IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE

[2020] NZERA 123
3084912

	BETWEEN	NEW ZEALAND PROFESSIONAL FIRE FIGHTERS UNION Applicant
	AND	FIRE AND EMERGENCY NEW ZEALAND Respondent

Member of Authority:	Geoff O'Sullivan
Representatives:	Peter Cranney, counsel for the Applicant Geoff Davenport, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions Received:	21 January 2020 from the Applicant 24 January 2020 from the Respondent
Date of Determination:	18 March 2020

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The New Zealand Professional Fire Fighters Union (the Union) and Fire and Emergency New Zealand (FE) are parties to a collective agreement which contains various terms requiring FE to notify vacancies or new positions and to give full consideration to the union's members. The agreement also contains a requirement that whenever vacancies or any new positions occur, not less than 14 days' notice shall be posted inviting applications from the workers for the filling of such vacancies together with an obligation to give full consideration to such applicants. The union contends that FE's proposed appointment

practice for the positions of District Manager and Group Manager does not comply with the agreement.

[2] The Union states that s 29 of the Fire and Emergency New Zealand Act 2017 (the Act) requires FE to put in place a procedure for the reviewing of appointments that are subject to complaints by employees. The Union further states that s 30 of the Act provides that ss 26 and 29 of the Act do not apply if the person appointed is an employee who has received a notice of redundancy. In other words there is a tension between the Act and the agreement.

[3] FE is a Crown Entity within the meaning of the Crown Entities Act.

[4] The Union states that an important question of law is likely to arise in the proceedings other than incidentally and the matter should be removed to the Employment Court. The important question of law is whether or not the effect of s 30 of the Act removes the contractual appointment and review entitlements which should be enjoyed by the Union's membership because of the provisions of the collective agreement.

[5] FE agrees with the Union's view namely that this matter should be removed to the Court.

[6] Both parties have filed submissions supporting removal to the Court.

Discussion

[7] Section 178(2) of the Employment Relations Act 2000 (the Act) provides:

> The Authority may order the removal of the matter, or any part of it, to the Court if:
>
> (a) An important question of law is likely to arise in the matter other than incidentally; or
>
> (b) The case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or
>
> (c) The Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
>
> (d) The Authority is of the opinion that in all the circumstances the Court should determine the matter.

[8] The ground for removal put forward by both parties is that:

> An important question of law is likely to arise in the matter other than incidentally.

[9] Having regard to s 174E of the Employment Relations Act 2000 I do not refer in this determination to all the submissions filed. I record however I have fully considered them. The principles involved in assessing conflicts between a statute and a collective employment agreement are well established and frequently practised in the Authority.

[10] Notwithstanding both parties agree that they wish the matter to be removed to the Court none the less they have to satisfy the statutory test. I am unconvinced that the present case will give rise to an important question of law.

Conclusion

[11] For the above reasons I conclude this is not a matter that should or in all probability given the law can, be removed to the Court. The application is declined.

Costs

[12] Costs are reserved although I note as both parties supported the application costs may not be an issue. If they are, I suggest the parties best await consideration of costs once the substantive claim is determined.

Geoff O'Sullivan
Member of the Employment Relations Authority