

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN New Zealand Amalgamated Engineering Printing and Manufacturing Union Inc (First Applicant)
AND National Distribution Union Inc (Second Applicant)
AND Northern Amalgamated Workers Union (Third Applicant)

AND Auckland District Health Board (First Respondent)
AND Transfield Services (New Zealand) Limited (Second Respondent)

AND Service and Food Workers Union Inc (Party appearing and being represented before the Authority)
AND Spotless Services (New Zealand) Limited (Party appearing and being represented before the Authority)

REPRESENTATIVES Helen White, Counsel for First and Third Applicants
David Fleming, Counsel for Second Applicant
David France, Counsel for Respondents

Tim Oldfield, Counsel for Service and Food Workers Union Inc
Shan Wilson, Counsel for Spotless Services (New Zealand) Limited

MEMBER OF AUTHORITY R A Monaghan

CONSIDERATION OF PAPERS 23 March 2006

DATE OF DETERMINATION 23 March 2006

DETERMINATION OF THE AUTHORITY

[1] This is an application under s 178 of the Employment Relations Act 2000 for the removal of an employment relationship problem to the Employment Court for hearing and determination.

[2] The problem concerns a dispute about the application of the Code of Good Faith in the Public Health Sector contained in Schedule 1B of the Act (“the code”). The applicant unions seek a determination that the code applies to certain work to be carried out for the Auckland District Health Board (“ADHB”). There is an associated application for interim orders restraining the ADHB and Transfield Services (New Zealand) Limited (“Transfield”) from recruiting other people to fill positions currently held at the ADHB by employees of Spotless Services (New Zealand) Limited (“Spotless”) who carry out the relevant work.

[3] This matter has been accorded urgency, so no statement in reply has been filed and there has been no referral to mediation. The Authority has, however, convened a conference call between the parties, and all advised that they do not object to the present application for removal.

[4] Both the Service and Food Workers Union (“SFWU”) and Spotless sought orders allowing them to appear and be represented in this matter. I ordered accordingly.

Background

[5] The following summary of facts is taken from the statement of problem.

[6] Spotless and the ADHB are parties to an outsourcing arrangement involving a facilities maintenance contract covering certain Auckland hospitals. The original contract, entered into in May 1996, was entitled ‘Agreement for Estate Services’ and defined ‘estate services’ as:

“the routine maintenance; breakdown (ready response) maintenance; grounds maintenance; equipment salvage; management of external service contracts and shift engineer services ...”

[7] Subsequently Spotless and the ADHB extended the term of the contract, and it is due to expire on 28 April 2006.

[8] The contract was put out to tender in October 2005. Although Spotless submitted a tender it was not successful. The contract was awarded to Transfield.

[9] Spotless employs 41 employees to provide services under the contract, comprising 18 members of the New Zealand Amalgamated Engineering Printing and Manufacturing Union Inc (“EPMU”) and two members of the Northern Amalgamated Workers Union (“AWU”). These groups are covered by a collective employment agreement. Six employees are members of the National Distribution Union Inc (“NDU”), and are covered by a separate collective employment agreement. A further 15 employees are employed under individual employment agreements.

[10] The SFWU has members employed under outsourcing contracts elsewhere, and believes those members will be affected by the outcome of the present problem.

[11] Both Spotless and the applicant unions believe the code applies to the work in question, so that the affected employees are entitled to be employed by the successful party to the tender on the same terms and conditions as applied immediately before the commencement of the contract.

[12] The ADHB and Transfield say that is not the case. Transfield is about to begin recruiting for the various positions. It has declined the unions’ request for undertakings to act in accordance with the code, and not to recruit employees to do the work of their members while this matter is resolved.

[13] At my request, and without purporting to limit the scope of the argument before the Court, the EPMU has provided the following indication of the questions it believes the Court will need to consider. I had sought a joint indication from the parties, but time constraints did not permit this.

- “1. Are the affected members of the Applicant Unions engaged in providing “services” to a district health board for the purpose of Clause 1(1)(e) of the Code of Good Faith in the Public Health Sector?
2. Does the Code of Good faith in the Public Health Sector apply to:
 - a) the affected membership of the Applicants?
 - b) the first respondent in its capacity as the recipient of services provided by affected membership of the Applicants?
 - c) the second respondent?

3. Does Clause 20 of the Code apply to the change in the provider of outsourced services from Spotless Services to the second respondent?
4. If Clause 20 of the Code does apply, what obligations do Clauses 20 and 21 impose on:
 - a) the first respondent?
 - b) the second respondent?
5. Does the affected membership of the applicant unions have an automatic right to be employed by the second respondent on their existing terms and conditions of employment?
6. If the affected membership does have an automatic right to employment by the second respondent, how is this affected by any arrangement by the second respondent to employ a third party to do the same work?
7. Do the term and conditions referred to in Clause 20 (2) include recognition of continuity of service for the purpose of service-related entitlements?
8. If the code applies to the affected members of the applicant unions but Clause 20 does not apply, when does the second respondent become bound by other aspects of the code, specifically clauses 4, 5 and 7?"

Determination

[14] I accept this matter is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court.

[15] Accordingly I order its removal.

R A Monaghan
Member, Employment Relations Authority