

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 63  
5390740

BETWEEN	THE NEW ZEALAND POST PRIMARY TEACHERS ASSOCIATION Applicant
A N D	THE SECRETARY FOR EDUCATION First Respondent
A N D	NEW ZEALAND SCHOOL TRUSTEES ASSOCIATION Second Respondent
A N D	BURNSIDE HIGH SCHOOL BOARD OF TRUSTEES Proposed Third Respondent
A N D	TE AWAMUTU COLLEGE BOARD OF TRUSTEES Proposed Fourth Respondent

Member of Authority: T G Tetitaha

Representatives: T Kennedy, Counsel for Applicant  
J Holden, Counsel for First Respondent  
D Asher/P Hall, Representatives for Second Respondent  
and Proposed Third and Fourth Respondents

Investigation Meeting: On the papers

Submissions Received: 21 December 2012 from Applicant

Date of Determination: 22 February 2013

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**INTERIM DETERMINATION OF THE AUTHORITY**

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- A. The application to join the proposed third and fourth respondents is declined.**
- B. The application for stay is declined.**

**C. The investigation meeting set down on 27 and 28 February 2013 is confirmed.**

**D. Costs are reserved.**

### **Interim determination**

[1] A pre-hearing issue regarding the joinder of the proposed third and fourth respondents (proposed respondents) has arisen. The parties were directed to file submissions on the issue of joinder of these respondents. By consent the matter is to be dealt with on the papers.

[2] The Applicant raises the issue of joinder because of an imminent appeal of an Employment Court decision. The Employment Court held a Union was entitled to pursue a dispute against the Secretary of Education as a sole respondent. The Court held concluded at paragraph [45]<sup>1</sup>:

*I conclude that the employment relationship that existed between the NZEI and the Secretary (as if she were in an employer) during bargaining and until execution of the collective agreement, means that the Union is entitled to have its dispute against the Secretary's obligations under the collective agreement dealt with in proceedings in which he is the sole respondent.*

[3] An application for stay was sought given the appeal. Submissions were directed and by consent the matter is to be dealt with on the papers.

### **Determination**

[4] The Authority may direct the parties to be joined to a proceeding “*to more effectually dispose of any matter before it according to the substantial merits and equities of the case*”<sup>2</sup>.

[5] The purpose of joinder rules is to secure the determination of all disputes relating to the same subject matter without delay and expense of separate proceedings. The general test is whether the proposed party will be directly affected by any order that may be made in the proceedings. The plaintiff may decide who they will sue and

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<sup>1</sup> *The New Zealand Educational Institute Te Riu Roa Inc v Secretary for Education* [2012] NZEmpC 84.

<sup>2</sup> Section 221 Employment Relations Act 2000.

for any person named as the defendant may take strike-out proceedings if they consider there is no arguable cause of action.<sup>3</sup>

[6] The application to join the proposed third and fourth respondent is declined for the reasons set out below:

- a) No relief is sought against the proposed respondents.
- b) None of the proposed respondents are required to give evidence.
- c) The determination shall have only an indirect effect upon the proposed respondents. These proposed respondents have no greater interest than any other Board of Trustees within New Zealand.
- d) The Boards' generic interests can be met by the presence of the Second Respondent and the requirement the Applicant notify of all union and employer parties to the agreement of the existence of this dispute.<sup>4</sup> Those employers who wish to be heard may apply for joinder.
- e) Until the Employment Court judgment is stayed and/or overturned on appeal, it remains the applicable law. No stay of the Employment Court judgment has been granted.
- f) An application for leave to appeal, the giving of that leave or an appeal does not operate as a stay of a proceeding in which a decision was given or a stay of execution of that decision<sup>5</sup>.
- g) The Secretary for Education has not raised the issue of jurisdiction in this proceeding despite its appeal.
- h) It is intended this determination shall issue prior to the disposal of the appeal and the next round of funding applications.

[7] The Authority may adjourn meetings from time to time.<sup>6</sup> In exercising this power the Authority must comply with natural justice and act in a manner that is

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<sup>3</sup> *Auckland Regional Services Trust v Lark* [1994] 2 ERNZ 135 (CA).

<sup>4</sup> S129(2)

<sup>5</sup> Rule 12 Court of Appeal (Civil) Rules 2005.

<sup>6</sup> S173(6)

reasonable.<sup>7</sup> The power to adjourn this meeting until disposal of the appeal is available to the Authority.

[8] However the application for stay of this proceeding is declined for the reasons set out below:

- The 2013 funding round which is the subject matter of this proceeding is due to begin
- The parties all require resolution of the substantive merits of this case prior to the next funding round
- The likely disposal of the appeal is after the funding round has started or been completed
- The disposal of the appeal shall determine the issue of the relevant parties but not the substantive merits of this case

[9] The hearing on 27 to 28 February 2013 is confirmed. Costs are reserved.

T G Tetitaha  
Member of the Employment Relations Authority

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<sup>7</sup> S173(1)