

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 61  
3423806

BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION INC TE PŪKENGĀ HERE TIKANGA MAHI First Applicant
AND	NEW ZEALAND PROFESSIONAL FIREFIGHTERS' UNION 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: 22 January 2026 in Wellington

Submissions and further 22 January 2026 from the Applicants  
information received: 22 January 2026 from the Respondent

Determination: 9 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The New Zealand Professional Firefighters Union (NZPFU) and the New Zealand Public Service Association Inc (PSA) are parties to collective agreements with Fire and

Emergency New Zealand (FENZ).<sup>1</sup> Both collective agreements contain an almost identical consultation clause imposing an obligation on FENZ to consult with NZPFU and PSA (the Unions) about proposed changes that may impact on the terms and conditions of employment of employees who are covered by the respective agreements.

[2] These proceedings arise out of an organisation wide restructuring commenced by FENZ with the release of a consultation document on 12 November 2025.<sup>2</sup> 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 a large number of roles across the organisation. Many PSA<sup>3</sup> and NZPFU<sup>4</sup> members' roles are affected by the restructure.

[3] The consultation document was released to the Unions on 11 November 2025 and embargoed for 24 hours before it was distributed to all employees at 4pm on 12 November 2025. FENZ accepts the consultation document was the first time it communicated a proposal for change to the Unions.

[4] The Unions initiated these proceedings with urgency and say FENZ has failed to consult with them and is therefore in breach of the respective collective agreements with the Unions. They raise two additional claims alleging FENZ also breached its obligations of good faith and undermined bargaining between the parties. Compliance orders are sought restraining FENZ from making decisions about the restructure proposal or dismissing any union members or seeking to change the terms and conditions of employment of any union members until the collective agreements and obligations of good faith have been complied with.

[5] FENZ says it was not obliged to consult with the Unions prior to releasing the consultation document. It intended consultation with the Unions would occur after the consultation document was released and after feedback from its employees was received. FENZ takes the position this is consistent with the obligations on it in the consultation clauses in the respective collective agreements.

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<sup>1</sup> Fire and Emergency New Zealand and Public Service Association Collective Agreement, 1 September 2022 to 23 March 2025 and Fire and Emergency New Zealand and New Zealand Professional Firefighters' Union Collective Agreement for Uniformed and Communications Centre Employees, 1 July 2021 to 30 June 2024.

<sup>2</sup> Proposal to restructure Fire and Emergency New Zealand (Consultation: Wednesday 4pm 12 November – Wednesday 4pm 26 November).

<sup>3</sup> Affidavit of Fleur Ann Fitzsimons at [40].

<sup>4</sup> Affidavit of Joanne Patricia Watson at [36] – [37].

[6] As a result of the consultation document having been released, the date for feedback has passed and FENZ now intends to announce its final decision on the restructure proposal on 18 March 2026.

[7] This determination resolves the dispute as to the correct interpretation, application and/or operation of the consultation clauses in the respective collective agreements between the parties. A further investigation meeting is scheduled to investigate and determine whether FENZ complied with the consultation clauses and hear the two remaining claims regarding whether FENZ breached its good faith obligations and whether it undermined bargaining.

### **The Authority's investigation**

[8] The parties attended urgent mediation which did not resolve the issues. Written witness statements were lodged from 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. For FENZ, an affidavit was lodged from Bryan Dunne, Programme Director, Strategic Implementation Programme (SIP).

[9] All witnesses answered questions from the Authority. Counsel for FENZ reserved the right to cross examine the Unions' witnesses at the next investigation meeting when the remainder of the evidence will be heard. Both oral and written submissions were given by counsel for the parties.

[10] As permitted by s 174E of 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 relevant clauses in the collective agreements**

[11] The NZPFU collective agreement with FENZ contains the following clause dealing with consultation:

#### **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.

[12] The PSA collective agreement with FENZ contains the following clause dealing with consultation:

## 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.*

[13] 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.

[14] 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.

[15] 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.

[16] 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.

[17] The PSA collective agreement contains an additional list of commitments and relationship principles in the preamble that guide the parties’ partnership:

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

A reduction in the incidence and consequence of **first** 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.

### **The issues**

[18] In relation to the clauses set out above the parties agreed the issues to be resolved by this determination are as follows:

- (a) Do the consultation clauses require FENZ to consult with the Unions prior to issuing a proposal for change?
- (b) Does consultation have to include the reasoning behind the proposal?
- (c) Is consultation required on whether any proposed changes should take place?

### **Applicable principles: interpretation of collective agreements**

[19] The principles of interpretation relating to contracts also apply to employment agreements.<sup>5</sup> The proper approach is an objective one with the aim being to ascertain the meaning the written agreement would convey to a reasonable person having all the background knowledge reasonably available to the parties at the time of the agreement.

