DECISION

Fair Work Act 2009
s.185—Enterprise agreement

ATCO Structures & Logistics Pty Ltd
(AG2017/4847)

ATCO STRUCTURES & LOGISTICS PTY LTD (QUEENSLAND) ENTERPRISE AGREEMENT 2017

Manufacturing and associated industries

COMMISSIONER SIMPSON BRISBANE, 12 MARCH 2018

Application for approval of the ATCO Structures & Logistics Pty Ltd (Queensland) Enterprise Agreement 2017.

[1] On 13 October 2017, ATCO Structures & Logistics Pty Ltd (the Applicant) made an application for approval of an enterprise agreement known as the *ATCO Structures & Logistics Pty Ltd (Queensland) Enterprise Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act).

[2] The Agreement is a single-enterprise agreement. The Agreement was made on 26 September 2017, and was signed on that day by Mr Glen Parsons, Senior Manager Corporate Compliance on behalf of the Applicant. The Agreement was signed by Mr Rick Longman, an employee bargaining representative on 4 October 2017 and filed with the Fair Work Commission (FWC) on 13 October 2017.

[3] On 24 October 2017 Mr Ashley Borg, the Senior Industrial Officer of the Construction, Forestry, Mining and Energy Union Queensland and Northern Territory Branch (CFMEU) sent correspondence to the FWC Member Assist Team submitting that it had a material interest in the application and advising the CFMEU wished to make submissions in relation to the application.

[4] The CFMEU requested copies of the material filed and this was sent to the CFMEU on 30 October 2017. On the same date the Member Assist Team noted that the CFMEU was not listed as a Union Bargaining Representative on the Form F16 filed by the Applicant, and requested that the CFMEU advise whether the CFMEU was a bargaining representative for the Agreement.

[5] On 10 November 2017 Mr Maurice Swan, Manager, Queensland – Workplace Relations of the Australian Industry Group sent correspondence on behalf of the Applicant to the Member Assist Team enquiring as to whether the CFMEU had provided a response to the FWC correspondence of 30 October, and if so whether the CFMEU asserted it was a

bargaining representative for the Agreement, and seeking an opportunity to provide further information and submissions in relation to such CFMEU response. The Applicant advised it was not aware of any information that would provide the CFMEU with any reasonable basis for claiming that it was a bargaining representative for the Agreement.

[6] On 20 November 2017 the Member Assist Team wrote to the Applicant advising that no further correspondence had been received by the CFMEU at that time. Later that day the CFMEU sent correspondence to the Member Assist Team simply stating it was a bargaining representative for the Agreement, and apologising for the delay in responding.

[7] On the following day, 21 November 2017 the CFMEU wrote to the Member Assist Team advising that it wished to make submissions in relation to the application, and also stating in its email that the Notice of Employee Representational Rights (NERR) was technically non-compliant rendering the application incapable of approval. The email did not identify how the CFMEU said the NERR was non-compliant. The CFMEU requested it be advised whether the Commissioner wishes to consider the application any further, or whether submissions would be necessary.

[8] On 22 November 2017 the Applicant wrote to the Member Assist Team disputing the assertion that the CFMEU was a bargaining representative. The Applicant requested that the FWC examine the basis upon which the CFMEU asserted that it was a bargaining representative in order to determine whether the claim was true.

[9] The Applicant submitted that firstly, the FWC require the CFMEU to disclose to the FWC (but not to the Applicant) a list of persons who, between 14 August 2017 and 15 September 2017,

(a) Were members of the CFMEU; and
(b) Were entitled to have their industrial interests represented by the CFMEU; and
(c) Were employees of ATCO who would be covered by the Enterprise agreement which is the subject of this application.

[10] The Applicant proposed the FWC require ATCO to disclose to the FWC (but not to the CFMEU) a list of persons who, between 14 August 2017 and 15 September 2017,

(a) Were employees of ATCO who would be covered by the Enterprise Agreement which is the subject of this application; and
(b) Did not appoint a bargaining representative.

[11] The Applicant submitted that, unless there is at least one person whose name appears on both lists, the CFMEU were not, and is not, a bargaining representative for the Enterprise Agreement.

[12] On 17 January 2018 the Member Support Research Team wrote to Mr Glen Parsons, Senior Manager Corporate Compliance employed by the Applicant setting out a range of issues concerning the application. Set out below is a summary of those issues and responses received.

Further Correspondence

[13] On 19 January 2018 the Member Assist Team wrote to the CFMEU advising that the matter had been allocated to Commissioner Lee for consideration. The correspondence said that upon review of the application documentation the Commissioner highlighted a concern that the Applicant had noted the CFMEU was not at any stage a bargaining representative and requesting that the CFMEU provide clarification as to why it maintained it was in fact a bargaining representative. The correspondence advised that the Commissioner requested a response by no later than the close of business Tuesday 23 January 2018.

[14] On 25 January 2018 the CFMEU sent correspondence to the Member Assist Team advising that it has members that would be covered by the Agreement, and it followed that the CFMEU was a default bargaining representative of those employees.

[15] On 31 January 2018 the Member Assist Team sent correspondence to the CFMEU thanking the CFMEU for its email, and advising "we would expect to have further information for you regarding this matter soon. Please let us know if you require any further information".

