

CITATION: *The Queensland Public Service Union of Employees AND
Queensland Fire and Rescue - Senior Officers Union of Employees
(B/2009/17) - Decision*
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 274A - power to make declarations

**The Queensland Public Service Union of Employees AND
Queensland Fire and Rescue - Senior Officers Union of Employees (B/2009/17)**

DEPUTY PRESIDENT SWAN
COMMISSIONER ASBURY
COMMISSIONER THOMPSON

27 August 2010

DECISION

[1] By way of amended application (B/2009/17), The Queensland Public Sector Union of Employees (QPSU) seeks the following:

- "(a) A declaration that the Queensland Fire and Rescue - Senior Officers Union of Employees cannot enrol into its membership and represent under the Industrial Relations Act 1999 the industrial interests of those persons who are employed in the Rural Fire Division of the Queensland Fire and Rescue Service;
- (b) A direction that the Queensland Fire and Rescue - Senior Officers Union of Employees, its officers, members, servants or agents refrain from enrolling into the membership of the Queensland Fire and Rescue - Senior Officers Union of Employees, those persons who are employed in the Rural Fire Division of the Queensland Fire and Rescue Service;
- (c) A direction that the Queensland Fire and Rescue - Senior Officers Union of Employees remove from its membership any person who is employed in the Rural Fire Division of the Queensland Fire and Rescue Service."

This application is opposed by the Queensland Fire and Rescue - Senior Officers Union of Employees (SOU).

History of the Application

[2] In 2009, the parties sought, through the Full Bench, a Case Stated to the Industrial Court of Queensland (the Industrial Court). The question posed by the Full Bench to the Industrial Court was as follows:

"Whether the Queensland Industrial Relations Commission has power under sections 273(h) and/or 274(A) to make the orders and decisions sought in the amended application No. B17 of 2009".

[3] In the preamble to the decision of the Industrial Court (C/2009/31) the President stated:

"The parties subsequently developed a Statement of Agreed Facts. The Full Bench is content to have the Question answered on the basis of the Statement of Agreed Facts. The Agreement, I should add, was entered into after an amendment of the Application for Declaratory Relief to remove any suggestion that a representation order was being sought."

[4] For the purpose of providing an appropriate background to this matter, it is helpful to have the "Statement of Agreed Facts" as put to the Industrial Court recorded in this decision. That Statement is as follows:

1. The Applicant ('QPSU') asserts that it is entitled under its registered rules and list of callings to represent the industrial interests under the Act of all persons engaged as officers in the employment of the Queensland Fire and Rescue Service ('QFRS').
2. The Applicant has utilised the asserted entitlement referred to in paragraph 1 in the making of successive certified agreements registered under the Act to cover such employees.
3. The Respondent (Queensland Fire and Rescue - Senior Officers Union of Employees ('SOU')) by correspondence dated 25 November 2008 to the Deputy Commissioner of the QFRS, asserted that it 'has, within the scope of its eligibility rules (Rule 3.1), the ability to admit as members any and all Senior Officers from within the Queensland Fire and Rescue Service'.

4. The SOU also asserted in the same correspondence that:

'Under Chapter 12 "Industrial Organisations" - Part 10 "Membership" - of the *Industrial Relations Act 1999* (Qld), the SOU must, on application, admit such persons to membership, if they are eligible to become a member.

It is also important to note that, in accordance with the eligibility rules of the SOU, Senior Officers from all three operational streams of the QFRS have applied for - and been admitted to - membership of the SOU. This includes Senior Officers from Urban Operations, Rural Operations and Scientific Operations.'

5. In light of paragraphs 3 and 4 above, the SOU has asserted that it is the legitimate and lawful bargaining agent for those Senior Officers who have applied and been admitted as members of the SOU.
6. The Applicant asserts that the Respondent has not, prior to the claim referred to in paragraphs 3, 4 and 5 above, purported to represent the interests of Senior Officers engaged in Rural fire operations, and that it is not entitled in accordance with its eligibility rule to do so. The Respondent denies this.
7. The Applicant asserts that the SOU cannot admit into membership, nor represent the industrial interests of senior fire officers engaged in work described 'Rural fire operations' and is not lawfully entitled to represent the industrial interests of such senior officers now or in the future. If the SOU is so entitled, it will do so in competition with the Applicant, in the sense that both unions will have overlapping coverage to that extent. If it cannot do so it is acting *ultra vires* and outside the terms of its registered rules.
8. The Respondent asserts that it has, since its registration as an industrial union on 22 June 1990, represented the interests of all senior fire officers including those senior fire officers in the 'rural fire operations'. Further the Respondent asserts it has been involved in, represented and been a party to, the making of successive certified agreements that cover senior fire officers.
9. The Respondent asserts that in response to its correspondence to the QFRS dated 25 November 2008, the QFRS responded on 19 January 2009 confirming that 'As the Queensland Fire and Rescue Senior Officers Union of Employees ('QFRSOU') is a party to the relevant industrial instruments which apply to senior officers within Urban, Rural and Scientific QFRS operations, the QFRSOU will be consulted with respect to any industrial issues which may impact upon Senior Officers'.
10. This disagreement has manifested itself in competing contradictory assertions by the Applicant and the Respondent to each other and to the employer of the relevant employees as to the respective entitlement of each union to represent the industrial interests of the affected employees during the forthcoming round of enterprise agreement negotiations.
11. The Applicant has lodged an Amended Application in the Commission, and has invoked section 273(h) and section 274A of the Act and is now seeking:
- a) a declaration as set out in paragraph 2(a) of the Amended Application that is 'that the SOU cannot enrol into its membership and represent under the Act the industrial interest of those persons who are employed in the Rural Fire Division of QFRS';
 - b) a direction set out in paragraph 2(b) of the Amended Application that is a direction that 'the SOU, its officers, members, servants or agents to refrain from enrolling into the membership of the SOU, those persons who are employed in the Rural Fire Division of the QFRS';
 - c) a direction set out in paragraph 2(c) of the Amended Application that 'the SOU to remove from its membership any person who is employed in the Rural Fire Division of the QFRS'.

Against this background, the question stated to the Court for its opinion requires the Court to determine if it has power or jurisdiction under section 273(h) and/or section 274A to make the orders, decisions, declarations and directions sought in the Amended Application.

12. The stated case does not require the Court to determine any aspect of the question as to whether such declarations, orders, decisions or directions should be made as a matter of merit having regard to the case before the Commission, but is confined to the question as to whether the Commission has the power or jurisdiction under one or other of the named sections of the Act to make the orders, decisions, declarations and directions sought in the Amended Application, or any of them."

[5] The decision of the Industrial Court on the case stated, *inter alia*, was as follows:

"If the Full Bench concludes that the issues about right to enrol and represent, which sparked the Application for a Declaration, are or may be a cause, or contributory cause of an industrial action or industrial dispute, the power at s. 274A of the Act may be exercised to grant declaratory relief about the Respondent's right to enrol and represent employees in the Rural Fire Division of QFRSO. However, the Applicant and the Respondent have not agreed that the issues between them are or may be a cause, or contributory cause of an industrial action or industrial dispute. The facts which are agreed do not permit such a conclusion to be reached by inference. In any event, s. 282 of the Act requires the Court to give an opinion on a question of law: not to give an opinion on a question of fact. For the same reasons, I abstain from determining whether there is an "industrial matter" by way of a demarcation dispute. On that issue, I should add, it is apparent from the submissions developed by the parties that there is not agreement as to the facts on this issue. The Full Bench may have to hear evidence.

The Applicant accepts that the Court cannot presently assert that the Act arms the Full Bench with power to issue a direction: (a) that the Respondent, its officers, members, servants or agents refrain from enrolling into membership of the Respondent, those persons who are employed in the Rural Fire Service of the QFRSO; or (b) that the Respondent remove from its membership any person who is employed in the Rural Fire Division of the QFRSO. Should a declaration about the Respondent's right to enrol and represent be granted (and I stress that this Court has not been taken to the merits of the Application) and be favourable to the Applicant, there is potential for events to take a course which may trigger powers under the Act which may support the directions sought. However, that is all in the future. There is no basis for assuming that the Respondent will fail on the merits nor for assuming that if unsuccessful, will not abide by the declaration. The Question asked of the Court should be answered:

- (a) The Commission has power under s. 274A of the Act to make the declarations sought in Application Matter No. B/2009/17; and
- (b) The Commission does not presently have power to issue the directions sought in Application Matter No. B/2009/17."

Applicant's Submissions

- [6] The Applicant submits that the matter "has significant practical implications for the proper and orderly administration of industrial matters under the IR Act concerning senior fire officers, and concerning the entitlements of various industrial parties to be heard and represented in relation to the negotiation of certified agreements.". [Written Submissions on behalf of the Applicant - point 2].
- [7] The application is confined to the issue of whether a person is or is not entitled to become a member of the Respondent by reference to whether the person is, at the point of application for membership, a person to whom the Rules, properly interpreted, apply. It is not a matter as to whether, on merit, the Respondent should be entitled to represent particular groups.
- [8] In its determination of the matter, the history and the context of the Respondent's eligibility rule should be considered.
- [9] The applicable eligibility rule of the Respondent is as follows:
 "The Association shall be composed of:
 - (a) all officers above the rank of Station Officer first class employed under the Fire Services Act 1989, the Fire Brigade Act 1964 or the Fire Safety Act 1974, or under any Act amending any of these Acts or under any Act in substitution for any of these Acts; and
 - (b) all persons who being employed by the Minister of the Crown responsible for the administration of the Fire Brigade Act 1964 as amended at a salary which is more than the salary of the Station Officer First Class employed in or in connection with the inspection of fire services, operations, appliance or equipment or in connection with training of other persons to prevent, suppress or extinguish fires or to discharge the duties of a Fire Safety Officer under the Fire Safety Act 1974 as amended, or employed under any Act in substitution for any of these Acts;
 - (c) elected officers of the Association, Life Members and Associate Members who are duly proposed and accepted by the Association".
- [10] The Respondent was registered as an Industrial Union on 22 June 1990. The Respondent emerged as an organisation as a consequence of the amalgamation of the Queensland Country Fire Brigade Senior Officers Association Union of Employees and the Fire Brigade's Executive Officers Union of Employees, Queensland.

- [11] The Applicant states that upon examination of the eligibility rules of those two organisations, it became clear that an entitlement related to persons of senior rank who were employed either by the Metropolitan Fire Brigades Board Brisbane, or a Fire Brigade Board elsewhere in Queensland.
- [12] Prior to the creation of the Respondent on 22 June 1990, the employment of such persons was under the *Fire Brigades Act 1964* or the *Fire Safety Act 1974*.
- [13] In the rural fire service, officers were employed by the Rural Fires Board which was constituted in accordance with the *Rural Fire Act 1946*.
- [14] At the time of the creation of the Respondent, there was no move to expand the Respondent's eligibility rule to cover the separate and distinct group of fire fighting employees under the Rural Fires Board.
- [15] Any reference in the Respondent's eligibility rule to the *Fire Services Act 1989* is unnecessary as the operative provisions of that Act were never proclaimed. No employee was employed under that Act. Importantly, as well, is that notwithstanding the reference to the *Fire Brigades Act 1964* and the *Fire Services Act 1989*, there is no mention of the *Rural Fire Act 1946*.
- [16] The essence of the Applicant's submissions is that "references in those rules to persons employed under particular named Acts or "under any Act amending any of these Acts or under any Act in substitution for any of these Acts" cannot be read as permitting an open ended "blank cheque" enlargement of the eligibility of the Respondent merely by reference to any changes whatsoever to the scope and coverage of the legislation there named." [Applicant's submissions - point 17]
- [17] The Applicant claims that it has been entirely the choice of the Respondent to only represent the interests of senior officers solely engaged in urban fire fighting services, thereby by implication excluding senior or any officers engaged in rural services, "although there appeared to be no reason why they could not seek to include such rural officers directly, by reference to the then existing legislation under which rural officers were employed at that time". [Applicant's submissions - point 18]
- [18] The Applicant states that "the correct interpretation of those parts of the rules of the Respondent that refer to employment under or in accordance with legislation which may be made subsequent to the creation of the Respondent, is a reference to persons employed in the same areas of work as are or were the subject of the original nominated legislation. Those parts of the rule that refer to subsequent legislation do not, and were not intended to, allow for the coincidental enlargement of the eligibility rules of the organisation by granting coverage over areas of work which were never contemplated by the rules of the organisation at the time of their creation, and were in fact expressly, or by necessary implication, excluded by those rules." [Applicant's submissions - point 25]
- [19] The Applicant asserts that there is still a significant difference and demarcation between urban operations and rural operations of the QFRS and that is sufficient to be able to maintain a clear identification of those senior officers:
- (a) who are engaged in rural service, on the one hand; and
 - (b) who are engaged in urban work which comprises the work formerly done by the Fire Brigade Boards which were the specific subject of coverage by the two predecessor organisations of the Respondent, on the other hand.
- [20] In its view, the Respondent has had sufficient time in which to make application to the Commission to have the terms of its rules altered in order to expressly extend them to cover areas of work which were not able to have been covered at the time of the creation of the Respondent and now cannot be covered.

Respondent's submissions

- [21] The Respondent states, that as a result of the decision of the Industrial Court, the issue for determination is limited to whether the Applicant can prove that the Respondent cannot:
- (a) enrol into its membership; and
 - (b) represent the interests of those persons who are employed as Senior Officers in the rural operational stream of the QFRS.
- [22] Senior Officer included Inspector, Superintendent or Chief Superintendent employed by the QFRS. It is to these ranks that the application relates.

[23] On the question of Membership and Representation, the Respondent states that the persons who fall within clause 3 of the Queensland Fire and Rescue - Senior Officers Union of Employees Rules (Rules) are eligible to be represented by the Respondent.

