



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT BELL**

**B2023/1313**

**s.236 - Application for a majority support determination**

**Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and  
Allied Services Union of Australia  
and  
EnergyAustralia Yallourn Pty Ltd T/A EnergyAustralia  
(B2023/1313)**

**Melbourne**

**10.00 AM, TUESDAY, 27 FEBRUARY 2024**

PN1

THE DEPUTY PRESIDENT: Be seated, please. All right. Good morning, everyone. Why don't we begin in the usual way by starting with appearances.

PN2

MR K REIDY: If the Commission pleases, Reidy, K, on behalf of the CEPU. With me today is Ms McGrath of the CEPU.

PN3

THE DEPUTY PRESIDENT: Good morning, Mr Reidy.

PN4

MR W SPARGO: Good morning, Deputy President, I seek permission to appear for the respondent and have with me instructing Aras Mollison.

PN5

THE DEPUTY PRESIDENT: I was looking at permission. I don't think I have previously dealt with it. Mr Reidy, is there any objection if I may ask?

PN6

MR REIDY: No, not in the circumstances.

PN7

THE DEPUTY PRESIDENT: All right, thank you. And I think also in the circumstances it's appropriate that permission be granted on one or more of the bases on section 596. Now, perhaps some just housekeeping matters. I have got a copy of the digital court book, which I am assuming everyone else has got a copy. I have seen a copy in the witness box, which is good.

PN8

Thank you to the parties for sending through electronic copies of the authorities in a broader sense. I have got those electronically with me, so just in bear in mind if we're referring to them there just might be a little bit of fumbling around there. While I don't think I need to have them I did print off a copy of your Federal rules, Mr Reidy, but I think the extract that is in the submissions is what everyone is happy to refer to and it seems accurate.

PN9

Then for just some other housekeeping matters I think Mr Chapple I have been told will be called last, and I don't know whether it's been communicated through my associate, but just because he's going to be online we will probably just adjourn for hopefully no more than five minutes. The IT gods frowning or smiling upon us it might be shorter, it might be longer. Now, in terms of evidence generally I am not quite sure whether all the witnesses are going to be required for cross-examination. If no one is required, if a witness isn't required for cross-examination I am happy just to have their statement tendered. I don't require them to physically get into the witness box to do that. Perhaps similarly I think, Mr Reidy, for some of the extra documents on your material unless there's an objection we can just deal with those as tendered at the appropriate time.

PN10

MR SPARGO: No objection to them being tendered, no, subject to the usual caveat people say about making submissions about relevance and weight.

PN11

THE DEPUTY PRESIDENT: All of those things are the usual fair game and the parties should assume those. So at least, Mr Reidy, there you go, some of your documents will be tendered without objection. In terms of just sort of timing issues or the order of proceedings has there been any discussion between the parties as to how you intend to organise things this morning of calling witnesses and the like?

PN12

MR SPARGO: Not beyond the fact that we have agreed that this is not a case where there's some very stark factual disputes, so we're content for witnesses to remain here. It's more a matter of emphasis and then applying the rules. Otherwise, no, we haven't, apologies, Deputy President, spoken about that. We will leave it to Mr Reidy to comment on his witnesses, but I propose to call when it's our turn to put our evidence forward Ms McAllister first because she's our main witness, and then subject to the IT gods Mr Chapple.

PN13

THE DEPUTY PRESIDENT: That's fine. Mr Reidy?

PN14

MR REIDY: I was going to call Mr Ipenburg first and then Mr Mooney, Deputy President.

PN15

THE DEPUTY PRESIDENT: Yes. I think Mr Spargo indicated a contentedness for witnesses to stay in.

PN16

MR REIDY: Yes.

PN17

THE DEPUTY PRESIDENT: You're content with that?

PN18

MR REIDY: Yes, we agreed with that.

PN19

THE DEPUTY PRESIDENT: All right. And then in terms of order of things you're the applicant we will deal with your witnesses first, then Mr Spargo's witnesses. I am intending to just deal with the evidence first and then I will hear from you both as to what oral submissions you want to make at the end.

PN20

MR REIDY: Yes, I agree with that, Deputy President.

PN21

MR SPARGO: Yes, Deputy President, thank you.

PN22

THE DEPUTY PRESIDENT: All of that tentatively suggests you might be finished - it should be a half day matter, but we will see how we go there. Were there any other housekeeping matters that anyone else either felt they want to do or needed to raise before we get into it?

PN23

MR SPARGO: No, Deputy President.

PN24

THE DEPUTY PRESIDENT: Why don't we then start. In terms of submissions like I said save them up until the end. If someone's got a burning desire to say something at the start then I am not going to shut you off, but I think, Mr Reidy, we're up to calling your witnesses.

PN25

MR REIDY: Thank you. I call Gene Ipenburg as our first witness.

**<GENE IPENBURG, AFFIRMED**

**[10.09 AM]**

**EXAMINATION-IN-CHIEF BY MR REIDY**

**[10.09 AM]**

PN26

THE DEPUTY PRESIDENT: Thanks, Mr Ipenburg. You have got a copy of what's called the court book in front of you. I was about to say I will urge you to pause the exact temptation which is what you just did, which is to pick it up and start flicking through it. You're about to be taken to that by Mr Reidy. He will, I am assuming, ask you to formally adopt your witness statement. Once that's done Mr Spargo might have some questions for you, and if he does when it comes to the questions whether they're from me, from Mr Reidy or from Mr Spargo just do your best to listen to the question and answer that question. If it's a badly asked question or you're just not sure what it means just say so and we will do our best to read back and deal with it on that basis. Mr Reidy.

PN27

MR REIDY: Thank you, Deputy President. Mr Ipenburg, do you have a copy of the court book in front of you?---I do.

PN28

Can I take you to page 47 of the court book?---Yes.

PN29

Do you have your witness statement there?---I do have my witness statement.

PN30

Are there any corrections or any changes you want to make to that witness statement?---Not at this time, no.

PN31

Deputy President, I tender Mr Ipenburg's witness statement.

\*\*\*

GENE IPENBURG

XN MR REIDY

PN32

THE DEPUTY PRESIDENT: Thank you.

**EXHIBIT #A1 WITNESS STATEMENT OF GENE IPENBURG  
TOGETHER WITH ITS EXHIBITS AS THEY COMPRISED AT  
PAGES 47 THROUGH TO 121 OF THE COURT BOOK**

PN33

MR REIDY: Thank you, Deputy President. Mr Ipenburg, can I take you to page 50 of the court book?---Yes.

PN34

In paragraph 13 you say:

PN35

*As an OTL I receive the same training and I am treated the same as all other members of the operations shift team, which I lead when it comes to working with electricity at the YPS.*

PN36

?---Yes.

PN37

Can you explain the training that you receive for your position and how it's similar or the same as the training that the other members of the operations shift team receive?---Yes, no problems. So when in my statement there I talk about in relation to the operation of electrical equipment, and as an electrical operator at Yallourn it is the same training for us as electrical operator as it is for any other operator in the operations team, in that we are required to undertake blue book training, which is a mandatory training component, which is the code of practice for blue book for high voltage electrical apparatus. We must carry out CPR training every 12 months.

PN38

Sorry if I just ask you there, Mr Ipenburg, when you talk about the blue book what exactly is that used for?---So that defines the rules and regulations that we use for compliance with operation of high voltage electrical equipment within the power station.

\*\*\* GENE IPENBURG

XN MR REIDY

PN39

Thank you. Sorry, if you continue?---That's all right. We also conduct CPR training, which is first aid training for electrical. We also undertake the low voltage rescue component as well, which is every 12 months. We also all do a five day initial training course for high voltage electrical operation, and that was refreshed post the incident that occurred at Yallourn. We then do three yearly refresher training on the operation of the high voltage switch gear, which we go through an external training provider that provides that training, and we're expected to demonstrate that we're competent in operating all the high voltage switch gear at Yallourn for both stages of the power plant, which is the Stage 1 units and the Stage 2 units. We also do other mandatory training which comes as

part of our high voltage electrical, which is the work on (indistinct) low voltage refresher training every three years as well.

PN40

So the team that you were the operational team leader that's the operation shift team; is that right?---Yes.

PN41

Is there any training that that team receives in regards to electricity that you do not receive?---No.

PN42

You've read Ms McAllister's witness statement?---Yes, I have.

PN43

And Ms McAllister makes reference in her statement about a dispute in 2013 at the Yallourn power plant?---Yes.

PN44

You were an operational team leader at that time?---Correct.

PN45

What duties were you called upon to perform at the time of that 2013 dispute?---Yes. So during the dispute in 2013 while the operations staff were negotiating or attempting to negotiate the enterprise bargaining agreement there were multiple bans put in place by the union at that time. The first stage of those bans involved not putting mills into service. So at the direction of EnergyAustralia and its predecessor companies we were directed to then go out to the control room and place the mills into service that the operators were refusing.

\*\*\* GENE IPENBURG

XN MR REIDY

PN46

Could you explain what you mean when you talk about a ban on the mills, like what that means in terms of the operation?---Yes. So our pulverised fuel mill at Yallourn is a piece of apparatus that's used to pulverise coal, turn it from a reasonably large substance into fine talcum powder type component, and we normally run six mills, pulverised fuel mills, at full generation of 360 to 380 or 380 to 396 megawatts, depending which unit it is. So we - the union dispute at that time was to not put those mills into service as a part of their protective action bans. So EnergyAustralia had directed us to go and put those mills into service, because obviously that was affecting the generation capacity of the units. Subsequent to that their bans were escalated, and at a point in time EnergyAustralia actually locked out the operators as part of the process, and EnergyAustralia directed all those people with the necessary competencies and skills to continue operating the plant. So in my case I was directed to continue operating the station, or the units, as an equivalent unit controller. So we were deemed competent by WorkSafe by the means of having a licence to perform high risk work, boiler and turbine advanced, and at that time also the CFMEU, as they were at the time, asked WorkSafe to put a PIN notice in that said we weren't deemed competent to operate that plant, and that PIN notice was declined by

WorkSafe on the basis that we held a licence to perform high risk work. And we were also at the time given two weeks of simulated training prior to that lockout period to refresh our operating skills on operating the units. So in my case I was one of the operators chosen to operate the units and I operated all four units as they were available.

PN47

So the work that you were performing at that time who would it normally be performed by?---The unit controllers and assistant unit controllers.

PN48

And that's a member of the team that you lead, the shift operations?---It's a member of the team that I lead, yes.

PN49

Your position description at that time and the training you received at that time has it changed from then to now?---It hasn't changed from then to now, because the final overriding criteria that had existed in all - I'll say common law employees, which incorporated us as well, is that we would do our normal position description and other duties as directed by the company from time to time, provided that we had the competencies to do so, and safe to do so.

PN50

Thank you. The team that you lead what's the size of that team?---So the minimum team numbers is six unit controllers, three assistant unit controllers, three unit attendants and three power workers. So that makes up 15 team members, plus myself.

PN51

Is there ever a time when the work demand on a shift team, the operators if you like, the demand exceeds their ability to perform the work?---It does occur on occasion, yes.

PN52

And on those occasions do you ever get involved in doing their work?---I had to do. As a team that has actually become pretty cohesive in my case in my team quite often I'm asked if I'm running around and I'm spare and I'm not doing something else at that time to assist them out. So I may go open some valves or I might go and rack a circuit breaker with another person, or I may go out and check on the night of a plant and what it's doing. Just recently we had a unit trip as part of an outage. The field CB failed to open. I went out to that field CB in closure, again being an electrical apparatus, and locally tripped that field CB to ensure that it had actually opened off.

PN53

And that's something that a member of your team would normally do?---Would normally do, but at that particular time the unit controller and assistant unit controller were busy actually shutting the unit down and so forth.

\*\*\* GENE IPENBURG

XN MR REIDY

PN54

Thank you, I have no further questions.

PN55

THE DEPUTY PRESIDENT: Thank you, Mr Reidy. Mr Spargo?

PN56

MR SPARGO: Thank you, Deputy President.

**CROSS-EXAMINATION BY MR SPARGO**

**[10.20 AM]**

PN57

THE WITNESS: Excuse me if I have a quick drink of water.

PN58

MR SPARGO: No. Take your time, Mr Ipenburg. Mr Ipenburg, you've given evidence about your particular qualifications. You've seen Ms McAllister's witness statement where she says that there are no technical or trades qualifications that are prerequisites to being an OTL?---Yes.

PN59

And you agree with that statement, that's correct?---I do agree with that. That is in the position description.

PN60

The training that is required can be obtained on the job?---On the job or in the classroom for certain components of it.

PN61

And you would accept, Mr Ipenburg, that amongst the current cohort of operational team leaders, OTLs, there are varying qualifications and types of experience amongst the seven of you?---Yes, I accept that.

PN62

Indeed one person has a background in maintenance as opposed to no background in operations at all before they became an operational team leader?---Yes, correct.

PN63

Mr Ipenburg, you spoke about training that OTLs receive. It's not the case that OTLs receive all of the same training as the operational team though, is it?---As in my witness statement in relation to electricity we all do receive the same training as the operators underneath us.

PN64

But for example operational team leaders are not required to undertake the assistant unit controller training course which is a six month course?---That is correct.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN65



And it's that six month course that allows the people in your team who you manage to physically operate the power plant. That's EnergyAustralia's requirement; is that right?---That is a requirement of EnergyAustralia.

PN66

Yes. Is it seven or eight OTLs?---We currently have seven.

PN67

Three hold that qualification, including yourself; is that correct, Mr Ipenburg?---I don't officially hold the Yallourn qualification from an AUC course, but I was given the authorisation by EnergyAustralia or its predecessor company to operate the units and was trained and deemed competent during the dispute.

PN68

In 2013?---Yes.

PN69

You had a background as an operator - - -?---Correct.

PN70

- - - of a power station?---Correct.

PN71

So you'd done the equivalent training elsewhere?---Multiple times.

PN72

But that's not the case for all OTLs?---No.

PN73

In terms of the training you received that is the same there's a significant safety aspect to that, isn't there?---There is, correct.

PN74

Would you agree with me it's reasonable and sensible for a manager to engage in the same safety training as their team so that everyone has the same views about how things should be done safely?---Yes.

PN75

But it is - - -?---But could I - could I qualify that if it's possible? Yes, we do have the requirement to do the training so we understand the work that's being done, but we are also expected on a daily basis to be able to participate in those activities.

PN76

Well, you say that, Mr Ipenburg, but I suggest to you that primarily your role is one where you are managing the operations team, managing the people and the operations work that they're performing, rather than doing, operating the power station yourself?---Yes, I'd have to agree with that.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN77

And you said that you have a good relationship with your team, and if you're spare you might help them out with something?---Correct.

PN78

But that is subservient to your primary duty of managing the team?---I would see that as part of managing the team is to be an active team member who shares the workload.

PN79

It's not a requirement of the position description that it's something you do having regard to your background as an operator?---Most likely, correct.

PN80

And it's not, because all of the operators have the same background, the same qualifications as you, it's not something that all of them could do to the same extent as you?---Not to the same extent, but I would expect that all the OTLs could participate in some degree with the assistance to the operators on the job.

PN81

Now, you've spoken about permits in your statement, Mr Ipenburg. Just for the benefit of the Commission perhaps explain what issuing a permit means in layman's terms?---So there's multiple steps of issuing the permit. There is the actual researching of the isolations that are needed to make it safe in the system. So if we use just a very simple pump to make it simple for the Commission to understand. A pump might have a suction valve, a discharge valve, an electric motor that's driving it by some 415 supply. So the researching of that job to make it safe for a maintenance person to do work on that would be to look at it and go, okay, I need to make up a permit, which is basically two-fold. It's an authority for maintenance to undertake the activity, and it's an isolation statement in our case which carries the isolations that make it safe for maintenance to do it. So we would research that, add the suction valve, add the discharge valve, add the 415 electrical supply to that pump, have it isolated, and then the permit could be issued to maintenance to allow them to safely do the work.

PN82

Issuing permits is primarily a duty of people in your team?---It is the primary duty, but it doesn't preclude an operations team leader to do it.

PN83

But primarily you oversee that process - - -?---Correct.

PN84

- - - in a supervisory managerial role.

PN85

Mr Ipenburg, you've given evidence about being selected to oversee a new electronic permit system project - - -?---Yes.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN86

- - - when you started at EnergyAustralia. Again that's something you were able to do because of your particular qualifications and experience. It's not something that every OTL starting at EnergyAustralia would be able to do?---No, I'd accept that, that it was based on my skillset.

PN87

Yes. Now, you give evidence about the fact that OTLs have in the past been asked to operate the station, do the physical operating of the station, the work that your team performs. My friend took you to 2013 lockout. Am I right in saying that is the only time when OTLs have been asked to step in and operate the plant instead of operators?---The only time the company has asked us to do it as team leaders, if some of the team leaders have the necessary skills they will on occasion assist the operators on the unit much to the dismay of a few operational staff, but under the circumstances when your workload is high - example last Thursday night we had a very bad night on our unit and I was helping the guys on the panel actually doing tasks.

