

NEWSLETTER TO MEMBERS No 32 – 17 DECEMBER 2010

FIRE SERVICE HARASSMENT OF UNION OFFICIALS – FIRE SERVICE CASE STRUCK OUT

Further to NTM No. 13 -

The Fire Service has suffered its third defeat in its relentless pursuit of two members (Jeff McCulloch and Boyd Raines) following a dispute in 2008.

Two separate High Court judges have agreed with the Union that because the employer's complaint arose from or was related to a strike, the proceedings should never have been issued in the High Court. Any complaint should have been raised in the Employment Court. This is important, because it allows the Union to argue in the Employment Court what was in fact the case – namely, that its actions were entirely appropriate and justified, and the strike action involved (a ban on acting up) was justified on health and safety grounds.

Now the Employment Court (Chief Judge Colgan) has agreed with the two High Court judges, and the employer's proceedings are currently at an end in the High Court.

The matter can go no further unless and until new proceedings are issued by the employer in the Employment Court.

It remains to be seen whether the employer will continue to waste public money by appealing the latest judgment to the Court of Appeal.

One interesting feature of the Employment Court judgment was to direct the employer to attend mediation with the Union to address the real issue in the dispute if the Fire Service decides to refile in the Employment Court – that is, whether the strike action was genuinely based on health and safety.

Thousands of dollars of public money has been wasted by the Fire Service on completely misguided harassment, through improper legal means, of Local officials and of course the cost to the Union is also very significant.

Link to the Court case available.

BARGAINING

Further to NTM No. 29, attached/below are the Agreed Parameters for Bargaining.

6 December 2010

AGREED PROCESS FOR COLLECTIVE BARGAINING

PARTIES TO BARGAINING:

BETWEEN: **The N.Z. Professional Firefighters Union (Inc)**
(The Union)

AND: **The Chief Executive of the New Zealand Fire Service**
on behalf of the
New Zealand Fire Service Commission

(The Fire Service)

1. PREAMBLE

- a) The parties acknowledge that these negotiations follow a collective agreement entered into for the period 1 January 2009 to 31 December 2010.
- b) The parties have committed to commencing bargaining within the 40 day period prior to expiry of the current collective agreement.
- c) The parties acknowledge that a final settlement is dependent on agreement being reached on all key issues.

2. AUTHORITY TO BARGAIN

- a) The parties to the bargaining recognise the authority of the respective bargaining teams in representing their relative constituents. The parties agree that all discussions that form part of the negotiation/bargaining will occur between the parties' nominated representatives, detailed below. All approaches to the other party will be made through the party's named bargaining team.

- b) The representatives and advocates for the parties are as follows:

New Zealand Fire Service

- Paul Baxter, Fire Region Manager
- Brian Butt, Fire Region Manager
- Larry Cocker, Employment Relations and HR Services Manager
- Kerry Gregory, Area Manager
- Janine Hearn, Director Human Resources
- Brendan Nally, Area Manager
- Brett Warwick, Chief Financial Officer

The New Zealand Professional Firefighters Union

- Steve Warner - President
- Derek Best - Secretary
- Peter Hallett - Vice-President
- Peter Nicolle - Committee Member
- Jim Ryburn - Committee Member
- Mike Powell - Committee Member
- Ian Wright - Committee Member
- Shane McGrail - Committee Member
- Denis Fitzmaurice - Committee Member

- c) Within 14 days of the commencement of negotiations the Union will provide to the Fire Service a list of the names of the individuals they are acting for in the bargaining. If there are any changes to the list of names during the course of the bargaining, the Union will, as soon as practicable, notify the Fire Service of those changes. If the Fire Service is made aware of any possible changes, the Fire Service will notify the Union forthwith.

3. RATIFICATION AND SIGNING PROCEDURES

- a) The NZPFU acceptance of any proposed settlement agreement shall require ratification by NZPFU members. The NZPFU will advise the NZFS of the ratification parameters that must be achieved in order to sign any proposed Collective Agreement.

