HIGH COURT OF AUSTRALIA

Public Information Officer

2 September 2004

ELECTROLUX HOME PRODUCTS PTY LIMITED v AUSTRALIAN WORKERS UNION, AUTOMOTIVE FOOD METAL ENGINEERING PRINTING AND KINDRED INDUSTRIES UNION, COMMUNICATIONS ELECTRICAL ELECTRONIC ENERGY INFORMATION POSTAL PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA, AND THE MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

A certified agreement could not include a provision requiring employers to collect on behalf of unions a bargaining agent's fee from non-union employees, the High Court of Australia held today.

During negotiations with the AWU, AMWU and CEPU over a new certified agreement in 2001, whitegoods manufacturer Electrolux objected to the inclusion of a $500 bargaining agent's fee to be deducted from non-union employees' wages. No agreement was forthcoming and in September 2001 the unions gave Electrolux notice of intended industrial action, in the form of rolling stoppages. The union claimed the stoppages were a protected action, pursuant to section 170ML of the Workplace Relations Act. Electrolux claimed the industrial action was not protected because the issue of a bargaining agent's fee was not a matter pertaining to the relationship between employer and employee, within the meaning of section 170LI of the Act.

Electrolux commenced litigation in the Federal Court which made declarations that the industrial action was not protected action and breached the Act. The declarations made by Justice Ronald Merkel were set aside by the Full Court of the Federal Court. Electrolux then appealed to the High Court in each of three related matters.

The unions argued even if the bargaining agent's fee was not a matter pertaining to the employer-employee relationship referred to in section 170LI that did not necessarily mean an agreement containing such a term was not an agreement in accordance with section 170LI.

The Court held that the principle was well-established that matters pertaining to the relationship between employers and employees are matters which affect them in their capacity as employers and employees. A particular application of the principle, as decided by a line of earlier cases, was that a proposal for an employer to deduct union fees from employees' wages and remit them to a trade union was not one that affected employers and employees in their capacity as such. The introduction of certified agreements via the Workplace Relations Act did not change the meaning of matters pertaining to the employer-employee relationship. If any objectionable provisions were included in a proposed agreement then that agreement could not be certified by the Australian Industrial Relations Commission.

The Court, by a 6-1 majority, allowed the three appeals and restored the orders of Justice Merkel.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Facsimile: (02) 6273 3025
e-mail: fhamilton@hcourt.gov.au