



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT HAMPTON**

B2023/925, B2023/968, B2023/969

s.234 - Application for an intractable bargaining declaration

Applications by Chevron Australia Pty Ltd

Sydney

10.00 AM, FRIDAY, 22 SEPTEMBER 2023

Continued from 12/09/2023

PN1

JUSTICE HATCHER: I'll take the appearances. Mr Dalton and Mr Pollock, you appear for the applicant.

PN2

MR DALTON: Yes, your Honour.

PN3

JUSTICE HATCHER: Mr Gibian and Mr Saunders, you appear for the AWU and the CEPU.

PN4

MR GIBIAN: May it please the Commission.

PN5

JUSTICE HATCHER: I understand that the applicant and the two unions have accepted Commissioner Riordan's recommendation. Is that correct?

PN6

MR DALTON: That's correct, your Honour.

PN7

JUSTICE HATCHER: So what do you want us to do with this application?

PN8

MR DALTON: We want you to adjourn the application for a period of four weeks to allow time for the parties to progress the drafting of the enterprise agreements and put those agreements to employee vote and have them approved by the Commission.

PN9

JUSTICE HATCHER: Is there any reason why we shouldn't take that course, Mr Gibian?

PN10

MR GIBIAN: Your Honour, our view is that the proceedings ought be withdrawn or dismissed. Obviously an essential aspect of an application of this type is that there is no reasonable prospect of agreement being reached. Whatever might have been said previously about that question, there is now obviously a reasonable prospect of agreement being reached, and in those circumstances there's no reason for the proceedings to hang around.

PN11

JUSTICE HATCHER: So should we go ahead with the hearing, should we?

PN12

MR GIBIAN: Well, your Honours can go ahead with the hearing. It would be very short. Upon tendering the communications that the Commission's received last night and this morning, that would be sufficient, frankly, to demonstrate a reasonable prospect, or that the Commission couldn't be satisfied there is no reasonable prospect of agreement being reached.

PN13

In our view, the proceedings shouldn't hang around on the basis, one infers, that Chevron thinks there's some prospect the drafting exercise will go awry and it will form the view again at some point that there is no reasonable prospect of agreement being reached. If that were to happen, I think contrary to everyone's expectation, it would obviously be open to make an application.

PN14

JUSTICE HATCHER: Is there some agreement or understanding that the industrial action will not proceed or not occur during the exercise of finalising the agreement and putting it to a vote?

PN15

MR GIBIAN: Yes. For the record, I can indicate that my client has already communicated to its members that protected action is to cease. It has indicated that it can't be 100 per cent certain that message will get through to everyone immediately. There are a large number of members involved.

PN16

For that reason, I wasn't in a position to give any sort of inter partes undertaking to Chevron that would commence before Monday, I think, it is, the 24th – which I think is Monday or Sunday, but it has already communicated it and the intention is that no protected action occur after now.

PN17

JUSTICE HATCHER: I think the course we'll take is that we'll accede to the application to adjourn the matter for a period of four weeks, but, Mr Gibian, we'll give your clients liberty to - if they wish to file the strike-out motion at some stage during that four-week period, you have leave to do so, and if that's filed we'll take steps to consider it.

PN18

MR GIBIAN: May it please.

PN19

JUSTICE HATCHER: Anything else we need to deal with at this stage, Mr Dalton?

PN20

MR DALTON: No, your Honour.

PN21

JUSTICE HATCHER: On behalf of the Full Bench can I congratulate the parties on the position they've achieved and wish them luck in their forthcoming endeavours to finalise the agreement.

PN22

I can also indicate that to the extent that parties need any further assistance from the Commission in respect of finalising the agreement, Commissioner Riordan will be available and the parties only have to request his assistance and it will be provided. We'll now adjourn.

ADJOURNED INDEFINITELY

[10.16 AM]