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Enterprise Bargaining Meeting 6

Wednesday 10th May 2017

10am – 4.00pm

Building EB, Boardroom (EB.2.23), Parramatta South campus

In Attendance:

Professor Denise Kirkpatrick, DVC & VP (Academic) (Chair)
Professor Kevin Dunn, School of Social Sciences & Psychology
Professor Gregory Kolt, Dean, School of Science & Health
Susan Hudson, Executive Director, HR
Natasha Maiolo, Senior Employment Lawyer
Clare Bockmann, Senior Workplace Relations Specialist
Dr David Burchell, NTEU Branch President
Tamara Talmacs, NTEU Industrial Officer
Dr Terri Mylett, NTEU Academic Staff Representative
Leslie Cowles, NTEU Professional Staff Representative
Rohan Giles, NTEU Professional Staff Representative
Chris Bird, CPSU Industrial Officer
Scott Pendlebury, CPSU Branch President
Lorraine Fordham, CPSU Staff Representative
Michael Reolan, CPSU Staff Representative
Sonya O'Shanna, Executive Officer, Major Projects (notes)

Meeting notes

1. Welcome

Professor Kirkpatrick welcomed all the parties to the bargaining meeting and thanked them for attending.

Clauses for discussion:

- a) *Organisational Change* – NTEU spoke to the clause and raised the following issues:

Information should be shared to all affected employees not just directly affected employees especially in line with shared services through consultation.

The NTEU object to the wording of 'their' instead of 'the' union. Unions are not part of the clause as representing members but rather party to the agreement as employee representatives.



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The Unions did not agree with the University's assumption about shared services and read proposed changes to the clause in line with what is currently taking place in the university.

The Unions expressed concern around the likelihood of work being outsourced across the university, particularly for work that does not require specialised staff and is replicated by outsourced staff.

The Unions also put forward a provision that protected staff whose positions are downgraded as a result of re-classification using the HAY methodology.

The NTEU also sought to re-insert reference to staff being able to contact the Vice President (People & Advancement) regarding an outcome on their redeployment options.

The CPSU suggested defining the term 'significant impact' in the agreement. The unions agreed to discuss the definition offline.

The University refuted the Unions' claims about changes to the clause reflecting what is taking place currently within the university. Under the 'early redeployment' option staff can contact the Vice President (People & Advancement) to nominate their options and provide feedback before the *actual* redeployment period commences.

b) *Job Security and outsourcing*

The bargaining parties maintain their positions in relation to this clause with no movement towards resolution. The Unions do not agree with moving outsourcing to another clause and deleting any reference to job security as this is seen as a statement of commitment by the university to provide job security for staff. The Unions want to retain the clause as is without change.

The University refute deleting any entitlement. It is moving aspects of the clause to sit in more relevant clauses within the agreement. The University cannot commit to job security in the Agreement based on the current environment. The University will review the clause and advise the unions.

c) *Redeployment and Redundancy*

The University proposed to review 'redeployment and redundancy, job security and outsourcing and organisational change as a package given they interrelate to one another and come back to the unions with revised versions of all three in line with the feedback provide by the unions.



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d) *Christmas/New Year Shutdown*

Following discussion at the ad-hoc meeting with the unions on 8th May, this clause was agreed in principle by all parties.

e) *Annual Leave*

The CPSU sent through revised wording in relation to staff attempting to take excess leave but not having it approved by their supervisory.

The revised word was accepted by all parties and this clause was agreed in principle by all parties.

f) *Termination of Employment*

The CPSU and NTEU agreed in principle to the proposed version of the Termination of Employment clause for the Professional Staff Agreement.

The NTEU is seeking two weeks mutual notice for academic casuals. The University will consider the NTEU's position and advise their outcome.

g) *Misconduct and Serious Misconduct*

The University has proposed what it considers to be a simplified but procedurally fair process for dealing with matters of alleged misconduct or serious misconduct. The current process is onerous and time-consuming, which places undue stress on an employee who is going through the process.

The University notes the NTEU claim is for the 2009-2012 misconduct/serious misconduct process to be reinstated in the new agreements. The University does not agree to this claim, as that process was similarly onerous and time-consuming.

The main changes to the clause:

- Clause 1.1(a) of the draft clarifies that the process does not apply to casual employees, or employees who are on probation.
- Clause 1.2 contains various defined terms that are used throughout the clause, that all warnings to be in written form and the right of the University to terminate in line with the Fair Work Act.



