



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

(ODN AM2008/15)

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Melbourne

4.39 PM, TUESDAY, 28 FEBRUARY 2017

PN1

THE DEPUTY PRESIDENT: Good afternoon. Can everybody hear me?

PN2

SPEAKERS: Yes.

PN3

THE DEPUTY PRESIDENT: Just for the record, we might just take appearances, beginning with those in Sydney.

PN4

MR G NOBLE: If it please the Commission, Noble, initial G, for the CEPU.

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THE DEPUTY PRESIDENT: Yes, thank you Mr Noble.

PN6

MS R BHATT: If it pleases the Commission, Bhatt, initial R appearing for the Australian Industry Group.

PN7

THE DEPUTY PRESIDENT: Does it really matter whether it pleases me or not? Yes, thank you Ms Bhatt.

PN8

MR G JERVIS: Jervis, initial G for NECA.

PN9

THE DEPUTY PRESIDENT: Thank you.

PN10

MR R KRAJEWSKI: If the Commission pleases, Krajewski, initial R for the Fire Protection Association Australia.

PN11

THE DEPUTY PRESIDENT: Thank you Mr Krajewski. In Brisbane?

PN12

MS L HOGG: Yes, may it please the Commission, Hogg, initial L, appearing for Australian Business Industrial and the NSW Business Chamber.

PN13

THE DEPUTY PRESIDENT: Yes, thank you Ms Hogg.

PN14

MR C YOUNG: Young, initial C for Master Electricians Australia.

PN15

THE DEPUTY PRESIDENT: Yes, thank you Mr Young.

PN16

MR J O'DWYER: O'Dwyer, initial J, also for the Master Electricians Australia.

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THE DEPUTY PRESIDENT: Yes, alright, thank you Mr O'Dwyer.

PN18

An amended revision status report in relation to the technical and drafting matters was published on the website earlier today. I'm not sure whether the parties have had an opportunity to look at that, but there are some outstanding matters on the last occasion. So, who wants to begin with a report?

PN19

MR KRAJEWSKI: Perhaps, your Honour, if I might start and get the ship work issue under way, if I might. Firstly, the Commission would be aware of a proposition that was agreed to between the group of four parties some weeks ago, and they include the CEPU, NECA, Master Electricians and ourselves. That proposition was then circulated to I think, Ms Hogg and to Ms Asuki. At this stage, we understand the position hasn't changed from what was the case when we were before the Commission on the last occasion.

PN20

I won't say too much more, your Honour, except to say that the position of the first group of four parties, really hadn't changed. We tried to articulate a little bit better the provisions for day workers and shift workers insofar as the hours of work proposition was concerned. With respect, we haven't had any substantive comments from either AiG or Ms Hogg's associations, or the associations she is representing, which would have been helpful to go through the various subclauses up for proposition so that we understood exactly where they were going.

PN21

Unless I've missed something there, I believe that is the case, that is in my understanding of it. Whilst some comments were made in relation to that clause, there was no substantive arguments given to the other parties, from what I understand, as to why they believe the proposition is a substantive matter, rather than a technical matter.

PN22

Your Honour, I don't know that there's much more at this point in time. As I say, that's the broad overview as to, I think, where we are with regards to that particular item.

PN23

THE DEPUTY PRESIDENT: To be clear, we're talking about item 42, is that right?

PN24

MR KRAJEWSKI: Yes, your Honour. The version of the summary document that I've got, is a first attempt – not so much today's - - -

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THE DEPUTY PRESIDENT: The item numbers haven't changed.

PN26

MR KRAJEWSKI: 42, your Honour, yes.

PN27

THE DEPUTY PRESIDENT: Thank you. Ms Hogg, do you want to respond?

PN28

MS HOGG: Thank you, Deputy President. Look, I don't think there's too much more that I can say beyond what was contained in my correspondence to the Commission dated 10 February. We've made it abundantly clear, for a long period of time now, that we do not consider this change to be necessary. In addition to that, the changes, whilst I don't think it's intended, I think are likely to substantively change the underlying entitlements of that particular provision.

PN29

One such example that was raised in my correspondence, is the merging of the continuous and non-continuous shift work provisions in the hours of work. There is obviously a distinction between those working continuous and non-continuous shift work. There are different rostering arrangements et cetera and as such, it's not appropriate that they be merged into the one clause

PN30

That's just one example. But at the end of the day, we are firmly of the view that this is a matter that because there will be substantive flow-on effects to the award in terms of the interpretation of the provision and entitlements, that the matter should be put forward by way of a claim and dealt with appropriately, by the parties that who are bringing forth that claim.

PN31

THE DEPUTY PRESIDENT: Yes, all right. Ms Bhatt?

PN32

MS BHATT: Thank you, Deputy President. I have little to add what Ms Hogg has just put to you. We support that position. There are two concerns, as Ms Hogg has outlined. One is that the proposal is not necessary, but secondly and perhaps more fundamentally, there is some anxiety that the proposal as put, would eventuate in a substantive change to the entitlements. It's on that basis we say that it's not appropriate that this matter be dealt with through this process.

