From: Michael Nguyen [mailto:michael.nguyen@amwu.asn.au]
Sent: Friday, 24 March 2017 2:43 PM
To: AMOD; Chambers - Hatcher VP
Cc: Raul Baonza (rjb@ccfnsw.com); Shaun Schmitke (shaun.schmitke@masterbuilders.com.au); Melissa Adler (m.adler@hia.com.au); Michael Aird; Vasuki Paul; Stephen Crawford - AWU (stephen@crawforddecarne.com.au); Guy Noble (guy@etuaustralia.org.au); 'Stuart Maxwell'
Subject: RE: AM2016/23 - 4 Yearly Review - Construction awards

Dear Associate to Vice President Hatcher

The AMWU requests an opportunity to make slight changes to its reply submissions.

Subsequent to the AMWU filing its submissions, an officer with extensive experience in the technical field of work has returned from bereavement leave and drawn to attention two issues with the submission.

1) It is not "non-destructive" testing which is the source of the Manufacturing Award's coverage of soil testers. Scientific, laboratory and engineering testing have always been comprehended within the definition of "technical field" of work, and which is demonstrated within.
2) There is no equivalent technical field of work at the trades level, which is also demonstrated in the manufacturing award classification structure.

Please find attached the new submission in reply with five paragraphs varied (paragraphs 25 – 30) and the draft determination changed.

The effect of the changes in the submission are:

1) To refer to the correct scope of the 'technical field' and remove references to "non-destructive";
2) To withdraw the proposed variation to the trades level – so that there is no equivalent technical field classification, which is also the position in the Manufacturing Award for work value reasons. The new draft determination limits the proposed variation to the CW2 level.

We submit that the changes are simple and clear and their acceptance into the proceedings should not raise any difficulties for parties or cause any unfairness. Importantly, the revisions which ensure the submissions are based on the correct understanding of the "technical field," should assist the Commission.

Regards

Michael Nguyen
Research Officer
Australian Manufacturing Workers' Union

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/260 Building and Construction General On-site Award 2010 & AM2016/23 Construction Awards
Re Application by: Various parties

Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) in reply to various parties' submissions

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) makes the following Submissions to the Fair Work Commission in reply to submissions made by a range of parties in these proceedings in relation to the AM2016/23 Construction Awards.

2. The AMWU supports the submissions and submissions in reply of the Construction, Forestry, Mining and Energy Union (Construction and General Division) (CFMEU C&G), the Australian Workers' Union (AWU), and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (Electrical Division) (ETU), except to the extent of any inconsistency with these submissions.

3. These submissions will address the following matters:

    a. The Master Builders Australia's (MBA) Work, Health and Safety submissions.

    b. The MBA's submission about removing requirement for piece work agreements to be made without "coercion and duress."

    c. The Employer Groups proposed changes to payment of wages.

    d. The AWU's submissions supporting variations to the classification definitions to include "Tester – soil, concrete, and aggregate."

4. The AMWU opposes the MBA's submissions about the allowances and clauses which they say are about Work, Health and Safety matters.

5. The AMWU oppose the MBA's submission bout the removal of the requirement for agreements for piece work to be made without coercion or duress. The AMWU propose that in alignment with the Award Flexibility decision, it should be made clear that these agreements cannot be made until after the commencement of employment.

6. The AMWU opposes the employer group's proposed changes to payment of wages.

7. The AMWU supports in principle the AWU's proposal for the classification definitions to be varied so that they cover employees performing testing of soil, concrete and aggregate. However, the AMWU proposes a different variation which ensures that the Technical Field appropriately extends to the levels which are necessary to cover the work identified.

Work Health and Safety

8. The MBA say that Work, Health and Safety regulations overlap and there shouldn't be an overlap with award based entitlements.

9. Many of the entitlements which the MBA seeks to characterise as "duplications" or WHS regulation are not duplications. Award clauses are for employees to access entitlements which benefit them directly, which is different to obligations for the employer to provide a safe work environment which may not entail any specific entitlement to the employee.

