

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN New Zealand Educational Institute (Inc) (Applicant)

AND Board of Trustees - Red Beach School (First Respondent)
AND Secretary of Education (Second Respondent)

REPRESENTATIVES John Robson, for Applicant
Christine Chilwell, for First and Second Respondents

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 15 February 2005

EVIDENCE TAKEN BY TELECONFERENCE 9 March, 1 July 2005

FURTHER DOCUMENTARY EVIDENCE RECEIVED 19 July 2005

SUBMISSIONS 5 August, 24 August 2005

DATE OF DETERMINATION 7 November 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Since 1990 Red Beach School has operated a unit (the Motuora unit) for special needs children aged five to thirteen. These children have intellectual and associated physical disabilities. They may or may not be mobile or be able to speak and many are unable to toilet themselves. Academically they function at the level of children aged 2-7. For some, social functioning is at an even lower level. Where possible, however, they spend part of their school day in mainstream classrooms. Teacher aides are employed to assist teachers with the special needs children in both the Motuora unit and the mainstream classrooms.
- [2] These “special needs” teacher aides have sought the help of their union (the New Zealand Educational Institute) to resolve issues relating to their grading and the status of their employment.
- [3] The union asserts that the special needs teacher aides have been placed on the incorrect grade. The collective agreement which covers their employment (“*Support Staff in Schools Collective Agreement*” Jan 2004-1 September 2005) divides support staff into two categories,

Administrative and Associate. Teacher aides are in the second category. The relevant provisions of the agreement provide:

“3.1 Grading

Every position shall be graded by the employer according to the level of skill, qualifications, relevant experience and responsibility which are [sic] required according to the definitions set out in...3.6.1, 3.6.2, and 3.6.3.

3.6 Associate Class

An associate position primarily involves working either directly or indirectly with teachers and students to support the teaching and learning outcomes of students.

3.6.1 Grade A

- (a) *The position is closely supervised. It involves duties and tasks which are specified and clear and are carried out in accordance with well defined procedures.*
- (b) *Some examples of the duties required within this grade are:*
- *Prepare and/or maintain resources;*
 - *Support teaching programmes and student learning;*
 - *Assist with routine needs of students.*

3.6.2 Grade B

- (a) *The position involves a range of duties for which advanced knowledge skills and experience are required. The position is likely to involve periods without supervision or may be sole charge.*
- (b) *Some examples of the duties or level of duties required within this grade are:*
- *Support and contribution to teaching programmes and curriculum delivery, including work with students either individually or in groups which assists their learning;*
 - *Contributing to and maintaining healthcare programmes for students;*
 - *Management of equipment and resources.*

3.6.3 Grade C

- (a) *The position involves a high level of responsibility and specialist knowledge. It will include management and/or administrative and/or financial responsibilities. Where the position does not involve supervision of staff it will involve management of specialist equipment and resources which make a significant contribution to the delivery of the curriculum.*
- (b) *Some examples of duties or levels of duties required for this grade are;*
- *Management of systems and/or specialist equipment and resources;*
 - *Management of healthcare programmes.”*

[4] There are no Grade B teacher aides at Red Beach Primary School. All its teacher aides, including those who work with the special needs children, are designated Grade A. The special needs teacher aides believe that their positions are in reality Grade B. In August 2004 the union requested Red Beach School to change their grading. The school declined.

[5] The union says that this amounts to an unjustifiable disadvantage to the workers concerned. Since then the parties have been unable to agree about whether the problem should properly be framed as a dispute or as a personal grievance. In its statement of problem, the union asked the Authority for a declaration that the special needs teacher aides have been wrongly graded, in

breach of their agreement and in addition sought an order for compliance both in the future and in the past, penalty for the breach and costs.

