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FWC cures union's beef over access to non-member records

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The FWC has granted the AMIEU access to the records of non-members after it raised suspicions an employer was underpaying workers by failing to honour an incentive payment scheme.

The FWC's Deputy President Ingrid Asbury held it was necessary to allow the union to investigate what it suspects are breaches of the remuneration document, which has now been incorporated into the agreement (see [Related Article](#)) and has granted it access to inspect non-member records and payslips.

The decision is the latest in the long-running dispute between meat processor Teys Australia and the AMIEU in what have become protracted negotiations to replace the [Tey's Beenleigh Pty Ltd/AMIEU Production Departments Enterprise Agreement 2013](#).

The AMIEU argued that it needed the [s483AA](#) order for the records to recover the underpayments.

It argued that as a result of the Federal Court decision handed down by Justice Mordy Bromberg last month, Teys is required under the remuneration document to pay correct wages and other entitlements owing under the [incentive payment system](#).

This was deemed by the FWC to have been validly incorporated into its [agreement](#).

The deputy president noted that there has been "lengthy litigation" between Teys and the union over the new agreement, which was approved twice but then quashed as a result of union intervention (see [Related Article](#)).

The AMIEU argued it had formed a "reasonable suspicion" that Teys had breached its obligations under the agreement by failing to apply the remuneration document since 2013.

It sought to inspect the time and wages records of four union-member employees so eligible payments under the payment scheme could be calculated.

While some documents were produced, the union claimed that Teys refused to release all of them. Teys countered the scheme did not form part of the agreement and could not therefore be the basis of a suspected contravention.

Following discussions before the Commission earlier this month, Teys said that it would allow the union to inspect the time and wages records, but expressed reservations because some of the records were unrelated to the four employees identified in the AMIEU's notice of entry and details of union member employee payments couldn't be separated from non-member employee payments.

Teys argued that including information that was unrelated to the four employees was a breach of the company's privacy obligations.

Deputy President Asbury considered the "extensive history of disputation" between the AMIEU and Teys and said that the productive approach would be to grant the order.

She found that to calculate the employee entitlements under the scheme, it was necessary for the union to see records relating to both members and non-members.

The deputy president said this was because the remuneration document provided an incentive payment system that was based on the work performed by employees collectively, rather than individually.

[Mr Robert Barton v Teys Australia Beenleigh Pty Ltd \[2016\] FWC 899 \(17 February 2016\)](#)

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