

HSE / IMPACT (CD/10/360)

Recommendation 5th May 2010

Having considered the submissions of the parties the Court recommends as follows in relation to each of the matters in dispute.

Industrial Action

The Union should immediately agree to cease any form of industrial action which is having the effect of preventing or limiting the provision of key financial data to the HSE Board and its CEO and the Department of Health and Children.

Framework Agreement

The Framework Agreement concluded between the Interim Health Service Executive and IMPACT in January 2005 provides significant protection for employees of the former bodies whose functions were transferred to the HSE, including employees of former Health Boards. It is a collective agreement in the normal industrial relations sense but it also goes further than most collective agreements in that it is intended to have legal effect by implying its terms into the individual contracts of employment of HSE employees to whom it relates. The Framework Agreement must be read in conjunction with the provisions of Section 60 of the Health Act 2004, which also provides protection to staff transferred to the HSE by that Section.

The Union is understandably concerned to ensure that the basic fabric of the agreement is maintained notwithstanding changes in the circumstances since its conclusion. The Framework Agreement is not time-bound and therefore will continue to have full force and effect unless and until it is terminated by agreement between the Union and the HSE. Moreover, as is clear from the text of the Framework Agreement, its terms can only be amended by a subsequent collective agreement by which both parties are bound including any agreement affecting the entire Public Service.

For the avoidance of any doubt the HSE should acknowledge that the Framework Agreement continues to have the status and standing referred to above.

The current dispute arose in the context of concerns in relation to the impact which the proposed Public Service Agreement 2010 – 2014, if ratified, will

have on the terms of the Framework Agreement. It is clear from a perusal of the terms of the Public Service Agreement 2010-2014 that certain provisions of the Framework Agreement will require adaptation so as to render them compatible with that Agreement if ratified.

It is a matter for the parties to make the necessary adaptations, which should be confined to modifications to the provisions of the Framework Agreement referred to hereunder. The adaptations should go no further than is necessary in order to bring the Clauses referred to into line with the requirements of the Public Service Agreement 2010-2014, if ratified.

Clauses requiring adaptation

- Clause 6 - Location
- Clause 11- The Approach to Change
- Clause 13 – Structures. Reporting Relationships and Shared Services Developments
- Clause 15 – Recruitment & Selection for Appointment and Promotion
- Clause 16 – Education Training and Development
- Clause 24 – Bi-lateral Meetings
- Clause 27 – Common Recruitment Pool
- Clause 31 – Employment Ceilings
- Clause 32 – Outsourcing
- Clause 35 – Procedures

The process of making the necessary adaptations should be undertaken by the parties immediately following acceptance of this Recommendation and completed within a period of not more than one week. In the event of disagreement on any aspect of this exercise the matter should be referred back to the Court for final adjudication, which the Court will undertake without the necessity for a further hearing.

The Framework Agreement as adapted should then continue as a collective agreement with its status, as described in this Recommendation, unaltered.

Standardisation of Terms and Conditions of Employment

It is noted that Clause 1.8 of the Draft Public Service Agreement 2010-2014 provides, in effect, that there will be, to the greatest extent possible, standardised terms and conditions of employment across the Public Service. In the context of the implementation of this provision, the Public Health Service should be deemed to include those Bodies whose staff are encompassed by the Public Service Pension Levy and / or the Financial Emergency Measures in the Public Interest (No.2) Act, 2009.

The HSE and relevant Trade Unions should engage in a process of seeking to standardise conditions across the Public Health Sector, as so defined. This process should also address any residual issues relating to the application of Clause 14 of the Framework Agreement.

This process should commence immediately following ratification of the Public Service Agreement 2001-2014 and conclude not later than 30th September 2010. If final agreement is not reached outstanding matters may be referred back to the Court for investigation and recommendation.

Performance Management

The Court notes that Management do not have a difficulty with the Union's position on this matter.

Outsourcing

The Court notes that Management do not have a difficulty with the Union's position on this matter.

Premium Pay

The Court notes that Management do not have a difficulty with the Union's position on this matter.

Existing Joint Processes

The Court notes that there is no substantial disagreement between the parties on this matter.

Outstanding Agreements / Recommendations

There should be further engagement between the parties on this matter with a view to reaching agreement

Trade Union Representation

The HSE should take such steps as are necessary in order to continue the current arrangements regarding the release of IMPACT representatives.