

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 130
5384138

BETWEEN

NEW ZEALAND POST
PRIMARY TEACHERS'
ASSOCIATION
First Applicant

ROBERT GRAY
Second Applicant

A N D

SECRETARY FOR
EDUCATION
First Respondent

CAMBRIDGE HIGH SCHOOL
Second Respondent

Member of Authority: Michele Ryan

Representatives: Tanya Kennedy, Counsel for the Applicants
Antoinette Russell, Counsel for the Respondents

Investigation Meeting: On the papers and via telephone conference on 19
October 2012

Determination: 23 October 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The first applicant, the New Zealand Post Primary Teachers' Association (the Association) have sought a declaration about the interpretation, application or operation by the Secretary of Education of terms contained in the Secondary Teachers' Collective Agreement: 16 March 2011- 15 January 2013, (the STCA).

[2] The second applicant, Mr Robert Gray, is a member of the Association and is employed by the second respondent. He seeks a determination that he entitled to be positioned on a higher pay scale than currently placed. He also states that he has been underpaid since 1 April 2011 as a consequence of the first respondent's failure to comply with the terms of the STCA.

[3] The dispute relates to a variation to the collective agreement which was agreed and executed by the parties on 27 September 2011. The variation was ratified by members of the Association and became effective on 13 April 2011.

[4] There are a number of provisions contained in the variation that are in dispute.

[5] The Association says that following the variation, a number of affected members should have been placed on an increased pay scale, including the second applicant. It says that the changes to pay scales apply not only to teachers who become registered after 13 April 2011 but to those who are registered as at 13 April.

[6] The Association says that despite the variation, the Secretary for Education continues to apply terms relating to pay scales according to provisions that were in existence prior to the agreed variation.

[7] The Secretary for Education does not accept the Association's interpretation of the various provisions within the variation.

[8] The parties have undertaken mediation in respect of the dispute between them but have not been able to resolve the matter.

Background

[9] The Association first filed a statement of problem on 31 May 2012. The Secretary for Education filed a statement in reply on 4 July 2012. The matter was scheduled to be heard by the Authority on 10 October 2012.

[10] An amended statement of problem was filed on 8 August 2012 to include a second applicant. An amended statement in reply was filed on 29 August 2012 to include a response on behalf of the second respondent and which provided a more detailed response to the Associations' claims.

[11] Following a request by the parties on 9 October 2012 the Authority's investigation was adjourned to allow the parties an opportunity to resolve the matter between them. They were not able to reach an agreement and the matter was rescheduled for an investigation meeting on 29 October 2012.

[12] On 15 October 2012 the Authority received a second amended statement in reply on behalf of the Secretary for Education.

Order for removal

[13] Following amendments to the Employment Relations Act 2000, from 1 April 2011 the Authority, pursuant to s.178(1) may on its own motion order the removal of a matter to the court to have it hear and determine the matter without the Authority investigating it.

[14] On 18 October 2012 the Authority requested counsel be available on 19 October 2012 to discuss whether the nature of the matter was such that it should be removed to the Court.

[15] Whether it is the Authority or a party that seeks to have a matter removed to the Court, the matter may only be removed if the circumstances of the case meet at least one of the four possible grounds for removal set out at s.178(2)(a) to (d) of the Act.

[16] Section 178(2) provides that the Authority may order removal if:

- a. An important question of law is likely to arise other than incidentally; or
- b. The case is of such a nature and of such urgency that it is in the public interest it be removed immediately; or
- c. The court already has before it proceedings between the same parties and which involve the same or related issues; or
- d. The Authority is of the opinion in all the circumstances that the court should determine the matter.

The case is of such a nature and of such urgency that it is in the public interest it be removed immediately

[17] Counsel provided helpful information during the telephone conference on 19 October 2012 as to removal pursuant to s.178(2)(b).

[18] At issue is the Secretary for Education's interpretation and application of provisions contained in the variation. Broadly speaking the dispute is about which, if any, of the Association's members should be or should have been placed on a higher pay scale and when.

[19] It is not in dispute that the matter is complex in nature. I have not set out the provisions which give rise to the dispute on the basis that considerable commentary would be required to give context to the wording and phrases used in the variation, and the respective parties' views as to what is meant by specific words and phrases.

[20] The dispute has now gained urgency in circumstances where on 15 and 16 October 2012 the Secretary for Education and the Association tabled claims relating to the commencement of bargaining for a new collective employment agreement.

[21] There was some conflict in the material provided to the Authority as to the impact the dispute may have on bargaining between the parties but it appears that the Secretary for Education has reserved her right to make changes to the provisions under dispute subject to the outcome of a determination.

[22] The collective agreement covers the work of over 20,000 full-time equivalent secondary teachers.

[23] On behalf of the Secretary for Education the evidence is that almost 2000 secondary school teachers could potentially be directly affected should a determination be made in favour of the Association and that there was a potential liability of \$6.6 million in salary payments.

[24] I consider that in circumstances where there is a dispute over terms which may impede or obstruct the parties' agreement so as to conclude bargaining, then the matter should be dealt with urgently.

[25] I also consider that in these circumstances the "public interest" qualification is satisfied by the significant number of individuals engaged in the education sector that may be either directly or indirectly interested in the resolution of the matter and/or affected by a delay to its resolution.

[26] I have reviewed the amended statement of problem, the first and second amended statements in reply, the witnesses' statements and the background

documents. An objective assessment of the information provided leads me to conclude that the matter is important to the parties and it is highly probable that a determination from the Authority will be challenged by one party or the other. Whilst the possibility of a challenge to a determination of the Authority should be treated with caution¹ as reason to remove a matter to the Court, I consider that in all the circumstances, the Court is more likely to be able to expeditiously conclude this matter than the Authority.

Additional information

[27] The parties do not oppose the removal of the matter to the Court.

Determination

[28] The order for removal in this instance is pursuant to s.178(2)(b). I order the matter be removed to the Employment Court to hear and determine.

Michele Ryan
Member of the Employment Relations Authority

¹ *Vice Chancellor of Lincoln University v Stewart* [2008] ERNZ 249