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The relevant parties may, of course, seek a substantive variation to the award.

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THE DEPUTY PRESIDENT: Does anybody else wish to say anything about this matter?

PN35

MR JERVIS: Not at this stage, your Honour.

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THE DEPUTY PRESIDENT: Mr Krajewski, that would seem to leave you in a position that if you want to pursue the matter then we'll put it on the substantive issues list and you'll have to set out the precise variation. I know you've already done it in correspondence, but in a more formal sense.

PN37

MR KRAJEWSKI: Yes, your Honour, I understand what you are saying and I'll give that consideration. In relation to that I'll talk to the other parties who were in that first group, if I can describe it in that way, and obtain their views in relation to that. There really isn't that much more for me to say, I don't think, your Honour. Except that perhaps, just one thing.

PN38

I don't know if it assists or not, is to review the entirety of that particular clause and provide some substantive argument to the other parties as to the purpose and intent of those subclauses. Maybe that will assist the others in alleviating some of their concerns, but as I said at the outset - - -

PN39

THE DEPUTY PRESIDENT: My optimism – no I understand. Well Mr Krajewski, can I ask you this? How long do you think you'll need to consult with your colleagues because I don't want this sort of hanging around?

PN40

MR KRAJEWSKI: I totally agree with you, your Honour. Perhaps by the end of this week, if I can arrange some sort of a meeting with the others and get back to the Commission by Friday at the latest.

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THE DEPUTY PRESIDENT: Well, given today is Tuesday. In my experience, those will run through quickly. How about I give you until the middle of next week.

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MR KRAJEWSKI: Thank you, your Honour.

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THE DEPUTY PRESIDENT: Yes, all right. Any other matters which remain outstanding and which a report can be given?

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MR KRAJEWSKI: Not from me your Honour.

PN45

MR YOUNG: Sorry, Mr Young from Master Electricians. We've made some submissions in relation to Schedule B.

PN46

THE DEPUTY PRESIDENT: Are you able to assist me by identifying the item in the summary that is referable to that matter?

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MR YOUNG: Item 55 to item 62, your Honour.

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THE DEPUTY PRESIDENT: Yes, thank you.

PN49

MR YOUNG: Effectively, our primary position is that the schedule should be omitted from the award completely. We think there are potentially some issues in terms of the rates being displayed in the back of the award, as they are currently, or internal at all. Particularly, where we have situations where those rates do not include certain allowances which are quite common in the electrical contracting industry and would likely cause potentially, result in underpayments to employees.

PN50

The example that we've outlined is of the Electrical Licence allowance. That's an all-purpose allowance which is paid to electrical workers who hold an unrestricted licence and it's payable for employees who are of electrical worker grade 5 or above. Now the rates in Schedule B do not include that allowance at all, and sorry – it's also payable as a proportion to apprentices as well.

PN51

The rates in Schedule B don't include, or provide for the inclusion of that allowance at all. I note they do include the industry allowance and they do include the tool allowance, but they don't have the electrical licence allowance, which would mean that without a lay person knowing that allowance needs to be applied on top of the rates, particularly for those grades – grade 5 and above, or apprentices, those rates would be incorrect throughout the schedule.

PN52

THE DEPUTY PRESIDENT: Does anybody wish to say anything about that matter?

PN53

MS BHATT: Deputy President, if I may, it's Ms Bhatt for AiGroup. There is some relationship between the matters that have just been put to you and items 47 to 54 of the Summary of Submissions which relates to a series of submissions made by AiGroup in relation to the summary of hourly rates. My understanding is that there was some discussion regarding these submissions the last time the parties were before you.

PN54

On 14 February AiGroup filed a draft determination which sets out the variations of the amendments that we say should be made to that Schedule.

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THE DEPUTY PRESIDENT: That's to Schedule 1?

PN56

MS BHATT: I think Schedule B, Deputy President. Schedule B to the exposure draft.

PN57

THE DEPUTY PRESIDENT: Yes, sorry, B1 or B in its entirety.

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MS BHATT: B in its entirety.

PN59

THE DEPUTY PRESIDENT: Yes.

PN60

MS BHATT: My understanding is that the changes that we've proposed in our correspondence of 14 February are agreed between AiGroup, the CPU and ABI and the NSW Business Chamber. I'm not aware of the position of the other parties. I've had a limited opportunity to look at what was filed by Master Electricians yesterday and I'm not in a position to be able to respond to it comprehensively today. We may seek a period of time to do so, if the Commission pleases.

PN61

I should say that at least in relation to some of the matters raised by Master Electricians, we will be at cross-purposes and one example of that, is the inclusion of public holiday rates in relation to day workers when they perform ordinary hours of work. That appears to be at least one issue in relation to which we will be in contest.

PN62

THE DEPUTY PRESIDENT: How long would you like to respond?

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MS BHATT: Seven days, Deputy President.

