

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 110  
3347380

BETWEEN	SECRETARY FOR EDUCATION Applicant
AND	NEW ZEALAND POST PRIMARY TEACHERS' ASSOCIATION TE WEHENGARUA Respondent

Member of Authority:	Rowan Anderson
Representatives:	Susan Hornsby-Geluk, counsel for the Applicant Tanya Kennedy, counsel for the Respondent
Investigation meeting:	On the papers
Submissions received:	11 and 14 February 2025 from the Applicant and Respondent
Determination:	24 February 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This determination deals with whether two substantive applications made to the Authority should be removed to the Employment Court.

[2] The Secretary for Education (the Secretary) has lodged a statement of problem, matter 3347340, seeking resolution of a dispute as to the proper construction of cl 10.4.1(c) of the Secondary Teachers Collective Agreement – 2022 to 2025 (the SCTA) and s 26(3) of the Employment Relations Act 2000 (the Act). Broadly speaking, the dispute concerns whether the New Zealand Post Primary Teachers Association Te

Wehengarua (the PPTA) is required to make arrangements with a school board (the employer) as may be necessary to ensure that a school remains ‘open for instruction’ (as opposed to what it describes as ‘supervision’) during paid union meetings (PUMs). The Secretary has also made application that the matter be removed to the Employment Court.

[3] The PPTA has lodged a statement of problem, matter 3347200, seeking to have the Authority resolve issues relating to s 26 of the Employment Relations Act 2000 (the Act) and cl 10.4.1 of the SCTA. In summary terms, the PPTA seeks a declaration in relation to the provisions relating to PUMs contending that the relevant arrangements are between the PPTA and the relevant employers (and not the Secretary). The PPTA opposes removal to the Employment Court.

### **The Authority’s investigation**

[4] A case management conference (CMC) was held on Friday 20 December 2024. The CMC was convened at short notice with the Authority having received an application for urgency from the Secretary.

[5] An application was also made for the Secretary seeking their application be afforded urgency. I granted urgency in relation to the removal application and advised that any consideration as to urgency in respect of the substantive applications would be deferred.

[6] I also ordered that the applications made by the PPTA and the Secretary be joined. Both applications concern the interpretation and/or application of clause 10.4.1 of the Collective Agreement and it would be significantly less efficient to deal with the two matters separately. I determined that removal should be considered having regard to the issues arising in both applications.

[7] In addition to the other issues raised by the parties as to removal I also noted in the timetable directions that, such as either party considered there was an issue as to standing or jurisdiction relevant to removal, that those matters should also be addressed in submissions.

[8] An affidavit was lodged from Frances Renton, Deputy General Secretary (Policy) of the PPTA in opposition to removal. An affidavit was also received from Oliver Williamson, General Manager, Payroll, Employment Relations and Pay Equity

in support of the Secretary's applications for removal and urgency. Both parties lodged written submissions and reply submissions as to the question of removal.

[9] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all of evidence and submissions received.

### **Issues**

[10] The issue identified for investigation and determination is whether the Authority should order the removal of matters 3347200 and 3347340 to the Employment Court pursuant to s 178 of the Act.

### **Analysis**

#### *Removal to the Employment Court*

[11] Section 178 of the Act provides as follows:

**178 Removal to court**

- (1) The Authority may, on its own motion or on the application of a party to a matter, order the removal of the matter, or any part of it, to the court to hear and determine the matter without the Authority investigating it.
- (2) The Authority may order the removal of the matter, or any part of it, to the court if—
  - (a) an important question of law is likely to arise in the matter other than incidentally; or
  - (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
  - (c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
  - (d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

....

#### *Provisions relevant to the matters currently before the Authority*

[12] Section 26(3) of the Act provides as follows:

- (3) The union must make such arrangements with the employer as may be necessary to ensure that the employer's business is maintained during any union meeting to which subsection (1) applies, including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the employer's operations to continue.

[13] Clause 10.4.1(c) of the SCTA provides as follows:

The union must make such arrangements with the employer as may be necessary to ensure that the school remains open for instruction during any union meeting, including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the school to remain open for instruction.

*Section 178(2)(a) – important questions of law*

[14] The important questions of law are said for the Secretary to include:

Whether the PPTA is required to make such arrangements with a school board as may be necessary to ensure the school remains open for instruction within the meaning of clause 10.4.1(c) of the STCA during a paid union meeting.