[24] Clause 3 of the Rules is as follows:

"3. Membership

3.1 Members

The Association shall be composed of:

- (a) all officers above the rank of Station Officer 1st Class employed under the Fire Services Act of 1989, the Fire Brigade Act 1964, or the Fire Safety Act 1974, or under any Act amending any of these Acts or under any Act in substitution for any of these Acts; and
- (b) all persons who being employed by the Minister of the Crown responsible for the administration of the Fire Brigade Act 1964 as amended at a salary which is more than the salary of a Station Officer 1st Class employed in or in connection with the inspection of fire services, operations, appliances or equipment or in connection with training of other persons to prevent, suppress or extinguish fires or to discharge the duties of a Fire Safety Officer under the Fire Safety Act 1974 as amended, or employed under any Act in substitution for any of these Acts; and
- (c) elected offices of the Association, Life Members and Associate members who are duly proposed and accepted by the Association."

[25] The Respondent's List of Callings reads as follows:

"All officers above the rank of Station Officer 1st Class and in particular:

Chief Officer

Deputy Chief Officer

Assistant Chief Officer

Superintendent

District Officer

Communications Officer

and/or any calling or callings which amend or replace any of the above callings."

[26] In the case of Uniform Officers, "that section of the callings of, Inspectors, Training Officers, Fire Service Officers and Technical Officers remunerated at a salary more than the salary of a Station Officer 1st Class, and in particular the callings of:

Chief Inspector

Assistant Chief Inspectors

Regional Inspectors

Assistant Regional Inspectors

Senior State Fire Services Officers

State Fire Services Officers

Appliance and Equipment Officer

Chief Training Officer

Senior Training Officer

Training Development Officer

Training Officer

and/or any calling or callings which amend or replace any of the above callings."

- [27] From the above, it can be seen that the Rules refer specifically to the rank and the legislation under which the person is employed but do not distinguish between the different operational streams.
- [28] The current Certified Agreement (*Queensland Fire and Rescue Service Certified Agreement 2009*) pertaining to the parties provides for specific terms and conditions for Senior Officers and does not differentiate between operational streams of Senior Officers. All Senior Officers are paid the same and enjoy the same terms and conditions of employment.
- [29] The Respondent says that all employees who hold the rank of Inspector, Superintendent and Chief Superintendent are Senior Officers of the QFRS and can be members of the Respondent and can be represented by the Respondent.
- [30] The Respondent says that when one considers the legislative changes affecting the Queensland Fire Service; the amalgamation of the fire service into the QFRS; the industrial changes affecting QFRS since 1990; and the role, responsibilities and functions and duties of all Senior Officers in the QFRS, it follows that the officers in question can be members of the Respondent.
- [31] The essence of the Respondent's submissions is that upon the formation of the amalgamated fire service, QFRS, the role that the employees performed prior to July 1990 was not the same as the operational role they had previously performed.
- [32] The consequence of the legislative changes was that the QFRS no longer had separate brigades and rural and urban fire officers were collectively employed by the Commissioner of Fire Service, of the QFRS. All Senior Officers became operational officers employed by the same entity; and covered by the same legislative instrument.

Witness Evidence

- [33] Applicant's Evidence

Witness evidence was given by:

Michael Thomas - Organiser, QPSU;
 Bryan Cifuentes - Area Director, Rural Operations, Cairns QFRS; and
 Warren Edwards - Area Director, Rural Operations, Maryborough QFRS.

- [34] Mr Thomas' evidence is as follows:

- Mr Thomas is an Organiser with the QPSU.
- Mr Thomas has been involved in enterprise bargaining negotiations around this industry since 2001.
- During the negotiations the interests of all ranks in the Rural Fire Service have been undertaken by a single working party with the assistance of the QPSU. The SOU (then the Queensland Fire Service Senior Officers' Association, Union of Employees (QFSSOA)) did not attend those working party meetings and they did not purport to represent the issues of any level of officer of the Rural Fire Service in those negotiations.
- In all negotiations the QPSU ensured that any relevant, beneficial conditions won by either the United Firefighters' Union of Employees, Queensland (UFU) or the SOU in the Urban Division would flow onto the appropriate rural officers.
- For the current collective agreement, the SOU is for the first time attending those meetings.
- There has been significant concern experienced by the QPSU and its members in the course of its enterprise bargaining negotiations with the employer. The 2006 enterprise bargaining negotiations highlighted the disparity between what each party to these proceedings was seeking. Within this context, Mr Thomas stated that:

"Industrially, there were two sets of negotiations". [Transcript 6-35]

- The QPSU has genuine concerns around the prospect of further enterprise bargaining negotiations with the employer while this issue remains unresolved.
- The SOU sought to amend its rules to cover senior officers in the Rural Fire Service in matter RIO/2007/19. QPSU opposed the rule change application.
- The Rural Fire Service was included in the Queensland Fire and Rescue Service Interim Award - State 2003 after negotiations had been undertaken in the 2003 collective agreement. An agreement was reached between the Department and the QPSU that the Rural Fire Service be covered by an Award and that the Award be the existing one rather than have to create a new award. The SOU were not involved in those discussions and were not involved in the application to amend the award in 2007.

The remainder of Mr Thomas' affidavit traversed the history of the various industrial instruments.

[35] Mr Cifuentes' evidence is as follows:

- First employed by the Rural Fire Board in 1990.
- Is currently employed by rural operations of the QFRS as an Area Director in the Cairns Area.
- The Cairns Peninsula Area office of the rural operations has an Area Director, an Area Training Support Officer, 2 Brigade Training Support Officers and 1.5 Administrative Assistants.
- The Cairns Peninsular Area Office provides fire protection for the Cairns Peninsular Area and manages the volunteer Rural Fire Brigades within the area.
- In this area there are 124 Rural Fire Brigades and 2,842 volunteers.
- In the area there are also 155 Fire Wardens who exercise a public function.
- As the Area Director, Mr Cifuentes:
 - Maintains, supports and organises the volunteer fire service;
 - Administers the fire warden network;
 - Has input into the use of fire by industry;
 - Deals with local authorities in relation to funding issues; and
 - Negotiates land grants for siting of facilities - ie Memorandums of Understanding with local authorities.

[36] Mr Cifuentes stated that all persons he manages (other than personnel in the Cairns Peninsular Area office) are volunteers as opposed to urban/town fire services where employees are paid full-time and/or part-time (Auxilliary) firefighters.

[37] Mr Cifuentes' office of rural operations in Cairns has little contact with the town/urban fire brigades and the two are not co-located.

[38] Mr Cifuentes cited 15 geographic areas which are managed by Directors such as himself. These are:

Barcaldine;
 Bundaberg;
 Roma;
 Cairns;
 Innisfail;
 Charters Towers;
 Mackay;
 Ipswich;
 Caboolture;
 Maryborough;
 Caloundra;
 Miles;

Toowoomba;
Rockhampton; and
Townsville.

[39] There are also seven Regional Managers who manage the Area Directors: The Regions are:

Brisbane;
South East;
South West;
North Coast;
Central;
Northern; and
Far Northern.

[40] Mr Cifuentes stated that the 1990 amalgamation did not cause "any real, or practical, change to what was in fact occurring on the ground in so far as rural operations were concerned". [Exhibit 1 - point 35]

[41] Mr Cifuentes' position as Area Director of rural operations involves working with industries, such as the sugar and grazing industries where fire is used as a tool which must be managed appropriately.

[42] Mr Cifuentes co-ordinates the work of 155 fire wardens in the Cairns Peninsular Area. Ninety percent of the fire wardens are full volunteers and 10% are employed by other government agencies.

[43] There are four major roles which are performed in rural operations. These are:

- Co-ordination;
- Facilitation;
- Extension; and
- Training.

[44] In Mr Cifuentes' opinion, the major roles of urban operations are:

- Response; and
- Training.

[45] These roles related to responding to structural fire, road accidents, hazard incidents and rescue.

[46] Mr Cifuentes cited the main differences between rural and urban operations as being:

- Fire prevention;
- The type of fire;
- Building inspections;
- The volunteer bases of the Rural Fire Service; and
- Conflict resolution.

[47] Mr Warren Edwards' evidence is as follows:

- He is the Area Director for the Maryborough area of the Rural Operations of the QFRS.
- The Maryborough area has 75 rural fire brigades and 155 fire wardens.
- He manages approximately 2000 volunteers.
- He states that there are a range of differences between rural operations and urban operations of the QFRS and these include:
 - Organisation of volunteers;
 - Funding;
 - Prevention - hazard reduction;
 - Guarantee of service;
 - Use of private equipment by volunteers;
 - Training;
 - Working times;
 - Negotiation between interest groups; and

- Fire warden system.
- Much of Mr Edwards' time was spent engaging, managing and training volunteers. As well, a significant part of managing Rural Fire Brigades is to ensure that they have sufficient numbers of firefighters and support staff.
- Differences between rural brigades and urban brigades are also found in the following areas of funding; fire prevention; training; equipment, work hours; negotiation and conflict resolution; fire warden systems; types of fires; and restrictions and fire bans.

[48] **Respondent's Evidence**

Witness evidence given by:

Mr Paul Adcock - Chief Superintendent - Director Rural Operations of QFRS;
 Mr Steven Crouch - Director of Rural Research and Training of QFRS;
 Mr Peter Hollier - Regional Manager Rural Operations North Coast Region; and
 Mr Ronald James - Chief Superintendent, Brisbane Region.

[49] **Mr Adcock's** evidence is as follows:

- Mr Adcock was appointed to the position of Director Rural Operations in approximately April 2005.
- He has been associated with the QFRS since around 1989.
- When reference is made in this evidence to "Senior Officer", it refers to an Inspector, Superintendent or Chief Superintendent employed by the QFRS.
- There are significant similarities between Senior Officers in both the rural and urban operations.
- While the content of the role might differ, the functions and responsibilities of the positions both operationally and administratively are very similar. Within this context, Senior Officers' roles differ to those of Junior Officers within the urban and rural operations where significant difference may be noted.
- Similarities include:
 - Senior Officers in rural and urban operations implement organisational policy and procedures, manage staff, interact with external agencies and provide operational management;
 - All Senior Officers follow and implement the same organisational systems and processes to administer, manage and improve organisational policy and process;
 - Chief Superintendents within urban and rural operations are required to implement high level policy and undertake strategic management of issues. There is no involvement in day to day issues;
 - Rural and urban Senior Officers have the same skill set and can move between operations in either grouping; and
 - Post 1990, Senior Officers within rural operations are required to follow Operations Doctrine, business systems and other systems in place within the QFRS to implement their role.
- Mr Adcock referred to his period of time in the QPSU and in 2004 resigned his membership of that Union.
- In February 2009 Mr Adcock joined the SOU.
- Within the 2006 Certified Agreement, all Senior Officers, irrespective of which operational stream they belong to are covered by Part 7 of the Agreement.

[50] **Mr Crouch's** evidence is as follows:

- Since 2002, Mr Crouch has held the rank of Senior Officer and has acted within both rural and urban operations of the QFRS.

- Senior Officers within urban or rural operations are able to move between each operation but if an officer has not received training in urban operations, they will not have the requisite knowledge for structural fires. That being said "all of the functions that Senior Officers perform are the same, irrespective of whether their position is within urban or rural operations.
- Mr Crouch gave like evidence to that of Mr Adcock as it went to the similarity in the work being performed by Senior Officers both within the urban and rural fire services.
- Those similarities included operation under the:
 - *Fire and Rescue Act 1990*;
 - Operations Doctrine;
 - Area Reference Manual;
 - Human Resource Delegations;
 - Financial Delegations;
 - State Standing Orders; and
 - Code of Conduct.

[51] Mr Hollier's evidence is as follows:

- Is currently employed by the QFRS as the Regional Manager rural operations North Coast Region.
- Mr Hollier's evidence was similar to that of the other Respondent witnesses, highlighting the similarities in the roles performed by both urban and rural Senior Officers.
- Mr Hollier added that all Senior Officers including those in urban operations are trained and able to respond to and manage rural fires. "Response is not necessarily based on whether the brigade is part of urban or rural operations but is location based and undertaken in accordance with QFRS protocol." [Exhibit 17 - point 15 (g)]
- Mr Hollier stated that whilst each Senior Officer might have separate duties, urban and rural operations work out of and share the same facilities including Area and Regional Offices, the Central Office and the School of Fire and Rescue at The Port of Brisbane facilities. [Exhibit 17 –point 15 (k)]
- Senior Offices from urban and rural operations:
 - Liaise with the community, the public, local and state Government agencies, industry and media in Queensland.
 - Provide training, and support to firefighters.
 - Recruit and train firefighters.
 - Work within closely aligned administrative processes.
 - Deal with conflict resolution.
 - Undertake hazard assessments of properties.
 - Apply the same financial delegations and work to the same procurement processes as prescribed by the Corporate Procurement Plan.
 - Comply with the same Code of Conduct.
 - Act as fire wardens/chief fire wardens.
 - Apply the same permit to the light fire system.
 - Use the same Incident Response methods.
 - Sit on the same management committees including Local and District Disaster Management Committees, Regional Planning Team meetings, Local Fire Management Committees, Local Hazard Abatement committees and Regional Interdepartmental Committees on Bush Fires, amongst other considerations.
- In all, Mr Hollier believed that to “simply draw comparisons based on name between urban and rural operations without going into the finite detail of the commonalities can be misleading.” [Exhibit 17 – point 22].
- Mr Hollier pressed the point that to simply draw comparisons based on name between urban and rural operations without going into the finite detail of the commonalities "can be misleading". [Exhibit 17 - point 22], urban and rural operations work out of and share the same facilities including Area and Regional Officers, the Central Office and the School of Fire and Rescue at The Port of Brisbane facilities.

Consideration of Evidence and Conclusion

[52] A significant part of Respondent witness evidence concentrated upon whether or not one union serviced its members better than the other. In our view, that consideration is irrelevant.

