



AIMPE

Australian Institute of
Marine and Power Engineers
HEAD OFFICE

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY 2601
By email: workplace.relations@pc.gov.au

13 March 2015

Dear Sir/Ms

Productivity Commission Inquiry into Workplace Relations Framework

This Preliminary Submission is made in response to a letter from Minister Abetz of 5 March 2015 in which he sought 'real-world' examples of which aspects of the workplace relations system work for us, and our members, and which do not. In the example he cited of our bargaining re Port Hedland tugboats I am aware that the claim for an extra 28 days of annual leave was not made by our members, rather it was the result of a push by the MUA. However, the negotiations were conducted by Mr Martin Byrne who is currently overseas on Annual Leave and will not be back until Monday 16th March.

We seek a one week extension, to Friday 20 March, so that Mr Byrne might be able to make a supplementary submission.

AIMPE Preliminary Submission:

1. Protection from larger unions in Bargaining structures:

One of our greatest difficulties is the Fair Work Act's insufficient capacity for our technical/ professional members to insist they NOT be dragged into a single Agreement with more numerous semi-skilled workers in a different (more militant) union, **such as the MUA¹**.

A good example is on Sydney Ferries (now operated by private company 'Harbour City Ferries' or 'HCF') where management thought it was better to have all 3 unions in a single agreement. Unfortunately this delivered to the MUA a platform for grand claims in a common meeting with the employer where the MUA Delegates progressively took control of the bargaining process. As a result the claims were bigger and the bargaining more belligerent than need be, but also the particular concerns of our members, as ferry-captains and ferry-engineers, were subsequently pushed into the background. Typically the MUA makes enough trouble and takes control of the bargaining agenda then suddenly they offer settlement on MUA issues so the company jumps at the deal. But the needs of more skilled employees get ignored. When the HCF inner-harbour single agreement was put to a Ballot of all relevant employees 236 MUA deck-hands & ticket-collectors (about 74% of total employees) overwhelmed the vote of the 82 ferry-captains and ferry-engineers whose concerns had been ignored.

Whether in the Sydney Ferries example the employer is already 'captured' by the militant union (much like 'Stockholm Syndrome') is a matter for conjecture but the employer's support for the MUA drive to have a single agreement has provided the MUA with the excuse to argue that ferry-captains and ferry-engineers are **now eligible to be members of the MUA, persuading employees that MUA can represent ALL classifications now that all employees are in one agreement**. MUA uses this to expand their coverage to the detriment of smaller more considered unions such as AIMPE.

If AIMPE tries to avert the above situation, under the current Act, the Ballot of all employees is not stopped by our 'Scope' Order Application. When the Ballot ends so does Bargaining and our Scope Application ceases.

Proposed Solution:

We propose that s.180(4) be amended such that the "**access period**" prior to the holding of such Ballot is suspended immediately that a union (with members who would be part of that Ballot) lodges with FWC an

¹ Maritime Union of Australia

Application under s.238 for a different Scope, and that if FWC finds in favour of the Scope Application the ***access period*** remains suspended until such time as the scope of the Agreement to be Balloted has been amended to comply with the Scope Order.

2. Restriction on Bargaining in Professional Matters:

Unions such as the MUA tout for membership by promising ever-larger amounts of money out of the employer's pocket. Such claims are permissible under the FWAct. Such cash-blandishments appeal to employee's hip-pocket-nerve, even amongst deck and engineer officers who the MUA are strictly speaking not entitled to cover. And of course when they push up the salary for a deckhand on an offshore supply boat AIMPE has no choice but to similarly push up the salary of the deck and engineer officers who actually operate the vessel and have responsibility to supervise the MUA-members.

One of our greatest strengths in combatting this poaching of our members by the MUA is to place emphasis on non-monetary considerations such as a demand for their employer to employ and TRAIN new young Australian deck and engineer officers. In 2013-2014 Offshore Oil & Gas negotiations we said that in exchange for such a commitment we were prepared to moderate our salary claim to the extent we made no specific demand for salary increase but indicated in negotiations we would be satisfied with CPI adjustment (this in the context of the existing enterprise agreement providing more than 6% p.a.). This AIMPE proposition was taken to our members at Seagoing Offshore Conferences we conducted in Sydney and Perth in April 2013 and was unanimously endorsed and this underpinned our subsequent bargaining with the employer.

Yet when AIMPE sought a Protected Action Ballot in support for these claims the Fair Work Commission (Commissioner Cloghan) ruled that our indifference to the salary outcome was a bar to us pursuing our claim that the employer employ/train more Trainee Engineers, ruling that our indifference meant we were not genuinely bargaining. Commissioner Cloghan further ruled that our claim that the employer employ/train more Trainee Engineers was not permissible either! (attached see decision of Commissioner Cloghan in Perth 11 September 2014 in AIMPE v Mermaid Marine Vessel Operations Pty Ltd & Others: [2014]FWC 3786). The effect of the Commissioner's decision was to defeat the ability of AIMPE to make claims about the employment of Trainees and to admonish us for not putting the boot into the employer over wages like the MUA were doing.

Proposed Solution:

We propose that provisions of the Fair Work Act be amended to expressly permit a union to bargain with the employer for the employment by that employer of Trainees and to specify the terms of their employment including the scope and standard of their training.

Sincerely,

(Acting) FEDERAL SECRETARY
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