- [6] In my first telephone conference with them the parties agreed that I should begin by determining whether the teacher aides were graded wrongly and if they were, I should proceed to decide whether this was capable of amounting to a personal grievance. The union will then advise what if any further action it wishes taken in respect of the employment relationship problem.
- [7] There is also a further issue which is causing concern to the special needs teacher aides: their non-permanent status. All are on fixed term agreements, usually expressed to be for one year. They say that these agreements are in breach of the requirements of s.66 of the Employment Relations Act which provides:

“66 Fixed term employment

- (1) *An employee and an employer may agree that the employment of the employee will end –*
- a. *At the close of a specified date or period; or*
 - b. *On the occurrence of a specified event;*
 - c. *At the conclusion of a specified project.*
- (2) *Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1) the employer must-*
- a. *Have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and*
 - b. *Advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way”*

- [8] The school says that fixed term agreements are justified because funding is attached to individual students who may or may not stay with the unit. The teacher aides say that while the roll has varied, there has always been a waiting list for entry to the unit and their employment is in effect permanent. They have requested that the Authority give a declaration that these fixed term arrangements do not comply with s.66.

Grade A or Grade B?

- [9] Ms Chilwell has reminded me that the Authority is tasked with ascertaining and giving effect to the intention of the parties by reference to the language in which they have expressed their agreement. It is required to adopt an objective approach to interpretation by considering what a reasonable person in the field, knowing all the background, would take the words in question to mean. I begin therefore with some background on industry practice, before describing the work done by the aides at Red Beach School and the school’s reasons for placing them at Grade B.

Background

- [10] Clause 3.6 took its current form in the 2001-2003 collective agreement (SSCA.) The Ministry acknowledged at that time that “*wording changes to the definitions of the various administrative and associate grades...may in certain circumstances have implications for grading particularly of associate staff*” (Ministry circular 2002/5) However, it did not share the union view which was that special needs teacher aides would very rarely if ever fit within the Grade A definition. To address this and other issues Group Special Education (Ministry of Education) set up a working group which also included representation from the union and the School Trustee’s Association. The group produced a *Joint Statement* which went out to all schools in the first week of November 2002 and contained the following in relation to grading:

“Grading of positions...

Determining which grade will involve considering the levels of skill, qualifications, relevant experience and responsibility required in the job in relation to the Grade descriptions in the collective agreement...It is teachers who have the responsibility for the learning outcomes for all students in their class and the way any instruction is given. Where the teacher aide performs a mix of duties which fall into both grades, they are placed in the grade reflecting the substantive part of their job....

Grading is a reflection of the duties required in the position NOT the experience of the person involved

[11] A Memorandum of understanding was later included within the 2004/05 collective agreement as follows:

“Concerns have been expressed that some support staff members who work with students with special needs may have been placed in a grade that does not recognise the duties required to be performed.

Employers must ensure that job descriptions are current and employees are placed in the correct grade as defined in clauses 3.6.1 3.6.2 and 3.6.3 of the Support Staff in Schools’ Collective Agreement.

The parties agree that the MoE will issue a circular to schools by the end of February 2004 containing the above statement.”

[12] The Ministry duly issued circular 2004/2 in compliance with this memorandum.

[13] With specific regard to the definition Ministry representative, Paul Kimble, told me that

“All teacher aides will work with students either individually or in groups and presumably do work which assists the student’s learning. This does not make the employee grade B and is only relevant if linked to the advanced requirements and responsibility described in clause 3.6.2 (a)”

[14] He said *“close supervision”* means working closely with and under the supervision of another employee. *“Knowledge skills and experience”* (clause 3.6.2) relates to the range of duties required and *“advanced”* means in relation to the Grade A requirements as assessed by the employer.

[15] Three expert witnesses (school principals with extensive experience in special needs education) also gave evidence at my investigation meeting. All agreed that the level of supervision was critical to the issue of grading. One (Ms BurrIDGE) distinguished between direction and supervision by explaining that she directs, but does not supervise, her teaching staff. She told me that she believed that ‘close supervision’ required the physical presence of a teacher at all times. A second (Ms Hoetawa) confirmed that she also considered that close supervision meant physically close (in the same room.)

[16] Acknowledging that the *“teacher can’t be everywhere”* Ms Hoetawa told me that that special needs teacher aides must at times work with students in isolation (for example when toileting a child) and be able to carry out (deliver) an individual education plan (IEP.) Such teacher aides would be provided with the requisite training and at her school were Grade B.

[17] The third expert was Mr Le Marquand, President, Auckland Special School Principal's Association and an executive member of the New Zealand Association of Special School Principals. He told me that all teacher aides must remain under the control and guidance of the teacher and distinguished Grade B and Grade A by saying that Grade B take a programme and implement it with the child. He said that they are also part of the decision making process and likely to be consulted in relation to the child's learning. He told me he would place most teacher aides who worked in a one to one role on Grade B.

