

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 102
3316300

BETWEEN	ELLEN DIXON First Applicant
AND	TANGIHAERE GARDINER Second Applicant
AND	THE NEW ZEALAND UNION OF STUDENTS' ASSOCIATIONS INCORPORATED Respondent

Member of Authority:	Alyn Higgins
Representatives:	Bryce Hamilton, advocate for the Applicants No appearance for the Respondent
Investigation Meeting:	25 November and 17 December 2025 in Wellington
Submissions received:	From the Applicant at the investigation meeting
Determination:	24 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicants, Ms Ellen Dixon and Mx Tangihaere Gardiner, have claimed that they were employees of the respondent (NZUSA) while acting in elected positions of National President and National Vice-President respectively of NZUSA, which is an incorporated society constituted pursuant to the Incorporated Societies Act 1908.

[2] The applicants have further claimed that they were unjustifiably (constructively) dismissed from their alleged employment with NZUSA and have also been unjustifiably disadvantaged by the actions of NZUSA in failing to pay out their final pay.

[3] In its statement in reply, NZUSA said that the applicants were engaged as contractors in elected roles in accordance with the NZUSA constitution and the Authority does not have jurisdiction to investigate the applicants' substantive claims. NZUSA claims that the applicants were office holders only and were not employees. Although the parties were directed to mediation, mediation did not subsequently take place.

[4] On 11 June 2025 the Authority held a Case Management Conference (CMC) with the parties and directions of the Authority were issued. On the CMC the Authority held that in order for the applicants' substantive claims for unjustified dismissal and disadvantage to be investigated the applicants' first need to be found to have been employees of NZUSA for the period of time that the alleged personal grievances relate to. This determination addresses this preliminary issue.

The Authority's Investigation

[5] For the Authority's investigation written witness statements were lodged from Ms Ellen Dixon and Mx Tangihaere Gardiner. There were no witness statements received from NZUSA. An in-person investigation meeting was held in Wellington on 25 November 2025 at which Ms Dixon answered questions under oath. Mx Gardiner appeared and gave evidence under oath at a resumed investigation meeting on 17 December 2025. At the end of the investigation meeting Mr Hamilton gave oral closing submissions and provided the Authority with a large volume of documents.

[6] There were no appearances from the respondent at either investigation meeting date. At the scheduled start time of the investigation meeting on 25 November 2025 no witnesses or representatives for the respondent were in attendance. The investigation meeting commenced 15 minutes after the advised start time to accommodate possible lateness on the part of the respondents. The Authority Officer attempted to contact Mr Liam White who had been named on the file as a contact for NZUSA and who had attended the CMC. The Authority Officer explained to Mr White that the investigation meeting was proceeding and to advise the named NZUSA officers on the incorporated

societies register, Keegan Wells and Hennessey Wilson, which Mr White acknowledged. Mr Wells had signed the Statement in Reply for NZUSA. The Authority Officer also advised Mr White that the Authority's investigation would be proceeding and a determination would be issued in due course.

[7] I am accordingly satisfied that NZUSA were aware of the proceedings and of the Authority's process. I accordingly decided to proceed with the investigation meeting in accordance with clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act). The notice of investigation meeting advised NZUSA that if it did not to participate in the investigation meeting then the claims would be determined in its absence.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received but all information provided in the course of the investigation has been considered.

The Issue

[9] The sole preliminary issue requiring determination is whether the applicants were employees of NZUSA while acting as elected officers for the period 1 January – 31 December 2023.

Relevant Background

[10] The NZUSA was first established in 1929 and since that time has been involved in the advocacy and representation of the interests of students in Universities and Polytechnics across New Zealand. NZUSA is a member led organisation comprised of member student associations across New Zealand. NZUSA acts in accordance with its Rules and Constitution. The Constitution was last updated on 21 November 2021. Under the NZUSA Constitution the National President and the National Vice President are roles elected by the wider NZUSA membership.