PN88

To the dismay of some operations team members. That's because the 2013 lockout remains very controversial; is that right?---For some, yes.

PN89

For some. So that's the only time that the company has asked you to do, to operate, and you gave evidence that you operated the power station. Not all OTLs operated the power station at that time; is that right?---At the time in 2013 all OTLs were involved in operating of the power station in multiple roles, some actually working as an AUC or UC, some working as a power worker doing the coal plant activities.

PN90

Okay. But you would agree with me that that wasn't an ordinary day, that didn't occur in part of the day to day of your employment. That was an extraordinary situation where the normal workforce were operating the plant. It was lockdown and you were asked to step in?---Correct. However, again qualifying that, there is nothing precluding the company at their will asking us to do it again.

PN91

Well, that's your view, Mr Ipenburg. It might be a different view on a different day given the position description, but I understand that's what you say now. If that were to happen, if the company were to ask OTLs to actually perform operations work it would have to deal with the minimum manning provisions in the enterprise agreement, wouldn't it?---And that may be part of the reason why we would - where we can't satisfactorily man the units, and provided that the operations team leader held the necessary skills it could be a requirement of the management to have us operate it.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN92

The minimum manning provisions in the enterprise agreement require a certain number of people below OTL level to operate the plant though, don't

they?---There is a minimum manning provision, and as would be aware by EnergyAustralia management at the moment we are having many days at the moment where we're struggling to man shifts to the minimum standards.

PN93

You've given some evidence about the training that you are involved in delivering?---Correct.

PN94

Again accept that that training, the training that you deliver is broader than that which some other OTLs would be able to deliver, because again of your particular qualifications and experience and background?---Correct. And again probably a little bit of clarity around that. In the past, maybe in the future, I can't comment what the future decisions, but quite often we have changed people in our roles or covered people in our roles to allow individuals off to do work for EnergyAustralia that fits their better skillset. So I might be taken off line to do particular training. Another team leader might be taken off to support management activities that are going on.

PN95

Mr Ipenburg, you give some evidence about conducting audits, and you say this is a daily task?---Correct.

PN96

Ms McAllister says that's on an as needed basis, and daily is overstating it. Do you agree with that?---No, I don't agree with that. Every day, if we average it out, every day we are auditing racking sheets that come back for a piece of HB apparatus that has been isolated during the shift or restored during that shift.

PN97

And that task involves reviewing the sheet?---Yes.

PN98

Piece of paper?---Yes.

PN99

And recording information from it?---Yes. And as a rule the business asks for the number of those racking sheets that have been competed for the month to be recorded by the sheet team for their KPIs.

PN100

Yes. Mr Ipenburg, you said that outside of these ordinary business hours OTLs are responsible for the overall running of Yallourn power station?---Yes, I did say that.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN101

Would you agree that some of that responsibility also rests with Ms McAllister and Greg McIntyre, the head of Yallourn?---Yes, to a degree. Unfortunately when you're in at 1 o'clock in the morning quite often management reps are not available by communication devices, and the OTL will have to make that call

there and then. We use quite often a WhatsApp application to send out a notification. That doesn't necessarily mean it's responded to, and it may not be responded to until 6, 7 o'clock in the morning. So at that time during the night we make those decisions.

PN102

So the buck does stop with you sometimes?---The buck stops with us definitely say out of hours.

PN103

And that's consistent with your role of being quite a senior management position?---I don't dispute that.

PN104

Some of the other factors you point to in your statement, engagement with external parties, coordinating with other functions of the business such as the marketing team, the maintenance team, the trading team, reporting information for annual budgeting purposes, completing a log of events, acting as emergency services liaison. You would agree with me that self-evidently they're not about physical operation of the power plant?---I agree they're not related to the physical operation, but I - - -

PN105

And they're consistent with you having a management role?---I agree with that, but I would consider that part of running the power station, by my definition.

PN106

By your definition that all contributes to the running of the power station, but it's in a management capacity, isn't it, not the physical task - - -?---Correct.

PN107

- - - of operating the power station. You have I think you said 15 people in your team that you're primarily responsible for, Mr Ipenburg?---Yes.

PN108

And you're the first port of call for those people on all sorts of issues in the workplace?---Yes.

PN109

And I mean indeed under the enterprise agreement you have to consult with them about moving rostered days off. You have to consider a need for extra staff during outages, approve overtime, call people in on overtime, receive notification of absences and consider staffing implications arising, and approve leave applications, all those sorts of things?---Yes. Part of the administration task, yes.

\*\*\* GENE IPENBURG

XXN MR SPARGO

PN110

And you said, Mr Ipenburg, that you accept the position description that the company has put up, and that includes that your role is to maintain a high performance team and to manage that team to achieve the business's operating targets; you agree with that?---Correct.

PN111

I think you've agreed with me earlier, Mr Ipenburg, that primarily it's a management role?---I agree primarily it's a management role. However, as stated there are numerous times depending on skillsets people do other tasks, operation units team.

PN112

Nothing further from me, thank you, Deputy President.

PN113

THE DEPUTY PRESIDENT: Mr Ipenburg, just on that last comment you made about OTLs doing other work depending on their skillsets, you gave an example earlier about you tripped a local field unit. I might have misstated that?---Your Honour, yes, tripping a field circuit breaker, which is a piece of equipment that breaks the electrical supply to the generator rotor to produce - - -

PN114

Is that something all OTLs at Yallourn would be competent and safe to do, or more with people with your particular background and training?---A bit hard to answer on that, your Honour. I think most would be competent of it, but I couldn't say that all seven would have the same knowledge.

PN115

Thank you. Mr Reidy?

PN116

MR REIDY: Thank you, Deputy President.

**RE-EXAMINATION BY MR REIDY**

**[10.36 AM]**

PN117

The members of your team, so this is the shift operations team, do they have trade qualifications?---It's not required, but some do.

PN118

But it's not required?---No. We've got people who are tradesmen. We've got people that come from backgrounds like physical education, PTs. Yes.

PN119

The members of your team do they do any administrative tasks or they simply do the operations tasks all the time?---They predominantly do operations tasks all the time, and the main administrative task they would do is maxima work orders which is putting in a requirement for maintenance to do repairs if there's a defect on the plant and recording information in their logs and their handover sheets.

\*\*\* GENE IPENBURG

RXN MR REIDY

PN120

You were asked a question about in your statement you said when there's - I think when Ms McAllister and the head of Yallourn are not on site that you're ultimately responsible for the running - and you referred to you having to make decisions or the buck stopping with you. Are those management decisions about

how a roster is going to work, or are you talking about operation decisions about the plant?---Generally we would not to Gayle or Greg or any of the management team about rostering or those sort of things. We would be out of hours talking about there's a plant malfunction or something and we'll have to make the call on whether we shut down the unit, shut down the plant due to safety, fires, whatever it be.

PN121

Okay. So about the operation of the plant?---About the operation of the plant.

PN122

You were asked a lot of questions about your particular skillset as an OTL. Your position description is an operational team leader, is it not?---Correct.

PN123

And it's no different than any other operational team leader?---That's correct.

PN124

Have you ever been told not to use your particular skills when you perform your position?---No.

PN125

Is Ms McAllister aware of you using your skills when you carry out your duties?---I would have to say yes.

PN126

She is aware?---Yes.

PN127

You were asked a question about - I think you'd said that you performed a particular duty on a daily basis and it was put to you that Ms McAllister in her statement said that that's overstating it. Would Ms McAllister be in a position to know how often you do that task, and if you remind us what that task is, please?---Yes. So the task that I referred to is the auditing of the safe work check sheets in particular, and it may be that Gayle wouldn't understand how many are done on a daily basis, only because how many racking operations and what plant's coming back every day in and out in a 12 hour shift. Most of the time she would be aware, but I think there's times, particularly in outages and stuff where we're restoring things and we could have 15, 16 circuit breakers that have to be restored on that particular day and they're the sheets that we would audit on that day.

PN128

So you're not required to go back to Ms McAllister and say, 'I have done this and I have done this' and - - -?---No, we're not.

PN129

I have no further questions, thank you, Deputy President.

\*\*\* GENE IPENBURG

RXN MR REIDY

PN130

THE DEPUTY PRESIDENT: Thank you, Mr Reidy. Mr Ipenburg, thank you very much for giving evidence, you're excused, and can take off your witness hat and probably just resume wearing your hat as an observer now?---No worries. Thank you, your Honour.

<THE WITNESS WITHDREW

[10.41 AM]

PN131

Now I think, Mr Reidy, we're up to your next witness.

PN132

MR REIDY: I call Mr Mooney as the next witness.

<PETER MOONEY, SWORN

[10.41 AM]

EXAMINATION-IN-CHIEF BY MR REIDY

[10.41 AM]

PN133

THE DEPUTY PRESIDENT: Thank you. Mr Mooney, given that you were in the room before with my instructions to Mr Ipenburg I just repeat those to you. Listen to the question, do your best to answer that question, and if it's not clear or you don't understand it just pipe up and we will take all steps necessary to have it reframed?---Thank you, Deputy President.

PN134

All right. Mr Reidy.

PN135

MR REIDY: Thank you, Deputy President. Mr Mooney, can I take you to page 122 of the court book?---Yes, I'm there.

PN136

Do you have your witness statement there in front of you?---Yes, I do.

PN137

Are there any changes you wish to make to that witness statement?---I would like to make two changes.

PN138

Yes?---Paragraph 5 of my witness statement, I would like to - where it says 'Operations' I'd actually like to say 'And' - cross out 'Operations', 'And now the OTLs.'

PN139

So this is the very last word in that paragraph?---The last word - the last word in that paragraph, 'And now the OTLs.'

PN140

MR SPARGO: Apologies, Deputy President, I seek clarity. Was that cross out 'Operations'?

\*\*\* PETER MOONEY

XN MR REIDY



PN141

THE WITNESS: Yes.

PN142

MR REIDY: You said you had two changes?---Yes, I have another one at 9.

PN143

Yes?---I just wanted to end - in the last part of the paragraph I would like it to end at 'plant', and those last three words crossed out.

PN144

THE DEPUTY PRESIDENT: Hang on, so it's deleting 'who are operators'?---'Who are operators', yes.

PN145

MR SPARGO: Sorry, Deputy President, I think it's deleting the whole - - -

PN146

THE WITNESS: No, no, just the last three words, Mr Spargo. The Deputy President was correct.

PN147

THE DEPUTY PRESIDENT: Yes, not from the comma, which was what I was about to do.

PN148

MR REIDY: Are there any other changes?---No, that's the only changes, thank you.

PN149

So it is your witness statement in this matter?---That's my witness statement in this matter.

PN150

I tender the witness statement of Peter Mooney with seven exhibits.

PN151

THE DEPUTY PRESIDENT: All right. Thank you.

**EXHIBIT #A2 WITNESS STATEMENT OF PETER MOONEY  
WITH THE TWO AMENDMENTS JUST NOTED ON TRANSCRIPT  
AND EXHIBITS COMPRISED AT PAGES 122 THROUGH TO 146  
OF THE COURT BOOK**

PN152

MR REIDY: Thank you. No further questions at this time.

PN153

THE DEPUTY PRESIDENT: All right, thank you. Mr Spargo.

\*\*\* PETER MOONEY

XN MR REIDY

PN154

MR SPARGO: Thank you, Deputy President.

**CROSS-EXAMINATION BY MR SPARGO**

**[10.44 AM]**

PN155

Mr Mooney, the Yallourn Enterprise Agreement, the current 2023 agreement, its predecessors, it applies broadly to two groups at the power station, maintenance workers and operations; do you agree with that?---It does.

PN156

And at paragraph 5 you have given evidence, as amended, that your union has members with a range of different occupations. But apart from OTLs they are all maintenance, on the maintenance side of things; is that correct?---That's correct. They're the people that I have represented at Yallourn over my time. I do have - the OTLs are members of ours, and we do have a couple of operational people that are members of ours, but I haven't actually represented those members directly.

PN157

You haven't represented those members directly, and am I right in thinking that one of those members joined in 2019 and one joined late last year, roughly?---Mr Spargo, I'd have to check our records, but I take that on face value at this stage. I can't confirm or not confirm.

PN158

We're not here today to determine the ETU's ability to cover those workers who are in the teams managed by the OTLs, but you're aware that the ETU's potential coverage of those workers is subject to some controversy with the MEU?---I wouldn't say it would be controversy. I think they'd have a different view than what our view is, but that's about it really. Yes.

PN159

That's one definition of controversy, albeit a mild controversy I suppose, Mr Mooney. All right. And there's about 75 operators?---Well, I'll take your word on that. Yes.

PN160

And operators who are managed by the OTLs they're not electricians in the ordinary sense of the word, are they, they're not - - -?---I would say there would be. There would be some people that are in the operational group that were electricians who have moved into operational classifications. Like there's some people I actually did my apprenticeship with that are in those ranks. There's others that I had worked with when I was on the tools some 30-odd years ago. So, yes, some natural progression has been where we've seen electrical (indistinct) people have moved from their traditional trade ranks, as I would put it, and moved into operations.

\*\*\* PETER MOONEY

XXN MR SPARGO

PN161

Yes. So there are some people who have that background, but just the role of operations, being an operations member of the team at Yallourn, it's not a role that you need to be an electrician to perform?---It's not exclusive to having to be an electrician or anything, but I will say of recent years that there seems to be a more favouritism of people with an electrical background to get operational jobs. That's my experience.

PN162

That's your experience?---That's my experience.

PN163

But there's no requirement for any sort of electrical trade qualification?---My understanding at Yallourn there is no requirement, but it does help.

PN164

Maintenance on the other hand that includes lots of people who we would commonly recognise as electricians, and you've mentioned electrician shift, electricians in your witness statement?---Correct.

PN165

You've mentioned that the OTLs that sought to be covered by your union because they're unable to get admission to what's now known as the MEU?---That's correct.

PN166

And that's because of controversy relating to their role in the 2013 lockout, isn't it?---That's correct.

PN167

Mr Mooney, you've put into evidence a series of correspondence between you and Mr Henley from EnergyAustralia?---That's correct.

PN168

He is an employment relations representative for EnergyAustralia?---That's correct.

PN169

You have had discussions with Mr Henley about union coverage of OTLs and which union is most appropriate, haven't you?---I wouldn't say we'd had like in-depth conversation or anything like that.

PN170

Not in-depth but the - - -?---No, but - - -

PN171

- - - issue of coverage and which union - - -?---I wouldn't even say issue of coverage really. No, that's - that's a, yes. I don't – I don't agree with that actually, yes.

\*\*\* PETER MOONEY

XXN MR SPARGO

PN172

There's – I'd suggest that you have had a discussion where you've talked about whether they should be in the MEU or the ETEU with Mr Henley at some point?---No. I – I – look, I - I – to be honest I can't remember, so.

PN173

Nothing further, Deputy President.

PN174

THE DEPUTY PRESIDENT: Thank you. Mr Reidy.

**RE-EXAMINATION BY MR REIDY**

**[10.49 AM]**

PN175

MR REIDY: Thank you, Deputy President. You were asked a question around electricians being employed at Yallourn power station in particular in the operations teams. When you were asked that question what were you thinking in terms of what the term electrician means?---It's about their skillsets in relation to what they can actually do electrically within that group.

PN176

You talked about some of those people being people you've gone to trade school with?---Correct.

PN177

They're – I assume from that you mean - - -

PN178

THE DEPUTY PRESIDENT: I think, Mr Reidy, I've got to pull you up on this one. I mean, (a) it could have been in his material as to what the definition of an electrician is but if that's where we're going.

PN179

MR REIDY: Well, he was asked a question about electrician. Obviously that's one that's right in the centre of the controversy in this case.

PN180

THE DEPUTY PRESIDENT: And he answered it and now we're - all right.

PN181

MR REIDY: But he answered it without the understanding of what the – how the question was being – well the context in which the question was being put. I'm simply asking him the question to see what he means by – when he says electrician what he means by that.

PN182

THE DEPUTY PRESIDENT: And he gave an answer.

PN183

MR REIDY: Yes. I probably would have asked another question but you're saying that - - -

\*\*\* PETER MOONEY

RXN MR REIDY

PN184

THE DEPUTY PRESIDENT: Why don't you – well perhaps ask the other question. I'm not quite sure where this – where it's all going to take us anyway but I'll let you ask the question.

