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No. 3

INDUSTRIAL COURT OF QUEENSLAND

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

Mohammad Khoshnevisan and Q-COMP (C/2008/34)

PRESIDENT HALL

25 August 2008

DECISION

This is an Appeal pursuant to s. 561 of the *Workers' Compensation and Rehabilitation Act 2003* against a decision of an Industrial Magistrate given on 30 July 2008. The original Application to Appeal filed 4 August 2008, was deficient both as to form and as to substance. In short form, the deficiency was that the Application gave no indication of the relief which was sought. By a further Application which was also filed on 4 August 2008, and which sought orders that rather than proceed by way of perusal of the transcript of the proceedings in the Industrial Magistrates Court, this Court should listen to the tapes of those proceedings, the Appellant made clear that what was envisaged on the Appeal was a second chance trial and/or a Royal Commission into the proceedings at first instance. By an Amended Application to Appeal filed on 15 August 2008, the Appellant accepts that this Court has no authority to conduct the inquiry into the proceedings at first instance which the Appellant envisages. The Appellant now seeks an Order of this Court referring the matter to a Court of competent jurisdiction.

The Courts of Queensland follow the British rather than the continental tradition. I am not aware of any Queensland Court which has jurisdiction to undertake the inquiry envisaged by the Appellant. Certainly, the Appellant is unable to suggest any such Court. Neither am I aware of any authority under the *Workers' Compensation and Rehabilitation Act 2003* or the *Industrial Relations Act 1999*, vesting this Court with power to refer a matter to another Court. It does not follow that there is no capacity to investigate the Appellant's complaints. The Queensland Police Service has ample authority to conduct investigations of the type envisaged. Indeed, the Appellant informs me that he has already approached the Queensland Police Service. In the alternative to the relief sought in the Amended Application to Appeal, the Appellant seeks an Order that the proceedings in this Court be left in abeyance until the Queensland Police Service investigation is complete. The difficulty which I have with that proposition is that many of the allegations in the materials which have been filed are defamatory of quite a number of persons. It would be vexatious to allow such allegations to be publicly displayed in the Registry of the Court when the Application to Appeal within which they are contained is fatally flawed.

It was for those reasons that on 20 August 2008, I dismissed the Amended Application to Appeal and the earlier Application to Appeal.

Dated 25 August 2008.

D. R. HALL, President.

Appearances:

Dr M. Khoshnevisan in person.

Mr S. Sapsford, directly instructed for Q-COMP.

Mr C. Clarke, instructed by Minter Ellison Solicitors, for Griffith University.

Released: 25 August 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 613 - orders about invalidity or its effects

Hardware Association of Queensland, Union of Employers (RIO/2008/142)

VICE PRESIDENT LINNANE

26 August 2008

DECISION

[1] This is an application by Brian Lee (Applicant) of the Hardware Association of Queensland, Union of Employers (HAQ) seeking the following relief:

- a declaration pursuant to s. 613 of the *Industrial Relations Act 1999* (Act) that invalidities have occurred in relation to the appointment by HAQ of a Returning Officer for the years 1999, 2000, 2002, 2003, 2004, 2005, 2006 and 2007;
- a declaration pursuant to s. 613 of the Act that invalidities have occurred in relation to the notification by HAQ to the Industrial Registrar of the appointment of a Returning Officer, since 1999;
- a declaration pursuant to s. 613 of the Act that invalidities have occurred in relation to filing a copy of HAQ's audit report and relevant accounts for each of its financial years since 2002;
- a declaration pursuant to s. 613 of the Act that invalidities have occurred in relation to filing a certificate by the President or Secretary of HAQ stating the originals of the report and accounts were presented to a HAQ general meeting or management committee meeting since 2002;
- an order pursuant to s. 615 of the Act that the Executive and Committee members of HAQ shall, from the date of this order until an election in May 2009, be constituted by the following persons:

President	Brian Lee
Vice President	David Symes
Vice President	Glenn Brown
Treasurer	Robert Gordon
Committee Member	John Lange
Committee Member	Michael Hatzifotis
Committee Member	John Reece
Committee Member	George Stevens
Committee Member	Scott Dyball

- an order pursuant to s. 615 of the Act that all acts, matters and things done purportedly on behalf of the HAQ by members of the Executive and Committee of the HAQ since 1999 are, to the date of this order, declared valid acts, matters or things done on behalf of the HAQ;
- an order pursuant to s. 615 of the Act that the audit reports and relevant accounts for the HAQ for each financial year since 2002 be treated as having validly been made;

- an order pursuant to s. 615 of the Act that the certificate by the President or Secretary of the HAQ in relation to financial reports being presented to a HAQ general meeting or management committee meeting be treated as having been validly made since 2002;
 - an order pursuant to s. 615 of the Act that application RIO/2008/143 filed in the Industrial Registry on 3 July 2008 and the amended application filed in the Industrial Registry on 7 August 2008 seeking a new set of rules be treated as having validly been made;
 - an order pursuant to s. 615 of the Act that application RIO/2008/149 filed in the Industrial Registry on 7 August 2008 to cancel an exemption from the Electoral Commission Queensland conducting the HAQ elections be treated as having validly been made; and
 - an order pursuant to s. 615 of the Act that application RIO/2008/141 filed in the Industrial Registry on 3 July 2008 and the amended application filed on 7 August 2008 be treated as having validly been made.
- [2] The object of the application is to remedy the invalidities that have occurred, to change the effects of the invalidities and to validate any act, matter or thing rendered invalid by the said invalidities.
- [3] The HAQ relied upon the evidence of Lisa Nicolle, the organisation's Executive Manager who provided an Affidavit (Exhibit 1) and a Supplementary Affidavit (Exhibit 2). The HAQ is a registered industrial organisation of employers. It was registered on 29 October 1981 as the Hardware Retailers Association of Queensland with its name being altered in 1994 to reflect its current title. Ms Lisa Nicolle was appointed Executive Manager of the HAQ on 1 January 2008 although she had acted in the position previously. One of her duties as Executive Manager is the administration of the organisation. In the course of her duties Ms Nicolle sought to file an audit of the HAQ election which occurred on 15 May 2007. At that time she was informed by an officer of the Industrial Registry that there were a number of irregularities affecting the HAQ.
- [4] On 16 December 2007 Ms Nicolle was informed by the Industrial Registrar of a number of irregularities involving the following:
- s. 547 and s. 548 of the Act in relation to the Register of Officers;
 - s. 570 of the Act in relation to financial returns;
 - s. 428 in relation to the HAQ rules being noncompliant with the Act;
 - s. 480 of the Act in relation to election rules being noncompliant with the Act; and
 - the HAQ eligibility rule not being restricted to Queensland residents only.
- [5] Whilst the HAQ has made separate applications in respect of its Rules and the Conduct of Elections, those applications are dependent upon this application to validate the applications.
- [6] Additionally, the HAQ has been unable to hold its Annual General Meeting (AGM) for 2008 until its office bearers are validated. According to Rule 6 of the HAQ's Constitution, the AGM must occur before the end of May in each year. This time has passed and the HAQ seeks orders that those persons purporting to be the Executive and Committee of the organisation be validated as the current office bearers until an election in May 2009.
- [7] It is evident that
- elections for office bearers were held each year;
 - nomination forms were sent out;
 - a Returning Officer was appointed before each of the elections;
 - elections were held at Annual General Meetings of the organisation in each year; and
 - the results of those elections were published in the HAQ newsletter.
- [8] The current HAQ office bearers are:
- | | |
|------------------|--------------------|
| President | Brian Lee |
| Vice President | David Symes |
| Vice President | Glenn Brown |
| Treasurer | Robert Gordon |
| Committee Member | John Lange |
| Committee Member | Michael Hatzifotis |
| Committee Member | John Reece |
| Committee Member | George Stevens |
| Committee Member | Scott Dyball |

