



STATEMENT

Fair Work Act 2009

s.576(2)(aa) - Promoting cooperative and productive workplace relations and preventing disputes

Endeavour Energy; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU); New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (USU); The Association of Professional Engineers, Scientists and Managers, Australia (PA)
(NA2017/20)

COMMISSIONER CRIBB

MELBOURNE, 19 DECEMBER 2017

Enterprise Bargaining Progress Report.

[1] On November 20 and 24 and December 1, 5, 6, 14 and 15 Endeavour Energy, CEPU, USU, PA ('the unions') and individual bargaining representatives conducted negotiations on-site for an enterprise agreement to replace the *Endeavour Energy Enterprise Agreement 2012* that has a nominal expiry date of 24 December 2014.

[2] Negotiations were facilitated by the Fair Work Commission (FWC) (by Commissioner Cribb) in the Commission's New Approaches jurisdiction using an interest-based approach to the negotiations.

Background

[3] Prior to this, Endeavour Energy and the unions had commenced negotiations in September 2014. Since September 2014 the parties have undertaken negotiations against a background of significant intervening events including a new Australian Energy Regulator Determination in early 2014, the NSW Government decision to lease the assets and infrastructure of the business in early 2015 and the actual lease transaction occurring in mid-2017. A company-initiated ballot of a proposed Agreement failed in March 2017.

[4] Negotiations commenced with the new management of Endeavour Energy in September 2017 using an interest-based approach. The unions and the individual bargaining representatives interests were defined as:

- Job security
- A reasonable wage increase and recognition of the wage freeze
- Maintain current terms and conditions
- 38 hour week
- Individual flexibility

Endeavour Energy's interests were defined as:

- Flexibility in working hours
- Geographic flexibility
- Individual flexibility
- Efficiently consult and resolve disputes
- Workforce planning

[5] Endeavour Energy, the unions and the individual bargaining representatives met and discussed these interests initially before FWC involvement and also broke down the issues into contentious and non-contentious issues.

[6] Endeavour Energy and the unions jointly applied for the assistance of the FWC through the New Approaches jurisdiction, in particular for assistance with reaching agreement on the contentious issues.

[7] The parties' discussions were intensive and productive with a view to attempting to move forward while not forgetting the difficulties of the years which have passed without an agreement being reached. The parties used interest based problem solving as far as possible in relation to each of the subject matters of discussion. This means that for each subject matter the parties identified their interests and generated a range of options that could be included in an enterprise agreement, rather than only examining their respective positions.

[8] I would like to acknowledge the great persistence and hard work shown by all of the bargaining representatives and congratulate all involved on their approach to the negotiations and the way they have managed to reach an agreement in principle on most of the issues. The only issue to not be finally agreed was Endeavour Energy's wages proposal where the unions will seek endorsement on the proposal prior to taking a final vote on the overall package.

[9] Endeavour Energy's wage proposal is:

1. Term of the Agreement

3 years to 31 December 2020.

2. Wage and Allowance Increases

Sign on bonus – \$1,750 in recognition of employee's commitment to productivity and efficiency (not paid to employees on contract including those under \$169,855 who were part of the salary review process in 2017)

- 2.75% from the first full pay period commencing on or after 15 December 2017
- 2.50% from the first full pay period commencing on or after 15 December 2018
- 2.30% from the first full pay period commencing on or after 15 December 2019

Sign on bonus and first wage increase will be paid from the first full pay period following the date the Agreement commences.

[10] In principle agreement

- Consultation
 - Consultation to take place at a local level as well as at formal consultative committees.
 - Guidance included in the Agreement on the consultation process for change impacting at the local, mid-level and Company wide basis.
 - 'Material impact' in terms of what is a matter requiring consultation is defined

- Redundancy & Salary Maintenance
 - The Agreement will note that the Employment Guarantee applies to 30 June 2020
 - A commitment to review the current policies using interest based bargaining after the end of the employment protections period with any matters not agreed referred to the Fair Work Commission for arbitration

- Facilitative provisions replacing project arrangements (Enterprise Workgroup Flexibility).

