

UNDER THE EMPLOYMENT RELATIONS ACT 2000
IN THE EMPLOYMENT RELATION AUTHORITY
AT WELLINGTON

No

**BETWEEN NEW ZEALAND PROFESSIONAL
FIREFIGHTERS' UNION**, a duly
registered union having its
registered office at 176 Jackson
Street, Petone, Wellington

Applicant

**AND FIRE AND EMERGENCY NEW
ZEALAND**, a Crown entity having
its National Headquarters at Level
7, Spark Central, 42 - 52 Willis
Street, Wellington Central,
Wellington

Respondent

STATEMENT OF PROBLEM
29 September 2022

PRESENTED FOR FILING BY:

OAKLEY MORAN
Solicitors, Wellington.
P.O. Box 241 DX SP20003
Phone: (04) 472.3055
Fax: (04) 472.6657
Person Acting: Peter Cranney

To: the Employment Relations Authority

And to: the respondent

The problems

1. The problems or matters the applicant wishes the Authority to resolve are:
 - 1.1. breaches of the respondent's obligations under section 32(1)(d)(iii) of the Employment Relations Act 2000 (**ERA**) not to undermine or do anything that is likely to undermine the collective bargaining between it and the applicant.
 - 1.2. breaches of the respondent's obligation not to undermine its employment relationship with the applicant (section 4A of the ERA).
 - 1.3. breaches of the respondent's obligations under section 4(1)(b) of the ERA to deal with the applicant in good faith, and not, whether directly or indirectly, do anything to mislead or deceive the applicant or anything that is likely to mislead or deceive the applicant.
 - 1.4. breaches of the respondent's obligations under section 4(1A)(b) of the ERA to be active and constructive in maintaining a constructive employment relationship in which the parties are, amongst other things, responsive and communicative.
 - 1.5. breaches of contractual good faith obligations regarding consultation.

Summary of the facts

2. The facts giving rise to the problems or matters are:

- 2.1. The applicant and the respondent are in collective bargaining for a collective employment agreement (**CEA**) for uniformed and communications centre employees.
- 2.2. Collective bargaining commenced in June 2021 and for the duration of that year the bargaining meetings centred around discussion of the applicant's claims. Those claims include extending the coverage of the CEA to include Welfare Officers and other Health, Safety and Wellbeing roles, and specific claims for the applicant's members who are trainers including progression to senior roles, provisions for lead trainers and training coordinators. These include claims for new Senior Trainer roles in the regions, and that Region Training Coordinators (**RTCs**) come within the CEA's coverage. These claims are part of the applicant's claims for a new Part 5 in the CEA.
- 2.3. On the 18 August 2022 the respondent made a reference for facilitation to the Employment Relations Authority in terms of section 50B of the ERA, which the applicant opposed.
- 2.4. On 30 August 2022, the applicant, the respondent and the Minister for Internal Affairs met in an attempt to find an alternative way forward. As a result of that meeting, the applicant and the respondent agreed (amongst other matters) to participate in a facilitated mediation process. As part of this agreement, the applicant agreed to suspend all industrial action, the respondent withdrew its application to the Employment Relations Authority, and both agreed to limit public communications to agreed statements.
- 2.5. On 5 September 2022, the respondent met with the applicant via videoconference and advised it of a 'proposal for change' referred to as the "People Branch Reset". Late in the evening of 5 September 2022, the respondent

emailed the applicant a document entitled “People Branch Reset in-confidence briefing-NZPFU”.

- 2.6. On 7 September 2022, the respondent emailed the applicant a document entitled the “People Branch Reset Internal Consultation Document” (**PBR document**). Amongst other matters, the PBR document refers to the establishment of 12 Senior Trainer roles, the establishment of five new Region Training Manager roles, and the disestablishment of the current 10 RTC roles. All these matters are relevant to and impact on current claims of the applicant in the collective bargaining, as summarised above.
- 2.7. The deadline for feedback on the matters set out in the PPR document was 12pm on 27 September 2022 (subsequently revised to 4.30pm on 30 September 2022).
- 2.8. The PPR document advises that after receiving feedback, the respondent’s Te Tumu Whakarae / Chief Executive will make decisions on the matters set out in it.
- 2.9. The “People Branch Reset in-confidence briefing-NZPFU” and the PBR document state that the respondent has worked on the matters set out in the documents for four months.
- 2.10. The respondent did not advise the applicant before 5 September 2022 that the respondent was working on the PBR document or that it intended to launch the detailed and substantial People Branch Reset, whether in collective bargaining, in the 30 August 2022 meeting with Minister Tinetti, or otherwise. The respondent’s lead representative in the collective bargaining is Brendan Nally, Deputy National Commander. Mr Nally was the Head of the People Branch, was involved in the design of the People Branch

