

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA104I/08
5128879

BETWEEN THE NEW ZEALAND
NURSES' ORGANISATION
and SERVICE AND FOOD
WORKERS' UNION NGA
RINGA TOTA INC
Applicants

AND ELMWOOD HOUSE
PARTNERSHIP
Respondent

Member of Authority: G J Wood

Representatives: Jock Lawrie and Tim Oldfield for the Applicants
Gary Tayler for the Respondent

Submissions Due: 13 November 2008

Determination: 14 November 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] Following correspondence between the parties, the union applicants brought a claim against Elmwood House attempting to get it, together with many other respondents, to confirm its acknowledgement of the existence of bargaining and that it had brought this to the attention of its union employees and to duly notify representation for the purposes of the bargaining for a multi-employer aged care provider collective agreement.

[2] In its statement in reply, Elmwood House was concerned that it had twice written to the unions but had received no specific response, questioned whether the required secret ballot had been taken and noted that as far as it was aware it had no union members in its employ. It stated that until the unions engaged Elmwood House directly it could do nothing more and that it believed that the proceedings were an

abuse of process. After receipt of the statement in reply, the unions withdrew their claims against Elmwood House.

[3] Despite the fact that there has not even been a conference call on this matter, Elmwood House seeks costs for the filing of the statement in reply in the sum of \$708.75. In support of the application, Mr Tayler seeks costs on an indemnity basis because Elmwood House was unnecessarily put to the cost of having to file a statement in reply against allegations that should never have been made against it.

[4] This application is surprising because Mr Tayler successfully argued in *Perkins v. Pritchard & Sullivan* (unreported, G J Wood, WA119/08, 17 September 2008), where Mr Tayler was defending a claim for costs by a respondent in similar circumstances, that no costs should be awarded as it has *been a longstanding practice of both the Authority and the Court not to award costs in respect of mediation*. As I stated in that determination:

In respect of the costs of preparing a statement in reply, that is not something that necessarily requires legal representation. In any event, it is part of the cost of justice that the parties ought to meet themselves. Were costs to be awarded every time a respondent was required to file a statement in reply and/or attend mediation the system would not result in the reduction of the need for judicial intervention, or promote mediation as the primary problem resolving mechanism.

[5] Those comments are as applicable in this case as they were there. There is no evidence before me that the unions' claim was devoid of merit. They chose to withdraw upon receipt of the statement in reply, as is their right, and there is no evidence before the Authority that leads me to believe the application was pursued against Elmwood House other than in good faith.

[6] I therefore consider that it would be inappropriate to require the unions to contribute towards Elmwood House's costs. I therefore determine to dismiss Elmwood House Partnership's application.

G J Wood
Member of the Employment Relations Authority