BRIEFING NOTE

Supported Bargaining

14 February 2023, ***BN20***

Introduction

The supported bargaining stream introduced by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (**SJBP Act**) replaces the low paid bargaining stream. It is intended to result in the making of multi-enterprise agreements, with the assistance of the FWC in a facilitative role, in industries where bargaining has proven to be difficult.

The low paid bargaining stream initially promised much but failed to deliver, with decisions concerning access to that stream being constrained by the expression of the relevant merit tests in the legislation and by FWC adopting inconsistent or unhelpful views about how to apply those tests, particularly when assessing access to bargaining, the history of bargaining and relative pay levels within an industry.

Once the gateway to supported bargaining has been opened under the new provisions through the making of a supported bargaining authorisation, it envisaged that bargaining would be concluded either through the making of agreements (assisted by FWC facilitation and/or protected industrial action) or arbitration where bargaining proves to be intractable. There are, nonetheless, risks of employers evading the gateway altogether, or exiting from the bargaining process while it is underway.

Operation of the new provisions

There are multiple steps in the process toward concluding a supported bargaining agreement.

Initiating Bargaining and representation

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

The fact that the type of agreement that a union wants to make is a supported bargaining agreement has 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

[1] S. 176

proposed agreement that included that employer[2]. There is essentially no distinction in rights and obligations between bargaining for a proposed cooperative bargaining agreement and bargaining for a proposed supported bargaining agreement at the stage before a supported bargaining authorisation is issued.[3] It follows that employers (or the employer's bargaining representative) may also initiate bargaining.

Bargaining for a proposed supported bargaining agreement may commence as a result, in a practical sense, of the Minister making an instrument which specifies a particular industry, occupation or sector under section 243(2B) of the Act.

Risks

At this early stage, the usual delay and non-engagement tactics of employers 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. If the employer does initiate bargaining for a single enterprise agreement with your union, it may 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 supported bargaining authorisation can be made promptly. In addition, the *reasons* that an employer wishes to engage in bargaining for a *single* enterprise agreement may assume significance at a later stage, as discussed further in sections 1.2 and 1.2.a below. Once an employer is specified in a supported bargaining 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 registered union that is entitled to represent the industrial interests of an employee to be covered by the proposed agreement, or by a bargaining representative.

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 agreement.[5] Therefore, it is to be expected that most unions seeking a supported bargaining authorisation would rely on their standing as an employee organisation who is entitled to represent the industrial interest of an employee to be covered by the proposed agreement[6]. Such standing does not require any of the proposed employees to be members, however the merit requirements (addressed below) do require at least some of those employees to be members. The standing to apply for an authorisation that emanates from

[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].

[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(7).

[5] S. 176

[6] s. 242(b). See also *Regional Express Holdings Limited v. Australian Federation of Air Pilots* [2017] HCA 55.

being a bargaining representative[7] is more likely to be utilised by an employer bargaining representative.

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[8] will be the subject of consultation through the Rules and Benchbooks Committee of the FWC. The application form will likely ask that you specify the employers and employees who you propose to be covered by the agreement, as well provide some information relevant to the merit tests which apply.

There are two such merit tests, providing alternate pathways for the making of a supported bargaining authorisation. The second, simpler, pathway applies where the Minister has made a declaration under section 243(2B) concerning a particular industry, sector or occupation. Where such a declaration has been made and an application for an authorisation has been made concerning employees specified in the same industry, occupation or sector, the FWC *must* make an authorisation.[9] The likely more common pathway provides that FWC *must* make an authorisation *if it is satisfied* of particular matters[10], which may be found in section 243 of the Act. While bearing some similarity to the matters that were relevant to the issue of a low paid bargaining authorisation, the relevant matters for a supported bargaining authorisation are clearly more streamlined and notably do not use the expression "low paid" at all, suggesting an intent to not give any elevated role to the "low pay threshold" adopted by the Commission in other matters which directly invite consideration of circumstances affecting "low paid" workers.

