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The Best Way to Set Up Work Groups for Consultation with Workers

On the 9th of July 2019 the NSW Industrial Relations Commission (IRC) delivered its decision on whether an employer had made the correct decision in its allocation of work groups in the employer's workplace. The IRC's decision and how it arrived at that decision, could be of interest and use for any PCBU who uses HSRs and/or Health & Safety Committee members to consult with workers about workplace health and safety matters.

In this case the PCBU was Sydney Trains which has about 1790 employees and 56 HSRs and 56 deputy HSRs across Sydney in its Customer Service Division. Sydney Trains has various occupations in this division and numerous locations across Sydney. It is very large employer but the matters and considerations covered in this decision are relevant to even small organisations.

One of Sydney Trains' HSRs endeavoured to change the system that Sydney Trains had adopted to determine workgroups for the purpose of consulting with workers. That HSR's endeavour eventually ended up before the Industrial Relations Commission who had to decide whether or not Sydney Trains had adopted an improper system of determining workgroups. That may seem to be a daunting task to carry out with so many employees and locations across Sydney.

It was a large task but the IRC focussed on;

1. What does the WHS Act and WHS Regulation require, and
2. What are the relevant facts of the situation at Sydney Trains.

The IRC has identified what they focussed on in item 31 of their decision on the 9th of July:

"31 As they will be necessary to a determination of these proceedings, it is convenient to note at this point the following provisions of the Work Health and Safety Regulation 2017 (NSW):

16 Negotiations for and determination of work groups

Negotiations for and determination of work groups and variations of work groups must be directed at ensuring that the workers are grouped in a way that:

- (a) most effectively and conveniently enables the interests of the workers, in relation to work health and safety, to be represented, and*
- (b) has regard to the need for a health and safety representative for the work group to be readily accessible to each worker in the work group.*

Note. *Under the Act, a work group may be determined for workers at more than 1 workplace (section 51(3)) or for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces (Subdivision 3 of Division 3 of Part 5 of the Act).*

17 Matters to be taken into account in negotiations

For the purposes of sections 52(6) and 56(4) of the Act, negotiations for and determination of work groups and variation of agreements concerning work groups must take into account all relevant matters, including the following:

- (a) *the number of workers,*
- (b) *the views of workers in relation to the determination and variation of work groups,*
- (c) *the nature of each type of work carried out by the workers,*
- (d) *the number and grouping of workers who carry out the same or similar types of work,*
- (e) *the areas or places where each type of work is carried out,*
- (f) *the extent to which any worker must move from place to place while at work,*
- (g) *the diversity of workers and their work,*
- (h) *the nature of any hazards at the workplace or workplaces,*
- (i) *the nature of any risks to health and safety at the workplace or workplaces,*
- (j) *the nature of the engagement of each worker, for example as an employee or as a contractor,*
- (k) *the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term,*
- (l) *the times at which work is carried out,*
- (m) *any arrangements at the workplace or workplaces relating to overtime or shift work.”*

After hearing witnesses and examining the facts the IRC concluded that Sydney Trains' work group proposal was the one that would best achieve the objectives of clause 16 of the WHS Regulation.

Conclusion

So, when considering and determining the best way to set up work groups for consulting with workers, keep in mind the requirements set out above in clauses 16 and 17 of the WHS Regulation 2017.

Note

You can access and read the full IRC judgement of this matter, **Mark Rolph v SafeWork NSW and Anor [2019] NSWIRComm 1043**, [HERE](#)

17th September 2019