

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 161
3423806

BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION INCORPORATED TE PŪKENGĀ HERE TIKANGA MAHI First Applicant
AND	NEW ZEALAND PROFESSIONAL FIREFIGHTERS' UNION INCORPORATED Second Applicant
AND	FIRE AND EMERGENCY NEW ZEALAND Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Peter Cranney and Luke Manning, counsel for the Applicants Hamish Kynaston, Emma von Veh and Raukura Doyle counsel for the Respondent
Investigation Meeting:	20, 26 and 27 February 2026 in Wellington
Submissions Received:	27 February and 2 March 2026 from the Applicants 27 February and 6 March 2026 from the Respondent
Determination:	18 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The New Zealand Professional Firefighters Union (NZPFU) and the New Zealand Public Service Association Inc (collectively referred to as the Unions) say Fire and Emergency New Zealand (FENZ) failed to consult with them in respect of a proposed restructure and are therefore in breach of the collective agreements with the

Unions.¹ The Unions raise two additional claims alleging FENZ also breached its obligations of good faith and undermined bargaining between the parties. The Unions seek compliance orders requiring FENZ to properly consult.

[2] FENZ says it was not obliged under the respective collective agreements to consult with the Unions prior to it releasing the embargoed consultation document on 11 November 2025. It intended to consult with the Unions after the consultation document setting out the proposal for change was released and after feedback from its employees was received. This is what FENZ says it has done.

[3] FENZ takes the position this is consistent with the obligations on it in the consultation clauses in the respective collective agreements. It denies there has been a breach of good faith or that bargaining has been undermined.

[4] On 9 February 2026, the Authority issued a determination dealing with the interpretation and meaning of the consultation clauses in the collective agreements, in particular, whether the clauses required FENZ to “pre-consult” with the Unions. This determination resolves the remainder of the Unions claims.²

The Authority’s investigation

[5] The parties attended urgent mediation which did not resolve the issues. Joanne Watson, National Secretary, NZPFU, Fleur Fitzsimons, National Secretary, PSA, Peter Hallett, Senior Advisor Risk Reduction and NZPFU representative, Keith McFadyen, PSA Organiser, Doreen Lally, Team Leader, ICT Applications, and Rebecca Dakin, Regional Business Analyst lodged written witness statements and gave oral evidence. By agreement written statements lodged by the Unions were accepted as hand up evidence from Benjamin Cozens, Carolyn Pannett, Christina Hughes, Claire Jones, Darren Aitken, Dean Latus, Ester Anderson, George Szabo, Graham Aitchison, Grant Detheridge-Davies, Heather Elder, Izaak Neale, Joshua Thomas, Karen Bearpark, Lakishane Laulu, Lisa Warden, Mark Bredenbeck, Megan Byers, Melissa O’Brien, Michelle Bartlett, Mikaela Battaerd, Nathan Jones, Paul Kirikino, Peter Gallagher,

¹ Fire and Emergency New Zealand and New Zealand Professional Firefighter’s Union - Collective Agreement for Uniformed and Communications Centre Employees, 1 July 2021 to 30 June 2024 and Fire and Emergency New Zealand and Public Service Association - Union Collective Employment Agreement 1 September 2022 to 23 March 2024..

² [2026] NZERA 61.

Rosemary Ayers, Russell Deritter, Sally McKay, Shree Helliwell, Sujo Philipose. Those witnesses did not give evidence in person.

[6] For FENZ, affidavits were lodged by Bryan Dunne, Programme Director, Strategic Implementation Programme (SIP), Kerry Gregory, Chief Executive, Megan Stiffler, Deputy Chief Executive, Deborah Barrett, Consultant and Daniel Parkman, National Manager Workplace Relations. All witnesses who gave oral evidence answered questions from the Authority and the other party. Counsel gave oral and written submissions.

[7] 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 orders made. It has not recorded all evidence and submissions received.

The issues

[8] The issues for investigation and determination are whether:

- (a) FENZ complied with the consultation requirements set out in the relevant clauses of the collective agreements;
- (b) FENZ breached its duty of good faith towards the Unions;
- (c) FENZ undermined collective bargaining; and
- (d) Compliance orders are appropriate.

Consultation

[9] The relevant provisions of the collective employment agreements required FENZ to consult on any proposal for change that may impact on the terms and conditions of employment of employees covered by agreements. The NZPFU collective agreement provides:

Part 1-Clause 20 – Consultation

Fire and Emergency New Zealand agrees to consult with the Union over any proposed changes that may impact on the terms and conditions of employment of employees covered by this agreement.

The obligation to consult is not limited to consultation about the consequences of a proposed change nor limited to numbers only, but includes consultation whether or not the proposed changes should take place and the reasoning behind the proposed change. Although consultation does not equate to negotiation and full agreement may not always be possible, consultation implies a genuine effort on the part of Fire and Emergency New Zealand to respond to the views of those being consulted, motivated by a desire to reach consensus.

Nothing in this clause is intended to restrict Fire and Emergency New Zealand's right to manage the organisation.

[10] The PSA collective agreement provides:

2. Consultation

Fire and Emergency New Zealand agrees to consult with the union over any proposed changes that may impact on the terms and conditions of employment of employees covered by this agreement. *This includes any employment related policy change/development.*

The obligation to consult is not limited to consultation about the consequences of a proposed change nor limited to numbers only, but includes consultation whether or not the proposed changes should take place and the reasoning behind the proposed change. Although consultation does not equate to negotiation and full agreement may not always be possible, consultation implies a genuine effort on the part of Fire and Emergency New Zealand to respond to the views of those being consulted, motivated by a desire to reach consensus.

