

Memorandum

From: Paul Stacchino, Acting Chief Officer, MFB

To: File

1. In around late July/early August 2016, the UFU provided the MFB the proposed *Metropolitan Fire and Emergency Services Board & United Firefighters Union Operational Staff Agreement 2016 (Proposed EBA)*. This document is referred to as version 1.1, however it is approximately version number 14 provided by the UFU to the MFB.
2. As Acting Chief Officer, I am concerned the Proposed EBA imposes constraints upon the capacities of the Board and the Chief Officer to exercise their powers and to discharge their functions under the MFB Act.
3. The existing *Metropolitan Fire and Emergency Services Board & United Firefighters Union Operational Staff Agreement 2010 (Current EBA)* contains a number of provisions which limit my decision-making power. For example, it contains provisions relating to consultation which apply whenever the MFB wants to implement changes in "matters pertaining to the employment relationship", and not just matters referred to in the agreement (see clauses 13, 15 and 17 of the Current EBA).
4. Such provisions have previously affected the MFB's responsiveness and limited the Chief Officer's decision-making. For example:
 - a. For over two years, the MFB was unable to deploy new advanced fire appliances because the UFU would not agree to their commissioning;
 - b. During a heatwave in December 2015, the UFU objected to then Chief Officer contacting Assistant Chief Fire Officers and Commanders to obtain their availability to assist in responding to emergencies;
 - c. The MFB's deployment of resources outside the metropolitan fire district has been delayed (including during the Hazelwood Mine Fire).

The Proposed EBA

5. Clause 16 of the Proposed EBA sets out consultation obligations (equivalent clause in the Current EBA is clause 13). This clause requires a Consultation Committee to "operate on the basis of consensus" (clause 16.5.1), and this means "unanimous agreement on an outcome supported by all members" of the committee (clause 16.5.11). The effect of this clause is that the UFU would have an effective veto on all matters the MFB is obliged to consult.
6. These include proposals for change (clause 17), employees' terms and conditions (clause 16.4.7), technological change (clause 20) and changes to amenities or communications (clause 80.6). More explicitly, clause 83.4 states that the MFB and UFU must agree on all aspects of the articles of clothing, equipment (including PPE), technology, station wear and appliances. All aspects is stated to mean, without limitation, design and specifications.
7. Clause 76.13 of the Proposed EBA provides that new appliances can only be introduced with the UFU's agreement and clause 76.15 provides the UFU will inspect new appliances at "at least three stages during the build".

Clauses of concern

8. Clause 36.1 of the Proposed EBA replicates clause 30 the Current EBA and requires that "any policy that effects the application or operation of this Agreement may only be made or varied by agreement". Clause 36.2 goes on to state that any policies which have not been dealt with through the consultative process "will not be applied, be enforceable or used to reduce the conditions of employment of employees nor will they be used as a means of taking conduct resolution against employees".
9. In addition, any policies in existence at the time the Proposed EBA commences operation that "affect the application or operation of this agreement or the work of employees ..." must

be reviewed in accordance with clause 16 (see clause 36.4). Clause 36.3 states policies include:

“[A]ny document that contains provisions that affect the application or operation or the work of employees ... or their representatives, inclusive of procedures, business rules, directions, standing orders, SOPs, Operational Work Instructions or any like document kept or promulgated by the MFB or their employees”.

10. This definition is extremely broad and could include a whole range of policies dealing with OH&S, equal opportunity, grievances and could extend to any document that deals with operational matters.
11. The effect of this clause is that potentially all managerial and operational decisions would be subject to consultation and UFU veto if those decisions are taken as a result of some form of document as defined. For example, I may make directions concerning the movement of appliances between fire stations. Where the move proposed is different from the status quo, I would first need to consult and reach agreement with the UFU before the change could be implemented.
12. Clause 7.8 of the Proposed EBA asserts that the MFB has entered into the Proposed EBA to, among other things, facilitate the exercise of the MFB's powers and obligations under a range of legislation, including the MFB Act, the OHS Act and the Emergency Management Act. I do not accept this to be the case. The Proposed EBA is contrary to the MFB powers and obligations under that, and other, legislation. Clause 24 also imposes an obligation on the MFB to consult in relation to any changes in emergency management arrangements. In this regard, the Proposed EBA fetters the MFB's powers.
13. Clause 22.1 of the Proposed EBA imports a notion of trust and confidence and requires the MFB to act in such a manner. I am concerned that the UFU would use this aspirational clause as a basis for raising a dispute whenever the MFB sought to introduce any change.
14. Clause 27 of the Proposed EBA requires the MFB to consult and reach agreement with the UFU regarding multi agency drills or training. This limits my ability to make operational decisions and operate in an integrated and enhanced statewide emergency management framework.
15. I am also concerned that the Proposed EBA contains provisions that govern, with a high level of prescription, how the MFB will respond to emergencies outside the Metropolitan Fire District. Clauses 142.11 and 142.12 expressly provide for the manner in which initial crews can be deployed and there is no discretion left to my judgment.

The MFB Act

16. The MFB Act sets out the Chief's powers which include, most relevantly, responsibility for the control and direction of all members of units in the metropolitan district (section 32B(1) of the MFB Act).
17. I am concerned that the Proposed EBA is inconsistent with the requirements of the MFB Act in relation to the Chief's powers and the powers of the Board. Given that clause 16, for example, gives the UFU an effective veto over a very broad range of decision making, there is an issue whether I would have the capacity to exercise my powers and functions under the MFB Act.
18. The fact clause 36 of the Proposed EBA gives the UFU a de facto veto over policies appears to be inconsistent with the Chief Officer's powers and functions in the event of an alarm of fire, particularly given the broad definition of policies in clause 36.3. The combined effect of the consultation clause and clause 36 also appears to be inconsistent with my capacity to issue general orders under regulations 11 of the MFB Regulations.