[11] The governing body of the NZUSA is the National Board. The Board includes the National President as Chair, the National Vice President and representatives from other member associations. Pursuant to the Constitution, the Board has the power to employ staff. In terms of the interplay between the National Council and the National

Board, the NZUSA Operations Manual provides that the National Council is the primary decision making body and is largely tasked with deciding on campaigns, policy, strategies and projects related to the purpose of NZUSA. The National Board takes care of financial oversight, employment matters, internal policy and provides advice on strategic governance matters to the National Office and National Council. The National Office carries out the operational work of NZUSA.

[12] Pursuant to the NZUSA Constitution election for officers occurs each year by secret ballot at a general meeting. Ahead of their election, Ms Dixon and Mx Gardiner ran together on an election campaign that consisted of disseminating proposed policies for the direction of NZUSA to NZUSA voters, members and non members in order to gather support for their election. At the NZUSA annual general meeting in December 2022, Ms Dixon was elected as NZUSA National President and Mx Gardiner was elected as NZUSA National Vice-President for the 2023 association year being 1 January – 31 December 2023. The effect of this was that Ms Dixon and Mx Gardiner became members of the NZUSA National Board and National Council with Ms Dixon becoming chair of the NZUSA National Board as prescribed by the NZUSA constitution.

[13] The NZUSA Constitution does not state whether the applicants' roles were employees or not. NZUSA says that the applicants were not employees and were at all times elected officers of NZUSA and were engaged as voluntary contractors and that the applicants' roles (along with a number of other constitutional roles) were governed by the NZUSA Constitution. NZUSA maintains that the factual circumstances including NZUSA's governance structure, appointment method, and honorarium payments support NZUSA's view that the applicants' positions were not employment positions.

[14] The NZUSA Constitution provides for six constitutional roles. In addition to the applicants roles as President and Vice President the NZUSA Constitution also provides for a National Education Officer, National Welfare Officer, National Rainbow Representative and National Thursdays in Black Representative and provides that these roles are also paid an honorarium.

[15] In contrast to the President and Vice President, the NZUSA Constitution states that these roles (other than the National Thursdays in Black Representative) are elected

in accordance with NZUSA's internal policies and do not have voting rights on the National Board and National Council. The applicants' roles are specifically elected at a NZUSA congress or general meeting, have voting rights on the National Board and National Council on which each are a member of in accordance with the NZUSA Constitution.

[16] The National Education Officer, National Welfare Officer and National Thursdays in Black Representative are not named as being members of either of the NZUSA National Board or the National Council. The National Rainbow Representative however is named as being a member of the National Council, but not the National Board.

[17] Ms Dixon and Mx Gardiner both resigned from their roles with NZUSA at the National Council meeting in January 2024 ostensibly as a result of the workloads being much bigger than had been anticipated, lack of proper support for their roles and a range of other breakdowns between Ms Dixon and Mx Gardiner and NZUSA outlined in a letter to NZUSA dated 25 January 2024 that forms the basis of the applicants' unjustified constructive dismissal claims. Ms Dixon and Mx Gardiner both ceased to be elected officers of NZUSA on 31 January 2024.

[18] Although the applicants referred to other student associations in documents and evidence presented the basis for any other association being an employer of the applicants was never made out.

Did the applicants' appointments go beyond the process of election and include elements typical of an employment contract?

Relevant law

[19] The Employment Relations Act 2000 (the Act) expressly enables the Authority to determine the real nature of the relationship between them.¹

[20] Under the Act, an employee is defined as any person employed by an employer to do any work for hire or reward under a contract of service.² This definition specifically excludes volunteers and does not mention elected officeholders. The Act further requires that the real nature of the relationship between the parties must be

¹ Section 6 (2)

² Section 6 (1) (a)

determined by considering all relevant matters, including intention, but not treating as a determining matter any statements that describe the nature of the relationship.³

[21] These statutory provisions have been informed by caselaw that has developed on the topic, which has established principles for determining the real nature of the relationship. The inquiry into the real nature of the relationship is factual in nature and is objectively assessed. It turns on what a reasonable person would understand the substance of the relationship to be. In other words, it is the overall relationship between the parties that must be examined as a whole.⁴