[20] The objective meaning is taken to be that which the parties intended. Context provided by the agreement as a whole and any relevant background can inform the meaning. When considering context the focus is on interpreting the document as a whole, rather than particular words, but the text remains centrally important.<sup>6</sup>

[21] Subsequent conduct can be a relevant consideration, especially where it is mutual and consistent, and provided the circumstances are not unique.<sup>7</sup> The subjective assertions by a party of what the parties understood, and what the interpretation of the collective agreement may be, is not determinative of the parties' mutual intention.<sup>8</sup>

[22] The Court in *Television New Zealand v E tū Inc*<sup>9</sup> recently set out the test with particular reference to the employment context in this way:

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<sup>5</sup> *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111 at [74]-[78].

<sup>6</sup> *Firm PI 1 Ltd v Zurich Australasian Insurance Ltd* [2014] NZSC 147 at [60]-[63].

<sup>7</sup> *Bathurst Resources Limited v L & M Coal Holdings Ltd* [2021] NZSC 85 at [84]-[90] cited favourably in *Le Gros v Fonterra Co-operative Group Ltd* [2023] NZEmpC 193 at [16].

<sup>8</sup> *Vulcan Steel Ltd v Manufacturing and Construction Workers Union* [2022] NZEmpC 78.

<sup>9</sup> *Television New Zealand v E tū Inc* [2024] NZEmpC 93 at [11].

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.

While these principles were set out in a judgment which related to the interpretation of a commercial contract, a full Court of this Court has since confirmed that the same principles apply when interpreting employment agreements. As I sought to explain in *Le Gros v Fonterra*, the statutory and common law context in which employment agreements are entered into and operate is relevant to the interpretative exercise. Employment agreements are not akin to arms-length business agreements; they involve people and human interactions (not the economic exchange of money for goods); they occur within the framework of multifaceted obligations, both statutory (such as mutual obligations of good faith) and common law (such as the obligation of fidelity and fair dealing). These features provide relevant context when the Court is asked to determine a dispute as to the correct interpretation, application and/or operation of a collective agreement (in this case) or an individual employment agreement.

[footnotes omitted]

### **The Unions' submissions**

[23] The Unions submit the clauses require consultation that involves a joint union/employer process attempting agreement and to reach consensus:<sup>10</sup>

[10] What the clause requires the employer to do is to communicate with the unions and inform them that it wishes to make changes; and then to enter into a process with the unions about whether the changes should take place, and the reasoning behind the changes. The clause also recognises that the process may not result in full agreement, but the employer is required to make a genuine effort to respond to the views of the unions and try to reach consensus.

[24] Noting both internal and external advisors had been involved in the proposal released on 12 November 2025, the Unions say they were entirely excluded from the process and the proposal was worked on in secret. They also say the “six themes for change” in the consultation document were not consulted on. The document itself is approximately 260 pages long and the consultation period was initially 10 working days.

[25] The Unions say what transpired after the proposal was released was chaotic. The document contained numerous material errors requiring several amendments. It was only after objection from the Unions and its members to the approach being taken that the period of

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<sup>10</sup> Submissions of Counsel for the Applicants, 22 January 2026, at [10] – [12].

consultation was extended. The Unions say there has still not been any consultation with them that satisfies the requirements of the clauses in the collective agreements.

[26] With reference to *Bigson Gumbeze v The Chief Executive of Oranga Tamariki – Ministry for Children*<sup>11</sup> it was submitted that the proposal document contains such strong and concluded views that it reads as a draft decision which barring something unusual and unexpected happening confirms what the final result will be.

[27] The Unions submit the approach taken by FENZ is in breach of the obligation to consult in the collective agreements. The way the clauses are written places an obligation on FENZ that is arguably similar to or even greater than co-design because negotiation and full agreement are envisaged albeit with the caveat that may not always be possible. The clauses require a joint union and employer process to attempt agreement and reach consensus. The clauses do not allow for what has occurred.

[28] Communicating its plan for significant change to its workforce by releasing the consultation document to the Unions in the way FENZ did (released to the Unions 24 hours earlier but embargoed), meant the consultation clauses could not be complied with because there was no opportunity to attempt to reach agreement, consult on the reasons for change, whether there should be change or make a genuine effort to try to reach consensus.

### **Submissions on behalf of FENZ**

[29] FENZ say the plain meaning of the words used in the clauses represent “orthodox public service best practice” consultation in relation to restructure.<sup>12</sup> The obligation to engage in co-design is not a feature of these clauses and there is no requirement for the level of consultation required in *Television New Zealand v E tū Inc.*

[30] FENZ submit the plain meaning is clear. The first sentence refers expressly to “proposed changes” and that is the trigger for FENZ to engage in consultation with the Unions. FENZ takes the position the obligation to consult with the Unions arises at the point at which FENZ is responding to the views of those being consulted because there must first be a proposal and consultation begins with that proposal. FENZ say the consultation document released on

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<sup>11</sup> *Bigson Gumbeze v The Chief Executive of Oranga Tamariki – Ministry for Children* [2024] NZEmpC 133 at [171].