Entitlement to time and facilities for cleaning

10. The example of an entitlement to access facilities for cleaning for a period of five minutes before lunch and before finishing for the day, is about providing employees with that level of comfort and cleanliness before eating and leaving for home. It may have some connection to WHS because the employee shouldn't be eating if they do not have facilities to clean up before eating. However, the key entitlement is for employees to be provided the five minutes and to be provided with sufficient facilities by the employer. Without this clause, an employer may require employees to clean up in their own time or during their break time. Removing this entitlement would be unfair change to the minimum safety net

11. Its not entirely clear what the WHS performance based requirement which the MBA is attempting to compare this prescription to, which would seem to suggest that the performance based requirement is likely not going to entail a reasonable level of facility from the employee perspective and a five minute break. It will likely entail some level of cost and time shifting onto the employee to achieve the relevant WHS objective, which would go against the modern awards objective of being fair and relevant to the building and construction on-site industry.

Preventative screening of infectious diseases

12. Another example used is an entitlement for x-rays for employees who may be exposed to tuberculosis. This entitlement is an important entitlement to preventative screening to ensure that any unintentional infection is found and treated early. The MBA's submissions raise an important question over why this entitlement is limited to tuberculosis, when it is now more common for workers to be exposed to a range of infectious diseases when working on construction or repairs to refractory brickwork for a hospital or other infectious diseases care facility.

13. A fair and relevant safety net should ensure that employees are provided with an entitlement to paid time off work to engage in preventative measures such as a doctor's screening or related procedure such as an x-ray, where there is a higher risk of infection due to the nature of their work. It is not a usual thing for employees not in the building and construction industry to be exposed to infectious diseases at their workplace on a constant basis.

14. Any higher than usual risk should be accommodated for in any fair and relevant safety net. If they are exposed on a constant basis, then they should be afforded entitlements as part of the fair and relevant safety net to ensure that they are not disadvantaged as compared to other employees in the economy who are not exposed.

The ongoing relevance of "Confined space" allowance is self evident

15. The MBA claim at paragraph 8.1 of their submission 16 December 2016 that there is no longer the need for a definition of confined space. There is no evidence being put that employees do not work in confined spaces and seem to concede that the allowance may be retained. The MBA have not put forward an alternative definition of confined space. Without a definition of confined space, there may be employer determined definitions of what constitutes a confined space, removing the ability of the safety net to be enforceable and relevant.

Entitlement to be reimbursed for damage to personal property

16. The MBA claim that an entitlement to be reimbursed for personal property damaged as a result of WHS procedure failures is contrary to WHS. There's nothing contrary about an entitlement that is linked to the circumstance where regardless of whether WHS processes have or have not been appropriately applied there is resulting damage to personal clothing and articles of employees. There is nothing to suggest that the articles must be personal protective equipment. The clause only provides that they are clothes, spectacles, hearing aids or tools of the employee. They might be clothes, spectacles, hearing aids or tools which are underneath the PPE provided by the employer and which still for some reason or another come into contact with corrosive or staining substances that damage them.

17. It is not reasonable given the statistics about WHS incidences in the Building and Construction industry to suggest that all these incidences which are described in the Award will not occur if people are following appropriate WHS procedures.

Entitlement to be reimbursed for protective equipment and to facilities for washing and applying protective materials

18. The MBA claims that the clause is contrary to WHS requirements. It is apparent that there is a utility in having an entitlement to be reimbursed for protective equipment and access to facilities. It is not entirely clear how the MBA claims that the entitlements are inconsistent with WHS practice. An employer may be satisfied that an employee is appropriately protected if they are wearing their own protective equipment when they arrive for the job. This may be the case for many day workers or labour hire workers who may arrive at a job with their own equipment. In that instance, they should be reimbursed by the employer for providing their own equipment.

Creating a generic obligation in relation to Personal Protective Equipment makes sense

19. It makes sense to create a generic obligation to provide or reimburse an employee for Personal Protective Equipment. However, the current specific examples should still be highlighted as examples, to ensure that the change is intended to make the entitlement clear and not interpreted as a diminution of entitlement.

The need for piece work agreements to be made without "coercion or duress"

20. It is important to note that individual flexibility arrangements must also be made without coercion or duress, particularly where a party is likely to be in a vulnerable position, such as award reliant employees. The Full Bench's decision in the 2012 Review about the Award Flexibility clause which provides for Individual Flexibility Arrangements, rather than deleting the words "coercion or duress" decided to add a further additional requirement that IFA's could not be entered into prior to the commencement of employment. The Australian Industrial Relations Commission (AIRC) assumed that the words "coercion or duress" should adequately ensure that the IFA's were not entered into prior to the commencement of employment. However, the FWA Full Bench in the 2012 review accepted evidence that template IFAs were being used by employer and that they were being put to prospective employees as part of the paperwork for commencing employees (TFN Declarations etc).[1]

21. The need for awards to be clear and easy to understand means that it is necessary for very specific direction to be given, even if there may be an equivalent course of action available, hidden away in the hundred of pages of the Fair Work Act. For piece work arrangements where there is a risk that employees may be forced to enter into arrangements as prospective employees, it should be made clear that the arrangements cannot be entered into prior to the commencement of employment, as the Full Bench has done for the Award Flexibility clause.