- b) The NZFS acceptance of any proposed settlement agreement shall require approval by the Chief Executive and the New Zealand Fire Service Commission.
- c) The parties will agree a timeframe for the ratification process and a timeframe for the payment of new pay rates and any other payments associated with the settlement of the collective agreement, at the conclusion of bargaining.
- d) The parties will also agree the level of detail that will be provided to members on any payments made, at the conclusion of bargaining.

4. BARGAINING PRINCIPLES

Bargaining will be undertaken in good faith. The parties to the bargaining commit:

- a) To conducting the bargaining in an orderly, effective and efficient manner, and in accordance with this Agreement.
- b) To conducting the bargaining through their bargaining teams.
- c) To meeting regularly as provided in this Agreement and to work together to achieve a Collective Employment Agreement. The parties note that they shall not be required to meet about proposals that have previously been considered and responded to.
- d) To providing information, on request, that is reasonably necessary to support or substantiate claims or responses to claims made for the purpose of bargaining.
- e) To considering and responding to proposals made by the other party within a reasonable period in order to progress the bargaining. Where a proposal is not accepted, the party not accepting the proposal will explain the basis for that non-acceptance.
- f) To giving the other party a full opportunity to present its views and to considering and responding to those views.
- g) To working together to identify, where there are areas of disagreement, the barriers to agreement and giving further consideration to their respective interests in light of any alternative options put forward.
- h) To recognising the authority and role of the other party's bargaining representatives.
- i) To not undermining or doing anything that is likely to undermine the bargaining, or the authority of the other party to the bargaining.
- j) To not offering take-it-or-leave-it demands at the commencement of bargaining.
- k) To not going through the motions of bargaining with no real intention of reaching an agreement.

- l) To not tabling a new proposal or revoking an existing offer without a compelling reason. Such reasons will be disclosed to the other party.
- m) To not tabling a proposal that is inflammatory with the deliberate intention of provoking a breakdown in bargaining.
- n) To not bargaining directly or indirectly about matters related to terms and conditions of employment with persons other than those persons designated as members of the parties' bargaining teams, unless the parties agree otherwise.

5. COMMUNICATION PRINCIPLES AND PROCEDURES

The parties agree that the following communication principles and procedures will be followed during bargaining:

- a) Each party will disclose its initial and subsequent bargaining positions and responses to the other party through its representatives and on the basis that at and during the bargaining there will be "no surprises" as to a party's position.
- b) Proposals from each party will be presented to the other party before they are presented in any other permissible way (for example, through agreed statements).
- c) During bargaining, the parties agree to keep any and all information surrounding the bargaining process, including any proposals, confidential to the parties.
- d) At the completion of each bargaining session, the parties will identify and document "key messages" for any communications.
- e) Both parties agree to provide each other with advance notice of communications, where possible, to allow for comment and discussion before proceeding.
- f) The parties agree to comply with all relevant legislation relating to communications during bargaining.
- g) Where possible, the parties agree to provide each other with advance notice of communications with media to allow for prior comment or discussion. However, the parties acknowledge that the nature of media communications may result in little or no notice or the subject matter evolving while media communications are occurring. The parties commit to managing such situations in good faith.

6. PROCESS FOR BARGAINING

- a) The parties agree to meet as set out in the attached schedule. The venue for negotiations will be agreed in advance and will generally be arranged by the Fire Service.
- b) The parties will agree an agenda in advance of each bargaining day.
- c) The parties will agree a written record at the end of each bargaining day, of what has been agreed in the course of that day.
- d) The parties commit their best endeavours to advancing negotiations with a view towards ratification of a Collective Employment Agreement as soon as possible following the expiry of the current Agreement on 31 December 2010

7. EXCHANGE OF INFORMATION

- a) In the course of bargaining, the parties may identify that there is relevant information that would assist the parties in reaching agreement.
- b) If a party identifies areas where additional relevant information is required, that party shall request the information in question under Section 34 of the Employment Relations Act. Requests for and provision of such information must be made in good faith and shall not be used as a mechanism for stalling the negotiations.
- c) Where information is provided under Section 34, the receiving party shall give due consideration to that information, and will maintain the confidentiality of any information provided by the other party that is considered by the party releasing the information to be confidential or sensitive for commercial or other good reasons.
- d) Where a party wishes to refer information to an independent reviewer, the parties shall use their best endeavours to reach agreement on the identity of the independent reviewer.

