



DECISION

Fair Work Act 2009

s.306E—Application for a regulated labour hire arrangement order

Applications by The Australasian Meat Industry Employees Union

(C2024/3881, C2024/3993)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
VICE PRESIDENT GIBIAN

SYDNEY, 26 SEPTEMBER 2024

Applications for regulated labour hire arrangement orders in respect of Food Industry People Group Pty Ltd and Task Labour Services Pty Ltd in relation to work performed for Australian Country Choice Production Pty Ltd – orders made by consent of the parties – determined on the papers.

Introduction and background

[1] The Australasian Meat Industry Employees Union (AMIEU) has made two applications under s 306E of the *Fair Work Act 2009* (Cth) (FW Act) for regulated labour hire arrangement orders applying to Australian Country Choice Production Pty Ltd (ACC) as the regulated host and Food Industry People Group Pty Ltd (FIP Group) and Task Labour Services Pty Ltd (Task Labour), respectively, as the employers. The orders would apply in respect of employees who perform work at ACC in Cannon Hill in Queensland. Neither ACC, FIP Group nor Task Labour oppose the making of the orders sought by the AMIEU.

[2] The factual background to the applications can be ascertained from the information provided in the two applications filed by the AMIEU, the outlines of submissions filed by the AMIEU in support of the two applications and two witness statements made by James Cottrell-Dormer dated 26 June 2024 (with respect to the application concerning FIP Group) and 3 July 2024 (with respect to the application concerning Task Labour). Mr Cottrell-Dormer has been the AMIEU organiser for ACC’s Cannon Hill facility for the last seven years. During that period, as one would expect, Mr Cottrell-Dormer’s duties have included recruiting new members, servicing existing members and providing industrial assistance to members.

[3] ACC operates a meat processing facility at Cannon Hill in Brisbane. Employees directly engaged by ACC at Cannon Hill are covered by the *Australian Country Choice Cannon Hill Production Enterprise Agreement 2022*¹ (ACC Agreement). The ACC Agreement covers employees who work in the operational areas within the Cannon Hill facility and applies to employees engaged in various classifications in the boning room, slaughter floor and offal and warehouse, amenities, stockyards and render set out in Schedules 1, 2 and 3 to the ACC Agreement.

[4] The evidence indicates that FIP Group has been providing labour to ACC for roles in which ACC could directly employ staff under the ACC Agreement over the last decade. A subsidiary of FIP Group previously operated at the Cannon Hill facility under an enterprise agreement known as the *Agribusiness Enterprise Agreement 2013*.² That enterprise agreement was terminated in 2019³ and, since that time, the terms and conditions of employees of FIP Group have been governed by the *Meat Industry Award 2010* and then the *Meat Industry Award 2020*.⁴ Although FIP Group currently pays rates that are above minimum modern award wages to employees engaged at the Cannon Hill facility, the same employees would receive rates that are approximately 25 percent higher if they were directly employed by ACC.

[5] The evidence also indicates that Task Labour has provided employees as labour for roles in which ACC could directly employ staff under the ACC Agreement over the last decade. Task Labour currently pays its employees engaged at the Cannon Hill facility the rates applicable under the *Meat Industry Award 2020*. Persons employed to undertake the same roles directly by ACC under the ACC Agreement would be paid significantly higher rates.

[6] Employees of FIP Group and Task Labour typically perform work of the following kind:

- (a) slaughtering and all associated tasks;
- (b) boning and all associated tasks;
- (c) slicing and all associated tasks;
- (d) general labour and all associated tasks; and
- (e) packing and all associated tasks.

[7] The evidence of Mr Cottrell-Dormer, in summary, indicates that employees of FIP Group and Task Labour working at the Cannon Hill facility:

- (a) do the same work as ACC's directly-employed employees, which includes but is not limited to those classified as slaughterers, boners, slicers, general labourers (such as stock hands and forklift operators) and packers;
- (b) work under the control and direction of ACC;
- (c) are supervised in all aspects of their day-to-day work by ACC management;
- (d) have their rosters set by ACC;
- (e) operate ACC's equipment and are provided equipment such as knives by ACC;
- (f) are fully integrated with ACC's employees and ACC's operations at the facility;
- (g) use ACC's consumables;
- (h) have their work inspected by ACC employees or Commonwealth meat inspectors in the same way as ACC employees do;
- (i) work for ACC's benefit;
- (j) process the same meat that is processed by ACC's employees; and
- (k) do not perform work that is specialised or expert in nature as compared to the work of ACC's employees.

[8] ACC pays a rate to FIP Group and Task Labour to supply employees to complete the work described above at the facility.

Consideration

[9] In *Application by the Mining and Energy Union*⁵, a Full Bench of the Commission outlined a number of principles concerning the proper interpretation and application of s 306E.⁶ We apply, but do not repeat, the principles stated in that decision.

[10] We are satisfied, for the purposes of s 306E(7) of the FW Act, that the AMIEU is an employee organisation that is entitled to represent the industrial interests of the employees of FIP Group and Task Labour who are supplied to perform work for ACC at the Cannon Hill meat processing facility. It is also entitled to represent the industrial interests of the employees of ACC who perform work at the Cannon Hill facility. Accordingly, the AMIEU is entitled to apply for a regulated labour hire arrangement order under s 306E of the FW Act.

[11] We are further satisfied that the requirements in s 306E(1) of the FW Act, in relation to which we must be satisfied to trigger the obligation to make a regulated labour hire arrangement order, are met. Specifically, we are satisfied on the material available to us, that:

- (a) Both FIP Group and Task Labour supply employees employed by them to ACC to perform work involving slaughtering, boning, slicing, general labour, packing and associated tasks.
- (b) The ACC Agreement would apply to the employees of FIP Group and Task Labour supplied to perform work at the Cannon Hill facility if ACC were to employ those employees directly to perform the same kind of work.
- (c) ACC is not a small business employer.

[12] For the purposes of s 306E(1A) of the FW Act, we are satisfied that the performance of work is not or will not be for the provision of a service, rather than the supply of labour. In forming that view, we have had regard to the matters set out in subsection (7A). In relation to the matters set out in s 306E(7A), we make the following findings:

- (a) There is no evidence that FIP Group or Task Labour have any involvement in matters relating to the performance of work by their employees working at the Cannon Hill facility.
- (b) The evidence indicates that ACC supervises and controls the work of employees of FIP Group and Task Labour who perform work at the Cannon Hill facility and is responsible for rostering, assigning tasks and the overall management of the employees. The discipline or promotion of employees is also done at the direction of ACC. There is no evidence that FIP Group or Task Labour, or any person on behalf of FIP Group or Task Labour, directs, supervises or controls the employees supplied to ACC when they perform work.
- (c) Employees of FIP Group and Task Labour performing work at the Cannon Hill facility are assigned to a workstation on a meat processing chain. The evidence indicates that those employees use the same systems and operate the same machinery as ACC employees when performing work on a meat processing chain.

- (d) There is no evidence that FIP Group or Task Labour are or will be subject to industry or professional standards or responsibilities in relation to the work of their employees supplied to ACC.
- (e) The evidence indicates that the work undertaken by employees of FIP Group and Task Labour at the Cannon Hill facility requires some on-the-job training before the worker is assessed to be 'competent', but does not involve work of a specialist or professional nature.

[13] Having regard to the considerations referred to in s 306E(7A), it is clear that the performance of work by the employees supplied by FIP Group and Task Labour to ACC at the Cannon Hill facility is not and will not be for the provision of a service. We are satisfied that FIP Group and Task Labour supply labour to ACC.

[14] In relation to s 306E(2) of the FW Act, we are not satisfied that it is not fair and reasonable in all the circumstances to make the order sought by the AMIEU. Section 306E(2) indicates that the Commission is required to have regard to the matters listed in subsection (8) in relation to which submissions have been made. No submissions were made to the Full Bench in relation to any of the matters in subsection (8). Accordingly, we are not required to have regard to those matters.

[15] In those circumstances, we are required by s 306E of the FW Act to make the regulated labour hire arrangement orders sought by the AMIEU. We will publish two orders together with this decision which set out the matters specified in s 306E(9) of the FW Act. The operative date of the orders will be 1 November 2024, consistent with s 306E(9)(e)(i). No party submitted that the orders should specify when they cease to be in force pursuant to s 306E(10). Accordingly, the orders will not contain such a specification.



PRESIDENT

Appearances:

B Swan for The Australasian Meat Industry Employees Union.
R Corcoran for Australian Country Choice Production Pty Ltd.
A Piper for Food Industry People Group Pty Ltd.
N Buckley for Task Labour Services Pty Ltd.
R Bhatt for The Australian Industry Group.

Hearing details:

2024.

Sydney by video link using Microsoft Teams:
30 July 2024 (report-back).

Matter determined on the papers.

Written submissions:

The Australasian Meat Industry Employees Union: 26 June 2024 (C2024/3881), 3 July 2024 (C2024/3993).

Printed by authority of the Commonwealth Government Printer

<PR779637>

¹ AE516471.

² AE404038.

³ [\[2019\] FWCA 2650](#).

⁴ MA000059.

⁵ [\[2024\] FWCFB 299](#).

⁶ Ibid [8]–[17].