DECISION

Fair Work Act 2009
s.437 - Application for a protected action ballot order

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

v

O&M Pty Ltd
(B2018/415)

DEPUTY PRESIDENT GOSTENCNIK MELBOURNE, 21 JUNE 2018

Proposed protected action ballot of employees of O&M Pty Ltd; whether s.438 engaged; application dismissed.

Introduction

[1] O&M Pty Ltd (O&M) is engaged in the business of supplying labour resources in the form of electrical and maintenance personnel to electrical operators in the La Trobe Valley.[1] O&M currently engages 25 permanent staff as well as casual staff who are called upon on an on needs basis. An enterprise agreement entitled *O&M Pty Ltd and ETU Greenfields Agreement 2010 – 2014* (2014 Agreement) applies to O&M and its employees. The nominal expiry date of the 2014 Agreement of 31 October 2014 has passed. An enterprise agreement entitled *O&M Pty Ltd ETU Greenfield Yallourn Power Station & Open Cut Mine 2016* (Yallourn Agreement) also applies to O&M and some of its employees, however, the Yallourn Agreement's coverage is limited to the "O&M activities at the Yallourn Power Station & Mine (Yallourn) and its employees engaged in maintenance at those sites".[2] The nominal expiry date of the Yallourn Agreement is 1 April 2020.

[2] The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) has, by application lodged on 25 May 2018, applied under s.437 of the *Fair Work Act 2009* (Act) for a protected action ballot order (PABO). It is a bargaining representative for the proposed agreement.

[3] O&M opposes the making of a PABO. It contends that the CEPU has failed to adequately specify the group of employees to be balloted pursuant to s.443(1)(a) of the Act, that there is a statutory bar to granting the application because the Yallourn Agreement has not yet reached its nominal expiry date or 30 days before its nominal expiry date and that the CEPU has not been genuinely trying to reach agreement.

[1] Exhibit 4 at [3]

[2] *O&M Pty Ltd ETU Greenfield Yallourn Power Station & Open Cut Mine 2016* at clause 4

[4] For the reasons set out below, I am satisfied that s.438(1) is a bar to the PABO application as presently framed. Some of the employees of O&M who will be covered by the proposed agreement are covered by the Yallourn Agreement. It is therefore not necessary to decide whether the CEPU has been and is genuinely trying to reach agreement. The CEPU's application for a PABO must be dismissed.

Background

[5] At the time the PABO application was made, between 9 to 12 of O&M's employees are engaged in electrical work at the Yallourn Power Station.[3] As described earlier, there are two enterprise agreements that cover O&M's staff:

- The 2014 Agreement covers O&M and its employees in Victoria at any location at which the Employee is temporarily required to perform work outside Victoria in respect of work covered by Service, Maintenance and Installation, Construction and Country and Cottage and the CEPU; and

- The Yallourn Agreement covers O&M and its employees engaged in O&M activities at the Yallourn Power Station & Mine engaged in maintenance at those sites and the CEPU.[4] The Yallourn Agreement incorporates by reference the *Electrical, Electronic and Communications Contracting Award 2010*.[5]

[6] The CEPU filed a PABO application on 25 May 2018. The application, *inter alia*, described the group of employees to be balloted as "those employees who are members of the "Electrical Trades Union Victorian Branch" and will be subject to the proposed enterprise agreement".[6]

[7] The CEPU described the group of employees to be balloted in the amended draft order it sought as follows:

> "Those who will be covered by the proposed enterprise agreement and are represented by the bargaining representative who is the applicant for this protect (sic) action ballot."

[8] There is some dispute as to when O&M agreed to bargain for a proposed enterprise agreement. According to the CEPU, discussions for the proposed agreement commenced on 5 October 2017.[7] According to O&M, discussions for the proposed agreement commenced on 12 April 2018, when the Notice of Employee Representational Rights (NERR) was issued by O&M to its employees.[8] Although there is some dispute between the parties as to the notification time, it is not an issue that I need to decide and I need not say anything further about it other than to provide some chronological context.

