QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of general ruling
Industrial Relations Act 1999 – s. 288 – application for statement of policy

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B879 of 1999) AND Queensland Council of Unions and Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B1049 of 1999)

UNION ENCOURAGEMENT PROVISIONS

COMMISSIONERS FISHER, BECHLY, SWAN 1 November 2000

Application for General Ruling/Statement of Policy – Previous decisions – Appeal decision -- Application for General Ruling denied – Statement of Policy approved – s. 110 – Parties to confer on content – Commission Guidelines – Applicants to prepare draft Statements of Policy – Respondents to provide comments or alternative proposals – Conference 7 December 2000.

DECISION

There are two applications before the Commission relating to s. 110 of the *Industrial Relations Act 1999* (the Act), **"Encouragement provisions permitted"**. The first application, B879/1999 is made by The Australian Workers' Union of Employees, Queensland (AWU) and seeks a General Ruling, pursuant to s. 287 of the Act regarding this matter and the second application, B1049/1999 is made by the Queensland Council of Unions (QCU) seeking a Statement of Policy pursuant to s. 288 of the Act upon the same issue.

During the hearing of this mater, three issues were raised by some parties who were respondents to the claims for which decisions of the Full Bench have issued. One related generally to the manner in which notification of the applications occurred. ((2000) 163 QGIG 1). The next was a claim that the Commission lacked jurisdiction to hear and determine the applications as lodged. ((2000)163 QGIG 277). The decisions of the Full Bench on each of the aforementioned matters were unsuccessfully appealed to the Industrial Court of Queensland. ((2000)163 QGIG 109; (2000)164 QGIG 21). The last issue related to the composition of the Bench as a consequence of the retirement of a member of the Full Bench during the course of the hearing. It was determined that the Full Bench was appropriately constituted. This position was unchallenged.

We reject the AWU's application for a General Ruling. In saying this, we accept, generally, the propositions from respondent parties that the implementation of such a ruling would be impracticable. We believe that the prescriptive approach contained within the AWU's application would be extremely difficult to accomplish.

We propose to issue a Statement of Policy pursuant to s. 288 of the Act. In determining that, we have decided as well to direct all parties to confer on the content of the Statement of Policy. The detail of which is provided hereunder. To assist the parties, we will issue a general guideline as to what might be appropriate for inclusion in or exclusion from the Policy.

Rationale for rejecting the claim for a General Ruling and accepting a Statement of Policy

Had a General Ruling issued, with consequent applicability to all workplaces, no consideration could be given to the diversity of industry and the particular needs of individual workplaces. General Rulings, of their very nature, apply "across the board" and generally relate to issues which can have immediate applicability to all employees and employers covered under Queensland's Common Rule system without undue dislocation occurring. In this instance, the subject matter does not easily lend itself to that approach.

One of the difficulties relates to the question of correctly identifying employees with their appropriate Union. Even were the Full Bench to accept that this element of the claim should be granted (and we state that we have made no decision on the point), the implementation of such a scheme would be problematic. Previously, Preference of Employment clauses within Awards of this Commission provided appropriate information as to Union coverage of employees in various industries. With the abolition of that provision, a much more stringent (and often litigated) approach must be undertaken to ascertain which Union might have coverage of various employees. As well, a number of major workplaces within Queensland have utilised the various provisions within industrial relations Legislation in place at different times, to have their worksites demarked in terms of Union coverage. We view these considerations as weighing against the granting of a General Ruling

Further, we are not disposed towards adopting a heavily prescriptive approach in terms of implementing the provisions of s. 110 of the Act.

Section 110 of the Act states as follows:–

"Encouragement provisions permitted

110. (1) A provision (an **"encouragement provision"**) of an industrial instrument may encourage a person to join or maintain membership of an industrial association.

(2) The following is not prohibited conduct –

(a) making or acting under an encouragement provision;

(b) encouraging a person to join or maintain membership of an industrial association.

(3) In this section –

"encourage" does not include coerce.".

We acknowledge the general wording of this section of the Act, with the major emphasis being on the word "encouragement". In considering this provision, we turn also to s. 3 of the Act, **"Principal object of this Act"** which sates at 3(g) and (h) –

"Principal object of this Act
3. . . .

(g) promoting participation in industrial relations by employees and employers; and
(h) encouraging responsible representation of employees and employers by democratically run organisations and associations; and".

There is no legal impediment against the issuing of a Statement of Policy and generally, we see those provisions as supportive of our decision to do so. A Statement of Policy would in our view provide for some uniformity in approach in considering s. 110 of the Act, but would also provide for flexibility which could facilitate the nature of the enterprise in question. We state our interest in having some "uniformity in approach" in that the insertion of this provision in an award in isolation (as would occur under normal circumstances) could have the potential to cause on-going litigation before the Commission (for reasons previously cited) and potentially unnecessary competition amongst various parties in terms of its implementation.

The Statement of Policy we envisage would consist of a clause regarding union encouragement which was capable of insertion into an award together with guidance to a Commissioner sitting alone about how to deal with the matter. (See (2000) 164 QGIG 21 @ 22; and (1999) 162 QGIG 359 @ 360).

In determining to issue a Statement of Policy, we have mentioned our intention to issue some guidelines to the parties for their consideration in reporting back to the Full Bench on what might be the appropriate format for such a Policy. We state that we do not propose adopting the draft Statement of Policy as adopted by QCU. We find that draft somewhat imprecise and difficult to follow. Rather, we shall, in drafting the guidelines, consider the debate around the appropriateness or otherwise of inclusion of certain criteria within the Policy.

As a matter of general principle, we would prefer to see a provision which was more generic rather than specific (with adaptation for particular workplaces) included within awards of this Commission which reflects the intent of s. 110 of the Act.

Therefore, adopting the wording of s. 110 of the Act, general terminology reflecting the joining and maintenance of financial membership of one's Union could constitute a preamble to the Policy.

We believe it might be worthwhile that, at the point of engagement, employers provide employees with some form of documentation indicating that such a Policy exists and pointing out that the award under which the employees would be employed encourages Union membership.

We would consider it onerous and in some instances, impossible, for employers to be required to dictate to employees which Union they should join, if they were not already members of an appropriate Union. We accept, however, that in many well established industries (and in those areas already cited where demarcation cases have determined Union coverage), Union coverage is well known and stability exists around the issue of Union membership. In these instances, it would not be inappropriate for mention to be made of the Union which has a clearly established right to coverage. However, we would not wish to see the destabilisation of these worksites around the issue of Union coverage and in the majority of cases employees should be simply encouraged to join an appropriate Union. The determination of that Union would rest with the Union which believes it has coverage of the employee/s in question. Demarcation issues around these matters, were they to arise, would be resolved in accordance with the Act.

We are not disposed towards the insertion of specific provisions relating to the facilitation of Union job delegates. In saying this, we are mindful of the differences which exist within a range of businesses. We would prefer to see a general clause which ensured, as best it could, that Union job delegates were not unnecessarily hindered in the reasonable and responsible performance of their duties. Therefore, due recognition and inclusion of accredited Union job delegates where appropriate is to be encouraged. Beyond those general provisions, were the parties to agree, then a more specific arrangement could be considered for inclusion within the Award.

Employers should be encouraged to give due consideration to the facilitation of the deduction of Union fees where an appropriate arrangement can be entered into.

For applications for the insertion of the Statement of Policy into awards, where the same clause (without modification) is to be inserted into a number of awards, then the Commission would be prepared to accept "cluster" applications. The matters can be heard at the same time under the one application. Where a departure from the Policy is sought, a separate application will need to be made.

The applicants are directed to prepare draft Statements of Policy in accordance with the above guidelines. A common draft would be useful but is not essential. The drafts are to be provided to the Full Bench and circulated to the other parties within 14 days of the date of release of this decision. The respondents are to provide comments on the drafts or alternative propositions to the Commission and the applicants within a further 14 days. A conference before a single member of the Commission will be held on 10am, 7 December 2000 to establish the extent of common ground. After considering the positions of the parties the Full Bench will determine the Policy to be adopted.

Order accordingly.

G.K. FISHER, Commissioner.

R.E. BECHLY, Commissioner.

D.A. SWAN, Commissioner.

Mr R. Livingstone (of Livingstones (Australia)) and with him Ms N. DeJager on behalf of a group of 10 Companies.
Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.
Mr J. Murdoch, SC and with him Mr I. Turner for the Australian Mines and Metals Association (Inc.) Queensland Branch.
Mr D. Williams (of Minter Ellison) on behalf of Grainco.
Mr R. Cullen for the Australian Sugar Milling Association, Queensland, Union of Employers.

Appearances:–
Ms D. Ralston for the Queensland Council of Unions.
Mr D. D'Arcy for The Australian Workers' Union of Employees, Queensland.
Ms R. Keys (instructed by the Director General for the Department of Employment, Training and Industrial Relations) for the Crown.
Mr M. Smith for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr C. Lentini for the Queensland Hotels Association, Union of Employers.
Ms S. Haire for the Australian Industry Group, Industrial Organisation of Employers (Queensland).
Mr N. McLary for the Printing Industry Association of Australia and the Queensland Country Press Association – Union of Employers.
Mr T. Kowalski for the Motor Trades Association of Queensland, Industrial Organisation of Employers.

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