

Employment Relations Act 2000 (the Act).¹ NZALPA subsequently sought leave to intervene.

[3] The plaintiff, while not opposed to NZALPA being granted leave to intervene, did not agree to the terms upon which it was sought.

[4] The application was set down for hearing on 6 August 2024.

[5] By a joint memorandum filed on 5 August 2024, NZALPA and the plaintiff advised the Court that having had the opportunity to review the submissions filed by the plaintiff, they have now reached an agreed position. NZALPA now seeks a more limited grant of leave to intervene, namely that it be permitted to intervene as an interested party under sch 3 cl 2(2) of the Act to:

- (a) appear at the hearing of the challenge;
- (b) make written submissions and, with leave of the trial Judge, address those submissions orally; and
- (c) make an application for special leave to file evidence/documents and to cross-examine if it considers such an application is required, having considered the evidence filed for the substantive hearing.

[6] The more limited grant of leave to intervene is not opposed by the plaintiff. The defendant supported NZALPA's application and has previously advised the Court that it considers the Court would benefit from hearing from NZALPA.

[7] Applications for leave to intervene fall to be considered under sch 3 cl 2(2) of the Act. The test is whether, in the opinion of the Court, the applicant is "justly entitled to be heard". The test is broad and is determined having regard to the particular circumstances of the case.²

¹ *McGearty v Air New Zealand Ltd* [2024] NZERA 55 (Member Blick) at [8].

² *Zhou v Chief Executive of the Department of Labour* [2010] NZEmpC 162, [2010] ERNZ 400 at [3], [5], [7] and [14]; and *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24 at [6]. See also *Leota v Parcel Express Ltd* [2019] NZEmpC 152 at [6]–[10] summarising some of the principles that apply.

[8] I have considered whether there are any countervailing considerations which might tell against the grant of leave. I have been unable to identify any.

[9] In light of the agreed position between NZALPA and the plaintiff, and the stated position of the defendant, I am satisfied that NZALPA is entitled to be heard, and leave is granted accordingly. The half-day fixture scheduled for 6 August 2024 is vacated.

[10] Leave is granted on the basis that NZALPA may:

- (a) appear at the hearing of the challenge;
- (b) make written submissions and, with leave of the trial Judge, address those submissions orally; and
- (c) make an application for special leave to file evidence/documents and to cross-examine if it considers such an application is required, having considered the evidence filed for the substantive hearing.

[11] There is no issue as to costs.

Kathryn Beck
Judge

Judgment signed at 1.50 pm on 12 August 2024