[22] In referring to the statutory test in s 6 of the Act the Supreme Court in *Bryson v Three Foot Six Limited*⁵ stated that “all relevant matters” include:

- (a) the written and oral terms of the contract between the persons, which will usually contain indications of their common intention;
- (b) any divergences from or supplementation to those terms which are apparent in the ways in which the parties have actually behaved in practice; and
- (c) features of control and integration, and whether the contracted person has been effectively working on their own account (the fundamental test). The Court further remarked that the definition of employee reflected the common law and added that the “control”, “integration” and “fundamental” tests were important determinants of the relationship at common law.⁶

[23] The Act does not prescribe that any one relevant matter is more important than another or impose a particular methodology for determining the real nature of a relationship. Section 6(3)(a) of the Act envisages that the Authority will ascertain the parties’ intention from any relevant matters that evidence it. It will also not usually be possible to examine the relationship in light of the control, integration and fundamental tests until the Authority has first examined the terms of the contract and the way in which it operated in practice.⁷ This approach was recently affirmed by the Supreme Court in *Rasier Operations BV and others v E Tū Inc and another*.⁸

³ Section 6 (3)

⁴ See *Bryson v Three Foot Six* [2005] NZSC 34

⁵ Above n 4

⁶ Above n 4 at [31] – [32]

⁷ Above n 4 at [32]

⁸ *Rasier Operations BV and others v E Tū Inc and another* [2025] NZSC 162

[24] By way of a brief summary, the “control test” relates to the level and way of control that the alleged employing party has over the would be employee.

[25] The “integration test” assesses the extent to which the applicants’ were “part and parcel” or integral to the organisation and is a critical component of the analysis of whether a person is an employee.

[26] The “fundamental test” assesses whether the applicants were in business on their own account or whether they undertook working solely for the would be employer during the material times.

[27] Applying this in practice, the Authority must first consider the parties’ mutual rights and obligations as set out in any contractual documentation, then review any divergence from that documentation that is apparent in the way the relationship worked in practice by applying the established tests. The inquiry is an intensely factual one on the particular circumstances of the relationship.

Analysis

[28] The applicants both claim that the substantive nature of their working relationship with NZUSA was identical to standard employment relationships and both of the applicants provided a number of grounds in support of this contention.

[29] Although NZUSA did not substantially participate in the investigation and no evidence from NZUSA was produced to counter the applicants claims, the burden of proving that a contract of employment exists falls on the applicants.⁹

[30] Both roles had documents titled “job descriptions” that set out ‘key responsibilities’ under which Ms Dixon and Mx Gardiner were to run the small National Office for NZUSA in Wellington and report to the National Council of which both were constitutional members of with voting rights. Both job descriptions specified a term of 1 January – 31 December 2023 and specified 40 hours per week.

[31] As outlined in the NZUSA Constitution both roles were paid an honorarium as outlined in the relevant job description. Under the job descriptions this was an amount of \$47,320.00 gross for each role from which tax was deducted in the form of PAYE.

⁹ See *Smith v Practical Plastics Ltd* [1998] 1 ERNZ 323

As detailed in payslips submitted in evidence, the honorarium was paid regularly in fixed fortnightly amounts and the applicants say that this was structured like regular wages and treated as income for tax purposes. Annual holidays and sick leave were also accrued.

[32] The applicants reported to the NZUSA National Council, the NZUSA National Board and the NZUSA Congress through both written and verbal reports. The applicants also said that the work necessary to discharge their roles required much more than 40 hours of work per week and, although they could refuse to do more work, this risked a vote of no confidence by the National Council.

[33] Both Ms Dixon and Mx Gardiner said that they were not precluded from doing other work outside of NZUSA whilst in their roles but said that the demands of their NZUSA roles essentially made this impossible even if they wanted to.

[34] There were no written employment agreements or indeed any other contractual documents concluded between the applicants and NZUSA, although I was referred to a draft contract document prepared for Mx Gardiner.

