal dated 29 January 2010 and the TEU's response to that proposal;
- (iv) that the working party be convened for the term of the settled collective agreement;
- (v) that the working party operate in accordance with the obligations contained in section 4 (1)(a)(b) of the Act; and
- (vi) that the working party access information appropriate and relevant to its inquiry.

[7] This recommendation is made on the following grounds:

- (i) that it is in the parties best interests and in accordance with their express wish to conclude a collective agreement as soon as possible;
- (ii) that on the information received I am not satisfied that the mechanisms within the expired collective agreement have been fully utilised to address the ITPs' concerns about discretionary leave and total working days;
- (iii) that the role of the ITP is to set and implement strategic goals within the policy framework of the tertiary sector policy and existing legal obligations;
- (iv) that discretionary leave forms part of total remuneration;
- (v) that the ITPs' concerns about flexibility and responsiveness may require a wider consideration of total remuneration.

[8] No recommendation is made regarding a salary increase.

[9] The parties are entitled to make this recommendation public.

[10] The legal question of whether this recommendation ends the facilitation remains unanswered. If this recommendation does not end the facilitation it may be reconvened on request.


Marija Urlich

Member of the Employment Relations Authority