[16] The undertakings were signed by Mr Parsons as an authorised representative of ATCO. The Applicant also forwarded a revised Form F17 signed by Mr Parsons and dated 30 January 2018. The matter was listed for a Directions Hearing on 14 February but adjourned to 21 February 2018.

Late Lodgement

[17] An application must be lodged within 14 days after the agreement is made. The Form F17 filed with the application on 13 October 2017 states that the Agreement was made on 26 September 2017, meaning that it was filed later than as required by s185(3)(a). Subsection 185(3)(b) states that if in all of the circumstances the FWC considers it fair to extend that period – within such further period as the FWC allows.

[18] On 22 January 2018 the Applicant wrote to the FWC in response on this issue advising that despite being requested to return the signed Agreement promptly, the employee authorised to sign the Agreement on behalf of the employees did not return the signed Agreement until after signing it on 4 October 2017. At that point, and until 13 October 2017, there was no authorised company officer available to complete and sign the Form F16 and Form F17.

Steps Taken to provide the Notice of Employee representational rights 'Notice'

[19] At question 2.3 of the Form F17 filed on 13 October 2017 the Applicant did not provide the steps taken to give the NERR 'Notice' to the employees covered by the Agreement. Section 173 of the Act and Schedule 2.1 of the Fair Work Regulations 2009 require the employer covered by the enterprise agreement to take reasonable steps to give notice of the right to be represented by a bargaining representative to each employee. The Applicant was asked to explain how the notice was 'issued' to employees.

[20] The Applicant advised in its correspondence of 22 January 2018 to the FWC that a copy of the NERR was, on 16 August 2017, provided directly to each of the employees whom

it was intended would be covered by the proposed Agreement. The Applicant said that this was done by the Branch Managers in the company depots in Townsville, Mackay, Gladstone and Brisbane and at the Brisbane assembly and manufacturing facility. This information was provided in the revised Form F17.

Notification of Vote

[21] At question 2.5 of the Form F17 filed on 13 October 2017 the Applicant did not provide any information with regards to the steps taken to notify employees of the time, place and method of vote by the start of the access period. Section 180(3) of the Act requires that the employer must take all reasonable steps by the start of the access period to notify the relevant employees of the time and place at which the vote will occur and the voting method to be used. On the basis of the information provided, it does not appear that this requirement has been met. The Applicant was requested to provide a revised correctly signed Form F17 with the correct date incorporated at question 2.5 for the purposes of assessing whether the legislative requirement had been met.

[22] In its correspondence of 22 January 2018 to the FWC the Applicant advised that on 7 September 2017, the employer provided directly to each employee to be covered by the proposed Agreement a memorandum informing them that the voting on the Agreement would take place by postal ballot commencing on 15 September 2017. That was done by the Branch Managers in the community depots in Townsville, Mackay, Gladstone and Brisbane and at the Brisbane assembly and manufacturing facility. This information was also provided in the revised Form F17.

Coverage of employees

[23] At question 2.2 of the original Form F17 the Applicant provided no information in reference to the coverage of employees in the Agreement. Section 186(3) of the Act requires that if the Agreement does not cover all of the employees of the employer, then the Fair Work Commission must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

[24] In its correspondence of 22 January 2018 to the FWC the Applicant advised that the classification descriptions set out in Clause 13 of the Agreement indicate the site-based or yard-based operational nature of the work performed by the employees intended to be covered by the Agreement, as opposed to the administrative, supervisory or managerial nature of the work performed by all other company employees in Queensland.

[25] The Applicant said that the coverage of the Agreement was limited to employees working in Queensland because the labour market is different from that in other States in a number of respects, including the level of demand for labour in respect of the occupations covered, and the general level of wages paid in such occupations. This information was also provided in the revised Form F17.

Time between Notice of Employee Representational Rights ('Notice') being provided to employees and the agreement

[26] At question 2.8 of the original Form F17, the date the last Notice was provided to employees is stated to be 16 August 2017. However at question 2.4 on the Form F17, the Agreement was provided to employees on or before 7 September 2017. It was put to the Applicant in correspondence from the FWC that the Applicant notes at question 2.3 that employees were covered by the Agreement, but that it cannot be determined how the employees knew they were covered by the Agreement if they had not received the Agreement. Further, that the Agreement was provided to employees almost three weeks after the notice.

[27] The Applicant was advised that if either or both of the dates are incorrect, that it should provide a revised Form F17 with the correct dates incorporated at question 2.8 and questions 2.4 to 2.6 for the purposes of assessing whether this legislative requirement has been met.

[28] The Applicant responded in its correspondence of 22 January 2018 by referring to subsection 173(1) of the Act. The Applicant said that by giving the employees the NERR on 16 August 2017, it was clearly indicating to those employees to whom it gave the NERR that they would be covered by the Agreement the Applicant was proposing and for which it had earlier (14 August 2017) informed them it was proposing to bargain. The Applicant submitted that the only possible conclusions an employee who received the NERR could reach from the terms of the NERR are that:

(a) The employer was intending that the Agreement it was proposing to bargain for would cover each of those employees; and
(b) Each of those employees had a right to appoint a bargaining representative.

[29] The Applicant submitted that if an employee received the NERR, they could not possibly have any reasonable doubt that the employer was proposing that the Agreement would cover them.

