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Enterprise Bargaining Meeting 2

Wednesday 15 March 2017

10am – 4.00pm

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

In attendance:

Professor Denise Kirkpatrick, DVC & VP (Academic) (Chair)

Professor Gregory Kolt, Dean, School of Science & Health

Professor Kevin Dunn, Dean, School of Social Sciences & Psychology

Susan Hudson, Executive Director, Human Resources

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

Scott Pendlebury, CPSU Branch President

Jen Mitchell, CPSU Industrial Officer

Lorraine Fordham, CPSU Staff Representative

Carmel Votano, CPSU Staff Representative

Sonya O'Shanna, Executive Officer, Major Projects (notes)

Meeting notes

WELCOME

1. Professor Kirkpatrick welcomed all the parties and thanked them for attending and their commitment to the bargaining process.
2. The NTEU raised concerns that the University was releasing bargaining meeting notes as part of their communications to staff. The University maintained their stand that there would be open communication with staff about what took place during the bargaining meetings from the viewpoint of the university. In response to this, the union stated they would release their own notes from the bargaining meetings to their members on the NTEU website.
3. The NTEU raised further concern that the notes of the bargaining meetings were not open for discussion by the bargaining parties at subsequent meetings which the university agreed to acknowledge for the record.



Without Prejudice

CLAUSES FOR NEGOTIATION

4. The bargaining parties discussed a number of clauses based on suggested changes provided by the University:

a. Flexible hours of work scheme

In line with the University's aim of developing streamlined enterprise agreements that focus on entitlements, the University has proposed that the operational provisions regarding the flexible hours of work scheme be moved into policy. In order to preserve the existing entitlement to flex leave, the University has drafted a clause that captures the following elements of the flex leave scheme:

- the actual entitlement to up to 14 hours of flex leave per 4-week settlement period; and
- the permitted carrying forward of up to 14 hours' time credit to the next settlement period.

The draft policy is based on the flex leave clause contained in the existing 2014 Professional Staff Agreement. There is no decrease in the entitlement to flex leave for professional staff. The policy captures what flex leave is about and will be placed on the DDS for staff feedback. The policy is very similar to what is in the current agreement with a simplification of wording to remove ambiguity.

The unions advised the proposed shift to policy is a major concern for their members in that policy can be changed without consultation and raised objection to moving the processes around flexible hours of work into policy to the extent the University is proposing. The unions further added the clause does not protect entitlements previously in the award. The unions want to retain the current clause with removal of ambiguous language but no removal of operational processes, bandwidth hours, core time or how many flex days can be taken or carried forward in a settlement period.

The University acknowledged the unions' position and that staff are protective of their flex leave, however they reiterated the proposed changes do state the entitlements and conditions in the agreement. The agreement should not include interpretation of legislation, process, procedures or operationalising of entitlements. The University requested unions provide evidence and cases of where entitlements have been changed or where policy is not followed.

As there was no agreement, it was agreed the marked up version of the clause would be discussed offline for resolution.

b. Annual leave

The wording of the annual leave clause has been simplified. There has been no change to annual leave entitlements, or the circumstances in which annual leave may be taken. The impact of Leave Without Pay on annual leave accrual is dealt with in the Leave Without Pay clause.

Clause 1.1(e) (ii) clarifies that where an employee is re-credited with annual leave due to having been ill or injured, the University will deduct an equivalent amount of leave from the employee's sick leave balance. This reflects current practice. Clause 1.3(a) clarifies that any University shutdown will only occur in the weeks of 25 December and 1 January (i.e. Christmas and New Year). For the first time in



Without Prejudice

this coming Christmas / New Year period, Christmas will fall on a Monday and this will be an issue if the University chooses to close down pre 25 December.

The unions asked if the definition of concessional days was going to be retained in the agreement to and sought confirmation of how many days the university will be shut during this period and requested the period of shutdown be set out in the agreement so staff knew in advance how many days of leave they would need to apply for. The unions also raised concern with staff being directed to take leave during the shutdown period particularly in operational settings when it was difficult to take leave.

The University confirmed the definition of concessional days would be retained in the new agreements and advised it had no intention of setting out the shutdown period in the agreements. The University also clarified that any applications for advanced leave from staff had not been declined in past shutdown periods.

Further discussions in relation to simplification of language took place with agreement from all parties that leave entitlements were not being changed in this clause. The University agreed to reinstate wording from the current annual leaves clauses of both agreements in relation to:

- Supervisors' responsibility to facilitate leave planning and the ability for employees to take leave (clause 33.2 PSA, clause 27.8 ASA); and
- Staff being able to defer taking leave provided that 30 days annual leave is taken within 2 years (clause 33.11 PSA, clause 27.10 ASA);

All parties agreed in principle to the suggested rewording of the clause relating to Christmas/New Year shutdown, "if the University shuts down within 4 working days of 25th December and 1st January, staff may be directed to take leave during this period" subject to final confirmation.