Table 1: Relevant matters - Supported Bargaining (new) vs. Low Pad Bargaining (old)

Low Paid Bargaining (Pre SJBP Act)	**Supported Bargaining (Post SJBP Act)**
The current terms and conditions of employment of the employees who will be covered by the agreement, as compared to relevant industry and community standards.	The prevailing pay and conditions within the relevant industry or sector (including whether low rates of pay prevail in the industry or sector)
The extent to which the likely number of bargaining representatives for the agreement would be consistent with a manageable collective bargaining process.	Whether the likely number of bargaining representatives for the agreement would be consistent with a manageable collective bargaining process.
The degree of commonality in the nature of the enterprises to which the agreement relates, and the terms and conditions of employment in those enterprises.	Whether the employers have clearly identifiable common interests. Examples of common interests that employers may have include the following: • a geographical location; • the nature of the enterprises to which the agreement will relate, and the terms and conditions of employment in those enterprises;

[7] s. 242(a)
[8] *Fair Work Commission Rules 2013,* rule *8.*
[9] S. 243(2A)
[10] 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].

	• being substantially funded, directly or indirectly, by the Commonwealth, a State or a Territory.
The extent to which the terms and conditions of employment of the employees who will be covered by the agreement is controlled, directed or influenced by a person other than the employer, or employers, that will be covered by the agreement.	[see common interest above]
[no predecessor provision]	Any other matters the FWC considers appropriate
Whether granting the authorisation would assist low-paid employees who have not had access to collective bargaining or who face substantial difficulty bargaining at the enterprise level	[Any other matters the FWC considers appropriate].
The history of bargaining in the industry in which the employees who will be covered by the agreement work	[Any other matters the FWC considers appropriate].
The relative bargaining strength of the employers and employees who will be covered by the agreement.	[Any other matters the FWC considers appropriate].
Whether granting the authorisation would assist in identifying improvements to productivity and service delivery at the enterprises to which the agreement relates.	[Any other matters the FWC considers appropriate].
The views of the employers and employees who will be covered by the agreement.	[Any other matters the FWC considers appropriate].
Whether granting the authorisation would assist low-paid employees who have not had access to collective bargaining or who face substantial difficulty bargaining at the enterprise level	[Any other matters the FWC considers appropriate].
The history of bargaining in the industry in which the employees who will be covered by the agreement work	[Any other matters the FWC considers appropriate].
[no predecessor provision]	That at least some of the employees who will be covered by the agreement are represented by an employee organisation.
The extent to which the applicant for the authorisation is prepared to consider and respond reasonably to claims, or responses to claims, that may be made by a particular employer named in the application, if that employer later proposes to bargain for an agreement that: • would cover that employer; and • would not cover the other employers specified in the application.	[See below]

In addition, there is an exclusion in section 243A of the Act which prevents the FWC from making a supported bargaining authorisation which covers an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date. The exclusion will not operate if the FWC is satisfied that the employer's "main intention" in making the agreement with the employees covered by it was to avoid being specified in a supported bargaining authorisation. This test of intention involves a higher bar than exists in relation to some other forms of conduct which undermine bargaining.[11]

[11] c.f. s. 360,361

A further exclusion also applies in section 243A which prevents the FWC from making a supported bargaining authorisation in relation to a proposed enterprise agreement if the agreement would cover employees in relation to general building and construction work.[12]

A supported bargaining authorisation operates from the date it is made, and will specify the employers and employees it covers. An authorisation will continue to operate subject to appeal, for as long as it specifies employers and employees. The employers and the employees that the authorisation covers can expand or reduce through variation, or be reduced through the FWC approving enterprise agreements or making workplace determinations.

A supported bargaining authorisation will have no effect to the extent that it specifies an employee that is covered by a single enterprise agreement that has not passed its nominal expiry date, again subject to an exception if the FWC is satisfied that the employer's "main intention" in making the agreement with the employees covered by it was to avoid being specified in a supported bargaining authorisation.