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THE DEPUTY PRESIDENT: I'll give you until the close of business tomorrow week to respond. If any party wishes to lodge a response or a demur from that, then they can do so with a further seven days. All right, anybody else wish to say anything about those items?

PN65

MR NOBLE: Only the CPU would support what AiGroup has just said, your Honour.

PN66

THE DEPUTY PRESIDENT: All right. Does that mean that Mr Noble you wish to also file some additional comments?

PN67

MR NOBLE: I do think that the clauses which go across what the AiGroup have actually put in, because that was an agreed position with the CEPU and the table. There doesn't seem to be that much, other than the public holidays, but I've only had today to sort of look quickly through it.

PN68

THE DEPUTY PRESIDENT: Mr Noble, and Ms Bhatt, if you can just confer before Ms Bhatt files the response next week, and if it's agreed between you, if you just indicate that, so far as the response is concerned.

PN69

MR NOBLE: Sounds like a sensible way forward, your Honour.

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THE DEPUTY PRESIDENT: Anybody else?

PN71

MR KRAJEWSKI: Yes, your Honour, if I might just make a brief comment. From our point of view, we generally support the position that Master Electricians have put forward. I note, for instance, their reference to the electricians' licences, that is a matter of some concern, it being left out of the Schedule. Having said that, as has been said already, having just received this yesterday, we would also want a further bit of time, if we could, with respect to review it.

PN72

But in essence, I think we would generally support the approach adopted by Master Electricians, particularly in relation to their alternative position.

PN73

THE DEPUTY PRESIDENT: Yes, all right, thank you.

PN74

MR JERVIS: Likewise, your Honour, NECA is in general agreement with the submissions of MEA. There are a couple of minor amendments that we would propose, or raise questions about amendments that have been proposed.

PN75

THE DEPUTY PRESIDENT: All right, well, amendments to MEA's proposal?

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MR JERVIS: That's right, yes.

PN77

THE DEPUTY PRESIDENT: Perhaps if there are to be any amendments to MEA's proposal, proposed by NECA, Mr Jervis could ask you to file those by say close of business this Friday, so that in reply, the AiGroup and the CEPU can take those into account.

PN78

MR JERVIS: Certainly.

PN79

THE DEPUTY PRESIDENT: Thank you. Anybody else want to speak up and have some work to do? Excellent. Anything else? Well, I'm sorry Mr – no. Well subject to receiving that additional material, in the event that there isn't able to be – well should there be another conference following the exchange of materials?

PN80

MR KRAJEWSKI: From the shift work point of view, your Honour, I don't know that there is a need. I've just had – with respect – identified a possible arrangement for a hook up on Thursday, but I need to talk to Mr O'Dwyer and Mr Noble about that, where that's a possibility for us to have a chat about the shift work proposition and get back to the Commission and the other parties as soon as possible.

PN81

THE DEPUTY PRESIDENT: Yes, thank you. In relation to the Schedule? As things present stand, Mr Jervis will file something if he wishes to propose amendments to his position, by close of business on Friday.

PN82

AiGroup, in consultation with the CEPU will file some positions in reply by next Wednesday and any party that wishes to say anything else about that, has a further week after that to file some material. Beyond that, is there a need for a further conference?

PN83

MS BHATT: Deputy President, I'm perhaps less optimistic than others at the Bar table. It seems likely to me that at least on one of these two issues, if not both, we're likely to have reached an impasse. I wonder if the Commission would be minded to thereafter list the matter for mention, perhaps by telephone if that's convenient, to simply discuss procedurally how these matters are to be dealt with.

PN84

THE DEPUTY PRESIDENT: Yes, I'm happy to do that. Just bear with me. I could have a telephone hook-up on 27 March at 9am. I think my associate tells me that it's easier to do things by video hook-up than telephone hook-up because of the multiplicity of parties. I am in Sydney the whole of that week, so from my end, I'd be having the conference in Sydney and that will just require hook-up to Brisbane and South Australia, there being nobody in Melbourne. Does that work?

PN85

MS BHATT: Yes, Deputy President, thank you.

PN86

MR JERVIS: Yes, your Honour.

PN87

THE DEPUTY PRESIDENT: All right, we'll make a listing for a video conference commencing at 9am in Sydney, although that would make it 7am in Brisbane, doesn't it?

PN88

MR O'DWYER: If it's 9am in Sydney, your Honour, it would be 8am in Brisbane.

PN89

MS BHATT: 8am.

PN90

THE DEPUTY PRESIDENT: Daylight savings – yes of course.

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MR O'DWYER: I think daylight savings finishes at Easter, usually.

PN92

MS HOGG: Pretty soon, doesn't it, yes.

PN93

THE DEPUTY PRESIDENT: All right, I'll take your word for it, but if you're wrong, it's 7am. Thank you all for your attendance and contribution. We'll adjourn on that basis. Thank you.

ADJOURNED UNTIL MONDAY, 27 MARCH 2017

[5.03 PM]