[30] The Applicant further submitted that, in any event when, on 14 August 2017, it indicated to the employees its intention to bargain for an Agreement, it provided the employees with a draft version of the Agreement it proposed, titled "ATCO Structures and Logistics Pty Ltd Queensland Enterprise Agreement 2017". That draft set out a description of the employees covered by the proposed Agreement. The NERR given on 16 August 2017 refers to a proposed Agreement titled "ATCO Structures and Logistics Pty Ltd Queensland Enterprise Agreement 2017". That is, the employees had received a draft of the proposed Agreement informing them of the coverage of the proposed Agreement 2 days before they had received the NERR. This information was also provided in the revised Form F17. I am satisfied the response provided resolves this concern.

BOOT Issues

[31] On 17 January 2018 the Member Support Research Team wrote to the Applicant noting that at clause 14.4 the minimum hourly rate of pay incorporates all the Award loadings and allowances, however the Agreement does not appear to provide crib time or meal allowance. Therefore as the Agreement rates of pay are similar to the award, employees working overtime will be worse off under the Agreement. The Applicant was offered an opportunity to provide an undertaking to address this issue.

[32] The Applicant responded in its correspondence of 22 January 2018 by stating that while the point in the correspondence from the Member Support Research Team is titled "Rates of Pay" the real issue raised is that "the agreement does not appear to provide crib time or meal allowance" and suggests that, in overtime scenarios, employees may be worse off, in the context of a suggestion that "the agreement rates of pay are similar to the award".

[33] The Applicant submitted that the Manufacturing Award hourly wage rate for a C13 is $18.81. For a L1, the Agreement equivalent classification, the hourly wage rate is $29.67 – more than 39% higher. The Applicant submitted that it is inaccurate to suggest that "the agreement rates of pay are similar to the award".

[34] The Applicant submitted that nevertheless, the employer is prepared to give an undertaking that it will increase the hourly wage rates for ordinary hours of work by 50 cents per hour for each classification in order to eliminate any risk that there may be a circumstance in which an employee may not be better off overall under the Agreement than under the Award. The Applicant provided a table demonstrating the effect of that increase.

[35] On 17 January 2018 the Member Support Research Team wrote to the Applicant noting that clause 14.4(h) of the Agreement provided the minimum hourly rate of pay incorporates all the Award loadings and allowances including, but not limited to industry Specific Redundancy Scheme. The Applicant was advised that the Commissioner (Commissioner Lee) sought an undertaking that clause 14.4(h) of the Agreement have no effect, and further the Commissioner sought an undertaking that the Industry specific redundancy scheme as per clause 17 of the Building and Construction General On-site Award 2010 to be incorporated into the Agreement for the relevant employees.

[36] The correspondence from the Member Support Research Team also advised that the Applicant seek the views of all bargaining representatives regarding the proposed undertakings, and any objections to the proposed undertakings should be raised with the Commission prior to the approval of the Agreement.

[37] The matter was reallocated from Commissioner Lee to myself. On 9 February 2018 the Applicant forwarded undertakings to my chambers on behalf of the Applicant as follows;

> "ATCO Structures & Logistics Pty Ltd ("ATCO") undertakes to the Commission that, in interpreting and applying the ATCO Structures and Logistics Pty Ltd (Queensland) Enterprise Agreement 2017 it will
>
> (1) Interpret and apply the table set out in Clause 14.1 as though the second column in that table provided for hourly wage rates that are 50 cents per hour higher for each classification; and
> (2) Interpret and apply the provisions of Clause 14.4 as though paragraph (h) was omitted from those provisions.
>
> ATCO has sought the views of all bargaining representatives in relation to the above undertakings and none of them has expressed any objections."

Hearings

[38] The matter was listed for a directions hearing on 22 February 2018. Following the directions hearing I issued directions advising that the matter was listed for hearing on 8 March 2018, and further that the CFMEU was to file with the Commission, and serve on the Applicant by 4pm Tuesday 6 March submissions as to whether it should be heard and identify matters it wished to heard on, and an outline of its objections to the approval of the Agreement.

[39] No material was filed by the CFMEU by 6 March. At 11.36 AM on 7 March the Applicant sent email correspondence to my chambers stating that as the CFMEU had not served any material the matter should proceed with consideration of the application without hearing from the CFMEU. At 11.38am the CFMEU responded by email advising it hoped to file materials by close of business and apologising for the delay.

[40] At 3.19pm the CFMEU sent email correspondence to my chambers noting the concerns already raised by the Commission in its correspondence of 17 January 2018 and further adding that the NERR in the matter was non-compliant insofar as it is incorrectly headed "Fair Work Regulations 2009 – Schedule 2.1". The CFMEU referred the Commission in particular to the paragraphs 46 and 47 of the Full Bench decision in *Peabody Moorvale Pty Ltd v CFMEU* [1] (*Peabody*) which read as follows;

> [46] In our view s.174(1A) is clear and unambiguous. There is simply no capacity to depart from the form and content of the notice template provided in the Regulations. A failure to comply with these provisions goes to invalidity. We agree with the Minister's submissions on this point, that is:
>
> > "a mandatory template is provided in the Regulations. The provisions make it clear that there is no scope to modify either the content or the form of the Notice other than as set out in the template."
>
> [47] Taking into account the considerations identified in *Project Blue Sky* we have concluded that the legislative purpose of s.174(1A) is to invalidate any Notice which modifies either the content or form of the Notice template provided in Schedule 2.1 of the Regulations…."