PN185

MR REIDY: Okay, I'll withdraw - - -

PN186

MR SPARGO: Well, apologies, Deputy President, I'm just going to jump onto your objection. I was waiting to object because I think where my friend is going is to just put his broader conception of an electrician to Mr Mooney and there's no – that he would be leading him if he did so. He's been asked in the ordinary sense are they electricians, he's given an answer. He's been asked, 'What do you mean?' he's given an answer. May not be the answer that my friend wants but he's – it's been dealt with and we shouldn't lead him in - - -

PN187

THE DEPUTY PRESIDENT: I understand. I accept he shouldn't lead but I suppose equally the rules of evidence don't strictly apply here but no doubt it – he kept trying not to lead too much, it'll – for the usual reasons.

PN188

MR REIDY: You were a – you went to trade school, you gave that evidence when you were asked?---Correct, correct.

PN189

I take it – are you a qualified electrician?---Yes, I am.

PN190

When you talk about electrician, do you mean – what do you mean by that?---Well, electrician is – my – this is me, it is a person that carries out all types of electrical work and that – that work can range from repairing electrical equipment, it can – it can be in isolation of electrical equipment, it can be commissioning, de-commissioning. There's a broad range of skills that a electrician has that - that allows them to carry out electrical work.

PN191

Thank you. You were asked a – it was put to you that you've had conversations with Mr Henley about which union is the right union to cover operational team leaders?---That's correct, yes.

PN192

Do you have any recollection of a conversation of that nature?---Not that I can remember, no.

PN193

Thank you.

\*\*\* PETER MOONEY

RXN MR REIDY

PN194

THE DEPUTY PRESIDENT: Thanks, Mr Reidy. That is your last question?

PN195

MR REIDY: Yes, that is.

PN196

THE DEPUTY PRESIDENT: It may not be. Just hold on one moment, Mr Mooney.

PN197

MR REIDY: Yes, no.

PN198

THE DEPUTY PRESIDENT: You're not excused yet.

PN199

MR REIDY: No further questions, Deputy President.

PN200

THE DEPUTY PRESIDENT: No further questions?

PN201

MR REIDY: So that's it. That is – completes our witness.

PN202

THE DEPUTY PRESIDENT: All right. Thank you, Mr Mooney. You are now officially excused?---Thank you, Deputy President.

**<THE WITNESS WITHDREW**

**[10.54 AM]**

PN203

THE DEPUTY PRESIDENT: All right. I think then, Mr Reidy, that's why I actually – that's almost your evidentiary material. We've got the items listed in the court book index described under the headings 'Material provided by the ETU in matter document list'. Now why don't we just - what's the easiest way to do this? We'll just – if you've got the index in front of you, if the parties are looking at page 2 we've got – at court book 149 is an - it's described as an email of Peter Mooney sent to Kelvin Reidy on 1 December 2024(sic). I've just marked that as A3.

**EXHIBIT #A3 EMAIL SENT FROM PETER MOONEY TO KELVIN REIDY DATED 01/12/2024**

PN204

The next item from pages 152 through to 155 which is an Industrial Relations Commission of Victoria decision from 1982, we'll mark that as just A4.

**EXHIBIT #A4 1982 INDUSTRIAL RELATIONS COMMISSION OF VICTORIA DECISION**

\*\*\* PETER MOONEY

RXN MR REIDY

PN205

The next item is a copy of or at least an extract of the Power and Energy Industry Electrical, Electronic and Engineering Employees Award 1998. That's at court book 156. We'll mark that A5.

**EXHIBIT #A5 EXTRACT OF POWER AND ENERGY INDUSTRY  
ELECTRICAL, ELECTRONIC AND ENGINEERING EMPLOYEES  
AWARD 1998**

PN206

Then I've got a list at court book 2022 but – and an F17. You want the F17 in there, don't you, so we'll mark the F17, employer declaration dated 25 July 2023 as A6.

**EXHIBIT #A6 F17 EMPLOYER DECLARATION DATED 25/07/2023**

PN207

I think that covers it, Mr Reidy?

PN208

MR REIDY: We have – sorry, Deputy President, I'm just looking at the other folder. You referred earlier during this hearing to the unions rules. I don't know if we need to necessarily - - -

PN209

THE DEPUTY PRESIDENT: Are they in your – they in one of your other ones are they?

PN210

MR REIDY: Yes, that's – this is in the additional folder. It's tab 6 and I actually have a few other documents in that folder that I will need to have marked.

PN211

THE DEPUTY PRESIDENT: Is that your authorities and industrial instruments/references document?

PN212

MR REIDY: That is the one.

PN213

THE DEPUTY PRESIDENT: All right. I mean, I – and I suppose notwithstanding that I just did it but my usual practice is that we don't – I won't mark such enterprise agreements just because they're uncontroversial, same for cases. We should probably mark your CEPU rules though at the very least and – well is it item 1 and item 6? Are they the ones that – just looking at that table of contents.

PN214

MR REIDY: There's a number in this bundle that I would need. It be tab 1, tab 6, tab 8, 9 and then tab 23.

PN215

THE DEPUTY PRESIDENT: Just bear with me while I'm - - -

PN216

MR REIDY: Yes.

PN217

THE DEPUTY PRESIDENT: Any objection?

PN218

MR SPARGO: No.

PN219

THE DEPUTY PRESIDENT: I'll respectively mark those then through A7 through to 11.

**EXHIBIT #A7 DOCUMENT AT TAB 1 OF APPLICANT'S  
AUTHORITIES, INDUSTRIAL INSTRUMENTS AND  
REFERENCES**

**EXHIBIT #A8 DOCUMENT AT TAB 6 OF APPLICANT'S  
AUTHORITIES, INDUSTRIAL INSTRUMENTS AND  
REFERENCES**

**EXHIBIT #A9 DOCUMENT AT TAB 8 OF APPLICANT'S  
AUTHORITIES, INDUSTRIAL INSTRUMENTS AND  
REFERENCES**

**EXHIBIT #A10 DOCUMENT AT TAB 9 OF APPLICANT'S  
AUTHORITIES, INDUSTRIAL INSTRUMENTS AND  
REFERENCES**

**EXHIBIT #A11 DOCUMENT AT TAB 23 OF APPLICANT'S  
AUTHORITIES, INDUSTRIAL INSTRUMENTS AND  
REFERENCES**

PN220

That's just referencing to tabs 1, 6, 8, 9 and 23 respectively of the applicant's additional - well authorities and industrial instruments and references. All right. I think then that's your evidentiary case then, Mr Reidy.

PN221

MR REIDY: That is, yes.

PN222

THE DEPUTY PRESIDENT: Mr Spargo then, over to you.

PN223

MR SPARGO: Thank you, Deputy President. I call Gayle McAllister.

**<GAYLE ANITA MCALLISTER, AFFIRMED**

**[10.59 AM]**



PN224

THE DEPUTY PRESIDENT: All right. Thanks, Ms McAllister. You're now a bit of a veteran having seen two witnesses give their evidence so the same encouragement to you and the same comments that apply, so I'll hand you over now to Mr Spargo.

PN225

MR SPARGO: Ms McAllister, can you tell us your full name, please?---Gayle Anita McAllister.

PN226

Ms McAllister, what's your – in what position are you currently employed?---Operations leader at EnergyAustralia Yallourn.

PN227

Thank you. Ms McAllister, have you made a witness statement in connection with this matter?---I did.

PN228

Ms McAllister, if I could ask you to turn to page 257 of the court book in front of you?---I can try. Yes, thank you.

PN229

Does that appear to be a copy of the witness statement you've made in this matter, Ms McAllister?---It – it does, yes.

PN230

Does that statement have 33 paragraphs in total and one annexure, Ms McAllister?---It does.

PN231

Is there anything in that statement that you wish to change, Ms McAllister?---There was one slight amendment and I can't remember which paragraph it was but - - -

PN232

Have a look at paragraph 16, Ms McAllister?---Yes. Yes, thank you. Yes, I would like to change that there are, in fact, three of the current OTL cohort that have completed assistant unit controller training not two as stated in this statement. It says - - -

PN233

That's about the sixth line down, commissioner?---

PN234

*Amongst the current cohort of OTLs I believe only two of them have the knowledge.*

\*\*\* GAYLE ANITA MCALLISTER

XN MR SPARGO

PN235

But it's actually three. Two actually operate the - - -

PN236

Ms McAllister, when you wrote this statement was your belief that there were only two?---Yes.

PN237

How did you become aware that, in fact, there are three?---Jean told me.

PN238

Ms McAllister, save for that amendment is the rest of the statement true and correct to the best of your knowledge?---It is.

PN239

Do you wish to adopt that statement as your evidence in these proceedings?---I do, thank you.

PN240

I seek to tender the statement and its annexure.

PN241

THE DEPUTY PRESIDENT: All right. I will mark then the witness statement of Gayle McAllister and the exhibit as R1 as comprised of pages 257 through to 266 of the court book.

**EXHIBIT #R1 WITNESS STATEMENT BY GAYLE MCALLISTER INCLUDING ANNEXURE**

PN242

MR SPARGO: Deputy President, with leave just one topic that's arisen. Ms McAllister, there's broadly two groups of workers who are covered by the enterprise agreement at Yallourn power station, maintenance workers and operators. Is that correct?---That's correct.

PN243

You're on the operations side?---Yes.

PN244

The maintenance workers, Mr Mooney's given evidence, there's lots of qualified electricians there?---Correct.

PN245

That's a requirement of their role?---Correct.

PN246

Are operators electricians?---No.

\*\*\* GAYLE ANITA MCALLISTER

XN MR SPARGO

PN247

When you say, is it it's not a – is it a requirement of the - it's not a requirement of the role, is that what you're saying?---That is correct. So an electrician is, at Yallourn, another person who has completed a trade qualification and then works or performs actual work in the electrical field, so as in physically maintaining and testing plant.

PN248

That's not the role of an operator?---No. They – they work as electrical – they are high voltage operators, there's absolutely no dispute there, but they don't perform maintenance tasks on the plant.

PN249

Thank you. Nothing further, Deputy President.

PN250

THE DEPUTY PRESIDENT: Thank you. Mr Reidy.

PN251

MR REIDY: Thank you, Deputy President.

**CROSS-EXAMINATION BY MR REIDY**

**[11.04 AM]**

PN252

MR REIDY: So the operators are not trade qualified, so they're not qualified electricians, necessarily? Not necessarily?---Those that do have a trade don't work - perform tasks in that trade. There's a number of different operators with different trade qualifications.

PN253

But you said there, they're high voltage operators though?---They are.

PN254

So why work with electricity?---They do.

PN255

On a regular basis?---Yes.

PN256

Thank you. I'll take you to paragraph 6 of your statement. Probably if you just turn a page - sorry, where the sentence starts. So it's where that sentence starts, on page 257 of the court book, 'This involves working with the OTLs and other midlevel managers to support and guide our operator shift teams, constituted by', and it lists the people who are members of that team. So you say the OTLs - the operators work with the OTLs and other mid level managers to support and guide the operators, is that a fair summary of what you say there?---Yes.

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN257

So who are the midlevel managers? So taking the OTLs out of the equation, who are the midlevel managers you're referring to?---So the unit controllers and sometimes assistant unit controllers have interactions with maintenance

supervisors and they often are reporting on permit type queries, just for clarification and permit issues times and things and the OTL performs a lot of those tasks but sometimes the unit controllers do that as well.

PN258

Okay. How often would they have those interactions? So the operators with the maintenance supervisors?---Depends entirely on the unit controllers. Some of them have quite good relationships with those maintenance supervisors and they'll talk to them quite regularly, often having conversations with the tradesmen. The tradesmen will come into the control room and answer questions about - have discussions about what work is being done on the plant.

PN259

Good?---Yes.

PN260

Thank you. But the maintenance supervisors - sorry, I'll withdraw that. In your Energy Australia organisational structure you have the shift teams and you have the OTL sitting in that shift team, as a member of that shift team, the operational shift team that is, is that correct?---Yes.

PN261

So they're a member of that team, that's not in doubt, is it?---No, I don't think so.

PN262

Okay. But the maintenance supervisors, are they members of the operational shift team?---No.

PN263

Okay. So would the members, the operators, would they deal more often with the operational team leaders, because that is their team leader?---Yes.

PN264

Thank you. Are you aware of the clause in the enterprise agreement, and I'll take you to it in the court book because it's probably going to be easier. Sorry, it's not in the court book, it's in that other folder?---Okay.

PN265

Sorry to do this to you. Hopefully there's one there?---So where am I going?

PN266

So if I can take you to page 504 in that folder?---Yes. Where am I looking?

PN267

So if I take you to clause 32.2, 'Skills mix'?---Yes.

PN268

So it has - it says there, 'Under normal 4-unit running operation, the operations group consists of a mix of the following classifications', and that has, first up, 'one operational team leader'?---Yes.

PN269

So isn't that recognition, in the enterprise agreement, that the operational team leader, although it's not covered by the agreement, it is a member of that operational team?---I do - they are a member of the operational team, but I don't know whether or not that qualifies it as part of the enterprise agreement, but I consider them to be part of the operations team. They're the team leader, they must be part of the operations team, yes.

PN270

Good. Thank you. If I take you next to clause 32.11, which is on page 506 of the folder?---Yes.

PN271

It's titled, 'Covering OTL absences'?---Yes.

PN272

So, 'Coverage of the OTL position may be done from within the teams', so I take that means operations team?---Absolutely, yes. Yes.

PN273

'It is the OTL or operations manager's responsibilities to coordinate a replacement to cover OTL absences'. Can you tell the Commission who the operations manager is?---Me.

PN274

It is you?---Yes.

PN275

So to have - so this is - so the OTL position is not something that is in - a position that is named in this enterprise agreement, do you agree with that?---Yes.

PN276

But it's risen to the status that it's included in the - what happens when an OTL is absent, is included in the enterprise agreement?---That's because members of the shift operations team who are trained can act as a relief operations team leader, in the absence of the operations team leader.

PN277

Yes?---So it's mentioned for that reason, I understand.

PN278

Yes. Okay. Thank you. So that's where you draw your stand-ins when there's an OTL absent, if I can put it that say?---Correct, yes, from the reliefs.

PN279

Yes, from the operations team?---OTL reliefs, yes.

PN280

Thank you?---At the moment there are two unit controllers who are qualified and we are training a couple more who are qualified to stand in to that OTL relief role.

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN281

Of the seven OTLs that you have, what substantive position holders at this point. I think you say, in your statement that six of them have operations or operating experience?---Correct.

PN282

That's right. Do you know how many of them, the level of experience they have in people management?---So the - I select - the people that I've selected, which was only the last two who were employed, all - I focused mainly on their leadership skills, but that's just how I do things, and the technical stuff was a bonus, for me. I - I consider that the leadership component is very important in their role. So how many of them have leadership skills, you're asking me?

PN283

Well, just their people management qualifications?---They've done varying degrees of leadership training over the years. I'm not exactly - I'm sorry, I'm not aware of all the individual qualifications that they actually hold.

PN284

That's all right. But it certainly seems to be, judging from your own statement, that operating experience is something that is highly desirable?---Yes, absolutely. It's very useful.

PN285

If I take you next to page 509 of the folder you have open, it should be just the next page, I think?---Yes.

PN286

And to clause 32.2 there?---Yes.

PN287

So this is about operation role descriptors?---Mm-hm.

PN288

Are you aware of there being a document that is merged from that clause, which sets out the role descriptors?---Yes, there is.

PN289

Okay. Are you aware of that document having a role descriptor for OTLs?---Yes, it - actually, I don't know that it does. Sorry, just off the top of my head. The only reason I'm confused about it is because we - a year and a half ago redid the position description but it hasn't been signed off by the union yet, so we're still going on the 2013 one.

PN290

Yes, I'll just - it's page 58 of the court book?---Yes.

PN291

Sorry, this is where it's going to get complicated?---Yes, I know. Sorry.

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN292

So if you go to the other folder, page 58?---Yes, so I still need this one. Fifty-eight, yes. Yes. So that's the power worker one.

PN293

Yes. So if I take you to page 67?---Operations team leader, higher duties. So that's a higher duties, referring to a unit controller acting as an operations team leader, in a higher duties capacity.

PN294

Yes, understood?---Yes.

PN295

The key responsibilities, the dot points that fall under that?---Yes.

PN296

Are they the same for a substantive OTL position holder?

PN297

MR SPARGO: That's a bit unfair, with respect to Ms McAllister, because she's expected to absorb all of that information and comment on whether it's the same as what's in the permanent OTL position description, which is also in evidence. The documents will speak for themselves, Deputy President. If there are differences that are germane then Mr Reidy can take Ms McAllister to them.

PN298

MR REIDY: Well, with respect, Deputy President, this document is owned by Ms McAllister, it says at the bottom of the page. I think it's legitimate for me to ask if that is the same, or to ask the question that I've asked, simply.

