

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2024] NZERA 432
3301620

BETWEEN	PUBLIC SERVICE ASSOCIATION – TE PŪKENGĀ HERE TIKANGA MAHI INCORPORATED Applicant
AND	SECRETARY FOR EDUCATION Respondent

Member of Authority:	Natasha Szeto
Representatives:	Peter Cranney and Angus Wilson, counsel for the Applicant Hamish Kynaston, Emma von Veh and Raukura Doyle, counsel for the Respondent
Investigation Meeting:	21 and 27 June, 2 and 8 July 2024 in Wellington
Submissions and information received:	Up to 17 July 2024 from the Applicant Up to 9 July 2024 from the Respondent
Determination:	18 July 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application by the Public Service Association – Te Pūkenga Here Tikanga Mahi Incorporated (PSA) for interpretation of disputed clauses of its Collective Employment Agreement with the Ministry of Education – Te Tāhuhu o te Mātauranga (1 March 2023 to 17 January 2025) (the Collective).

[2] In March 2024 the Ministry of Education through the Secretary for Education (the Ministry) formally commenced a change management process in response to a Government Directive to achieve cost savings. This change process encompassed other

change processes at the Ministry including the Government's decision to rephrase the NCEA Change Programme, the School Transport process, and the transfer of the Sector Service Desk team to Network for Learning (N4L). The overall impact of the change proposals at the Ministry is they contain possible job losses for 755 public servants.

[3] The PSA says the Ministry has not appropriately considered the terms of the Collective and has underestimated the extent of its obligations. As a consequence, the PSA says the Ministry has not complied with the requirement to approach the change management process with the aim "to reach agreement" and "make recommendations to management". The PSA is also looking to the next stages of the change management process, and asks the Authority for determinations about the nature and scope of the parties' obligations in relation to options available to employees who are not reconfirmed or reassigned into roles. The PSA says the Collective requires the Ministry to consider the options for each affected employee. One of these options is severance, which the PSA says is only available under the Collective if the employee agrees to it.

[4] The Ministry says it understands and has complied with its obligations under the Collective. It has taken the change management process very seriously, and consultation has been extensive and genuine. The Ministry takes a different view of how the options must be approached and says in the first instance the options can be explored change process by change process, and not individual by individual. The Ministry also says it does not require an employee's agreement to severance, but in any case it would always be the last resort.

[5] It is important these matters are resolved as soon as possible. The parties have been involved in change management processes for several months now. The first group of affected employees was due to have their employment end on 27 June. That process has been paused by the Ministry, but I acknowledge this has been a difficult and impactful process for all involved and a prompt resolution to these issues will assist the parties to move forward.

The Authority's investigation

[6] The PSA lodged a statement of problem with the Authority on 4 June 2024. It sought urgency, which the Ministry consented to. A first Case Management Conference was convened on 5 June and urgency was formally accorded to the matter on 14 June. Dates for an investigation meeting were timetabled according to counsel availability,

and timetabling orders for the exchange of evidence, memoranda and submissions were made to ensure the necessary information was available for each stage of the investigation. The matter was investigated over approximately three and a quarter days on 21 and 27 June, and 2 and 8 July 2024.

[7] In all, there were ten witnesses for the PSA, comprising Fleur Fitzsimons, Assistant Secretary, PSA; Aleeta Hau, Senior Business Advisor (Business Performance team / Te Pae Aronui) and PSA Rūnanga delegate; Carl Klitscher, Senior Solutions Architect (Te Pou Hanganga, Matihiko Infrastructure and Digital); Gary Northcott, Transport Contract Manager in School Transport (Infrastructure and Digital Group); Ian Rich, Principal Advisor – Risk Management (Corporate Business Group) and PSA National Delegate; Tania Roxborough, NCEA Implementation Facilitator; Hayley Whitaker, Principal Advisor (early learning operational policy) and PSA delegate; Joanna Houston, Strategic Advisor Māori for Canterbury Chatham Islands and PSA co-convenor; Cheryl Reynolds, National Sector Leader at the PSA; and John Ryall, former union organiser and advocate.

[8] The seven witnesses for the Ministry comprised: Ellen MacGregor-Reid, Hautū / Deputy Secretary (Te Poutāhū / Curriculum Centre); James Meffan, Group Manager, (School Transport); Mere-Hēni Simcock-Rēweti, Hautū (Te Pou Tuarongo); Geraldine Smith, Manager Employee Services (Te Pou Rangatōpū / Corporate); Sean Teddy Haūtū / Deputy Secretary (Te Pae Aronui / Operations and Integration); Stuart Wakefield, Chief Digital Officer (Matihiko / Digital business unit); and Emma Wright Manager, Organisational Design & Change.

[9] All witnesses except one PSA witness gave evidence in person and answered questions from counsel and the Authority under oath or affirmation. Thousands of pages of information was provided to the Authority. Accordingly, I have focused on the material to which I have specifically been directed, and which is relevant to the issues before me.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified the orders made. It has not recorded all the evidence and submissions received, but all information submitted to the Authority has been considered.

[11] In saying this, I acknowledge the time and care put into all the statements and information submitted to the Authority. If witnesses or their evidence have not been specifically referenced in this determination, that is no reflection on the importance or quality of the witness's evidence and all evidence has been taken into account.

Issues

[12] The heart of the issue between the parties is their different interpretations of certain clauses of the change management section of the Collective.

[13] The PSA asks the Authority to make determinations about the disputed clauses of the Collective. In relation to the reviews/restructures process in clause 11.7, the PSA seeks a finding there has been non-compliance, but asks the Authority to reserve its determination on making a compliance order under s 137 of the Act.

[14] The Ministry says it has complied with the Collective in its reviews/restructures process. The Ministry also says even if the Authority was to find there had been non-compliance, I should not exercise my discretion to order compliance – it is not sought by the PSA, and is now unnecessary in the circumstances.

[15] The investigation proceeded at pace, and the PSA's claims evolved over the course of the proceedings. Two open substantive proposals were put forward by the Ministry to resolve the issues, relating to clause 11.7 (on 24 June) and clause 11.15.1 (21 June). Both proposals were declined by the PSA.

