

EB9 SBU Meeting #11

Wednesday 27 November 2019 10.00am – 3.30pm

MINUTES

1. Welcome

1.1. Attendance and apologies

Employee Representatives:

Brad Hayes
Ian Hughes
Monique Roosen
Mark Harris
Daryl Bathe

Terry Burke
Nicole Kapernick
Paul Giles
Andrew Elphinstone
Kerry Esmond

Jo-Anne Desailly
Marie Sellin
Mark Rieken
Melissa Goodingham
Terri-An Nolan

Employer Representatives:

Ray Kelly
Deb Crotty
Andrea Alchin
Peter Simpson

Alison Terrey
Nicole Spohn
Alyn Cooper
Jennifer Elvery

Peter Chapman
Colin O'Neill
Gary Cooper
Julia Cassidy

Apologies:

Kevin Collins

1.2. Prayer

Prayer offered by attendees.

2. General Business

2.1. Minutes of the previous meeting

2.1.1. Confirmation of the Minutes of 6 November 2019

- a. Draft minutes of the SBU meeting #10 on 6 November 2019 were exchanged prior to the meeting and changes agreed.
- b. Minutes of Meeting #10 on 6 November 2019 were confirmed.

2.2. General Business

2.2.1. Procedural Matters

a. Status of Negotiations/Form of Agreement

- i. Employee representatives noted that they are attending these meetings in the context of the Single Interest Employer Authorisations (SIEA) and are attending for the purposes of negotiating separate agreements with each employing authority.
- ii. Employer representatives confirmed that employers have been, and continue, to negotiate two separate agreements in accordance with SIEAs issued by the FWC and the scope of those SIEAs.

- b. **Scope of Agreement**
 - i. Employee representatives noted that the scope of any agreement is itself subject of negotiation consistent with the decision of the FWC regarding Stuartholme and others.
- c. **Communications**
 - i. It was noted that the minutes of SBU meeting #10 will be made available on the EB9 website.
 - ii. Employee and employer representatives confirmed they had communicated with members and employees respectively.
- d. **Sub-committees**
 - i. Technical Amendments/Insecure Work
 - Employee representatives advised that the sub-committee dates will be decided on out of session.
 - ii. Employer Claim Item 2: Nursing Provisions
 - Employer representative advised the full position has been given to the QNMU for consideration.

2.2.2. Business Arising

- a. **Report back on Out of Session Meetings for Resolution of Agreement**
 - i. Both parties agreed there was no need to report further on out of session meetings.
- b. **Employer offer dated 6 November**
 - i. Employee representatives reported that correspondence sent to employees on 22 November made reference to employee representatives rejecting the employer offer dated 6 November. Employee representatives stated they have never rejected the employer offer but have provided a counter offer. Employee representatives questioned where in the endorsed SBU minutes of 6/11/19 does it state employee representatives recorded that there is in fact no reference to employees rejecting the offer in the 6 November Minutes.
 - ii. Employer representatives expressed confusion about employee representatives' statement and advised that employee representatives position was appropriately considered to have been a rejection of the offer given:
 - employee representatives did not accept the offer within the clear timelines provided to do so (ie. COB 27 November 2019); and
 - employee representatives provided a counter-offer/proposal on 27 November 2019, which is considered in negotiation contexts as a rejection of the original offer.
- c. Employee representatives reiterated that they provided an alternate position for employers to consider.
- d. **Protected industrial action clarification**
 - i. Employer representatives sought clarity from employee representatives in regard to industrial action noting:
 - the contents of the IEUA-QNT tweet on social media that morning (stating "*protected industrial action in the form of work bans in 196 QLD schools has been suspended by IEUA-QNT members*") and that "*members are seeking Fair Work Commission assistance*") and a letter to employers that morning dated 27 November (stating "*the IEUA-QNT has recommended to its members that the current protected industrial action be suspended*");
 - numerous reports from schools with regard to employee confusion in regard to the IEUA-QNT's position on protected industrial action as result - different chapters seemingly taking a different perspective regarding the timing of, or the types of bans being lifted; and
 - it is the employers' understanding at the moment that the bans have been lifted and notices withdrawn in regard to them, but the IEUA-QNT's tweet and the letter to employers are not consistent, namely the tweet refers to bans being "suspended" and the letter refers to a IEUA-QNT "recommendation" that the bans be suspended by members.

- ii. Employee representative stated, "the letter says what the letter says" and that bans have been suspended at all schools by IEUA-QNT members. Employee representatives indicated that the letters forwarded to employers were a courtesy and reiterated that employees are suspending the workplace bans.
 - iii. Employer representatives were still concerned about the confusion amongst IEUA-QNT members given the feedback from different schools and the IEUA-QNT needed to provide clear communications to its members about this.
 - iv. Employee representatives noted employer representatives' feedback.
- e. **Concerns regarding IEUA-QNT "lock out" comments**
- i. Employer representatives expressed concerns that:
 - the IEUA-QNT are reporting in the media and communications to their members that employers are intending to "lockout" staff by issuing section 471(4) notices;
 - these statements by the Branch Secretary of the IEUA-QNT are false and misleading and unlawful as they contravene obligations under the *Fair Work Act 2009*; and
 - the Branch Secretary had to clarify these statements as the employers were clearly not intending to "lock out" staff under the *Fair Work Act 2009* and the Branch Secretary should know this as a lock out occurs when employees are prevented from turning up to work and being paid without any choice – clearly the employers are encouraging employees to choose to attend work and perform their duties.
 - ii. Employee representatives recorded that:
 - the legislative definition of "lockout" (see section 19(3) of the Act) and the intended employer notice amounted to a lock out;
 - the letter from the Toowoomba Director to employees in this regard and that a lockout is when employers prevent employees from turning up and being paid;
 - their concerns about an inaccuracy of the employer letter dated 22 November from Catholic Employing Authorities to employees where it states an employee will not be entitled to any payment for a "whole day" is considered a misrepresentation of the Act as it would extend to the whole period of time the industrial action was in place, and that any pay withheld could be for days, if not weeks; and
 - the IEUA-QNT is open to seek the assistance of the FWC under the new approaches program.
 - iii. Employer representatives noted it is disappointing and disheartening that IEUA-QNT is persisting in its incorrect claims that employers intend to lock out employees and requested communication from IEUA-QNT be reasonable and appropriate.
 - iv. Employee representatives expressed their disappointment in the employers' response regarding the request for assistance of the FWC under the new approaches program.
- f. **Opportunity for employees to vote on a proposed agreement**
- i. Employer representatives questioned whether the IEUA-QNT would support a vote by employees for a proposed enterprise agreement based on outcomes of negotiations to date with agreed communications to staff, referring to:
 - feedback from many employees directly to employers that they want to accept the employer offer;
 - a letter from employers to IEUA-QNT dated 9 September 2019 (responding to union request for in-principle agreement for referral to FWC New Approaches), stating employers are keen for a timely resolution of negotiations and the opportunity for staff to be able to vote based on parties raising reasonable expectations and engaging in reasonable communications with employees.
 - ii. Employee representatives again put on the record that they asked to make application to the FWC to assist with these negotiations through the "New Approaches program" and the employers declined to go into that space.

- iii. Employee representatives noted that new approaches only considers the points of conflict and secondly, at every SBU meeting, employee representatives have always made the statement that there is a clear determination to reach an agreement with employing authorities.
- iv. Employee representatives stated repeatedly that the decision to go to a ballot is for employers to make under the provisions of the Act.
- v. Employer representatives stated:
 - that staff should be given the opportunity to vote based on the merits of a proposed enterprise agreement and without conflicting information and an adversarial atmosphere that confuses employees;
 - significant feedback from employees has been received that they are confused by the IEUA-QNT communications and support the current employer offer;
 - they are requesting an employee vote based on agreed statements of what are the benefits of a proposed agreement and whether the union would support that or at least commit not to a conflicting, confusing and adversarial communications as part of a union “vote no” campaign?
- vi. Employee representatives stated:
 - they are not standing in the way of employing authorities conducting a ballot - the *Fair Work Act* “is what the Act is” and it is up to employers to decide to conduct a ballot or not;
 - In terms of IEUA-QNT communications about a ballot and agreed communications, this would mean the employer line not being critiqued or challenged.
- vii. Employer representatives are seeking a vote based on the facts of the offer without further conflicting and adversarial communications causing confusion amongst staff. Employers are trying to come to a joint agreement with the union based on facts and benefits of proposed EA.
- viii. Employee representatives noted that all employees would consider any document that goes out to ballot from the employers and identify what it means to them as an individual.
- g. Employee representatives seeking FWC assistance via New Approaches model
 - i. Employee representatives stated they were open to engaging in the New Approaches model under the *Fair Work Act* and if employers are intent on an outcome there needs to be a meaningful intervention for workload intensification. IEUA-QNT are receiving daily comments from members asking why employee representatives are “going soft” in negotiations.
 - ii. Employer representatives noted:
 - There is some irony with employee representatives seeking the assistance of the FWC in a New Approaches model, which is based on a collaborative approach while the IEUA-QNT continues to make unlawful misrepresentations about the employer intending to engage in “lock outs”;
 - A perception that the IEUA-QNT raises the issue of referral to the FWC at the same time as escalating negotiations, for example:
 - seeking in-principle agreement from employers to refer to the FWC in August of this year at the same time as organising a ballot for industrial action;
 - now requesting referral to the FWC following a recent escalation of industrial bans to a full stoppage on 19 November;
 - from an AEC official that that the IEUA-QNT had been engaging in discussions from very early this year with the AEC about the conduct of a ballot for industrial action, way before negotiations had even started;
 - parties should be able to efficiently resolve negotiations themselves without having to refer to the FWC, which there is the perception that this is the now the negotiation model that the IEUA-QNT is adopting - escalate expectations, communications and industrial action with the view that negotiations will need to be referred to the FWC for assistance;

- their preference is that employees be given an opportunity to vote on an agreement in an atmosphere of facts about what is on offer and not confusion and conflict.
- iii. Employee representatives noted:
- That FWC New Approaches model was a highly efficient way to finalise negotiations in EB8 – it de-escalated the sharpness of negotiations and after 6 weeks, a ballot of employees was agreed to be arranged;
 - the IEUA-QNT were approached first by the AEC to discuss the potential of a ballot given the industrial action last time – it was not the IEUA-QNT that made an approach;
 - the FWC approached both parties during EB8 to consider New Approaches with concerns regarding the protected industrial action and legal proceedings. Any perception that there is a long-term strategy to have future negotiations referred to FWC is not correct.

**MORNING TEA AT 11.00AM FOLLOWED BY CAUCUS
MEETING RESUMED AT 12.00PM**

h. Further Clarification of Protected Industrial Action and Work Bans

- i. Employer representatives:
- a. noted during the caucus that the timing of the IEUA-QNT's letter to employers that morning came before the advice on Twitter and via a media release that makes it clear that all work bans have now been suspended by members of the IEUA-QNT;
 - b. thanked employee representatives for the subsequent distribution of the above material to members and the media making the status of the bans now clear to employers;
 - c. confirmed that employer s471(4) will not be issued given the lifting of the bans; and
 - d. confirmed that employers will be advised of the above immediately after this meeting.
- ii. Employee representatives expressed appreciation for the clarification from employers about the updated status of s471(4) notices.

3. Matters Under Negotiation

3.1. Employee response

3.1.1. Employer offer of 22 November 2019

- a. Employee representatives:
- i. noted their position on outstanding items that was tabled at the SBU on 6 November 2019 remains the position of employee representatives, but were open to all matters with a view to resolution of negotiations;
 - ii. advised they were not rejecting the employer offer outlined in letters dated 22 November 2019 to employee representatives and employees;
 - iii. advised the employer offer was not sufficient for employees;
 - iv. queried whether the employer representatives are prepared to compromise and have discussions about matters.
 - v. asked what the employer position would be in relation to a joint investigation, without prejudice, regarding conditions for instrumental music teachers
- b. Employer representatives noted:
- i. It was clear from the employer representatives' perspective there was not an intention by employee representatives to accept the employer offer (22/11/19) by the end of the day, therefore the offer will lapse;
 - ii. at an "out of session" meeting on Thursday 21 November, employee representatives stated they were open to a compromise position; however, from employer representatives perspective, employee representatives would not outline any details of what it was prepared to compromise about;
 - iii. the employers have provided clear positions on issues as part of its offer to resolve negotiations in a timely way;

- iv. employers want to finalise a total package of conditions in a proposed EA for a vote by employees;
- v. in regard to instrumental music instructors, employer representatives confirmed that this had been answered previously and that the School Officer Joint Working Party is the priority, as has been the focus of the union previously, and employers will focus on this and doing it properly.

