

IN FAIR WORK AUSTRALIA

FWA Matter No.: B2010/2957

s.242 – Application for a low-paid authorisation

Applicant: Liquor, Hospitality & Miscellaneous Union

Respondent(s): Various

STATEMENT OF JIM MATTHEWS

BACKGROUND

Role and Responsibilities

1. I am employed by UnitingCare Wesley Port Adelaide Inc (“the **Employer**”).
2. I commenced employment with the Employer on 3 October 1995.
3. My current position is Manager Human Resources.
4. I am responsible for all Human Resources activities including industrial relations, recruitment, training and Occupational Health & Safety.

LHMU LOW PAID BARGAINING APPLICATION

Employer and Employee Information

5. The Employer employs 893 employees in total, across 29 sites/locations in regional and metropolitan South Australia.
6. The Employer operates on a not for profit basis.
7. The services provided by the Employer cover residential aged care, aged care community-based services and other community services. The approximate split of these services is 50% aged care and 50% community services.
8. Of the total number of employees, the number covered by the LHMU’s Low Paid Bargaining application is 317, which is approximately 35% of the total number of employees. This represents employees covered by the *Aged Care Award 2010*.
9. Of the employees covered by the scope of the application, the main *Aged Care Award 2010* classifications are:
 - (a) Level 4 – represents most employees working as carers.
 - (b) Level 2 – domestic/ancillary roles.
10. The Employer’s total aged care annual wages cost is \$18.1 million including on-costs. The total *Aged Care Award 2010* wages and on-costs is \$12.3 million.
11. The percentage of wages costs to overall revenue is 72% based on the last full year figures available.

Enterprise Bargaining

12. The Employer has the following collective agreements in operation as set out in the table below:

Agreement Name	Date Approved	Employees Covered	Union Involved	Expiry
UnitingCare Wesley Port Adelaide Inc – Nursing Employees – ANF (Aged Care) Enterprise Agreement 2009	7 April 2009	Registered and Enrolled Nurses (excluding Director of Nursing and Clinical Nurse Consultants)	ANF	6 April 2012
Salary sacrifice Agreements (x 6)	2002	Employees covered by the: <ul style="list-style-type: none"> • <i>Clerks (South Australia) Award;</i> • <i>Social and Community Services Award;</i> • <i>Health Services Employees Award;</i> • <i>Disability Services Award;</i> • <i>Crisis Accommodation and Supported Housing Award, and</i> • <i>Child Care Award.</i> 	LHMU & ASU	2004

In the past 5 years the Employer has negotiated collective agreements as set out in the table below:

Agreement Name	Date Approved	Employees Covered	Union Involved	Expiry	The Party who Instigated Bargaining
UnitingCare Wesley Port Adelaide Inc – Nursing Employees – ANF (Aged Care) Enterprise Agreement 2005	23 February 2006	Registered and Enrolled Nurses (excluding Director of Nursing and Clinical Nurse Consultants)	ANF	22 February 2009	UCWPA

The Employer was the principle party who negotiated the agreements set out in the tables above.

13. Based on the Employer's experience there has been no improvements in terms of productivity and/or service delivery improvements achieved through these agreements. In my experience productivity improvements are not the main purpose – enterprise agreements are about wages and benefits for employees.
14. Enterprise bargaining has not produced greater output or productivity for the Employer.
15. In relation to the employees presently covered by the *Aged Care Award 2010*, the Employer has attempted to initiate bargaining with these employees.
16. In 2000, the Employer was negotiating towards an agreement for nurses.
17. At the time, Dennis Herbert of the LHMU wrote to the Employer seeking to negotiate an agreement for the employees who were under the *Health Services Employees Award* at the time.
18. The Employer agreed and negotiations were undertaken. The agreement contained a guarantee to maintain wages at 1% above the award rates and also to contribute an additional 1% to employer funded contributions for superannuation.
19. At the conclusion of the negotiations, the agreement was put out to employees to vote upon.
20. The LHMU ran a strong campaign that employees should vote against the agreement.
21. My recollection is that the LHMU argued that the Employer should pay more.