[16] It was agreed with the parties that the following are the issues for determination:

In relation to clause 11.7 of the Collective:

- (i) Whether clause 11.7 requires the Ministry to participate in a process with the union with the aim of reaching agreement as to joint recommendations to be made to management.
- (ii) Whether clause 11.7 requires that the Ministry's management take the joint recommendations into account as far as possible before making final decisions.
- (iii) Whether the Ministry has complied with clause 11.7.
- (iv) Whether the Authority should reserve a decision on making a compliance order, and only make the order in the event of continued non-compliance.

In relation to clause 11.15.1 of the Collective:

- (v) Whether clause 11.15.1 requires that how the options or other options (including the types and levels of financial assistance) are implemented will be negotiated on a case-by-case basis between the Ministry and the union; and the phrase “negotiations on a case-by-case basis” includes negotiation about each separate employee (including his or her circumstances).
- (vi) Whether clause 11.15.1 requires the Ministry to “so far as it is able”:
 - i. identify particular skill shortages in the Education Service or elsewhere in the state services; and
 - ii. assess where there are generally job opportunities in the Public Service and/or in the private sector.
- (vii) Whether clause 11.15.1 requires the Ministry to consider the skills, training and so on of the members who are surplus and determine whether there are retraining opportunities for them for work either in the Public Service or the private sector; and if retraining opportunities are identified, to design specific retraining programmes.

In relation to clause 11.16 of the Collective:

- (viii) Whether the severance option in clause 11.16 can only be implemented by the Ministry if both the PSA and the individual concerned agree.

What are the applicable principles for interpreting Collectives?

[17] The parties agree that the case of *Le Gros v Fonterra Cooperative Group Limited*¹ provides the relevant law as to the interpretative exercise, with reference to the statutory and common law context in which employment agreements are entered into and operate.

[18] In *Le Gros*, the Court stated:²

As the Supreme Court has explained in the context of a dispute about the meaning of a commercial contract, the approach is objective. The aim is to ascertain the meaning which the agreement would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the agreement. This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by context. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.

¹ [2023] NZEmpC 193.

² Above, at [16].

Clause 11.7 of the Collective

[19] I consider clause 11.7 of the Collective first. Clause 11.7 states:

11.7 Reviews/Restructures process

The PSA and the Ministry agree to the process outlined below for the management of change:

- (a) The Ministry will notify the PSA (as per Clause 11.2) of a proposal for change.
- (b) The Ministry will invite the PSA nominated delegate(s) to support members affected/impacted by the change, to attend a briefing to discuss the proposal for change. At the briefing the Ministry will provide:
 - (i) Proposal for change documentation which must include a timeline that notes the dates that the Ministry met with the PSA prior to the release of the proposal for change and the final decision documentation
 - (ii) The names of all members in the team/group that the management of change is being proposed
 - (iii) Information on potential impacts to members from the proposed change.
 - (iv) The Ministry will provide this information in a timely manner, no less than 7 days prior to announcement to affected staff.
- (c) The PSA will inform the Ministry of the name(s) of the delegate(s) that will be supporting members affected/impacted by the change.
- (d) The Ministry will advise members in writing that they have briefed PSA on the proposal for change and they will include PSA in all communications sent to members throughout the change.
- (e) The Ministry will include the names(s) of the PSA delegate(s) in the proposal for change documentation and encourage members to liaise with the PSA with regard to the change.
- (f) The Ministry agrees to a minimum of 10 working days for the consultation period on the proposal for change documentation.
- (g) The PSA will support members at each stage of the change process, including attendance at any consultation meetings, workshops or other forms of engagement and will collate and submit member feedback on their behalf to the Ministry where requested to do so.
- (h) The PSA will support any members affected/impacted by the change in accordance with the terms and conditions outlined in this agreement.

The aim of this mechanism will be to reach agreement and make recommendations to management, who will endeavour to take the views into account as far as possible before making final decisions.

[20] The disputed part of clause 11.7 is the last sentence. It is common ground between the parties that clause 11.7 was engaged following the development and

notification of the change proposals for each group, and there were no joint recommendations made to management.

[21] The PSA says clause 11.7 operates on the basis the PSA will attend meetings, workshops, discussions, and participate in other forms of engagement to reach agreement and the Ministry's representatives will have the same aim. When agreement is reached, that agreement becomes a joint recommendation to management. The PSA says there have been multiple meetings between the parties, but none were directed to this specific intention, and there has been no attempt to make recommendations to management "in any way".

[22] The PSA accepts the Ministry has the prerogative to make final decisions, but if the parties fail to reach agreement on joint recommendations, the PSA says both perspectives should be put before management who are obligated to take those views into account as far as possible. The PSA says to date, this kind of engagement has formed no part of the change management process.

[23] The PSA says the context of the whole Collective needs to be explored when considering the meaning of clause 11.7, including the general provisions which give contractual effect to the Ministry's obligation to be a good employer, and the quality working relationship principles and mutual commitment to Te Tiriti o Waitangi. The PSA says the Ministry has not aimed to reach agreement and make recommendations to management in terms of the principles of the Collective, or in accordance with its obligations under Te Tiriti – in particular, the principles underpinning change management of kaitiakitanga (guardianship and security) and pono (do the right thing).

[24] The Ministry's view is the last sentence of clause 11.7 is a purpose statement, and not a separate step. It provides the "aim" for the mechanism of consultation which is provided in the preceding steps (a) to (h). Read as a whole and in context, the Ministry says clause 11.7 reflects orthodox but best practice consultation which begins with a proposal (noting there is no obligation on the Ministry to involve the PSA in formulation of the change proposal itself), incorporates consultation meetings, workshops or other forms of engagement and the collation and submission of member feedback, and culminates in final decisions being made by the employer.

[25] The Ministry says clause 11.7 has never been applied in the way now advocated for by the PSA, and importing a specific step into the last sentence of clause 11.7 is

contrary to its proper interpretation. Clause 11.7 does not require negotiation, or joint recommendations. The Ministry agrees with the PSA that management is obligated to take views into account as far as possible, but the Ministry says “views” is a broader concept than “recommendations”. The Ministry also say consultation has been done *with* and not *to* employees. The outcomes are sometimes far-reaching and not what they wanted or agreed to, but that does not make them unlawful. The Ministry takes no issue with the PSA’s position about the principles that underpin the change management process, but says the principles do not block or diminish the Ministry’s prerogative to implement change.

What does clause 11.7 require the Ministry to do?

What is the natural and ordinary meaning of clause 11.7?

