

IN THE FAIR WORK COMMISSION

Matter No: AG2014/5121

Applicant: **METROPOLITAN FIRE AND EMERGENCY SERVICES BOARD**

Section 225 Application for termination of enterprise agreements after their nominal expiry date

WITNESS STATEMENT OF GREGORY BAWDEN

I, Gregory James Bawden, AFSM, Assistant Chief Fire Officer (**ACFO**), with the Metropolitan Fire and Emergency Services Board (**MFB**), of 450 Burnley Street, Richmond in the State of Victoria, say as follows:

1. I have been employed by the MFB for 40 years. I currently hold the rank of ACFO and I have held that rank and its historical equivalents for approximately 23 years. I hold the current specialist qualifications and award:
 - Tertiary fire service academic qualifications
 - Attended national senior executive development courses for Police and Emergency Services
 - Attained various fire service vocational technical qualifications
 - Australian Fire Service Medal (2001)
2. I oppose the MFB's application to terminate the Operational Staff Enterprise Agreement 2010 and the Assistant Chief Fire Officers Enterprise Agreement 2010.

The Agreements

Lodged on behalf of: United Firefighters Union
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3. My immediate concern is that at the time of signing and approval of the two agreements, both the firefighters and signatories had an agreed position with the start date and a prescribed process for those agreements to be renegotiated. The termination of the Agreements would in my view profoundly and detrimentally impact on the trust and confidence as between the MFB and operational staff.
4. . One provision in the Operations Agreement 2010 is that:

"The parties agree that this agreement shall remain in force until replaced by a new agreement." (Clause 4.1)
5. I believe such clauses underpin the security of the parties until a new agreement is made. Firefighters to whom I have spoken, and in my own case, see a breach of this provision as a breach of trust and fear for the future.
6. The agreements have been in operation now for a number of years and in my view have operated very effectively and with certainty over the wide ranging emergency response and normal business activities of the Metropolitan Fire Brigade. In my experience the MFB has been functioning and operating at a high level of competence and capacity in delivering responses to the community and the delivery of firefighting services have not been frustrated by the operation of the agreements or the consultation provisions in particular.

My Role

7. I am the Director of Fire Safety in the MFB. The Fire Safety Directorate is accountable for a number of specialist areas – Building Code of Australia and Audits, Building Inspection and Compliance, Fire Investigation and Analysis, Dangerous Goods Department and Administration, and the Alarm Assessment Department and the Fire Safety Technical

Department. A number of these responsibilities relate to legislative obligations of the MFB. (e.g. Building Code; Coroners Act).

8. I have been absent from work on sick leave since October 2013 due to a medical condition.

Building Code Concessions

9. In the application of the Building Code the Chief Officer is a reporting authority for a number of prescribed fire safety matters. Variations may be sought by developers/building applicants from the deemed to satisfy requirements of the Building Act and Regulations. These proposed variations are contained in an alternative solution submitted by a building applicant on the pathway to seeking an occupancy permit. One of the critical processes in assessing an alternative solution that relates directly to fire brigade safety, operational response, staffing, equipment and its location is the application of the Fire Brigade Intervention Model (FBIM). The result of an FBIM assessment by the MFB fire engineers and technical operational officers can determine whether an alternative solution is accepted or rejected by the Chief Officer. Fundamental to the FBIM assessment are the elements of available staffing, personal equipment, response times, set up times and specialist equipment. FBIM is recognised and applied by industry. FBIM was initially developed in the MFB and now it is a national fire service initiative sponsored and supported by the peak fire service body Australasian Fire Authorities Council (AFAC). Changes to the MFB's capacity to respond by, for example changes in appliances and crewing, would have significant implications for the integrity of building code concessions approved by the Chief Officer. FBIM capacity is often reflected in design solutions for major developments such as the Burnley Tunnel, and Eureka Tower.

Management of Crewing

10. From my perspective, the terms and conditions within the agreements, particularly for the staff, enable me to manage effectively on a day to day basis within my business position and provided me with a level of certainty that my staffing numbers relative to the

establishment numbers enable me to perform the regulatory functions required by the Chief Officer. As a manager the continued operation of the Agreements is important as it provides certainty in respect of operational response and clarity about the arrangements and entitlements that are to apply. The adoption of policy of some form in place of the enforceable Agreements will result in uncertainty in operational response, variations in interpretation that are justified on the basis of managers' discretion, with inconsistencies of application.

Resourcing

11. From the total establishment numbers of the fire brigade a staffing chart has been developed, agreed and allocated to the day work area which enabled the MFB to carry out the prescribed functions and responsibilities required under a number of Acts and Regulations including the Metropolitan Fire Brigade Act. The allocation of resources is based on scientific assessments, local knowledge, consultation and professional judgment. Overwhelmingly it is evidence based. It relies on the location of resources, allocation of appliances and crewing. It is essential to understand that such decisions are not made hastily. They benefit from consultation with local crews, local government, community, and the union. Changes have occurred over time. They can continue to develop and change without the need for the termination of the agreements.

12. During the period I functioned in the specialist day work area, I did not have any difficulty with the operation of either of the agreements, whether the staff were required to assist in their emergency response role or their unique day to day specialist department responsibilities.

Incident Controller

13. My specialist emergency management role is that of an emergency manager or responder at the rank of Assistant Chief Fire Officer. The greatest level of certainty and confidence I have when responding to, or in the management of a GARS third alarm or higher event, is that the response of fire fighters and equipment is in accordance with the Greater Alarm Response System (GARS). This system is prescribed and ensures a safe, consistent, properly resourced and timely response underpinned by the resourcing of the Strategic Location Plan (SLP) and crewing chart. In turn these arrangements are reflected in the assignment rules applied by dispatchers at Emergency Services Telecommunications Authority (ESTA) following the original Computer Aided Dispatch Model (CAD) developed and implemented by the MFB. This enables me as the Incident Controller to adequately form an Incident Management Team of the appropriate ranks, be reassured that the vehicles nominated in the GARS formula were responded in the quickest most efficient means to deploy and suppress whatever the incident may be and ensuring that it is done with the most safe staffing levels on the fireground. It is not appropriate nor safe for these systems to be adjusted and varied on a shift by shift or ad hoc basis. The setting aside of the agreements and the application of these arrangements under the operational agreement would have a deleterious effect on the capacity of operational leaders to respond effectively, on community safety and firefighter safety.

14. In contrast, historically I can reference when there was no prescribed response criteria or staffing, or limited safety equipment. My first instance of a serious fire as a junior fire fighter was at North Fitzroy where we turned out with two fire fighters and no breathing apparatus. Our back up resourcing depended on the interpretation of a work back of 'not yet under control' or 'assistance required', which often varied widely in the response dispatched.

15. Our physical amenities in fire stations were rudimentary at the least or non-existent before subsequent agreements, proper engagement and consultation with the employees took place to improve those conditions including OH&S, . More importantly, the same can be said for the development of fire fighting equipment, fire fighter personal protection and safety.

Training Facilities.

16. The value of consultation was exhibited on a plaque at the training college in Abbotsford. That training facility at the time was world class and even at its closure remained a training college of standing within the fire service community. The training college was a product of genuine consultation between the MFB Board, representative officers and the United Firefighters Union. The plaque recorded this collaboration in the design and development of the facility. The recognition, success and longevity of the Abbotsford training complex was however not reflected in the consultation or outcome (longevity) of the subsequent Burnley Complex.

17. Whilst I was the Superintendent at the Abbotsford Training College, it became apparent that the development of our training to meet academic standards and recognition of achievement required accreditation of the college as a Registered Training Provider. This was essential to ensure validation of fire industry training. This was done through the broader consultation process that went to the various Australian Fire Authorities Council (AFAC) committees to formalise the training framework, as well as through industrial consultation. There was full engagement with the industrial body in this process and they became a key driver in the eventual outcome and ongoing success of qualifications that fire fighters obtain as recognised within the Australian Qualifications Framework. (AQF)

18. It is essential that training requirements and arrangements and the qualifications required for MFB ranks be consistent with AQF standards.

Breathing Apparatus

19. Another example of MFB consultation is when it became known that the original Dragger model of breathing apparatus used by the MFB was to be phased out by the manufacturer and needed review and modernisation for the safety and operational efficiency of its employees. At the time, I was asked by the Chief Officer to form a committee to develop the specific operational performance requirements of the tender and in turn review the tender submissions. The committee comprised members of our specialist purchasing department, training, operations and UFU fire fighter representation. Its task was to oversee and select the next generation breathing apparatus. Our recommendations were accepted in the consultation process. Change was undertaken and included a purchasing and implementation commissioning phase which was seamless and effective and formed the basis of the sophisticated safe and effective breathing apparatus that in use today. To me in terms of fundamental safety for myself and the workforce, this was the most successful experience of consultation that I have been directly involved with. This process allowed firefighters to review the proposals, engage with them and to buy in to the outcome and solutions. As a result an outstanding outcome was achieved that, importantly, had the confidence of firefighters.

ACFO Role

20. One of the fundamental elements of our ACFO agreement that ensures professionalism and leadership and emergency management safety is the inclusion of the two part ACFO job description in our agreement. This job description ensures that people with the appropriate operational emergency management experience and qualifications are appointed consistently and without challenge in any forum to perform the role of an Assistant Chief Fire Officer. It underpins career succession for permanent MFB staff who are

qualified under the Australian Qualifications Framework aligned with ACFO rank and also importantly the emergency management competence achieved through practical experience and rank progression to function as an incident controller on the fire ground.

ACFO Contracts

21. In terms of my personal employment security and the concept of a formal work agreement and the process of consultation I have never felt so uncertain emotionally or materially from the time of Jeff Kennett and the extinguishment of our (Superintendent) conditions and our transfer into an individual contractual environment. This continued until 2010 and the time we became part of the agreements being considered here.
22. During the period of time when we were not part of a collective agreement and we were on individual contracts, I experienced myself and for those colleagues around me inconsistencies, inequities and unfairness in the negotiation and implementation of the contracts as a whole and individually.
23. For the entire time that we were on contracts, the Board failed to apply the contract or the provisions fairly and equitably which created internal angst amongst senior executive colleagues and had a detrimental effect on the business focus and mental wellbeing of our executive group. The contract period experience was a fundamental distraction to the executive officers which detracted from their energies and focus on the core business.
24. One of a number of examples that I can recall in the contract period was a disagreement in the application of one of the clauses and when it came to us trying to apply the dispute resolution clause of the contract it was pointed out to us by the Board that despite the dispute provisions, there was no enabling clause to give effect to the dispute resolution and hence the Board were not going to do anything to implement the outcome of any dispute resolution process.
25. Another example of the contracts period was the performance element of the contract that was related to remuneration and bonuses. Despite many years of trying to implement fair

and equitable assessment across our different job roles and responsibilities through moderation processes, consultant engagement and other forms of review, not once did the employer effectively and consistently carry out the bonus requirements of the contract for the executive group. The contract environment managed by the MFB was divisive and used as a punishment tool not a personal development tool. In the process of our complaints we were simply advised that regardless of what the contract said, the MFB would just revert back to Victorian Public Service Policy or MFB Policy, whichever suited them at the time.

26. This dissatisfaction with the individual contract environment by the ACFOs was reflected in their commitment and struggle for over half a decade to be included in the agreements. Not one ACFO supported remaining on an individual contract.
27. Since the commencement of our agreement in 2010 I have had the anxiety and distraction of my fundamental work agreement removed completely in that I was able to focus totally on my legislative responsibilities, job description and functional accountabilities.
28. I never want to return to that environment of contractual inequities, unenforceable contracts, and the personal isolation and in some cases victimisation of our work group.
29. I have been through the full gambit of award to individual contract to agreement and I have a practical understanding of how both systems work and I certainly know that individually I have fewer rights in a contract environment.
30. On that basis I would not support or trust any undertaking given by the MFB that we would not suffer in our work conditions, personal wellbeing, organisational health and public safety if the agreement was set aside. Again, historically I can say that the employer did not show true regard for the employee in a contractual environment and this reflected in its inability to manage the total contract process.
31. The MFB's applications in this matter seem to me to be driven solely by their current dissatisfaction with the financial implications of the agreements not the important elements of emergency response and fire-fighter safety that underpin the existing agreements.

Gregory Bawden

June 2014