

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON**

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2025] NZEmpC 171
EMPC 329/2025**

IN THE MATTER OF an application for an injunction
AND IN THE MATTER OF an application for an interim injunction
BETWEEN NZEI TE RIU ROA INCORPORATED
 Plaintiff
AND SECRETARY FOR EDUCATION
 Defendant

Hearing: 7 August 2025
 (Heard at Wellington)

Appearances: P Cranney and K Gawe, counsel for plaintiff
 S Hornsby-Geluk, counsel for defendant

Judgment: 13 August 2025

**INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(Application for interim injunction)**

[1] NZEI Te Riu Roa Incorporated (NZEI), a registered union, seeks an interim injunction restraining the Secretary for Education from making specified pay deductions from wages or salaries of its members on the grounds that such anticipated deductions are unlawful.

[2] The application for an interim injunction to restrain specified pay deductions from the wages or salaries of NZEI's members is opposed by the Secretary for Education (the Secretary).

[3] Injunction proceedings were issued by NZEI on 29 July 2025 and an interim injunction application was filed on 30 July 2025.¹

[4] Urgency was granted by the Court and the interim injunction set down for hearing. The hearing proceeded based on the affidavit evidence filed and submissions directed to the usual test for interim injunctions.

[5] The Court was advised that there was a concern that the Secretary may not be able to stop its pay deductions in time because of its payroll systems and processes, and these would be made at 10 am Monday 11 August 2025.

[6] In a minute dated 11 August 2025, the Court advised the parties that an interim order restraining the specified pay deductions would not be made. This judgment provides the reasons for this.

Background

[7] The background to the application for an interim injunction is taken from the untested affidavit evidence and the exhibits annexed to the affidavits and are not matters in dispute.

[8] The Secretary and NZEI are involved in two separate collective bargaining processes. Bargaining was initiated on 30 January 2025 to renew a collective agreement covering about 70 service managers. NZEI subsequently initiated bargaining on 6 February 2025 for a collective agreement covering about 700 field staff members. About 70 per cent of service managers and field staff are members of NZEI.

[9] On 18 July 2025, notices of strike action were provided by NZEI to the Secretary in respect of the bargaining covering service managers and the bargaining covering field staff.²

¹ Employment Relations Act 2000, s 100(1)

² Employment Relations Act 2000, s 86A.

[10] The notice of strike action for service managers provided that the nature of the proposed strike is:

- (a) a ban on working more than eight hours per day;
- (b) a ban on working more than 40 hours per week; and
- (c) a ban on any work on new cases.

[11] The notice was given on behalf of all employees who are service managers and are members of the Union and covered by the bargaining initiated on 30 January 2025. The strike was to begin on 23 July 2025 at 0700 hrs and end on 22 August 2025 at 1700 hrs.

[12] The notice of strike action for field staff provided that the nature of the proposed strike is:

- (a) a ban on working more than 7.6 hours per day;
- (b) a ban on working more than 38 hours per week; and
- (c) a ban on any work on new cases.

[13] The notice was on behalf of all employees who are members of the Union and covered by the bargaining initiated on 6 February 2025. The strike for the field staff was also to commence on 23 July 2025 at 0700 hrs and end on 22 August 2025 at 1700 hrs.

[14] Both strike notices stated that the employees will continue to perform some work for their employer while undertaking the proposed action and that the strike will be continuous.

[15] On 21 July 2025, the Secretary for Education gave notice to NZEI of specified pay deductions for service managers and notice of specified deductions for field staff.

[16] The deductions were to be made in respect of the parts of pay period 09.2025 (17 July 2025 to 30 July 2025) and pay period 11.2025 (14 August 2025 to 27 August 2025) that fall within the strike period and the full pay period, 10.2025 (31 July 2025 to 13 August 2025). The notice provided that if employees are overpaid, then they will be given the notice required by s 6 of the Wages Protection Act 1983 before the overpayment is recovered.

