BRIEFING NOTE

ACTU australian council of trade unions

Single Interest Bargaining

14 February 2023, ***BN21***

Introduction

As it stands today, bargaining for a single enterprise agreement is the only form of bargaining that provides for enforceable good faith bargaining rules, protected industrial action and compulsory conciliation during bargaining. Single enterprise agreement bargaining almost always involves bargaining with a single employer because, outside of related bodies corporate and joint ventures, few employers are eligible to participate without Ministerial approval and no employers are eligible to participate unless they apply to do so of their own volition.

The single interest bargaining stream introduced by the SJBP Act represents the first credible effort to introduce multiple employer bargaining since the introduction of enterprise bargaining in the early 1990s. It broadens the categories of employers who can be subject to the suite of bargaining rights and responsibilities the Act offers and allows those rights to be activated without the employer's consent.

Operation of the new provisions

There are multiple steps in the process toward concluding a single interest employer.

Initiating Bargaining and representation

No FWC procedures need to be invoked to initiate bargaining for a single interest employer agreement. However, none of the rights and privileges that are associated with the single interest employer agreement bargaining stream are available until an application for a single interest employer authorisation has been made and determined by the FWC.

The fact that the type of agreement that a union wants to make is a single interest employer agreement is of little significance at this early stage. As far as representation is concerned at this point, the rules that determine bargaining representatives are the same as would be the case for other non-greenfields agreements.[1] This in practice means that a union would need members (or a member) employed by each employer that it sought to be covered by the proposed agreement, in order to be a default bargaining representative in respect of bargaining for a proposed agreement that included that employer.[2] There is essentially no distinction in rights

[1] S. 176

[2] There are bargaining representatives for employees and employers "who will be covered by the agreement" 176(1). Bargaining involves an exchange between bargaining representatives: s. 228. In addition, the constitutional footprint of the Act relies on the legal relationship between employees and their employer: see s.13 and *NSW v. The Commonwealth* [2006] HCA 52 at [177-178], [198].

and obligations between bargaining for a proposed cooperative bargaining agreement and bargaining for a proposed single interest employer agreement at the stage before a single interest employer authorisation is issued.[3] It follows that employers (or the employer's bargaining representative) may also initiate bargaining.

Risks

At this early stage, the usual delay and non-engagement tactics of employer that are familiar experiences in relation to single enterprise agreement bargaining may occur. Additionally, the employer may seek to initiate bargaining for a single enterprise agreement instead, either by direct dealing or by engaging with the union. As a bargaining representative that has initiated bargaining for a single enterprise agreement, the employer may, if it involves your union in bargaining, ultimately seek a bargaining order to compel your union to bargain with it for a single enterprise agreement. Careful organisation and planning will be required to ensure that an application for a single interest employer authorisation can be made promptly. This is because once an employer is specified in a single interest employer authorisation, and for so long as they remain so specified, they are prevented from making any other type of enterprise agreement in respect of the employees specified in the authorisation.[4]

Applying for an authorisation

An authorisation may be applied for either by a bargaining representative for the employees or by the employers who are covered by the proposed agreement.

It is to be noted that an *employee's* bargaining representative in this context – that is *before* any authorisation has been issued by the FWC – is a bargaining representative for a *proposed* enterprise agreement that is not a greenfields agreement. That means, at this stage at least, a union would need members (or a member) employed by each employer that it sought to be covered by the proposed agreement, in order to be a default bargaining representative in respect of bargaining for that proposed agreement.[5]

The form in which an application will be required to be made, and the associated lodgement and service requirements, have not been finalised. We would expect consultation on any amendments to the regulations will to be announced by government in due course. Changes to the *Fair Work Commission Rules* and any forms approved by President[6] will be the subject of consultation through the Rules and Benchbooks committee of the FWC. The application form will likely ask that applicant specify the employers and employees who are proposed to be covered by the agreement, identify if there is a person who is nominated to make any further applications under the Act in the event the authorisation is made[7], as well provide some information relevant to the merit tests and exclusions which apply.

There are merit tests which are common to all applications, and some tests, exclusions and evidentiary presumptions whose application depends on whether the applicants are employers

[3] Cooperative workplace agreements, single interest employer agreements and supported bargaining agreements are all subsets of multi enterprise agreements per their definitions in section 12 and 172(3).

The elevated rights that exist in supported bargaining and single interest employer bargaining derive from the issuing of authorisations by the FWC: see section 240(2), 229(2), 437(2), 437(2A), 173(2)(d), 173(2)(e).

[4] s. 172(5).
[5] S. 176
[6] *Fair Work Commission Rules 2013,* rule *8.*
[7] S. 248(2).

and, if they are not, whether the employer's consent to the making of the authorisation (see *Table 1*). There is also a general exclusion which prevents a single interest employer authorisation being made in respect of a proposed agreement that would cover employees in relation to general building and construction work.[8] Each of these is expressed as a duty upon the FWC ("the FWC must") contingent upon it being "satisfied" of particular matters.[9] Finally, the FWC has a discretion to exclude from an authorisation any employers (and their employees) who are bargaining for another agreement.

Basic merit tests

Whilst the coverage of the single interest employer bargaining stream is much wider than the single enterprise agreement stream that it replaces, it is not unrestricted. There are only two types of employer groups that may be included: franchise groups and common interest groups. It does not appear to be envisioned that a group could be composed of both. Each application that is made must pass one of the merit tests below.

The merit test that applies to the franchise group is essentially unchanged from that which applies in relation to single enterprise agreements pre amendment: The FWC must be satisfied that the employers carry on similar business activities under the same franchise, and are either franchisees of the same franchisor, related bodies corporate of the same franchisor or any combination thereof.

The merit test that applies to common interest groups is novel. The FWC must be satisfied that the employers have clearly identifiable common interests and that is not contrary to the public interest to make the determination.[10] Whilst common interest is not defined, certain matters are specified "that may be relevant for determining whether the employers have a common interest, being geographical location, regulatory regime and the nature of the enterprises to which the agreement will relate, and the terms and conditions of employment in those enterprises.[11] The test further requires that the operations and business activities of the employers are reasonably comparable.[12]

If the relevant merit test cannot be met in relation to some but not all of the employers specified in the application, the FWC has a discretion to exclude the employers who do not meet the test from any authorisation it makes.[13]

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[8] S.249A

[9] This essentially means that on an appeal to the Full Bench the decision is taken to be a discretionary decision: *Appeal by McKewin & Hamilton &Ors* [2013] FWCFB 2568 at [30]; *Coal & Allied v. AIRC* [2000] HCA 47 at [19-28]. Such decisions are difficult to ultimately set aside through judicial review: *Coal & Allied v. AIRC* [2000] HCA 47 at [29-32].

[10] S. 249(3)

[11] S. 249(3A)

[12] S. 249(1)(b)(iv)

[13] S. 250(2)

Table 1: Single Interest Employer Authorisation - Common Interest Groups

	Application by Union, opposed by the relevant employer	Application by Union, consented to the relevant employer	Application by employers
Basic merit tests	Applies	Applies	Applies
Representation test	Applies	Applies	Applies
Alternative bargaining – discretion to exclude	Applies	Applies	Applies
Requirement for 20 employees	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply
Requirement to demonstrate majority support	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply
Presumption regarding common interest	Applies in relation to that employer if it has 50 employees or more	Applies in relation to that employer if it has 50 employees or more	Does not apply
Presumption regarding reasonably comparable activities	Applies in relation to that employer if it has 50 employees or more	Applies in relation to that employer if it has 50 employees or more	Does not apply
Agreement to bargain test	Does not apply	Does not apply	Applies
Competing application test	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply
Competing authorisation test	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply
Unexpired agreement test	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply
Alternative bargaining – mandatory exclusion	Applies in relation to that employer	Does not apply in relation to that employer	Does not apply

Representation test

For each application, the FWC must be satisfied that at least some of the employees that will be covered by the agreement are represented by a registered union.[14]

[14] S. 249(1)(b)(i).

Presumption regarding common interest

If an application for an authorisation in respect of a common interest group is made by a bargaining representative of an employee that is proposed to be covered (e.g. a union), then each employer that has 50 employees or more will be presumed to have clearly identifiable common interests with the employers and it will be presumed that it would not be contrary to the public interest to make the authorisation, unless the contrary is proved.[15]

Presumption regarding "reasonable comparable" business activities.