Payment of wages

22. Every State and Territory has specific Building Industry security of payments legislation.[2] As recently as last year, a Security of Payments Working Group was established by the Commonwealth *Building and Construction Industry (Improving Productivity) Act* 2016. Given the unique risk of security of payments in the building industry which warrant this industry specific legislation, it would seem logical that the Award continue to have the current standard of weekly payments. The weekly payment standard ensures that Award reliant employees become aware as soon as possible if there are issues with their employer being able to pay their wages.

AWU claim for change to classifications to include "Tester – soil, concrete and aggregate"

23. The AWU propose to vary the classification definitions to include an indicative occupation title of "Tester – soil, concrete and aggregate."

24. The AMWU supports in principle the inclusion in the Building and Construction General On-site Award 2010 of workers who are in and experience the Building industry working environment.

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[1] https://www.fwc.gov.au/documents/decisionssigned/html/2013fwcfb2170.htm at paragraphs [73] – [80] and [207] – [212]

[2] https://www.abcc.gov.au/industry-issues/security-payments

25. However, the AMWU submits that the work of testers of soil, concrete and aggregate is part of the "Technical Field" of work which is defined in the Award at B.1.13.

"B.1.13 Work in a technical field includes:

- Production planning, including scheduling, work study, and estimating materials, handling systems and like work;

- Technical, including inspection, quality control, supplier evaluation, laboratory, non-destructive testing, technical purchasing, and design and development work (prototypes, models, specifications) in both product and process areas and like work; and

- Design and draughting and like work."

26. The work of laboratory, scientific and engineering testing work has always been understood to be included in the "technical field" of work. The classification of laboratory tester within the definition at clause B.3.6 of the *Manufacturing and Associated Industries and Occupations Award* 2010 which currently covers the work of the soil testers is within the "technical field" of work within the Manufacturing Award.

27. In order to ensure that the Award clearly covers the work type under the Technical Field of work, the AMWU proposes variation to the Award in the form of the Technical Field of work, which currently begins at CW/ECW4 level. The AMWU variations will extend the Technical Field of work to CW/ECW2.

28. The following paragraph will be added to the definitions of CW/ECW2.

"(e) General Technician

A General Technician is an employee who has the equivalent level of training and/or experience to a CW/ECW 2 worker but who performs work in the technical fields as defined in B.1.13, such as testing (Tester – Soil, Concrete and Aggregate)."

29. This will create a new classification of General Technician.

30. A draft determination is attached at Attachment A.

End

24 March 2017

Attachment A - Proposed Draft Directions

DRAFT DETERMINATION

Fair Work Act 2009
Part 2-3 Division 4 – 4 Yearly Review of Modern Awards
s.156(2)(b)(i)

Building and Construction General On-site Award 2010
(MA000020)

Building Industries

AM2014/300 Award Flexibility

VICE PRESIDENT HATCHER SYDNEY, X XXX 2017

4 yearly review of modern awards – soil testers.

[1] Further to the decision and reasons for decision <<decision reference>> in AM2016/23, it is determined pursuant to section 156(2)(b)(i) of the Fair Work Act 2009, that the Building and Construction General On-site Award 2010 be varied as follows.

B.2.2 Construction worker level 2/Engineering construction worker level 2 (CW/ECW 2)

[2] Delete B.2.2 heading and replace with the following heading:

"**B.2.2 Construction worker level 2 /Engineering construction worker level 2 (General Technician) (CW/ECW 2)**"

Schedule B.2.2(e)

[3] Delete B.2.2(e) and replace with the following (e) and (f):

"(e) General Technician

A General Technician is an employee who has the equivalent level of training and/or experience to a CW/ECW 2 worker but who performs work in the technical fields as defined in B.1.13, such as testing (Tester – Soil, Concrete and Aggregate).

(f) An employee at this level may be undergoing training so as to qualify as a CW/ECW 3."

VICE PRESIDENT