

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s29(1) application for hearing of an industrial dispute

The Minister Administering the State Service Act 2000

(T13765 of 2011)

and

Community and Public Sector Union

(State Public Services Federation Tasmania) Inc.

Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch

COMMISSIONER J P MCALPINE

HOBART, 24 February 2011

Industrial dispute – order sought - work bans - order issued

REASONS FOR DECISION

[1] On 23 February 2011 the Minister administering the State Service Act 2000 (MASSA) sought a hearing with respect to the refusal of a number of Correctional Officers (COs) at the Risdon Prison Complex (RPC) to undertake their normal duties as directed. The Minister sought an order of the Commission that the COs resume normal operations immediately as directed by management in accordance with the revised operating model for the Tamar Unit.

[2] This matter is tied to matter T13763 of 2011, an application by the CPSU and LHMU seeking an order against MASSA to have stand downs imposed on COs at RPC on Monday 21 February 2011 rescinded. It was agreed by both parties that matter T13763 be held over to await the outcome of the instant matter.

[3] In mid 2010 the Ombudsman made recommendations to Government with respect to the ongoing management of inmates in RPC. The Government embraced most of the recommendations in policy. As a consequence the Tasmanian Prison Service (TPS) has been charged with introducing a number of operational changes. These changes have directly impacted on the day to day functions carried out by COs, particularly in the high security Tamar Unit.

[4] To accommodate the Ombudsman's recommendations the Tamar Operating Model was reframed. A process of consultation with COs and unions was initiated in January 2011. A draft of the new operating model was distributed to staff on 28 January and their feedback sought. On 2 February a meeting was held with unions and delegates at which the implementation program and timeframe was discussed. Subsequently the implementation program and timeframe was distributed to the staff at RPC and their feedback sought.

[5] On 8 February the final operating model was distributed to staff, which incorporated those recommendations by staff which were deemed to be relevant and

appropriate. A general information session was held on 9 and 11 February. As a result of staff concerns a risk analysis was conducted on 15 February and some adjustment made to the model. It was acknowledged by the risk review committee that the presence of the Tactical Response Group (TRG) was unlikely to prevent assaults on staff.

[6] A significant hurdle to the implementation of the new models was the removal of the TRG as a permanent standing unit. The TRG was to cease operating on Sunday 20 February.

[7] On Friday 18 February lockdowns of some areas of the Tamar Unit were initiated by COs. This was later purported to be a *"miscommunication"*. On Saturday 19 February a document from the COs on duty that day was delivered to management. The concluding paragraph states:-

"Staff have voted that when the Tactical Response Group are withdrawn from Risdon Prison Complex that the prison will remain in lock down with only the following to occur:

1. *Laundry workers will go to work*
2. *All escorts will occur*
3. *All medication will be conducted*
5. *Inmates will be fed as per lock down procedures."*

[8] On Monday morning 21 February as the COs arrived for the day shift management representatives sought from each individual CO a commitment to perform the entirety of their function as specified in the new operating model, as directed. Those who refused to make the commitment were stood down without pay under s50A of the *Industrial Relations Act 1984 (Act)*.

[9] An application T13763 was made by the CPSU and LHMU on Monday 21 February seeking an order for the rescission of the stand down orders and reinstatement of the COs. Conciliation conferences were held on 21 and 22 February, with further negotiations held with COs at RPC on 22 and 23 February, however no outcome was reached.

[10] Evidence by Acting Director Partridge was that the TRG was initially deployed following an incident where an inmate escaped from accommodation in late September 2010 and was not as a result of the critical incident of 22 September where officers were badly injured. It was subsequently utilised in the large scale movement of inmates from RPC to another facility and for their later return. The TRG capacity was maintained until the development of the new operating model.

[11] In matter T13763 the applicants in that matter raised three aspects of the new operational model which the COs opposed. In the instant matter the now respondents restricted their argument, in the main, to the risks to COs by the removal of the TRG capacity. A number of COs gave evidence and were passionate about the need to retain the TRG. Collectively they argued that the TRG was a deterrent to large scale disturbances such as was experienced in September 2010.

[12] Some of the COs giving evidence expressed their enthusiasm for the new operational model but opposed the loss of the TRG. They argued that the previous manner of dealing with critical incidents was inadequate and that the proposed training of officers to deal with such incidents had not been carried out. Further they

argued that the TRG was equipped with *"armaments"* to which the duty COs do not have access. Indeed it was acknowledged that the promised *"control agent"* had not been issued and only the supervisor had access to a single canister of it.

[13] The COs also gave evidence of the increased level and number of threats of physical violence towards them *"when the 'cuffs come off"* and *"when the TRG goes"*.

[14] Mr Bonde outlined the critical response routine which consists of *"containment"* if the incident, *"isolation"* of the perpetrators and *"evacuation"* of staff and other inmates. The 1st response team, made up of COs manning specific functions, make the initial contact and start the aforementioned process. It is supported by the 2nd response team, again made up of COs on duty. He said in the incidents to date the TRG have arrived to *"clean up"* and return the situation to *"normal"*.

[15] He argued that the TRG could not prevent assaults on officers. He acknowledged that the extra training envisaged for COs for dealing with critical incidents had not been started and said the expectation was that the training would be done over a 12 month period. However all COs are trained to deal with critical incidents in their initial training.

[16] The operation of the new model will be reviewed in 3 months and revised if necessary.

FINDINGS

[17] The respondent initiated stand downs on Monday 21 February. The exercise conducted on the 21st was obviously well planned and I have no doubt as a result of the threat to *"lock down"* made on the previous Saturday. Under s50A of the Act an employer has the capacity to:

"...stand down, without pay, any employee who refuses to perform any or all of the duties that the employee normally carries out and could reasonably be expected to carry out for such a period as the employee continues to refuse."

[18] RPC management has the right to initiate stand-downs in the current situation, I so find.

[19] I acknowledge the level of concern the COs have with the removal of the TRG capability. The COs asserted the TRG gave them a feeling of security, this cannot be disputed. The TRG was referred to on a number of occasions as a *"control mechanism"* and a risk reducer; there was no evidence adduced to support this. There was a perception that its presence enhanced security, but again no evidence of this was adduced. It was also argued that the TRG presence prevented large scale disturbances, again there was no evidence to support this.

[20] In my view it is the responsibility of the management of RPC to ensure the safety and security of its employees. I accept that it has evaluated the risks with and without the TRG and has chosen to go a particular route. This is its prerogative, I so find.

[21] I turn to the process of introducing “*change*” in a workplace. It is my view that it is the prerogative of any business to introduce improvements and efficiencies to their operation. Notwithstanding that view, however, the introduction of any major change must follow a process where those employees impacted are given a voice in the decision making. In the instant matter I accept that there was extensive consultation between all the parties involved as evidenced by the exhibits presented by the applicant as well as evidence from the COs and respondent.

[22] There are many authorities which address “*consultation*”. Provided the input from participants is acknowledged, considered, then accepted or rejected, and the reasons for such decision communicated back to the participant, in my view that constitutes proper consultation. The applicant provided documentary evidence that this process did indeed take place. Consultation does not mean acquiescing to all or any counter argument simply because someone else has a different view.

[23] The management of RPC have consulted effectively over the development and introduction of the new operational model and the final say must lie with them, I so find.

[24] It is my considered opinion that the current situation which exists at RPC cannot be resolved by the parties.

ORDER

Given my reasoning above, I hereby Order, pursuant to s.31 of the *Industrial Relations Act 1984* that Correctional Officers of the Tasmanian Prison Service are to immediately resume normal operations as directed by management in accordance with the revised operating models for the Risdon Prison Complex, copies of which have been made available to all correctional employees.

J P McAlpine
Commissioner

Appearances:

Mr M Johnston for the Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

Ms S Griffiths for the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch

Mr P Baker for the Minister administering the State Service Act 2000

Mr R Williams for the Department of Justice

Date and Place of Hearing:

2011

February 23

Hobart