As noted above, an additional element of the common interest test is that the operations and business activities of the employers are reasonable comparable. If an application for an authorisation in respect of a common interest group is made by a bargaining representative of an employee that is proposed to be covered (e.g., a union), then each employer that has 50 employees or more will be presumed to have operations and business activities that are reasonably comparable, unless the contrary is proved.[16]

Agreement to bargain

Where an application is made by employers, the FWC must be satisfied that the employers that will be covered by the agreement have agreed to bargain and that no person coerced (or threatened to coerce) them to do.[17]

No competing application

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that none of those non-consenting employers have made a separate application for a single interest employer authorisation which has not yet been decided, in relation to the employees that will be covered by the agreement.[18]

No competing authorisation

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that none of those non-consenting employers are named in an existing single interest employer authorisation or supported bargaining authorisation in respect of the employees who are proposed to be covered by the agreement.[19]

Majority Support

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that a majority of the employees of each of those non-consenting employers that will be covered by the agreement want to bargain for the agreement.[20] The FWC may assess majority support using any method it considers appropriate.[21]

Unexpired agreement

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that none of those non-

[15] 249(3AB).
[16] S. 249(1AA)
[17] S. 249(1A)
[18] S. 249(1B)(b)
[19] S. 249(1B)(c)
[20] S. 249(1B)(d)
[21] S. 249(1C)

consenting employers and their employees are covered by an enterprise agreement (of any type) that has not passed its nominal expiry date.[22]

Mandatory exclusion for alternative bargaining

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that none of those non-consenting employers has agreed in writing with a registered union to bargain for *a single enterprise agreement* that would cover the same (or substantially the same) group of employees.[23]

Requirement for 20 employees

If an application is made by a bargaining representative for the employees and one or more of the employers does not consent to it, the FWC must be satisfied that each of those non-consenting employers has at least 20 employees at the time the application is made.

Discretion to exclude for alternative bargaining

The FWC may exclude one or more employers (and their relevant employees) from any authorisation it would otherwise make on the basis of them bargaining for a replacement agreement. In may do so if it is satisfied that:

- those employers are bargaining in good faith for a proposed agreement that will cover the same (or substantially the same) group of their employees as specified in the application;
- those employers and those employees have a history of effectively bargaining in relation to *one* or more enterprise agreements (of any type) that have covered the same (or substantially the same group) of employees; and
- less than 9 months have passed since the most recent nominal expiry date as at the date the FWC will make the authorisation.

Further, if the FWC is satisfied of the above matters in relation to all of the employers, then it may choose to make no authorisation at all.

Risks

There is little guidance about what will constitute a "clearly identifiable common interest". It seems that the matters asserted in the provisions as *relevant to determination of whether* employers have a common interest merely identify the *features* that employers may have in common, which may lead to them having common interests, rather than an identification of the *interests*. The presumption of common interests, where it applies, will probably not relieve the applicant from articulating the common interests which are to be presumed to apply. On the face of it, common interests may be more easily demonstrated in dependent supply chain arrangements (e.g., horizontally for contract cleaning) or for specialist services contractors to oligopolies (e.g., baggage handling) rather than on a whole of "industry" basis as articulated in modern awards and the union eligibility rules which they have some historical connection to. This raises the need for close cooperation with affiliates engaged at different levels vertically in the same supply chain, particularly in relation to price effects.

Of more immediate concern is the manner which bargaining behaviour – including bargaining behaviour *right now* can narrow the field of employers who may be included in an authorisation. There are multiple levels at which this operates. Firstly, single interest employer agreements

[22] S. 249(1D)(a)
[23] S. 249 (1D)(b)

when eventually made and approved cannot operate where other extant agreements have not reached their nominal expiry date, and this insulating effect (even if a temporary one) is no doubt on the minds of many employers. Secondly, the process for making approvals ensures that employers who have unexpired agreement and employers who have written agreement with a union to bargain (irrespective of their bargaining history) can avoid an authorisation being made which covers them merely by opposing it for either of those reasons. Thirdly, even if all requirements are met (and even if the employer is initially consenting to the making an authorisation), employers that have expired agreements in place can avoid an authorisation covering them by starting to bargain for a replacement – including without any union involvement where the relevant employees have no default union bargaining representative.