[9] The NERR that was provided by O&M to its employees provides that the coverage of the proposed agreement will be "employees that are engaged in any classifications specified

---

[3] Transcript dated 5 June 2018 at PN113 – PN114 and PN215

[4] *O&M Pty Ltd ETU Greenfields Agreement Yallourn Power Station & Open Cut Mine 2016* at clauses 3 and 4

[5] Ibid at clause 5

[6] Form F34 – Application for a protected action ballot order dated 25 May 2018 at Q 2.1

[7] Exhibit 1 at [5]

[8] Exhibit 6 at [3]

in the Electrical, Electronic and Communications Contracting Award 2010, including employees that are covered by the O&M Pty Ltd and ETU Greenfields Agreement 2010 – 2014 and the O&M Pty Ltd ETU Greenfield Yallourn Power Station & Open Cut Mine 2016".[9] Since the NERR was issued, there have been a number of bargaining meetings involving, amongst others, Mr Peter Mooney, CEPU Organiser and Mr Tony Bradford, Principal Workplace Relations Consultant at the Australian Mines and Metals Association. Mr Bradford is appointed by O&M, pursuant to s.176(1)(d) of the Act, as bargaining representative for the proposed agreement.[10]

[10] Mr Bradford gave evidence that on 23 April 2018, Mr Mooney sent him an email enclosing a 245 page document which he believed to be the "pattern ETU enterprise agreement".[11] It is not in dispute that on 27 April 2018, the parties participated in a bargaining meeting. The precise content of the discussions that took place at that meeting is disputed. According to Mr Bradford, he raised concerns with Mr Mooney at the 27 April 2018 meeting that the scope of the proposed agreement was said to cover LSA People Pty Ltd, not O&M, that it sought to cover employees Australia wide and that it sought to cover service, maintenance, installation, construction, country and cottage but that O&M engages only in service, maintenance and installation.[12]

[11] Mr Bradford says that in response to the coverage concerns, Mr Mooney said that the CEPU may put an alternative forward.[13] Mr Bradford says that he understood this to mean that Mr Mooney was considering bargaining for two different agreements with two different scopes.[14]

[12] Mr Mooney says that at no point did he raise a claim in relation to the scope of the proposed agreement but that he did enquire as to whether the correct entity to be party to the proposed agreement was O&M Pty Ltd or LSA People Pty Ltd because the CEPU's member's payslips listed the latter as the employer.[15]

[13] In addition to the scope issue, Mr Mooney says that Mr Bradford advanced further claims at the meeting on 27 April 2018, on behalf of O&M including casual loading, accrual of leave on RDO's and wages. He says that he asked Mr Bradford to confirm the offers in writing but that he did not receive anything.[16]

[14] On 1 May 2018 Mr Mooney wrote by letter to Mr Bradford.[17] The letter relevantly stated:

> *"The following is… <u>our alternative proposal</u> for your client's consideration… Add the following wording to Introduction clause 1 Title & Application of Agreement";*

---

[9] Ibid at Annexure TB-1

[10] Ibid at [2]

[11] Ibid at [4] and Annexure TB-2

[12] Ibid at [5] and [6]

[13] Ibid at [6]

[14] Ibid

[15] Exhibit 1 at [30]

[16] Ibid at [22]

[17] Exhibit 6 at [7]

> *d) This Agreement does not apply to:*
>
> *a. employees covered by the 'O&M PTY LTD Greenfield Yallourn Power Station & Open Cut Mine 2016' [AE423141] as varied or replace from time to time…".*[18] [Emphasis added]

[15] It appears that following the meeting on 1 May 2018 there were further discussions between the parties but there is no evidence about the extent to which those discussions concerned the coverage issue. Having reached a purported impasse, the PABO application was lodged.

Consideration

[16] Before turning some factual findings that need to be made, I should make some observations about the statutory scheme underpinning the PABO application. For present purposes it is sufficient to note that the following statutory provisions are relevant. Part 3-3 of the Act is concerned with industrial action. Division 8 of Part 3-3 of the Act deals with protected action ballots and s.436 describes the objects of the Division as follows:

> **436 Object of this Division**
>
> The object of this Division is to establish a fair, simple and democratic process to allow a bargaining representative to determine whether employees wish to engage in particular protected industrial action for a proposed enterprise agreement.
>
> Note: Under Division 2, industrial action by employees for a proposed enterprise agreement (other than employee response action) is not protected industrial action unless it has been authorised in advance by a protected action ballot.

