

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 663
3173886

BETWEEN	NEW ZEALAND NURSES ORGANISATION INCORPORATED First Applicant
AND	THE PUBLIC SERVICE ASSOCIATION TE PUKENGA HERE TIKANGA MAHI Second Applicant
AND	TE WHATU ORA HEALTH NEW ZEALAND Respondent

Member of Authority: Helen Doyle

Representatives: Peter Cranney, counsel and Lisa Heap, advocate for the First and Second Applicants
Victoria Casey KC, Susan Hornsby-Geluk and Megan Vant, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: Application dated 12 December 2022 from the respondent
Memorandum on behalf of first and second applicants dated 13 December 2022

Date of Determination: 14 December 2022

DETERMINATION OF THE AUTHORITY

Application for interim orders

[1] The respondent seeks an interim order from the Authority fixing rates and directing remuneration for prior work, pending final determination of the application by the first and second applicants in their second amended statement of problem dated 17 October 2022.

[2] In their second amended statement of problem the first and second applicants seek determinations under s 13ZY(d)(i) and (ii) of the Equal Pay Act 1972 for the fixing of pay equity remuneration and rates and a review process to ensure that pay equity in respect of remuneration rates is maintained for the future.

[3] The first and second applicants do not oppose the application for the making of interim orders fixing rates and directing remuneration for prior work.

[4] They have made some comments to matters in the application that I have set out.

Agreement in principle

[5] The respondent seeks that the commitments made by the employer in the agreement in principle signed by the parties on 22 December 2021 should be implemented on an interim basis, pending resolution of this claim.

[6] The applicants asked the Authority to remove the reference to the agreement in principle from appendix one and appendix two attached to this determination. The Authority considers it is important that it is clear where the interim rates are taken from. It suffices to set out the different views about the agreement in principle and that the interim orders are subject to final determination.

[7] The applicants say they disagree with the description of the agreement in principle as a “commitment made by the employer.” The applicants say that the document was subject to “numerous conditions, most of which were not satisfied, and it has no legal effect.” The applicants view is that the underlying methodology was non-compliant with the Equal Pay Act 1972 and the sums referred to were based on outdated comparative remuneration information.

Basis for the application

[8] The respondent made the application in recognition that it is now clear to all parties that the investigation process that the unions have initiated by asking the Authority to fix rates, is going to take longer than the nursing workforce had contemplated. The respondent considers that the nursing workforce should not be prejudiced by the resulting delay in receiving the benefits of the agreement in principle that the employer committed to.

[9] The first and second applicants do not accept that the Authority process is going to take longer than the nursing workforce contemplated and say the matter can and should be promptly resolved.

Power to make interim orders under the Equal Pay Act 1972

[10] The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including matters under the Equal Pay Act 1972 as set out in s 161(qd)(i) to (viii) of the Employment Relations Act 2000 (ERA).

[11] The Equal Pay Act 1972 does not contain express provision for interim orders by the Authority.

[12] Under s 157 (2)(b) and (c) of the ERA the Authority must in carrying out its role aim to promote good faith behaviour and support successful employment relationships. Making interim orders by consent in this matter is consistent with those provisions. There will be benefits in doing so for employees of the respondent who are members of the first and second applicants. I have further had regard to the powers of the Authority in s 160 of the ERA and in particular s 160(1)(f) of the ERA to follow whatever procedure the Authority consider appropriate.

[13] Neither party has suggested that the interim orders consented to infringe s 157(3) in respect of the relevant multi-employer collective agreement. I do not conclude from the application and appendices that they do.

[14] The parties in this matter consent to the interim orders. The Authority has the power to make such interim orders by consent in appropriate cases. This is such a case.

Orders made by consent

[15] The Authority makes the following interim orders by consent:

- (a) Rates are to be fixed at the level set out in Appendices One and Two described as rates from 7 March 2022.
- (b) The rates are to be paid as soon as feasible in terms of the respondents pay roll systems. This may take two to four months given the payroll administration implications of the upcoming holidays.

- (c) There is to be recovery of remuneration for past work in accordance with s 13ZZD of the Equal Pay Act 1972 as follows:
 - (i) There is to be backpay on the rates to 7 March 2022.
 - (ii) There is to be a lump sum payment of \$10,000 to each employee less the \$7,000 advance payment already made to members of the applicants.
 - (iii) The above payment is to be a pro-rata payment by FTE, and by service for those employed by the employer and its predecessor DHBs for less than 26 months prior to 7 March 2022.
 - (iv) The lump sum will be deducted from any other order for backpay or remuneration for past work relating to the pay equity claim that the respondent may otherwise be directed to pay.
- (d) These interim orders are made and will take effect entirely without prejudice to the applicants' substantive pay equity claims and application.
- (e) The respondent agrees that regardless of the outcome of that application, it will not seek clawback of any amounts paid or payable in accordance with these interim orders.

