

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 Paul Muller

I, Paul Muller, of 4/106 Carrington Road, Randwick, in the State of New South Wales, do hereby state:

1. I am employed by Sydney Water Corporation at the Parramatta Head Office as a Development Services Representative.
2. I have been elected to the positions of Executive Member on the Water Industry Division Committee of Management and Executive Councillor (Sydney Water) on the Executive of the New South Wales and ACT (Services) Branch ("Branch") of the Australian Municipal, Administrative, Clerical and Services Union ("ASU").
3. I have been a member of the ASU for 37 years, have been a delegate for over 30 years, held the elected position on the Water Committee of Management for 20 years and been an ASU Executive member for approximately 12 months.
4. Sydney Water is a highly unionized workforce. Awards and agreements that apply to the workforce have always been negotiated by our Union. The membership has always relied on our Union to negotiate the best deal on behalf of members and seek guidance and recommendations from our union about when a deal should be accepted. In my time at Sydney Water it has always been the practice of our Union to hold mass meetings of the workforce to report on progress or seek endorsement for agreements reached with Sydney Water. In that time the rank and file have, save for 1 or 2 occasions, accepted recommendations made by our union.

5. I was one of the negotiators during the 2009 negotiations for a new agreement to cover union members employed by Sydney Water. In that role I attended the majority of the meetings.
6. There were many draft agreements circulated during the negotiations. Those documents were provided to me by my Union officials. The flexibility clause did not become an issue until August 2009. Prior to that I understood that the agreement would simply reproduce the Award clause with some minor amendments.
7. On 8 October a draft document was emailed by Nicolas Saunders with a new individual flexibility clause included which had not previously appeared in any documents.
8. At negotiation meetings on 13 and 19 October, the ASU said we would not agree to Sydney Water's proposed individual flexibility clause.
9. The negotiating committee believed that the company's proposed flexibility clause was an important issue and that the members should be informed about the company proposal. On 21 October Sally McManus sent a notice to members outlining the concerns with Sydney Water's claim. This included concerns about the flexibility clause.
10. On 22 October the Managing Director of Sydney Water sent me an email denying some of the claims made. I understand this email was sent to all employees who would be covered by the agreement.
11. On 23 October, I received another notice from the ASU outlining concerns with Sydney Water's claim, including detail on concerns regarding the individual flexibility clause.

12. At a meeting on 28 October, the ASU agreed to a proposal from Sydney Water that the agreement retain the current flexibility clause and Sydney Water agreed to withdraw the individual flexibility clause that had been forwarded to the ASU on 8 October.
13. On 10 November the ASU received an email from Nicolas Saunders with a copy of another draft document that included a flexibility clause which was in the same terms as the award clause and with the individual flexibility clause removed. I was provided with a copy of that document.
14. In that draft document the following words were added at the request of unions "any flexible work arrangement entered into under this clause will not alter or exclude the operation of another clause of this agreement".
15. Sydney Water representatives did not say that they thought the agreed flexibility clause would not meet the requirements of the Act. If that had been raised, we would have worked with Sydney Water to amend the proposed agreement so that it did meet the Act. I did not know that if the clause did not meet the requirements of the Act that a model clause would apply.
16. During the 2009 negotiations I was involved in many discussions with my workmates about the negotiations. In those discussions I said that there were some points of issue between the parties. During those discussions I told members about the company's attempts to change the flexibility clause. After November I was satisfied that this issue was resolved and that there would be no individual flexibility clause and that is what I told members in any discussions about the agreement.
17. I attended the mass meeting of members at Parramatta Stadium on 25 November. The purpose of the meeting was to report on the progress of the negotiations and to recommend the agreement to the rank and file. There were at least 1,000 members at the meeting.
18. Sally McManus 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. There was to be no real change to the flexibility clause in the award

and that was reported to the meeting. I thought Sally's report was an accurate account of the negotiations and the proposed agreement.

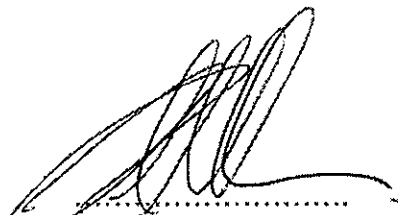
19. I understand that Sydney Water now claims that the flexibility clause in the agreement does not meet the requirements of the Act and that it should be replaced by a model individual flexibility clause which is in similar terms to the clause our Union rejected in negotiations.

20. As a Water Division of ASU Committee of Management member, I would have spoken against the model flexibility clause and recommended rank and file members not vote for the agreement.

21. I voted for the agreement but I would have voted against it if I knew Sydney Water was going to apply the default flexibility clause.

Signed at *PARRAMATTA*

this 25th day of February 2010.



Paul Muller