



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

Application by Exegen Pty Ltd Atf Dostoros Unit Trusts T/A Exegen Pty Ltd (AG2023/4499)

Building, metal and civil construction industries

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON

SYDNEY, 30 JANUARY 2024

Application to extend the default period for Pacific Engineering Surveyors Collective Agreement 2008

[1] Pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Exegen Pty Ltd Atf Dostoros Unit Trusts T/A Exegen Pty Ltd has applied to extend the default period for the *Pacific Engineering Surveyors Collective Agreement 2008* (the Agreement).

[2] The application is made in accordance with subitem 20A(6)(a) on the ground that the bargaining is occurring for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as are covered by the Agreement and that it is appropriate to do so. The application was made after the notification time for the proposed enterprise agreement.

[3] The Full Bench in *ISS Health Services Pty Ltd*¹ described the requirements that must be met for an application to extend the default period where bargaining for a replacement agreement is made.

[4] The Applicant commenced bargaining for a proposed enterprise agreement on 16 October 2023 (the notification time) by issuing the Applicant's employees with a Notice of Employee Representational Rights. The Applicant lodged its application to extend the default period for the Agreement on 21 November 2023. Accordingly, the application was made after the notification time for the proposed agreement pursuant to subitem (7)(a).

[5] The Agreement covers approximately 9 of the Applicant's employees. 9 employees are intended to be covered by the proposed agreement. The proposed agreement will therefore cover "the same or substantially the same group of employees" as the Agreement does for the purposes of subitem (7)(b).

[6] Finally, the applicant submits that it has had several bargaining meetings with employees following the notification time in October 2023. An employee bargaining representative has been appointed. Therefore, bargaining for the proposed enterprise agreement is occurring, as required by subitem (7)(c).

[7] The Applicant requests that the Agreement be extended to afford it more time to explain the terms of agreement to all employees, allow employees to raise questions and potentially negotiate further, provide all employees access to the final proposed agreement and incorporated documents, for the completion of the employee vote, and for the lodgement of the proposed agreement for approval should the employees vote in favour of its approval.

[8] The Applicant submits that the employees are currently paid well above the applicable Modern Award and that reversion to award entitlements will accordingly reduce employees' rates of pay and that employees are better off remaining on the Agreement.

[9] We are satisfied on the material provided that the requirements in subitem (6)(a) are met and that it is appropriate to extend the default period. The employee bargaining representative supports the extension of the Agreement. The applicant has commenced bargaining for a replacement agreement and we consider that an extension until 6 May 2024 is sufficient time for a replacement agreement to be made and approved.

[10] Pursuant to item 20A(6) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), we order that the default period for the Agreement, is extended until 6 May 2024.

[11] The Agreement is published, in accordance with subitem 20A(10A), on the Fair Work Commission's website.



DEPUTY PRESIDENT

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¹ [\[2023\] FWCFB 122](#).