These provisions effectively incentivise bargaining at the enterprise level by framing it as an exit strategy from single interest employer bargaining, including one which can be deployed not only before but also *after* an application for an authorisation has been made. This stands in contrast to the process for supported bargaining authorisation, where there is at least some capacity for enterprise agreements which are made with the "main intention" of avoidance being superseded.[24] The contest between forms of agreements and bargaining levels poses obvious tensions which requires close cooperation by affiliates, particularly in areas of joint coverage.

Bargaining under an authorisation

The immediate impacts of a single interest employer authorisation being made are:

(1) The good faith bargaining requirements may be enforced (in the usual way) through bargaining orders;[25]

(2) Applications for protected industrial action ballots can be made[26];

(3) Applications can be made to FWC for assistance in resolving bargaining disputes, without the consent of other bargaining representatives[27]; and

(4) Employers specified in the authorisation are prohibited from bargaining for (or making) any other type of enterprise agreement with the employees specified in the authorisation[28], or varying an existing agreement to include those employees[29].

Scope orders are not available in respect of proposed single interest employer agreements and notices of representational rights are not required.[30]

Risks

The item above underscores why applications for single interest employer authorisations are critical junctures in determining bargaining levels. However, as will be seen, once bargaining is underway and thereafter there are still pathways for employers to enter and exit the process.

Protected Industrial Action under an authorisation

Although the provisions relating to applying for a protected action ballot were amended through the SJPB Act[31], they do not discriminate in their application to single interest employer bargaining

[24] See section 243A
[25] S 229(2), 230(2)(e).
[26] S. 173(2)(e), 437(2A).
[27] S. 240(2)(c).
[28] s. 172(5)
[29] S. 211(1A)
[30] S. 238(1), 173(1)
[31] See the Briefing Note on Protected Industrial Action

save in two respects. Firstly, it will be possible to make a single application covering all of the employers in relation to who action is proposed to be taken, but the application will be treated as if separate applications are made in relation to each employer and separate orders will be made.[32] Secondly, the minimum notice period for taking any protected action will be 120 hours (or such longer period as is specified by FWC).[33]

Risks

It might be expected that the case law around when an application for a protected action ballot is "premature" may be revisited. Previously, there was some tension in the case law around when an applicant could be considered to be genuinely reaching agreement[34] which was "addressed" by the former government amending the Act to require (in section 437(2A)) that there be a notification time before a protected action ballot order may be applied for. The amendment to section 173(2)(e) means that requirement is satisfied once the single interest employer authorisation is made, thus employers will have renewed interest in confining the "genuinely trying" requirement in section 443(1)(b) by reference to how advanced the bargaining process is.

Variation of an authorisation

Once an authorisation has been made, it will be possible to both expand and reduce the numbers of employers who are covered by it.

Applications to remove employers from an authorisation may be made by either the employer seeking to be removed or by a bargaining representative for the employees. There are two alternative pathways for removal, the first of which is available irrespective of the applicant for removal and irrespective of the size of the employer proposed to be removed. The second is available only if the applicant for removal is a bargaining representative for the employees and only permits removal of an employer who the FWC is satisfied employs less than 50 employees at the time the application is made.

Under the first pathway[35], the FWC must remove the employers name if "..because of change in the employer's circumstances, it is no longer appropriate for it to be specified in the authorisation"[36] and the other employers and the bargaining representatives have had an opportunity to express their views. It is to be expected that consideration of changed circumstances would not be entirely at large in the sense that it would involve at a minimum some examination of whether, if the authorisation was applied for on the date the removal was sought, would the same decision be made in relation to that employer? Perhaps, for example, their interests have changed because they no longer operate a particular franchise, or contract in a particular industry. Additional significant matters (for example the employer being placed into external administration) may be also be argued to be sufficient.

