

RELEASED

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 125 - making, amending and repealing awards

**Queensland Fire and Rescue Service Auxiliary Employees Interim Award - State 2013
(A/2013/2)**

INDUSTRIAL COMMISSIONER FISHER

19 September 2013

Application for making an interim award - Auxiliary firefighters - Industrial regulation sought - Present terms and conditions contained in a Standing Order - Cost implications - Respondent opposed making interim award at current time - Determined interim award should be made - Object of the Act - Parties to confer over title and contents of interim award and submit a draft.

DECISION

- [1] The United Firefighters' Union of Australia, Union of Employees, Queensland (UFU) has filed an application seeking the making of an interim award for auxiliary firefighters. This application follows a two year period where the UFU has tried varying mechanisms to seek industrial regulation for this group of workers.
- [2] The UFU advised the Queensland Industrial Relations Commission (the Commission) that auxiliary firefighters are paid part-time firefighters located in regional communities across Queensland and at a small number of stations on the outer suburbs of the south-east corner of Queensland. Approximately 2000 auxiliary firefighters are engaged which is similar to the number of permanent firefighters.
- [3] The majority of auxiliary firefighters are located at stations crewed entirely by them although in certain circumstances they may work with permanent firefighters. Auxiliary firefighters usually hold other primary employment but are on call 24 hours a day, seven days a week to respond to fires and other emergencies that occur in the community. Because of this, there are no set hours of work other than regular drill training.
- [4] Auxiliary firefighters are also required to attend specialised training and are subject to performance standards.
- [5] Presently the terms and conditions of auxiliary firefighters are contained in a Standing Order issued by the Commissioner of the Queensland Fire and Rescue Service (QFRS). Traditionally, the Commissioner has flowed on wage increases to auxiliary firefighters following the Commission's certification of an agreement made between the QFRS and the UFU. Auxiliary firefighters have not received a wage increase since 2011 because bargaining has broken down in respect of the permanent firefighters and proceedings are presently on foot in the Commission for a Determination to be made under s. 149 of the *Industrial Relations Act 1999* (the Act).
- [6] Recently in other proceedings before the Commission as constituted (A/2012/13), the UFU has sought to make an award for auxiliary firefighters. Despite Orders being issued by the Commission seeking a response to the application, the QFRS was slow in responding due to the need to obtain instructions from Government. Ultimately the QFRS did not fully comply with the formal requirements of a response. In the circumstances the UFU considered it had no option but to seek a decision from the Commission that an interim award be made.
- [7] The position of the QFRS is that it is not opposed to the making of an Interim Award for this group of employees in the future but there are significant implications for the QFRS were such an instrument to be made at this point. Essentially, the QFRS is concerned about the cost implications of the s. 149 arbitration proceedings presently underway in the Commission in respect of permanent firefighters. In addition, the QFRS raised the question of whether such an award for auxiliary firefighters will be required if it is successful in gaining the capacity to engage casuals in the Determination emanating from the s. 149 proceedings. For these reasons the QFRS was opposed to the making of an Interim Award for auxiliary firefighters at the present time.
- [8] In response, the UFU submitted that the provision which the QFRS sought in respect of casual employees would have limited impact on auxiliary firefighters. While there would be capacity for some auxiliary firefighters to be employed as casuals, this would not affect the majority of auxiliary firefighters.

Conclusion

- [9] The Commission has given consideration to the competing submissions of the parties. I have reached the view that an Interim Award should be made for this group of workers. This decision is consistent with the Principal Object of the Act which is to provide a framework for industrial relations that supports economic prosperity and

social justice by, amongst other things, promoting and facilitating the regulation of employment by awards and agreements: s. 3(j).

