



DECISION

Fair Work Act 2009

s.789FC - Application for an order to stop bullying

Worker A, Worker B, Worker C, Worker D and Worker E

v

Automotive, Food, Metals, Engineering, Printing and Kindred Industries

Union known as the Australian Manufacturing Workers' Union;

Communications, Electrical, Electronic, Energy, Information, Postal,

Plumbing and Allied Services Union of Australia and others listed in

Schedule A

(AB2016/208)

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 18 AUGUST 2016

Application for an FWC order to stop bullying; serious issue to be determined; balance of convenience; interim order appropriate.

[1] On 15 August 2016, I made an order restricting *inter alia* the publication of the names and addresses of persons described as Worker A, Worker B, Worker C, Worker D and Worker E (Applicants) in connection with an application under s.789FC of the *Fair Work Act 2009* (Act) made by them. During the course of the hearing of the application for a confidentiality order, the Applicants also sought relief by way of an interim order directed to particular conduct said to be occurring at a picket being conducted at, and adjacent to, the entrance to the Carlton & United Breweries site (Site) in Abbotsford, Victoria.

[2] Programmed Skilled Workforce Limited (Programmed) is involved in an industrial dispute with the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union in connection with its acquisition of a contract to provide certain services at the Site.

[3] The dispute centres around terms and conditions of employment of persons employed by Programmed, and the employment by it of persons whose employment was terminated by the previous contractor, on redundancy grounds. The dispute remains unresolved and the picket activity continues.

[4] The conduct about which complaint is made in the principal application involves allegations about the conduct or behaviour of persons who are participating in a picket outside of, and adjacent to, the entrance to the Site.

[5] I am satisfied on the material filed in the Fair Work Commission in support of the principal application, that there is a serious question to be determined as to whether some or

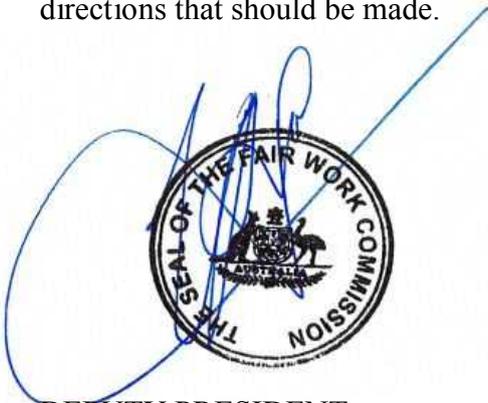
all of the conduct alleged by the Applicants, is conduct that may be described as the Applicants being bullied “at work”, within the meaning of s.789FD of the Act, and whether the respondents to the principal application or any of them have engaged in the conduct alleged.

[6] Moreover, having regard to the nature of the allegations about the conduct, I consider that the balance of convenience favours the making of interim orders of some kind which would serve to de-escalate any further inappropriate conduct and minimise the risk to the health and safety of the Applicants in this proceeding.

[7] To confining the interim order to conduct directed towards the Applicants, would undermine the utility of the confidentiality order that I made on 15 August 2016 in the sense that an interim order limited to the Applicants would require that each Applicant be named in the order. I therefore consider that it is appropriate to make a wider order which prohibits the conduct as identified in the order, being directed towards a group of individuals, described and defined in the order as, Programmed Workers.

[8] The order that I make is separately issued in PR584404.

[9] The parties are otherwise directed to confer on the directions that should be made to progress the principal application to hearing and file in my chambers by 5.00pm on Tuesday, 23 August 2016, a document setting out consent directions, or in the absence of consent, a document or documents setting out the respective positions of the parties in relation to directions that should be made.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<Price code A, PR584414>

SCHEDULE A

The Respondents are the following:

1. The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers' Union;
2. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia;
3. Mr Andrew March;
4. Mr Chris Bowden;
5. Mr Craig Kelly;
6. Mr David Roach;
7. Mr Paul Jeffares;
8. Mr Steve Diston; and
9. Mr Troy Gray.