



DECISION

Fair Work Act 2009
s.225—Enterprise agreement

Carl Maynard
(AG2019/1758)

LABOURPLUS SECURITY STAFF AGREEMENT 2007

Industries not otherwise assigned

COMMISSIONER WILLIAMS

PERTH, 24 DECEMBER 2019

Application for termination of the Labourplus Security Staff Agreement 2007.

[1] This decision concerns an application made by Mr Carl Maynard under section 225 of the Fair Work Act 2009 (Cth) (the Act) for the termination of the Labourplus Security Staff Agreement 2007 (the Agreement). Mr Maynard is an employee covered by the Agreement.

[2] The respondent is Australian Workplace Solutions (WA) Pty Ltd trading as Labourplus (Labourplus or the Respondent).

[3] Following the conference convened by the Commission the parties have reached agreement regarding this matter.

[4] The Respondent, the applicant and the United Workers Union (UWU) have filed a statement of agreed facts.

Agreed facts

1. Australian Workplace Solutions (WA) Pty Ltd trades as Labourplus (Labourplus).
2. The Applicant is an employee of Labourplus covered by the Agreement.
3. The UWU is the principal union with coverage of Labourplus' employees covered by the Agreement (Employees).
4. Labourplus commenced operation in or around 2006 to engage security guards and crowd controllers to businesses.
5. Labourplus entered into the Labourplus Security Staff Agreement 2007 (Agreement) in accordance with Part 8 of the Workplace Relations Act 1996 (Cth) (WR Act).

6. The Agreement covers the security guards and crowd controllers employed by Labourplus.
7. The Agreement commenced operation on the day it was lodged with the Employment Advocate and had a nominal term of five years from the date of lodgement (ie in or around 2012).
8. Although the Agreement has passed its nominal term, it continues to operate as a collective agreement - based transition instrument pursuant to Schedule 3 Part 3 Item 16 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth) (Transitional Act).
9. Labourplus has approximately 4,000 security guards and crowd controllers on its books covered by the Agreement.
10. Labourplus has contracts to provide security guards and crowd controllers with some 23 different firms (Clients).
11. The Clients have contracts with businesses to provide security and crowd control services.
12. The Clients use the Employees to service their contracts to provide security guards and crowd controllers to the businesses.
13. The Clients' contracts with businesses are generally for extended periods of time. For example the contract for the supply of security and crowd control services between NPB Security Australia Pty Ltd (NPB) and Optus Stadium is for a period of three years (and subject to an option to extend for a further two years) will expire on 31 December 2020.
14. NPB also has long term contracts with the City of Mandurah and the City of Belmont which expire on 1 August 2022 and 21 June 2022 respectively.
15. The contracts Labourplus has with its Clients are based upon Employees being paid in accordance with the Agreement. If the terms of the Agreement were to cease to apply then that would be grounds for those contracts to be terminated.
16. The Employees are currently engaged on all-in hourly rates in accordance with the Agreement.
17. The Employees covered by the Agreement are paid wages above those set out in the Agreement.
18. Depending upon the work being done and the hours and rosters worked, some of the Employees are paid less than they would be entitled to under the Award.

19. Termination of the Agreement would result in significant changes to the way in which the Employees are remunerated.
20. Termination of the Agreement would result in the Award applying would also require significant changes to the systems and structures for Labourplus' payroll administration.
21. Labourplus and The UWU intend to negotiate a new enterprise agreement to replace the Agreement prior to or by 1 July 2020.

