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Enterprise Bargaining Meeting 3

**Wednesday 29 March 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, 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 to the bargaining meeting and thanked them for attending, noting apologies from Professor Gregory Kolt.
2. The University raised the issue of delays in receiving feedback from the unions particularly since the clauses were being sent to them earlier, however revisions and feedback was still being received up to the evening before bargaining, not giving the university enough time to revise and prepare a response to the feedback before the bargaining meeting.
3. The Unions objected they were delaying the process; rather the bargaining process was being delayed because clauses were not being negotiated during the bargaining meeting leaving many to be discussed offline which was creating a backlog.
4. The University suggested the matter be discussed towards the end of the meeting about how to move forward with a view to altering the agenda for future meetings.



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5. There was discussion about negotiating big ticket items sooner in the schedule so the unions could get a sense of the overall package to be negotiated.
6. The University advised the current claims by the unions for salary would not be feasible however what can be offered has not been determined by the university as yet. However cost savings by removing expensive processes in some clauses could be returned to staff in the form of other benefits. The unions advised they would not agree to 'trade-off' processes for other staff benefits. The University advised this was not the case; rather suggesting some descriptions of processes be removed from the agreement and in other instances where the University would like to see a different process implemented.

CLAUSES FOR NEGOTIATION

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

- a. *Probation*

The probation process for academic and professional staff has been revised with a view to introducing a simple but fair process for dealing with new staff who is serving a probationary period.

Professional Staff - Clause 1.2(a)(i) and (ii) clarifies the length of the probationary period that can be imposed for fixed-term staff, depending on the term of their contract.

Academic Staff – Provides for termination during probation which currently does not exist. The University believes having to retain staff that are not performing for the full 2 year probation period is not productive for the work unit and also impacts on staff within that unit. However, the extensions to probation remain unchanged.

In terms of the reviews that are to be undertaken during probation, the University proposes to remove the mid-point reviews and change this to a monthly supervisory meetings with the new employee, to either confirm the employee's progress or identify concerns and develop a plan for their resolution. In the University's view, this is beneficial as it ensures more continuous feedback, and the timely resolution of any issues that may arise.

In relation to Professional Clause 1.5(c), there will be no internal appeal or challenge available to employees in relation to the probationary process.

The Probation Review Committee for the Academic clause has been removed. The mechanisms for staff to challenge termination of their contract exist via the dispute resolution clause and this is an example of simplification of process, particularly one that is onerous, takes time and costs money.



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The Unions want to maintain the current clauses and object to the suggested changes to the clauses put forward by the university. The Unions sought clarification as to what is considered a reasonable amount of time before an employee is terminated during probation.

The University reiterated its intention was not to terminate staff during probation but to identify areas of concern in performance early on to provide the necessary support mechanism for the staff member to improve. The University also stated they will develop a guideline for supervisors to ensure consistency of supervision for new staff across the university.

The Unions suggest minimum terms be articulated in the clauses in relation to termination. The University agreed to review the wording of the clause and come back to the unions with a suggested revision of the clauses.

b. Superannuation

The wording of the superannuation clause has been simplified. The University has also amended the provisions relating to 17% superannuation contributions for fixed-term employees. This change is ensuring a consistent application of superannuation entitlements for fixed-term employees, and is more beneficial than the current conditions.

The proposed provisions now state that:

- if a fixed-term employee's first contract is for 12 months or more, they will receive 17% superannuation from the date of commencement; and
- if a fixed-term employee is on a second or subsequent fixed-term contract, they will receive 17% superannuation from the 12 month anniversary of their date of commencement.

The University is aware UniSuper may introduce Flexi-Choice to its members in 2018 and is currently working on a clause to factor this in should it be introduced by UniSuper and if it is implemented by the university. The University sought feedback from the unions around the wording of this clause.

The University will provide costs to the unions in relation to the superannuation increases.

c. Terms of Engagement

The University has proposed that the terms of engagement clause be deleted from both agreements. The existing clauses do not confer employee entitlements. Rather, they simply re-state the information that is already provided to employees as a matter of standard practice via letters of appointment, casual employment authorities, and fortnightly payslips. Fair Work provisions cover



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the rights of employees to be given this information upon commencement - we therefore cannot abandon that practice under the Fair Work Act.

In relation to annualised salaries, the university does not have employees with annualised salaries, rather there are only a few employees under whose salary is averaged across the year with most being staff that take part in the Payment of (PAL) scheme. Everything else outlined in this particular clause is covered in a different way within the university and is therefore not required.

The Unions objected to the clause being deleted from both agreements and maintain their position to keep the clause, however the unions agreed to the removal of the sub-clause in relation to annualised salaries as it does not cover anyone employed by the university. The Unions view enterprise agreements as repositories of rights and entitlements for new and ongoing staff.

d. Organisational Change

The University has simplified the wording of the organisational change clause for easy interpretation. Defined terms have now been grouped at the start of the clause for ease of reference [clause 1.2], however the content of text has not changed from where they initially sat in the agreement.

The representation clause has been clarified to state that an employee can appoint a “representative” (as defined) for the purposes of the organisational change clause which is not limited to only union representation. The University proposes to delete subclause 19 of the current agreements as the list of “measures to mitigate any negative consequences” do not present feasible and/or long-term solutions for employees affected by organisational changes. The University is not proposing to change current organisational change process.

The Unions did not agree with the proposed changes and believe the list of options in subclause 19 is important for staff to know of their options. The University did not agree as the consultation process allows for staff to raise options as an alternative to redundancy that will be considered by the University during the organisational change process to determine feasibility. The CPSU suggested including realistic options that may be available to staff, however the University confirmed this information is already contained within the redeployment clause.

The Unions also objected to the removal of the term ‘unions’ under the representation clause and suggested alternate wording. The University agreed to review the wording of the representation clause and send the unions a revised clause.

e. Redeployment and Redundancy

The University put forward the following proposed changes which simplifies the wording of the redeployment and redundancy clause:



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- i. Clause 1(a) now clarifies that the redeployment and redundancy provisions contained in the agreements do not apply to casual or fixed-term employees.
- ii. Clause 1.2(a) has been amended to import the Fair Work Act definition of “genuine redundancy” in relation to an employee becoming displaced through organisational change.
- iii. Clause 1.3 (b)(ii) is now deleted. It is never used and contradicts the Leave Without Pay clause as it cannot be used for sampling employment.
- iv. Clause 1.4(b) now prescribes what will occur if an employee does not elect between redeployment and redundancy within the required timeframe – the University will proceed to redundancy in such cases. The University will make the determination to make the position redundant.
- v. Clause 1.4 (c) This is a new provision that covers the situation where an employee is displaced from their substantive position whilst on secondment. Essentially, an employee cannot wait until the end of the secondment position to then decide on redundancy or redeployment in their substantive position.
- vi. Clause 1.5(b) now clarifies that the University may agree to a longer or shorter redeployment period, depending on circumstances and where requested by the affected employee.
- vii. Clause 1.5(c) entitles employees to an additional 4 week redeployment period if they have been displaced through outsourcing, and/or are aged 45+, or have more than 15 years of continuous service. The clause now states that an employee can waive this additional redeployment period if they wish to do so (but get paid out in lieu of the extra 4 weeks). Example – when a staff member wishes to be employed while they are actively seeking employment.

The NTEU deferred their position on this clause pending the outcome of its members meeting on Wednesday 5th April but reiterated their position of no forced retrenchment of staff during the life of the agreement. The Unions expressed concern regarding affected staff that choose to remain in their secondment not having a redundancy payout at the end of the secondment.

The CPSU sought to reinstate lost wording in clause 1.2(c) in relation to the University’s obligations in relation to the Fair Work Act. They also disagreed with the notion of redundancy being the default option if affected staff have not submitted their preference of redundancy or redeployment.

The University agreed to revisit the clause after the NTEU’s member meeting.



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OTHER BUSINESS

8. The bargaining parties discussed the mechanics of how to move forward on outstanding clauses. The Unions objected to the current process as they are reluctant to discuss clauses offline and believed the agreement of clauses should not depend on the overall package.

The University acknowledged the work the bargaining parties have achieved so far however reiterated that some clauses could not be finalised quickly especially if they have a monetary impact to the university.

The bargaining parties agreed clauses requiring re-wording only (no change to benefits and entitlements) can be finalised during bargaining meetings and clauses with substantial changes would need ongoing discussion to reach agreement.

It was agreed to have a recurring item on the agenda for outstanding clauses to be discussed at each meeting. It was also agreed that a member of each bargaining team would review clauses requiring re-wording to present to the full meeting for in-principle agreement.

It was suggested to start meetings at 9.30am which will be discussed offline with the unions.

9. CLAUSES AWAITING FEEDBACK:

The University identified a number of clauses that are awaiting union feedback:

- a. *Fixed term severance pay* - The University will resend the proposed clause to the unions for their comment.
- i. *Annual leave* – The Unions want to include reference to staff being able to take other forms of leave rather than just annual leave during the Christmas shutdown and would like to see a cap on the number of days leave to be taken in conjunction with the concessional days. At the moment the clause implies a mandated leave of up to 8 working days which is considered excessive. The University agrees to insert a maximum of 4 working days and other forms of leave i.e. flex and LSL. CPSU object to staff being directed to take leave particularly when they are trying to apply for annual leave but is rejected by the line manager. CPSU will consult with members about this section of the clause and advise the bargaining parties.
- ii. *Sick leave* – The NTEU provided a revised clause notably the inclusion of ‘pharmacists’ in clauses 1.4(a)(ii), 1.4(c) given it is already the case that pharmacists are already able to provide diagnosis of a medical condition and provide medical certificate that is covered under the Fair Work Act. The University did not object to this additional wording but all parties agreed the wording of the clause



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needed tidying up. The clause was agreed in principle subject to final editing of wording and distribution to the unions by the university

- iii. *Policy clause* – All parties agreed to this clause
- iv. *Parental leave* – it was agreed to move this clause to the 12th April theme meeting.
- v. *Personal leave* – it was agreed to move this clause to the 12th April theme meeting.
- vi. *Long service leave* – The unions' request data in relation to new staff commencing at the university with greater than 90 day long service leave accrued. The unions' continued to express concern about staff having their LSL rejected for operational reasons despite giving adequate notice. The University advised CPSU there will not agree to their claim to recognise NSW public sector LSL based on a liability point of view and the university maintains its position relation to directing staff to take excessive LSL balances.
- vii. *Leave without pay* – It was agreed to resolve this clause offline.
- viii. *Termination of employment* – it was agreed to move this clause to the 12th April theme meeting.

10. Next meeting

- a. Wednesday 12th April 2017

Clauses for discussion

- i. Job security and outsourcing
- ii. Availability of the agreement
- iii. Supervision
- iv. Salary packaging
- v. Flexible work provisions
- vi. Domestic violence leave
- vii. Abandonment
- viii. Right to request flexible working arrangements
- ix. Termination of employment
- x. Parental leave
- xi. Personal leave



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Meeting close 4pm