The work of the teacher aides at the Motuora Unit

[18] At the time of my investigation meeting, Red Beach School employed about 10 teacher aides in the Motuora unit. During 2004 and the early part of 2005, four of these aides spent all day in the unit itself usually in the presence of the team leader, special needs teacher Liz Taute. The maximum amount of time they might spend on their own with an individual student would be 30 minutes in the computer room.

[19] Each of the other six teacher aides was assigned to a particular child on a one to one and on-going basis. In the morning (after settling them in on arrival) they would accompany their students to mainstream classrooms. How long they were there depended on the aides' assessment of how the child was getting on, but was ideally for most of the morning. Aides and students rejoined the unit for the afternoon and for regular sessions outside the unit (for horse riding and swimming.)

[20] Ms Taute gave evidence for the school. She told me that the teacher aides were: "*responsible to 'support and assist with children's learning under the direction of the class teacher.'*" Whilst in the unit itself aides received direction and supervision from her and the other part-time teacher. When the aide was in the mainstream unit with a child (usually the greater part of the morning) the mainstream teacher was the 'first call' supervisor. However she stressed that:

"3.4 Our view at Red Beach School is that it is the work that is supervised by the teachers, not the aides themselves. I have explained this to the aides on a number of occasions."

"3.14 The aides who work with students in mainstream classes are asked to write a description of their students' work in mainstream in the staff log book on a daily basis. This is to assist the teachers in preparing work for the following week, and to ensure that the IEP goals are being met. It is also a way in which we can see if the teacher aides are having difficulty in a certain area so that they can get more help in that area."

"3.15...a teacher in the unit prepares a basket for each of these students each week, for the aide to take to the mainstream class for back-up work. If the student is not able to do the work in the mainstream class, she will give him/her work from their basket...."

3.16 On Monday morning [the other special needs teacher] touches base with teacher aides to show them the work that she has added to the students' baskets. At this stage, if the teacher aide has any questions, comments or concerns, they discuss those.

...Sometimes the teacher aide may need to make some changes to the work being done in the mainstream class for the students. These will be minor changes only...

3.22 the aides deliver the curriculum but it is set by the teachers...

“3.29 the aides do not assess student progress or work...they give me informal verbal input as to whether their students have regress [sic] or progressed. The aides do write data as directed by the teacher for assessment purposes. For example we have behaviour charts for some of our students...”

- [21] The aides themselves told me in their evidence that what supervision they got was from the special needs’ teachers. Some mainstream teachers largely ignored the special needs children and all are busy. Aides feel as though they are on their own whilst in the mainstream classrooms.
- [22] Ms Taute told me that where necessary, and with parent approval and direction, teacher aides administer medication after which they must fill in the medicine log. All teacher aides receive yearly first aid training and have been prepared to deal with seizures (which occur 5-10 times per year.) They have also been trained by a Starship nurse to take blood sugar levels for one child with diabetes.
- [23] Reports and programmes prepared by physiotherapists and occupational and speech therapists are passed on to the aides. It then becomes the aides’ responsibility to implement these. Doing so may require considerable skill and care. One example related to the requirement to place a child with limited mobility and few verbal skills in a standing frame for regular periods. Incorrect placement might cause serious discomfort for the child who had limited means of conveying this.
- [24] The school has also provided autism training and Crisis Prevention Institute training in supporting children with special needs. Ms Taute told me a typical day could also include:
- “dealing with a difficult child who has a behaviour management plan written by a teacher or behaviour specialist. This might involve dealing with a child who is crying, hair pulling, headbutting, hitting kicking, spitting biting etc Toileting can be tricky as well...”*
- [25] This description of the duties required of a teacher aide at Red Beach School has focussed on what I was told by Ms Taute. However I have also had regard to the relevant job description and to the aides’ own evidence about the tasks and activities performed throughout the day. That evidence did not contradict what Ms Taute told me although the aides felt she underestimated the frequency with which they performed some tasks (such as dealing with medical matters.)

