

[2025] FWCFB 203

The attached document replaces the document previously issued with the above code on 9 September 2025.

Amendment to the citation: [\[2025\] FWCA 286](#) at paragraph [45].

Associate to Vice President Asbury.

30 September 2025.



DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

United Workers' Union

v

**The Corporation Of The Trustees Of The Roman Catholic Archdiocese Of
Brisbane t/a Centacare**

(C2025/1449)

VICE PRESIDENT ASBURY
DEPUTY PRESIDENT BELL
DEPUTY PRESIDENT O'KEEFFE

BRISBANE, 9 SEPTEMBER 2025

Background

[1] The United Workers Union (UWU/Appellant) has made an application pursuant to s. 604 of the *Fair Work Act 2009* (Cth) (the FW Act) for permission to appeal and to appeal Decision¹ of Deputy President Dobson issued on 23 January 2025 to approve the *2024 Centacare Community Services Enterprise 2024 Agreement* (the 2024 Agreement). The Respondent (the employer covered by the 2024 Agreement) is the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane (Centacare/the Respondent). The UWU contends that it was a default bargaining representative for the 2024 Agreement and that notwithstanding that it filed a Form F18 Declaration giving notice that it was a bargaining representative, and wished to be bound by the 2024 Agreement, the UWU was not advised of a determinative conference in relation to the approval of the Agreement and it was not noted in the approval decision that the Union is covered. This was asserted to be an 'administrative oversight' which resulted in the UWU being denied procedural fairness. The UWU also contends that the Deputy President erroneously focused on the fact that the Union was not involved in negotiations to conclude that it was not entitled to be covered by the 2024 Agreement, rather than the fact it was a bargaining representative regardless of its involvement in the negotiations for the Agreement.

[2] The appeal was lodged on 28 February 2025, 29 days after the Decision was released. Rule 56(2) of the *Fair Work Commission Rules 2013* (FWC Rules) provides that a notice of appeal under s. 604 of the FW Act must be filed within 21 calendar days after the date of the decision the subject of the appeal, or within such further time as may be allowed by the Fair Work Commission (Commission) on application by the appellant. Accordingly, the UWU requires the grant of an extension of time to lodge the appeal.

[3] Directions issued by the President of the Commission on 7 March 2025, provided for the matter to be determined ‘on the papers’ without an attendance hearing. The Uwu sought to adduce additional evidence in the appeal, consisting of a witness statement made by Mr

Alexander Nash, Lead Industrial Officer of the UWU, and annexures. The Respondent did not object to the witness statement being admitted into evidence and advised that it did not seek to cross examine Mr Nash, if the Full Bench decided to receive the statement.

[4] Section 607(2) of the FW Act permits the Commission to admit further evidence and take into account any other information or evidence in an appeal brought pursuant to s 604(1). Consistent with the principles which have been referred to in decisions of the Commission concerning the discretion to admit new evidence or to consider further material,² we decided to receive the statement of Mr Nash and to have regard to the matters raised in that statement. We accepted that the evidence could not have been called at first instance, given the circumstances of this case and the evidence is of such a high degree of probative value that there is a probability that had it been considered at first instance the outcome would have been different. There is also no issue of credit in relation to the evidence, noting that the Respondent advised the Full Bench that it did not seek to cross-examine Mr Nash.³

Chronology of events

[5] The chronology of events based on Mr Nash's statement and material on the Commission's file can be summarised as follows. Mr Nash states that the UWU has members employed by the Respondent who are covered by the 2024 Agreement and were members at the time the 2024 Agreement was made. Mr Nash appended to his witness statement, a redacted list showing that the UWU has three members employed by the Respondent, and who were employed when the Agreement was approved.⁴

[6] On 1 November 2024, Mr Nash became aware that bargaining for the 2024 Agreement had commenced when he was informed by the UWU's Industrial Administration team that the ASU had made an application to extend the default period for the *Centacare Community and Disability Union Collective Agreement 2008* (2008 Agreement) on the basis that bargaining for a new enterprise agreement was occurring. We interpolate that the Liquor, Hospitality and Miscellaneous Union, now the UWU, was one of the Unions with which the 2008 Agreement was made and is listed in that Agreement as having 'coverage' of certain employees. Mr Nash corresponded by email directed to Ms Joanne Roy and Mr John Thompson of the Respondent on 14 November 2024, in the following terms (salutations omitted):

'We refer to the current enterprise bargaining that we understand is currently underway to replace the Centacare Community and Disability Union Collective Agreement 2008.

From discussions with our relevant portfolio, the United Workers Union does not appear to have been advised of this bargaining.

Whilst the UWU does not currently have capacity to participate in this bargain, we do want to remain party to the replacement EBA as we have coverage of Care and Support Workers.

