Determination Number: AA 100/07
File Number: 5034933

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	New Zealand Nurses Organisation Inc
AND	Waikato District Health Board
REPRESENTATIVES	Nicola Bush, Counsel for Applicant Doug Alderslade, Counsel for Respondent
MEMBER OF AUTHORITY	Dzintra King
INVESTIGATION MEETING	12 October 2006
DATE OF DETERMINATION	2 April 2007

DETERMINATION OF THE AUTHORITY

The matter before the Authority is a dispute regarding the interpretation of the Northern Districts and New Zealand Nurses Organisation Multi Employer Collective Agreement ("the MECA") in relation to salary scales. The argument is about the date of implementation of annual increments for Registered Nurses and Midwives.

Prior to the MECA the Waikato District Health Board ("the WDHB") was party to a single employer agreement, the WDHB Nurses and Midwives Collective Agreement ("the CA"). Pursuant to that Agreement employees received salaries in accordance with a salary scale based on service. The only way staff could move through the levels was to complete the requirements of the respondent's Professional Development Programme and demonstrate that they had met the competencies required for a particular level. There were no automatic annual increments.

Other District Health Boards ("DHBs") all had different salary scale systems, some of which included annual increments. In 2002 the New Zealand Nurses Organisation Inc ("the NZNO" or "the Union") wished to negotiate a MECA with the WDHB and four other DHBs. There were lengthy negotiations and the MECA was not concluded until mid 2003 although the term of the document was from 1 July 2002 until 30 June 2005.

The Union and the WDHB, together with a number of other DHBs, subsequently entered into a national collective employment agreement, the District Health Boards/NZNO Multi-Employer Nursing/Midwifery Collective Agreement ("the National MECA"). The term of this document is 1 July 2004 to 31 December 2006.

It is agreed that one of the important aims of the negotiation for the MECA was to achieve a common salary scale ("the common scale"). This was achieved and it is set out at Clause 12 of the MECA which states that:

Individual DHB translations to this scale are attached in Appendix B and should be checked in the first instance to ensure correct placement of new employees

The common scale is attached to this determination.

Clause 12.1 sets out how the common scale would operate. Employees would move to the steps marked with an asterisk by automatic annual increments. Movement onto steps without an asterisk was contingent upon employees participating in the Professional Development Programme and obtaining and maintaining the relevant level of practice.

Appendix B is headed "Salary Translations and Transitional Agreements" and sets out the salary translations for each of the DHBs. The provision for the WDHB is attached to this determination. It sets out how staff would move from the existing salary scale to the new one and what the salary on the common scale would be at 1 July 2003 and at 1 July 2004.

There are separate provisions for the translation of Enrolled Nurses and Health Care Assistants. A significant difference between the Registered Nurse translation and those of the Enrolled Nurses and Health Assistants is that the two latter group translations contain a specific reference to the application of automatic increments whereas there is no such reference in the Registered Nurse translation.

The Union's position is that automatic increments should have taken place during the term of the document and that the increments were to be automatic anniversary based increments.

The respondent's position is that Appendix B meant that by 1 July 2004 all of the respondent's employees would be earning a salary equivalent to the salaries set out in clause 12, the common scale. At that stage, the provisions for annual increments set out in clause 12 would take effect so that a person, for example, a person on step 4 of the competent scale would automatically move to step 5 on the competent scale a year later on 1 July 2005.

The Law on Interpretation

Cases such Northern Distribution Union (Inc) v 3 Guys Ltd [1992] 3 ERNZ 903,906, Quainoo v NZ Breweries Ltd [1991] 1 NZLR 161, Principal of Auckland College of Education v Hagg [1997] ERNZ 116 set out the relevant principles.

In Godfrey Hirst NZ Ltd v National Distribution Union Inc, unrep, AC62/04, 27 October 2004, Colgan J stated that an objective approach to interpretation should be taken and that the issue was not what the parties intended but what a reasonable person would take the words in contention to mean. For that reason, evidence of what the parties thought or of earlier negotiations or drafts was inadmissible. He also stated that the point was that a final written agreement superseded pervious negotiations and drafts and that there was a sense in which the final agreement had a life of its own as it would be relied by people who were not party to the negotiations. At para 24 he said if the words were clear and could have only one possible meaning that should determine the matter.

In ASTE Inc v Hampton, Chief Executive of the bay of Plenty Polytechnic [2002] 1 ERNZ 491 Colgan J stated that one should first examine the words used and then the factual matrix or surrounding circumstances in order to ensure that the first impression of the meaning of the words is correct and that the circumstances do not necessitate any modification of the natural meaning of the words.

I was given evidence about the purpose of the negotiations, the course of the negotiations, what various people believed and thought and evidence of earlier drafts. Much of this I must disregard given the statements in the above cases and also in McLaren v Waikato Regional Council [1993] 1 NZLR 710 725 where Fisher J said at p725 that when a contract has been reduced to writing the Court was not entitled to consider antecedent acts or correspondence, or to look at words deleted before the conclusion of the contract except for the purpose of establishing what facts were within the mutual contemplation of the parties; and that the

Court could have regard to the precontract communications between the parties not for the purpose of ascertaining their intentions but to assist in ascertaining those facts which must have been within their mutual contemplation when the contract was entered into.

Decision

Interestingly, both parties assert that the words of the contract are clear yet they arrive at differing interpretations. I also think that the words are clear on the face of the document but I have also considered the factual matrix in order to test my view regarding the meaning of the words.

I have taken the agreed purpose of the negotiations regarding salaries into account. I have also taken into account that as part of the agreement the WDHB paid a $1,000 lump sum on 30 June 2003 to staff who were employed prior to or on 7 June 2003 and who received a salary increase of less than 10% over the term of the MECA. This tends to point to the correctness of the respondent's position because if the applicant's position were correct the amounts received would be higher and would have disentitled some recipients from receiving the $1000 payment.

The Union maintained that that there was no date in the MECA to indicate that the implementation would occur at some date than the date the agreement came into force. That is incorrect because clause 12 is clearly subject to the provisions of Appendix B and that makes it clear that translation to the common scale is only completed on 1 July 2004. It is the common scale that sets out the provision for automatic increments according to that scale. There is no provision in the MECA as far as the WDHB is concerned for automatic increments to occur before the attaining of the common salary scale apart from the provisions regarding automatic payments for Enrolled Nurses and Health Care Assistants.

Appendix B sets out the process whereby staff were to be translated to the common scale provided in clause 12. It is clear that the provisions of the clause 12 did not take effect from the date of the signing of the document or the coming into force of the document but that they were conditional upon the various translations that the DHB parties to the MECA had agreed upon.

The respondent's interpretation of the agreement is correct.

Costs

Costs were reserved. If the parties are unable to agree the respondent should file a memorandum within 28 days of the date of this determination and the applicant should file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member
Employment Relations Authority