

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

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

**[2025] NZEmpC 189  
EMPC 370/2025**

IN THE MATTER OF            an application for an injunction  
  
AND IN THE MATTER OF an application for an interim injunction  
  
BETWEEN                      TŌPŪTANGA TAPUHI KAITIAKI O  
   AOTEAROA – THE NEW ZEALAND  
   NURSES ORGANISATION  
   INCORPORATED  
   Plaintiff  
  
AND                              HEALTH NEW ZEALAND  
   Defendant

Hearing:                      25 August 2025  
   (Heard at Wellington)

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

Judgment:                    28 August 2025

---

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN  
(Application for an interim injunction)**

---

[1] This judgment resolves an application by Tōpūtanga Tapuhi Kaitiaki O Aotearoa – the New Zealand Nurses Organisation Inc (NZNO) for an interim injunction restraining Health New Zealand - Te Whatu Ora from making deductions from the wages of NZNO members in Auckland and Whangārei covered by notices of intention to strike, dated 1 August 2025. NZNO says the anticipated deductions would be unlawful.

## **The test in relation to interim injunctions is well-known**

- [2] When the Court is asked to grant an interim injunction, it considers:
- (a) whether there is an arguable case, noting that if an interim injunction could finally dispose of the issue, there needs to be more than a barely arguable case;<sup>1</sup>
  - (b) where the balance of convenience lies, including whether damages would be an adequate remedy to either party if, on later consideration, the injunction is not warranted; and
  - (c) where the overall justice lies.

## **The Employment Relations Act now allows for pay deductions to be made in relation to partial strike action**

[3] On 1 July 2025, the Employment Relations (Pay Deductions for Partial Strikes) Amendment Act 2025 came into force. It includes new provisions that allowed an employer to make specified pay deductions from the salary or wages of an employee who is party to a partial strike.<sup>2</sup> Section 82AA of the Employment Relations Act 2000 now defines partial strike and specified pay deduction:

### **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:

- (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:

---

<sup>1</sup> *Car Haulways Ltd v First Union Inc* [2017] NZEmpC 158 at [22], noted in *NZEI Te Riu Roa Inc v Secretary for Education* [2025] NZEmpC 171 at [29].

<sup>2</sup> Employment Relation Act 2000, ss 95A-95C.

- (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).

[4] Section 95A(1) of the Act generally allows an employer to make a specified pay deduction from the salary or wages of an employee who is a party to a partial strike. Pursuant to s 95C of the Act, there is an option for an employer facing a partial strike to impose a 10 per cent deduction on the salary or wages otherwise payable to the striking employees.

[5] However, before a deduction may be made, notice must be provided in accordance with the requirements under s 95B. That section provides:

**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.

### **Strike notices were given**

[6] On 3 September 2024, NZNO initiated bargaining with Health New Zealand on the national collective agreement. There has been previous strike action taken by NZNO members who are employed by Health New Zealand and covered by the bargaining.

[7] By notices from NZNO dated 1 August 2025, 49 NZNO members at Whangārei Hospital and 174 NZNO members at Auckland City Hospital gave notice of their intention to strike. The NZNO members at Whangārei Hospital covered by the strike notice said they would not perform any work outside Ward 4 (surgical) at Whangārei Hospital; the NZNO members at Auckland City Hospital covered by the strike notice notified Health New Zealand that they would not perform any work outside the Cardiothoracic and Vascular Intensive Care Unit (CVICU) at Auckland

City Hospital. The strike action was scheduled to begin on 18 August 2025 at 0700 hours and end on 23 August 2025 at 0700 hours.

[8] A Life Preserving Services Agreement was put in place to provide for patient safety during the strike.

[9] There have been further national or district-wide strike notices given since the notices on 1 August 2025, covering various groups of NZNO members employed by Health New Zealand, some of which notify partial strikes and others notify Health New Zealand of NZNO members' full withdrawal of labour.

[10] The ban on performing work outside the CVICU at Auckland City Hospital, and Ward 4 at Whangārei Hospital, covered work that nurses who are primarily employed in those two places also undertake from time to time pursuant to their terms of appointment.

[11] A ban on such work has two principal effects. First, nurses are routinely deployed to other areas when there is an excess of nurses in their primary location, and demand for additional nurses elsewhere in the hospital, and the ban would prevent this. Second, the ban on outside work would impact on tasks that the nurses are required to undertake outside of their work areas, incidental to that work. For Ward 4 nurses it can include taking patients to theatre, delivering specimens to the lab, and assisting in a code blue occurring close to the ward; for CVICU nurses it may include such things as taking patients for CTs, MRIs and cardiac investigations.

