Fair Work Australia finds that Appin mine (BHP NSW) was not bargaining in Good Faith.

Fair Work Australia issues orders to compel Appin to provide information including pay band Information to APESMA, and tell APESMA what it can agree to in an enterprise agreement for Staff.

Background at Appin

In 2010 Staff at Appin Mine decided that they wanted a Staff enterprise agreement to consolidate their conditions, to include a standard contract for all staff, and to improve some conditions. The overwhelming majority signed a majority support statement for the enterprise agreement, and when Appin did not agree to bargain with staff, we went to Fair Work Australia who issued a Majority Support Statement in July 2010 meaning that Appin had to bargain with staff.

After over 12 months of bargaining, we again went to Fair Work Australia in September 2011 and successfully argued that Appin was not bargaining in good faith with its’ staff for an enterprise agreement. As part of our case, APESMA sought that Fair Work Australia order Appin to provide APESMA information essential to the bargaining process and to take certain steps to promote bargaining.

Broadmeadow

APESMA on behalf of Staff at Broadmeadow Mine (BMA Qld) also lodged an application with Fair Work Australia in December 2011 arguing that Broadmeadow has not been negotiating in good faith with its’ staff for an enterprise agreement. That case will be heard in April 2012. We are now hopeful that BMA will show leadership and accept the guidance of the independent umpire in the Appin decision , and move to finalise the Staff enterprise agreement at Broadmeadow.

The decision

In his decision on 4 January 2012, Commissioner Roberts, of Fair Work Australia decided that:

“In short, I am satisfied that Endeavour is “bargaining” with APESMA with no real intention to negotiate an enterprise agreement. This cannot constitute bargaining in good faith in the terms envisioned by subclause 228(1) (d) of the Act.” (Paragraph 11 of the Decision).

- Commissioner Roberts ordered that Endeavour Coal Pty Limited (Appin) is to take the following actions within 14 days:
  - Provide to APESMA a list of subject matter that Endeavour Coal would be prepared to include in an enterprise agreement
applying to employees at Appin Mine in respect of whom a Majority Support Determination was made of 8 July 2010 (‘Staff’);

- Tell APESMA what aspects of the latest version of the APESMA proposed enterprise agreement (annexed to the Application), if any, can be agreed;
- Tell APESMA what changes to the latest version of the APESMA proposed enterprise agreement should be made to make it an agreement that Endeavour Coal would make;
- Propose terms of an enterprise agreement that Endeavour Coal would be prepared to enter into.

○ Endeavour Coal is not to:
  - Take any further action to unilaterally determine the terms of a new standard contract for Staff; or
  - Alter standard terms contained in Staff contracts of employment; outside of the enterprise bargaining process.

○ Endeavour Coal is required within 14 days to disclose to APESMA the following information (with such information to be disclosed in a manner that does not identify the actual pay of any individual):
  - How many pay bands apply to Endeavour Coal’s Colliery;
  - What is the minimum dollar figure for each pay band;
  - Which positions fall into which of the pay bands (positions can be aggregated to the extent necessary to prevent any individual salary being identifies);
  - The current policy or procedure by which the minimum pay point in the pay band is adjusted from time to time;
  - The quantum and date of the last 4 percentage adjustments applied to each pay band;

○ Endeavour Coal is to ensure that in future bargaining meetings it is represented by a person who has the capacity to make decisions and give reasons for Endeavour Coal’s responses.

○ The parties meet to progress their bargaining within 21 days after Endeavour Coal has taken the steps ordered above.”

APESMA is hopeful that Appin will now take the opportunity to implement the decision of the independent umpire in a constructive manner, consistent with BHP’s Corporate values.

Catherine Bolger
Director

APESMA Collieries’ Staff Division
Level 1, 491 Kent St
Sydney NSW 2000

02 9269 0688
info@apesma.asn.au