

----- Forwarded by Ciaran O'Neill/entemp on 26/01/2011 16:27 -----

RECOMMENDATION
(RECOMMENDATION NO. LCR19988)

Note: You are now editing this document.

Employer Party on Rec:HSE South (St Senans Hospital)

Worker Party on Rec: PNA

|-----|
| () Draft |
(*) Final

Date Finalised: 26/01/2011 Date Issued: 26/01/2011
Confidential: No Embargo: 02/02/2011

Division

Chairman: Mr Hayes

Employer Member: Ms Doyle

Worker Member: Mr Shanahan

Date of hearing: 20/01/2011

Court Secretary: Sharon Cahill

CD/11/36 RECOMMENDATION NO. LCR19988
(CCc-099009-10)

INDUSTRIAL RELATIONS ACTS, 1946 TO 2004
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HSE SOUTH (ST SENANS HOSPITAL)

- AND -

PNA
SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION
IRISH MUNICIPAL, PUBLIC AND CIVIL TRADE UNION

DIVISION :

Chairman : Mr Hayes
Employer Member : Ms Doyle
Worker Member : Mr Shanahan

SUBJECT:

1. Lack of Consultation with Unions in Drawing up Re-Configuration Plans

BACKGROUND:

2. The case before the Court concerns a claim by the Unions on behalf of their members in relation to the alleged lack of consultation with regards to the restructuring of the Waterford/Wexford Mental Health Services. The Unions contend that Management did not adequately consult with them on the drawing up of re-configuration plans and the plan for implementation despite having a considerable amount of time to do so. The Unions further assert that under the terms of the Public Service Agreement 2010-2014, Management are required to consult with the Union group on the drawing up of plans for the re-structuring of the Mental Health Services and on the implementation of same. Management dispute this and maintain that under the terms of the Public Service Agreement 2010-2014 and under the terms of previously binding agreements, consultation with Unions is not necessary until plans have been drawn up and a timeframe for implementation has been agreed. The dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on 14th January 2011, in accordance with Section 26(1) of the Industrial Relations Act 1990. A Labour Court hearing took place on the 21st January 2011.

UNION'S ARGUMENTS:

3.
 1. The Unions are not disputing the contents of the re-configuration plans however they are disputing the manner in which plans for implementation have been delivered to them.
 2. The Unions contend that Management has acted in breach of the terms of several agreements with regards to the lack of consultation on the Management side.

3. Despite the impending deadline for the commencement of implementation of the plans, the Unions are currently seeking the opportunity to express their views and to have an input into the decision making processes surrounding implementation.

EMPLOYER'S ARGUMENTS:

4.
 1. Under the terms of the Public Service Agreement 2010-2014 Management contends that they were not required to consult with the Unions on the initial drawing up of re-structuring plans however every effort was made by Management to consult with the Unions with regards to the implementation of the plans.
 2. Management contends that ample opportunities to engage and consult were offered to the Unions but the Unions did not take these up at any stage.
 3. Management must adhere to the strict guidelines for the implementation of the re-structuring plans as set down by the Mental Health Commission.

RECOMMENDATION :

The Court has carefully considered the position of all parties to this dispute.

The Court notes that all parties agreed that the matter was before the Court under the terms of the Public Service Agreement 2010 – 2014. All parties advised the Court that, in accordance with the terms of that agreement, they agreed to be bound by the Court's Recommendation.

In early 2010 the Mental Health Commission issued a closure order on two acute admission units within St Senan's hospital. As a result the Approved Centre Registration of St Senan's Hospital is due to expire on 28th February 2011.

Consequent upon the order the HSE decided to take the opportunity to accelerate the implementation of the 2006 Vision for Change policy document and proceed with the establishment of the Extended Catchment Area that covered the combined Waterford and Wexford Mental Health Service. All parties advised the Court that extensive discussions had taken place, and substantive agreement had been reached, on these matters at the relevant time.

On 15th April 2010, the Hospital Manager, Wexford Mental Health Services, issued a memo to all staff that contained the following commitment

“ In the coming weeks we will develop a plan to meet the instructions of the MHC and we will revert to you with the plan in advance of submission. We have to have this completed and sent to the MHC by the end of May. Following this we will work with you to implement it.” (emphasis added)

The HSE established a committee to “develop a plan.” A further letter was sent to various trade union representatives on May 5th 2010 by Ms Stephenie Lynch, Dr Liam Watters and Mr Kevin Plunkett that contained the following commitments

“ As advised at that time, a draft plan to meet the instructions of the Mental Health Commission is now being developed. When details of this plan are available it will be discussed with staff. At this time there has been no further developments in relation to this plan”. (emphasis added)

A further memo was issued by the Hospital Manager dated 26th July 2010 that contained the following statements

“Finally in relation to the acute wards, St. Clare’s and St. Anne’s a plan is currently being devised under the chair of the Executive Clinical Director Dr. Noel Sheppard and will be finalised in September. Once this plan is agreed with the Health Services Executive for both manpower and funding it will be circulated to all staff groups. In addition once this plan is agreed then a number of sub groups will be established to devise plans of how services will be operationalised to fulfil this plan”. (emphasis added)

After the HSE had approved the plan and undertook to provide funding local management met with the unions on December 15 2010, at which the plan was presented. It appears that a misunderstanding occurred at this meeting. The unions stated that they were advised that the plan was non negotiable whilst management stated the opposite.

The net effect of this misunderstanding was that each side became entrenched and valuable time was lost whilst the issue was processed through procedures.

Having reviewed the matter the Court is satisfied that the process set out by the Hospital Manager in her letter of April 15th to the effect that she would revert to the staff after it had been drafted and before it was submitted to the HSE and by Ms Stephenie Lynch, Dr Liam Watters and Mr Kevin Plunkett on 5th May 2010 where they indicated that they were developing a draft plan and that when it was available it would be discussed with staff, complies with the provisions of the Public Service Agreement 2010 – 2014.

The commitment to consult with staff in the development of plans as well as on their implementation is central to the Public Service Agreement 2010 – 2014; the Health Service Information and Consultation agreement of September 2006 and Improving our Services: The HSE Guide to Managing Change in the Health Services of July 2008. It is also central to the partnership approach to effecting change in the Public Service.

Equally the Court is of the view that both parties must conduct the consultative process in good faith. On the one hand the obligation to consult does not provide the parties to be consulted with a right of veto nor with a means of delaying the implementation of change. Neither can the party undertaking the consultation render it nugatory by turning it into an empty process of formal compliance with procedure.

Both parties must recognise that the Public Service Agreement provides guarantees in respect of pay and security of employment in return for co-operation with measures designed to transform public services. Both parties must also recognise that they have committed to realising these objectives through partnership in a climate of industrial peace. Consultation with staff on all aspects of the proposed transformation of the public services is central to ensuring that this is realised in an efficient and effective manner.

Where agreement cannot be reached between the stakeholders the unions have accepted that “management have the right to implement changes in accordance with the provisions of this Agreement.” Furthermore staff have agreed to “co-operate with the changes” while the issue is processed through procedures.

Applying all of the above to the instant case the Court recommends as follows: -

- For the future management and unions should recognise that the transformation program envisaged in the Public Service Agreement requires that all parties continue to engage meaningfully with each other on both the drafting and the implementation of all aspects of proposed plans rather than adopt entrenched positions that tend to obscure rather than clarify the issues in dispute and ultimately result in delay and resistance rather than timely and co-operative implementation of change.
- That the reference of issues to 3rd parties be used as complementary to direct discussions on other substantive issues rather than as an alternative to them.
- That both parties recognise that the requirement to consult is contained in the agreement to facilitate change and not to delay or frustrate it.

Equally the consultation must be meaningful and genuine and not simply an empty procedural technicality to comply with the provisions of the Agreement.

- The parties advised the Court that not all aspects of the plan are subject to the strict time constraints imposed by the Order of the Mental Health Commission. Accordingly the Court recommends that management separate these two aspects of the plan and proceed to implement them as set out below.
- Management should identify the specific measures contained in the Plan that are necessary to give effect to the instructions of the Mental Health Commission and the Unions should co-operate with and participate in all of the processes that are necessary to ensure that they are in place and operational on or before February 28th 2011.
- In addition management and unions should simultaneously engage, in a meaningful manner, on the remainder of the Plan with a view to identifying any adjustments or amendments that may arise and that are appropriate and can be accommodated to meet the concerns of the staff. This process should be completed within two weeks of the date of this recommendation.
- Thereafter the parties should engage intensively on the steps that are necessary to give effect to the measures set out in the revised plan. This process should be substantially completed within six weeks of the date of this recommendation.
- Thereafter management should proceed to implement the plan in accordance with whatever agreements emerge from these processes.
- Where issues remain outstanding after six weeks have elapsed the parties should have recourse to the agreed industrial relations processes.
- Where the relocation of staff arises the provisions of the Public Service Agreement 2010 – 2014 shall apply.

- The unions should co-operate with the implementation of all changes set out in the plan and process all outstanding matters through the relevant procedures in accordance with the terms of the Public Service Agreement.

Given the timescale involved and the volume of work that needs to be completed by both sides the Court recommends that the parties consider utilising the services of an independent chair to assist them through this process.

The Court so recommends.

Signed on behalf of the Labour Court

26th January 2011
SC

Brendan Hayes

Deputy Chairman

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Sharon Cahill, Court Secretary.

Edit History:	Rev.	Editor	Edit Date
	10.	Sharon Cahill/entemp	26/01/2011 15:25:25
	9.	Sharon Cahill/entemp	26/01/2011 15:18:32
	8.	Sharon Cahill/entemp	26/01/2011 14:52:13
	7.	Sharon Cahill/entemp	26/01/2011 11:16:10

* Only past five edits are shown

Email Disclaimer:

http://www.deti.ie/corporate/it/e-mail_disclaimer_text.htm?
