



DECISION

Fair Work Act 2009
s.739—Dispute resolution

CPSU, the Community and Public Sector Union

v

Library Board of Victoria (C2020/699)

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 26 OCTOBER 2020

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)].

Introduction

[1] CPSU, the Community and Public Sector Union (CPSU) and the Library Board of Victoria, which trades as State Library of Victoria (SLV), are in dispute about whether certain proposed changes to the job designs and duties or functions of some Library Officers and Librarians employed by SLV are permitted having regard to the terms of the *State Library Victoria Enterprise Partnership Agreement 2016* (Agreement). The Agreement, the nominal expiry date of which passed on 31 December 2019, covers and applies to SLV, the CPSU and relevantly, the affected Library Officers and Librarians in their employment with SLV. The CPSU applied under s.739 of the *Fair Work Act 2009* (Act) for the Commission to deal with the dispute in accordance with the dispute settlement term in clause 27 of the Agreement. The dispute was not resolved through conciliation and the parties have agreed the following question be determined to resolve the dispute by arbitration:

Do any of clauses 4(g), 4(j) and/or 4(k) of the Agreement prohibit the Respondent from:

- a. altering the duties and responsibilities of Library Officers such that they only perform their duties in one of either Visitor Information Services or Collection Access, rather than performing duties in both of those areas; and/or
- b. altering the duties and responsibilities of those Librarians who previously performed, or were given the opportunity to perform, front-of-house duties such that they are removed from performing front-of-house duties?

Background

[2] The Library Board of Victoria is a body corporate established under s.16 of the *Libraries Act 1988* (Vic). The Library operated by the Board traces its history to the

Melbourne Public Library which was established in 1854 and opened in 1856.¹ It has remained in the same location since its opening, but its physical structure and layout has changed considerably over time, including as a result of the SLV's Vision 2020 redevelopment.²

[3] SLV employs, *inter alia*, Librarians and Library Officers.³ Librarians are professional employees supporting the development of the Library's collections and the provision of services to Library users.⁴ Library Officers support those functions.⁵ The role of Library Officer was created in or around the commencement of 2017 as the result of SLV merging the classifications of Collection Access Officer and Customer Service Officer.⁶ This classification merger was contemplated in the "Service Delivery Partnership Plan" (SDPP) found at clause 4 of the Agreement.

[4] The SDPP was included in the Agreement to permit wage outcomes in excess of the Victorian Government's Fair Pay Guide.⁷ The Fair Pay Guide is the Victorian Government's wages policy forming part of its enterprise bargaining framework, and which sets base increases including wages and conditions at 2.5 per cent per annum over the life of an enterprise agreement and for wages outcomes of 3 per cent per annum where accompanied by a service delivery partnership plan.⁸

[5] In May 2017, SLV commenced that which it describes as a *People Plan project*.⁹ SACS Consulting was engaged to assist with the project, the aim of which was to gain an understanding of the current SLV workforce and to identify its future workforce needs.¹⁰ From employee feedback obtained during the *People Plan project* emerged an organisational redesign or restructure,¹¹ phase 1 of which commenced in March 2018.¹² Phase 2, known as *3D Ready*, commenced in September 2018.¹³

[6] On or around 30 April 2019, SLV released to employees and the CPSU a document titled *Communication and Consultation about Significant Change* setting out its proposal on how the 3D Library structure would be implemented.¹⁴ In short compass, under the proposed restructure, employees would be grouped together based on the function, or type of function, performed, which, it was said, would enable more focused work aimed at improving the customer experience.¹⁵ A key proposal was to centralise *front-of-house duties* or functions into

¹ Exhibit 5 at [4]

² Ibid

³ Ibid at [6]

⁴ Ibid at [7]

⁵ Ibid

⁶ Ibid at [8]

⁷ Ibid at [9]

⁸ Exhibit 3, attachment CO-1

⁹ Exhibit 5 at [16]

¹⁰ Ibid

¹¹ Ibid at [17]

¹² Ibid at [18]

¹³ Ibid at [21]

¹⁴ Ibid at [23]

¹⁵ Ibid at [24]

Visitor and Information Service (VIS) and to centralise *back-of-house duties* or functions into Collection Access.¹⁶

