



STATEMENT

Fair Work Act 2009
s.590 application

Fair Work Commission
(C2016/2519)

COMMISSIONER CLOGHAN

PERTH, 2 MAY 2016

The Griffin Coal Mining Company Pty Ltd and AMWU.

[1] Griffin Coal Mining Company Pty Ltd (**Griffin Coal**) has made application for the termination of the *Griffin Coal (Maintenance Collective Agreement 2012 (Maintenance Agreement))* pursuant to s.225 of the *Fair Work Act 2009 (FW Act)*.

[2] At the “heart” of the application to terminate the Maintenance Agreement is Griffin Coal’s financial position.

[3] Separately, but related to the application to terminate the Maintenance Agreement, Griffin Coal and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers’ Union (**AMWU**) have been in discussions on a replacement enterprise agreement to the Maintenance Agreement.

[4] Since February 2016, the Fair Work Commission (**Commission**) has facilitated over 15 conferences to assist the parties in reaching agreement on a replacement agreement.

[5] From my perspective, a significant impediment to securing a replacement enterprise agreement has been a reluctance and, in some instances, a resistance to acceptance of Griffin Coal’s alleged financial position. I was satisfied that this reluctance and/or resistance was not malevolent but due to a lack of independent and impartial information, at “arms length” from Griffin Coal itself.

[6] To overcome this unhelpful situation in bargaining for a replacement enterprise agreement, I suggested to the AMWU that it consider commissioning expert accounting advice from a firm of accountants. Ernst & Young Australia (**EY**) was selected.

[7] A partner of EY has had access to the witness statement of Mr Roy in the termination proceedings, Griffin Coal’s statement of facts and inference (used in the termination application), copies of domestic supply contracts and various financial reports. In addition, two partners of EY attended a Commission conference, and for a period of nearly two (2)

hours, listened to and had the opportunity to ask questions relating to Griffin Coal's financial position.

[8] On 6 April 2016, Mr Smith, Partner, prepared for the AMWU, a report which is entitled "Investigative Accountant's Review of Griffin Coal Mining Company Pty Ltd" (**EY Report**). The EY Report was tendered into evidence as part of the termination of the Maintenance Agreement proceedings on 8 April 2016.

[9] Griffin Coal and the AMWU consider the following as a fair and accurate representation of the key financial position of Griffin Coal as reflected in the EY Report and evidence given in the termination of the Maintenance Agreement proceedings.

[10] This Statement is provided both for the information of employees and to assist in the process of securing a replacement enterprise agreement to the Maintenance Agreement. The key statements regarding Griffin Coal's financial position are as follows:

- Griffin Coal has experienced significant trading losses both at the Gross Profit line and also Profit Before Tax line in all financial periods from 2011 to year to date 2016;
- the trading losses equate to a cumulative loss for the period of 2011 to year to date 2016 of \$293.4 million and an average gross margin loss of \$48.9 million per year;
- given these losses, Griffin Coal only continues to operate with the financial support of its parent company, Lanco Infratech Limited;
- production in 2015 was approximately 2.26 million tonnes. Griffin loses money on every tonne of coal produced and sold. There is a significant gap between the cost per tonne incurred by Griffin Coal in running its operation and the income it receives from sales to customers. The prices for coal supplied to domestic customers are set under long term contracts;
- Griffin's largest operating cost is labour. The total for wages and salaries in 2015 (which includes maintenance and production employees, and staff) accounted for 43% of Griffin's total operating costs;
- a company should create a redundancy provision in instances where employees have been notified that they are going to be made redundant before year end. As no employees have been notified of redundancy, no employee redundancy entitlements are recorded in Griffin Coal's current financial statements;
- Griffin Coal's immediate financial goal is to reduce its operating losses and become profitable so that it is sustainable for all stakeholders, including the sustainability of employment for employees.

Danny Goghun