[35] The applicants say that they were subject to NZUSA policies and procedures and provided in evidence a copy of a NZUSA Internal Policy Manual dated November 2021. This included a Delegation Policy, which provides that employment and management of staff are delegated to the National President including employment agreement negotiations, pay movements and disciplinary matters. The Internal Policy Manual also includes a number of other policy documents such as for complaints and harassment among others.

[36] There is no dispute from the applicants that they took up elected positions on the NZUSA executive pursuant to the NZUSA Constitution and of their own free will. Being elected to a position, especially within an incorporated society, does not itself make someone an employee. Indeed, many office holders of boards, incorporated societies and other similar organisations perform a great deal of work without being classified as employees. It is also not uncommon for elected positions to have a job (or role) description to help with the accountabilities of office. It is also not uncommon for elected roles to be paid some form of an honorarium from which personal income tax is required to be paid as earnings.

[37] Equally the holding of office need not be incompatible with entering into a contract of employment with the organisation in which one holds office. An officeholder may enter into an employment relationship subsequent (or in addition) to election if a legally binding agreement exists with consideration and agreed terms, but the appointment must clearly go beyond the process of election and include elements typical of an employment contract.¹⁰

[38] Intention to create a legally binding agreement is a clear intention to create a further relationship additional to the constitutional role, but this must be demonstrated by words or actions beyond those giving effect to the constitutional role.

[39] The Authority has previously considered whether elected officers of similar associations are employees. In summary, elected officers of student associations may be employees if there is a clear contract of service and mutual intention to be legally bound, separate from their elected office. Where such arrangements are absent, officers are generally regarded as office holders rather than employees.¹¹ The determination is fact-dependent and must consider the Constitution, the arrangement in practice and intentions of both parties.

[40] The Authority case of *Vegar v Albany Students Association*¹² indicates that election to a position in an incorporated society, such as Vice President, does not in itself create an employment relationship. Factors such as the nature of the work, payment arrangements, and the actual conduct of the parties must be considered. In *Vegar*, the Authority found that being elected to office was not equivalent to being employed, particularly where the role was subject to a fixed term and election by the wider membership and the Constitution that governed the appointment.

[41] However, it is also possible for an office holder to have a concurrent contract of employment but only if the arrangement and duties support such a finding.¹³ Factors such as the substantial nature of the work, payment, and degree of control may also suggest an employment relationship but are not conclusive.

¹⁰ *Caccipoli v Board of Trustees of Edmund Hillary School* [2004] ERA Auckland AA402/04

¹¹ Above n10

¹² *Vegar v Albany Students Association* [2001] ERA Auckland AA127/01

¹³ *Brown v University of Canterbury Student's Association Incorporated* [1996] EMHNZ 1118

[42] In *Vegar* the Authority held that Ms Vegar was also remunerated through an honorarium, which is typically not considered a salary or wage under a contract of employment. The role was found to be more akin to that of an office holder rather than an employee, as Ms Vegar's entry into the role was subject to election by the student body and Ms Vegar was not 'hired' by the association.¹⁴

[43] This is the first point. Both Ms Dixon and Mx Gardiner accepted that they were not 'hired' into their NZUSA roles through a recruitment process but sought election to constitutional positions through a running for office campaign.

[44] In late 2022 Ms Dixon stood for and was successfully elected to the constitutional role of National President of NZUSA. In the same campaign Mx Gardiner stood for and was successfully elected to the constitutional role of National Vice-President of NZUSA. Both became members of NZUSA's Executive Committee and held office for a term of one year in accordance with the NZUSA Constitution. Re-election through the same process would be necessary to remain in the roles after the constitutional year. Under the NZUSA Constitution an elected representative could be removed under a vote of no confidence at a general meeting. Neither Ms Dixon nor Mx Gardiner stood for re-election at the end of 2023 for the 2024 year. These arrangements are fundamentally not how an employed role is understood to ordinarily come about.

[45] I now turn to look more closely at each of the applicants' circumstances.

Ms Dixon

[46] On analysing the evidence there are a number of key differences in the way that Ms Dixon undertook her role when compared with a typical employee.

