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Enterprise Bargaining Meeting 4

Wednesday 12th April 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

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)

Chris Bird (CPSU) Observer

Meeting notes

WELCOME

1. Professor Kirkpatrick welcomed all the parties to the bargaining meeting and thanked them for attending, noting apologies from Professor Kevin Dunn and Susan Hudson. Professor Kirkpatrick also welcomed Chris Bird who is attending the meeting as a CPSU observer. Chris will be replacing Jen Mitchell in the bargaining process for the next 4 weeks.
2. Professor Kirkpatrick clarified the agenda which is going to incorporate standing item 3 (discussion on outstanding items) into item 2 (clauses for discussion).
3. The University read through the list of clauses that would be discussed today as some of the responses from the unions were received too late for the university to review before the meeting. It was agreed to



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work through the clauses that all parties can talk to and if time permitted, the meeting would recess to allow the university to review the unions' late responses for discussion towards the end of the meeting.

CLAUSES FOR DISCUSSION

4. Professor Kirkpatrick reviewed the list of clauses for discussion noting clauses that have had responses from all parties and confirmed with all parties the leave without pay clause is agreed in principle and therefore has been removed from the agenda.
5. Parental leave and Organisational Change clauses have been flagged as late responses and will only be discussed at the meeting if time permits.

a. Job security and outsourcing

In line with the University's aim of developing streamlined enterprise agreements that focus on entitlements, the University has proposed that the majority of this clause be deleted as it effectively repeats provisions found elsewhere in the Agreements. The University does propose, however, that some provisions be moved to other clauses within the Agreement as appropriate, i.e. organisational change.

i. Job security

Subclause (a) is unnecessary as it does not confer any entitlement or benefit to employees and therefore does not add any value to the text of the Agreement which is consistent with the common aim to develop plain English Agreements as suggested by the CPSU. Subclause (b) is also does not confer any benefits to employees. In addition, it contains commitments about maintaining overall levels of employment that the University is unable to make in its current financial position. Subclause (c), which relates to reducing systemic long-term casualization, can be dealt with in provisions relating to casual employment which will be discussed on 26th April meeting and includes creating improved conditions for casual employees. Subclause (d) is already covered by the organisational change clause so in an effort to simplify the agreements, it is therefore not required. As previously discussed, subclause (e) prescribes measures that are not feasible, and which do not provide genuine long-term solutions to workforce reduction will be deleted. It also refers to measures (case management, redeployment) that are already covered in the Organisational Change clause.

The Unions objected to this section of the clause being deleted as it acts as an intermediary to other clauses. This is a major claim item for the NTEU and its members. The Unions are aware of the current environment and the reality of the situation of the university as well as acknowledging the Vice-



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Chancellor's commitment to avoid forced retrenchment; they believe clause 1(a) is a statement of intent and commitment from the University to its staff. The commitment to job security is an important condition of employment for staff and the unions do not see why it serves any purpose to delete this clause. The Unions suggested the list in subclause (e) be included in the organisational change clause so staff were aware of the options that may be available to them. The NTEU also suggested additional wording and the opportunity for staff with significant workplace knowledge and experience to be involved in discussions about organisational change and offer suggestions for the university to consider in place of redundancies.

The University stated if the current environment continues it will face serious challenges to maintain its current state. The University is also concerned about job security but is also committed to sustaining the university to maintain viability for the future. The university is not stepping back on its commitment to job security or addressing the issue of casualization, however improvement in the current situation may not see the university returning to previous load levels or increased funding.

The University agreed to consider the unions' suggestions and proposes to discuss this clause further in future meetings.

ii. Outsourcing

The University proposes to delete subclause (a) due to a range of factors (i.e. cost, particular service providers meeting university needs) but financial position is not the primary driver (unions to provide evidence of this happening in the life of the current agreements). Subclause (b) states only that the University will adhere to its legal obligations, which is an unnecessary statement – the University is required to do this in any event. Subclause (c) is largely unnecessary as it repeats provisions contained in the Organisational change clause. However, the requirement for a discussion paper to be prepared in the event of proposed outsourcing has now been included in the Organisational change clause, which is the appropriate placement. Subclause (d) is unnecessary as it is simply repeating a provision that appears elsewhere in the Agreements (Organisational change clause). The subclause (e) reference to the Implementation Committee receiving reports about proposed outsourcing has been moved to the Organisational change clause.

This is a major claim for the CPSU and its Members are particularly concerned about outsourcing. The CPSU believed the University was taking steps to address casualization and outsourcing in implementation committee which is different to what is being proposed by the university now. The Unions submitted a joint revision of the clause and believe work should only be outsourced when existing



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staff cannot carry out the work i.e. specialised work, peak volume periods. The NTEU believe the clause should sit in organisational change and that the original substance of the clause be retained.

b. Availability of the Agreement

As previously advised, the University is of the view that this clause is unnecessary.

The Agreements are already available on the University's website and this will not change. Similarly, any employee who is unable to access the Agreements can contact HR to request a copy.