Risks

As noted earlier, it may be expected that some employers that have traditionally been quite hesitant to bargain will move quickly to "lock in" single enterprise agreements on terms favourable to them, in order to insulate themselves from the operation of these provisions, and indeed they will have had a six month head start on this strategy prior to the amendments taking effect in early June. Unions therefore need to make choices about the potential gains associated with supported bargaining stream and the organising strategies that best suit the circumstances – there is clearly no forum to run an argument about an employer's "main intention" as referred to above until the amendments take effect. It is not inconceivable that 4 year baseline agreements for alternate and newly created employing entities in corporate groups are already being made, particularly in industries where casual work is the norm.

There will likely be a number of contested areas in the early applications for supported bargaining authorisations, particularly in relation to the common interest test and the breadth of considerations that might to be brought to bear on whether it is "appropriate….to bargain together…having regard to..any other matters the FWC considers appropriate". Employers might be inclined to exaggerate the confidentiality, complexity or rigidity of their operations to evade being covered by an authorisation. In addition, they may each appoint (or indicate they will or must appoint) more than one bargaining representative, in order to influence the assessment of whether bargaining will be "manageable". A small target strategy, both in relation to the scope of which employers would be covered and the scope of changes in conditions sought to those contained in modern awards which they all ought to able to comply, may provide some context against which the merit tests will be applied by FWC. Further, whilst majority support is not mentioned as a matter that must be considered by the FWC in deterring whether an authorisation should be issued, it is difficult to imagine a circumstance in which it would be *unhelpful* to be in a position to demonstrate it.

Bargaining under an authorisation

The immediate impacts of a supported bargaining authorisation being made are:

[12] Whilst the framing of the exclusion is broad in the sense that it prevents an authorisation from being made at all by reference to the coverage of the "proposed agreement", there is authority for the proposition that a "proposed agreement" is not fixed and its scope in particular may be subject to change: *AMWU v. Skilled Offshore* [2015] FWC 6727, *MUA v. Maersk* [2016] FWCFB 1984.

(1) The good faith bargaining requirements may be enforced (in the usual way) through bargaining orders;[13]

(2) Applications for protected industrial action ballots can be made[14];

(3) Applications can be made to FWC for assistance in resolving bargaining disputes, without the consent of other bargaining representatives[15];

(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[16], or varying an existing agreement to include those employees[17].

(5) The union that applied for the authorisation (assuming a union did apply) becomes the default bargaining representative for *all* employees specified in the authorisation who it is eligible to represent, provided they are not members of another union or have not appointed another bargaining representative.[18]

(6) The FWC can provide assistance to the bargaining representatives on its own initiative.[19]

It is presumably the last item above from which the label "supported bargaining" derives. The true extent of the level of assistance available is not immediately apparent from section 246 of the Act, which has been retained in its current form and was not the subject of significant consideration owing to the failure of the predecessor low paid bargaining stream. What is clear from that section is that the assistance which is contemplated:

(a) is assistance that is provided *to the bargaining representatives;*

(b) which the FWC considers appropriate to *facilitate* bargaining for the agreement; and

(c) is assistance that the FWC *could provide if it were resolving a dispute*.[20]

This excludes arbitration and tends to suggest that the most likely form of assistance will involve a program of conferences and report backs somewhat less formal than those associated with section 240 applications, but less relaxed than those associated with the interest based bargaining interventions that are conducted by consent. Section 246 specifically provides that the FWC may "provide assistance by.." directing a person who is not an employer specified in the authorisation to attend a conference "..if the FWC is satisfied that the person exercises such a degree of control over the terms and conditions of the employees who will be covered by the agreement that the participation of the person in bargaining is necessary for the agreement to be made". Whilst this signals the capacity to (for example) summons Ministers or bureaucrats in funding entities, it does not define the limits of what those persons might be required by FWC to do. It is considered, by reference to section 590 and the requirement in section 246(2)(b) that the assistance be of a type that could be provided if the FWC were resolving a dispute, that the power would extend to compelling the person to provide information (either through documents or answers to questions), but would not extend to compelling them to make a decision or concession.

