

UNDER THE EMPLOYMENT RELATIONS ACT 2000
AND THE EQUAL PAY ACT 1972
IN THE EMPLOYMENT RELATIONS AUTHORITY
AT WELLINGTON

No:

BETWEEN

NZEI TE RIU ROA of 166 Willis St
Wellington
Applicant

AND

SECRETARY FOR EDUCATION of
Level 3, 47-40 Pipitea St, Thorndon,
Wellington
Respondent

STATEMENT OF PROBLEM
1 December 2015

PRESENTED FOR FILING BY:

OAKLEY MORAN
Solicitors, Wellington.
P.O. Box 241 DX SP20003
Phone: (04) 472.3055
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Person Acting: Peter Cranney

TO: the Employment Relations Authority

AND TO: the respondent

1. The problems the applicant wishes the Authority to resolve are:
 - 1.1. A dispute about the interpretation, operation, application of a collective agreement.
 - 1.2. An application for an urgent order to mediation.
2. The facts giving rise to the problem are:
 - 2.1. The applicant is a union.
 - 2.2. The respondent is the Secretary for Education.
 - 2.3. The applicant and the respondent are parties to a collective agreement binding on them, on Boards of Trustees and on members of the applicant employed by Boards of Trustees as support staff in schools.
 - 2.4. Many of the members work 40 weeks per year and receive an additional four weeks' annual holidays and some payment for public holidays.
 - 2.5. The collective agreement contains provision for annualisation, a process by which projected annual income for a twelve month period is paid in equal fortnightly instalments by agreement between the employer and the employee.
 - 2.6. The purpose of annualisation is to enable members to access regular payments throughout the year where the employee's employment include periods of time when that employee does not have paid work available with the employer.

- 2.7. Under the respondent's paying system, wages are paid fortnightly and each fortnight has a pay period number.
 - 2.8. The rules of annualisation are contained in a document known as appendix D.
 - 2.9. Appendix D provides that the period of annualisation must begin at the start of pay period 23 and run until the end of pay period 22 (being 26 two week pay periods, namely the four pay periods 23-26 inclusive and the twenty-two pay periods 1- 22 inclusive).
 - 2.10. The pay periods amount to 26 fortnights or 52 weeks.
 - 2.11. In the year 2016 the respondent plans 27 pay days and not 26.
 - 2.12. Accordingly it intends to "annualise" projected income over 54 weeks and not 1 year (that is, it will average projected annual or 52 week income over 27 pay periods amounting to 54 weeks leading to a reduction in wages of about 3% for each pay period which will be to the respondent's advantage).
 - 2.13. This result is neither authorised nor permitted by the collective agreement and is contrary to justice.
3. The applicant seeks the following remedies:
- 3.1. A determination that the wage fortnightly wage rates proposed for the 2016 annualisation period are in breach of the collective agreement, and that any annualisation agreement containing them is an unlawful agreement inconsistent with the collective agreement.
 - 3.2. Compliance order.
 - 3.3. An order for urgent mediation.
 - 3.4. Costs.
4. The applicants refer to the following documents:

- 4.1. Collective agreement.
- 4.2. Appendix D.
- 4.3. Letter applicant – respondent 25 November 2015.
5. The parties have not attended mediation, and the applicant considers that mediation is urgently required.
6. This application is accompanied by the prescribed fee.

Peter Cranney
Solicitor for applicant
1 December 2015

THIS statement of problem is filed by Peter Cranney Counsel for the above-named applicants. The address for service is 15 Brandon St Wellington.

DOCUMENTS for service on the above-named applicants may be left at that address for service or may be posted to the above address.

Notice to the Respondent

1. If you intend to respond to this application, you must, within 14 days after the date of the service of this application on you, lodge 2 copies of a statement in reply with an office of the Employment Relations Authority at Auckland.
2. The term **days** (in paragraph 1 of this notice) does not include any day in the period beginning with 25 December in any year and ending with 5 January in the following year.
3. You will be notified of the place, date, and time at which the Authority will conduct any investigation meeting in respect of this application.

Officer of the Employment Relations Authority:.....

Date: