

**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

CORAM: BOLAND J

DATE: 5 SEPTEMBER, 2002

**Matter No IRC 2002 of 4534**

Notification under section 130 by New South Wales Fire Brigade Employees Union of a dispute with the New South Wales Fire Brigades re: consultative process

**Matter No IRC 2002 of 4545**

Notification under section 130 by New South Wales Fire Brigade of a dispute with the New South Wales Fire Brigade Employees Union re bans

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**RECOMMENDATION**

- 1 The New South Wales Fire Brigades is required by provisions of the *Subordinate Legislation Act 1989* to periodically review the *Fire Brigades (General) Regulation 1997*. Given that the Regulation was due to be automatically repealed on 1 September 2002, the Fire Brigades had been in the process of reviewing it since June 2001. The review was extensive and a draft new Regulation was referred to the Fire Brigade Employees' Union ("the Union") in February 2002 for comment. The Union's comments were received and after considering the views of the Union and other parties a final draft was submitted to the relevant Minister.
- 2 The Union did not agree with the final draft and in August 2002 it commenced industrial action that involved the imposition of certain bans.

- 3 Both the Brigades' and the Union's notifications came before me on 8 August 2002. After hearing the parties, the Commission recommended that the bans be lifted and the parties engage in further discussion regarding the final draft of the Regulation. The parties complied with the recommendation.
- 4 The Commission was informed on 3 September that the parties had been unable to agree on a number of aspects of the draft but that the most critical difference between them concerned the Commissioner's power to terminate a firefighter's appointment, such power being reflected in proposed regulation 12 of the final draft. The proposed regulation 12 would give the Commissioner the power to terminate a firefighter's appointment: as a firefighter; as a firefighter of a particular rank; and, to a particular position. The grounds upon which the Commissioner could terminate are:
- (a) if the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter, or duties of the rank, or duties of the position as the case may be; or
  - (b) if the firefighter is no longer suitable to be a firefighter or to be a firefighter of a particular rank, or a firefighter in a particular position as the case may be; or
  - (c) at the firefighter's own request.
- 5 The exception taken by the Union to the proposed regulation was the inclusion of the power to terminate on the grounds that the firefighter "is no longer suitable".
- 6 The "no longer suitable" test is not a new test. It appears in the repealed Regulation in regulation 11 and has been in existence since 1992. Nevertheless, the Union objects to it continuing to appear in any new Regulation or that if it is to appear that it be defined to mean where the firefighter has abandoned his or her employment.

- 7 The Fire Brigades' position is that the "no longer suitable test" should remain a part of the Regulation in the form proposed.
- 8 I am most reluctant to interfere with a regulation that has been in existence in one form or another for a decade now and which has been used only sparingly in the past. There is no evidence that the power to terminate where the Commissioner considers the firefighter is no longer suitable has been abused. Further, the exercise of the power is subject to review, either under the terms of the *Government and Related Employees Appeal Tribunal Act 1980* or the *Industrial Relations Act 1996*. I note the utility of the provision as applied by *Wilcox J* in *New South Wales Fire Brigades v Burrows* (1997) 77 IR 288.
- 9 I also note that the Fire Brigades has sought to ameliorate the Union's concern about the prospect of a lack of procedural fairness being afforded to a firefighter by including additional provisions requiring the Commissioner to give the firefighter notice of the reasons for a proposed termination, to provide that the firefighter be allowed time to respond to the notice and to require the Commissioner to consider the firefighter's response. Where a firefighter has been given notice I note the provisions of s 89(7) of the *Industrial Relations Act*.
- 10 The Union expressed a concern that by enabling the Commissioner to terminate a firefighter's appointment if the firefighter is no longer suitable, firefighters are being treated unfairly compared to other classes of employees in respect of whom such provisions do not apply. It was put, in effect, that firefighters are no different to other workers when it comes to their rights in relation to termination of employment. I disagree. Firefighters hold a special position in the community and they are regarded with a high degree of trust and respect by the community. If they betray that trust and respect in carrying out their role in such a manner as to warrant swift removal it is appropriate that the

Commissioner have the power to do so, subject to the requirements of procedural fairness and review by the relevant tribunal.

11 In relation to the draft Regulation I would recommend the following changes:

- 1) By inserting after the word "such" in cl 7(d) the word "reasonable"; and
- 2) By inserting after the word "determining" in cl 7(e) the word "whether".