HSU NATIONAL

Wednesday, 6 July 2016

Associate to Vice President Hatcher
Fair Work Commission

By email: chambers.hatcher.vp@fwc.gov.au

Dear Associate,

Four yearly review of modern awards: casual and part-time employment (AM2014/196 and 197)

We refer to the correspondence dated 5 July from the Australian Business Lawyers on behalf of their clients Australian Business Industrial and NSW Business Chamber Ltd [ABI/NSWBC].

On behalf of the union parties, United Voice, the ASU, the ACTU, the ANMF and the HSU, we advise that the parties oppose the application by ABI/NSWBC to vary the determination. The union parties believe that, contrary to the assertions made by the applicant, the proposed variation is not substantially the same, at least in so far as the response from the union parties is concerned.

To adequately and appropriately respond to the varied claim the union parties need to undertake the following steps:

- confer with all witnesses, in particular member witnesses;
- brief our expert and enable him time to provide any supplementary report which may be required;
- consult with the respective branches of each union; particularly with a view to understanding what impacts might arise from the proposed draft;
- give consideration to whether [the union parties] need to make any application for other variations which might arise as a consequence of the proposed determination

Each of these steps takes time and even should the time period overlap, it would take longer than the time available before the hearing. Consultation with branches is not achieved through a single phone call, they would also be required to consult with the members to ascertain the impact at workplace level. And at least one of the union parties is involved in each day of the hearings listed next week.

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The initial application was filed by ABL essentially twelve months ago, on July 17 2015. Since that time there has been ample opportunity for the applicants to seek either conciliation or a variation to their claim. Such an approach would have provided all parties with the opportunity to adequately consider and respond without any jeopardy to the arguments already filed with the Commission. Indeed there could have been multiple conferences between the parties which may have resulted in a narrowed claim or a settlement.

Three weeks ago the parties met in conference on 16 June 2016 before his honour. The employer parties put to the unions a joint proposal which amalgamated the claims of ABI/NSWBC and St Ives. The proposal was not to vary the claim listed to be heard on 14 and 15 July, rather it was a proposal for the unions to consider in settlement of the claims made by the employer parties.

The union parties advised the employers in correspondence by email on 23 June, that while the unions could not agree to the proposal they were prepared to continue discussions with a view to resolving the claims of the employers.

The unions also indicated that such discussions were not ones that could be accommodated within the less than 3 weeks remaining prior to the hearing because such changes to part-time employment would require significant consultation with our branches and members.

The employer parties did not respond.

On 4 July, 7 business days prior to the commencement of the hearing, ABL provided the revised draft determination, requesting that the unions respond by 4pm the following day. The advice to the unions did not include any indication that St Ives, let alone other employer parties, agreed with the proposed variation. We have written to St Ives asking them to confirm their position. We have not yet received a response. Other employer parties have advised the unions that they support the revised application.

The union parties responded to ABL as requested but advised that they opposed the variation. The unions again indicated that they were prepared to have broad discussions concerning part-time employment and related matters and proposed the claims be referred to a New Approaches Conference. This, however, clearly required the hearing next week to be vacated.

The employer parties did not respond. ABI/NSWBC lodged an application with the Commission to vary their claim.

The unions submit the application to vary the claim sought by ABI/NSWBC should not be granted. This constitutes the third version of a draft determination provide by ABL. If the applicant has a vacillating position the unions are unable to respond appropriately, especially within such tight time frames.

If the Commission is minded to grant the application to vary by ABI/NSWBC, then the unions advise that they require additional time to respond to the varied application. As such the unions submit there are the following options:

1. The application to vary is not granted and the hearing listed for 14 and 15 July 2016 proceed;
2. If the application to vary is granted:

a. The hearing dates for 14 & 15 July are vacated – in so far as they relate to these claims
b. A directions hearing is listed
c. Further filing and hearing dates are set

3. The applicants withdraw their applications, and the matter proceeds to conference

We respectively request that the next steps in this matter be determined urgently.

Thank you for your consideration.

Yours sincerely,

Leigh Svendsen
Senior National Industrial Officer