[17] On 24 July 2025, counsel for NZEI, Mr Cranney, wrote to the Secretary advising that if wage deductions were made, they would be challenged, and that arrears and penalties would be sought as appropriate in each case.

[18] On 25 July 2025, counsel for the Secretary, Mx Hornsby-Geluk, wrote to Mr Cranney asking for a clear explanation about the basis for the challenge and why the Union considered the notices of specified pay deduction to be defective.

[19] On 28 July 2025, Mr Cranney responded to Mx Hornsby-Geluk setting out the basis for the view that the deductions were unlawful. A summary of the response is set out below:

- (a) That specified pay deductions could not be made in respect of the partial strikes that involve a refusal to work overtime. Very few employees are currently affected by the ban on new cases. Most have taken no strike action except arguably the overtime ban.
- (b) The s 95B notices are premised on a misunderstanding of the law that because the union members are covered by the strike notice they are a party to a strike.
- (c) It was not clear if the person who issued the notices had authority to do so.

[20] An application for injunctive relief was threatened if there was no advice received by midday the following day that no deductions would be made.

[21] On 29 July 2025, Mx Hornsby-Geluk wrote to Mr Cranney. The basis on which it was alleged the deductions were unlawful was not accepted. It was confirmed that the acting general manager, people sustainability and place who issued the notices was acting at the time under authority of the Secretary. It was confirmed that the deduction notices would not be withdrawn, and deductions would be made accordingly.

[22] No deductions were made for pay period 17 to 30 July 2025. In a letter dated 30 July 2025 from Mx Hornsby-Geluk to Mr Cranney it was stated that it was not reasonably practicable. There was advice that it was intended that the specified pay deductions for this period would be recovered as overpayments in the 10 September 2025 pay run and that employees would be given notice of this the next day. It was confirmed that the pay of employees who are parties to the strike action occurring between 31 July 2025 and 13 August 2025 will be subject to a specified pay deduction in the pay run occurring on 13 August 2025. In respect of the partial strike action occurring between 14 and 22 August 2025, the pay of employees who are parties to the strike will be subject to a specified pay deduction in the pay run occurring on 27 August 2025. It was confirmed that the authority given by the Secretary to issue s 95B notices on behalf of the employer was done verbally.

[23] On 31 July 2025, the Secretary issued a notice to all service managers and field staff of an intention to recover an overpayment under s 6(2) of the Wages Protection Act 1983.

[24] The amount of the total deductions if they were made would be in the vicinity of \$400,000 or higher.

Jurisdiction

[25] On 1 July 2025, the Employment Relations (Pay Deductions for Partial Strikes) Amendment Act 2025 came into force. It amended the Employment Relations Act to provide for specified pay deductions to be made in relation to partial strike action.

[26] There is no dispute that the Court has jurisdiction to deal with this matter.³ Mx Hornsby-Geluk referred to s 100(5) of the Employment Relations Act 2000 (the Act) that provides, if the Court is satisfied of the matters in s 100(4), then the application must be dismissed.

[27] Sections 100(4) and 100(5) of the Act provide:

- (4) Subsection (5) applies if any action or proceedings seeking the grant of an injunction to stop a specified pay deduction that is being, or is to be, made are commenced in the court, and the court is satisfied that—
 - (a) the employer is entitled to make a deduction under section 95A; and
 - (b) notice has been given in accordance with section 95B; and
 - (c) the deduction has been correctly calculated in accordance with section 95C.
- (5) If the court is satisfied of the matters specified in subsection (4)(a) to (c),—
 - (a) the court must dismiss that action or those proceedings; and
 - (b) no proceedings seeking the grant of an injunction to stop that specified pay deduction may be commenced in the District Court or the High Court.

Law relating to interim injunctions

[28] In deciding whether to grant interim relief the Court considers:

- (a) Whether there is an arguable case. Assessment of an arguable case in submissions focussed on the entitlement to make a deduction under s 95A, whether notice accorded with the requirements of s 95B and whether the deductions have been calculated correctly in accordance with s 95C.
- (b) The balance of convenience needs to be considered with the impact on the parties of granting or refusing to grant an order. This includes some consideration as to whether damages would be an adequate remedy to either party if the injunction is granted or refused incorrectly.

