



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Tandem Building Group (SA) Pty Ltd T/A Tandem Building Group
(AG2021/5081)

TANDEM BUILDING GROUP (SA) PTY LTD ENTERPRISE AGREEMENT 2021

Building, metal and civil construction industries

DEPUTY PRESIDENT BOYCE

SYDNEY, 31 MAY 2021

Application for approval of the Tandem Building Group (SA) Pty Ltd Enterprise Agreement 2021.

[1] An application has been made for approval of an enterprise agreement to be known as the *Tandem Building Group (SA) Pty Ltd Enterprise Agreement 2021 (Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009 (Act)*. It has been made by Tandem Building Group (SA) Pty Ltd T/A Tandem Building Group (**Applicant / Employer**). The Agreement is a single enterprise agreement.

[2] The Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) have made written submissions requesting to be heard in relation to the approval of the Agreement pursuant to s.590 of the Act. The Applicant opposes the CFMMEU's request to be heard.

[3] Having reviewed the submissions of the parties,ⁱ and the F16 and F17 Forms lodged with the application for approval of the Agreement, I make the following conclusions and findings:

a) the CFMMEU was not a bargaining representative concerning the negotiation, or the making, of the Agreement;

b) the CFMMEU brings no evidence of any membership with the Applicant, or any involvement (whatsoever) in the Applicant's enterprise. The CFMMEU does not assert that it has any members covered by the Agreement;

c) in view of (a) and (b), the CFMMEU are strangers, not only in respect of the bargaining and the making of the Agreement, but to the Applicant's workplace/s. At this point in time, or previously, the CFMMEU has no right, interest or legitimate expectation in respect of the Agreement, or its approval;

d) employees voted to approve the Agreement;

- e) the Agreement does not alter or interfere with an employee's right to choose to become a member of the CFMMEU;
- f) the approval of the Agreement will not affect the CFMMEU's rights to participate in bargaining for future enterprise agreements with the Applicant, or the CFMMEU's relevant rights to represent employees under the Agreement (if any relevant current or future employees become members of the CFMMEU);
- g) the nature of the issues raised by the CFMMEU need to be addressed by the Commission as part of the approval process in any event;
- h) the Commission can determine whether to approve the Agreement absent a contender or third-party intervener;
- i) the CFMMEU has not identified any specific knowledge as to the Applicant's workplace, or actual knowledge of the bargaining or making of the Agreement;
- j) simply because the CFMMEU might have standing to appeal a decision to approve an enterprise agreement does not mean that a request to be heard ought to be granted in these proceedings;ⁱⁱ and
- k) the fact that the CFMMEU may represent employees into the future who are their members does not, of itself, warrant the exercise of the discretion in favour of granting the CFMMEU's request to be heard under s.590 of the Act in this matter.

[4] In *CFMEU v Collinsville Coal Operations Pty Limited*,ⁱⁱⁱ the Full Bench of the Commission stated the following in respect of s.590 of the Act (in the context of the Commission's enterprise agreement role):

“[65] In our view the right, interest or legitimate expectation that is said to be affected by application of the kind before the Senior Deputy President must be identified and understood against the framework of enterprise bargaining and agreement making established by the FW Act. It is not enough, without more, to point to the status of the CFMEU as an employee organisation with a history of representation at the workplace or in the industry. Moreover, this is not a case where some of the members of the CFMEU voted against the approval of the Agreement or did not vote at all. All of the employees covered by the Agreement voted, and all of those employees (including Employee 2) voted in favour of approving the Agreement

...

[75] We would make the observation however, that the Commission may choose, in a particular case, to hear from an employee organisation or any other person about the approval of an agreement even though the organisation or person may not otherwise have a right to be heard. The Commission has a broad power to inform itself in relation to any matter in such manner as it considers appropriate, including by inviting oral or written submissions from a person of organisation”.

[5] In *Macmahon Contractors Pty Ltd*,^{iv} Commissioner Williams stated:

“The benefit of a union acting as a contradictor will depend on the particular circumstances of the case and will involve in each case a judgement by the Commission. The absence of a contradictor would be the most common situation the Commission deals with in agreement approval applications and is no way abnormal or in any way inconsistent with the scheme of the Act. This absence of a contradictor of itself is not sufficient reason for the Commission to exercise its discretion and allow a union, that was a stranger to the bargaining process, to be heard over the objections of one or more of the parties to the Agreement”.

[6] In *CFMEU v MGI Piling (NSW) Pty Ltd*,^v the Full Bench stated:

“In *Collinsville*, the Full Bench made clear that:

- An enterprise agreement may confer or deal with the rights and obligations of an employee organisation vis-a-vis the employees and a new agreement might displace or alter those rights and obligations. Account should be taken of such matters in deciding whether a union (which is not a bargaining representative) has a right to be heard in relation to an application for approval of an enterprise agreement; and
- The right, interest or legitimate expectation that is said to be affected by an application to approve an enterprise agreement must be identified and understood against the framework of enterprise bargaining and agreement making established by the Act”.

[7] The fact that a union simply has coverage, experience, knowledge and/or an interest in an industry is not, in my view, a *prima facie* (let alone a sufficient) platform upon which to grant a request to be heard under s.590 of the Act. Certainly, as far as the s.590 request being made by the CFMMEU to be heard in these proceedings, in weighing the exercise of my discretion, I consider these factors to be no more than neutral considerations.

[8] Having regard to my conclusions and findings above, and the case law referred to in this decision, I have determined to refuse leave for the CFMMEU to intervene in the approval of the Agreement.

[9] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act, as are relevant to this application for approval, have been met.

[10] I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[11] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 June 2021. The nominal expiry date of the Agreement is 31 May 2025.



DEPUTY PRESIDENT

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ⁱ CFMMEU email submissions, 21 May 2021; Applicant email submissions, 26 May 2021.

ⁱⁱ See: *Marine & Power Engineers & Australian Maritime Officers' Union* [2018] FWCFB 3370 (at [15]).

ⁱⁱⁱ (2014) 246 IR 21; [2014] FWCFB 7940.

^{iv} [2018] FWC 869.

^v (2016) 260 IR 244; [2016] FWCFB 2654.