



RECOMMENDATION

Fair Work Act 2009

s.240 - Application to deal with a bargaining dispute

Office of the Commissioner for Public Employment

(B2016/618)

COMMISSIONER WILSON

DARWIN, 23 JUNE 2016

Bargaining for a replacement agreement for NT Public Sector Fire fighters. Recommendation or expression of an opinion for the purposes of resolution of bargaining.

[1] Northern Territory public sector firefighters are employed pursuant to the provisions of the *Northern Territory Public Sector Fire and Rescue Service 2011-2013 Enterprise Agreement*,¹ (the 2011 Agreement) the nominal expiry date of which was 7 November 2013.

[2] Bargaining for a replacement agreement has been ongoing for some time, but has so far been unsuccessful.

[3] The bargaining representatives for a replacement agreement are the Office of the Commissioner for Public Employment, representing the NT Government and its agency, the NT Fire and Rescue Service, and United Voice, as representative of firefighters.

[4] A 3% wage increase with effect from 12 March 2015 was provided to employees through an administrative determination made by the Commissioner for Public Employment, acting pursuant to the terms of the *Public Sector Employment and Management Act (NT)*.² The wage increase applied to any person employed under the Agreement on 29 June 2015. Amongst other reasons, the Commissioner desired the administratively applied wage increase to be seen as a sign of good faith in bargaining.

[5] In August 2015 “in-principle” agreement for a replacement agreement was reached between the bargaining representatives, with negotiators prepared for the comprehensive proposal to be put to employees for their approval. Consistent with this, a proposed enterprise agreement was put to employees in a ballot which closed on 8 September 2015, however, the proposal was not supported by a majority of employees.

[6] While there have been discussions between the parties since September, there have not been substantial negotiations.

¹ AE888047.

² *Determination Number 1051 of 2015.*

[7] Feedback provided by United Voice to the employer bargaining representatives after the September 2015 ballot identified a number of matters that may have led to the defeat of the ballot. These included concerns about firefighters' perceptions about the consistency of Agency and Government decision making; their perception of Agency culture and leadership; and the extent to which the offer dealt with firefighters' claims for wage increases to be backdated to the nominal expiry date of the 2011 Agreement.

[8] I have now conducted three conferences between the bargaining representatives³ and in those conferences have developed a keen understanding of the parties' respective positions.

[9] Firefighters very clearly want a resolution to bargaining, but one that improves significantly on the offer put to employees in the unsuccessful 2015 ballot, as well as seeking a resolution that positively addresses their claims about back-payment.

[10] The NT Fire and Rescue Service plainly also want an end to bargaining, and genuinely want to reach agreement on mutually acceptable terms.

[11] While noting that each party desires an end to bargaining, it must also be noted that neither want it to occur on the wrong terms. I have had extensive discussions with both parties about their positions and believe agreement can be reached on terms that provide a significant improvement for firefighters on the proposal voted on in September 2015 but which remains within the employer's bargaining authority and consistent with its bargaining objectives.

[12] Having regard to the provisions of s.240 (Application to deal with a bargaining dispute) and s.595 (FWC's power to deal with disputes) of the *Fair Work Act 2009*, I consider it appropriate to make a recommendation or express an opinion in this matter.

[13] I recommend that the wages and allowances shown in the 2011 Agreement be adjusted as follows;

1. An increase of 3% to apply from 12 March 2015, which is to formalise the increase provided for in the Commissioner for Public Employment's Determination dated 17 July 2015. For the avoidance of doubt, this adjustment formalises the administrative increase for the purposes of a new enterprise agreement, and does not provide an additional increase;
2. An increase of 3% from the first pay period following 7 November 2015;
3. An increase of 3% payable from the first pay period following the date of this Recommendation (if accepted by the bargaining representatives);
4. An increase of 6% payable from the first pay period following 7 November 2016;
5. The increases referred to in items (a), (b), (c) and (d) above should be applied to wages with allowances being adjusted in line with the wage increases; and
6. The above wage increases should only be payable if the proposed enterprise agreement is supported in a ballot by a majority of eligible employees, and should

³ 9 June 2015 (Darwin); 15 June 2015 (video link from Melbourne); and 23 June 2015 (Darwin).

then be paid only to firefighters employed by NT Fire and Rescue Service on the date the agreement is approved by the Fair Work Commission.

[14] I further recommend the payment of a New Agreement Payment as follows;

1. There should be two New Agreement Payments, each of which should be \$1,000;
2. The New Agreement Payments should be paid to firefighters as follows;
 - i. \$1,000 payable to firefighters employed on the date on which the ballot closes and a successful result is declared; and
 - ii. \$1,000 payable to firefighters employed on 7 November 2016.
3. These payments will not be included in the proposed enterprise agreement and are to recognise that all parties have conducted their negotiations in good faith, and to encourage finalisation of bargaining through an agreement supported by a majority of firefighters;
4. The New Agreement Payments should be payable only to firefighters employed by the NT Fire and Rescue Service on the dates referred to above; and
5. The Nominal Expiry Date for the proposed enterprise agreement should be 6 November 2018.

[15] In relation to the processing of wage and allowance adjustments that will follow from an approved agreement, NT Fire and Rescue Service should use its best endeavours to promptly pay the above wage and allowance increases once the proposed enterprise agreement has been approved by the FWC. The Commission acknowledges this may take some time to be fully processed and requests employees understand this. By no later than the date on which its employee information sessions about the proposed enterprise agreement commence, the Office of the Commissioner for Public Employment should provide to United Voice a schedule of its expected payment dates for all of the above wage and allowance adjustments.

[16] The foregoing proposal takes account of the parties' respective bargaining objectives. Importantly, for United Voice members, it significantly improves on the wages offer that was taken to a ballot in September 2015. The accelerated schedule of wage increases brings that situation about.

[17] The absence of a wage increase in the last period of the proposed agreement may be a concern to some – however, on balance, that situation is neutralised through there being a double increase of 6% in 2016, together with adjustments of two further amounts of 3% each also to be paid to firefighters in 2016. The benefits to firefighters of the aggregation of those payments into late 2016 must surely outweigh what is then planned for the last period of the proposed agreement.

[18] I recommend adoption of the above proposal by all bargaining representatives.

[19] Each bargaining representative should advise my Chambers, and each other, by no later than close of business 24 June 2016, of whether they are prepared to accept this Recommendation and to allow a proposed enterprise agreement consistent with the above to be put to firefighters for their consideration in a ballot.

COMMISSIONER



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