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- Clause 1.3(a) states that any matter of alleged misconduct or serious misconduct should be reported to the EDHR as soon as practicable.
- Clause 1.6 allows for informal resolution of any matters arising under the clause if appropriate, with any attempts at resolution to be documented in writing.
- Clause 1.7 provides that if informal resolution is not appropriate or has not been successful, the University will prepare written allegations for the employee's response.
- Clause 1.8 outlines what will occur depending on the employee's response to the written allegations. The Misconduct Investigation Committee has been removed from the process.
- Clause 1.9 deals with the outcome of the matter once a formal investigation has concluded.

The University has deleted the current clause 49.3 (PSA)/43.3 (ASA). The clause now provides that an employee may be suspended with or without pay at any time during the process. The University proposes to remove the current categories of suspension, as there may be many varied circumstances in which suspension is appropriate.

The Unions oppose the proposed deletions to the clause and want to retain the misconduct committee as well as the independent review of misconduct situations. The proposed removal of the terms of reference is not supported.

The University advised the unions the aim is to remove high level of details in the agreement for simplification with establishment of an internal review committee replacing the independent review committee. The University is also developing a flowchart that outlines the steps taken in a misconduct process.

h) *Unsatisfactory Performance*

As with misconduct/serious misconduct, the University has proposed a simplified but procedurally fair process for dealing with unsatisfactory performance.

- Clause 1.1 clarifies that the process does not apply to casual employees, or employees who are on probation.



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- Clause 1.2(a) provides guidance as to what amounts to unsatisfactory performance.
- Clause 1.3 stipulates that the first step in dealing with unsatisfactory performance is informal counselling.

The University does not wish to have a prescriptive process for how informal counselling will occur, as the nature of informal counselling will vary depending on the circumstances of each case.

- Clause 1.4 prescribes the more formal process for dealing with unsatisfactory performance if informal counselling has been unsuccessful including the implementation of a Performance Improvement Plan (PIP).
- Clause 1.5 deals with the review stage of the PIP.
- Clause 1.6 sets out the Employment Executive member's options in dealing with unsatisfactory performance.

If termination of employment is recommended to the VC, the VC can either refer the matter back to the Employment Executive member for other action, or confirm the recommendation to terminate.

The University is proposing to remove the Unsatisfactory Performance Review Committee, however the notice of termination provisions in clause 1.8 are unchanged from the current clause.

The Unions objected to the removal of the review committee and suggested more clarity around the PIP process. Suggests review of wording in sub-clause 1.5 (a)(i), (ii) and (iii) as the link between the 3 sub-clauses to indicate satisfactory progress vs unsatisfactory progress is not clear.

The University will review the clause in line with the Unions' feedback.

i) *Dispute Settlement*

In line with the University's aim of developing plain English agreements that are easy to interpret, the overall wording of the dispute settlement clause has been simplified.

In relation to clause 1(c), the University has adopted wording that mirrors the model consultation clause contained in the Fair Work Regulations. The clause now states that whilst in dispute:

- an employee must continue to perform work as they normally would unless they have reasonable concerns about their work health and safety; and



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- an employee must comply with a reasonable direction to perform other available work at the same workplace, or another workplace, unless the work is not safe, not appropriate, or there are other reasonable grounds for the employee to refuse to comply with the direction.

The informal discussion step between an employee and their supervisor has been retained in clause 1(e).

The informal discussion between an employee and their Dean or Director, which is found in the current clause, has been removed with an unresolved dispute formally escalated to the Dean/Director to expedite resolution of the matter.

Clause 1(f) also clarifies that if there is a conflict of interest, a dispute is to be formally notified to the EDHR.

The provisions relating to the content of a formal dispute notification remain unchanged (clause (i)).

The Unions did not agree with the proposed changes with concerns obligations during dispute resolution would sit with the employee rather than mutually shared. The Unions will be submitted a joint clause in response to the proposed clause put forward by the University.

j) *Professional Staff Career Development and Planning*

The University has removed the statement that currently appears in the current clause 27.1 on the basis that it does not confer any particular entitlement upon professional staff.

The University has removed the \$4.2 million annual expenditure requirement that appears in the current clause 27.2. This is in line with the University's aim of removing targets from the enterprise agreements.

The University has removed the requirement to advertise positions at HEW 6 and below internally in the first instance. This requirement leads to unnecessary delays in the recruitment process and is impractical. The University in the long term needs to have the flexibility to go to the market for recruitment to get the best person for the job.