[47] Ms Dixon had previously worked for NZUSA since 2021 on a 7 hour per week elected role as National Education Officer for the 2021 year and then for a further non-elected role as a National Researcher for 7 hours per week in 2022, but these were clearly employed roles.

¹⁴ Above n 12

[48] Ms Dixon's work as National President was undertaken either remotely at her home in Palmerston North or on frequent travel around New Zealand. There is also a small office in Wellington with workstations and other general office equipment provided. Four or five paid support roles also worked out of the Wellington Office.

[49] Ms Dixon presented pay advice in her evidence that detailed PAYE deductions from her honorarium for the role. KiwiSaver contributions were also made and there are accruals for annual leave and sick leave. Ms Dixon had been on an employee tax code since first starting in her various roles with NZUSA in 2021 and this code continued in respect of her honorarium as National President. Mx Gardiner had also been placed on an employee tax code and had PAYE deductions from the honorarium made. These features can be indicators of an employment type relationship but are not determinative and NZUSA did not participate in the investigation meeting and no counter evidence or arguments were available.

[50] Ms Dixon described the National President role as significantly more work than had been expected often working long hours of up to 70 per week on work without which would not otherwise have been done and if not would frustrate the operation of NZUSA, but accepts that she was not made to do extra work but did so because she believed in the work and her belief in the direction NZUSA should take to advance its objects.

[51] Ms Dixon claims to have an employment relationship as National President that is part and parcel of her role as an executive member of NZUSA but did not give evidence that defined terms and conditions of employment were ever formally concluded. Ms Dixon was concerned about the lack of contractual documentation for not just her role but other elected and non-elected personnel and in fact took active steps to address the lack of contractual documentation for NZUSA personnel including involvement in a draft contract document for and with Mx Gardiner.

[52] In her evidence Ms Dixon detailed an array of duties and responsibilities that she was expected to discharge in her role as National President. Ms Dixon says that she had limited discretion as to how she was to carry out the role responsibilities but accepted that once in the role that she was largely free to act in a way that advanced NZUSA's objects, which are prescribed in clause 3 of NZUSA's Constitution and is

indeed why one gets elected. Ms Dixon was accountable to the NZUSA Council who in turn are accountable to the NZUSA membership.

[53] Ms Dixon's background, experience and motivation for advancing the interests of the student movement are clear and extensive. I also consider that Ms Dixon would have been well aware of the demands that the National President role required by virtue of her previous experience within NZUSA and the wider student movement prior to deciding to seek out the National President role in late 2022 while in an employed role as a National Researcher with NZUSA. Although during her term as National President, Ms Dixon did make a business case and petition the NZUSA Board for administrative support to assist with the workload issues.

[54] Ms Dixon explained that her job included being responsible for the performance of the employed support roles (including the type of role that she had held) within the NZUSA office once she became National President. Ms Dixon described to me that as National President she was involved and in fact led a PIP type process & warnings for non-performance by one of the employed officers and that this process included taking advice from such sources as MBIE and community law and involved letters and meetings.

[55] This is to be contrasted for how non performance could be addressed for the National President role. Ms Dixon told me that where performance fell short of expectations for elected roles (such as hers and Mx Gardiner's) the circumstances could be considered by the National Council and a vote of no confidence could be put before the Council and the holder of the elected role could, under the Constitution, ultimately be removed from office by a motion passed at a general meeting. This is not the usual way in which misconduct or non performance would be addressed in an employment situation.

Mx Gardiner

[56] Like Ms Dixon, Mx Gardiner also had background experience and had been active in student politics before running for and being successfully elected to the Vice President role. Prior roles included Māori student rep and student disability rep.

[57] For the first part of the term Mx Gardiner shared the Vice President role with another person. Both completed 20 hours per week to make up the 40 hours role

component. Throughout the term Mx Gardiner was also in receipt of a welfare benefit, which limited the ability to work full time. Mx Gardiner carried out the work from home, at the office of the Otago University Students Association office as well as travel in support of the role.

[58] Mx Gardiner supplied a laptop and phone to do the work. When discharging the work Mx Gardiner said that there was little guidance from the National Council to which the role was accountable and accepted that election had been on the basis that Mx Gardiner would know how to undertake the role but worked closely with Ms Dixon.