The Unions advised their position was unchanged and that the clause should not be deleted from the agreements.

c. Supervision

The University' position remains unchanged; the University is proposing that this clause be deleted from the Academic Staff Agreement. Supervisors are nominated for each employee as a matter of standard practice, and referred to in an employee's letter of appointment. "Supervisor" is also already defined in the Academic Staff Agreement. The reference to an employee being able to request an alternate supervisor in "exceptional circumstances" is too vague and unclear. The allocation of an alternative supervisor is something that would ordinarily occur through another process, for example, a dispute or other grievance.

d. Salary packaging

Both the CPSU and NTEU gave in-principle agreement to the clause put forward by the university.

e. Flexible work provisions

In line with the University's aim of developing streamlined enterprise agreements that focus on entitlements, the University has proposed that this clause be deleted. The clause does not confer any entitlements upon employees. Rather, it simply provides an overview of the various flexible work provisions contained in the Agreement. In the University's view, this is unnecessary and inappropriate for inclusion in an enterprise agreement. Furthermore, the University website contains information regarding the various flexible work arrangements that may be available to employees. It is much more likely that an employee would access the University's website to seek out such information, or contact HR, than look for it in the agreements.



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NTEU objected to the clause being deleted and suggested alternatives to be added in the clause in a way to move forward without deleting the clause in its entirety. The NTEU believe clause 1.1 is not a motherhood statement but agreed that clause 1.2 would be moved elsewhere in the agreement but not deleted.

The CPSU's position is to maintain the clause without changes as it provides a commitment from the university in providing these provisions to staff.

f. Domestic violence support

The University maintains its previously stated position that it is not appropriate to specify the ways in which victims of domestic violence may be assisted by the University. Firstly, specifying a list of measures is unnecessarily restrictive. The needs of each individual will undoubtedly vary, and the University will provide assistance that is specific to that person. Secondly, as noted by Professor Dunn on the last occasion this was discussed, publicising the ways in which the University may assist victims of domestic violence (for example, relocation, or change of contact details) could place them at further risk. To date, the University has adopted a confidential and supportive approach to employees who are experiencing domestic violence, and will continue to do so. The University does not wish to be restricted by a clause that prescribes the types of steps that may be taken, and believes that the current clause is sufficient. Situations are managed on a case by case basis.

The Unions continued to maintain their position in wanting the clause to contain extensive information, especially around leave provisions, for staff as they are concerned for staff in the situation that are not coming forward because they are not aware of support available to them by the university.

g. Abandonment of employment

The University has considered the feedback received from both Unions in relation to abandonment of employment generally. More specifically, the reference to making "all" reasonable attempts to contact the employee or their nominated emergency contact has been deleted, as it makes the provision too broad and difficult to comply with. The University is of the view that a reference to making "reasonable attempts" is sufficient; especially as the clause goes on to specify the types of contact that will be made. The University has simplified the balance of the wording proposed by the Unions.

The Unions submitted a joint draft clause with amended wording in 1(a)(ii) that outlines the steps the university will take to try and contact a staff member who appears to have abandoned their employment with the university and questioned why the university is opposed to specifying how to contact staff. The



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unions believe the aim of the clause is to capture the university's responsibility of exhausting all options to contact the staff member.

The University responded to the unions that clause is about abandonment of employment not the university's duty of care responsibilities. This is about staff not making contact with the university because they have decided to not return to work or if there was a legitimate reason why they could not be at work. The University agreed to look at particular phrase in current clause regarding liaison with supervisor/dean/director and consider inserting reference to contacting all recorded contacts.

h. Right to request flexible work arrangements

In line with the University's aim of developing streamlined enterprise agreements that focus on entitlements, the University has proposed amendments to this clause that ensure it does not reproduce information found in legislation. The University is proposing to keep the signpost to the fact that staff can request flexible work arrangements in accordance with the Fair Work Act. In addition, as mentioned earlier, the University website contains information regarding flexible work options, including the right to request flexible work arrangements. The clause retains the references to the types of flexible work arrangements which are currently in place as examples whilst allowing for flexibility with the types of arrangements that may put in place on a case by case basis being contained on the University website, which directs staff towards this further information without the need to reproduce the details in the clause.

The Unions want to see the clause retained, keeping it in the agreements makes it easy for staff; deleting it makes the clause work less efficiently. NTEU agrees with CPSU position about consistent definition of immediate family throughout the agreement.

i. Termination of employment

An amended clause was circulated to the Unions on 24 March 2017. The University has agreed to retain the words "at least" in notice of termination provisions for fixed-term employees (clause 1.2(c)). The University does not agree to increase the notice of termination for casual employees from one hour (which is consistent with our Casual Employment Authority terms) to two weeks as requested by the NTEU. The University has agreed to include a reference to "annual leave loading" in clause 1.5(a), which deals with recovery of overpayments.

The Unions object to the 1 hour termination notice for casual staff and do not believe this provision is conducive to the university environment in that casuals employed in the university are not 'on-call'



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casuals as in other sectors. The Unions also object to the university position whereby casuals are required to give the university 2 weeks' notice when terminating their casual employment authority. The clause will be discussed further with the unions' offline.

j. Personal leave

The University notes the CPSU's request to move the definition of "Immediate Family" into the definitions clause. The University does not agree to this request as already discussed. The definitions of "Immediate Family" differ between the Personal Leave and Right to Request Flexible Work Arrangements clause. The definition in the "Personal Leave" clause is broader, whereas the narrower definition used in the Right to Request clause reflects the Fair Work Act. The University wishes to retain the broader definition for the purposes of personal leave.

