IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2022] NZERA 690
3200639

	BETWEEN	TERTIARY EDUCATION UNION Applicant
	AND	VICE CHANCELLOR AUCKLAND UNIVERSITY OF TECHNOLOGY Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Simon Mitchell KC and Peter Cranney, counsel for Applicant
	Paul Wicks KC and Bridget Smith, counsel for Respondent
Investigation meeting:	15 December 2022
Conference:	21 December 2022
Compliance orders:	22 December 2022

COMPLIANCE ORDERS OF THE AUTHORITY

Employment relationship problem

[1] The Tertiary Education Union – Te Hautū Kahurangi o Aotearoa – (TEU) applied for compliance orders against the Vice Chancellor Auckland University of Technology (AUT).

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[2] The Authority issued a determination[1] on 19 December 2022 finding that AUT had breached certain provisions of Part 10 of the collective employment agreement (the CEA) covering academic and associated staff members. Part 10 is concerned with organisational change and provides the option of severance of employment in surplus staff situations.

[3] The Authority determined that the breaches should be met with orders unless the parties resolved the compliance application on terms which made orders unnecessary. The parties were given until 22 December to consider the Authority's determination and advise whether orders were required or not.

[4] The Authority conferred with counsel at 2 pm on 21 December and later it was provided with draft wording of the orders AUT and TEU respectively seek.

[5] It appears orders are necessary.

Compliance order

[6] The Authority has considered the drafts and now makes the following compliance orders under s 137 of the Employment Relations Act 2000.

A. On or before 5 pm on 23 December 2022, in relation to academic staff employed by AUT and who are members of TEU, AUT shall desist from

    (1) terminating their employment, and/or

    (2) giving notice of termination of their employment, and/or

    (3) where notice of termination is currently in force, allowing the period of that notice to elapse or to continue to elapse.

B. On or before 23 December 2022, AUT shall notify TEU and academic staff who are TEU members and who are currently under notice, that it has complied or will comply by 23 December 2022, with the order to desist given under A. above.

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C. Following compliance with the order under A. above, AUT shall not, in reliance on any grounds under Part 10 of the CEA, terminate the employment of academic staff who are members of TEU or give notice of termination of their employment, until AUT has complied with all applicable provisions of Part 10 of the CEA, and in particular complied with clause 10.3.3(i).

D. AUT must identify specific positions as surplus by reference to the name of the current position holder, and where there is more than one position and more than one employee per position, AUT shall then call for voluntary severance from the employees potentially affected. AUT shall in accordance with clause 10.3.3(i) determine which, if any, of those employees who request voluntary service shall be granted voluntary severance.

[7] The Authority is not satisfied that there has been a breach of clause 10.3.2(b). TEU was consulted before AUT determined the process and/or criteria under that provision. No orders are made in relation clause 10.3.2(b) of Part 10.

[8] Leave is reserved for the parties to apply on notice for further directions.

Costs

[9] Costs remain reserved.



Alastair Dumbleton
Member of the Employment Relations Authority