[41] On 8 March 2018 several hours before the hearing the Applicant sent email correspondence to my chambers stating that the CFMEU outline of objections was late, and that the CFMEU had failed to comply with the Direction to provide submissions as to whether it should be heard. The Applicant submitted that the CFMEU had forgone its opportunity to be heard by failing to file and serve material as directed and therefore should no longer be heard.

[42] At the commencement of the hearing on 8 March the CFMEU submitted it was content to confine its submissions to matters concerning the validity of the NERR. I granted the CFMEU permission to be heard on that basis.

[43] The Applicant referred to three cases in support of its submission that the notice as issued was valid. The Applicant referred to a decision of Deputy President Asbury in *Falcon Mining Pty Ltd* [2], a decision of Commissioner Cambridge in *DP World Brisbane Pty Ltd*[3] and

a Full Federal Court decision in *Shop Distributive and Allied Employees Association v ALDI Foods Pty Ltd*[4].

[44] In the *Falcon Mining* matter Deputy President Asbury found that an error in the fields of the NERR in respect of the name of the employer and the name of the Agreement amounted to minor typographical errors that did not render the NERR invalid. Deputy President Asbury included in her reasons that there was no evidence that the employees were misled about the coverage of the Agreement or the identity of the employer party who was proposing to make the Agreement.[5]

[45] In the *DP World Brisbane* matter Commissioner Cambridge found an incorrect date in the title of the agreement referred to the NERR is not a matter that represents a material change to the form and content prescribed by the NERR and did not invalidate a NERR,[6] however went on to find the issuing of the NERR on the Employers letterhead had the effect of altering the character of the document to the extent that it was invalid.[7]

[46] In *SDA v ALDI* the judgement of Jessup J expressed the view that it would not have been in error jurisdictionally to have read s 174(1A) as permitting a reference to "leader" instead of "employer".[8] Katzmann J disagreed with that view[9] and White J did not express a concluded view on the matter.[10]

[47] The CFMEU's submission without repeating it, in short rested on the authority in *Peabody*.

[48] In a Full Bench decision in *KCL Industries Pty Ltd*[11] the circumstances in that matter involved the first paragraph of the NERR having been restructured into two separate sentences. The Full Bench described that particular change as being arguably a triviality with which s.174(1A) might not be concerned. However the Full Bench did not make a formal finding on the point in that matter as it was unnecessary to do so given the NERR was invalid for other reasons.

[49] A later Full Bench decision dealing with three separate decisions to approve three separate enterprise agreements each involving the Maritime Union of Australia[12] referred to the decision in the *SDA v ALDI* matter and concluded the proper course on the facts of the matters before it was to follow *Peabody*.[13] However that matter was concerned with the insertion of an incorrect telephone number. The Full Bench said as follows;

> "[101] …..Even if the requirement for strict compliance still allowed some capacity for errors of an entirely trivial nature to be overlooked (the possibility of which was adverted to by Jessup J in *Aldi* at [49] and by the Full Bench in *KCL* at [17]) we do not consider that the defect in the NERR's here could be characterised as trivial for the reason we have given."

[50] The issue that arises does not do so from the words used in the body of the notice, as those words conform to the legislative requirements. The NERR was not issued on a letterhead or with a logo of any kind. The issue raised is that the following words in capital letters and bold type appear at the head of the notice "**FAIR WORK REGULATIONS 2009 – SCHEDULE 2.1**".

[51] Those words appearing as a heading above the notice would not have the potential to mislead employees in relation to the proposed Agreement. It would appear the presence of the words has no effect in relation to the notice. It does not in any material way change the form and content prescribed by the NERR. I am satisfied that the inclusion of the words at the head of the document are so trivial as to fall within the ambit of the circumstances contemplated by Jessup J in *Aldi* at [49] and by the Full Bench in *KCL* at [17]. On that basis I am satisfied that the notice is valid.

Conclusion

[52] I am satisfied in all of the circumstances it is fair to extend the period for filing and have determined to do so. I am also satisfied by the Applicant's responses and the amended Form F17 in relation to the issues set out above including the steps taken to provide the NERR, notification of the vote, coverage of employees, the time between the issuing of the NERR and the Agreement being made. I accept the undertakings offered and on the basis of those undertakings I am satisfied that the Agreement satisfied the BOOT.

[53] I am satisfied that each of the requirements of ss186, 187 and 188 as are relevant to this application for approval have been met.

[54] The Agreement is approved and will operate in accordance with s.54 of the Act.

COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<AE427588 PR601083>

---

[1] [2014] FWCFB 2042.

[2] [2016] FWC 5315.

[3] [2016] FWC 385.

[4] [2016] FCAFC 161.

[5] [2016] FWC 5315 at para [133].

[6] [2016] FWC 385 at para [8].

[7] [2016] FWC 385 at paras [11] to [13].

[8] [2016] FCAFC 161 at para [49].

[9] [2016] FCAFC 161 at para [70].

[10] [2016] FCAFC 161 at para [176].

[11] [2016] FWCFB 3084 at [17].

[12] [2017] FWCFB 660.

[13] [2017] FWCFB 660 at [98].

ATCO Structures & Logistics Pty Ltd

(Queensland) Enterprise Agreement 2017

Table of Contents

1. Title

This is the *ATCO Structures & Logistics Pty Ltd (Queensland) Enterprise Agreement* 2017 ("Agreement").