Nothing in this clause is intended to restrict Fire and Emergency New Zealand's right to manage the organisation.

In particular, it is agreed that the Employer will consult the Union over any future progression criteria which is developed for Training, Volunteer Support Officer or Fire Risk Management Officer positions.

[11] The wording is identical in both collective agreements other than two additional sentences in the PSA collective which are italicised above. The italicised sentences do not appear in the NZPFU collective.

[12] Clause 21.1 of the PSA collective agreement and part 3, clause 17.1 of the NZPFU collective agreement refer to restructuring (the restructuring clauses). The PSA clause provides:

21.1 Restructuring

The Employer may at its discretion restructure or change the organisational structure, or positions within that structure. When such a restructuring or change directly affects the position of the employee covered by this agreement, the Employee will be consulted and have the opportunity to make submissions before proposed changes are finalised.

[13] The NZPFU clause provides:

3.17.1 Fire and Emergency New Zealand may at its discretion restructure or change the organisational structure, or positions within that structure. When such a restructuring or change directly affects the position of an Employee covered by this agreement, the Employee will be consulted and have the opportunity to make submissions before proposed changes are finalised.

[14] These clauses are also almost identical. The NZPFU collective agreement uses the phrase “an Employee” where the PSA collective agreement uses “the employee”. The restructuring clauses underscore the organisational prerogative of an employer to make changes but also record agreement between the parties about the requirement to consult employees before changes are finalised.

[15] The PSA collective agreement also contains an additional list of commitments and relationship principles in the preamble that guide the relationship:

1. The relationship is based on our commitment to work to promote the following shared outcomes:

A reduction in the incidence and consequence of fires and a professional response to other emergencies;

Improvements in our efficiency and effectiveness of the Fire and Emergency New Zealand;

Co-operative and open relationships, where employees and management needs are better understood and met;

A culture of respect, mutual trust and quality communication;

Increased collective participation of employees, through the unions, adding value to the work of all parties; and

Skilled, valued, challenged and fulfilled employees.

2. The principles that guide the partnership relationship include:

Honesty and timely sharing of information in good faith;

Managers are required to make decisions;

All parties have mutual and differing interests, and respect the independence of each organisation; and

Partnership behaviours are receptive listening, positive co-operative attitudes, and include using a problem solving approach to address issues with the aim to reach consensus.

Background to consultation on proposal for change

[16] FENZ is a Crown Entity established on 1 July 2017 bringing together 40 different organisations. There are 1632 NZPFU member and 380 PSA members.

[17] There has been a continuous program of work since 2017. Early in 2024, Kerry Gregory, Chief Executive, engaged in early discussions with the FENZ Board and this led to a decision to refresh the organisational strategy. Mr Gregory described this as a stocktake of the strategic direction to respond to changes in the strategic and operating context and be more deliberate about focus and where effort was to be applied across the organisation over the next five years.

[18] In May 2025, a refreshed organisational strategy called “Our Strategic Direction 2025 – 2030” was launched. The draft was consulted on with the Unions before it was put before the Board for approval.

[19] The forward to the document stated:

The time is right in our maturity as an organisation to set a clear strategic direction for the next five years to drive change we need to ensure Fire and Emergency is sustainable, continues to mature and grow, and delivers the right services effectively to those who need them most. In setting this direction, Fire Emergency’s Board have looked at where we have been, the context are currently operating and the factors that will shape the organisation in the future. Our strategic direction outlines the five core areas of focus that will guide the organisation for the next five years to drive change we need to make.

[20] On 12 June 2025 the Strategic Implementation Programme (SIP) was released. SIP was described as the “next step in turning our Strategic Direction 2025 – 2030 into action ...” Various communication channels were set up within FENZ designed to communicate updates to staff. These included a portal page, “Town Hall” meetings were scheduled and whole of organisation emails were sent out.

[21] Change took place in two phases. This determination is about Phase 2. Phase 1 commenced earlier on 10 July 2025 with consultation on a review of senior managers and their support staff. No PSA or NZPFU members were impacted but the Unions were consulted on this. Phase 1 was completed in August 2025.

[22] Around the same time FENZ consulted with the Unions on a new policy about how to manage organisational change to replace the existing policy which had been in place since 2017. The new policy was called the Managing the Impacts of Organisational Structure Change on Employees Protocol (the Protocol).

[23] It is accepted both the Strategic Direction 2025-2030 document and the SIP signalled change at FENZ but were not specific about what those changes would be. Mr Gregory recorded in the all staff email on 12 June that announced the launch of the SIP:

While I can't give you specific details today, I'm sharing this with you now because it's important you understand the reasons behind any upcoming changes. My hope is that when we need to engage you further, you'll have the context for why this work needs to happen.

[24] Mr Gregory tasked each member of the Executive Leadership Team (ELT) with designing a plan for change in relation to the branch they were responsible for with the overall objective of aligning FENZ with "Our Strategic Direction".

[25] Each plan was signed off by Mr Gregory and the overall proposal for change was signed off by the Board. External contractors were engaged to provide support, manage change and assist with producing the consultation document. The consultation document was released on 12 November 2025.

[26] The plans for change from each ELT member (for each branch) were discussed within FENZ at a high level involving Tier 3 managers and above and at senior and executive leadership level. Decisions about the process for promulgation and consultation of the change proposals were also discussed at ELT. ELT decided when the consultation document would be released and how it would be disseminated. This included the decision to release the consultation document under embargo to the Unions 24 hours before it was disseminated organisation wide and the decision not to consult with the Unions prior to consulting with the whole organisation.

[27] Mr Gregory accepted the issue of when consultation is required under the collective agreements has been contentious in the past. In this case FENZ took advice and ELT and ultimately Mr Gregory signed off on both the proposal for change and the process for consultation.