Helen Doyle
Member of the Employment Relations Authority

Appendix One

Agreement in Principle remuneration rates outlined below:

Registered and Community Nurses	Agreement in Principle rates (from 7 March 2022)
Step 7	\$95,340
Step 6	\$92,563
Step 5	\$89,868
Step 4	\$80,883
Step 3	\$76,554
Step 2	\$72,061
Step 1 (New Graduate)	\$66,570

Enrolled, Obstetric, Karitane Nurses and Nurse Assistants	Agreement in Principle rates (from 7 March 2022)
Step 5 (new)	\$73,609
Step 4	\$71,300
Step 3	\$68,990
Step 2	\$63,980
Step 1	\$61,146

Health Care Assistants and Hospital Aides	Agreement in Principle rates (from 7 March 2022)
Step 5	\$61,540
Step 4	\$59,748
Step 3	\$58,689
Step 2	\$55,011
Step 1	\$51,770

Mental Health Assistants	Agreement in Principle rates (from 7 March 2022)
Step 5	\$65,334
Step 4	\$63,431
Step 3	\$59,487
Step 2	\$54,976
Step 1	\$50,741

Designated Senior Nurse Salary Scales	Agreement in Principle rates (from 7 March 2022)
Grade 1	\$95,576
(Formerly grade 3)	\$99,253
	\$106,016

Designated Senior Nurse Salary Scales	Agreement in Principle rates (from 7 March 2022)
Grade 2 (Formerly grade 4)	\$101,089 \$104,765 \$111,695
Grade 3 (Formerly grade 5)	\$106,601 \$110,282 \$117,373
Grade 4 (Formerly grade 6)	\$110,282 \$113,956 \$121,161
Grade 5 (Formerly grade 7)	\$113,956 \$117,632 \$123,628
Grade 6 (Formerly grade 8)	\$120,028 \$126,529 \$133,032 \$143,718

Nurse Practitioner	Agreement in Principle rates (from 7 March 2022)
Grade 6 (Formerly grade 8)	\$120,028 \$126,529 \$133,032 \$143,718

Appendix Two

Existing MECA scales alongside Agreement in Principle remuneration rates

Registered Nurses / Mental Health Inpatient Nurses	Existing MECA rate	Agreement in Principle rates
Step 7	83,186	\$95,340
Step 6	80,932	\$92,563
Step 5	78,745	\$89,868
Step 4	71,452	\$80,883
Step 3	67,938	\$76,554
Step 2	64,291	\$72,061
Step 1 (New Graduate)	59,834	\$66,570

Enrolled, Obstetric, Karitane Nurses and Nurse Assistants	Existing MECA rate	Agreement in Principle rates
Step 4	62,847	\$71,300
Step 3	61,185	\$68,990
Step 2	57,133	\$63,980
Step 1	54,432	\$61,146

Health Care Assistants and Hospital Aides	Existing MECA rate	Agreement in Principle rates
Step 5	53,803	\$61,540
Step 4	52,405	\$59,748
Step 3	51,579	\$58,689
Step 2	48,710	\$55,011
Step 1	46,182	\$51,770

Mental Health Assistants	Existing MECA rate	Agreement in Principle rates
Step 5	60,610	\$65,334
Step 4	59,014	\$63,431
Step 3	55,705	\$59,487
Step 2	51,921	\$54,976
Step 1	48,368	\$50,741

Community Mental Health and Public Health Nurses	Existing MECA rate	Agreement in Principle rates
Step 8 (PSA)	89,512	\$95,340
Step 8 (NZNO)	88,757	\$95,340
Step 7	84,793	\$95,340

Step 6	83,243	\$92,563
Step 5	78,745	\$89,868
Step 4	71,452	\$80,883
Step 3	67,938	\$76,554
Step 2	64,291	\$72,061
Step 1	59,834	\$66,570

Designated Senior Nurse Salary Scales	Existing MECA rate	Agreement in Principle rates
Grade 2	85,560	\$95,576
	87,122	\$99,253
	91,175	\$106,016
Grade 3	92,687	\$95,576
	96,030	\$99,253
	102,178	\$106,016
Grade 4	97,669	\$101,089
	101,041	\$104,765
	107,341	\$111,695
Grade 5	102,710	\$106,601
	106,056	\$110,282
	112,053	\$117,373
Grade 6	106,056	\$110,282
	109,396	\$113,956
	115,946	\$121,161
Grade 7	109,396	\$113,956
	112,738	\$117,632
	118,189	\$123,628
Grade 8	114,916	\$120,028
	120,826	\$126,529
	126,738	\$133,032
	136,453	\$143,718

Nurse Practitioner	Existing MECA rate	Agreement in Principle rates
Grade 8	114,916	\$120,028
	120,826	\$126,529
	126,738	\$133,032