Reset, and attended all bargaining meetings and was involved in all discussions regarding the applicant's claims.

- 2.11. The respondent did not invite the applicant to any of the discussions it had about the matters set out in the PBR document with what the respondent refers to in the PBR document as "key stakeholders". The respondent also did not advise the applicant that those discussions were taking place.
- 2.12. The applicant would not have agreed on 30 August 2022 to suspend industrial action and to limit public communications to agreed statements if it had known that the respondent was going to launch the People Branch Reset.
- 2.13. On 16 September 2022, Oakley Moran on behalf of the applicant wrote to the respondent claiming that due to the above the respondent had undermined the collective bargaining and the facilitated mediation process, as well as breaching other good faith obligations. The applicant requested that the respondent suspend the People Branch Reset until the collective bargaining is concluded.
- 2.14. The respondent replied on 22 September 2022. The respondent denied having undermined the bargaining or the facilitated mediation process, and denied having breached its good faith obligations. The respondent stated however that it would 'put on hold' and "defer" making decisions on the establishment of the 12 new Senior Trainer roles and the 5 new Region Training Manager roles, and the disestablishment of the 10 current RTC roles. The respondent advised that this would be reviewed "following the conclusion of the current facilitation process and its outcomes".

- 2.15. The respondent also advised that the remainder of the “proposed changes” would “proceed independently” (i.e. all other aspects of the People Branch Reset would not be put on hold).
- 2.16. On 27 September 2022, the respondent emailed all People Branch staff advising that it was “putting on hold” and would defer making decisions on the establishment of the Senior Trainer and Region Training Manager roles referred to above, and the disestablishment of the 10 current RTC roles. The respondent also advised that this would be reviewed after the facilitation process had concluded. The respondent advised that “final decisions” would be made on the other matters set out in the PBR document.
- 2.17. The respondent’s response does not remedy the breaches identified. In particular:
- 2.17.1. The respondent’s refusal to acknowledge that it breached its good faith obligations by not advising the applicant of the People Branch Reset before 5 September 2022 means that the applicant cannot be confident that such breaches will not reoccur, further undermining the parties’ employment relationship.
- 2.17.2. While the respondent has ‘put on hold’ its decision-making in relation to the Senior Trainer, Regional Training Manager and RTC roles referred to above, the respondent continues to assert the right to make decisions on those roles unilaterally, outside of the agreed facilitated mediation process and outside of collective bargaining, and before the collective bargaining is concluded. That undermines or is likely to undermine the bargaining and the facilitated mediation process.

2.17.3. The establishment of the Senior Trainer and Region Training Manager roles, and the disestablishment of the 10 current RTC roles, are part of key “priorities” and “design shifts” which the PBR document states are “designed to work together” (see pages 7 and 15). These are set out in the PBR document in considerable detail. Once the respondent has made “final decisions” on all other aspects of the People Branch Reset, the applicant considers that the respondent will not be able to engage genuinely and in good faith on the establishment and disestablishment of the roles referred to above and on the applicant’s other claims relating to trainers and training (including RTC coverage by the CEA and a new Part 5 for the CEA). Instead, the respondent’s positions in bargaining and the facilitation process on these matters will be determined by decisions the respondent has already made as part of the People Branch Reset, including ensuring that decisions on these matters are consistent with the overall design the respondent wants for the People Branch.