[13] S 229(2), 230(2)(d).
[14] S. 173(2)(d), 437(2A).
[15] S. 240(2)(b).
[16] s. 172(7)
[17] S. 211(1A)
[18] S. 176(2)
[19] S. 246
[20] Per section 246. The general powers are contained in subdivisions B and C of Division 3 of Part 5-1.

Scope orders are not available in respect of proposed supported bargaining agreements and notices of representational rights are not required.[21]

Risks

There are always avenues for employers to delay and the immediate tactic that comes to mind is associated with the right to representation. It's a common experience that lawyers obfuscate and slow things down. A lawyer that *is* a bargaining representative or is an officer or employee of a bargaining representative does not require permission to appear at a conference of this type[22], so it is foreseeable that employers will appoint the likes of Ashurst or Seyfarth Shaw to be their bargaining representatives. This will not relieve the employer's obligation to attend conferences (as their status as a bargaining representative is irrevocable)[23] , but will nonetheless provide a level of restraint on their participation. Additionally, there are risks in not reaching a common understanding between unions about how organising and recruitment campaigns associated with supported bargaining will be operated, in light of the expanded "default" status of applicant unions to represent non-members. There is a capacity under the FW Act for employees to revoke the default status of bargaining representatives[24], however the mechanics for achieving this should be discussed and could be complex in areas of joint coverage including where joint applications are made.

Protected Industrial Action under an authorisation

The availability of protected industrial action for the supported bargaining stream marks a significant departure from the low paid bargaining system which preceded it. Although the provisions relating to applying for a protected action ballot were amended through the SJPB Act[25], they do not discriminate in their application to supported bargaining 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 each to employer and separate orders will be made.[26] Secondly, the minimum notice period for taking any protected action will be 120 hours (or such longer period as is specified by FWC).[27]

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[28] 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)(d) means that requirement is satisfied once the supported bargaining 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

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[21] S. 238(1), 173(1)
[22] S. 596(4)
[23] S. 176
[24] S. 178A(2)-(3)
[25] See the Briefing note on Protected Industrial Action [use proper title and hyperlink]
[26] S.437A
[27] S. 414(2)(a), 443(5).
[28] See *Total Marine Services* [2009] FWAFB 368, *JJ Richards v. TWU* [2010] FWAFB 9963.

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 only be made by the employer seeking to be removed, and must be granted "..if the FWC is satisfied that, because of a change in the employer's circumstances, it is no longer appropriate for the employer to be specified in the authorisation"[29]. 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 the mandatory considerations (and findings in relation to those considerations) which were relevant at the time that the authorisation was made. However, additional significant matters (for example the employer being placed into external administration) may be also be argued to be sufficient.

Applications to add an employer to an authorisation can be made by that employer, by a bargaining representative or by a registered union that is entitled to represent the industrial interests of an employee who will be covered by the proposed agreement to which the authorisation relates. Applications must be granted if the FWC is satisfied it is in the public interest to do so, taking into account the matters that apply to the making of the authorisation and any other matter it considers appropriate. As is the case with the initial making of the authorisation, adding an employer to the authorisation will not be permitted if it would have the result that the proposed enterprise agreement would cover employees in relation to general building and construction work.[30] Nor can an employer be added to an authorisation if it is already covered by an unexpired single enterprise agreement, unless the FWC was satisfied that the employer's main intention in making that agreement was to avoid being specified in a supported bargaining authorisation.[31]

Risks

The criteria for adding an employer to an authorisation are, by virtue of the requirement to demonstrate public interest, more onerous than those that would apply to the inclusion of the relevant employer in the authorisation from the outset. For this reason, care should be taken in the scoping of the initial authorisation application.

Conclusion of an agreement

Additional features of approval process for a supported bargaining 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.[32]

(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.[33]

[29] S. 244(2)
[30] S. 244(5)
[31] S. 244(4A).
[32] See the briefing note on Approval [use proper title and hyperlink]
[33] S. 182(2), 184, 187(3)

(3) The Fair Work Commission must be satisfied that the agreement does not cover employees in relation to general building and construction work[34]

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 a supported bargaining 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[35]. Indeed, it may be beneficial to invite the FWC to make a finding about the group being fairly chosen in the course of the preceding authorisation proceedings, on the basis that it is an "other matter" that the FWC might "consider appropriate" to have regard to[36], in order to have some certainty about that issue.

