

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Association of Staff in Tertiary Education: Te Hau Takitini o
Aotearoa (Applicant)

AND John Webster, Chief Executive Officer of Unitec Institute of
Technology (Respondent)

REPRESENTATIVES Mike Dawson for the Applicant
Emma Butcher for the Respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 26 September 2006

SUBMISSIONS RECEIVED 6 October 2006

DATE OF DETERMINATION 30 October 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant union ("ASTE") seeks compliance orders in relation to consultation provisions in a Collective Agreement before the Unitec Institute of Technology ("Unitec") proceeds with changes to certain courses that may affect staffing.

[2] A draft report on a review of staffing levels in the Certificate in Design and Diploma in Design Media courses includes a decision to withdraw the Diploma. ASTE alleges that decision is outside the terms of reference of the review. Further it says such a decision would fail to honour terms of the Collective Agreement. It says that the terms of that Agreement require a full review of a proposal to withdraw the Design Diploma course and such a review should involve staff and their union before a decision is made.

[3] ASTE also says a decision announced by the respondent on 3 August that he was accepting a recommendation from Unitec's senior academic and administrative executives for some particular business and computing courses to be offered at one campus only in future, with some effect on staffing, was a decision that should have been the subject of prior formal consultation with ASTE.

[4] In reply the respondent says Unitec's review of staffing levels for Certificate and Diploma courses in Design was conducted according to the Collective Agreement consultation procedures and its own policy, with input from ASTE considered in the review.

[5] Unitec also says moving some business courses to another campus was not a review of the type contemplated by the particular term of the Collective Agreement but that ASTE had input into the process in any event. A staffing review was yet to be carried out and ASTE would be consulted.

Investigation meeting

[6] The disputes regarding the Design course and the business and computing courses were lodged in the Authority as two separate employment relationship problems. The investigation

meeting dealt with both matters. Written witness statements were provided by ASTE Field Officer Chandra Dixon, ASTE's Unitec Branch Chair Sarah Hardman, and Unitec Human Resources Manager Peter Wulff. Each of these witnesses answered questions at the meeting. By agreement of the parties further evidence was received through the sworn affidavits of Unitec Chief Executive Officer John Webster and a Unitec Programme Director in the School of Computing and Information Technology Liz Nicholson. Neither of the last two witnesses were able to attend the investigation meeting but their affidavits provided some useful factual background and attached a number of important documents. Following the meeting both parties provided written submissions.

Contractual and statutory obligations

The Employment Relations Act 2000

[7] These employment relationships are subject to the statutory duty of good faith including the requirements of s4(1A) of the Employment Relations Act 2000 ("the Act") that

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and

(c) without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected—

(i) access to information, relevant to the continuation of the employees' employment, about the decision; and

(ii) an opportunity to comment on the information to their employer before the decision is made.

[8] Under section 4(4) of the Act this duty applies (among other matters) to:

(b) any matter arising under or in relation to a collective agreement while the agreement is in force:

...

(c) consultation (whether or not under a collective agreement) between an employer and its employees, including any union representing the employees, about the employees' collective employment interests, including the effect on employees of changes to the employer's business:

(d) a proposal by an employer that might impact on the employer's employees, including a proposal to contract out work otherwise done by the employees or to sell or transfer all or part of the employer's business: ...

The Employment Agreement

[9] In addition to the general statutory requirements the parties here are bound by the terms of a multi-employer collective employment agreement between ASTE and six polytechnics and institutes of technology. A specific term on consultation states:

1.10 Consultation

1.10.1 The employer will consult with the ASTE branch about the employees collective interests and in the development of policies affecting those interests.

[10] A schedule to the agreement includes further provisions applying to only Unitec and one other institution. These provisions – under the heading "Organisational Change" – include:

10.5 PROCEDURES

10.5.1 Consultation

- (a) *The National Secretary of ASTE, the Chairperson of the local branch of ASTE and affected employees will be notified by the employer of any reviews of the institute's organisational structure or function, which may result in significant changes to either the structure, staffing or work practices affecting existing employees.*
- (b) *A minimum of one month will be provided to allow ASTE and affected employees to make submissions which will be considered by the employer before making a final decision. The parties may agree to a lesser period.*
- (c) *The employer will take all practicable steps to provide relevant information requested by ASTE.*
- (d) *The employer will provide the union with an opportunity to be involved in any review. Should the review confirm a surplus staffing situation, individuals who might be affected will be advised in writing of this and of their right to assistance from ASTE.*

[11] The present dispute centres on the application and scope of clause 10.5.1(a) of Schedule E ("clause 10.5.1(a)") and particularly the level and nature of a decision or proposal by the employer required to trigger the consultation requirements.

[12] Clause 10.5.1(a) is to be interpreted according to its plain meaning. The Concise Oxford English Dictionary (11th ed, 2004) defines a review as "a formal assessment of something with the intention of instituting change if necessary". That definition is usefully applied to the wording here. Such reviews are not necessarily limited to activities formally described or established as such by Unitec. However notification to specified ASTE officers is only required for "reviews" with particular characteristics.

[13] Firstly, they must be of "organisational structure or function". I accept ASTE's submission that this includes the courses offered and taught as these are fundamental to Unitec's function. Offering courses and arranging the teaching, administration and funding of those courses of study comprises part of the organisational structure of Unitec.

[14] Secondly, changes to that structure or function must have a "significant" effect on the structure, staffing or work practices of existing employees. The Concise Oxford defines 'significant' as "extensive or important enough to merit attention". Not every change to the structure, staffing or work practices is intended to trigger the specific consultation procedure to which Unitec has committed itself at clause 10.5.1. Whether a change is "significant" must be considered objectively in the context of its effect on existing employees – whether it will or will not affect them determines its significance, not the subjective assessment of either Unitec managers or ASTE members. The effect need not be a certainty – the clause requires notification where significant changes *may* result. The prospect of significant change need not be as high as a likelihood, it need only be a possibility.

[15] In this context the notification provision at clause 10.5.1(a) – and the subsequent one month minimum period for submissions before a final decision is made at clause 10.5.1(b) – does not apply *universally* to every management decision of Unitec. However it is consistent with its plain meaning that these clauses are intended to be acted on by the relevant managers and decision-makers in all situations where existing staff face the prospect or possibility, but not certainty, of changes to structure, staffing provisions and work practices under which they work.

Unitec's own policy

[16] Unitec has adopted a policy, accepted by ASTE, for situations where it has "a need to evaluate its organisational structure and functions". This policy titled 'Restructuring and Staff Surplus Policy and Procedure' is referred to within Unitec as an "HR18 Review".

[17] It states that evaluations of organisational structure and functions must be carried out in accordance with the policy in order for Unitec “to meet its legal obligations”. The procedure outlined begins with a Head of School or Manager identifying the need for a review and discussing this with their Senior Manager and Unitec’s Human Resources Department. Steps are set out for notifying the union’s head office and for consulting staff. Staff who may be affected by the evaluation are to be given the opportunity to respond to the terms of reference and have submissions from themselves and their union considered before a review committee makes any recommendations. A draft report on the review, including any recommendations, is to be provided to staff affected and the appropriate union, with an opportunity for further submissions on the recommendations before the report is finalised and recommendations made to the Senior Manager for final decision. Decisions involving withdrawal or major changes to a programme may be made only by Unitec’s Chief Executive Officer.

Issues

[18] In light of the parties’ obligations at law and by agreement, the issues to be resolved in this matter are:

- (a) In deciding on 10 August 2006 to withdraw the Diploma in Design course, had Unitec – through the Chief Executive and others acting on Unitec’s behalf – complied with its obligations under clause 10.5.1?
- (b) In deciding on 3 August 2006 to transfer teaching of the Certificate of Business Administration and Computing level 3 and 4 courses (CBAC 3 and 4) from its Mount Albert to its Waitakere campus had Unitec – through the Chief Executive and others acting on Unitec’s behalf – complied with its obligations under clause 10.5.1?
- (c) Should any compliance orders now be made?
- (d) Are any orders or recommendations required in respect of the conduct of ASTE and Unitec and their officers on these matters?

Diploma in Design decision

[19] Having reviewed the evidence provided by the parties’ witnesses, including the chain of events apparent through the correspondence and other documents, and considered the parties’ written submissions I am satisfied that ASTE has made out its case that Unitec has not yet complied with its obligations under clause 10.5.1 before making the decision to withdraw the Diploma of Design courses. I come to this view on the basis of the following findings and for the following reasons.

[20] In early June 2006 management in Unitec’s School of Design began a review of current staffing levels for its Certificate in Design and Diploma in Design Media. The review was to be conducted according to specified terms of reference. It was stated to be an “HR 18” review. These terms had been circulated in draft form to staff in May 2006 for comment before being finalised.

[21] The terms noted that the Diploma has been assessed as a non-viable programme and the Certificate was “marginally viable”. Actual enrolments were below projected levels. A “re-write” of Certificate and Diploma programmes was anticipated as leading to “restructured programmes being introduced in 2008”. There is no indication that a decision to withdraw the Diploma is contemplated. Rather the introduction to the review terms states:

*The teaching of Design at **both** Certificate and Diploma levels **is part** of the School of Designs (sic) **future** operation ... It is considered that now is an appropriate time to review the staffing levels within these two programmes. (emphasis added)*

[22] The specific terms of reference similarly refer to both programmes and include a general term allowing the review committee “to consider such other matters, and make such recommendations as the review committee considers relevant and appropriate”.

[23] The terms also set out a time frame for the review starting from 1 June with a final

report to be signed by the Chief Executive on 8 September and communicated to staff on 11 September. A draft report was to be distributed to "affected staff and ASTE" by 25 August with a week allowed for submissions before receiving submissions on the draft report.

[24] Mr Wulff sent the ASTE National Secretary a copy of the terms of reference on 13 June with an apology for not having sent them earlier.

[25] On 28 July the review leader Glenda Jacobs sent Design School staff an email stating that "as you probably know, the Programme Directors proposed two alternative paths forward, both involving the withdrawal of the Diploma in Design Media as it stands ..." . It is not clear that all staff did know of the proposal which was presented to the review committee three days earlier. On 3 August Ms Jacobs again emailed Design School staff advising that a meeting of the Head of the Design School with two Deans had agreed that a proposal was to go to Unitec's Senior Executive recommending discontinuation of the Diploma.

[26] That day Mr Wulff and Ms Jacobs met with Ms Hardman to advise her of the recommendation. They told her the recommendation to withdraw the Diploma would create a staff surplus of around 2.4 Full Time Equivalent (FTE) positions.

[27] That recommendation was subsequently approved on 10 August by the President's Committee – an administrative body comprising the Chief Executive Officer, two Deputy Presidents and the Registrar. It was then referred to the Senior Executive – a body comprising the President's Committee members and Unitec's Deans and Directors.

[28] On 9 August Unitec representatives talked with staff about the recommendation to withdraw the Diploma and asked for their ideas on how the resulting staff surplus could be managed. On 10 August Mr Wulff sought ASTE's "contribution" by "next Monday" (meaning either within two working days or seven working days).

[29] The minutes of the President's Committee for 10 August record that the Deans recommendation to withdraw the Diploma was accepted on the basis that "consultation has taken place with the staff and the Union".

[30] ASTE objects that consultation had not taken place – at least not on the basis set out in the terms of reference for the Design School review or clause 10.5.1(a).

[31] Mr Wulff's evidence was to the effect that by meeting with Ms Hardman on 3 August, informing her of the recommendation and inviting her to attend a meeting with staff on 9 August, Unitec had met its obligations to consult with ASTE on the proposal to withdraw the Design Diploma. Similarly he suggests that as all the relevant staff who received Ms Jacobs' earlier emails were ASTE members, as were the two Programme Directors who recommended the withdrawal, there was effective consultation with ASTE and its members.

[32] I need not detail the subsequent debate between Dr Webster, Mr Wulf, Ms Hardman and Ms Dixon on how decisions on the proposal came to be made. In part Unitec's argument is that the terms of reference for the review included a 'catch-all' term allowing the committee to consider all other relevant matters. That does not meet the requirements of the statutory duty of good faith nor the contractual obligations of clause 10.5.1(a) nor Unitec's own HR18 review policy.

[33] From late July it was clear that the review committee was developing a proposal to withdraw the Diploma that went beyond the review's terms of reference contemplating the Diploma as part of the "future" of the School. This proposal was crystallised in the Dean's recommendation on 3 August and approval by the President's Committee on 10 August.

[34] By 3 August the proposal was certainly within the scope of s4(1A) of the Act. The Head of School in conjunction with two Deans was proposing to make a previously unnotified decision to recommend withdrawing the Diploma courses. This was likely to have an adverse effect on the continuation of employment of 1 or more employees. Unitec identified the likely

surplus as 2.4 FTE positions. (A final draft report on the review suggests the staffing surplus for the two affected programmes is 1.51 FTE in 2007 and 0.95 FTE in 2008.) That there may be prospects such a surplus could be absorbed by redeployment or development of new courses does not negate the requirement to act in good faith by providing employees with information about the decision and an opportunity to comment on that information before the decision is made.