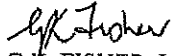
- [10] Further, the employment of auxiliary firefighters is presently award free and they are the only group of employees engaged by the QFRS, other than senior executives, whose employment is not governed by an industrial instrument. Their terms and conditions are governed by a Standing Order which can be varied at the discretion of the Commissioner of the QFRS. As such auxiliary firefighters have not had the capacity in a formal industrial relations setting to seek to influence their terms and conditions of employment.
- [11] In deciding to make an Interim Award for auxiliary firefighters the Commission has also taken into account the submission of the UFU that employees in New South Wales and South Australia, who are engaged in a similar role to those in Queensland, have award coverage.
- [12] In reaching the decision to make an Interim Award the Commission has also considered the two concerns of the QFRS. The first concern is about the potential inclusion of casual provisions in the s. 149 Determination. The Commission as constituted chaired the s. 148 conciliation in respect of the permanent firefighters. My understanding of the casual provision sought by the QFRS accords with the submissions put by the UFU here, that is, the effect of the QFRS application to insert casual provisions into the Determination, if successful, will not impact on the vast majority of auxiliary firefighters. The intention of the casual provision is to provide an option for filling vacancies in the rosters of permanent firefighters and is not to provide complete industrial regulation for auxiliary firefighters. In my view this concern of the QFRS is insufficient to defer industrial regulation of auxiliary firefighters.
- [13] The second concern of the QFRS, that is, the cost implications, can be dealt with by making an Interim Award in substantially the same terms as the Standing Order. Such an approach is consistent with the First Award Principle of the State Wage Case 2013 Statement of Policy¹ (and the equivalent Principle of the State Wage Case 2012 Statement of Policy).
- [14] The UFU has sought an increase in the wages paid to auxiliary firefighters and has proposed that the wages be the existing rates plus the 2012 State Wage Case increase. The UFU submitted that such an approach was consistent with the approach under s. 129 of the Act when rolling up certified agreement rates into awards. The Commission is not disposed to adopt this approach here. As mentioned earlier, traditionally the Commissioner of the QFRS has flowed on enterprise bargaining rates to auxiliary firefighters. No increases have been payable recently because of the breakdown in the bargaining process for permanent firefighters and the consequent referral of that matter to the Commission for determination. As the s. 149 arbitration proceedings are still on foot it is unknown when the Determination might be released. It also unclear whether any wage outcomes granted by the Determination will be flowed on to auxiliary firefighters by the Commissioner, consistent with past practice.
- [15] In addition, there is the matter of the application of 2013 State Wage Case Decision granting an increase to all award rates of pay. Notwithstanding the above submission of the UFU, on one view those increases might be payable to auxiliary firefighters on the making of the Interim Award. However, in the recent past auxiliary firefighters would not have received State Wage Case increases, instead benefiting from the flow on of certified agreement increases. Arguably, then the existing wage rates for auxiliary firefighters could be considered to be above Award wage rates. In such circumstances the 2013 State Wage Case increase would be absorbed into those rates: see Principle 3(d) of the State Wage Case 2013 Statement of Policy.
- [16] Given these issues and the question of whether any wage increases emanating from the s. 149 proceedings would apply to auxiliary firefighters, the Commission considers that the best course is to omit wage rates from the Interim Award and to revisit the matter on release of the Determination. In adopting such a course the Commission appreciates that the issue of retrospectivity may arise. Consideration will also need to be given at that time to Principles 8 and 9 of the State Wage Case 2013 Statement of Policy and s. 126 and s. 129 of the Act.
- [17] The 2013 State Wage Case decision also granted an increase to existing allowances that relate to work or conditions which have not changed. In my view the same considerations that arise in relation to wage rates apply to any such allowances applicable to auxiliary firefighters.
- [18] The reference in paragraph [13] above to "substantially the same terms" is an acknowledgment that not all matters included in the current Standing Order are relevant for inclusion in an award of this Commission. Further, it may be necessary to include some matters in the Interim Award which are presently not included in the Standing Order, for example, but not limited to, procedural matters such as an award coverage clause and

¹ Queensland Council of Unions AND Queensland Government and Local Government Association of Queensland Ltd (B/2013/30); The Australian Workers' Union of Employees, Queensland AND Queensland Government and Local Government Association of Queensland Ltd (B/2013/36) Statement of Policy <<http://www.qirc.qld.gov.au>>

parties bound clause. However, the Commission would not approve the inclusion at this stage of provisions that have cost implications such as Divisional and District parities.

[19] The parties are directed to confer over the title and contents of the Interim Award and to submit an agreed draft by 21 October 2013. In the event the parties are unable to agree on these matters by that time the UFU is to notify the Industrial Registry so that the matter can be relisted.

[20] Order accordingly.



G.J.K. FISHER, Industrial Commissioner.

Hearing Details:

2013 20 August

Appearances:

Mr J. Spreckley and Mr A. Cooke, United Firefighters' Union of Australia, Union of Employees, Queensland.

Mr G. Carthew and Mr S. Donovan, Department of Community Safety - Queensland Fire and Rescue Service.

Released: 19 September 2013