

[2023] FWC 1769 [Note: An appeal pursuant to s.604 (C2023/4319) was lodged against this decision.]



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

Nilsen (NSW) Pty. Ltd.

(B2023/725)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 21 JULY 2023

Proposed protected action ballot of employees of Nilsen (NSW) Pty. Ltd.

[1] This is an application by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) made under s.437 of the *Fair Work Act 2009* (**Act**) for a protected action ballot order in relation to certain employees of the Respondent, Nilsen NSW Pty. Ltd. (**Nilsen** or **Employer**).

[2] On 20 July 2023, the Commission was advised that Nilsen did not object to the Application.

[3] In the circumstances, I have decided to determine the matter on the papers without holding a hearing.

[4] On the basis of the material before me, including the declaration of Mr Frederick Barbin, NSW Branch Secretary for the CEPU, setting out the steps taken by the CEPU in bargaining with the Employer and that it has been, and is, genuinely trying to reach agreement with Nilsen, I am satisfied that there is a notification time in relation to the proposed agreement and that all of the requirements in s.443(1) of the Act have been met.

[5] The ballot is to be conducted by the Democratic Outcomes Pty Ltd T/A CiVS (**CiVS**). CiVS has recently been approved as an eligible protected action ballot agent under s 468A of the Act¹ and consequently is authorised to conduct the ballot. For the purposes of s.443(3)(c) and s.448A(2) of the Act, a ballot period of ten (10) working days from the date of the Order (21 July 2023) has been approved by the Commission.

[6] An order has been separately issued in [PR764414](#).

[7] This matter will be assigned to another Member of the Commission to conduct the s.448A conference and this Member will issue the Order requiring attendance at the conference. It is likely that Directions will also be issued to ensure that the parties attend the conference ready to conduct meaningful negotiations.



DEPUTY PRESIDENT

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¹ *Democratic Outcomes Pty Ltd T/A CiVS* [\[2023\] FWC 1400](#)