[12] By letter dated 6 August 2025, Health New Zealand notified NZNO that it intended to deduct 10 per cent of the wages of the Auckland and Whangārei NZNO members who were covered by the strike notices. The notice relevantly reads:

[3] Pursuant to Section 95A and 95B of the Employment Relations Act 2000 Health NZ is notifying you that we will be implementing a partial deduction of wages in respect of the striking employees named in attachment "A" and in your strike notices.

[4] The notified strikes take place over the pay periods occurring between 18 August to 23 August 2025. As the strike goes over two or more pay periods the Employer is not required to give a secondary notice see 95B(5)(c).

- [5] Pursuant to Section 95B(4)(a) we are providing a single notice to you as the union for these employees.
- [6] Pursuant to Section 95C(3) we are electing to impose a 10% deduction on the salary or wages of the striking employees named in attachment "A".

[13] On 12 August 2025, Mr Cranney, counsel for NZNO, wrote to Health New Zealand giving NZNO's view that the notice was non-compliant with s 95B of the Act as it was not given as soon as reasonably practicable, but a full five days after Health New Zealand received the strike notices; and, because it was not notice given to each employee. Mr Cranney asserted that the provision for notice to the union instead of individual employees under s 95B(4)(a) only applies when two or more employees are party to a strike; it cannot be used in anticipation of a strike to which no one is yet a party. Mr Cranney sought an undertaking from Health New Zealand by 4pm on 13 August 2025 that no deductions would be made and that the letter notifying deductions would be withdrawn. He said that if that undertaking was not received, injunction proceedings would be issued in the Employment Court.

[14] Health New Zealand initially responded on 13 August 2025, advising that it would not be able to meet the 4pm 13 August 2025 deadline.

[15] NZNO filed an application for interim injunction on 15 August 2025 and served it, together with NZNO's amended statement of claim, undertaking as to damages, and an affidavit in support of the application for an interim injunction on Health New Zealand early that afternoon.<sup>3</sup>

[16] NZNO claims the notice provided by Health New Zealand on 6 August 2025 does not comply with the requirements of s 95B of the Act. Hence, its amended statement of claim seeks both a permanent and an interim injunction restraining the deductions.

[17] Also on 15 August 2025, Health New Zealand issued a notice of specified pay deductions to each employee named in the partial strike notices that had been issued by NZNO. Health New Zealand says these notices were given as soon as reasonably

---

<sup>3</sup> Its original statement of claim was filed with the Court on 14 August 2025.

practicable after NZNO's concerns in relation to the original notification were drawn to Health New Zealand's attention. The same day, Health New Zealand advised NZNO that, in light of its position, Health New Zealand had issued an individual notice to each of the striking employees, but that those notices were without prejudice to Health New Zealand's view that lawful notice was provided on 6 August.

[18] Health New Zealand also sought confirmation from employees as to whether they would be accepting work outside their principal place of work (CVICU, Auckland City Hospital or Ward 4, Whangārei Hospital) during the period of the partial strike. Some employees who were named in the strike notices confirmed that they would accept such work, and one advised she would be on annual leave.

[19] In addition, on 18 August 2025, approximately 6 hours after the strikes had commenced, Health New Zealand issued a further notice of specified pay deduction to NZNO, which it says it gave as soon as reasonably practicable after the partial strike commenced, given NZNO's claim that notice under s 95B(4) could not be given in anticipation of the strike commencing.

[20] The notices of 15 August and 18 August 2025 specifically refer to one pay period in respect of which Health New Zealand would make the deductions.

[21] Health New Zealand intends to make the deductions from wages in the pay being processed next week.

### **NZNO submits the pay deduction notices are non-compliant**

[22] There is no dispute over whether NZNO has given notices of a partial strike. NZNO submits, however, that being named in the strike notice, does not on its own, make someone a party to the strike; this, it says, will depend in each case on whether they will do, or does one of the acts enumerated in s 81(1)(a)(i) to (v) of the Act:

...**strike** means an act that—

- (a) is the act of a number of employees who are or have been in the employment of the same employer or of different employers—

- (i) in discontinuing that employment, whether wholly or partially, or in reducing the normal performance of it; or
  - (ii) in refusing or failing after any such discontinuance to resume or return to their employment; or
  - (iii) in breaking their employment agreements; or
  - (iv) in refusing or failing to accept engagement for work in which they are usually employed; or
  - (v) in reducing their normal output or their normal rate of work; and
- (b) is due to a combination, agreement, common understanding, or concerted action, whether express or, as the case requires, implied, made or entered into by the employees.

