

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

National Union of Workers – General Branch ABN 76 490 325 232

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) National Union of Workers – General Branch ABN 76 490 325 232 (**NUW**)for the purpose of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Workers employed by Sigma Pharmaceuticals Pty Ltd (**Company**) at its Distribution Centre in Belmont, Perth (**Distribution Centre**), who were members of the NUW attended a union meeting on 6 October 2014 convened by an NUW organiser working in the Western Australian office (**Organiser**).
3. At the meeting on 6 October 2014, the majority of workers voted to take protected industrial action in support of a new Enterprise Agreement.
4. Four of the five workers who voted against taking protected industrial action subsequently resigned from the NUW on 6 October 2014 (**the Four Workers**).
5. On 8 October 2014 the workers who were members of the NUW at the Distribution Centre (not including the Four Workers who had resigned their membership of the NUW) engaged in protected industrial action.
6. The Organiser wrote the word 'SCAB' on each of the Four Workers' resignation letters and attached each of the resignation letters to an NUW banner. The NUW banner was displayed outside the Distribution Centre when the industrial action was held on 8 October 2014.
7. The Organiser took photographs of the NUW banner containing the four 'SCAB' resignation letters and uploaded a photograph onto the Organiser's Facebook page titled "Sigma EBA 2014". Workers at the Distribution Centre were able to access the Organiser's Facebook page.
8. On discovering that their letters of resignation from membership of the NUW had been placed on an NUW banner and put on the Organiser's Facebook page bearing the word 'SCAB', each of the Four Workers expressed feelings of humiliation and embarrassment.
9. The Organiser engaged in the conduct set out in paragraphs 6 to 7 above because the Four Workers did not engage in "industrial activity" (within the meaning of that term in s.347(f) of the FW Act), in that the Four Workers did not take part in the protected industrial action at the Distribution Centre.

Contraventions

10. The FWO has determined, and the NUW admits, that the NUW contravened section 346 of the FW Act by taking adverse action against the Four Workers.

Commencement of Undertaking

11. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by NUW; and
 - (b) the FWO accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking, the NUW undertake to assume the obligations set out below.

Undertakings

13. For the purposes of section 715 of the FW Act, the NUW undertakes to:

- (a) place a public notice in the Saturday edition of *The Australian* (**WA Public Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment A;
- (b) place a public notice on the NUW Website (**Website Public Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment A;
- (c) place a notice within the workplace at the Distribution Centre which is accessible to all workers of the Company (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment A;
- (d) provide the FWO with a copy of the **Public Notices** and **Workplace Notice** and written details of how the **Public Notices** and **Workplace Notice** have been displayed within seven days of publication/display of the notices;
- (e) write and send an **apology** to the Four Workers within 14 days of executing this document, in the form of Attachment B;

Donation

- (f) donate to Jobwatch (Australia) Employment Rights Legal Centre and make payment of a \$2,000 donation within sixty days of this Undertaking being executed. Provide proof of payment of the amount of \$2,000 to the FWO within seven days of payment;

Workplace Relations Training

- (g) within 90 days of the execution of this Undertaking, organise and ensure delivery of a training program so that all union organisers of the NUW in its Western Australian office are made aware of Chapter 3 Part 3-1 General Protections Division 4 Industrial Activities;
- (h) ensure that the training course is conducted by an accredited workplace trainer (not being anyone who has advised the NUW in relation to the subject matter of the Contravention noted in this Undertaking) who is approved by the FWO and paid for by the NUW;
- (i) provide the training materials to be used in the training to the FWO no later than 7 days before the training is to be conducted;
- (j) within seven days of the training being conducted, provide the FWO with evidence at the training (including the name and position of all attendees and the date on which the training was conducted);

Future Workplace Relations Compliance

- (k) ensure all union organisers of the NUW in its Western Australian office comply at all times and in all aspects with the FW Act by developing systems and processes designed to ensure ongoing compliance with Commonwealth workplace laws; and
- (l) ensure the names of the Four Workers are not released in any form including on the NUW Facebook page by the NUW.