³ Employment Relations Act 2000, s 100.

- (c) Finally, there is an assessment of the overall justice by standing back after having analysed the arguable case and balance of convenience.

[29] An interim injunction may entirely prevent the Secretary's ability to make specified pay deductions. There will likely be significant difficulties because of the requirements of s 95B of the Act and s 6 of the Wages Protection Act 1983. In such cases where the interim injunction may finally dispose of the issue, there needs to be more than a barely arguable case.⁴

[30] The Court has approached this matter in accordance with the above considerations.

[31] An undertaking as to damages was provided and signed by the national secretary of NZEI.

Arguable case?

Partial Strike

[32] Sections 95A, 95B and 95C in the Act under the heading "Specified pay deductions in relation to partial strike" were inserted on 1 July 2025.⁵

[33] Section 95A(1) provides that if there is a partial strike, the employer may make specified pay deductions from the salary or wages of an employee who is a party to the strike.

[34] Section 82AA was inserted on 1 July 2025 and provides the meaning of partial strike and specified pay deduction.⁶ It provides as follows:

82AA Meaning of partial strike and specified pay deduction

In this Act,—

partial strike means a strike in which the employees who are party to the strike do one or both of the following:

⁴ *Car Haulways Ltd v First Union Inc* [2017] NZEmpC 158 at [22].

⁵ Employment Relations (Pay Deductions for Partial Strikes) Amendment Act 2025, s 9.

⁶ Employment Relations (Pay Deductions for Partial Strikes) Amendment Act 2025, s 5.

- (a) continue to perform some work for their employer or employers during the strike instead of wholly discontinuing their employment during the strike, and includes, without limitation,—
 - (i) a partial discontinuance of work through a refusal or failure to accept engagement for work that forms part of the employees' normal duties:
 - (ii) a reduction in the employees' normal performance of work, normal output, or normal rate of work:
- (b) break their employment agreement, whether or not the act involves any reduction in the employees' normal duties, normal performance of work, normal output, or normal rate of work

specified pay deduction means a deduction—

- (a) made, or to be made, from an employee's salary or wages in accordance with section 95A; and
- (b) calculated—
 - (i) in accordance with section 95C(1) and (2); or
 - (ii) by imposing a flat rate of 10% under section 95C(3).

[35] The strike notices in this matter provide that the employees who are party to the strike would continue to do some work for their employer while undertaking the proposed actions as set out earlier. A situation where the employees wholly discontinued their employment was not intended from the notices; what was intended was a partial strike.

Party to a strike?

[36] NZEI submitted that s 95A(1) only has any effect if the employee is party to the partial strike. If an employee is not party to the partial strike, the existence of a partial strike cannot, and does not, authorise a wage deduction from the employee's wages.

[37] An advocate for NZEI provided an affidavit in support of restraining pay deductions. Some emails were annexed to the affidavit from employees about the assignment of new cases. One employee said that at the end of June she was assigned eight cases and another two cases by her manager in early July. She wrote that her instructions from her manager were not to worry about the cases that she had not

contacted and that she was meant to leave them there until after the strike and then discuss who is a priority and if any cases needed to be changed. This employee was going on parental leave in September and had said she would not have time to set anything up with the cases as she would only have a month left at that point but that the cases remained on her list.

[38] Two other employees referred in their respective emails to having been assigned new cases prior to the strike by their service manager. One stated that they were told not to worry if they did not get to them before the start of the strike period or assign them back to the service manager. Another said that cases were being assigned ahead of the strike, but they were already at a full caseload and did not have capacity to take on new clients.

[39] Two affidavits in reply from service managers who are members of NZEI were filed. One service manager expressed concern amongst other matters about whether the proposed deduction is proportional given any impact. Another stated that two days before the strike their manager asked them to allocate two more cases to each team member so that they could get started before the strike. These cases would otherwise be taken on over the next month.