The grading process at Red Beach School

- [26] Ms Tait, principal of the school, told me that in considering the grading issue, the Board (including herself as ex officio member) considered such issues as:
- *"The extent to which the teacher aides worked under supervision;*
 - *Whether they were required to plan the programmes and prepare IEPs;*
 - *Whether they had to make judgement calls about safety.*
- [27] In assessing these factors, Ms Tait and the Board took into consideration advice from Ms Taute about what was required as well as the aides’ job descriptions. She told me that the Board did not agree that the teacher aides were Grade B and that entirely different job descriptions would be drawn up if they were: *“They would then be asked to plan programmes for the students, take responsibility for other aides, and work in an unsupervised manner.”*

- [28] Ms Tait told me that she would only place a teacher aide on Grade B if they were directly controlling the learning process, supervising other teacher aides or creating a programme. I asked Ms Tait whether it would be correct to describe the planning of programmes and preparation of individual education plans (IEPs) as the work of a teacher and she agreed. She also conceded that this work would not be required of a Grade B teacher aide either. She then told me that she could not envisage a situation where one would ever grade a teacher aide “B.”
- [29] She described “close supervision” as where a teacher aide would not be left alone with a child for more than 10-15 minutes. Normal supervision, in contrast, might permit them to be alone for an hour to an hour and a half.
- [30] In submissions Ms Chilwell asserted:

“The first respondent does not attempt to downplay or belittle the role of the teacher aides. But it does say that they have exaggerated the level of skill, qualifications, experience and responsibility required for their positions...”

Determination

- [31] My task now is to ascertain the intention of the parties from the words of clause 3.6 and (in line with the Memorandum of Understanding) determine its application to the duties to be performed. Consistent with the words of 3.6.2 witnesses for both sides identified that the key factors in deciding whether a position was Grade B were the level of supervision and the knowledge skills and experience required, so I begin by considering those matters. I will then go on to compare the duties required of special needs teacher aides at Red Beach School to the examples provided in the clause. (There appears to be no dispute that the teacher aides are engaged in a range of duties so I need say nothing more about that.)

Supervision

- [32] The first issue here is what it means to supervise a position. The respondent argues that the work is to be supervised rather than the worker. According to this approach supervision means planning work and monitoring the results rather than overseeing its execution.
- [33] The union and its witnesses disagree, drawing a distinction between directing individuals in their work and supervising them in its performance. The union does not dispute that the special needs teacher aide positions are under the direction of the special needs teacher. (Indeed, it does not dispute that they are supervised, just that they are *closely* supervised.) The union says that to supervise a position is to supervise the holder of the position in the performance of their work.
- [34] Unless a teacher aide holds a limited authority to teach they must have some supervision from a teacher. Any such authority is personal to the holder. I am satisfied that the aides themselves are to be supervised and reject the school’s argument on this point.
- [35] The next question is whether the position of teacher aide is *closely* supervised. Grade A positions are closely supervised (clause 3.6.1) whereas Grade B positions are “*likely to involve periods without supervision.*” So Grade B positions will be supervised, but not closely or continuously.
- [36] The evidence is that special needs teacher aides are alone with students in a variety of situations: in the computer room, when assisting with toileting, and when escorting students to mainstream classes. In the mainstream classrooms teachers are physically present but may have

little or no involvement with the special needs child or the aide who is with that child. During each working day the teacher aide will need to make judgement calls on their own initiative (such as deciding to take a child out of the mainstream classroom or adopting appropriate strategies to manage behaviour issues.) There are thus periods when the teacher aide is without direct supervision. I am satisfied that the special needs teacher aides at Red Beach School are not closely supervised.

Knowledge, skills and experience

[37] Clause 3.6.2 refers to ‘*advanced*’ knowledge skills and experience. I accept Mr Kimble’s assertion that this means in advance of that required at Grade A.

[38] All the aides I heard from impressed me as being very skilled, knowledgeable and experienced and clearly needed to be to meet the demands of their roles. Some prior experience in a care giving role (paid or unpaid) appears essential for anyone employed to work as a special needs teacher aide.

[39] Special needs teacher aides are provided with training specific to their role (such as the autism and Crisis Prevention Institute training.) This training is neither required nor available to all teacher aides and through it the special needs aides acquire knowledge and skills which are in advance of those required for many other teacher aide positions. Further knowledge and skills are acquired as they familiarise themselves with and implement programmes designed by specialists such as speech and occupational therapists.

