

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 85/10
5162612

BETWEEN NEW ZEALAND PUBLIC
 SERVICE ASSOCIATION
 INCORPORATED
 Applicant

AND CHIEF EXECUTIVE OF
 INLAND REVENUE
 DEPARTMENT
 Respondent

Member of Authority: G J Wood

Representatives: Peter Cranney for the Applicant
 Susan Hornsby-Geluk for the Respondent

Investigation Meeting: 14 November 2009 and 23 March 2010 at Wellington

Determination: 4 May 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is effectively a dispute between the applicant (the PSA) and the respondent, the Chief Executive of the Inland Revenue Department (IRD) over the interpretation and operation of its collective employment agreement. Indirectly it potentially affects a large number of IRD staff who are covered by the agreement. However the issue before the Authority relates to eight PSA members who, following a restructuring exercise by IRD, accepted new positions under the management of change provisions in the collective agreement. The key issue is whether or not the salary range for these new jobs remains set by the existing range and midpoint to the affected staff's old positions, given a failure to agree to the midpoints and ranges set

for the new positions by the IRD, or whether IRD (although having grand-parented the salary midpoints for the affected staff) can review their salaries against the new salary midpoints, which are lower.

The Facts

[2] In 2009 IRD restructured its Business Systems Management and Applications team in the Information Technology business group. As a result, sixteen PSA members were offered new positions, that IRD believed were provided for in the Collective Agreement as *suitable alternative positions*, known as Service Support Analysts (Senior Level). The positions were not covered in Appendix 2 to the collective agreement, which provides the salary midpoints and ranges for all positions covered by the collective agreement. Nor had the salary ranges subsequently been agreed to by the PSA, as could be provided under the remuneration system part of the collective.

[3] Furthermore, the midpoint and range of the salaries are significantly below those that the affected PSA members were already earning. Inland Revenue agreed to grand-parent the salary of those staff, but in terms of their annual salary review they would be assessed against the salary midpoint and range it had determined for the new positions. Thus the employees will only get a pay rise after the midpoint grows to the level of their old position. While the IRD considers that its approach is consistent with the collective agreement and the new positions are now covered by the collective (and that it has dealt with the affected staff in a more generous manner than that required), the PSA claims that IRD must get its agreement on the salary levels of any new positions and that it does not agree to the level set for these workers.

[4] The eight PSA members involved in these proceedings agreed to the offer of the new positions by way of a mediated settlement. They only accepted the positions, however, on the basis that it was *without prejudice to any entitlements that the Employment Relations Authority find should have applied in relation to the midpoint review issue, which forms part of the matter between the PSA and the IRD*.

[5] The terms of the collective agreement are therefore vital in determining the answer to this employment relationship problem. In the latest collective agreement the parties, for the first time, introduced a schedule (set out in the Appendix 2) of salary midpoints and ranges. Clause 8.2 of the collective agreement covers

remuneration and clause 8.2.1 makes it clear that there was a new remuneration system that was being progressively introduced during the term of the collective. Clause 8.2.3 provides for that new remuneration system and clause 8.2.4 sets out how remuneration system decisions are made:

8.2.3 New Remuneration System

The new remuneration structure has two parts:

- *A salary midpoint is established for a given position; and*
- *A salary range around this midpoint.*

Progression through the range will be linked to the Performance Management System. The performance management system establishes a Job Expectation for each position and measures an employee's performance against the job expectation. The job expectation describes what is expected from a fully competent performer in terms of outputs, deliverables, core and technical competencies.

Inland Revenue will establish the job expectation for a position in consultation with the relevant staff. Job expectations will be reviewed regularly. Where a job expectation requires substantive change it will be resized.

For all positions, the midpoint of the new salary range will be aligned with the job expectation. This means that employees will progress through to the midpoint of the range based on the degree to which they meet the job expectation for their position. Progression beyond the midpoint occurs when employees exceed the job expectation for their position.

Each employee's salary will be reviewed at least annually or on request.

Details of the salary midpoints and ranges for positions that fall within the coverage of this agreement, applicable as at the commencement date (7 February 2007), are set out in Appendix 2 of this agreement. These rates may be varied by agreement between the parties during the currency of this agreement, and therefore the current rates at any time will be those set out in the Inland Revenue Human Resources intranet site e-version of the Collection Agreement.

8.2.4 How Remuneration System decisions are made

A joint Inland Revenue – PSA Remuneration Forum will:

- *ensure that the salary midpoints reflect the principles underpinning the remuneration provisions of this Collective Agreement.*
- *review relevant remuneration market information and salary midpoints annually.*
- *develop and agree a staged plan to update the rates of pay for positions covered by the Collective Agreement in the department.*

- *negotiate, develop and agree recommendations to the Chief Executive and PSA members on when positions will move to the new remuneration system, salary midpoints and ranges, and any consequential translation arrangements.*
- *use a problem solving process and work to achieve consensus outcomes at all times.*
- *regularly review and update the processes used by the Forum to ensure the Forum is operating as intended.*

PSA members affected by their movement to the new remuneration system, or the review of salary ranges and midpoints, will be asked to endorse the recommendations from the Forum. This endorsement process will be consistent with the PSA remuneration ratification procedure.

If the Forum's recommendations are not endorsed by either party, the Forum will reconvene to consider the reasons for the non endorsement and develop a further recommendation(s) taking into account the reasons for the non endorsement.