PN299

THE WITNESS: There are some differences, but they're - you know, the intent remains fairly similar. Yes. Yes. No, that's - they're - it's probably close enough, or something fairly similar. I also note that the previous role descriptors all say, 'Previous position plus', whereas the operations team leader high duties does not mention the need for them to be in a controller - in that description. I mean they are, but they don't have to be. In theory, I could ask an assistant unit controller to act as a higher duties - - -

PN300

THE DEPUTY PRESIDENT: Ms McAllister, I might just get you to pause there?---Sorry. Yes.

PN301

Mr Reidy will ask the questions?---Sure. That sounds like a great idea.

PN302

MR REIDY: Thank you. I'll take you to paragraph 12 of your statement?---Yes. What page was that, sorry?

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN303

I'll just find the reference.

PN304

THE DEPUTY PRESIDENT: Two-five-eight.

PN305

MR REIDY: Thank you, Deputy President?---Yes.

PN306

So you made a comment there about, 'I find it somewhat strange that it is the ETEU that is seeking to represent the OTLs. The ETEU has not, historically, sought to represent this cohort at Yallourn Power Station'?---Yes.

PN307

Have you had an opportunity to read Mr Mooney's witness statement?---Yes.

PN308

And you'd be aware, from that statement, a number of emails that's attached to it, and - - -?---Yes. So - yes.

PN309

So this is about him representing the OTLs from, say, 2001, I think it's April, through to 2013, is that - - -?---No.

PN310

It's not?---No, they did not represent - the ETEU did not represent the OTLs from 2001 to 2013.

PN311

No, sorry. Sorry, I misspoke there?---Yes.

PN312

2021 to - to last year?---Yes, that makes more sense.

PN313

The last couple of years?---Yes.

PN314

And you accepted, from what is in those emails, you took no issue with Mr Mooney performing that role, as their representative?---I had no issue with it. I thought it was strange, but I had no issue with it.

PN315

Did you tell him that?---Yes, at the time.

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN316

Okay. But he negotiated with you for changes to the common law contracts for the OTLs?---He did. I think the guys would probably support me in this, they



could have done it themselves, they didn't need to be in the union to do that, but they did and that's what we did.

PN317

I accept your evidence, but my question is probably more loaded about Mr Mooney was representing them, there's no question about that?---Yes.

PN318

Can you tell the Commission - sorry, I'll withdraw that. Energy Australia seems to take exception to the ETEU representing the OTLs at the time that the majority support application was made, is that your view?---That's my understanding, yes.

PN319

Was that your view personally? Sorry, I'll withdraw that question. Do you know who, at Energy Australia, formed the view about - - -

PN320

THE DEPUTY PRESIDENT: Does it matter?---No. I was asked to come here and give a witness statement and then speak to my witness statement, and that's what I'm doing. I thought we were just trying to determine whether or not the ETEU had the right to represent the OTLs. That's as far as - that's all I've got.

PN321

I accept it's an industrial interest for the ETEU but in terms of the task that I've got, of construing your rules. I'm not trying to take this anywhere.

PN322

MR REIDY: It's just about the genuineness of the sentiment held by the company, Deputy President. If I can't ask the question I can't ask it, so I might - you said in your statement that you're quite happy - well, I don't know if you're happy, but you're willing or your supportive of the OTLs wanting to advance their terms and conditions of employment?---Yes. We've negotiated an increase for them, in good faith, with the ETEU in 2021.

PN323

And you're happy for them to do that via a variation to their common law contracts?---That's what I thought we were doing, yes. Yes.

PN324

But you're resistant for them to have an enterprise agreement?---I am not - - -

PN325

MR SPARGO: Sorry, I object. Deputy President, it's the same problem. It doesn't matter. It doesn't help you work out whether, under the rules, given the statutory role the ETEU is now seeking to play, in representing these people, they have coverage or not. And Ms McAllister hasn't given evidence about whether she thinks she'd be happy to negotiate an enterprise agreement with these team members or not, but it's beside the point. The only question is whether there's covered, under the ETEU rules.

\*\*\* GAYLE ANITA MCALLISTER

XXN MR REIDY

PN326

THE DEPUTY PRESIDENT: I think that's right. I mean, Mr Reidy, without peering into the mind of everyone at the company, there'll be, I expect, a range of opinions there. Ms McAllister's might be one, but I'm not sure it's going to be germane to the task that I've got to deal with.

PN327

MR REIDY: Good. Thank you, Deputy President. I have no further questions.

PN328

THE DEPUTY PRESIDENT: Thanks, Mr Reidy. Mr Spargo, any matters arising?

PN329

MR SPARGO: One matter, thank you, Deputy President.

**RE-EXAMINATION BY MR SPARGO**

**[11.23 PM]**

PN330

MR SPARGO: Ms McAllister, you were taken to, in the enterprise - well, not in the enterprise agreement but referred to in the enterprise agreement, the various position descriptions, including for OTL higher duties. You understand the enterprise agreement locks those position descriptions in place, unless the union approves a change, is that right?---Correct. Yes.

PN331

And that OTL higher duties position description you were taken to, that's not what you look at when you go to hire or assess the performance of an OTL now, is it?---No, it's not.

PN332

No. Without taking you to it, you said, in your statement, that it's the position description which is GI4 to Mr Ipenburg's witness statement, is that correct?---That's correct. That's the one we put out with the ad, when we advertise for the role.

PN333

That encapsulates the current position, from the company's perspective, correct?

PN334

THE DEPUTY PRESIDENT: I think I cautioned Mr Reidy about leading a little bit, I'll do the same.

PN335

MR SPARGO: Thank you. I think I'm repeating what's in Ms McAllister's evidence. But, Ms McAllister, you said that there is actually a new version of the higher duties role that has been developed recently, the higher duties OTL role, but that hasn't been approved by the union yet, is that right?---Correct.

\*\*\* GAYLE ANITA MCALLISTER

RXN MR SPARGO

PN336

Thank you, Deputy President, nothing further.

PN337

THE DEPUTY PRESIDENT: All right, thank you. Ms McAllister, thank you for giving evidence today. You're now excused as a witness and you can resume wearing your hat as an observer or an instructor?---Thank you.

<THE WITNESS WITHDREW

[11.25 AM]

PN338

THE DEPUTY PRESIDENT: Now, next is our online witness for Mr Chapple. I think I indicated I'd just stand it down briefly while we try and get him. Before I do, is there anything else? There was no other evidentiary material, is there?

PN339

MR SPARGO: No, not from the respondent. Mr Chapple has been in contact by text, I believe, with my instructor, so we should be al ready to go.

PN340

THE DEPUTY PRESIDENT: All right. Well, we will adjourn for a period of time, determined by the IT guys.

**SHORT ADJOURNMENT**

[11.26 AM]

**RESUMED**

[11.37 AM]

PN341

MR SPARGO: Deputy President, we call Peter Chapple.

PN342

THE DEPUTY PRESIDENT: Yes. Mr Chapple, just trying to think what your line of visual might be but can you see and hear me okay?

PN343

MR CHAPPLE: Yes, fine, sir.

PN344

THE DEPUTY PRESIDENT: Excellent. Can I just confirm what you've got with you in terms of documents. Do you have a thing called a court book?

PN345

MR CHAPPLE: Yes, I do.

PN346

THE DEPUTY PRESIDENT: Excellent, and is that – have you got it in hard copy or have you got it electronically?

PN347

MR CHAPPLE: I've got it electronically on my iPad beside the computer.

PN348

THE DEPUTY PRESIDENT: Okay, so you've got it on a separate device which is good to know.

PN349

MR CHAPPLE: Yes.

PN350

THE DEPUTY PRESIDENT: And I think probably– well perhaps, Mr Spargo and Mr Reidy, just take note that if he's looking for a document he's just got to look it up electronically there. All right. Mr Chapple, in a second I'll have you affirmed by my associate and then we'll take you to your witness statement so you're ready to be affirmed?

PN351

MR CHAPPLE: Thank you.

PN352

THE DEPUTY PRESIDENT: Thank you.

**<PETER WILLIAM CHAPPLE, AFFIRMED** [11.39 AM]

**EXAMINATION-IN-CHIEF BY MR SPARGO** [11.39 AM]

PN353

THE DEPUTY PRESIDENT: All right. Thanks, Mr Chapple. I'll hand you over to your – well to the respondent's lawyer, EnergyAustralia Yallourn's lawyer, now and he will take you to your statement.

PN354

MR SPARGO: Good morning, Mr Chapple. Could you tell us your full name, please?---It's Peter William Chapple.

PN355

Thank you. What's your current employment status, Mr Chapple?---I'm happily retired.

PN356

Very good. But before that you worked at the Yallourn power station for many years. Is that correct?---I did, yes, true.

PN357

Mr Chapple, have you made a witness statement in connection with these proceedings?---(No audible reply)

PN358

Just ask you to speak directly into your microphone there, Mr Chapple?---Yes, I have.

PN359

Thank you, got that. Mr Chapple, do you have a copy of that with you?---I do.

\*\*\* PETER WILLIAM CHAPPLE

XN MR SPARGO

PN360

For the benefit of the commission, that is on page 267 of the court book. Mr Chapple, I believe you have a hard copy of your witness statement. Is that correct?---That is correct.

PN361

You could have a look at it and tell me, Mr Chapple, does it have 25 paragraphs and six numbered annexures in total?---I believe so.

PN362

Thank you. Mr Chapple, if I could take you to paragraph 24 of that statement, I understand there's a matter you wish to clarify there. Is that correct?---That's correct.

PN363

Could you please provide that clarification?---Okay. The last sentence of 24 I say that the work of a co-ordinator - I'll try to quote, sorry, if the way (indistinct).

PN364

*The work of co-ordinator operations officer 4 role was not utilised at the Yallourn power station during my employment.*

PN365

I wish to correct that. Insofar as – if I can take you to the previous para 23, I – I talk about having made inquiries of an ex-colleague who was a senior operations employee at the Yallourn power station from the 70s in fact. I had further conversations with him after I had seen the ETU material about this position and the – what he recalls is the – there was a role prior to 97, I don't know how far before 97, which was an operations officer role which was a secondment role from the shift operations cohort. It was seconded into a collective group of others that were responsible for the preparation of shutdowns and major outages. It was notionally a secondment for six to 12 months because people (indistinct) take this particular individual, he'd served in this role for a period of time and – and in – in actual fact that particular secondee was also the outage co-ordinator when the works were – were undertaken. So I – I – I'm – I'm going to correct in saying on that – on that basis that the - that particular role was not utilised at Yallourn power station during my employment but it – but my recollection is it wasn't utilised as a role post – from 97 onwards.

PN366

Thank you, Mr Chapple for that clarification and apart from that, is the evidence true and correct to the best of your knowledge and belief?---Yes.

PN367

Would you like to adopt that statement as your evidence in this proceeding?---Yes.

PN368

I seek to tender the statement of Mr Chapple and its annexures.

\*\*\* PETER WILLIAM CHAPPLE

XN MR SPARGO

PN369

THE DEPUTY PRESIDENT: All right. I'll mark as Exhibit R2 the witness statement of Peter Chapple and its exhibits which are comprised of pages 267 through to 451 of the court book.

**EXHIBIT #R2 WITNESS STATEMENT BY PETER CHAPPLE  
INCLUDING ANNEXURES**

PN370

MR SPARGO: Thank you, Deputy President. Nothing further in chief for Mr Chapple.

PN371

THE DEPUTY PRESIDENT: All right. Thank you. Mr Reidy. Mr Chapple, just before Mr Reidy starts I should also say, as I've said to other witnesses here today, Mr Reidy will be asking you some questions as indeed I might or Mr Spargo might at the end. For each of those questions just do your best to – well listen carefully to that question and do your best to answer that question and if there's anything that you're unsure about because it's not clear to you, just pipe up and we'll do our best to have it clarified?---Thank you.

PN372

MR REIDY: Thank you, Deputy President.

PN373

THE DEPUTY PRESIDENT: Mr Reidy.

**CROSS-EXAMINATION BY MR REIDY**

**[11.44 AM]**

PN374

MR REIDY: Mr Chapple, can I take you to paragraph 8 of your witness statement. In that paragraph – sorry, are you at that paragraph, Mr Chapple?---I – I – I have that now, yes, para 8, was it? Eight?

PN375

That's right?---Yes.

PN376

You refer to a – sorry, paragraph 8(b)?---Yes.

PN377

The Chambers Twentieth Century Dictionary of 1908?---Yes.

PN378

Then you have that as an appendix to your witness statement at PC2 I believe. Sorry, PC3?---Yes, I don't have that in front of me at the time.

PN379

You don't have the exhibit, sorry?---I – if you just (indistinct).

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN380

Sorry, if you go to – it's page 280 of the court book, if you go back to that folder?---(No audible reply)

PN381

THE DEPUTY PRESIDENT: Mr Chapple, can I just get you to - when you speak, to speak I suppose straight onto your microphone because I think you've said a couple of things there and I haven't been able to hear you so I just want to make sure that we're all hearing you okay?---Yes. Sorry, could you repeat where you – you are – could you (indistinct) I've got it up now so where would you like me to go now?

PN382

MR REIDY: Sorry, so you're at page 280 of the court book?---(Indistinct) I'm – the – sorry, (indistinct).

PN383

THE DEPUTY PRESIDENT: Mr Chapple, can I just get you to pause. When you're speaking, I think the way it's working from my observation is that when you're looking directly at your laptop we can hear you but when it's a little bit side on the microphone's very sensitive and you cut out intermittently?---Yes, I'm sorry, it's hard to keep straight onto the - - -

PN384

No, no, no, it's – I appreciate it's not easy so thank you?---Yes.

PN385

MR REIDY: Mr Chapple, I can – I'll just ask - - -?---I have the document. I have the document which is Chambers Twentieth Century Dictionary 98 on page 1. Where would you like me to go from there?

PN386

Just on that, is that a document that you researched and found?---I've got to say that the – that the – the – the lawyers actually did that work.

PN387

Thank you. You have the definition in your statement as - well this is the definition of an electrician, as one who studies or is versed in the science of electricity?---Yes.

PN388

Is that – are you confident that that definition is representative of the state of play in Victoria in 1908?---I can't say that, no.

PN389

Thank you. At paragraph 14 of your statement, Mr Chapple?---Yes.

PN390

You say there, and this is in – at the top of page 269?---Well, I have my statement in front of me in hard copy so it's (indistinct).

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN391

Sorry. If you go to page 3 of your statement?---Yes.

PN392

You say the – there's a sentence there that starts:

PN393

*This enterprise is underpinned by a modern award being the Electrical Power Industry Award 2020.*

PN394

?---Yes.

PN395

Can you tell me what you mean by that, by underpin?---I suppose I – I – the way I'd address that is that if there's any terms and conditions that are not addressed by the current industrial instrument, which as example an EBA, that if – that if there's – the underpinning award would support or assist in the terms and conditions that may not be readily noted, if you like, in the enterprise agreement.

PN396

You don't mean that the award is incorporated into the agreement then?---I'm – well I – if it is the terms of the EBA would – would be – over-rule any exigencies.

PN397

No, Mr Chapple, I'm just asking you if – do you mean that the award is incorporated into the 2023 enterprise agreement?---Well, for a start I wasn't there, for a start, I would say. I – I left in 217(sic) before that occurred.

PN398

I'm just reading from your statement. If you don't know the answer I'm quite happy for you to say you don't know the answer?---I'll (indistinct) underpinned by the modern award.

PN399

THE DEPUTY PRESIDENT: Can I just get you to repeat that answer because we got about two words of it?---Okay, so I - I - I'll stick to my statement saying that the enterprise is underpinned by the modern award.

PN400

MR REIDY: I'll move on, Deputy President. In your statement you say – sorry, I withdraw that. You were working at EnergyAustralia Yallourn at the time that the 170 MX Award was made in 2001?---I was, correct.

PN401

That award essentially took the place of an enterprise agreement for Yallourn power station?---Yes, EB3 1997, yes.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN402



But you're – are you aware that the 1998 award continued to apply and is – that's provided for in the MX Award?---Yes.

PN403

The MX Award wasn't the only award that operated at Yallourn power station?---That'd be true at that time, yes, because the commission made, the ARC made the MX Award.

PN404

And you say that the shift manager, so there was a position of shift manager in - in the 1997 enterprise agreement, is that right?---Yes, that's correct.

PN405

Then that position was not included in the MX Award though?---I think that the terminology changed, I think. But essentially that role remained but it was - the OTLs, sorry, the operations team leader roles, from memory, replaced the shift manager's role. So terminology, that is.

PN406

Okay. Do you recall what happened in that transition, from the people who were employed as shift managers who then became operational team leaders?---In terms of their status in employment?

PN407

Well, were they all made redundant and Yallourn hired a group of new people? Were they transitioned from shift managers to operational team leaders? What happened?---Okay. Without being specific to each shift manager, but basically shift managers were offered employment contracts outside the coverage of the MX Award.