[40] The chief adviser learning support, Ms Davies, provided an affidavit in opposition to the application to restrain specific pay deductions. Ms Davies stated in her affidavit that all service managers and field staff routinely and regularly undertake work on new cases as part of their ordinary duties.

[41] Ms Davies annexed to her affidavit job descriptions for service managers. The job description provides a description of the role as follows:

The Service Manager is responsible for the management of a team of field staff in the development, co-ordination and provision of efficient, effective and equitable services aimed at improving social and education outcomes, both directly and indirectly, for children and young people with learning support needs.

[42] Job descriptions were also annexed for field staff. They provide early specialist services for children and young people with learning support needs. There are

different areas of speciality and different job descriptions. Some advise on deaf children and there are early intervention teachers. Others are regional assistive technology coordinators, speech language therapists, special education advisors, education specialist trainers, occupational therapists, psychologists, psychology interns, physiotherapists, kaitakawaenga, and district Māori advisers.

[43] Mr Cranney refers to the Employment Court judgment in *20 District Health Boards v NZNO*.⁷ It was held in that case that individual members possess the right to determine whether they will participate in a strike. There was reference to the Employment Court judgment in *Finau v Southward Engineering Company Ltd* where the full Court affirmed a conclusion reached by Goddard CJ in *Heke v Attorney-General in respect of the Department of Corrections*.⁸ The conclusion referred to was that notice of an intention to strike is notification of a future strike and not of participation in a present strike. For any particular employee to become a party to a strike, it would have to be shown that he or she was not only a party to the original agreement to strike but had continued to support it when it occurred.

[44] In *Heke*, the employee was on sick leave prior to, and on the day, the strike commenced. The employee received a suspension notice and was not paid sick leave or other pay for the day of the strike.⁹

[45] The Judge in *Heke* referred to a situation where employees may agree that, for strategic reasons, a small number of them will actually discontinue working or otherwise breach their employment contracts. The larger group would still, in those circumstances, be parties to the strike once it took place not merely because they had been parties to the original agreement but because they had continued in a frame of mind under which they continued to support the strike by other employees. There was reference to the need for the existence of both a mental and physical element. There are those who withdraw their labour or reduce their output and will generally be doing it deliberately. That would provide evidence of the physical and mental elements.

⁷ *20 District Health Boards v New Zealand Nurses Organisation* [2021] NZEmpC 138, [2021] ERNZ 796 at [106]–[121].

⁸ *Finau v Southward Engineering Co Ltd* [2007] ERNZ 522 (EmpC) at [45]–[50], confirming *Heke v Attorney-General in respect of the Department of Corrections* [1998] 1 ERNZ 583 (EmpC) at 586.

⁹ At 586.

Those who do not take part in the actual strike may nevertheless be parties if they mean to support it. Their state of mind is a question of fact to be ascertained by reference to the surrounding circumstances.¹⁰

[46] Mx Hornsby-Geluk also referred to *McCulloch v New Zealand Fire Service Commission*.¹¹

[47] That was a case where the Commission brought proceedings in the High Court seeking damages in tort in respect of the union's actions in issuing notices banning its members from applying for higher ranks or positions, known as "acting-up". The Employment Court in that case held that the ban amounted to a strike in terms of s 81(1)(a)(i) of the Act because the ban was directed to a reduction of the normal performance of their employment by employees. There was an argument that it was not possible to identify which employee, or employees, had specifically reduced their normal employment.

[48] The Employment Court in *McCulloch* did not accept that argument and stated "by, in effect, banning acting-up, the union, as a collective the employees, threatened to strike".¹² On appeal, the Court of Appeal agreed with the conclusion reached by the Employment Court and stated:¹³

We are also satisfied that it was open for the Chief Judge to conclude that the requirements of s 81(1)(b) were met in that the Union ban amounted to the collective action of firefighter employees and was a combination of concerted action by them.

