



# STATEMENT

*Fair Work Act 2009*

s.269 Intractable Bargaining Workplace Determination

**United Firefighters' Union of Australia**

**v**

**Fire Rescue Victoria T/A FRV**

(B2023/771)

DEPUTY PRESIDENT MILLHOUSE

DEPUTY PRESIDENT BELL

COMMISSIONER ALLISON

MELBOURNE, 22 APRIL 2025

*Application for an intractable bargaining workplace determination.*

[1] On 4 October 2023, a Full Bench of the Fair Work Commission made an intractable bargaining declaration, pursuant to s 234 of the *Fair Work Act 2009* (Cth) (FW Act). The declaration was made upon an application by the United Firefighters Union (UFU), which was supported by Fire Rescue Victoria (FRV). The Commission is required to make an intractable bargaining workplace determination “as quickly as possible” under s 269 of the FW Act.

[2] On 5 February 2024, we issued a decision dealing with a preliminary dispute between the parties as to whether there were “agreed terms” for the purposes of ss 270(2) and 274(3) of the FW Act (as the FW Act then was). We concluded there were not. The matter was stayed following an application by the UFU for judicial review. That application was determined by the Full Court of the Federal Court on 25 February 2025: [2025] FCAFC 16.

[3] On 28 February 2025, the Commission wrote to the parties and the relevant Minister with our intention to convene a case management conference, initially proposed for 18 March 2025. We requested the parties to give consideration, with the input of counsel, to a list of typical matters for case management, such as: estimated hearing length, estimated witness numbers, proposed timetables for evidence, an issues list, electronic court file management, and a proposed timetable.

[4] On 3 March 2025, the UFU, through its solicitor, requested an adjournment of the case management conference due to both of its senior counsel being unavailable. That request was accommodated, and the case management conference was rescheduled to 17 April 2025. On 16 April 2025, the UFU’s solicitor wrote to chambers requesting a further adjournment, because the UFU had apparently engaged new counsel. The request was declined and the case management conference proceeded.

[5] At the case management conference, the UFU was represented by its Secretary, Mr Peter Marshall in person. In relation to the UFU’s legal team, Mr Marshall clarified the UFU was engaging new counsel. In these circumstances, while Mr Marshall was unable to contribute

meaningfully to the case management conference, a discussion ensued based on directions proposed by FRV and the Minister.

[6] Having regard to the statutory mandate to make an intractable bargaining workplace determination “as quickly as possible,” we have issued directions with a tighter timetable than that requested by any party. We briefly record our view that there has already been an extended opportunity for significant preparation for the matter, if only on the key matters that will clearly remain in dispute. One aspect of the proposed directions sought (which we have granted) concerns a request by the parties to confer in relation to the substantive contested matters. The parties can confer but we do not consider it appropriate to delay the programming of this matter based on the outcome of that conferral. *First*, the matter is before us because bargaining between the parties is “intractable” – there was nothing before us to credibly indicate that further conferral between the parties will yield material improvement on that position. *Second*, in any litigation there is an expectation on the parties to continually make efforts to narrow the issues in dispute as the trial approaches – we expect this matter should be no different. That *might* result in the parties undertaking work that proves later to be of limited utility, but these are matters the parties have had plenty of time to consider since this matter commenced before us.

[7] We have taken into account in the timetable that the UFU is presently without legal representation in this matter; we trust that the UFU’s new legal team will be capable of managing the matter on the UFU’s behalf in the timeframe available and that its case is appropriately resourced.

[8] The directions issued provide facilities for further case management conferences after major milestones for the filing of evidence, to ensure the matter remains on track.



DEPUTY PRESIDENT

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