[59] Both Mx Gardiner and Ms Dixon explained that a contractual structure was needed for the other individual who shared the Vice President role with Mx Gardiner for MSD and Immigration NZ purposes and that this also precipitated the preparation of a draft contract document for Mx Gardiner, which was provided in evidence.

[60] Ms Dixon had discussions about this document with the National Council and emailed Mx Gardiner a draft of the proposed contract document but Ms Dixon said to Mx Gardiner that the contract document would not be signed off by NZUSA until it had been shown past a legal expert. This was made clear in bold in a cover email from Ms Dixon to Mx Gardiner dated 30 December 2022. This draft document included a term that stated that the relationship was not one of employment. This document was never authorised or concluded by the NZUSA National Council or ever signed by either Mx Gardiner or NZUSA.

Conclusion on employment status

[61] Assessing all of the evidence presented to the Authority the following factors could, arguably, indicate the existence of an employment contract relationship between the applicants and NZUSA:

- The applicants were integrated into the NZUSA organisation and I accept that NZUSA would be significantly impeded in its operations without the efforts of the applicants;
- The applicants' role responsibilities were set out in written job descriptions, although were still relatively general and not prescriptive;

- The applicants' received regular fixed payments and were paid fortnightly (described in the job descriptions as honorariums) with PAYE deducted;
- Annual holiday and sick leave were accrued;

[62] Set against these are the following factors that indicate that the applicants were not employees:

- The NZUSA National Committee did not recruit or select the applicants for their roles. The applicants stood by choice for election within the wider student membership and were voted into the roles;
- The Applicants were elected to their positions at a NZUSA congress or general meeting within a registered incorporated society and as prescribed by a written constitution and they remained in office only until the end of the one-year term of office in accordance with the terms of the constitution;
- The existence and appointment of the roles have their foundation in and are governed by the Incorporated Societies Act and the NZUSA Constitution, which describes the roles as elected representatives;
- The applicants roles had membership and voting rights within the governance of the association with the National President being the National Board chair;
- The applicants could only be removed by NZUSA through a motion and vote of no confidence by members at a general meeting of members of the association;
- There was no clear offer and acceptance or any concluded document that set out any clearly agreed terms between the parties;
- Mx Gardiner's draft contract document contained a statement that the relationship between the elected representative and NZUSA is that of a contractor and does not constitute the relationship of employer and employee unless otherwise agreed;
- There was little evidence of any direct control by the National Council as to the direction and the manner in which the applicants had to fulfil their obligations and the applicants had flexibility in how they undertook their role responsibilities.

[63] The standard by which I must be satisfied to accept the applicants' claim is on the balance of probabilities. While I accept that the applicants' were integral to the

functioning of the NZUSA organisation, the level of control over Ms Dixon and Mx Gardiner by NZUSA was not of such a nature as to apportion a clear employment relationship. No examples of regular direction or instruction from anyone within NZUSA over their work was provided. The applicants were accountable to the National Council and wider NZUSA membership and there was no ability for any one individual to dismiss or remove the applicants from their roles. Instead, a process and vote of no confidence passed at a general meeting of the organisational membership was needed, which is not typical of an employment relationship. There is also no evidence that there was ever any mutual intention to create a legally binding employment relationship between the parties. The draft document presented in respect of Mx Gardiner indicated the opposite.

[64] In conclusion, while I accept that there are some characteristics of an employment type relationship present, when taking all of the factors into overall consideration the applicants have not persuaded me that they had employment relationships with NZUSA.

Outcome

[65] The applicant's applications for a declaration of their status as employees does not succeed. As a result, the substantive matters the applicants have with NZUSA are not something that the Authority has jurisdiction to investigate further.

Costs

[66] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves but if they are unable to do so may request the Authority to determine costs. However, NZUSA did not participate in the investigation and the applicants' applications have not succeeded. In such circumstances any costs are likely to lie where they fall.

Alyn Higgins
Member of the Employment Relations Authority