In relation to the Unions' proposed revisions to 1.2(f), the University maintains that this wording is unnecessary.

The Unions objected to the changes put forward by the University and prefer the clause remains unchanged. The Unions are seeking inclusion of the word 'community' to replace 'cultural'. The University does not agree with this proposal by the unions as the term 'community' is considered too broad in the context of cultural leave and better reflects the purposes for which the personal leave can be taken. The NTEU will seek advice from members before proceeding with discussions in relation to this clause.

k. Parental leave – The clause was not discussed and has been held over to 26th April meeting.

l. Flexible hours of work scheme – The clause was not discussed and has been held over to 26th April meeting.

m. Fixed term employees severance pay

The Unions were requested to respond in relation this clause by COB on 4 April 2017. On 7 April 2017, the NTEU sent through proposed amendments to the clause on behalf of both Unions. The University notes the only change put forward by the Unions is an amendment to clause 1.2(b) to reinstate the effect of subclause (3) of the current clause. This provision states that if an employee accepts an offer of comparable alternative employment with the University, then the University may vary the severance payment payable to the employee only with the agreement of the employee. The University does not agree with the Unions' proposed change. The clause was amended by the University to ensure that an employee who accepts further employment with the University does not retain the right to effectively



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“double dip” by also receiving a severance payment. A severance payment is made to compensate an employee for the cessation of their employment on the ground of redundancy. The University is of the view that it is not appropriate for the employee to retain complete control over whether they receive a severance payment despite being provided with further employment by making variation of the payment conditional upon the employee’s agreement. There are also taxation implications that arise from paying a redundancy payment to an employee who continues to be employed by the university in an alternative role.

The Unions prefer to retain the current clause without change.

n. Organisational change

The NTEU and CPSU submitted a joint clause however as it was submitted late, the University was not in a position to review it before the meeting. The Unions were asked to speak to the clause which would be reviewed by the University before the next bargaining meeting on 26th April.

The main claims put forward by the unions:

- A commitment to job security and no forced retrenchments for the life of the agreement;
- Seeking improved consultation with staff before a change proposal process commences;
- Inclusion of alternative employment options during consultation and during redundancy in the clause;
- Seeking to retain more information in the clause than what the University proposes;
- Concerns about the restructuring of positions resulting in a ‘push-down’ of HEW levels;
- Grandfathering of redeployed staff into lower HEW level positions while they are in the position; and
- Better protection in relation to relocation and of staff and services as a result of organisational change.

o. Redeployment and redundancy – The clause was not discussed and has been held over to 26th April meeting.

p. Probation

Following on from discussions at the last bargaining meeting, the University has made some further amendments to the Probation clauses in the Professional and Academic Staff Agreements. Clause 1.3 of



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both Agreements expressly states the maximum probationary period that can be imposed, inclusive of any extension (as per Unions' request). (i.e. 9 months professional and 3 years for academic). 1.4a(ii) does identify appropriate plan for concerns raised for resolution for professional staff. The University remains of the view that it is appropriate for supervisors of Professional staff to meet with a probationary employee on a monthly basis. For Academic staff, the requirement to meet has been changed from monthly to quarterly. The University agrees to retain the current notice of termination for probationary Professional staff – clause 1.5(b) has been amended to refer to two weeks' notice being provided. For Academic staff, the University is proposing 12 weeks' notice of termination during probation (clause 1.5(b)).

The Unions are seeking an inclusion in the clause whereby staff that have successfully completed a probationary period do not need to complete another probation period when they move between positions within the university. The Unions would like to see re-insertion of parts of the termination process that the University propose to delete as they are operational rather than entitlements. The Unions agree the clause can be shortened but not to the extent that it removes protections for staff.

The University to review the clause and revised wording for clarify and definition of the clause.

q. Application of the Agreement

The NTEU submitted a revised Application of the Agreement clause. However, this clause was not a tabled item and has been held over to be discussed at the 7th June meeting.

6. *Other Business*

The NTEU sought approval for casual academic staff member, Gavin Smith, to attend the next meeting on 26th April in relation to the conditions of casuals theme. NTEU also requested an Aboriginal and Torres Strait Islander staff member attend to speak to the Aboriginal and Torres Strait Islander Peoples Employment Strategy clause. No objections were raised to either guest attending the next meeting.

7. Next meeting - Wednesday 26th April 2017

Clauses to be discussed:

- a. Conversion
- b. Conditions for casuals
- c. Categories of employment



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- d. Work environment
- e. Individual flexibility arrangements
- f. Aboriginal and Torres Strait Islander peoples employment strategy clause
- g. Organisational Change
- h. Job Security And Outsourcing
- i. Redeployment And Redundancy
- j. Flexible Hours of Work Scheme
- k. Parental Leave

Meeting close 4pm