

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 272  
5551277

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| BETWEEN | RADIUS RESIDENTIAL<br>CARE LMIMITED<br>Applicant  |
| AND     | THE NEW ZEALAND<br>NURSES ORGANISATION<br>INC<br>First Respondent                           |
| AND     | THE SERVICE AND FOOD<br>WORKERS UNION NGA<br>RINGA TOTA INC<br>Second Respondent            |
| AND     | THE EMPLOYEES LISTED IN<br>THE SCHEDULE TO THE<br>STATEMENT OF PROBLEM<br>Third Respondents |

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|------------------------|--|
| Member of Authority:   | Vicki Campbell   |
| Representatives:       | Peter Kiely for Applicant<br>Jock Lawrie for First Respondent<br>Peter Cranney for Second Respondent |
| Investigation Meeting: | On the papers  |
| Determination:         | 9 September 2015   |

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**DETERMINATION OF THE AUTHORITY**

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- A. Matter 5551277 is removed in its entirety to the Employment Court to determine in the first instance.**

**Removal Application**

[1] This is an application by the Second Respondent to remove this matter to the Employment Court without prior investigation by the Authority. The application is made

in reliance on the ground that important questions of law are likely to arise in the matter other than incidentally.<sup>1</sup>

[2] The Applicant and the First Respondent have consented to the application for removal.

### **Employment relationship problem**

[3] In a statement of problem lodged on 9 April 2015 the Applicant seeks determinations that:

- a) The Third Respondents did not attend a union meeting pursuant to section 26 of the Employment Relations Act 2000 (the Act) on 26 and 27 March 2015;
- b) The actions of the Third Respondents amounted to unlawful strike action which also amounted to a breach of the Multi Union Collective Agreement (“MUCA”);
- c) The First and Second Respondent’s aided and abetted the breaches of the MUCA;
- d) Damages and/or penalties be awarded;
- e) Any penalties be paid to the First and/or Second and/or Third Respondents.

### **Ground of application**

[4] The ground for the application is that important questions of law are likely to arise in the matter other than incidentally. The importance of the question has to be measured in relation to the case in which it arises and is decisive of the case or some important aspect of it or strongly influential in bringing about a decision of it or a material part of it.<sup>2</sup>

[5] The starting point for assessing whether an asserted important question of law is likely to arise in this matter other than incidentally is to consider the actual issues for determination. On the basis of what is disclosed by the statement of problem, statement in

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<sup>1</sup> Employment Relations Act 2000 section 178(2)(a).

<sup>2</sup> Hanlon v International Educational Foundation (NZ) Inc [1995] 1 ERNZ 1.

reply and various background documents lodged by the parties to date, the central questions to be determined include:

- a) The meaning of the phrase “union meeting” in section 26 of the Act.
- b) Whether the word “strike” in part 8 of the Act includes conducting protest activity during a union meeting.
- c) If so, whether such protest activity renders the meeting an unlawful strike.
- d) Whether, if such protests occur during a union meeting they are a breach of contract.
- e) Whether, if such protests occur during a union meeting they are a breach of the statutory duty of good faith.
- f) Whether protest activity in such circumstances is a breach of the employment agreement thereby subjecting the employees liable to the imposition of a penalty.
- g) The meaning of the concept of “undermine a ... collective agreement” as that phrase is used in section 4A(b)(iii) of the Act.
- h) Whether the Act allows for the imposition of a fine for an unlawful strike.

[6] In my view, on the basis of the material lodged by the parties to date important questions of law are likely to arise in the matter other than incidentally.

[7] I am therefore satisfied that this is an appropriate matter for the Authority to exercise its discretion to remove the matter in its entirety to the Employment Court to determine in the first instance.

Vicki Campbell  
Member of the Employment Relations Authority