



ORDER

Fair Work Act 2009

s.229 - Application for a bargaining order

Castlemaine Perkins Pty Limited T/A Castlemaine Perkins

v

United Voice

(B2018/223)

COMMISSIONER HUNT

BRISBANE, 3 AUGUST 2018

Application for bargaining order – alleged failure to meet good faith bargaining requirements –s. 228(1)(e) – alleged capricious or unfair conduct that undermines freedom of association and collective bargaining – preventing or hindering access to site during rally which coincides with industrial action – false and misleading statements to the media about the future of the brewery – bargaining order issued.

- A. Further to the decision in [2018] FWC 2979 the Fair Work Commission orders as follows:
1. Until the Proposed Agreement is approved by the Fair Work Commission pursuant to section 186(1) of the FW Act, or further order, United Voice (whether by itself, its officers, servants, agents or howsoever otherwise) be restrained from:
 - (a) preventing, hindering or interfering with, or attempting to prevent, hinder or interfere with, free access to and free egress from the Site by any person or vehicle, whether by themselves or by any object or vehicle; and
 - (b) advising, causing, inducing, procuring or inciting any person to do or attempt to do any of the things restrained by sub-paragraph 1(a) of these orders.
 2. Until the Proposed Agreement is approved by the Fair Work Commission pursuant to section 186(1) of the FW Act, or further order, United Voice (whether by itself, its officers, servants, agents or howsoever otherwise) be restrained from making, publishing, disseminating or distributing any statement or representation (whether in or to the media, in or on social media or howsoever otherwise) to the effect that:
 - (a) CPPL wants to or intends to close or shut down the Site;
 - (b) CPPL has threatened to, is threatening to, wants to or intends to outsource, shift or move jobs from the Site to interstate;

- (c) CPPL has threatened to, is threatening to, wants to or intends to increase its use of interstate labour at the Site;
 - (d) CPPL has threatened to, is threatening to, wants to or intends to outsource, shift or move production from the Site to interstate.
 - (e) Any industrial action in relation to the Site is being organised by United Voice and or taken by Employees:
 - (i) For the purpose of supporting or advancing claims to keep jobs and production at the Site local, in Queensland or on home turf; or
 - (ii) Because of concerns about jobs and production at the Site being moved interstate.”
3. By 4.00pm on 7 August 2018, United Voice must send an email to each of its employees, officers and delegates who have since July 2017, had any involvement or association with the Site and the negotiations for the Proposed Agreement and for whom it has an email address, attaching a copy of these orders and containing a message substantially in the following terms:

The Fair Work Commission has made a bargaining order. The bargaining order, during its period of operation:

- (i) *restrains United Voice (including through its officers, servants and agents) from preventing, hindering or interfering with persons or vehicles accessing or exiting the XXXX Brewery Site at 185 Milton Road, Milton, Qld. You are hereby advised that United Voice no longer authorises or supports any obstruction of access to, or egress from, that site whilst the bargaining order is in operation; and*
- (ii) *restrains United Voice (including through its officers, servants and agents) from among other things, making, publishing, disseminating or distributing any statement or representation to the effect that the Company wants to or intends to close the XXXX Brewery Site at Milton, has threatened to or wants to increase its use of interstate labour, or to shift or move jobs interstate. This part of the order was made on the basis that such statements were either false or misleading. You are hereby advised that United Voice withdraws any such statements or representations and no longer intends to make any such statements or representations whilst the bargaining order is in operation.*

Specifically, as an employee, officer or delegate of United Voice, you must not, whilst the bargaining order is in operation:

- (1) *prevent, hinder, interfere with, or attempt to prevent, hinder or interfere with, free access to and free egress from the XXXX Brewery Site by any person or vehicle;*
- (2) *advise, cause, induce, procure or incite any other person to do so;*
or
- (3) *make, publish, disseminate or distribute any statement or representation (whether in or to the media, in or on social media or howsoever otherwise) to the effect that:*

- (i) *the Company/XXXX Brewery wants to or intends to close or shut down the XXXX Brewery; or*
- (ii) *the Company/XXXX Brewery has threatened to, is threatening to, wants to or intends to outsource, shift or move jobs or production from the Site to interstate.;*

For a full and complete picture of what you, as an employee, officer or delegate of United Voice must not do, please review the bargaining order made by the Fair Work Commission, a copy of which is attached to this email.