[28] On 29 October 2025, Mr Gregory telephoned Mr McFadyen, PSA Organiser, to give him a heads up about the upcoming consultation and sent a formal email to the Unions advising them “consultation on the structure of our organisation” would be starting at 4pm on Wednesday 12 November 2025. A 15 minute check in with Mr Gregory and the Unions was offered to discuss “the intentions behind this consultation and how we can best support our people through this process together.” They were also advised they would receive the consultation document on Tuesday 11 November on the basis it would be embargoed until 4pm the next day when it was to be released to the organisation.

[29] Wattie Watson, Secretary of the NZPFU replied by email on 30 October reminding FENZ that if the matters affected the work of any NZPFU members covered by the collective agreement that FENZ was required to consult in accordance with the consultation clause. Mr Gregory responded reiterating the process and what was intended.

[30] Neither Union took up the opportunity for a 15 minute check with Mr Gregory but there were some communications with the Unions before the document was released organisation wide. Mr McFadyen requested the consultation document earlier but Mr Gregory told him it would be unlikely to be ready but agreed to send the document as soon as FENZ were able. Mr McFadyen replied saying that he was going to be in Wellington on 12 and 13 November 2025 for bargaining so if he had the document in advance he could catch up with Mr Gregory when he was in Wellington about any concerns or issues.

[31] Mr McFadyen also emailed Mr Gregory on 3 November seeking to have the consultation period extended so PSA could be available to its members and for them to have more time to respond. He also asked that all national project work be postponed until further notice so PSA could concentrate on supporting its members.

[32] Mr McFadyen emailed again on 6 November noting Mr Gregory had not responded to his earlier emails about extending the consultation period saying some

managers had told staff they would hear something on Monday 10 November. Mr McFadyen recorded this seemed inappropriate because the PSA had not yet received the embargoed copy nor had there been any pre-consultation about any proposal with the PSA.

[33] On the evening of 10 November Ms Stiffler sent a series of meeting invites to employees in batches whose positions were affected by the proposal. The intention was to communicate with those most affected before the whole organisation was aware of what the proposal contained. The invite was to a meeting that was to be held in confidence ahead of the consultation process described as an “opportunity to talk with you in private before any proposed changes are shared more widely.”

[34] The evidence from Mr Hallett and others was that the recipients of those emails were very upset and stressed. They assumed they were losing their jobs. Mr Hallett contacted Ms Watson that evening who told him the NZPFU had not seen the proposal so they were unable to provide any support or guidance until they knew more.

[35] The meetings with affected staff and Ms Stiffler were held on 11 November. Mr Hallett attended one of the meetings because his role was affected. Mr McFadyen also attended one of the meetings. He said Ms Stiffler advised in the meeting FENZ could not provide the change proposal document to them yet but that each person’s role had been significantly impacted.

[36] 11 November was also the first day of the three day NZPFU Annual Conference. On 29 October Ms Watson had emailed Ms Stiffler and others extending an invitation to speak at the conference as was traditionally the case. On 11 November NZPFU representatives received calls from members but were initially unable to provide much information or assistance to members because the NZPFU did not receive the embargoed copy of the change proposal until after 5.00pm that day.

[37] On 13 November, Ms Stiffler and Mr Pyatt, Acting Deputy Chief Executive, Prevention, arrived to speak at the NZPFU conference. Mr Gregory said he did not draw the dots between the date settled on for release of the consultation document and the NZPFU conference. Ms Stiffler said she knew the dates coincided but thought it was appropriate because she could attend and answer questions and discuss the change

proposal. Ms Stiffler said she was surprised by Ms Watson wanting to discuss the consultation process at the conference.

[38] At 5.40pm, on 11 November the embargoed copy of the consultation document on Phase 2 was emailed to the Unions. The covering email explained the intent of the proposal was to:

- (a) become a more efficient and effective emergency service
- (b) better align FENZ functions across the organisation
- (c) to deliver on the Strategic Direction

[39] The email also recorded non-essential activities could be rescheduled to allow for meaningful participation in consultation. A dedicated Change Team and leaders would be available to support and engage with employees. Consultation was open for two weeks and Mr Gregory stated his intention to deliver the final decision by 17 December 2025. The rationale was to allow people to go into Christmas knowing the outcome of consultation but also that no structural change would take effect until 2026.

[40] The email also stated:

I want to reassure you that this is a proposal only, and that this consultation is a genuine opportunity for you to understand what's being proposed and why it's being considered.

We're seeking your views on both the proposed structure and the thinking behind it, including whether the proposed changes should proceed.

The outcome will be shaped by the feedback we receive, and your insights are important to ensuring the proposal is fair, reflects the realities of the work our people do, and helps identify any potential issues early.

If you would like to provide feedback, please email: [email address]

This consultation marks the next stage of one of the initiatives within our Strategic Implementation Programme and represents an important milestone in our efforts to remain financially sustainable and deliver effective services to the communities of New Zealand.

[41] The proposed position summaries and a list of members whose roles were affected by the proposal were not provided initially because that information was still undergoing final checks.

[42] At that time, although the Unions said it was difficult to tell what the overall picture was in terms of affected positions including how many were disestablished, it was understood 66 NZPFU members were listed as being affected significantly and 3 positions proposed to be disestablished. In terms of PSA members, 181 were affected and 97 disestablished.

[43] Mr Gregroy met with Mr McFadyen and members of the PSA national Delegate team in Wellington. PSA withdrew from day two of bargaining with FENZ because members of the FENZ bargaining team had identified their roles had been proposed for disestablishment and they were taking a lot of calls from members.

