



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**DEPUTY PRESIDENT MILLHOUSE
DEPUTY PRESIDENT BELL
COMMISSIONER ALLISON**

B2023/771

s.234 - Application for an intractable bargaining declaration

**United Firefighters' Union of Australia
and
Fire Rescue Victoria T/A FRV
(B2023/771)**

Melbourne

10.00 AM, MONDAY, 18 DECEMBER 2023

Continued from 20/10/2023

PN1

DEPUTY PRESIDENT MILLHOUSE: Thank you and good morning, everyone. Mr Borenstein, you're with Mr Friend and Mr Dixon today for the UFU?

PN2

MR H BORENSTEIN: Yes, I am. Thank you.

PN3

DEPUTY PRESIDENT MILLHOUSE: Thank you. Ms Sweet, you and Mr Garozzo today for the FRV?

PN4

MS R SWEET: If the Commission pleases.

PN5

DEPUTY PRESIDENT MILLHOUSE: Thank you. And Mr O'Grady, you appear today seeking leave to appear on behalf of the Minister?

PN6

MR C O'GRADY: Leave to intervene, yes. Yes, thank you, Deputy President.

PN7

DEPUTY PRESIDENT MILLHOUSE: Thank you very much.

PN8

MR O'GRADY: Along with Ms Leoncio.

PN9

DEPUTY PRESIDENT MILLHOUSE: Thank you. Good morning. The Full Bench has considered the written submissions that have been filed by the parties in relation to the request by the Minister for leave to intervene. The Full Bench is satisfied that there is an appropriate basis to inform ourselves by hearing, through Mr O'Grady, the submissions made orally and in writing by the Minister in relation to this application.

PN10

The Minister's written submissions have been of assistance to the Full Bench, and we consider it likely that the oral submissions made by the Minister today will be of the same effect.

PN11

The exercise of our discretion to grant leave to the Minister is subject to an overriding procedural consideration, that the time allocation between the FRV and the Minister today does not unduly disadvantage the UFU, and that is a matter that the Full Bench will be mindful of throughout the course of today's proceedings.

PN12

Further, noting that there's no objection, and to the extent that it's necessary to do so following the 26 September proceedings, the Full Bench grants permission to

the parties to be legally represented today, as satisfied we are of the matters in section 596(2)(a).

PN13

With those matters said, Mr Borenstein, the Full Bench would like to understand from you the situation as you understand it with the witnesses, and whether they'll be required for cross-examination by the UFU today.

PN14

MR BORENSTEIN: I was actually, Deputy President, going to raise that very matter with you.

PN15

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN16

MR BORENSTEIN: But firstly, in the context of your ruling on the Minister's submissions, we've been informed that the FRV wishes to cross-examine our two witnesses, and they are available for cross-examination, and we've given notice that we wish to cross-examine Ms Crabtree.

PN17

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN18

MR BORENSTEIN: What we ask is an indication from the Full Bench that the permission to the Minister to make submissions does not carry with it permission to cross-examine the witnesses.

PN19

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN20

MR BORENSTEIN: That they're going to be called.

PN21

DEPUTY PRESIDENT MILLHOUSE: Yes. The position of the Full Bench in relation to that matter is that leave is granted for the purposes of making oral and written submissions today.

PN22

We have proceeded on the understanding that the Minister won't seek to ask any questions of the witnesses, but we make that observation on the basis that unless there is something particularly pressing or unusual which arises from the witness evidence that is given today, then that might be a matter that the Minister considers appropriate to raise with us, and we'll reconsider at that point in time whether there is a basis for extending the grant of leave to the position of asking questions of any of the witnesses today.

PN23

MR BORENSTEIN: We're content with that, Deputy President.

PN24

DEPUTY PRESIDENT MILLHOUSE: Thank you. Are there any other administrative or housekeeping matters that anyone seeks an opportunity to raise before we commence with your case? Mr Borenstein?

PN25

MR BORENSTEIN: We don't have any.

PN26

DEPUTY PRESIDENT MILLHOUSE: Ms Sweet?

PN27

MS SWEET: No, Deputy President.

PN28

DEPUTY PRESIDENT MILLHOUSE: Mr O'Grady?

PN29

MR O'GRADY: No, Deputy President.

PN30

DEPUTY PRESIDENT MILLHOUSE: Thank you, everyone. Thanks, Mr Borenstein.

PN31

MR BORENSTEIN: The Full Bench will be aware that the hearing, in this hearing, although part of an application for an intractable bargaining workplace determination, is directed only to what might be described as a preliminary question or a first question, which was identified by the President in his directions on 25 October 2023, which is a hearing to determine what are the agreed terms, and which other matters that are in issue for the purpose of the Full Bench exercising the determination powers, the arbitration powers, to make the determination that's being sought.

PN32

We have filed submissions in accordance with the President's directions and also a position document. The submissions which have been filed on behalf of the United Firefighters' Union were filed on 17 November 2023 and on 11 December 2023, and we rely on those submissions. I am not sure what the practice of this Bench is as to whether you wish to mark them.

PN33

DEPUTY PRESIDENT MILLHOUSE: That won't be necessary, thanks, Mr Borenstein.

PN34

MR BORENSTEIN: Thank you. We also have filed and rely on an affidavit of Ms Laura Campanaro, the date of which is 17 November 2023, and the affidavit is actually titled, 'Third statement of Laura Campanaro.' The other two statements were filed in relation to her earlier part of the process, and there is a fourth

statement of Ms Campanaro, which is dated 11 December 2023, and we rely on those.

PN35

We also rely on a statement of Mr James Kefalas, which was filed on 17 November 2023, which is also titled, 'Second statement of Mr Kefalas', because the first statement was filed in the previous stage of the proceeding.

PN36

So that's the evidence that we seek to rely upon. We've been given notice that both Ms Campanaro and Mr Kefalas are to be cross-examined, so Mr Kefalas out of the court, and Ms Campanaro is here and available to be cross-examined.

PN37

DEPUTY PRESIDENT MILLHOUSE: Very well. We'll call Ms Campanaro. Thank you.

PN38

THE ASSOCIATE: Can you state your full name and your address, the business address (indistinct).

PN39

MS CAMPANARO: Laura Campanaro, 408 Brunswick Street, Fitzroy.

<LAURA CAMPANARO, SWORN [10.10 AM]

EXAMINATION-IN-CHIEF BY MR BORENSTEIN [10.11 AM]

PN40

DEPUTY PRESIDENT MILLHOUSE: Thanks, Ms Campanaro. Please take a seat?---Thank you.

PN41

Mr Borenstein.

PN42

MR BORENSTEIN: If the Commission pleases, we've prepared a hard copy of Ms Campanaro's two statements in a folder in case she needs to refer to them, and perhaps we can hand them up to her.

PN43

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN44

DEPUTY PRESIDENT BELL: Are those hard copies – are they court book version hard copies, if I might ask?

PN45

MR BORENSTEIN: They're the ones that are in the court book, yes.

PN46

DEPUTY PRESIDENT BELL: Yes, thank you.

PN47

MR BORENSTEIN: Ms Campanaro, just for the record, is your full name Laura Campanaro?---Yes, it is.

PN48

And your address is 408 Brunswick Street, Fitzroy?---Correct.

PN49

And is your occupation industrial office coordinator with the United Firefighters' Union of Australia?---Yes, it is.

PN50

Do you recall making what is described as a third statement to be filed in this proceeding on 17 November 2023?---I do.

PN51

Have you had a chance recently to review that affidavit and the annexures to it?---I have.

PN52

Can you tell the Commission whether the contents of the affidavit are true and correct?---The contents of the affidavit are true and correct.

PN53

Thank you.

PN54

DEPUTY PRESIDENT MILLHOUSE: Do you seek to tender that statement?

PN55

MR BORENSTEIN: Yes, I do. Sorry.

PN56

DEPUTY PRESIDENT MILLHOUSE: Any objection, Ms Sweet?

PN57

MS SWEET: No objection.

PN58

DEPUTY PRESIDENT MILLHOUSE: Mr O'Grady?

PN59

MR O'GRADY: No objection.

PN60

DEPUTY PRESIDENT MILLHOUSE: We'll mark the third witness statement of Laura Campanaro dated 17 November 2023 as exhibit 7, continuing the numbering from the proceedings on 26 September 2023.

EXHIBIT #7 THIRD WITNESS STATEMENT OF LAURA CAMPANARO DATED 17/11/2023

PN61

MR BORENSTEIN: Thank you, Deputy President. And then could I ask you, Ms Campanaro, did you make a further statement titled, 'Fourth statement of Laura Campanaro', dated 11 December 2023?---I did.

PN62

Have you had a chance recently to review that statement?---I have.

PN63

Can you tell the Commission whether the contents of the statement are true and correct?---The contents of that statement are true and correct.

PN64

Thank you. Yes, I tender that statement as well, if the Commission pleases.

PN65

DEPUTY PRESIDENT MILLHOUSE: Thanks, Mr Borenstein. Ms Sweet, any objection?

PN66

MS SWEET: No, Deputy President.

PN67

DEPUTY PRESIDENT MILLHOUSE: Mr O'Grady?

PN68

MR O'GRADY: No.

PN69

DEPUTY PRESIDENT MILLHOUSE: Thank you. We'll mark the fourth statement of Laura Campanaro dated 11 December 2023 as exhibit 8.

EXHIBIT #8 FOURTH WITNESS STATEMENT OF LAURA CAMPANARO DATED 11/12/2023

PN70

MR BORENSTEIN: Thank you, Deputy President. I have no further questions in-chief.

PN71

DEPUTY PRESIDENT MILLHOUSE: Thank you, Mr Borenstein. Ms Sweet.

CROSS-EXAMINATION BY MS SWEET

[10.13 AM]

PN72

MS SWEET: Yes, thank you. Before I commence my cross-examination I believe Mr O'Grady has something he wishes to raise.

*** LAURA CAMPANARO

XXN MS SWEET

PN73

DEPUTY PRESIDENT MILLHOUSE: Mr O'Grady.

PN74

MR O'GRADY: It's just an issue about the nature of the statements. Whilst we don't object to them, as the Full Bench will appreciate, there is a degree where there is a tendentiousness in respect of them. There is also a lot of expression of subjective opinion in those statements.

PN75

Now, clearly the Commission is not bound by the rules of evidence, but we do note that that is a feature of the statements, and to that end we have prepared a short document dealing with all of the UFU statements. They're really just for the assistance of the Full Bench so that the Full Bench can have regard to it in due course when assessing the weight to be given to Ms Campanaro's statement.

PN76

So it's more of a matter of submission than of objection as such, but we did think it was appropriate to raise these matters at the outset.

PN77

DEPUTY PRESIDENT BELL: Has Mr Borenstein been given a copy of this document?

PN78

MR O'GRADY: No, he hasn't.

PN79

DEPUTY PRESIDENT MILLHOUSE: Mr Borenstein?

PN80

MR BORENSTEIN: Well, I'm just taking up the Deputy President's point. The Minister seeking an indulgence from the Commission to intervene and to make submissions was directed to file its submissions some time ago at a point where the affidavits were available to it, and if it was going to take issue with the evidence, or call on the Commission to in some way or other diminish the significance of the evidence, we should have been put on notice back then so that we could take instructions from Ms Campanaro, and depending on what these so-called objections are, we may have been able to rectify them.

PN81

We say it's too late and we shouldn't receive them, and if our friend wants to make some submissions at the end of the day, well he can make those submissions.

*** LAURA CAMPANARO

XXN MS SWEET

PN82

DEPUTY PRESIDENT MILLHOUSE: In the absence of understanding the nature of the objections that are raised, and picking up on the point just now made that it will be open to the Minister pursuant to the grant of leave to make submissions orally in relation to those matters, is there anything in your view that would preclude us from receiving that document in writing from the Minister?

PN83

MR BORENSTEIN: We haven't seen it.

PN84

DEPUTY PRESIDENT MILLHOUSE: True it is. All right, well - - -

PN85

MR BORENSTEIN: It really is a very unsatisfactory way of running a case from someone who seeks an indulgence from the Commission, and who's meant to be a model litigant.

PN86

DEPUTY PRESIDENT MILLHOUSE: Perhaps the appropriate course might be to proceed in this way. Mr O'Grady, in circumstances where the UFU's not been apprised of what's been put in the submissions that you seek to tender now, then I might invite your instructing solicitors to produce a copy to the UFU. There will be an opportunity throughout the course of today's proceedings or during the luncheon adjournment for the UFU to consider the nature of those submissions, and it will be an opportunity at that stage for the UFU to address us on whether there are any issues that might preclude us from receiving that document in writing, or whether those are matters that you might raise orally at the conclusion of the proceedings.

PN87

MR O'GRADY: Yes, Deputy President. It was really with a view to assisting the Full Bench rather than anything else.

PN88

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN89

MR O'GRADY: We didn't want to take up time with objections. We did think it was appropriate to note some of the defects in the witness material. As my learned friend is well-aware, the normal course would be for that to be done at the outset of the witness giving evidence and that's what we sought to do, but I'm content to proceed in the way that you've indicated, Deputy President.

PN90

DEPUTY PRESIDENT MILLHOUSE: All right. Any observations you'd like to express in respect of the view that I've provided?

PN91

MR BORENSTEIN: Well, I'd seek to reserve our position until we see the document but in the vein of Mr O'Grady seeking to assist the Commission, I wonder whether he's done a similar exercise with Ms Crabtree's statement.

PN92

DEPUTY PRESIDENT BELL: I think Mr O'Grady indicated it was only the UFU witnesses that the exercise had been undertaken.

*** LAURA CAMPANARO

XXN MS SWEET

PN93

MR BORENSTEIN: (Indistinct) only partially assisting the Commission. Thank you.

PN94

DEPUTY PRESIDENT MILLHOUSE: All right. Well, we'll proceed on that basis. If there's anything that you'd like to raise upon review of that document at the appropriate time, we'll hear from you, Mr Borenstein.

PN95

MR BORENSTEIN: So we'll look at it over lunchtime. Thank you.

PN96

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN97

Ms Sweet?

PN98

MS SWEET: Yes. Thank you, Deputy President. Can I just clarify what's been provided to the witness is a copy of the entire court book or just the witness' own statement?

PN99

MR O'GRADY: No, it's the statements.

PN100

MS SWEET: Just the statements. All right.

PN101

Ms Campanaro, I want to take you to a particular time frame. I want to take you to the time frame when formal bargaining started in this matter and you'd accept from me that that was approximately 1 July 2020?---Formal bargaining commenced approximately 26 April 2023. 2022; I apologise.

PN102

Yes, apologies. Informal bargaining started around July 2020, is that correct?---Correct.

PN103

And I just want to ask you about your awareness of certain things at that time. You're aware that FRV was a publicly - a public sector agency at that time, correct?---Yes.

PN104

And do you have generalised knowledge about how the FRV was funded at that time?---Generalised knowledge, yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN105

In the sense of the majority of its funding was sourced through statutory contributions, correct?---Could you please fine 'Statutory contributions.'

PN106

MR BORENSTEIN: Perhaps - - -

PN107

MS SWEET: So in term - you're aware that the Fire Rescue Victoria Act 1958 provided for various statutory contributions to be made to FRV in order to fund it?---Ms Sweet, could you please define, 'Various statutory obligation' - what as the term, 'Statutory contributions.'

PN108

Yes. Perhaps I'll short-circuit this. What was your understanding at the time that informal bargaining had commenced about how the FRV was funded?---I understood that the FRV was funded predominantly by the fire services property levy.

PN109

And did you understand that another part of the FRVs funding came from the consolidated fund?---Yes.

PN110

And you were aware that at the time that FRV was not - did not - was not a self-funding outfit, that it didn't itself generate revenue, correct?---No.

PN111

You didn't know that at the time?---Could you repeat that question, sorry?

PN112

You knew that FRV was not a self-funded entity, that it didn't generate revenue itself?---Generate any revenue or some revenue?

PN113

Didn't generate significant revenue?---I was aware that FRV generated some revenue of itself or of its own.

PN114

And you're aware in general terms that there was a wages policy in force at this time, correct?---I was aware of a wages policy, yes.

PN115

And that at this time the relevant wages policy promulgated by the Victorian Government was the 2019 Wages Policy, correct?---Yes.

PN116

And you're aware that that policy - the wages policy had three pillars?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN117

And you're aware under pillar 1, that increases to wages and conditions was capped at 2 per cent, correct?---Yes.

PN118

And you're aware that there was also a pillar 3, correct?---Yes.

