

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Service and Food Workers Union Nga Ringa Tota Inc (applicant)
AND	Auckland District Health Board and 19 Ors (respondents)
REPRESENTATIVES	Peter Cranney for the applicant Paul McBride and others for the respondents
MEMBER OF THE AUTHORITY	Denis Asher
SUBMISSIONS	Received by 18 January 2007
DATE OF DETERMINATION	1 February 2007

DETERMINATION OF AUTHORITY: Application for Removal

Employment Relationship Problem

1. In its statement of problem received on 19 December 2006 the Union says the respondents – district health boards and companies that provide cleaning and/or orderly and/or food catering services in various public hospitals (the names of whom are listed in schedules to the statement of problem) – are in breach of their statutory duty to support and conclude a multi-employer collective employment agreement (meca).
2. The Union also says important questions of law are likely to arise other than incidentally, specifically whether s. 33 of the Act requires the respondents to conclude a meca and

whether clause 6(1) of schedule 1B of the Act (the code) requires the respondents to support a meca.

3. The parties have attended mediation repeatedly.
4. No statements in reply have yet been received. A number of the respondents have in the meantime communicated with the Authority: to date some do not consent to the application for removal but none oppose it.
5. Mr Paul McBride, counsel for one of the respondents, OCS Limited, notes that if removed to the Employment Court then statements in reply will not be required whereas differently constituted statements of defence will be: he asks if the Authority is minded to remove the matter to the Court in advance of the filing of a statement in reply. That enquiry is supported by at least one other respondent.
6. Counsel for the Union, Mr Peter Cranney, proposes that statements in reply be filed prior to the Authority considering the application for removal, even if removal is unopposed. Various arguments are advanced by Mr Cranney in support of his client's request including the claim that the Employment Court will thereby know what matters if any, are disputed.

Findings

Removal

7. Section 178 of the Act provides that, where a matter comes before the Authority, any party may apply to it to have the matter removed to the Court.
8. The Authority may order the removal of the matter to the Court if, amongst other things, there is an important question of law that is likely to arise in the matter other than incidentally or the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court or the Authority is of the opinion that in all the circumstances the Court should determine this matter: s. 178(2).
9. I am satisfied this application meets all of these requirements. That is because the issue is novel, untested, central to the employment relationship problem and clearly raises important questions other than incidentally. It also involves a bargaining problem in an essential service as well as the promotion of productive employment relationships in the

public health sector in the context of every employer being a good employer by way of, and amongst other things, recognising and supporting the principles of the Treaty of Waitangi (clauses 5 & 7 of the code).

10. Finally I note that this application is sought and not opposed by senior employment law practitioners. This is a sensible position because, I imagine, they appreciate that – amongst other considerations – this employment relationship problem would almost certainly go to the Court notwithstanding any input by the Authority.

Waiver

11. Statements in reply for the Authority are not required as I am satisfied that statements of defence required by the Court will properly inform it, and the applicant (who is any way already aware, through repeated mediations, of the respondents' positions), of the respondents' positions while avoiding unnecessary costs through pointless double-handling: clause 8 of the Employment Relations Authority Regulations 2000 applied.

Determination

12. For the reasons set out above I find in favour of the Union's application for removal to the Employment Court. The respondents are not required to file statements in reply.
13. Costs are reserved.

Denis Asher

Member of Employment Relations Authority