[44] On the evening of 12 November the consultation document was released to FENZ employees organisation wide and the embargo on the copies provided to the Unions was lifted. After it was released a number of errors were identified and despite having initially deciding the original two week period for consultation was appropriate it was later extended. Mr Gregory said there were errors that needed fixing and he received a lot of feedback about extending the time for consultation. Several requests to extend the consultation period were declined and then on 21 November the consultation period was extended by a further two weeks to 19 December 2025 with final decisions being made on 29 January 2026. The decision date has now been further extended.

[45] On 13 November 2025, PSA wrote to Mr Gregory advising that it considered FENZ was in breach of the consultation clause in the collective agreement and said it wanted to resolve that breach by having FENZ retract the change proposal and comply with cl 2 of the collective and consult with PSA.

[46] Mr Gregory responded in writing on 18 November recording FENZ's position that it was consulting and that there was no obligation to consult with the PSA exclusively before consulting with other unions and associations and directly with employees. As consultation had just commenced FENZ had not yet heard the views of those being consulted which included PSA and once FENZ had those views it would consider them including consideration of whether any changes should proceed and if so, the nature of those changes.

The background to the proposal for change

[47] Ms Stiffler's evidence was that she had been employed as the Deputy Chief Executive, Operational Response, at FENZ in April 2025. Ms Stiffler was responsible for designing the change proposal for the Operational Response Branch and she brought considerable knowledge with her from her previous roles in Australia. She consulted with the Tier 3 managers in the Operational Response Branch early on and spent several months working up plans and ideas as well as her formal proposal for change. That was signed off by Mr Gregory and formed part of the change proposal set out in the consultation document circulated on 12 November 2025.

[48] Mr Gregory's foreward in the consultation document explained the changes were designed to align FENZ with the focus areas set out in the Strategic Plan, including a focus on aligning workstreams with funding.

[49] By way of summary the reasons for the change proposal were to:

- (a) respond to a rapidly evolving operating environment including climate change and technical advances;
- (b) shift the focus in accordance with the Strategic Plan;
- (c) respond to changes in revenue from statutory levies noting from 1 July 2026 a new levy system was coming into force;
- (d) focus on core business because 95 per-cent of FENZ overall revenue comes from levies and the new system provided for variability in a way that had not previously existed making it difficult to forecast future levy revenue.

[50] The consultation document was divided into change proposals for each branch: Operational Response, Prevention, People, Asset and Programme Delivery, Corporate Services, and Chief Executive Support and Organisational Assurance Team. Further explanations tailored to each branch were set out under the following headings:

- (a) Where we are now
- (b) Our vision for the future
- (c) Strategic focus
- (d) Why change is needed
- (e) What's being proposed

[51] The proposed new position summaries were in an appendix and descriptions of roles that were affected including being disestablished were set out at the end of each branch section.

[52] Significant changes to FENZ's workforce were proposed in the consultation document which was approximately 260 pages long. FENZ is proposing changes affecting each branch and to a large number of roles across the organisation.

[53] The key changes proposed are difficult to glean from the consultation document itself. The changes are designed to be read branch by branch. The scope of change is described as significant and that many people will see changes to their roles. While some were described as relatively minor others would have changes in role title or reporting line and it is proposed positions be disestablished. New roles were also being created. Each branch has been redesigned and there are very few roles that will be unaffected. While frontline firefighter roles remain, there will be changes affecting the structure and reporting lines within the Operational Branch and the reduction in back office services will also affect them.

[54] The best evidence of the key changes comes from the power point dated 23 January 2026 and created for a Union and Association Engagement Session:

- (a) NHQ and regional management restructures – proposed changes will impact around 700 roles, resulting in a net loss of around 140 positions
- (b) Cost savings programmes, targeting non-people costs – projects, travel awareness activities;
- (c) Rescoping projects to manage costs within “business as usual”
- (d) Investigating new ways of operating, including a review of training approach and processes
- (e) Planning to stop/defer/rescope further projects and re-investment plans
- (f) Adjusted assumptions on salary increases and further costs savings initiatives
- (g) Investigation other revenue and liquidity options and cash management tools. A saving of approximately \$90m by 30 June 2029.

The parties' submissions

[55] The Unions submit FENZ has not consulted early enough to be able to satisfy the consultation requirements in the clauses and in particular to use genuine effort to respond to the views of those being consulted and to be motivated by a desire to reach consensus. They also say the communications since the change proposal was released have not been in accordance with the requirements of the consultation clauses. Namely FENZ has failed to consult in a way that demonstrates a genuine effort to respond to the Union's views or in a way that can be said FENZ has been motivated to reach consensus about the points raised by the Unions.

[56] FENZ accepts there was no consultation prior to the release of the consultation document on 11 November 2025 but says this was because there was no proposal that could be consulted on prior to that date. In response to the Unions' submissions that FENZ worked in secret on a plan for change FENZ says the Unions were aware there was going to be change and the reasons for it were communicated widely.

[57] FENZ says the Unions have been invited to engage and have either declined or provided limited responses. The Unions say the reluctance to engage with consultation was on the basis FENZ had failed to consult on the basic premise of the change proposal in a way that was consistent with the requirements in the collective agreements. The Unions were reluctant to engage in consultation while proceedings about that were underway but they have supported their members and PSA has provided a written response to the change proposal but recorded that it was without prejudice to the Authority's investigation.

[58] In order to comply with the clauses FENZ must consult with the Unions once there is a proposal for change. It must consult on whether change should occur and the reasons for any proposed changes and not just about the consequences of proposed changes. While consultation is not the same as negotiation and full agreement may not always be possible, consultation with the Unions requires a genuine effort on the part of FENZ to respond to the views of those being consulted and FENZ is to be motivated by a desire to reach consensus.