Could you please ensure to copy myself in on any correspondence relating to the EBA once it has been finalised.'

[7] The email set out Mr Nash's contact details including his mobile telephone and direct email address. Mr Nash did not receive a response to his email. An application for approval of the 2024 Agreement was filed in the Commission on 6 December 2024. The Form F16 filed by Centacare lists the Australian Municipal, Administrative, Clerical and Services Union (ASU)

and The Australian Workers Union as bargaining representatives. The UWU is not listed as a bargaining representative in the Form F16.⁵ The Respondent accepts that there is no requirement in s. 176(1)(b)(i) that an employee organisation participate in the 2024 Agreement making process as a bargaining representative. However, the Respondent points to the fact that the Form F16 relevantly required it to answer the following question:

‘Were there any employee organisations (unions) **involved** in the 2024 Agreement making process as a bargaining representative?’ (emphasis in Respondent’s submission)

[8] The Respondent submits that as the Appellant was not ‘involved’ in the 2024 Agreement making process as a bargaining representative, it was not required to include the Appellant’s details in the Form F16.

[9] On 11 December 2024, Mr Nash was copied into an email sent by the ASU indicating that the Respondent had filed the 2024 Agreement with the Commission⁶. Mr Nash caused a Form F18 Declaration of employee organisation in relation to an application for approval of an enterprise agreement to be filed with the Commission. Ms Carolyn Smith, an Officer of the UWU, declared that the UWU was a bargaining representative for the 2024 Agreement, did not wish to advise that it supported or opposed the 2024 Agreement and gave notice pursuant to s. 183 of the FW Act that the Union wanted the 2024 Agreement to cover it.⁷ The ASU filed a Form F18 on 12 December 2024, raising concerns about whether the 2024 Agreement passed the better off overall test (BOOT) and a range of other matters.⁸ The AWU filed a Form F18 on 16 December 2024.

[10] On 20 December 2024, the Associate to the Deputy President sent an email to Centacare, the ASU and the AWU, stating that a preliminary analysis of the 2024 Agreement had indicated that several matters required further action. The UWU was not copied into the email. The email set out the issues, with a column for responses. Relevantly, the first issue was in the following terms:

‘Form F18 (UWU): The UWU are not listed as a bargaining representative on the F16, however have filed an F18 indicating that they are a bargaining representative and wish to be covered by the 2024 Agreement.

The Deputy President seeks that the Applicant confirm whether the UWU were involved and an amended F16 if necessary. This can be done by amending the PDF produced upon lodgement.’⁹ (emphasis in original)

[11] On 15 January 2025, Centacare responded by email stating that:

‘On 1 December 2023, Centacare issued correspondence to the United Workers’ Union (the UWU) regarding the commencement of bargaining and Centacare’s application to extend the ‘default period’ of the ‘2008 Centacare Community and Disability Services Union Collective Agreement’ (the Centacare Zombie Agreement). Attached hereto and marked ‘Attachment 1’ is a copy of the letter correspondence sent by Centacare to the UWU dated 1 December 2023.

The UWU did not respond to the letter correspondence sent by Centacare and were not involved in any of the subsequent bargaining meetings which occurred between 4 December 2023 and 30 October 2024.’¹⁰

[12] The letter (which was sent as an email) was Attachment 1 to Centacare’s response to the Deputy President, is under the signature of Ms Stephanie Belmonte, General Manager People

& Culture – Centacare, and is addressed to: ‘Ms Stacey Schinnerl, AWU QLD Branch Secretary, United Workers Union’ and directed to a general UWU email address. The letter is in the following terms:

‘At present, we are not aware of any Centacare employees covered by the Centacare Agreement that are members of the UWU. However, we do note that the UWU (albeit in your earlier guise) is referred to in both clauses 1.3.3 ('Union Coverage') and 1.10 ('Parties Bound') of the Centacare Agreement. The purpose of this correspondence is to advise you that Centacare have commenced bargaining for a proposed enterprise agreement. As such, please find attached a copy of the Notice of Employee Representational Rights that was issued to the Centacare employees who will be covered by the proposed Agreement on 13 November 2023.

We ask that you please respond to this correspondence advising whether you have any members that are covered by the Centacare Agreement and will therefore be covered by the proposed Agreement. Should it be the case that the UWU does have any members, you will be considered a bargaining representative for the relevant employee/s (unless one of the exceptions applies), and Centacare will therefore ensure that the UWU is included in the bargaining process for the proposed Agreement.

When responding, could you please also confirm the relevant contact details for the purpose of directing all future correspondence.

