

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 280
5345593**

BETWEEN

AUCKLAND DISTRICT
HEALTH BOARD
Applicant

AND

ASSOCIATION OF
PROFESSIONAL AND
EXECUTIVE EMPLOYEES
(APEX)
Respondent

Member of Authority: R A Monaghan

Representatives: Peter Chemis, counsel for applicant
Bill Manning, counsel for respondent

Determination: 28th June 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Auckland District Health Board and APEX are parties to a multi-employer collective agreement (MECA) which came into effect on 7 September 2010 and expires on 6 April 2012.

[2] The parties have disputed the application of certain clauses in the MECA to a group employed as student radiation therapists while they were studying, and who were offered positions as radiation therapists after the successful completion of their studies. Employment as a student radiation therapist was subject to a standard letter of offer and a standard fixed term agreement ending one month after notification of graduation results. Employment as a radiation therapist was also subject to a standard letter of offer and a written agreement.

[3] The hours of work provisions in the agreements for student radiation therapists and radiation therapists respectively differed. Among other things an issue arose over

whether further and express agreement to differing hours of work was required under the MECA.

[4] The Auckland District Health Board asked that the problem be resolved by the making of the following determinations:

- a. that when the student radiation therapists accepted the offers to be employed as radiation therapists they agreed to work flexi-start times;
and
- b. as a consequence of this, their further agreement to work flexi-start times is not required under clause 3.4 of the MECA ie their agreement given at the outset met the requirements of clause 3.4

[5] APEX said it does not oppose the application.

[6] I therefore make the determination set out at [4] above.

R A Monaghan

Member of the Employment Relations Authority