[23] NZNO may be defining “party to a strike” too narrowly; the issue would likely be a factual one – whether a person named in the strike notice continued to support the strike when it occurred.<sup>4</sup> Those who do not take strike action 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.<sup>5</sup>

[24] NZNO also say there is an issue regarding what the period of the partial strike is, which is needed to determine over what period deductions may be made. That argument must be seen against s 95C(3) that notes that the period of the partial strike “...must be ascertained by reference to the information contained in the relevant strike notice.”

[25] Those issues tend to go to the deductions from wages that Health New Zealand can make, which is a matter for the future. The main issue at this stage, is whether the notice(s) from Health New Zealand of a pay deduction comply with s 95B of the Act. The proceedings initially were focussed on the notice of 6 August 2025.

---

<sup>4</sup> *Heke v Attorney-General in respect of the Department of Corrections* [1998] 1 ERNZ 583 (EmpC); and *The 20 District Health Boards v New Zealand Nurses Organisation* [2021] NZEmpC 138, [2021] ERNZ 796 at [117]-[118].

<sup>5</sup> *Heke v Attorney-General in respect of the Department of Corrections*, above n 4, at 586-587; and *NZEI Te Riu Roa Inc v Secretary for Education*, above n 1 at [45].

[26] Mr Cranney submits that if an employer wishes to give notice in advance of a strike, it must give that notice to each employee who will be party to the strike; the notice given solely to NZNO will not suffice. In other words, it must comply with s 95B(1). The argument centres on the difference in the opening words of s 95B(1) and s 95B(4), with s 95B(1) including the words “will be”, whereas s 95B(4) does not. That implies, he says, that the option to instead provide notice to the employees’ union under s 95B(4)(a) applies only in instances where a strike has commenced.

[27] Mr Cranney also submits that there was further non-compliance with s 95B because the notice of 6 August was not given as soon as was reasonably practicable, as required by s 95B(3)(c)(i).

[28] There was a further suggestion that the requirement that notice be provided as soon as reasonably practicable interacts with ss 95B(1) and 95B(4)(a), so that the option under s 95B(4)(a) is only available where the strike notice was so short that it was only reasonably practicable to issue a pay deduction notice after the strike commenced. Otherwise, the employer must issue individual notices in accordance with s 95B(1). That would effectively mean that issuing notice to NZNO was never an option open to Health New Zealand.

[29] Finally, Mr Cranney submits the notice does not correctly specify the relevant pay period(s) in respect of which Health New Zealand will make deductions, as required by s 95B(3)(b).

[30] Health New Zealand disagrees with NZNO’s interpretation of s 95B(4) and says it may choose whether to give its notice to individual employees or to the union. It submits that NZNO’s interpretation is strained and that such a precondition would need to be clearly spelt out. It points to s 95B(5)(a) as consistent with its own interpretation, ss 95B(1) and 95B(4) being “methods” for the employer to choose between. It says too that the original notice was given as soon as reasonably practicable and before the first deduction was made or the end of the first relevant pay period (whichever comes first), as required by s 95B(3)(c), and that it specified the relevant pay period as required by s 95B(3)(b).

[31] Mr Cranney submits the later notices to individual NZNO members on 15 August and to NZNO on 18 August 2025 do not assist Health New Zealand. They were, he says, not given as soon as reasonably practical after the notices of strike action were given, and, in the case of the notice to NZNO, as soon as reasonably practicable after the strike commenced. Health New Zealand says they were given as soon as reasonably practicable in the circumstances, with the individual notices being given as soon as was practicable after NZNO's objection to the original notices was known, and the notice to NZNO being given as soon as was practicable after the strike had commenced (in order to meet NZNO's interpretation of s 95B(4)).

[32] While all NZNO's submissions in respect of the 6 August letter are arguable, some appear stronger than others. The last argument, regarding compliance with s 95B(3)(b) is, on the face of the notice, the strongest.

[33] While acknowledging the argument advanced by Mr Cranney on s 95B(4), arguably it is inconsistent with what seems to be the general intention of s 95B; that the employer can choose to provide notice to the union, as an alternative to giving notice to each employee.

[34] Whether it was "reasonably practicable" to give the notice more quickly is fact dependant. A period of five days from the day the strike notices were given, including a weekend, does not on its face seem surprising. Nevertheless, the point is arguable. There was no evidence before the Court about the circumstances around preparing the notice.

[35] In respect of the later notices, NZNO's arguments on ss 95B(3)(b) and s 95B(4) fall away, but, again, there will be an issue as to whether they were given "as soon as reasonably practicable" in the circumstances. It is arguable that they were not.

[36] Accordingly, although NZNO's position is still to be fully argued, NZNO has overcome the first hurdle; it has an arguable case.