If it is the case that the UWU is not a bargaining representative, we kindly ask that you advise us of same by close of business Monday, 4 December 2023.’¹¹

[13] The email is incorrectly addressed – Ms Schinnerl was and is the Secretary of the AWU. Despite Mr Nash’s clearly communicated request on 14 November 2024, to be directly copied into correspondence relating to the 2024 Agreement, the email was not addressed to him and was sent to a generic UWU email address rather than Mr Nash’s direct email address. The fact that the UWU did not respond is unsurprising given that the email from Centacare erroneously referred to Ms Schinnerl and was directed to a generic email address. Mr Nash located the email when he became aware of its existence, upon reviewing the material filed by the Respondent in support of approval of the 2024 Agreement, after it had been approved. Notwithstanding that the email was incorrectly addressed, Mr Nash accepted that it had been received by the UWU on 1 December 2024. The ASU’s response to the questions posed in the email stated (correctly) that the previous 2008 Agreement had been negotiated between Centacare, the ASU, the AWU and the UWU (then the Australian Liquor, Hospitality and Miscellaneous Workers’ Union).¹²

[14] After the application for approval of the 2024 Agreement was filed, there were a series of email exchanges between the Deputy President and the Respondent, the AWU and the ASU about issues with the 2024 Agreement. The UWU was not copied into that correspondence. The matter was listed for determinative conference on 22 January 2025. The conference was attended by representatives of the Respondent, the AWU and the ASU. The UWU was not notified of the conference and did not attend.

[15] The transcript of the proceeding indicates at the commencement of the conference, the Deputy President took appearances and asked the AWU and the ASU representatives to confirm that those Unions had members, each Union was a bargaining representative for the 2024 Agreement and the representatives had participated in the bargaining for the 2024 Agreement.¹³ The Deputy President then raised the issue of the involvement of the UWU in bargaining and had an exchange with the representative of the Respondent about the letter sent to the UWU on 1 December 2024. During that exchange, the Deputy President observed that the letter was directed to the Secretary of the AWU rather than the UWU but appears to have accepted the

Respondent's submission that regardless of the error, the email was correctly sent to an email address held by the UWU. The Deputy President then had the following exchange with Mr Thompson the Respondent's HR Manager in relation to the Respondent's intention with respect to the email said to have been sent to the UWU:

'MR THOMPSON: Deputy President, to answer that question it was the intention it was to be sent to UWU and the relevant representative of the UWU to receive the invitation and on that occasion not the intention to commence bargaining via Ms Stephanie Belmonte who was the general manager of people and culture at that time.

THE DEPUTY PRESIDENT: And did the UWU attend any of the bargaining sessions?

MR THOMPSON: No. They did not. They did not respond back to Ms Stephanie Belmonte's email and correspondence to confirm receipt or acknowledge receipt and did not engage in any bargaining with the bargaining team or with the bargaining party throughout the whole process.

THE DEPUTY PRESIDENT: Did the UWU have an employee who was a member and were they the default bargaining rep?

MR THOMPSON: Not that we were aware of in the independent bargaining list of employees. They never identified themselves as a member of the UWU and we never heard from anyone from the UWU in regard to any concerns of not being involved in the whole process.

THE DEPUTY PRESIDENT: Okay. Thank you'.¹⁴

[16] At the conclusion of the determinative conference, the Deputy President expressed a preliminary view that there were no issues relating to genuine agreement, undertakings provided by the Respondent in advance of the conference addressed other concerns and subject to checking some final matters, the 2024 Agreement would likely be approved. As foreshadowed at the determinative conference, the Decision approving the 2024 Agreement was issued on 23 January 2025. Relevantly for present purposes, the Decision includes the following in relation to organisations of employees covered by the 2024 Agreement:

'[12] The Australian Workers Union (AWU) and Australian Municipal, Administrative, Clerical and Services Union (ASU) have each lodged a Form F18 statutory declaration giving notice under s.183 of the Act that they want the 2024 Agreement to cover them. In accordance with s.201(2) of the Act, I note the 2024 Agreement covers the AWU and ASU.

[13] The United Workers Union (UWU) also submitted a Form F18 however I note from the Applicant's material that the UWU did not have a bargaining representative involved in making the 2024 Agreement. I wrote to the UWU regarding this and giving them an opportunity to make submissions however they did not respond. On that basis I note the UWU is not entitled to be covered by the 2024 Agreement, and the 2024 Agreement does not cover the UWU.' (emphasis in original)

[17] Upon his return from leave on 24 February 2025, Mr Nash was informed by staff of the UWU that the 2024 Agreement had been approved. After reviewing the Decision Mr Nash undertook searches of email inboxes operated by the UWU to locate the email referred to by the Deputy President in paragraph [13]. Those searches were not successful. Mr Nash then emailed Ms Merinda Foster at the ASU requesting a copy of email correspondence from the Commission pertaining to the query referred to by the Deputy President in paragraph [13] of the Decision. Ms Foster forwarded email correspondence between the ASU and the

Commission between 20 December 2024 and 21 January 2025 but did not forward an email meeting the description in paragraph [13] of the Decision.

