

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 260/09
5275144

BETWEEN CORRECTIONS
 ASSOCIATION OF NEW
 ZEALAND
 Applicant

AND CHIEF EXECUTIVE OF THE
 DEPARTMENT OF
 CORRECTIONS
 Respondent

Member of Authority: Marija Urlich

Representatives: James Roberts, Counsel for Applicant
 Karen Spackman, Counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 3 and 4 August 2009

Determination: 4 August 2009

DETERMINATION OF THE AUTHORITY

[1] CANZ and Corrections seek, by way of joint application, removal to the Employment Court of this employment relationship problem filed in the Authority on 30 July 2009. The grounds upon which this application is made are that an important question of law is likely to arise in the matter other than incidentally and the case is of such a nature and of such urgency that it is in the public interest that the matter is removed immediately to the Court.

[2] By agreement of the parties the removal application is to be determined on the papers. The Authority has received written submissions regarding the removal application.

Employment Relationship Problem

[3] CANZ says the commissioning of double bunked prison cells is in breach of the applicable collective employment agreement.

[4] Corrections say the operating capacity protocols as agreed between the parties enables double bunking. It denies there is any basis for the asserted breaches.

The application for removal

[5] The relevant statutory provisions state:

178 Removal to Court

(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.

(2) The Authority may order the removal of the matter, or any part of it, to the Court if –

- (a) an important question of law is likely to arise in the matter other than incidentally;
- (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;

...

[6] It is submitted on behalf of CANZ that this employment relationship problem raises important questions of law which flow from the interpretation and application of the applicable collective employment agreement:

- (i) the important question of law concerns whether double bunking of prisoners satisfies conditions set out in the collective employment agreement concerning prisoner accommodation;
- (ii) this matter concerns four prisons which may be extended to other prisons in the future and interpretation of the collective agreement has ramifications for all CANZ members;
- (iii) the determination of this question of law is likely to be decisive of the case;

(iv) the Employment Court is the highest authority to decide the on construction of a collective employment agreement¹.

- [7] In regard to the public interest and urgency of this matter it is submitted:
- (i) prisoner accommodation has a high level of public interest;
 - (ii) projected prisoner numbers have brought this question into sharp relief for Corrections;
 - (iii) an urgent and authoritative determination of this question is needed to allow appropriate planning for future prisoner numbers;
 - (iv) construction of newly commissioned prisons will not cease pending determination of this matter; and
 - (v) the health and safety of those working in prisons and the humane accommodation of those imprisoned is of considerable public interest attracting close media attention.

[8] In the interests of expediency I have not summarised Ms Spackman's submissions other than to say they largely concur with those of Mr Roberts.

Determination

[9] The statute provides that the Authority is to determine matters at first instance and should generally do so unless it is satisfied that one of the removal criteria is met and that it is appropriate given the Authority's residual discretion for it to remove the matter.

[10] The resolution of the posed questions of law is central to this employment relationship problem. The question of law is important to the parties and concerns a important provision of the applicable collective agreement with the potential to affect large number of employees of a significant public institution. I accept that this matter has a high level of public interest and that the urgent resolution of this issue is desirable.

¹ Section 214 Employment Relations Act 2000

[11] It is appropriate that I should exercise my discretion and remove this matter to the Employment Court. Accordingly I order the removal of this matter to be heard and determined by the Court.

[12] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority