

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Local Government Association of Queensland Ltd v Queensland Services, Industrial Union of Employees & Ors* [2020] QIRC 065

PARTIES: **Local Government Association of Queensland Ltd**
(Applicant)

v

Queensland Services, Industrial Union of Employees
(First Respondent)

&

Queensland Independent Education Union of Employees
(Second Respondent)

&

The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees
(Third Respondent)

&

United Voice, Industrial Union of Employees, Queensland
(Fourth Respondent)

CASE NO: MA/2020/1

PROCEEDING: Application

DELIVERED ON: 6 May 2020

HEARING DATE: 29 April 2020

MEMBER: O'CONNOR VP

HEARD AT: Brisbane

ORDER: **1. Application granted.**

CATCHWORDS: INDUSTRIAL LAW – VARIATION OF A MODERN AWARD – application to vary a modern award

LEGISLATION: *Industrial Relations Act 2016 (Qld) s 147*

APPEARANCES: Ms S Mitanis for the Applicant

Mr N Henderson for the First Respondent

Mr J Spriggs for the Second Respondent

Reasons for Decision

- [1] On 28 April 2020 the Local Government Association of Queensland Ltd filed an application to vary the *Queensland Local Government Industry (Stream A) Award – State 2017*. On 29 April 2020, the LGAQ filed an amended application. On the same date, the matter was heard, and orders issued varying the Stream A Award.
- [2] The Stream A Award has coverage of local government councils throughout Queensland. The application is a direct response to the Coronavirus pandemic (COVID-19) which has impacted on local councils and their workforce. The variations to the Stream A Award is aimed at preserving both the ongoing viability of councils and jobs.
- [3] In his affidavit of 28 April 2020, Mr Gregory Hallam, the Chief Executive Officer of the Applicant details the unusual circumstances in which the application is made:
2. For the previous 7 weeks, the LGAQ has been convening regular telephone linkups with all councils on workforce management issues arising out of the COVID 19 pandemic.
 3. These meetings, along with other sources, have confirmed the immediate and lingering workforce effects for councils of COVID-19 inspired events. These events include Queensland's Chief Medical Officer's issuing of directives ordering the closure of libraries, fitness centres, art galleries, theatres, conferencing facilities and the like.
 4. Further, social distancing rules, including federal and state government requests to have as many workers as possible working from home, have facilitated significant changes to council business and workforce practices. The focus of councils has been to keep affected workers productive and continuing to service council and the community.
 5. A small number of councils have had to stand down workers. These have mainly been casual workers.

6. Two factors impede council's capacity to keep displaced and disaffected staff working. The first is the ability to find alternative productive work without incurring additional costs while the second relates to councils' ongoing capacity to afford its current workforce in the light of significant reductions in revenue.
7. To mitigate the costs and other difficulties associated with deploying staff to alternative roles or applying different work practices to current roles, the LGAQ initiated several discussions with the Queensland Services, Industrial Union of Employees (QSU) and other unions on options to provide Councils with greater flexibility in managing staff during this pandemic. These greater flexibilities will assist councils in their efforts to continue to employ their workforce in productive and meaningful work and provide greater security for local government workers whose work is affected by the pandemic.
8. Accordingly, and in direct response to the current COVID-19 Pandemic, changes are sought to the *Queensland Local Government Industry (Stream A) Award – State 2017* (the Award). These changes are not intended in any way to serve as a mechanism to introduce permanent changes to the Award. The sole motivation of these proposed changes is to provide the capacity of Councils to continue to engage workers in affordable and productive employment and to minimise the necessity of having to stand down employees without pay.
9. The amendments are requested to apply until 30 June 2020 with an option for extension. This short timeframe is requested due to the rapidity of changes in the current environment and to determine the value of the changes for Council and workers.
10. The LGAQ and the QSU have reached agreement on the proposed provisions which are sought to be inserted into the Award by way of a new "Schedule 3 – Award flexibility during the COVID-19 Pandemic" in the back of Division 1.