2. Parties to the Agreement

The parties to the Agreement are:

(a) ATCO Structures & Logistics Pty Ltd ("Employer"), and

(b) All employees of the Employer engaged in any of the classifications set out in Clause 14 who are usually engaged in working for the Employer in Queensland ("Employee(s)"), together referred to as the "Parties".

3. Application of the Agreement

This Agreement will apply to the Employer and to its Employees engaged in the classifications set out in Clause 13 and performing work in relation to the Employer's business anywhere within Queensland, except where such Employees are covered by a greenfields agreement.

4. Duration of the Agreement

4.1 The Agreement commences operation from 7 days after the Agreement is approved by the Fair Work Commission.

4.2 The Nominal Expiry Date of the Agreement is 31 August 2021.

5. No Extra Claims

5.1 The Employees will not pursue any extra claims for any entitlement or benefit which pertains to the relationship between the Employer and its Employees, whether Award or over Award, prior to the Nominal Expiry Date of this Agreement.

5.2 The Employees will not take industrial action in support of extra claims, whether award or over award, prior to the Nominal Expiry Date of this Agreement.

6. Contract of Employment

6.1 To suit the specific needs of the employer's business, Employees may be engaged on either a full-time or part-time basis and may be employed as either

(a) Permanent employees; or

(b) Employees engaged for a specified period or project ("fixed term employees); or

(c) Casual employees.

6.2 All Employees will be subject to a 6 month probation period.

6.3 There must be no demarcation or restrictions between functions or organisational status including between traditional crafts, occupations, or vocations or callings.

6.4 An Employee may be required to perform any functions provided the Employee has the required skill, training, qualifications and experience necessary to safely discharge those functions and provided that such functions must be performed in accordance with safe, legal and practical work practices.

6.5 If, in accordance with the previous paragraph, an Employee is allocated to work for which the wage rate prescribed by this Agreement is higher than the rate for the job he usually performs, he will be paid at the higher rate for the time during which he performs that work. However, if an Employee is allocated to work for which the wage rate prescribed by this Agreement is lower than the rate for the job he usually performs, he will continue to be paid at the rate for the job he usually performs.

6.6 The required level of flexibility and skill is reflected in the minimum wage rates for each classification.

7. Termination

7.1 Termination of the employment of a non-casual Employee must be in accordance with the provisions of the *Fair Work Act* 2009.

7.2 In the case of Employees engaged on fixed term contracts, the employment will terminate at the expiration of that fixed term, unless terminated earlier by the Employer for a valid reason or by the Employee.

7.3 Where notice Is not given by the Employee.in accordance with Clause 7.1 herein the Employer is entitled to withhold monies from the Employee's final payment but not exceeding the amount the Employee would have been paid in respect to the period of notice required less any notice actually given.

7.4 Payment in lieu of notice must be made if the appropriate notice period is not given by the Employer. The employment may be terminated by giving part of the period of notice and part payment in lieu. Payment in lieu of notice must be at the full rate of pay for the hours the Employee would have worked had the employment continued until the end of the minimum period of notice.

7.5 The absence of an Employee from work for a continuous period exceeding three working days without the consent of the Employer and without notification to the Employer is reasonable evidence that the employee has abandoned their employment.

7.6 Nothing in this clause affects the right of the Employer to summarily dismiss an Employee for conduct that justifies this action.

8. Redundancy

In the event of an Employee being made redundant any entitlement to a redundancy payment must be determined in accordance with the NES.

9. Safety

Employees will comply with the relevant Acts, Regulations, Codes of practice and the Employers Occupational Safety Policies and Procedures (as amended from time to time). It is a requirement to wear and maintain personnel protective equipment and safety equipment whilst in areas requiring such equipment. In particular this means the wearing of high visibility long sleeve shirts/vests, hard hats (where required), safety glasses and approved safety boots and the completion of pre-start check documentation and required ATCO safety system administrative controls.

10. Drug and Alcohol Testing

The Employer is entitled to carry out drug and alcohol testing during the life of this Agreement on Employees during work hours at the Employee's place of work.

11. Consultation

The parties to the Agreement will be bound by the consultation term in schedule 1.

12. Flexibility

The Parties to the Agreement will be bound by the flexibility term in schedule 2.

13. Classification Structure

The following table sets out the classification of Employees covered under this Agreement. Where a role differs from the classification matrix below, the role will be matched against the closest higher classification level per the table below.

Classification Level	Classification Description
Level 1	General Labourer (Factory / Yard), Cleaning & Housekeeping, Equipment Spotter & Traffic Management, Storeperson
Level 2	Skilled Labourer, Construction Site Labourer, Trades Assistant, Steel Fixer, Scaffold Assembler, Concrete Pump Line hand,
Level 3	Building Installer, Welder, Forklift Operator, Skilled Yard Worker (building repair & retrofit), Skid Steer Operator, Water Truck Operator / Dump Truck Operator < 10t, Excavator Operator < 10t, Concrete Pump Operator
Level 4	Qualified Tradesperson, Skilled Building Installer (site setout, service setout, install coordination), Skilled Factory Assembler, Rigger & Dogmen
Level 5	Crane Operator
Level 6	Leading Hand, Crane Operator equal to or greater than 200t

14. Wages and Remuneration

14.1 Employees must be paid in accordance with the following table of minimum ordinary hourly rates.

Classification	Ordinary Hourly Rate x(1.0)	Time and Half Rate x(1.5)	Double Time Rate x(2.0)
Level 1	$23.13	$34.70	$46.26
Level 2	$24.33	$36.50	$48.66
Level 3	$26.01	$39.02	$52.02
Level 4	$29.67	$44.51	$59.34
Level 5	$31.15	$46.73	$62.30
Level 6	$32.64	$48.96	$65.28

14.2 These wage rates will increase by 2.5% in each of the years 2018, 2019 and 2020 operative from 1 September in each of those years.

