

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

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

**[2025] NZEmpC 195
EMPC 78/2025**

IN THE MATTER OF proceedings removed in full from the
Employment Relations Authority

AND IN THE MATTER OF a challenge to objection to disclosure

BETWEEN THE SECRETARY FOR EDUCATION
Plaintiff

AND NEW ZEALAND POST-PRIMARY
TEACHERS' ASSOCIATION
INCORPORATED TE WEHENGARUA
Defendant

EMPC 79/2025

IN THE MATTER OF proceedings removed in full from the
Employment Relations Authority

BETWEEN NEW ZEALAND POST-PRIMARY
TEACHERS' ASSOCIATION
INCORPORATED TE WEHENGARUA
Plaintiff

AND THE SECRETARY FOR EDUCATION
Defendant

Hearing: On the papers

Appearances: S Hornsby-Geluk, counsel for the Secretary for Education
T Kennedy, counsel for the New Zealand Post-Primary Teachers'
Association Incorporated Te Wehengarua

Judgment: 2 September 2025

**INTERLOCUTORY (NO 3) JUDGMENT OF JUDGE J C HOLDEN
(Challenge to objection to disclosure)**

[1] By notice dated 14 May 2025, the Secretary for Education sought disclosure from the New Zealand Post Primary Teachers' Association Inc of:

1. All NZPPTA documents, records and communications (including with and between NZPPTA's executive, officials, officers, delegates, advocates, and representatives) referring to arrangements for paid union meetings, including how to engage with schools and appropriate arrangements to accommodate paid union meetings, since 2004 when a provision materially similar to the current paid union meetings provision was included for the first time in a collective agreement between the parties.
2. All communications between NZPPTA and school Boards of the schools listed in Appendix A in relation to paid union meetings held in 2024, including arrangements for these meetings.
3. All communications between NZPPTA and its members employed by the school Boards of the schools listed in Appendix A in relation to paid union meetings held in 2024, including arrangements for these meetings.

[2] Appendix A comprises a list of 79 schools.

[3] NZPPTA has objected to disclosure on the grounds of relevance and the Secretary challenges NZPPTA's objection. This judgment resolves the Secretary's challenge.

[4] The substantive proceedings concern what is required of NZPPTA in respect of making arrangements with school boards of trustees to ensure that a school remains open for instruction during paid union meetings.

[5] The proceedings centre on cl 10.4.1(c) of the Secondary Teachers' Collective Agreement – 2022 to 2025 (the STCA) and on s 26(3) of the Employment Relations Act 2000.

[6] Clause 10.4.1(c) of the STCA provides:

The union must make such arrangements with the employer as may be necessary to ensure that the school remains open for instruction during any union meeting including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the school to remain open for instruction.

[7] Section 26(3) of the Act provides:

The union must make such arrangements with the employer as may be necessary to ensure that the employer's business is maintained during any union meeting to which subs (1) applies, including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the employer's operations to continue.

[8] Both parties have filed claims in the Court. The Secretary seeks declarations on the following questions:

- (a) Is the NZPPTA required to make such arrangements with the school board as may be necessary to ensure that a school remains open for instruction within the meaning of cl 10.4.1(c) of the STCA during a paid union meeting?
- (b) Is a school that gives students the option of attending school while staff attend a paid union meeting, and provides "supervision" of those who do attend and/or access to self-directed learning, open for instruction under cl 10.4.1(c) of the STCA?
- (c) Are the requirements of s 26(3) of the Act met during a paid union meeting where the school gives students the option of attending school and provides "supervision" of those who do attend and/or access to self-directed learning?

[9] NZPPTA seeks declarations that:

- (a) the correct interpretation, application and operation of s 26 of the Act is that the particular arrangements in relation to each paid union meeting under s 26 of the Act are made between the union and the applicable employer.
- (b) the correct interpretation, application, and operation of cl 10.4 of the STCA is that the particular arrangements in relation to each paid union meeting are made between the union and the applicable employer.
- (c) the Secretary should not be involved, and/or be seeking to interfere with the particular arrangements made between NZPPTA and the applicable employer in relation to paid union meetings under s 26 of the Act and/or cl 10.4.1 of the STCA.