22. The agreement was voted down by employees.
23. The Employer has not attempted to negotiate an agreement for the employees now covered by the *Aged Care Award 2010* since that time.
24. The Employer has not been approached since 2000 to negotiate an agreement. The LHMU did not attempt to re-visit negotiations after the failed agreement.
25. In relation to the employees presently covered by *Social, Community, Home Care and Disability Services Industry Award 2010*, the Employer has not attempted to initiate bargaining with these employees. The services provided in relation to community-based aged care are funded by government grants and there is no scope to negotiate higher wages.
26. The Employer has never been approached by a union to negotiate an agreement for these employees.
27. In relation to the employees presently covered by *Nurses Award 2010*, the Employer has not initiated bargaining with these employees, however, the ANF has approached the Employer and the Employer has agreed to bargain.
28. The principle focus of negotiations has been on wages. At the Employer's initiative paid maternity leave has also been included in the agreement for these employees.

Union Involvement

29. In the last 12 month period, the Employer has had visits from the ANF to conduct recruitment visits to sites with their coffee van.
30. The ASU, who cover employees employed under the *Social, Community, Home Care & Disability Services Industry Award 2010*, participate in regular two-monthly consultative committee meetings.
31. I am involved in these discussions with the Senior Manager Aged Care and employee representatives. At one point there was some suggestion about an agreement for community employees but this has dropped off since the ASU Pay Equity case has commenced.
32. To the best of my knowledge the LHMU (and AWU) have conducted minimal site visits in the past 12 months. The sites are required to advise me when they receive contact from unions to visit sites.
33. Based on a lack of advice from sites, I can say that there has been little contact from the LHMU to visit our sites.
34. I have been advised by the Director of Nursing at each site that when the LHMU does visit sites they have complied with right of entry requirements. The level of activity from the LHMU does not appear to have increased since the Low Paid Bargaining application.
35. In relation to the Low Paid Bargaining application, the Employer has not had any contact from the LHMU other than through the G10 Group.
36. The Employer has not been served with a copy of the LHMU's application.
37. I was not sent a copy of the LHMU employer deed titled "Fair Share for Aged Care". I first became aware of this deed at the G10 meeting in May 2010 that Paul Martin (LHMU official) attended.
38. I have not been asked to sign this Deed specifically, other than the general request made by Paul Martin at the G10 meeting. I have since received a copy of the Deed, a copy of which is annexed and marked "A".
39. It was at this meeting that I found out that the Employer was named as a respondent to the application.

-
40. My notes of the G10 meeting indicate that Paul Martin stated that the LHMU would not proceed with the Low Paid Bargaining application unless the government provided additional funding to enable an increase in wages.
 41. At previous G10 meetings I can recall that Paul Martin made similar statements that the LHMU understood the funding pressures faced by aged care employers and that they would lobby the government for better funding.
 42. The Employer offers Payroll deductions for union dues to employees who request this.
 43. I estimate that the union coverage is less than 50% of those employees able to be covered by the LHMU. This is based on events that occurred in approximately 2004 whereby the Employer negotiated an agreement with employees for the specific purpose of providing salary sacrifice benefits to employees. At that time South Australian industrial relations laws required a union to have 50% membership coverage to be a party to the agreement. The LHMU advised me at the time that they did not have 50% coverage of members.
 44. I am not aware of any other unions who have members among employees covered by the application.