[17] Subdivision B deals with protected action ballot orders as follows:

> **Subdivision B—Protected action ballot orders**
>
> **437 Application for a protected action ballot order**
>
> *Who may apply for a protected action ballot order*
>
> (1) A bargaining representative of an employee who will be covered by a proposed enterprise agreement, or 2 or more such bargaining representatives (acting jointly), may apply to the FWC for an order (a ***protected action ballot order***) requiring a protected action ballot to be conducted to determine whether employees wish to engage in particular protected industrial action for the agreement.
>
> (2) Subsection (1) does not apply if the proposed enterprise agreement is:
>
> (a) a greenfields agreement; or
> (b) a multi-enterprise agreement.
>
> (2A) Subsection (1) does not apply unless there has been a notification time in relation to the proposed enterprise agreement.

[18] Ibid at Annexure TB-3

Note: For ***notification time***, see subsection 173(2). Protected industrial action cannot be taken until after bargaining has commenced (including where the scope of the proposed enterprise agreement is the only matter in dispute).

Matters to be specified in application

(3) The application must specify:

(a) the group or groups of employees who are to be balloted; and

(b) the question or questions to be put to the employees who are to be balloted, including the nature of the proposed industrial action.

(4) If the applicant wishes a person other than the Australian Electoral Commission to be the protected action ballot agent for the protected action ballot, the application must specify the name of the person.

Note: The protected action ballot agent will be the Australian Electoral Commission unless the FWC specifies another person in the protected action ballot order as the protected action ballot agent (see subsection 443(4)).

(5) A group of employees specified under paragraph (3)(a) is taken to include only employees who:

(a) will be covered by the proposed enterprise agreement; and

(b) either:

(i) are represented by a bargaining representative who is an applicant for the protected action ballot order; or

(ii) are bargaining representatives for themselves but are members of an employee organisation that is an applicant for the protected action ballot order.

Documents to accompany application

(6) The application must be accompanied by any documents and other information prescribed by the regulations.

438 Restriction on when application may be made

(1) If one or more enterprise agreements cover the employees who will be covered by the proposed enterprise agreement, an application for a protected action ballot order must not be made earlier than 30 days before the nominal expiry date of the enterprise agreement, or the latest nominal expiry date of those enterprise agreements (as the case may be).

(2) To avoid doubt, making an application for a protected action ballot order does not constitute organising industrial action.

443 When the FWC must make a protected action ballot order

(1) The FWC must make a protected action ballot order in relation to a proposed enterprise agreement if:

(a) an application has been made under section 437; and

(b) the FWC is satisfied that each applicant has been, and is, genuinely trying to reach an agreement with the employer of the employees who are to be balloted.

(2) The FWC must not make a protected action ballot order in relation to a proposed enterprise agreement except in the circumstances referred to in subsection (1).

(3) A protected action ballot order must specify the following:

(a) the name of each applicant for the order;

(b) the group or groups of employees who are to be balloted;

(c) the date by which voting in the protected action ballot closes;

(d) the question or questions to be put to the employees who are to be balloted, including the nature of the proposed industrial action.

(3A) For the purposes of paragraph (3)(c), the FWC must specify a date that will enable the protected action ballot to be conducted as expeditiously as practicable.

(4) If the FWC decides that a person other than the Australian Electoral Commission is to be the protected action ballot agent for the protected action ballot, the protected action ballot order must also specify:

(a) the person that the FWC decides, under subsection 444(1), is to be the protected action ballot agent; and

(b) the person (if any) that the FWC decides, under subsection 444(3), is to be the independent advisor for the ballot.

(5) If the FWC is satisfied, in relation to the proposed industrial action that is the subject of the protected action ballot, that there are exceptional circumstances justifying the period of written notice referred to in paragraph 414(2)(a) being longer than 3 working days, the protected action ballot order may specify a longer period of up to 7 working days.

Note: Under subsection 414(1), before a person engages in employee claim action for a proposed enterprise agreement, a bargaining representative of an employee who will be covered by the agreement must give written notice of the action to the employer of the employee.

