

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 258  
5390740

BETWEEN	NEW ZEALAND POST PRIMARY TEACHERS' ASSOCIATION Applicant
A N D	SECRETARY FOR EDUCATION First Respondent
A N D	NEW ZEALAND SCHOOL TRUSTEES ASSOCIATION Second Respondent

Member of Authority: Alastair Dumbleton

Representatives: Tanya Kennedy, counsel for Applicant  
Joanna Holden, counsel for First Respondent  
Peter Hall, advocate for Second Respondent

Investigation Meeting: 14 June 2013 (by telephone)

Date of Determination: 19 June 2013

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**DETERMINATION OF THE AUTHORITY**

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**A. The applications to recall the Authority's determination and reopen its investigation are declined.**

**B. Costs are reserved.**

**Application to recall determination and reopen investigation**

[1] The New Zealand Post Primary Teachers' Association (NZPPTA) has applied on 6 May 2013 to have the Authority recall a determination and reopen its investigation.

[2] Clause 4 of Schedule 2 of the Employment relations Act 2000 provides that the Authority may order the reopening of an investigation upon such terms as it thinks reasonable and in the meantime stay the effect of any order previously made.

[3] The “order” made previously by the Authority is a determination of an employment relationship problem given in respect of the applicant NZPPTA and the two respondents, the Secretary for Education and the New Zealand School Trustees Association (NZSTA).

[4] At the conclusion of its determination dated 3 May 2013 – [2013] NZERA Auckland 164 - the Authority expressly determined that:

*... the 2011-2013 Secondary Teachers Collective Agreement does not inhibit the employer representatives or the Study Leave Award Selection Panel from taking into account the fact an application lacks Board of Trustees’ support when considering applicants for a Study Leave Award.*

[5] The Authority recorded that a second issue - as to whether the Secretary for Education had acted in bad faith – had been disposed of at the investigation meeting when the NZPPTA elected not to pursue that issue.

[6] The following grounds have been put forward in support of the reopening application:

1. *The member has not decided all of the issues for determination;*
2. *There was no agreement reached on 17 September 2012 [in a telephone conference] that there were only two issues for hearing;*
3. *The applicant did not elect not to pursue the issue of bad faith against the First Respondent (the applicant only withdrew its claim for a penalty);*
4. *The member appears to have misunderstood or failed to take into account submissions on behalf of the applicant;*
5. *The member appears not to have understood the employment relationship problem;*
6. *The member has only focused on a “single issue”;*
7. *The member has focused on the employer panel members marking rather than the issues raised in this regard in relation to the interpretation, application and operation of the clauses in the STCA [Secondary Teachers Collective Agreement], see, for example, her findings at paragraphs [25] to [28];*
8. *The member is also incorrect in her conclusions at paragraphs [9], [10], [19], [20], [21], [24], [29];*
9. *The member’s summary of previous documentation may also be incomplete and incorrect.*

[7] Since the recall and reopening applications were made the NZPPTA has filed a challenge against the determination in the Employment Court.

[8] In applying for the immediate recall of the 3 May determination reference was made by NZPPTA to s 221 of the Employment Relations Act and also to the grounds put forward for reopening.

[9] Section 221 of the Act begins with the heading “Joinder, Waiver and Extension of Time.” It is assumed that in seeking recall NZPPTA places reliance on s 221(d), under which the Authority may give such directions as are necessary or expedient in the circumstances to enable it to more effectually dispose of any matter according to the substantial merits and equities of the case.

[10] The Secretary for Education in opposing the recall and reopening applications has done so for the following reasons; that the Authority member dealt properly with the employment relationship problem before her and that in particular the central issue for determination was the one the member determined. Further, that by withdrawing a claim for penalty as the remedy for the alleged breach of good faith, the issue was no longer live and no longer needed to be addressed. Also, the fact that the NZPPTA might disagree with the findings of the Authority does not provide a basis for either recall or reopening, and s 221 of the Act is not applicable in the circumstances and, finally, that it is not in the interests of justice to reopen the investigation.

[11] The NZSTA also opposed the application, referring to challenge as the appropriate way for NZPPTA to address dissatisfaction with the determination. NZSTA also considers that a determination may be recalled to correct slips and errors but not to make substantive changes to the decision.

[12] In considering this application I note that the Authority has a broad discretion whether to reopen an investigation.

[13] It seems to me that the applicant has lost sight of the nature of an investigation and the Authority’s statutory role in conducting one. Section 57 of the Act provides that the Authority, as an investigative body, has the role of resolving relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. Further in this regard, s160(3) provides that the Authority is not bound to treat a matter as being a matter of

the type described by the parties, and may, in investigating the matter, concentrate on resolving the employment relationship problem, however described.

[14] Much detail has been unnecessarily layered around a relatively straightforward employment relationship problem since it was brought to the Authority. Keeping in mind the fundamental problem originally raised, I consider that the Authority discharged its role in giving the determination recorded by the member.

[15] A review of the statements of problem and reply and written submissions made by counsel, Ms Kennedy on behalf of the NZPPTA, and Ms Holden for the Secretary for Education, indicates that the core matter in issue between the parties was whether the Secondary School Teachers' Collective Agreement provides that any particular weight is to be given to support, or lack of support, by a Board of Trustees' in relation to any application for a study leave award made by a teacher employed by the Board.

[16] The problem is in the nature of a dispute about the interpretation, application or operation of a collective agreement. The Authority provided discussion and gave a declaration about those matters. Its conclusion expressed is that the collective agreement does not restrain the employer representatives or the Study Leave Award Selection Panel on which they sit from taking into account any lack of Board of Trustees' support when considering an application for a study leave award. The employment relationship problem was thereby resolved.

[17] In relation to the bad faith issue, the Authority appropriately concentrated on the core employment relationship problem and its resolution rather than assessing whether fault was present in matters at best peripheral to that.

[18] If the Authority's declaration is wrong, that may become a matter for the Employment Court to determine in a challenge, the remedy the NZPPTA has now sought from the Court.

[19] In the discretion of the Authority, I consider that no orders are to be made for the determination to be recalled and there are no grounds on which the investigation should be reopened.

**Determination**

[20] Accordingly, the application is dismissed.

[21] Costs are reserved.

A Dumbleton  
**Member of the Employment Relations Authority**