

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

SECOND STATEMENT OF JAMES KEFALAS

I, James Kefalas, Senior Station Officer of Geelong City Fire Station, say:

Introduction

1. I made a statement on 11 August in this matter (**First Statement**).
2. I am the officers' representative on the Branch Committee of Management of the Victorian Branch of the UFU. I also sit on a number of committees, including the Consultative Committee.
3. I make this second statement in relation to the two matters at paragraph 3(a) of the Fair Work Commission Directions dated 25 October 2023 in this matter.
4. I am authorised by the UFU to make this affidavit on its behalf.
5. Unless otherwise stated, the facts in this affidavit are within my own knowledge, information and belief.

Summary of Bargaining for a new Operational Staff Agreement:

6. The UFU commenced discussions with FRV for a new Operational Staff Agreement in 2020. I attended many meetings between 2020 and 2022.
7. Laura Campanaro of the UFU was present for all or the vast majority of the meetings I attended. Ms Campanaro kept notes of the meetings, and I would read her notes and never disagreed with any of the contents of Ms Campanaro's notes.
8. From the commencement of formal bargaining on 26 April 2022, I attended the following meetings:
 - (i) 23 March 2022;
 - (ii) 26 April 2022;
 - (iii) 3 May 2022;
 - (iv) 10 May 2022;
 - (v) 13 May 2022;
 - (vi) 17 May 2022;
 - (vii) 24 May 2022;
 - (viii) 31 May 2022;
 - (ix) 6 June 2022;

- (x) 7 June 2022;
- (xi) 14 June 2022;
- (xii) 21 June 2022;
- (xiii) 28 June 2022;
- (xiv) 13 July 2022;
- (xv) 19 July 2022;
- (xvi) 2 August 2022;
- (xvii) 9 August 2022.

9. During these negotiations, at no stage did FRV representatives suggest that agreement reached between the parties on non-quantum clauses were subject to government approval or any other qualification.
10. Clauses were often taken from an existing agreement or developed in conjunction between the parties during negotiations. It was regularly said during negotiations that clauses were “agreed”, and the parties would then move on to the next issue. Once agreed, those clauses were never revisited.
11. The only matter during the bargaining process that was acknowledged to be agreed in principle between UFU and FRV and subject only to Government funding (other than quantum) was the matter of increased safe staffing levels (which I address below).
12. I also attended meetings on the following dates:
 - (i) 27 September 2022;
 - (ii) 19 February 2023.
13. In these meetings post-August 2022, the FRV indicated, for the first time, that it required government approval on certain non-wage related matters. The issue of government approval was stated by the FRV in the context of the need for funding of certain items. Not all clauses required government funding.
14. However, I did not understand that this language undid anything that had already been agreed for the reasons set out below. By that stage, the vast majority of clauses had been agreed.
15. It was never suggested by the FRV that the whole process of bargaining would come to nothing if the government did not agree with the clauses that the parties had agreed to. On occasion Mr Parkinson or Mr Sands would say words to the effect that an agreement reached was “subject to government approval” or “subject to the overall package”. In response Laura Campanaro and I said words to the effect of “do we have agreement or not on what has been agreed?”. Mr Parkinson or Mr Sands for the FRV would say “yes” in reply to such questions.
16. There was never any suggestion in these meetings that the government would be re-writing the terms that the parties had agreed to. The FRV representatives indicated that they had authority to bargain. The UFU would never have participated in such a lengthy and involved process if government could simply undo what had been agreed or alternatively if FRV could not reach agreement.

17. For these reasons, it was made clear to me by the conduct of the FRV bargaining representatives, including the discussions around what they meant by the “need for government approval” as set out above, that any government approval was either not in issue or that it was immediately forthcoming while we were continuing to bargain and narrow the issues. There was no indication from the FRV that such approval had not been given in respect of the clauses that the parties had agreed to.

