



CFMEU and CEPU quash Bechtel industrial action orders

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Hall Payne Lawyers (HPL), acting for the CFMEU and CEPU, has successfully appealed a section 418 order of the Fair Work Commission (FWC).

In late June 2015 there had been some issues with the use of a hazardous substance known as perlite at Bechtel's Curtis Island site. Our clients' members were understandably concerned about this issue.

On the afternoon of 29 June 2015 our clients were served with a s.418 application on behalf of the relevant employer (Bechtel). The matter was listed for hearing at 2.30pm the following day (30 June 2015). At 1.50pm on 30 June 2015 our clients were served with the Applicant's evidence in the matter. The matter was then called on before the FWC at 2.30pm before DP Lawrence. It was not in dispute that, at the time of the hearing, there was no industrial action happening. During the course of the hearing, our clients sought adjournment(s) to take instructions and to consider the filed material, however this was not granted.

At the conclusion of the hearing DP Lawrence found that there were sufficient grounds to make a s.418 order. He then issued an order that required that the unions (our clients and the AMWU) and the relevant employees, must stop, not engage in and not organise industrial action. The basis of this finding by DP Lawrence was said to be a threat made by an AMWU delegate to management.

The CFMEU and the CEPU appealed the order on the basis of 3 alleged jurisdictional errors and the fact that there was no rational connection between the evidence and the length of the order (3 months), and there were no adequate reasons provided for an order of that length.

Our clients' appeals were lodged on 14 July 2015 and listed for an expedited hearing on 31 July 2015. On 22 July 2015 the AMWU also filed an appeal, relying on substantially the same grounds as our client's appeal, with the addition of a procedural fairness ground founded upon evidence of their industrial officer. The CFMEU and CEPU later added a procedural fairness appeal ground

based on the evidence of the AMWU industrial officer.

At the commencement of the hearing counsel for Bechtel made concessions, the effect of which was that the original appeal grounds of the CFMEU and CEPU were established. The parties went on to argue the procedural fairness ground including by hearing evidence of the AMWU industrial officer.

The Full Bench did not require any submissions from the representatives of the unions. The Full Bench quashed the order of Deputy President Lawrence due to the denial of procedural fairness and the fact that in any event “the Deputy President could not have formed the view that industrial action was being organised by at least two of the organisations”.

[Hall Payne Lawyers](#) has extensive experience in dealing with urgent applications regarding stoppages of work. In particular HPL acted for the CEPU in the landmark procedural fairness case CEPU v Abigroup [2013] FCAFC 148. If you require advice about such matters in Brisbane please contact our Principal [Luke Tiley](#) on (07) 3017 2400 or in Sydney our Associate [Joe Kennedy](#) on (02) 8338 8477.

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