

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: GRAYSON DP

Thursday 28 October 2010

Matter No IRC 127 of 2010

Notification under section 130 by New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union of a dispute with the Local Government Association of NSW and the Shires Association of NSW re terms and conditions of award

DECISION

- 1 This decision is the culmination of a lengthy and productive process of conciliation arising from the notification of a dispute under s 130 of the *Industrial Relations Act 1996* (the "Act") by the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (the "USU") regarding the terms and conditions of employment to be included in a new award to succeed the *Local Government (State) Award 2007* (the "2007 Award"). The dispute notification was filed on 23 February 2010. The nominal term of the 2007 Award will expire in three days time on 31 October 2010.
- 2 This decision follows a considerable period of negotiation, including numerous conciliation conferences conducted before the Commission and private conferences between the parties. The decision also follows a Statement and Recommendation issued by the Commission, as presently constituted, on 27 September 2010 regarding paid parental leave and related

entitlements. For completeness, that Statement and Recommendation will be attached to and become part of these reasons for decision.

3 During proceedings before the Commission today, a draft *Local Government (State) Award 2010* (the “new Award”) was tendered by Mr A Dansie for the Local Government and Shires Associations of NSW (the “LGSA”) and marked as Exhibit 1 in the proceedings. Mr Dansie sought the making of the new Award pursuant to sections 10 and 11 of the Act. Mr S Hughes appearing for the USU and mentioning the matter for the New South Wales Nurses Association, together with Mr I Robertson for the Development and Environmental Professionals Association and Mr G Brock for the Local Government Engineers Association supported the LGSA submission and confirmed their consent for the making of the new Award by the Commission.

4 As the matter proceeds by consent, it falls for consideration under Principle 2(e) of the Commission’s Wage Fixing Principles which is expressed as follows:

(e) where the application is consented to by the parties it will be dealt with in terms of the Act.

5 The application for a new Award is supported by affidavit evidence tendered during the proceedings, as required by Practice Direction 6, to the effect that the new Award satisfies the requirements of s 23 of the Act and the requirements of the Equal Remuneration Principle determined by the Commission in *Re Equal Remuneration Principle* (2000) 97 IR 177. Such affidavit evidence was marked during the proceedings as follows:

- affidavit of Mr A Dansie, sworn 22 October 2010 (Exhibit 2)
- affidavit of Mr G Kelly, sworn 26 October 2010 (Exhibit 3)

The New Award

6 A detailed schedule of the agreed changes between the 2007 Award and the new Award is contained at annexure "A" of Mr Dansie's affidavit.

7 The local government industry has traditionally negotiated a new award approximately every three years. The nominal term of the proposed new Award is also for three years, however, it is the parties' present intention that the new Award, if made by the Commission, will continue to operate beyond the three year nominal term, as expressed in clause 41(viii) of the new Award as follows:

(viii) It is the intention of the parties that there shall be a 12 month delay between the 1 July 2013 increase in rates of pay under this Award and the increase in rates of pay under the award to succeed this Award. In agreeing to this Award, the parties have undertaken not to pursue increases in rates of pay and existing allowances (other than to increase existing allowances in accordance with the terms of this Award) until 1 July 2014. This subclause shall not prevent the parties from holding discussions in relation to future adjustments to award rates of pay and allowances."

8 The Commission was advised that the above undertaking will allow for the operative date of future award increases to coincide with the commencement of the financial year. This, together with the three year nominal term, is expected to provide councils with increased certainty about wage and salary costs and assist councils with managing their budgetary requirements.

9 Under s 16(2) of the Act, the maximum term of an award can be no more than three years. However, it is clear from section 16(1) that an award applies after its nominal term until rescinded by the Commission. I am satisfied that the proposed undertaking in clause 41(viii) of new Award does not offend the requirements of the Act.

10 A central feature of the new Award is the increases in rates of pay agreed between the parties. These are:

- 2.6% with a minimum of \$19.00/week to rates of pay from the first full pay period on or after 1 November 2010.
- 2.15% with a minimum increase of \$17.00/week to rates of pay from the first full pay period on or after 1 July 2011.
- 3.25% with a minimum increase of \$23.00/week to rates of pay from the first full pay period on or after 1 July 2012.
- 3.25% with a minimum increase of \$23.00/week to rates of pay from the first full pay period on or after 1 July 2013.

11 Most of the work related allowances under the new Award are to be increased by the same percentage as the pay increases. However there are certain work related allowances where the parties have agreed to use a different adjustment factor, as follows:

- (a) Tool allowances have been adjusted to reflect the tool allowances payable under the *Crown Employees (Skilled Trades) Award*.
- (b) The travelling allowances payable for 34-50km and for each additional 10kms will increase by approximately 30% over the term of the new Award.
- (c) The camping allowance will increase by approximately 73% over the term of the new Award.

