



MCA briefing note

Intervention in multi-employer bargaining test case: NSW coal mines

March 2024

Background

- In December 2023, the Association of Professional Engineers, Scientists and Managers Australia (APESMA) applied to the Fair Work Commission for a 'single interest multi-employer authorisation' covering five separate employers.
- They are all coal miners in New South Wales, but are completely separate businesses.
- If granted, the authorisation would compel each business to participate in multi-employer bargaining with APESMA.

The following businesses were subject to the application:

1. Wollongong Resources Pty Ltd (subsidiary of Jindal Steel and Power Limited)
2. Great Southern Energy Pty Ltd (t/as Delta Coal) (subsidiary of Seven Global Investments Pty Ltd)
3. Whitehaven Coal Mining Ltd
4. Peabody Energy Australia Coal Pty Ltd
5. Ulan Coal Mines Ltd (subsidiary of Glencore plc)

What is at risk

- If the application is successful, the businesses will be roped into forced multi-employer bargaining with APESMA, from which it will be extremely difficult for them to ever escape.
- If an agreement cannot be reached, then they could be subjected to an arbitrated 'workplace determination' set by the Fair Work Commission. This would replace their existing enterprise agreements and effectively prohibit them from returning to single enterprise bargaining in future.
- Multi-employer bargaining would also allow 'protected industrial action' (i.e. strikes) across all of the sites. The positions involved are statutory positions, which are a legal requirement for mines to operate – if they stopped work then the mines would have to shut down.
- Many businesses cannot afford the uncertainty and litigation that multi-employer bargaining will force upon them. One of the five businesses in this application, Wollongong Resources, recently shut down its mines, citing a range of commercial pressures that had rendered them unviable.¹ It was already a marginal operation. Multi-employer bargaining was the last thing it needed.

¹ <https://www.abc.net.au/news/2024-02-05/wollongong-resources-russell-vale-colliery-to-close/103429916>

The precedent it would set

- The case will be heard by the Fair Work Commission in April. It will be the ‘test case’ that will set the precedent for how the multi-employer bargaining laws will be applied.
- The union is urging the Commission to take a very wide view of the law. Its submissions argues that the fact that each of the companies mine coal in NSW should be enough for them to be roped in together.
- The MCA has been granted permission by the Commission to intervene in the proceeding, and will urge the it to adopt a more cautious and limited approach.

It this precedent was extended to other industries, this would mean, for example:

- The major iron ore producers roped in together because they all mine the same resource in Western Australia.
- All ‘big four’ banks roped in together because they all provide retail banking services throughout Australia.
- Coles and Woolworths roped in together because they both sell the same types of groceries in similar types of stores in a particular state.

The unions’ agenda

- This is not about higher wages, it is all about union power.
- It would mean industry-wide industrial action, shutting down entire industries, which is what unions have always wanted.
- It has nothing to do with improving wages – the best wage improvements have always resulted from enterprise-based measures, where a more productive business is able to pay its staff more and compete for talent. These measures have enabled the mining industry to be Australia’s highest paying, with average annual wages of approximately \$151,500 a year compared to \$98,400 across all sectors in 2022-23.
- The multi-employer bargaining system is so complex that negotiations could take years, without any agreement being reached. In the meantime, all workers must go without any pay rise.

This is not what the government promised

- The government never mentioned multi-employer bargaining in its 2022 election policy. In fact, Jim Chalmers ruled it out, saying “*It’s not part of our policy*”.²
- Minister Burke gave a specific undertaking that businesses such as this would not be captured: “*if you’re on the east coast and you’re on enterprise agreements, then you’re excluded from the multi-employer bargaining agreements*”³
- Minister Burke also stated, when the legislation was introduced that: “*With respect to mining, again, you’ve got examples. It’s pretty hard. Like you go mine by mine, you’ve got enterprise agreements already in place in most of them. So legally, is it possible that you could have a mine somewhere where this was pursued it wouldn’t be unlawful, but it’s not really realistic.*”⁴

² Jim Chalmers interview, ABC ‘Insiders’, 21 November 2021

³ Tony Burke, speech to National Press Club, 22 November 2022

⁴ Tony Burke interview, ABC 730, 2 November 2022