[18] On 27 February 2025, Mr Nash corresponded with the Associate to the Deputy President explaining that he had recently returned from leave and stating with respect to paragraph [13] of the Decision that:

- a. 'We do not appear to have been included on any email correspondence seeking the UWU's views;
- b. We have searched, but have not been able to find further correspondence from the Commission regarding our status as a bargaining representative.
- c. We have contacted the other union parties with regard to correspondence from the Commission about the UWU being covered, and have received confirmation that the UWU was not included in any correspondence from the Commission, particularly the email of 20 December 2024.
- d. The Employer was informed by the UWU on 14 November 2024 as per the attached email confirming that the UWU wanted to remain a party to the replacement 2024 Agreement. No response was received from the Employer.
- e. UWU has members employed by the employer and is therefore a bargaining representative within the meaning of s 176(1)(b) of the FW Act.
- f. In those circumstances, we respectfully request that the Commission give consideration to amending paragraph [13] of the Decision pursuant to s 602 of the FW Act to reflect that UWU is a bargaining representative and is covered by the enterprise Agreement.¹⁵

[19] The Notice of appeal was filed on 28 February 2025, the day following the email sent by the UWU to the Deputy President and unsurprisingly in those circumstances, the Deputy President did not act upon the UWU's email. In circumstances where the Deputy President made a decision to refuse to note that the 2024 Agreement covered the UWU, rather than overlooking the filing of the F18 by the UWU, this is not a case where Decision could have been corrected as provided for in s. 602.¹⁶ In relation to the late lodgement of the appeal, Mr Nash states that the appeal was filed outside the 21-day time limit because he was absent from work on leave and as the industrial officer with carriage of the matter, a decision as to whether to appeal was referred to him.

[20] The Respondent submits that if, contrary to its submissions, the Full Bench finds that the Applicant was a bargaining representative for the 2024 Agreement, the Decision of the Deputy President should be varied in accordance with s. 607(3)(a) of the FW Act consistent with the Appellant's original request and the Respondent's submissions that the appeal should have no impact in relation to the terms of the 2024 Agreement that would otherwise affect employees.

Grounds of appeal and submissions

[21] In its Form F7 Notice of appeal, the UWU set out paragraphs which can be distilled into two grounds of appeal. Firstly, the UWU asserts that the correspondence described in paragraph [13] of the Decision was not received by the Union and as a result, it was denied procedural fairness. Secondly, it is contended that the Deputy President erred by:

- a. taking into account an irrelevant consideration; and
- b. not applying the correct tests:

- i. under s 176 of the FW Act in determining whether UWU was a bargaining representative for the 2024 Agreement; and
- ii. in determining whether UWU was entitled to be covered by the 2024 Agreement under s 52 of the FW Act.

[22] The UWU admits that it received a notification of bargaining from Centacare on 1 December 2023 and states that it was unable to determine why a response was not provided.¹⁷ As we have noted, the UWU did not rely on the incorrectly addressed email to explain the failure to respond. However, the UWU submits that any failure to respond on its part, is remedied by the email sent to the Respondent on 14 November 2024¹⁸, confirming that while it could not participate in bargaining, it wished to remain a party to the new 2024 Agreement. The UWU also points to the failure of Centacare to respond to that email.

[23] The UWU submits that it was denied procedural fairness by not being given an opportunity to provide submissions as to why it was entitled to be covered by the 2024 Agreement. The UWU also points to the failure by Centacare to notify the Deputy President of the email from the UWU on 14 November 2024 in its email on 15 January 2025 responding to the Deputy President's questions about the involvement of the UWU, or during the 22 January 2025 determinative conference. The UWU accepts that the way the Deputy President dealt with the involvement of the Appellant in the 2024 Agreement making process was an administrative oversight and cites *United Voice v Sodexo Australia Pty Ltd (t/a Sodexo Australia)*¹⁹ as authority for the proposition that an administrative oversight can constitute a denial of procedural fairness.²⁰

[24] It is also submitted in relation to ss 176 and 183 of the FW Act, that the UWU has at all relevant times had members covered by the 2024 Agreement and is entitled to represent their industrial interests as a default bargaining representative. Further, it is submitted that the UWU is a bargaining representative regardless of whether it attended bargaining meetings or exchanged correspondence relating to the 2024 Agreement. In this regard, the UWU contends that the Deputy President misapplied s 176 of the FW Act by incorrectly concluding that the UWU was not entitled to be covered by the 2024 Agreement because it did not attend bargaining meetings.