Joint submissions on behalf of the parties and the UWU

Application

1. By Application dated 20 May 2019 (Application) the Applicant, an employee of the Respondent applied to terminate the Labourplus Security Staff Agreement 2007 (Agreement) pursuant to section 225 of the *Fair Work Act 2009* (Cth) (Act).
2. The Agreement is a collective agreement - based transitional instrument in accordance with Part 2 of Schedule 3 of the *Fair Work (Transition Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act).
3. In conference held in relation to the Application on 31 August 2019, the Commission exercised its power under section 586 of the Act that the Applicant would be taken to be an application made on a Form F28 being an application to terminate a collective agreement - based transitional instrument after its nominal expiry date by one of the parties under Item 16 of Schedule 3 of the Transitional Act.
4. By application dated 5 July 2019 the registered organisation, the United Workers Union (UWU) applied to the Commission to be granted standing to be heard as a full participant in the Application.
5. In its decision dated 13 August 2019, the Commission granted UWU, as the principal union with coverage over the security industry and security officers covered by the Agreement, the right to lead evidence, make submissions and question other witnesses in the Application, in their own right.

Statutory provisions

6. Item 16 of Schedule 3 of the Transitional Act provides that Subdivision D of Division 7 of Part 2-4 of the Act, which deals with the termination of enterprise agreements after their nominal expiry date, also applies in relation to the termination of a collective agreement - based transitional instrument such as the Agreement.
7. Section 225 of the Act states:

If an enterprise agreement has passed its nominal expiry date, any of the following may apply to the FWC for the termination of the agreement:

- a) one or more of the employees covered by the Agreement;*
- b) an employee covered by the Agreement;*
- c) an employee organisation covered by the Agreement.*

8. The Applicant is an employee of the Respondent and, as such, it is submitted that the requirements of section 225 have been met.
9. The Agreement has passed its nominal expiry date, which was five years from the date of lodgement of the Agreement with the Employment Advocate in 2007.
10. As indicated above the UWU, an employee organisation (which has exclusive coverage of the security industry) has been granted leave to be heard in relation to the Application.
11. Section 226 of the Act states:

If an application for termination of an enterprise agreement is made under section 225, the FWC must terminate the Agreement if:

- a) the FWC is satisfied that it is not contrary to the public interest to do so; and*
- b) the FWC considers that it is appropriate to terminate the Agreement taking into account all the circumstances including:*
 - i. the views of the employees, each employer and each employee organisation (if any), covered by the Agreement; and*
 - ii. the circumstances of those employees, employers and organisations including the likely effect that the termination will have on each of them.*

12. Section 227 of the Act provides that if an enterprise agreement is terminated under section 226, the termination operates from the date specified in the decision to terminate the agreement.

Not contrary to public interest

13. The Applicant, the Respondent and the UWU have, subject to there being a transitional period until 1 July 2020 (transition period), agreed that the Agreement be terminated.
14. It is a requirement of section 226 of the Act that the Commission be satisfied that the termination of the Agreement is not contrary to the public interest before it can order its termination.
15. What constitutes the public interest has been considered in a number of decisions of the Commission including Aurizon Operations Limited; Aurizon Network Pty Ltd; Australian Eastern Railroad Pty Ltd [2015] FWCFB 540 which cited with approval an earlier Full Bench Decision of the then Australian Industrial Relations Commission in the matter of Kellogg Brown & Root Bass Straight (Essa) Onshore/Offshore Facilities Certified Agreement 2000 [2005] AIRC 72. Those decisions indicate that consideration of the public interest involves something distinct from the interests of the parties covered by the particular agreement in question, although they acknowledge that both might happen to be simultaneously affected.
16. Those decisions indicate that the notion of public interest refers, instead, to matters that might affect the public more broadly as a whole, such as the attainment of the objects of the Act, the pursuit of desirable economic outcomes, or the maintenance of appropriate industrial standards.
17. It is submitted that the termination of the Agreement by agreement between the parties and the UWU, subject to the proposed transition period, is not contrary to the public interest.
18. The objects of Part 2-4 of the Act are set out at section 171(a) to include:

To provide a simple, flexible and fair framework that enables collective bargaining in good faith.
19. The UWU and the Respondent propose to enter into negotiations to establish a new enterprise agreement to replace the Agreement.
20. The UWU and the Respondent agree that the termination of the Agreement to take effect on 1 July 2020 will assist them in bargaining good faith to establish a new enterprise agreement.
21. The termination of the Agreement after the transition period will set a timeline by which the new enterprise agreement should be able to be negotiated and approved.
22. The fact that the relevant modern award, the Security Services Industry Award 2010 would commence operation on 1 July 2020 will motivate the

Respondent, the UWU and the Employees to finalise a new enterprise agreement before that date.