[49] *McCulloch*, which was decided after *Heke*, supports that it is not necessary that every employee discontinue working or breach their employment agreement to still be regarded as parties to the strike if they support the strike by other employees.

[50] Two Employment Court judgments briefly referred to specified pay deduction provisions enacted in 2015 and repealed in 2018 when considering strike notices.

¹⁰ At 586-587.

¹¹ *McCulloch v New Zealand Fire Service Commission* [2010] NZEmpC 160, [2010] ERNZ 385.

¹² At [45].

¹³ *New Zealand Fire Service Commission v McCulloch* [2011] NZCA 177 at [14].

[51] *Car Haulaways Ltd v First Union Inc* was an Employment Court judgment in which the Court considered the provisions for strikes and lockouts in the context of the introduction of the previous s 95(b).¹⁴ Judge Corkill stated:¹⁵

In my view, it is strongly arguable that having regard to the deliberative process which accompanied the introduction of these provisions, Parliament intended that the notice provisions for strikes and lockouts would be effective. They are there for a reason. It is strongly arguable that s[s] 86A and 86B reflect the Minister's intention that employers be aware of an upcoming strike, which will include the ability to decide how they will respond to making proportionate pay reductions in the case of a partial strike. ...

[52] In *Secretary for Justice v The New Zealand Public Service Association*, the union and its members, who were employed by the Secretary for Justice, engaged in partial strike action.¹⁶ Written notice was only given 30 minutes prior to the action being taken. The Secretary for Justice argued that the 30-minute notice was unlawful because amongst other matters it could not consider whether to make proportionate pay deductions under the Act. The notice given was distinguished from the notice deemed to be clearly ineffective in *Car Haulaways*. The Judge was not satisfied in *Secretary for Justice* that the notice given in that case was ineffective such to result in it being unlawful and was not concerned that the amount of notice would impact unduly on deductions from wages.¹⁷

[53] The strike notices in this matter were provided on behalf of all employees who are service managers and field staff, members of NZEI and are covered by the collective bargaining initiated on 30 January and 6 February 2025. The strike notices indicate a collective decision for the taking of partial strike action, which includes a ban on any work on new cases. As set out in the cases referred to earlier, the notices of partial strike action are notices of a future strike, and there needs to be an act of striking.

[54] NZEI says that it cannot be established that all of those named in the strike notices are parties to the strike. Although asked by the Secretary to do so, NZEI did

¹⁴ *Car Haulaways Ltd*, above n 4.

¹⁵ At [33].

¹⁶ *Secretary for Justice v New Zealand Public Service Assoc* [2018] NZEmpC 129.

¹⁷ At [23].

not provide a list of its members' names. As Mr Cranney submits, it is arguable that they were not required to provide a list.

[55] Ms Davies states in her affidavit that since the commencement of the partial strike action there has been monitoring of the number of new cases, closed cases and active jobs. The data that is annexed to the affidavit shows that from August 2023 to August 2024 there were an average of 86 cases opened per day and 1,720 cases per month. Across 1,000 staff that is an average of 1.7 new cases started each month. Ms Davies sets out an expectation that staff pick up about two new cases each month and close two a month. She further stated that it would be highly unlikely that any employee on whose behalf a strike notice was issued would not be required to take a new case over the course of the entire strike period.

[56] After six days of the partial strike, the data shows 366 cases have been opened and 386 closed. The usual trend is opening more cases than are closed. In the seven days before the strike action, 580 cases were opened and 497 closed. Ms Davies puts this down to the service managers not allocating new cases and field staff not starting work on new cases. Ms Davies said that the largest impact is the number of cases recorded as "awaiting decision." The number of cases as at 30 July 2025 was 530 compared to 297 seven days earlier at the start of the strike. The awaiting decision cases include 82 jobs that are now in red or orange because they have been waiting for longer than the ten day period the KPIs require processing to take place.