[25] The Respondent submits that based on the information and documentation it has received including the redacted list tendered by Mr Nash, it is unable to confirm whether it has employees who are, and were at all relevant times, members of the Appellant and if so, whether any of those employees appointed a bargaining representative other than the Appellant to be their bargaining representative for the 2024 Agreement in accordance with s 176(1)(c) of the FW Act. The Respondent confirms that no employee revoked the status of the UWU as their representative in accordance with s 178A(2) of the FW Act. The Respondent did not seek to cross-examine Mr Nash and did not provide any basis for the Commission to go behind the Form F18 filed on behalf of the UWU or to question the veracity of Mr Nash's evidence in relation to membership.

[26] The Respondent submits that the question posed in the Form F16 Application for approval of an enterprise agreement is whether there were any employee organisations involved in the agreement making, and that the UWU was not involved. The Respondent also submits that the question posed by the Deputy President in the 20 December 2024 email asked for

confirmation as to whether the UWU was ‘involved’ in the bargaining process and that it responded to that question accurately by advising that the UWU had not been involved. Further, the Respondent submits that the 14 November email it received from the Appellant advising that it would not participate in bargaining but wanted to remain a party to the 2024 Agreement, was ‘not responsive’ to the issue raised by the Deputy President in the 20 December 2024 email and was therefore not included in the Respondent’s response to that email. The Respondent reiterates its submissions at first instance maintaining that it correctly answered all questions in relation to the ‘involvement’ of the UWU in bargaining, and that the Union’s email stating that it wanted to remain a party to the 2024 Agreement was not an issue raised by the Deputy President and was appropriately not included in the response by Centacare.

[27] It is also submitted by the Respondent that if it is found that the UWU was a bargaining representative in accordance with s 183(1) of the FW Act, then the 2024 Agreement should be varied in accordance with s 607(3)(a) of the FW Act. Additionally, it is submitted that varying the 2024 Agreement to cover the UWU would be consistent with its request that the decision be varied in accordance with s 602 of the FW Act and would not impact the term of the 2024 Agreement that would otherwise affect employees. In response, the UWU accepted that the effect of varying the decision in accordance with s 607(3)(a) would have the same effect as correcting an obvious error, defect or irregularity in accordance with s 602 of the FW Act.

Consideration

Extension of Time to Appeal

[28] Rule 128(2) of the *Fair Work Commission Rules* requires that an appeal must be lodged within 21 days after the date of the decision or order being appealed against or within such further time as allowed by the Commission. The following matters are generally relevant to whether a further period should be granted:

- Whether there is a satisfactory reason for the delay;
- The length of the delay;
- The nature of the grounds of appeal and the likelihood of one or more of those grounds being upheld if time was extended; and
- Any prejudice to the respondent if time was extended.

[29] Having regard to these matters, we are satisfied, based on Mr Nash’s statement, that there is a satisfactory reason for the delay. The UWU advised the Respondent of its interest in the 2024 Agreement in a timely manner, correspondence from the Respondent to the UWU was incorrectly addressed, and Mr Nash was on leave at critical moments. The delay is short and there is no indication of prejudice to the Respondent if time was extended, noting that the UWU seeks to be covered by the 2024 Agreement and does not otherwise to disturb the 2024 Agreement or its approval. Accordingly, we extend time for the UWU to lodge the appeal to 28 February 2025.

Permission to appeal

[30] A person who is aggrieved by a decision made by the Commission may appeal the decision with permission (s. 604(1)). It is not in dispute in the present case that the UWU has standing to appeal. Regardless of its status as a bargaining representative, the UWU has standing to bring an appeal, on the basis that it is an organisation with coverage of employees undertaking work of the kind covered by the 2024 Agreement and in that capacity may be ‘a person aggrieved by a decision of the Commission’.

[31] Subject to the Appellant demonstrating an arguable case of appealable error, the Commission has a broad discretion as to the circumstances in which it can grant permission to appeal. Examples of circumstances where permission has been granted include that the decision is attended with sufficient doubt to warrant its reconsideration and that substantial injustice may arise if permission is refused. Without limiting when permission may be granted, the Commission must grant permission if satisfied that it is in the public interest to do so. It is well established that the expression ‘in the public interest’ imports a discretionary value judgment to be made by reference to undefined factual matters, confined only by the subject matter of the legislation.²¹ The public interest might be attracted in circumstances including that the decision at first instance manifests an injustice.²²

[32] We have decided to grant permission to appeal on the basis that the decision of the Deputy President manifests an injustice because the UWU was a bargaining representative for the 2024 Agreement at the time it was approved and entitled to have a note in the decision that it is covered by the Agreement. It is only necessary that we deal with the second ground of appeal concerning the approach the Deputy President took to deciding not to note in the approval decision that the 2024 Agreement covers the UWU.

