



Questions and Answers on Members' queries regarding the CPSU legal action.

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Questions and Answers

On December 19 2006, the CPSU served an injunction application, filed in the Federal Court of Australia, on the AFP and the AFPA. The injunction sought to stop the AFP and AFPA from going ahead with finalising the Collective Agreement. The CPSU is the applicant, and the AFP and AFPA are the respondents in the matter. On 25 January 2007, the CPSU sought to move the matter to a hearing on the latest possible date available to all parties to the action, despite the AFP and AFPA seeking to have the matter heard at the earliest possible time. Since the filing of the injunction application, the CPSU has released a number of misleading bulletins and documents, all of which have raised many questions amongst all AFP employees about why the action was, and still is, being taken; who took the action; how the action can be stopped; and whether the action will impact on the negotiations of the Collective Agreement.

When, by who and how did this action start?

While the CPSU and AFPA were meeting (December 19 2006) with the ACTU to talk about the way ahead with negotiations, the CPSU had its lawyers file an application for injunction in the Federal Court. The CPSU made no mention of this action during the meeting with the ACTU, despite the ACTU making 4 recommendations for the parties to consider, including one that specifically recommended against legal action being taken. The application was then served on the AFP and AFPA immediately after the meeting had finished. The CPSU has misled all of its members in suggesting it has 'unequivocally' agreed with the recommendations as it did, and still is, proceeding with legal action in breach of the ACTU recommendations. The actions of the CPSU also represent a rejection of other recommendations made by the ACTU including recognising '*what is in the best interests of employees of the AFP*'.

Can the CPSU end the action if they want to?

Yes – they are the applicant to the action and are the **only** party that can withdraw the action. The AFP and AFPA are respondents and cannot withdraw the action. The CPSU has stated the '*ball remains in the court of the AFP and AFPA*'. This is simply misleading CPSU rhetoric.

The CPSU has stated that '*The only way CPSU could end this situation would be to give up the right to effectively represent PSO members. If the AFP respected the choice of over 400 PSO's to join the CPSU or if the AFPA agreed with the ACTU recommendations, this issue could be resolved within a day and we could focus on developing a new agreement*'.

It is our understanding that the AFP has never stopped PSO's from joining the CPSU. It would not be possible for the AFP to stop PSO's from joining the CPSU, and we don't believe they have or would do that. It must be said that it is only up to the CPSU as to how '*effectively they can represent*

their members'. CPSU representation of PSO's, and AFPA agreement with the ACTU recommendations will not stop Federal Court action – withdrawing the action by the applicant is the only way to stop it. There were only 4 ACTU recommendations. Crucially, one of the ACTU recommendations was that no party start legal proceedings. In an appalling act of deception and bad faith, the CPSU participated in the ACTU discussions and agreed to the 4 recommendations whilst their lawyers lodged the Federal Court action on the same day. The CPSU did not mention the court proceedings to the AFPA at any time prior to the AFPA being served with them.

Is the court action taken by the CPSU delaying the negotiations or the finalisation date for the Collective Agreement?

Yes - it is disingenuous to suggest that the legal action would not have an impact on the negotiations or the finalisation of the agreement. Indeed the AFPA has not had any negotiations with the AFP since the legal action was initiated.

This is for two reasons. First, the stated intention behind the legal action when the papers were served was to seek injunctive relief to prevent the AFP and AFPA from reaching an agreement without the CPSU. It was not clear until the hearing on 25 January 2007, after a month had elapsed, that the CPSU was not, in fact, going to seek an urgent injunction preventing the finalisation of an agreement.

Secondly, the CPSU seeks an order at trial permanently preventing the AFP and AFPA entering into a collective agreement without the CPSU.

In short the legal action taken by the CPSU has delayed negotiations and the likely finalisation date for the agreement. The AFPA are the only party that are actively attempting to move forward with negotiations and finalisation of the agreement. This is our key concern. On the contrary, the CPSU, in seeking to extend the Federal Court Hearing to the farthest possible date, stated words to the effect that 'the negotiations had been on since early 2006 and couldn't see how extending the hearing date a month would effect the Agreement being finalised.

How can the CPSU state they agree with the ACTU recommendations if they have filed and are going ahead with legal action?

By being dishonest and misleading – recommendation 4 of the ACTU recommendations states '*No legal action will be instituted whilst discussions proceed ...*'. Legal action was surreptitiously instituted whilst discussions were taking place with the ACTU.

