



SIGNAL SEVEN

February 18 2019

Protected Action Ballot Order Granted by Fair Work Commission

As widely reported last week. The UFU made application to the Fair Work Commission for a Protected Action Ballot Order (PABO). The Fair Work Commission granted the application today. A copy of the Order of the Fair Work Commission is attached. The Commission will publish its reasons for decision on 19 February.

Proceedings in the Fair Work Commission, and related discussions, took place over the course of Thursday and Friday last week. Proceedings concluded at just before 16:50 hrs on Friday afternoon. During proceedings, the UFU withdrew 2 of the bans listed in our application, and made some minor amendments to 4 of the bans.

The ESA argued in relation to a number of the bans that they had “exceptional circumstances” so as to warrant a notice period of 7 days before those bans were implemented, instead of the standard 3 days notice under the Fair Work Act. This argument from the ESA failed in relation to all but one ban (no. 12 in the attached order) which concerns directions to transfer between work locations.

Unfortunately, there is an error in 2 of the bans, and we have today made application to vary the order. We anticipate that this will be dealt with very quickly, and an amended order will be distributed after that.

The next steps are:

- the UFU is required to submit our list of members to the Australian Electoral Commission by 4 pm Tuesday 19 February. IF YOU HAVENT PROVIDED US WITH YOUR UP TO DATE ADDRESS PLEASE DO SO IMMEDIATELY BY SENDING A TEXT TO 0408 296 801.
- The AEC will develop a timeframe for the conduct of the ballot.
- A 50% turn out for the vote is required, with 50% of those voting needing to vote yes. If you have not updated your address it will weaken the turnout.
- Following the vote, 3 days notice of any industrial action is required, and 7 days notice of Ban 12 is required.

Some interesting arguments were put by the ACT Government...

The parties to the proceedings (UFU and ACT Government) were required to put their arguments in writing by 9 am on 15 February. The ACT Government filed their material at 9.01 am in an email from Mark Brown. In paragraph 4 of their arguments, the following statement appears:

“4. The Respondent seeks extended notice periods for a number of the proposed actions, including items 1, 2, 15, 16 and 17. The Respondent seeks 7 days’ notice for these actions on the basis that operational pressures arising in the current environment have resulted in firefighters being stationed across Australia to respond to emergency incidents. Our current response is to fires in Tasmania and floods in Queensland.”

Make sure you read that carefully: It *looks like* it is saying that there are career firefighters from ACTFR in Queensland and Tasmania, but *it doesn't actually say that*. It was not until the lawyers for the union

challenged this statement by asserting that no career firefighters had been sent interstate, that the lawyers for the respondent conceded that no one covered by the agreement had been deployed interstate.

In a statutory declaration filed by Mark Brown later that day, the following appears:

“5. We have already seen recent significant fires in Tasmania, Victoria and northern NSW and there have been indications that the current fire conditions in the ACT are the worst since 2003, when the ACT experienced 4 fatalities and over 500 homes destroyed during the major fire emergency on 18 January 2003. For the 2018-19 fire season, ACT Rural Fire Service ("ACTRFS") has already sent, to my knowledge, more than 40 personnel to Victoria and Tasmania to assist with major fires. ACTF&R does not determine how many, if any, ACTRFS employees are deployed in that way. While ACTF&R firefighters have not been sent interstate to date, we have identified officers to be ready for deployment if required.

6. While the ACTRFS officers are not covered by the terms of the ACT Fire & Rescue Enterprise Agreement 2013-2017, the unavailability of these deployed officers to assist with emergency incidents in the ACT directly affects the workload of ACTF&R.”

When you piece the above together, Mark Brown is arguing that sending RFS “personnel” interstate directly affects the workload of ACTFR. Note that the ESA Website on 14 February stated:

“ACT Rural Fire Service (ACTRFS) will deploy ten firefighters to assist Emergency Management Victoria with bushfires burning near the township of Buchan.”

This is to be contrasted to what was reported in the Canberra Times on January 27:

“ACT Fire and Rescue is proposing to halve the level of additional crews it is required to stand up on days with a very high fire danger rating, in a move that has been slammed by the United Firefighters Union.”

“But Emergency Services Agency commissioner Dominic Lane stressed that ACT Fire and Rescue was only a small part of fire authorities' overall response to bushfires, with the Rural Fire Service taking primary responsibility. He also said the planned changes would have no impact on public safety”

So the Chief Officer ACTFR says that sending some RFS crews interstate directly affects ACTFR, but the ESA Commissioner says that halving the ACTFR resources stood up on days of very high fire danger has no impact on public safety. It's interesting to contrast statements made under oath with statements made to the newspaper! What was that thing the ESA said about the Strategic Reform Agenda? Cohesive Operations, Collaborative Management Team, Unified Executive?

Goodbye Steve, and Hello Steve...

After 35 years as a firefighter and senior firefighter, UFU ACT Branch Vice President Steve Geerdink has resigned from ACT Fire and Rescue. Steve has been an important part of our Enterprise Bargaining negotiating team since April 2017. Steve generously offered to continue in this work for no payment. The BCOM considered this, and we couldn't accept the idea that Steve might work for us and not be covered by workers compensation and the like. For this reason, the BCOM decided to appoint Steve as a temporary part time organiser in the short term.

Steve will remain an important part of our negotiating and campaign team. Good onya Steve!

Authorised by Greg McConville, Secretary, UFU, A.C.T. Branch.

**This is an official Union document to be shared between members only
Read out at muster and pin on notice boards.**



ORDER

Fair Work Act 2009
s.437—Protected action

United Firefighters' Union of Australia

v

**The Head of Service of the ACT Public Service on behalf of Australian
Capital Territory T/A ACT Fire and Rescue**
(B2019/110)

COMMISSIONER WILSON

MELBOURNE, 18 FEBRUARY 2019

Proposed protected action ballot of employees of ACT Fire and Rescue.

Pursuant to s.443 of the *Fair Work Act 2009* (the Act) the Fair Work Commission orders:

1. PROTECTED ACTION BALLOT TO BE HELD

The United Firefighters' Union of Australia (UFU) is to hold a protected action ballot of employees of Australian Capital Territory T/A ACT Fire and Rescue (ACT Fire and Rescue) described in clause 3 of this order.

2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT

The ballot is to be conducted by the Australian Electoral Commission.

3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTTED

In accordance with s.437(5) of the Act, the employees to be balloted are Firefighters 1st Class, Firefighters 2nd Class, Firefighters 3rd Class, Senior Firefighters, Station Officers, Commanders and Superintendents who are represented by the United Firefighters Union, who are employed by ACT Fire and Rescue and who will be covered by the proposed enterprise agreement.

4. DATE BY WHICH BALLOT CLOSES

The date by which voting in the protected action ballot is to close is 20 working days from the date of this order.

5. QUESTIONS

The question(s) to be put to voters in the ballot are:

“In support of reaching an enterprise agreement with your employer, do you do you support the taking of protected industrial action which will involve one or more of the following:

1. Stoppages, except responding to fire calls, which shall include emergency incidents, for up to two hours to communicate and display union badging and industrial campaign material in work locations and to the public and to wear industrial campaign t-shirts, badges and stickers in association with that activity;
2. Stoppages, except responding to fire calls, which shall include emergency incidents, for up to one hour for the purpose of making public and media statements in relation to the employer's bargaining position or employees' experiences as firefighters employed by the employer;
3. A ban on complying with a direction to remove union badging or industrial material displayed on, in or around work locations, appliances or UFU members;
4. Only engaging on behalf of the employer in communications with the media for the immediate purpose of public health or safety;
5. A ban on wearing uniform shirts, uniform jumpers or uniform jackets;
6. Only attending meetings at which any of the ESA Commissioner, Chief Officer, Executive Officer, or ESA Directors, attend if the purpose of the meeting is notified in advance as about operational incidents, operational de-briefing, training, securing public health or occupational health and safety, or enterprise agreement bargaining;
7. Refusing to report or record the code or type of false alarms triggered at protected premises other than reporting via the radio where faults require maintenance;
8. A ban on creating a record of any employee's participation in protected industrial action;
9. A ban on conducting any process relating to employee misconduct or discipline;
10. A ban on assisting in the preparation of ministerial reports;
11. Responding to emails via the employers email system with the caps lock function turned on (including reports and attached documents);
12. A refusal to comply with a direction to transfer between work locations until and unless notified within fourteen (14) days of the proposed transfer;
13. Refusing to act up or perform higher duties above an employee's substantive rank in "on shift" positions;
14. A ban on saluting, including standing when a senior officer enters the room;

15. Stoppages for the purpose of attending the ACT Legislative Assembly on sitting days, except to respond to fire calls, which shall include emergency incidents,;
16. A ban on appliances leaving a station, for the purpose of training, if such a movement would result in a response time of greater than ten minutes as estimated using the Dynamic Coverage Tool;
17. A ban on cross-crewing of appliances leaving a station, if such a movement would result in a response time of greater than ten minutes for a pumper as estimated using the Dynamic Coverage Tool;
18. A ban on the processing of accounts, including a ban on billing all external agencies, entities or persons for any work performed or undertaken;
19. Employees start and finish work in accordance with the rostered hours as set out in the Enterprise Agreement, except in the case of emergency fire calls, which shall include emergency incidents;
20. A ban on signing receipts for the delivery of goods; and
21. A ban on any restriction of the approval for leave if the restriction is not in accordance with the Enterprise Agreement.

YES []

NO []”

6. NOTICE REQUIREMENTS FOR INDUSTRIAL ACTION

In accordance with section 443(5) of the Act, before a person engages in protected industrial action as set out at question element 12 above the UFU will provide ACT Fire and Rescue with written notice of the proposed action in accordance with s.414 of the Act, with the period of notice to be at least 7 days. All other remaining question elements will require 3 working days written notice.



COMMISSIONER

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