



RTBU NSW

NEWSFLASH

LOCO DIVISION

June 5, 2024

QUBE – General Update

1 – Intractable Bargaining Update

2 – QUBE’s appeal to vary the 2015 and 2019 EA’s.

3 – Federal Court Proceedings

1 – Intractable Bargaining – Qube and the RTBU were in the Commission on 3 and 4 June 2024 before Deputy President Wright arguing about the state of bargaining. The RTBU’s position was that the bargain had become intractable, and Qube was of the view that, despite the time spent bargaining, there was still some untrodden ground.

The Deputy President made a suggestion from the Bench that the parties might like to consider some supervised bargaining before another member of the Commission, the outcome of which will be reported to the Deputy President and will assist in informing the Commission’s decision on whether the bargain is intractable.

Both parties have agreed to this approach. A supervised meeting will occur before Deputy President Saunders before the end of June and likely again in July and August, with the parties meeting in between listings to discuss anything that arises.

What does this mean? The intractable bargaining proceedings remain on foot, effectively adjourned part-heard. This means bargaining is ongoing in a modified form, the outcome of which will inform whether an intractable bargaining declaration is made that will result in the end of bargaining and a suitable agreement imposed on Qube.

2 - QUBE appeals their loss - On 1 May 2024, the Fair Work Commission handed down its decision to dismiss QUBE’s application to vary the 2015 and 2019



Enterprise Agreements. This is a huge win for members and the decision can be found [here](#).

Unsurprisingly and as previously reported, Qube has appealed this decision to the Full Bench of the Fair Work Commission. This has been listed for a hearing on 9 July 2024 in Melbourne.

The RTBU has filed a notice of contention in the Appeal, articulating further grounds upon which the decision of 1 May 2024 can be upheld.

A decision in the Appeal is likely to be made relatively quickly following the 1-day hearing.

3 – Federal Court Proceedings – The Federal Court case remains stayed pending the outcome of Qube’s Variation Appeal in July. Whilst it is impossible to anticipate the outcome of any proceedings, a resolution of Qube’s variation application may finally get the Federal Court proceedings moving once more.

The Federal Court proceedings are not tied to bargaining, in the sense that the outcome of the intractable bargaining dispute will not speed up or slow down the resolution of the matter before the Federal Court. Qube’s variation proceedings are the matter that is slowing down the resolution of the Federal Court proceedings.

As to the prospects of the Federal Court proceedings if Qube’s appeal is dismissed, it is worth reading this reflection from DP Cross in dismissing Qube’s s 217 Variation application on 1 May 2024;

“the task of identifying an ambiguity or uncertainty in [a variation] application is not an especially onerous step, I find that there is an ambiguity or uncertainty arising from the non-application of the terms of the 2015 EA and the 2019 EA in the payments made to the employees covered by those agreements.

However, I note that if the question before me was the proper construction and interpretation of the 2015 EA and the 2019 EA, [RTBU note - as it is



before the Federal Court,] a conclusion of ambiguity or uncertainty would not have been available on that basis.”

All QUBE members should be incredibly proud of their efforts through this long and difficult process. We are on the home stretch now, and members have never been better positioned to achieve fair and just pay and conditions of employment at Qube.

Not a Member, Join Now

If you have any questions about joining,
please contact the RTBU Head Office on (02) 9264 2511.