Arbitration

Unlike the low paid bargaining stream, there is no dedicated stream of arbitration that is exclusive to the supported bargaining stream. Instead, 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 breifing note.

Operation of an agreement

Once a supported bargaining agreement has been approved, it operates to the exclusion of a single enterprise agreement, even if the latter has not passed its nominal expiry date[37]. As noted above, the provisions concerning supported bargaining generally work to exclude employers from participating in supported bargaining where they are covered by an unexpired single enterprise agreement, but there are two exceptions to this. Firstly, where the Commission is satisfied that the "main intention" of the employer in making that agreement was to avoid it being specified in a supported bargaining authorisation[38] and, secondly, in particular circumstances where the agreement is varied.

The second exception arises because supported bargaining agreements are capable of being varied not only with respect to their content and the scope of employees they cover[39] but also the scope of employers they cover[40]. 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.[41] The process to vary a supported bargaining agreement to add an employer

[34] S. 186(2B)
[35] 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.
[36] S. 243(1)(b)(iv)
[37] s. 58
[38] S. 243A
[39] Subdivision A of Division 7 of Part 2-4
[40] 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.
[41] Subdivision AE of Division 7 of Part 2-4

however progresses differently depending on whether is varied "with consent"[42] or "without consent"[43], where consent refers to the attitude of the employer. In either case, it will not be possible to extend the agreement to cover an employer that is specified in a single interest employer authorisation in relation to any of the affected employees.

Varying a supported bargaining agreement to add an employer "with consent" does not require the consent of the unions covered by the agreement. An application with consent is an application advanced jointly by the relevant employer and its affected employees. The merit test for approval is based upon a vote and the test relating to the issuing of an authorisation without a supporting ministerial declaration (but absent the requirements relating to the number of bargaining representatives or representation of employees). 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, unless there are serious public interest grounds for not it doing so. An exception is that the FWC cannot approve the variation if the new employer is already covered by a single enterprise agreement that has not yet passed its nominal expiry date, unless it is satisfied that the employers main intention in make that agreement was to avoid being covered by a supported bargaining authorisation – which in rare cases an employer might be willing to concede if the resultant supported bargaining agreement which they initially resisted bargaining for turns out to be a lesser burden upon them than the single enterprise agreement they already have.

Varying a supported bargaining agreement to add an employer "without consent" is possible only on application of a registered union that is already covered by the agreement. Rather than being strictly bound to the tests that apply for the making of an authorisation, the merit tests for a variation of this type involve a test of majority support and the FWC being satisfied that the extension is appropriate -in connection with which it has a *discretion* to have regard to the merit tests that apply for the making of an authorisation. The FWC cannot approve of a variation if the affected employees are covered by any enterprise agreement that has not passed its nominal expiry date.

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 for supported bargaining.

Another issue to consider during the operation of a supported bargaining agreement is dispute resolution. On the assumption that at least some terms of a supported bargaining 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 supported bargaining provisions have the potential to make a considerable difference to collective agreement coverage and union representation in sectors which have been difficult to organise through the traditional enterprise bargaining model. Some employers or groups thereof may be more receptive than others to supported bargaining, and the old adage that

[42] Subdivision AA of Division 7 of Part 2-4
[43] Subdivision AB of Division 7 of Part 2-4

"hard cases make bad law" should be front of mind – the movement after all has a collective interest in getting some runs on the board using these new tools. For example, the supported bargaining stream necessarily will involve a grouping of employers who are or who appear to be in competition with one another. It that context, employers that had little to compete on other than price would seem to be those who would most resist both inclusion in supported bargaining and the conclusion of any agreement.

There are key areas involving the intersection of types of agreements and default representational rights that could test unity and it 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).*