

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 199/09
5290032

BETWEEN ALL NEW ZEALAND
DISTRICT HEALTH BOARDS
(As contained in Schedule 1)
Applicants

AND NEW ZEALAND RESIDENT
DOCTORS ASSOCIATION
INCORPORATED
Respondent

Member of Authority: G J Wood

Representatives: Peter Chemis and Andrea Pazin for the Applicants
Bill Manning for the Respondent

Investigation Meeting: Held on the papers

Submissions Received: By 14 December 2009

Determination: 14 December 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicants, the New Zealand District Health Boards (the DHBs), seek to have the employment relationship between themselves and the respondent, the New Zealand Resident Doctors Association Incorporated (the RDA), referred to the Employment Court under s.178(2)(a) and (b) of the Act.

[2] Given the urgency of the matter I have deferred addressing the issue of mediation until the Authority's determination on this application, and scheduled an investigation meeting on the problem for 22 December if the application failed.

[3] The important questions of law are said to relate to what is meant in s.42(2)(a) of the Act by a *union ... or its duly authorised representative* and in particular whether the RDA's General Secretary has the power to delegate the signing of initiation of bargaining notices and as to the effect of someone signing *pp* on her behalf. The applicants maintain that these are questions of law which have not previously been tested in the Authority or Court.

[4] The DHBs also consider that the 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. This is because the DHBs have issued their own notices to initiate bargaining and have sought a different structure of bargaining than that purportedly initiated by the RDA. In their view it is a matter of urgency for the basis of bargaining to be determined, particularly as this may impact on whether the current collective employment agreement will continue in force beyond its expiry date, 31 December 2009. The public interest test is said to be met by the fact that this involves all DHBs and that approximately 2,000 union members are involved.

[5] From the RDA's perspective the real issue is said to be the structure of bargaining and that this will be sorted out by the parties at bargaining. The RDA notes that novelty per se does not make a question of law important. The RDA also notes that the potential for challenge is not an important factor and that removal would deprive the parties of one right of challenge.

[6] The RDA also submitted that there is no immediate urgency to this case as substantial progress in bargaining is unlikely to occur before the end of January 2010 and that there is no apparent prospect of strike or lock-out action in the short term. The RDA also noted that the Authority could hear the matter before Christmas and issue a decision in January, whereas the Court might not be able to attend to the matter on such an urgent basis.

[7] The RDA also submitted that the Authority should not remove the matter, by using its residual discretion, because the Authority could deal with the matter expeditiously and issue a decision which the parties could reflect on, rather than risk a delayed hearing and judgment in the Employment Court.

[8] I am satisfied, as are the parties, that there is a question of law about the use of a pp signature to initiate bargaining, and that it is novel and therefore not previously determined.

[9] The question of law is, I conclude, important. In a case Mr Manning referred to, *Hanlon v. The International Educational Foundation (NZ) Inc.* [1995] 1 ERNZ 1 it was held:

It goes without saying that every question of law that needs to be resolved in the course of deciding a case is important in the sense that the fate of the case may depend upon the way in which the question of law is resolved. That is not enough by itself to render the question of law an important one for the purposes of s.94. On the other hand, a question of law will obviously be important if its resolution can affect large numbers of employers or employees or both, or if the consequences of the answer to the question are of major significance to employment law generally...

A question of law arising in a matter will be important if it is decisive of the case or some important aspect of it or strongly influential in bringing out a decision of it or a material part of it.

[10] That last passage is important, as the matter here will be resolved on the basis of the question of law raised by the DHBs. Given that the wider question is also one that has not been addressed before, any judgement may, when considering the requirements of s.42, also be important in assisting parties in bargaining generally, and thus have potential precedent value, as has resulted from other test cases heard in the Court in the past on these sorts of issues.

[11] I also accept that it is in the public interest for the matter to be removed, because it is in the parties' interests and accordingly health consumers' interests to have these bargaining issues determined as quickly as possible, but I do not accept that given that the fact that the Authority could deal with the matter next week, there is such urgency that it needs to be removed immediately to the Court.

[12] The public interest aspects, and the potential for implications over whether the current CEA will continue in force after expiry do, however, support the Authority's residual discretion being exercised in the applicants' favour.

Determination

[13] I therefore order the removal of the employment relationship problem between the DHBs and the RDA, filed in the Authority as 5290032, to the Employment Court for it to hear and determine without the Authority investigating the matter.

G J Wood
Member of the Employment Relations Authority

Schedule 1

Northland District Health Board

Waitemata District Health Board

Auckland District Health Board

Counties Manukau District Health Board

Waikato District Health Board

Bay of Plenty District Health Board

Lakes District Health Board

Tairāwhiti District Health Board

Taranaki District Health Board

Hawkes Bay District Health Board

Whanganui District Health Board

Mid-Central District Health Board

Capital and Coast District Health Board

Hutt Valley District Health Board

Wairarapa District Health Board

Nelson Marlborough District Health Board

West Coast District Health Board

Canterbury District Health Board

South Canterbury District Health Board

Otago District Health Board

Southland District Health Board
