



## ORDER

*Fair Work Act 2009*  
s.229 - Application for a bargaining order

**Australian Mines and Metal Association**  
(B2014/787)

COMMISSIONER CLOGHAN

PERTH, 31 OCTOBER 2016

*Application for a bargaining order.*

[1] Pursuant to s.230 of the *Fair Work Act 2009* and Interim Decisions [2015] FWC 8479 and [2015] FWC 773 and Decision [2016] FWC 738, the Fair Work Commission orders that by 4:00 pm (WST) on 11 November 2016, the Maritime Union of Australia (MUA) (as bargaining representative for employees covered by the *Swire Pacific Management (Australia) Pty Ltd Integrated Ratings, Cooks, Caterers and Seafarers (Offshore Oil and Gas) Enterprise Agreement 2010 (Agreement)* and who are members of the MUA (**relevant employees**)) provide to the Australian Mines and Metals Association (AMMA), correspondence which corrects the following information which the Union sent to the relevant employees about the status, content and character of enterprise bargaining to replace the Agreement. Specifically, the information to be corrected by the MUA is as follows:

- on 20 February 2014 the MUA informed the relevant employees that AMMA and offshore vessel operators had withdrawn a 16.5% wage offer. The fact is that the MUA had rejected the offer on 16 January 2014;
- on 10 March 2014, the MUA informed the relevant employees that AMMA was “running fast and loose with the truth...and then withdrawing [wage offer] when the MUA finally accepted that offer”. The fact is that the MUA had rejected the 16.5% wage offer on 16 January 2014, and secondly, the MUA purported acceptance of the offer was conditional;
- in February 2014, the MUA accused Swire Pacific Management (Australia) Pty Ltd (**Swire**) of seeking to deny the relevant employees of a replacement agreement until June 2015. There is no evidence of Swire attempting to deny employees of a replacement enterprise agreement. In fact, Swire were seeking a replacement agreement as early as possible;
- in March 2014, in a publication to the relevant employees, the MUA accused vessel operators including Swire, of refusing to meet to bargain for a replacement enterprise agreement. Swire had not refused to meet with the MUA;

- on 27 April 2014, the MUA informed the relevant employees by email, under the title “Foreign Labour Clause not resolved”, that the said clause had not been resolved with Swire. The fact is that the MUA and Swire had reached agreement on the proposed clause. Further, the location of the said clause was not a matter of substantial controversy between the parties; and
- on 27 April 2014, the MUA emailed the relevant employees that “offshore employers appear to flag offer of non-union agreement”. This email communication had no basis in fact.

[2] Further, the MUA, from the date of this Order, is directed:

- to refrain, when communicating with relevant employees and the media, from misrepresenting the position of Swire as to the Union’s claims, its status or progress of bargaining for a replacement enterprise agreement to the Agreement; and
- to refrain from making it a condition that the bargaining group, or bargaining for a replacement enterprise agreement, include a third party.

[3] Finally, the MUA is directed to forward to the relevant employees a copy of this Order and its correspondence to AMMA in compliance with paragraphs [1] and [2] above by 4:00 pm (WST) on 16 November 2016.

[4] The MUA, by 4:00 pm (WST) 17 November 2016, provide evidence to the Commission at [Perth@fwc.gov.au](mailto:Perth@fwc.gov.au) and Mr Simon White at AMMA via email: [simon.white@amma.org.au](mailto:simon.white@amma.org.au) of compliance with the order set out at paragraph [3] above.

[5] This Order is operative from 31 October 2016.

*Dawn Holmes*  
  
COMMISSIONER

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Paddy Crumlin - National Secretary | Will Tracey - Deputy National Secretary  
Ian Bray and Warren Smith - Assistant National Secretaries

11 November 2016

Amanda Mansini  
Director Workplace Relations & Legal  
Australian Mines and Metals Association  
By email: [Amanda.Mansini@amma.org.au](mailto:Amanda.Mansini@amma.org.au)

Dear Amanda

The Maritime Union of Australia (**MUA**), as bargaining representative for employees covered by the *Swire Pacific Management (Australia) Pty Ltd Integrating Ratings, Cooks, Caterers and Seafarers (Offshore Oil and Gas) Enterprise Agreement 2010 (Agreement)* who are members of the MUA (**relevant employees**), corrects the following information which the MUA sent to the relevant employees about the status, content and character of enterprise bargaining to replace the Agreement.

Specifically, the MUA corrects the following information:

- On 20 February 2014, the MUA informed the relevant employees that AMMA and offshore vessel operators had withdrawn a 16.5% wage offer. The fact is that the MUA rejected the offer on 16 January 2014;
- On 10 March 2014, the MUA informed the relevant employees that AMMA was "running fast and loose with the truth ... and then withdrawing [wage offer] when the MUA finally accepted that offer." The fact is that the MUA had rejected the 16.5% wage offer on 16 January 2014, and secondly, the MUA purported acceptance of the offer was conditional;
- In February 2014, the MUA accused Swire Pacific Management (Australia) Pty Ltd (**Swire**) of seeking to deny the relevant employees of a replacement agreement until June 2015. There is no evidence of Swire attempting to deny employees of a replacement enterprise agreement. In fact, Swire was seeking a replacement agreement as early as possible;
- In March 2014, in a publication to the relevant employees, the MUA accused vessel operators including Swire, of refusing to meet to bargain for a replacement agreement. Swire had not refused to meet with the MUA;
- On 27 April 2014, the MUA informed the relevant employees by email, under the title "Foreign Labour Clause not resolved", that the said clause had not been resolved with Swire. The fact is that the MUA and Swire had reached agreement on the proposed clause. Further, the location of the said clause was not a matter of substantial controversy between the parties; and
- On 27 April 2014, the MUA emailed the relevant employees that "offshore employers appear to flag offer of non-union agreement." This email communication had no basis in fact.

Yours sincerely

Will Tracey  
National Deputy Secretary