2.17.4. Good faith consultation includes consulting on whether or not change should occur, not only on the content of proposed changes. Clause 20 of Part 1 of the 1 July 2018 to 30 June 2021 Collective Employment Agreement for Uniformed and Communications Centre Employees (**2018-2021 CEA**) states that the obligation to consult is not limited to consultation about the consequences of a proposed change nor limited to numbers only, but includes consultation whether or not the proposed changes should take place and the reasoning behind the proposed change. The

clause also provides that consultation implies a genuine effort on the part of FENZ to respond to the views of those being consulted, motivated by the desire to reach consensus. The applicant considers that the PBR document demonstrates that the respondent has already decided that change will occur, in breach of its good faith obligations and its consultation obligations set out in clause 20 of the 2018-2021 CEA. The matters set out in the PBR document have broad-ranging implications for the health, safety and well-being of the applicant's members, including but not limited to the changes referred to in the PBR document regarding training focus, training delivery and training standards. Further, if the respondent had advised the applicant of the changes referred to in the PBR document earlier, that would have affected the claims made by the applicant in bargaining.

Remedies sought

3. The applicant would like the problem or matter to be resolved in the following way:
 - 3.1. determinations that the respondent has breached its statutory good faith obligations to the applicant and contractual good faith obligations as referred to in paragraphs 1.1-1.5 above (sections 161(1)(b) and (f) of the ERA).
 - 3.2. a compliance order requiring the respondent to suspend the People Branch Reset until the collective bargaining for the CEA is concluded (section 137 of the ERA).
 - 3.3. a compliance order requiring the respondent to consult with the applicant on any proposed changes to the People

Branch in accordance with clause 20 of Part 1 of the 2018-2021 CEA, including an order preventing the respondent from implementing the proposed changes without first complying with the statutory and contractual obligations referred to above (section 137 of the ERA).

3.4. costs.

Documents

4. The applicant attaches a copy of the following documents which it thinks are relevant to the problem or matter. Further documents may be provided during these proceedings:
 - 4.1. Collective Employment Agreement for Uniformed and Communications Centre Employees (1 July 2018 to 30 June 2021).
 - 4.2. Document entitled "Response to PFU Part Five-Training Provisions Claims Received 2021" (received by applicant on 24 December 2021).
 - 4.3. Agreement between the applicant and the respondent entitled "Trusted process going forward" (dated 31 August 2022).
 - 4.4. Agreed statement from Fire and Emergency New Zealand, the NZ Professional Firefighters Union, and the Minister of Internal Affairs dated 31 August 2022.
 - 4.5. Terms of reference for facilitated mediation process.
 - 4.6. Document entitled "People Branch Reset in-confidence briefing-NZPFU".
 - 4.7. Document entitled "People branch reset internal consultation document September 2022".

- 4.8. Letter from Oakley Moran to the respondent dated 16 September 2022.
- 4.9. Letter from the respondent to Oakley Moran dated 22 September 2022.
- 4.10. Email from the respondent's Te Tumu Whakarae / Chief Executive dated 27 September 2022, entitled "People Branch Reset proposal – changes to aspects of proposed Learning and Development Directorate."

Mediation


5. The parties have not tried to resolve this problem or matter by using mediation services provided by the Ministry of Business, Innovation and Employment.
6. The parties have not tried to resolve this problem or matter by using mediation services provided by someone other than the Ministry of Business, Innovation and Employment.
7. The applicant is willing for this to be referred to an urgent mediation.
8. The applicant wrote to the respondent on 16 September 2022 in an attempt to reach resolution, but resolution has not been achieved (see the respondent's response dated 22 September 2022).

Fee

9. This application is accompanied by the prescribed fee.

Address for service

10. This application is lodged by Peter Cranney on the applicant's behalf.
11. The applicant's address for service is Oakley Moran, Level 4, 186 Willis Street, Wellington. Documents for service on the applicant may be left at that address for service or may be posted to Mr Cranney at PO Box 241, Wellington, or sent by email to pcranney@oakleymoran.co.nz.

PP 
Peter Cranney

Counsel for applicants

29 September 2022

Notice to respondent

1. If you intend to respond to this application, you must, within 14 days after the date of the service of this application on you, lodge a statement in reply with an officer of the Employment Relations Authority.
2. The term **days** does not include any day in the period beginning with 25 December in any year and ending with 5 January in the following year.
3. You will be notified of the place, date, and time at which the Authority will conduct any investigation meeting in respect of this application.

Date:

Signature:
(Officer of the Employment Relations Authority)