23. If a new enterprise agreement is approved before 1 July 2020, then it will apply to the exclusion of the Agreement. See section 58(2) of the Act.
24. It is acknowledged that depending on the basis of their employment and when they are required to work, some Employees are paid less than they would be entitled to under the Award.
25. The negotiation of a new enterprise agreement or, if those negotiations are unsuccessful by the end of the transition period, the application of the Award to Employees' employment will address that issue.

Views of the employees and employer

26. The Respondent is in agreement with the UWU that, subject to the transition period, the Agreement be terminated.
27. The UWU believes that there is no opposition by the Employees to it being terminated provided that there is a controlled and orderly transition to a new enterprise agreement or to coverage by the Award.

Circumstances of the employees, employer and organisation

28. The parties to this Application and the UWU consider that the termination of the Agreement with the transitional period to be in the best interests of all concerned.
29. The termination of the Agreement is seen as part of the orderly negotiation of a new enterprise agreement to apply to the Respondent and the Employees.
30. If the Agreement was to be terminated without the transition period it would create contract difficulties between the Respondent and its clients and the contractual arrangements between those clients and their clients.
31. There would be a high possibility that the contracts could be terminated with the result that the Employees lose their jobs with the Respondent.

When termination takes effect

32. Pursuant to section 227 the termination of an enterprise agreement takes effect on the date specific in the decision to terminate the enterprise agreement.
33. The Parties and the UWU have agreed that the termination of the Agreement should take effect on 1 July 2020.

34. The reasons for the transition period before the termination takes effect include:
- (a) to provide a stable environment in which to negotiate a new enterprise agreement in relation to the Employees;
 - (b) to avoid or mitigate against the situation where there is a sudden change in the terms and conditions of the employment which could result in the termination of the contracts upon which the Employees are currently working and put them out of work; and
 - (c) to provide a period for the Respondent to organise its administrative arrangements including payroll services to cope with different terms and conditions of employment in a new enterprise agreement or the Award on the termination of the Agreement.

Conclusion

35. The parties and the UWU have agreed that the Agreement be terminated.
36. The parties and the UWU have further agreed that the termination of the Agreement be subject to a transition period until 1 July 2020 before it takes effect.
37. It is submitted that the implementation of the transition period before the termination takes effect would give effect to the objects of Part 2-4 of the Act in enabling collective bargaining in good faith.
38. For the reasons set out above the parties and the UWU submit that the Commission terminate the Agreement with the termination to take effect on 1 July 2020.

Commissions consideration

[5] Considering the facts in this matter I am satisfied that it will not be contrary to the public interest to terminate the Agreement.

[6] Taking into account the views of the employees and the Respondent and taking into account the circumstances of these employees and the employer, and also the likely effect that termination of the Agreement will have on them, I do consider in the circumstances that it is appropriate to terminate this Agreement.

[7] A unique circumstance in this matter is that the parties having agreed to a transition period such that the date the Agreement will be terminated would be 1 July 2020. The reason for the delayed termination of the agreement is to provide a stable environment in which to negotiate a replacement agreement, to mitigate against a sudden change in the terms and conditions of employment which could result in the termination of contracts upon which the employees are currently working and thus jeopardise their employment and finally to provide a period for the Respondent to put in place administrative arrangements to cope with the inevitably different terms and conditions of employment provided in either a new agreement or the award whichever applies on termination of this Agreement.

[8] The parties agreement on this transitional period is entirely sensible. The specified date for the termination of the Agreement will be 1 July 2020. And order to this effect will be issued in conjunction with this decision.



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