FRV’s Agreement to increase staffing numbers

18. The UFU’s proposed staffing charts were initially developed by the UFU with the support of Deputy Commissioner Ken Brown.

19. In early 2020, the UFU presented DC Brown with a ‘FRV Staffing Plan’ (**Plan**) that set out a five-year staffing plan for FRV. This Plan detailed additional new staffing positions, their locations and rationale for each item.

20. I took on the lead role in negotiating staffing clauses on behalf of the UFU.

21. I had several meetings with DC Brown to take him through the Plan and explain to him the UFU’s justification for the additional staff. The UFU’s position at all times was that the increase in staffing was to ensure that there were safe systems of work at all FRV stations across the State.

22. The Plan was finalised with FRV and UFU. Once finalised, DC Brown presented the Plan to the then Fire Rescue Commissioner Ken Block and the Executive Leadership Team (ELT). During this meeting, Commissioner Block expressed support of the Plan but had a few questions that he wanted to understand.

Annexed and marked **JK-1** to this statement is a copy of the Plan.

23. I attended three meetings with Commissioner Block and DC Brown that occurred prior to formal bargaining with the FRV. During these meetings, Commissioner Block requested clarification regarding the following:

(a) Marine response in Western District 3 (Geelong) – I went through the documents as set out above.

(b) The extra staffing for Technical Rescue Response for Dandenong and Geelong. I explained that our FRV legislative responsibility is trench rescue and we had a capability gap across the State and even though land based rescue was the responsibility of Victoria Police, FRV heavily supported Victoria Police across the State in land based rescue and therefore we needed a capability to help support that.

(c) The extra Training Instructors:- I explained that the increase to instructor numbers was to support the increased training within FRV (eg promotional, recruit, and specialist roles) as a result of the proposed increase staffing levels over the 5 year period in FRV; and


(d) He wanted to understand the 5 year roll out and why it would be rolled out. I explained that the roll out was based on a number things such as:

(i) the requirement for infrastructure to take appliances and staff

- (ii) ability to promote and recruit people over the 5 years and
 - (iii) to build not only infrastructure (fire stations) but also appliances.
24. After the UFU had responded to all of Commissioner Block's questions, he expressed his agreement to the Plan to increase the capability (that is the staffing numbers, infrastructure and appliances) to ensure safe systems of work for all firefighters and to increase safety to the community. I understand that Commissioner Block had received the approval of the Executive Leadership Team prior to communicating to me FRV's approval of the staffing proposal.
25. Once the UFU had Commissioner Block's agreement, we presented the Plan to FRV representatives during formal bargaining. On 26 July 2022, the FRV accepted in principle the Plan. That is, FRV agreed to the need for an increase to the staffing numbers, infrastructure and appliances – as detailed in the Plan.
26. The Plan contained a Table setting out the increase in numbers for each year for various appliances at various locations.
27. Whilst the numbers were determined and agreed collaboratively between UFU and FRV, the funding for the increased staffing levels was required from the Victorian Government.
28. This qualification was specified in the FRV's Bargaining Notes of 11 October 2022 which stated in part "*staffing numbers, whilst being finalized in principle, was still subject to Govt instruction refunding [sic]*". This document is found at **LC-9** of the Third Statement of Laura Campanaro.

Conclusion

29. During bargaining, the parties agreed on clauses as they progressed discussions.
30. There was no qualification in relation to the matters agreed between the parties concerning non-wage related clauses until at least August 2022 by which time nearly all of the clauses had been agreed in Version 10 of the Master Copy of the draft Agreement.
31. That qualification - that the FRV required government approval on non-wage related matters - was made late in bargaining, however, there was no indication made by the FRV that such approval had not been given in respect of the clauses agreed to. I assumed that the approval had been given and that there was purpose to the negotiations and that the matters agreed were final.
32. Only minimum safe staffing levels remained subject to government approval in respect of funding as explained above.



James Kefalas

Date: 17 November 2023