[18] It is to be observed that the Act variously makes reference to a "proposed agreement", or the "proposed enterprise agreement" and "proposed single-enterprise agreement" to describe in a particular context the same concept, that is, the agreement that is being proposed by a party wishing to bargain or by one that is actually bargaining. That this is so seems to be confirmed by the Explanatory Memorandum to *Fair Work Bill 2008* and its description of the use of the phrase "proposed enterprise agreement" in Parts 2-4 and 3-3 as "a generic term",[19] and its reference to the decision in *Wesfarmers Premier Coal Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Union (No 2)*[20] in which French J referred to the use of the

[19] Explanatory memorandum at [643]

[20] Ibid; (2004) 138 IR 362

words "proposed agreement" in s.170MI of the *Workplace Relations Act 1996* as a "generic term [that] allows for a variety of possibilities".[21] The content of a proposed agreement need not be settled nor need the scope of a proposed agreement be agreed between the bargaining parties for that which is proposed by one party to bear the character of a proposed agreement or proposed enterprise agreement for the purposes of the Act.[22]

[19] As a Full Bench of Fair Work Australia in *MSS Security Pty Ltd v Liquor, Hospitality and Miscellaneous Union*[23] observed, the Act uses the expression "proposed enterprise agreement", "proposed single-enterprise agreement" and "proposed agreement" in a number of places. An agreement may be "proposed" by an employer or it may be "proposed" by a bargaining representative of employees, or there may be different and competing agreements "proposed" by both. Where a person makes an application under the Act in their capacity as a bargaining representative for a "proposed enterprise agreement" or "proposed single enterprise agreement", the bargaining representative is entitled to rely on the agreement it has proposed or it may choose to make the application in relation to an agreement proposed by another bargaining representative.

[20] Identifying the proposed agreement in this case is not difficult since it was annexed to an email dated 23 April 2018 from Mr Mooney to Mr Bradford to which earlier reference has been made. There seems no dispute that the proposed agreement to which the application for a PABO relates is the proposed agreement accompanying the 28 April 2018 email.

[21] As to the operation of s.438 a Full Bench in *Mermaid Marine Vessel Operations Pty Ltd v Maritime Union of Australia*[24]said:

> "[45] The prohibition of making an application for a protected action ballot order under s.438(1) is, in our view, concerned with identifying whether an employee who is covered by an enterprise agreement that has not passed its nominal expiry date will also be covered by the proposed enterprise agreement. The relevant enquiry is therefore directed to assessing whether any of the employees who will fall within the scope of the proposed enterprise agreement that is the subject of the application are also covered by an enterprise agreement that has not passed its nominal expiry date.
>
> [46] When read in context, "a proposed enterprise agreement" in s.438(1) seems to us to mean no more than the agreement the bargaining representative applying for an order under s. 447 is proposing at the time the application for a protected action ballot order is made. It is that agreement to which the ballot will relate and it is employees represented by the bargaining representative who fall within the scope of that agreement (or a group of such employees) who will vote on questions of particular industrial action. That the Appellant does not agree with the scope of the proposed agreement or would prefer a broader scope or that the bargaining parties have bargained for a broader scope previously is, for the purpose of identifying the proposed enterprise agreement to which s.438(1) might relate, irrelevant in considering whether s.438(1) prohibits an application being made.
>
> [47] In our view, this construction adheres to the ordinary meaning of "a proposed enterprise agreement" and does not lead to any absurdity or repugnance. It is consistent with the objects

---

[21] Ibid at [55]

[22] *Mermaid Marine Vessel Operations Pty Ltd v Maritime Union of Australia* [2014] FWCFB 1317 at [42]

[23] [2010] FWAFB 6519

[24] [2014] FWCFB 1317

and purpose of the scheme of bargaining, agreement-making and industrial action established by the Act.

[48] In this case the Respondent proposes an agreement with a scope that excludes employees to whom the Gorgon Agreement applies. For present purposes we do not think that anything material turns on the fact that the application is expressed to exclude employees to whom the Gorgon Agreement "applies" rather than excluding employees "covered" by the Gorgon Agreement. The PABO Application is limited to only those employees that will be covered by the Respondent's proposed enterprise agreement. Those employees are not covered by another enterprise agreement that has not passed its nominal expiry date. It follows that the Respondent is not prevented by reason of s.438(1) from making the PABO Application.

[49] We also observe that s.438(1) reflects the intent underpinning the Act that industrial action not be engaged in or organised by persons covered by an enterprise agreement which is yet to pass its nominal expiry date. Section 417 of the Act to which we earlier referred also reflects that intent.