[59] FENZ's position is that it has consulted and continues to consult with the Unions and has met its obligations under the consultation clauses in the collective agreements.

[60] For the reasons that follow I have found that FENZ has not yet complied with the consultation clauses in the collective agreements.

Analysis

[61] The first determination in this proceeding considered the meaning of the consultation clauses in issue and whether the clauses required FENZ to "pre consult" with the Unions and concluded the following:

- (a) The meaning of the first sentence of the clauses is clear and unambiguous.
- (b) The words used in the clauses do not require or exclude pre-consultation with the Unions but nor do they prevent it.
- (c) Once there is a proposal for change the obligation to consult is engaged.
- (d) The clauses are structured in three parts with the first sentence dealing with the obligation to consult which is engaged when there is a proposal for change.
- (e) The next two sentences are triggered once the obligation to consult has been engaged and they speak to what is to be consulted about and how to go about consultation.
- (f) There is no sequential stepped approach to consultation found to exist in the *TVNZ* case but rather the obligation to consult simply arises once there is a proposal for change.
- (g) What constitutes “proposed changes” is not defined.

[62] In the recent case of *Lyttelton Port Co Ltd v Maritime Union of New Zealand*,³ the Employment Court emphasised the importance of process requirements set out in the collective agreement in circumstances involving a proposed restructuring. The Authority had determined that the port company had breached the agreement and the good faith obligations in section 4 of the Act 2000. Judge Holden held that the port company had complied with its obligations and lifted an interim injunction made earlier but made the following observations:

[80] There are many cases on the meaning of consultation. In short, consultation is not negotiation and it does not require agreement. It involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses, and then deciding what will be done. The party being consulted must be adequately informed so as to be able to make intelligent and useful responses. Consultation also must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. It is implicit that the party obliged to consult, while entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh.

[81] Accordingly, even if cl 2 was applicable, developing a proposal without input from the unions would not be in breach of its requirements. Rather, it would be important that the proposal was not final, and that the opportunity to review and analyse options and provide opinions was done with an open mind from Lyttelton Port Company.

[footnotes omitted]

³ *Lyttelton Port Co Ltd v Maritime Union of New Zealand* [2025] NZEmpC 167 at [80].

[63] As noted in the *Lyttleton Port* case there are a number of cases about consultation. In *Communication & Energy Workers Union Inc v Telecom New Zealand Ltd*⁴, the Employment Court discussed the meaning of “consultation” in the context of redundancy, and listed a series of propositions extracted from the Court of Appeal’s decision in *Wellington International Airport Ltd v Air New Zealand Ltd*.⁵ In particular, Chief Judge Goddard noted:

- Consultation requires more than mere prior notification and must be allowed sufficient time. It is to be a reality, not a charade. Consultation is never to be treated perfunctorily or as a mere formality.
- If consultation must precede change, a proposal must not be acted on until after consultation. Employees must know what is proposed before they can be expected to give their view.
- Sufficiently precise information must be given to enable the employees to state a view, together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.
- Genuine efforts must be made to accommodate the views of the employees. It follows from consultation that there should be a tendency to at least seek consensus. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done.
- The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

[64] In *Auckland City Council v New Zealand Public Service Assoc Inc*,⁶ the Court of Appeal made the following observations about the obligation of good faith and consultation, albeit under a different version of the legislation and with reference to the statutory requirement to consult:

[64] There can be no dispute that the parties to an employment relationship must deal with each other openly and fairly. They must communicate and,

⁴ *Communication & Energy Workers Union Inc v Telecom New Zealand Ltd* [1993] 2 ERNZ 429

⁵ *Wellington International Airport Ltd v Air New Zealand Ltd* [1993] 1 NZLR 671 (CA).

⁶ *Auckland City Council v New Zealand Public Service Assoc Inc*⁶ [2004] 2 NZLR 10 (CA).

where appropriate, consult in the sense of imparting and receiving information and argument with an open mind when that still realistically can influence outcomes. To adopt an approach calling for mandatory consultation at specified times risks inflexibility. What is practical and the exigencies of particular business operations and workplaces must be kept in mind. Similarly the issue in question may affect the nature and timing of the provision of information and consultation. Redundancy of particular positions presents different issues than does the formulation of business plans.

[65] The starting point in determining whether FENZ complied with the consultation clauses is the very clear and unequivocal first sentence of the clauses:

Fire and Emergency New Zealand agrees to consult with the Union over any proposed changes that may impact on the terms and conditions of employment of employees covered by this agreement.

[66] While reference was made to the *Lyttleton Port* case, the words in the consultation clauses in this matter are quite different to that case. This case involves an obligation to consult not only about the consequences of a proposed change or numbers but also whether or not the proposed changes should take place and the reasoning behind the proposed change.

[67] The terms “proposed changes” or “proposal” are not defined. The Union says what was released for consultation was well advanced and almost completed. The proposal was worked on for approximately six months and there was no indication of the massive exercise that was underway. Whereas FENZ says it had to formulate a proposal in order to trigger the consultation clause which is what it did.

[68] In the *Lyttleton Port* case the court held that a proposal that was in an advanced form, drawn up without input from employees or unions did not breach good faith or consultation requirements when it was not a final document and consultation was thereafter genuine. Because of the scope and magnitude of the change proposal in this case, there remains a question about at what point did the work by FENZ that led up to the release of the consultation document crystallise into a proposal or put another way at what point was FENZ’s planning and work sufficiently formulated such that meaningful consultation could take place.

[69] Noting the requirement to consult on whether change should take place as well as the reasons for change, what was released appears to have gone beyond a point

where there is any question about whether the significant changes proposed should occur.