[7] As earlier noted, the role of Library Officer was created in or around the commencement of 2017 by merging the classifications of Collection Access Officer and Customer Service Officer. Before the merger of these classifications to create the Library Officer role, Collection Access Officers were responsible for a number of duties, including duties described as *front-of-house duties*.¹⁷ These duties involved direct interaction with users of the Library. These duties included assisting Library users with directional enquiries and searching for items for which a user has a call number but needs assistance locating it, assisting Library users with the use of equipment such as microfiche, microfilm and photocopiers and membership registrations.¹⁸

[8] Collection Access Officers also undertook duties described as *back-of-house duties* which were focused on collection services assisting Library users to access Library collections.¹⁹ These duties included book delivery and retrieval, document supply and delivery and converting items in the Library's collection into an electronic format and making them available online.²⁰

[9] Customer Service Officers were responsible for limited *front-of-house duties*, such as greeting Library users, answering basic queries, providing general directions and answering and redirecting telephone calls.²¹

[10] Under the proposed restructure, employees would be grouped together based on the function, or type of function, performed. A key proposal is to centralise *front-of-house* functions into VIS and to centralise *back-of-house* functions into Collection Access. The proposed restructure would involve changes to the positions and teams within SLV.²²

[11] Under the proposed changes Library Officers:

- would either remain in the VIS branch or be allocated to a new Collections Logistics team in the Collection Access branch;
- would continue to be responsible for welcoming and guiding visitors, assisting visitors with printing/copying/scanning and the use of other equipment such as microfiche and microfilm and assisting with new membership enquiries;
- would also have additional responsibilities associated with the new spaces (for example, interacting with children in the Children's Quarter, promoting StartSpace and assisting visitors with accessing new meeting rooms and digital studios);

¹⁶ Ibid

¹⁷ Ibid at [8]

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid at [24]-[25]

- in Collection Access would be responsible for the collection, storage and maintenance, retrieval, re-shelving and processing functions and would receive training to enable them to retrieve from a broader range of areas and collections;
- would have the opportunity to express a preference to remain in VIS or move to Collection Access, and SLV would endeavour to accommodate those preferences;
- would no longer be rostered to fixed service points, rotating every 30-45 minutes, and would instead be rostered to zones (for example, the Quad, which comprises the Children's Quarter and Create Quarter, or the Collection Zone, which comprises the reading rooms and the Newspaper and Family History room); and rosters would include significantly increased administration time, providing greater opportunity to perform tasks such as reading emails, attending meetings and undertaking training;
- would have the opportunity to undertake secondments between VIS and Collection Access; and
- those who are newly employed would undertake training in all tasks (those performed by Library Officers in VIS and those performed by Library Officers in Collection Access).²³

[12] As for Librarians, the changes proposed encompass the following:

- a single Librarian role and position description would be created;
- a new classification of Senior Librarian would be created which would have higher level responsibilities, higher level expertise and fewer people management responsibilities;
- Librarians and Senior Librarians would be allocated to a team within one of the following branches:
 - the Collection Development and Description branch;
 - the Collection Access branch; or
 - the VIS branch; and
- only Librarians and Senior Librarians in the VIS branch would be rostered for *front of-house* desk duties who would spend up to 50% of their working hours performing desk duties.²⁴

[13] In short, the changes proposed by SLV involve the separation of the duties and responsibilities of Library Officers from both of *front-of-house* and *back-of-house*, to one of those areas only, with a similar separation to be implemented for Librarians.

²³ Ibid at [27]

²⁴ Ibid at [31]

[14] The CPSU contends that the proposed changes will result in outcomes that are at odds with the intended meaning and effect of several provisions of the Agreement. Specifically, the CPSU contends the proposed changes will:

- have the effect of creating a silo rather than a streamline of *front-of-house* and *back-of-house* services in the Library Officer role, contrary to clause 4(g) of the Agreement;
- deprive Library Officers of the full spectrum of duties referred to in clause 4(g) of the Agreement;
- reduce, rather than increase, flexibility for staff in the occupational specific structure to work both *front-of-house* and *back-of-house* duties, contrary to clause 4(j) of the Agreement; and
- deprive Librarians in the Collections Development and Description Branch of opportunities for direct customer service, contrary to clause 4(k) of the Agreement.

Consideration

[15] As should be evident from the foregoing, the central issue in dispute concerns the proper construction of clause 4 of the Agreement and whether the proposed changes are prohibited by it.

