

9th March 2017

SUBMISSION TO SENATE INQUIRY INTO “THE INCIDENCE OF, AND TRENDS IN, CORPORATE AVOIDANCE OF THE FAIR WORK ACT 2009”

INTRODUCTION

1. This submission is made by and on behalf of 70 members of the AMWU and ETU employed by Parmalat Australia at the company’s Echuca site who have been locked out from work, without pay, since 18th January 2017.
2. This submission addresses the following matters contained in the Inquiry’s Terms of Reference:
 - “(a) the use of labour hire and/or contracting arrangements that affect workers’ pay and conditions;
 - “(c) the use of agreement termination that affects worker’s pay and conditions;” and
 - “(k) the economic and fiscal impact of reducing wages and conditions across the economy;”

BACKGROUND INFORMATION

3. Parmalat Australia is a major manufacturer of dairy products in Australia. For the calendar year of 2015 (last financial report available), Parmalat Australia had a sales revenue of \$1.65 billion and reported a profit of \$58.5 million for the year.
4. Parmalat Australia is part of the multi-national European based Lactalis Group of companies. Lactalis is the largest dairy products manufacturer in the world.
5. In late February 2016, Parmalat Australia took over the ownership and operation of the Fonterra Echuca dairy products manufacturing site. Under the sale agreement between Fonterra and Parmalat, all existing Fonterra Echuca employees transferred in their employment from Fonterra to Parmalat. Parmalat committed to recognize all employment service with and recognized by Fonterra and to assume responsibility for all accrued employment entitlements of the Echuca site employees. On taking over the Echuca site, under transmission of business provisions, Parmalat was bound by the Fonterra (Echuca) Agreement 2015. This was the Enterprise Agreement that covered the Echuca site and its employees immediately prior to Parmalat taking over.

6. The Fonterra (Echuca) Agreement 2015 contains employment conditions that have applied at the site for many years. Many of the provisions have been in Enterprise Agreements covering the site for more than fifteen years. These include: hours of work provisions, redundancy pay entitlements, classification arrangements and penalty rate provisions. This Agreement also contains wage rates that are comparable to other dairy product manufacturers in the Goulburn Valley and major food manufacturers also based in Echuca.

PARMALAT STRATEGY TO ATTACK EMPLOYMENT CONDITIONS

7. The Fonterra (Echuca) Agreement 2015 had a nominal expiry date of 31st August 2016. The company and unions commenced negotiations for a new Enterprise Agreement in July 2016.
8. At the start of enterprise agreement negotiations, Parmalat presented a very aggressive log of claims attacking Echuca site employment conditions. The following were part of the company log of claims:
 - A four year wage freeze;
 - A reduction of employer superannuation contributions;
 - The company to have total freedom to engage contractors and labour hire personnel to do the work on the Echuca site. No minimum wage rates and employment conditions were to apply to such labour. (This would result in a 40% to 50% reduction in wage rates paid on the site);
 - A significant reduction to employee rights in relation to union representation.
9. Understandably Echuca site employees and their unions totally rejected the company log of claims and their attack on wage rates and employment conditions.
10. In early October 2016, after union members rejected the company log of claims, Parmalat applied to the Fair Work Commission (FWC) to terminate the existing Enterprise Agreement. The company made this application to the FWC only **five weeks** after the Echuca site Agreement reached its nominal expiry date.
11. If the FWC approved this Agreement termination application, it would result in catastrophic reductions in wages and employment conditions for all Echuca site employees. This would include a minimum 40% reduction in hourly wage rates, significantly reduced penalty rate entitlements and the maximum redundancy payment would be capped at 16 weeks pay. This means an employee with 20 years of service currently entitled to a \$100,000 redundancy pay out would get no more than \$20,000.

12. After receiving this Agreement termination application, the FWC set down 16th & 17th February 2017 for two days of hearings in Echuca to consider the matter. The FWC also set down a process for the company and unions to provide evidence and submissions to the FWC in the lead up to the Agreement termination application hearings in Echuca.
13. Between early October 2016 and mid-January 2017, Parmalat and the unions continued to engage in Enterprise Agreement negotiations at the Echuca site. Some progress was made in these negotiations but Parmalat continued to maintain an aggressive position attacking employment conditions at the site. Additionally, the Agreement termination application continued to be a live matter before the FWC with the threat to bring about a catastrophic reduction in wage rates and employment conditions if the employees did not satisfy Parmalat's agenda.
14. In this situation, Echuca site union members gave the company notice that they planned to commence taking protected industrial action. This industrial action involved three four hour stoppages of work on 18th January 2017 and bans on overtime and call backs. Soon after the commencement of the first four hour stoppage of work, the company implemented an indefinite lock out of Echuca site employees.
15. At the same time as implementing this lock out and in the lead up to the February 2017 FWC hearing to consider Parmalat's application to terminate the existing Echuca site Agreement, the company changed its claims for the new replacement Echuca Agreement and introduced totally new claims. These new claims included:
 - The introduction of a new lower wage rate structure for new Echuca site employees. Under this proposed wage rate structure, new employees would be paid between \$8.00 and \$11.00 an hour less than existing site employees.
 - The right for the company to come up with and implement new seven day week shift rosters on terms that they consider appropriate. This would enable the company to substantially reduce penalty rate entitlements and could cause major disruptions and family problems for Echuca site employees.
16. Following the implementation of the indefinite company imposed lock out, Parmalat and the unions have continued to have enterprise agreement negotiations. Six weeks into the lockout, some further progress has been made in these negotiations but Parmalat is still seeking to attack and reduce site employment conditions.
17. On 6th February 2017, the Fair Work Commission notified the company and unions that the Deputy President appointed to consider Parmalat's application to terminate the Echuca site Agreement was too busy to proceed with the hearings that had been set down for 16th and 17th February 2017 in Echuca. The Commission has now re-scheduled these two days of hearings for 19th and 20th April 2017 in Shepparton.

18. On 20th February 2017, Parmalat notified Echuca site employees that it planned to conduct an employee vote on a company proposal for a new Echuca site Agreement. Employees were told this Enterprise Agreement vote would be conducted by Commissioner Ryan of the Fair Work Commission on 3rd March 2017. In seeking employee support for this proposed Enterprise Agreement, Parmalat tried to use its Fair Work Commission application to terminate the existing Echuca site Agreement as a significant point of leverage to pressurize employees to accept this proposed Agreement. On 22nd February 2017, Parmalat told employees that the company's "application to terminate the current Echuca EBA" would be withdrawn if this proposed Agreement was accepted "by a valid majority of employees".
19. On 3rd March 2017, 98% of Parmalat Echuca employees voted to reject the new site Enterprise Agreement proposed by Parmalat. The employees did this because we do not believe we should have to accept reductions in employment conditions.

ECONOMIC AND FISCAL IMPACT OF PARMALAT'S TERMINATION OF AGREEMENT APPLICATION

20. If the Fair Work Commission approved Parmalat's application to terminate the existing Echuca site Enterprise Agreement, the wage rates of all employees would be reduced by at least 40%. Such an Agreement termination would result in further reductions in wages with lower overtime and shift penalty loadings applying. The combined effect of the application of award wage rates and penalty loadings would be an approximate 50% reduction in the wage entitlements paid to Echuca site employees. This would mean that the annual wage bill paid to the current 70 Echuca site employees would be millions of dollars a year less than was paid to these employees in the calendar year 2016.
21. The effect of such an annual wage payment reduction would not only be felt by the Echuca site employees. Most of the wages paid to these workers are spent in the Echuca region and therefore such a major wage payment reduction would have a deleterious effect on employment and economic activity generally in the region. Many employees would not be able to meet their existing housing mortgage payment obligations and this reduction would dramatically reduce the amount and value of the consumer goods they purchase from local shops and retailers.

ISSUES WITH THE FAIR WORK ACT 2009

22. With its July 2016 Enterprise Agreement log of claims and during months of enterprise agreement negotiations, Parmalat has pressured Echuca employees to agree to Enterprise Agreement terms that would give it the right to engage labour hire personnel and contractor labour on terms that would only have to comply with Award conditions rather than site Enterprise Agreement conditions. There has been no operational reason that warrants the engagement of labour hire personnel and contractors on this basis. This is about Parmalat wanting to pocket hundreds of thousands of dollars a year

in wage payments. The law should stop employers from being able to avoid paying long standing wage rates by moving to engage labour hire personnel and contractor labour. Further, the law should also stop employers' from using a claim to introduce labour hire personnel and contractors as a point of bargaining leverage to pressure employees to accept reductions in established employment conditions.

23. When Parmalat took over the Echuca site in February 2016 it knew it was accepting the terms and obligations of the established site Enterprise Agreement. The terms of this Agreement were no secret and were available for study and review after a simple two minute Google search. Simple due diligence by the company prior to its takeover would have revealed the contents of the Agreement. Less than eight months after taking over the site and five weeks after the Agreement's nominal expiry date, Parmalat applied to the Fair Work Commission to terminate this Agreement. Parmalat was effectively seeking to reduce employees' wage and employment conditions to award standards/level. The law should fully protect Enterprise Agreement employment conditions and provide that the agreement of the employer and the employees concerned is required to remove or change such employment conditions.
24. On 25th January 2017, after having locked out employees for one week, Parmalat proposed, as part of settling the terms of the new Agreement and getting everyone back to work, that a new two tiered wage structure should apply at the Echuca site. Under this company proposal, existing employees would receive a 9% wage increase paid over three years and all new employees would be paid under a different wage structure that had wage rates 20% lower than applied to existing employees with the same or comparable skills/jobs. This company proposal was unanimously rejected by Echuca site union members. The law should not allow an Enterprise Agreement to contain such a discriminatory arrangement where employees with the same or comparable skills/jobs are paid different wage rates. Additionally, the law should not allow one group of employees to make a financially advantageous Enterprise Agreement deal for themselves at the expense of future employees who have no say in such lesser and discriminatory terms applying to them.

RECOMMENDATIONS

25. In summary, we therefore recommend that the Fair Work Act needs to be amended to:
 - 25.1 Stop employers from being able to avoid long standing wage rates and employment conditions by moving to engage labour hire personnel and contract labour.
 - 25.2 Stop employers from using a claim to introduce labour hire contractors (not subject to the Agreement) as bargaining leverage to pressure employees to accept reduction in established employment conditions.

- 25.3 Stop employers from using the threat of terminating the existing Agreement, and reducing employees' wages and conditions (to the Award) as bargaining leverage to pressure employees to accept a reduction to current conditions.
 - 25.4 Fully protect Enterprise Agreement employment conditions and provide that the agreement of the employer and employees concerned is required to remove or change such employment conditions.
 - 25.5 Prohibit an Enterprise Agreement from containing discriminatory arrangements where employees with the same or comparable skills/jobs are paid different wage rates.
 - 25.6 Prohibit one group of employees from making financially advantageous Enterprise Agreement deals for themselves at the expense of future employees who have no say in such lesser and discriminatory terms applying to them.
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