The Employment Court Regulations provide for disclosure

[10] The object of disclosure is to ensure that, where appropriate, each party to proceedings in the Court has access to the relevant documents of the other party to those proceedings, while recognising that, while such access is usually necessary for the fair and effective resolution of differences between parties to employment relationships, there are circumstances in which such access is unnecessary or undesirable or both.¹

[11] Pursuant to the Employment Court Regulations 2000, a document is relevant if it directly or indirectly:²

- (a) supports, or may support, the case of the party who possesses it; or
- (b) supports, or may support, the case of a party opposed to the case of the party who possesses it; or

¹ Employment Court Regulations 2000, reg 37.

² Reg 38(1).

(c) may prove or disprove any disputed fact in the proceedings; or

(d) is referred to in any other relevant document and is itself relevant.

[12] Where documents are relevant, the only grounds upon which an objection may be based are that the document or class of documents:³

(a) is, or are, subject to legal professional privilege; or

(b) if disclosed, would tend to incriminate the objector; or

(c) if disclosed, would be injurious to the public interest.

[13] Beyond that, the Court has a discretion to refuse unnecessary or undesirable disclosure, taking into account matters of proportionality and the extent to which disclosure may become oppressive. Ultimately, disclosure is said to “constitute a function of relevance, proportionality and discretion”.⁴

The documents are relevant

[14] In considering the issue of disclosure (as opposed to admissibility and/or ultimate relevance to the matters to be determined), a broad assessment is required. Not all documents that are discovered will ultimately make their way into the common bundle before the Court, or be considered of assistance to the Court, but that is not the test.

[15] Having considered the issues before the Court, and the submissions made in support of the Secretary’s challenge to the objection to disclosure, I am satisfied that the documents sought may support the case of one or the other of the parties to these proceedings, and/or may prove or disprove any disputed fact in the proceedings.

[16] While ultimately what is required by s 26(3) of the Act and/or cl 10.4.1(c) of the STCA, is principally a matter of interpretation, the documents sought may provide

³ Reg 44(3).

⁴ *Van Kleef v Alliance Group Ltd* [2019] NZEmpC 157 at [24].

context and background that assists the Court on those issues. As the Secretary submits, having such documents before it means the Court is not having to undertake the interpretation exercise in a vacuum. Material sought may assist the Court in providing a judgment that is usefully focused on the issues between the parties. In that respect, I note that a finding that cl 10.4.1(c) of the STCA requires the NZPPTA to make such arrangements with the employer as may be necessary to ensure that the school remains open for instruction during any union meeting is unhelpful; it simply mirrors the clause. Likewise, a finding that s 26(3) of the Act requires the NZPPTA to make such arrangements with the employer as may be necessary to ensure that the employer's business is maintained during any union meeting to which s 26(1) applies takes the parties no further than the legislation.

[17] The two scenarios identified by the Secretary in her statement of claim that are of particular interest to her are where a school provides "supervision" of those who do attend and where it provides access to self-directed learning.

[18] NZPPTA has objected to the Secretary referring to "other types of arrangements" in her submissions in reply, advancing a concern that the Secretary is referring to the issues in the case more broadly than pleaded. I accept the Secretary's statement of claim does not refer to arrangements apart from supervision and/or self-directed learning. NZPPTA's statement of claim is broader, however, it refers to "particular arrangements" made between it and the applicable employers.

[19] In any event, I accept that the documents sought by way of disclosure, including those containing information on other arrangements, may be relevant in determining the correct interpretation, application and operation of s 26 of the Act and/or cl 10.4.1(c) of the STCA, including whether "supervision" and/or "self-directed learning", satisfies those requirements, in that they may support one or the other party's case.

[20] The Secretary has limited her request for disclosure to schools where the most recent paid union meetings have been held, and has confirmed that she is prepared to waive the requirement that NZPPTA list documents that have been in its possession, custody or control, but no longer are.

[21] With those limits, I consider that the documents sought are relevant and that the request is proportionate.

[22] Accordingly, NZPPTA is directed to disclose and make available for inspection the documents described in paras 1, 2, and 3 of the Notice Requiring Disclosure dated 14 May 2025 that are currently in its possession, custody or control, and to make a concise and ordered list or index of those documents. That is to be done within 14 days of the date of this judgment.

[23] Costs are reserved.

J C Holden
Judge

Judgment signed at 9.00 am on Tuesday 2 September 2025