

Summary of Decision

29 September 2014

United Voice

B2013/1264

1. United Voice applied for a low-paid authorisation for a proposed multi-enterprise agreement that would cover five private security businesses and their employees in the Australian Capital Territory.
2. The application was opposed by those businesses.
3. The objects of the low-paid authorisation provisions of the *Fair Work Act 2009* (Act) include “*encouraging bargaining for and making an enterprise agreement for low-paid employees who have not historically had the benefits of collective bargaining with their employers and assisting those parties through multi enterprise bargaining to identify improvements in productivity and service delivery and which also takes account of the needs of individual enterprises.*”
4. The Commission must be satisfied that it is in the public interest to make the low-paid authorisation taking into account a number of considerations set out in section 243 (2) and (3) of the Act which includes amongst others considerations, whether it would assist low-paid employees, the history and difficulty of bargaining in the industry, the bargaining strength of employees and the current conditions of the employees compared with others in the industry and with community standards.
5. The Deputy President was not satisfied that it was in the public interest to make the low-paid authorisation, as the considerations he was required to take into account, on the evidence weighed against granting the authorisation.
6. Although the Deputy President found that some of the employees the subject of the application were low paid:
 - The Deputy President was not persuaded that these employees had not had access to collective bargaining or that they faced substantial difficulty bargaining at the enterprise level;
 - In some cases, the history of bargaining between United Voice and the employers established that there was an opportunity to continue bargaining, while in others that little effort had been made to bargain. There was an absence of evidence of the history of bargaining in the industry more generally;
 - There was little evidence of any difficulty faced by employees bargaining at the enterprise level. Indeed bargaining at the enterprise level had occurred with some of the employers;
 - Although the employers are in a relatively stronger bargaining position than the employees, the extent of the relative difference could not be determined;

- The terms and conditions of employment of the employees the subject of the application are not comparably less beneficial than those within the same industry or by reference to community standards;
- Although there is a high degree of commonality in the nature of the enterprises conducted by the employers and similarity in the terms and conditions of employment in those enterprises, the enterprises nevertheless compete with each other for security contracts;
- No evidentiary basis had been established to show that a low-paid authorisation would assist in identifying improvements to productivity and service delivery in the employers' enterprises;
- The evidence did not establish nor can it be assumed that a government competitive tendering process for private security services resulted in control, direction or influence over terms of conditions of employment. The exercise of price pressure through procurement practices is not only proper but to be expected of government expending tax payers funds. That fact alone is an insufficient basis for concluding that a procurement practice results in control, direction or influence over terms and conditions of employment of the employees.

[\[2014\] FWC 6441](#)

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.*

- ENDS -

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