Acknowledgements

14. The NUW acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request

under the *Freedom of Information Act 1982* (Cth);

- (c) the FWO may issue a media release in relation to this Undertaking and, from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by union organisers employed by the NUW in its Western Australian office;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that the NUW has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, the NUW may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

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- (d) provide the FWO with a copy of the **Public Notices** and **Workplace Notice** and written details of how the **Public Notices** and **Workplace Notice** have been displayed within seven days of publication/display of the notices;
- (e) write and send an **apology** to the Four Workers within 14 days of executing this document, in the form of Attachment B;

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Workplace Relations Training

- (g) within 90 days of the execution of this Undertaking, organise and ensure delivery of a training program so that all union organisers of the NUW in its Western Australian office are made aware of Chapter 3 Part 3-1 General Protections Division 4 Industrial Activities;
- (h) ensure that the training course is conducted by an accredited workplace trainer (not being anyone who has advised the NUW in relation to the subject matter of the Contravention noted in this Undertaking) who is approved by the FWO and paid for by the NUW;
- (i) provide the training materials to be used in the training to the FWO no later than 7 days before the training is to be conducted;
- (j) within seven days of the training being conducted, provide the FWO with evidence at the training (including the name and position of all attendees and the date on which the training was conducted);

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- (c) the FWO may issue a media release in relation to this Undertaking and, from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by union organisers employed by the NUW in its Western Australian office;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that the NUW has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, the NUW may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by the National Union of Workers
in accordance with rule 27 of the *Registered
Rules of the National Union of Workers*



Signature of General Branch Secretary

SAMUEL ROBERTS

Printed name

23 January 2015

Date



In the presence of:

GODFREY MOASE

Name of witness



Signature of FWO Representative

STEVEN RONSON

Printed name

27 JANUARY 2015

Date



In the presence of:

FAY PIHIOURAS

Name of witness

Attachment A – Form of Public and Workplace Notice

The Office of the Fair Work Ombudsman (the FWO) recently investigated allegations that the National Union of Workers (the NUW) contravened workplace laws in October 2014. The allegations were that an organiser employed in the Western Australian office of the General Branch of the NUW subjected four workers to adverse action by attaching the four workers' letters of resignation from membership of the NUW on an NUW banner on 8 October 2014, photographing the banner and uploading the photo onto the organiser's Facebook page.

The four workers expressed feelings of humiliation and embarrassment.

The NUW has formally admitted to the FWO that it did in fact contravene workplace laws by taking adverse action against the four workers.

An Enforceable Undertaking has been given by the NUW to the FWO to reflect these formal admissions (available at www.fairwork.gov.au).

The NUW expresses its sincere regret and apologises for failing to comply with its obligations. Furthermore the NUW gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws.

Attachment B – Letter of Apology

[letterhead]

<Date>

<Worker name>

<Worker address>

Dear

I am writing to let you know about the outcome of a recent investigation by the Office of the Fair Work Ombudsman (the FWO). On behalf of the National Union of Workers (the NUW) I offer my sincere apology to you for the unfortunate situation that was the subject of the FWO's investigation.

The FWO's investigation concerned allegations that an organiser in the Western Australian office of the General Branch of the NUW subjected you and three other workers to adverse action by attaching each of the letters of resignation from membership of the NUW to an NUW banner on 8 October 2014, writing the word 'SCAB' on each resignation letter, photographing the banner and uploading the photo onto the organiser's Facebook page. As a consequence of that organiser's actions, you expressed feelings of humiliation and embarrassment.

Following its investigation, the FWO found that the NUW had contravened Commonwealth workplace laws.

The NUW has formally admitted to the FWO that it that it did in fact contravene workplace laws by engaging in the conduct set out above and, as a consequence, taking adverse action against you and three other workers.

The NUW expresses its sincere regret and apologises to you for failing to comply with its lawful obligations. Furthermore, the NUW gives its commitment that the prohibited conduct will not occur again.

Signed

Sam Roberts

General Branch Secretary