The application

- [4] The amended application seeks to vary the Stream A Award by the inclusion of *two* new schedules both titled 'Award flexibility during the COVID-19 Pandemic'). Division 2, Section 1 of the Award will be varied by the addition of a new Schedule 3. Division 2, Section 3 of the Award will be varied by the addition of a new Schedule 2.
- [5] The new schedules are aimed at assisting councils to maximise retention of their existing workforce by amending employment conditions thereby enabling easier redeployment of workers who are or may be displaced from their normal roles as a consequence of the pandemic. The new schedules cover a number of topics including: 'operational flexibility'; 'working from home'; 'temporary reduction in ordinary hours'; 'split shifts'; 'pandemic leave'; 'stand down'; 'annual leave; and long service leave'.
- [6] Importantly, the variations to the Stream A Award will operate as and from the date of the variation until 30 June 2020 unless otherwise extended by a further order of the Commission.

Consideration

- [7] The application is made by the LGAQ with the support of the QSU.¹ The views of the other unions with coverage under the Award (QIEU², APESMA³ and UV⁴) were sought.
- [8] Mr Adam Kerslake of APESMA informed the Commission, by way of email, that its position was that whilst the union had not undertaken broad member consultation regarding the application, it was of the view that "*delays may mean that some staff will not receive the benefits of the proposed award*". Mr Kerslake further stated that his union would seek to support the position of the other union parties.
- [9] UV did not provide the Commission with a formal response nor did it attend the hearing of the matter. However, in the affidavit of Mr Anthony Goode dated 29 April 2020 he deposes that "*All these unions were involved to (sic) all subsequent meeting*" and further "*It is my understanding that...United Voice were amongst those who did not express an interest in participating*". I am satisfied that UV were aware of the application and elected not to participate.
- [10] Mr Neil Henderson on behalf of the QSU submitted that the amendments proposed by the LGAQ are for a limited period and, when considered as a whole, did not disadvantage those workers covered by the Award.
- [11] Mr John Spriggs, the Senior Industrial Officer with the QIEU identified two issues with the proposed variation. Both related to the provisions dealing with the 'standing down' of employees. Mr Spriggs informed the Commission that his union did not oppose the form of the orders proposed by the Applicant.
- [12] The Covid-19 Pandemic has presented local governments throughout the State with unique challenges. The amendments proposed by the LGAQ provide an appropriate and measured response to those challenges.
- [13] The parties were provided by my chambers with a draft minute of the proposed orders for comment. There were no substantive amendments proposed by the parties and accordingly, pursuant to s 147 of the IR Act the application to vary the *Queensland Local Government Industry (Stream A) Award – State 2017* was granted. The order varying the Stream A Award took effect as and from the granting of the variation and concludes on 30 June 2020, unless otherwise extended by the Commission.

¹ Queensland Services, Industrial Union of Employees (First Respondent).

² Queensland Independent Education Union of Employees (Second Respondent).

³ The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees (Third Respondent).

⁴ United Voice, Industrial Union of Employees, Queensland (Fourth Respondent).

Order

- 1) **On the hearing of an amended application made by the Local Government Association of Queensland to vary the *Queensland Local Government Industry (Stream A) Award – State 2017*, IT IS ORDERED BY CONSENT THAT:**

- (a) **The Table of Contents of Division 2, Section 1 of the *Queensland Local Government Industry (Stream A) Award – State 2017 (Award)* be varied by adding "Division 2 – Section 1 – Schedule 3 (Award flexibility during the COVID-19 Pandemic)";**
- (b) **The Table of Contents of Division 2, Section 3 of the Award be varied by adding "Division 2 – Section 3 – Schedule 2 (Award flexibility during the COVID-19 Pandemic);**
- (c) **Division 2, Section 1 of the Award be varied by adding a new Schedule 3; and**
- (d) **Division 2, Section 3 of the Award be varied by adding a new Schedule 2.**

Both Schedules 2 and 3 as mentioned above will read as follows:

Award flexibility during the COVID-19 Pandemic

- (1) **The provisions of this schedule are aimed at preserving the ongoing viability of Councils and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date.**
- (2) **A reference in this schedule to an employee “working from home” is to be read as a reference to an employee who is working from home because of measures in response to the COVID-19 pandemic.**
- (3) **This Schedule operates from 29 April 2020 until 30 June 2020 and overrides the respective provisions in the Award. The period of operation can be extended on application.**
- (4) **For the removal of doubt, this schedule is aimed at assisting councils to maximise retention of their existing workforce, by amending employment conditions to enable easier redeployment of workers who are or may be displaced from their normal roles as a consequence of the COVID -19 pandemic. Employees, whose work is not affected by the pandemic and work patterns continue as normal, will continue to have their conditions regulated by the existing award provisions, unless mutually agreed otherwise.**
- (5) **Where a provision of this Schedule is used, the agreement between the employer and employee (who may be represented by an accredited union representative) must:**
 - (a) **be in writing (included by electronic means); and**
 - (b) **stipulate a duration which is no longer than the life of this Schedule.**
- (6) **During the operation of this Schedule, the following provisions apply:**

Operational Flexibility

- (a) **An employee will perform all duties that are within their skill and competency regardless of their classification under an Award, provided that the duties are safe, and the employee is licensed and qualified to perform them, where necessary. Employees will be paid their current level of remuneration and expected to apply their skills and abilities at the level of their existing**

remuneration. To make it clear, no employee shall have their pay reduced as a result of being directed to perform duties in accordance with this clause.

- (b) **Employees placed into vacant established positions and expected to perform the full functionality of the positions at the substantive level of the vacant position will be remunerated at the level of the position. To clarify, the following examples are provided:**

- (i) **A library assistant is deployed to assist the HR work area with administrative HR tasks. The assistant will be paid her existing remuneration.**
- (ii) **A library technician instructor with a background in human resources is placed in a human resource officer position during the absence of the HR officer on maternity leave and is expected to perform the full function of the role. If the remuneration of the HR position is higher, then the library technician instructor will be remunerated at this higher level. If it is lower, then the library technician will retain their current level of remuneration.**
- (iii) **An employee is redeployed (redeployee) into a role left vacant by an earlier resignation of another employee. The redeployee is instructed to assist the remaining employee/s in the work area with any tasks requested by the remaining employee/s that are commensurate with the skills and abilities of the redeployee. The redeployee will remain on their existing remuneration.**

- (c) **Part-time employees working from home**

Where a part-time employee is working from home, the employer is required to roster the employee for a minimum of two (2) consecutive hours on any shift. This clause is not intended to reduce the employee's current hours.

- (d) **Casual employees working from home**

Where a casual employee is working from home, the employee is entitled to a minimum payment of two (2) hours' work at the appropriate rate.

- (e) **Ordinary hours of work for employees working from home**

- (i) **By mutual agreement between an employee and employer, the spread of ordinary hours of work for day workers is between 4.00am and 11.00pm, Monday to Friday, and between 6.00am and 7.00pm on Saturday.**
- (ii) **Work may be performed continuously or across a range of hours within this spread, as agreed between the employer and employee, provided they do not exceed the prescribed daily working hours of the employee.**
- (iii) **Day workers are not shift workers for the purposes of any penalties, loadings or allowances under the award.**

- (f) **Agreed temporary reduction in ordinary hours**

- (i) **An employer and the full-time or part-time employees in a workplace or section of a workplace, may agree to temporarily reduce ordinary hours**

of work for the employees in the workplace or section for a specified period while this schedule is in operation.

- (ii) The approval of at least 75% of the affected full-time and part-time employees in the relevant workplace or section shall be required.

NOTE: Prior to advancing the option of reducing hours of work for employees, the employer shall provide opportunity for affected employees to express interest in voluntarily reducing hours or being stood down on either accrued leave or no pay.

- (iii) For the purposes of subclause (f), ordinary hours of work may be temporarily reduced:

(A) For a full-time employee, to not fewer than 75% of the full-time ordinary hours applicable to an employee immediately prior to the implementation of the temporary reduction in ordinary hours.

(B) For a part-time employee, to not fewer than 75% of the part-time employee's ordinary hours immediately prior to the implementation of the temporary reduction in ordinary hours.

NOTE: This arrangement does not inhibit an employee, by mutual agreement with the employer, reducing their hours to 50%. The employee may then opt to take the remaining 50% on annual leave on half pay as prescribed elsewhere in this schedule.

- (iv) Where a reduction in hours takes effect under subclause (f), the employee's ordinary hourly rate will be maintained but the weekly wage will be reduced by the same proportion of the reduced hours.
- (v) Nothing in this schedule prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce hours or to have an employee move temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.
- (vi) For an employee whose hours have been reduced in accordance with subclause (f):
- (A) the employer must not unreasonably refuse an employee request to engage in reasonable secondary employment; and
- (B) the employer must consider all reasonable employee requests for training, professional development and/or study leave.
- (C) For the purposes of subclause (f), where there is any reduction in the ordinary hours of work for full-time or part-time employees in a workplace or section during the period this schedule is in operation, all relevant accruals and all entitlements on termination of employment will continue to be based on each employee's weekly ordinary hours of work prior to the commencement of this schedule.

- (g) **Split Shifts**

An employer may request a redeployed employee and the employee may agree to work a split shift where the nature of the work requires the employee to do so, provided the total hours worked each day does not exceed eight hours.

- (h) **Pandemic Leave**

Paid pandemic leave of at least two (2) weeks is available as follows:

- (i) **Subject to sub clauses (h)(ii), (iii) and (iv), any employee is entitled to take up to two (2) weeks' paid leave if the employee is required, by government or medical authorities or acting on the advice of a medical practitioner, to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic, in circumstances where the employee is required to work at premises operated by an employer.**
 - (ii) **The employee must give their employer notice of the taking of leave under sub clause (h)(i) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).**
 - (iii) **An employee who has given their employer notice of taking leave under sub clause (h)(i) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in sub clause (h)(i).**
 - (iv) **Leave taken under sub clause (h)(i) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this Award.**
NOTE: The entitlement for paid pandemic leave does not require Councils to reduce similar leave provisions already paid administratively by Council as a result of COVID-19.
- (i) **Stand Down**
- (i) **An employer may:**
 - (A) **require an employee to be stood down giving at least two (2) weeks' notice or any shorter period of notice that may be agreed, provided that where a shorter period of notice is agreed, the employee will be entitled to receive a payment for the period of notice forgone; and**
 - (B) **a stood down employee may take any accrued leave for the period while stood down.**
- (j) **Annual Leave and Long Service Leave**
- (i) **Where the need to stand down employees within a particular work area has been identified, the employer may call for expressions of interest from employees who are prepared to take annual or long service leave to mitigate against the need to stand down employees. Where there are insufficient expressions of interest, the employer may direct affected employee/s to take annual or long service leave in accordance with the conditions prescribed in sub clause (j).**
 - (ii) **A stood down employee may elect to take annual leave at half pay.**
 - (iii) **An employee who has been stood down may elect to access up to two (2) weeks of annual leave in advance.**
 - (iv) **An employer may direct an employee to take up to four (4) weeks annual leave on full pay, provided the employee is provided two (2) weeks' notice prior to the taking of the leave and where the employee will have a**

minimum balance of five (5) weeks annual leave remaining in their balance at the time of the commencement of this directed leave.

- (v) **A stood down employee may elect to take long service leave at half pay.**
 - (vi) **An employee who has been stood down will be entitled to access long service leave on a pro rata basis if they have completed at least seven (7) years of service.**
 - (vii) **An employer may direct an employee to take up to six (6) weeks long service leave on full pay, provided the employee is provided two (2) weeks' notice prior to the taking of the leave and where the employee will have a minimum of 13 weeks long service leave remaining in their balance at the time of the commencement of this directed leave.**
 - (viii) **The employer and employee may agree that the employee may take more than two (2) weeks' unpaid pandemic leave.**
 - (ix) **Any period of stand down of an employee during the term of the period of operation of this Schedule will be recognised as service with council.**
- 2) **This variation is operative as and from 29 April 2020 and remains in effect until 30 June 2020 unless otherwise varied by order of the Commission.**