PN119

And pillar 3 dealt with additional changes to allowances and other conditions that were not general wages, correct?---Could you please repeat that, Ms Sweet?

PN120

Yes. That pillar 3 dealt with additional changes to allowances and other conditions that were not general wages?---I was aware that pillar 3 related to additional strategic changes.

PN121

And were you aware that those changes would only be allowed under the wages policy if the government agreed that those changes would address key operational and strategic priorities for the agency?---I don't remember that level of detail.

PN122

And were you aware of the public sector priorities in the wages policy at that time?---No, I don't recall them.

PN123

And you're aware that pillar 3 to the extent it dealt with conditions was relevant to non-monetary conditions as well as monetary conditions, correct?---I was aware it related to monetary conditions, yes.

PN124

But also non-monetary conditions or were you not aware of that?---I don't recall.

PN125

And you're aware that the wages policy dealt with not only these various pillars but part of the wages policy was also the enterprise bargaining framework, correct, that formed part of the wages policy?---I was aware of the 2019 Wages Policy.

PN126

And were you aware at the time that that wages policy contained within it an enterprise bargaining framework that dealt with governmental approvals?---I was aware of the 2019 Wages Policy document.

PN127

And do you accept from me that that document of which you're aware, contained an enterprise bargaining framework?---No, I don't recall.

PN128

And you say you were aware of it, had you read it?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN129

And you read it before commencing the informal bargaining negotiations for the new operational agreement, correct?---I may have read it around the same time. I'm not sure if it was before.

PN130

But you would have read it contemporaneously to starting those negotiations, correct?---I believe I read it around the same time.

PN131

And you were aware that the wages policy set out various times at which public sector agencies needed to apply for government approval of enterprise bargaining arrangements, correct?---Could you repeat that question, please, Ms Sweet?

PN132

Yes. Having read - once you'd read that policy, you were aware that the wages policy set out arrangements for government approval that public sector agencies had to meet at various times in the course of negotiating Enterprise Agreements, correct?---I don't recall that level of detail.

PN133

And you were aware, weren't you, that the enterprise bargaining negotiations for this proposed agreement were a major agreement under the wages policy?---I don't recall that level of detail, Ms Sweet.

PN134

And you're aware that as a public sector agency, the FRV was required to obtain approval from the government in order to have the authority to commence bargaining, correct?---Yes.

PN135

And you're aware that under the wages policy during bargaining, all offers were required to be made on an in-principle basis, correct?---No.

PN136

So you said you read the document?---I was aware of the document. I skimmed the document, yes.

PN137

Isn't it part of your job, Ms Campanaro, to be familiar with what's required for government agencies in respect of seeking to make offers under the wages policy?---No.

PN138

And you were aware that all Enterprise Agreements required the approval of government by public sector agencies prior to commencing any formal approval requirements under the Fair Work Act?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN139

Right. So from your read of the document, you knew that there was approval processes to be taken prior to commencing the formal steps under the Fair Work Act but not that any offer needed to be in-principle?---I was aware of the fact that government approval was required prior to commencing formal bargaining.

PN140

And you were aware that at all times during formal and informal bargaining that the FRV considered it was required to comply with the wages policy, correct?---Yes.

PN141

And you knew it was bargaining on the understanding that you did have to comply with the wages policy?---Could you repeat that question, sorry?

PN142

You understood that when FRV came to the table to bargain, it was bargaining on the understanding that it was required to comply with wages policy?---With respect to - yes.

PN143

So you knew that its view that it was required to comply with wages policy was a fundamental part - fundamental tenet of its bargaining strategy with the UFU, correct?---No.

PN144

And you'd agree that the FRV informed the UFU that it was required to seek approval from the Victorian Government in order to commence negotiations in accordance with the 2019 Wages Policy on or around 29 July 2021?---Sorry, could you please repeat that?

PN145

Yes. Taking you to the time frame of about late July 2021, at that time, FRV informed the UFU that it was required to seek approval from the Victorian Government in order to commence negotiations in accordance with the 2019 Wages Policy, correct?---I recall FRV advising it would seek approval. I don't recall when.

PN146

Deputy President, just to clarify, may I - is the witness able to have brought up in front of her pages of the court book on that screen? Is that operational?

PN147

DEPUTY PRESIDENT MILLHOUSE: Let me just make an inquiry about that, Ms Sweet. Ms Sweet, I understand that it's possible. We might need to stand the matter down for five minutes in order to do so. The alternative is that there is a copy of the court book with relevant material before the witness in hard copy. Will that suffice?

*** LAURA CAMPANARO

XXN MS SWEET

PN148

MR BORENSTEIN: It's only the statement, it's not a court book.

PN149

MS SWEET: I understand from my learned friend that it's just the statements, it's not the court book itself.

PN150

DEPUTY PRESIDENT MILLHOUSE: I see. In those circumstances, you're seeking to produce to the witness a copy of a document that is not presently part of her evidentiary case.

PN151

MS SWEET: Yes.

PN152

DEPUTY PRESIDENT MILLHOUSE: All right. Is it possible that that can be done in hard copy by reference to the page number in the court book and a hard copy produced to the witness so that we can proceed in that way?

PN153

MS SWEET: I was going to need to get some instructions on whether or not that hard copy is available in the courtroom.

PN154

DEPUTY PRESIDENT MILLHOUSE: I see.

PN155

DEPUTY PRESIDENT BELL: Can I just ask more generally of all the parties; I don't suppose anyone has a complete copy of the court book available here for witnesses. No.

PN156

MR O'GRADY: We don't have a complete copy but if Ms Sweet wants to refer to volume D of - sorry, we do have a - sorry. My instructor does have a spare copy of the court book available for witnesses and I have a version of volume D that is unmarked and Ms Sweet could provide that to the witness to expedite matters.

PN157

DEPUTY PRESIDENT MILLHOUSE: All right. So the question then for Ms Sweet is whether the document which she would like to put to the witness appears in any of the court book at all, is that right?

PN158

MS SWEET: It certainly - yes. Everything's in the court book.

PN159

DEPUTY PRESIDENT MILLHOUSE: All right.

PN160

MS SWEET: It's just a matter of whether there's a hard copy to provide to the witness.

*** LAURA CAMPANARO

XXN MS SWEET

PN161

DEPUTY PRESIDENT MILLHOUSE: Well, it sounds as if there is.

PN162

MS SWEET: Might be - is it worth standing the matter down, Deputy President? We can just make those arrangements, otherwise, if it can be done quickly I'm happy to keep going. Deputy President, if I could trouble the Commission, we might see if we can get matters on the screen. That's going to be easiest.

PN163

DEPUTY PRESIDENT MILLHOUSE: All right. Can I just inquire, there was an invitation by my chambers last week for the UFU to compile a complete copy of the court book. Can I understand whether that occurred?

PN164

MR BORENSTEIN: Sorry, I'm not understanding what the question is, Deputy President.

PN165

DEPUTY PRESIDENT MILLHOUSE: There was an invitation to the UFU to produce a complete hard copy of the court book for the use by any witnesses in the proceeding. Am I correct in understanding that that didn't occur?

PN166

MR BORENSTEIN: Would your Honour just excuse me for a minute?

PN167

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN168

MR BORENSTEIN: It's not entirely clear, but it seems that a complete hard copy of the court book hasn't been prepared.

PN169

DEPUTY PRESIDENT MILLHOUSE: Thank you for that indication. In those circumstances, it appears that the most prudent course, at least for present purposes, is to stand the matter down to facilitate the use by the witness of the screen, and I'll ask my associate to take the relevant steps to do that. We'll stand the matter down while that occurs. Thank you.

<THE WITNESS WITHDREW [10.34 AM]

SHORT ADJOURNMENT [10.34 AM]

RESUMED [10.41 AM]

<LAURA CAMPANARO, RECALLED [10.41 AM]

CROSS-EXAMINATION BY MS SWEET, CONTINUING [10.41 AM]

*** LAURA CAMPANARO

XXN MS SWEET

PN170

DEPUTY PRESIDENT MILLHOUSE: Thank you, Ms Sweet.

PN171

MS SWEET: Thank you. I'm indebted to the Full Bench for arranging this. Can I have the witness taken to volume D, page 2171, please. Do you have on the screen there, Ms Campanaro, a document titled 'Wages policy and the enterprise bargaining framework'?---I do.

PN172

Is the witness able to manipulate the screen herself? Thank you. If I can just get you to move down to the second page. Do you recognise this – and let me know if you would like to be taken through it in its entirety. Do you recognise this as the 2019 wages policy?---I do.

PN173

I think you agreed with me before we broke to deal with these documentary issues that you had read this document around about the time that informal bargaining had commenced for these enterprise negotiations?---Yes.

PN174

I was asking you about the pillars, and can I just take you to page 1274 – sorry, 2174. You recognise those as the pillars in that 2019 wages policy?---Yes.

PN175

I was taking you to pillar 3, which is titled 'Additional strategic changes', and you'll see there:

PN176

Additional changes to allowances and other conditions not general wages will only be allowed if government agrees that the changes will address key operational strategic priorities for the agency and/or one or more of the public sector priorities.

PN177

Stopping there, you agree reading about that pillar at the time?---Sorry, could you repeat that, please?

PN178

You agree reading that that was what pillar 3 said at that time?---I recall reading pillar 1, pillar 2 and pillar 3.

PN179

You understood from reading that, didn't you, that pillar 3, strategic changes, could relate to other conditions, which included non-monetary conditions. Correct?---Could you repeat that question again, sorry, Ms Sweet? Could you just repeat that, sorry?

*** LAURA CAMPANARO

XXN MS SWEET

PN180

Did you understand from reading that that the other conditions referred to in pillar 3 included non-monetary conditions?---I recall reading the document. I don't recall that specific section.

PN181

If I can take you just up to the previous page, 2173. Do you recall reading about the public sector priorities?---I recall reading that document. Again, I don't recall that specific page.

PN182

Having read the document, you understood that one of the public sector priorities was to deliver exceptional services and value for Victorians. Correct?---Again, Ms Sweet, I recall reading the document. I don't recall that specific section.

PN183

If I can take you to page 1277.

PN184

MR BORENSTEIN: 2177.

PN185

MS SWEET: Sorry, what am I saying?

PN186

DEPUTY PRESIDENT MILLHOUSE: One two.

PN187

MR BORENSTEIN: One two.

PN188

MS SWEET: Thank you. 2177. You'll see there's a heading there Enterprise Bargaining Framework. You see that?---Yes.

PN189

You'd agree that when you read the document you didn't stop at the pillars, that you moved through, reading the whole document so as to encompass the enterprise bargaining framework. Correct?---I recall reading the document with a focus on pillars 1, 2 and 3.

PN190

I suggest that given that you were about to enter into an enterprise bargaining negotiation, you also paid attention to the enterprise bargaining framework within the wages policy. Correct?---No.

PN191

Do you recall whether or not you came away with an understanding – you see page 2177 there's a reference to Major Agreements? Do you see that?---Are you referring to the subheading?

*** LAURA CAMPANARO

XXN MS SWEET

PN192

There's a subheading Major Agreements. Do you see that?---Yes.

PN193

After 1, 2 and 3 you'll see there's another paragraph, 'Major agreements include those covering the public service, teachers, police, firefighters.' Do you see that?---I can see that, yes.

PN194

Do you recall that reference to firefighters under the heading Major Agreements sticking out in your mind when you read the document?---No.

PN195

If I can take you to page 2197, do you see a heading there, 'Authority to Commence Bargaining'?---Sorry, I don't think we're there.

PN196

I don't know, I – all right. I'm going to have to ask my junior to read out the numbers in a minute. 2179, do you see there's a heading there, 'Authority to Commence Bargaining'?---Yes, I can see that.

PN197

Yes. And I think you agreed with me that you were aware having read the policy that a public sector agency needed to obtain authority to commenced bargaining for this type of negotiation that you were entering into with the FRV, correct?---I was aware that FRV was required to obtain government approval to commenced bargaining.

PN198

And you are aware that these negotiations therefore were being conducted under the auspices of this wages policy, correct?---I was aware of the government wages policy.

PN199

Thank you. If you'd just go to page 2180. Do you see there's a heading, 'During Bargaining'?---Yes.

PN200

And you'll see the third paragraph down, 'All offers should be made on an in-principle basis with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with the wages policy, the industrial relations policy, the Fair Work Act and other relevant legislation.' Do you see that?---I can see that, yes.

PN201

And I suggest to you when you were there you came away with an understanding in entering these negotiations that all offers put to the UFU would be on an in-principle basis, correct?---No.

*** LAURA CAMPANARO

XXN MS SWEET

PN202

You'll see on the other column on page 2180, 'Approval Requirements.' Do you see that first paragraph? 'All proposed enterprise agreements require the approval of government prior to the commencement of any of the formal approval requirements outlined in the Fair Work Act', do you see that?---I can see that, yes.

PN203

That's a concept you were aware of having read this document, correct?---No.

PN204

And since you agreed with me at all times during bargaining you were aware that the FRV considered itself bound by the wages policy?---Yes.

PN205

Given that you were aware of that I suggest, Ms Campanaro that you actually read this document quite closely, didn't you?---No.

PN206

I think before we broke I was asking you about whether or not – or the timing of when FRV informed the UFU that it was required to seek approval from the government to commence negotiations. Do you recall me asking you about the timing of that and you weren't sure?---Yes.

PN207

Yes. Can I take the witness to volume D, page 2206? And tell me if you need me to scroll up here. Do you recognise this as part of a section 240 application that the UFU filed with the Commission?---If you take me to the top of it - - -

PN208

Yes, see if you - - -?---Perhaps I can confirm that, yes.

PN209

Yes. Thank you, 2203?---Yes.

PN210

Yes. And if I can take you then back down to paragraph 13 on page 2206. Do you see there it says, 'On 29 July 2021 FRV informed the UFU that to bargain under the applicable wages policy FRV needed to make a request to the Victorian Government to commence bargaining by 1 August 2021. FRV informed the UFU that it would make its submission with respect to a new enterprise agreement within this timeframe.' Does that satisfy you as to the timing?---It does.

PN211

Yes, thank you. And you'd agree with me, wouldn't you, that this document, this proceeding was filed by the UFU because in part it was concerned that the FRV was not taking timely action to obtain that approval from the government, correct?---Correct.

PN212

And when it says at page 2207 that this was a document filed on 1 November 2021, that's the correct timing, isn't it?---Correct.

*** LAURA CAMPANARO

XXN MS SWEET

PN213

You've given some evidence in your witness statement, Ms Campanaro, that there was a meeting on 26 April 2022?---Yes.

PN214

Yes. And that, I think you'd agree, was the first meeting in which formal bargaining commenced?---Yes.

PN215

And you've given evidence that at that meeting Mr Parkinson of the FRV advised that FRV had approval to bargain under the 2019 wages policy, correct?---Correct.

PN216

And he specifically noted, didn't he, that the permission was under the 2019 policy rather than the 2021 policy?---Correct.

PN217

At that meeting a Mr Sands(?) of the FRV also advised that FRV had requested an extension to bargain under the 2019 wages policy until 1 August 2022?---Yes.

PN218

Yes. And you've given some evidence about an agreed charter that was put in place around this time?---Correct.

PN219

And you've given some evidence that that charter made no mention of the need for government approval of any other reservations to matters agreed such as subject to overall agreement of a package?---Correct.

PN220

Now if I can take you to volume A, page 62. I'm much better with the lower numbers. If we can take you up to page 61 do you recognise this as what you've referred to as the 'agreed charter'?---I do.

PN221

Yes. And just tell me if I'm wrong but as I understand your evidence the agreed charter goes beyond page 61 and takes in the following pages which set out suggested agendas for meetings and proceeds all the way down to page 63, and the date 3 May 2022? That's, the charter goes for those three pages, doesn't it?---It is, yes.

PN222

Yes, okay. Then can I take you back up to page 62 and you'll see that there's a heading, 'Meeting 1, 26 April 2022'?---Yes.

PN223

And you'll see under there's a suggested agenda item number three, 'FRV to provide explanation of current status of current enterprise agreement, government wages policy, FRV objectives and broad concepts'?---Yes.

PN224

That agenda item formed part of the charter, didn't it?---Yes.

PN225

Given that it refers to wages policy I suggest to you that the wages policy is incorporated into the charter by way of reference, isn't it?---No.

PN226

And do you agree with me that that suggested agenda item, item 3, did in fact form part of the agenda and the content of meeting 1 on 26 April, didn't it?---It formed part of the agenda.