PN408

Okay. So they - when the shift managers moved from the enterprise agreement and they were offered common law contracts to become operational team leaders?---That's correct.

PN409

When they became operational team leaders they were not covered by the MX Award?---That's my understanding from what the - yes.

PN410

But you've also agreed that the 1998 award continued to apply?---Well, I presume so, yes.

PN411

The 1998 award had that position you're referring to at the beginning, the work group coordinator 4?---Yes. And I think, in the context, you had quite a number of businesses and the unions, of course, that were covered under - the modified MX Award, so it could possibly be that position in other businesses. Certainly it wasn't that title in our business at that time.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN412

Okay. I'm not - - -?---If I could just go back a step. The EB3, and the gentleman behind you will be aware of this, it was a fully comprehensive standalone agreement, 120-odd pages, that covered every aspect of how people who were covered by the agreement worked at that station. The relevance of the '98 award, which was made post that, basically had no relevance because every term and condition was addressed, if you like, in the '97 agreement.

PN413

Yes. I'm talking about the 2001 MX Award, not the - - -?---Yes, I understand. Yes, understood.

PN414

So people moved from shift managers, they became operational team leaders, they were on common law contracts, you had - once the MX Award was in place, in 2001, it didn't include the position of operational team leader?---That's correct.

PN415

But it did allow for the 1998 Power Industry Award to operate in conjunction with the MX Award, do you agree?---Look, from memory, that's correct, yes.

PN416

And the 1998 award had a list of classifications. THE top operational classification being the work group coordinator 4, do you accept that?---I can't accept that, because I can't recall what was the top classification in the '98.

PN417

Can I take you to page 168 of the court book? Sorry, 169, I'll correct that?---You have to be more specific where you're taking me.

PN418

Is your court book numbered in the bottom right - - -?---No, it's not. Not that I can see.

PN419

THE DEPUTY PRESIDENT: Do you have a digital copy though?---Yes, I have a digital copy.

PN420

The digital copy page should be identical to the numbered page on the bottom. So if - well, maybe, Mr Reidy, could we take him to 156 first, just so he can see the document that he's going to be asked to look at?---Sorry, when you mean court book, you mean the list of authorities and - - -

PN421

MR REIDY: No, sorry, that's the wrong folder. Yes, correction?---Okay, sorry.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN422

There's a court book, which is the other folder you should have, or the other document you should have. So where your witness statement is, where you're viewing that?---Yes.

PN423

That's the court book?---Okay. Right. Yes. I went out of that and went into the other one.

PN424

Yes, sorry?---I'm (indistinct). I'll say it again - yes, I don't have any numbering, any numbering related to the court book. Each of the attachments, if you like - - -

PN425

THE DEPUTY PRESIDENT: Mr Chapple, can you tell me what you're looking at? Are you looking at a physical hard copy or are you looking at a digital copy, on your device?---I'm looking - I'm looking at a digital and is it part of the annexures?

PN426

Let's just pause. The digital one that you're looking at, can you go to page 1, the very first page, and hopefully there's a bit of an index there and there's a Fair Work Commission logo on the top right-hand corner, and it says 'Digital court book' at the top?---No, sorry, I haven't got that.

PN427

So what's the front page that you're looking at?---I think it was just my witness statement and attachments. That's not it, is it?

PN428

No. That's part of the digital court book.

PN429

MR SPARGO: Can I try and assist?

PN430

THE DEPUTY PRESIDENT: Yes. Mr Spargo is just going to try and get us on track. Thanks, Mr Reidy, as well.

PN431

MR SPARGO: Mr Chapple, RS Mollison sent you two links. One of them should be labelled 'Digital court book'. Do you have an email from him with two links?---Yes. I've just found that now. Okay.

PN432

If you click on the digital court book and, perhaps, initially, just look at the first page, you'll see it's got a table of contents?---Yes, I've got that now. Yes.

PN433

And page 1 down the bottom, the number 1, marked in red, down the bottom?---Number 1, number 2. Yes, I've got it. Yes, I've got it.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN434

Thank you, Mr Chapple. While I'm on my feet, Deputy President, I might just - this might not satisfy Mr Reidy, but if I can try and offer a concession to short-circuit this. There's no dispute that the work group coordinator role is where it appears in the 1998 award. There's no dispute about what the 176 MX Award says about that. As to what Mr Reidy draws from that, we would respond to in submissions, I suppose. But I don't see how Mr Chapple's said anything to the contrary in his statement. But there's no dispute the document says what it says, if that assists.

PN435

THE DEPUTY PRESIDENT: Understood. Why don't we let Mr Reidy go on anyway.

PN436

MR REIDY: The point is, Deputy President, in his witness statement - - -

PN437

THE DEPUTY PRESIDENT: That's all right, you don't have to explain, you've got the witness here. Mr Chapple just while we've got the digital court book in front of you, I was suggesting you start of page 156, just so you know the document that you're about to be asked to look at. Then once you - - -?---Bear with me. Okay, I've got it, I think.

PN438

All right. Just to confirm, are you looking at document proof 1168 is the very first line at the top?---Correct. Yes.

PN439

I think, Mr Reidy, I'll had him back to you.

PN440

MR REIDY: Thank you. So you're on page 169, Mr Chapple, you'll be looking at clause 9.2, titled, 'Career streams'?---One minute, 169?

PN441

Yes, that's the red print - - -?---Yes. Yes. Yes, I've got that. Yes.

PN442

This is the career streams structure and you'll see, at the top there, it's got 'manager' and it has 'specialist'?---Yes, I see that, yes. And if you move down from there, on the next line across, on the far right, it has the position of 'work group coordinator operations officer 4'?---I can see that, yes.

PN443

So do you agree that that is the highest operational position?---Yes, I can agree with that.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN444

You say, in your statement, sorry, if I take you to paragraph 20 of your statement, so this is page 270?---Yes.

PN445

You say, in the second last sentence of that paragraph, 'The OTL role has not been covered by an industrial instrument since its inception'?---Correct.

PN446

So you came about in 2001?---Correct.

PN447

The 1998 award existed in - sorry, I withdraw. The 1998 award existed in 2001, and applied at Yallourn?---Yes.

PN448

And there was a classification in that award for an operations officer 4, being the highest operational position in the award?---Yes.

PN449

So do you agree with me that the OTLs could have well been covered by that operations officer 4 position, seeing they're the highest operational position within that team and this is the highest operational position in the award?---I would have to know what the job descriptor was for operations officer 4 and the job descriptor of an OTL to determine whether they're one and the same. (Audio malfunction) that.

PN450

Okay. Thank you, Mr Chapple. If I take you to paragraph 18 of your witness statement?---Yes.

PN451

At about the mid point of that paragraph there's a sentence that starts, 'The intention', do you see that one?---Yes.

PN452

So, 'The intention was that the employees working in this role', so the OTL role, 'would be employed on a common law contract as they were required to manage the operations workforce'?---Correct.

PN453

So that was the intention when that role was created?---Correct.

PN454

Then do you recall the industrial dispute that happened at Yallourn Power Station, in 2013?---Yes.

PN455

Evidence has been given this morning about operational team leaders performing the role of operators, because the operators were to impose industrial action?---Yes, that's correct.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN456

You agree that they did perform that role, the OTLs that is?---Some of them did. Some did perform that role, others conscientiously didn't want to perform that role and others, I don't know whether they were capable of doing that role. But, yes, some of them did actually perform that role, but I don't think everybody did that role because of their capability or their reluctance to do so.

PN457

Okay. Do you know how many - so the evidence that's been given this morning is that they all performed that role. Your evidence is that they did not all perform that role. Could you tell us how many of the OTLs did perform the role of operators?---No, I can't. I just (indistinct), I just - my memory, if it serves me correctly, I think there was some reluctance among those people not to perform the role.

PN458

Okay. But when they performed that role they weren't managing the workforce, were they?---I - I can't answer that. I'm not too sure to what extent their activities were when they actually sat on the units.

PN459

Okay, so - -?---Whether they also - they'd come from a supervisory, managerial position, whether they had the ability to run the units and also to give direction to some of the people reporting to them normally, I can't answer that. I don't know.

PN460

Okay. So I'll ask the question differently. You say the intention, in 2001, was that the OTLs would simply manage the operations workforce?---Correct.

PN461

In 2013 I put it to you that they were operating the power plant due to necessity?---At least some of them were, yes.

PN462

So that is quite a difference, isn't it, managing the operations workforce to actually operating a power plant?---Yes, absolutely.

PN463

So when you say the intention, I understand the intention, and a lot of people have intentions, but what happened in practice changed quite dramatically, would you agree?---Just the circumstances, yes.

PN464

Is it conceivable that the operation team leaders had performed operational duties at other times, during the last 20-odd years?---In terms of the - certainly some of them would have, because they came from the shift operations ranks and there's others that didn't come from the shift operations ranks that may not have actually operated the plant.

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN465

Thank you. Across paragraphs - sorry, I'll take you to paragraphs 21 to 23 in your statement, so this is the last page of your statement?---Yes.

PN466

In those paragraphs you give evidence about your knowledge about which union represents the OTLs?---Yes.

PN467

That's all that evidence is, isn't it, it's just your historical knowledge of which unions represented the OTLs?---Sorry, represented the OTLs?

PN468

Yes. So the evidence you give in those paragraphs is just your evidence, your knowledge of which unions represented the OTLs during your time at Yallourn Power Station, is that right?---Yes. And what you're saying is - and, rather, in the previous forms too, shift managers and (audio malfunction) et cetera.

PN469

Yes, certainly?---But, yes, okay. Yes. That's fine. That's certainly my knowledge, yes. That's my evidence, yes, as a long term industrial operator and also as a representative of the ASUMLA before that.

PN470

You never had reason to look at the ETEU's rules to form a view about whether or not the ETEU could represent OTLs, did you?---No.

PN471

Thank you. That's all my questions, thank you.

PN472

THE DEPUTY PRESIDENT: Thanks, Mr Reidy. Mr Spargo, anything in reply?

PN473

MR SPARGO: Nothing in re-examination, Deputy President, no.

PN474

THE DEPUTY PRESIDENT: All right, thank you. Mr Chapple, thank you very much for bringing yourself out of retirement. Hopefully not too many flashback memories for you, or trauma caused, but we're grateful that you made yourself available. You're now excused as a witness, so if I can get you to find the leave or exit button on your screen, your job for today with us is done, so thank you?---Thank you, Commissioner and I hope to see those gentlemen at the back right there in retirement very soon.

<THE WITNESS WITHDREW

[12.12 PM]

PN475

THE DEPUTY PRESIDENT: That is the conclusion, Mr Spargo, your client's evidence, is that correct?

\*\*\* PETER WILLIAM CHAPPLE

XXN MR REIDY

PN476

MR SPARGO: That is, Deputy President, yes.

PN477

THE DEPUTY PRESIDENT: We - what's the time now? 12.12. I don't think we're going to be quite finished by lunch, as I was, perhaps over optimistically, anticipating. But, Mr Reidy, I was expecting you would go first then I'd hear from Mr Spargo and you would have the final right of reply, in the usual way. Is that the party's understanding today?

PN478

MR REIDY: We haven't discussed the matter, but it makes sense to me.

PN479

MR SPARGO: Me too, Deputy President.

PN480

THE DEPUTY PRESIDENT: All right. Then why don't we get into things and then, I suppose, if the practitioners could keep an eye on the clock and identify a time to break, otherwise I'm intending to break at 1 o'clock, just briefly.

PN481

MR REIDY: Deputy President, we rely, predominantly, on the outline of submissions that we filed in the Commission, back in January. To define the issue that needs - what we need you to resolve is a simple one and that is, do the ETEU rules allow it to have operational team leaders at Yallourn Power Station represent them.

PN482

So, at centre stage, the question is obviously the union's rules, how they should be interpreted and then an application to the OTL role and the duties they perform and do the two coordinate in a way which allows the ETEU to have them as members and represent them in the majority support determination application.

PN483

As we say in our submissions, the ETEU's rules are broken in two parts, if you like. On the one hand we have a list of positions, or descriptions of callings, as the terms we used in that time, and on the other hand we have a kind of catchall phrase of 'all employees are clients, particular to the electrical industry'.

PN484

We say that the operational team leaders fall under both parts of these rules. In particular, for the first part, 'Electricians engaged or usually engaged or employed in running and maintaining electrical plants'. That's been conceded by my friend that electrical plants should include power stations. So that makes it we're just simply arguing about everything else.

PN485

The term 'electrician' is used there, we included in our submissions the use of that term as a technical term, because of the licencing regime that's been in place since



approximately 1920, and that being that you must be trained to hold a licence as an electrician.

PN486

As we've heard, on the operational side of a power plant, there isn't any requirement for people who work - who, as the hardest part of their job, come into contact with electricity to be trade qualified. So these are, when we talk about the operators, these are people who work with power or electricity on a regular basis. They're not qualified to be electricians, in that A grade electrician term, but they, without a doubt, work with electricity to operate the power plant to generate power.

PN487

All the documents that the company has, in terms of its operational structure, its enterprise agreement, has the operational team leaders as part of that operations team, so this is a shift team. Yes, they're the team leader, but that doesn't exclude them from the team, they're a part of it. Ms McAllister gave evidence that exactly that's the case, that's how they're treated.

PN488

We heard evidence, from Mr Ipenburg about the work that he does. Yes, we don't deny that he manages the team, that's a part of his job, but he also is involved in what the duties of the operators do, when that need requires. He has operated the power plant in 2013, when there was industrial action, and that was required. He's not - he's wrong to treat the OTL as a simple people managers, as there's an ability for Yallourn Energy to simply hire someone say, 'Okay, come in, no prior work experience. You can be a manager of this team, that's all we need, just a simple manager. You don't need any operational experience or knowledge of how a power plant works'. They might pick that up, it's not a requirement.

PN489

The OTL role is much more than that, that's why, predominantly, six out of seven of the employees, have come from the operating ranks. The career structure is you come through the operating ranks and move into the OTL role because, as Ms McAllister said, that's very useful for the business that those people have that background and skills. We know why, because, as Mr Ipenburg said, he steps in and performs those operating roles when required. It's also part of his job. He is a supervisor, sorry, an observer of the high voltage electricity. That is something that goes well beyond what you'd normally expect of just a people management role, as the respondent is trying to portray the OTL role.

PN490

So we don't see that there's any - there should be any controversy about that and the position of the company seems to be that we're saying that the OTLs don't manage the team and, instead, they're out on the tools performing the role of like a foreman. We're not saying that at all. We're saying, 'Yes, they manage the team but they also work with power and do other things that brings them within the scope of the ETEU's rules', that first part of the rules, because they are an integral part of the operational team who runs the power plant.

PN491

THE DEPUTY PRESIDENT: When you say they fit within the rules, we've got to be precise now. If we were focusing on what the parties are calling limb 1, that requires me to accept that those people are electricians, is that correct?

PN492

MR REIDY: Electricians, but not in the way of A grade electrician, because the operators are not A grade electricians, they are electricians, in terms of they are employees who work with electricity or in connection with electricity. That's what the operators are and that's what the status of the OTLs.

PN493

THE DEPUTY PRESIDENT: There's a lot of people at Yallourn who would work in connection with electricity, though. I mean it's an electrical power plant.

PN494

MR REIDY: But not - sorry, Deputy President.

PN495

THE DEPUTY PRESIDENT: Those words are pretty broad, 'in connection with'. I mean the potential breadth of those - that's something that might tell against the construction of that particular word, 'electrician'.

PN496

MR REIDY: We rely on - sorry, I accept your point and I know that a submission is being made by the respondent that it could include Ms McAllister could be a member of the union, or the head of Yallourn could be a member of the union. That really misses the point and that is that on it's operational structure it said, 'This is the operational shift team'. So, this is the team that operates the power plant. We didn't tell Yallourn to structure it that way, they did and they put the OTL at the top of that team. So that's where it stops. Like it doesn't go any higher than that because that's the way it's structured and also that's the work that is performed. I haven't heard any evidence from Ms McAllister that she goes out and works the way that the OTLs do, and I wouldn't expect her to because she's the manager of the team and that just wouldn't make any sense.

PN497

But we say, based on their own structure, that the OTLs are part of the team that operates the power plant in the same way that on the maintenance side, there's that team that performs maintenance in the power plant but it doesn't - we're not looking or we're not - yes, we're not looking to expand that to be as broad as the company - as the respondent is alluding to and it's in submissions.

PN498

THE DEPUTY PRESIDENT: Well, I think they were picking up on your words that's all with an electrician being defined as someone who works in connection with electricity.