The annual leave clause was agreed in principle pending review of the new drafted clause to be sent to unions for feedback and agreement.

c. Personal leave

The wording of the personal leave clause has been simplified. There has been no change to personal leave entitlements, or the circumstances in which personal leave may be taken. Clauses 35.1 and 35.2 (PSA) and 29.1 and 29.2 (ASA) do not confer any entitlements and therefore have been removed from the proposed clause. The newly proposed sub-clause of the 6 day entitlement refers to a calendar year and also removes the 10 day sick leave limit in accordance with direction from the Fair Work Commission. The proposed clause also clarifies that the personal leave entitlements of Aboriginal and Torres Strait Islander People employees are in addition to the basic entitlement to paid personal leave.

The University has introduced a new sub-clause where employees are now required to provide evidence of personal leave within 5 working days of commencing the leave. The University is of the view that this requirement is appropriate, and it will assist with processing applications for personal leave in a timely manner so that the University can maintain accurate records.

The unions objected to the 5 working day requirement to submit evidence supporting personal leave in that an employee may not be in a position to provide this within the timeframe.

The unions also stated the proposed deleted clauses 35.2 (PSA) and 29.2 (ASA) explains how personal leave interacts with other leave in agreement and is useful to have it spelt out.



Without Prejudice

The University clarified the purpose of the deleted clause was purely to remove ambiguity and not restrict the purpose of the clause. Following discussion the University agreed to consider including a value statement in place of the two deleted preambles and distribute an updated proposed clause to the unions for feedback offline.

In line with wording in the Fair Work Act, the University agreed to re-word the new sub-clause relating to submission of evidence to “within 5 working days or as soon as practicable”.

d. Sick leave

The wording of the sick leave clause has been simplified. There has been no change to sick leave entitlements, or the circumstances in which sick leave may be taken.

The previous reference to “illness or incapacity” has been changed to “illness or injury” to bring terminology in line with the Fair Work Act. This is also consistent with the Fair Work Commission undertaking previously provided by the University.

The University has introduced a new sub-clause where employees should advise the University that they will be taking sick leave before they are expected to commence work on the relevant day. The University is of the view that this requirement is appropriate, and it will assist with promptly addressing any operational requirements that may arise due to an employee’s absence on sick leave.

The clause also introduces a new requirement that medical certificates must be provided:

- within 5 working days of an employee commencing sick leave; or
- as proof of attendance when an employee has used sick leave to attend a medical appointment.

The University is of the view that these requirements are appropriate, and will assist with processing applications for sick leave in a timely manner.

Clauses 36.5 (PSA) and 30.5 (ASA) of the current agreements have been amended to clarify that if an employee is required to provide evidence in support of absences but fails to do so, they will be placed on unpaid sick leave for those absences. The University is of the view that this requirement is appropriate, as paid sick leave should not be granted in circumstances where an employee fails to adhere to the evidence requirements in line with the Fair Work Act (section 107).

The unions raised similar concerns in relation to the 5 working day requirement to submit evidence of sick leave and/or medical appointments and suggested the same wording as now appears in personal leave.

The University agreed to reword the clauses relating to submission of evidence to support sick leave in line with personal leave “within 5 working days or as soon as practicable”.

All parties agreed the heading of clause 1.6 “Evidence requirements – absences totalling 5 days or more” was ambiguous and agreed to reword the heading “Evidence requirements – absences of more than 5 occasions”.

The amended proposed clause will be distributed to the union’s offline via email for feedback and agreement.



Without Prejudice

e. Long service leave

There has been no change to long service leave entitlements for existing employees, other than simplified wording.

Proposed clause 1.1(a) clarifies that casual employees are entitled to long service leave in accordance with the NSW Long Service Leave Act. The entitlement sub clause has been separated for clarity, and accrual of long service leave after 15 years of service, has been amended to make it easier to understand.

Proposed clause 1.3(a), which deals with recognition of prior long service leave credits," has been amended to refer to "publicly funded Australian universities" rather than "higher education institutions" to clarify that the University will recognise prior service with universities rather than the much broader category of "higher education institutions".

Clause 1.3(a) (i) introduces a 90 day cap on the amount of long service leave a new employee can transfer across from another university; however there is no cap on the recognition of long service leave accrued during service with a University entity. The University is of the view that it is appropriate to restrict the amount of transferred long service leave as a way of minimising potential future liabilities.

Clause 1.6(a) introduces a right to decline an application for long service leave based on operational requirements. The University is of the view that this is a reasonable addition to the clause, and it is consistent with other enterprise agreements across the sector.

The unions agreed with the rewording and reordering of clauses however suggested a link to the Act be included in the clause as in past agreements which casual staff can refer to for clarification of their entitlements.

The unions objected to the 90 day cap on long service leave portability and the university's ability to refuse long service leave applications when 6 months' notice is given by the employee as they consider this to be ample amount of time for the business unit to make alternative arrangements that does not impact on operational needs. The unions also objected to the university being able to direct staff to take long service leave however the university advised they are following a directive by the Board of Trustees in relation to directing staff to take long service leave.

The amended proposed clause will be distributed to the union's offline via email for feedback and agreement.

f. Parental leave

The University is maintaining the current entitlements with no loss or reduction in parental leave entitlements. The wording of the parental leave clause has been simplified.