[57] Ms Davies attaches to her affidavit an email sent on 30 July 2025 to all service managers and field staff seeking confirmation whether they would be accepting and carrying out work on new cases during the period of partial strike. The employees were advised that if they did not respond by 3 pm on 1 August 2025, they would be assumed to be participating in the partial strike action. Ms Davies states that they were told by a number of managers who issued the communication to their team members that employees were advised by NZEI not to respond to the request for confirmation. There is an email from a manager annexed to Ms Davies affidavit about that. This email presented an opportunity for service managers and field staff to advise they were not parties to the strike action. This was not a step taken in *Heke* before Ms Heke was served with a suspension notice. Ms Heke was on sick leave unlike other employees

who reported for work and were first asked whether they still intended to take the selective industrial action stated in the strike notice.

[58] It is arguable that not all of those named in the strike notices are parties to the partial strike. The strength of the argument does need to be considered with the surrounding circumstances from the untested affidavit evidence, including the 30 July 2025 email. It is strongly arguable from the untested affidavit evidence that working on new cases is part of the normal duties of field staff and service managers. There is data provided that supports the partial strike has had an impact. It is arguable from the data that banning any work on new cases resulted in a reduction of normal performance of work, normal output and/or normal rate of work for employees. It is also arguable that the service managers and field staff who did not advise after the 30 July email that they would be accepting and undertaking work on new cases and are named in the strike notices collectively support the strike and/or are not undertaking any work on new cases.

Restrictions to making specified pay deductions

[59] There are some restrictions to making specified pay deductions. Section 95A(2) provides as follows:

- (2) However, the employer must not make a specified pay deduction—
 - (a) if the partial strike is lawful on the grounds referred to in section 84 (which relates to lawful strikes on the grounds of safety or health); or
 - (b) if—
 - (i) the employee is paid by piece work; and
 - (ii) the partial strike results in the employee reducing their normal output; or
 - (c) in respect of any period of the partial strike that involves—
 - (i) a refusal to work overtime; or
 - (ii) a refusal to perform call-out work if the employee would otherwise receive a special payment for performing that work.

[60] The Secretary in its notices of specified pay deductions for service managers and field staff noted that the strike action relevantly includes a ban on new cases. It is not strongly arguable that specified pay deductions were intended to be made in respect of any period of the partial strike that involves the refusal to work overtime.

Notice requirements

[61] Before making any deduction under s 95A(1), the employer must comply with the notice requirements in s 95B, which provides as follows:

95B Notice of specified pay deduction

- (1) If an employer intends to make specified pay deductions in relation to a partial strike, the employer must give notice to each employee who is, or will be, party to the strike that the employer will make those deductions.
- (2) A notice under subsection (1) may be given only if the employer has received notice of the partial strike in accordance with this Part or section 589 of the Education and Training Act 2020 (whichever applies).
- (3) A notice under subsection (1) must—
 - (a) be in writing; and
 - (b) specify the relevant pay period or relevant pay periods in respect of which the employer will make a deduction; and
 - (c) be given—
 - (i) as soon as is reasonably practicable; and
 - (ii) before the first deduction is made or the end of the first relevant pay period specified under paragraph (b) (whichever comes first).
- (4) If 2 or more of the employer's employees are parties to a partial strike, the employer may, instead of giving notice to each of those employees, give notice under this section by—
 - (a) providing a single notice to all those employees or their union; or
 - (b) providing a notice to each of those employees, with the same wording in each notice.
- (5) To avoid doubt, —
 - (a) an employer may choose the method of giving notice under this section:

- (b) the validity of a notice is not affected merely because it is also given to employees who are not subject to the specified pay deduction (for example, non-striking employees):
 - (c) if the partial strike continues over more than 1 pay period, the employer is not required to give notice more than once:
 - (d) a notice under this section is not required to specify the amount or proportion of a specified pay deduction:
 - (e) the validity of a notice is not affected if the employer recovers a specified pay deduction as an overpayment under section 6 of the Wages Protection Act 1983.
- (6) In this section, **relevant pay period** means a pay period within which an employee will, in the normal course of events, be paid for a period within which a partial strike, or part of a partial strike, occurred.