Ability to Negotiate Under a Low-Paid Bargaining Authorisation

45. The employer has dedicated Human Resources personnel in-house.
46. We have a total of four (4) dedicated HR employees. In addition to my role, there is a HR Coordinator, HR Officer and a Trainee.
47. The Employer Associations of which the Employer is a member is Aged and Community Services SA/NT ("**ACS**") and Business SA (for non-industrial matters).
48. In my view ACS does not have dedicated IR resources on staff that could assist with the agreement negotiation. I believe this is the case because they have always outsourced IR services in the past. ACS has never indicated that they have this capability in-house. I was previously sat on the ACS HR Committee and at that time there was only involvement from the ACS CEO.
49. If required to negotiate towards an agreement, I would be involved in such negotiations with Senior Managers Aged Care and I would seek assistance from EMA Consulting. I would feel more confident with external support because this is a new area and process which the Employer is not familiar with.

Terms and Conditions of Employment

50. In relation to employees covered by the *Aged Care Award 2010*, the Employer provides terms and conditions of employment consistent with this award.
51. Prior to the introduction of the *Aged Care Award 2010*, the applicable award that applied was the *Health Services Employees Award (NAPSA)*.
52. The modern award introduction has lead to an increase in costs. By the end of the five (5) year transitional period costs will have risen substantially – mainly because the modern award rates are higher than the equivalent NAPSA rates. Any EBA will obviously need to take this into account as per the Better Off Overall Test.

Potential for Productivity and/or Service Delivery Improvements through a Low Paid Bargaining Agreement

53. In relation to the Employer's operations, I believe that there is no real potential under a Low Paid Bargaining agreement for improvements to productivity and/or service delivery.

54. The Low Paid Bargaining application will ultimately place extra burden on the organisation. I cannot see any way that a Low Paid Bargaining outcome, via enterprise agreement, could increase productivity. Staffing is already at the maximum productivity level.

Comparison with Other Employees

55. The Employer has employees doing similar work, not covered by the LHMU application, including Home Care employees under the *Social, Community, Home Care & Disability Services Industry Award 2010*.
56. Paul Martin of the LHMU mentioned at the May 2010 G10 meeting that the LHMU expect to negotiate base hourly rates of up to \$26.00 per hour under a Low Paid Bargaining agreement. My initial reaction is that this is impossible. Employees covered by the *Aged Care Award 2010* are the majority of our staff and the funding simply does not allow for the dollar or percentage increases they are talking about.
57. The Employer currently has employees who have higher qualifications who would be paid less than the hourly rates the LHMU has stated it is seeking under the Low Paid Bargaining agreement.
58. An Enrolled Nurse with Diploma would be paid less than a Carer with Certificate III qualification. By way of example, a Year 6 Enrolled Nurse with Diploma is currently paid \$22.56 per hour. This position has supervisory responsibility for carers. The highest rate currently for a carer is \$17.46 per hour. If this increased to \$26.00 per hour, a carer would be paid substantially more than an Enrolled Nurse who is response for supervising them. As a result Enrolled Nurse pay rates would have to increase to reflect the duties and responsibilities of the higher position.
59. Even a Level 1 Registered Nurse with less than five (5) years of service is not paid \$26.00 per hour. The proposed wage increase would have significant flow-on effects to other aged care staff.
60. Employees in community services perform similar work to that of carers (albeit in the resident's home) and were previously aligned with the *Health Services Employees Award (NAPSA)*. Some employees work across both community and residential aged care. In this situation, these employees would suddenly find they were earning substantially more in residential aged care than the work performed in community services and we would find that all of our employees would want residential rather than community work.
61. I have not heard any concerns from employees about this. I suspect that employees are probably not aware of some of these implications.

Government Funding

62. The Employer receives funding from the federal government for the services that it provides.
63. The table below sets out the federal government funding received over the last 5 years and the increases in each funding source. This financial information was provided to me by the Employer's Accountant.

Financial Year	Total Funding	Percentage Increase	Total Expenditure	Increase in Fixed and Variable Costs over Same Periods
2005/2006	\$17,350,432		\$23,250,478	
2006/2007	\$17,786,367	2.5%	\$24,791,038	6.6%
2007/2008	\$18,606,763	4.6%	\$26,253,080	5.9%
2008/2009	\$20,265,566	8.9%	\$26,865,563	2.3%
2009/2010	\$20,460,623	1.0%	\$28,902,971	7.6%
2010/2011 (estimated)	\$20,869,835	2.0%	\$30,059,089	4.0%
Total		19%		26.4%

-
64. The increases in government funding did not cover the Fair Work Australia annual wage review increase in July 2010. The funding increase was 1.7%. The FWA increase at lower classification levels was 4%.
 65. In terms of revenue sources, the Employer does not have other sources of revenue other than interest on resident's bonds. However, not all residents pay a bond if they do not have capacity to pay a bond.
 66. The Employer would have to focus on high category care which provides a higher level of government funding. The Employer currently has 473 residents (332 in high care and 141 in low care). This is already happening to a certain extent because the Employer is struggling financially. Low care is not funded to the same extent. We would have to rationalise the ratio of low care/high care beds to maximise funding.
 67. In terms of the current level of funding received, the Employer has identified additional issues in terms of rising costs for insurance, utilities and other expenses which are increasing at a higher rate than funding indexation.

Government Regulation

68. Within the aged care sector, the delivery of services is highly regulated by the government. The effect of this regulation is to ensure standards of care are maintained.
69. The regulations include an accreditation process. All being well every three (3) years the Agency assess our facilities against the 44 standards set by the *Aged Care Act 1997*. There are also spot visits that are unannounced. If we do not meet the standards there is a restriction on taking new residents until the issues identified are addressed.
70. The regulations are at times punitive in terms of withholding the ability to take new residents.
71. The regulations affect costs through the time involved to ensure paperwork is up to date and the need to employ a dedicated quality person for this purpose. The constraints of the government regulations dictate the standard of service and quality of care and these have to be maintained irrespective of the costs involved. If costs increase there is no flexibility to vary services and standards as a result.
72. As a result of the regulation of the sector, there are no options to reduce services if wage costs increase. We would have to look at other ways of delivering services without reducing the services. This is very difficult and my concern is that resident care will suffer.

Options for Employers

73. If wages costs for employees covered by the application increased significantly beyond increases in government funding, the Employer would have to investigate options in terms of restructuring.
74. This restructuring may impact on the level of nursing cover that we have. We currently have a Registered Nurse on each shift but are not strictly required to do so. We could achieve the same outcome by credentialing. Alternatively, we may look at employing more Enrolled Nurses and less carers in the event that the LHMU's Low Paid Bargaining agreement raised rates substantially such that Enrolled Nurses became less expensive than carers. These are not threats, just basic business planning or common sense outcomes.
75. It is possible that the restructure may result in reduced staff numbers if wages costs increased. The number of carers is less likely to change than ancillary staff. If one of the intentions of the Low Paid Bargaining application is to improve services and staffing, it is unlikely that this could be achieved because we are already at the maximum staffing ratios that our funding can support.
76. The number of corporate support staff (including the number of staff in Human Resources) would also be affected and would most likely be reduced.
77. We would also look to increase the ratio of high care/low care beds as far as possible.

78. We already outsource catering at a number of sites. If outsourced services were able to be provided at lower cost we would certainly look at this option.

Response to LHMU submissions

79. I am aware of the LHMU submissions and statements as they relate to my state and/or the Employer.
80. I have seen the statement by David Di Troia (State Secretary of the LHMU) regarding a request to G10 for an agreement covering all G10 employers.
81. David Di Troia states that the LHMU wrote to the Employer as one of the employers that they wrote to requesting an agreement.
82. I did not receive any such letter from the LHMU in 2006 requesting that we negotiate an agreement with the LHMU.

Other issues

83. I do not see advantages or necessity in negotiating a multi-employer agreement. We would lose some control over our ability to negotiate specific provisions for our organisation.
84. I understand that it would be almost a "one-size fits all" agreement with little or no room to meet our own enterprise specific requirements. Each organisation is obviously different in terms of its needs.
85. We are also uncertain about how this arrangement is different from regular enterprise agreement negotiation and we do not know what the impact would be. We do not know where the negotiations would go.



[insert date]

[Employer]

Liquor Hospitality and Miscellaneous Union

Deed



[insert date]

Parties

[insert Employer legal name] [insert ABN] [insert address] (the Employer)

Liquor Hospitality and Miscellaneous Union of 303 Cleveland Street,
Redfern in the state of New South Wales (LHMU)

Background

LHMU and the Employer (**Parties**) will undertake negotiations for the Proposed Agreement and have decided to enter into this Deed to assist those negotiations. The Employer agrees to be a willing party to any low-paid authorisation application under section 243 of the *Fair Work Act 2009* ("the Act")

The Parties commit to

- *creating a positive working environment for all Employees;*
- *promoting constructive relations between all Employees and the Employer;*
- *Working together to increase the wages of the Employees;*
- *Supporting the Fair Share for Aged Care campaign;*
- *Doing what is necessary to allow any current Enterprise Agreement to be replaced by the Proposed Agreement even if before the nominal expiry date of the Enterprise Agreement;*
- *Working together to lobby the Commonwealth Government on matters affecting the provision of quality aged care services and employees wages and conditions; and*
- *Bargaining, including low-paid bargaining, in good faith to make an Enterprise Agreement*

The Parties agree that the wages of employees in Aged Care are inadequate and will work together to explore and promote strategies designed to improve those wages.



Agreed terms

1 Definitions

Proposed Agreement means an Enterprise Agreement, including a multi-enterprise agreement pursuant to Division 9 of Part 2-4 of the Act to be negotiated between the parties.

Employees means the employees of the employer whom are eligible to be members of LHMU, whether or not the employees or any of them was an employee of the employer at the date upon which this Deed was executed.

2 Term and Scope of Deed

The Deed will commence on the date it is executed by the Parties, and will expire and cease to operate 3 years from its date of commencement. The Deed has application in relation to all the Employers aged care facilities and all Employees performing work within those facilities. The Parties have agreed to confer benefits on the Employees and prospective employees of the Employer.

3 Fair Share for Aged Care Provider

- 3.1 The Employer agrees to become a Fair Share for Aged Care Provider.
- 3.2 The Employer agrees to be supportive of being party to any low-paid authorisation pursuant to section 243 of the Act.
- 3.3 The Employer agrees to do all things necessary to ensure that any Enterprise Agreement currently covering them will be replaced by the Proposed Agreement, even if before the nominal expiry date of the Enterprise Agreement.

4 Payment of LHMU Fees

Where an employee to be covered by the Proposed Agreement authorises the Employer to do so, the employer shall send to LHMU, within one pay period, the necessary details of that employee to establish a direct debit arrangement for the payment of the employee's union fees.

5 Union Delegates

- 5.1 The Employer recognises the contribution made by LHMU delegates in the workplace and accepts the right of LHMU delegates to represent employees who are members of LHMU. Conduct by the parties to this Deed will be in accordance with this commitment to building positive working relationships and recognition of the role of LHMU delegates. LHMU delegates shall:
 - (a) Be able to perform their role without any discrimination or victimisation in their employment;



- (b) Be provided with paid time to represent the interests of LHMU members to the Employer and at industrial courts, tribunals and meetings with persons able to affect their terms and conditions of employment;
- (c) Be able to consult with LHMU members during normal working hours;
- (d) Be able to place LHMU information on designated notice boards provided by the Employer for this purpose.
- (e) Be provided with reasonable opportunities to speak to new employees in the workplace.

6 Delegate Training

6.1 LHMU will be able to utilise a minimum of five days per calendar year, for each delegate, for the purpose of training their elected delegates. This training shall be subject to the following:

- (a) The delegate will request the training time with at least fourteen days notice in order to minimise disruption to the Employer.
- (b) The delegate shall be paid by the Employer for the time attending training.
- (c) A request for training shall not be unreasonably withheld.

7 Union Access

7.1 An official of LHMU may enter any of the Employer's premises where they may meet with employees at their normal break room at any time, for any purpose, including;

- (a) Consultation with Employees to be covered by the Proposed Agreement about their rights and obligations under the Proposed Agreement;
- (b) Consultation with Employees to be covered by the Proposed Agreement about the negotiation of the Proposed Agreement;
- (c) To deal with disputes about Employee's terms and conditions of employment;
- (d) For any other purpose connected to the work of the Employees or the relationship between LHMU and the Employer.

7.2 Officials of LHMU will be granted access to areas where employees congregate such as lunch rooms or common areas.

7.3 Officials of LHMU will give reasonable notice and report their attendance to the Employer's management when on site.

8 Consultative Committee

8.1 A Consultative Committee consisting of a maximum of six LHMU delegates will meet at least once every three months from the commencement of negotiations for the Proposed Agreement to discuss the negotiations and other relevant issues.



The Consultative Committee will continue to meet once every three months after any agreement on the Proposed Agreement is reached.

- 8.2 The Consultative Committee may make recommendations to management and develop proposals for policies and in relation to the negotiations for the Proposed Agreement and the operation of any resulting Enterprise Agreement.

9 Paid Quarterly Union Meeting

- 9.1 All LHMU members covered by the Agreement will be able to attend quarterly 30 minute paid union meetings on site.
- 9.2 Union meetings may be part of professional development days or other days dedicated to staff training or development.
- 9.3 LHMU will give at least 14 days notice of the time and place of the staff meeting/training and the names and positions of those attending.
- (a) LHMU will be entitled to thirty minutes to address the employees without Employer management representatives being present.

10 Inductions

- 10.1 The Employer shall, when holding inductions for new employees, seek authorisation from the new employee (if necessary) and provide the following information to LHMU at least seven days prior to the induction;
- (a) The full name of all employees who will participate;
- (b) The hours of work of each employee;
- (c) The classifications of the named employees
- (d) The rates of pay of the employees; and
- (e) The work sites of each employee.
- 10.2 The Employer shall allow LHMU thirty minutes at inductions to address the participants without management representatives being present.
- 10.3 Where the Employer does not regularly hold inductions they agree, every 3 months or at a time negotiated with LHMU, to bring all Employees who commenced employment during this period together facilitating LHMU 30 minutes to address those employees without management representatives being present.

11 Notice Board

If LHMU requests, a notice board space in a convenient and readily accessible place shall be made available for the posting of LHMU notices concerning LHMU matters. The Employer agrees that officials and delegates of LHMU may deliver and post notices at all relevant sites.



12 Other Sites

- 12.1 The Parties agree that they will ensure that any sites acquired by the Employer will also apply the terms of this Deed as well as the terms of the any agreement reached following negotiations for the Proposed Agreement.

13 AWAs and ITEAs

- 13.1 The Employer agrees that, as part of negotiations for the Proposed Agreement, it will agree to Employees on AWAs and ITEAs, where they so wish, being offered a 'conditional termination' so that the employee will be covered by the Proposed Agreement when it commences operation.

14 Disputes

- 14.1 Any dispute about this Deed, if it cannot be settled by agreement between the Parties, will be resolved through the Dispute Resolution Procedure in the Proposed Agreement if made. In the absence of an operational Enterprise Agreement resulting from negotiations for the Proposed Agreement, it will be referred for mediation by an independent mediator.
- 14.2 If the Parties cannot agree on a mediator, either party may approach the Institute of Arbitrators and Mediators Australia to appoint a mediator.
- 14.3 The Parties will share the costs of the mediator.



Executed as a deed.

**Executed by [insert employer name]by)
its duly appointed officer in the presence)
of:)**

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

**Executed by the Liquor Hospitality and)
Miscellaneous Union by its duly)
appointed officer in the presence of:)**

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)