

FAIR WORK AUSTRALIA

Fair Work Act 2009

- s. 185 Application for approval of a single - enterprise agreement

Sydney Water Corporation t/as Sydney Water

(Matter No **AG2009/14491**)

Witness Statement of NAOMI ARROWSMITH

I, NAOMI ARROWSMITH, c/- Level 1, 39-47 Renwick Street, Redfern in the State of New South Wales, do hereby state:

1. I am an Assistant Secretary of the Australian Services Union of New South Wales ("ASU").
2. I have been employed by the Union since 2004 and have been responsible for the Water Division as Team Leader since 2007.
3. I was the lead negotiator for the Union during the 2009 negotiations for a new agreement to cover the employment of members of the union employed by Sydney Water. In that role I attended 30 negotiation meetings. Those meeting occurred on:

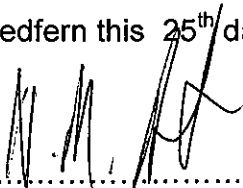
12 February, 6 March, 1 April, 21 May, 3 and 22 June, 16, 21, 24, 29 and 30 July, 7, 17, 19, 20 and 21 August, 14, 16, 24, 28, September, 6, 12, 13, 19, 28 and 29 October, 3, 9, 11, 18, November 2009.
4. At the commencement of negotiations Sydney Water had an existing Award of the Industrial Relations Commission of New South Wales. It was known as the Sydney Water Conditions of Employment Agreement. The Union has always negotiated the Sydney Water Corporation Award or Agreement in the NSW Industrial Relations system and this is the first agreement in the federal system.

5. On 5 March 2009 the ASU received, via email from Kirsten Took, Senior Industrial Relations Adviser, a draft document with a Flexibility Clause that was in substantially the same terms as the flexibility clause in the existing Award. Attached and marked **A** is a copy of that email and the draft document
6. The difference between the proposed clause and the existing award term was the deletion of the words "career break schemes" in subclause 46.1.5
7. I understood from that document that Sydney Water did not seek any substantial amendment to the existing flexibility clause.
8. On the 3 June 2009 the ASU received a second draft document from Sydney Water. Whilst there were changes to this document, the Flexibility Clause remained unchanged.
9. On 21 July 2009 the ASU received another draft from Nicolas Saunders, Senior IR Adviser to Sydney Water, which contained comments made by the Unions concerning the proposed agreement during negotiations. The ASU's comment regarding the Flexibility Clause was "does not support the proposed changes and proposes adding purchase additional leave". This reflects the position that I took during negotiations on behalf of the ASU. Attached and marked **B** is a copy of that draft document.
10. On 14 August 2009 the ASU received from Nicolas Saunders another draft Flexible Working Arrangement Clause for consideration. The clause provided was substantially different from the clause previously sought by Sydney Water. Attached and marked **C** is a copy of that proposed clause.
11. Sydney Water's new flexibility clause was discussed and rejected by the Unions at meetings held on 17, 19, 20 and 21 August 2009.
12. In response, the ASU and APESMA provided a draft flexibility clause to Sydney Water for consideration on 28 September 2009. Attached and marked **D** is a copy of unions' proposed flexibility clause.
13. On 8 October 2009 a draft document was emailed by Nicolas Saunders with an individual Flexibility Clause included which had not previously appeared in any documents. Attached and marked **E** is a copy of Sydney Water's further proposed flexibility clause.
14. At negotiation meetings on 13 and 19 October 2009, the ASU said we would not agree to Sydney Water's proposed Individual Flexibility Clause.
15. In late October 2009 the ASU sent its members information, by email, outlining the concerns we had with Sydney Water's claim. This included concerns that we had about the Flexibility Clause. Attached and marked **F** is a copy of that email.

16. On 19 October 2009, the Managing Director of Sydney Water Corporation emailed staff denying some of the claims made in Attachment F. Attached and marked **G** is a copy of that email.
17. On 23 October 2009, the ASU published and distributed to all members another notice outlining our concerns with Sydney Water's claim, including detail on our concerns regarding the Flexibility Clause. Attached and marked **H** is a copy of that notice.
18. At a meeting with Sydney Water on 28 October 2009 the ASU agreed to a proposal from Sydney Water that the proposed agreement retain the current Flexibility Clause. At that meeting Sydney Water agreed to withdraw the individual flexibility clause forwarded to the ASU on 8 October 2009.
19. On 6 November 2009 the ASU received an email from Ray Ferrier, Industrial Relations Manager for Sydney Water, stating "Flexibility – as you recall our position has always been that we maintain at least the current provision for flexible working arrangements. I refer you to the current award at 49.2 (a) which removes limits on when work will be performed, and the need to pay overtime and penalty payments. This is consistent with our proposals on Individual Flexibility Arrangements other than the reference to 'allowances' which we are happy to remove". Attached and marked **I** is a copy of that email.
20. On 9 November 2009 the ASU received another email from Ray Ferrier stating "flexibility: as discussed, we will retain the clause which provides for Flexible Work Arrangements and remove the clause which provides for Individual Flexibility Arrangements". Attached and marked **J** is a copy of that email.
21. On 10 November the ASU received an email from Nicolas Saunders with a copy of another draft document that included a flexibility clause and with the Individual Flexibility Clause removed. Added at 44.10 of the flexibility clause were the words "Any Flexible Work Arrangement entered into under this clause will not alter or exclude the operation of any clause of this agreement". This was added at the request of the Unions to indicate that any flexible work arrangement entered into between an employee and employer did not change the meaning and effect of the agreement for the rest of the workforce. Attached and marked **K** is a copy of that email.
22. On 10 November 2009 I emailed to Ray Ferrier a report on negotiations. At point 8 in the report, regarding flexibility, we stated that "this matter appears to be agreed on the basis that Sydney Water will not seek to impose the default clause for flexibility but will simply seek to maintain the clause that exists in the current award. The principle on which the matter is settled is that we are simply maintaining what exists". Attached and marked **L** is a copy of that email

23. On 4 December 2009 I requested that Nicolas Saunders send the ASU the application and statutory declaration for the approval of the agreement. I received his response at 1.46pm on 4 December 2009. The ASU received another email at 3.15 pm stating that all the documentation had been sent to Fair Work Australia.
24. I did not have time to review Sydney Water's statement before it was filed and did not read it thoroughly afterward as I believed that Sydney Water would have alerted me should they be stating anything not agreed or out of the ordinary.
25. At no time during negotiations did any representative of Sydney Water indicate that they had concerns that the flexibility clause would not meet the requirements of the Act. If that concern was raised the ASU would have worked with Sydney Water to amend the proposed agreement or we would have pressed the flexibility clause we had earlier proposed.
26. I attended the mass meeting of members at Parramatta Stadium on 25 November 2009. Sally McManus, Secretary, addressed this meeting on behalf of the Union. She explained to members that there were no changes to members' current conditions or rights with the proposed agreement other than those she went through in detail at the meeting.

Signed in Redfern this 25th day of February 2010



.....
Naomi Arrowsmith
Assistant Secretary
Australian Services Union of NSW