

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No. EW1028_11

Senator Abetz asked on 23/02/2011, Hansard page 122.

Question

WR - NATIONAL UNION OF WORKERS

Senator ABETZ—.... Can I take you to another case with the National Union of Workers, Baiada Group Pty Ltd, trading as Adelaide Poultry: are you aware of that one? Mr Kovacic—I am aware of some concerns that the NUW has expressed about Baiada. Senator ABETZ—What happened in that case was that there were some orders but there was a lack of consent given by the employers and employees involved, and the decisions and/or transcripts have not been opened to public comment and have been marked as confidential. I understand the employer has made an application against the union for matters relating to the access to non-union members' records. We have some real logistical difficulties here, and I am wondering once again if that is how it was envisaged that the Fair Work Act would be implemented. Mr Kovacic—I would need to take that one on notice. Senator ABETZ—If you could, please, thank you.

Answer

This is an ongoing matter being dealt with by Fair Work Australia (FWA) and involves a number of applications and cross applications under the statutory right of entry provisions in the *Fair Work Act 2009* (FW Act) in relation to access to non-member records.

Under section 483AA of the FW Act, a permit holder may apply to FWA for access to specified non-member records. FWA will only grant such an order if it is satisfied that access is necessary to investigate a suspected contravention of the FW Act or a fair work instrument that relates to or affects a member of the permit holder's union.

In this particular matter, orders were made by FWA to allow the National Union of Workers (NUW) access to non-member records in relation to Baiada employees including - employee names and employment status; dates employment commenced; starting and finishing times and breaks during the working day; nominal and rostered working hours; leave accruals, leave taken and payments relating to leave; superannuation payments; termination payments; and pay details including payment for ordinary hours, penalties, loading and allowances. This order applied from 14 October 2010 for one month. The order was published on the FWA website.

A further order in similar terms granted the NUW access to non-member records held by, or in relation to, poultry processing employees of GKK Enterprises Pty Ltd, CGA Labour Pty Ltd and/or Peter K Labour Services Pty Ltd who are, or have been, engaged to work at Baiada's Wingfield premises. This order applied from

11 November 2010 for a period of one month. The order was published on the FWA website.

Transcripts of these proceedings are not publicly available on the FWA website. FWA have advised that because of the nature of some of the evidence and concerns expressed by a number of employees for their employment if their identity was disclosed beyond FWA, the Commissioner dealing with the matter determined that the hearing should be conducted in private, pursuant to subsection 593(3) of the FW Act. In addition, statements and material identifying the employees should also remain confidential, pursuant to subsection 594(1). A copy of the transcript, with the names of the individuals removed, has been supplied to the employer.

In respect of the decision itself, under subsection 601(4) of the FW Act, FWA is required to publish "a decision that is required to be in writing and any reasons that FWA gives in relation to the decision". FWA may, however, make an order prohibiting or restricting the publication of material including "the whole or any part of a decision or reasons in relation to the matter" under subsection 594(1)(d) of the FW Act "if FWA is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reasons". It appears that FWA exercised this discretion in respect of this matter.

The employer has subsequently made an application on 9 November 2010 requesting FWA take action against the NUW and two of its organisers under section 508 of the FW Act for misuse of their rights as permit holders. Baiada alleged that the union engaged in improper and unlawful conduct and, in pursuit of this claim, sought access to a large number of documents held by the NUW, ABC TV, the Fair Work Ombudsman and SafeWork SA. The documents sought included records of communications between the NUW and the ABC in relation to a Lateline program concerning Baiada, documents relied upon by the NUW in producing a series of pamphlets, letters and media releases it distributed making allegations about a range of Baiada's practices and documents held by both the Fair Work Ombudsman and SafeWork SA evidencing any breach of an industrial or occupational health and safety law by Baiada.

On 21 January 2011, SDP O'Callaghan made orders allowing Baiada access to some (but not all) of the documents sought. The order and reasons for decision are available on the FWA website.

As far as the Department is aware, the substantive section 508 matter is ongoing.