12 The Commission was advised that the above increases to the travelling and camping allowances were a one off to bring the allowances to a more

appropriate rate. It is contemplated by LGSA that variations to these allowances will revert to the traditional method of adjustment in future awards. I note that the union parties reserve their rights in that regard as to the future method of adjustment of these allowances.

- 13 With the exception of the meal allowances, expense related allowances have been adjusted to reflect the relevant change in the level of such expenses. The parties however have agreed to adjust the meal allowances to reflect the meal allowances prescribed by the federal *Local Government Industry Award 2010* (the federal award). Leave is also reserved for the parties to apply to vary the meal allowances following any adjustment to the meal allowances under the federal award.
- 14 Changes have been made to clarify the meaning or intent of some of the new Award's provisions. These include amending the definition of 'ordinary pay', introducing new definitions of a 'seven day a week rotating roster system', 'sewer choke', and 'materials'. The changes also include clarification in the salary system provisions to the effect that where a council changes its salary system structure employees shall not suffer a reduction in pay or salary range.
- 15 The new Award clarifies that employees seeking to claim a paid holiday during NAIDOC week (to participate in National Aboriginal and Islander Day celebrations) are required give their council at least seven (7) days notice of their intention to take the paid holiday.
- 16 The new Award includes a new 'Certificate and Licences' provision at clause 14(viii). Under this sub-clause, where an employee in Operational Band 1 or Administrative/Technical Trades Band 2 of the award is required by council to hold a WorkCover NSW approved certificate or licence the council is required to reimburse the employee for the cost of such certificate or licence.

- 17 Clause 14(viii) also provides that where an employee in Operational Band 1 or Administrative/Technical Trades Band 2 of the award is required by council to hold a drivers licence other than a Class C (car) or Class R (rider) licence, the council shall reimburse the employee the difference between the cost of the required licence and the cost of a Class C (car) drivers licence. I note here that the cost of the Class C (car) drivers licence is the same as the cost of the Class R (rider) licence. If the cost of the required drivers licence is the same as the cost of a Class C/Class R licence then no reimbursement is required to be made by the council.
- 18 The new Award introduces a provision concerning the accreditation of council employees by the Building Professionals Board at subclause 14(xv). Under this provision, where an employee is required by the council to be accredited by the Building Professionals Board the council will be required to pay the reasonable costs associated with obtaining and/or maintaining the accreditation. The council will also be required to grant paid leave to the employee to attend course requirements associated with such accreditation. Leave is reserved for the parties to apply to vary the new Award (consistent with the principles of the Industrial Relations Commission of New South Wales) in relation to the accreditation of council employees by the Building Professionals Board. Such leave reserve is intended to allow scope during the term of the new Award for the parties to respond to any new and unexpected consequences associated with the requirement for employees to be accredited by the Building Professionals Board. The leave reserved clause is also framed in a way that limits councils' exposure to increased costs by requiring that any such variation to the new Award will need to be consistent with the Commission's principles.
- 19 Significant changes have also been made to the new Award's leaseback vehicle and fixed term contract provisions.

20 There are a number of agreed flexibility changes in the new Award. These include giving councils the ability to change an employee's normal starting point by the giving of reasonable notice provided that the relocation is reasonable in the circumstances and does not unreasonably disadvantage the employee [see clause 14(x) of the new Award]. Additionally, council will now have the ability to alter an employee's commencement and/or finishing times with the provision of reasonable notice where there are genuine operational or safety reasons for doing so [see clause 17A(v) of the new Award].

21 The new Award includes enhanced facilitative provisions to assist employees with managing their work and family responsibilities. The new Award's existing examples of flexible work and leave arrangements have been expanded to include purchased additional annual leave entitlements and arrangements to accommodate breast feeding women. A council will not be allowed to unreasonably withhold their agreement to such flexible work and leave arrangements, provided its operational needs are met. The new Award also includes a 'Phased Retirement' clause [clause 22] that encourages councils to develop and promote flexible work and leave arrangements to enable their employees to better manage their transition into retirement. I consider these new provisions to be reflective of the general approach taken by NSW local government in recent years to better meet the needs of working families.

22 One of the most significant changes in the new Award is the new paid parental leave and related entitlements. In my earlier Statement and Recommendation of 27 September 2010, I described the new paid parental leave provisions as follows:

"I consider this to be an innovative and logical integration of award entitlements and applicable federal legislation. Furthermore, NSW local government would be one of the first industries to build on the new statutory paid parental leave scheme at an award level.