PN499

MR REIDY: Well, I think by that I mean it's not an unlimited - when I said that and when I wrote that, that was in terms of the OTLs that I was thinking of. Evidence has been given that they do work directly with electricity so it's on

that basis that we say – so when we say it's a term, yes, I use those terms in connection with electricity, but it was in the context of this particular matter and the OTLs and the work they perform and I'm saying they work in connection with electricity but I'm not trying to say that other people that just happen to walk in the door and work at Yallourn power station work in connection with electricity.

PN500

Otherwise that would mean that it is an unlimited thing and we could just about claim everyone that works at the power plant. Of course, that would be a ridiculous outcome. So we're really focussing on the OTLs and what they do and the team that they've been put in and the work that they do in that team and say that's part of running a power plant. The EA says if an OTL is absent they've got a system to make sure that that absence is covered, so this kind of speaks to it being more than just, 'The person who rostered us isn't in today. Our people manager's not here'.

PN501

This is something much more and which is crucial to the operation of a power plant. Because otherwise why have so many references to the OTL in the agreement when they're not actually covered by any agreement and this is kind of part of the ridiculous lengths that have been gone to where you've got an agreement that says this person can act up into an operational team leader that's uncontroversial, it's in the enterprise agreement, it's in the declaration that went with the enterprise agreement to say, yes, that's part of it.

PN502

But the substantive position holder, no, they're not part of the operational team. It's only the person that acts up but not the substantive position holder. That's – the company's more or less admitting that yes, they're covered by – they should be covered by this agreement. We want them to be covered because we prefer to have them on common law contracts and that's their decision and it's been in place for some time. But they're absolutely part of that operational team because of everything that the agreement says about the OTLs.

PN503

THE DEPUTY PRESIDENT: Well, let's just say that's accepted and they're part of the operational team and as operational team leader you're probably on reasonable ground there but I mean are you – well they still need to be, on limb one, electricians engaged or usually engaged or employed in running and maintaining electric plants.

PN504

MR REIDY: Yes.

PN505

THE DEPUTY PRESIDENT: So I mean just focussing on how you might confine the term electrician if it's not a licensed electrician, I mean – well that's – for limb one that seems to me the issue of difficulty that I'm going to have to determine.

PN506

MR REIDY: Well, on that, we'd refer to the authorities that are in our submissions about the interpretation of union rules and obviously they say that you should give a broad interpretation to them. Not to ridiculous levels obviously and that's what we're – we're certainly not countenancing that but you should give a broad interpretation from them and that shouldn't be – that's where we go with our submission about electrician doesn't mean trade qualified, it means someone that works in connection with power and I've said what I've said about that and I don't want to repeat that. It's probably the next limb is where it says running and maintaining a power plant.

PN507

THE DEPUTY PRESIDENT: But if it's someone who works with power or electricity are engineers, are power engineers, electrical engineers caught in the net of an electrician?

PN508

MR REIDY: That's not one of the positions actually named in the rules, so I'm looking at page 31. But, for example, they have – they've got electrical fitters. They're probably not – they wouldn't be trade qualified necessarily. The battery fitters, because it's electrical batteries, telephone fitters, radio workers, linesmen, so they work in connection to the power generation obviously because they're working on the lines but they're not trade qualified, they're just linesmen.

PN509

THE DEPUTY PRESIDENT: What about a high voltage engineer?

PN510

MR REIDY: Well - - -

PN511

THE DEPUTY PRESIDENT: Qualified – degree qualified engineer.

PN512

MR REIDY: They – the rules don't spell that out – sorry, that position necessarily. It doesn't mention high voltage and I'm not sure if that's – high voltage was a term that was in usage at the time the rules were made.

PN513

THE DEPUTY PRESIDENT: I'm only talking high voltage because we're in Yallourn and it spits out high voltage electricity.

PN514

MR REIDY: Yes, no. No, I appreciate it. It doesn't countenance that but I think if – I suppose it depends on how closely they're working in connection with the power. In the case of an engineer, and I have no understanding of what they do so – they're probably – it may be more design side rather than actually working on the end product and working near electricity. If they were then there might be a chance that we'd say, yes, they come within our rules but I don't have any – I'm really just talking on the basis of no knowledge.

PN515

Certainly working with high voltage we'd say, yes, as Ms McAllister said and the evidence of Mr Ipenburg as well about working near high voltage.

PN516

THE DEPUTY PRESIDENT: The evidence doesn't disclose that the ops team before me, that any of them hold themselves out as electricians as such, do they?

PN517

MR REIDY: No, they don't, they don't. They simply work at the power station in the operations team, that's it, and we'd probably – I suppose we're looking at it – taking interpretation to the rules that we say should be taken, which is a broad one, the rules say in the running and the maintaining of electric plant, so – we dealt with this in our submissions but it's whether it should be running and maintaining in which case I don't think there's anyone that both runs and maintains a power plant, they're either on one side or the other, so we say you shouldn't join those together, they can be separated out.

PN518

That's in the spirit of – sorry, of the authorities which includes someone who maintains electric plant – sorry, who runs the electric plant. I can't really offer much more in terms of electrician and what it might mean apart from what I've said and – which is really just what I've put in my submissions, Deputy President. But I – for the word to have any meaning, in the case of operators – or people involved in maintaining the plant, then I don't think we'd have an issue and I don't think we have an issue because they're electricians, because they must be electricians in order to do maintenance work. It's only where you have the case of people running or operating the plant but they don't need to be electricians.

PN519

THE DEPUTY PRESIDENT: Well, licensed electricians.

PN520

MR REIDY: Licensed electricians, correct, and we say well electrician shouldn't be read down to this narrow meaning of trade qualified. It should mean anyone who works in connection with electricity and not I walk past a switchboard so now I'm electrician. It should be on a regular basis I work in direct contact with electricity which is what the operators do and that was Ms McAllister's evidence about HV operators and also Mr Ipenburg's evidence and we say that should be enough on top of the other duties that he lists in his witness statement which are not management. In terms of the - - -

PN521

THE DEPUTY PRESIDENT: Sorry, sorry, just pausing on that because if an electrician in probably the more modern understanding is licensed electrician unless there's, I suppose fear within industry of unlicensed electricians, but I'm not particularly familiar with the licensing requirements for electricians but is that an ongoing licensing requirement, do you know? Is there a fee that needs to be paid each year?

PN522

MR REIDY: I'll just get instructions on that. I think it's renewed. It's renewed every five years, Deputy President.

PN523

THE DEPUTY PRESIDENT: Yes, okay. Thank you. Because it's one thing to be trade qualified but you might be – and then you might have got your ticket but then it might lapse so there's – but this comes down into the rules are going to be interpreted and I'll - - -

PN524

MR REIDY: Yes, and just on that, as I was saying before, Deputy President, if it meant electrician means someone with a trade qualification there wouldn't really be a necessity for the rules to say any more. They can just say that and that would – it's either have you got a trade qualification or not. If you don't, okay, you're not an electrician and that's the end of the story. But it doesn't say that because there was no regime in place at the time the rules were made and that's why it has a – I imagine that's why it has this list of occupations which, on reading them, you wouldn't necessarily think that's an electrician, for example a – well, electric crane attendants, rail welders and their assistants.

PN525

Now I wouldn't know that a rail welder themselves would be trade qualified let alone their assistant but they're caught in the rules and this points to our case of this is - when the rules were written this is what was in mind. It's like they've gone through and said what are the occupations that we think should be electricians and then they've put that into the rules and as long as no other union objects to them including in that rules, that they're captured as electrician and then they've gone on to say and the work of an electrician and electricians engaged and then in a power plant.

PN526

THE DEPUTY PRESIDENT: Just to be clear, this clause 2.1 of your federal rules, other than some re-numbering issues, is in the form it was in as registered on 24 December 1919.

PN527

MR REIDY: Yes, so just on that, and – because I did some further research, I actually found the rules – because the union was registered in – federally in 2000 – sorry, not 2000, in 1913. It – the rules that were registered at that time are exactly these rules, then it de-registered in 2018 because it left out a – it didn't have a particular council that it needed and then it re-registered so it just made that change to its rules entirely. So these rules have been in place since 1913. They didn't change when it was registered again in 1919 so, yes, they're quite old.

PN528

THE DEPUTY PRESIDENT: Well, just on that then, is there any - what's the controversy with the dictionary definition from the Chambers Dictionary of about 1907 then? Is that possibly the best evidence that we've got of what an electrician might have been at the time?

PN529

MR REIDY: Well, we disagree, Deputy President. That definition seems to speak to someone who's actually been trained. So it says:

PN530

*Electrician, one who studies or is versed in the science of electricity.*

PN531

That sounds like an electrical engineer but – so there's no evidence at all that there was any formal training or anything like that at the time that the rules were made. The licensing regime – so prior to the licensing regime coming into force in 1920-1921, there was nothing so people just went and worked on power without any qualifications. This became quite alarming to the union and also to the employer association at the time because people were electrocuting themselves and it was a bit of a controversy so they forced – well pushed the issue and in the end the licencing was introduced in 1920.

PN532

So there was no formal training you just went out, did the job, learnt on the job and that was the end of the matter. But in this definition, and I'm not sure if this is - it seems like an English definition, but I'm not sure about that, but I'm not sure if it reflects the situation in Australia, or Victoria, at that time. I don't think it does, because it talks about applying to your studies. I've not seen anything about, even if they wanted to, being able to go off and be trained or study to be an electrician. That's why I say I don't think that definition suits the situation that we had back then.

PN533

THE DEPUTY PRESIDENT: No. Well, we've got really no evidence of the time.

PN534

MR REIDY: Yes. Correct. It doesn't fit well with many of the occupations that are named in the rules. They don't - like linesman, that's not - sorry, that's probably a bad example. But a battery fitter, to call then someone who's studied or is versed in the science of electricity, because they fit batteries, well, they might be but to say it's a bit of a reach, or a welder's assistant, as someone who's studying electricity. They're probably just a labourer.

PN535

THE DEPUTY PRESIDENT: Rail elders.

PN536

MR REIDY: Yes. It's, as I said before, the - whether they've even got any qualifications in electricity, or electrical labourers is another one that's covered. Well, if you're an electrical labourer why would you be training to be an electrician. You're a labourer, so you wouldn't be an electrician. You can't be two things at once.

PN537

THE DEPUTY PRESIDENT: Just on this word 'electrician', the respondent's have pointed to a couple of authorities where they say union rules should not be



construed in a static matter, based on when they're established, but can adopt a more contemporary meaning if that would be appropriate. That's at paragraph 35 of their submissions. What do you say about that proposition?

PN538

MR REIDY: I agree with it. I think, yes, the union rules, they shouldn't be fixed in time, they should move with the times. I think that's what's being said there. But at the same time it doesn't mean, in a case like this, that you say, 'Electrician now means trade qualified' so therefore whatever they thought back then, however contradictory it is to many parts of these rules, you ignore it and say, 'Right now it means trade qualified, so that's what it means'. Then you look and say, 'Well, how can that be that I'm a triple welder, or a triple labourer is covered by the rules but we're saying that you've got to be trade qualified'. So I think - - -

PN539

THE DEPUTY PRESIDENT: Well, not necessarily. If in the modern regulatory world rail welders were required to be trade qualified or licenced, then it might be that the rules adopt or adapt to the modern regulatory impositions.

PN540

MR REIDY: Yes. I think I agree with that, that if it was a requirement for a rail welder, as you say, to be trade qualified, then the rules should move with the times. But that - I don't know if that helps us in this case because OTLs or (indistinct) aren't required to be trade qualified.

PN541

THE DEPUTY PRESIDENT: It might not make a difference for - well, that's the issue, but electricians are, aren't they? I'm just focusing on limb 1. If electricians are required to be either licenced or trade qualified and OTLs aren't, doesn't that suggest that OTLs, on a modern assessment of electrician, won't fall within that coverage clause?

PN542

MR REIDY: No, because I think the term 'electrician', as used in the rules, has a broader meaning that we're arguing for absolutely a trade qualified electrician comes within that broad meaning, without a doubt, and it's probably predominantly most position would fall within trade qualified. But it shouldn't be that the broad conception of electrician that we say applied at this time should be narrowed down to what it is now. It should be if things change and other positions come in and they're called - regarded as electricians, then they should come into that broad definition as well.

PN543

THE DEPUTY PRESIDENT: But things can't go out.

PN544

MR REIDY: Yes, that's right. That's right. That's the interpretation that's being argued for, or the authorities argue for, in the case of the union rules.

PN545



THE DEPUTY PRESIDENT: I understand that. Thank you.

PN546

MR REIDY: In the case of the second limb, so this is the catchall if you like. All employees whose callings are particular to the electrical industry. So I'll start at the end and say that an electrical power plant is part of the electrical industry. I don't think that's controversial.

PN547

THE DEPUTY PRESIDENT: I think we've at least got agreement there.

PN548

MR REIDY: Yes, I'll start on the good stuff. So then we have all employees who's callings are particular to that. So I think what this boils down to is, if the OTLs are simply people managers, and anyone can come in and do that job as a people manager and you can just hire them that way, then what are we arguing about? They're not - there's nothing about this position that fits within the peculiarities of the electrical industry.

PN549

Certainly they are people managers, that's a given, but the evidence given today is that they do other things, which are quite unusual and you wouldn't expect, as a people manager, to walk in and be told, 'You're going to manage people today but if those people go on strike you're going to be operating a power plant'. That seems quite peculiar to Yallourn and to the OTLs.

PN550

In the same way that the other duties that are just a regular part of the OTLs jobs, and HV operations came up, that is something that doesn't fit within just a people management role. These people - the OTLs, six out of seven of them, they come from the operators ranks. They know the power plant, or they've worked in other power plants and they know the operations. They can perform operational duties if they need to.

PN551

When I asked Ms McAllister about - sorry, in her witness statement Ms McAllister was quite articulate about the operational experience and background that the OTLs had. I asked about the people management skills and experience that they have and Ms McAllister admitted that she was a bit sketchy on that, and that's my term not hers. I think that's a fair indicator, when Ms McAllister is the manager of the OTLs, of what she's looking for from this role. That is, operations understanding, power plant operations knowledge, the ability to go and do - perform operator roles when required.

PN552

Mr Ipenburg gave evidence about him doing that and that he did that on a - he says he does it, or Ms McAllister concedes. I think the point is, it's conceded that he does perform those roles, and he does it on a regular basis, whatever - however regularly you accept that being.

PN553

I think one of the examples I have in the authorities was the process workers working with the printed circuitry. No trade qualification, just process workers. They're working on circuitry but they're not connecting any power to that circuitry that I'm aware of in any case. That was found to be peculiar to the electrical industry.

PN554

Here we have the people that lead the operational team, operational shift, perform operational duties at a major power plant, or even arguing about whether or not they fall within this rule. It would be a strange outcome that the first case gets up and this case does not.

PN555

THE DEPUTY PRESIDENT: Well, I'll have to - suffice to say, I need to have a careful look at those cases. But I mean, as with many of these, the difficulty is either drawing a line or trying to draw the line in a way that is, I think, intended in a sensible way. But, I mean, if you're looking at the - I think it's GI3, which has a collection of various descriptions of teams, they're all, in some ways pretty focused on the electrical industry, but I've got things like chemical team leader, operations business analyst. Sorry, I'm looking at court book 75, which intuitively don't leap out to me as callings peculiar to the electricity industry, but - - -

PN556

MR REIDY: Well, I'm certainly not having any reference to those other positions, only the operation team leaders, Deputy President. The others, I don't think we're going to be - yes, of any interest to us or we're purporting, in any way.

PN557

THE DEPUTY PRESIDENT: I'm not suggesting, sorry, that they were of interest to you, I don't want to create more industrial disharmony than might already be there. I was just - I'm just sort of teasing out, in my own mind, somewhere in there a line's got to be drawn where as this side you're within your coverage rules and on the other side they're not.

PN558

There's no suggestion from you that other than the OTLs, on that particular page, no one else would fall in?

PN559

MR REIDY: I'm just going to answer the question 'Yes', that it is only the operational team leaders we're looking at. In terms of electrical industry, I mean we're just looking at what's the business? The business is generating power, electrical power, ipso facto it's an electrical industry.

PN560

THE DEPUTY PRESIDENT: Yes.

PN561

MR REIDY: These other, I think the operations team, I think Mr Ipenburg says, it's in this statement, that they support the operations in the power plant but they're

not - but they're more support than they are part of the operations team. So without downplaying what they do, of course, but that's the way we view it.

PN562

If I, just on this question, at paragraph 25 of my outline of submissions, so it's page 36 of the court book. So this case a Full Bench of the Commission was looking at the question of - the case - it's the NTIA case, so a Full Bench of the Australian Industrial Relations Commission, sorry. I haven't got the date on that one, apologies, but the authority is in the folder.