The second pathway[37] requires (in addition the under 50 employees' criteria) that the FWC be satisfied that the employees have, at the request of the bargaining representative, approved of the removal. The vote requires a double majority in support (like a protected action ballot) and for the FWC to be satisfied that the are no reasonable grounds for believing that this was not

[32] S.437A
[33] S. 414(2)(a), 443(5).
[34] See *Total Marine Services* [2009] FWAFB 368, *JJ Richards v. TWU* [2010] FWAFB 9963.
[35] S. 251(2A)
[36] S. 251(2A)
[37] S. 251(2B)-(2D)

genuinely approved by the employees. The FWC must also be satisfied that the other employers and the bargaining representatives have had an opportunity to express their views.

Applications to add an employer to an authorisation can be made either by that employer, or by a person who is bargaining representative of *both* an employee of new the employer and of an employee already covered by the authorisation.[38] In all cases, the FWC must be satisfied that the basic merit tests set out in 1.2.a above would continue to be met if the employer was added and that the bargaining representatives and the employers already specified in the authorisation have had an opportunity to express their views. In all cases the FWC will have the same discretion to refuse to add the new employers name as set out in 1.2.l above, which relates to bargaining for a replacement agreement. If the application to add an employer's name to an authorisation is made by that employer, the FWC must also be satisfied that no person coerced, or threatened to coerce, the employer to do. An authorisation cannot be varied to add an employer if the result would be that the proposed agreement would cover employees in relation to general building and construction work.[39]

If the application to add an employer's name is made by a bargaining representative, the presumptions concerning common interest and reasonably comparable activities as set out in 1.2.c and 1.2.d also apply, if that employer employs 50 or more employees at the time the application is made.[40] Additionally, the FWC must be satisfied (irrespective of whether the employer consents)[41]:

- The new employer employees at least 20 employees at the time the application is made (see 1.2.k);
- That the no competing application requirement (1.2.f) and no competing authorisation requirement (1.2.g) are met;
- That there is majority support among employees of the new employer (1.2.h)
- That the new employer and their relevant employees are not covered by an unexpired agreement (1.2.i); and
- That the new employer had not agreed with a registered union to bargain for a single enterprise agreement (1.2.j)

Risks

The decision the FWC publishes in relation to the granting of the authorisation will necessarily limit the scope of which employees can be later added, particularly in relation the common interests which it identifies (which may be a more confined set of interests than those you sought to demonstrate in your application). That said, there is no real suggestion that it will any more difficult to add an employer to an authorisation than it will be to include it in the first place.

Conclusion of an agreement

Additional features of approval process for a single interest employer agreement to be aware of are:

(1) That the agreement cannot be circulated for a vote in the absence of the agreement of each registered union that is a bargaining representative, unless a voting order is made.[42]

[38] S. 251(3)-(4)
[39] S. 251A
[40] S. 251(4A)
[41] See s. 251(4)(b)(iii), 251(5)-(7).
[42] See the briefing note on Approval [use proper title and hyperlink]

(2) That the agreement can only be approved in respect of the employers of employees who have voted in favour it. There is an onus on the bargaining representative who applies for the approval to vary the agreement to confine it to those employers in respect of whom the majority was reached and give notice to all bargaining representatives of that variation.[43]

(3) The Fair Work Commission must be satisfied that the agreement does not cover employees in relation to general building and construction work[44]

Further information on how the approval requirements for enterprise agreements have been amended is provided in the Agreement Approval briefing note.

Risks

The approval process is the first and only point at which single interest employer agreement will be examined for whether the group of employees were fairly chosen. It would be quite disappointing to have endured a likely lengthy process to arrive at agreed terms only to have the agreement fail at the last hurdle. Careful consideration should be given to the authorities on this issue to reduce the likelihood of such a finding[45].

Arbitration

Issues in bargaining can be arbitrated either by consent under section 240 or independently of consent through an industrial action related workplace determination (where protected action has been terminated) or through the new provisions concerning intractable bargaining. Further information on the intractable bargaining provisions is provided in the Bargaining Disputes briefing note.

Operation of an agreement

As noted above, the provisions concerning single interest authorisations generally work to exclude unwilling employers from being included in authorisations (and, accordingly, single interest employer agreements) where they are covered by an unexpired enterprise agreement or are otherwise bargaining.