[40] I am satisfied that the duties of the special needs teacher aides at Red Beach School require an advanced level of knowledge, skill and experience.

Comparison with examples given in clause 3.6.2

[41] Ms Taute’s evidence shows that the aides provide feedback on student progress which is relied on by teachers in developing IEPs. Those who work in the mainstream classroom are responsible for its delivery there. In my view, this amounts to “*Support and contribution to teaching programmes and curriculum delivery, including work with students either individually or in groups which assists their learning.*”

[42] Ms Tait considered it relevant that the aides did not prepare IEPs. I disagree. This is the work of a teacher, not a teacher aide of any grade. Clause 3.6.2 requires only “support and contribution” to programmes and delivery. In a similar way she considered it relevant to note that the special needs teacher aides did not supervise other staff. However, only the Grade C definition refers to supervisory work.

[43] Ms Tait went so far as to tell me that she did not think there could ever be such a thing as a Grade B teacher aide. I conclude that she and the respondent are demonstrating a refusal to acknowledge that there is a step in the collective agreement between Grade A and Grade C (or for that matter, between Grade A and the level of the teaching staff.) Aides do not need to perform the work of teachers in order to meet the criteria for placement on Grade B.

[44] Ms Taute also acknowledged that special needs teachers aides need to be able to take responsibility for the administration of medication (where authorised to do so by parents) to administer CPR and to deal with seizures. Aides also implement physiotherapy programmes for students. Some of these situations arise infrequently and sometimes a teacher might be on hand to assist. Equally, however, they may not. The crucial point is that aides must be competent to

deal with them when they arise. I consider these requirements amount to “*contributing to and maintaining healthcare programmes.*”

[45] In submissions Ms Chilwell also argued:

“Even if the Authority should hold that a higher degree of knowledge and skill is required when working in mainstream, and/or this work is not supervised, the time in mainstream is less than half of the relevant teacher aides’ day. Here the second paragraph of clause 3.3.1 applies. The substantive part of the job falls within grade A and so the teacher aide is properly classified as grade A.

Alternatively, even if the Authority finds that those aides going to mainstream should be grade B (which is not accepted by the first respondent) there can be no doubt that the position of those who are based solely in the unit is closely supervised and does not require advanced knowledge, skills and experience.”

[46] I accept that the teacher aides who remain in the unit do not provide the same level of input into teaching programmes. However, they do assist with delivery and they have the same training and responsibilities in relation to student healthcare. In addition they may be in sole charge of children on occasions.

[47] I am satisfied that all the teacher aides in the Motuora unit have been incorrectly graded and are in fact working at grade B level.

Did the respondent’s refusal in or about August 2004 to regrade the teacher aides amount to an unjustifiable disadvantage?

[48] The respondent has been unable to justify its decision to place the aides on Grade A. Remuneration is tied to grading so this action has clearly disadvantaged them. **Since there has been an unjustified action to their disadvantage the aides will have a personal grievance.** It is now over to them and their union to decide what if any further action they wish to take on this issue, although I suggest to the parties that mediation might be the next appropriate step.

Fixed Term Issue

[49] At the time of my meeting with the parties the Motuora unit had a roll of 14, all funded on the basis (“ORRS’ or similar) under which funding is lost if the child leaves the school. (It may also be varied if a child’s level of need is reassessed.) No major changes are anticipated to the funding structure in the near future.

[50] The roll has been trending upwards for the past 3-4 years and has never dropped below seven students. Ms Tait told me that there are limited special needs places available for some distance around Red Beach so it is expected that there will continue to be a demand for places at the unit. The staffing of the unit has also been stable. As students have left aides have picked up the care of new children.

[51] However Red Beach School is not gazetted as a Special Needs school and so is not obliged to provide places to special needs children outside its zone. Because of space constraints the Board has decided that the optimum roll for the unit is 11 children and plans to let it fall to this level by attrition. (This is expected to happen by the end of 2005 as children go to high school.) The waiting list has accordingly been restricted and now sits between 2-and 4.

