

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: MURPHY C

16 March 2020

Matter No IRC 2019/00258837

Notification under section 130 by Local Government NSW of a dispute with the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union and Others re negotiations for a new Award to cover local government in New South Wales

RECOMMENDATION

- 1 On 19 August 2019, Local Government NSW (“LGNSW”) notified the Industrial Relations Commission of New South Wales of a dispute pursuant to s130 of the *Industrial Relations Act 1996* (NSW) regarding the terms and conditions of a new award to succeed the *Local Government (State) Award 2017* (the “Award”). The nominal term of the Award expires on 30 June 2020.
- 2 The other industrial parties to the dispute proceedings are the Development and Environmental Professionals’ Association (“depa”), the Local Government Engineers’ Association of NSW (“LGEA”), the Nurses and Midwives Association of NSW (“Nurses Association”), and the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (“USU”).
- 3 The proceedings were listed for conciliation on 16 March 2020 at which time the parties also made submissions about progress of the negotiations. One issue advanced by depa in conciliation was a proposed new clause that

acknowledged an employer's responsibility to provide adequate staff and other resources to enable employees to carry out their duties and functions in working hours that were not unreasonable.

- 4 In advancing the claim Mr Robertson of depa submitted that the proposed clause would be entirely consistent with a range of legislative, contractual and common law duties. In making this submission, Mr Robertson referred the Commission to the following:

- Clause 6.2.1 of the *Office of Local Government Standard Contract of Employment: General Managers of Local Councils in New South Wales* – which provides that Council:

“will provide adequate resources to enable the employee to carry out the duties and functions ...”

- Section 8A(i) of the *Local Government Act 1993* (NSW) – which provides that:

“Council should be responsible employers and provide a consultative and supportive working environment for staff”

- Section 403(1) and (2) of the *Local Government Act 1993* (NSW) – which mandates that:

(1) “A Council must have a long-term strategy (called its ‘resourcing strategy’) for the provision of the resources required to implement the strategies established by the community strategic plan that Council is responsible for.

(2) The resourcing strategy is to include long-term financial planning, workforce management planning and asset management planning.”

5 Mr Robertson also asserted that there existed a common law obligation on employers to provide proper resourcing in reasonable hours. In this regard Mr Robertson had sought and obtained an opinion from legal counsel on the obligations of employers to provide suitable workplace resourcing.

6 The opinion that was relied upon by Mr Robertson was tendered and made available to the parties. Relevantly, the opinion cited both case law and legislative obligations and concluded:

“In summary, an employer is required to ensure that the workplace is safe. It faces liability under contract, tort and statute if it does not do so. Fatigue can clearly be a cause of injury and lead to a breach of those obligations. Fatigue can clearly be caused by inadequate resourcing. An employer would face considerable risk if it failed to provide sufficient resources to ensure that its employees are able to carry out the duties and functions in reasonable working hours and that failure caused a risk of injury.”

7 The Commission is of the view that it is appropriate for the Award to contain a provision dealing with adequate resourcing and goes hand in hand with the discretion afforded to employers to direct employees to carry out duties within the limits of their skill, competence and training.

8 The Commission notes that there is a substantial history of the Award promoting multiskilling and providing employers with more flexibility to deploy workers in such a way as to make the most of their skill, competence and training. In this regard it is both sensible and prudent that the Award should note that adequate resources are required to eliminate any impediments to multi-skilling and broadening the range of tasks that a worker may be required to perform.

- 9 The Commission recommends to the parties a variation that would insert into the Award a new clause 9 to the following effect:

9 RESOURCING AND DIRECTING EMPLOYEES

- (i) The employer shall provide adequate staff and other resources that enable employees to carry out their duties and functions over the course of working hours that are not unreasonable and support the implementation of the employer's community strategic plan.
- (ii) The employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training.

John Murphy
Commissioner