[the provisions]...if implemented, will significantly improve the award's parental leave and related entitlements for both male and female employees when compared to the existing entitlements that exist under the 2007 Award.

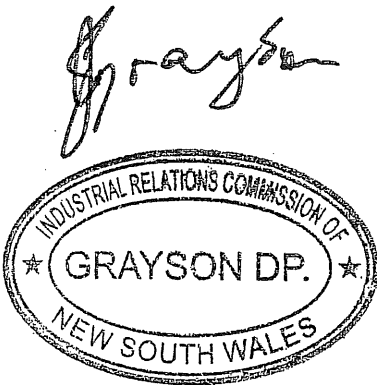
The non-discriminatory aspect of the proposal would for the first time provide parental leave without discriminatory assumptions based on gender and will allow parents of either gender to elect to be the primary carer. Such an approach is consistent with the parties' commitment at clauses 2 and 3 of the award to eliminate discrimination and to ensure flexibility for work and family responsibilities. Such an approach is consistent with the objects under the *Industrial Relations Act 1996* (NSW) and the *Anti-discrimination Act 1977* (NSW) to prevent and eliminate discrimination in the workplace. It is also consistent with the objects of the *Local Government Act 1993* (NSW) at section 344 to eliminate and ensure the absence of discrimination in employment and to promote equal employment opportunity."

- 23 In my opinion, the new paid parental leave and related entitlements strike a fair and reasonable result. They also highlight the capacity of the NSW State industrial relations system to deliver equitable, innovative and productive workplace relations and to facilitate appropriate regulation of employment through awards, without the complexities and limitations that apply to the making and varying of awards under the federal industrial relations system.
- 24 The new Award reflects the broad range of concerns that are specific to local government such as community wage movements, local government reform and productivity improvements. Other factors considered include, but are not limited to, prevailing and forecast economic circumstances, relative and general wage movements and a focus on lower paid employees.
- 25 I congratulate the parties for the constructive approach you have each and all of you adopted and demonstrated during the negotiations.
- 26 The new Award if made will replace and rescind the *Local Government (State) Award 2007* (364 IG 491).

27 Having considered the submissions of the parties and the documents tendered in the proceedings, I am satisfied that the proposed new Award:

- i) Meets all of the legislative requirements of the Industrial Relations Act 1996;
- ii) is consistent with the Commission's wage fixing principles as set out in the State Wage Case 2009;
- iii) has substantial industrial merit; and
- iv) should be approved by the Commission in the public interest.

28 Accordingly, pursuant to ss 10, 11, 23 and 146 of the Act, the Commission makes a new Award to be known as the Local Government (State) Award 2010 in terms of Exhibit 1 in the proceedings. The new Award shall take effect from the first pay period on or after 1 November 2010 and shall remain in force for a nominal period of three years thereafter.



INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: GRAYSON DP

Monday 27 September 2010

Matter No IRC 127 of 2010

Notification under section 130 by New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union of a dispute with the Local Government Association of NSW and the Shires Association of NSW re terms and conditions of award

STATEMENT AND RECOMMENDATION

- 1 On 23 February 2010 the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (USU) notified the Industrial Relations Commission of New South Wales of a dispute regarding the terms and conditions of a new award to succeed the *Local Government (State) Award 2007* (the "2007 Award"). The nominal term of the 2007 Award will expire on 31 October 2010.

- 2 The Commission, as presently constituted, chaired compulsory conferences with the industrial parties to the award on 23 February, 13 April, 17 June, 28 June, 12 July, 29 July and 1 September 2010. Present at these conferences were representatives from the USU, the Development and Environmental Professionals' Association of New South Wales (depa), the Local Government Engineers' Association of NSW (LGEA), the Local Government Association of NSW (LGA) and the Shires Association of NSW (SA).

- 3 I commend the parties on the progress of the award negotiations to date and note the in-principle agreement that has been reached on many of the terms and conditions to be included in the proposed new *Local Government (State) Award 2010* (the "2010 Award").
- 4 A significant matter during the award negotiations that remains in dispute concerns paid maternity leave and related entitlements.
- 5 Under the 2007 Award, eligible female employees receive 9 weeks paid maternity leave on full pay or 18 weeks maternity leave on half pay or a combination of full pay or half pay provided that the leave does not exceed the equivalent of 9 weeks on full pay. The 2007 Award also includes an entitlement to 5 days paid supporting parent leave for an employee who is a supporting parent, which is deducted from the employee's accrued sick leave balance.
- 6 The USU, in its log of claims, has sought that the award entitlement to paid maternity leave be increased to 18 weeks on full pay or 36 weeks on half pay. Depa and the LGEA have sought similar increases in their logs of claims, however depa and the LGEA also seek that the entitlement be on a non-gender specific basis. That is, either male or female employees who are primary carers of children would receive 18 weeks parental leave on full pay under the 2010 Award.
- 7 The LGA, during its annual conference in October 2008, adopted a motion supporting an increase in the award's paid maternity leave provision to 18 weeks on full pay or 36 weeks on half pay. Motions relating to paid maternity leave were also considered during the LGA's annual conference in October 2009 and were referred to the LGA's Executive Committee.

