



CONSULT ON CHANGES TO AVOID TROUBLE

When a school principal undertook a review of management units and reallocated some of them, two staff brought personal grievances alleging they were disadvantaged by the changes. The principal's actions, although well-intentioned, caused the college liability. Paul Robertson warns it is important to take advice before making important employment decisions.

THE GOOD FAITH OBLIGATION

to consult with employees when management units within a school are reallocated has been highlighted in a recent decision of the Employment Relations Authority.

In 2011, the incoming principal of a South Island College faced many challenges. One was that staff had, for historical reasons, been allocated additional payments to reflect management and similar responsibilities.

The allocation of these management units was now out of sync with the responsibilities of the staff members involved.

The principal undertook a review and reallocated the units. Two members of staff brought personal grievances alleging that their management units had been allocated on a permanent basis, there had been a failure to consult with them over the changes, and they had been disadvantaged.

FIXED TERM/PERMANENT

Pursuant to the collective employment agreement,

management units can be fixed term—either in time or in relation to a project—or permanent. The school held few records about the allocation of the management units and so their status was unclear.

After reviewing the collective, the Authority held that in the absence of documents confirming that the units were for a fixed term, they were logically of indefinite duration and hence were permanent.

CONSULTATION?

The teachers argued strenuously that the process adopted by the college was flawed. Their initial complaint was that the decision was unjustified given the management responsibilities that they held. They also said that the college had breached its duty of good faith by not consulting with the teachers.

The teachers gave evidence that they found out about the reallocation of the management units after the decision had been made. One found out about the

change only when her salary was reduced. They were not told how the management units had been reallocated.

The Authority concluded that the college had reallocated the management units with the genuine intention of ending disparities and to reflect current workloads and responsibilities.

It appears that there was general discussion with staff about reallocating the units, but individuals were not spoken with.

The good faith requirement of the Employment Relations Act applied to the reallocation of the units. In breach of the good faith requirement, the teachers affected were not consulted. They ought to have been told about the proposed changes and given an opportunity to comment.

REMEDIES

The Authority member found that the teachers had been disadvantaged and he upheld their personal grievances. He directed that:

- a) The units should be reinstated

with retrospective effect including payment of all money due;

- b) Interest was paid on the sums that should have been paid;
- c) Superannuation contributions linked to the units were to be made; and
- d) The teachers should receive \$5000 each for hurt, humiliation and distress.

THE MORAL

The well-intentioned actions of the principal to more fairly allocate management units unfortunately caused the college liability. This decision emphasises the need to document decisions affecting staff, and to take advice before making important employment decisions.



Thornley v Marlborough Boys College Board of Trustees [2015] NZERA Christchurch 31

PAUL ROBERTSON is a partner at Heaney & Partners in Auckland. Visit: www.heaneypartners.com

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PAUL ROBERTSON | Partner: direct dial: (09) 367 7004 email: paul.robertson@heaneypartners.com www.heaneypartners.com
Phone: (09) 3030 100 Fax: (09) 3677 009 Level 26, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503