

From: Ian Robertson

Sent: Friday, 4 June 2021 10:17 AM

To: LBarnes@begavalley.nsw.gov.au

Cc: ksmerdon@begavalley.nsw.gov.au; mirvin@begavalley.nsw.gov.au

Subject: Your proposal to "pause" progression in the salary system as required by the Award

Good morning Leanne, Kaleigh and Mark,

I have been provided with details of your proposal to "pause" progression in your salary system. I understand that the reasons for doing so are based upon financial considerations and that you gain some comfort from references to a discretion you say exists in your *Procedure 6.04.10 Salary Administration* for the GM to override progression based upon clause 7 Salary System of the Award will stop

In your document titled *Talking points* on the topic "*Draft Operational Plan and Budget 2021-2022*", you include the following question and answer:

Q. *Why has the annual salary increment been paused?*

A. *Employee expenses are one of our largest costs. While we needed to find savings in the budget, the priority was to maintain our current staffing level and continue to deliver services for our community.*

Staff will receive the annual award increase of 2%.

Clause 7 Salary System is prescriptive about what a salary system is and how it operates, and:

- 7(iv) provides the two methods of progression, (iv)(a) *the acquisition and use of skills*; or at (iv)(b) *employee performance, provided that progression based upon the acquisition and use of skills is also available.*
- 7(v) provides *progression based on the achievement of performance objectives if skills based progression is not reasonably available... set in consultation with the employee(s).*
- 7(vi) provides for skills for progression to be set "*at the annual assessment*",
- 7(vii) provides assessment "*for progression through the salary range for their position at least annually, or when required to use the skills etc*
- 7(viii) excuses the obligation to conduct an annual assessment for employees maxed out, although the employee can still request one.

It's implicit in these provisions that progression is potentially available annually subject to the requirements in the clause. There is an explicit obligation in 7(vii) if an employee starts using the new skills.

There is no provision with general application providing the discretion you say you need to "pause" progression, and there is certainly no unilateral right to do so.

And it really goes without saying that your *Procedure 6.04.10 Salary Administration* does not override your obligations under the Award - obligations that allow both employees and industrial organisations like mine to prosecute you for breaches.

How do you say you can satisfy these award obligations? Have you sought advice? If you haven't, I encourage you to do so. Having been responsible for the industrial activities of depa since May 1984, and having negotiated the 1992 Local Government State Award, and subsequent awards, I would be absolutely astonished if you were able to obtain any advice from LGNSW inconsistent with these two fundamental principles from clause 7:

- Employees shall be assessed for progression through the salary range for their position at least annually or when they are required to use skills that would entitle them to progress in the salary system, unless they've topped out neither they or council want to do an annual assessment;
- Progression through the salary system to be based upon (a) the acquisition and use of skills; or (b) employee performance, provided that progression beyond the award entry level based upon the acquisition and use of skills is also available.

Cumberland City Council last year for allegedly COVID-related financial reasons tried to deny progression under the State Award for employees who would otherwise be entitled to receive it. In the end, they recognised that the Award provided individual rights for employees and that the only way they could introduce arrangements where employees would not get progression on their anniversary or at the annual review, was with the individual employee's consent. You are welcome to try this approach.

There is also an infrequently used section of the Industrial Relations Act that allows an employer to argue an incapacity to pay. It's infrequently used because the analysis of the employer's finances is often regarded by the employer as too intrusive... I would be surprised if there has been a capacity to pay argument in the last twenty years.

Happy to discuss.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au