



Australian Federation of Air Pilots

Submission to the Greenfields Agreements Review

25 October 2017

The Australian Federation of Air Pilots

Formed in 1938, the Australian Federation of Air Pilots (“the AFAP”) is the largest industrial and professional association for commercial pilots in Australia with approximately 5000 members. The AFAP is also a foundation member of the International Federation of Airline Pilots Association (IFALPA), the global body representing commercial pilots worldwide.

The AFAP’s membership coverage includes Virgin Australia pilots, Qantas owned subsidiary airline pilots (such as QantasLink, Cobham and Jetstar), regional airline pilots, Australian pilots flying for overseas operators, general aviation pilots, flight instruction pilots, aero-medical pilots, corporate jet pilots, helicopter pilots and aerial agricultural pilots.

As an industrial association the AFAP represent over 2000 members Pilots employed in the general aviation sector, which is primarily aviation operations outside of major commercial air transport. The AFAP provide the only dedicated and highly specialised industrial advice to Pilots employed in the general aviation sector, and are the only employee association that provide input into ensuring that General Aviation Pilots’ conditions are protected through maintenance of the *Air Pilots Award*.

As a professional association, the members and staff of the AFAP are active in promoting flight safety and improving Australian and global aviation standards.

Overview

The AFAP submission is centred on our experience of bargaining in relation to the *Cobham SAR Services Pilot and Aircrew Enterprise Agreement 2015* (AG2015/5900) (“Cobham SAR Agreement”), which was approved after changes introduced by Part 5 of Schedule 1 of *Fair Work Amendment Act 2015* (“Amendment Act”) in November 2015.

The AFAP provides specific comment below on the following issues in relation to the Cobham SAR Agreement:

- a) The extent to which the 2015 Greenfields Agreement amendments have altered bargaining behaviour on the part of either employers or unions; and
- b) The AFAP concerns relating to the effect of the 2015 Greenfields Agreement amendments on bargaining outcomes and bargaining behaviour.

The AFAP position is that based on our experience in the Cobham SAR Agreement, the definition of bargaining representative for a Greenfields Agreement prior to the Amendment Act needs to be restored to ensure good faith bargaining requirements are adhered to by all parties, and so that highly specialised and well-resourced unions are not deliberately excluded from bargaining as a means of undermining employees terms and conditions in Greenfields Agreements.

a) The extent to which the 2015 greenfields agreement amendments have altered bargaining behaviour on the part of either employers or unions during the Cobham SAR Agreement Negotiations

The Cobham SAR Agreement covers aerial search and rescue operations (both at sea and over land) performed by Cobham SAR Services Pty Ltd (ACN 082 387 835) (“Cobham Services”) pursuant to a contract awarded by the Australian Maritime Safety Authority (“AMSA”).

Background to the Cobham SAR Agreement

Cobham Services was an entity created for the express purpose of tendering for the AMSA contract, and is a division of another Cobham business unit, Surveillance Australia Pty Ltd (ACN 050 021 308) (“Surveillance Australia”). The AFAP and Surveillance Australia are parties to a current Enterprise Agreement the *Surveillance Australia Pilot and Observer Enterprise Agreement 2016* (AG2013/43) (“Surveillance Australia Agreement”).

The AFAP were also a bargaining representative and party to the predecessor to the Surveillance Australia Agreement, the *Cobham Special Mission Pilot and Observer Enterprise Agreement 2012* (AG2013/340) (“Special Mission Agreement”) which was in operation at the time of the Cobham SAR Agreement negotiations.

The AFAP is also a party to the following Enterprise Agreements with other divisions of Cobham that employ Pilots:

- c) National Jet Express Pty. Ltd. Pilot Enterprise Agreement 2012-2016 (AG2012/13744)
- d) National Jet Systems Pty Ltd Pilot Enterprise Agreement 2012 (AG2013/6164)

We note that the Transport Workers Union (“TWU”) is also a party to the above agreements and has been in direct competition for members with the AFAP across the various divisions of Cobham over many years. This competition has been evidenced by the TWU (in concert with Cobham) to deny access to any Loss of Licence reimbursement in any of the Cobham Enterprise Agreements, despite this being an entitlement that is provided in the *Air Pilots Award*.

The reason the TWU has actively negotiated for the exclusion of any Loss of Licence insurance reimbursement in Cobham is as a result of AFAP membership providing exclusive access to the Australian Air Pilots Mutual Benefit Fund (“MBF”), the preeminent loss of licence fund for Australian pilots. As the TWU does not provide any comparable product to its members, ensuring that Pilots cannot be reimbursed for MBF coverage is a way of undermining the AFAP.

We can only speculate as to why Cobham have supported the action of the TWU, but it is clear that it would prefer not to deal with the AFAP, as we are a highly resourced union with unmatched expertise in negotiating on behalf of Pilots.

Conduct of Bargaining for the Cobham SAR Agreement

Despite being a party to other Agreements within Cobham (including the business unit that set up Cobham SAR Services), the AFAP were not even notified that bargaining had commenced between Cobham and the TWU in relation to the Cobham SAR Agreement. We became aware only when the Cobham SAR Agreement was listed on the Fair Work Commission Website as pending approval.

At no stage did Cobham agree to meet with or recognise the AFAP as a bargaining representative consistent with the requirements of good faith bargaining obligations at s.228 of the Act that would be required to be (and are) afforded to the AFAP in each of the other three Enterprise Agreement negotiations at Cobham.

Given the level of familiarity of Cobham with the AFAP, the decision to exclude the AFAP from bargaining for the Cobham SAR Agreement was clearly a deliberate decision from the Employer in concert with a complicit TWU.

In all other negotiations within Cobham for Enterprise Agreements the AFAP has always been recognised as a bargaining representative. Therefore it is reasonable to conclude that the decision to exclude the AFAP was as a direct result of the amended definition of “bargaining representative” introduced by the Amendment Act, which provides that an “employer must agree to bargain”¹ with an employee organisation in a Greenfields Agreement before it is recognised as a bargaining representative.

The Amendment Act provided a means for Cobham to pick and choose which employee organisation it negotiated with, in direct contradiction of the stated aim of the Amendment Act, which was to extend the existing good faith bargaining requirements (applied to enterprise agreements other than Greenfields Agreements) to Greenfields Agreements, and consequentially ensuring “that bargaining representatives must attend and participate in meetings and recognise and bargain with other bargaining representatives.”² The practical application of the Amendment Act in the Cobham SAR Agreement negotiation has been the exact opposite.

The result of the Cobham SAR Agreement was a Greenfields Agreement providing for conditions below relevant industry standards, providing a base salary for pilots flying modern jet aircraft (Challenger CL-604) under the Cobham SAR Agreement less than Cobham pilots receive flying Dash-8 turbo-prop aircraft under the Special Mission Agreement. Consistent with other Cobham Enterprise Agreements the Employer and TWU also consciously did not provide for a Loss of Licence Reimbursement.

The ability for one union to approve a Greenfields Agreements provided it has “eligibility” to cover a majority of employees that will be engaged, does not prevent Greenfields Agreements being approved by a union for other classifications of workers that are not its membership base. In this instance the AFAP have at least 18 members employed under the Cobham SAR Agreement

This further supports the need for employee organisations that are dedicated to a particular profession being notified when Greenfields Agreements are being negotiated.

The scope of the Cobham SAR Services Agreement encompasses a number of other employees who form members of the TWU (cabin crew, observers, ground crew, engineers), forming occupations that are more likely to be TWU members. Pilots by contrast form only a small portion of TWU members, and as such it is not impacted from having agreed to a substandard deal for Pilots under the Cobham SAR Agreement. Further, by not providing for a reimbursement for Loss of Licence

¹ See s.177(b)(ii) of the *Fair Work Act 2009* (Cth.).

² See section 2.3.2 of the Explanatory Memorandum to the *Fair Work Amendment Bill 2014*.

protection in the terms of the Cobham SAR Agreement, the TWU supported Cobham in directly undermining the interests of AFAP members who have exclusive access to the MBF.

b) The AFAP concerns relating to the effect of the 2015 greenfields agreement amendments on bargaining outcomes and bargaining behaviour.

The AFAP concerns are that the Amendment Act has:

1. Failed to ensure that bargaining representatives to Greenfields Agreements meet the good faith bargaining requirements that would be required in an Enterprise Agreement negotiation;
2. Allowed Employers to pick and choose which employee organisations they negotiate with, undermining collective bargaining and freedom of association;
3. Excluded the AFAP from bargaining, resulting in a bargaining outcome that was below industry standards for a particular class of employee; and
4. Provided a means for an Employer and an employee organisation to collaborate in a Greenfields Agreement to the deliberate detriment of members of another employee organisation.

Conclusion

The introduction of good faith bargaining requirements in the Amendment Act are rendered largely pointless by the limited definition of bargaining representative, contained at s.177 of the Act, which permits Employers to select at their discretion which unions they negotiate with.

Instead the consequence of the Amendment Act has been to severely weaken the right for all employees to be represented by effective unions such as the AFAP on all Greenfields Projects. The result, as demonstrated in the Cobham SAR Agreement, is an Employer can elect to bargain only with less specialised and resourced unions to undermine conditions of any employees covered by a Greenfields Agreement.

Recommendations

The AFAP makes the following recommendations to the Greenfields Agreement Review:

1. The requirement for an Employer to bargain in good faith should be extended to all relevant bargaining representatives by removing the discretion for Employers included by the Amendment Act at s.177(b)(ii) of the Act; and
2. The AFAP does not object to a fixed negotiation period and last-offer arbitration where agreement cannot be reached, provided that s.177(b)(ii) of the Act is removed and all relevant bargaining representatives are recognised by Employers for the duration of the negotiating period and have standing in any arbitration.

Further information

Written by the Australian Federation of Air Pilots and Authorised by:



Captain David Booth

President

Australian Federation of Air Pilots

For further information regarding the above submission please contact:

Patrick Larkins

Senior Industrial/ Legal Officer

Australian Federation of Air Pilots

Level 4, 132 Albert Road

South Melbourne VIC 3205

Ph: (03) 9928 5737

Fax: (03) 9699 8199

Email: patrick@afap.org.au

Web: www.afap.org.au