

## EMPLOYEE RELATIONS UPDATE –FEBRUARY 2005

### CAN AN EMPLOYER BE FORCED INTO MAKING A CERTIFIED AGREEMENT?

*A recent decision has clarified the Queensland Industrial Relations Commission's power to refer to arbitration a matter where one of the parties to a proposed certified agreement has refused to enter into negotiations.*

This matter was dealt with in the case of the *Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees Queensland (AMEPKU) and Townsville Engineering Industries Pty Ltd (the Employer)* (Case no. B1291 of 2004).

In this case, the AMEPKU forwarded correspondence to the Employer proposing to negotiate a certified agreement. The employer responded by advising the Union that they did not wish to enter into negotiations for a certified agreement. The employer claimed that it already paid its employees above the award requirements.

The AMEPKU made an application to the QIRC seeking their assistance in negotiating a certified agreement with the Employer. Two (2) conciliation conferences were held by the QIRC where the employer continued to state their position that they were not prepared to enter into negotiations for a certified agreement. The Commissioner then referred the matter to arbitration.

Whilst the AMEPKU believed that their correspondence to the Employer constituted entering into 'negotiations' with the Employer, the Employer argued that the *Queensland Industrial Relations Act 1999* (the 'Act') provides a choice as to whether a certified agreement can be made or not. The Act does not state that an employer "must" enter into an Agreement on the request of relevant parties, but that it "may" do so.

The Act provides that a party may ask the QIRC to assist through arbitration if they believe that certified agreement negotiations have broken down.

However, in order for it to be considered that agreement negotiations have broken down and for the Commission to intervene, both parties would be required to **agree** to enter into negotiations. In this case, there was no agreement by *both* parties to enter into negotiations of an agreement.

The QIRC confirmed that there is no requirement for an employer to make an agreement. If the employer does not wish to have an agreement at all, there is no requirement in the Act that would force an agreement to come into existence. It was confirmed that the QIRC does not have the power to arbitrate on this matter.

In this case, had the Employer entered into negotiations but then withdrew, the above would not apply. The QIRC confirmed that since there had been no discussions with the intention to negotiate a certified agreement, there had been no negotiation and, as such, the Commission lacked jurisdiction to arbitrate the matter.

*If you have no intention of entering into a certified agreement with a union/s, you should not enter into negotiations. Simply respond to any attempt to negotiate with written correspondence that makes it clear that you have no intention of negotiating a certified agreement. Contact a Partner at MJ Smith and Partners if you require further information.*