



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/265)**

Electrical, Electronic and Communications Contracting Award 2010

Sydney

9.10 AM, MONDAY, 27 MARCH 2017

PN1

THE DEPUTY PRESIDENT: Good morning. Yes, good morning. Can everybody hear me okay? Yes, all right. For the purposes of the transcript I might just record the appearances, beginning here in Sydney.

PN2

MR G JERVIS: Your Honour, Jervis, initial G, from NECA.

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THE DEPUTY PRESIDENT: Yes, thank you.

PN4

MR G NOBLE: Noble, initial G, for the CEPU.

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THE DEPUTY PRESIDENT: Thank you, Mr Noble. In Melbourne?

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MS B PAUL: Paul, initial B, from Ai Group.

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THE DEPUTY PRESIDENT: Yes, thank you, and in Adelaide?

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MS K VAN GORP: Van Gorp, initial K, for Business SA and with me Klepper, initial C, also for Business SA.

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THE DEPUTY PRESIDENT: Yes, thank you. In Brisbane?

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MS L HOGG: Yes, thank you, Deputy President: Hogg, initial L, solicitor of Australian Business Lawyers and Advisors appearing on behalf of Australian Business Industrial and New South Wales Business Chamber.

PN11

THE DEPUTY PRESIDENT: Yes, all right. Well, the purpose of this morning is to see whether we can tidy up a couple of outstanding matters. There were to be some discussions: who wants to begin?

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MR JERVIS: Your Honour - - -

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THE DEPUTY PRESIDENT: Yes, Mr Jervis.

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MR JERVIS: - - - following your directions, we did file further submissions in the form of a letter on 3 March, commenting on MEA's alternative submission insofar as we say that our preferred position is to delete schedule B but if that's not going to happen then the number of submissions that were made by MEA and

supported by us in general and then there were further suggestions from us about the submissions of MEA. A reply was received from AiG on 7 March. It's fair to say that some of the conclusions that are drawn from the correspondence are not totally agreed by us.

PN15

Then the Commission would have received further correspondence on 9 March from the Fire Protection Association. It sets out tables to be included in the schedules. Again, they're generally in support of MEA's proposal and ours. But there are some other suggested amendments. There have been no direct discussions between the parties since that correspondence was sent and received.

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THE DEPUTY PRESIDENT: Yes, all right. Thank you. Mr Noble, you were going to say something and then - - -

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MR NOBLE: It's unfortunate that Master Electricians and also the Fire Protection Authority aren't here because I think the bulk of the correspondence has actually been from them.

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THE DEPUTY PRESIDENT: Yes.

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MR NOBLE: So I don't really want to speak to any of their matters, other than - I'm not particularly averse to the proposal that FPA have actually put forward. But I still am not confident that that is going to satisfy the other employer groups, Ai Group and Business SA and ABI.

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THE DEPUTY PRESIDENT: Yes, all right.

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MR NOBLE: As Mr Jervis says, as I understand it there hasn't been any sort of communication so I'm not clear what their position is, whether they're going to continue to hold out. I imagine they are.

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THE DEPUTY PRESIDENT: Yes, all right. Well, perhaps, Ms Paul, do you - - -

PN23

MS PAUL: If I may address the first issue, being the schedule - I think we've been clear about what we say the problems with the MEA's submissions. Our first proposal has been (indistinct) schedule B (indistinct). What we say that our proposed amendment filed in February, I believe, I guess the submissions that were raised before your Honour in the conference in February so that you dealt with the fact that the schedule as it stood or as it stands in the exposure draft contradicts the (indistinct) the meaning of public holidays column in certain of those paragraphs have been - alleviate that issue.

PN24

So the removal of the public holidays column has done what we proposed it's actually done, to insure that there is a level of (indistinct), the very contradiction of what was in the body of the letter. Subsequent to that we've seen the MEA's proposal and (indistinct). We've don't agree that that resolves the problems: in fact, we think it compounds it. We've articulated that. I don't know that we can (indistinct) with respect to that (indistinct). On the second point of the proposal put forward by the NPAA, I understand, your Honour, at the last conference when Ms Bhatt was present, that that matter was going to be moved to the - being the substantive matter that NPAA and others would be seeking to therefore make amendments in accordance to the award and award's substantive conditions identifying the reasons why and providing any evidence in support.

PN25

The proposal given by Mr Krajewski in his correspondence has not changed our position.

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THE DEPUTY PRESIDENT: Yes, all right. SO your position in relation to the second matter is that it should be dealt with as part of the substantive matters and added to the substantive matters list?

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MS PAUL: Yes, your Honour.

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THE DEPUTY PRESIDENT: Yes, and in relation to the first matter, Ms Paul, do you see any - noting that each party have set out various matters in their correspondence, is there any purpose to be served by having some discussions directly with the parties?

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MS PAUL: Your Honour, in our view I don't see that - sorry, we would be happy to participate in any discussions, I just don't know that - that there seems to be deferring view in terms of the proposal to remove public holiday provisions. There also seems to be in the MEA's submission that they seem to have a different view about when public holiday is paid or unpaid. That needs to (indistinct) there is discussion around about (indistinct). That's a matter that they need to address, potentially, as - sorry, in terms of - obviously, the (indistinct) instead of changing the award as well. But the fact that it's just caused by a misunderstanding between the parties as to what is a full shift - we are available to participate in any discussions but I think we've all been very clear about where we stand.

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THE DEPUTY PRESIDENT: Do I take that to mean that AiG - sorry, the Ai Group - is unlikely to change its current position? I just want to make an assessment - - -

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MS PAUL: Yes.

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THE DEPUTY PRESIDENT: - - - yes, thank you. All right. Okay, I've just received a note from my associate that Richard from the EFPA just called apologising for his non-attendance at the conference. Apparently he's undergoing some surgery - I hope not while he was making the telephone call. So he is unavailable for the next few weeks - all right, who wants to go next? Don't all rush at once?

PN33

MS HOGG: I'll go next.

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THE DEPUTY PRESIDENT: Yes, Ms Hogg.

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MS HOGG: Well, in terms of schedule B, we're supportive of the Ai Group's position. In regards to Fire Protection's claim in respect of the shift work provision and hours of work which they're trying to change, my understanding from the last conference is that Mr Krajewski was required to report back to you the following week as to whether he wished to pursue that claim.

PN36

THE DEPUTY PRESIDENT: Yes.

PN37

MS HOGG: I don't believe that's occurred. In lieu of that he did provide correspondence to the parties on 3 March, much the same as Ai Group. Nothing that was said in that correspondence has changed our position so at this stage, if Fire Protection wish to pursue that they really need to file a claim and points to support the claim.

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THE DEPUTY PRESIDENT: Yes, all right. Ms van Gorp?

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MS VAN GORP: Thank you, your Honour. Business SA will support the submissions that have been made by Ms Paul. We agree that the Fire Protection Association's submissions will need further attention and we support the submissions made by ABI and AiG with regard to the schedule B public holiday issues.

PN40

THE DEPUTY PRESIDENT: All right, thank you. That seems to leave us in the position where both matters should be referred to the substantive matters list and a full bench or full benches will be convened in due course to deal with those matters and no doubt directions for the prosecution of each of the matters will be listed and that will no doubt focus the attention of those pursuing particular claims to either prepare cases in support of them or alternatively drop off on the claims.

PN41

Short of that, all of the other matters appear to be resolved and on that basis, subject to anybody else having a contrary view, I propose to prepare a report for the President indicating those matters in the technical and drafting list that have been resolved and provide him also with an updated list as to the substantive matters that are, at this stage, likely to require determination by full bench. Does anybody have a contrary view?

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MR JERVIS: Nothing from me, your Honour.

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THE DEPUTY PRESIDENT: All right, well, can I thank all of the parties for their efforts in trying to resolve most of the matters and I think we have and I will insure that a copy of the report that I prepare will be uploaded onto the relevant page of the award modernisation pages of our website. Have a good week. Thank you all.

ADJOURNED INDEFINITELY

[9.25 AM]