However, single interest employer agreements are capable of being varied not only with respect to their content and the scope of employees they cover[46] but also the scope of employers they cover[47]. This might provide an option to "rope-in" employers to single interest employer agreements after their own agreements have expired and their preferred bargaining arrangements have not resulted in an agreement.

The process to vary a single interest employer agreement to add an employer depends on whether the application is made by the employer or by a registered union that is covered by the agreement. In either case, it will not be possible to extend the agreement to cover an employer that is specified in a supported bargaining authorisation in relation to any of the affected employees, or to cover employees of the new employer in relation to general building and construction work.

An application by an employer first requires that a variation is made with its affected employees, which requires both a vote and that the terms of the agreement as proposed to be varied (and

[43] S. 182(2), 184, 187(3)

[44] S. 186(2B)

[45] See for example *Cotton on Group* [2014] FWCFB 8899, *UFU v. MFESB* [2010] FWAFB 3009, *AWU v. BP* [2014] FWCFB 1476, *Maurice Alexander Management* [2022] FWC 3236.

[46] Subdivision A of Division 7 of Part 2-4

[47] In either case however it is not possible to vary the agreement so as to cover employees in relation to general building and construction work.

their effect) is explained.[48] The FWC's approval is based upon a vote and the tests which substantially repeat the basic merit tests (1.2.a). In addition, a variation of the "genuinely agreed" test will apply which omits consideration of representation and whether an employee organisation agreed to the vote proceeding. The FWC *must* approve the application if is satisfied as to these requirements, subject to a discretion to refuse based on the employer bargaining for a replacement agreement, as in 1.2.l above.

In an application by an employee organisation, the applicant is able to take advantage of the presumptions set out at 1.2.c and 1.2.d concerning the basic merit tests where the new employer has 50 or more employees. Additionally, the FWC must be satisfied (irrespective of whether the employer consents)[49]:

- That the new employer employs at least 20 employees at the time the application is made (see 1.2.k);
- That there is majority support among employees of the new employer (1.2.h)
- That the new employer and their relevant employees are not covered by an unexpired agreement (1.2.i); and
- That the new employer had not agreed with a registered union to bargain for a single enterprise agreement (1.2.j)

As with applications that are made by employers, the FWC *must* approve the application if is satisfied as to these requirements, subject to a discretion to refuse based on the employer bargaining for a replacement agreement, as in 1.2.l above.

In order to be approved by the FWC, variations to remove an employer for the coverage of a supported bargaining agreement require in all cases both a majority vote of the affected employees and the consent of each registered union that is both covered by the agreement and entitled to represent the industrial interests of the affected employees.[50]

Risks

The principal risks associated with expanding coverage of agreements relate to preferences around forms of bargaining, and the history of bargaining, among affiliates with joint or overlapping coverage. This highlights the need for careful planning and cooperation concerning the ideal targets and timing for single interest employer bargaining. Because variations to add employers must be advanced without the usual rights associated with bargaining, and because there are incentives on employers to avoid or exit single interest bargaining, there is a real risk that the employers who escape it in favour of single enterprise bargaining from the outset will continue to do so.

Another issue to consider during the operation of a single interest employer agreement is dispute resolution. On the assumption that at least some terms of a single interest employer agreement apply uniformly to all employers, there is a risk that dispute resolution proceedings in the FWC become protracted owing to employers who are not parties to the dispute (but are covered by the agreement) seeking to be heard on construction questions that may impact their interests.

Key considerations for unions

The single interest employer bargaining provisions have the potential to make a considerable difference to collective agreement coverage and union representation in sectors where density

[48] S. 216D, 216DA.
[49] See s. 216DC.
[50] Subdivision AE of Division 7 of Part 2-4

has waned. The experience in advocating for the introduction of these reforms has proved that employers will strongly resist participation in this stream of bargaining.

There is little doubt that employers will already be arranging their affairs, months in advance of these provisions taking effect, so as to insulate themselves – the most obvious of which would be direct dealing. This difficult intersection of types of agreements could test unity and we would encourage unions to work together as single bargaining units at all stages.[i]

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[i] *The information in this document does not constitute legal advice and should not be taken to include all requirements or obligations relevant to the entitlement(s).*