PN563

I see, on the facts, it was a case of some store persons that worked for an electrical contractor. The ETEU sought to have them as members. It was contested. The ETEU sought to have them included under the rule that we're discussing at the moment, Deputy President. As I say there, based upon the findings about the application of the rule, the Full Bench considered the examples of store person working for an electrical contractor, they found that this position came within the rule as it involves the handling of electrical equipment and some understanding of it, as a substantial element of their work.

PN564

So absolutely not trade qualified, they're store people, but they handle electrical equipment and they have a, as the Commission said, a substantial element of their work is having an understanding of that electrical equipment. But they're not installing it and they're store people, so there's not kind of - yes, there's nothing more to it than that. So we say, here's another case where it's been applied very broadly and it should be viewed very favourably, that case, to the case that's before you now.

PN565

THE DEPUTY PRESIDENT: I understand that. I understand what you're saying there.

PN566

MR REIDY: Deputy President, apart from those submissions, I just rely on our written submissions, unless you have any other questions, of course?

PN567

THE DEPUTY PRESIDENT: No. Look, I don't and bear in mind I suppose you'll also get the final two cents today, after Mr Spargo finishes. So, thank you very much, Mr Reidy.

PN568

Mr Spargo, is now a convenient time?

PN569

MR SPARGO: Yes. Yes, thank you.

PN570

THE DEPUTY PRESIDENT: Shall we resume then at - we probably need to resume at 2 o'clock, don't way, because I and I think at least you, have a matter at 4 o'clock.

PN571

MR SPARGO: We do. Yes, thank you, Deputy President.

PN572

THE DEPUTY PRESIDENT: All right. We'll adjourn until 2 o'clock.

**LUNCHEON ADJOURNMENT** [12.54 PM]

**RESUMED** [2.01 PM]

PN573

THE DEPUTY PRESIDENT: Mr Spargo.

PN574

MR SPARGO: Thank you, Deputy President.

PN575

Deputy President, Energy Australia is here objecting to the majority support application brought by the ETEU on the basis that it says the ETEU is not entitled to represent the industrial interests of the relevant cohort, the OTLs, as we've been referring to them, under its rules.

PN576

In essence, the basis of Energy Australia's objection is that an OTL role is primarily a management role, as opposed to a technical or trades role, which the ETEU's rules, we say, do not contemplate covering. While we accept that union rules are to be given a reasonably broad import, they should not be interpreted in a manner which gives them such a wide and indefinite scope of operation as to promote exorbitant claims to coverage. We say that principle is relevant to this matter.

PN577

If we look at the clause of the ETEU rules in question, it begins by listing a number of specific occupations, some of which are perhaps a little anachronistic now, but many of which are still very familiar: electrical fitters, electrical mechanics, railway electricians, linesmen, electricians in certain context, and then, at the end, there is a catchall.

PN578

A couple of threshold points we make about that, before addressing the two specific limbs relied on by the ETEU. The first is that list of occupations, they all relate to or involve the application of some technical or trade skill to a physical task: installing, repairing, maintaining or manufacturing. Then, in that context, a catchall appears. They are, essentially, employees who perform electrical trades, this is the Electrical Trades Union, after all. There's no indication of an intent, in that coverage clause read as a whole, to cover the managers of such employees. We say that's a relevant threshold point.

PN579

THE DEPUTY PRESIDENT: Sorry, is that for up to and including the words, 'and/all' sorry, not including the words, 'All employees whose callings are peculiar'?

PN580

MR SPARGO: Well, what we say about that, Deputy President, is that that catchall has to be interpreted in the context of the coverage clause as a whole and what comes before it. It would be a strange result if hitherto having referred to particular electrical trades qualifications and given no sense that managers in that industry are meant to be covered, that that catchall ropes in people in management roles.

PN581

Now, we'll say, as you know from our written submissions, that essentially this role is a generic people and operations management role. Yes, it's in the electrical industry and, of course, that means there are features of it that distinguish it from a role in another industry, but that's not enough to make it peculiar to that industry. But we say it's relevant context (indistinct) that there doesn't appear to - it's not surprising for a blue collar union any intent to cover people higher up in the chain from people who are actually exercising an electrical trades function.

PN582

We also note that the rules refer to people employed or usually employed in the list of occupations, so that's people, we say, employed principally to perform one of these roles or usually to perform one of these roles. So that might include someone how is acting up for a time, and not in one of these roles for a time, or it might include someone who has other minor duties which are not part of one of these roles. But we say, when you're looking at whether a particular position falls within the coverage of these rules, you need to look at the principal purpose of that position, was when we're classifying any role in an industrial context, and you don't look at the qualities of the person, you look at the position itself and what the person in the position is employed to do.

PN583

The two specific limbs that the ETEU rely on, of course, begin with the reference to, 'Electricians engaged or usually engaged or employed in running and maintaining electric plants'. We concede it has to be noted that Yallourn Power Station is an electric plant. However, we say that OTLs, plainly, do not satisfy the qualification that they are electricians, nor do the operators whom the OTLs manage. That was the evidence of Mr Mooney today, the only ETEU to give evidence, even after a few goes from my friend to get him to broaden out his conception of electrician. His view of what an electrician is was put to him, in the ordinary sense. That does not include OTLs or operators at Yallourn power plant. It does include a lot of electricians who are engaged at Yallourn power plant and who are members of the ETU.

PN584

Similarly, the evidence of Ms McAllister was similar. The evidence of Mr Ipenburg, with respect to operators, not even OTLs but operators, the next level down, was that some of them may be electricians, in the sense that they are

qualified, in the sense that they performed that role in the past. But when acting as an operator, Mr Ipenburg conceded that that's not a job that we would refer to as an electrician, in the ordinary sense.

PN585

Now, the way around this, Mr Reidy says, is that you should not read the rules as referring to the occupation of an electrician, as we would understand it, but so broadly as to include any employee who works in connection with electricity.

PN586

The basis for that, Mr Reidy says, is that the meaning of the word 'electrician' was frozen in time when the rules were drafted, which is at least back to 1919 when the union re-registered, although he says their origin was even earlier than that, taking it back to 1909.

PN587

But, Deputy President, there's no evidence before you, apart from some evidence put up by the respondent, there's no evidence before you of what an electrician meant at that time. There's certainly no evidence that it meant anyone who works in connection with electricity, apart from some assertions from Mr Reidy.

PN588

What Mr Reidy does say, and there's no contest about this, is that the licencing regime, under the 1918 Widens Act, didn't take effect until after the rules had been drafted. That might be relevant, if we were thinking about whether a licence back then was an essential element to fall within the ETEU rules.

PN589

But the fact that regulation occurred is not evidence that there sudden change in the ordinary meaning of who is an electrician. Indeed - and there is no evidence before you that that's the case. We say, in the absence of specific evidence that when parliament sought to regulate the industry, sought to ensure that people were qualified and had licence, there's no basis to an inference that that suddenly narrowed the meaning of who is an electrician, the occupation of an electrician. Indeed, it would be rather odd if, in seeking to regulate an industry, you narrow the conception of who is an electrician and, therefore, presumably allow for the mischief you're trying to regulate around to continue.

PN590

So we say there's simply no evidence before you to support a finding that the meaning of who is an electrician, who fulfils the definition of the occupation of an electrician, is something quite different to when the rules were drafted. Rather, you should interpret the rules to give electrician it's ordinary meaning, which these days, we think about a qualified or a licenced electrician because the regulatory regime is in place. But that doesn't mean that the nature of the occupation is changed. Mr Reidy's making submissions that that's wrong, but they run up against all of the evidence, including from, notably, Mr Mooney.

PN591

Now, we say that a construction where an electrician is a specific occupation, as oppose to someone who's vaguely connected to electricity, is also more consistent with how the term 'electrician' appears in the union rules.

PN592

There was some discussion today about the other occupations in that list, and whether all of them are electricians or not, that's neither here nor there, in my submission. They are occupations. The word 'electrician' is used twice. It's used in relation to electric welders, whose work is associated with the work of an electrician.

PN593

If I pause there, if all electrician means there is someone who is connected to - works in connection with electricity, well why isn't an electric welder - why doesn't an electric welder meet that requirement on their own? Why is it necessary to qualify or limit it to electric welders who work with an electrician? And, similarly, electricians engaged in running and maintaining electric plants. If it was simply intended that anyone who works in connection with electricity be an electrician, well, it just gives the word 'electrician' no work to do. That would be anyone engaged in the running and maintaining of an electric plant.

PN594

We also say, finally on this point, that our conception of what is an electrician, which is it should have its ordinary meaning which, today refers to a qualified electrician, is more consistent with the only evidence you have of what 'electrician' means in 1908, which is the dictionary definition before you. It's somewhat antiquated language, unsurprisingly, but, as Mr Reidy says, it sounds like an electrical engineer, it's not something as broad as anyone who works in connection with electricity.

PN595

Today there were submissions put to you, in this context, about whether OTL was a part of the operations team. We say that doesn't assist you to determine whether or not they are electricians. So what, we say, with respect. So does Ms McAllister, I think that was her evidence, unsurprisingly, that the operations manager would also be part of the operations team.

PN596

What is relevant to note, though, perhaps, is that the OTLs appear in the company's organisational chart, which you took Mr Reidy to, Deputy President, at a level where he says, 'Well, everyone else, they're all sufficiently disconnected from electricity so as not to be covered by our rules, but it's only the OTLs we're interested in'.

PN597

Now, that might be the case, but it doesn't give you a logical dividing line that you can use when applying the rules and that others can use when seeking to be consistent in applying those rules in the past.

PN598



We made our written submissions about the fact as well, that union rules, while you have regard to industrial context, historical context, the meaning is not frozen in time. That means you can take account of the fact that electricians, now it's a licenced qualified position, albeit it hasn't changed the general idea of who is an electrician.

PN599

If you are against us on that, Deputy President, we would - if you find some broader meaning of electrician, we still say that that word, at least, connotes someone who is employed, principally, to use their technical skill to do with electricity and it would not - an electrician would not, even on that broader view of who it is, would not extend to a person employed to manage electricians.

PN600

So our primary submission, Deputy President, is that neither operations leaders or operations team members, who they look after, are electricians. But if you were to conceive of a version of electrician, in the alternative to that submission where it relies on some - the application of technically skilled, performing a physical task, we would say, okay maybe then operators are covered, but still not their managers. And, as I said, if you take another approach the question just becomes where do you draw the line? Why not Ms McAllister? Why not the head of Yallourn, who has overall responsibility for operation of the power plant.

PN601

Those are our submissions, Deputy President, with respect to the first limb.

PN602

The second limb, the catchall, 'All employees who's callings are peculiar to the electrical industry' which, as I said, follows a list of occupations which involve the application of technical or trade skill.

PN603

A submission about why OTLs do not fall within this limb is essentially because it is an operations and people management role and it's not - there's not enough about it that it can be said it is peculiar to the electrical industry, in the say that we say the rules should be construed.

PN604

THE DEPUTY PRESIDENT: Just on that, just to break in firm, I think, there's no dispute that OTLs are at least working in - well, the business of Yallourn is dealing in the electrical industry.

PN605

MR SPARGO: Yes. Your question, Deputy President, relates to whether the Yallourn power plant is in the electrical industry. We can see, having regard to the history of industrial awards in this area, that electrical industry and the industry where the ETEU has coverage, seems to have included the electrical power generation industry.

PN606



THE DEPUTY PRESIDENT: I was having a look at some of the authorities, in particular that Mr Reidy is relying on, and part of the historical analysis, I guess, of the rule is that up to the callings part of the clause 2.9 of those rules, it's employee focused.

PN607

MR SPARGO: Yes.

PN608

THE DEPUTY PRESIDENT: Then - well, it switches, or arguably switches, because I do think a couple of the Full Bench decisions didn't quite fully nail colours to the mast on this, to a more industry focused.

PN609

MR SPARGO: Yes. Yes. Our assessment, Deputy President, is that we're hard-pressed to say that what the electrical industry is, if it doesn't include the power generation - electrical power generation industry.

PN610

THE DEPUTY PRESIDENT: As far as I understood your submissions, the killing ground on this limb is going to be peculiar to - - -

PN611

MR SPARGO: It's going to be peculiar - - -

PN612

THE DEPUTY PRESIDENT: You're not saying it's not a calling, the OTL is not a calling?

PN613

MR SPARGO: I'm not saying it's not a position, I'm saying it's not a - it is - well, in terms of a calling, that's perhaps relevant to my submission that you look at this catchall in the context of the occupations that come before it. Perhaps it be argued that the calling is consistent with the trades-based occupations that come before it, as opposed to a profession. So we make that submission, but we also say that you have to give that word 'peculiar' work to do. It can't just be, 'Well, they're in the industry'. There are certain consequences of being in the industry, which means there's always going to be things that the ETEU can point to and say, 'Look, it's peculiar to the industry'. But we say things they're pointing to are not sufficient.

PN614

So we point to the fact that no trade or other technical qualifications are required to get in the door to commence this role. We say that while an understanding of the power generation industry is advantageous and it is important, the fact that industry experience is desirable doesn't distinguish this management role from a management role in any other industry. If you were to find otherwise you'd simply be noting that it is in the electrical industry or the power generation industry.

PN615

There's on the job training but, again, that does not distinguish this role from operations and people management roles in other industries. If it did, then we say the word 'peculiar' has no work to do.

PN616

In my submission, there can't be any real doubt, after the evidence that the role is primarily, principally, a management role. It's not principally about the application of a technical or trade skill of any nature, whether that's as an electrician or otherwise, to a physical task.

PN617

Mr Ipenburg accepted that the principal primary nature of the role is a management role. The operating work, the physical work, the use of technical skill, that is primarily performed by the people he manages.

PN618

There was one time, during a lockout, when the company asked OTLs, some of them at least, to operate the station. I'll come back to why that doesn't assist the ETEU, in a moment. But Mr Ipenburg also says, he says there's one time when the company asked, and that's the 2013 lockout. He says there are other times when he helps out because he's asked by his team, to the chagrin of some operators, but not those in his team. But he acknowledges that's not a request of the company and not all OTLs could do that, even if they were willing. His particular background is as an operator, albeit at a different power station.

PN619

Ms McAllister gave evidence about Mr Ipenburg in the sense, that only three out of the seven OTLs have the capacity to operate the Yallourn Power Station. It's not surprising or, again, unusual or peculiar to this industry, that when you're talking about management roles some of them are going to have come from the factory floor, to put it colloquially. That doesn't change the essential character of this as a management, operations and people management role that is not peculiar to this industry.

PN620

Just on the evidence of Mr Ipenburg, Deputy President, three quick things. First we would say that the Commission needs to approach this task based on objectively what is the role, not what Mr Ipenburg himself does that may be excess to requirements, not the qualifications that he happens to have, but what is the role and what are the requirements set by the company.

PN621

Second, in my submission, there's not much inconsistency, after cross-examination, between what Mr Ipenburg says and Ms McAllister's statement. But to the extent there is, her statement should be preferred because she is speaking about the role, what the company requires of the role, as opposed to Mr Ipenburg, who is lapsing into speaking about what he particularly does, acknowledging that his experience and qualifications were different to that of some of his colleagues.

PN622

Thirdly, ultimately, as I think Mr Ipenburg agreed, many of the matters he points out - he points to in his statement as being in addition to the position description are not to do with the application of technical skill to the physical operating of the power plant. They are paperwork, auditing, it's an overseeing function, a liaison function with other teams and other bodies. We say that's consistent with the requirements of an operations and people management role, generally, not one that's peculiar to the industry.

PN623

THE DEPUTY PRESIDENT: What do you say about the auditing?

PN624

MR SPARGO: The auditing, there's a controversy, I suppose, as to whether it's a daily task or not.

PN625

THE DEPUTY PRESIDENT: Putting aside - - -

PN626

MR SPARGO: Putting aside that, we say - I say that is paperwork. He's receiving a sheet of paper and reporting on it. It's not the application - auditing is something that an operations and people leader, in many industries, might do. It doesn't make it peculiar to this industry, it's just the fact that he's conducting that audit and in this industry.

PN627

THE DEPUTY PRESIDENT: Does it involve any assessment of - I mean what exactly is being audited?

PN628

MR SPARGO: Well, I'd have to get Mr Ipenburg back to be precise about this but, as I understood it, there's information that might come from a piece of equipment, a circuit breaker, and there's information about its operation that's generated and he reviews that and is reporting on it. It's a sheet of paper.

PN629

SPEAKER: Do you want me to just answer that?

PN630

THE DEPUTY PRESIDENT: That's okay.

PN631

MR SPARGO: I may have butchered that, Deputy President, but that's my understanding of his evidence.

PN632

THE DEPUTY PRESIDENT: I'll see the transcript as well.