- [9] This application was made by Ms Nicolle. I consider Ms Nicolle to be a person able to make this application: see s. 614 of the Act. In respect of this application, an advertisement was published in the Courier Mail on 18 August 2008 advising that invalidities had occurred and that an application for a declaration of invalidity was scheduled for 21 August 2008. Neither HAQ nor the Industrial Registry received any objection to the application.
- [10] Ms Nicolle's evidence is that she is not aware of any injustice that would be caused to the HAQ, a member or creditor of the organisation, or a person dealing with or who has dealt with the organisation, by the making of the orders sought in this application.
- [11] Section 613 of the Act provides as follows:

"613. Commission may decide

- (1) The commission may, on application, decide whether an invalidity has happened in-
 - (a) the management or administration of an organisation's affairs; or
 - (b) the election or appointment of an officer of an organisation; or
 - (c) the making, amending or repealing of a rule of an organisation.
 - (2) In deciding the application, the commission may declare whether or not an invalidity has happened."
- [12] The failure on the part of HAQ in not complying with the provisions of the organisation's rules and the Act in respect of the appointment of its Returning Officers for the years 1999, 2000, 2002, 2003, 2004, 2005, 2006 and 2007, its failure to notify the Industrial Registrar of the appointment of a Returning Officer since 1999, the failure to file a copy of the HAQ's audit report and relevant accounts for each of the financial years since 2002 and the failure to file a Certificate from the President or Secretary of the HAQ stating that the originals of the report and accounts were presented to a HAQ general meeting or management committee meeting since 2002 are invalidities in the management or administration of the HAQ's affairs and/or invalidities in the election or appointment of an officer of an organisation within the terms of s. 613(1)(a) and (b) of the Act. I therefore declare that invalidities have happened in the management and administration of the HAQ and that invalidities have happened in the election or appointment of officers of the organisation as and from 1999 to date.
- [13] Having declared that invalidities have happened, it is then s. 615 of the Act which deals with the orders about the effect of any such declaration. Section 615 of the Act provides as follows:

"615. Orders about effects of invalidity

- (1) This section applies if, on the hearing of the application, the commission declares an invalidity has happened.
 - (2) The commission may make an order it considers appropriate to-
 - (a) remedy the invalidity or to cause it to be remedied; or
 - (b) change or prevent, or cause to change or prevent, the effects of the invalidity; or
 - (c) validate an act, matter or thing made invalid by or because of the invalidity.
 - (3) The commission may also make another order consequential to an order under subsection (2).
 - (4) The commission must not make an order under this section if the order would cause substantial injustice to-
 - (a) the organisation that the invalidity concerns; or
 - (b) a member or creditor of the organisation; or
 - (c) a person dealing with or who has dealt with the organisation."
- [14] Having read the application filed on 3 July 2008, the Affidavit of Lisa Nicolle in support of the application filed on 3 July 2008, the further Affidavit of Lisa Nicolle filed on 19 August 2008, the Affidavit of Alexie Finucan filed on 19 August 2008, the further Affidavit of Alexie Finucan filed by leave on 21 August 2008 and having heard from Mr Harding, Counsel for the HAQ, I make the following orders:

(a) That the Executive and Committee members of HAQ shall, as and from the date of this order until an election in May 2009, be constituted by the following persons:

President	Brian Lee
Vice President	David Symes
Vice President	Glenn Brown
Treasurer	Robert Gordon
Committee Member	John Lange
Committee Member	Michael Hatzifotis
Committee Member	John Reece
Committee Member	George Stevens
Committee Member	Scott Dyball

(b) That all acts, matters and things done purportedly on behalf of the HAQ by members of the Executive and Committee of the HAQ since 1999 are, to the date of this order, declared valid acts, matters or things done on behalf of the HAQ;

(c) That the audit reports and relevant accounts for the HAQ for each financial year since 2002 be treated as having validly been made;

(d) That the certificate by the President or Secretary of the HAQ in relation to financial reports being presented to a HAQ general meeting or management committee meeting be treated as having validly been made since 2002;

(e) That application RIO/2008/143 filed in the Industrial Registry on 3 July 2008 and the amended application filed in the Industrial Registry on 7 August 2008 seeking a new set of rules be treated as having validly been made;

(f) That application RIO/2008/149 filed in the Industrial Registry on 7 August 2008 to cancel an exemption from the Electoral Commission Queensland conducting the HAQ elections be treated as having validly been made; and

(g) That application RIO/2208/141 filed in the Industrial Registry on 3 July 2008 and the amended application filed on 7 August 2008 be treated as having validly been made.

[15] On the evidence before me, I do not believe that the abovementioned orders would cause substantial injustice to the HAQ, any member or creditor of the HAQ or to any person dealing with or who has dealt with the HAQ: see s. 615(4) of the Act.

[16] The operative date of these orders is 21 August 2008.

Order accordingly.

D.M. LINNANE, Vice President.

Appearances:

Mr. A. C. Harding Counsel for the Hardware Association of Queensland, Union of Employers, instructed by McCullough Robertson Lawyers.

