

# HEALTH SERVICES UNION – SA

## NEWSLETTER

### Clinpath Laboratories

#### Clinpath Laboratories Enterprise Agreement 2017 Appeal Dispute

On 21<sup>st</sup> August 2018 the Health Services Union appeared in front of the Full Bench of the Fair Work Commission to present submissions in regards to our appeal against the registration of the Clinpath Laboratories Enterprise Agreement 2017: matter C2018/3512 Health Services Union v Clinpath Laboratories.

At the hearing, the (HSU) submitted that the **Enterprise Agreement should not have been registered by the Commission** as a number of substantive procedural errors were made in the application and registration processes that Clinpath Laboratories followed, those include but are not limited to:

#### Notice of Employee Representational Rights

When an employer initially agrees to bargain with a particular group of employees, and later decides to broaden the coverage to include a larger number of employees, employer must issue a Notice of Employee Representational Rights (NERR) at least to the relevant employees covered by the broader scope agreement, in order to meet the requirements of **s173**. Failure to do so means that no valid NERR has been issued.

Clinpath Laboratories did not provide the appropriate notice of representation to all employees, and so the Commission has erred in registering the Enterprise Agreement; especially when the Commission must be satisfied in determining (for the purposes of **s186(2)(a)**, whether the Enterprise Agreement has been genuinely agreed to by the employees covered by the agreement.

#### Enterprise Agreement Ballot Process

The employees were sent their ballot papers by mail on the 11<sup>th</sup> December 2017, but did not receive access to the proposed Enterprise Agreement until 14<sup>th</sup> December 2017. The *Fair Work Act 2009* states:

*Before an employer requests under subsection 181(1) that employees approve a proposed enterprise agreement by voting for the agreement, the employer must comply with the requirements set out in this section.*

According to the Act, the voting process is supposed to begin when employees are provided with ballot papers. This means the process began on 11<sup>th</sup> December 2017, and not 21<sup>st</sup> December 2017, as employees were not provided with copies of the agreement until 14<sup>th</sup> December 2017, after the voting process had begun, the pre-approval requirements in s180 of the *Fair Work Act* were not met, and the vote is therefore invalid.

We also submitted that the information provided to employees was deficient and confusing. The letter sent on 11<sup>th</sup> December did not state when the ballot was to open, only that it closed at 4pm on the 28<sup>th</sup> December 2017. This, coupled with the timing of the ballot over the Christmas period and the ballot return box not always accessible caused major confusion and frustration by employees wanting to cast a ballot.

### **Misleading information provided to employees**

The HSU SA/NT contend that Clinpath misled employees in its communication on 1<sup>st</sup> December 2017, as indicated in our letter dated 13<sup>th</sup> December 2017, to which Clinpath responded on 13<sup>th</sup> December 2017. In addition, the letter Clinpath provided to employees dated 11<sup>th</sup> December 2017 contained contradictory information about what was and was not changing in the proposed agreement.

For example, Clinpath stated in their agreement summary under the title "*Changes to the agreement are*" that the '*increment increases occur at 1950 hours for all staff*', but also said in "*Many clauses remain unchanged in the agreement*" and that there will be "*no change to increment increases*".

The above statement is incorrect, those incremental increases have changed and have a negative impact on casual and part-time employees; especially when the current progression is at 1560 hours or two years (whichever was the lesser) while the progression time in the new Agreement is completed at 1950 hours. Therefore raising concerns about meeting the non-disadvantage test.

This was a major point of difference and contention during the negotiations and the parties did not reach an in principle agreement on this matter.

Following the hearing the full bench of the Fair Work Commission reserve their decision. However it is our understanding that the employer now accepts that as a result of steps not being taken by Commissioner Jones the Enterprise Agreement "should have not been approved" and that, under those circumstances it is appropriate for the Full Bench to grant leave to appeal and uphold the appeal and quash the decision of Commissioner Jones made on 8 June 2018.

### **What this means for members**

It means that Clinpath Laboratories will now have to take the necessary steps to comply with the requirements of the Fair Work Act, and return to the negotiating table to recommence negotiations with staff representatives and the HSU.

The matter is now in the hands of the full bench for their decision.

We'll be meeting with your HSU reps to determine the next steps, and will be in touch with members shortly.

Any questions in the meantime, please contact either:

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