## **The balance of convenience favours NZNO and its members**

[37] In considering the balance of convenience, the Court looks at whether it is more just that the plaintiff should have the advantage of an interim injunction in the event that the defendant is eventually successful or, on the other hand, whether the plaintiff should be held out of that interim advantage if it is later established that it would have been entitled to it.<sup>6</sup>

[38] Neither party gave much evidence of the impact on them should they be unsuccessful in their respective cases.

[39] It is clear, however, that members of NZNO will be adversely impacted if 10 per cent of their wages are withheld. Ultimately, they could be compensated by an award of damages should the deduction be found to be unlawful but, in the meantime, they are out of pocket, possibly for some time, until the substantive case is heard and determined.

[40] On the other hand, Health New Zealand would be impacted should an interim injunction be granted, but it succeeds on the substantive case; it could not deduct the money it is entitled to. However, the total amount of the deductions for the approximately 200 nurses is relatively modest for an enterprise of its size. It has been calculated to be approximately \$45,000, but may be less depending on whether all the nurses named in the strike notice were in fact parties to the strike.

[41] Health New Zealand would not be able to rely on s 6 of the Wages Protection Act 1983 to recover the money paid as, by the time the substantive case is heard and determined, it would be outside the timeframes in that section.<sup>7</sup> In that circumstance, individual nurses may agree to a deduction being made, or may repay the amount that Health New Zealand was entitled to deduct. To the extent that did not happen, NZNO accepts that Health New Zealand would be entitled to recover the overpayments through actions brought in the Employment Relations Authority against the individual

---

<sup>6</sup> *Service and Food Workers Union Nga Ringa Tota Inc v Rendezvous Hotels (NZ) Ltd* [2010] NZEmpC 78, [2010] ERNZ 154 at [2].

<sup>7</sup> Notices of intention to recover overpayments must be given within 10 working days of the overpayment and recovery must be within 2 months of the notice being given.

nurses.<sup>8</sup> NZNO also has provided an undertaking that, if by reason of the interim injunction Health New Zealand sustains damages (being damages that, in the opinion of the Court NZNO ought to pay), NZNO will abide by any orders that the Court may make in respect of those damages.

[42] Health New Zealand therefore has remedies although I acknowledge that they are potentially more cumbersome than a recovery under the Wages Protection Act, and would impact on Health New Zealand's payroll teams.

[43] Health New Zealand also says it believes that if it is prevented on an interim basis from making the specified pay deductions, further strike action by NZNO members will follow, which would impact on patients and staff. I do not put any significant weight on that speculative concern.

[44] The balance of convenience is finely balanced, but I accept that deductions of 10 per cent of their wages for the nurses covered by the strike notices, even for a limited period, is more impactful than the difficulties faced by Health New Zealand in recovering some or all of the moneys that it may have been entitled to deduct, or, alternatively, in having to forego the amount it would have been entitled to deduct.

[45] The balance of convenience therefore favours NZNO.

### **Overall justice does not displace the balance of convenience**

[46] I have accepted that there is an arguable case that the notices of deduction did not meet the requirements of s 95B of the Act, and that the balance of convenience favours NZNO.

[47] In addition, I accept the point made by Mr Cranney, that wages are a special type of contractual payment protected by statute, and that deductions are generally constrained.<sup>9</sup> Making deductions from wages for partial strikes, while now permitted, is a serious departure from that general position.

---

<sup>8</sup> *The New Zealand Fire Service Commission v Warner* [2010] NZEmpC 90, [2010] ERNZ 210.

<sup>9</sup> Wages Protection Act 1983.

[48] I also acknowledge that, while s 95C of the Act allows employers to deduct 10 per cent of an employee's wages when they are party to a partial strike, the strike by NZNO nurses was confined both as to duration and content. While they gave notice that they would not perform work outside their principal place of employment, they continued with their main responsibilities and a Life Preserving Services Agreement was in place. There was little evidence of the costs to Health New Zealand of the partial strike, including whether the work withheld was of a value more or less than the \$45,000 it may be entitled to deduct from wages.

[49] For these reasons, overall justice does not displace the balance of convenience.

### **Interim injunction granted**

[50] An interim injunction is made accordingly, restraining Health New Zealand from making specified deductions from the wages of NZNO members named in the NZNO's notices of intention to strike, dated 1 August 2025. Health New Zealand also is restrained from seeking to recover payments made, pending further order of the Court.

[51] The Registrar is directed to arrange for a telephone directions conference as soon as practicable to determine next steps.

[52] Costs are reserved.

J C Holden  
Judge

Judgment signed at 12.45 pm on Thursday 28 August 2025