[35] In Unitec's case clause 10.5.1(a) and (b) specified an agreed process of consultation which would also meet the statutory obligations. ASTE's Branch Chair was verbally notified of the proposal but neither written nor verbal advice of it went to ASTE's National Secretary. Rather than allowing a month for submissions, only a few days were available before the recommendation was adopted by the President's Committee on the misleading basis that adequate consultation had occurred with the union and staff. A final decision was made on one aspect of the review – the Diploma – well ahead of the timetable set out in the terms of reference which contemplated a draft report open for comment and submissions by the staff and their union by 25 August before a final decision in September.

[36] The review committee proposal to withdraw the Diploma warranted an HR18 review process of its own. Its position on the Diploma's future was clearly beyond the scope of the terms of reference which had been notified and consulted on for the wider review of both the Certificate and Diploma programmes.

[37] The Diploma proposal, with the reduction considered necessary in FTE staffing, was a significant change in structure and function which may effect existing employees, either entirely (if an entire position is made redundant) or in part through reduced hours spread across a wider number of staff. This situation was within the circumstances contemplated by clause 10.5.1(a).

CBAC decision

[38] Having reviewed the evidence provided by the parties' witnesses, including the chain of events apparent through the correspondence and other documents, and considered the parties' written submissions I am satisfied that ASTE has made out its case that Unitec did not comply with its obligations under clause 10.5.1 before making the decision to cease teaching CBAC 3 and 4 courses at the Mt Albert campus and to instead offer those courses at the Waitakere campus in 2007. I come to this view on the basis of the following findings and for the following reasons.

[39] The CBAC 3 and 4 courses – which I was told were general office administration courses – were identified as "non-viable" by a report from the Dean of Vocational Education in May 2006.

[40] In May 2006 meetings between the Heads of the School of Computing and Information Technology and General Studies, the Dean of Vocational Education, the Academic Deputy President and other advisors discussed the possibility of moving CBAC 3 and 4 to the Waitakere campus and discontinuing programmes at the Mt Albert campus for the second semester of 2006.

[41] This proposal was discussed with CBAC 3 and 4 staff on 1 June, including their Programme Director Liz Nicholson. Ms Nicholson later raised issues regarding the accuracy of the costings for CBAC 3 and 4 relied on in the viability evaluation. On two occasions in early June Ms Nicholson also communicated staff feedback on the proposal to a Unitec Human Resources advisor. Ms Hardman also had email correspondence with Unitec Corporate Deputy President Richard Handley on the costings issue.

[42] On 22 June the President's Committee considered the proposed cancellation of CBAC 3 and 4. It resolved to recommend both courses continue with full time enrolments only for the second semester of 2006 and be cancelled for 2007. An HR18 review was to be carried out once the Senior Executive approved cancelling the programmes for 2007. The need to consult

staff and their union was discussed. Registrar Rebecca Ewert expressly referred to the prospect of legal action against the cancellation of the courses if consultation did not take place and described consultation as “good change management practice”.

[43] Dr Webster avers that he did not consider that decision to recommend cancellation to the Senior Executive constituted a review of Unitec’s organisation or structural function, significantly affecting existing employees and triggering clause 10.5.1(a). He says withdrawal of a programme does not necessarily mean any change in staffing, let alone a significant one. He does accept however that proposing to make a decision that might impact on employees was within the scope of good faith requirements under section 4 of the Act. For that reason he says Unitec agreed there would be what he calls “further consultation” before making a final decision.

[44] At the subsequent President’s Committee on 29 June Mr Handley reported meeting with Ms Nicholson and Ms Hardman to discuss issues on the costings for the courses and that they now appeared satisfied with the information provided.

[45] That same day Ms Nicholson provided Dr Webster and Mr Handley with a detailed memorandum setting out issues that she wanted the Senior Executive meeting to consider before deciding on the future of CBAC 3 and 4. Dr Webster says that as a direct result of Ms Nicholson’s representations the Senior Executive decided not to cancel both courses for 2007. Instead it resolved to recommend that CBAC 3 and 4 not be taught at Mt Albert but be transferred to Waitakere for that year.

[46] Minutes of President’s Committee meetings on July 6, 13 and 20 record efforts by Mr Handley to get feedback from Ms Hardman on the recommendations regarding CBAC 3 and 4. On 27 July, at Dr Webster’s request, Ms Ewert sent Ms Hardman an email seeking that “feedback”. She noted that Dr Webster “would like to finalise this matter” and asked for “any information/comment you may wish to make” by 3 August. This request was recorded in Senior Executive Committee meeting minutes on 28 July as ASTE being given a final opportunity to provide feedback on the proposed changes.

[47] On 2 August Ms Hardman provided a detailed response to the proposal. This questioned the financial analysis on which it was based and the level of consultation with ASTE. She stated that:

Apparently this programme has been threatened with closure for some time, in fact for years. However, Unitec management has not approached ASTE to discuss the matter. Our members brought it to our attention and we approached you. Richard Handley has been helpful which we appreciate. Although we have a differing interpretation of consultation, this is clearly a case where discussion at a considerably earlier time should have been indicated. We are in a position of advocating for our members in the absence of a transparent process and dialogue with those who are making recommendations as to CBAC’s fate. We firmly believe that consultations should have been occurring before the point in time at which proposals are on your desk for sign-off.

[48] After a further email exchange with Ms Hardman, and considering responses from Mr Meldrum and Mr Handley to Ms Hardman’s email, Dr Webster made a decision on 3 August to accept the Senior Executive’s recommendation to move the CBAC courses to Waitakere for 2007. A memorandum setting out the decision was issued to senior managers and Ms Hardman that day. A memorandum to staff in the School of Computing was issued the following week.

[49] Unitec’s argument on this point acknowledges its consultation requirements in this situation statutory duty at s4(4)(c) and (d) and the employment agreement at clause 1.10.1 requiring consultation only with the ASTE branch (not notification to the National Secretary as in clause 10.5.1). However it does not accept this situation went beyond a proposal that “might impact on” staff to one contemplated under s4(1A) as having or likely to have an adverse effect on the continuation of anyone’s employment. Rather Unitec says its obligations

were met by seeking discussion and comment with Ms Hardman in her role as ASTE's branch chair and the input of CBAC Programme Director Liz Nicholson who is also a member of ASTE's Unitec branch committee.

[50] I prefer ASTE's submission that the Dean's proposal to stop teaching CBAC 3 and 4 courses, that went to the Senior Executive meeting on 30 June, was of the type that triggered the consultation requirements of clause 10.5.1(a). Senior Executive members themselves noted, as recorded in their meeting minutes, that "*whether or not the proposal from General Studies was acceptable an HR18 review would be required, and in the interest of good consultation, the Union should be advised of this*". There was clearly an understanding among Unitec's senior managers at that point that the Dean's proposal for CBAC 3 and 4 also triggered its own policy for dealing with restructuring and likely staff surplus set out in the HR18 policy. The courses presently involved around 3 FTE staff positions which would be affected should the proposal be implemented. Whether that change would result in the redundancy or redeployment of any person in a particular position or result in a change of teaching hours, its effect would be significant for those staff.

[51] Clause 10.5.1 sets out the steps required for consultation on a prospect of change of that type. The communication with Ms Hardman and Ms Nicholson did not adequately meet the terms of that clause. Ms Hardman is an academic in Unitec's language school and her role as ASTE Branch Chair is an elected position. That role takes around 15 per cent of her working time. She is a lay representative rather than a paid member of the union's professional field staff. Unitec did not advise ASTE's National Secretary which I understand from Ms Dixon's evidence would have started a process whereby ASTE's professional staff – particularly Ms Dixon in her role as field officer responsible for Unitec – would have discussed the proposal with ASTE members likely to be affected and provide what she called a 'structured' response.

[52] Neither can Ms Nicholson's input into Unitec's management process for developing the proposal fairly be taken as consultation with ASTE members in the affected area. Ms Nicholson did provide her relevant managers with ideas and feedback from staff but it is clear from the papers that this was done in her role as Programme Director. That is a role in the lower levels of Unitec management and one where she would have been operating within the institute's policies and not the union's. It is unrelated to her own role as an ASTE member. Her comments in her management role, including any feedback she had from staff, were not a substitute for the opportunity through consultation for those employees, including Ms Nicholson, to express their independent views through ASTE and to promote their own interests even if they were at odds with those of the Institute.

[53] A failure to appreciate that distinction in roles is also apparent in the approach of Unitec senior managers to the proposal and decisions in the Design School. Similarly consultation requirements are not met simply because staff who are told of a proposal are ASTE members. The terms of the collective agreement commit Unitec's representatives to do more than relying on those members and the 'lay' officers of the union's local branch (themselves working Unitec staff) to notify important issues to the union's national office.