Is a school that gives the options of attending school while staff attend a paid union meeting, and provides ‘supervision’ of those who do attend and / or access to self-directed learning, open for instruction under clause 10.4.1(c) of the STCA?

Are the requirements of section 26(3) of the Act 2000 met during a paid union meeting where the school gives students the option of attending school and provides ‘supervision’ of those who do attend / or access to self-directed learning?

Whether the Secretary has a legitimate interest in the arrangements between the union and the applicable employer in relation to paid union meetings under section 26 of the Act and / or clause 10.4.1 of the SCTA.

[15] The application for removal lodged on behalf of the Secretary contends that the matter should be removed on three grounds, those being the grounds set out at s 178(2)(a), (b), and (d) of the Act. The PPTA opposes the application for removal.

[16] It is submitted for the Secretary that they and the PPTA have different longstanding views but that the issue has come to a head recently based on what are said to be clear expectations from the current Government.

[17] The PPTA opposes the application for urgency and takes issue with the standing of the Secretary. It contends there are no important questions of law and that s 26 of the Act has already been the subject of judicial consideration in *Greenlea Premier Meats Limited v NZ Meat & Related Trade Union Inc (No. 2)*.<sup>1</sup> The PPTA also submitted that the law is well settled.

[18] The Secretary’s application to the Authority, such as it relates to at least the third and fourth questions of law raised in their submissions, relates to a union under Part 4 of the Act. Setting aside any issue as to standing in terms of s 29 of the Act, the PPTA’s application seeks a declaration that the Secretary is not to be involved in, and is not to interfere with, arrangements for PUMs that are to be made as between the PPTA and the applicable employer, that being the board of trustees for each relevant school.

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<sup>1</sup> [2006] 1 ERNZ 549.

[19] I consider an important issue of law is likely to arise as to the standing of the Secretary. The matter involves a dispute raised in the context of there being no apparent extant dispute with the employer. I consider that issue is central to the application made by the PPTA and is likely to arise, more than incidentally, in terms of both applications. Additionally, the Secretary is a party to the SCTA and it was submitted for them that they have an interest in the relevant issues relating to s 26(3) of the Act and cl 10.4.1 of the SCTA. There is a question as to whether leave is required in terms of s 29 of the Act, and if so, whether it should be granted.

[20] I also consider an important question of law is likely to arise in terms of when a school is 'open for instruction'. *Greenlea* involved an application for permanent injunction restraining the defendant union from holding stopwork meetings that were said would interfere with continuous production and whether the union was entitled to determine the timing of such meetings. I consider the decision in *Greenlea* is likely of some assistance in terms of the interpretation of s 26 of the Act.

[21] The present matter concerns the interpretation of both s 26(3) of the Act and cl 10.4.1(c) of the SCTA. The PPTA submitted that the present matter is simply about the correct application, interpretation and operation of cl 10.4 of the SCTA and that the principles applying to the interpretation of collective agreements are well settled. While I agree that the principles of interpretation relevant to collective agreements are well settled, I consider there are questions of law that go beyond a simple application of those principles.

[22] Subject to any issues of standing being resolved, what is required in terms of a school remaining 'open for instruction' is likely to be significant in terms of resolving the matter. While there is not a complete absence of relevant authorities both as to s 26 and separately what is meant by 'open for instruction', I consider the questions that arise in this matter differ, including as to the interaction between the terms of the SCTA, the Act, and other legislative and regulatory provisions. I am also satisfied that the questions arising have been subject to only limited judicial consideration.

[23] Aside from the questions raised on behalf of the Secretary, it is also the case that the matter concerns fundamental rights relating to PUMs under Part 4 of Act.

[24] I am satisfied that the issues relevant to the matter raise important questions of law that are likely to arise other than incidentally in terms of s 178(2)(a) of the Act. I consider it appropriate that the matter be removed to the Employment Court.

[25] Having regard to my other findings I need not consider the grounds for removal in terms of s 178(2)(b) and (d).

**Conclusion and orders**

[26] I conclude that there are grounds for removing the matter under s 178(2)(a) of the Act, and I order that the matters 3347200 and 3347340 be removed to the Employment Court.

Rowan Anderson  
Member of the Employment Relations Authority