14.3 Current employees will continue to receive the ordinary hourly rate of payment they were receiving at the date when this Agreement was made and will receive pay rises in accordance with Clause 14.2.

14.4 The minimum hourly rates of pay set out above incorporate all the Award loadings and allowances including, but not limited to

(a) Annual leave loading;

(b) Industry allowance;

(c) Special allowance;

(d) Leading hand allowance;

(e) Fares and travel patterns allowance;

(f) Tool allowance for the Tradesperson classification;

(g) Classification and industry specific allowances; and

(h) Industry Specific Redundancy Scheme;

but not including those expressly specified in this Agreement.

14.5 For casual employees the minimum ordinary hourly rate must be the Ordinary Hourly Rate as set out in the Table plus 25%.

Apprentices

14.6 The ordinary hourly rate of pay for an apprentice will be no less than the below:

	% of the Agreement standard (trade) rate for apprentices who have not completed year 12	% of the Agreement standard (trade) rate for apprentices who have completed year 12
First Year	52	57
Second Year	62	67
Third Year	77	77
Fourth Year	92	92

14.7 The ordinary rate of pay for an adult apprentice (over 21 years of age) will be not less than that prescribed for an Employee classified as a trades assistant under the Agreement.

Payment of Wages

14.8 Wages **must** be paid on a weekly basis by electronic fund transfer to an acceptable financial institution nominated by the employee.

14.9 The Company may deduct from an employee's wages, or any monies owing, any amount it is authorised or required to deduct, including any overpayment of remuneration or any amount provided for by this Agreement.

15. DISTANT WORK

15.1 Where employees are required to work at a location away from the Company's premises which is such a distance that they cannot reasonably be expected to return home at night, the Company will provide one of the following to Employees at its election:

(a) All board, accommodation and messing free of charge where the Employee is required to live in a camp.

(b) Reasonable board and lodging in a well-kept establishment with three adequate meals each day.

(c) A minimum living away from home allowance of $438.25 per complete week of work. In the case of broken parts of the week the living away from home allowance will be $62.70 per day (LAFHA).

15.2 Where employees are provided with camp accommodation they are required to comply with the relevant rules for that camp.

15.3 Where distant work is required the employee will be paid at their ordinary rate of pay for time spent travelling up to a maximum of 7.6 hours per day. This travel time payment will only be paid on the Employee's initial mobilisation to site and their final demobilisation from site. The Company will provide appropriate transport or pay for the transport costs.

16. Hours of Work

16.1 The ordinary hours of work must be an average of 38 hours per week Monday to Sunday Friday to be worked over a nominated work cycle, which must be over a period no greater than 3 months.

16.2 The normal span of hours is 6:00 am to 6:00 pm (except for shift workers). The span of hours may be altered on particular work sites or for particular parts of the year, by agreement with a majority of affected workers, by up to one hour at either end or both ends of the span.

16.3 An Employee may be required to work on a site or project on which hours are arranged on a system which provides for employees to accrue rostered days off (RDOs). The application of an RDO roster system will apply to site and project works only. Where Employees are engaged on site and project works, the ordinary hours worked must be an average of 36 hours per week Monday to Sunday to be worked over a nominated work cycle, which must be over a period no greater than 3 months.

16.4 If, in such a case, the Employer elects to roster the Employee on a system which provides for the accrual of RDOs then:

(a) the Employee will accrue one RDO for every two weeks worked by working eight hours each day, being paid 7.2 ordinary hours' pay and accruing 0.8 of an hour towards an RDO;

(b) RDOs shall not be accrued during any period of leave or absence from work, except for paid public holidays;

(c) at the time of termination, any untaken RDO accrual hours shall be paid to the Employee at ordinary rates.

16.5 No more than 8 ordinary hours will be worked on any day.

16.6 Work done outside of ordinary hours will be payable at overtime rates as provided for in clause 9.

Meal and Rest Breaks

16.7 Employees are entitled to a paid 20-minute morning rest break.

16.8 Employees are entitled to a 30-minute unpaid meal break after not more than 5 hours' work, except where otherwise required by the Company. Where the Company requires the break to be taken at a later time, the Company will consult with the affected employees. Payment for this break shall not be counted towards the employee's ordinary hours of work.

17. Shift Work

17.1 As a condition of employment, the employees agree to work shift work when required to do so by the Company.

17.2 The Company can require employees to work shift work but before it does so, it must give 24 hours' notice of its intention to introduce shift work. The notice will include advice on the intended starting and finishing times of the respective shifts. However, less than 24 hours' notice may be given in the event of safety or emergency requirements.

17.3 For the purposes of this clause:

(a) 'Night shift' means any shift commencing at or after 6.00pm and before 11.00pm; and

(b) 'Afternoon shift' means any shift commencing at or after 1.00pm and before 6.00pm.

17.4 The ordinary hours of work for shift workers are a maximum of 38 hours per week Monday to Friday inclusive. No more than 8 ordinary hours will be worked on any shift.