[16] The CPSU contends that the effect of sub-clauses 4(g), (j) and (k) is to prohibit SLV from restructuring its operations in the manner contemplated. It says that it is not open to SLV to conduct itself inconsistently with the Agreement and if SLV wishes to relieve itself of these obligations it should bargain for a different arrangement in a replacement enterprise agreement.

[17] SLV contends that clauses 4(g) - 4(m) of the Agreement identify specific initiatives “that will be undertaken”: “we will, over the course of this agreement, undertake the following...”. It accepts that undertaking these initiatives is obligatory. However, it contends that the language above, combined with the language of each sub-clause, makes it plain that the provisions are forward looking. SLV says that the provisions require the initiatives there described to be undertaken “over the course of the agreement”. It argues that read in context, that is not a reference to the initiatives being implemented and then retained in some exacting and specific form for the life of the Agreement; rather while the Agreement is in operation (or perhaps, during its nominal life), the various initiatives will be implemented, undertaken or introduced.

[18] The construction of an enterprise agreement or of a provision thereof, much like construing a statute, begins with a consideration of the ordinary meaning of the words, read in context, taking account of the evident purpose of the provisions or expressions being construed. Context may be found in the provisions of the agreement taken as a whole, or in their arrangement and place in the agreement. The statutory framework under which the agreement is made or in which it operates may also provide context, as might an antecedent instrument or instruments from which a particular provision or provisions might have been derived. The industrial context in which an enterprise agreement is made and operates is also

relevant. Thus, the language of an enterprise agreement is to be understood in the light of its industrial context and purpose, not in a vacuum or divorced from industrial realities. A purposive approach to interpretation is appropriate, not a narrow or pedantic approach.²⁵

[19] Clause 1 of the Agreement sets out that which may be described as the aim of the Agreement and provides that the Agreement “follows a path set by the Library’s previous Enterprise Agreements which we intend to continue to pursue”. By clause 1 the Agreement is said to reflect:

- Recognition of the ongoing need to constructively address flexible working arrangements, operational efficiency, the needs of our users for consistent quality, and the reliability of services provided by the Library;
- An approach to employment matters that reflects cooperation between management, employees and the Union, demonstrates the high value placed on employees at the Library and is based on a commitment to employee development and to fair and equitable employment conditions; and
- A commitment to consultation aimed at fostering sound workplace relations, improving knowledge of the overall aims of the Library’s business plans, increasing efficiency and productivity, and improving job satisfaction and the skills of employees.

[20] The Agreement is also said to establish “a positive direction for the future and the basis for greater cooperation in achieving the Library’s Charter”.²⁶

[21] Clause 4 of the Agreement deals with the SDPP. Amongst other things, the SDPP contains aspirational statements noting that “[W]e will continue to strive to improve service delivery and customer experience whilst balancing workloads” and statements recognising the parties’ “mutual commitment to the highest standards of service and excellence for the Library as a world-leading library, research, knowledge and cultural institution”.²⁷

[22] The SDPP also contains principles for “changes to staff roles and practices”, which include provision of support and appropriate training.²⁸

[23] The SDPP is not to supplant any obligation under the Agreement.²⁹

[24] Clause 4 also sets out “specific initiatives” that will be undertaken to support the partnership over the course of the Agreement. In this regard SLV “will” undertake the following:

- “(g) Streamlining of first tier front and back of house services by merging Collection Access and Customer Service officers into a Library Officer classification will be subject to the provisions identified in (d) above. The broader role will provide the Library with flexibility in rostering staff to back and front of house tasks thereby

²⁵ *WorkPac Pty Ltd v Skene* [2018] FCAFC 131, at [197] and the authorities referred to therein

²⁶ *State Library Victoria Enterprise Partnership Agreement 2016*, cl 1

²⁷ *Ibid*, cl 4(b)

²⁸ *Ibid*, cl 4(d)

²⁹ *Ibid*, cl 4

enriching roles and providing staff with greater variety and development opportunities. Library Officers will be given the opportunity to develop a broader range of task based competencies through training with a view to developing a more flexible and responsive workforce. Staff in these roles will be involved in book delivery and retrieval, digitisation, equipment support, document supply and delivery and direct customer service including registrations and enquiries as well as provision of support to the programming areas.

- (h) Continue to consolidate reference services by merging reference service points.. An interim trial will be undertaken amalgamating a number of fixed service points representing a staged approach to the centralised service model identified in the Future Service Model project which informs the Vision 2020 Redevelopment Project. Training will be provided to staff. This trial will systematically record service issues that arise and management will collaboratively consult front of house staff, to maximise the quality of service provided to Library patrons.
- (i) Greater emphasis on digitisation of collection items to extend access to the Library's material in the online environment. The creation, management and archival description of online content alongside the collection and preservation of born digital material provides opportunities to extend the skills of staff.
- (j) Greater flexibility for professional staff covered by the occupational specific structure to work both front and back of house as part of a streamlined or merged role in accordance with the commitments identified in (d) above.
- (k) All staff roles to incorporate the opportunity to provide direct customer service to Library patrons to enhance staff understanding of the needs of the public and continuously improving the customer experience.
- (l) All staff involved in customer services and programming will be offered clothing and/or accessories to augment the identification of staff by the public. A group consisting of representatives of both parties will be established to determine the clothing and/or accessories to be provided.
- (m) Development of a Service Charter through a collaborative process which:
 - Acknowledges the high level of commitment to customer service by management and staff
 - Establishes service standards which reflect agreed service targets
 - Ensures opportunities for staff to provide input to the development of the Charter
 - Provides a review mechanism for the operation and effectiveness of the Charter and Service Standards contained within it
 - Enables operation of the Charter during the life of this Agreement.”

[25] Relevantly, these initiatives envisage the following outcomes:

- The establishment of a new Library Officer role with particular duties which include both *front-of-house* and *back-of-house* tasks (clause 4(g));
- All staff roles (including Library Officers and Librarians) are to include the opportunity to provide direct customer service to Library users (clause 4(k)); and
- More flexibility for “professional staff” (Librarians, Conservators, Library Technicians and Library Assistants [see Appendix Two of the Agreement]) to work both *front-of-house* and *back-of-house* (clause 4(j)).

[26] Taken together, the initiatives that clause 4 of the Agreement required SLV to undertake have the result that Library Officer and Librarian roles would, after the initiatives have been undertaken, have a mix of both *front-of-house* and *back-of-house* tasks. As earlier indicated, SLV accepts that it was bound by the Agreement to undertake the initiatives for which clause 4 provides. There is no dispute that it has undertaken (and implemented), relevantly the initiatives that affect the Library Officer and Librarian roles. The issue is whether duties and tasks ascribed to these roles as a consequence of the initiatives may be altered so as to remove the mix of *front-of-house* and *back-of-house* tasks as a feature of the roles.

[27] Clause 15 of the Agreement is titled “Continuous Improvement for Quality Service” and provides as follows:

“The success of this agreement will and ought to have direct and measurable impact on the Library's ability to achieve and deliver service excellence against key result areas identified by the Strategic Plan and the annual Business Plan. In order to achieve this, the parties agree to commit to ongoing and continuous improvement.

To build on the current level of flexibility changes may be required to the way in which jobs are designed and tasks undertaken. Defining and implementing strategies for waste reduction and improved services and work practices will become the normal way of the Library's business operating approach. In undertaking reviews of current practice, the Library undertakes to collaborate with employees in identifying opportunities for improvement.

In undertaking reviews of current practice, management acknowledges the concerns of employees with regard to workload and its impact on service quality and access to collections, and undertakes to consult with and consider the views of employees throughout the review processes.”

[28] Clause 15 is concerned with the parties’ commitment to “ongoing and continuous improvement” which may require changes “to the way in which jobs are designed and tasks undertaken”. Any such changes are to be the subject of consultation and the views of employees will be considered.

[29] SLV contends that clause 15 of the Agreement enables it to change and improve job designs and tasks, subject to genuine consultation, which it has done. It says that clauses 4(g), 4(j) and 4(k) do not cut across or constrain SLV’s ultimate responsibility to make decisions relating to its strategic direction. When read in the context of the Agreement, particularly

clause 14, SLV says the identified clauses 4(g), 4(j) and 4(k) do not prohibit those matters addressed in the question for arbitration.

[30] There is some superficial attraction to this proposition but ultimately it is rejected for the following reasons.

[31] Firstly, there is the language of the provisions mandating the initiatives in clause 4 of the Agreement. The initiatives that are set out, relevantly those in clauses 4(g), 4(j) and 4(k), are intended to “be undertaken to support the partnership”, which is a reference to the SDPP the plan for which is earlier set out in clause 4. There is thus an indication of some longevity in the initiatives that are to be undertaken. An initiative implemented to support the partnership is not able to do so if it can be removed or undermined. A further indication of the longevity of the initiatives is that they will be undertaken “over the course of” the Agreement.

[32] Secondly, there does not appear to me to be any textual basis for a reading that once the initiatives in clauses 4(g), 4(j) and 4(k) have been implemented, the effect of which is, *inter alia*, Library Officer and Librarian roles contain a mix of *front-of-house* and *back-of-house* tasks, the obligations are then ‘spent’ and the initiatives may be undone. Indeed, that the initiatives are to be undertaken to support the partnership, clearly tells against such a construction

[33] Thirdly, that a mix of *front-of-house* and *back-of-house* tasks form a continuing part of the role is consistent with the “Rostering Principles and Job Design” provisions in clause 21.2.1 of the Agreement and which provides that “[E]ach roster for Librarian and Library Technician staff will be designed to provide a reasonable balance between back (research, collection maintenance and development) of house and front (direct customer service) of house functions.”

[34] Fourthly, I accept, as the CPSU submitted, that if clause 4 only compelled SLV to implement the initiatives but not maintain them, that would deprive the effected employees of the benefit of the bargain struck. As disclosed by the words of clause 4 the objectively ascertainable intended operation of the provision is that it compels the initiatives to be undertaken over the course of the Agreement to support the partnership and does not contemplate giving SLV the sole discretion to deprive employees of the outcome of the initiatives that are undertaken. On SLV’s construction it would be permissible for it to have implemented the initiatives shortly after the Agreement commenced operation and very soon thereafter commenced consultation about, and then implementation of, changes which depart from or contradict the initiatives. Such a construction cannot be countenanced against the language used in clause 4.

[35] Fifthly, the generalised reference to ongoing and continuous improvement perhaps requiring changes to the way in which jobs are designed and tasks undertaken in clause 15 of the Agreement does not overcome the detailed and prescriptive language in clause 4. The two provisions may be read in conformity without the latter undoing the changes brought about through the initiatives undertaken pursuant to the former. Changes to the way in which jobs are designed and to tasks may be implemented in furtherance of ongoing and continuous improvement, but not in a way that alters the effect on Library Officer and Librarian roles of the initiatives undertaken pursuant to clause 4. Moreover that “changes may be required” to the way in which jobs are designed and tasks undertaken, does not give SLV *carte blanche*. The change which may be implemented will necessarily be constrained by the terms of the

Agreement. One such constraint is the obligation to consult, another is the initiatives in clause 4.

[36] An available course to SLV to undo or change the initiatives it agreed to undertake under clause 4 of the Agreement is to negotiate a variation of the Agreement and have it processed under Division 7 of Part 2-4 of the Act. Alternatively, it can seek new arrangements by bargaining for them and seeking the approval of a new enterprise agreement or it can apply to terminate the Agreement as its nominal expiry date has passed. What it cannot do is to implement the proposed changes by relying on clause 15. Individual flexibility arrangements might be made pursuant to clause 8 which can vary the effect of clause 21 of the Agreement. Clause 21 deals with, *inter alia*, “Roster Principles and Job Design”, to which earlier reference has been made.

Conclusion

[37] As the Library Officer and Librarian roles, after the initiatives in clause 4 of the Agreement are undertaken, have a mix of both *front-of-house* and *back-of-house* tasks and on the construction I prefer, this mix cannot be altered, save as indicated above, the answer to both parts of the agreed question is that the identified provisions do not in terms prohibit anything. However, on a proper construction of the provisions identified, the outcome of the initiatives - that Library Officer and Librarian roles have a mix of both *front-of-house* and *back-of-house* tasks - continue while the Agreement (unvaried) is in operation. As the proposed alterations are inconsistent with that outcome, clauses 4(g), 4(j) and/or 4(k) of the Agreement have a prohibiting effect. In that sense the answer is “yes”. Unilateral change of the kind proposed is not permitted.

[38] The dispute is determined accordingly.

The image shows a circular seal of the Fair Work Commission. The seal features a central emblem with a crown and a shield, surrounded by the text "THE SEAL OF THE FAIR WORK COMMISSION". A blue ink signature is written over the seal, extending from the top left towards the bottom right.

DEPUTY PRESIDENT

Appearances:

D Murphy on behalf of the Applicant

M Follett of counsel on behalf of the Respondent

Hearing details:

2020

Melbourne (via video)

10 August

Written submissions:

Applicant, 22 June and 29 July 2020

Respondent, 17 July 2020

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