[54] I note for the parties' benefit that I have not considered ASTE's evidence on what it considers is the good or better practice of some other employer parties to the same collective agreement. As stated at the investigation meeting, the issue is whether Unitec complies with the terms of the agreement to which it has committed. Unitec's conduct must stand or fall on its own merits measured against the terms of the agreement rather than the conduct of other institutions in making factually different and complex decisions.

Are compliance orders now required?

[55] I am satisfied that the compliance orders sought by ASTE should be granted on the terms now to be set out:

- (i) In respect of the proposal for the withdrawal of the Diploma in Design Media, the respondent is to comply with clause 10.5.1 of Schedule E of the Academic Staff Multi-

Employer Collective Agreement by carrying out the steps required in that clause. Those steps may be carried out through the procedure set out in Unitec's HR18 policy.

(ii) In respect of the proposal for the transfer of the CBAC 3 and 4 courses to the Waitakere campus, the respondent is to comply with clause 10.5.1 of Schedule E of the Academic Staff Multi-Employer Collective Agreement by carrying out the steps required in that clause. Those steps may be carried out through the procedure set out in Unitec's HR18 policy. That is a step which the respondent's closing submission state that the respondent intended now undertaking in any event. I confirm, in case there is any doubt, that such a review, conducted in terms of clause 10.5.1 and Unitec's HR18 policy, would meet the requirements of this compliance order. The practical effect is that a final decision on whether to transfer the CBAC 3 and 4 courses to the Waitakere campus for 2007, what staffing may be required for that, and the handling of any staffing surplus should be considered and decided through the report process set out in the HR18 policy.

(iii) In both cases a period of one month is provided by the agreement for submissions from ASTE and affected employees and Unitec remains required to allow that period of time unless ASTE and affected employees agree to a shorter period.

(iv) As required by s137(3) of the Act I specify that the respondent must comply with these orders within eight weeks of the date of this determination. The respondent may, as provided for by s138(3), apply for an extension of the time for compliance should that be necessary.

[56] I have considered Unitec's concern about the effect of having to undertake consultation at this stage of the year on its planning for 2007. That is a consequence of its earlier actions and which could have been avoided by measures easily undertaken. Advising the National Secretary of ASTE requires only an email (as seen from Mr Wulff's email of 13 June). Providing relevant information requires no additional work if the relevant manager who has developed the proposal has already gathered that for consideration by senior managers who have to make subsequent recommendations and decisions within Unitec. Begun early enough the one month time period for submissions from ASTE and affected staff can be accommodated without significantly extending the timelines needed for final decisions within the Institute, as seen by the timeline in the Design School's wider HR18 review.

Conduct of parties in consultation

[57] The general requirements for consultation provided for within an employment agreement or under a statutory duty are helpfully set out in a number of Employment Court decisions.¹ More than notification is needed but not negotiation and agreement. A final decision should be made only after considering with an open mind submissions made either by staff directly or through their union. The information provided for staff and their union to comment on needs to be sufficiently precise to be able to state a view.

[58] Evidence and submissions for the respondent complain that ASTE itself has not acted in good faith through Unitec's review of its Design Certificate and Diploma courses. Particularly the complaint is that Ms Hardman openly discouraged Design School staff from attending some meetings arranged as part of the review. I do not make any findings on this particular conduct or the extent to which it was or was not justified in the the context. However the respondent correctly submits that the obligations of good faith apply to employers, employees and unions.

[59] A consultation process is not to be treated as an opportunity for passive resistance to delay and frustrate change which may be necessary for an organisation's viability and, for the parties in this case, proper stewardship of public funds and public educational interests. Rather it is supposed to be a real opportunity for comment and discussion that may influence

¹ *Cammish v Parliamentary Service* [1996] 1 ERNZ 404 (EC, Goddard CJ) at 417 and *Simpson Farms Limited v Aberhart* (unreported, EC Auckland, 14 September 2006 AC 52/06, Colgan CJ) at [62] – [63].

the outcome. A pin-picking approach of delaying responses or seeking ever more detailed information may be inconsistent with the statutory good faith obligations to be responsive and communicative. It is not a counsel of perfection but one of reasonable endeavours and fair effort.

[60] All parties now have the opportunity to apply those principles through the required consultation on changes proposed both in the Design and Computing schools.

Costs

[61] Costs on these two matters, heard jointly, are reserved. If the parties are unable to resolve any costs issues between themselves, either party may apply to the Authority for that costs to be determined.

Robin Arthur
Member of Employment Relations Authority