

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

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

**[2022] NZEmpC 231
EMPC 242/2022**

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

AND IN THE MATTER of an application for intervener status

BETWEEN NEW ZEALAND NURSES
ORGANISATION INCORPORATED
First Plaintiff

AND PUBLIC SERVICE ASSOCIATION TE
PŪKENGĀ HERE TIKANGA MAHI
Second Plaintiff

AND TRACEY BLACK and approximately
33,000 other healthcare worker members of
the first plaintiff
Third Plaintiffs

AND JOY NEILSON and approximately 2,000
healthcare worker members of the second
plaintiff
Fourth plaintiffs

AND TE WHATU ORA - HEALTH NEW
ZEALAND
Defendant

Hearing: On the papers

Appearances: R Harrison KC, P Cranney, counsel for plaintiffs
S Hornsby-Geluk, counsel for defendant
S Mitchell, counsel for Midwifery Employee Representation and
Advisory Service

Judgment: 13 December 2022

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL
(Application for leave to appear as intervener)

[1] As explained in my interlocutory judgment of 30 November 2022, this proceeding concerns certain backpay equity matters. I explained these fully in that judgment.¹

[2] A key matter for consideration by the Court will relate to the status of certain agreements entered into between the parties, including terms of settlement for multi-employer collective agreements, and memorandums of understanding, which referred to pay equity backpay (backpay agreements).

[3] The Midwifery Employment Representation and Advisory Service (MERAS) has now filed an application to be heard as an intervener.

[4] It says it engaged in bargaining with Te Whatu Ora – Health New Zealand, along with the New Zealand Nurses Organisation Incorporated. As part of terms of settlement for a collective agreement for the period 2019 to 2021, it entered into documentation about backpay similar in nature to the backpay agreements entered into by the parties to this proceeding. Thus, it says, it has an interest in this proceeding as it, and its members, are bound by parallel agreements.

[5] The plaintiffs do not oppose the application. The defendant says only that it reserves its position in relation to any disclosure issues which may arise in relation to the application. In response to this point, the plaintiffs say that status as an intervener, if granted, could not give rise to any disclosure issues so far as the intervener is concerned.

¹¹ *New Zealand Nurses Organisation Inc v Te Whatu Ora – Health New Zealand* [2022] NZEmpC 218 at [3]–[18].

[6] The principles as to the granting of leave are well established.² In summary, the test is whether, in the opinion of the Court, the applicant is justly entitled to be heard. It is a very broad test to be determined on the particular circumstances of the case.

[7] I am satisfied that it is appropriate to grant the application. It is just for MERAS to be heard. It is given leave to intervene on the following terms:

- a) MERAS may file, serve, and lead evidence only with leave of the Court, to be sought before the timetabling for the filing of evidence by the parties commences.
- b) MERAS may make written submissions which are to be filed and served no later than two weeks prior to the hearing, and to speak to those submissions at the hearing only with leave.
- c) MERAS may not make any application for costs.

B A Corkill
Judge

Judgment signed at 1.50 pm on 13 December 2022

² *Ovation New Zealand Ltd v New Zealand Meatworkers and Related Trades Union Inc (No 3)* [2018] NZEmpC 101 at [6]–[8].