8 A motion to increase the award's paid maternity leave provision to 18 weeks on full pay or 36 weeks on half pay was considered by the SA during its annual conference in June 2009 and the motion was not passed.

9 In May 2009 the federal government announced that it would introduce a federally funded paid parental leave scheme to commence on 1 January 2011. The *Paid Parental Leave Act 2010* (Cth), was passed by federal Parliament on 17 June 2010 and received Royal Assent on 14 July 2010. The federal scheme will provide eligible working parents with 18 weeks of parental leave pay at the National Minimum Wage, currently \$569.90 a week.

10 Under the federal scheme, employers will be responsible for paying parental leave payments to employees through their payroll systems on behalf of the Family Assistance Office. The federal scheme does not require employers to make superannuation contributions and employees will not accrue any additional leave entitlements in respect of parental leave pay under the scheme.

11 The parties have considered a number of maternity/parental leave options for inclusion in the 2010 Award, which to varying degrees have sought to have regard to the respective positions of the parties and/or the soon to commence federal scheme under the *Paid Parental Leave Act 2010*. Notwithstanding these efforts, the parties have been unable to reach agreement.

12 During compulsory conference proceedings before the Commission on 1 September 2010, the LGA and SA offered, on a without prejudice basis, a package of amendments relating to parental leave and related entitlements (the "offer") to be included in the 2010 Award. The offer includes:

- the introduction of 18 weeks parental leave make-up pay for male and female employees who are the primary carer of the child;

- the ability for eligible employee's to elect to receive 9 weeks maternity leave under the existing 2007 Award provisions in lieu of receiving 18 weeks parental leave make-up pay;
- supporting parent leave doubled from 5 to 10 days;
- the introduction of 4 weeks paid adoption leave;
- the introduction of 2 days paid pre-adoption leave.

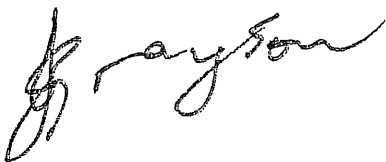
13 The offer incorporates parental leave and related entitlements under Chapter 2, Part 2-2, Division 5 of the *Fair Work Act 2009* (Cth). This Chapter of the *Fair Work Act 2009* applies to all employers, including NSW councils (notwithstanding that NSW councils remain part of the NSW State industrial relations system). The offer also incorporates the *Paid Parental Leave Act 2010* (Cth). As a consequence, eligible employees who might otherwise only receive the federal minimum wage under the *Paid Parental leave Act 2010* will instead receive their ordinary rate of pay (inclusive of paid leave instalments), leave accruals and superannuation payments. I consider this to be an innovative and logical integration of award entitlements and applicable federal legislation. Furthermore, NSW local government would be one of the first industries to build on the new statutory paid parental leave scheme at an award level.

14 The offer, if implemented, will significantly improve the award's parental leave and related entitlements for both male and female employees when compared to the entitlements that exist under the 2007 Award.

15 The non-discriminatory aspect of the proposal would for the first time provide parental leave without discriminatory assumptions based on gender and will allow parents of either gender to elect to be the primary carer. Such an approach is consistent with the parties' commitment at clauses 2 and 3 of the award to eliminate gender discrimination and to ensure flexibility for work and family responsibilities. Such an approach is consistent with the

objects of both the *Industrial Relations Act 1996* and the *Anti-Discrimination Act 1977* to prevent and eliminate discrimination in the workplace. It is also consistent with the objects of the *Local Government Act 1993* at section 344 to eliminate and ensure the absence of discrimination in employment and to promote equal employment opportunity.

- 16 The offer includes an option that allows eligible employees to elect to receive paid maternity leave under the 2007 Award provisions in lieu of receiving 18 weeks parental leave make-up pay. This ensures that no employee will be worse off relative to existing award entitlements.
- 17 The offer, if implemented, would represent an overall cost increase to councils, however, there is a genuine expectation that some of the additional cost will be offset by a reduction in costs associated with attracting and retaining employees who might otherwise be lost to the industry.
- 18 The offer represents a practical and sensible compromise, and moreover I see it as a good outcome.
- 19 The Commission strongly recommends that the offer made by the LGA and SA in respect of paid parental leave and related entitlements be accepted.



Hon. John Grayson
Deputy President