17.5 Where an employee is employed continuously for five night or afternoon shifts Monday to Friday, they will be paid a flat loading of 50% of the ordinary rate for each hour worked.

17.6 Where less than five consecutive shifts are worked then employees shall be paid at overtime rates in lieu of shift loading, except when the shift process has come to an end in the last week and less than five consecutive days is required to finish the work.

17.7 The consecutive nature of shifts will not be regarded as broken, if work is not carried out on an RDO, public holiday, Saturday or Sunday.

17.8 The ordinary hours on shift work will include a meal break without deduction of pay, not exceeding thirty (30) minutes. Rest period and meal break provisions for shift work will apply as per clauses 7.6 and 7.7 of this Agreement.

18 Additional Hours / Overtime

18.1 The Employer may require Employees to work reasonable additional hours in excess of their ordinary hours.

18.2 Additional hours worked beyond 7.6 hours on any single day between Monday to Friday must be paid at the Time and a Half Rate for the first two hours and Double Time Rate thereafter. Payment for Saturday must be paid at the Time and Half Rate for the first 2 hours and Double Time Rate thereafter. All hours worked on Sundays and Public Holidays must be paid at the Double Time Rate. Where ordinary hours are rostered for Saturday or Sunday, the penalty rates provided in this clause are applicable.

18.3 There must be a ten-hour break between cessation of work on one day or night shift and commencement of work on the next day or shift, otherwise double time must apply until a ten hour break is taken.

Saturday and Sunday Work

18.4 Where ordinary hours are rostered for a Saturday, Sunday or Public Holiday, the penalty rates provided in Clause 18.2 are applicable.

19. Superannuation

The Employer must pay superannuation in accordance with the provisions of the Superannuation Guarantee (Administration) Act 1992 as amended from time to time into the Employee's nominated superannuation fund. This will satisfy the statutory requirements for occupational superannuation.

20. Wet Weather/ Downtime

During periods of inclement weather that prevents work being performed at a workplace, the Employer, where practical, must transfer employees to an alternative workplace not so affected, or to the Employer's depot! yard to perform maintenance, service-type duties or training.

21. National Employment Standards – Relationship with this Agreement

21.1 The National Employment Standards (NES) apply to all employees covered by this Agreement by virtue of sections 55 and 61 of the *Fair Work Act* 2009.

21.2 In summary, the NES provide the following entitlements:

(a) An employee may not be required to work, on average, more than 38 hours per week unless the requirement to work additional hours is reasonable.

(b) An employee with 12 month's service has the right to request a change in working arrangements to assist the employee in certain specified circumstances (e.g., to care for a child under school age). The employer can refuse the request on reasonable business grounds.

(c) Up to 12 months' unpaid parental leave, with an employee right to request an extension for a further period of up to 12 months. The employer can refuse the request on reasonable business grounds.

(d) Four weeks annual leave per annum for non-casual employees, with an additional week for certain continuous shift workers.

(e) Up to 10 days per annum paid personal/carer's leave for non-casual employees.

(f) Up to two days unpaid carer's leave per occasion for casuals and employees who have exhausted their paid carer's leave entitlements.

(g) Up to two days paid compassionate leave per occasion.

(h) Paid jury service leave and unpaid leave for eligible community service activities.

(I) Long service leave consistent with the long service leave provisions applicable to employees prior to the commencement of the NES (e.g., in many cases, long service leave entitlements arise under State legislation such as the *Industrial Relations Act* 2016 (Qld) – but see Clause 8.4).

(j) Public holidays.

(k) Notice of termination and redundancy pay, subject to certain exclusions.

(l) The provision of a Fair Work Information Statement to new employees.

21.3 The NES apply to employees covered by this Agreement, as a minimum standard. Where this Agreement provides terms and conditions more beneficial than the NES, the terms and conditions of this Agreement apply.

21.4 With respect to Long Service Leave, where State legislation concerning long service leave for employees applies to an employee covered by this Agreement, an employee's entitlement to Long Service Leave arises under that State legislation.

21.5 The text of this Clause is included in this Agreement for information purposes only and is not intended to take effect as an operative provision of this Agreement or otherwise provide any entitlements beyond those created by the NES provisions of the FW Act.

22. Annual Leave – Definition of Shiftworker for Purposes of FW Act s.87(1)(b)

A shift worker (other than a casual employee), defined as an Employee whose shifts are continuously rostered 24 hours a day for 6 days a week, is entitled to an additional one week's annual leave for each year of continuous service consistent with the NES, with the amount of additional leave accruing pro rata according to the proportion of time employed on such shift work.

23. Dispute Resolution

23.1 If a dispute relates to a matter arising under:

(a) the Agreement; or

(b) the NES;

this term sets out procedures to settle the dispute.

23.2 An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

23.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and supervisor concerned.

23.4 If the matter cannot be resolved in the first instance, it will be referred to the next level of management for further discussion with the Employee or Employees concerned, and with other representatives as requested by either or both of the parties.

23.5 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWC.

23.6 FWC may deal with the dispute in 2 stages:

(a) FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) if FWC is unable to resolve the dispute at the first stage, FWC may then:

(i) arbitrate the dispute; and

(ii) make a determination that is binding on the parties.

23.7 If FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

23.8 A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

23.9 Any determination by the FWC or other binding outcome of the FWC proceedings must be consistent with the Building Code 2016 in order to meet the requirements of section 15(1)(b) of the Building Code 2016.