The parental leave clause has been amended to clarify that the latest date on which maternity, adoption, or foster parent leave can commence is the date on which the child is born, adopted, or enters foster care. The University is of the view that this is appropriate given that related entitlements (for example, extended unpaid leave) are calculated by reference to the date on which parental leave commences (clauses 1.2(e), 1.3(e), 1.4(b), 1.6(b)).

Clause 1.5 (a) (i) has been reworded to clarify partner leave commences "...at the time of birth or adoption of their child..."



Without Prejudice

A new clause 1.5 (c) has been drafted to reflect the current agreement. The University acknowledges the parental leave clause does not capture the Vice-Chancellor's announcement regarding an additional six week of paid parental leave to the primary carer and will revise the sub-clause to include this additional leave and resubmit to the unions for agreement offline.

Clauses 1.6(a) has been amended to reflect the process around changes to approved parental leave.

The University acknowledges Clause 1.7 (i) should be placed under its own sub-heading "Subsequent Periods of parental leave" as it does not relate to "Reduced Hours", and the University will amend and send out with reworded clause to the unions.

Clause 1.8 introduces a provision that relates to employee couples of the University. The clause states that where both parents are employees, the maximum period of unpaid parental leave they can access is 24 months. The clause also states that unpaid leave taken by one employee will be taken into account when assessing an application for unpaid leave by the other employee.

The NTEU referred their parental leave claims and whilst they acknowledge the financial situation of the university in relation to their request to increase maternity to 36 paid weeks, the NTEU seeks to include a provision of 20 days paid antenatal leave in addition to the paid maternity leave. The NTEU also made reference to their claim of increasing partner leave to 3 paid week at the time of birth or adoption of the child and a provision to expand the reduced hours clause (1.7) (h) that allows employees returning to work after a maternity or adoption leave the opportunity to work reduced hours for up to six years from the date of commencement of leave. The NTEU also seek to reduce the period of continuous service for maternity leave eligibility from 12 months to 6 months.

The CPSU raised concerns in respect to foster leave as there is currently no consideration for short term/respite care in the foster leave clause nor are there provisions for foster carers to take unpaid leave. In relation to clause 1.5 (c), the CPSU sought clarification as to whether casual staff were entitled to 6 weeks unpaid partner leave. The CPSU raised questions in relation to staggering paid partner leave over the first 12 months of birth/placement of the child rather than 2 weeks immediately following the birth/placement of the child, questions were also raised in relation to clause 1.8 in the case of multiple births/placements and questioned how the university would capture employees on any form of parental leave being included in workplace change consultations during their leave.

The University agreed to review the clause based on the union's feedback and send to them a revised version for offline discussion/agreement.

g. Leave without pay

There has been no change to leave without pay entitlements.

The proposal to remove sub-clause 1 (f) no longer restricts the circumstances for which leave without pay may be taken.

This was a fairly uncontentious clause with the CPSU raising no objections to the removal of this sub-clause. They advised they will reaffirm their agreement of the proposed clause in writing.

The NTEU questioned the removal of the list of reasons why staff can apply for leave without pay and questioned why sub-clause 1 (g) was removed.

The University agreed to review the exclusion sub-clause and make any necessary clarification and send the clause to the unions for agreement.



Without Prejudice

h. Domestic violence support

This clause remains largely unchanged, apart from very minor amendments to wording. The University is of the view that it is preferable to provide domestic violence support on a case-by-case basis rather than in accordance with a prescriptive clause. This will allow a more collaborative approach to meeting the needs of an employee in a way that is tailored to their specific circumstances. The University is committed to develop best practice guidelines in relation to how the organisation manages domestic violence; including liaising with relevant government bodies and non-profit organisations as well as providing training through the Talent and Leadership Development Unit for appropriate persons i.e. senior HR partners.

The Unions objected to the limitation of information in the proposed clause and suggested having clear guidelines for employees to refer to.

The University reiterated it would not reveal university processes in a public document as a means of protecting victims who are employee of the university.

It was agreed this clause requires further discussion and would be deferred to another theme meeting.

i. Union Representation

The University notes the unions need to apply to Fair Work Commission to be covered by the agreement.

Clause 1.4 clarifies that union information packs will be distributed at orientation sessions for new staff as is current practice with no change to the clause in relation to industrial relations training for union representatives. The University proposes that the time release granted to each Union Branch President be reduced from 50% to 20%. Whilst the University values the role each Union plays in supporting staff, the reduced percentage of time release is more consistent with practice both across the higher education sector and more generally.

The unions objected strongly to the proposed changes to the clause in particular the reduction of time release for Union Branch Presidents. Both unions stated a lot of time is expended in the role, more so in times of change within the university. The unions also objected to the university's position of not increasing training days or the number of union representatives able to access training which they believe benefits the university in dealing with matters raised at HR level.

As there was no resolution in relation to this clause and it was agreed to discuss further offline with the unions.

5. Next meeting

Clauses to be discussed:

Staff Engagement

Probation

Super

Terms of Engagement

Organisational change



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Retrenchment and redeployment

Meeting close 4.15pm.