



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT HAMPTON**

**B2023/703**

**s.248 - Application for a single interest employer authorisation**

**Application by Independent Education Union of Australia (130N)  
(B2023/703)**

**Perth**

**9.30 AM, THURSDAY, 20 JULY 2023**

PN1

THE DEPUTY PRESIDENT: Yes, good morning, everyone. I will just confirm the appearances. So, Mr Dean, I think you're seeking permission to appear on behalf of the applicant union?

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MR DEAN: Yes, thank you. We have filed written submissions and we can confirm further we don't oppose the grant of permission to the respondents.

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THE DEPUTY PRESIDENT: Very well. Thank you. And I think you're appearing with Mr Elliott and Mr Odgers?

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MR DEAN: Yes.

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THE DEPUTY PRESIDENT: Yes. Good morning to the three of you. And, Mr Jensen, you're seeking to appear on behalf of the respondent employers?

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MR JENSEN: Yes, I am, thank you, Deputy President.

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THE DEPUTY PRESIDENT: And you have with you Ms Littlejohn and Ms Jones. So good morning to the three of you.

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MR JENSEN: Yes. Ms Littlejohn is in the front and Ms Jones is sitting behind, so you know.

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THE DEPUTY PRESIDENT: Thank you very much. Dealing with the issue of permission largely for reasons that are set out in the written submissions and noting that both parties are seeking, or all parties are seeking permission to be represented permission is granted to all parties to be represented by a lawyer in these proceedings.

PN10

Perhaps before we proceed I should set some of the context. Firstly, the matter remains a potential to be referred by the president to a Full Bench of the Commission, and this will be the first substantive test of the new single interest authorisation provisions of the amended Act. I have decided to initially deal with the application so I can gain a broader understanding of what is or isn't in dispute, and also the extent and nature of any evidence that might wish to be led.

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As part of that I want to ascertain the views of the employers on the application, and of course that's important in any matter before the Commission, but in this case it appears to be particularly relevant given the section 249(1)(iv) appears to have a different set of rules depending on who it is that applied and whether or not

the employer concerned or the employers concerned actually consent to the authorisation being issued. So I want to ascertain the views of the employers. If some or all the employers do not agree to be bound and would want to understand the process to confirm the size of the employer and how the Commission would be satisfied the majority of employees employed by each employer want to bargain for an agreement, that issue may or may not arise given the answer to the first question.

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In respect to the answer to the first question there will be presumably an evidentiary basis for the assessment of the common interest. That is whether or not there are reasonably comparable operations and business activities. I want to explore the nature of evidence that might be led about that.

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The Commission would have to be satisfied that the authorisation is not contrary to public interest. I think that's a matter for later submissions, and I only note that for the sake of completeness. And I also want to confirm that there are no existing single enterprise agreements for the employees that would be covered by the authorisation given there are certain rules that arise from that as well.

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So informed and with an understanding on those matters and anything else the parties are in a position to advise me today the Commission, and more particularly the president, will subsequently make a decision as to whether or not the matter will be referred to a Full Bench. Then either I or the Full Bench will probably issue some directions to enable the matter to be dealt with as quickly and efficiently as possible. So that's the purpose of the conference. Mr Dean, perhaps I will hear from you first on behalf of the applicant union.

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MR DEAN: Yes, Deputy President, that appears to be a sensible way to proceed. I suppose (audio malfunction) I can say inasmuch as the application sets out, we say, in compliance with section 248(1) and section 248(2) the various matters that are required for the application to constitute an application under section 248(1), that is the employers and employees are nominated. In that respect if it's an application pursuant to section 248(1)(b), and therefore what we might need to show will depend upon, I think, the position of the employer and whether any of the presumptions under section 249 apply. I think that's probably as far as I can take it without hearing the respondent's position in relation to the applications, or the respondents I should say.

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THE DEPUTY PRESIDENT: Thank you. Mr Jensen?

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MR JENSEN: Yes. I represent all 10 of the employers named, so what I am saying applies to all 10 of them. We spoke to Mr Elliott before when the first application of this kind was filed about a month ago. We advised him then that we wouldn't be opposing the application and our position hasn't changed. We don't oppose the application. There is a single employer authorisation for the

negotiation of the teachers agreement covering the same group of employers. No reason why there shouldn't be one made for this. So we are not opposing the application.

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THE DEPUTY PRESIDENT: I don't want to be semantic, but I think then there might be a difference as to whether or not you're not opposing the application or whether or not the employers are agreeing to bargain together for this purpose.

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MR JENSEN: The employers have agreed to bargain together for this purpose.

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THE DEPUTY PRESIDENT: Very well.

