[2024] FWC 1573 [Note: An appeal pursuant to s.604 (2024/4538) was lodged against this decision - refer to Full Bench decision dated 6 December 2024 [[2024] FWCFB 451] for result of appeal.]



DECISION

Fair Work (Registered Organisations) Act 2009 s.18(b) RO Act - Application for registration by an association of employees

Ambulance Employees Association of Western Australia (D2023/6)

DEPUTY PRESIDENT COLMAN

MELBOURNE, 17 JUNE 2024

Application for registration – application dismissed under s 587(1)(c)

- [1] The following is an edited version of a decision given on transcript earlier today to which I have added a brief introduction. The Ambulance Employees Association of Western Australia Incorporated (AEA) has made an application under s 18(b) of the *Fair Work (Registered Organisations) Act 2009* (RO Act) for registration as an organisation. The United Workers' Union (UWU) lodged an objection to the application. It then applied under s 587(1)(c) of the *Fair Work Act 2009* (FW Act) for the application to be dismissed on the ground that it has no reasonable prospect of success. The UWU contends that the application cannot be approved under s 19(1) of the RO Act because that section applies to associations 'other than an enterprise association', whereas the AEA is such an association, as the majority of its members are employed by one enterprise, St John Ambulance.
- [2] I advised the parties that I proposed to leave to one side certain objections raised by the AEA to the UWU's standing to make the s 587 application and that I would consider on my own initiative whether the AEA's application should be dismissed under s 587(1)(c) (see s 587(3)(a)). If the AEA's application had no reasonable prospect of success, much time and effort stood to be saved by the Commission so determining.
- [3] The relevant framework of the RO Act is as follows. Section 18 allows any of the following associations to apply for registration as an organisation: a federally registrable association of employers (s 18(a)); a federally registrable association of employees (s 18(b)); and a federally registrable enterprise association (s 18(c)). Section 18B defines when an association of employees is 'federally registrable'. Section 18C(1) defines an 'enterprise association' as an association 'the majority of the members of which are employees performing work in the same enterprise'. Section 18C(2) defines when an enterprise association is 'federally registrable', and s 18C(3) sets out certain circumstances when an enterprise association is not federally registrable.
- [4] Section 19 of the RO Act states:

- '(1) The FWC must grant an application for registration made by an association (other than an enterprise association) that, under section 18, may apply for registration as an organisation if, and only if:
 - (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 18(a) or (b); and
 - (ii) is an association for furthering or protecting the interests of its members; and

... '

- [5] Section 20(1) provides as follows:
 - '(1) The FWC must grant an application for registration made by an enterprise association that, under section 18, may apply for registration as an organisation if, and only if:
 - (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 18(c); and
 - (ii) is an association for furthering or protecting the interests of its members; and

....

- [6] It was common ground between the parties, and I consider it to be clear, that the AEA is an enterprise association as defined in s 18C(1). It is also the case that, as a consequence of certain changes in the composition of the AEA's membership that occurred after the application was made, s 18C(3) is engaged and the AEA is no longer a *federally registrable* enterprise association.
- [7] The AEA submitted that its application had reasonable prospects of success, because although it is an enterprise association, it is also a federally registerable association of employees, as defined in s 18B: it is a constitutional corporation, and some or all of its employees are federal system employees. The AEA contended that under the RO Act, enterprise associations are not separate and distinct from associations of employees, but are instead a subgroup of such associations, and that an enterprise association can apply for registration either under s 18(b) or (c) of the RO Act. I do not accept this.
- [8] In my opinion, it is clear from the structure of Divisions 1 and 2 of Part 2 that an association of employees as referred to in s 18(b) is distinct from an enterprise association as referred to in s 18(c) and defined in s 18C(1). There are separate criteria for the approval of associations referred to in ss 18(a) and (b) on the one hand and those referred to in s 18(c) on the other. Section 19 applies to the former, and s 20 applies to the latter.
- [9] But even if the AEA's contention on this matter were correct, there remains an insurmountable impediment to its application. In order for its application to be granted, the

requirements of s 19 must be met. The AEA acknowledges that this is the case. Yet it is clear from the words 'other than an enterprise association' that an application can only be granted under s 19 if it is made by an association that is not an enterprise association. The AEA submitted that these words should be understood as referring to a *federally registrable* enterprise association. This is an untenable argument. It reads into the section words that are not there. The AEA contended that there was a policy argument that supported its contention, but this was simply to the effect that without reading in the desired words, organisations in its particular circumstances could not be registered, which it said was absurd or unreasonable. But there is nothing absurd or unreasonable about this. On the contrary it would be curious if an organisation rendered unregistrable by s 18C(3) could choose instead to be registered as an association of employees. The objects of the RO Act do not assist the AEA. This is not a case where the objects support one plausible interpretation but not another. The AEA's interpretation of s 19(1) is simply not available.

[10] The AEA has applied for registration as an organisation. To be registered, it must meet the requirements in s 19. It was clear to me at the conclusion of the hearing that there was no reasonable prospect of the application being granted. The Commission's discretion to dismiss the application under s 587(1)(c) was enlivened and I considered it appropriate to exercise it. The application was therefore dismissed.



DEPUTY PRESIDENT

Appearances:

C. Fogliani for the Ambulance Employees Association of Western Australia W. Friend K.C. for the United Workers' Union

Hearing details:

2024

Melbourne (by MS Teams to Perth)

17 June

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