3.2. Employer Response

Agenda items 3.2.1 – 3.2.7 placed on the agenda by employee representatives were not discussed at this point in the meeting.

3.2.1 Boarding Supervision (tabled SBU#5 and SBU#11)

- a. Employer representatives:
 - i. tabled amended boarding clause;
 - ii. Noted that a clause was previously tabled at SBU#5 on 16 July 2019, with employee representatives agreeing in principle to the averaging hours change proposed, but not to the proposed board and lodging provisions;
 - iii. the tabled clause today was to clarify the existing board and lodging provisions regarding accommodation provisions in lieu of payment up to average of 10 hours work, noting the prior concerns raised by employee representatives about the clause previously tabled regarding reasonable deductions for the value of accommodation.
- b. Employee representatives to consider and provide a response at the next meeting.

**LUNCH AT 1.15PM FOLLOWED BY CAUCUS TO CONSIDER MATTERS DISCUSSED
MEETING RESUMED AT 2.00PM**

3.2.2 Position of Employee Representatives

- a. Employee representatives noted:
 - i. a resolution requires compromise by both parties.
 - ii. They are willing to outline a position on items on the basis that employers will also need to be prepared to compromise from their current tabled position;
 - iii. the position is absolutely without prejudice to initiate a process of exploring outcomes other than each position of parties currently on the table, noting that the positions of the employer and employees may change as a result of this process.
- b. Employee representatives spoke to some possible positions to resolve these issues and negotiations.
- c. There is an expectation from employee representatives, of some compromise from employing authorities in relation to the set of matters put forward by employee representatives.

3.2.3 Employer initial response to position of employee representatives:

- a. Employer representatives:
 - i. Noted that they will need to obtain formal employer instructions in order to respond at a later time.
 - ii. questioned what quantum is being considered by employee representatives if less than \$1250?
- b. Employee representatives noted it would not be less than \$500.

**FURTHER CAUCUS AT 2.45PM
MEETING RESUMED AT 3.00PM**

3.2.4 Employer further response to position of employee representatives:

- a. Employer representatives:
 - i. expressed thanks to employee representatives for the work bans being lifted;
 - ii. acknowledged the employee representatives' movement on items, which is positive in the context of moving issues forward;
 - iii. clearly there are still issues with some of the items mentioned and there is no further specific questions about those at the moment, but it is believed there is something to consider and work within terms of potentially agreeing to a total package
 - iv. Given the time of the year and the end of school nearing, a formal response will be provided as soon as possible, with further meetings next year
- b. Employee representatives:
 - i. expressed an appreciation for the employers' positive response;
 - ii. in terms of further meetings, Wednesday 4 December 2019 was nominated;
 - iii. expressed the need to outline clear understanding of the status of the employer offer lapsing at 5pm - employee representatives have not rejected the offer;
 - iv. on this basis we would argue that only a redacted copy of these minutes would be published;
 - v. clear that with the status of negotiations, parties have agreed to further negotiate beyond tabled positions and there will be subsequent meetings to consider exploratory positions tabled during the course of today.
- c. Employer representatives:
 - i. confirmed that the employer offer would not be accepted by employee representatives;
 - ii. confirmed that employers are still very concerned about the misrepresentations and "lockout" comments in communications from the IEUA-QNT and wanted to give employee representatives an opportunity to correct the public comments that have been made to date, via subsequent communications.
- d. Employee representative advised that:
 - i. communications will report that the work bans are suspended, and employers have indicated the s471(4) notices will not be issued;
 - ii. regarding "lock out" comments, there is nothing to rectify.
- e. Employer representatives:
 - i. Advised since IEUA-QNT will not take the opportunity to rectify misleading "lock out" communications, then employers will note the misrepresentations being made in its communications;
 - ii. thanked all participants for their attendance at the SBU meetings this year and wished everyone an enjoyable holiday and a well-earned rest, with hopes of moving forward early next year as both employers and employees will be keen to do so.

4. NEXT MEETING

- 4.1. **Next Meeting:** To be confirmed by parties at a later date.

5. CLOSE OF MEETING: 3:15pm