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MR JENSEN: I think that's - - -

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THE DEPUTY PRESIDENT: Yes, go ahead.

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MR JENSEN: I think that almost circumvents a lot of the other issues which you have raised that you needed to consider and discuss with regards to this application.

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THE DEPUTY PRESIDENT: Yes, I suspect it does. We have just lost Mr Dean, so we will just for a moment until he rejoins us. He might have been so delighted with your news, Mr Jensen, that he has disconnected.

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MR JENSEN: You're losing everyone.

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THE DEPUTY PRESIDENT: I think Mr Odgers is just off camera. As far as I know we have everyone. Yes. We are just waiting on Mr Dean. It wasn't the best connection from my perspective either, so not a complete surprise that it dropped out.

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MR ELLIOTT: Deputy President, I can advise that Mr Dean is attempting to rejoin now.

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THE DEPUTY PRESIDENT: Thank you, Mr Elliott. Mr Dean, welcome back.

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MR DEAN: Apologies, Deputy President. The last words I heard were that the respondents had agreed. I think, Deputy President, you were clarifying whether there was a distinction or a material distinction between not opposing and perhaps

consenting or agreeing to bargain, and I thought the response was that the employers had jointly agreed to bargain.

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THE DEPUTY PRESIDENT: Indeed, and that was the point you dropped out. I expect in your absences you were so delighted with the response that you dropped out. But nevertheless that was the point that I realised you were no longer on the line. And you may not have heard this, but as Mr Jensen subsequently indicated that probably makes at least some of the material otherwise foreshadowed largely academic.

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MR DEAN: Thank you, Deputy President.

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THE DEPUTY PRESIDENT: I think that does leave us with then the question of the context or the material that might be provided to commence the Commission about the assessment of the common interest, in particular how the Commission can be satisfied there are reasonably comparable operations and business activities. I suspect this will be largely uncontroversial. I am familiar with the sector over many years, and I also note an earlier authorisation as I think Mr Jensen correctly pointed out already applies under different rules, but nevertheless broadly the same considerations for the same group of employees in respect of the teaching staff. So I suspect that's a solid foundation, and it may be that all that is required is some submissions about that and the other requirements perhaps with a statutory declaration or some form of affirmation from either the union and/or on behalf of the employers.

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MR DEAN: Yes, Deputy President. I wondered whether in the context of a non-contested application it would be appropriate for the parties to simply agree facts. I mean some of the obvious ones are they're all Catholic education schools operating in Western Australia. They all receive a mix of state and Commonwealth funding. They're all registered under the Schools Act, et cetera. I don't know how much - whether that's an appropriate vehicle for the Commission to base - - -

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THE DEPUTY PRESIDENT: Yes, Mr Dean, I think on face value that's a very constructive suggestion. Mr Jensen, how do you feel about that?

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MR JENSEN: Yes, we have no objection to that.

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THE DEPUTY PRESIDENT: All right, very well. And can I confirm - I think this was indicated in the application, Mr Dean, that the parties are not aware of any existing single enterprise agreements that apply - the cover I should say that cover the employees who will be covered by the authorisation?

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MR JENSEN: There was only - there's (indistinct), but that's an expired agreement.

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THE DEPUTY PRESIDENT: Then I think what the suggestion is firstly I understand that not only is the application not opposed, but all employers concerned have agreed to bargain collectively, and I think a process of written submissions and a statement of agreed facts would be useful, combined with a short hearing. So what I will do is I will alert the president to this development, and then he can decide whether or not the matter should be dealt with by a Full Bench.

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If he does then the Full Bench will issue some directions I suspect confirming the timeframe for that and scheduling a short hearing. If the president does not refer the matter to the Full Bench then I will issue the directions along those lines, and liaise with the parties about a date for a mutually convenient hearing at the earliest opportunity. Mr Dean, anything else you want to raise at this point? Mr Dean, your line is a bit poor I suspect. Mr Jensen, anything you want to raise at this point?

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MR JENSEN: There's nothing further we want to raise, Deputy President.

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THE DEPUTY PRESIDENT: Mr Dean, can you hear me all right?

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MR DEAN: I can.

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THE DEPUTY PRESIDENT: We have difficulty hearing you in reply. My understanding is there's nothing further you want to add at this point?

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MR DEAN: No, Deputy President. So we will just be waiting on procedural directions either from the Full Bench or alternatively from yourself.

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THE DEPUTY PRESIDENT: Very well. Thank you all for your constructive participation in the conference. We will get this matter moving as quickly as we can. The Commission will be adjourned. Good morning.

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COUNSEL: Good morning.

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MR ELLIOTT: Thank you, Deputy President.

**ADJOURNED TO A DATE TO BE FIXED**

**[9.44 AM]**