Agreements may be reached with volunteers to change the following clauses to support project agreements for periods of 3 days or longer with a limit of 8 weeks where night shift is required.

 - Changing start and finish times
 - Change of span of hours
 - Not having to work a 9 day fortnight where longer shifts are the best way to work
 - Not being paid for stand down next day if night shifts are worked on a project arrangement

- Individual Flexibility Agreements

Expand the number of areas where employees can request flexibility, particularly to support working from home and working from other sites. No change to the current process requiring the agreement of an employee's manager for the arrangement.

- Temporary shift work

Where access restrictions or customer demands mean that there is a need for extended periods of night shift, an agreement can be reached with volunteers after consultation as follows:

 - Employees volunteer to be available for night shift for a 12 month period
 - During that 12 months the volunteers can be rostered to work up to 6 months on night shift
 - A program would be worked out as early as possible with the employees involved
 - Employees will receive:
 - a flat allowance of 10% per week of ordinary pay for the whole 12 month period
 - an additional allowance of 50% per week of ordinary pay for each week worked on night shift (effectively a 60% shift allowance)
 - pro rata additional annual leave for the period while working night shift

- all overtime while on night shift will be paid at double time
 - paid meal breaks
- Purchased Leave
Employees may request to purchase up to an extra 8 weeks annual leave. All applications are subject to meeting business needs.
 - Long Service Leave
The accumulation of long service leave has been clarified to reflect the recent Fair Work decision. It also supports the current practice which permits employees to take less than 4 weeks leave.
 - Dispute resolution
There will be a requirement that all disputes are addressed as soon as possible.
 - Maturing Allowance
All employees with a balance of maturing allowance may elect to have it paid out in full or in instalments. There is no requirement to have the maturing allowance paid out but once an employee makes this election even if they choose to only take part of the balance, maturing allowance will stop accruing for that employee.
 - Start and/or finish on site
There will be a specific provision in the Agreement and the associated allowance will be updated.
 - Hours of Work – Workplace Arrangements
All workplace arrangements that currently have 40 hours to be worked need to reflect the Fair Work Act wording of 38 ordinary hours plus reasonable additional hours. This is to align the arrangements with the National Employment Standards. There will be no reduction in salary resulting from this change.
 - Pay Points
The way that pay points are shown in the Agreement will be revised to make it easier to read. This will not affect any pay levels or career progression.
 - Update the Agreement to include changes in the Fair Work Act
To the extent required to ensure all legal minimums for conditions of employment are met or are otherwise required for the FWC to approve the Agreement.
 - Allowances
All allowances including switching allowances will be included in a new table in the Agreement
 - Revised Workplace Arrangements
Currently workplace arrangements sit outside the agreement but are referred to in Appendix D by name. We will incorporate the arrangements in the agreement and some will be revised.

- Annualised Salaries for Manager/Specialist Employees
A provision has been included for contract employees (only those under \$169,855) to be covered by the Agreement but have annualised salaries and continue to participate in the “at risk” payments currently available. This would be available subject to a “better off overall test” for each employee involved.
- Other compliance changes
Changes in the Fair Work Act have meant that we need to update a series of provisions. These reflect in particular changes to leave provisions in the NES. We will also be reordering some of the clauses in the agreement to better group similar clauses together.

In discussions with the CEO Tony Narvaez, who addressed the bargaining unit, he agreed that during the life of the agreement the Company would explore the sharing of any efficiency and productivity gains through an ‘incentive scheme’.

Next Steps

[11] The bargaining representatives (Company, union and employee) need to do some further drafting to finalise a few non-contentious issues in the proposed agreement. The unions will hold a joint delegates meeting in early February. The Company will present information sessions to all employees, which will be timed to coincide with Union mass meetings and employee meetings with other employee bargaining representatives.

[12] Subject to broad employee endorsement employees will be given time to consider the proposed agreement, in line with the requirements under the Fair Work Act, and will then have the opportunity to formally vote on the proposed Agreement.

