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Meaning of Consultation (Appendix 5)

Appendix 5: Meaning of Consultation

The views in *Wellington International Airport* [1993] 1 NZLR 671 (CA) were adopted by Goddard CJ in *Communication and Energy Workers Union v Telecom NZ Ltd* [1993] 2 ERNZ 429, an application for an interim injunction. The Chief Judge restated (at pp 455-456) several propositions as a guide to employers and employees:

“(1) The word ‘consultation’ does not require that there be agreement.

“(2) On the other hand it clearly requires more than mere prior notification.

“(3) If there is a proposal to make a change, and such change requires to be preceded by consultation, it must not be made until after consultation with those required to be consulted. They ‘must know what is proposed before they can be expected to give their views’ ...

“(4) This does not involve a right to demand assurances but there must be sufficiently precise information given to enable the person to be consulted to state a view together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.

“(5) The requirement for consultation is never to be treated perfunctorily or as a mere formality. The person or body to be consulted must be given a reasonably ample and sufficient opportunity to express views or to point to problems or difficulties...

“(6) Consultation must be allowed sufficient time...

“(7) Genuine effort must be made to accommodate the views of those being consulted; consultation is to be a reality, not a charade...

“(8) Consultation does not necessarily involve negotiation towards an agreement although this not uncommonly can follow as the tendency in consultation is to seek at least consensus;

“(9) Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses, and then deciding what will be done...

“(10) The party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh...

“(11) There are no universal requirements as to form or as to duration of consultation.

“(12) Consultation cannot be equated with negotiation in the sense of a process which has, as its object, arriving at agreement.”