23.10 While the parties are trying to resolve the dispute using the procedures in this term:

(a) an Employee must continue to perform his or her work as he or she would normally perform unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) an Employee must comply with a direction given by the Employer to perform other available work at the same workplace, or at another workplace, unless:

(i) the work is not safe; or

(ii) applicable occupational health and safety legislation would not permit the work to be performed; or

(iii) having regard to the Employee's skill, qualifications, training and expertise the work is not appropriate for the Employee to perform; or

(iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.

23.11 The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.

Signatures

Employer

Signed for and on behalf of **ATCO Structures & Logistics Pty Ltd (ABN 71 083 902 309)**.

Signature on behalf of the Company	GLEN PARSONS Name of person authorised to sign	Date: 26/09/17

SENIOR MANAGER CORPORATE COMPLIANCE
Position

149 - 151 MAGNESIUM DRIVE, CRESTMEAD QLD 4132
Address Post Code

For Employee

Signed for and on behalf of the employees covered by this Agreement

Signature of Employee Representative	RICK BOWMAN Name of Employee	Date: 11/10/17

Employee Bargaining Representative
Authority to Sign

10 mclean st Eagleby 4207
Address Post Code

Schedule 1: Consultation

(1) This term applies if the employer:

(a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

(b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

(2) For a major change referred to in paragraph (1)(a):

(a) the employer must notify the relevant employees of the decision to introduce the major change; and

(b) subclauses (3) to (9) apply.

(3) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(4) If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

(b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

(5) As soon as practicable after making its decision, the employer must:

(a) discuss with the relevant employees:

(i) the introduction of the change; and

(ii) the effect the change is likely to have on the employees; and

(iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

(b) for the purposes of the discussion—provide, in writing, to the relevant employees:

(i) all relevant information about the change including the nature of the change proposed; and

(ii) information about the expected effects of the change on the employees; and

(iii) any other matters likely to affect the employees.

(6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

(8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.

(9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:

(a) the termination of the employment of employees; or

(b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or

(c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

(d) the alteration of hours of work; or

(e) the need to retrain employees; or

(f) the need to relocate employees to another workplace; or

(g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

(10) For a change referred to in paragraph (1)(b):

(a) the employer must notify the relevant employees of the proposed change; and

(b) subclauses (11) to (15) apply.

(11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(12) If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

(b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

(13) As soon as practicable after proposing to introduce the change, the employer must:

(a) discuss with the relevant employees the introduction of the change; and

(b) for the purposes of the discussion—provide to the relevant employees:

(i) all relevant information about the change, including the nature of the change; and

(ii) information about what the employer reasonably believes will be the effects of the change on the employees; and

(iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and

(c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

(14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

(16) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).

Schedule 2: Flexibility

1.1 An Employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement if:

(a) The Agreement deals with any one or more of the matters with respect to which this Agreement makes provision except

(i) Clauses 1 to 7;

(ii) Clauses 9 to 13;

(iii) Clause 19;

(iv) Clause 24 (except where a provision of the Individual Flexibility Agreement confers on the employee an entitlement more favourable to the employee than the relevant NES entitlement);

(v) Clause 25;

(vi) Clause 28; and

(vii) Schedules 1 and 2.

(b) The arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and

(c) The arrangement is genuinely agreed to by the Employer and Employee.

1.2 The Employer must ensure that the terms of the individual flexibility agreement:

(a) are about permitted matters as defined in section 172 of the Act;

(b) are not unlawful terms as defined in section 194 of the Act;

(c) result in the Employee being better off overall than the Employee would have been if no such agreement was made.

1.3 The Employer must ensure that the individual flexibility agreement:

(a) is in writing; and

(b) includes the name of the Employer and Employee; and

(c) is signed by the Employer and Employee and if the Employee Is under 18 years of age, signed by a parent or guardian of the employee; and

(d) includes details of:

(i) the terms of this Agreement that will be varied; and

(ii) how the agreement will vary the effect of the terms; and

(iii) how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the agreement; and

(e) states the day on which the agreement commences.

1.4 The Employer must give the employee a copy of the individual flexibility agreement within 14 days after it is agreed to.

1.5 The Employer or Employee may terminate the individual flexibility agreement:

(a) by giving no more than 28 days written notice to the other party to the agreement; or

(b) if the Employer and Employee agree in writing at any time.

Undertaking by ATCO Structures & Logistics Pty Ltd to Fair Work Commission

in relation to

***ATCO Structures & Logistics Pty Ltd (Queensland) Enterprise Agreement* 2017**

ATCO Structures & Logistics Pty Ltd ("**ATCO**") undertakes to the Commission that, in interpreting and applying the *ATCO Structures & Logistics Pty Ltd (Queensland) Enterprise Agreement* 2017 it will

(1) Interpret and apply the table set out in Clause 14.1 as though the second column in that table provided for hourly wage rates that are 50 cents per hour higher for each classification; and

(2) Interpret and apply the provisions of Clause 14.4 as though paragraph (h) was omitted from those provisions.

ATCO has sought the views of all bargaining representatives in relation to the above undertakings and none of them has expressed any objections.

Yours faithfully,

Glen Parsons
Senior Manager, Corporate Compliance

Authorised representative of ATCO Structures & Logistics Pty Ltd

Date - 30/01/18