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▶▶ Federal Court rebuffs Telstra bid to gag unions

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The Federal Court has dismissed an application by Telstra to prevent unions from making what the company claimed were misleading statements about a non-union offer it made to its employees.

Justice Ross Sundberg rejected the application after hearing several hours of argument from Peter Jopling QC on behalf of Telstra and Herman Borenstein SC for the CPSU, CEPU and APESMA.

The hearing focused on the war of words between the unions and Telstra over non-union collective agreements to be voted on next week by about 380 workers in the company's wholesale and service advantage divisions.

But for Telstra, the significance of the application went beyond the fate of the two collective agreements.

"These are the first agreements to be rolled out, but it is the hope of Telstra that they will put agreements like this to their remaining employees," Jopling told the Court.

Telstra argued 11 statements made by the unions – including that the agreements would "drive down wages and conditions", be difficult to enforce and deny employees "the right to be represented by unions" - were false and misleading.

The effect of the statements, which were mostly communicated via union websites, would be to cause employees to vote against the collective agreements when they otherwise might not, a breach of [s401](#) of the Workplace Relations Act, it said.

The unions countered that, when considered in context, the statements relied upon by the company either had a different meaning from that alleged or could be defended as truthful.

In relation to the claim the agreements would deny employees the right to be represented, for example, Borenstein said the full quote – that "Telstra management is using the damaging remnants of the Howard Government's Work Choices IR laws to deny workers the right to be represented by unions", revealed a broader context to the words that removed any misleading meaning.

"It is important that your honour read documents as a whole rather than pluck out some juicy words in isolation as Telstra has done," Borenstein said.

Justice Sundberg decided in favour of the unions, reserving his full reasons.

Beyond the legal victory, the Telstra submissions also contained a few morale-boosting concessions to the union case - for example, in an affidavit, Telstra director workplace relations and people services, Darren Fewster, acknowledged that Telstra employees "listen to unions" and "rely on their advice".

It was also revealed that an independent legal advice line Telstra has set up with Harmers Workplace Lawyers has only received eight calls and nine emails from employees.

Speaking after the hearing, union instructing solicitor and Maurice Blackburn principal Josh Bornstein said Telstra's decision to bring the case "smacks of desperation".

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"This was a desperate, clumsy and harmful attempt to gag Telstra employees in the lead-up to the ballot next week," Bornstein said.

ACTU assistant secretary Chris Walton, who is leading the union campaign against Telstra's industrial strategy, said the decision vindicated the unions.

"This case was always frivolous, but Telstra was clearly looking for a public relations win," Walton said. "Unions have been advising their members honestly and openly and the court has dismissed any argument to the contrary."

Telstra spokesman Martin Barr said the company was glad it took a "principled approach" to protect the right of employees to be properly and accurately informed.

"This decision in no way vindicates the unions as the offer we have put to our employees is fair and competitive. We now just want to get on with the vote and let our employees decide," he said

Meanwhile, Telstra has also lodged an appeal against Senior Deputy President Brian Lacy's [decision](#) earlier this week that the AIRC has the jurisdiction to act as a mediator in the dispute between Telstra and the unions.

Telstra refused to participate in the first conciliation session convened by Commissioner Diane Foggo yesterday, and will tomorrow seek a stay of Senior Deputy President Lacy's decision until the full matter can be heard.

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