PN227

And it was part of the content of that first meeting that the FRV provided an explanation of government wages policy, correct?---FRV mentioned government wages policy at that meeting in the context of monies.

PN228

In fact FRV described the wages policy more fulsomely than that, didn't they, to include references to the enterprise bargaining framework that I've taken you to?---FRV mentioned the government wages policy at that meeting and the reference was with respect to the monies, monetary outcome.

PN229

You'd agree with me, wouldn't you, that by the inclusion of item 3 of that agenda in the charter the government wages policy formed part of the agreed charter that the parties were following?

PN230

MR BORENSTEIN: I object to this. This is asking the witness to give a legal opinion about the operation of this document in connection with the wages policy. She has given evidence about what transpired. She's given evidence about her understanding that she was asked. But she can't be asked to proffer an opinion about whether one document was incorporated by reference to another document. That's a legal question.

PN231

DEPUTY PRESIDENT MILLHOUSE: Yes but having regard to the witness' involvement there is a basis, for at least my view, that I would like to understand what the witness says in response to that question. I'd allow the question.

PN232

MR BORENSTEIN: She has been asked a question about whether she considered that - - -

PN233

DEPUTY PRESIDENT MILLHOUSE: It might – can I just interject there, Mr Borenstein. Is there a basis for having Ms Campanaro leave the room whilst you make this objection in a more fulsome way?

*** LAURA CAMPANARO

XXN MS SWEET

PN234

MR BORENSTEIN: If Ms Sweet wants her to I don't have a problem with that, Deputy President.

PN235

DEPUTY PRESIDENT MILLHOUSE: Ms Sweet, do you have a view?

PN236

MS SWEET: I think the witness should leave the courtroom, yes. Thank you, Deputy President.

PN237

DEPUTY PRESIDENT MILLHOUSE: Ms Campanaro, can we invite you please to just take a step out the door and move into the conference room until such time as you are called?---Thank you.

<THE WITNESS WITHDREW

[11.00 AM]

PN238

Mr Borenstein.

PN239

MR BORENSTEIN: Yes, I'm sorry. I think its unarguable that it's not a proper question for counsel to ask a witness to express a legal opinion about a legal opinion. She has been asked a number of questions about her understanding of item 3 of the group charter, a list of items for the first meeting. She has given her answers about that.

PN240

And then she is asked a final question and I think I have the paraphrase but I don't remember exactly, but she's basically asked whether the government wages policy forms part of this agenda item. It is incorporated by reference.

PN241

DEPUTY PRESIDENT BELL: I thought she answered that and said no, didn't she?

PN242

DEPUTY PRESIDENT MILLHOUSE: Yes but - - -

PN243

MR BORENSTEIN: But - - -

PN244

DEPUTY PRESIDENT MILLHOUSE: And then I thought - - -

PN245

MR BORENSTEIN: Which is her lay understanding but she said no.

*** LAURA CAMPANARO

XXN MS SWEET

PN246

DEPUTY PRESIDENT MILLHOUSE: And then I thought that the latter question to which the objection relied is a broader question as to whether by inclusion of item 3 the government wages policy formed part of the agreed charter, which was a broader question.

PN247

MR BORENSTEIN: That's the question that I was objecting to.

PN248

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN249

MR BORENSTEIN: And that's a matter of construction.

PN250

DEPUTY PRESIDENT MILLHOUSE: Well, is it?

PN251

MR BORENSTEIN: The Commission can do that. The witness can't give an opinion about that. It has no probative value.

PN252

DEPUTY PRESIDENT MILLHOUSE: But she has an opinion about whether it formed part of the charter that she'd attached to her witness statement, surely.

PN253

MR BORENSTEIN: But how can that assist the Commission?

PN254

DEPUTY PRESIDENT MILLHOUSE: It might not.

PN255

MR BORENSTEIN: That's the point of the objection. If she's being asked to express a legal opinion about incorporation by reference which is a legal issue, whatever she says can't be probative of anything. If the commission made a decision based on her opinion about whether it was or wasn't incorporated, it would be in error.

PN256

DEPUTY PRESIDENT MILLHOUSE: All right. Ms Sweet, in circumstances where the question has been put in a couple of different ways to the witness, and it seems that you've got an answer that at least indicates that it was not incorporated by way of reference, and that it formed part of, in the witness's view, the agenda only - - -

PN257

MS SWEET: Yes.

PN258

DEPUTY PRESIDENT MILLHOUSE: - - - are there any supplementary questions that you consider it necessary to put to the witness, in order to further tease out any of the issues that you're seeking to adduce at this time?

PN259

MS SWEET: Well, if I can just take the Commissioner to the section of the witness statement that I'm cross-examining on, if that might assist, which is volume A, page 29.

PN260

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN261

MS SWEET: And it's paragraph 19. The bargaining charter makes no mention of the need for government approval, or any other reservations. So I'm asking her a question as to whether or not she's agreeing that item 3 is in fact a mention of the need for government approval by virtue of the reference to the wages policy.

PN262

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN263

DEPUTY PRESIDENT BELL: Is that really just challenging her interpretation of the bargaining charter?

PN264

MS SWEET: Well, I think it goes beyond interpretation, Deputy President, and I'm questioning her on a matter of fact, whether the fact that that reference to wages policy, as a matter of fact, means that there is a mention of the need for government approval. I can't take it any higher than that.

PN265

DEPUTY PRESIDENT BELL: All right. It sounds possible that Mr O'Grady's aide-mémoire is going to be coming back to us, I think, but anyhow, I understand, Mr Borenstein, your objection at asking lay witnesses to interpret documents, but in light of paragraph 19, there's an element of - - -

PN266

MR BORENSTEIN: Paragraph 19 is simply recording the fact that there's no mention in the charter. If my friend wants to put to the witness - - -

PN267

DEPUTY PRESIDENT BELL: That there is a mention.

PN268

MR BORENSTEIN: - - - 'Well, you've said that here; what do you say about that?' that would be a different question.

PN269

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN270

DEPUTY PRESIDENT BELL: Ms Sweet.

PN271

MS SWEET: Well, perhaps I will take that steer from my learned friend.

PN272

DEPUTY PRESIDENT MILLHOUSE: Yes, refrain. All right. We will proceed on that basis. We will ask the witness to return, thank you.

PN273

MS SWEET: As the commission pleases.

<LAURA CAMPANARO, RECALLED [11.05 AM]

CROSS-EXAMINATION BY MS SWEET, CONTINUING [11.05 AM]

PN274

DEPUTY PRESIDENT MILLHOUSE: Thank you, Ms Sweet.

PN275

MS SWEET: Yes, thank you, Deputy President. Ms Campanaro, I'm going to ask you a different question. And I'm going to take you - in order to ask the question, I want to take you to your witness statement, which is volume A, page 29. And I want to draw your attention, Ms Campanaro, to paragraph 19, where you say, 'This bargaining charter makes no mention of the need for government approval, or of any other reservations to matters agreed, such as "subject to overall agreement on a package".' I just - in particular, I want to take you to the idea that the charter 'makes no mention of the need for government approval'. Having now seen - having had your attention drawn to item 3, which forms part of the charter, do you still agree that the bargaining charter makes no mention of the need for government approval?---Yes.

PN276

You would agree that as part of the charter - wouldn't you - that the issue of the wages policy - the issue of the wages policy, and compliance with wages policy, forms part of the charter, by reference - by reason of the reference to government wages policy in item - agenda item 3; correct?---No.

PN277

And, given the answer you've just given, it's correct to say, isn't it, that the bargaining charter doesn't incorporate - I withdraw that - the bargaining charter isn't a comprehensive statement of the protocols and principles that applied to bargaining; correct?---Could you please repeat that, Ms Sweet.

PN278

Yes. You've accepted from - you've given evidence that the wages policy was raised at this initial meeting; correct?---Yes.

PN279

And you've given evidence that that was raised as part of item 3 of the agenda that's in the charter; correct?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN280

So, to the extent that the charter does not deal with the requirements of the government wages policy, it's correct to say that this charter doesn't

comprehensively state the protocols and principles that applied in bargaining; correct?---No.

PN281

I want to now take you to the FRV's response to version 10 of the UFU log. And this appears at volume A, page 103. And this is contained within your statement. And you see there - and you recall providing the log of claims, version 10 to the FRV on or around 11 August 2022; that would be about right - correct?---Yes.

PN282

And you recall receiving this response on or around 16 August 2022?---Yes.

PN283

And you see the words there:

PN284

The following provides FRV's response to the above log on a without prejudice basis, noting that a range of substantive matters now await instruction to FRV by the State Government.

PN285

You see that there?---Yes.

PN286

And you recall reading that at the time you received the document?---Yes.

PN287

And the third paragraph down:

PN288

All clauses as set out in the UFU log, unless otherwise commented on below, are agreed in principle by FRV, subject to final agreement on an overall package of provisions for the proposed EA.

PN289

So, having seen - having had your attention drawn to that, you would agree that, from at least 16 August 2022, FRV had made express its position to the UFU that all clauses in the log that had been agreed were agreed in principle; correct?---Yes.

PN290

And that the agreement was conditional upon 'final agreement on an overall package of provisions for the proposed EA'; correct?---Yes.

PN291

And the bargaining that occurred thereafter occurred with the UFU's express understanding of those matters; correct?---With respect to the wages and allowances matter, yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN292

Well, the previous answer you've given was not qualified with respect to wages and allowances, now, was it?---No.

PN293

And you didn't understand, from those paragraphs I took you to, that those - that in principle agreement, subject to final agreement, related only to wages and allowances matters; correct?---The preamble to that document relates also to the rest of the document.

PN294

Yes. But it is in no way qualified by only wages and allowances matters, is it?---The preamble to that document, again, relates to the rest of the clauses as outlined in that document.

PN295

You see how it says, in the third paragraph, 'All clauses as set out in the UFU log, unless otherwise commented on below, are agreed in principle by FRV' - you see that?---I can see that, yes.

PN296

So that's - you had understood that as a reference to all matters in the version 10 log, including things that weren't wages and allowances; correct?---Could you just repeat that, sorry, Ms Sweet.

PN297

Yes, no, of course. You understood the references to 'All clauses as set out in the UFU log unless otherwise commented on below, are agreed in principle by FRV' - you understood that reference to include all clauses not contained below that were set out in version 10, which included non- - matters not related to wages and allowances; correct?---No, I read the document as a whole. The response document as a whole.

PN298

Yes, I will make submissions about that. Can I now take you to the bargaining meeting of 11 October 2022. You recall that there was a meeting around that time?---Yes.

PN299

I will take you to the minutes of that meeting. If the witness could be taken to volume A, page 101. And if I can draw your attention to item 7:

PN300

UFU to circulate an updated version of the EA document this week. It will be called version 12.

PN301

You see that?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN302

I now want to take you to a UF - a 240 proceeding filed by the FRV. If the witness could be taken to volume D, at 2214. And do you recognise this as a 240 proceeding that was addressed to you as the contact person?---Yes.

PN303

And I can take you to the bottom of the document. Do you accept that it was filed on or around 4 November 2022?---If - - -

PN304

You're just being taken to it?---Thank you.

PN305

Yes. Do you accept that you would have received this document on or around that time?---Yes.

PN306

Yes. And you read this document when - around the time that it was provided to you?---Yes.

PN307

And if I can take you to page 2217. And I just want to draw your attention to paragraphs 17 and 18. You will see that the FRV says there:

PN308

FRV attended the bargaining meetings in good faith, and in its view, significant progress has been made, including a range of concessions agreed in principle, subject to reaching an overall agreement, to which FRV's stance relied upon some of the efficiencies measures referenced in another proceeding.

PN309

The most recent bargaining meeting occurred on 11 October 2022. At that meeting, the following was noted.

PN310

And look at (a):

PN311

The UFU would provide FRV with an updated draft enterprise agreement, reflecting the amendments agreed in principle, including unresolved matters, for FRV to consider and provide a response to.

PN312

And that description at 18(a) there is an accurate description of what the UFU was asked to provide to FRV; correct?---No.

*** LAURA CAMPANARO

XXN MS SWEET

PN313

And I suggest to you, to the extent that those facts are not reflected in the bargaining minutes of 11 October that I took you to, that those minutes don't

fulsomely record what was asked to be provided by way of version 12; correct?---No.

PN314

And UFU - as I understand it, you didn't take any objection to that characterisation of the meeting, having received this document, did you?---Could you please repeat that question, Ms Sweet.

PN315

Yes. I think you've agreed with me that you received this document, as the contact person, and you read it at the time you received it?---Yes.

PN316

And you didn't take issue with - to the commissioner in this - in the 240 proceeding - as to the FRV's characterisation of what was asked to be provided in respect of the updated draft agreement; correct?---We did.

PN317

And you understood that FRV, on 11 October, was asking you to provide an updated draft agreement to reflect its in principle agreement to matters; correct?---No.

PN318

And if I can now take you to – sorry, I withdraw that. And ultimately, the UFU provided a version 12 to the FRV, correct?---Yes.

PN319

And I want to take you to FRV's response to version 12, which is – if the witness could be shown volume D, page 2224. And if it's possible, thank you very much. And you'll see there that the response was prefaced by the words:

PN320

The following provides FRV's response to the above revised UFU log on a without prejudice basis. Noting the range of substantive matters are subject to the state government instruction and approval.

PN321

Do you recall reading that at the time?---Yes.

PN322

Do you see down the bottom of the page, FRV notes that:

PN323

In-principle agreement has been reached on a substantial number of matters, including conditional concessions it has offered during bargaining, including but not limited to the following:

*** LAURA CAMPANARO

XXN MS SWEET

PN324

And then it lists a number of matters. If we could have the next page, please. And can I take you to under the heading, 'FRV response to UFU log, volume 12'. The second paragraph:

PN325

All clauses set out in the UFU revised log 12, unless otherwise commented on below are agreed in-principle by FRV, subject to final agreement on an overall package of provisions for the proposed EA and subject to the efficiencies allowance proceeding.

PN326

So having read this, you understood that FRV was proceeding with negotiations based on everything not commented on below, that was included in the volume 12 log as having been agreed in-principle only; correct?---Sorry, could you repeat that question, Ms Sweet.

PN327

Yes, of course?---Thank you.

PN328

You understood, having read this, that unless the clause was set out in the table below, that the FRV's agreement to the matters that appeared in version 12 of the log were the subject of FRV's in-principle agreement only; correct?---No.

PN329

And if I could now take you to a letter sent from the FRV to the UFU on 10 March which, if the witness could be provided, volume D, page 2256. And do you recall receiving that offer at around that time? Do you recall reading that?---Yes.

PN330

And when it said:

PN331

FRV's authorised to and makes the following monetary offer

PN332

you understood authorised to mean 'authorised by the government'?---Yes.

PN333

And if I can take you to another letter from the FRV to UFU at volume D, page 2263. And you recognise that as a letter from Fire Rescue Victoria to Peter Marshall, dated 14 March 2023?---Yes.

PN334

And you recall reading that at around that date?---Yes.

PN335

And if I can take you to the next page, 224. Under sub-paragraph (f), the next paragraph:

*** LAURA CAMPANARO

XXN MS SWEET

PN336

On 3 March 2023, FRV sought government authorisation to make an alternate wages proposal which included a pillar 3 element, contrary to the instructions from government set out above. On 8 March 2023, government reaffirmed its instruction as set out above, confirming that FRV had no authorisation to put forward FRVs alternative wages proposal.

PN337

So having read that, you understood the FRV had, in fact, sought instructions to put an offer that included a pillar 3 payment; correct?---Yes.

PN338

And you understood that it was not authorised by government to do so?---Yes.

PN339

And now I want to take you to a counteroffer made by the UFU on 15 March 2023. If the witness could have volume D, page 2267, please. And you recognise that as the counteroffer the UFU sent to the FRV on 15 March 2023?---Yes.

PN340

And do you see the second paragraph:

PN341

The UFU accepts your offer of a two per cent base wage increase plus a sign-on bonus of \$1500 subject to the conditions set out in this letter.

PN342

?---Yes.

PN343

So you understood that the UFU was telling FRV that it'd accepted their offer but on certain conditions; correct?---Yes.

PN344

And if we could have the next page, please. And Items 1 to four were the conditions that the UFU attached to its acceptance of the FRV's offer; correct?---Correct.

PN345

And you see, at the bottom, after those four matters that are itemised:

PN346

These conditions are put forward on the basis that the parties have otherwise agreed to all non-wages terms and conditions as contained in the most recent iteration of the draft operational staff agreement.

PN347

You see that?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN348

You'd agree that the UFU put that offer in the express knowledge that FRV's response to version 12 expressly stated that its agreement to the matters in version 12 of the log was in-principle only; correct?---No.

PN349

All right. Well, I've taken you to the FRV's response to version 12 of the log. You remember me taking you to that?---Yes.

PN350

And you agree, I think, that it contained a statement to the effect that unless otherwise commented on below, the matters contained in version 12 of the log were agreed in-principle; correct?---Yes.

PN351

And so, coming back to the present, this letter; the UFU put this particular offer, in the express knowledge that FRV's response to version 12 was stated to be agreement in-principle only; correct?---No.

PN352

I want to go now to a report back that the parties had before Commissioner Wilson on 17 March 2023. And if the witness could be shown, in volume D, page 2273, please. And if we can just have that rotated for Ms Campanaro, thank you very much. You recognise this as a report back document that the FRV provided as part of the 240 proceeding?---Yes.

PN353

And it was provided during the report back on 17 March 2023; correct?---I don't recall when it was provided but it's dated 16 March.

PN354

And you'd agree that there was a report back on or around 17 March 2023 that the parties had before Commissioner Wilson?---Yes.

PN355

And do you agree that this document was discussed during that report back?---I don't recall if it was discussed.

PN356

And you'll see there that the report back document is said to be read in conjunction with FRV's detailed response to version 12 of the UFU log of claims dated 28 November 2022. You recall reading that instruction, at the time, that it should be read in conjunction with the response document to version 12 of the log?---Yes.

PN357

And it's correct to say, isn't it, that during the section 240 conference, the FRV's response to version 12 of the log was discussed with the Commissioner as part of the report back?---I don't recall exactly what was discussed at that conference.

*** LAURA CAMPANARO

XXN MS SWEET

PN358

But you'd accept it's possible that version 12 – the FRV's response to version 12 of the log was discussed with the Commissioner during this report back?---I don't recall if we had any discussions about that.

PN359

Yes. And I'm asking you if it's possible, given you don't recollect one way or the other, that it happened?---Perhaps. But I don't have any recollection.

PN360

And, in fact, one of the things that was discussed before the Commissioner was the in-principle nature of FRV's agreement to its response to version 12; correct?---No.

PN361

Well, you've just told me you don't recollect one way or the other whether version 12 was discussed. You remember giving that evidence?---Yes.

PN362

So it's possible, given you can't recollect one way or the other, that the in-principle nature of the response to version 12 of the log was discussed with the Commissioner; correct?---I don't recall us discussing the in-principle nature of any response.

PN363

And given that you don't recall, it's possible that that was discussed before the Commissioner; correct?---Sorry, could you repeat that, Ms Sweet.

PN364

Yes. Given that you said that you can't recall, you don't – I withdraw that – given you say you don't recall, it's possible that the in-principle nature of the response to version 12 was discussed with the Commissioner at the report back on 17 March; correct?---I don't recall there being discussion about in-principle nature with respect to version 12.

PN365

I want to take you, now, to the wages policy that – 2023 wages policy. And you'd accept the 2023 wages policy came into effect in around April 2023?---Correct.

PN366

And you read that document at the time; correct? At the time it came into effect and was published?---At the time it was published.

PN367

And so that it follows, that you read that sometime in April 2023, correct?---I – I read it at the time it was published.

PN368

And when do you say that was, Ms Campanaro?---I don't recall the time. But it was sometime after the statement was made about it being published soon.

*** LAURA CAMPANARO

XXN MS SWEET

PN369

And having read it, you were aware that in encompassed an enterprise bargaining framework; correct?---Yes.

PN370

And if the witness could be taken to volume D, page 2192. And tell me if you need to scroll through it, but do you recognise that as the 2023 wages policy?---Could you please scroll through the first few.

PN371

Yes?---Yes.

PN372

And if I can take the witness to volume D, page 2198. You'll see there's a statement there, see the heading, 'Transitional arrangements'?---Yes.

PN373

Parties to enterprise agreements that have not been finalised – sorry:

PN374

Parties to enterprise agreements that have not finalised new agreements under the previous wages policy are eligible to bargain under the new wages policy parameters. All parties currently bargaining will be required to seek government approval before any offer is made under the new wages policy parameters.

PN375

So just stopping there. At this stage, the parties had not finalised a new agreement under the 2019 wages policy; correct?---Correct.

PN376

And you understood, upon reading this document, didn't you, that the parties were eligible to bargain under the 2023 wages policy?---Yes.

PN377

And you understood that the FRV was required to seek government approval before any offer was made under the new wages policy parameters; correct?---With respect to wages offer, yes.

PN378

Well, when you read that statement about government approval before any offer is made, you understood that to mean an offer on an overall package, not confined simply to wages and conditions - wages and allowances; correct?---No.

PN379

And the qualification that you are reading into that is not contained in those words; you would accept that, wouldn't you?---I read it to say wages - with respect to wages - 'wages policy parameters' - wages.

*** LAURA CAMPANARO

XXN MS SWEET

PN380

And I suggest to you that you read the part of the wages policy that came under the heading Enterprise Bargaining Framework; correct?---Yes.

PN381

And then I want to take you to - you will recall, there was an offer made by FRV to the UFU on 7 August 2023. You recall that offer?---Yes.

PN382

Yes. If the witness could be taken to volume D, page 2290. Do you recognise that as the offer made by the FRV to the UFU on 7 August 2023?---I do.

PN383

And you see, three paragraphs down, 'In accordance with the Victorian Government's 2023 wages policy and enterprise bargaining framework' - you see, there's a reference there - do you see that?---Yes.

PN384

And so you understood that the offer was being made pursuant to that entire document that's referred to there as the 2023 wages policy?---There's a reference, yes.

PN385

Yes. And you understood that FRV was making this offer to the UFU pursuant to the 2023 wages policy and enterprise bargaining framework; correct? That's what you understood?---'In accordance with', yes.

PN386

And if I can take you down to the next page. Three paragraphs from the bottom, do you see, there's a paragraph that starts - sorry. There's a paragraph, two from the bottom: 'This settlement offer is being put in the context of an overall package.' You see that?---Yes.

PN387

And you understood, this offer was being made on an overall package basis; correct?---I can see that sentence, yes.

PN388

Yes, and further to that, you understood that what was being offered under this offer was an overall package; correct?---I can see that's where it's stated in the letter.

*** LAURA CAMPANARO

XXN MS SWEET

PN389

Yes, I'm asking you to go beyond that. I'm asking what you understood, having read that letter, not just what you saw. What was your understanding? Was your understanding, when you read that letter, that this offer was being put on an overall package basis?---Can I read the letter as a whole. Can I refer to the front - the earlier letter - the earlier page. Thank you. I understood the letter to be providing various parameters. So you've got - on the first page, it talks - (a), (b), (c) and (d). And then it goes over, on the other page, and talks about other clauses, or other items, rather.

PN390

Yes. Do you accept that the offer was being made on an overall package basis?---Could you define 'overall package basis'?

PN391

That this was to include - this was an offer to include all of the wages, allowances and conditions that would form part of the proposed enterprise agreement?---Yes.

PN392

And the UFU rejected the offer the same day, didn't it?---Correct.

PN393

And it rejected the entire package, didn't it?---Could I be taken to that letter, please.

PN394

Yes, of course?---Thank you.

PN395

2293, please. I will just - I will take you to a specific section, but if you wish to read the whole document, of course, you must. But just going down to the second page, please. And then - sorry - the third - the next page. This is longer than I remember. Next page, please. Do you see, there's a final sentence, in the last paragraph: 'It is seen by the UFU as such, and is rejected out of hand.' So I want to suggest to you that the 7 October offer was rejected in its entirety by the UFU, by virtue of that letter, on 7 August 2023?---The offer was rejected.

PN396

I want to now take you to the post declaration negotiating period?---Yes.

PN397

And I want to take you now to volume B, at page 21. And it's correct to say that by a letter of 5 October 2023, the FRV suggested a meeting with the UFU on 11 October 2023; correct?---Correct.

PN398

And the UFU did not suggest that the parties meet any earlier, did it?---I don't recall. I believe we accepted 11 October, I recall.

PN399

And it's correct to say that the UFU made itself available for two hours on 11 October 2023; correct?---Initially, yes.

PN400

Well, I take you to volume B, page 33. You will see there that there's a letter from Mr Marshall to Mr Freeman, stating that the UFU was available from 10 until 12 on that day?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN401

So you would accept that the UFU made itself available for two hours; correct?---Yes.

PN402

And the UFU declined to agree to make inquiries with Commissioner Wilson regarding his availability to attend on that day; correct?---Yes.

PN403

And the UFU declined to permit a representative from the Department of Justice and Community Safety to attend as an observer, on the basis that that department was not a bargaining representative; correct?---Correct.

PN404

Okay. I think, ultimately, though, the meeting on 11 October lasted about four hours, didn't it?---About that, yes.

PN405

And during its meeting - during this meeting, the FRV accepted from the UFU that version 14 was the most up to date version of the proposed new operational agreement, didn't it?---It accepted, it would not reopen or renegotiate version 14.

PN406

And the FRV said in that meeting that the government had not approved the non-wage related matters that were agreed in principle between the FRV and UFU; correct?---No.

PN407

And the FRV said that it was seeking to focus on the 7 August offer, on the terms previously offered to the UFU; correct?---Sorry; could you repeat that, Ms Sweet.

PN408

Yes, of course. The FRV said that, at this meeting, it was seeking to focus on the 7 August offer, on the terms that had been previously offered to the UFU; correct?---FRV sought to focus on the three items contained - identified by the 7 August offer.

PN409

And it said, didn't it, that there were matters which were agreed in principle between the FRV and the UFU during bargaining, but which were subject to an overall agreement being reached, and were not ultimately approved by the government for inclusion in the package; correct?---No.

PN410

And there was a discussion about staffing numbers and additional firefighters; correct?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN411

And the FRV said that while there was in principle agreement in relation to the addition of 583 new firefighters, FRV's capacity to add these new positions was

subject to funding which had not yet been approved?---Could you repeat that question.

PN412

Yes?---Sorry.

PN413

So the FRV said that there had been in principle agreement in relation to 583 new firefighter positions; you agree that it said that?---No.

PN414

It said that its capacity to add the new positions was subject to funding which had not yet been approved?---Yes.

PN415

And that the necessary funding for the additional positions required the approval of the government's expenditure review committee; correct?---Could you repeat that again.

PN416

Yes. The FRV said at this meeting that the necessary funding for the additional positions required the approval of the government's expenditure review committee; correct?---I don't recall them saying it required the approval of the expenditure review - review committee.

PN417

Do you agree, it mentioned the expenditure review committee?---It did.

PN418

And it said that the necessary funding had not yet been obtained for those positions; correct?---Could you clarify that question.

PN419

Yes?---Thank you.

PN420

So there was - in the context of a discussion about staffing numbers and additional firefighters - - -?---Yes?

PN421

- - - the FRV said that the necessary funding for those positions had not yet been obtained?---Yes.

PN422

And it said that the proposed new operational agreement could not pre-empt that approval; correct?---I don't recall that.

*** LAURA CAMPANARO

XXN MS SWEET

PN423

And it said that even if funding was obtained, the FRV did not have authority to include the additional positions in the proposed new enterprise agreement; correct?---Sorry, Ms Sweet; could you repeat that question again.

PN424

Yes, it said, even if the funding was obtained, FRV didn't have authority to include those additional positions, the 583 positions, in the proposed agreement; correct?---FRV said that Government had not authorised them to include the additional positions in the enterprise agreement.

PN425

And it said that it only had authority to maintain the staffing numbers in schedule 1 of the current agreement; correct?---Yes.

PN426

So, in summary, its position was, at this meeting, that it didn't have the funding approved - sorry - the funding had not been obtained, and it didn't have authority to include the numbers themselves within the schedule to the agreement, correct?---Could you repeat that question again? Sorry, Ms Sweet.

PN427

Yes. I'm just trying to come to a landing on a summary position. It said that the funding - it didn't currently have the funding for those 583 positions, correct?---Yes.

PN428

And it didn't have authority to include the numbers in the schedule to the agreement?---Yes.

PN429

And there was discussion about the fire registration board, wasn't there?---Yes.

PN430

And FRV told the UFU that the government had expressed concerns about the costs of the fire registration board, correct?---I don't recall if the UFU raised that or if the FRV raised that.

PN431

So you agree that the topic of the cost of the FRV - the fire registration board was raised in the meeting?---Yes.

PN432

And there was a view expressed in the meeting that the work of the clause was complete, wasn't there?---I don't recall that point specifically.

PN433

And there was a concern raised by FRV about the government's concern with potential overlap and duplication between the FRV and the proposed statutory registration board, correct?---Yes.

*** LAURA CAMPANARO

XXN MS SWEET

PN434

And in respect of - and there was a discussion of the issue of extra claimed clauses with the power of arbitration attached, correct?---Correct.

PN435

And the FRV, it gave an explanation in the meeting to the UFU about the removal of the power of the Commission to arbitrate those claims clauses, correct?---Define, 'Explanation.' Sorry.

PN436

Yes. Do you agree that they raised this topic in an attempt to explain why the 7 August offer removed the arbitration clauses?---They raised the topic and they attempted to point us to the clauses in version 14 that it related to.

PN437

And the FRV said that the reason the government required the removal of the clauses was that its position was that the clauses could result in additional unbudgeted costs to the State, correct?---I don't recall if that was used - that wording was used.

PN438

And they said that the government was concerned that the operation of those clauses would be contrary to the 2023 Wages Policy and bargaining framework, correct?---No.

PN439

But Ms Crabtree has given some evidence as to her version of what occurred on 11 October and she refers to - you recall you've given some evidence at paragraph 157 of your third statement that Ms Crabtree said at the commencement of the meeting everything was agreed but the three clauses identified in the 7 August offer. Do you recall giving that evidence?---Yes.

PN440

And you're aware, aren't you, that Ms Crabtree through her statement, denies saying that?---Yes.

PN441

And in fact, you're mistaken about that, aren't you?---No.

PN442

And you received, on 13 October, a letter from the FRV with respect to the bargaining meeting held on 11 October. Do you recall that letter?---Yes.

PN443

And the UFU substantially replied to that letter on 17 October, didn't it?---I think it was 16 October.

PN444

All right. So I'll just take you to volume B, page 58 and 59. Sorry, it's got two - go to 57. Just scroll down. Thank you.

PN445

You agree - in any event, you agree that this was a communication sent from you to Mr Freeman on 17 October?---Yes.

PN446

Now, and you attach that two documents you say that the UFU would have tabled if there had been another meeting within the post-negotiating bargaining period?---Yes.

PN447

And see at page 59 is a - that was, in effect, an offer with respect to wages and allowances, correct?---Yes.

PN448

And 50 - and if you just go up to page 58, please. And that was, in effect, an offer with respect to the firefighter registration board clause, correct?---Yes.

PN449

And if I can take you to page 62 and if I can take you to - you recognise that as a letter that was sent from Fire Rescue Victoria to the UFU responding to, amongst other things, your 17 October proposals?---Yes.

PN450

Yes. And if I can take you down to the end of the letter on page - actually what I want to do is take you to page 63, please, and just down the - you'll see there's a heading halfway down the page about, 'UFU 17 October proposals'?---Yes.

PN451

And you see at the bottom of that page you've requested that:

PN452

FRV provide a response to those proposals by 2 pm today. I can confirm that FRV does not have authority from government to accept the proposed firefighters registration board clause, nor can it agree to a wage and allowance proposal as set out in the UFU correspondence.

PN453

And so you understood from that, that the 17 October proposals had been rejected by the FRV?---Yes.

PN454

And just take you over to the next page, there's a heading:

PN455

UFU rejection of the package and government approved FRV position. As you are aware, the 7 August offer reflects the terms and conditions that the Victorian Government advised FRV is prepared to approve on an overall package basis. FRV has not been authorised to agree to any other proposal and it is clear that the UFU have rejected the 7 August offer including wages and conditions.

PN456

And you accept that as at this date, that that was the status of the 7 August offer, that it had been rejected by the UFU?---Yes.

PN457

And unfortunately, in the circumstances where the FRV has made it clear that the 7 August offer was put as a package, the UFUs rejection of this package means there are currently no matters that meet the definition of agreed terms for the purposes of inclusion in a workplace determination.

PN458

Now, having read that letter, it was your position as the UFU that the parties had not been able to come to an agreement on the terms of the proposed Enterprise Agreement, correct?---No.

PN459

Yes. I have no more questions for this witness, Deputy President.

PN460

DEPUTY PRESIDENT MILLHOUSE: Thanks, Ms Sweet.

PN461

Mr Borenstein?

RE-EXAMINATION BY MR BORENSTEIN

[11.57 AM]

PN462

MR BORENSTEIN: Just one matter if I might?---Yes.

PN463

Right at the end, Ms Sweet asked you a question about whether you agreed that the parties had not been able to reach agreement on the terms for an Enterprise Agreement and you said, 'No.' Can you explain to the Commission, please, why you were of that opinion?---The UFU and FRV have undertaken extensive bargaining since 2020 and it was the 19 June statement of Commissioner Wilson that recorded the final progress, extensive progress between UFU and FRV whereby version 14 of the proposed operational staff agreement contained all of the terms and conditions that UFU and FRV had agreed - bargained for and agreed, except, of course, for the increase to wages and allowances. Wages and allowances increase was the only outstanding matter by June 2023.

PN464

Thank you. I have no further re-examination if the Commission please.

PN465

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN466

Ms Campanaro, thank you for your evidence. You're excused from your oath?---Thank you.

*** LAURA CAMPANARO

RXN MR BORENSTEIN

PN467

You can resume your place in the court room?---Thank you, Deputy President.

<THE WITNESS WITHDREW

[11.59 AM]

PN468

MR BORENSTEIN: I'm just told by Ms Sweet that they don't seek to cross-examine Mr Kefalas.

PN469

DEPUTY PRESIDENT MILLHOUSE: Very well.

PN470

MR BORENSTEIN: Can we tender his statement, please?

PN471

DEPUTY PRESIDENT MILLHOUSE: Yes. That is the second witness statement of James Kefalas dated 17 November 2023.

PN472

MR BORENSTEIN: Correct.

PN473

DEPUTY PRESIDENT MILLHOUSE: Any objection?

PN474

MS SWEET: No.

PN475

DEPUTY PRESIDENT MILLHOUSE: We'll mark that statement as exhibit 9.

EXHIBIT #9 SECOND WITNESS STATEMENT OF JAMES KEFALAS DATED 17/11/2023

PN476

MR BORENSTEIN: Thank you. That's the applicant's evidentiary case, Deputy President.

PN477

DEPUTY PRESIDENT MILLHOUSE: Thank you very much.

PN478

Ms Sweet?

PN479

MS SWEET: Yes. Thank you, Deputy President. I rely on the two sets of written submissions filed by the FRV in this matter, the first is found at volume B, page 3. The second reply submissions are found at volume B, page 71.

PN480

The essentials of the FRVs case are contained in those submissions. The Full Bench will also have deduced the directions of the FRVs final submissions from

my cross-examination of Ms Campanaro and therefore I don't propose to open at any length.

PN481

The position of the FRV is set out, as I say, in the submissions. The short point being there are no agreed terms and the matters at issue are all the claims made by the parties but the matters in issue are divided into two categories.

PN482

The first is being the substantive workplace determination matters that are set out in the Minister's position document which appears at volume C, page 3 and attachment A to that position document. So those are defined matters and then there is what I would call everything else that's in version 14 of the log of claims and version 14 of the log of claims appears at volume A, page 109.

PN483

So while all of the matters are technically (indistinct) the government has now authorised FRV to and FRV has determined to adopt a position that other than the matters which the FRV is not authorised to agree to or support, the matters in version 14 of the draft proposed Enterprise Agreement are not contested.

PN484

The applicant - sorry, the FRV relies upon two witness statements of Ms Crabtree, the first is contained in volume D and Ms Crabtree's statement commences at volume D, page 2153 and the second statement - or I should say that is the second statement. The third statement on which we rely is contained in volume B commencing at page 77.

PN485

DEPUTY PRESIDENT BELL: Sorry, can I just clarify that? I've got three statements of Jo Crabtree.

PN486

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN487

DEPUTY PRESIDENT BELL: The first is what I would - in chronological order is D 2153.

PN488

DEPUTY PRESIDENT MILLHOUSE: And that was marked exhibit 5 in the previous proceedings, dated 5 September 2023.

PN489

MS SWEET: Yes. So I think that statement is in the materials at the request of, I think, the Minister.

PN490

DEPUTY PRESIDENT BELL: I see.

PN491

MS SWEET: Because the Minister's position was that the Minister wished for all the material that had been before the previous Full Bench to be before this Full Bench but in terms of the statements upon we rely, for the purposes of this hearing, it's the second and the third.

PN492

DEPUTY PRESIDENT MILLHOUSE: Yes. Thank you.

PN493

MS SWEET: I call Ms Jo Crabtree.

PN494

DEPUTY PRESIDENT MILLHOUSE: Thank you. Call Ms Crabtree.

PN495

DEPUTY PRESIDENT BELL: Actually, sorry, Ms Sweet, can I just ask - I suppose technically they're potentially important questions so the second witness statement of Jo Crabtree which is at B 15 and paragraph 3 - - -

PN496

MS SWEET: Yes. Yes, my learned friend's just raising that with me now, Deputy President. I think the safest route is to say that we rely on all three of them and I'll tender all three of them in the witness box with Ms Crabtree.

PN497

DEPUTY PRESIDENT BELL: I think that's a good indication for your friend so - - -

PN498

MR BORENSTEIN: We have no problem.

PN499

DEPUTY PRESIDENT BELL: All right. Thank you.

PN500

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN501

Thank you, Ms Crabtree. Will you be taking an oath or an affirmation today?

PN502

MS CRABTREE: An oath.

PN503

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN504

THE ASSOCIATE: Can you please state your full name and your address, you may use a business address.

PN505

MS CRABTREE: Joanne Crabtree and Albert Street in East Melbourne.

PN506

THE ASSOCIATE: Thank you.

<JOANNE CRABTREE, SWORN

[12.07 PM]

EXAMINATION-IN-CHIEF BY MS SWEET

[12.07 PM]

PN507

DEPUTY PRESIDENT MILLHOUSE: Ms Sweet?

PN508

MS SWEET: Yes. Thank you, Deputy President.

PN509

Ms Crabtree, if you could please repeat your full name for the Commission?---Joanne Crabtree.

PN510

And your address?---Albert Street, East Melbourne. I forget the number - of FRV.

PN511

And can you tell the Commission what you do for a living?---I'm the executive director people and culture at FRV.

PN512

All right. And in the course of this wider intractable bargaining proceeding, you've made three statements, correct?---That's correct.

PN513

All right. If I can take you to volume D, page 2153. Do you recognise that as your first statement in this matter?---That's correct.

PN514

And if I can take you to page 2169, do you see that there's a date of 5 September to that statement?---Yes.

PN515

And have you read that statement recently?---Yes.

PN516

And are you satisfied it's true and correct?---That's correct.

PN517

Yes. I tender that statement, Deputy President.

PN518

DEPUTY PRESIDENT MILLHOUSE: I understand there's no objection.

*** JOANNE CRABTREE

XN MS SWEET

PN519

MR BORENSTEIN: No.

PN520

DEPUTY PRESIDENT MILLHOUSE: We'll mark the statement of Ms Crabtree dated 5 September 2023 as exhibit 10.

EXHIBIT #10 STATEMENT OF MS CRABTREE DATED 05/09/2023

PN521

MS SWEET: Now, I want to take you to another statement, Ms Crabtree. Volume B, page 15. Do you recognise that as the second witness statement you made in this proceeding?---That's correct.

PN522

And if I can take you to page 20, you'll see that there's a date there of 17 November 2023?---Yes.

PN523

And have you read that statement before coming - have you read that statement recently?---Yes.

PN524

And are you satisfied it's true and correct?---Yes.

PN525

I tender that statement.

PN526

DEPUTY PRESIDENT MILLHOUSE: Also no objection, Mr Borenstein?

PN527

MR BORENSTEIN: No.

PN528

DEPUTY PRESIDENT MILLHOUSE: We'll mark the second witness statement of Ms Crabtree dated 17 November 2023 as exhibit 11.

EXHIBIT #11 SECOND WITNESS STATEMENT OF MS CRABTREE DATED 17/11/2023

PN529

MS SWEET: And, Ms Crabtree, if I can take you to page - volume B, page 77, do you recognise that as your third witness statement in this matter?---Yes.

PN530

If I can take you down to page 78, you see there's a date there, 11 December 2023?---Yes.

PN531

Have you read that statement recently?---Yes.

*** JOANNE CRABTREE

XN MS SWEET

PN532

You're satisfied it's true and correct?---Yes.

PN533

I tender that statement.

PN534

DEPUTY PRESIDENT MILLHOUSE: Mr Borenstein, any objection?

PN535

MR BORENSTEIN: (No audible reply).

PN536

DEPUTY PRESIDENT MILLHOUSE: Third witness statement of Ms Crabtree dated 11 December 2023 is exhibit 12.

**EXHIBIT #12 THIRD WITNESS STATEMENT OF MS CRABTREE
DATED 11/12/2023**

PN537

MS SWEET: Thank you. I have no further questions for this witness in chief.

PN538

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN539

Thank you, Mr Borenstein.

CROSS-EXAMINATION BY MR BORENSTEIN

[12.11 PM]

PN540

MR BORENSTEIN: Ms Crabtree, can I ask you to look at paragraph 5 of your third statement? Do you see there - do you have that in front of you?---Yes.

PN541

Do you see there that you take issue with the content of paragraphs 141 to 146 of Ms Campanaro's third witness statement where she states that:

PN542

At 28 July '23, all matters except wages and allowances had been agreed.

PN543

You say that on behalf of FRV, you disagree with this?---That's correct.

PN544

See that? What do you mean when you say, 'I on behalf of FRV', does that mean that you were instructed by someone at FRV to disagree with that or is this your opinion?---It was my opinion.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN545

It's your opinion?---Mm-hm.

PN546

You say that you disagree with it - excuse me, because FRV had throughout the bargaining process made it clear that any in-principle agreement on the inclusion of particular clauses was subject to approval by the government and final agreement on an overall package, correct?---Correct.

PN547

All right. Now, you mean by that that the various particular clauses which were agreed between the parties during bargaining over three years were agreed on the basis that they were subject to reaching an overall agreement, a whole agreement, which would then need to be approved by the government, is that correct?---Correct.

PN548

Now, you also refer in paragraph 5(a) - excuse me, to paragraphs 43, 49 and 59 of your first statement.

PN549

I wonder if the witness could be shown that.

PN550

MR O'GRADY: It starts at 2153.

PN551

MR BORENSTEIN: Sorry?

PN552

MR O'GRADY: It starts at 2153. Volume D at 2153.

PN553

MR BORENSTEIN: It starts at volume D, 2153. Thank you.

PN554

So you see in paragraph 43 there, reference is made in the third and fourth line of the paragraph that:

PN555

Any proposed final agreement would be subject to approval by the Victorian Government.

PN556

And 49 on the next page, refers to:

PN557

All clauses set out in version 12 were agreed in principle by FRV subject to that agreement - subject to agreement on an overall package which would then be approved.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN558

And paragraph 59 which again then refers to a letter sent by FRV to UFU on 14 March '23 to the same effect. Now, those paragraphs and in particular, paragraph 50, refers to a statement that was issued by Commissioner Wilson. Do you see that in paragraph 50?---Yes.

PN559

And do you see that that refers to an attachment which contains the statement from Commissioner Wilson. That's D2239 but perhaps before we go there - sorry. In paragraph 50 you record the commissioner's statement that he noted that FRV and UFU had reached agreement on all but 10 issues and then he listed those issues. See that?---Yes.

PN560

Now, in addition to that the Commissioner made a further statement, if you will recall, on 19 June 2023, which you refer to at paragraph 68 and following of your statement, you remember that, and you'll remember that that was a situation where Wilson C provided the UFU and FRV with a draft statement for comment, or agreement?---That's correct.

PN561

And you will recall that Ms Campanaro communicated with FRV and secured agreement from FRV to amend the Commissioner's first draft?---Yes.

PN562

And you've set out in paragraph 70 the amendment that was proposed by Ms Campanaro, and that was intended to make clear that the report to the Commissioner of agreement was coming from both UFU and FRV, correct?---That's correct, that the matters were resolved.

PN563

I beg your pardon?---It refers to the matters being resolved.

PN564

Can you speak a bit louder, please?---It refers to the matters being resolved.

PN565

Yes, but the original draft only had the United Firefighters' Union reporting that?---Yes.

PN566

And Ms Campanaro invited the FRV to amend so that the report to the Commissioner about the resolution was coming from both UFU and FRV, correct?---Correct.

PN567

The FRV agreed to that amendment?---Yes.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN568

And the ultimate statement that was made by the Commissioner recorded both parties having reported the resolutions to him?---Yes.

PN569

In paragraph 71 – can you have a look at paragraph 71, just read that to yourself for a minute? Did you draft that statement yourself to go in the witness statement, that paragraph I mean?---I didn't draft it specifically, but it was written based on conversations with myself.

PN570

Conversations with whom?---Our lawyers.

PN571

I'm sorry?---Our lawyers.

PN572

You say in paragraph 71 that to the extent FRV indicated to Wilson C that matters had been resolved, this indication reflected the fact that parties had reached in-principle agreement as contemplated by the 2023 wages policy. You'll agree with me that the statement which was issued by Wilson C includes none of that, yes?---Sorry, can you repeat the question?

PN573

Yes. You say in paragraph 71 that to the extent FRV indicated to Wilson C that matters had been resolved, this indication reflected the fact that the parties had reached in-principle agreement as contemplated by the 2023 wages policy?---That's correct.

PN574

It is correct, isn't it, that there is nothing in Wilson C's statement that says any of that, that you've put in paragraph 71?---That's correct.

PN575

And you have produced no documentation to indicate that you conveyed what's in paragraph 71 to Wilson C when you agreed to have FRV attached to the report back, that's correct, isn't it?---Yes.

PN576

So are you saying in paragraph 71: that's what we meant, but we never told anybody; is that what you're saying?---No.

PN577

Well if you didn't tell Wilson C about the reservations in paragraph 71, and it's not included in the statement, how else is anyone to read the statement when they see it, the statement from Wilson C when they see it?---It was discussed multiple times through the conferences with Wilson C that we were bargaining under the government wages policy.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN578

Going to paragraph 16 of your third statement – do you have that in front of you?---Not yet.

PN579

Could we have paragraph 6 on page 70 of volume B, please? 78, sorry. You can read that to yourself. Is it not the case that over the time that you've been negotiating with UFU for this enterprise agreement that you were regularly reporting back to the government on progress that had been made with agreement on terms for the new agreement?---Yes.

PN580

You haven't given any evidence in the three statements that you've made that the government at any time told you during those report backs to withdraw agreement to any particular clauses that had been agreed with the UFU?---Not to withdraw, no.

PN581

You haven't given any evidence in your statements that at any time FRV informed UFU the clauses that had previously been agreed in discussions were no longer agreed, that's correct, isn't it?---Can you repeat the question, please?

PN582

Yes. We were talking about clauses that have been agreed over the bargaining period of three years or however long?---Mm-hm.

PN583

And I'm putting to you that you haven't advanced any evidence that during that period FRV informed the UFU that any of those clauses that had been previously agreed were no longer agreed?---Not until the 7 August offer.

PN584

Now, at the end of paragraph 6 in the final sentence you say:

PN585

FRV's position is that no matters met the definition of 'agreed term' when the application for the intractable bargaining declaration was made or at the end of the bargaining period.

PN586

You say that they didn't meet the definition of 'agreed term.' That's what you say in paragraph 6, correct?---Yes, in relation to the intractable bargaining legislation.

PN587

So would you mind telling me what you mean by 'agreed term'?---Yes, and I'm not a lawyer so can only speak I guess from my understanding of the legislation and going through this process.

PN588

Well can I just interrupt for a moment, sorry, just on that point?---Mm.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN589

When you've written this in paragraph 6 that they don't meet the definition of 'agreed term', is that an opinion that you've expressed based on your own understanding - - -?---Yes.

PN590

As you were about to say?---Yes.

PN591

Sorry, I interrupted you?---No, that's okay.

PN592

You were going to tell us what you meant?---So what I meant is that there's a different meaning for 'approved' in the context of bargaining in relation to the context of intractable bargaining legislation.

PN593

When you say 'approved', do you mean 'agreed'?---Agreed, yes. And so 'agreed' in that term means that both parties have agreed to it being included in a declaration or an agreement.

PN594

I'm just wanting to turn up a document for you. I'm just trying to find the electronic page number for you, I'm sorry. Can I ask you to go to volume A, page 821, and if we're lucky that will be the offer of 7 August? Now, this is – did you have anything to do with the drafting of this offer?---I did.

PN595

What did you have to do with it?---I helped draft it.

PN596

Who did you help?---There were multiple drafts, but I helped the Fire Rescue Commissioner.

PN597

The development in this letter of 7 August is the proposal of four monetary sums as part of a package, correct, at the bottom of the first page?---Correct.

PN598

Then there is a reference on the second page to the two clauses which it's said the government has not authorised FRV to include in the replacement operational agreement, correct?---It's one clause which is the Fire Registration Board clause. And then there's a reference to multiple clauses with regards to removing the arbitration of Fair Work during the life of the agreement. But that one paragraph refers to multiple clauses.

PN599

So, when you say that, you're talking about the clauses that allow for arbitration of claims made during the life of the agreement?---It's clauses that allow for extra claims to be made.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN600

Okay. It's the position, isn't it, that those sort of clauses exist in the current enterprise agreement?---Correct.

PN601

And to your knowledge they existed in the previous agreements that were combined to form the current agreement?---My understanding was that some of them were. Some of them were relatively new clauses negotiated through the current negotiation period for this agreement.

PN602

Yes. And up until this letter those clauses were, to use your terminology, agreed in principle?---Up until FRV received authority by government which was prior to this letter, up until that point they had been agreed in principle, yes.

PN603

And that goes to the registration board, as well?---The registration board was agreed in principle to be maintained.

PN604

In the second-last paragraph of the letter it says that this settlement offer is being put in the context of an overall package. And you mean by that, don't you, that this offer is an offer of a complete enterprise agreement that is to be put forward?---Correct.

PN605

The letter says nothing, does it, about what is to happen to previously agreed clauses or terms if the letter is not accepted?---Sorry, could we just go to the second page of the letter please?

PN606

The letter does not say what is to happen to the clauses that were previously agreed with the UFU if the UFU did not accept this particular offer. That's so, isn't it?

PN607

MS SWEET: She's just reading the letter.

PN608

WITNESS: I'm just reading the letter.

PN609

MR BORENSTEIN: Go ahead?---No, it doesn't.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN610

No. Can I ask you to turn to paragraph 64 of your first statement and I'll give you the page number in a moment. It's D2165 on – thank you. Do you have that page now? Thank you. Can I ask you to go to paragraph 66. We heard a lot of talk today about FRV needing authorisation from the government to make any offers. On 15 June you say DJCS wrote to FRV to confirm the government's

position in relation to bargaining from the Operational Firefighters Agreement, and you've attached the correspondence. And you say that the correspondence authorised a revised offer to be put to the UFU. And you go on to say that 'in addition to a monetary offer the letter stated that FRV's offer should specify the following matters would not be approved for inclusion.' And then you've mentioned a couple of things there?---Mm-hm.

PN611

Then in paragraph 67 the letter also stated in subparagraph (a), 'The settlement offer should also specify that if the offer is rejected by the UFU and other bargaining representatives FRV will reserve its right to withdraw in-principle agreement to retain some or all of the restricted clauses contained in the current operational agreement.' Do you see that?---Yes.

PN612

Now you'll agree with me and it's obvious on the face of the letter of 7 August, 7 August doesn't have the wording which is in paragraph (a), does it?---No.

PN613

No. This is an authorisation that FRV received for an offer on 15 June 2023?---Yes.

PN614

Is this the authorisation on which FRV acted in making the 7 August offer?---Not entirely, no.

PN615

What other authorisation was there for the 7 August letter that you haven't told us about?---So, between the receiving this notification and issuing the 7 August letter there was a number of conferences and discussions and lobbying with government to reconsider some of the elements of this letter.

PN616

Is that because FRV didn't agree with it all?---We had concerns with it, yes.

PN617

And so can you tell us about these meetings because you haven't put them in your statement?---I think there was reference to a number of meetings between – I thought there had been reference in the statement to a number of meetings over this time.

PN618

After 15 June?---Yes.

PN619

Can you just point them to me? I may have missed them. Are you talking about paragraph 73?---Potentially. It's a little bit hard without it in front of me.

PN620

Sorry?---It's a little bit hard without it in front of me but yes, 73.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN621

I'm sorry. Do you have paragraph 73 in front of you?---Yes, I do now.

PN622

You don't say in paragraph 73 that you were having meetings because FRV had concerns about the letter of 15 June, do you?---Well, we had a number of meetings in relation to the offer but predominantly we needed to have more information provided. But we also did express some of the concerns that we had.

PN623

Yes. Because you don't mention that you expressed concerns about the letter when you made your statement in paragraph 73, do you?---Not specifically, no.

PN624

Well, not at all. There's no mention of the word, 'concerns' in that paragraph, is there?---There's no mention of the word, 'concerns' but it's implied there that we'd had a number of meetings with government over the matters that we had agreed in principle that we didn't receive approval for from government.

PN625

I'm sorry, could you just repeat that please?---We discussed with them particularly those matters that we had reached in-principle agreement through bargaining that we didn't receive authority for from government in the letter.

PN626

Okay. And so is the implicit story in paragraph 73 that FRV was unhappy about the terms which had been authorised on 15 June?---We were concerned with them, yes.

PN627

Okay. And why were you concerned? What was the concern?---Well, the concern was that both parties, the UFV and FRV had worked collaboratively together over an extended period of time to develop and bargain and enterprise agreement that would provide harmonisation for the workforce, support for the workforce, and that all the parameters that we'd agreed through. And it felt like when we got to the end of that, additional conditions were put on the table. And we felt that it would impact the collaborative industrial environment that we had. And these particular clauses that we talked about earlier had been agreed in principle, some of them brand new and some of them rolled over.

PN628

And who attended these meetings with the government?---I can only talk on some of the meetings that I attended.

PN629

Yes?---So, I attended one meeting with myself, Deputy Secretary Schroeder, the Minister's Chief-of-Staff and Kate Fitzgerald, Deputy Secretary of DJCS.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN630

And do you know who attended the meetings that you were not at?---The Fire Rescue Commissioner – sorry, who also attended that - - -

PN631

Sorry, I can't hear you?---Sorry, the Fire Rescue Commissioner also attended by phone that previous meeting and - - -

PN632

Was that Commissioner Freeman?---Yes. And there'd been other meetings between Commissioner Freeman and the Minister, and Commissioner Freeman and the Minister's Chief-of-Staff and the Deputy Secretary, Kate Fitzgerald.

PN633

Ms Schroeder wasn't at those other meetings?---Not that I'm aware of.

PN634

And there those meetings minuted?---No.

PN635

So, there's no record of what was said in those meetings?---The ones that I weren't at, I don't know.

PN636

What about the ones you were at?---The meeting that I attended, we did send ahead of the meeting, pre-read material and an outline of what we wanted to discuss.

PN637

Is there any reason why that sort of material wasn't included in your statement?---It was removed.

PN638

Sorry?---It was removed.

PN639

By who?---Through the legal review process.

PN640

What does that mean?---Well, through it being reviewed by lawyers it was felt that that needed to be removed.

PN641

Is that material that you could provide to us in the course of today?---Yes.

PN642

Could I ask for a direction, Deputy President, that the witness provide that material to us as soon as possible today, please?

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN643

DEPUTY PRESIDENT MILLHOUSE: I might confer with my colleagues on the Full Bench about that.

PN644

MR BORENSTEIN: Certainly.

PN645

DEPUTY PRESIDENT MILLHOUSE: And we'll revert to you after the lunch break, Mr Borenstein.

PN646

MR BORENSTEIN: Thank you. Now, in the course of the discussions about your concerns, was one of the concerns the inclusion in any offer that was communicated to the UFU of the ultimatum that's referred to in paragraph 67, as being in the letter of 15 June, that is, that if the settlement is rejected that you reserve the right to withdraw all the in-principle agreed terms? Was that part of the concerns that were raised?---We felt there could have been a more constructive and collaborative way to put that.

PN647

So the answer is yes, that was one of the concerns you raised?---Yes.

PN648

As a result of you raising your concerns, did the government agree that when you sent your letter of 7 August that you did not need to include that ultimatum?---They reviewed the final letter before it was sent, and they were happy with that and they approved that version.

PN649

I just want to deal with one final matter in your first witness statement at paragraph 11. It's the second page of the statement. It's D2154, thank you. Do you see paragraph 11 on that page?---Yes.

PN650

Could I ask you to look at the last sentence in that paragraph?---Yes.

PN651

Two things: firstly, it is the case, is it not, that there are a number of persons who are employed or engaged by FRV who were involved directly in the enterprise bargaining from 2020 onwards and who are still in the employment or engagement of FRV?---There are some, not all.

PN652

I'm sorry?---There are some, not all.

PN653

Yes, there are some though?---Some.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN654

One of them is Ms Schroeder?---I don't recall Ms Schroeder being directly part of the negotiations, in terms of the bargaining meetings.

PN655

When you say you don't recall, does that mean that she might have been but you can't remember?---I only really became involved probably from about August – July/August '22.

PN656

So you're telling us that you really can't speak to what happened before that?---Not in a great terms of detail in terms of who actually attended the meetings.

PN657

Yes?---But I do have an oversight or understanding as to what happened during the course of the bargaining.

PN658

You have a general impression of what happened?---Not impression; understanding.

PN659

Based on what?---Based on speaking to some of the individuals who were involved, and reading some of the material.

PN660

But you haven't told us in your statement at all of speaking to anybody. You say in your statement at paragraph 9:

PN661

Unless otherwise stated I make this statement based on my own knowledge and belief. Where I give evidence on any matters based on information provided to me, I identify the source.

PN662

?---That's - - -

PN663

You haven't identified any other sources. What are we to make of that?---I don't know.

PN664

Well, who are the other people that informed you?---My team.

PN665

Who is on your team?---Well, it's the people and culture team at FRV, so - - -

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN666

That still doesn't give me a single name?---So the workplace relations group, I spoke to Peter Parkinson, Alex Sands, Caz Laughton, Nick Koletsis; I spoke to members of ELT.

PN667

And all of those people are still contactable by FRV, are they not?---Not all of them. Some of them have left.

PN668

When you say, 'they've left', they haven't left the earth; they're all on a phone or something, aren't they?---That's correct.

PN669

So they're contactable, aren't they?---Yes.

PN670

I notice the time. That's all the questions I have for the moment, but I would ask that the witness be retained until after lunch when we get your ruling on the production of those documents.

PN671

DEPUTY PRESIDENT MILLHOUSE: All right.

<THE WITNESS WITHDREW

[12.53 PM]

PN672

MR BORENSTEIN: It may be that Ms Sweet might be particularly cooperative and arrange for them to come before lunch so we save time.

PN673

DEPUTY PRESIDENT MILLHOUSE: Well, I was going to use this opportunity to hear from Ms Sweet in relation to that question now.

PN674

MR BORENSTEIN: Yes, sure.

PN675

DEPUTY PRESIDENT MILLHOUSE: Thank you, Mr Borenstein. Ms Sweet?

PN676

MS SWEET: Deputy President, I'm going to need to seek some instructions before I can address you on that.

PN677

DEPUTY PRESIDENT MILLHOUSE: All right. Well, on that basis, it seems that now might be an appropriate time to take the luncheon adjournment, and we'll return at 2 o'clock.

PN678

MR BORENSTEIN: Just before you leave – I'm sorry - - -

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN679

DEPUTY PRESIDENT MILLHOUSE: That's all right.

PN680

MR BORENSTEIN: We're concerned about transcript coming sooner rather than later, and it's suggested to me that if the Commission gives an indication to the people who run the transcript for expedition at this time we might get lucky.

PN681

DEPUTY PRESIDENT MILLHOUSE: Is your request that a single-day turnaround time of tomorrow is produced for the transcript of today's proceedings, Mr Borenstein?

PN682

MR BORENSTEIN: That – well I think that's probably the best we could ask for.

PN683

DEPUTY PRESIDENT MILLHOUSE: Yes. The Commission's usual approach is to take a more timely turnaround time for the production of transcript. If a party is seeking an expedited turnaround time, then it's a matter for the party to make that transcript order and make that request. It will incur the fees associated with paying for that expedited timeframe.

PN684

Whether and if we're in a position to secure transcript for today by the time that we come back together again tomorrow is not something I can advise you on at this stage. I can make some inquiries during lunch and revert to you on that.

PN685

MR BORENSTEIN: That would be entirely satisfactory. Thank you.

PN686

DEPUTY PRESIDENT MILLHOUSE: All right. Thank you very much. With that said, we'll adjourn. We'll return at 2.

LUNCHEON ADJOURNMENT [12.55 PM]

RESUMED [2.06 PM]

<JOANNE CRABTREE, RECALLED [2.06 PM]

CROSS-EXAMINATION BY MR BORENSTEIN, CONTINUING [2.06 PM]

PN687

DEPUTY PRESIDENT MILLHOUSE: Thank you, everyone. I understand, from my chambers, that we've received an email from your instructing solicitors, Ms Sweet. Would you like to address us on that?

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN688

MS SWEET: Yes, thank you. So, in answer to my learned friend Mr Borenstein's call, we've provided this document. It's the one document; there are no attachments to it. But it answers the call, in the sense that it contains, in that document, the pre-reading and the items for discussion in the one email that were the categories of call. We provide that, in the interests of transparency, and the parties and the intervenor all have that. It is, in my submission, of limited relevance and utility to the questions that the Full Bench has to answer in this case, but as said, we provide it by way of transparency.

PN689

DEPUTY PRESIDENT MILLHOUSE: Very well. Mr Borenstein, you have a copy of that document before you?

PN690

MR BORENSTEIN: I have an electronic copy. Thank you.

PN691

DEPUTY PRESIDENT MILLHOUSE: Have you had an opportunity to consider its contents?

PN692

MR BORENSTEIN: I have.

PN693

DEPUTY PRESIDENT MILLHOUSE: Would you like to put some supplementary questions to the witness in relation to it?

PN694

MR BORENSTEIN: I would, if the commission would allow me.

PN695

DEPUTY PRESIDENT MILLHOUSE: Very well. Ms Crabtree, you remain under your oath. Thank you.

PN696

MR BORENSTEIN: Ms Crabtree, do you have a copy of this email with you?---No.

PN697

MS SWEET: Thank you, Deputy President.

PN698

MR BORENSTEIN: Have you had a chance to read that, Ms Crabtree?---Yes.

PN699

Have you seen this document before?---Yes.

PN700

When did you see it?---I was copied into the email.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN701

Did you have anything to do with the drafting of this document?---Yes, I did.

PN702

What did you have to do with the drafting of it?---I drafted some of the content.

PN703

And who else was involved, then?---I drafted it, and then sent it through to the commissioner.

PN704

So the document you drafted is not what we see here?---It's along the lines of - it's not substantially different.

PN705

This document is dated 27 June 2023?---Correct.

PN706

It refers to there having been meetings with the government: you will see, in the second-last paragraph, 'Representatives have discussed with the Department of Justice and Community Services an alternative approach'?---That's correct.

PN707

Is that something that you wrote?---Yes.

PN708

And which FRV representatives are you referring to there?---So that's in reference to a standing meeting between FRV's workplace relations team and the Department of Justice and Community Services' workplace relations representatives.

PN709

And that took place at some time between 15 June, when you got the authorisation for the offer, and when you prepared this letter; is that right?---It's - it's a standing meeting, so they meet regularly, approximately - usually every week, every Wednesday.

PN710

Okay, so the answer to my question is that there was a meeting between 15 June and when this letter was drafted?---Most likely, yes.

PN711

Well, you say that there were meetings, where - - -?---Usually. They don't always meet, if there's a cancellation, but they meet - it's scheduled for every Wednesday. Unless there's something else that's happening, they meet.

PN712

But what I want to ask you is this. In the second-last paragraph, the first sentence: is that not based on some actual fact that you know of, about - - -?---Yes.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN713

- - - having had discussions?---That - that would have - if I've put it in there, it would have happened.

PN714

Well, that's what I'm asking you about. So I'm asking you whether the discussions which you've referred to in the first sentence of the second-last paragraph happened between 15 June and when this document was prepared?---I would have to say yes.

PN715

Yes. And can you tell me the names of the people who were in those discussions on behalf of FRV, please.

PN716

MS SWEET: Well, I just object to the question. It's unclear to me the relevance of this line of cross-examination, and who exactly attended what meeting.

PN717

DEPUTY PRESIDENT MILLHOUSE: You might be able to assist us in relation to that question, Mr Borenstein.

PN718

MR BORENSTEIN: I'm sorry; I didn't hear that question entirely.

PN719

DEPUTY PRESIDENT MILLHOUSE: The relevance of the parties who attended the meeting.

PN720

MR BORENSTEIN: Well, there are representations being made through this witness, as with all of her witness statements, about things that are attributed to people who are at the FRV, which people are not being called to be questioned. Now, there is an important issue in this case about the proper characterisation of the 7 August offer. And we've heard evidence from this witness, before lunch, about the way in which that offer appears to have come about following the authorisation from the government, and the variation between the 7 August offer and the original authorisation for an offer from the government on 15 June.

PN721

Now, we are seeking to explore just what happened in that period that contributed to the change in the terms of the offer that's to be put to UFU, and how and why that happened, because that will be relevant, in our submission, to the commission characterising the offer, and what it actually was intended to convey, by FRV.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN722

Now, all that Ms Crabtree could tell us is, 'Oh, well, there were meetings to discuss a different approach', but she wasn't there. And so her evidence is second-hand, or perhaps third-hand. We're entitled to know who was there, and, so far as

we can ascertain, what was actually discussed, because that bears on the way in which you are going to characterise the 7 August offer, particularly when the parties are at odds as to what it means.

PN723

DEPUTY PRESIDENT BELL: When you said in there, 'what was intended to be conveyed by FRV' - I might not have got that exactly right - is it the UFU's case that subjective intention of the parties is going to be relevant to what's agreed as far as these terms, or is it something we're going to be assessing objectively? Because, if it's objective, then I'm not quite sure why any of this material is relevant.

PN724

And I pause there. It's in their material - it's in their statement, and I accept why you were cross-examining on it, but I would probably cast a question mark over, at least, paragraphs 66, 67, and, I think, 73 of the first Crabtree statement there.

PN725

MR BORENSTEIN: The reason why - our position is, obviously - I shouldn't say 'obviously'. Our position is that the determination of what has been an agreed term for the purpose of the section is clearly something that you have to assess objectively, but you make the objective assessment by looking at what happened.

PN726

And so, in this case, you've got first-hand evidence from Ms Campanaro about all of the meetings, and what was said at all the meetings, and so on. FRV have produced nobody from most of those meetings to contradict her, and she hasn't given any ground in cross-examination about any of those things.

PN727

So that's one factual scenario that you would take into account, and say, 'Well, that happened.' And then there are all sorts of assertions made from the other side, and you would look at those, and give them appropriate weight. And then you will say, having all that material, from an objective point of view, what does that all amount to?

PN728

One of the aspects of determining the agreed terms is the effect on what has happened before of the letter of 7 August. And, again, you will have to read that letter, but you read it in context. And so part of the context is the 15 June authorisation. And you look at that, and you look at the 15 June authorisation, and you say, 'Well, that said - that authorisation proposed that if the offer wasn't accepted, then everything else is off the table', right? And we've taken the witness to that, and we've had her response to the fact that the offer didn't contain that proviso.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN729

Now, I am assuming that our friends are going to maintain the position they have until now, which is, they say, 'Well, the 7 August letter was a "take it or leave it"

package, and if you didn't take it, it's all off the table.' And so it's important to understand whether their characterisation accords with what actually happened, and so, when you make your objective assessment or characterisation of the offer, you are informed as to the facts that actually occurred, rather than just assertions from the bar table.

PN730

DEPUTY PRESIDENT BELL: But when you say 'what actually happened', isn't it what actually happened on facts mutually known to the parties?

PN731

MR BORENSTEIN: Well, the - that's - what you say, Deputy President, is correct, but it seems that what is being put in relation to the 7 August offer is that 'This is what we intended' - FRV intended - and that that's how you should characterise it. Now, we say, that's an incorrect approach; we agree with you about that. But, insofar as they are proposing that, and insofar as - - -

PN732

DEPUTY PRESIDENT BELL: You want to test it.

PN733

MR BORENSTEIN: - - - in the unlikely event that that happens to find acceptance by some of the members of the bench, we want to question what it was, in fact, that they did intend. And if it transpires that the evidence shows that they didn't intend what they now say at all, then that strengthens our argument for the way in which you should objectively characterise the 7 August offer. That's the reason that we put this.

PN734

I mean, there's a real problem - we will make a submission, ultimately, that there's a real problem about the evidence that has been advanced through Ms Crabtree - and I adverted to some of it before lunch - that it's based on things that she has - I'm trying to think of a neutral term - derived from various sources, without identification. And, although the commission is not bound by the rules of evidence, there are various decisions of the commission which say that that sort of evidence has to be approached with a degree of caution, because it deprives the other party of an opportunity to test it. And some of the decisions talk about natural justice, and so on, but we don't need to go there for the moment.

PN735

My point is really that there's a cloud over this evidence, because it's not first-hand. We, for our part, have put on first-hand evidence. And so, when we asked about this - and this came out in the context of questioning about the difference between what they were authorised to offer and what they ultimately offered, and why there was a difference, and how that came about - this document came out. But, once again, the document is based on things that Ms Crabtree believes she knows, but without saying how she knows, and without indicating, well, who did all this. It's sort of like an imagined summary of events, which is really, in terms of a piece of litigation, unsatisfactory evidence.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN736

And all we're trying to do is to say, 'Well, okay. You say there were FRV representatives; who were they?' And it may be that we would say at the end, 'Well, these are all people that could have explained this', and, 'Where are they? Why aren't they here?' These are important questions, in the context of the case that our friends want to run. Their case is centred on the 7 August offer, and we're trying to unpack what that offer really amounted to.

PN737

And, insofar as they want to say, 'Well, we intended it to mean this' - and you will remember that I questioned Ms Crabtree about the statements that the commissioner made back on 15 June, and she says, 'Well, insofar as we gave our consent to that statement about things being settled, what we meant was X, Y, Z. Now, they never said that, but what we meant' - and she wants to rely on 'what we meant'. Well, all we're doing is saying, we want to know what was - if you want to rely on what was meant by the 7 August letter, we're entitled to look into that, and see what was meant. We're not conceding that that's the correct approach, but we're confronting a case where that's being put, and so we've got to at least explore that, to see whether there's credence to it, if that is an approach that the commission finds attractive.

PN738

DEPUTY PRESIDENT MILLHOUSE: All right. Ms Sweet, is there anything you would like to say in response to that?

PN739

MS SWEET: That's a lot of words for my learned friend to suggest that they want to interrogate our internal processes, so that the commission might be better informed about what the objective intent of the 7 August offer is. In respect of what the commission has to find, was there any agreed terms, all my learned friend is trying to do is outside the bounds of what will actually assist the Commission.

PN740

DEPUTY PRESIDENT MILLHOUSE: Parties, thank you for your submissions. We'll allow the question. Thank you, Mr Borenstein.

PN741

MR BORENSTEIN: Thank you. If the Commission pleases. Ms Crabtree, we're back to where we were, the second-last paragraph, the first sentence. Reference to FRV representatives who have had discussions with the department between 15 June and the date of this email. Can you tell us who they were please?---I can say that it would have been - that it was our workplace relations and ethical standards director, Stacey Walker, and - - -

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN742

So, just one individual?---Her team. And other team members that report to Stacey. But I know for certain it was Stacey and members of her team. Who,

specifically in support of Stacey I can't tell you the names but I know that our director was in attendance.

PN743

Right. And did Ms Walker report to you what had happened in these discussions that she was having with the department?---Yes.

PN744

And did you make a note of those reports?---Not in writing but in discussions, yes.

PN745

So, when someone tells you what's happening in the course of an important bargaining round in FRV it's not the practice to make a note to keep a record of developments. Is that the position?---I wouldn't say that's the position across everything. But in this instance it was a verbal update.

PN746

But why didn't you make a note? That's my question?---I can't recall why I didn't.

PN747

Do you usually not make notes when people report back to you?---I usually make notes. It depends on the situation but on this occasion I didn't make notes.

PN748

But this was a pretty critical situation, wasn't it? Because you'd had an offer on 15 June which you didn't agree with. Isn't that the position?---We had an offer on 15 June that we had concerns with.

PN749

Yes. Well, when you say concerns, you didn't agree with it. Otherwise you would have put it out in the same terms, wouldn't you?---There were elements that we had concerns with.

PN750

Yes, you keep saying that. But doesn't that mean you didn't agree with putting out an offer in those terms?---As it was put to us, no, we didn't.

PN751

Correct. And that was a pretty significant thing for FRV to be at odds with the department, wasn't it?---It was.

PN752

Yes. And so isn't that precisely the sort of thing where you would want to keep a record of FRV representatives' discussions with the department over this important issue? Is that not right?---I was satisfied with the verbal update that I'd received.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN753

What was the verbal updated?---Well, the verbal updated highlighted that there were a number of clauses and gave us an alternative to removing those clauses from the proposed agreement.

PN754

It gave the government an alternative to consider?---Yes.

PN755

Who developed that alternative for the government?---We went through and identified the clauses and came up with the alternative that rather than to remove the entire clauses, that we potentially look at or seek approval to remove the arbitrary element of the clauses.

PN756

And when you say 'we', who do you mean?---FRV.

PN757

Well, FRV is an amorphous entity. Who's 'we'? Which people?---So it would have been in discussions with myself, the Commissioner, Deputy Secretary Schroeder and Stacey.

PN758

And Stacey. Stacey's in the commission, isn't she?---Yes, she is.

PN759

Yes. And so is Ms Schroeder?---That's correct.

PN760

Right. Do you know whether they kept any records of those discussions?---Possibly.

PN761

Now following this letter on 27 June were there further discussions between people from FRV and the department?---We met the following day.

PN762

Again, can I ask you who 'we' is?---It was myself, Deputy Secretary Schroeder, the Commissioner, the Fire Rescue Commissioner was on the phone, Ken McPherson, the Chief-of-Staff for the Minister, and Kate Fitzgerald, Deputy Secretary.

PN763

Okay. And where did you meet?---In DJCS offices.

PN764

Did any of your team take any notes of that meeting?---I took some notes.

PN765

Where are those notes?---I'd say on my One Note.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN766

Where is that?---On my computer.

PN767

You mean on your desk computer?---Yes, on my laptop.

PN768

On your laptop. Okay. Was that meeting followed by any communication between FRV and the government to confirm or put on paper the matters that had been discussed in that meeting?---There was a period of time, I'd say it'd be a week or so, and then the government came back in writing with regards to the matters that we had raised.

PN769

Yes. But what I'm getting at is before that when you'd met on the day after this document, this email. Following that meeting did one of your people who went to the meeting send the government an email, a letter or a message saying here's what we put to you in the meeting today, we look forward to your answer, or something like that?---No, because this was the basis of what the conversation was ahead of the meeting. I don't – I never sent anything afterwards and I don't think anybody else did. I never saw anything.

PN770

All right. So, after your meeting on the following day you say you received further communication from the government?---I think some time past, I can't recall exactly - - -

PN771

I'm not asking for an exact date but some time after this meeting, some days after - - -?---There was a response. There was a response.

PN772

Yes. And was that a response in writing?---From memory, yes.

PN773

Yes. Do you have that response?---I can't be a hundred per cent certain if it came to me or if it went directly to somebody else but I was made aware of it.

PN774

Who else would it have gone to?---Potentially it would have gone directly to the Commissioner.

PN775

The Commissioner is in Melbourne, isn't he?---I assume so.

PN776

Yes, all right. And what was the gist of the response that was received, do you know? Or did you not see it?---Yes. No, I recall the outcome of what it was, so the outcome - - -

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN777

Sorry, do you recall the outcome from seeing the document that they sent you?---I remember the conversation and the outcome. I can't specifically recall if I read it or if I spoke to somebody about it.

PN778

And if we want to see clearly what the government's response was following this meeting we really need to see what they sent you, don't we?---Well, I think the response is the 7 August offer.

PN779

No, because that didn't come from the government?---But it contains what the outcome of that discussion was.

PN780

Well, you say you think it is but you can't tell us whether you've seen the actual document that the government sent?---So it wasn't part of my original submissions or statements so I haven't come fully prepared to be able to talk through that.

PN781

I'm not being critical about that. I'm just saying that the best evidence of what the government's response was following the discussion you've told us about is the document which the government sent to you before the 7 August offer. That's correct, isn't it?---The government came back to FRV in writing.

PN782

Yes?---I cannot recall if I received a copy of it or I went directly to somebody else.

PN783

And I accept that. But what I'm saying is you agree with me that that document will be the clear answer to my question?---Yes.

PN784

It will show it. Right, okay. Ms Crabtree, or perhaps I should direct this through the Bench. We would ask the Bench to direct our friend to provide the Commission and us with this last document we've been talking about which is the communication from the department to FRV regarding the 7 August offer. And subject to that we don't have any further cross-examination.

PN785

DEPUTY PRESIDENT MILLHOUSE: Thank you. Ms Sweet?

PN786

MS SWEET: I'll need to get some instructions on it, Deputy President but we'll make some inquiries.

PN787

DEPUTY PRESIDENT MILLHOUSE: Is it appropriate for us to stand the matter down while you do that?

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN788

MS SWEET: I expect that will be appropriate.

PN789

DEPUTY PRESIDENT MILLHOUSE: All right, we'll adjourn. How long do you think you might need, Ms Sweet?

PN790

MS SWEET: I'd ask in the first instance for 15 minutes.

PN791

DEPUTY PRESIDENT MILLHOUSE: Very well, thank you. We'll adjourn for 15 minutes.

<THE WITNESS WITHDREW [2.32 PM]

SHORT ADJOURNMENT [2.32 PM]

RESUMED [2.48 PM]

<JOANNE CRABTREE, RECALLED [2.48 PM]

CROSS-EXAMINATION BY MR BORENSTEIN, CONTINUING [2.48 PM]

PN792

DEPUTY PRESIDENT MILLHOUSE: Thanks, Ms Sweet.

PN793

MS SWEET: Yes, Deputy President. In response to my learned friend's call, we have produced the response document, which is an email dated 5 July 2023 from Kate Fitzgerald to Gavin Freeman, and copied to, amongst other people, Ms Crabtree. We've provided that to all the parties, the intervenor, as well as the Full Bench.

PN794

DEPUTY PRESIDENT MILLHOUSE: Thank you, Ms Sweet. Mr Borenstein.

PN795

MR BORENSTEIN: Thank you. We have an electronic copy of that. Before I go to that, I should tender the document that we were asking about before the adjournment.

PN796

DEPUTY PRESIDENT MILLHOUSE: Yes, the 27 June email from Commissioner Freeman?

PN797

MR BORENSTEIN: That's the one.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN798

DEPUTY PRESIDENT MILLHOUSE: We'll mark that email as exhibit 13.

EXHIBIT #13 EMAIL FROM COMMISSIONER FREEMAN DATED 27/06

PN799

MR BORENSTEIN: Thank you. Now, Ms Crabtree, do you have a copy of this latest document?---No.

PN800

Hopefully, this time Ms Sweet will have a copy for you.

PN801

DEPUTY PRESIDENT MILLHOUSE: Yes, my associate will hand a copy to you now. Thank you.

PN802

MS SWEET: No notice, Mr Borenstein.

PN803

MR BORENSTEIN: Do you see, Ms Crabtree, that you seem to be copied into this email?---Yes.

PN804

This email is dated 5 July 2023?---Correct.

PN805

Do you remember this email?---Upon seeing it, I remember, yes.

PN806

Excuse me. When you saw this email, did you take this to be an acceptance of the proposals that you had put to the department by way of modifying the offer that you should put to the union?---Not all of them.

PN807

Not all of them. Can you remember which ones it didn't take up?---Well, our preference - FRV's preference - was that we would recognise the work that had been done by the parties through bargaining, and to leave the clauses for those allowing extra claims in their original form of what we had bargained, and to also make no changes to the firefighters' registration scheme. From memory - - -

PN808

That's fine. Thank you?--- - - - they were the key ones.

PN809

Sorry; I didn't know that you had finished. Thank you. Now, this email is dated 5 July. Did the FRV go back to the government again, after this, to press for further changes?---I'm just trying to think, so I give you the most - I'm really trying to think, from a sequencing perspective. I think there was some more conversations, but I wasn't part of them.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN810

Do you have any idea who was?---The commissioner - the commissioner was part of them.

