

FECA Meeting

5 August 2020 – 11am

Via Teams

Attendees:

Roy Breeze, Des Irving, Michael Balmer, Scott Bell, Mark Boere, Mitchell Brown, Stephen Butler, Peter Clark, Ken Cooper, Megan Dromgool, Ian Duncan, Kevin Evans, Trent Fearnley, Craig Geddes, Grant Haywood, Graham Hill, Gareth Hughes, Steven Jones, Steve Kennedy, Lindsay Scott, Vaughan Mackereth, Paul Manson, Jeff Maunder, Don McErlich, Glenn Menzies, Craig Monrad, Brad Mosby, Ian Penn, Geoff Purcell, Nick Pyatt, Colin Russell, Mike Shaw, Dave Stackhouse, Daryl Trim, Charlie Turei, Laurence Vought, Peter Wilding, Esitone Pauga, Julian Tohiariki, Gavin Travers, Stephen Greenyer, Nigel Hall, Keith McIntosh, David Utumapu, Dave Key, Roger Smith, Mike Shaw, Hamish Smith, Scott Lindsay, Murray Binning, Matthew Abel, Richard Twomey, Dave Woon, Isaia Piho, Roger Callister

Roy Breeze chaired the meeting and gave a general overview from his August newsletter (Attachment).

The two options were reiterated:

Option 1: Legal Action This option is the FECA committee's recommendation.

Considers that good faith discussions alone between FECA and FENZ and will not result in any further movement of the DM/GM role and a legal decision is required to move on from this point.

It requires legal determination to assess several breaches of our CEA (problem 3).

This option will legally challenge the processes used in developing the new roles and the PIA process to prove they were not done fairly and were in breach of our employment agreement.

Option 2: Continue in good faith discussions to resolve problems 1 and 2.

FECA continues in good faith discussions with FENZ to resolve outstanding problems. This is a trust option for both FENZ and FECA to work together to resolve problems and move on.

Questions:

What legal advice have we had re Clause 20 in the CEA around restructuring? Have we received a second opinion?

Our CEA provisions overrides the FENZ Act, or any act. We have sought a second legal opinion and this has come back the same as the first, in that we have a strong case.

Has there been discussion around the interpretation of the word "transfer".

Where would the organisation likely to be if the NZPFU was successful in their court case?

If the PFU are successful in their court case, then we won't have to do anything. They're arguing that employees have equal dibs on roles regardless of their affected or impacted status. This however will mean that those that are labelled 'affected' will lose that status.

Clause 5.4.1 in their Collective says the best qualified person will be appointed in a role. They are challenging that FENZ takes the most 'suitably qualified' (meaning TAPS qualified), not just 'qualified' person.

If the PFU was not successful in their case, FECA would start preparing documents to lodge in court. Our Lawyer will sit in on the PFU hearing to watch for components in their case that could help us if they were not successful.

Re Redundancy: Kerry's email said Notice of Termination of Employment. What is the difference between this and redundancy?

Page 9 of the CEA. Only not eligible to redundancy when your alternative position is offered. Don't put in a preference for roles if you want redundancy. Des will seek clarification around Kerry's email.

If the PFU are successful, suggest the organisation ensures there is a FECA member on the appointment panel.

Discussion are costs for each option:

Option 1: Legal Action

- The principal of protecting our CEA and seeing our contracts being honoured
- Redo PIA as it was wrong due to old JD's
- It would cost approximately \$5-\$10k to start preparing documents, and on flights and accommodation for our lawyer to sit in on the PFU court case, then a minimum \$35k for legal action. There would be a levy of between \$500 - \$1k each to get started.

Option 2: Continue in good faith

- Continue negotiating
- We can review individual positions (via PG's), however this cost between \$2-\$2.5k each, and depending on how many positions we had to challenge, this could end up costing more than if we went down the legal path

Our Lawyer, SJ, has resigned from her role at the firm, however she has agreed to continue with our case free of charge apart from flights and accommodation.

We have been recommended a new Lawyer, Tim Cleary (Barrister) in Wellington who is very experienced in Employment Law.

Reminder to have your vote on which option you want – it is critical.

Close 12.20pm

Attachment



Fire and Emergency Commanders Association

Subject: Membership vote on next direction.