8. SUPPORT FOR BARGAINING AND RATIFICATION

- a) Members of the Union's bargaining team who would be on duty on the day of an agreed meeting will be given time off work for these shifts. If due to travel time from the negotiations to their home district, it is not possible for a member of the negotiating team to attend work on the night shift immediately before or after the meeting, then the Fire Service will approve additional leave. The Union must advise the Fire Service in advance of any request for leave to enable the Fire Service to advise local management.
- b) To assist in the progress of ratification, the Fire Service will provide paid leave for a nominated union official or officials to conduct member meetings. This assistance will be limited to no more than a total of eight shifts and a request must be made to the Fire Service in advance setting out the names and times of any shifts for which leave is being requested.

9. AUTHORITY TO ENTER INTO AGREEMENT AND LIMITS OF AUTHORITY

- a) At least one member of each bargaining team will have the authority to settle at the table. Settlement at the table means agreement in principle to what is proposed. This authority is exercised in consultation with the respective offices of the NZPFU and the NZFS.
- b) Each party acknowledges that the other bargaining team does not have the absolute authority and cannot commit themselves to unilaterally declare a concluded agreement as binding. Settlement is therefore "in principle" until a ratification vote by NZPFU members has been carried out, and the Chief Executive of the NZFS has approved the settlement.

10. PROCESS TO APPLY WHERE AGREEMENT CANNOT BE REACHED

- a) If agreement cannot be reached in the course of bargaining the parties will discuss ways to address this, including consideration of the extent to which setting aside the point of disagreement could still leave the parties with an overall settlement agreement sufficient to meet their joint interests.
- b) If bargaining ceases to make progress then the parties will, prior to giving notice of, or taking, industrial action, attend mediation providing that the mediation can occur within a reasonable timeframe (a reasonable timeframe would normally be considered to be 14 days). The parties will agree on the mediation service and mediator to be used, and on the issues to be discussed.

11. CORE TERMS AND CONDITIONS

- a) The NZPFU recognises that the New Zealand Fire Service seeks to maintain the unity of the staff within NZFS through maintaining similarity in core terms and conditions of employment between union and non-union staff.

- b) The NZFS recognises that the role of the NZPFU in the workplace and in bargaining needs to be reflected in the outcomes of bargaining so that union members are not disadvantaged and collective bargaining is promoted.
- c) The NZFS will not offer the terms and conditions of any Collective Employment Agreement agreed through bargaining by way of an Individual Employment Agreements without genuine bargaining. The NZFS and the NZPFU agree that the condition of genuine bargaining is met if the Fire Service formally offers an employee an Individual Employment Agreement in writing and that employee accepts the Agreement in writing.

12. APPLICATION OF THIS AGREED PROCESS FOR COLLECTIVE BARGAINING

- a) This agreed process shall bind the parties to this agreement.
- b) Where a party believes there has been or may be a breach of this agreed process or of the obligations of good faith set out in the Employment Relations Act, or any applicable Code of Good Faith issued pursuant to the Act, the party shall, wherever practicable, notify the other party of their concerns at an early stage so as to enable the defaulting party to remedy the situation or provide an explanation for the action or inaction in question.

Signed by Fire Service and Union

NEW PLYMOUTH MEMBERS' INJURIES

The New Plymouth Local reports that Both Sam and Graeme are progressing well at this stage, with Sam returning to normal duties just prior to Christmas.

The Local also expresses a concern that there appears a common perception that the actions leading up to the incident, in particular Command & Control, Entry Control and Pump Operation failures were carried out by the professional firefighters at New Plymouth, when this is not the case.

The NZPFU members present at the fire were under the command and control of a volunteer CFO within the Volunteer District.

N.Z.P.F.U.