[6] Appendix 2 is titled Salary Midpoints and Ranges, and commences with a note that states:

These rates are applicable as at the commencement of this agreement, however they may be varied by agreement between the parties during the currency of the Collective Agreement. Employees should refer to the e-version of the Collection Agreement for current rates, available on the Inland Revenue Human Resources intranet site.

[7] Clause 10 is entitled Management with Change and deals comprehensively with how change will be developed and implemented. The following relevant extracts state:

10. Management of Change

10.1 Introduction

Change is an integral part of ensuring the achievement of Inland Revenue's mission. Sometimes this change has implications for employees in their jobs. Each change situation needs to be managed in a way that achieves the Government and Department's required outcomes and ensures that employee's needs are recognised, and their rights and entitlements are observed.

These provisions provide a framework for managing change that occurs when:

- *changes are being made to organisational structures; or*
- *employees' positions no longer exist; or*
- *the nature of the work employees do is significantly different;*
or
- *changes to the location of position[s] need to take place.*

10.2 Principles

The primary focus of these management of change provisions is to retain employees in jobs while effecting organisation change. This will be achieved through the maximum utilisation and development of the skills and experience of current employees and maintaining Inland Revenue's ability to achieve its required outcomes.

The best management of change outcomes will be achieved through involving employees and the PSA in the identification of the need for the change, the actual change that is required and the implementation of that change in a way that is consistent with the Inland Revenue/PSA Partnership Agreement and the consultation/participation clause of this agreement (Clauses 3.1 and 3.2)

[8] Clause 10.4.2 covers employees whose positions are affected by change, which is said to occur, amongst other things, where the job description/expectation is not the same or not very nearly the same, or the salary or grade is not the same.

[9] Clause 10.5.4 provides for an equalisation allowance. It states:

If the salary applying to the position which an employee is offered and accepts ... is less than that which applied in their former position, they will be paid an equalisation allowance.

[10] The level of this allowance is basically set according to length of service with IRD.

[11] It is also relevant that the Collective Agreement followed bargaining and agreed terms of settlement between the PSA and IRD. These terms cover remuneration rates in clause 2.5. That clause states:

Inland Revenue and the PSA have agreed that the salary midpoints and ranges for positions that fall within coverage will be included in the Collective Agreement by way of an appendix. This appendix:

- (a) *will be referred to in remuneration provisions section of the Collective Agreement.*
- (b) *will be updated quarterly to reflect any changes to midpoints and ranges agreed by Inland Revenue and the PSA, and midpoints and ranges for any new positions established during the previous quarter.*
- (c) *will be accessed by the e-version of the Collective Agreement which is available on the Inland Revenue Human Resources intranet site.*
- (d) *The updated appendix will be sent to the PSA each quarter.*

Analysis

[12] In essence this dispute is about whether or not the PSA's agreement is required to set the salary midpoint and salary for the new positions affecting its members here. I conclude first that the remuneration system clauses can be read to cover only existing positions, as well as being able to be read to cover existing positions and new positions, so are ambiguous.

[13] The agreement covers the implementation of a new system, so the Forum would have had many bedding in issues to deal with, but those were completed before the issues in this matter first arose. On the other hand, clause 8.2.3 does state that rates may be varied by agreement, which implies that IRD can not set rates unilaterally. Similarly, clause 8.2.4 provides no *circuit breaker* if the parties can not agree on matters that come before the Forum, such as reviews of salary ranges and midpoints, which implies agreement is required. By contrast, it can be argued that only existing rates need to be varied by agreement under clause 8.2.3 and that IRD has sole responsibility, subject to consultation, to establish the job expectation (and by implication the salary range) for any position. It can also be argued that clause 8.2.4 has no application to new positions.

[14] For the reasons given below I conclude that IRD's position involves a better interpretation of the agreement. I interpret the management of change provisions as effectively a code that allows IRD, following consultation, to establish new positions if this better helps achieve Inland Revenue Department's mission, even if such changes have implications for employees and their jobs (as per clause 10.1).

[15] The fact that there is an equalisation allowance provided for where employees have been placed into a suitable alternative position is consistent with that approach. Similarly, if the PSA's argument was correct then clause 10.4 (dealing with the identification of staffing positions affected by any change) could only operate where employees were shifting from one established position to another established position, which is inconsistent with the thrust of the management of change provisions.

[16] Furthermore, the terms of settlement to the Collective Agreement are more consistent with a two tiered approach to remuneration, namely there being a difference between existing positions and new positions under the Collective Agreement, because of the difference (in clause 2.5(b)) between the quarterly update

to reflect any changes agreed to midpoints and ranges, and the quarterly update to reflect any new positions established in that quarter. The latter clearly implies that IRD can establish such positions of its own prerogative, without agreement.

[17] Finally, while employers and employees can agree to any restriction on what would otherwise be an employer's ability to manage (particularly under the auspices of the collective agreement), if the PSA's interpretation was held to be the correct one then the IRD could never establish new positions without the PSA's agreement. This is inconsistent with the thrust of the Management of Change provisions. I also note in this regard that this is not an argument that the PSA has ever advanced before.

[18] It follows from this analysis that IRD is entitled (having elected to grandparent the affected staff's salaries, rather than pay them an equalisation allowance, which is to the workers' benefit) to assess their salaries against the midpoints and ranges of the new positions, rather than the old ones.

[19] For all the above reasons I therefore dismiss the PSA's application against the Chief Executive of the Inland Revenue Department.

Costs

[20] Costs are reserved.

G J Wood
Member of the Employment Relations Authority