[50] The construction of s.438(1) that we favour is consistent with and does undermine that intent. The employees who are balloted on the question of whether particular industrial action should be authorised are not covered by an enterprise agreement that has not passed its normal expiry date. Only those employees covered by the General Agreement who are not also covered by the Gorgon Agreement are the persons to be balloted. Further, no employee covered Gorgon Agreement will be covered by the Respondent's proposed enterprise agreement. Neither s. 438(1) nor s.417 operate so as to prevent the taking of protected industrial action by employees who are not covered by an in term enterprise agreement in furtherance of claims for a proposed enterprise agreement, which by its scope will be limited to covering only those employees."[25]

[22] Section 53 of the Act deals with coverage of an enterprise agreement and provides:

53 When an enterprise agreement *covers* an employer, employee or employee organisation

Employees and employers

(1) An enterprise agreement ***covers*** an employee or employer if the agreement is expressed to cover (however described) the employee or the employer.

Employee organisations

(2) An enterprise agreement ***covers*** an employee organisation:

(a) for an enterprise agreement that is not a greenfields agreement—if the FWC has noted in its decision to approve the agreement that the agreement covers the organisation (see subsection 201(2)); or
(b) for a greenfields agreement—if the agreement is made by the organisation.

Effect of provisions of this Act, FWC orders and court orders on coverage

[25] Ibid at [47]-[50]

> (3) An enterprise agreement also ***covers*** an employee, employer or employee organisation if any of the following provides, or has the effect, that the agreement covers the employee, employer or organisation:
>
> (a) a provision of this Act or of the Registered Organisations Act;
>
> (b) an FWC order made under a provision of this Act;
>
> (c) an order of a court.
>
> (4) Despite subsections (1), (2) and (3), an enterprise agreement does not ***cover*** an employee, employer or employee organisation if any of the following provides, or has the effect, that the agreement does not cover the employee, employer or organisation:
>
> (a) another provision of this Act;
>
> (b) an FWC order made under another provision of this Act;
>
> (c) an order of a court.
>
> *Enterprise agreements that have ceased to operate*
>
> (5) Despite subsections (1), (2) and (3), an enterprise agreement that has ceased to operate does not ***cover*** an employee, employer or employee organisation.
> Enterprise agreements cover employees in relation to particular employment
>
> (6) A reference in this Act to an enterprise agreement covering an employee is a reference to the agreement covering the employee in relation to particular employment.

[23] The reference in s.438 to "one or more enterprise agreements cover the employees who will be covered by the proposed enterprise agreement" requires first, a consideration of whether a particular employee or employees of an employer is or are covered by an enterprise agreement in relation to particular employment. Secondly, if such an employee or employees is or are identified, then consideration needs to be given to whether that employee or those employees "will be covered by the proposed enterprise agreement". That issue will be determined by reference to the coverage that is being proposed by the proposed agreement.

[24] It seems clear to me that s.438(1) will operate to prevent an application for a protected action ballot being made in a given case if:

- the proposed enterprise agreement by its terms will cover any employee;
- who is covered by an enterprise agreement that has not passed its nominal expiry date; and
- the application has been made more than 30 days before the nominal expiry date of that enterprise agreement.[26]

[25] Turning then to some factual matters. Based on the material before me the following factual findings may be made:

---

[26] See also *Mermaid Marine Vessel Operations Pty Ltd v Maritime Union of Australia* [2014] FWCFB 1317 at [27]

- The proposed enterprise agreement for the purposes of this application is that agreement which is annexed to an email from Mr Mooney to Mr Bradford and dated 23 April 2018;

- A copy of the terms of the proposed agreement sought by the CEPU was given to Mr Bradford by Mr Mooney on or about 23 April 2018;

- The CEPU is a bargaining representative for the proposed agreement in respect of certain employees of O&M who are its members. The CEPU is advancing claims for the proposed agreement with O&M;

- Initial discussions between the CEPU and O&M about a proposed agreement began towards the end of 2017;

- A notice of employee representational rights was given to relevant employees by O&M on or about 12 April 2018;

- Mr Bradford is appointed as a bargaining representative for O&M shortly thereafter;

- The scope of the proposed agreement that was given to Mr Bradford by Mr Mooney, relevantly describes the group of employees that will be covered by the proposed agreement as:

    - the employees of the Employer in Victoria and, for employees ordinarily based in Victoria at any location at which the employee is temporarily required to perform work outside Victoria in respect of work covered by:

        - Part A – Service, Maintenance and Installation
        - Part B – Construction
        - Part C – Country and Cottage;

- Part A of the proposed agreement relevantly excludes "work performed at any enterprise or project where a site specific or project specific agreement is made between the Parties and applies to the employees (entered into after this agreement is made)";

