IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 383/09
5121492

	BETWEEN	NEW ZEALAND NURSES ORGANISATION INCORPORATED Applicant
	AND	TE PUNA HAUORA O TE RAKI PAEWHENUA SOCIETY INC Respondent

Member of Authority:	Dzintra King
Representatives:	Jock Lawrie, Counsel for Applicant Lyvia Marsden, Advocate for Respondent
Determination:	30 October 2009

DETERMINATION OF THE AUTHORITY

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[1] The applicant, The NZ Nurses' Organisation Inc ("the NZNO" or "the union") has applied for the matter to be removed to the Employment Court. The respondent, Te Puna Hauora O Te Raki Paewhenua Society Inc ("Te Puna Hauora") opposes the removal.

[2] The NZNO has members employed on a nationwide basis by Maori and Iwi health providers. These people have previously been covered either by the Practice Nurses MECA, the Medical Receptionists' MECA, single employer collective agreements or individual agreements.

[3] NZNO held secret ballots with a view to initiating bargaining for a multi employer Maori and Iwi Health Care Provider collective agreement ("the MECA").

[4] The respondent refused to acknowledge receipt of the initiation notice. The NZNO sought compliance by the respondent with s 43 Employment Relations Act

2000. NZNO sent correspondence advising details of a number of hui to discuss the bargaining. The respondent failed to attend.

[5] NZNO wrote advising of the legal obligation to attend the MECA negotiations and to try to reach agreement. Notification was given of negotiation dates and the respondent was asked about representation. The respondent confirmed representation and the NZNO confirmed negotiation dates. The respondent put in apologies regarding the January dates scheduled and failed to attend the meeting scheduled for February. On 26 February the respondent advised the NZNO of its intention to withdraw from the negotiations. The NZNO challenged this withdrawal and the respondent failed to reply to the correspondence.

[6] The NZNO asked that the withdrawal be reconsidered and asked that mediation be agreed. The respondent declined both and failed to attend negotiation dates scheduled in March. Other negotiation dates have not been attended.

[7] The NZNO filed proceedings seeking a declaration that the respondent had failed to be active and constructive in establishing and maintaining a productive employment relationship, that it had failed to meet for the purposes of bargaining; and a compliance order requiring it to attend scheduled MECA negotiations.

[8] The respondent says that the NZNO has disregarded accepted Maori protocols of consultation at the beginning of the process with a Maori organisation, that the unique aspect that Maori have a treaty relationship with the Crown has been ignored and disrespected by the NZNO and that the Tikanga process of consultation with all sixty Maori organisations should have taken place individually taking into consideration that the target was specifically Maori. The respondent says that it is not challenging the law but the interpretation of the law by the NZNO with what it believes are deceptive intentions to force the respondent into a relationship with the NZNO. The respondent asks that the Authority rules that it can maintain the status quo and that the NZNO cease negotiations with other Maori providers until the culturally appropriate processes of engagement have been fulfilled with them.

[9] The NZNO says that the issue of whether a claim that a breach of the kaupapa of the respondent and of tino rangatiratanga constitutes a genuine reason, based on reasonable grounds, not to negotiate or conclude an MECA constitutes an important question of law likely to arise in the matter other than incidentally.

[10] Pursuant to s.178, subsections (1) and (2) provide:

> *(1) Where a matter comes before the Authority, any party may apply to the Authority to have the matter, or part of it, removed to the Court for the Court to hear and determine it without the Authority investigating the matter:*
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> *(2) The Authority may order the removal of the matter, or any part of it, to the Court if –*
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> *(a) An important question of law is likely to arise in the matter other than incidentally; or*
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> *(b) 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*
>
> *(c) The Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*
>
> *(d) The Authority is of the opinion that in all the circumstances the Court should determine the matter.*

[11] A question of law will be important *"if it is decisive of the case or some important aspect of it or strongly influential in bringing about a decision of the case or a material part of it:" Hanlon v. International Educational Foundation (NZ) Inc* [1995] 1 ERNZ 1 at 7.

[12] An application for removal is considered in three steps. First, whether there is a question of law arising other than incidentally; secondly, whether the answer to the question is likely to be decisive or strongly influential in deciding the case or an important part of it; and thirdly, where the statutory test for removal is satisfied, whether there are nevertheless any relevant factors in the particular case that are good and sufficient reasons for the Authority, in the exercise of its discretion, not to order removal.

[13] There is a question of law arising other than incidentally. The issue of whether a failure to abide by the respondent's cultural practices constitutes a reason not to conclude bargaining is an important question of law The answer to the question will be strongly influential in deciding the case.

[14] There is little likelihood of resolution of the matter between the parties themselves. A determination made by the Authority is likely to be challenged given the importance of the issues of the parties.

[15] The matter is to be removed to the Employment Court.

Dzintra King
Member of the Employment Relations Authority