[62] Mr Cranney submits that s 95B(1) provides for notice of specified pay deductions that must be given to each employee who is, or will be, a party to the strike. In this case, the notice was not provided to each employee but to the Union under s 95B(4). Mr Cranney submits that s 95B(4) is an alternative provision that only applies if the employees notified are “parties to a partial strike” and not in anticipation of that occurring. At the time the notices were provided to the Union, the employees were not parties to a partial strike, and therefore he says there was non-compliance with s 95B and the notice requirements.

[63] Notice was given by the Secretary that met the requirements of s 95B(3) in that it was in writing, specified the relevant pay period or pay periods for which the employer will make a deduction, and was given as soon as reasonably practicable and before the first deduction or the end of the first relevant pay period.

[64] The interpretation advanced by Mr Cranney is arguable. Section 95B has not been the subject of caselaw. The meaning of legislation is ascertained not only from its text but in light of its purpose and its context.¹⁸ At this interim stage I refrain from making any further comment about the arguable case

¹⁸ Legislation Act 2019, s 10.

Were the notices for specified pay deductions given by the employer?

[65] Mr Cranney submits that the notices under s 95B must be given by “the employer”. The employees of a department for the purposes of good faith bargaining for a collective agreement are to be treated as if they were all employees of the Public Service Commissioner.¹⁹ Whilst Mr Cranney accepts that the Commissioner may delegate any of his powers and functions to a department chief executive, he says that the right to delegate cannot be delegated.²⁰

[66] The notices under s 95B are to be given by the employer. They were given by Geraldine Smith, who was at the time the acting general manager, people sustainability and place. Ms Smith in her affidavit states that she was acting under authorisation from the Secretary. This was confirmed by the acting secretary for education Ms MacGregor-Reid in her affidavit.

[67] Section 66 of the Public Service Act 2020 provides that:

...the Chief Executive of the department—

...

(c) has, except as expressly provided to the contrary in this Act, the rights, duties and powers of the employer of the employees.

[68] Mx Hornsby-Geluk submits that the Secretary is the chief executive of the department and has the rights, duties and powers of the employer and was entitled to give notice of a specified pay deduction without the need for any delegation. Further, s 587(4A) of the Education and Training Act 2020 that provides for the Public Service Commissioner to direct that a specified pay deduction is to be made applies to education service employees and not to employees of the department.

[69] I do not conclude from the untested affidavit evidence it is strongly arguable that the notices of specified pay deductions were not given by the employer. It is further not strongly arguable that the notices for specified pay deductions are required to be signed.

¹⁹ Public Service Act 2020, s 78.

²⁰ Public Service Act 2020, s 80 and sch 3 cl 6(3)(a).

Calculation of the specified pay deduction

[70] The calculation of a specified pay deduction is provided for in s 95C:

95C Calculation of specified pay deduction

- (1) An employer must calculate the amount of a specified pay deduction by—
 - (a) ascertaining, for the employee or group of employees, the usual hours of work for the day of the partial strike (which may be by reference to information contained in the wages and time record, the employment agreement, or a roster or any other document or record used in the normal course of the employee's employment); and
 - (b) identifying the work that the employee or employees will not be performing because of that strike (which must be by reference to the information contained in the relevant strike notice); and
 - (c) estimating how much time the employee or employees would, but for the strike, have spent performing the work referred to in paragraph (b) on the day of the strike; and
 - (d) calculating the time referred to in paragraph (c) as a percentage of the employee's or employees' usual hours of work (as ascertained for the purposes of paragraph (a)).
- (2) The percentage referred to in subsection (1)(d) is the percentage of the employee's or employees' salary or wages that may be deducted.
- (3) However, despite subsections (1) and (2), an employer may, instead of calculating and applying a deduction in accordance with those provisions, impose a 10% deduction on the salary or wages that are payable to the employee or employees for the period of the partial strike (which must be ascertained by reference to the information contained in the relevant strike notice), regardless of whether the amount of deduction calculated in accordance with subsection (1) would have been more or less than 10%.
- (4) An employer may calculate and apply a specified pay deduction in respect of a group of employees only if each member of the group performs work of the same, or a similar, nature.

