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Ross refuses to refer agreement termination "test case" to bench

Thursday, March 23, 2017, 4:03pm

FWC President Iain Ross has refused the NTEU's bid for a full bench to hear Murdoch University's request to terminate its enterprise agreement, which the union claims is a "test case" that will affect up to 20,000 Western Australian higher education employees.

The NTEU argued that it would serve the public interest to refer the case to a full bench under [s615A](#) of the Fair Work Act.

It claimed that Murdoch's case raised "novel" issues in the higher education industry, warranting referral.

It said more than 3,000 Murdoch employees would be directly affected by a decision in the matter and that it might have a flow on effect on the 18,000 employees working in Western Australia's higher education sector.

The union said it would be more efficient for a full bench to hear the substantive application because it would limit further litigation arising from a challenge to a single member's decision.

But Justice Ross said he was not convinced NTEU's claims enlivened the public interest.

He noted that this was not the first occasion where the Commission had considered the public interest argument in the context of public service employment.

He said the "contest" between the parties concerned the application of the statutory provisions, as opposed to the proper interpretation of the provisions themselves.

While the case involved a significant number of employees, this fact on its own did not enliven the public interest, and it was mere "conjecture, unsupported by any evidence" that it would affect up to 20,000 higher education workers, he said.

He also noted that given the number of witnesses involved, the likelihood that "significant factual disputes" between the parties would arise and prolong proceedings, it was more efficient for the matter to be heard by a single member.

"It will be a more efficient allocation of the Commission's resources to have the matter determined by a single member.

"Any subsequent appeal will have the benefit of the Commission's findings in respect of the various factual disputes," he said.

Justice Ross also refused to exercise his discretion under [s582](#) to refer the case.

"Considerations of fairness, efficiency and expedition lead me to conclude that the appropriate course is to have the substantive application determined by a single member, he said.

[Murdoch University v National Tertiary Education Union \[2017\] FWC 1553 \(21 March 2017\)](#)

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