IN THE FAIR WORK COMMISSION

Title of Matter: Application by Metropolitan Fire & Emergency Services Board

Section: s.225 - Application for termination of an enterprise agreement after its nominal expiry date

Subject: Application for termination of the Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Assistant Chief Fire Officers Agreement 2010 & Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2010

Matter Number: AG2014/5121

WITNESS STATEMENT OF JANETTE LORI PEARCE

I, JANETTE LORI PEARCE, of 456 Albert Street, East Melbourne in the State of Victoria say as follows:

Lodged by: The Applicant

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13 Changes that the MFB proposes to make in relation to virtually every workplace decision must be agreed by the UFU, generally through the consultation process in the relevant Agreement/s, regardless of the significance of the change or its effects on employees, including any:

a. change to matters pertaining to the employment relationship (whether or not arising from the Agreements) in any of the workplaces covered by the 2010 Operational Agreement or the ACFO Agreement must be referred to the Consultative Committee (2010 Operational Agreement, cl 15; ACFO Agreement, cl 10);

b. change that 'will impact on any of the terms and conditions of employees' (2010 Operational Agreement, cl 21.2; ACFO Agreement, cl 14.2);

c. modification, deletion or addition to any existing policy that affects employees (2010 Operational Agreement, cl 30);

d. modification, deletion or addition to existing HR policies (ACFO Agreement, cl 33);

e. proposal or change for MFB activities or any activities usually or capable of being carried out by the MFB to be delegated or assigned to, or to be provided by, another party (2010 Operational Agreement, cl 32.4);
f. changes to occupational health and safety in accordance with Schedule 1 (2010 Operational Agreement, cl 44.1);

g. entitlements in respect of emergency responses outside of the metropolitan fire district (2010 Operational Agreement, cl 85);

h. proposal in respect of any aspect of articles of clothing; equipment, including personal protective equipment; station wear; and appliances, including, without limitation, design and specifications. This applies to new and replacement items (2010 Operational Agreement, cl 88.1);

i. relocation entitlements - no employee will be relocated or directed to relocate into temporary premises prior to there being agreement reached with the UFU as to (i) any necessary temporary facilities and amenities; (ii) an allowance of $3.50 per attended shift; (iii) in circumstances that do not involve relocation to a fire station, the parties will review the quantum of any allowance that may be applicable by agreement (2010 Operational Agreement, cl 90.7);

j. relocation directions - no employee will be relocated or directed to relocate into any permanent premises (e.g. a new location, station or training college) prior to there being agreement reached between the parties as to the design of and facilities and amenities at the new location (2010 Operational Agreement, cl 90.8);

k. deployment of staff to a particular station - which shall not occur until infrastructure, furnishings, fittings and all deployment principles and matters have been agreed to in respect of that station (2010 Operational Agreement, cl 90.9.3);

l. changes to the Emergency Response Training Framework (2010 Operational Agreement, cl 92.8);

m. new community awareness and safety initiatives, which must not impact on the resources required for operational response (2010 Operational Agreement, cl 93.2);

n. decision as to the amenities to be provided at each location including for the preparation and consumption of meals, refreshments,
recreation, rest and recline (recliner chair) (2010 Operational Agreement, cl 115.1).

Most matters are referred to sub-committees. In fact, I cannot recall any matter that has come before the Consultative Committee that has not been referred to a sub-committee in my time at the MFB. It is not unusual for a matter to be
referred to more than one sub-committee, depending on the issue raised by the proposal.

In my experience, some proposals proceed through the consultation process smoothly, while others are protracted. Some do not progress at all. Even a relatively straightforward matter would generally take a minimum of three months to progress through the consultative process, given the referral to sub-committee/s.
Failure of UFU to provide a quorum

Under the Terms of Reference, the Consultative Committee must have a quorum of three members from each organisation. In my experience, the UFU has on occasion failed to provide enough members for a quorum which means that the Consultative Committee cannot meet, and the issues that were to be discussed at that meeting are delayed for another month. This also has a flow on effect, postponing future agenda items. A recent example of this is the MFB’s proposal regarding the Victorian Emergency Management Training Centre. The centre was due to be handed to the MFB by the developers (Leighton) in March 2014. Due to the UFU advising the MFB that it would not attend any scheduled consultative or sub-committee meetings during the month of March, despite the MFB making all efforts to accommodate the UFU's other commitments, this proposal could not be discussed prior to handover.
Given the number of decisions that are integral to the running of the MFB that must progress through the Consultative Committee, the failure of the UFU to provide a quorum results in significant and unacceptable delays to the organisation.
Flexible employment

97 Another provision that creates problems within the MFB is clause 37 of the 2010 Operational Agreement, which specifically prohibits part time or casual employment – except by agreement with the UFU (cl 37.2), or the employment of operational employees on any basis other than the roster of hours provided for in the Agreement (37.1). Accordingly, firefighters must be engaged on the 10/14 roster with no allowance for flexible work arrangements and day workers can only work flexibly if the UFU agrees to the arrangement.

98 In my employment and industrial relations experience, part time and casual employee arrangements have the most significant uptake by female employees, who tend to be the primary carers for their children.

99 The rigidity of the 2010 Operational Agreement in relation to flexible employment and the cultural barriers that are reinforced as a result, impairs the capacity of the MFB to engage and retain women in its operational workforce.

100 In my experience outside of the MFB, employees would approach their employer to discuss their return to work and a conversation would be had about the details of the arrangement, such as the employee’s expectations of the position and the length of time that he or she anticipated working part time. Coming from that background, where requests for flexibility were made frequently, the thing that stands out for me at the MFB (besides the lack of flexible work options on shift) is the requirement under clause 37.2 that the MFB must consult with the UFU before allowing any part time employment. The fact that someone other than your employer has input into that decision is absurd.

101 I have also found that employees returning to part time work tend to return to their substantive role on a part time basis, rather than a new role. This is not possible at the MFB because operational firefighters cannot work part time. The UFU would not agree to such an arrangement. At best, employees could only return to day work positions, to the extent that such a role was available. Effectively, operational employees who want to return to part time work are treated like they are unfit for work. By that I mean they have similar rostering arrangements to employees in the Operational Support Group (OSG). OSG employees are firefighters who are sick or injured and aren’t fit to complete all their operational duties.
I also understand that firefighters are only eligible for promotion while they are performing an operational role (rather than day work). Women who return part time are therefore not eligible for promotion until they return to full time operational duties.

I am aware from reviewing the files of the MFB, Fair Work Australia and the Australian Industrial Relations Commission, that the UFU has a long history of opposing the introduction of flexible work options for operational employees. This includes:

- the rejection of MFB bargaining claims for part time and casual employment in Operations;
- submissions made in the award simplification proceedings in 1999 (Re Victorian Firefighting Industry Employees Interim Award 1993 C No 37547 of 1997, UFU submissions at [31]) not to include part time employment options in the Victorian Firefighting Industry Employees Interim Award; and
- submissions in the 2010 award modernisation proceedings (Award Modernisation - Decision [2009] AIRCFB 945, UFU submissions [39]-[61]) not to include part time employment in the Firefighting Industry Award 2010.

In my opinion the lack of flexible work options at the MFB is not conducive of attracting women to the brigade, and contributes to its male-dominated operational workforce. I am aware that as at 30 April 2013, there were 1871 male operational employees and 64 female operational employees. Women account for only 3.4% of the operational workforce. This figure has not changed significantly over the last five years.
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I refer to paragraph 159 of Mr Lee’s statement. My point in my first statement was that it is absurd that an organisation needs to seek and receive the approval of a union to enable it to offer flexible return to work options for women wishing to return to work part time.

Mr Lee states at paragraph 159 of his statement that he does not believe the MFB has ever sought the UFU’s approval for a female firefighter to return to operational duties on a part time basis. The 2010 Operational Agreement expressly precludes the MFB from employing on a part-time or casual basis without the consent of the UFU. Further, clause 76 of the 2010 Operational Agreement provides that employees will work the 10/14 roster, the Special
Administrative Duties roster or another configuration as agreed between the MFB and the UFU. This again requires the MFB to consult with the UFU if the MFB was to offer part time work, that is, a roster which is not in accordance with the 10/14 roster or the Special Administrative Duties roster.
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