

Guidance for DHBs and Unions regarding the

Passing On of Union/DHB negotiated terms and conditions of employment to non union members.

February 2016

The implementation of ‘Passing on’ has caused some confusion within DHBs as they are not sure what they are supposed to do. These guidelines give both the unions and DHBs a set of principles to follow when implementing “Passing On”.

**DHBs have an interest in ensuring all staff working in the same roles are on the same terms and conditions.**

Consistent interpretation and application of employment agreements across an employee group is made more efficient through the application of the same terms and conditions.

It is operationally inefficient and a potential barrier to effective functioning of teams for employees employed in similar roles and in the same workplace, to have different terms and conditions of employment e.g. hours of work.

The advantage offered by collective agreements in providing the same terms and conditions of employment is an example of the benefit collectively organized labour provides to the employer. Whilst recognizing the rights of employees on IEAs to negotiate in good faith with their employer, the ability to base an offer on one already settled with similar workers, is likewise an advantage to the employer.

**It is equally legitimate for Unions to want to ensure terms and conditions are not automatically passed on to non-Union members.**

Union members’ resource the negotiation of terms and conditions of employment through their membership fees and by collective activity in support of the negotiation. The passing on of those terms and conditions is perceived to be unfair in that those employees, to whom the negotiated terms and conditions are passed on, contribute no resource to that process (free loading) but still gain the benefits. This in turn tacitly encourages non union membership and inevitably undermines union activity.

**NBAG Role**

The purpose of NBAG includes:

* Promote productive and effective workplace relationships; and
* Improve decision making and inter party co operation; and
* Provide a forum for dispute / problem resolution.

NBAG is also charged with giving oversight of agreed processes for resolving individual and collective union and DHB issues that have national relevance.

Given the legitimate interest both parties have in the matter of passing on and the potential to create disharmony in the employment relationship including disputes, it is appropriate NBAG provide bipartite advice to assist manage the issue.

**Principles to be followed by bargaining teams in bargaining re Passing On**

The purpose of presenting a principle based approach to a ‘Passing On’ agreement recognises that the matter of ‘Passing On’ of all/some of a Union negotiated CA settlement to non Union members is a legitimate concern for Unions and for DHBs as employers.

The parties in bargaining should seek a resolution that confers no advantage to those who have not participated in the collective bargaining, whilst responding to the employer’s desire for consistency.

It is recommended that ‘Passing On’ concerns be discussed in bargaining and form a mutually agreed resolution in that process, including the detail of the “what” and “when” will be passed on. This may include:

* 1. The application of a bargaining fee;
  2. Time delay’s in the passing on of monetary improvements;
  3. One off terms or conditions that apply solely to those participating in CA bargaining;
  4. Recognition of the benefit gained through collective settlements, and the role of unions in this process.