



Victorian Public Sector Commission

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Mr Jim Higgins
Chief Executive Officer
Metropolitan Fire and Emergency Services Board
456 Albert Street
East Melbourne VIC 3002

Dear Mr Higgins

Metropolitan Fire and Emergency Services Board (MFB) selection process

By letter dated 15 January 2015, the Victorian Public Sector Commission (Commission) received a request from Mr Greg Wilson, Secretary, Department of Justice and Regulation (DOJR), that it perform its oversight function regarding MFB's selection process for five Assistant Chief Fire Officers (ACFO). Mr Wilson requested the Commission review this matter on the basis that the United Firefighters Union (UFU), representing MFB employees, alleged that MFB had not followed due process in its selection process.

Jurisdiction

The Commission accepted Mr Wilson's request and reviewed this matter in line with its function under s 40(1)(c) of the *Public Administration Act 2004* (Act), to monitor and report to public sector body heads on compliance with the public sector values, codes of conduct and public sector employment principles and standards. The Commission did not review or comment on the relative merits of the applicants to the selection process, as this is out of its jurisdiction under the Act.

Summary of MFB's submission

On 20 January 2015, DOJR provided to the Commission MFB's submission regarding the ACFO selection process, which provided that:

- the ACFO vacancies were advertised via Chief Officer Memorandum on 19 September 2014, which is consistent with standard MFB promotions practice;
- the interview panel comprised Chief Officer Peter Rau, Deputy Chief Officers David Youssef and Paul Stacchino, and Executive Director, People and Culture, Ms Danielle Byrnes;
- the selection process included an Invigilator, Ms Laura Malone, Recruitment Business Partner, whose role was to observe and maintain proper conduct during the selection process;
- selection panel members completed MFB's Conflict of Interest and Privacy Declaration Form on 1 December 2014;
- MFB shortlisted and offered interviews to all candidates;
- the selection panel has not moderated candidate's scores or ranked candidates, as one candidate has not yet been interviewed, due to illness; and

- MFB will select candidates it considers appropriate for promotion in accordance with the requirements of the following legislation and instruments:
 - *Metropolitan Fire Brigades Act 1958*;
 - *Metropolitan Fire Brigades (General) Regulations 2005*;
 - *Public Administration Act 2004*; and
 - Metropolitan Fire and Emergency Service Board, United Firefighters Union of Australia, Assistant Chief Fire Officers Agreement 2010 (ACFO Agreement).

MFB's submission to the Commission included the following documents:

- MFB Chief Officer Memorandum No.21/2014, advertising the ACFO positions, dated 19 September 2014, and the ACFO position description (Schedule 2 of the ACFO Agreement);
- the selection panel and Invigilator's completed Conflict of Interest and Confidentiality Declaration Forms, dated 1 December 2014;
- MFB's ACFO interview guide; and
- MFB's ACFO Selection Interview Rating Sheet.

Summary of UFU's submission

By letter dated 20 January 2015, the Commission invited UFU to provide a written submission outlining its concerns on behalf of its members regarding MFB's selection process, which provided that:

- over the past two to four years, industrial disputes have occurred between elements of MFB's workforce, and between MFB and UFU;
- in March 2014, MFB applied to the Fair Work Commission (FWC) to terminate the ACFO Agreement. At FWC, some MFB employees supported UFU and other employees supported MFB;
- MFB attempted to transfer three Commanders who supported the UFU at FWC, in contradiction of a pre-agreed arrangement with MFB management that they would not be transferred for at least two years;
- members of MFB's senior management have made comments to employees that indicated a bias against employees involved with UFU's FWC case; and
- MFB's ACFO selection process was flawed, including on the basis that:
 - MFB failed to provide to employees and the UFU adequate information regarding the selection process, criteria and methodology;
 - MFB did not use a standard application form or provide statements that covered fairness, equity or privacy in relation to the selection process; and
 - MFB's processes and actions were not transparent or accountable.

UFU's submission to the Commission included the following documents:

- MFB's Workplace Behaviour Policy and Issue Resolution Procedure, dated 22 March 2010, and its Personnel Management Principles, undated;
- MFB Chief Officer Memorandum No.21/2014, advertising the ACFO positions, dated 19 September 2014, and the ACFO position description (Schedule 2 of the ACFO Agreement);
- emails between Mr Casey Lee, UFU, and Mr Paul Stacchino, MFB, which established an extension to the application period, dated 25 and 29 September 2014;
- emails between Mr Lee, Mr Stacchino and Mr Peter Rau, MFB, regarding the selection and application process, dated between 29-30 October 2014;
- email from Mr Lee to Mr Rau, which raised a grievance under the ACFO Agreement;
- letter from Mr Sean Hogan, MFB, to UFU, which responded to UFU's grievance, dated 13 November 2014;

- email from Mr Lee to Mr Hogan, which requested further information regarding MFB's selection and accountability processes, and Mr Hogan's response, both dated 14 November 2014; and
- letter from Mr Peter Marshall, Branch Secretary, UFU, to Mr Jim Higgins, Chief Executive Officer, MFB, which raised concerns of selection panel bias, dated 12 December 2014.

Discussion

In its submission, UFU raised two substantive allegations that fall within the Commission's jurisdiction:

1. The MFB selection panel is either biased or has an apprehended bias against MFB employees who supported UFU throughout ongoing industrial disputes in recent years, particularly the FWC case in March 2014; and
2. MFB's ACFO selection process was flawed, particularly as MFB did not follow due process and did not provide to applicants or UFU certain information regarding selection and assessment processes.

Selection panel bias

UFU's primary claim under its allegation of selection panel bias is that some MFB employees hold a perception that the selection panel members will treat employees who supported UFU at FWC less favourably. In support of its allegation, UFU reported that members of MFB's senior management made comments to employees that indicated bias against employees involved with UFU's FWC case. It also cited that MFB senior management attempted to transfer three Commanders, who supported UFU's FWC case, in contradiction of a pre-agreed arrangement that MFB would not transfer those employees for at least two years. UFU advised the Commission that it raised the issue of potential bias with MFB via email dated 14 November 2014, in which it requested that MFB advise it of MFB's process for managing employee concerns regarding selection panel bias.

In its response to UFU of 17 November 2014, MFB denied that the selection panel members were biased. However, it did not provide to UFU the requested information regarding MFB's process for managing potential selection panel bias. MFB also noted in its submission to the Commission that selection panel members signed MFB's Conflict of Interest and Confidentiality Declaration Form, which requires each panel member to declare they do not have any interest that could reasonably be perceived as giving rise to the perception of a conflict of interest.

Having regard to both parties' submissions, the Commission does not consider that UFU has established selection panel bias against particular candidates in the ACFO selection process. However, it does consider there is sufficient evidence to support UFU's view that some employees may have a reasonable apprehension of selection panel bias. The Commission also notes that MFB may have avoided allegations of selection panel bias by engaging an external party as a member of the selection panel, particularly after UFU raised concerns regarding bias.

Selection process

UFU's allegation that the ACFO selection process was flawed focussed primarily on its claim that MFB did not follow due process and did not provide candidates or UFU with adequate information regarding the selection process. UFU also referenced the Commission's Best Practice Selection and Recruitment Toolkit (Toolkit) in its submission, and reported that MFB's selection process was not consistent with the Toolkit. The Commission notes that the Toolkit is a best practice guide and does not represent a required minimum standard for public sector employment processes.

MFB advised the Commission that it conducted its selection process in accordance with the Act, which includes the minimum requirements set out under the public sector employment principles and standards. The merit in employment standard requires that employee promotions must be based on a competitive process that is open and designed to identify a suitable field of candidates. It also requires that individuals are assessed based on their work-related abilities, qualities and potential against the genuine requirements of the role. Additionally, the fair and reasonable treatment standard requires that decision-making processes are fair, accessible and consistently applied in comparable circumstances. It also requires that decision making criteria are relevant, objective and readily available to those subject to the decision.

MFB advertised the ACFO positions via Chief Officer Memorandum, in accordance with standard practice, and extended the advertised period in response to UFU's request, to allow MFB employees greater access to the promotion opportunity. The Memorandum invited suitable people to apply for the ACFO positions and stated that applicants must meet the qualifications, skills and experience as detailed in the position description, which is contained in the ACFO Agreement. It shortlisted all candidates for interview and the selection panel used an interview guide for all candidates that contained set questions and prompts. It also used MFB's Selection Interview Rating Sheet, which assessed candidates against the qualifications, skills and experience set out in the position description.

In light of this, the Commission considers that MFB's selection process in this case was consistent with the public sector employment principles and standards. However, it also notes that MFB could have addressed the majority of UFU's concerns regarding the selection process if it had provided the UFU with relevant and adequate information, including clarification regarding the selection criteria, at an early stage of the selection process. It also notes that no evidence was provided to the Commission that indicated that these processes are available to all employees in the form of published policies and procedures.

Findings

The Commission considers that UFU has not demonstrated that MFB's selection panel is biased against employees who supported UFU's FWC case or other industrial actions. However, it does consider that there is sufficient evidence to support UFU's view that some employees may have a reasonable apprehension of selection panel bias.

The Commission also considers that MFB has acted consistently with the public sector employment principles and standards in this case. However, it also notes that no evidence was provided to the Commission that indicated that MFB had made its recruitment and selection processes available to all employees in the form of published policies and procedures.

Recommendations

Section 63(1) of the Act enables the Commission to make recommendations on the steps that should be taken to change or introduce processes in relation to a public sector body in order to promote or comply with the public sector employment principles and standards. On this basis, the Commission makes the recommendations below:

1. The Commission recommends that MFB engage an independent external advisor, who both MFB and UFU approve, to attend the pending process for moderating ACFO candidates' scores and rankings and to provide an attestation regarding the fairness of the process and reasonableness of the decisions.
2. The Commission recommends that, should standard selection processes not yet be documented, MFB review its selection processes in light of UFU's allegations and the Commission's findings, and develop written selection and recruitment processes with an aim to promote consistent selection processes.

Please note s 63(2) of the Act in your consideration of the above recommendations:

- (2) *If a public sector body Head has not adopted a recommendation made under subsection (1) within 14 days after it is made, he or she must provide the Commission with a written statement of reasons for not adopting the recommendation within 14 days after the end of that period.*

If you have any questions regarding this matter, please do not hesitate to contact Mr Bill Burton, Senior Adviser, Standards and Equity, on (03) 9651 5197 or at bill.burton@vpssc.vic.gov.au

Yours sincerely



Belinda Clark QSO
Commissioner

10/2/2015

cc. Mr Greg Wilson, Secretary, Department of Justice and Regulation
Mr Peter Marshall, Branch Secretary, United Firefighters Union