



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

NGS Services Group Pty Ltd
(AG2023/4968)

NATIONAL MANAGEMENT GROUP EMPLOYEE COLLECTIVE AGREEMENT 2006

Security industry

DEPUTY PRESIDENT WRIGHT
COMMISSIONER CONNOLLY
COMMISSIONER ALLISON

SYDNEY, 16 FEBRUARY 2024

Application to extend the default period for the National Management Group Employee Collective Agreement 2006

[1] NGS Services Group Pty Ltd has applied under Item 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**) to extend the default period for the *National Management Group Employee Collective Agreement 2006* (**Agreement**).

[2] The Agreement is a collective agreement-based transitional instrument under item 2(5)(c) of Sch 3 of the Transitional Act. The application seeks to extend the default period of the Agreement to 1 July 2025 on the grounds that bargaining for a replacement agreement is occurring or, alternatively, that it is reasonable in the circumstances to do so as provided by item 20A(6) of Schedule 3 of the Transitional Act.

[3] The Full Bench in *ISS Health Services Pty Ltd*¹ described the requirements that must be met for an application to extend the default period where bargaining for a replacement agreement is made as follows:

- The application must be made at or after the notification time for a proposed enterprise agreement; and
- The proposed enterprise agreement must cover the same or substantially the same group of employees covered by the Agreement; and
- Bargaining for the proposed enterprise agreement must be occurring.

Background

[4] NGS Services Group Pty Ltd has agreed to commence bargaining for a proposed enterprise agreement and on 7 November 2023 issued a Notice of Employee Representational Rights (**NERR**) to all employees to be covered by the proposed agreement.

[5] The current Agreement covers 82 employees, and the Applicant intends that, arising from the expiration of fixed term contact under the current arrangements, approximately 48 employees will be covered by the proposed agreement.

[6] Five employee bargaining representatives have been appointed. Information sessions for all employees were held on 5 and 7 December 2023. An initial bargaining meeting was held on 16 January 2024, a further meeting held on 7 February 2024, and another scheduled for 21 February 2024.

[7] The Applicant has submitted a Statutory Declaration from Ms Vicki Tod, CEO of the National Management Group of companies, which includes the Applicant. Ms Tod submits that a significant proportion of the Applicant's revenue is tied to contractual terms expiring within the next 12 months that are based on its current operational model, inclusive of the terms and conditions of employment currently in place. Further, that any change to these terms, without the certainty of new contractual terms in place will present a risk to the financial viability of the enterprise.

Consideration

[8] The application satisfies the three requirements of subitem (7) in that:

- the application was made on 6 December 2023, which is after the notification time of the proposed enterprise agreement, which was 7 November 2023; and
- the proposed agreement covers the same or substantially the same employees as the Agreement; and
- bargaining for the proposed agreement has commenced and is progressing.

[9] We must therefore extend the default period if we consider it appropriate in the circumstances to do so.

[10] In considering this application, the Commission sought the views of the bargaining representatives identified regarding the application. Two bargaining representatives provided submissions to the Commission. In summary, these submissions identified that while the bargaining representatives supported the application, they were concerned for their jobs; that a 6-month extension should be sufficient; they were worse off under the agreement compared to the Award, and that the bargaining meeting scheduled for 9 January 2024 did not occur.

[11] On 7 February 2024, the Full Bench received further submissions from the Applicant in support of its application contesting the submissions received from the employee bargaining representatives. The Applicant provided additional materials in support of the bargaining process and its comparison of the proposed agreement with the relevant award. The Applicant reiterated its request for an extension to 1 July 2025 for the reasons identified above.

[12] As the Full Bench observed in *Suncoast*,² the Commission has a discretion as to the length of the extension, subject to the limitation that the extension cannot be more than four years. The nature of the discretion is such that we are not bound to grant the period of extension sought in the application.³

[13] The extension sought by the Applicant is to 1 July 2025. In the circumstances of the case, we are not satisfied that an extension of this length is justified. The Applicant is committed to bargaining for a replacement agreement and has commenced this process, with 2 meetings already convened and further meetings scheduled.

[14] On this basis, we consider an extension to 6 June 2024 is an appropriate timeframe within which the Applicant can apply to the Commission for approval of the replacement agreement.

Order

[15] We order that the default period for the Agreement is extended to 6 June 2024, in accordance with item 20A(6) of Sch 3 of the Transitional Act.

[16] The Agreement is published, in accordance with subitem 20A(10A) of Sch 3 of the Transitional Act, on the Fair Work Commission's website.



DEPUTY PRESIDENT

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¹ [\[2023\] FWCFB 122](#)

² [\[2023\] FWCFB 105](#) at [18].

³ *Ibid.*