PN633

MR SPARGO: What we do say is crucial when you're looking at the what is the role, what are the requirements of the role, apart from Mr Chapple's evidence about the history and Ms McAllister's evidence about what is required now, is the

position description. We say if there was a dispute about disciplinary action or what the company is required to - is entitled to require, really the position description would be the start and the end point. There's no dispute about the validity of the position description. The relevant position description is the one at GI4 to the statement of Mr Ipenburg. It's not the position description for an OTL acting up that is locked in by the enterprise agreement.

PN634

I note that when asked to look at that large block of text Ms McAllister said, 'It's broadly similar to the requirements of an OTL proper' but that doesn't mean you should substitute it. The only document you should be looking at is the document that everyone accepts is the position description for this role, and I note Ms McAllister did say, as well, that, 'Actually, that OTL acting up role has been changed by the company'. They would like to change it, but they can't because they need the union approval, under their enterprise agreement, so it doesn't have any particular relevance, in my submission.

PN635

I might take you, if I may, to the position description at GI4, Deputy President. Of course I submit that the Commission should have regard to the document in full. But if I look at the purpose of the role, which is imported, I submit, when assessing what type of role this is, it says:

PN636

*The power station operations team leader is responsible for continuous operation of production equipment at the Energy Australia Yallourn Power Station, in a manner which meets health and safety, environmental requirements and statutory requirements, achieves production and financial objectives, protects the integrity of plant and equipment.*

PN637

And it says, it goes on to say:

PN638

*The role is occupied by a number of individuals who each provide leadership of one of the five teams of operations staff on shift. The role may also include some day work. Team leaders will play a key managerial role in the business, as part of a team of team leaders. All team leaders are expected to display exceptional commitment to building and maintaining part of all these teams. The team leaders are expected to understand the station's business objectives, to initiate strategies and activities to achieve them. They are required to be active in identifying and overcoming obstacles to the achievement of those objectives.*

PN639

There's nothing in that apart from the fact that it's in the electrical power generation industry which makes that a unique or peculiar role to that industry. It could easily be substituted as a description of an operations and people management role in other industries. And that continues to be the case, in my submission, if you work through the key activities; you know, things like managing teams to achieve power station operating targets, development and

maintenance of highly effective shift operations teams and the promotion of respectful engagement in a performance-based culture. And it continues to be the case when you look at the required capabilities and qualifications. And consistent with everyone's evidence, there is no technical qualification required because the role is principally a leadership and management role.

PN640

THE DEPUTY PRESIDENT: But just putting aside the second aspect of what you said - it being a leadership and management role - do you accept the authorities that Mr Reidy relies on that are suggesting some sort of technical qualification isn't necessarily required for limb 2 as we've been calling it?

PN641

MR SPARGO: Yes, but I say that those cases don't assist the ETU because there's no hint – they still all deal with occupations that are peculiar to the electrical industry. There's no hint of any intent in those cases that the Electrical Trades Union's rule should apply to people who are engaged as managers. And there's no suggestion in those cases that someone performing a management role in this industry just by virtue of the fact they're in this industry that that makes it peculiar to this industry. Those cases all deal with people who have electrical skill, and they use that skill either in assembling electrical broadly – they use that skill either in assembling a circuit board, you know, electrical hardware, or they apply that technical knowledge to perform some sort of physical task. They are akin to the occupations that are listed before the catch-all, but they're niche roles. They don't have a well-recognised occupational title. They don't fall within a well-recognised occupational title.

PN642

THE DEPUTY PRESIDENT: Is that a fair assessment? I mean, I was looking at the final paragraph of Newtronics which is page 221 of Mr Reidy's additional bundle, and these are the employee's seemingly printed circuit boards, and after observing that printed circuit boards are the current technology for managing electricity the Full Bench states:

PN643

*It is hard to comprehend that an employee whose task it is to assemble such a board is not to be characterised as an employee whose calling is peculiar to the electrical industry.*

PN644

And then they say:

PN645

*Put another way -*

PN646

which I think, in fact, lowers the bar –

PN647

*we do not think it matters that the work of an employee in assembling a printed circuit board can be characterised as process work in the sense that it is*

*repetitive and done without knowledge where the task undertaking is the assembling of the component which is, of itself, peculiar to the electrical industry.*

PN648

Not quite sure what the 'itself' is actually they're referencing there now that I look at it. Is it the assembling or is it the work of assembling?

PN649

MR SPARGO: Well, what I say the Full Bench has found in that case, Deputy President, is essentially that making a circuit board, that puts you into the electrical industry and there's no other industry in which you make a circuit board. Again, it's the application of some technical skill, some trade skill. If it's broader than that then I say it's plainly wrong because the effect of it would be that, well, you're in the industry therefore you're covered by the catch-all, and that doesn't give the word 'peculiar' any proper work to do.

PN650

THE DEPUTY PRESIDENT: It would start capturing the spot market traders and things like that.

PN651

MR SPARGO: It's not capturing spot market.

PN652

THE DEPUTY PRESIDENT: No, if it was as broad as you're saying it would start capturing those people.

PN653

MR SPARGO: Yes, yes. And, indeed, less specific roles that are less specific to the industry like an operations and people leader action role. Mr Reidy put to Ms McAllister – well, he said about Ms McAllister that she was sketchy on the people management qualifications of OTLs, which is a little bit unfair assessment, I think. We don't say there's a particular people management qualification required. It's not in the position description. I'm not sure what that would be. But what Ms McAllister did say was that when she is employing people in these roles her primary concern is their leadership skills, and that technical experience, industry experience is a bonus. And we say that's relevant to have regard to, not an alleged lack of people management qualifications.

PN654

In terms of the lockout, quite a bit was made about the lockout. We say that doesn't change the regular character of the role, the substantive character of the role. It's happened once in 21 years. It's clearly not part of their ordinary duties. It's not happened again since. How it can be characterised is a contingent labour force doing something completely different to their ordinary role during industrial action. Management fulfilling that role in industrial action is not an unknown phenomenon. It doesn't change the usual character of their role as being a management one.

PN655

Also say that a construction where a role that is principally an operations and people manager role is not within this catch-all because it's not a calling or it's not peculiar to the industry is more consistent with the available evidence of industrial history and context. The ETU has not contested the evidence of Ms McAllister or Mr Chapple to the effect that the ETU have never represented anyone in an OTL role at Energy Australia Yallourn or at any of the Victorian power stations to which they refer in their evidence. They would be well placed to contest that evidence if there was a basis on which to do so. They've had an opportunity to reply, they have not. And given that's the case, the question of whether they have coverage should be approached with some caution.

PN656

THE DEPUTY PRESIDENT: Where does all of that evidence take me though? I mean, there's potentially a range of reasons why unions might not have sought to have - - -

PN657

MR SPARGO: I can put it no higher, Deputy President, I think than its relevant context. It is relevant industrial context. If it were otherwise, it would be put against us that there's a practice of this happening. And the fact that it hasn't happened over an extended period of time is at least a basis to approach the question of extending coverage of the rules to these people with some degree of caution. We're not talking about some new category of employee that's popped up working with electricity in some new technology that wasn't contemplated by the 1990 rules in recent years.

PN658

Perhaps more relevantly – and I do say this is important, Deputy President – the extent to which we're in uncharted waters for the ETU is also indicated by the position with respect to operators. So these are the people being managed by the OTLs in a variety of positions but all broadly doing the physical task of operating the power station, of ensuring that power generation meets demand in accordance with the requirements.

PN659

Mr Mooney today took out of his statement reference to representing operators, so there's no assertion or there's no evidence before you that that is something that the ETU does or can do. He then in oral evidence went on to say, 'Well, we do have two.' He accepted what I said about the timing of that, that it's very recent. He has two people who have signed up to be members, but he said he's never sought to represent their industrial interests so there's been no opportunity for that to be challenged by the company, by the MEU. and we're not here, I suppose, strictly to determine whether they are covered; that might be an issue for another day it sounds like. But on his evidence, they're not electricians engaged in the running of a power plant; they're something else. They're operators engaged in the running of a power plant.

PN660

So on his evidence they may not be covered, or we would say on our conception of electrician they're not covered. And if they're not covered under that first limb because they're not electricians engaged in the running of a power plant, you



couldn't interpret the catch-all to mean that other people engaged in the running of a power plant should be interpreted, in my submission. So we say it seems that the ETU may not have coverage of operators, and it would be a very strange result indeed if the ETU does not have coverage of people performing this technical work, but it does cover the people who are managing them.

PN661

THE DEPUTY PRESIDENT: I don't think any of the material I have before me would allow me to safely conclude that (a) operators cannot be covered, and (b) therefore OTLs should not be covered.

PN662

MR SPARGO: No, I accept that, Deputy President. It perhaps came into sharper relief for me today in light of the amendment that Mr Mooney made to his statement. But equally you can at least say that it seems to be a matter of some – I use the word 'controversy', Mr Mooney said 'difference of opinion' with the MEU. And there's been no opportunity for it to be tested. There's no history of it. Their MEU covered – you know, you can have regard to the fact that it's certainly not clear that they can cover them. And Mr Mooney has taken it out of his statement, an assertion that they do.

PN663

Those are my submissions about why this role is not covered by the second limb, Deputy President. Just very briefly some other points that were made – responding to some other points that were made by Mr Reidy today or in his written subs. We say that the timing of Energy Australia's objection, there's nothing surprising or improper about it, and it doesn't relate to your task. Before Mr Mooney wrote saying, 'We're not acting as a bargaining representative under the Act and we're applying for majority support determination', there was no statutory trigger for the coverage to be challenged. And the fact that Energy Australia dealt with him as a representative of the OTLs where now we're negotiating common law contracts just doesn't mean anything. It would be a bit difficult not just to try and ignore him, I expect, Deputy President.

PN664

Also, there were submissions made and there was cross-examination of Mr Chapple about the 1998 award and a level in that which is said to bear some similarity to an OTL. It was put to Mr Chapple that it may well have covered OTLs, Mr Chapple said he wasn't sure. But the submission seems to be that, 'Well, the ETU is covered by that award, perhaps OTLs are too, therefore we have coverage.' That is a non sequitur in my submission. A number of unions are covered by that award, including APESMA and the ASU. Presumably the ETU would not submit that that coverage means that those unions can have members who are shift electricians at a power plant, for example.

PN665

If the Commission pleases, those are my submissions.

PN666

THE DEPUTY PRESIDENT: Thanks very much, Mr Spargo. Mr Reidy, I think we promised you the final right of reply.



PN667

MR REIDY: Thank you, Deputy President. So my friend made some comments about the role descriptor document that I took Ms McAllister to. He made some comments and submissions about that, Ms McAllister's view of the document. My recollection is that Ms McAllister had a look at the document and said that that did fit with what the substantive OTLs do as a job. That will be shown up on the transcript anyway, but I just - - -

PN668

THE DEPUTY PRESIDENT: I think there was an adjective in there. It's possibly 'substantially' or 'it's about right' or 'it's broadly' or - - -

PN669

MR REIDY: Yes.

PN670

THE DEPUTY PRESIDENT: Well, I'll say (indistinct) but yes.

PN671

MR REIDY: It's open to the position description which, like many position descriptions, tells you nothing much in particular about what you do as a daily job. It says kind of a lot of high-level statements about what the job would entail, but it doesn't go to the level of detail that is in that role description document which really tells you what you'd be doing on a daily basis. So I don't think the position description is particularly helpful. Mr Ipenburg in his statement said it wasn't really that – he agrees that that is his position description and it does cover what he does, but it doesn't explain everything that he does. And he goes on in his statement to explain all the other things that he does, and most of the evidence that he gave today about the duties he has to do in relation to interacting with electricity, you won't find any of that in that position description. But that's his evidence and it wasn't challenged from my memory. So it's not a particularly helpful document, and his statement is probably a better source of evidence of what he does as a job as an OTL.

PN672

THE DEPUTY PRESIDENT: Is one potential way of viewing that though that perhaps reflects a little bit more positively on Mr Ipenburg because he might see team members he's supervising needing to be helped out and he helps out rather than necessarily the strict four corners of what he's required to do? Good for morale, but not necessarily part of the remit.

PN673

MR REIDY: Yes. Well, that's whether the company is – I suppose it's a matter of whether the company is aware of that and they're quite happy to do that because it helps the operations, or whether the company has a really strong view that they don't want him to do that. But I don't think on the evidence that was kind of put one way or another. I think maybe the former, that they're happy – there is some level of knowledge.

PN674

THE DEPUTY PRESIDENT: There was no evidence that he was told to stop.

PN675

MR REIDY: Correct. Yes, that's the evidence. So to this time, the representations made by Mr Mooney regarding the OTLs has been on the basis of them and their common-law contracts and seeking changes of those common-law contracts. But there was a letter sent - and this is at page 146 of the court book, Deputy President - and you'll see there Mr Mooney wrote to Mr Henley to say that he wanted to act on behalf of the operation team leaders to negotiate an enterprise agreement in August of last year. Now, that didn't go anywhere necessarily; like, we didn't negotiate a new agreement. But it steps it outside of the common-law contract parameters and into a, 'We want to negotiate an enterprise agreement for this group of people.' No objection was taken. It might be that the company felt they could resist that so they didn't need to, but no objection was taken that Mr Mooney wasn't able to represent that group of employees. Whereas the company could have taken that and said, 'That's very good, Peter. We got your letter but you can't represent them. So that's our view and you'll have to live with that or do something about it.' They waited until the MSD application was made.

PN676

THE DEPUTY PRESIDENT: I mean, again, everyone's sort of pointing a little bit to evidence for their own purposes on this. I'm not sure where it takes me. I mean, you might certainly have the final six months or two years under your belt, but the company points to the previous 20-odd years where they'll say OTLs weren't represented.

PN677

MR REIDY: Yes.

PN678

THE DEPUTY PRESIDENT: I mean, in the end isn't it just the rules and the position descriptions I've got to – well, not position descriptions, the positions and duties performed?

PN679

MR REIDY: I think that's right at the end of the day. The history of what's gone on and why it's gone on is probably of small utility in the task that's been set for you, Deputy President.

PN680

THE DEPUTY PRESIDENT: Yes, I'm not saying it's not going to have some future importance on the ground, but I'm not quite sure it makes it to my level for this particular decision.

PN681

MR REIDY: Yes, agreed. My friend referred to the – there was a lot of submissions put in about operators. Just to be clear, we're not seeking to cover operators; that's not what we're here to do today. I don't know if you can reverse engineer that maybe we're not allowed to cover a group of people we're not seeking to cover, and because we can't cover them, we're not allowed to cover OTLs. I don't know if that's much assistance.

PN682

In any case, it was said that the MEU hasn't been put on notice about our seeking to represent operators. When we first filed the majority support determination application Mr Henley on behalf of the respondent said that it was his view and the MEU's view that we don't cover operational team leaders. So that was at the end of last year, I think, from memory. So the MEU – and he said that's the MEU's view as well, as if he'd spoken to them about it. So they haven't been called by the respondent to give any evidence about that. If they really felt strongly about it I'm sure they would have done exactly that. So I say only that.

PN683

THE DEPUTY PRESIDENT: I'm sure the MEU has opinions about your rules but, in the end, that's a construction question.

PN684

MR REIDY: Yes. So they're my submissions in reply. Thank you, Deputy President.

PN685

THE DEPUTY PRESIDENT: Thank you. Thanks very much, Mr Reidy. Mr Spargo, I note it's only Mr Reidy who had the final say, but in the event of anything of burning agency that you can - - -

PN686

MR SPARGO: I'd love to, Deputy President, but then I'd lead you into a trap where we're going back and forth all day.

PN687

THE DEPUTY PRESIDENT: Correct.

PN688

MR SPARGO: And we have a 4 o'clock appointment as you noted so, no, I will stick to the usual order.

PN689

THE DEPUTY PRESIDENT: All right. Thank you, everyone. I will be reserving now. I'll be ordering transcripts, so if nothing else you'll see a transcript in a weeks' time just as a matter of course. That's not an invitation to send further submissions. But I will endeavour to get a decision out as soon as I can. The only caveat I say to that is that I have a list of such decisions that are ahead of you in the queue; a somewhat increasing and alarming at least as time is going on from my perspective, but that's not your problem. But it's important for you, and I'll be trying to get a decision out as soon as I can. That's probably not going to be in a couple of weeks, just bear that in mind. It's more like a couple of months, but we'll see how I'm going after the rest of things. I think that's it. Thank you, everyone, we'll adjourn. Sorry, we're not quite adjourned.

PN690

MR SPARGO: Sorry, Mr Deputy President. Just relevant to the – we are in respect of this matter – I just wanted to check in terms of the next matter whether you'll be doing that from one of these rooms or in chambers? In which case if it's the latter I should run back to my office and jump on a computer, I suspect.

PN691

THE DEPUTY PRESIDENT: We're in chambers, aren't we? Yes.

PN692

MR SPARGO: Thank you. See you virtually shortly.

**ADJOURNED INDEFINITELY**

**[2.54 PM]**

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