PN811

He alone?---It's my understanding.

PN812

Okay. And were you copied into any further communications between him and the department, or the other way around?---Between that and 7 July?

PN813

7 August?---7 August; sorry. Possibly. Possibly. I can't remember anything specifically, though.

PN814

See, what I'm curious about, Ms Crabtree, is that it's a month between this document and when you made the offer. And I'm curious as to why it has taken that time for the offer to be made. Can you help us with that?---So there was a lot of - we needed to understand, and very clearly get more information from Government, and to understand what the offer meant, particularly around the extra claim clauses. And so we were putting that together. But there were further meetings, backwards and forwards. We were - we were concerned with what this offer would do.

PN815

And were you involved in those efforts?---Directly?

PN816

Directly?---Like, with - - -

PN817

Were you involved in sitting down and talking to people about how you clarify what the government was putting about the no extra claims and so on?---Not directly, no.

PN818

Who was it that was directly involved?---So my team were directly involved in putting together the words around these clauses.

PN819

And can you just remind us again who was in your team at that time.

PN820

So it - the team would have been the workplace relations and ethical standards team, which is led by our director, Stacey Walker.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN821

Stacey Walker. So, under her, they were putting together proposals to take to the government; is that the position?---What they were doing is that, between our

workplace relations team and relevant people in DJCS, they were working through these particular clauses, putting proposals to each other, which would then come back to a leadership group, and settled on them.

PN822

And were you part of the leadership group?---Yes.

PN823

Okay. Can we assume that the report back to the leadership group was in writing?---There were - like, what was in writing was the outcome of what the amended clauses would look like.

PN824

Yes?---Yes. Because we needed to approve it, like, and look at it.

PN825

Yes. That's what I assumed?---Yes.

PN826

So, at some point, after this email, there are further documents, which chart the progress of the discussions between your people and the department; is that right?---Yes.

PN827

Okay. And do you have a recollection of how many times the leadership team had to convene in order to approve the progressive changes?---So we met regularly, through that period of time. I can't give you an exact number, but what it was is an exchange between our teams, until everyone was comfortable with the words.

PN828

All right. Just excuse me a moment. Could I tender this document, please, if the commission pleases.

PN829

DEPUTY PRESIDENT MILLHOUSE: Yes. I will mark the email from Kate Fitzgerald, dated 5 July 2023, as exhibit 14.

**EXHIBIT #14 EMAIL FROM KATE FITZGERALD DATED
05/07/2023**

PN830

MR BORENSTEIN: The discussions that took place between the date of this email, 5 July, and when you made the offer, focused on non-monetary terms and conditions that had previously been taken to be agreed in principle; is that right?---Yes.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN831

And the report back documents that we spoke about a couple of minutes ago: they're documents which you have available in your office?---They would be in emails.

PN832

Sorry?---They would be in emails.

PN833

So you would have access to them?---Yes.

PN834

Okay. If the commission pleases, I don't seek to cross-examine this witness any further, but I do seek a direction that, overnight, these report back documents that Ms Crabtree has been talking about should be provided. I don't want to delay the case waiting for them, but we should have them for the purpose of submissions.

PN835

DEPUTY PRESIDENT MILLHOUSE: Thank you, Mr Borenstein. Ms Sweet, would you like to commence your re-examination, or would you like to address the request that has been made in relation to the report back materials?

PN836

MS SWEET: I would like to do the latter first, please, Deputy President.

PN837

DEPUTY PRESIDENT MILLHOUSE: Thank you. Please proceed.

PN838

MS SWEET: Yes, thank you. My learned friend has been cross-examining the witness now about, really, things that come out of paragraph 73 of her witness statement from 5 September, where she makes plain, on the wording, that throughout June and July 2023 - - -

PN839

MR BORENSTEIN: I'm sorry to interrupt my friend. This issue came up earlier, and I'm wondering whether Ms Crabtree should be out of the commission while - - -

PN840

DEPUTY PRESIDENT BELL: Just did occur to me, yes.

PN841

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN842

DEPUTY PRESIDENT BELL: I think that would probably be correct.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN843

DEPUTY PRESIDENT MILLHOUSE: I concur. Ms Crabtree, would you mind, please, exiting the witness box, and taking yourself into the conference room next door until you're recalled. Thank you.

<THE WITNESS WITHDREW

[3.00 PM]

PN844

DEPUTY PRESIDENT MILLHOUSE: Thanks, Ms Sweet.

PN845

MS SWEET: Yes, thank you. The cross-examination has arisen from paragraph 73 of Ms Crabtree's statement, which is on volume D, page 2166. Ms Crabtree says there that throughout June and July, FRV had a number of discussions with representatives of the Victorian Government in relation to the terms of a further offer to be made to the UFU.

PN846

Since 5 September, when the union has had - since the union has had this document, there has been no application made for discovery, and it is unsatisfactory, in my submission, for FRV now to be put through this piecemeal call for documents while the union figures out its case theory on the run. It's unfair to Ms Crabtree to be continually paused in her cross-examination.

PN847

In my submission, it's really an echo of what I said before: the 7 August letter speaks for itself. It is that document that is relevant to understanding - to the commission making a determination as to whether or not there were agreed terms. These internal machinations are not relevant, and it is unsatisfactory and too late for the UFU to seek to engage in this piecemeal discovery process at this time.

PN848

DEPUTY PRESIDENT MILLHOUSE: Do we take it from your submissions, Ms Sweet, that you object to making the inquiries as to the particular report back documents that are sought, and producing those in a voluntary manner, in the way that your client has in relation to exhibits 13 and 14 this afternoon?

PN849

MS SWEET: I would have to take instructions on whether the objection is to the production, or whether it goes further, and simply to - or whether it's different, and it is simply to whether or not those records should form part of the court's record and be available to be cross-examined - for this witness to be cross-examined on.

PN850

DEPUTY PRESIDENT MILLHOUSE: Can we proceed, then, on the basis that we take the submissions that you've made now on notice. Upon the conclusion of the proceedings today, you might confer with your client about that question - - -

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN851

MS SWEET: Yes.

PN852

DEPUTY PRESIDENT MILLHOUSE: - - - and you might be in a position to advise my chambers, at your earliest opportunity before we reconvene tomorrow morning, and we can deal with the issue further at that stage.

PN853

MS SWEET: Yes, thank you, Deputy President.

PN854

DEPUTY PRESIDENT MILLHOUSE: Thank you.

PN855

MS SWEET: I will make the inquiries.

PN856

DEPUTY PRESIDENT BELL: Can I perhaps add one observation to that. As I've understood from what Mr Borenstein was saying earlier, these matters weren't just confined to paragraph 73, but arose out of paragraph 71 of Ms Crabtree's first statement, where – I'm putting some violence to the words I'm about to put into Mr Borenstein's mouth, but where Mr Borenstein says she puts a gloss on what Commissioner Wilson's statement said. But I did ask Mr Borenstein this, why is this material relevant or indeed 66, 67 of your 71, 73, perhaps of your client's statement. But if they're pressed, as Mr Borenstein, I think, apprehended that they were, then that was the basis why he was pressing with his cross-examination.

PN857

MS SWEET: Yes, thank you, Deputy President. That's not what I took from what Mr Borenstein said, but I could be mistaken.

PN858

DEPUTY PRESIDENT BELL: All right.

PN859

MS SWEET: I don't think the witness is saying there's a gloss. She's explaining what had been said to Commissioner Wilson, and therefore what could be taken from the word 'resolved' used in that statement. But I - - -

PN860

DEPUTY PRESIDENT BELL: I think his words were, this is not what FRV necessarily meant, or something, perhaps, more along those lines.

PN861

MS SWEET: Yes, thank you. I'll take that on board and we'll make the inquiries.

PN862

DEPUTY PRESIDENT BELL: Yes, thank you.

*** JOANNE CRABTREE

XXN MR BORENSTEIN

PN863

DEPUTY PRESIDENT MILLHOUSE: All right. Thank you. We'll recall Ms Crabtree. Thank you.

<JOANNE CRABTREE, RECALLED [3.05 PM]

RE-EXAMINATION BY MS SWEET [3.05 PM]

PN864

DEPUTY PRESIDENT MILLHOUSE: Thanks, Ms Sweet.

PN865

MS SWEET: Yes, thank you. (Indistinct) re-examination, Deputy President. Towards the commencement of your cross-examination, Ms Crabtree, you were asked a question to the effect that had FRV been given instructions by government to withdraw certain clauses, do you remember being asked that question?---I remember something. Yes, sorry. I was very nervous. Yes.

PN866

No, no, don't apologise. There was a question that arose from Mr Borenstein, asking you about the fact that during the course of the negotiations, FRV had been reporting back to government about progress?---Yes, yes, yes.

PN867

And he suggested to you that you had not – that the government had not asked you at any point to withdraw any particular clause and you said, 'not withdraw'?---Yes.

PN868

Is there another word that you - - -

PN869

MR BORENSTEIN: Well, you should just ask her what they did.

PN870

MS SWEET: What did they do?---Now, it's been a journey. So when I was making reference to not withdraw, I was actually referring to these clauses where we were able to modify them to keep them in the agreement. That's what I was talking about.

PN871

Thank you. That's all the re-examination, Deputy President.

PN872

DEPUTY PRESIDENT MILLHOUSE: Thank you. Thank you for your evidence, Ms Crabtree. You are now excused from your oath and you can resume your seat. Thank you very much. Ms Sweet, does that conclude FRV's evidentiary case?

PN873

MS SWEET: Yes, it does. Thank you.

PN874

DEPUTY PRESIDENT MILLHOUSE: Thank you very much. Mr Borenstein.

PN875

MR BORENSTEIN: Deputy President, I note the time and we're waiting on those documents. I'm wondering whether the Commission would be amenable to adjourning now and starting early tomorrow morning?

PN876

DEPUTY PRESIDENT MILLHOUSE: Yes. I wanted to discuss with you the progress that we've made in relation to transcript.

PN877

MR BORENSTEIN: Thank you.

PN878

DEPUTY PRESIDENT MILLHOUSE: Because I thought that that might inform your desirability to commence your closing submissions this afternoon.

PN879

MR BORENSTEIN: Yes.

PN880

DEPUTY PRESIDENT MILLHOUSE: Consistent with the need for the Commission to deal with these matters as quickly as possible, the Full Bench has taken the approach of placing an urgent order for transcript. That order has gone in on a progressive basis and it would be our hope that there would be some capacity for us to receive at least transcript in part. But I am informed that Epiq has indicated to the Commission some incapacity in relation to its availability to do so.

PN881

So whilst the order has been made at the Commission's expense, I'm not confident that we'll receive a copy of any progressive transcript from today before we resume tomorrow morning.

PN882

MR BORENSTEIN: That might still be useful.

PN883

DEPUTY PRESIDENT MILLHOUSE: Yes. Now, with respect to adjourning this afternoon and regrouping tomorrow morning, I'd be interested in the views of other parties at the Bar table in relation to that course.

PN884

MR BORENSTEIN: Can I just explain before our friends say anything. It's clear we're not going to – I probably won't finish my submissions this afternoon. I'd probably only be about half way, perhaps, not even that. But we would be suggesting that perhaps we could reconvene at 9 am tomorrow, to give us the optimum time available to go through everybody's submissions.

PN885

DEPUTY PRESIDENT MILLHOUSE: All right. Thank you. Ms Sweet, do you have a view? We are listed for tomorrow as well.

PN886

MS SWEET: Yes. We would have a preference for commencing at 10, rather than nine as was originally scheduled. Though I should say, it would be consistent with what the Commission mentioned this morning, with respect to the union not being prejudiced by the presence of an intervener. It will be Mr O'Grady who will bear the brunt of the submissions. So perhaps the intervener's view might be more weight for the Commission. But I express a preference for 10 am.

PN887

DEPUTY PRESIDENT MILLHOUSE: Thank you. Mr O'Grady.

PN888

MR O'GRADY: Yes, thank you, Deputy President. Well, Mr Borenstein's indicated that he will be less than two hours in his final submissions.

PN889

MR BORENSTEIN: No, I didn't.

PN890

MR O'GRADY: Well, he indicated that he'd be half way through, and if one runs that forward to 4 o'clock, he's going to be less than two hours. On that basis we don't see there's any reason to start at nine. If we start at 10, we should be well and truly finished in the course of tomorrow. Unless Mr Borenstein is widely out with his estimate.

PN891

DEPUTY PRESIDENT MILLHOUSE: All right. I'm not sure that you did hold yourself to two hours, Mr Borenstein.

PN892

MR BORENSTEIN: I definitely did not. Mr O'Grady shouldn't verbal me.

PN893

DEPUTY PRESIDENT MILLHOUSE: But having regard to the position that's expressed, is there any reason why we cannot resume at 10 o'clock as per the listing?

PN894

MR BORENSTEIN: Well, I was going to suggest that in the way of the Commission, perhaps we should compromise and start at 9.30. I'm just concerned that we do get through it. I mean, counsel's estimates are always questionable and not reliable, even Mr O'Grady's. And we don't want to get caught short. And so that's why we suggested an earlier start. But we're in the hands of the Commission.

PN895

DEPUTY PRESIDENT MILLHOUSE: Well, look, I think that it would be preferable that we retain our 10 am listing time. If it becomes apparent, at the time that we would typically take lunch, that your submissions haven't concluded, then perhaps a more appropriate course might be to truncate the lunch adjournment so that we're able to conclude all of the closing submissions tomorrow. But on that basis, we're otherwise content to adjourn the proceedings this afternoon and resume at 10 am tomorrow for closing submissions.

PN896

MR BORENSTEIN: Thank you, Deputy President.

PN897

DEPUTY PRESIDENT MILLHOUSE: Is there anything else that anyone would like to raise before we adjourn? Thank you very much for the evidence and the submissions given thus far. We'll adjourn on that basis. Good afternoon.

<THE WITNESS WITHDREW [3.12 PM]

ADJOURNED UNTIL TUESDAY, 19 DECEMBER 2023 [3.12 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

LAURA CAMPANARO, SWORN	PN39
EXAMINATION-IN-CHIEF BY MR BORENSTEIN	PN39
EXHIBIT #7 THIRD WITNESS STATEMENT OF LAURA CAMPANARO DATED 17/11/2023	PN60
EXHIBIT #8 FOURTH WITNESS STATEMENT OF LAURA CAMPANARO DATED 11/12/2023.....	PN69
CROSS-EXAMINATION BY MS SWEET	PN71
THE WITNESS WITHDREW	PN169
LAURA CAMPANARO, RECALLED	PN169
CROSS-EXAMINATION BY MS SWEET, CONTINUING.....	PN169
THE WITNESS WITHDREW	PN237
LAURA CAMPANARO, RECALLED	PN273
CROSS-EXAMINATION BY MS SWEET, CONTINUING.....	PN273
RE-EXAMINATION BY MR BORENSTEIN	PN461
THE WITNESS WITHDREW	PN467
EXHIBIT #9 SECOND WITNESS STATEMENT OF JAMES KEFALAS DATED 17/11/2023	PN475
JOANNE CRABTREE, SWORN.....	PN506
EXAMINATION-IN-CHIEF BY MS SWEET	PN506
EXHIBIT #10 STATEMENT OF MS CRABTREE DATED 05/09/2023	PN520
EXHIBIT #11 SECOND WITNESS STATEMENT OF MS CRABTREE DATED 17/11/2023	PN528
EXHIBIT #12 THIRD WITNESS STATEMENT OF MS CRABTREE DATED 11/12/2023	PN536
CROSS-EXAMINATION BY MR BORENSTEIN.....	PN539
THE WITNESS WITHDREW	PN671
JOANNE CRABTREE, RECALLED.....	PN686

CROSS-EXAMINATION BY MR BORENSTEIN, CONTINUING	PN686
THE WITNESS WITHDREW	PN791
JOANNE CRABTREE, RECALLED.....	PN791
CROSS-EXAMINATION BY MR BORENSTEIN, CONTINUING	PN791
EXHIBIT #13 EMAIL FROM COMMISSIONER FREEMAN DATED 27/06	PN798
EXHIBIT #14 EMAIL FROM KATE FITZGERALD DATED 05/07/2023....	PN829
THE WITNESS WITHDREW	PN843
JOANNE CRABTREE, RECALLED.....	PN863
RE-EXAMINATION BY MS SWEET	PN863
THE WITNESS WITHDREW	PN897