

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 MICHAEL ANTHONY WALKER**

I, Michael Anthony Walker, AFSM, Assistant Chief Fire Officer (**ACFO**) with the Metropolitan Fire and Emergency Services Board (**MFB**), Level 2, 456 Albert Street East Melbourne, in the State of Victoria, say as follows:

1. My qualifications include:
  - Associate Diploma Applied Science;
  - Graduate Diploma of Business;
  - Graduate Certificate of Applied Management;
  - Certificates IV in Computer Science;
  - Graduate Institute of Fire Engineers.
2. I hold an Australian Fire Service Medal (AFSM).

**MY EXPERIENCE IN THE MFB**

3. I joined the MFB as a recruit firefighter in 1976.
4. I undertook firefighting duties at a variety of stations in Central District for the following 8 years.
5. I subsequently sought and obtained promotion to the rank of Station Officer in 1983. I held this rank for 4 years.

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6. I worked for 2 years as a reliever in Southern District before moving permanently to Windsor, followed by a short period at South Melbourne prior to, on request, being transferred to training and becoming a specialist training officer in MFB. I trained in all heavy gear and pumping equipment. That is all the trucks.
7. Whilst at training I applied for and undertook the Senior Station Officer's course in 1987 and I continued as a senior station officer working at training in the specialist department. I subsequently applied for and was successful in being promoted to District Officer (DO) at which time I left training and commenced operational shift duties as a DO in 1988. The DO role at that time was the equivalent of what is now known as a Commander.
8. Initially as a District Officer I was on shift for approximately 4 years. The on shift District Officer role performs many of the same task as the on shift Commander role of today. I was a reliever which meant I relieved across Eastern, Southern, Western and Northern Districts and across all platoons. The role was to manage a designated number of stations including day to day management of stations and personnel within that district, and to respond to emergencies as required in accordance with organisational policy of the time.
9. Following this I transferred to Structural Fire Safety in 1991 and held the same rank for approximately 3 years. I was the DO responsible for all structural fire safety matters in Southern District, prior to transferring and looking after all matters in the Central District. I assisted the then officer in charge in a transition from 4 DO's to 1 DO at structural fire safety. After this transition I was the DO responsible for overseeing all structural fire safety matters across the MFD. This meant liaising with building developers and contract developers on major building proposals to ensure that appropriate fire safety systems were designed and implemented as part of the construction of these premises.
10. In 1994 I was appointed to the role of Emergency Management Liaison Officer for approximately another 4 years, reporting directly to the Chief Fire Officer. I was responsible for liaising with other emergency services, law enforcement and support agencies to ensure an effective and coordinated approach to emergency response within the MFD. I was the responsible MFB representative on a committee brought together by the Department of Justice to review and re-write the then DISPLAN arrangements for Victoria. This ultimately lead to the promulgation of the Victorian Emergency Management Arrangements still

currently in use today (although they have continued to change). Also as a part of a secondment role to the Department of Justice, I undertook the first review of those arrangements 18 months after their implementation. This document fundamentally underpins how emergency response, law enforcement and some 56 support agencies across the State of Victoria will interface to effectively mitigate all types of emergencies within Victoria.

11. In 1998 I was promoted to the rank of Commander. The rank of Commander at the time was the equivalent of what today is known as the rank of Assistant Chief Fire Officer (ACFO).
12. For a period of approximately 4 years I was in charge of Training and Education. Following this I took up the position of the Assistant Chief Fire Officer in charge of Central Zone.
13. My current appointment for the last 5 years has been as the Officer in Charge of Capability Improvement which included Operations Improvement, Rosters, and Operational Communications. I am presently on sick leave.

#### **ORGANISATIONAL REALIGNMENT: ACFO RANK**

14. In the organisational realignment in about 2006 where Commanders' rank terminology changed to the ACFO rank (of which I was one) and the Inspectors would be known as Commanders, all ACFOs remained on individual employment contracts. The Commanders were successful in a harmonisation process and were brought under a collective instrument. This did not occur for the ACFO's at that time. At the termination of the original contract in about 2004 the ACFO group attempted to renegotiate their terms and conditions of employment with the employer. Due to the fact that the original contract had no enabling clause requiring MFB to implement the outcome of a dispute resolution process, negotiations continued for some 8 years with no success until the group contacted the United Firefighters Union and asked them to step in and represent us in attempting to renegotiate a reasonable outcome. This was achieved with the ACFO agreement being struck in 2010.
15. Importantly that Agreement contains a Position Description (PD) for ACFOs as this had been the subject of contention in the preceding years. The PD recognised the senior operational emergency response role of ACFOs.

16. During the period of negotiation (some 8 years) the ACFO group were expected to do more work and take on more responsibility which was not necessarily recognised by senior management. As part of the contractual arrangements, annual bonuses were allocated across the ACFO group. There was a strong perception within the group that these bonuses were allocated on a basis of who was, or who was not, in favour with their respective boss or senior management rather than on the basis of objective performance assessment. As a result, frustration levels reached a point where the ACFO group requested of the MFB that a health and wellbeing survey of the group be undertaken in an attempt to distil down what the real issues were and hopefully provide a more cohesive workplace group within the MFB. It was clear from the survey, undertaken by Mark Maloney, that there was significant frustration at the lack of organisational acknowledgement of the ACFOs role in emergency management and emergency response and the subsequent responsibilities that those roles carried and that there were clear animosities between members of the ACFO group and senior management which were reflected in interactions and ultimately bonuses paid out under the individual contract system. The health and wellbeing survey was supposed to have been presented to the MFB board and discussed in an attempt to resolve the very issues contained therein.
17. Ultimately the ACFO group had no other option but to place the matters with the UFU and request their assistance in determining a suitable solution to a very protracted and prolonged dilemma. They were successful in achieving a collective ACFO agreement in 2010.
18. Graham Fountain was appointed CEO in 2010. He commenced having regular meetings with the ACFO group (this was the first real time that regular meeting were held with the ACFO group to reinforce their importance as a senior management operational group within the organisation) as he identified them as an integral part in the change management that he wished to instigate across the MFB.
19. Ultimately as CEO Graham Fountain directed in 2010 that both the ACFO issue as well as the negotiations around the MFB operational staff agreement be finalised as a priority. He recognised this would be the only way to implement changes that he desired and which were in accordance with the newly appointed fire commissioner.

20. Once it was announced that the ACFOs would be offered a collective agreement as part of the total bargaining process being undertaken by the UFU, there was an immediate sense of relief and satisfaction among ACFOs that this ongoing level of uncertainty and frustration had finally ended. Since the new collective agreement was enacted there has been a much clearer sense of the ACFOs roles and responsibilities and a willingness and preparedness to assist the organisation (and at that time Graham Fountain) in implementing substantial change across the organisation. This was evidenced in the effective transition from 4 zones to 5 districts and all of the associated work in successfully bringing this major organisational change about. The change was intended to align MFB arrangements to accord with the administrative regional divisions that applied across other agencies.
21. It is my belief that transitioning to a collective agreement has given certainty in my employment terms and conditions and I firmly believe that removing a collective agreement for ACFOs and returning to some sort of individual contract / undertaking or similar, is a retrograde step as there is a real possibility, even likelihood, that the 8 years of frustration previously experienced could return to haunt not just the ACFO group but all operational employees aspiring to senior management levels in the future.

#### **OPERATIONAL RESPONSE**

22. The MFB has used a comprehensive process based on significant risk overlays to determine where best to locate fire stations to equitably and adequately service that risk profile across the MFD. It has always been recognised that this is not a static process but a dynamic one and that periodic reviews are required to ensure that stations remain appropriately located to service the risk level within any particular community.
23. As such, stations have been located and for that matter relocated over time.
24. The station locations are based on assessments that it is important to have the first appliance arrive on scene and effecting firefighting operations within 12 minutes of fire initiation to maximise the opportunity of minimising fire damage. As such, the strategic location is predicated on the first responding appliance being on scene to any call within the MFD within 7.7 minutes on the 90th percentile of occasions.

25. The station locations and response system are to ensure equitable coverage and to effectively meet a predetermined response time to maximise the health and safety of the community as well as operational staff. All of this study and work comes under the auspices of what is known as the strategic location plan. A number of revisions have been prepared over the years to maintain equality of emergency service provision to the community.
26. Tethered with this some years ago, the organisation developed a greater alarm response system (GARS). I was responsible for completing a revision of GARS and that led to the implementation of the current version of GARS. Linking this with an electronic call receive and dispatch system the MFB could dispatch appropriate resources to appropriate locations in a timely manner to ensure the most effective mitigation of a broad range of emergencies across the MFD. The GARS determines the specific types of appliances that will be dispatched depending on the nature and magnitude of the incident.
27. Coupled with this again, organisational agreement was reached that to maximise Occupational Health and Safety on the fire ground, 7 personnel would be dispatched in a minimum of 2 trucks to ensure the commencement of effective management of any emergency with which they are confronted.
28. To facilitate this whole process there is a requirement to have a minimum number of crew on duty at all times across a designated number of fire stations, and a designated number of front line and specialist appliances.
29. Some years ago the MFB introduced this concept. It is called the minimum crewing chart that details what resources would be at what stations to crew all the relevant appliances on a 24/7, 365 days of the year basis. This system provides certainty to staff at station level as well as front line operational managers and senior operational staff that, dependant on the complexity of the emergency being responded to, they can call a predetermined alarm level within GARS and they can be assured of receiving the appropriate trucks in a timely manner with the minimum number of staff as designated by the chart.
30. As soon as any minimum staffing agreements are removed, uncertainty is introduced into what crew and what appliances will respond to an emergency and where they will be responding from.

31. A front line officer responding to an emergency is faced with a plethora of decisions that have to be made in a very short space of time. He needs to be able to provide a word back, giving a GARS designation, and know, with confidence, what resources are being responded to support his attempts to mitigate the emergency. In the absence of confidence that appliances and associated crewing provided by the MFB's systems will be deployed, an incident controller is unable to effectively manage fire ground operations. Any variation to established deployment systems can have dramatic and cascading implications for incident management. These arrangements underpin MFB's emergency response. They are not matters that are, or can be, adjusted on an ad hoc basis. The application of the crewing chart and the requirement for 7 on the fire ground do not hamper the MFB in its operational response. Rather, they are important planks to that response.

## **CONSULTATION**

32. I have been involved in the MFB's consultation process for many years. I was a member of the consultative committee as MFB's representative for approximately 10 years. Unsurprisingly there have been good and bad experiences arising from that committee process. Some matters have been badly handled, others extremely well. I readily acknowledge what I believe were failures and frustrations with the consultative processes under this and prior agreements. However, in my judgment the termination of the agreements and the removal of the current consultation regime will not address or resolve the difficulties claimed to arise from the existing process. The effective introduction of change in the MFB is in my experience partly dependent upon issues of culture and personality. Trust by firefighters in the sponsor(s) of a particular proposal is important. The consultative processes in place have been introduced in part because of a lack of trust in management by firefighters. The removal of those provisions will do nothing to enhance the trust and confidence necessary to enable change.

## **MFB CONCERNS**

33. The publicly stated concerns that form the basis of the application are that bargaining is taking too long. Their belief is that there is need for different, community standard consultation and dispute resolution clauses, the removal of minimum crewing and equipment clauses and an ability to employ from outside the service into the career structure. Regardless of the merits of such changes or the scale of change sought, there is no

doubt in my mind that these matters belong in enterprise bargaining and are capable of being addressed in that context.

34. I understand that the MFB propose that the standard consultation clause be adopted in place of current arrangements. The standard clause refers to consultation obligations arising following a definite decision by the employer to introduce major change that is likely to have a significant effect on employees such that it results in the need for retraining, restructuring of jobs, relocation of employees, reduction in job opportunities, workforce changes and some other issues. Such a model simply does not meet the legitimate needs of firefighters or the MFB. There is a demonstrable and legitimate need for firefighters to be consulted on a wide range of matters that impact on their work and safety that extends well beyond what would be called a major change having a significant effect of a particular kind.

#### **CONSULTATION ARRANGEMENTS**

35. The consultation arrangements now in place have been developed and agreed over time in the context of a firefighting service in which the trust of employees in their systems of work is essential.
36. Firefighting is an inherently dangerous occupation. It needs to be said that it involves uncontrolled risk, unknown risk factors at any given incident, exposure to trauma and distress, immediate risk to the community and firefighters' health and safety. Operational decision making is required to be immediately effective, timely and the result of professional judgment informed by training, education, risk appreciation and experience exercised in the context of potentially grave consequences. Against this background it is not surprising that the consultation arrangements between management and employees may not be found in other industries. MFB equipment, training, systems, crewing and consultation are responsive to the nature of the industry and the profession of firefighting.
37. The MFB's proposal to terminate the agreements and apply a community standard developed without regard to the needs of an emergency service and confined to consultation on "significant" change, fails to address the need for firefighters to have confidence in their workplace arrangements through industry appropriate and detailed consultation processes. The existing consultative arrangement reflects changes in the organisation. The process is not always streamlined, it can be frustrating for management,

but very detailed consultation is necessary in the arena of professional firefighting. The proposed termination of the entire Agreements substantially on the basis of difficulties with the current consultative arrangements is in my view misconceived. The adverse impact on the MFB and its operational capacity will far outweigh the advantages that might accrue to management of being relieved of some of the obligations of consultation.

38. In my view the present MFB applications are simply part of its bargaining strategy. Senior management recognise the need for detailed consultation arrangements. On the other hand, the consistent concern within MFB management as expressed to me has been the cost of overtime, and its management. This is because of the effect of the various provisions in the Agreements. I have been regularly involved in reviewing and addressing overtime costs on the part of management as a major cost concern. The termination of the agreements would provide the MFB with the blank page it wants to negotiate changes to conditions that would result in reductions in the cost of overtime. In my view these changes should be negotiated while the current agreement is in place.

39. The maintenance of the current agreements would mean that MFB will need to engage in a transparent process of seeking and negotiating change to such matters as overtime, recall and crewing. Transparency in its position is reasonably required, rather than securing the removal of such cost sensitive provisions (and indeed all the terms) of the agreements, and avoiding the agreement it reached by means of termination. If MFB secured the termination of the Agreements it would have no interest or incentive to negotiate. As a result all operational staff would be in the position of ACFOs in the approximately 8 years up until 2010, and potentially for as long.

## **CONCLUSION**

40. I oppose the setting aside of the current agreements. Based on my 37 and a half years of experience in the MFB and on the frustrations of an 8 year period within those years of being on an individual contract, I would not wish to see future generations of operational personnel aspiring for senior positions within the MFB having to be placed in that position. Similarly, operational firefighters under the Operations Agreement have a real and legitimate need for the security the various provisions of that agreement provide so as to support them in their work.

41. Were the Commission to terminate the agreements I consider that the morale of the brigade would be adversely affected to a very marked degree. A culture of suspicion and hostility is likely to pervade the organisation and antipathy toward senior management and its authority is likely to emerge. This will inevitably have adverse consequences for the operational effectiveness of the organisation.

**Michael Walker**

**June 2014**