

## *Workplace Relations Act 1996*

### AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

IN THE MATTER of an application by the Australian Municipal,  
Administrative, Clerical and Services Union for  
Order for protected action ballot be held

BP2008/3401

### ASU SUBMISSIONS

#### Background

1. This application arises as a result of an industrial campaign for a collective agreement by ASU members who are employed at the IBM Flightdeck, Baulkham Hills, NSW.
2. The application is made under s 451 of the Workplace Relations Act 1996 (Cth).
3. The union seeks that the application under s 451 be granted and that an order be issued for a protected action ballot to be held.

#### Relevant Principles - Eligibility

4. Section 328 of the Workplace Relations Act 1996 provides:  
*An employer may make an agreement (a union collective agreement) in writing with one or more organisations of employees if, when the agreement is made, each organisation:*
  - (a) *has at least one member whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and*
  - (b) *is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.*
5. The ASU is an organization of employees within the meaning of the Act and is entitled to represent the industrial interests of members employed at the IBM Flightdeck.
6. The ASU relies upon Rule 5, b, Part V of the rules of the Australian Municipal, Clerical and Administrative Services Union.
7. The relevant rule reads:

"5 - INDUSTRY AND ELIGIBILITY

... b. Eligibility for Membership

... PART V

(a) an unlimited number of persons who are employed or usually employed wholly or partly in the servicing, repairing, maintaining, structurally altering and/or assembling business equipment, excluding typewriters, excepting persons employed in or in connection with the manufacture of photographic supplies and materials and employees in photographic establishments and excepting persons who are members or are eligible for membership of the Association of Architects Engineers Surveyors and Draughtsmen of Australia, the Federated Clerks Union of Australia, the Transport Workers' Union of Australia, and the Australian Railway Union, Organisations registered under the Conciliation and Arbitration Act 1904, as amended, as at the date of registration of the Guild. Provided that persons who are eligible for membership of the Amalgamated Engineering Union, the Australasian Society of Engineers and the Electrical Trades Union of Australia, Organisations registered under the Conciliation and Arbitration Act 1904, as amended, shall not be eligible for membership of the Union. Without limiting the generality of the foregoing, the term "business equipment" shall be deemed to include, *inter alia*, cash registers, accounting machines, adding machines, calculators, computers and peripheral equipment.

...

#### Relevant Principles – Section 451 Application

8. Section 423 of the Workplace Relations Act sets out the requirements for initiating a bargaining period for a union collective agreement.
9. The ASU accepts that in order to validly notify the commencement of a bargaining period, that the ASU as an organisation must be satisfy the requirements of Section 328 of the Workplace Relations Act 1996.
10. Section 461 of the Workplace Relations Act 1996 states:

Commission must be satisfied of various matters

(1) The Commission must grant an application for a ballot order if, and must not grant the application unless, it is satisfied that:

- (a) during the bargaining period, the applicant genuinely tried to reach agreement with the employer of the relevant employees; and
- (b) the applicant is genuinely trying to reach agreement with the employer; and
- (c) the applicant is not engaged in pattern bargaining.

Note 1: An application for a ballot order must comply with the requirements set out in Subdivision B.

Note 2: To work out when a bargaining period began, see section 427.

Note 3: For other provisions relating to pattern bargaining, see:

- (a) section 431; and
- (b) section 439; and
- (c) section 497.

When Commission has discretion to refuse application

- (2) Despite subsection (1), the Commission may refuse the application if it is satisfied:

- (a) *that granting the application would be inconsistent with the object of this Division (see section 449); or*
- (b) *that the applicant, or a relevant employee, has at any time contravened a provision of this Division or an order made, or direction given, under this Division.*

### **Evidence – Eligibility**

11. The ASU will rely on evidence from the Ms Sally McManus, the Branch Secretary of the ASU and documentary evidence including position descriptions in order to illustrate the work performed by the ASU members at the IBM Flightdeck.
12. The facts relied upon in Ms McManus' statement are:
  - That ASU members at the IBM Flightdeck work with computers and computer peripherals
  - That ASU members at the IBM Flightdeck are employed to service, repair, maintain and structurally alter computers and computer peripherals.
  - That IBM Australia Ltd is a respondent to the Business Equipment (Technical Services) Award.
  - That it was the intention at the time of the development of the rules to include people employed in the type of work undertaken by ASU members at the IBM Flightdeck.
  - That no other union asserts coverage of the workers at the IBM Flightdeck.
13. We submit that on the ordinary meaning of the words used in the ASU eligibility rules "servicing", "maintaining", "repairing", "structurally altering", "computer" and "peripheral", that the rules include the type of work done by workers at the IBM Flightdeck.
14. Therefore, we submit that the ASU is eligible to represent the industrial interests of ASU members at the IBM Flightdeck and to make a union collective agreement under section 328 of the Workplace Relations Act 1996.

### **Evidence – Section 451 Application**

15. The ASU relies on documentary evidence and the evidence of Ms Sally McManus and documentary evidence to support the application for a protected action ballot.
16. In particular the ASU relies on:
  - The Notice to Initiate a Bargaining Period issued on 1 May 2008.
  - The correspondence from the Paul Slape the National Secretary of the ASU to IBM CEO Glen Boreham dated 1 May 2008.
  - The letter from Carl Harris, Organiser from the ASU (Services) Branch to IBM CEO Glen Boreham dated 1 May 2008 requesting a meeting to negotiate a collective agreement.
  - The letter from Carl Harris, Organiser from the ASU (Services) Branch to IBM CEO Glen Boreham dated 5 May 2008 again requesting a meeting to negotiate.

- The letter from IBM Hr Partner Graham Hills to Carl Harris, Organiser from the ASU (Services) Branch dated 6 May 2008 refusing the request for a meeting to negotiate.

17. The ASU also relies on the account in the witness statement of Ms Sally McManus of a meeting at Baulkham Hills on 23 June 2008 with ASU members employed at the IBM Flightdeck.

18. We submit that the ASU has satisfied the requirements of section 461 of the Workplace Relations Act and that the AIRC should grant the order for a protected action ballot to be held.