

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: Making of a modern award - Queensland Fire and Emergency Services (Including Auxiliaries) Award - State 2014* [2014] QIRC 185

PARTIES: State of Queensland (Department of Community Safety, Queensland Fire and Emergency Service)

United Firefighters' Union of Australia, Union of Employees, Queensland

Queensland Fire and Rescue - Senior Officers Union of Employees

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland

Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland

Together Queensland, Industrial Union of Employees

CASE NO: MA/2014/60
MA/2014/61

PROCEEDING: Application for Legal Representation

DELIVERED ON: 18 November 2014

HEARING DATE: Written submissions received:
11 November 2014 (Queensland Fire and Rescue - Senior Officers Union of Employees)
12 November 2014 (Queensland Fire and Emergency Services)
13 November 2014 (United Firefighters' Union of Australia, Union of Employees, Queensland)

MEMBER: Industrial Commissioner Knight

ORDERS: **Parties to be allowed legal representation**

CATCHWORDS: AWARD MODERNISATION - APPLICATION FOR LEGAL REPRESENTATION - *Industrial Relations Act 1999 (Qld)*- Whether parties can be represented by a lawyer under s319(2)(ba) - Application opposed - Commission's discretion - Special Circumstances - Is it Desirable - Leave granted to be legally represented.

CASES:

Applicant v Respondent [2014] FWC 2860
Wanninayake v Queensland [2014] QIRC 79

Decision

- [1] The Queensland Industrial Relations Commission is currently undertaking an award modernisation process for the Queensland Fire and Emergency Services sector. As part of this process a series of conference dates, extending over a seven week period, have been arranged to provide the parties with an opportunity to discuss the content of a new modern award(s) for the sector.
- [2] During these conferences, the parties will be required to consider an Exposure Draft of a modern award(s) in the context of recently legislated Queensland Employment Standards (QES) and other provisions dealing with required, permitted and non-allowable provisions within the Act.
- [3] The parties will also be requested to provide detailed objections where they do not consent to the proposed content of the modern award(s). Where objections are received, the matter will then be listed before the Full Bench so that those objections can be dealt with.

A question of legal representation

- [4] As a preliminary point, the question of legal representation has arisen. The United Firefighters Union of Australia, Union of Employees Queensland (UFUQ) does not agree to the representation of Queensland Fire and Emergency Services (QFES) by Mr Glenn Carthew, Manager of the Employee Relations Unit, Public Safety Business Unit (PSBU) on the basis that Mr Carthew is a lawyer.
- [5] The PSBU was established as a public service office on 21 May 2014 and provides strategic and corporate services to Queensland's public service agencies which includes QFES.
- [6] The UFUQ has taken a similar stance in relation to the representation of the Senior Officers Union (SOU) in conference proceedings by Maurice Blackburn Lawyers.

What is the issue to be determined?

- [7] In this matter, for the Commission to grant leave for the QFES and the SOU to be represented by a lawyer, it must be satisfied in accordance with section 319(1)(ba) that there are special circumstances that make it desirable, or otherwise satisfied that it is desirable for the parties to be legally represented.
- [8] The decision is discretionary and in this regard the Commission may consider various factors including the nature and complexity of the matter, the capacity of a party or person to represent himself or herself or whether the duration or costs of the proceedings will be decreased or increased if the party is represented.

Is it desirable for the QFES and/or SOU to be legally represented in the award modernization conference proceedings?

- [9] The conference process for the modernisation of awards in the QFES sector will take place over the coming seven weeks or thereabouts. The existing awards in the sector currently form the basis for the determination of terms and conditions of employment for thousands of workers within the QFES sector across the State.
- [10] During the conference process, the parties will be required to review existing awards, along with an exposure draft of a modern award(s) and consider the content of these awards in the context of newly legislated minimum conditions and other prescriptive requirements with respect to permissible content.
- [11] All of the parties will benefit from their representatives having a reasonable understanding of the minimum employment standards contained in the Act, as well as the legislative provisions dealing with permitted and unauthorised content.
- [12] Between conferences, representatives of the QFES, UFUQ and SOU will be asked to analyse modern award drafts and where agreement cannot be reached with respect to content, requested to prepare objections that will eventually be considered and determined by a Full Bench. This is not an easy or insignificant task.
- [13] In this respect, the submissions of Maurice Blackburn, on behalf of the SOU, in support of an application to be legally represented during the conference proceedings are particularly persuasive.
- [14] The SOU is a small union, comprising four elected officials all working in senior full-time roles within the QFES. The elected officials all have significant responsibilities associated with their positions and are regularly required to travel. The SOU is operated by its officials on a voluntary basis, does not engage any employees and has limited access to industrial relations support.
- [15] The SOU has submitted that in order to attend a conference or other proceedings in the Commission, elected officials are required to seek leave from their employer which must be taken at a mutually agreeable time. The SOU argues the travel and work commitments associated with their respective roles may result in challenges associated with obtaining leave and further difficulties attending the conferences on a consistent basis. The SOU further submits it is in the interests of the efficient and effective conduct of the modernisation process for it to be granted permission to be legally represented.
- [16] The UFUQ submitted the SOU application has failed to identify any special circumstances which are capable of establishing a "desirability" for the SOU to be represented and further, the SOU has previously not experienced difficulties in attending other Commission proceedings at a conference and arbitration level.
- [17] I am satisfied the complexity, duration and nature of the award modernisation conference proceedings in combination with the existing structure of the SOU; and the work and associated travel commitments of its elected officials reinforce the desirability of the SOU being legally represented during the award modernisation conference proceedings.

- [18] Mr Carthew, whilst holding legal qualifications and a practicing certificate is a long-term employee of QFES and more recently the PSBA, where he has overseen the industrial relations processes on behalf of the QFES for many years. Notably, Mr Carthew is not employed as a lawyer with the Queensland Government, nevertheless the parties have proceeded on the basis that he requires leave to appear in these proceedings and I will also proceed on this basis.
- [19] Mr Carthew on behalf of the QFES submitted he is expected to represent the QFES in various matters relating to the Department's industrial relations practices and to retain a sound knowledge and understanding of the relevant industrial instruments which underpin the operations of the QFES.
- [20] The UFUQ contends the QFES has failed to adequately identify any "special circumstances" and/or address the relevant criteria the Commission ordinarily relies on when determining the desirability of legal representation and also argues Ms Swindells, a Senior Employee Relations Officer is already available to represent the QFES during conference proceedings.
- [21] Importantly, the UFUQ has further submitted the Commission ought to consider whether permitting legal representation may unnecessarily add to the cost of the conference process given the UFUQ may need to consider if it requires legal representation in the event the QFES and/or SOU applications for legal representation are successful.
- [22] I am satisfied the duration and complexity of the award modernisation proceedings and the potential risk associated with relying on just one representative of the QFES during conference proceedings, in combination with the importance of representatives holding a sound knowledge of the sector and the historical development of the underpinning relevant industrial instruments, reinforces the desirability of the QFES being represented by Mr Carthew.
- [23] Recent decisions of Deputy President Sams of the Fair Work Commission in *Applicant v Respondent*¹ and Industrial Commissioner Neate in *Wanninayake v Queensland*² also point to both the utility of having at least one party legally represented and to the trend in bodies such as the Commission to exercise their discretionary powers to permit such representation.
- [24] Whilst I have some sympathy for the submissions of the UFUQ with respect to the possibility of increased costs in the event the union is required to consider its current representation, I concur with the views of Industrial Commissioner Neate³ where he noted the fact that one party, either by choice or circumstances, is not represented by a lawyer is no reason to deny the other party or parties of legal representation, particularly in significant and potentially complex matters.
- [25] To the extent the UFUQ considers it may be at some disadvantage in the conference proceedings where the QFES or the SOU are represented by persons holding legal qualifications, I note the conferences will proceed on the basis that all parties will be

¹ *Applicant v Respondent* [2014] FWC 2860.

² *Wanninayake v Queensland* [2014] QIRC 79.

³ *Ibid.*

given time to consider the content of the proposed modern award draft as well as the opportunity to develop objections with respect to areas of the award where no agreement can be reached between the parties in relation to award content.

[26] I am satisfied, having regard to the nature, duration and complexity of the award modernization process and the submissions of the parties that there are circumstances that make it desirable for both the QFES and the SOU to be legally represented in the conference proceedings.

[27] Consequently, I grant leave for the QFES and the SOU to be represented by a lawyer.