[71] The Secretary decided that, instead of calculating and applying a deduction, a 10 per cent deduction on salary and wages would be imposed for the period of the partial strike.

[72] There is some concern from the affidavit evidence of NZEI that a ten per cent deduction is not proportionate. However, s 95C(3) is clear that a 10 per cent deduction

may be imposed regardless of whether a properly calculated amount would have been more or less than 10 per cent.

[73] Mx Hornsby-Geluk referred to the intent of the Employment Relations (Pay Deductions for Partial Strikes) Amendment Act 2025 with reference to the regulatory impact statement – partial strike dated 24 October 2024.²¹

[74] It was recognised in the regulatory impact statement that the ability of an employer to make a flat 10 per cent pay deduction may be disproportionate if there was low level strike action such as wearing a union t-shirt in place of a standard uniform. It was recognised that a flat deduction was intended to reduce compliance costs and complications in quantifying the amount of time and output impacted.

[75] It is not strongly arguable that the flat 10 per cent deduction on salary or wages is an incorrect calculation.

[76] There may be an argument about the period to which the deduction applies. Mx Hornsby-Geluk submits that s 95C(3) and s 95A(5) support that the period to which the deduction applies is the entire period of the strike. Those sections have not been the subject of earlier case law. Mx Hornsby-Geluk referred to other cases that support the position that the period of the strike is the whole of the period within which the notified strike action is occurring.²² I could not be satisfied of a strong arguable case at the interim stage about the period to which the deductions apply.

[77] In conclusion under the arguable case consideration NZEI's claim that the proposed specified pay deductions are unlawful is arguable with some arguments stronger than others.

²¹ Ministry of Business, Innovation and Employment "Regulatory Impact Statement: Partial strikes (24 October 2024).

²² *New Zealand Meat Processors, Packets etc v Alliance Freezing Co (Southland) Ltd* [1990] 1 NZILR 725 (LC); and *Lyttelton Port Co Ltd v Maritime Union of New Zealand Inc* [2016] NZEmpC 173, [2016] ERNZ 445.

Balance of convenience

[78] The Court considers when assessing the balance of convenience, the impact on each of the parties of granting or refusing to grant an interim injunction.

[79] The members of NZEI will have amounts deducted from their salaries that they say are unlawful if an interim injunction is not granted. If deductions are subsequently found to be unlawful at the substantive hearing, then the Secretary is in a position to repay the specified pay deductions to each striking worker. The impact for each worker is financial, and that could be compensated for by an award of damages.

[80] On the other hand, if an interim injunction was granted preventing the making of the respective pay deductions and they are subsequently found to be lawful, then the Secretary will face significant difficulties making the specified pay deductions at a later date and in recovering the deductions as an overpayment.

[81] Whilst the Union provided an undertaking as to damages, the amount in issue is sizable.

[82] There is an arguable case for a claim that the proposed deductions are unlawful, but the arguments do not impress at this stage as strong so as to displace other considerations under the balance of convenience.

[83] A date can be offered promptly for a substantive hearing.

[84] Taking all matters into account, the Secretary will suffer the greater prejudice if an interim injunction is granted to restrain specified pay deduction. The balance of convenience favours the Secretary.

Overall Justice

[85] Standing back to cross-check the position reached after consideration of the arguable case and balance of convenience, I am not satisfied that it is appropriate to make an order for an interim injunction.

Next steps

[86] There will be an urgent telephone conference to progress the matter.

Costs

[87] I reserve the issue of costs.

Helen Doyle
Judge

Judgment signed at 10 am on 13 August 2025