[52] The working party which considered the grading issue also considered this issue. The Joint Statement had this to say about it:

“Permanent or Fixed Term appointment

The board must decide if an ORRS funded teacher aide is to be appointed as either permanent or fixed term (i.e. the employment ends on a specified date, period or event, or on the end of a project. However any fixed term appointment must meet the requirements of s 66 of the Employment Relations Act (replicated in sub-clause 2.3.3 of the SSCA) which should be read carefully. In summary, before any position is offered as fixed term the school must have ‘genuine reasons based on reasonable grounds’ for why it is fixed term and notify the aide of these...a single ORRS funded student leaving may or may not be a genuine reason...

Some factors for consideration in determining employment status include:

- *Is there ongoing work for the teacher aide? If work from the loss of a funding associated with a student leaving will be reduced, can this be covered by a reduction in hours ...*
- *How are the children included in the school’s teaching programmes? Do the aides work with several children or with an individual?*
- *How many children funded through ORRS are in the school now, have been in the past and are projected to be in the future? How long do they generally remain in the school?*

[53] Marion Norton (former organiser for the applicant union) agreed that there might be circumstances where the departure of a special needs child from a school might be an event which could justify a fixed term in terms of section 66. For example, she thought this might be the case where a school which had no special needs unit employed one aide to work with one special needs child. However she said it was not necessary to keep the entire staff of a special needs unit on fixed term when that unit has a stable roll and a waiting list. In such circumstances children who leave will be able to be replaced.

[54] Mr Le Marquand, who gave evidence for the respondent, conceded that roll changes are easier to manage if there is a waiting list. Ms Hoetawa told me that she manages any fluctuation in the roll of her school by putting a small number on fixed term while the balance of the staff are offered permanent jobs. She further manages then situation by utilising the variation of hours provisions contained in the agreement as follows:

“2.4.2

The hours of work and the weeks per year of administrative and associate employees will be set by the employer in accordance with the requirements of the school...

2.5 Variation of Hours per Week and/or Weeks Per Year

2.5.1

- (a) *Except as provided for in 2.6, each time the hours of work and the weeks worked per year for administrative and associate staff are fixed by the employer, they shall be fixed by written advice to the employee for a minimum of twelve months. After consideration of 2.4.2 the employer shall give the employee not less than one month’s written notice of any variation in hours of work and/or weeks to be worked, prior to this variation coming into effect. Except in exceptional circumstances (e.g. where an employee is absent*

on long term sick leave) this notice shall be given at such a time as to ensure it covers a period during which the employer is paid and at work.

(b) Where the employer and employee agree the hours of work and/or the weeks to be worked may be varied during the twelve month period.

2.5.2

Where the variation referred to in 2.5.1 above involves either a reduction or an increase in hours per week and/or weeks per year, the notice period is to allow time for discussion between the employer and employee about the following:

- (a) reasons for the variation;*
- (b) Whether the variation can be avoided or lessened;*
- (c) In the case of a reduction in hours, whether that reduction can be absorbed by attrition;*
- (d) In the case of an increase in hours and/or weeks per year, whether that increase will create any difficulties for the employee;*
- (e) Whether in a reduction of hours there are alternative hours of work available in the school with terms and conditions no less favourable. This may involve retraining.”*

Determination

[55] The school’s reasons for entering into fixed term arrangements with its special needs teacher aides are, I accept, genuine. They relate to the fact that ORRS funding is tied to individual children and comes and goes with those individual children. Although the individual fixed term agreements are expressed to end on a particular date, and not to terminate upon the departure from the school of the child in the care of each aide, these grounds are well known to the aides.

[56] I am not however satisfied that these grounds are reasonable. The roll is stable and there is a waiting list. New children coming in to the unit require teacher aide assistance in similar ways to former students. It is accepted that the employer requires a degree of flexibility to manage roll fluctuations but this can be achieved through the application of the provisions for variation of hours.

[57] The circumstances prevailing at the Motuora Unit at Red Beach School do not fit the criteria of section 66 of the Employment Relations Act. **I deem the special needs teacher aides to have permanent employment.**

Costs

[58] Mr Robson should advise if and when the applicant union requires further assistance from the Authority in the resolution of this employment relationship problem. In the meantime, I reserve the issue of costs at this point. Either party should feel free to advise the Authority if it considers that I should proceed to determine the issue.