Hearing Details:

2008 21 August

Released: 26 August 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 1999 - s. 474 - approval for eligibility rule amendment

Australian Federated Union of Locomotive Employees, Queensland Union of Employees (RIO/2008/144)

VICE PRESIDENT LINNANE

27 August 2008

Application for approval to amend the organisation's eligibility rule - No objection - Application granted - *Industrial Relations Act 1999 - s. 474.*

Delivering her decision from the Bench on 26 August 2008, Vice President Linnane stated:

"This is an application by the Australian Federated Union of Locomotive Employees, Queensland Union of Employees (AFULE) to amend its eligibility rule. The application has been made in accordance with the provisions of the *Industrial Relations Act 1999* (Act) and the *Industrial Relations Regulation 2000*. The application seeks to restrict the persons eligible to enrol as members of the organisation to persons employed within Queensland.

The proposed amendment to the rules has been made in accordance with the rules of the AFULE. There is no objection to the proposed amendment.

None of the matters outlined in s. 474(3) of the Act have been identified in the course of this hearing.

In those circumstances I am required by the provisions of the Act to grant consent to the amendment of the rules and I so do.

The operative date for the amendment is 26 August 2008."

Order accordingly

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Appearances:

Ms. S. Keating of the Australian Federated Union of Locomotive Employees, Queensland Union of Employees for the Applicant.

Hearing Details:
2008 26 August

Released: 27 August 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 156 - certifying an agreement

Various UNiTAB Agents Association Employers AND The Employees of Various UNiTAB Agents Association Employers (CA/2008/19, CA/2008/20, CA/2008/21, CA/2008/22, CA/2008/23, CA/2008/24, CA/2008/25, CA/2008/26, CA/2008/27, CA/2008/28, CA/2008/29, CA/2008/30, CA/2008/31, CA/2008/32, CA/2008/39, CA/2008/40, CA/2008/41, CA/2008/42, CA/2008/43, CA/2008/44, CA/2008/45, CA/2008/46, CA/2008/47, CA/2008/48, CA/2008/49, CA/2008/50, CA/2008/51, CA/2008/52, CA/2008/53, CA/2008/54, CA/2008/55, CA/2008/56, CA/2008/57, CA/2008/58, CA/2008/59, CA/2008/60, CA/2008/61)

DEPUTY PRESIDENT SWAN

27 August 2008

DECISION

A number of applications have been made by Jones Ross Pty Ltd on behalf of UNiTAB Agents Association employers. These applications are as follows:

Matter Number	Title of Certified Agreement	Date Certified	Reported at
CA/2008/19	UNiTAB Agents Association (Joanne Lepik) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/20	UNiTAB Agents Association (Yvonne & Ron Melling) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/21	UNiTAB Agents Association (Margaret Roberts) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/22	UNiTAB Agents Association (A.W. & H.C. Coutts) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/23	UNiTAB Agents Association (Joan Collins) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/24	UNiTAB Agents Association (Kevin & Marianne Lever) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/25	UNiTAB Agents Association (Hazel Brown) Enterprise Bargaining - Certified Agreement 2008	20 May 2008	188 QGIG 177
CA/2008/26	UNiTAB Agents Association (Frank & Doris McRobbie) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 177

Matter Number	Title of Certified Agreement	Date Certified	Reported at
CA/2008/27	UNiTAB Agents Association (Philip & Lynn Spencer) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/28	UNiTAB Agents Association (Jacqueline Bestzynski) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/29	UNiTAB Agents Association (A.W.G. & G.M. Baulch) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/30	UNiTAB Agents Association (Thelma Hurley) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/31	UNiTAB Agents Association (Darryl & Lorraine Norwood) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/32	UNiTAB Agents Association (Pamelia Ward) Enterprise Bargaining - Certified Agreement 2008	23 May 2008	188 QGIG 178
CA/2008/39	UNiTAB Agents Association (Debra Hetherington) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/40	UNiTAB Agents Association (Dino & Grace Zanchetta) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/41	UNiTAB Agents Association (John Jarvis) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/42	UNiTAB Agents Association (Cherie Gallagher) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/43	UNiTAB Agents Association (Betty Henderson) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/44	UNiTAB Agents Association (Linda Neal) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/45	UNiTAB Agents Association (Margaret Lyons) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/46	UNiTAB Agents Association (Malgorzata Adamczak) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 291
CA/2008/47	UNiTAB Agents Association (Patricia & Denis Mullins) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/48	UNiTAB Agents Association (Joyce Ansell) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/49	UNiTAB Agents Association (Brenden & Vanessa McClennan) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/50	UNiTAB Agents Association (Allison Darnell) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/51	UNiTAB Agents Association (C. Ivory & B. Peck) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/52	UNiTAB Agents Association (Alison Patterson) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/53	UNiTAB Agents Association (Beverly Lily Ruthenberg) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/54	UNiTAB Agents Association (John & Anne Winmill) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/55	UNiTAB Agents Association (Sophia Gambetis) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/56	UNiTAB Agents Association (Mary Cracknell) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/57	UNiTAB Agents Association (Linda McGlade) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/58	UNiTAB Agents Association (Donna Munro) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/59	UNiTAB Agents Association (Gloria Hoskin) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/60	UNiTAB Agents Association (Julie Lawson) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292
CA/2008/61	UNiTAB Agents Association (Karen Johnston) Enterprise Bargaining - Certified Agreement 2008	2 July 2008	188 QGIG 292

The aforementioned applications do not cancel CA/2005/201 (*UNiTAB Agents Association Enterprise Bargaining - Certified Agreement 2004*) (the 2004 Agreement).

CA/2005/201 was an agreement certified by the Commission on 8 June 2005. The 2004 Agreement was made between the Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees, the Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees and various UNiTAB Agents named in Schedule B of the 2004 Agreement.

The aforementioned applications which had been approved and certified by the Commission will have Certificates issued which explicitly state: "This agreement cancels CA/2005/201 (UNiTAB Agents Association Enterprise Bargaining - Certified Agreement 2004) only in relation to the aforementioned parties."

Order accordingly.

D.A. SWAN, Deputy President.