- Although there is some dispute about whether scope of the proposed agreement was an issue in bargaining, it is clear that the question whether the proposed agreement should cover employees who, in their particular employment at Yallourn are covered by the Yallourn Agreement was discussed;

- The correspondence from the CEPU to Mr Bradford and dated 1 May 2018 advances that which is described by Mr Mooney in his evidence as responsive to a claim advanced by O&M as to scope and proposes "our alternative proposal" as to scope of the proposed agreement. The "alternative proposal" would have the effect of excluding from the coverage of the proposed agreement employees covered by the Yallourn Agreement;

- It is also clear from the evidence that the initially described scope of the proposed agreement was not abandoned by the CEPU in favour of the "alternative proposal";

- Mr Mooney's evidence is that at no point did he raise a claim in relation to the scope of the proposed agreement[27], that he maintained that position[28], that O&M were seeking a narrower scope by carving out employees covered by the Yallourn Agreement[29] and that the "alternative proposal" was a way of accommodating O&M's scope claim.[30] O&M has not agreed to the "alternative proposal";

- The application for a PABO was made by the CEPU on 25 May 2018;

- A number of employees of O&M were at the time at which the application for a PABO was made working at Yallourn and in that employment are covered by the Yallourn Agreement;

- The Yallourn Agreement also covers O&M and the CEPU;

- The nominal expiry date of the Yallourn Agreement is 1 April 2020;

- Both the application for a PABO and the draft order that the CEPU seeks to be made in respect of that application, describes the group of employees to be balloted relevantly as those "employees… who will be covered by the proposed enterprise agreement".[31]

[26] On the basis of the material before me, it seems clear that the CEPU was and is pursuing a claim for a proposed agreement that on its face, would cover employees of O&M who are covered by the Yallourn Agreement but that it was prepared to consider a narrower scope, that is, one that would exclude employees of O&M who are covered by the Yallourn Agreement. The broader scope of the proposed agreement has not been abandoned by the CEPU. That broader scope will cover employees of O&M who are covered by the Yallourn Agreement. I am therefore satisfied on the evidence that the proposed agreement that the CEPU was advancing when it made this application and continues to advance will cover employees of O&M who are covered by the Yallourn Agreement.

[27] As I have already identified, it is uncontroversial that some of O&M's employees when working at Yallourn, are covered by the Yallourn Agreement. This was the case when the application for a PABO was made. On the face of the proposed coverage clause of the proposed agreement being pursued by the CEPU (and in relation to which the PABO is sought), those same employees will be covered by the proposed agreement. That coverage has not been abandoned by the CEPU. The Yallourn Agreement has not yet passed its expiry date. The application for a PABO was made on 25 May 2018 and so it was made more than 30 days before the nominal expiry date of the Yallourn Agreement. All employees of O&M for whom the CEPU is a bargaining representative and who will be covered by the proposed agreement are sought to be balloted as set out in the application and the draft order. The

[27] Exhibit 1 at [30]

[28] Transcript PN185

[29] Transcript PN183

[30] Transcript PN184

[31] Form F34 – Application for a protected action ballot order dated 25 May 2018 at Q 2.1 and Amended Draft Order

Yallourn Agreement, which nominally expires on 1 April 2020, covers some of these employees. This is the very circumstance to which s.438 is directed. Since industrial action may not be taken by employees during the nominal life of an enterprise agreement which covers them,[32] it is hardly surprising that the Parliament would make provision (as it has done in s.438) to prevent applications for a PABO to be made in respect of such employees. It follows that by reason of s.438, the application must not be made. Therefore it should be dismissed.

Conclusion

[28] For the reasons stated, the application by the CEPU for a PABO in B2018/415 is dismissed.

[29] Plainly the CEPU could abandon the broader coverage set out in the proposed agreement and adopt a narrower coverage clause as set out in its "proposed alternative". Alternatively, it could review the description of the group of employees sought to be balloted. It did neither of these during the hearing before me.

DEPUTY PRESIDENT

Appearances:

Ms A Kendall for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

Mr L Howard, Counsel for O&M Pty Ltd

Hearing details:

29 May.
2018.
Melbourne.

5 June.
2018.
Melbourne.

[32] *Fair Work Act 2009* (Cth), s.417

8 June.
2018.
Melbourne.
Printed by authority of the Commonwealth Government Printer

<PR608175>