The University has also removed the requirement to advertise positions internally in the first instance where there is a reasonable pool of applicants. Firstly, the reference to "reasonable pool of applicants" is vague and difficult to apply in practice. Furthermore, as with the previous point, the requirement also leads to delays in the recruitment process.



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In relation to clause 1(d), the reference to “internal temporary transfers” has been deleted, as this is covered by the reference to “secondments” in subparagraph (v).

The following provisions remain substantively unchanged (simplified only):

- Annual Planning and Career Development Program in clause 1.1;
- Reimbursement of course fees in clause 1.2 (new subheading inserted for ease of reference);
- Study leave in clause 1.3 (new subheading inserted for ease of reference).

In relation to clause 1.4, which deals with multiskilling:

- the aspirational statement that currently appears in clause 27.12 has been removed on the basis that it does not confer any entitlements upon professional staff; and
- the current clause 27.14, which requires the University to act in a manner consistent with its WHS obligations, has been deleted on the basis that the University is already bound to comply with its legal obligations.

The Unions oppose the changes to the clause, particularly any reference to the University’s commitment to provide professional development to staff. The Unions do not agree with the removal of the financial target and believe internal recruitment in the first instance provides career opportunities for staff. The Unions want to see up to HEW level 9 advertised internally in the first instance which the University does not agree to.

The CPSU sought clarification about the University’s position on broadbanding as it is one of their claims in their log to see broadbanding positions removed from the agreement. The University is seeking union and staff feedback in relation to broadbanding and will provide a revised clause based on feedback they receive.

k) *Academic Career Development, Planning and Review (including supervision)*

The University has removed the statement that currently appears in the current clause 24.1 on the basis that it does not confer any particular entitlement upon academic staff.

The University proposes to re-draft the supervision clause to be embedded within this clause to which the unions agreed.



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Clause 1(a) of the draft remains unchanged from the current agreement.

In relation to the Academic career development, planning and review process outlined in clause 1.1, this remains substantively unchanged; only the wording has been simplified. Some provisions have also been moved around so that the clause follows a more logical sequence.

The only exceptions to this are:

- the current clause 24.6(e) (which refers to the ACDPR process being used as a basis for further professional development) has been deleted from the draft clause 1.1(f) as professional development is already referred to in subclause 1.1(f)(iii); (old (v)) and
- the current reference to TFRs in clause 24.6(g) has been deleted on the basis that the University has proposed discontinuation of this category of employment for academic staff.

The most significant change in this clause relates to the evaluation of teaching (clause 1.2):

- subclause (b) states that an employee will make SFT outcomes available to their supervisor for discussion at the ACDPR meeting;
- subclause (c) also states that an employee's SFT outcomes may be accessed by their Dean or Institute Director;
- the current requirement (in clause 24.10) that SFT outcomes be confidential to the employee (other than for the purposes of ACDPR discussions with their supervisor), has been deleted. In the University's view, it is impractical and inappropriate that an employee be able to withhold the outcomes of their teaching evaluations from their Dean or Director;
- subclause (d) clarifies that the ACDPR process will incorporate SFT outcomes, the employee's response to those outcomes, and any plans to address areas identified as needing development;
- subclause (e) remains substantively unchanged, and notes that evaluation of teaching performance must be considered in the context of the teaching and learning environment, and also that SFT outcomes cannot be used as the sole measure of an employee's teaching performance.



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The balance of the clause, which relates to the ACDPR report and unsatisfactory performance, remains substantively unchanged.

The CPSU are silent on this clause as it only relates to Academic staff. The NTEU did not agree with the proposed changes which they believe has moved towards academic development review instead of academic career development.

There was robust discussion about the use of SFT's as an evaluation of teaching which is not specified in the current clause. The Unions believe research career development also needs to be considered in this clause, not just career development and performance around teaching. The University agreed to review the clause and consider multiple sources of evidence that recognise all dimensions of teaching performance.

1) *Professional Staff Workloads* – held over to next meeting 24 May

There were discussions about meetings to be held post 7th June as it was agreed by all parties that more meetings would be required. The University requested resources about subsequent meetings be made in writing from CPSU and NTEU and sent to EDHR.

It was agreed some clauses still require wordsmithing. The University agreed to meet with CPSU and NTEU to finalise these clauses.

Next meeting – Wednesday 24th May 2017

Clauses to be discussed:

- Workloads (Professional staff)
- Workloads (Academic staff)
- Casual academic employment
- Revisit outstanding clauses