Hearing Details:

2008 20 May (CA/2008/19 to CA/2008/25)
23 May (CA/2008/26 to CA/2008/32)
2 July (CA/2008/39 to CA/2008/61)
22 August

Appearances:

Mr C. Pollard, of Jones Ross Pty Ltd, on behalf of the UNiTAB Agents Association employers

Released: 27 August 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 230(4)(c) - interim injunction

**The Australian Workers' Union of Employees, Queensland v Queensland Health
(D/2008/118)**

**The Queensland Public Sector Union of Employees v Queensland Health
(D/2008/119)**

DEPUTY PRESIDENT BLOOMFIELD

29 August 2008

DECISION and ORDER

Background

On the afternoon of Thursday 28 August 2008 I utilised the powers available to me at s. 230(4)(c) of the *Industrial Relations Act 1999* (the Act) to issue an (verbal) Order which:

- (i) restrained Queensland Health from taking any steps to close the Aramac Hospital and/or convert that facility to a Primary Health Care Centre (PHCC) for a period of 60 days from Friday 29 August 2008; and
- (ii) restrained Queensland Health from taking any steps to terminate, or alter current conditions of employment to the detriment of, its existing employees at the Aramac Hospital for a period of 60 days from Friday 29 August 2008 unless any such termination and/or change in condition of employment was by consent (freely given) between Queensland Health and any of its employees; and
- (iii) required Queensland Health to consult about the proposed closure of the Aramac Hospital, and its conversion to a PHCC, with the affected employees and their Unions as required by the various provisions of the *Queensland Public Health Sector Certified Agreement (No. 6) 2005* (EBA 6), especially clauses 3.2, 4.1 and 6.1.

At the time of issuing the verbal Order to the Queensland Health representative then present I indicated I would release a formal Order on Friday 29 August 2008 together with reasons why I had decided to exercise my discretion to make the Order. This Decision is issued for those combined purposes.

Reasons

The staff at Aramac Hospital were asked to attend a meeting convened by the District Manager of Queensland Health at approximately 2.30pm on Tuesday 26 August 2008. It appears from all reports that the meeting was convened by the District Management rather hurriedly, and without much formality, as a result of various rumours circulating in the local

community to the effect that the Aramac Hospital was to be closed. The District Manager indicated, and I whole-heartedly accept, that the meeting was convened in good faith in the best interest of the employees so that she could let the staff members know what was proposed to happen at the Hospital because of escalating employee concern as a result of the rumours.

Shortly prior to talking to the employees a representative of the District Management telephoned the local AWU organiser to inform him that staff were being called to a meeting at which they were to be informed that it was Queensland Health's intention to convert the existing Hospital to a PHCC which, if implemented, would have the effect of reducing staffing levels from 22 persons to 3 persons. Because of the travelling distances involved the organiser was unable to attend the meeting which was about to commence.

Dispute notifications were lodged on the following day by The Australian Workers' Union of Employees, Queensland and The Queensland Public Sector Union of Employees asking the Commission to convene a conference to discuss Queensland Health's failure to consult any of the employees, or their Unions, prior to the decision being taken to close the Hospital and convert it to a PHCC. Subsequently, the Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees wrote to the Commission asking to be joined to those disputes on the basis that that Union also had a member who would be affected by the announced closure.

When the conference was convened, the representative for Queensland Health readily conceded that the steps required at Clauses 3.2 and 4.1, in particular, of EBA 6 had not been complied with. The representative gave an undertaking that Queensland Health would consult, as required by the EBA, with the affected employees and their Unions. The representative also said that no firm date for the proposed closure of the Hospital had been finalised because that detail was still to be worked through.

It also came to light during the course of the conference that the District Management had first started to consider the possible closure of the Aramac Hospital, and its conversion to a PHCC, in approximately April 2008. That proposal was developed over the next several months and was presented to the Executive Team of Queensland Health at a meeting in July, when the plan was approved.

Even though a definite decision was taken at that time about the likely closure of the Hospital, no steps were taken, as required by EBA 6, to inform the relevant employees and their Unions of that decision nor were any steps taken to commence any form of consultation in an endeavour to mitigate the potential adverse affects of the decision. Despite this failure to consult the persons most directly interested the District Representatives of Queensland Health met with the Mayor of the Barcaldine Regional Council on or about Friday 21 August 2008 and informed him of the decision that had been taken at the Executive Team meeting and discussed the potential implications for the local community when the Hospital closed and was replaced by a PHCC. It is logical to assume that this information then made its way around the local community, including to employees at the Aramac Hospital.

Aramac is a small community of roughly 350 persons which is located 68km north of Barcaldine and approximately 150kms north east of Longreach. There are limited employment opportunities in the town and limited scope for employees affected by the closure to "commute" to alternative employment which might be available in either Barcaldine or Longreach. As such, any decision to close the Hospital is likely to have significant, and lasting, impact upon the present workforce.

The Union officials in attendance at the dispute conference indicated that the affected employees were extremely concerned about their future and were raising a number of questions with them about Queensland Health's intentions and the impact which the impending closure was going to have on them as individuals. However, because of the lack of consultation, the Unions were unable to assist their members or help alleviate their concerns about their future employment or job security.

The present dispute notifications about Queensland Health's failure to consult its employees, and their Unions, about decisions taken to implement structural changes is but one example of a number of similar matters which have come before the Commission as presently constituted over recent months. On each occasion there has been some limited acknowledgement by Queensland Health of its failure to consult and various excuses, or reasons, have been provided as to why that has occurred. On each occasion the Queensland Health representative present has also acknowledged that the organisation does have an obligation to consult in accordance with the terms of the applicable industrial instrument and has given a commitment to do that. However, it has become apparent to me that, notwithstanding the above commitments, the various managers who have failed to consult don't necessarily have the same awareness of the obligations imposed on them by the applicable industrial instruments as do the Industrial Advocates who have appeared. Invariably, the relevant managers seem to have been of the belief that it is up to them to decide when (and if) consultation is to occur, without regard to, or knowledge of, the obligations imposed upon them by the terms of the various industrial instruments which bind Queensland Health and the Unions.

In this respect, it is important that I point out that the consultation arrangements spelt out in the various Certified Agreements which cover different groups of employees employed by Queensland Health have been freely negotiated between that organisation and the Unions which are signatory to the respective Agreements. None of the consultative arrangements have been imposed by this Commission and, indeed, the consultative arrangements appear to be more onerous than those set out in this Commission's Termination, Change and Redundancy Decision (174 QGIG 908).

Despite being freely negotiated, there are increasingly obvious signs that there is a lack of training and/or protocols within Queensland Health to ensure that managers are aware of, and follow, the requisite consultative obligations. This lack of awareness, or conscious decision not to abide by clear obligations, has become of significant concern to the Unions signatory to the agreement to the point where their frustration, and that of their members, has become manifest. It has also become of considerable concern to me.

In my view, the time has come for this Commission to take a firm stand and to make it clear to both managers and employees alike that whilst the Commission is prepared to accept the inevitability of the fact there will be an occasional failure to follow the relevant provisions in Certified Agreements, and will try to resolve those issues on a single case basis, there can be no excuse when the failure to comply with the provisions of a Certified Agreement becomes significant, pronounced and systemic.

In my view, the employees currently engaged at the Aramac Hospital have a right to be provided with some clear certainty that Queensland Health will not act to implement any decisions which will have the effect of potentially ceasing their employment until all of the processes required by the terms of the applicable industrial instrument have been gone through. In that regard it is appropriate that the employees be afforded at least 60 days certainty while discussions about their likely future are held. Such time frame will also give the affected employees some reasonable opportunity to make any decisions they might be called upon to make which, obviously, will have a severe impact upon them.

Hopefully, the decision I have taken to issue Orders in respect of the Aramac Hospital will have the effect of causing the Senior Executive Team within Queensland Health to review the organisation's internal processes to ensure that the obligations imposed on, in particular, managers are made known to all levels of management so that there is no repeat incident of any failure to consult with employees and their Unions as required by such industrial instruments as EBA 6.

For the above reasons I decided to issue Orders on the afternoon of 28 August 2008. The formal Orders giving effect to my decision are set out below.

"

ORDER

Pursuant to the powers available to it at s. 230(4)(c) of the *Industrial Relations Act 1999* the Commission Orders:

- 1) Queensland Health be restrained from taking any steps to close the Aramac Hospital and/or convert that facility to a Primary Health Care Centre for a period of 60 days from Friday 29 August 2008.
- 2) Queensland Health be restrained from taking any steps to terminate, or alter current conditions of employment to the detriment of, its existing employees at the Aramac Hospital for a period of 60 days from Friday 29 August 2008 unless any such termination and/or change in condition of employment is by consent (freely given) between Queensland Health and any of its employees.
- 3) Queensland Health be obliged to consult about the proposed closure of the Aramac Hospital, and its conversion to a Primary Health Care Centre, with affected employees and their Unions as required by the various provisions of the *Queensland Public Health Sector Certified Agreement (No. 6) 2005* especially clauses 3.2, 4.1 and 6.1.
- 4) This Order shall come into effect at 4.00pm on Friday 29 August 2008 and shall remain in effect for 60 days thereafter, or until otherwise decided by this Commission.
- 5) An authorised Officer of Queensland Health file an affidavit by 4.00pm on 7 November 2008 stating the steps taken to comply with this Order.
- 6) Liberty to apply for a variation to this Order be granted to any party to the dispute upon 48 hours notice to the Commission and the other parties.
- 7) Order Accordingly."

I so determine and Order.

A.L. BLOOMFIELD, Deputy President.

Hearing Details:

2008 28 August

Released: 29 August 2008

Appearances:

Mr P. Eldon, Mr T. Jeffers and Mr T. Sullivan (The Australian Workers' Union of Employees, Queensland).

Mr K. McKay (The Queensland Public Sector Union of Employees).

Ms J. Sheppard (Australian Municipal, Administrative, Clerical and Services Union, Central and Southern

Queensland Clerical and Administrative Branch, Union of Employees).

Ms T. Rosten and Ms J. Koeneman (Queensland Health).

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 274A - Power to make declarations

The Australian Workers' Union of Employees, Queensland AND The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (B/2008/40)

COMMISSIONER FISHER

27 August 2008

Application for Declaration/s - Right to enrol and/or represent employees Somerset Regional Council - Occupations or Callings - Council amalgamation - Enterprise bargaining negotiations - Evidence - Alleged union conduct - CFMEUQ enrolling members in breach of Rules and Callings - Demarcation dispute - No evidence CFMEUQ acting illegally - Membership eligibility - Representation rights - Demarcation not evident - AWU rights not threatened - Decline to make Declaration/s sought - Application refused.

DECISION

The Application

The Australian Workers' Union of Employees, Queensland (AWU) has applied to the Commission seeking a Declaration or Declarations under s. 274A of the *Industrial Relations Act 1999* (the Act) in the following terms:

- "1. That the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU) does not have the right to enrol as members and/or represent the industrial interests of, employees of Somerset Regional Council, employed in the occupations or callings identified in Schedule 1; and
2. That The Australian Workers' Union of Employees, Queensland (AWUEQ) does have the right to enrol as members and/or represent the industrial interests of, employees of Somerset Regional Council, employed in the occupations or callings identified in Schedule 1.

Schedule 1:

Relevant Occupations/Callings at the Somerset Regional Council:

- Labourer
- Tipmaster
- Backhoe Operator
- Truck Operator
- Ganger
- Assistant Treatment Plant Operator
- Loader Operator
- Roller Operator
- Grader Operator
- Town Steward."

Background

Enterprise bargaining negotiations have been occurring at the Somerset Regional Council since the amalgamation of local Councils occurred in March 2008. The AWU contends that The Construction, Forestry, Mining & Energy, Industrial

Union of Employees, Queensland (CFMEUQ) has purported to enrol as members various employees of the Somerset Regional Council in breach of their Rules and Callings. In addition the CFMEUQ has been purporting to represent such employees at the enterprise bargaining negotiations by attending meetings of the Local Government Employment Group. The AWU contends that such conduct by the CFMEUQ has "the potential to cause industrial disputation and disruption" whilst enterprise bargaining negotiations are continuing and consequently seeks "clear guidance" from the Queensland Industrial Relations Commission to ensure employees have the correct industrial representation.

AWU Evidence

Wayne Mills

In support of its application the AWU called evidence from Wayne Mills, an Organiser with the AWU since August 1988. Part of Mr Mills' duties as an Organiser is to represent members' interests in enterprise bargaining negotiations with various employers, including the Somerset Regional Council.

The Somerset Regional Council was formed as a consequence of the amalgamation of the Council of the Shire of Esk and the Kilcoy Shire Council. Mr Mills gave evidence that prior to the amalgamation he believed the CFMEUQ was enrolling as members employees of the Council of the Shire of Esk who were not eligible for membership. He said that although he raised this issue with the Council at the time it did not want to become involved.

In February 2008 Mr Mills requested a copy of the wage records of the Council of the Shire of Esk. He was provided with a copy of wage records for one pay period which showed employees' names, designations, ordinary pay rates, union membership and the Award under which they were employed. Mr Mills said that "the information revealed a number of employees were paying union membership fees to the CFMEU, however their occupations did not fall within the callings of the CFMEU".

At the first meeting of the newly formed Council's Local Government Employment Group (LGEG) the Chief Executive Officer raised the issue of which unions should be party to the new agreement. Mr Mills said the CFMEUQ should not be party as it did not have employees within their callings. The Minutes of that Meeting held on 3 April 2008 show that Mr Mills objected to Barry Lukritz attending the meeting as a CFMEU delegate and suggested that it would be more appropriate if he attended in the capacity of the Federated Engine Drivers' and Firemens' Association of Queensland, Union of Employees (FEDFA) representative. The meeting agreed that the unions should resolve the representation issue and advise the meeting of the outcome. Mr Mills' evidence was that the issue remains unresolved.

At the next meeting of the LGEG held on 1 May 2008 Mr Mills again objected to the CFMEUQ being present and it being a party to the proposed agreement.

Bob Bain

Mr Bain is the Chief Executive Officer of the Somerset Regional Council and gave evidence as a result of being served with an Attendance Notice. Mr Bain attends the enterprise bargaining negotiations on behalf of Council.

Mr Bain said that a number of unions have members at the council including the AWU, CFMEUQ, FEDFA, Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMEPKU) and the Queensland Services, Industrial Union of Employees (QSU). He noted that both the CFMEUQ and the FEDFA had been parties to the previous certified agreement.

Mr Bain said that the Minutes of LGEG Meetings described the capacity in which each person attended the meetings. When the issue arose about the coverage Mr Bain advised the person preparing the Minutes to keep the descriptors consistent so that Mr Lukritz and Rohan Crotty, CFMEUQ Organiser, consistently appear as representing the CFMEUQ.

Although Mr Bain had been aware of an ongoing dispute between the AWU and CFMEUQ over coverage and representation he did not believe it was the role of Council to make a decision as to which union represented which employees.

In cross-examination Mr Bain said that in response to a request from Mr Crotty he sought information about the duties being performed by two employees of Council, Bruce Zinn and Gary Kubler. The information, which is attached to Mr Crotty's affidavit, was supplied by the Council's Works Engineer and the Water and Sewerage Engineer. These Engineers are the supervisors of the two employees concerned. Mr Bain acknowledged that the information showed that the two employees were performing bridge carpentry work.

In re-examination Mr Bain said that the document does not list the two employees' full duties but it "substantially" showed their duties. He said they were both in the bridge group.

Kerrie-Lee Jones

Ms Jones is employed as the Human Resources Co-ordinator of the Somerset Regional Council. She gave evidence as a result of being served with an Attendance Notice.

Ms Jones also attends the LGEG meetings. She said that at each meeting committee members sign a register indicating their name and who they are representing.

Nelson Handyside

Mr Handyside is a Senior Foreman employed by the Somerset Regional Council and is also a delegate for the QSU. He also gave evidence as a result of being served with an Attendance Notice.

Mr Handyside said the Council was aware he was the QSU delegate as a result of being advised in writing by the QSU. On attending meetings of the LGEG he said he printed and signed his name on an attendance sheet but did not provide any other information.

In cross-examination Mr Handyside acknowledged that he had been telephoned by Mr Crotty and asked whether he had observed the work performed by Messrs Zinn and Kubler. He advised that he had and agreed that he had said that the work they performed would be regarded as bridge carpentry.

He was shown the document outlining the duties performed by Messrs Zinn and Kubler. Mr Handyside said that some of the duties would be those of a bridge carpenter and in re-examination said that some duties they perform are not bridge carpentry.

CFMEUQ Evidence

Rohan Crotty

Mr Crotty has been employed as a CFMEUQ Organiser since April 2005. He holds right of entry authorisations issued under s. 364 of the Act for both the CFMEUQ and the FEDFA. He is an Organiser for both unions and is jointly employed by them.

He is the designated Local Government Co-ordinator within the two unions and has had specific responsibility for the Somerset Regional Council since April 2008. He said he attends LGEG meetings as a representative of both unions, although he admitted that he had not formally advised the LGEG of that. Mr Crotty rejected the contention that any great dispute exists between the AWU and the CFMEUQ over union membership and representation rights.

Mr Crotty gave evidence that he had spoken to Messrs Zinn, Kubler, Handyside and the Works Supervisor, Rob Bouchier, and that as a result he was satisfied that Zinn and Kubler were performing bridge carpentry duties. However, in cross-examination, he conceded that he had not witnessed them performing work.

Mr Crotty's evidence referred to "bridge carpenters" being a calling listed in the registered callings of the CFMEUQ. Attached to Mr Crotty's affidavit is a CFMEUQ membership list for the Somerset Regional Council. It shows that Messrs Zinn and Kubler are the only two members of the CFMEUQ employed at the Somerset Regional Council. The document shows that a number of other (unidentified) employees are members of the FEDFA.

Mr Crotty's affidavit also had attached the membership application form for the CFMEUQ and FEDFA. He said he asked employees to join one of the unions based on the information they supplied about their work.

Paula Masters

Ms Masters is the Accountant for the CFMEUQ and has been so engaged since August 1993.

Ms Masters said that in 1993 an Administration Agreement (the Agreement) was entered into between the then Amalgamated Society of Carpenters, Joiners, Bricklayers, Plasterers, Painters and Decorators of Australasia, Union of Employees, Queensland (ASC&J) and the FEDFA whereby the ASC&J provided services to the Construction and General Division of the FEDFA in return for the payment of a service fee. The Agreement remains in operation and establishes the arrangements for services and facilities to be provided to the FEDFA. One of the administrative functions to be

undertaken by the ASC&J was the banking of union dues received by the FEDFA Construction and General Division. The ASC&J subsequently changed its name to the CFMEUQ.

Ms Masters is responsible for the preparation of the financial statements of the CFMEUQ. Membership dues collected from FEDFA members are disclosed separately within the Income Statement. An extract from the Financial Report of the CFMEUQ for the year ended 31 December 2007 shows revenue as per the FEDFA Administration Agreement.

Ms Masters said that the allocation of membership dues between the FEDFA and the CFMEUQ is based on the data sourced from the CFMEU membership database as members of the FEDFA and the CFMEUQ are also members of the CFMEU. The CFMEUQ membership database distinguishes FEDFA members from CFMEUQ members.

Ms Masters said that once the CFMEUQ's audited statements have been adopted by the State Executive they are provided to the Mining and Metalliferous Division of the FEDFA as that Division is responsible for the preparation of the financial statements for the FEDFA.

With respect to the Somerset Regional Council and the Council of the Shire of Esk, Ms Masters said that membership dues deducted via the payroll system are paid directly into the CFMEUQ's main bank account. Once received and processed in the union's membership system, allocation of dues is determined by individual member records.

Conclusions

The premise on which the AWU's application is based is that the CFMEUQ has been enrolling, and continues to enrol as members, employees of the Somerset Regional Council who are not eligible to be members of the CFMEUQ but who are eligible to be members of the AWU. The effect of this alleged conduct by the CFMEUQ is said to be a demarcation dispute at Somerset Regional Council with the dispute set to escalate if the Commission refuses to issue the declarations sought.

Section 274A gives the Commission power to issue a declaration about an industrial matter. The section does not provide guidance about the circumstances in which a declaration may be issued. The Minister's Second Reading Speech and Explanatory Notes also do not shed any light on this or the purpose of the section. The power given to the Commission is discretionary and in the absence of statutory guidance about its exercise it is useful to have regard to general law decisions about the exercise of discretion in applications for declaratory relief. It has been held that the discretion "must be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making" *Ibeneweka v Egbuna* [1964] 1 WLR 219 @ 224-5 (PC) approved in Australia in *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564. Further, as was held in *Ainsworth*, declarations are not generally issued where the determination would have no practical relevance or utility or where the application deals with abstract or hypothetical issues.

In deciding whether to exercise the discretion in favour of the applicant the Commission must consider whether the CFMEUQ is or has been engaging in the conduct alleged by the AWU. An affirmative answer is more likely to enliven the possibility of a declaration being issued as it would have some practical effect.

In examining the conduct of the CFMEUQ the Commission must consider the position as it actually is, not as one party believes it to be, even if there appears to be evidence to support that belief.

The extract of the wages records annexed to Mr Mills' affidavit shows that employees with the "occupation/calling" listed in Schedule 1 to the AWU application are paying union dues to the "CFMEU". On that basis it appears that employees are being enrolled and subsequently represented by an industrial organisation which may not have the requisite membership coverage.

The application by the AWU is made in relation to the Somerset Regional Council yet the Commission has no evidence before it which shows that the CFMEUQ is acting as alleged with respect to that Council. The extract from the wages records is from the Council of the Shire of Esk, a Council that was disbanded as a consequence of the local government amalgamations which occurred earlier this year. No evidence is before the Commission to prove or confirm that the Somerset Regional Council keeps its wages records in the same form as that previously kept by the Council of the Shire of Esk or that the information shown on the wages records as at February 2008 is current. In the absence of such information alone I am reluctant to make the declarations sought.

Even if that information could be produced I am not satisfied that the CFMEUQ is not enrolling as members employees who fall outside its list of callings. The employees are not paying dues to the CFMEU (the federal body) but are paying to either the CFMEUQ or the FEDFA, both state registered industrial organisations of employees. The evidence of Ms

Masters clearly sets out the somewhat complex administrative arrangements existing between the FEDFA and the CFMEUQ. Her evidence, which was unchallenged in this regard, explains that dues are paid into the CFMEUQ's main bank account and then forwarded to the FEDFA in accordance with membership records. Although dues are collected in this manner persons do not necessarily become members of the CFMEUQ as a result. Employees only become members of the FEDFA based on the nature of the work performed and are shown as members of the FEDFA on that industrial organisation's membership records. Further, the extract of the membership list for the Somerset Regional Council annexed to Mr Crotty's affidavit, shows that a number of employees are FEDFA members and only two are CFMEUQ members. Messrs Zinn and Kubler are identified on the list as the two employees of the Somerset Regional Council who are members of the CFMEUQ. Their job titles are "Ganger - Bridge Crew" and "Labourer - Bridge Crew" respectively.

The AWU submits that the case "is not about the particular individuals and the work performed by them. The application neither supports nor opposes the view that the two particular employees are eligible to be members because of some work perform[ed] from time to time". Rather, it is about declaring existing rights of enrolment of certain occupations into membership of the AWU and declaring that the CFMEUQ does not have those rights. Although the AWU referred in submissions to "occupations" it is noted that the application refers to "occupations" or "callings".

There must be some real controversy in order to invoke the exercise of discretion. The controversy contended by the AWU is not about the enrolment into membership and representation of Messrs Zinn and Kubler by the CFMEUQ but that the CFMEUQ are enrolling into membership and representing persons who have job titles that do not fall within their callings.

In further submissions sought by the Commission on the relevance of job titles and occupations to callings the AWU says that the occupations or callings identified in the Schedule to the application are taken directly from the list of job titles in use by Somerset Regional Council. The AWU submits that job titles appear to be used by the Somerset Regional Council to classify employees and those job titles refer to the occupations of the employees. Further the job titles have been drawn from the occupations contained in the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003*, an Award made by a full bench of this Commission.

The AWU also contends that the terms "occupation" and "calling" can be used interchangeably as the Act defines a calling to mean (amongst other things) an occupation.

The CFMEUQ argues that the AWU application is misconceived because the entitlement of an industrial organisation to enrol a person into membership is governed by s. 531 of the Act which provides:

"531 Eligibility

A person is eligible to become a member of an organisation if the person -

- (a) by the nature of the person's occupation or employment, engages in a calling for which the organisation is registered; and
- (b) complies with the organisation's rules."

The CFMEUQ emphasises that the use of the noun "nature" indicates that s. 531 requires an assessment of duties actually performed to determine whether those duties amount to engaging in a calling. Additionally, the use of the verb "engage" indicates that a person must be actively partaking in the activity that brings them within the eligibility in question. That is, mere job title or position description is insufficient to satisfy this requirement. In support of that contention the CFMEUQ relies on the decision of the Full Bench in *AWU & ALHMMWU v The Crown & Ors* (1996) 152 QGIG 56 where the following was said:

"Regardless of whether the employees are called traffic controllers or are given some other title, and bearing in mind what was said in the *Queen v Issac* and others, aforementioned, we are satisfied that the type of work in question does fairly fall within Calling 56 of the ALHMMWU." (@58).

Further, a determination of whether a person engages in a calling for which an organisation is registered depends on the major and substantial nature of the duties performed irrespective of the job title given. The CFMEUQ points out that if job titles as determined by employers were the determinant of eligibility the entire scheme of the Act would be undermined.

The purpose of the application for declarations is to determine the rights of the two industrial organisations concerned to enrol, or not enrol, as the case may be, certain employees as members and those organisations' rights to industrially represent those members. The application adopts job titles apparently in use at the Somerset Regional Council. At the outset I note that not all of the job titles included in the Schedule to the application are specified in the occupations covered by the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003*. I consider that it is inappropriate to consider issuing declarations about industrial organisations' rights to enrol and represent employees using job titles of positions. A job title may briefly describe the position but job titles are not necessarily synonymous with callings. As the CFMEUQ submits, an assessment of the nature of the person's occupation or employment by reference to

the work or duties performed is required to ascertain the calling in which they are engaged. Callings play a critical role in the industrial relations system as they determine eligibility for membership of industrial organisations; the ability of an industrial organisation to industrially represent particular employees and whether an industrial organisation can be a party to an industrial instrument: see *The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia, Queensland Division, Union of Employees* (1972) 79 QGIG, 718 @ 719. If job titles were to determine callings, then there is nothing to prevent employers from assigning job titles to positions which may not necessarily reflect the nature of the work engaged in order to circumvent particular unions from being present in a workplace. I accept the submission of the CFMEUQ that to determine callings on the basis of job titles would be to undermine the scheme of the Act.

In any event most of the job titles that the AWU seeks to specify in the declarations are not ones with which the CFMEUQ concerns itself and the CFMEUQ does not have as its members employees with those job titles. Of the two employees who are members of the CFMEUQ who have job titles which include the words "Labourer" or "Ganger" information is before the Commission that the nature of their work encompasses bridge carpentry. "Bridge carpenters" are a calling the CFMEUQ shares with the AWU. Accordingly, I cannot find that the rights of the AWU to enrol or represent the industrial interests of employees at the Somerset Regional Council are being infringed by the CFMEUQ and in those circumstances decline to make a declaration about those matters.

The failure of the CFMEUQ and FEDFA representatives to correctly identify the industrial organisations they represent at LGEG meetings has also contributed to the belief held by Mr Mills that the CFMEUQ is purporting to represent employees which they have no capacity to represent. Mr Crotty and Mr Lukritz, an employee of the Somerset Regional Council and delegate, have failed to either correctly identify the industrial organisation(s) of employees they are representing at LGEG meetings or to correct the Minutes of Meetings where representation is recorded. Additionally there was a failure by Mr Lukritz to properly respond to Mr Mills' concerns identified at the meeting of LGEG in April 2008 that he should attend as the FEDFA representative. On the evidence of Mr Crotty, Mr Lukritz is a member of the FEDFA and it is as a representative of that industrial organisation of employees that he should be attending the LGEG meetings.

It is opportune to comment on a submission made by the AWU that Mr Crotty said in evidence that Mr Lukritz was a member of the CFMEU and this was not corrected in re-examination. It seems to me that Mr Crotty's evidence is correct. Other evidence given by Mr Crotty is that Mr Lukritz, as a member of the FEDFA, is also a member of the CFMEU (the federal body).

Failure by the CFMEUQ and FEDFA representatives to correctly identify the basis of their attendance at various meetings at the Somerset Regional Council is neglectful and contributes to discontent on the part of those who believe the misrepresentation is mischievous or just plainly wrong. The CFMEUQ and FEDFA representatives do their members, industrial organisations or the orderly system of industrial relations no credit by an incorrect portrayal, even by silence or oversight, of their representation. However, in my view, this conduct has been isolated to a few occasions, and limited to Mr Lukritz, a FEDFA delegate and to Mr Crotty when he represents the FEDFA (as Mr Crotty properly represents the CFMEUQ). I note also that steps have been taken to rectify the problem by the State Secretary of the CFMEUQ (see attachment RC 8 to Mr Crotty's affidavit). This conduct is insufficient to cause me to decide to exercise my discretion and grant the relief sought.

Another basis for issuing a declaration is where there is an immediate and real controversy. In this regard the AWU contends that a demarcation dispute exists at the Somerset Regional Council which is likely to be exacerbated in the event the Commission does not issue the declarations sought. The application discloses that in the view of the AWU the situation at the Somerset Regional Council has "the potential to cause industrial disputation and disruption".

The apprehension of industrial disputation rests mainly with the AWU. Mr Mills' evidence as outlined above sets out the basis of that belief. In contrast, Mr Crotty is of the view that no industrial dispute exists.

Mr Bain's evidence is that he is aware of an ongoing dispute between the AWU and the CFMEUQ but Council does not wish to be involved. I note that the term "dispute" was one put to him in examination in chief and although Mr Bain did not take issue with it, it was clear that he did not regard the situation between the two unions at Somerset Regional Council as being of the magnitude ascribed to it by the AWU. This was evident both in his demeanour and in response to questions from the CFMEUQ concerning correspondence sent to him by the State Secretary of that Union explaining the relationship between the FEDFA and the CFMEUQ. Mr Bain gave no indication that a demarcation issue between the AWU and CFMEUQ was a pressing issue of concern for the Council or was affecting the work of the Council.

Mr Handyside gave evidence that comments had been made to him by employees that the AWU and CFMEUQ were fighting and Mr Mills and Mr Lukritz were at odds.

Having considered the evidence as a whole, I am not satisfied that the rights of the AWU are being immediately or substantially threatened at the Somerset Regional Council. Clearly the AWU has concerns about the alleged activities of the CFMEUQ but representation issues do not appear to be affecting the work of the LGEG nor work on site. Moreover, and as previously determined, the conduct attributed to the CFMEUQ has not been found to have occurred and this of itself should be sufficient to alleviate the dispute the AWU perceives.

For all of the above reasons the Commission declines to make the declarations sought. The application is refused.

G.K. FISHER, Commissioner.

Hearing Details:

2008 3 and 17 June
10 and 11 July
18 July written submissions both parties
14 August further written submissions - CFMEUQ
15 August further written submissions - AWU.

Appearances:

Mr D. Broanda of The Australian Workers' Union of Employees, Queensland on behalf of the Applicant.
Mr J. Stein of the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland on behalf of the Respondent.

Released: 27 August 2008

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