[26] The proper exercise of interpretation starts with considering the natural and ordinary meaning of the clause. On its face, clause 11.7 refers to the aim of the mechanism which is to “reach agreement” and “make recommendations to management”. The mechanism must be a reference to clauses (a) to (h) which sets out the process the parties have agreed to follow in the management of change. The Ministry submits the mechanism at (a) to (h) is an orthodox and defined consultation process. The PSA submits clause 11.7 requires more than mere consultation, which is a weak contractual right compared with the aim “to reach agreement”.

[27] I prefer the more expansive reading of the mechanism, in that it goes beyond being a mere consultation process. The mechanism is stated to be a change management process, and not just a consultation process. Consultation meetings may be part of the process and are specifically referred to in clause 11.7(g), but the inclusion of consultation meetings as part of the mechanism suggests the parties intended the mechanism to be more than consultation. The opening words of clause 11.8 also reinforce this interpretation because they refer to next steps only occurring “as a result of the review and at the conclusion of the consultative process”.

[28] The aim “to reach agreement” and “make recommendations to management” is the stated purpose of the mechanism. In this case, the Ministry and PSA both agree the aim is not merely aspirational, but prescribes the way the change management process must be approached. Where the parties differ is the PSA sees the last sentence of clause

11.7 as effectively importing a distinct step into the change management process, and the Ministry says the aim gives meaning or effect to the steps set out in (a) to (h).

[29] The difficulty with interpreting the clause is it contains both a purpose statement and desired outcome. To give proper effect to the clause, the phrase “make recommendations to management” should be viewed as the natural corollary of the mechanism at (a) to (h) being properly implemented by parties who are aiming to reach agreement.

[30] Who is to have the aim “to reach agreement” and “make recommendations”? The clause refers to “the Ministry” and “the PSA”. There is no dispute between the parties that it is up to each side to “organise its own shop”, but engagement should be at the right level within each organisation to be able to demonstrate compliance with the obligation. The recommendations will be made to management. In this case “management” is the Hautū (also known as the Deputy Secretaries) who are the decision-makers for change in their groups.

[31] I do not accept an interpretation advanced by the PSA that the parties are obligated to reach agreement on “joint recommendations”. Clause 11.7 does not require negotiation and does not require agreed recommendations on the plain wording of the clause. I am reinforced in that position because management is obligated to take “the views” into account as far as possible before making final decisions, which envisages that a properly implemented process may not necessarily conclude with one agreed view. The clause makes clear that managerial discretion to make the final decision is retained as long as management has considered “the views”.

[32] The introductory words of clause 11.8 reflect the sequential approach to change management, in that it follows as a result of the review referred to in clause 11.7. The Ministry can require a reduction in the number of employees, but only “as a result of the review referred to above, and at the conclusion of the consultative process”. In effect, the next phase of change management cannot commence until clause 11.7 has been complied with.

[33] I agree with the Ministry’s submission the aim “to reach agreement” and “make recommendations” does not import a separate and specific step into clause 11.7 and such an interpretation would strain the plain wording of the clause. Having said that, evidence that a separate and specific step was taken may be a way to demonstrate

compliance. It is clear something more is required than the process steps set out at (a) to (h), or there would have been no need for the inclusion of the final sentence.

[34] My provisional view of the natural and ordinary meaning of clause 11.7 is the change management process must be carried out with the shared aim of the Ministry and the PSA reaching agreement as to recommendations to be made to management. Clause 11.7 envisages collaborative engagement between the Ministry and the PSA to give effect to the aim “to reach agreement”. The required outcome is there will be “recommendations to management”, although the recommendations may not necessarily be joint, or agreed.

What are the relevant contextual factors to consider when assessing the provisional view of meaning?

[35] Having reached a provisional view as to meaning, I turn to consider whether there are any contextual factors that support or disrupt that provisional view.

[36] The PSA says strong interpretative aids are contained within the Collective itself. Clause 11.7 falls under Section 11 – Change Management. The principles underpinning the section are set out in Section 11:

Nga Kaupapa-Kaitiakitanga/Pono

The PSA's Ngā Kaupapa "Kaitiakitanga" and the Ministry's He Huarahi Pai principle "Pono" will be used to underpin this section of this agreement.

The definition of "Kaitiakitanga" within the context of this section is:
"Protection of members to secure fair working conditions and a secure future."

The definition of "Pono" within the context of this section is:

"Doing the right thing, not the easy thing i.e. implementing the clauses outlined within Section 11."

This section has been divided into three sections as outlined below.

[37] Further, clause 11.3 states:

11.3 Principles

The parties recognise and agree that:

- (a) Change within the Ministry is an accepted part of organisational development.
- (b) The benefits of effective and successful management of change includes proactive involvement with the PSA in support of their members.
- (c) Consultation between the Ministry and the PSA is timely, consistent and thorough.

- (d) A Change Protocol (Appendix 1) to guide both parties' approach to management of change has been developed.

They may, from time to time, agree a change protocol to guide the parties' approach to change.

[38] The principles underpinning change contained in the first part of Section 11 are said to be fundamental to any interpretation and the clause 11.7 obligations can only be properly ascertained through the lens of kaitiakitanga and pono. Aligned to this submission, the PSA advocates for the obligations to be seen as weighty because they arise in the context of a change process where the outcome could be job losses. Clause 11.1 under "Section 1 – Preamble" states:

The parties to this agreement recognise the serious consequences that the loss of employment can have on employees and propose to minimise this as far as possible by using the provisions of this agreement to keep as many employees as possible in employment.

[39] I agree with the PSA's submission that both the context of the change management process and the underpinning principle of "pono" in particular (doing the right thing, not the easy thing) point to the obligation under clause 11.7 being significant.

[40] Another relevant contextual factor is the relationship between the Ministry and the PSA. Section 2 of the Collective sets out the Principles for a Quality Working Relationship between the parties. Section 2.1 of the Collective includes the following:

The PSA recognises the right of the Ministry to plan, manage, organise and finally decide on the operations and policy of the Ministry.

Ministry management and the PSA agree they shall attempt to resolve together any issues raised concerning this Agreement and any other matters of mutual interest in good faith based on the principles of the Relationship Agreement.

The Ministry will act as a good employer and will advise and/or discuss with employees and the PSA:

- the Ministry's objectives;
- major organisation changes and timelines and
- technological changes that will significantly affect how the Ministry operates.

[41] Clause 11 of the Collective recognises the role the PSA has in the change management process including that effective and successful change management "includes proactive involvement with the PSA" (clause 11.3(b)). Clause 11.1 of the

Collective incorporates the Relationship Agreement between the Ministry and the PSA, dated May 2022, which outlines the approach to be applied to change within the Ministry. Among the Relationship Principles under the Relationship Agreement is an acknowledgement by the Ministry of the role of unions as collaborative partners and integral to the relationship within its organisation.

[42] Under the terms of the Collective and the Relationship Agreement, the PSA is clearly more than a mere conduit between the Ministry and its member employees for information exchange. The principles refer to proactive involvement and active participation. This adds to the contextual lens through which clause 11.7 should be interpreted.

[43] For further interpretative context, the PSA provided the Authority with two cases where the Court has determined disputes about collective employment agreements containing provisions similar to clause 11.7. In *Andersen v Capital Coast Health Limited*³ the Court held the union and its members had a legitimate expectation of three things: the union would be involved in the change process, the involvement was for the purpose of reaching agreement where possible, and management would endeavour to take the views of the union into account before making final decisions. Although the Ministry points out the Court did not import an additional step into the process (being to reach agreement and make recommendations), the purpose of the clause was to secure the union's contractual right to be actively involved in the change process. Similarly in the case of *Spotless Services (NZ) Limited v Service and Food Workers Union* it was held:⁴

What is contemplated is a mechanism involving the union and some representatives of the management and the workforce at an appropriate level discussing an issue and then making recommendations to management.

[44] Another highly relevant significant contextual factor is the recent case of *Television New Zealand Limited v E Tū Incorporated*⁵ (*Television New Zealand*) which was the genesis of the claims brought by the PSA. The Court analysed a clause materially similar to the clause in the current matter and upheld the Authority's determination finding Television New Zealand did not comply with its obligations. The

³ EmpC WC 25/00.

⁴ WC 84/99 at p 18.

⁵ [2024] NZEmpC 93 at [11].

Ministry distinguishes the case by pointing out the Ministry's position in this proceeding is different to that of *Television New Zealand* in several key respects. The Ministry's senior leaders were aware of their obligations under the Collective. The Ministry says it complied with clause 11.7 in the conventional and orthodox way the clause has previously been applied because the aim to reach agreement and make recommendations to management was incorporated into its consultation process. This was unlike the situation in *Television New Zealand* where the Collective required separate collaboration at an earlier "developmental" stage of the change management process.

[45] The cases support the interpretation that what is envisaged by the clause is a mechanism that supports active participation and involvement of both parties for a shared purpose – namely reaching agreement as to recommendations.

[46] In terms of prior practice, it was common ground the specific part of clause 11.7 now the subject of dispute had not been raised as an issue until after the *Television New Zealand* decision. The Collective in force prior to the current Collective (1 May 2019 to 30 September 2021) had a similarly worded provision, but the aim of the mechanism referred to the Ministry providing the PSA with an opportunity to be involved in the review. There were no steps (a) to (h) and the mechanism was not as prescriptive. For that reason, I find comparison with the prior Collective unhelpful.

[47] The Ministry says the ordinary process of consultation involves recommendations from staff and the PSA being taken into account by the decision maker, before arriving at a final decision. The Ministry's witnesses say not only had the current dispute with the clause not been raised until mediation, but a number of change processes have proceeded under the same or similarly worded clauses, and the interpretation now being advocated for by the PSA has not previously been applied. The Ministry says the late raising of this strained interpretation is relevant to the interpretative exercise.

[48] Prior practice and the late raising of an issue may be relevant as indicators of objective intention. However, ultimately these factors are not materially helpful to my analysis. The scale of the current change management processes, the consequences of the proposed changes and the impact of new case law on a similar issue are all perfectly valid reasons for parties to reevaluate their positions.

[49] There is no criticism of the Ministry or PSA for considering the interpretation of clause 11.7 afresh. The parties have a genuine dispute about the extent of their obligations which has only recently manifested. This is not a case where parties were ignorant of their obligations and I accept Ministry decision makers were familiar with the change management provisions of the Collective they were operating under.

[50] Interpreting the clause in a way which requires collaborative engagement to give effect to the aim of reaching agreement could have operational and resourcing impacts for both parties. However, neither party seeks to rely on resourcing impacts as being a reason to avoid giving effect to clear obligations under the Collective and which the parties have agreed to.

[51] My provisional view as to meaning remains unaltered. A reasonably informed objective observer would likely conclude that clause 11.7 obligates both parties to engage collaboratively with the aim of reaching agreement and making recommendations to management although the recommendations may not necessarily be joint or agreed. That is the natural and ordinary meaning of the clause. This interpretation is reinforced by the context of the wider terms of the Collective, the relationship principles between the parties, and case law on similar provisions. It is not disrupted by prior practice or the late raising of the issue.

[52] The obligation is significant. It is more than merely aspirational, but does not require an additional mandatory step to be read into the process. Collaborative engagement must be between members of the Ministry and PSA at an appropriate level and the contractual right of the PSA to be an active participant in the change management process must be secured.

[53] For the reasons given above, I find clause 11.7 requires the Ministry to participate in a process with the PSA with the aim of reaching agreement as to recommendations to be made to management, but the recommendations do not need to be joint or agreed. I also find clause 11.7 requires that the Ministry's management take the views into account as far as possible before making final decisions.

Has the Ministry complied with clause 11.7 of the Collective?

[54] Given my findings about what the Ministry was required to do under clause 11.7 of the Collective, I now analyse whether the Ministry has complied. The PSA has the

burden of proving the non-compliance, which in this case means demonstrating the change management process was not carried out with the aim of reaching agreement and providing recommendations to management.

[55] The Ministry says the change management process was compliant with clause 11.7 and the submissions and other feedback from the consultation process were the “recommendations to management” discussed and considered by the Hautū. The Ministry points to the multiple opportunities for engagement across multiple channels, where it says there has been constructive and regular engagement with the PSA, genuine “back and forth” involving managers and decision-makers, detailed submissions from the PSA, senior manager engagement in reading all the submissions and giving detailed feedback, and workshops between the Hautū and their leadership teams.

[56] The process for the Ministry began in September 2023 when the Ministry commenced work to identify financial savings as a result of savings targets set by the Government. On 21 December 2023, the Ministry of Education received notification of a requirement to achieve 7.5 per cent savings from baseline for the 2024 / 2025 financial year.