Approach to determining entitlement of UWU to be covered by the 2024 Agreement

[33] We accept Mr Nash’s evidence that the UWU had a member covered by the 2024 Agreement during the negotiations and at the time the Agreement was approved and was therefore a bargaining representative for that Agreement. The UWU gave notice under s. 183 that it wanted to be covered by the 2024 Agreement and complied with the requirements in relation to such notice, by lodging a Form F18, before the Agreement was approved. There is no issue that the Form F18 was received by the Commission and that Centacare was aware of it before the 2024 Agreement was approved. The Form F18 is a Declaration, which includes a warning to the declarant, immediately below the signature, that knowingly giving false or misleading information or producing a false or misleading document in relation to an application for approval of an enterprise agreement, is guilty of an offence, the punishment for which is imprisonment for up to 12 months. There is no basis upon which we could reject the Form F18 lodged by the UWU. We reject the Respondent’s submission that we should not accept Mr Nash’s evidence noting it did not seek to cross-examine Mr Nash or to otherwise put him to proof. The Respondent could have done this by seeking that Mr Nash provide to the Commission unredacted details of members at the time the Agreement was made and by providing details of employees at that time to enable the Commission to conduct a comparison. Based on the Form F18 and our acceptance of the evidence of Mr Nash, we are satisfied that the UWU was a bargaining representative for the 2024 Agreement and was entitled to give the Commission notice under s. 183 of the FW Act that that the UWU wanted the Agreement to cover it and did so in compliance with that section. The Deputy President erred by refusing to include a note in the approval decision that the UWU was covered by the 2024 Agreement.

[34] We consider that there are two possible explanations for the error. The first is that the refusal was based on a conclusion that the UWU was not ‘involved’ – presumably in the sense of not participating – in bargaining for the 2024 Agreement. The second is that the Deputy President concluded, contrary to the Form F18 declaration lodged by the UWU, that the UWU did not have any members and therefore could not be a bargaining representative, and was not entitled to be covered by the 2024 Agreement.

[35] When the approval decision is read in conjunction with the transcript of the determinative conference, we think that the second explanation is the more probable explanation for the Deputy President’s refusal to note that the 2024 Agreement covered the UWU. Our reasons for reaching this conclusion are as follows.

[36] While we acknowledge that the reference in the approval decision to the UWU not having a bargaining representative ‘involved’ in making the Agreement is ambiguous, we consider that it was used as a convenient shorthand for the Deputy President’s conclusion that the UWU had no members and as an explanation for the Union not being involved in the negotiations for the 2024 Agreement, rather than to indicate a view that a union is required to be actively involved in bargaining to be a bargaining representative entitled to be covered by an enterprise agreement. It is reasonably clear from the transcript of the determinative conference conducted by the Deputy President on 22 January 2025 that the Deputy President was attempting to ascertain whether the UWU had at least one member who would be covered by the 2024 Agreement rather than simply whether the UWU was involved in bargaining for the Agreement. This is evidenced by the fact that when taking appearances from the AWU, the Deputy President asked the AWU representative, in relation to an AWU delegate: “... but Mr Stephens [the delegate] was involved, and you have at least one member?”

[37] The transcript indicates that the Deputy President considered not only whether the employee organisations, including the UWU, were involved in bargaining, but also the orthodox minimum requirement that an employee organisation have at least one member, as was necessary to be covered by the 2024 Agreement. Further, in the exchange with Mr Thomson of Centacare extracted above, the Deputy President specifically asked in conclusion: ‘Did the UWU have an employee who was a member and were they the default bargaining rep?’ Mr Thompson responded to that question in the negative, in our view, in a way that was at best incomplete and at worst, incorrect. The Deputy President’s acceptance of that response led her into error and we uphold appeal ground 2.

[38] In doing so, we note that Centacare did not assist the Deputy President in dealing with the status of the UWU as a bargaining representative. The Form F16 Application was made by Mr Thompson. Contrary to the emphasis placed by Centacare on the term ‘involved’, the question in the Form F16 asks the Declarant: ‘Were any employee organisations (unions) involved in the agreement making process as a bargaining representative?’ (emphasis added) The information sought in response to that question is not limited to the role of an employee organisation in negotiations or actual bargaining. The process of making an enterprise agreement involves more than bargaining. A union may be a bargaining representative without being involved in bargaining.