Date: August 4th 2020

Kia ora all

We have reached the time where decisions need to be made on what direction your FECA committee needs to take for you.

This notice is asking you to vote, to determine which of 2 options you want the committee to proceed with.

Below is some information and we are having a membership VC on Wednesday the 5th August at 11:00 am on Teams. Invites have been sent to your calendar. (Click link in the invite to join)

You will be able to ask questions on the Teams meetings chat and verbally.

Voting will open at the end of the VC meeting and close Thursday 6th August at 5pm.

Background.

For over three years now, FECA committee and reps have been working in co-design with FENZ and the other partner agencies to develop our future organisation. We have provided three submissions to formal consultation and had regular scheduled and impromptu FECA/FENZ meetings. Predominantly, this has worked very well in maintaining two-way communications and keeping our concerns to a minimum.

As we went into the planning phase related to the positions within Tranche 2, the co-design stopped for the 'development of the job descriptions' and the 'Position Impact Assessment' (PIA). This followed with decisions being made that caused us concern.

We presented FENZ with an 'Employment Relationship Problem' (ERP) which listed a number of concerns, predominately related to the PIA process and Unified Service Delivery on rank. The Employment Relationship Problem filed has not been withdrawn and is still active.

FENZ and FECA exchanged letters and had meetings which reduced some of our concerns. Not wanting to hold up the integration with our outstanding concerns we emphasised to FENZ that if the selection process for the new roles was more transparent and appropriate, we would have more trust in the process. Inclusive of other stakeholder feedback, FENZ provided a further opportunity for re-consultation on the selection process via the 'Additional and Changed proposal for re-consultation'. We provided 16 recommendations, with the first 11 directly related to the selection process.

Where are we now?

We are awaiting the final decision of re-consultation which may or may not address our selection process concerns.

We recently meet with FENZ to discuss the Terms and Conditions for the new roles of GM, DM and CRM.

A key area of concern was that the remuneration for the GM and CRM role was not what we expected.

Our interpretation of this situation is if a role is that much different, with more and/or higher accountabilities and new tasks, you would assume it attracts a higher remuneration. Alternatively, if the remuneration was assessed as similar between the old and new roles, then it is likely the differences are learnable and thus should only require training and development, rather than disestablishment. So, a straight forward EOI process to move existing AAM's to the GM positions should be all that is required for redeployment.

We have had more discussions with FENZ and there was some movement in the remuneration, but it appears there are no options left to increase the remuneration or alter the 'significant change' status of the AAM role to GM in the PIA process.

The key outstanding concerns are:

Problem 1: The remuneration of the GM and CRM is not appropriate, and the difference between the AAM role and GM role is not significantly different to warrant these being categorised as "affected" and required to go through a selection process to apply for the GM role

Action: Via electronic vote this week, you decide how the committee will represent you on this.
Voting options below

Problem 2: The proposed CORE selection process is not appropriate for the (interim) rank for GM and DM roles. The CORE selection process does not include Schedule 4, clause 19 of our collective which requires all positions between SSO-ANC to have ACL. We have had a second legal opinion on this clause that confirms our thinking ACL should be part of the selection process.

Action: Await the final decision on re-consultation proposals. Both voting options below can include follow up on this problem if required.

Note: The CORE interim rank proposal is a direct result of a potential breach of our Collective Employment Agreement (CEA) regarding ranked appointments.

Problem 3: Breaches of our CEA.

Action: Dependent on whether the above problems 1 and 2 are resolved. Both voting options below will include follow up on this problem if required.

Other factors.

The NZPFUs claim in the employment court may influence the upcoming selection process and the legal options FECA will consider. If they win their claim, all 'affected' status is lost and all positions are open to all internal and external applicants to apply. Priority in selection for our members may be provided via other aspects of their claim.

Voting options overview.

The committee has developed two options requiring you **to vote for one of the options.**

Option 1: Legal Action This option is the FECA committee's recommendation.

Considers that good faith discussions alone between FECA and FENZ and will not result in any further movement of the DM/GM role and a legal decision is required to move on from this point.

It requires legal determination to assess several breaches of our CEA (problem 3).