<sup>12</sup> *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825, and *Wellington International Airport Ltd v Air New Zealand Ltd* [1993]1 NZLR 671.

12 November 2025 was the proposal and in accordance with the words in the consultation clauses in the agreements it was required to consult on that proposal with the Unions.

[31] FENZ notes the phrase “proposed changes” is used more than once in the clauses and while there is a requirement on FENZ to be motivated by a desire to reach consensus, it is expressly stated that consultation does not equate to negotiation and full agreement may not always be possible.

[32] The clauses do not anticipate or require earlier engagement with the Unions and this also reflects established case law on consultation which recognises there is a tendency during consultation on a proposal to at least seek consensus. FENZ note the clauses do not anticipate or require any form of “pre-consultation with the Unions and they are expressly subject to FENZ’s right to manage the organisation”.

### **The plain meaning of the words**

[33] The plain and ordinary meaning of the words in the first sentence of the consultation clauses is straight forward. There is an obligation on FENZ to consult the Unions arising when changes are proposed that may impact on employees’ terms and conditions of employment:

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.

[34] The second sentence sets out what FENZ must consult about and makes it clear consultation is wider than just about the consequences of a proposed change and the numbers because it extends to consultation on whether changes should take place and the rationale for change:

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.

[35] The third sentence sets out what consultation is to involve and how consultation is to be approached. There is to be a “genuine effort” to respond to the views of those being consulted accepting that full agreement may not always be possible. It is acknowledged consultation does not equate to negotiation which is consistent with the case law on consultation.

[36] FENZ when it engages with the Unions must also be motivated by a desire to reach consensus:

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.

[37] Finally, both the last part of the consultation clauses and the restructure clauses are clear that managerial prerogative remains allowing FENZ to make changes to its business but with an obligation on FENZ to consult with the Unions when changes are proposed that may impact on employees' employment.

[38] The consultation clauses envisage a process of active engagement with NZPFU and PSA about proposed changes. The use of the word "may" provides a low threshold for when employees' employment can be said to be impacted which is the point at which the consultation obligation is engaged.

[39] The parties agree the consultation clauses in the collective agreements are engaged in the context of what FENZ is proposing. It is also accepted by both parties the consultation clauses are subject to FENZ's right to manage the organisation.

[40] The meaning of the first sentence of the clauses is clear and unambiguous. The words used do not require or exclude pre-consultation with the Unions. This is because the point at which FENZ is obliged to consult will be dependent on whether what FENZ is intending can be considered to be a "proposal". Whether FENZ's discussions, considerations or plans to implement changes to the organisation are at the stage they can be referred to as proposed changes is what dictates when consultation is to occur with the Unions. Once there is a proposal for change the obligation to consult is engaged.

[41] The word "proposal" is not defined but the requirement to consult on a "proposal for change" suggests consultation is required at the stage when organisational work on changes amounts to something that is proposed but has not yet been completed and with work still to be done. The Collins Dictionary online defines proposal as:<sup>13</sup>

A proposal is a plan or an idea, often a formal or written one, which is suggested for people to think about and decide upon.

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<sup>13</sup> [www.collinsdictionary.com/dictionary/english/proposal](http://www.collinsdictionary.com/dictionary/english/proposal)

[42] To put it another way if what is circulated for consultation has gone beyond a proposal then it would appear the obligation to consult with the Unions would have been engaged earlier at the point in time when any plans for change that impact on employees' employment can accurately be described as a proposal for change. That is what the Unions assert has happened on this occasion.

[43] Turning to consider the remainder of the words in the consultation clauses, the Unions submissions are that when the whole clause is taken into account it must have been intended consultation with the Unions required engagement at a level similar to or even greater than co-design. The words used mean consultation has to include discussion about whether the changes should take place and the reasons for change. It is not a negotiation but the clauses contemplate that agreement will be reached because it is stated that FENZ must make an effort to "reach agreement".

[44] This case is different from the *TVNZ* case. In *TVNZ* the employer was required to consult on the developmental stage of a proposal for change. The Court found the collective agreement between TVNZ and the Unions in that case required more than engaging in a "garden variety" consultation on a proposal and then making a decision. It extended the obligation on TVNZ to engage in a "sequential stepped approach" involving three steps where step one involved engagement on the developmental stage of decision making processes and business planning before consultation.<sup>14</sup>

[45] That is not what the words used in these clauses can be said to have intended. Firstly because of the way the clauses are structured and secondly the words used. In terms of the way the clauses are structured, they are in three parts with the first sentence dealing with the obligation to consult which is engaged when there is a proposal for change. 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. 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.

[46] Once the consultation obligation is engaged FENZ must engage in a way that is motivated by a desire to reach consensus, there must be consultation on whether change should occur and the reasons for any proposed changes and consultation is said to require "a genuine

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<sup>14</sup> *Television New Zealand Ltd v E tū* [2024] NZEmpC 93 at [15].

effort on the part of Fire and Emergency New Zealand to respond to the views of those being consulted.

[47] The unions say there are a number of additional contextual and background factors that are also relevant to the intention of the parties and the meaning of these clauses. The role of the Union in the process is to represent its members in relation to their collective interests as employees in accordance with s 18 of the Employment Relations Act 2000. Section 18 of the Act provides:

**18 Union entitled to represent members' interests**

- (1) A union is entitled to represent its members in relation to any matter involving their collective interests as employees.
- (2) This Act does not prevent a union offering different classes of membership.
- (3) A union may represent an employee in relation to the employee's individual rights as an employee only if the union has an authority from the employee to do so given under section 236.

[48] The term "industrial democracy" was used to describe clauses such as the consultation clauses in the collective agreements between these parties. These types of clauses were said to be designed to ensure unions can have influence at an early stage and that will benefit both the employer and the employees. It was accepted consultation does not give unions a right to veto or that consultation means negotiation, but what these types of clauses allow are opportunities for unions and the employer to talk about whether changes should take place or not and if so in what way.

[49] Following on from that the Unions submit the consultation clauses are not only about individual rights but have a broader function which is to record an agreement which enhances and codifies the rights of the unions as collectives of union members and is in accordance with the statutory entitlement of unions to represent members in relation to the collective interests of employees.

[50] It was also submitted there is a statutory obligation to engage with the Unions under s13 of the Fire and Emergency Act 2017 which supports the view the consultation clauses are intended to be engaged early. Section 13 of the Fire and Emergency Act 2017 records that FENZ's board must formulate operating principles designed to assist FENZ to work co-operatively and collaboratively with other relevant organisations and to carry out consultation with relevant stakeholders and organisations. I agree the PSA and NZPFU are other relevant

organisations and stakeholders and that there is a statutory obligation on FENZ to work with the Unions and to carry out consultation with them. I also agree that in developing the principles the board must have taken into account the importance of engagement with FENZ personnel and the unions and associations that represent or advocate on behalf of FENZ personnel.

[51] These contextual factors are not inconsistent with the position I reached above on the plain meaning of the words in the consultation clauses. The way the clauses are written and constructed allow for and intend for consultation to occur at the proposal stage when organisational change is planned. That is consistent with the statutory entitlement given to unions in s 18 of the Act set out above and the submitted purpose of those types of clauses. The clauses allow for the parties to enter into discussions about changes before final decisions are made and while proposals are still in existence and being worked through. Engagement at an early stage was submitted to be of benefit to both employees and the employers and the Unions can assist with that.

[52] The statutory obligations on the FENZ board to create operating principles is also consistent with the consultation clauses in the collective agreements. Engagement and working co-operatively with the unions would require consultation on proposals for change including engagement about whether changes should take place and consultation about the reasons for any proposed changes.

[53] I was also asked to consider relevant background. The clauses have remained the same for at least 10 years. The genesis of the clause was submitted to have arisen from litigation between FENZ and the NZPFU. There was evidence that in the past there has been a variety of approaches to change and on at least one occasion by way of combined working groups at a much earlier stage in order to work up a significant proposal for change. There was nothing persuasive in the common usage or genesis of the clauses that changes my view on the plain meaning of the words used in the clauses.

[54] The plain meaning of the clauses is that FENZ is required to consult the Unions on a proposal for change if the proposal is one that will impact on employees' employment. There is no obligation on FENZ to engage in pre-consultation but equally the words do not prevent FENZ from engaging in pre-consultation. There is a very clear and unambiguous obligation to

consult on a proposal for change. Whether what is consulted on is genuinely a proposal for change will dictate whether the clauses have been complied with.

### **Conclusion**

[55] I have reached the following conclusions:

- (a) The consultation clauses in the respective collective agreements do not require FENZ to consult with the Unions prior to issuing a proposal for change. Consultation is required when planned changes are at the proposal stage.
- (b) Once the obligation to consult has been engaged consultation will include consultation about the reasoning behind a proposal and on whether any proposed changes should take place.

### **Next steps**

[56] The investigation meeting on 17 and 18 February 2026 has been scheduled to hear the remainder of the Unions' claims against FENZ.

### **Costs**

[57] As this matter was a dispute as to the meaning of contractual terms in collective agreements between the parties the Authority's practice direction on costs would suggest that this is a matter where costs lie where they fall. Accordingly, no order as to costs is made.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority