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## Bench backs quashing of deal in which workers had "no stake"

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An FWC full bench has thrown out a service provider's attempt to challenge the quashing of an agreement that was negotiated with employees not covered by it, prompting the TWU to seek a new deal for members engaged under it to deliver a cut-price government contract.

The tribunal approved [Broadspectrum's](#) (formerly Transfield Services) Justice Business Unit enterprise agreement in November last year but a full bench later quashed the decision and remitted the application to Deputy President John Kovacic, who found in March that it was not genuinely agreed (see [Related Article](#)).

[United Voice](#) argued the four employees with which it was negotiated had no stake in the agreement as they were paid well in excess of its rates, they did not perform correctional work captured by its classifications and were hired just before bargaining started.

Deputy President Kovacic found they were in fact primarily engaged for preparatory work relating to tendering for correctional services contracts and noted they were paid a premium ranging from about \$28,000 a year to more than \$50,000.

[Broadspectrum](#) advised that as it won work they would be "engaged in their roles on those contracts" and that work was set to begin under a WA Government court security and custodial services contract in March.

However, as this would start about 260 days after the agreement was made, Deputy President Kovacic said it did "not support a finding that the principal purpose for which the employees were employed was the positions specified in their contracts or that they were therefore covered by the agreement".

Finding "reasonable grounds for believing that the agreement was not genuinely agreed to by the employees" under [s186\(2\)\(a\)](#) on the basis that the employees who made it were not covered by it at the time it was made, Deputy President Kovacic refused to approve it.

[Broadspectrum](#) challenged his ruling, arguing the employees were covered by the deal when they voted, but an FWC full bench yesterday found Deputy President Kovacic's decision was not attended by "sufficient doubt" as to require permission to appeal in the public interest or to grant it on a discretionary basis.

In its appeal, [Broadspectrum](#) also argued that a higher pay rate did not indicate the employees lacked a "stake" in the deal.

It maintained that they were engaged primarily for work identified in its position descriptions or, in the alternative, their work fell within its administrative officer classifications, imported from the clerical award.

However, Vice President Adam Hatcher, Senior Deputy President Jonathan Hamberger and Commissioner Chris Simpson said a "principal purpose" test could not be used to bring an employee within the coverage of an award or classification "where the employee does not perform *any* of the prescribed work duties".

The bench also found "no merit" in the latter argument that the work of preparing the policies, procedures and processes necessary to enable Broadspectrum to win and perform correctional/custodial contracts in the future was captured by the clerical classifications.

"On no view could this be described as merely clerical work as defined in clause 3.1 of the Clerks Award, that is 'recording, typing, calculating, invoicing, billing, charging, checking, receiving and answering calls, cash handling, operating a telephone switchboard and attending a reception desk'.

"It was work of a higher order, and the level of remuneration paid to the employees reflected this fact," the bench continued.

"We consider that the Deputy President's conclusion that the work performed by the employees at the time the agreement was made bore little if any resemblance to the classification descriptors was correct having regard to the overriding requirement in the Clerks Award for the performance of clerical work."

## Agreement undercut incumbent pay by 30%: Union

United Voice industrial coordinator Stephen Bull today told *Workplace Express* the employer had used the reduced pay rates in the JBU agreement to its advantage when tendering for work that was usually subject to agreements paying about 30% more.

He said it was typical of agreements that attempted to "carpet over bargaining and the bargained rate" and provide "industrial relations security".

"It's commodifying the prohibition on collective action that a valid enterprise agreement brings" and it "puts a price on being able to exclude the union", Bull said.

He said there was also a "broader issue" of governments seeking to do things "on the cheap".

## TWU seeks new deal

In October last year the WA Government announced that by awarding Broadspectrum the contract to provide court security and custodial services across the state it would deliver "more services for \$36 million less".

In a statement titled "Liberal National Government saves \$126 million via private sector contracts", Corrective Services Minister Joe Francis said the new arrangement had been "negotiated for \$36 million less than the previous contract, delivering value for money to WA taxpayers".

"As well as significantly reducing costs, the new contract provides a range of additional services," he said, including extra duties at seven regional courts, increased clearance of people in custody from police lock-ups and improved services at the Supreme Court and Magistrates Court.

TWU WA branch secretary Tim Dawson today told *Workplace Express* that many of the 400-odd WA employees engaged under the JBU agreement by Broadspectrum as part of the government contract were TWU members transferred from Serco, where they had been paid 30% more.

He said the employer had since made "improvements" but these still fell short of the Serco rates.

Dawson said he had this morning spoken with Broadspectrum and told them they "should negotiate now" with the union for a valid agreement.

"We expect them to respect the full bench decision as well as the decision of members to have their union negotiate on their behalf," Dawson said.

Broadspectrum did not respond to a request for comment.

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