This option will legally challenge the processes used in developing the new roles and the PIA process to prove they were not done fairly and were in breach of our employment agreement.

Option 2: Continue in good faith discussions to resolve problems 1 and 2.

FECA continues in good faith discussions with FENZ to resolve outstanding problems. This is a trust option for both FENZ and FECA to work together to resolve problems and move on.

Discussion on the options

Option 1. Legal Action.

This option legally challenges the processes that brought us to this point:

It is looking to achieve a legal decision so that the PIA process and related processes are redone in co-design, and that T&C's within the collective are honoured, or change is negotiated. This will ensure creditability of the CEA going forward.

The goal is proving there is not significant difference to warrant disestablishment of a number of existing roles. Or secondly if there is significant change in these roles, that the Korn Ferry (Job Sizing) process is redone to assess pay bands.

Our legal advisor provided us with a combination of options and estimated costs and what may be achieved. The key first step is to monitor how the NZPFU legal case progresses. The key component is if their CEA trumps the FENZ act. A successful outcome for the PFU will further strengthen our position regarding collective contracts vs FENZ Act. Their case is being heard on August 19th and 20th.

We will incur legal costs building our initial case.

Straight after the NZPFU determination we will then decide if it is worth putting a claim in for breach of our CEA. If no, we revert back to Option 2 being to continue with good faith discussions.

Or, the Tranche 2 selection process may be completed by the time this case is heard, and the new structure is in place. Depending on what this looks like, we may decide that it is not worth the legal challenge and instead just manage any anomalies of the selection process separately.

If the Court finds in favour of the NZPFU claim, we will submit our claim to the Employment Court immediately. It is unknown at this stage how long this will take to be heard.

It is not the intention of FECA to hold up the scheduled selection process, however if the court decision is in our favour and the selection process is already completed, it could cause the reversal of some appointments.

The minimum estimated cost of this is \$30,000 plus GST. It will require a further levy from the membership.

The key matters we are addressing via legal opinion on whether there is a breach of our employment agreement are: CEA Paragraphs 6 (c); and 6 (g), Schedule 4, Paragraphs 19 -22

- whether there is sufficient difference between some existing and new roles to warrant disestablishment and thereby being categorised as 'affected' in the PIA process.
- That our CEA Section 6 [g], being the 10.4% after hours allowance, Clause 23, schedule four Clauses 19-22 still applies to the Terms and conditions being discussed between FENZ and FECA.
- That for the selection process the ACL based system should be used, or the Comprehensive Competency Framework, which is still to be developed in co-design with FECA.
- Clarify redundancy options.

If successful it will provide future security for our CEA. This is important! We feel there are several breaches of our CEA which need to be challenged to make sure all sections of future CEAs are honoured.

Option 2. Carry on with good faith discussion. Maintain a focus on the GMs remuneration and the selection process:

This option has some reliance on some or all of our submission recommendations being accepted.

FECA will continue discussions with FENZ re the remuneration package of GM and CRM. The Korn Ferry process assessed the GM and CRM roles as high within the assessed pay band. FENZ remuneration policy is to pay at the mid-range of a pay band.

We have been advised there will be no movement in the band and the opportunity to negotiate this will be March 2021 when our CEA expires. We recently met for a second time with FENZ to stress the importance of this issue and are still waiting for a reply.

As in both options we will keep a focus on supporting everyone in the selection process.

In Summary

We need you to vote what direction you want the committee to take. Option 1 or 2.

Option 1 = Legal action (Recommended by the Committee) what we consider are breeches of the CEA and that the PIA process is incomplete, therefore no disestablishment of current roles.

We will discuss the risks, costs and potential outcomes of this option on Wednesday.

Option 2 = Continue with good faith discussions with FENZ on any issues. There will be a focus on trying to build a stronger commitment to our CEA obligations and the upcoming negotiations.

Please provide written questions before the VC direct to Des and myself. There will also be an opportunity to use the chat function on TEAMS or to ask verbal questions.

The vote outcome is via simple majority of the actual votes submitted, as per our FECA constitution.

It is ESSENTIAL that you vote.

Electronic voting will open after the Wednesday meeting and close Thursday at 5 pm.

Roy Breeze - On behalf of the FECA Committee.