[70] To illustrate this the slides prepared in January 2026 to present to the Unions and Associations feedback session provide detail about the rationale for change and sets out the case for change in stark terms. Both the Board and the Minister have set targets for savings over the next three years that will involve significant savings being made and the changes to statutory levies are greater than just the change in the regulations.

[71] There is also a detailed explanation regarding the changes to income from levies explaining why significant savings need to be made by FENZ. The resulting cash pressures on FENZ are set out. Additional financial pressures to be managed are also significant. Some of the steps being taken to address the financial pressures due to the risks inherent in variability to levy income listed included the number of current roles impacted and the net loss of positions forecast from the proposed changes, costs savings to be found by targeting non-people costs, projects, travel and awareness activities, projects will be rescope, new ways of operating are being investigated including a review of training.

[72] The slide with the title “What does this all mean?” lists the following:

- (a) Heading into uncharted territory
- (b) Significant changes to levy collection and insured behaviours not seen before;
- (c) Significant cost pressures to be managed and absorbed;
- (d) Significant cost savings required in addition to managing inflationary pressures, and this will not be easy;
- (e) a strong back office is required to deliver front-line services – this is likely to be significantly reduced in the proposed restructure but needs to maintain service delivery;
- (f) And, if that is all achieved, FENZ only just remains financially sustainable.

[73] This makes it clear change is imperative and urgent for financial reasons and also that these reasons were known when the SIP was released on 12 June 2025. FENZ

itself describes the proposal for change as significant. No branch is unaffected. Even though there is less change for NZPFU members and the Operational Branch in terms of positions affected and disestablished, the changes to the structure of the organisation as a whole and the other plans to reduce costs will still impact on that Branch and therefore NZPFU members.

[74] FENZ pointed to numerous communications with the organisation signalling change including Town Hall meetings. The evidence from some of the Unions' members was that they knew more change and a restructure was coming but did not have any information about what that might look like or the magnitude of it.

[75] It was accepted by FENZ that the scale of the changes it had been signalling were implied rather than any direct information about the nature of the changes resulting from wholesale redesign of every branch of the organisation. That is consistent with the nature of the communications provided to the Authority.

[76] Regarding the reasons for change, the same approach was evident in FENZ's communications about why change was needed. While financial reasons clearly underpin the need for such an urgent and wide-ranging redesign of the business this was not immediately apparent in the earlier communications. At least not when it is compared with the specific information that was shared at the feed back session in January 2026.

[77] Having reviewed all the material I have concluded that what was presented as a proposal for change had gone past the point where consultation could be said to be meaningful when the clause required consultation with the Unions about whether change should occur and the reasons for change.

Did consultation comply with the clauses after the change proposal was released?

[78] The Unions also submit that once consultation commenced on 12 November, the obligation on FENZ was to respond to the views of those being consulted motivated by a desire to reach consensus. They point to the following to show the consultation clauses have not been complied with:

- (a) Refusing the request to release the consultation document to the Unions earlier and failing to mention the scale of change that was to be proposed:

- (b) Inviting union members to confidential meetings and then meeting with those members before the Unions had been provided with the consultation document;
- (c) Breaching the agreement to provide the Unions with the consultation document before others in the organisation were aware of the proposed changes;
- (d) Releasing a consultation document that did not **expressly refer** to the Unions or identify a role for the unions other than a reference in the covering email to Unions “supporting its members”;
- (e) Refusing the requests from the Unions to extend the time for consultation until 29 November, despite numerous errors in the consultation document and the link to the proposed position summaries being “in active” initially.
- (f) Failing to engage with the PSA on its suggestion they discuss voluntary redundancies.
- (g) Failing to respond to the PSA letter requesting the change proposal be withdrawn until after the statement of problem was lodged in the Authority;
- (h) When Mr Gregory did respond his letter only referred to being motivated by a desire to reach consensus while reading the submissions rather than to try to reach consensus as to either process or decision:
- (i) No process was identified by which FENZ and the Unions could identify disagreements, or follow a two way process to try to reach consensus;
- (j) The feedback session in January did not provide for a process for the parties to consult meaningfully, including identifying disagreements and attempting to reach consensus about these;
- (k) Not responding to the Union’s requests for copies of the feedback that was to be the subject matter of the feedback session;
- (l) There was no response to the Union’s concerns about proceeding with the feedback meeting when the Authority hearing was imminent;
- (m) Providing detailed reasons for the financial case for change in the slides at the feedback meeting in January and not at any earlier point;
- (n) Recording the minutes that the Unions had given apologies for non attendance when they had responded with reasons as to why the meeting was problematic at that time.

[79] On the other hand, FENZ says it has continued to consult with its employees and offer the unions opportunities to engage in consultation with a view to meeting the published timelines for implementing the changes. It points to the Unions hampering the consultation process by not engaging. FENZ also says the obligation to be motivated by a desire to reach consensus only applies at the point it is responding to the views of those who have been consulted and that consensus does not mean agreement necessarily.

[80] The approach to interpreting collective agreements and the clauses relevant to this matter were set out in the first determination.⁷ I do not accept that the clause can

⁷ Above n 2.

be constructed to mean that the phrase “motivated by a desire to reach consensus” applies only to FENZ’s response to the views of those being consulted. The sentence read as a whole refers to how FENZ is to approach consultation with the Unions. Consultation is not negotiation and full agreement may not always be possible but FENZ must be genuine in its efforts to respond to the views of those being consulted and consultation must be motivated by a desire to reach consensus.

[81] When the clause is read in that way FENZ cannot have made extensive efforts to engage with the Unions about the proposals. Significant work was undertaken to work up the plans for each Branch to the point they were signed off by Mr Gregory and the Board. Although it is permissible for an employer to have a fully developed plan prior to engaging in consultation, it is not realistic to think that the Unions could influence in any significant or meaningful way the plan that was disseminated as the proposal for change in November 2025.

[82] The redesign of the organisation that was undertaken and the plan to embed change that involves changes to approximately 700 roles and over 150 redundancies set out in the consultation document illustrate how advanced the thinking was. This undermines the prospect of meaningful consultation with the Unions in accordance with the words in the consultation clauses.

[83] While consultation was submitted to be ongoing, the detail in the slides for the January feedback session sets out the reasons for change that could have been expected to be provided at the start of the process. This is particularly so given the express requirement that FENZ consult with the Unions about the need for change and the reasons for change. While the Authority investigation meeting may not be a reason not to engage in consultation, the investigation meeting was imminent and the Unions’ carefully recorded a response that left the door open to further engagement. One of the Unions has provided a detailed written response.

[84] The additional issues set out above from the Unions perspective show a lack of engagement in a consultation process that contractually had to be motivated by a desire to reach consensus. Some of the early responses from FENZ to the Unions’ requests after the consultation document was released lack focus on the obligations in the collective towards the Unions as opposed to the Unions’ role in supporting its members. The wording in the consultation document itself, in that there were no

references to consultation with the Unions, demonstrates that as does the failure to recognise more time would have been required to understand a change proposal of that scale and a document of that size before release to the Unions' members.

[85] For completeness reference to the policy Managing the Impact of Organisational Structure Change on Employees uses some of the words from the consultation clauses in the collective agreements but without reference to the Unions. For example, it records:

Work will be undertaken to assess whether there is a need to propose the change in the organisational structure, and, where Fire and emergency considers there is a need to proposed changes, what those proposed changes are. Before making any decisions on the need for, and nature of, any changes, views and feedback will be sought from all employees in areas where changes are proposed, on both the rationale for why the changes being proposed, and the specific proposals for change through formal consultation process.

[86] FENZ had to accept there was little mention of the Unions in this policy. Given this was the document that FENZ say guided its decision-making on the process and how it approached consultation what is obvious is that there is no express mention of the Unions or consultation with the Unions.

[87] I note the evidence of Ms Stiffler and Mr Gregory that they did not notice the Unions were not referred to in the consultation document and their evidence was to the effect that union participation and involvement was a given. Mr Gregory said the unions and associations being involved in consultation is simply a part of how they operate. In an organisation such as FENZ that may well be the case however they also accept it was an oversight and say this will not happen again.

[88] I note at this point the evidence was that consultation with the Unions and the operation of these clauses has been an issue in the past. I also note Mr Gregory's evidence regarding the number of times he says he invited consultation with the Unions. The wording he used in those emails and other communications read as invitations to consult on change. The part that is missing that could have brought these communications within the ambit of the consultation clauses was communications that expressly set out engagement with the Unions at a time and in a manner when FENZ could comply with the obligations on it in the consultation clauses.

[89] It is accepted there has been re consultation on 12 areas and indications have been given that some proposals will either change or not proceed at all, based on the feedback received. I also accept FENZ has been consulting with employees. However, that does not change the position set out above and that the consultation clauses required FENZ to consult with the Unions on the need for change and the reasons for change. In the circumstances of a proposal of this magnitude in this organisation, the obligation to consult with the Unions must have crystallised earlier than 12 November 2025 and that is unaffected by the consultation that has been undertaken with employees thus far.

[90] Furthermore once consultation commenced, the responses to the series of communications from the Unions, such as requests for more time, earlier release of the consultation document, requests for confidentiality at the feedback session with the Unions, requests for extensions to the consultation period, do not demonstrate consultation involving a motivation to reach consensus, or in some cases genuine effort to respond to the views of those being consulted.

[91] I find that FENZ has breached the consultation clauses in the collective agreements with the Unions by not consulting on a proposal early enough to allow for consultation on whether change should occur and the reasons for change.

[92] After consultation commenced, FENZ has not demonstrated it engaged with the Unions motivated by a desire to reach consensus or used genuine effort to respond to the views of those being consulted when the Unions communicated with FENZ about its views on the process FENZ had adopted.

Breach of the statutory good faith obligations

[93] The object of the Act includes to build productive employment relationships through the promotion of good faith in all aspects of the employment environment. This includes within the employment relationship by recognising that employment relationships must be built on the implied mutual obligations of trust and confidence, but also on the statutory obligation of good faith. The employment relationships to

which these obligations apply are between an employer and employee employed by the employer and between a union and employer.⁸

[94] Parties must not to do anything that will or is likely to mislead or deceive the other, they are required to be active and constructive in establishing and maintaining productive employment relationships, and to be responsive and communicative with each other.⁹

[95] An employer who is proposing to make a decision that will or is likely to have an adverse effect on the continuation of the employment of one or more employees is to provide the affected employees with access to information relevant to the continuation of employee's employment about the decision and an opportunity to comment on the information to the employer before the decision is made.¹⁰

[96] The Unions say they raised concerns that they would have insufficient time to read and absorb the anticipated change proposal in the 24 hours before it was provided to their members and the refusal to provide the document earlier was a breach of good faith.

[97] The next step taken by FENZ was to make arrangements with union members prior to the Union's having an opportunity to see the change proposal document and this it is submitted is also a breach of good faith.

[98] FENZ have also admitted that the change proposal document made no reference to the Unions and only invited consultation and feedback from employees. FENZ through the course of giving evidence has said this was not intentional and was an oversight. It is a learning it has taken on board. For completeness the covering email sending the proposal for change to the Unions did invite consultation and provided an email address but that was the extent of any references to the Unions.

[99] The Unions have asked for copies of the feedback on the proposal and regardless of whether that is a reasonable request at this point FENZ has not responded to this request.

⁸ Above s4(2)(a) and (b).

⁹ Employment Relations Act 2000, s 4 (1) and (1A)(a) and (b).

¹⁰ Above s4(1A)(c).

[100] FENZ has also accepted the proposal was released for consultation on a date that coincided with NZPFU annual conference and bargaining between PSA and FENZ. Mr Gregory's evidence was that he did not join the dots about the coinciding dates but FENZ as an organisation knew so it cannot have been unintentional.

[101] I find there has been a breach of the statutory obligation of good faith by FENZ. It accepts the consultation document should have referred to the Unions and has said this will not happen again. The timing for the release of such wholesale and significant change for the same time as both Unions were tied up with other legitimate activities is not conduct that can be said to be aimed at maintaining a productive employment relationship.

[102] The requests from the Union to access the document earlier and/or to extend the consultation period was declined initially with no discussion and seemingly no consideration to whether there was sufficient time for the Unions to be able to support its members regardless of the concerns about consultation with the Unions.

[103] These are not the actions of an employer who is being active and constructive in establishing and maintaining a productive employment relationship that involves being responsive and communicative with the other party to the employment relationship, which in this case is the Unions.

[104] I find there has been a breach of the duty of good faith in s 4(1A)(b) of the Act.

The parties agree orders for compliance can be reserved

[105] Having concluded there have been breaches of the collective agreements and Part 1 of the Act, it would be open to the Authority to consider making compliance orders under s 137 of the Act. Given the parties have been unable to resolve matters between themselves, are currently engaged in litigation and bargaining with both unions is ongoing, compliance orders are likely to be appropriate to prevent any further non-observance or non-compliance.

[106] However, the parties agree the issue of compliance can be reserved. FENZ has indicated it will consult with the Unions in accordance with the Authority's conclusions without the need for the issuing of compliance orders.

[107] Draft compliance orders were provided in submissions to the Authority. The parties are largely in agreement about the content of any compliance orders that might be required. Either party can return to the Authority if they require clarification as to the content of those compliance orders.

Undermining bargaining

[108] Bargaining commenced in May 2024 with NZPFU and there have been approximately 50 days of bargaining and six days in facilitation. PSA bargaining commenced in January 2025 and there have been nine days of bargaining meetings and it has been on pause since 13 November 2025.

[109] It is claimed the actions of FENZ in how it approached consultation with the Unions about the change proposal has undermined bargaining in relation to both Unions. FENZ accept the claims and the proposed changes are not entirely unrelated but say with the number of NZPFU claims (120) it would be unlikely if there was not some commonality. FENZ do not accept the proposal was intended to undermine the bargaining, or the claims, if accepted cannot sit together with the proposed changes.

[110] NZPFU say bargaining claims made since September 2024 and continued to be raised up to and including September and October 2025, were directly affected by the restructure document. The affect is submitted to be removal of important subject matter from the bargaining and to undermine the process very significantly.

[111] PSA and FENZ have engaged in 12 bargaining sessions since February 2025. PSA had made a claim in bargaining about change management and did not consider it was lawful for FENZ to have created the Managing the Impacts of Organisational Structure Change on Employees. It says several other claims are undermined.

[112] FENZ say bargaining has been underway for a significant period of time and some claims alleged to have been undermined were either not being advanced or FENZ had indicated it did not accept. FENZ also point out that work only started in earnest on the proposal for change in approximately September 2025, after Phase 1 had been completed.

[113] In relation to the NZPFU, FENZ say bargaining is in facilitation although this has been adjourned by the member for reasons that are unrelated to these proceedings. Most NZPFU claims were addressed in April 2025 well in advance of the consultation process. Other are ongoing despite the consultation process.

[114] FENZ say in relation to the claims PSA say have been undermined, these claims have been asked and answered or the bargaining was ongoing for example working parties are to be set up. PSA bargaining has been paused due to PSA activating a clause in the Bargaining Process Agreement for the National Secretary to talk to the Chief Executive, based on insufficient progress.

[115] I accept there is cross over between a number of NZPFU claims and some of the PSA claims and the proposal for change but bargaining is ongoing with both unions. While there has been an element of surprise so to speak given that there is cross over between the change proposal and bargaining claims, bargaining is a dynamic process. FENZ organisational priorities have clearly changed and consultation should have occurred earlier with the Unions but the fact claims are impacted does not necessarily mean bargaining is undermined.

[116] There is a lot of change underway to the operating environment. Some of the Unions' claims are affected but bargaining has not been undermined.

Findings

[117] Fire and Emergency New Zealand has breached:

- (a) Part 1- Clause 20 (Consultation) of the New Zealand Professional Firefighters' Union collective agreement 1 July 2021 to 30 June 2024
- (b) Clause 2 (Consultation) of the Public Service Association collective agreement 1 September 2022 to 23 March 2025
- (c) Section 4(1A)(b) of the Employment Relations Act 2000

[118] Fire and Emergency New Zealand has not undermined bargaining with the Unions.

[119] Orders for compliance are reserved.

Costs

[120] Costs are reserved. An Authority Practice Direction effective 1 February 2024, has examples of circumstances where the parties are expected to bear their own costs. One of those circumstances is as here, is where the predominant issue in dispute involves the interpretation of a collective employment agreement provision.¹¹

[121] The parties could expect the Authority to determine costs, if asked to do so, with reference to that Practice Direction.

Sarah Kennedy-Martin
Member of the Employment Relations Authority

¹¹ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf