FairWork Commission

FINAL RECOMMENDATION

Fair Work Act 2009
s.240 - Application to deal with a bargaining dispute

United Firefighters' Union of Australia

v

Country Fire Authority
(B2015/1496 & B2015/1498)

COMMISSIONER ROE MELBOURNE, 1 JUNE 2016

Alleged dispute concerning various agreement clauses.

[1] I provided the parties with a draft recommendation on 14 January 2016. Parties were required to respond to the draft by 25 January 2016. Both parties advised of some matters which they sought to vary in the draft recommendation. I assisted the parties to narrow the differences in respect to the outstanding matters. However, on 19 February 2016 the CFA advised the Commission that it did not support the making of final recommendation as they did not believe it would resolve the dispute. On 8 March 2016 the Commission decided not to make a final recommendation at that stage and adjourned the matter. At the request of the UFU the matter was relisted and a number of further conferences have been held in May 2016. The CFA advised the matters which they consider to be outstanding.

[2] The parties have provided me with detailed submissions concerning the outstanding matters. I have taken the material they have provided into account in finalising this Recommendation. I also provided the parties with a draft of this Recommendation and I have considered the comments of the parties in respect to that draft. The CFA expressed the view that further discussions about a number of matters would be fruitful. Based upon my long experience with the matters in contention I am confident that at this stage there is no capacity for agreement to further amendment and that this Recommendation offers the best prospect for resolution of this long running dispute.

[3] The history of the matter before me is extensive and dates back to early November 2015. Unlike many bargaining disputes there was a significant issue between the parties as to what matters had been agreed and what matters were still in dispute. The only way I could see the matter progressing was to at least have some level of shared understanding about the matters that were properly before me. Accordingly, the first piece of work undertaken by the parties when they were before me in November 2015 was to identify the matters that were not agreed. This process was not without difficulty and contention but ultimately we arrived at an agreed document setting out the matters that were properly before me (even though there was still major disagreement between the parties as to which of those items had been agreed at some point in the process). What came to be known as the 23 November document contained

not only the matters that the CFA had identified as not agreed but also the solutions to those matters from their perspective. It was on the basis of the 23 November document that the matter proceeded before me. The parties accepted my position that it was inappropriate to subsequently raise issues which were not identified in the 23 November document. I note that there were only a small number of matters included in the 23 November document which the CFA and Government representatives indicated had been previously agreed in bargaining but where their position had changed.

[4] In the more recent conciliation sessions it appears to me that the CFA have sought to ignore the long and sensitive bargaining process that has been before me since November 2015. In the context of good faith bargaining and the general clause by clause approach that has been adopted before me, I find it difficult to now disturb the agreements that have been made during the course of bargaining. It is also important to note that the reason or basis upon which it was put to me that the CFA are at liberty to re-agitate matters previously agreed was not clear. Although I note the clear and unambiguous concerns put to me by the CFA in the most recent conferences in relation to various matters, it is difficult for me to reconcile this against previous agreements reached and the fact that at all times before me I have had the benefit of senior members of both the CFA and different areas of government advocating for certain outcomes. I would also note that no explanation was provided as to why the most recent suggested outcomes varied significantly from the outcomes previously sought by the CFA in the 23 November document. The most recent claim or proposal from the UFU has not changed in any significant particular since it has been before me and presumably for some time prior to that. In those circumstances I have felt that I am somewhat constrained in the matters that I am able to properly deal with given the good faith bargaining regime under the Act.

[5] For these reasons I have particularly focused on the matters which were still outstanding as at 19 February 2016 some of which are resolved by Version VF1-0 of 13 April 2016. I consider that this is appropriate having regard to:

- Principles of good faith bargaining. In this respect I am satisfied that many of the matters now in contention have been conceded at some point in the process.
- The very long history of this matter.
- The lack of consensus as to what was agreed between the parties at various stages of the negotiating process which has been exacerbated by the lack of continuity of personnel involved.

[6] I do not consider it necessary to recommend any variation to Clause 12 as I consider that Clauses 12.14(g) and (h) only apply where an employee has a right to progression in accordance with the other provisions of Clause 12.

[7] I do consider it necessary to recommend changes to the Agreement to underline that the Agreement only applies to paid professional firefighters and does not apply to volunteer firefighters or affect their important role. The changes also underline the maintenance of the discretion of incident controllers in managing resources in the interests of public safety. The changes to clause 83.5 are also designed to emphasise that the provisions only relate to integrated stations and to the work of professional firefighters. The role of volunteers in fighting bushfires and maintaining community safety and delivering high quality services to the public in remote and regional areas and in integrated stations is not altered by this Agreement. Recommendations 1, 4, 7, 8, 9, 12 and 13 below are directed to this outcome.

[8] I recommend that the dispute be settled by making the following amendments to Version VF1-0 of 13 April 2016.

1) Add a definition of integrated station at clause 11.24. "Integrated Station is a fire station which includes professional firefighters appointed to the station."

2) Clause 45.16 drivers – Alter 46.16 to read
   "In addition to the other requirements of this clause (including the requirements of the Charts in Schedule 1 as applicable from time to time), above-strength career firefighters or career firefighters who are OSG personnel from either CFA or MFB can be used where necessary to act as drivers for on shift Commanders"

3) Move Clause 84 diversity to after Clause 147

4) Revised wording for 7 on fire ground Clause 83.5 (replace the relevant paragraph with the following)
   "Consistent with the increases in staffing provided in this Agreement, the CFA will conduct an extensive range of preventative and preparedness programs and meet its duty of care by ensuring a minimum of seven professional firefighters to fireground incidents are dispatched before commencement of safe firefighting operations. This requirement applies to integrated stations in Districts 2, 7, 8, 13, 14, 15 and 27. Consistent with the increases in staffing provided for in this Agreement, CFA will also ensure that there is a minimum of seven professional firefighters to fireground incidents that professional firefighters are dispatched to before commencement of safe firefighting operations for the following integrated stations being Shepparton and Midura professional firefighters by no later than 1 January 2017 and Warrnambool professional firefighters by no later than 1 January 2018."

5) Clause 99.1 revert to the wording of the 2010 Agreement at clause 38.1.
   "The monetary amounts of the allowances provided for in this agreement set out in Schedule 4 (with the exception of Clause 99.6 Personal Expenses and Accommodation) shall be paid in accordance with Australian Tax Office legislation. However, in the case where an employee receives less than the net amount stipulated in Schedule 4 the parties agree to have discussions regarding the reduced quantum. Each party reserves their rights to pursue any reduction in net entitlements in accordance with the above so no employee is disadvantaged."

6) Clause 100.2. Vary to make it clear that the initiatives are not agreed by altering the preamble as follows: Replace "to discuss and pursue the following agreed initiatives" with "and agree to discuss and pursue the following initiatives".

7) Vary Clause 36.4 to add "except in the case where the incident is a level 3 multi-agency incident or to a CFA/MFB incident controller at an incident"

8) Alter Clauses 44.2.7 and 45.13 to be consistent with 83.5.

9) Add a provision that "For the avoidance of doubt, except as provided in Clause 64- Peer Support, nothing in this agreement shall prevent volunteers in the CFA from providing the services normally provided by such volunteers as volunteers without remuneration."

10) Clause 3 Objectives Add: "In implementing this Agreement the parties will act consistently with equal opportunity and anti-discrimination legislation."

11) Add a provision that "The additional staffing resources implemented in accordance with Schedule 1 are sufficient to meet the staffing requirements of other provisions in this Agreement which have staffing implications."

12) 152.3. Delete the last sentence.

13) Clause 16.4 add the word "administrative" before "reporting line" in the last line.

14) Replace Clause 27 with Clause 21A as follows:

"21A DISPUTE RESOLUTION OFFICER

Any dispute from a party regarding consultation shall be dealt with in accordance with this clause and the dispute resolution clause of this agreement. The Dispute Resolution Officer is responsible for ensuring consultation proceeds pursuant to this Agreement in a fair, timely and effective manner. The Dispute Resolution Officer is to act independently of the parties.

21A.1 Where there is a dispute regarding consultation, before referring the matter to the Fair Work Commission, a party may notify the Dispute Resolution Officer. When a dispute has been notified, the Dispute Resolution Officer shall arrange a meeting within seven days of the CFA CEO and the Secretary of the UFUA Victorian Branch (or their respective delegates), each with one other person accompanying them if necessary having regard to the nature of the dispute.

21A.2 The Dispute Resolution Officer, the CFA and the UFU Secretary shall attempt to resolve the dispute by consensus. They may decide to refer the matter for further consultation, decide that the matter is at an end or resolve it in another manner. If there is no resolution by consensus, a party may refer the matter to FWC pursuant to the dispute resolution clause.

21A.3. The Dispute Resolution Officer is either an employee as agreed to between the UFU and the CFA, or an independent third party as agreed between the UFU and the CFA. All costs incurred by the establishment and operation of a Dispute Resolution Officer shall be carried by the CFA."

[9] If the Recommendation is accepted by the parties then, with the above amendments, the document should be put to employees for endorsement and, in the event of a positive vote, submitted to FWC for approval in the normal manner.

COMMISSIONER