4. By 4.00pm on 7 August 2018, United Voice must:

- (a) send an email to each of the Employees who are its members and for whom it has an email address; and
- (b) send an SMS text message to each of the Employees who are its members and for whom it has a mobile phone number;

containing a message substantially in the following terms:

The Fair Work Commission has made a bargaining order. The bargaining order, during its period of operation:

- (1) *restrains United Voice (including through its officers, servants and agents) from preventing, hindering or interfering with persons or vehicles accessing or exiting the XXXX Brewery Site at 185 Milton Road, Milton, Qld. You are hereby advised that United Voice no longer authorises or supports any obstruction of access to, or egress from, that site; and*
- (2) *restrains United Voice (including through its officers, servants and agents) from among other things, making, publishing, disseminating or distributing any statement or representation to the effect that the Company wants to close the XXXX Brewery Site at Milton or has threatened to or wants to move production or jobs from the XXXX Brewery Site interstate. This part of the order was made on the basis that such statements were either false or misleading. You are hereby advised that United Voice withdraws any such statements or representations and no longer intends to make any such statements or representations whilst the bargaining order is in operation.*

5. By 4.00pm on 6 August 2018, United Voice must:

- (a) post on its Facebook page at “United Voice Queensland” (<https://www.facebook.com/au/unitedvoiceq/>); and
- (b) post prominently on the homepage of the internet site of its Queensland Branch (<https://www.myunitedvoice.org/>);

a copy of this order and a message substantially in the following terms:

The Fair Work Commission has made a bargaining order. The bargaining order, during its period of operation:

- (1) *restrains United Voice (including through its officers, servants and agents) from preventing, hindering or interfering with persons or vehicles accessing or exiting the XXXX Brewery Site at 185 Milton Road, Milton, Qld. You are hereby advised that United Voice no longer authorises or supports any obstruction of access to, or egress from, that site; and*
 - (2) *restrains United Voice (including through its officers, servants and agents) from among other things, making, publishing, disseminating or distributing any statement or representation to the effect that the Company wants to close the XXXX Brewery Site at Milton, or has threatened to or wants to move production or jobs from the XXXX Brewery Site interstate. This part of the order was made on the basis that such statements were either false or misleading. You are hereby advised that United Voice withdraws any such statements or representations and no longer intends to make any such statements or representations whilst the bargaining order is in operation.*
6. The obligations in this Order at paragraphs 3 – 5, must be met without any additional words or commentary in or immediately preceding or immediately following the obligations at paragraphs 3 – 5, which might detract from the importance of the Order.
7. In this order:
- (a) “**CPPL**” means Castlemaine Perkins Pty Ltd (howsoever described), Lion Pty Ltd (howsoever described), XXXX and the XXXX Brewery (howsoever described);
 - (b) “**Current Agreement**” means the *Castlemaine Perkins Pty Limited Certified Agreement 2014-2017*;
 - (c) “**Employees**” means employees of CPPL whose employment is covered by the Current Agreement and whose employment will be covered by the Proposed Agreement;
 - (d) “**FW Act**” means the *Fair Work Act 2009* (Cth);
 - (e) “**industrial action**” means:
 - (i) the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
 - (ii) a ban, limitation or restriction on the performance of work by an employee or on the acceptance of or offering for work by an employee; or
 - (iii) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work.
 - (f) “**Proposed Agreement**” means the proposed enterprise agreement to replace the Current Agreement, being negotiated between CPPL, United Voice, the Communications, Electrical, Electronic, Energy,

Information, Postal, Plumbing and Allied Services Union of Australia and the Employees; and

- (g) “**Site**” means the XXXX Brewery located at 185 Milton Road, Milton, in **the** State of Queensland.

B. This order comes into operation on 3 August 2018 and ceases to be in operation at the earliest of the following:

- (a) if the order is revoked—the time specified in the instrument of revocation;
- (b) when the Proposed Agreement is approved by the Fair Work Commission;
- (c) when a workplace determination that covers the Employees comes into operation; or
- (d) when CPPL, United Voice and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia agree that bargaining has ceased

Note: A consequence of breaching a term of this Order is that, pursuant to section 233 of the *Fair Work Act 2009*, the person in breach will have contravened a civil remedy provision and may be subject to penalties and injunctions if ordered by a Federal court.



COMMISSIONER

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