

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 854  
3380263

BETWEEN	PUBLIC SERVICE ASSOCIATION TE PŪKENGA HERE TIKANGA MAHI INC First Applicant
AND	THE PERSONS LISTED IN SCHEDULE A Second Applicant
AND	TE ROOPU TAURIMA O MANUKAU TRUST Respondent

Member of Authority: Jeremy Lynch

Representatives: Peter Cranney, counsel for the Applicants  
Mark Lawlor and Joseph Williams, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 21 November 2025 from the Applicants  
5 December 2025 from the Respondent

Date of Determination: 24 December 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The persons listed in Schedule A (the named employees) are members of the Public Service Association Te Pūkenga Here Tikanga Mahi Inc (the PSA).

[2] Te Roopu Taurima O Manukau Trust is a registered charitable trust (the Trust).

[3] The PSA initiated bargaining for a replacement collective agreement with the Trust on 3 January 2024. During the bargaining, the named employees were partially

locked out, insofar as the Trust did not offer them any additional hours of work, as provided for under cl 5.5 of the existing 2023-2025 collective agreement (the collective agreement).

[4] The partial lockout notices were withdrawn on 10 June 2025, and the parties concluded their collective agreement on 30 June 2025.

[5] The PSA and the named employees seek a preliminary determination as to whether wage arrears would be payable, if the lockouts were unlawful (the preliminary issue).

### **The Authority's investigation**

[6] The Authority held a case management conference (CMC) with the parties on 6 November 2025. During this CMC, the representatives agreed that the most efficient way of progressing this employment relationship problem, was for the Authority to determine the preliminary issue, prior to the parties attending further mediation.

[7] The preliminary issue for investigation and determination was agreed by all parties during the CMC. The representatives agreed that the Authority would not require any evidence to determine the preliminary issue, which could be done 'on the papers', without the need for an investigation meeting.

[8] Submissions were lodged from the PSA and the named employees in accordance with the agreed timetable.

[9] The Trust also lodged submissions, in accordance with the agreed timetable.

[10] Despite timetable provision being made for the PSA and the named employees to lodge reply submissions, they chose not to do so.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[12] The Authority has carefully considered all the material provided.

### **The issues**

[13] The issues for investigation and determination are:

- (a) whether, under the relevant collective agreement, any wage arrears would be payable, if the lockouts were unlawful?
- (b) Is any party entitled to an award of costs?

### **Background**

[14] During the course of the parties' bargaining, the Trust issued two notices in respect of partial lockouts.

[15] Under the partial lockouts, although they continued to work and be paid for their contractual hours, the named employees were not offered discretionary overtime hours, in accordance with cl 5.5 of the collective agreement, and in accordance with the requirements of the Act.

### **The additional hours clause**

[16] The relevant clause in the collective agreement provides:

An employee may undertake additional hours of work to assist in filling where roster needs, if the employer offers such additional hours to that employee. Additional hours of work will be paid at an hourly rate equivalent to Pay Equity Level Four (4) Kaiawhina rate. Acceptance of additional hours is voluntary and is treated separately from hours required under clause 6.

[17] The Trust submits that a plain reading of this clause conveys considerable flexibility and discretion to both parties, including that the employer is under no obligation to offer additional hours to employees, and an employee is free to accept or reject any additional hours offered.

[18] I accept this submission. However, the discretionary aspect of this clause does not displace statutory obligations.

### **The submissions of the parties**

#### *The PSA and the named employees*

[19] For the PSA and the named employees it is submitted that:

- (a) the issue is whether any lost wages will be payable if the lockout was unlawful.
- (b) No such finding of illegality has yet been made.
- (c) In the absence of a lawful lockout the refusal to offer hours in relation to the named employees was both unlawful, and a breach of contract.

- (d) Arrears are recoverable calculated on what would have been paid on the balance of probabilities, but for the unlawful act.
- (e) Whilst the Trust does not have an obligation to offer additional hours, if it does so, this must be done without discriminating on prohibited grounds (such as union membership) .
- (f) Section 85(1) of the Act only applies to lawful participation in a strike or lockout. If the lockout is unlawful, an employer will be held liable in the normal way.

### *The Trust*

[20] For the Trust it is submitted that:

- (a) regardless of any lockout, the Trust retained the ability to cease offering additional hours to the named employees at any point.
- (b) Regardless of whether the lockouts were lawful, there is no certainty that the named employees would have been offered, or would have accepted, any additional hours. Therefore, any assessment of lost wages would be entirely speculative and risk considerable unfairness

### **Relevant law**

[21] Part 3 of the Act provides for a prohibition on preference, arising from whether or not a person is a member of a union.<sup>1</sup>

[22] Section 85 of the Act provides:

#### **85 Effect of lawful strike or lockout**

- (1) Lawful participation in a strike or lockout does not give rise –  
...
  - (c) to any action or proceedings–
    - (i) for a breach of an employment agreement; or
    - (ii) for a penalty under this Act; or
    - (iii) for the grant of a compliance order.

[23] Section 96 of the Act provides:

#### **96 Employer not liable for wages during lockout**

- (1) Where any employees are locked out by their employer, those

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<sup>1</sup> Employment Relations Act 2000, s 9.

employees are not entitled to any remuneration by way of salary, wages, allowances, or other emoluments in respect of the period of the lockout, unless the employer's participation in the lockout is unlawful.

## **Discussion**

[24] In *AFFCO New Zealand Limited v New Zealand Meat Workers and Related Trades Union Inc*,<sup>2</sup> the Court of Appeal held that the employer's unlawful lockout and its consequent failure to pay wages to the affected employees, was an unlawful deduction recoverable under s 11 of the Wages Protection Act 1983.

[25] The Trust's submission that any assessment of lost wages would be entirely speculative is not without merit.

[26] However, the Authority is not tasked with assessing the quantum of the wages the named employees could expect to have received, but for the lockout. Nor is the Authority tasked with determining the lawfulness (or otherwise) of the lockouts.

[27] Similarly, the issue of whether or not the named employees have been discriminated against, or subjected to an unlawful preference based on their membership of the PSA, does not form part of this preliminary investigation, despite this issue being alluded to in the submissions of the PSA and the named employees.

[28] The Authority's investigation and determination of the preliminary issue is solely as to whether, under the collective agreement, any wages would be payable to the named employees, if the lockouts were unlawful.

## **Outcome**

[29] The Trust submits that regardless of whether the lockouts were lawful, the named employees had no entitlement to work or be paid any additional hours under cl 5.5 of the collective agreement. This in effect, is akin to putting the cart before the horse.

[30] It could be that after considering the circumstances of all the named employees, certain of this cohort would not have been offered any additional hours because of their own individual circumstances. For example, a named employee may have a secondary

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<sup>2</sup> *AFFCO New Zealand Limited v New Zealand Meat Workers and Related Trades Union Inc* [2018] NZCA 562 at [54].

job, and as a result had never been offered, or accepted any additional hours during the lockouts.

[31] However, as outlined above, the Authority is not tasked with determining quantum. Nor is the Authority determining the lawfulness of the lockouts.

[32] In reliance on ss 85 and 96 of the Act, a finding is made that if it is determined that the locking out of the named employees was unlawful, the named employees are entitled seek arrears.

[33] The assessment as to the quantum of wages that would have been paid but for any unlawful lockout, is to be undertaken after the lawfulness of the lockouts is determined.

### **Direction to mediation**

[34] Mediation is promoted by the Act as the primary problem-solving mechanism.<sup>3</sup>

[35] With the preliminary issue having been determined by the Authority, it is appropriate that the parties are directed to attend further mediation.

[36] The Authority directs the parties to attend mediation on or before 30 April 2026. Under s 159(2) of the Act, parties are required to comply with a direction to mediation, and to attempt in good faith to reach an agreed settlement of their differences.

[37] The PSA and the named employees are further directed to notify the Authority of the outcome of mediation, and advise whether all matters between the parties are resolved, or whether further investigation by the Authority is required.

### **Costs**

[38] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[39] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the PSA and the named employees may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the Trust will then have 14 days to lodge any reply

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<sup>3</sup> Section 3(a)(v).

memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[40] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>4</sup>

Jeremy Lynch  
Member of the Employment Relations Authority

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<sup>4</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

## **Schedule A**

Ranjit Buttar

Michelle Callinan Troup

Dawn Doig

Miracle Epere

Kula Folau

Natasha Fuller

Miria Harris

Louisa Hati

Edward Hokai

Damien Ioane

Katie Jamieson

Stephanie Jensen-Ogle

Norma Kopa

Raewyn Korewha

Tautala Lamusitele

Losivale Lene

Angel Liu Chan

Marama Matangi

Lucia McIlroy

Carolene Neilson

Trina Newton

William Pereira

Georgina Peri

Mere Ritete

Lupe Sasalu

Emma Scanlan

Kelly Skedden

Saumani Sua

Vaeagi Sua

Sione Tangi

Luanne Jacinda Tino

Davina Tipene

contd...

**Schedule A** (continued)

Solomon Tohu

Ngaluma'a Ve'a

Havea Vimaha