[39] We accept that Mr Thompson did not know whether the UWU had members covered by the 2024 Agreement and that this explains why he did not include the UWU as a bargaining representative for the 2024 Agreement in the Form F16. However, on 6 December 2024, when Mr Thompson made the Form 16 Declaration and the Form F17B Declaration in support of the application for approval of the 2024 Agreement, he knew (or should have known) that all employees covered by the 2024 Agreement had previously been covered by the *2008 Centacare Community and Disability Services Union Collective Agreement* (the 2008 Agreement). The 2008 Agreement states that it was made on 7 October 2008 between Centacare and ‘its employees represented by the Australian Workers Union of Employees, Queensland, the Australian Municipal, Administrative, Clerical and Services Union and the Liquor, Hospitality and Miscellaneous Union’ (as the UWU was previously known). At clause 1.3.3 the 2008 Agreement states that traditional areas of union coverage will be observed as follows:

- a) For those employees employed in classifications formerly covered by the Social and Community Services (Queensland) Award 2001, The Australian Municipal, Administrative, Clerical and Services Union otherwise known as the Australian Services Union (ASU) shall have coverage.
- b) For those employees employed in classifications formerly covered by the Disability Support Workers Award - State 2003 - The Australian Workers Union of Employees, Queensland, shall have coverage.
- c) For those employees employed in classifications formerly covered by the Award for Accommodation and Care Services Employees for Aged Persons - South-Eastern Division 2004, the Liquor, Hospitality and Miscellaneous Union [now the UWU], shall have coverage.

[40] The 2024 Agreement provides at clause 4.1 that it covers employees within classifications set out in the schedules, the employer, the ASU and the AWU. There is no reference to the 2024 Agreement covering the UWU. Mr Thompson also knew (or should have known) that the UWU had corresponded with Centacare on 14 November 2024 advising that the Union did not have capacity to engage in bargaining but wished to be covered by the 2024 Agreement. Centacare did not respond to the UWU’s email to advise of disagreement with the UWU’s request to be covered by the 2024 Agreement or that its entitlement to make the request was disputed. The explanatory material provided by Centacare to its employees to explain the terms of the 2024 Agreement and the effect of those terms, does not highlight the changes to the ‘coverage’ provisions between the 2008 and 2024 Agreements. Evidence of the explanation of the terms of the 2024 Agreement provided to the Commission by Centacare was in the form of documents attached to its response of 15 January 2025 to the issues raised by the Deputy President. Attachment 5b to the Centacare response is a document that was provided to employees by email and is said to provide an explanation of the terms of the 2024 Agreement compared to the 2008 Agreement and the *Social, Community, Home Care and Disability Services Award 2010*.²³ In relation to coverage the document states that the 2024 Agreement is made with the TSU (the ASU) and the AWU and that the 2008 Agreement (referred to as the ‘zombie agreement’) was made with ‘the TSU’. That statement is factually incorrect. As we have noted, the 2008 Agreement was made with three Unions as set out above.

[41] In the Form F17B, Mr Thompson refers to a document entitled ‘FREQUENTLY ASKED QUESTIONS – YOUR EBA’ of which Attachment 5b is a part.²⁴ Mr Thompson does not otherwise indicate in the Form F17B that Centacare explained to employees that the UWU (in its earlier iteration as the LHMWU) was referred to in the 2008 Agreement as one of three Unions that made that Agreement and as being covered, along with the AWU and the ASU, and that the UWU is not referred to in that capacity in the 2024 Agreement, while the AWU and the

ASU continue to be referred to as being covered. Nor does it appear that the Respondent informed the Deputy President of this change during the determinative conference. In relation to explaining the terms of an enterprise agreement, the Form F18 states that the Commission must take into account the Statement of Principles on Genuine Agreement which states that taking all reasonable attempts to explain the terms of an agreement and the effect of those terms, should include at a minimum explaining to employees how the proposed agreement will alter their existing minimum entitlements and other terms and conditions of employment, and that it will generally be sufficient to explain *inter alia* the differences between entitlements and other terms and conditions between the proposed agreement and the existing agreement.

[42] We accept that the correspondence dated 15 December 2024, sent by the Deputy President to Centacare, the ASU and the AWU, asked Centacare to confirm whether the UWU was ‘involved’ in the 2024 Agreement. However, Centacare’s failure to inform the Deputy President in its response, that the UWU had notified Centacare on 14 November 2024 that while it did not have capacity to participate in bargaining, it wished to be covered by any resultant agreement, is surprising. That the UWU took this approach to bargaining did not remove any rights it had as a bargaining representative, nor its capacity to exercise its right to seek to be covered by the 2024 Agreement as provided in s. 183 of the FW Act. Centacare’s failure to mention this correspondence to the Deputy President in its response to a general question as to whether the UWU was involved with the 2024 Agreement, appears to be an exercise in splitting hairs. While the response is technically correct, it was given in the context of Centacare’s knowledge that the UWU was involved in the 2008 Agreement and was one of three unions with which it made that Agreement, that reference to the UWU had been removed from the 2024 Agreement but had been retained for the ASU and the AWU, and that the UWU had stated its intention by email sent on 14 November 2024 to be covered by the 2024 Agreement, which had neither been responded to nor challenged by Centacare. That information was plainly relevant to the questions the Deputy President asked about the UWU.

[43] We also accept that the UWU’s correspondence to Centacare of 14 November 2024 was somewhat confusing as it stated that the UWU has ‘coverage’ of care and support workers rather than that the Union had members in that cohort, which was necessary for its status as a bargaining representative to be accepted. However, the lack of clarity in the UWU’s correspondence does not explain the failure of Centacare to provide relevant information to the Deputy President in response to her questions both before and during the determinative conference. It is concerning that Centacare did not inform the Deputy President of the correspondence that it had received from the UWU in relation to seeking to be covered by the 2024 Agreement, in response to her questions. It is also concerning that Centacare does not appear to have explained to employees the effect of the omission of the UWU from the coverage provisions of the Agreement. As the present appeal does not turn on this issue, it is not necessary that we consider it further.

Conclusion and disposition of the appeal

[44] In circumstances where the UWU provided sufficient information to establish that entitlement, we do not consider it necessary and nor do we do not intend to go behind the Form F18 Declaration and the statement of Mr Nash. We consider that the proper course is to uphold the appeal and to vary the approval decision pursuant to s. 607(3)(a) of the FW Act to include the s. 201 note that the Agreement covers the UWU. We do so on the basis that we have

concluded that the UWU was a bargaining representative for the 2024 Agreement at the time it was made and has been deprived of its entitlement to have a note in the approval Decision that it is covered by the Agreement.

Order

[45] We order as follows:

1. Permission to appeal is granted.
2. The appeal is upheld.
3. The Deputy President's Decision in AG2024/4858 published as [2025] FWCA 286, is varied by adding to paragraph [12] a reference to the United Workers Union (UWU) in the first and second sentences so that the decision notes that the UWU is covered by the 2024 Agreement and by deleting paragraph [13].



VICE PRESIDENT

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¹ [\[2025\] FWCA 286](#).

² *Akins v National Australia Bank* (1994) 34 NSWLR 155, applied in a number of decisions of the Commission, including *Max Vincent v Roof Safe Pty Limited* [\[2023\] FWCFB 182](#), [27]; *Levin v Douglas and Mann Pty Ltd (T/A Histopath Diagnostic Specialists)* [\[2022\] FWCFB 39](#), [17]; *C Ozsoy v Monstamac Industries Pty Ltd* [\[2014\] FWCFB 2149](#) [21]; *Perry v Rio Tinto Shipping Pty Ltd* [\[2016\] FWCFB 6963](#), [11].

³ *King v Crane Enfield Metals Pty Ltd T/A Crane Copper Tube* [\[2014\] FWCFB 4103](#), citing *Akins v National Australia Bank* [1994]34 NSWLR 155 at 160.

⁴ Statement of Alexander Nash, Attachment 1.

⁵ Appeal Book, p 91.

⁶ *Ibid*, paragraph 13 Annexure 8.

⁷ Appeal Book, pp 148 – 151.

⁸ Appeal Book, pp 134 – 147.

⁹ Appeal Book, p 158.

¹⁰ Appeal Book, p 184.

¹¹ Appeal Book, p 200 – 201.

¹² Appeal Book, p 262.

- ¹³ Transcript of determinative conference 22 January 2025, PN30 – 33, PN35 – 37.
- ¹⁴ Transcript of determinative conference 22 January 2025, PN64 – 69.
- ¹⁵ Statement of Alexander Nash Annexure 16, p 126.
- ¹⁶ Compare the Full Bench Decision in *In RotoMetrics Australia Pty Ltd v “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)* [\[2011\] FWAFB 7214](#) where a Full Bench of the Commission found that an error such as the Commission overlooking the fact that a union had filed a Form F18 and had not noted in a decision that an agreement covered the relevant union, is capable of correction under s. 602.
- ¹⁷ Statement of Alec Nash dated 21 March 2025, Annexure 16, being incorrectly addressed email.
- ¹⁸ *Ibid*, Annexure 6.
- ¹⁹ [\[2016\] FWCFB 8531](#).
- ²⁰ Submissions of UWU, [16].
- ²¹ *O’Sullivan v Farrer* (1989) 168 CLR 210 at 216.
- ²² *GlaxoSmithKline Australia Pty Ltd v Makin* (2010) 1997 IR 266; [\[2010\] FWAFB 5343](#) at [27].
- ²³ Appeal Book, p 218.
- ²⁴ Appeal Book p 186