- [53] The further component of the Respondent witness evidence went to establishing the commonality and similarity between work being performed by Senior Officers in both urban and rural divisions of QFRS.
- [54] The Respondent says that when reading the Respondent's eligibility rule (Rule 3) of the Rules, the Respondent has, and continues to have, the right to represent Senior Officers in the QFRS without limitation.
- [55] In support of this claim, the Respondent relies upon a number of principles espoused in the following cases:
- *The Amalgamated Society of Engineers and Ors v Smith*¹ where Isaacs J at p. 559 held that:

"the interpretation of the terms the society (including the eligibility rule) should be given a broad interpretation with reference to its plain meaning."
 - *Geo. A Bond & Co Ltd (in liq) v McKenzie*² where Street J at pp 503-504 held that when construing an award one must:
 - "View the matter broadly;
 - Be careful to avoid a too literal adherence to the strict technical meaning of the words;
 - Try to interpret the words in line with the general intentions of the parties and that such intentions are to be gathered from the whole of the award."
- [56] Similar views have been expressed by various Courts and the Respondent cites a number of cases which include, but not exhaustively, the following:
- *R v Commonwealth Conciliation and Arbitration Commission; Ex parte The Melbourne and Metropolitan Tramways Board*³;
 - *R v Aird; ex parte The Australian Workers' Union*⁴ ;
 - *R v Cohen and Ors; Ex Parte Motor Accidents Insurance Board (Tas)*⁵ ; and
 - *Short v FW Hercus Pty Ltd*⁶.
- [57] The Respondent denied the Applicant's claim that the SOU did not seek to amend the Rules to cover rural senior officers as the SOU maintains that the application for amendment of the eligibility rule in Matter RIO/2007/19 sought only to clarify and update the language and existing coverage.
- [58] There had not been a hearing on that matter, only conciliation conference/s and as the matter did not proceed to a hearing, the SOU did not oppose the application at a hearing before the QIRC.
- [59] The Respondent states that the SOU has never threatened to prevent, obstruct or restrict the performance of work for and on behalf of the QFRS.
- [60] The Respondent says that it has had, since 22 June 1990, the ability to represent all rural senior officers that meet the criteria of the Respondent's eligibility rule.
- [61] Further, that s. 273(h) and s. 274A of the *Industrial Relations Act 1999* (the Act) do not provide the Commission with the jurisdiction to make an order about the representation rights of the SOU; that the decisions and orders sought cannot be made pursuant to s. 273(h) and/or s. 274A of the Act and that s. 279 of the Act is the section of the Act which provides the Commission with the specific power to make an order about representation rights.
- [62] The application is not made pursuant to s. 279 of the Act and the Respondent asserts that the application should be dismissed on this basis and costs should be awarded in favour of SOU.
- [63] The Applicant asserts that the Industrial Court has determined that the matter is within the jurisdiction of the Commission to make a declaration pursuant to s. 274A.

¹ *The Amalgamated Society of Engineers and Ors v Smith* [1913] 16 CLR 537

² *Geo. A Bond & Co Ltd (in liq) v McKenzie* [1929] AR (NSW) 498

³ *R v Commonwealth Conciliation and Arbitration Commission; Ex parte The Melbourne and Metropolitan Tramways Board*

⁴ *R v Aird; ex parte The Australian Workers' Union* [1973] 129 CLR 654 at page 659

⁵ *R v Cohen and Ors; Ex parte Motor Accidents Insurance Board (Tas)* [1979] 27 ALR 263 at p. 265 and 270

⁶ *Short v FW Hercus Pty Ltd* [1993] 40 FCR 511

[64] In our view, the application must succeed for the following reasons:

- The issues in contention between the parties are not in the form of a demarcation dispute.
- We have accepted the submissions of the QPSU and the evidence of Mr Thomas with respect to the potential for industrial disharmony surfacing in the current and future rounds of enterprise bargaining with the employer while the Respondent is inappropriately, in our view, a party to those discussions.
- Against the plain reading of the eligibility rule of the Respondent, the Respondent's existence rises out of the amalgamation of the Queensland Country Fire Brigades Senior Officers' Association, Union of Employees and The Fire Brigade Executive Officers Union of Employees, Queensland.
- The only entitlement that both organisations had and which had carried forward into the amalgamated rules effective from 22 June 1990, was in relation to persons of senior rank who were employed either by the Metropolitan Fire Brigades Board Brisbane, or a Fire Brigade Board elsewhere throughout Queensland.
- Prior to the creation of the Respondent on 22 June 1990, the employment of such persons was under and in accordance with the *Fire Brigades Act 1964* or the *Fire Safety Act 1974*.
- Employment in rural fire service was employment by the Rural Fires Board which was constituted in accordance with the *Rural Fires Act 1946 to 1984*.
- At that time and thereafter, no attempt was made by the Respondent to bring within their eligibility rules any coverage of the separate group of fire fighting persons then engaged under the *Rural Fires Act 1946 to 1984*.
- The Bench accepts that a rural fire officer then, and now, has a separate and identifiable area of activity and has different responsibilities and accountabilities to service as a non-rural fire officer. In this regard we have accepted the evidence of Messrs Cifuentes and Edwards to the extent that the major differences between rural and urban operations are clear - these include, for rural officers:
 - fire prevention;
 - the type of fire;
 - building inspections;
 - the volunteer bases of the Rural Fire Service;
 - conflict resolution;
 - funding;
 - use of private equipment by volunteers;
 - working times;
 - negotiation between interest groups; and
 - the fire warden system.

and for urban operations:

- response and training.

[65] The Respondent asserts (through witnesses Messrs Adcock, Crouch and Hollier) that major similarities between the work of rural and urban officers go to issues such as organisational policy and procedures; administration, management and improvement of organisational policies and processed. As well, both groups of officers have the same skill set and can easily move between operations in either groupings. The Operations Doctrine and business systems apply to both groupings. Succinctly, the similarities can be found in the operation of the following by both groupings:

- Fire and Rescue Act 1990;
- Operations Doctrine;
- Area Reference Manual;
- Human Resource Delegations;
- Financial Delegations;
- State Standing Orders; and
- Code of Conduct.

[66] Having considered that evidence, we are of the view that there are discrete differences between the rural and urban brigades. Notwithstanding the various policy and administrative processes to which adherence must be given, the real differences in the work performed are those cited in the evidence. In our view, the two groupings are discretely different.

- [67] Added to that, there is a clear distinction in that one group of employees is engaged in rural services and the other group of employees is engaged in urban work (this encompasses the work formerly done by the Fire Brigade Boards which were the subject of coverage by the two predecessor organisations of the Respondent).
- [68] It follows that at the date of its registration, the Respondent was unable to enrol any person engaged as a senior officer, employed by the Rural Fires Board constituted under the *Rural Fires Act 1946 to 1984*.
- [69] The Respondent had limited its rules to the ambit of the application of the rules of the two amalgamating bodies, neither of which were entitled to represent senior officers employed under the *Rural Fires Act 1946 to 1984*.
- [70] The operative provisions of the *Fire Service Act 1989* are of no consequence because that Act was never proclaimed. However, while reference is made to the *Fire Brigade Act 1964* and the *Fire Safety Act 1974*, there is no mention of the *Rural Fires Act 1946 to 1984* in the eligibility rules.
- [71] The Bench accepts the Applicant's submissions that "references in those rules to persons employed under particular named Acts, or 'under any Act amending any of these Acts or under any Act in substitution for any of these Acts' cannot be read as permitting an open ended 'blank cheque' enlargement of the eligibility of the Respondent, merely by reference to any changes whatsoever to the scope of coverage of the legislation there named". [Applicant's submissions - point 17].
- [72] It is accepted that the Respondent has chosen this path - i.e. to confine the coverage of the organisation to urban fire officers to the exclusion of rural fire officers.
- [73] By way of example, the Applicant poses the proposition that if the *Fire Services Act 1990* was now replaced by an Act which created a single legislative structure regulating the Police Service, the Fire Service and the Ambulance Service, and created generic officer rank structures within such legislation, the Respondent's submission must be that it could enrol as members police officers and ambulance officers higher than the presently described rank of a Station Officer first class who might fall within a wide range of callings.
- [74] It is our view that the Respondent is not entitled to any expansion of its eligibility rules which may arise (either intentionally or coincidentally) from an enlargement of legislative instruments which might apply (at any time) in the place of the legislation specifically named by the Respondent as demarking its area of eligibility.
- [75] In our view, where reference is made in the Respondent's rules to employment under or in accordance with legislation which may be made subsequent to the creation of the Respondent, it is a reference to persons employed in the same areas of work as are or were the subject of the original nominated legislation.
- [76] There is no entitlement in the Respondent's rules to permit "coincidental enlargement" of the eligibility rules of the Respondent by granting coverage over areas of work which were never contemplated by the rules of the organisation at the time of its creation.
- [77] The Orders so sought by the Applicant in its amended application are granted.
- [78] The Applicant is required to draft the orders pursuant to s. 274A of the Act and forward those draft orders to the Commission within 14 days from the release of this decision.
- [79] Order accordingly.

D.A. SWAN, Deputy President.

I.C. ASBURY, Commissioner.

J.M. THOMPSON, Commissioner.

Hearing Details:

2009 20 April
25 May
8 July
16 September
2010 17-19 February

Appearances:

Mr A. Herbert, of Counsel, instructed by Mr J. Payne and Ms C. Sullivan of Hall Payne Lawyers, for the Applicant.
Mr C. Murdoch, of Counsel, instructed by Ms C. Miller and Ms J. Marcs of Clayton Utz, for the Respondent.