[57] On 11 January 2024, the PSA National Secretaries wrote to the Secretary for Education Iona Holsted about engagement on the fiscal sustainability programme. The PSA stated it opposed the cuts but understood the Ministry needed to make the savings directed by Government. The PSA said it would be organising meetings with members to talk about savings that do not result in job losses and are consistent with Te Tiriti o Waitangi. On 9 February 2024, the PSA wrote to Ms Holsted containing suggestions from members about how savings and efficiencies could be made without job losses.

[58] On 27 February 2024, Ms Holsted met with a PSA organiser and two delegates and provided them with an embargoed copy of an email to be sent to staff regarding workforce reduction. In the email, with the subject “Important Update” the Ministry advised its kaimahi the Government is looking to find \$1.5 billion per annum in savings across the public service, to deliver on policy commitments and address critical cost pressures. Along with other Crown Agencies and Entities, the Ministry said it is required to contribute to the Government’s savings target and the Ministry’s savings target is 7.5 per cent of its baseline budget to take effect from next financial year (2024 / 2025) onwards. The Ministry advised there will be changes proposed to roles.

[59] The change management process at the Ministry formally began in March 2024. During March and April, the Ministry sent the PSA nine consultation documents proposing changes in separate areas of the Ministry. The first consultation for Te Pou Kaupapahere (Strategy / Policy) was due to close on 5 April, with a final decision to be made by 30 April. The second for Te Pou Hanganga Matihiko (Property) was due to close on 4 April, and this was later extended to 8 April, with the final decision to be made by 23 April. Major change proposals were also provided for Te Pae Aronui (Operations and Integration), Te Mahau Takiwā (support for staff and leaders) and Te Poutāhū (Curriculum).

[60] Consistent themes emerged from the Ministry witnesses about the change management process. The Ministry supported business groups by providing them with HR business partners, a change lead contact, and a Pou Arahi (leader). Comprehensive consultation within groups included open “Ask Me Anything” sessions, and engagement forums. The Ministry established an intranet sub site it called “Confluence” to host up to date information for staff such as change proposals. Important meetings (particularly group meetings) were recorded and uploaded to Confluence. Multiple groups set up dedicated pātai mailboxes to receive emailed questions and feedback.

[61] There was a genuine attempt to engage Kaimahi Māori, including documents being translated into Te Reo. The Ministry engaged its Te Pou Tuarongo (lead on Crown / Māori Relations) team to provide advice and support through the change process. Te Pou Tuarongo ensured there was someone within each group with knowledge of Tikanga, and Māori protocols reflecting the diversity of the workforce at the Ministry. Te Pou Tuarongo stood up an expert panel to ensure standards in relation to Tikanga and Māori Crown capability were considered consistently across business groups. Although Te Pou Tuarongo considered its services available to both the Ministry and PSA in terms of discussions between those parties, it had no direct contact with Rūnanga (delegates). Based on the evidence before the Authority, Te Pou Tuarongo was viewed mostly as a support or advisory service for the Ministry.

[62] The Ministry also set up regular meetings with the PSA ahead of, and throughout, the change process. The purpose of these meetings was to connect on emerging issues and talk through what support was needed through the change. The Ministry created a shared excel spreadsheet where the PSA could input questions, and

the Ministry could provide answers. The PSA was not involved in all the meetings, standups, communications, consultation, or one to one meetings. Sometimes delegates were at meetings. There were conversations between delegates and leaders but the initial focus of discussions at a senior level was on voluntary redundancies, redeployment and retraining – that is, potential options for affected employees who were not reconfirmed or reassigned. During the consultation phase, the main role of the PSA delegates was to collate submissions on behalf of PSA members within the individual groups into a single PSA submission document in response to group change proposals.

[63] On 5 April 2024, a Rūnanga delegate for the PSA sent Hautū of each group an email reminding them of the requirements of clause 11.7 of the Collective and in particular, the requirement to meet before the release of the proposal for change, provide information no less than seven days prior to the announcement to affected staff, and to include the PSA in all communications sent to members. This email was sent because the PSA had not received any advance notice of change process information announcements made to PSA members of Te Mahau (the operational arm of the Ministry consisting of five groups). The Ministry later apologised for this oversight.

[64] Based on the evidence before the Authority, the first meeting between senior PSA officials and senior leadership at the Ministry after the change management process started, occurred on 18 April 2024. Fleur Fitzsimons, Assistant Secretary at the PSA and PSA delegates met with Ms Holsted and Geraldine Smith, Manager Employee Services, Te Pou Rangatōpū. There was no set agenda for the meeting. The PSA requested longer consultation periods to ensure members could provide considered feedback, but this was denied by the Ministry. The parties discussed voluntary redundancies and a request the PSA had made about the use of contractors.

[65] On 24 April, the PSA met with the Secretary for Education again. By this stage, from the PSA's perspective, problems were starting to emerge with the approach to change including that there were inaccuracies in the organisational charts and in job descriptions, and positions were being advertised externally which should have been part of the internal expression of interest process. Ms Fitzsimons took a copy of the Collective to the meeting and read from it. She said the PSA would need to see strict compliance with the Collective given the scale and impact of the changes.

[66] On 8 May, the PSA's lawyer wrote to the Ministry reminding it of its obligations around redeployment. The PSA also raised the retraining option under clause 11.15.1. On 9 May, the PSA sent general submissions to the Ministry which related to all the change proposals and the process for change.

[67] On 10 May, the General Manager People, Sustainability and Place responded to the 8 May letter from the PSA, expressing the Ministry's disappointment that the PSA had declined an urgent meeting to discuss clause 11.15 that the Ministry had proactively put into diaries. The PSA responded the same day saying the comment was inappropriate given there was a genuine reason for the PSA not being able to attend. The subject of the meeting was "Discussion on change initiatives" and at the time, the PSA did not realise this meeting was specifically about clause 11.12 – reassignment, and clause 11.15 - redeployment.

[68] On 13 May the PSA and Ministry attended a further meeting about change and redeployment but the meeting did not appear to be constructive.

[69] On 17 May, Ms Holsted replied to the 10 May letter about redundancy, redeployment and retraining. She referred to the meeting on 13 May between the Ministry's co-convenors, the PSA lead advocate and other representatives as helpful. Ms Holsted proposed attending mediation to help in agreeing a way forward on the issues and the change process more broadly. The PSA responded on 20 May agreeing to attend mediation, but saying arrangements should be made for negotiation and agreement on the options available to employees.

