

PC:BJM

16 December 2011

Derek Best
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NZ Professional Firefighters Union

By Hand

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Dear Derek

EXPIRED COLLECTIVE AGREEMENTS

1. We refer to your request for a brief summary of the law as relates to member rights under expired collective agreements.
2. It is a requirement of the Employment Relations Act 2000 (ERA) that each collective agreement contain an expiry date. The collective agreement specifies an expiry date of 31 December 2010.
3. Although the collective agreement is specified to expire on that date, provisions of the ERA operate to effectively nullify an expiry date in some circumstances. Section 53 provides that if bargaining was initiated by the union before the collective agreement expired for the purpose of replacing it, the collective agreement continues in force for a period not exceeding 12 months, provided bargaining continues during that period. These requirements are met, and the consequence is that the effective expiry date of the collective agreement is 31 December 2011, not 31 December 2010.
4. We turn now to the consequences of the collective agreement no longer being in force after 31 December 2011. While a collective agreement is in force, new employees are required to be offered the terms of the collective agreement for the first 30 days of employment: s62(2)(v). Further, any union member performing work covered by an in-force collective agreement is required to be employed on the terms of the collective agreement: s56(1). Finally, it is unlawful to engage union members on terms inconsistent with those contained in the collective agreement. None of those requirements will apply after 31 December 2011.
5. In practical terms, however, nothing should change. The position of your members after expiry is that they will continue to be bound by the terms of the collective agreement, but as individual terms.
6. Some employers adopt an adventurous approach on the expiry of a collective agreement by seeking to employ new staff on inferior conditions or by seeking to entice individual

union members away from their existing terms. We consider it unlikely the Commission will attempt such tactics, particularly in light of the fact that negotiations are ongoing. If such steps are taken there are likely to be grounds of legal challenge and industrial action could also be added to.

7. Please be in touch if you need assistance.

Yours faithfully
OAKLEY MORAN

A handwritten signature in black ink, appearing to read 'P. Cranney', written in a cursive style.

Peter Cranney