[70] The parties attended an open mediation on 30 May which did not resolve all the issues between them. It is common ground the mediation was the first time the PSA raised specific concerns about the operation of clause 11.7 of the Collective following the release of the *Television New Zealand* decision. The PSA says there was a discussion of whether the Ministry had a far greater obligation to employees under the Collective than had been acknowledged. However the Ministry declined to respond because it had not read the Court's decision at that time.

[71] Following mediation, weekly discussions between the Ministry and the PSA became daily standup meetings conducted over Teams, lasting anywhere from fifteen minutes to half an hour. The Ministry and the PSA continued to engage and did reach agreement on a number of issues including in relation to voluntary redundancy,

recognition of service for the purposes of severance and severance for fixed-term staff. Shortly after mediation, a Statement of Problem was lodged in the Authority on 4 June 2024. On 19 June 2024, the Ministry told all staff the expression of interest process and any pending dismissals by redundancy would be paused as a result of the legal proceedings taken by the PSA in the Authority.

[72] Standing back and looking at the full scope of consultation over this time, there was evidence of a significant volume of engagement between Hautū, Group Managers, senior leaders and employees within groups. There was also evidence of engagement between some Hautū, Group Managers, and PSA delegates within groups, but this appeared to arise from individual relationships rather than being intentional collaboration. The Ministry's witnesses demonstrated empathy for their teams and understanding of the impacts of the change process on individuals and their whānau. Many of them also demonstrated deep commitment to honouring their obligations under Te Tiriti.

[73] Hautū witnesses for the Ministry gave evidence that at the end of the change management process, they read and considered each piece of feedback received from their groups which was reflected in the decision documents. Some groups had their senior leaders convene workshops to discuss the feedback, which was then followed by full day challenge meetings with the Hautū. There was evidence of changes made to the proposals based directly on feedback received during consultation, which the Ministry says were significant changes, and reinforces the leadership team's genuine openness and responsiveness to feedback including from PSA members collectively. There was also re-consultation on some aspects of the proposed changes before final decisions were made.

[74] However, the evidence before the Authority did not demonstrate collaborative engagement between the Ministry and the PSA with the aim of reaching agreement and making recommendations to management about the change proposals. I have reviewed the schedule of consultation engagements and decisions engagements prepared and provided by the Ministry. Even accepting the evidence that this list may not be complete, among eight pages of listed engagements, there is only one mention of a specific meeting between Hautū and leadership team members with the PSA and it is

unclear what the purpose of that meeting was.⁶ Other mentions of the PSA in the schedule are limited to advising the PSA of meetings, inviting or welcoming the PSA to meetings, receiving feedback from the PSA, or giving the PSA updates. The Ministry's change proposals and decision outcome documents record it was the PSA's role to receive pre-release draft change proposals and confirmed decisions, provide support and advice to its members, and receive relevant communications during the change process. The PSA was involved in the change management process, but as a recipient of information from the Ministry and disseminator of information to its members. The evidence falls short of demonstrating the PSA was an active participant in the change management process and the Ministry engaged collaboratively with the PSA with the shared aim of reaching agreement and making recommendations to management.

[75] I earlier stated my view that discussions would need to be held at the appropriate level within both the Ministry and the PSA. It is apparent there were multiple meetings happening at multiple levels, as the Ministry put it. However there was no evidence before the Authority of meetings or discussions for the shared purpose of formulating recommendations to Hautū. Each Hautū worked with their own leadership team and sometimes other Hautū to understand the programmes of work, and where savings could be made. The Ministry did not work with the PSA to make recommendations to the Hautū.

[76] There was a suggestion from the Ministry that the submissions or feedback from the consultation process were the recommendations to management. I do not accept that because the submissions and feedback were not formulated as a result of the Ministry and PSA engaging with each other. There is no evidence the feedback was the outcome of collaborative engagement between the Ministry and the PSA designed to reach agreement on recommendations to the decision makers. That is what was required by the Collective.

[77] PSA witnesses told the Authority the change management process was not going well from their perspective and the PSA was consistently raising concerns with the Ministry. The PSA felt timeframes were too rushed, and it was not receiving answers to its questions. Evidence from the PSA was each business group ran its own

⁶ Consultation Engagements, 4 April, Te Pou Kaupapahere.

change process in isolation, and this resulted in processes being inconsistent across the groups and engagement not always being constructive. I accept that was the case. The Ministry has acknowledged mistakes were made and said when these issues were brought to its attention, it apologised, and it worked with the PSA to put them right. Based on the evidence before the Authority, both parties were aware the change management process was not without its difficulties. Some groups were managing their change processes well, but there was also evidence before the Authority of employees feeling disempowered, excluded or even harmed. It is impossible to conclude whether full compliance with the Collective and collaborative engagement between the Ministry and the PSA may have avoided or alleviated some of these issues, but that is the bargain the Ministry signed up to, and it is required to honour it.

[78] For the sake of completeness, I record the PSA does not specifically allege non-compliance in relation to the application of kaitiakitanga and pono to the change process, and both parties agree they are core values and beliefs underpinning the change process. I agree with the Ministry's submission it was not required to obtain advice about the operation of these values as a contractual obligation, and it was entitled to rely on its interpretation of kaitiakitanga and pono and its own views of the application of these core values to the change process. There is a legitimate difference in views about the meaning of these terms as they applied to the change process, and I do not accept the Ministry disregarded these principles or treated them as unimportant. While Te Tiriti, kaitiakitanga and pono were not raised with the Ministry in a literal way, there was an expectation both parties would recognise the principles in their approach to change management.

[79] I do not agree with the PSA's submission the Ministry did not appropriately consider the terms of the Collective. There was a genuine and legitimate dispute between the parties about the meaning and operation of the Collective. The Ministry accepts it cannot point to specific evidence that it met "to reach agreement" or "made recommendations to management". However, once these issues had been brought to its attention and despite its view that it had complied with the terms of the Collective, the Ministry paused its processes, reviewed its stance, and put forward proposals that would essentially wind back the clock on critical aspects of the change management process. Those were appropriate steps to take.

[80] The issue is finely balanced, but given my finding about the significant obligations under the Collective for the parties to engage collaboratively in the change management process with the aim “to reach agreement” and “make recommendations to management”, and there being no evidence of the collaborative engagement required by the Collective, I conclude the Ministry did not comply with clause 11.7 of the Collective.

Should the Authority reserve a decision on making a compliance order?

[81] The power of the Authority to order compliance applies where any person has not observed or complied with any provision of any employment agreement. The Authority may, by order require that person to do any specified thing or to cease any specified activity for the purpose of preventing further non-observance of, or non-compliance with that provision. If ordering compliance, the Authority must specify a time in which the order is to be obeyed.⁷

[82] The PSA requests the Authority reserve its decision on making a compliance order and only make the order in the event of continued non-compliance.

[83] The Ministry says the application for a compliance order should not be held in reserve in unspecified terms to hover over a process that has yet to occur. If the PSA considers the Ministry’s later actions are in breach, it can bring a claim at a later time.

[84] It is appropriate to note there has been no resolution to the proposals put forward by the Ministry on 21 and 24 June. That is understandable given the parties were - at that stage - well advanced in their preparation for the Authority’s investigation and then engaged in the proceedings. However, there appears to be no barrier to the parties re-engaging on the proposals now.

[85] I agree with the Ministry it is not appropriate to hold compliance over in unspecified terms. The proposals put forward by the Ministry specified timeframes of between 14 and 24 days for completion of the process. I reserve my determination on compliance for a period of 28 days from the date of this determination, at which point if compliance is not applied for, the reserve period will lapse and any alleged non-compliance will require a new application.

⁷ Employment Relations Act 2000, s 137.

Does clause 11.15.1 require negotiation on a “case by case” basis, and what is the meaning of “case by case”?

[86] Clause 11.15.1 provides:

During this period the PSA and the Ministry will meet to reach agreement on the options which are appropriate to the circumstances and will be available to surplus employees will be agreed.

The following options may be available:

- (a) Leave without pay
- (b) Enhanced early retirement
- (c) Retaining [sic]
- (d) Redeployment/job search
- (e) Severance (case by case basis)
- (f) Retirement
- (g) Voluntary Redundancy

How these options, or other options, including the types and levels of financial assistance) are implemented, will be negotiated on a case by case basis between the Ministry and the PSA.

[87] The natural and ordinary meaning of clause 11.15.1 is it requires the PSA and Ministry to meet to reach agreement on the options which are appropriate to the circumstances and will be available to affected employees who have not been placed by reconfirmation or reassignment (referred to in the Collective as “Surplus Employees” as defined in clause 11.14.1).

[88] The Ministry says the parties are not bound to reach agreement, the obligation is to meet and to negotiate. The Ministry says clause 11.15.1 obligates the parties to carry out process steps and the negotiation between the Ministry and the PSA on a “case by case basis” means “change process by change process”. The PSA says the clause requires the Ministry and the PSA to agree on the options. It also says “case by case basis” means individual by individual.

[89] Both parties acknowledge the awkward wording of the clause. The Ministry advocates for an interpretation of clause 11.15.1 as being one process which requires the parties to meet to reach agreement on the options and negotiate how they will be implemented, change process by change process. The Ministry says following this group approach, once the available options are agreed, it is for the Ministry to engage with individuals about the options that will apply to them, and employees may choose to be supported by the PSA.

[90] On its face, the consideration of options under clause 11.15.1 of the Collective involves a two-stage process. This is because there are distinct parts to the process as the clause is drafted. In the first stage, the PSA and Ministry will meet to reach agreement on the range of options appropriate to the circumstances and which will be made available to the surplus employees. I agree with the Ministry's interpretation that the obligation at this stage is a process step that requires the parties to meet. I also agree with the Ministry that this stage clearly envisages a "change process by change process" or "group by group" approach. The discussion between the PSA and the Ministry at the first stage may result in a refining of the list of eight options available to a particular group (for instance, some options may be immediately discounted as being inappropriate for the affected employees, such as early retirement), or it may result in other options being added to the non-exhaustive list provided for in (a) to (g). While I acknowledge the awkward grammatical wording of the clause, which concludes with "will be agreed", I read this as being the options which are appropriate to the circumstances will be agreed. Failure to agree on the options is not contemplated by the clause.⁸ Completion of the first stage sets the parameters for discussion of the available options in the second stage.

[91] The second stage involves consideration of how the options are to be implemented. I see this as being a separate stage because it does not follow on directly from the first stage. On the plain wording of the clause, this stage requires negotiation of how the options will be implemented, or given effect.

[92] The Ministry says "case by case" at this stage refers to change process by change process, partly because the negotiation is between the Ministry and the PSA and it could result in the individual being cut out of the process. The Ministry says the proper interpretation is that once available options are agreed, it is for the Ministry to engage with individuals on the options that will apply to them and the employees may choose to be supported by the PSA.

[93] In determining the meaning of "case by case" I start with the natural and ordinary meaning of the words. The PSA provided the case of *Kathleen Archibald v Waikato District Health Board*⁹. Although there was no judicial discussion of the

⁸ *Spotless Services (NZ) Limited v Service and Food Workers Union Inc*, WC 84/99 (p 16).

⁹ [2017] NZERA Auckland 11 at [28].

meaning of “case by case” in *Archibald*, this was because there was no dispute between the parties that “case by case” meant each individual affected by the restructuring and it was accepted this was the natural and ordinary meaning of the phrase.

[94] I also note that adopting the Ministry’s interpretation of “case by case” would require defining a group of individuals in a change process which could potentially lead to a lack of clarity about who is included in each “case”.

[95] Clause 11.15.1 uses different terminology for the first and second stage, only requiring “case by case” negotiation at the stage of implementing options. This must be assumed to have been a deliberate choice. If negotiation about implementation of options had been intended to be “change process by change process” as the Ministry suggests, the Collective could have used group terms. It could have duplicated wording from the first stage of the process and stated that negotiation on implementation of the options would be for “surplus employees”. It did not do this.

[96] The Ministry says its engagement with individuals about the options that will apply to them sits outside the process provided in clause 11.15.1. However if “case by case” is not interpreted as applying individual by individual in the way advocated for by the PSA, there is nothing in the Collective that obligates the Ministry to engage with individuals about the implementation of options available to them. There is consequently a risk that affected workers may not be consulted on an individual basis¹⁰ and I do not accept that was the intention. I also do not accept that negotiation between the Ministry and the PSA (as opposed to between the Ministry and the individual) would shut the individual out of the process of negotiating their options. That submission does not take into account that the PSA acts only on behalf of and with the authority of its individual members.

[97] Once the Ministry and the PSA have agreed on the options available to “surplus employees” (as defined in clause 11.14 of the Collective), the next logical step is individual consultation with those employees.

[98] For the reasons given above, I conclude clause 11.15.1 requires the Ministry and the PSA to meet to reach agreement on the options. Implementation of the options

¹⁰ *Matthes v Mew Zealand Post Limited* CA384/92, 12 July 1994.

will be negotiated on a “case by case basis”, meaning on an individual “employee by employee” basis.

What does clause 11.15.1 require the Ministry to do in terms of skill shortages, job opportunities and retraining opportunities?

[99] The PSA says the definition of “case by case” applies to the clauses that follow which provide detail about each of the options available. The PSA also says the approach must be consistent with the principles of kaitiakitanga and pono, and clause 1.1 of the Collective. The Ministry says it need not take steps to identify skill shortages and consider the skills and training (etc) of members if retraining is not an option. There is no dispute between the parties as to the application of the principles to all parts of the change management process.

[100] I agree with the PSA’s submission there is a prerequisite that whether the option is available to an individual must be negotiated between the Ministry and the PSA for that individual. I also agree with the Ministry that if retraining is not an option following that negotiation, the Ministry does not have an obligation to take steps in respect of the option.

[101] If retraining is one of the options available to the employee, the obligation on the Ministry is clear: it is required to take the steps under the retraining provision “as far as it’s able”. The Ministry accepts those obligations are clear .

[102] There being no real dispute between the parties, I find it unnecessary to make a determination on this clause. The meaning and application of clause 11.15.1 as it relates to identifying skill shortages, assessing job opportunities and determining whether there are retraining opportunities flows from the interpretations of clause 11.15.1 above.

Can the severance option in clause 11.16 only be implemented if both the PSA and the individual agree?

[103] Clause 11.16 - Severance provides:

Following agreement that the option of a redundancy payment is to be made available and where it is mutually agreed on the individual ceasing service (as per Clause 11.16) the formula for severance is detailed below.

[104] The PSA says severance under clause 11.16 can only be implemented by the Ministry if both the PSA and the individual concerned agree. In effect, the PSA says

there are two levels of agreement required before severance can be implemented. The first is agreement the option of a redundancy payment is to be made available. The second is there must also be agreement on the individual ceasing service.

[105] The Ministry says the PSA's submission conflates the concepts of severance and redundancy. In the context of the Collective, the Ministry says severance refers to a redundancy payment, and not the "severing" of the employment. The Ministry says its ability to terminate employment is preserved in the Collective through clauses 2.1, 11.7 and 11.8. Practically, if the Ministry and employee do not agree to an option other than severance, the Ministry says they can be expected to agree to severance as specified. Clause 11.14.2 is a notice provision relating to the date the surplus is required to be discharged. The Ministry's submission is that severance has not been used as an option under the Collective, and it would be a last resort.

[106] The placement of the severance provisions within clause 11.15 of the Collective is an important interpretative aid. Severance is listed as an option that may be available to "surplus employees" (as defined in clause 11.14.1). Severance is (e) in a list of eight options from (a) to (g). Next to the severance option, it is specifically noted: "case by case basis". Severance is not the only option that results in the end of employment - other options include voluntary redundancy and retirement. This suggests severance was intended to be only one of a suite of options potentially available to affected employees.

[107] There are two references to "agreement" in clause 11.16 that reflect the two-stage process I have referred to earlier in relation to clause 11.15.1. The severance option (which includes a redundancy payment) can only be implemented once the Ministry and the PSA have agreed it is an available option, and once the individual has agreed to take the option. I am not persuaded the PSA's interpretation that the individual has to explicitly agree to cease service is correct because it seems unnecessary, given ceasing service is a condition of severance. The individual's agreement to ceasing service is implicit in their acceptance of severance as their chosen option.

[108] The additional issue that has arisen is if severance requires agreement and is not the mechanism by which the Ministry can unilaterally terminate employment under

clause 11.16, does the Ministry have the ability to terminate employment for redundancy as the result of a change process?

[109] The PSA says no. In the case of *Spotless Services (NZ) Limited v Service and Food Workers Union Inc*¹¹ the Court discussed the voluntary option of severance and what consequences would flow in the event of the option not being agreed. In that case, it was found the relevant clause did fetter the appellant's right to manage its business and terminate the employment in a staff surplus situation, but the Court was not able to "strike down" the agreement the parties had entered into, which must be considered to have been sensible to the parties at the time.

[110] The Ministry says it would defeat the intention of Section 11, cut across the Ministry's managerial prerogative and run counter to established law and practice around restructuring and redundancy if the PSA could insist on its members effectively remaining in employment after they had been determined to be surplus employees. The Ministry points to the principles at clause 2.1, the context of clauses 11.7 and 11.8 and specifically clause 11.14.2(a) as preserving its right to terminate employment. The Ministry says a materially similar clause was considered in the case of *Rachel Elizabeth Stevenson v The Chief Executive of the Auckland University of Technology*¹². The Judge in that case accepted the reference to a date by which surplus staff were required to be "discharged" under a notification clause, referred to the actual termination of the employment.

[111] The Ministry submits that in practice it is more likely to be the Ministry that withholds agreement to severance if another option (for instance, redeployment) is available. Severance is only likely to be agreed in practice if no other options are applicable or agreed. I accept that submission as to practice.

[112] As to whether the Ministry has the ability to terminate employment for redundancy outside the severance provision in clause 11.16, I find it unnecessary to determine that question at the present time. The issue was not initially raised and it has not been fully considered and argued by the parties.

¹¹ WC 84/99.

¹² AC 68/01.

[113] The parties have asked for clarification as to whether the severance option in clause 11.16 can only be implemented by the Ministry if the PSA and the individual agree. I answer that question in the affirmative. Severance under clause 11.16 is an option that may be available to affected employees who have not been reconfirmed or reassigned, and as an option, it must be agreed.

Costs

[114] The parties have asked me to reserve the issue of costs. I do so, but note there is a presumption in cases involving genuine disputes that parties bear their own costs.¹³ If either party wishes to be heard on the issue of costs they are to apply to the Authority.

Natasha Szeto
Member of the Authority

¹³ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1