The CPSU filed the action with 3 working days to go to the Christmas break; they set the date for the injunction a month later; they waited until only a few days before the injunction date to suggest they would withdraw if the AFPA agreed with the ACTU recommendations (made while they were filing the action in court); they then did not proceed with seeking the injunction and instead moved for a hearing; they then sought the farthest date possible for the hearing at the disagreement of both the AFP and AFPA lawyers.

Regrettably, the AFPA can no longer trust the CPSU. This not only relates to the issuing of legal proceedings in the most duplicitous fashion but also relates to the following behaviours: cold-calling AFPA members for recruitment purposes; attempting to poach key AFPA delegates (including members of the AFPA negotiation team); making false and misleading statements about the AFPA, and continuing negotiations with the AFP without the AFPA present.

Has the CPSU initiated the legal action as a result of the AFPA not agreeing with the ACTU recommendations?

No – the ACTU recommendations do not relate to the legal action at all, although one of the recommendations does state legal action cannot be taken. The fact is that the CPSU went to Court surreptitiously on the same day as it purported to agree to the 4 recommendations, one of which was that no party should go to Court!

Is the AFPA proceeding in a manner to exclude the CPSU and its members?

No – The AFPA is not proceeding in a manner to exclude the CPSU and its members from negotiations or representation rights. Indeed if anything this might be something the CPSU is doing to themselves through their actions over the last 12 months.

The AFPA Executive, in the interests of the AFPA membership, decided after much consideration of a catalogue of hostile CPSU behaviour (see above) that contravened the principles underpinning the Single Bargaining Unit that it could no longer work with the CPSU. This was not a simple decision to make, but if anything it has been confirmed by the approach of the CPSU over the last 2 months.

What we have clearly stated to the AFP is that as a result of the CPSU behaviour we are not prepared to negotiate alongside the CPSU or advocate for the CPSU.

This does not prevent the CPSU from negotiating with the AFP for an agreement and using whatever avenues are available to the CPSU in attempting to achieve their industrial goals. This includes, as they have previously intimated, seeking to get approval to take industrial action. The AFPA is not blocking the CPSU from taking this path.

We hope that the CPSU does consider the interests of their members and not just their leadership.

Does the CPSU have an ulterior motive in taking the Federal Court action?

Only the CPSU could answer that question – however the facts are that the CPSU has: sought the lengthiest legal path available; sought an injunction and then not proceeded with the injunction and moved to hearing; openly stated they agree with the recommendations without stating that one of the recommendations is not to take any legal action; has not stated that one of the recommendations that they have ‘agreed’ to is to *‘accept one Collective Agreement that covers all AFP employees’*, even though a plebiscite of their members voted not to accept such an agreement; and finally, has misled its members to suggest they are not in a position to withdraw the action and that the *‘ball remains in the court of the AFP and AFPA’*. How do any of these actions that have been taken by the CPSU assist its members?

The injunction was based on an allegation that the AFP and AFPA were working together to exclude the CPSU from negotiations. Is this true?

No – This is not true. The AFPA was prepared to negotiate alongside the CPSU despite their limited membership so long as it was in the interests of the AFPA membership and the CPSU acted in good faith. The working relationship between the unions deteriorated over the course of negotiations and irretrievably broke down in late November/early December. This was a result of a range of actions by the CPSU that made the relationship unworkable including poaching of members and

misrepresentation of the AFPA (see above). The AFPA National Executive made the difficult decision to terminate the Single Bargaining Unit and also to consider the revised AFP offer for a single agreement.

The CPSU could still pursue negotiations with the AFP separate from the AFPA negotiations and take whatever course of action they needed to take to pursue their claims. Their competence to effectively represent their members' interests this way was not a concern of the AFPA and we did not act to exclude them from doing so.

Can the AFPA become a party again to the SBU with the CPSU?

No – Due to various inappropriate behaviours over a number of years, of which some of the behaviour of the CPSU outline in this Q&A is a good example, the relationship has irrevocably broken down between the parties.

It has now come to the point that the actions of the CPSU have moved further than just negatively affecting their own members; they are now affecting all the employees of the AFP. The CPSU is clearly not acting in the interests of its members or other AFP employees. The recent actions of the CPSU do nothing to serve the interests of any AFP employees, especially the AFPA members.

I want to have this sorted ASAP. What can I do to assist to have the Collective Agreement up and running?

The AFPA need to respond to the CPSU's Federal Court action. **The CPSU has not withdrawn the matter** and is the only party that can do so. This is not something that AFP employees can directly assist in, however, if all AFP employees understand the truth of the CPSU's actions, then we believe this will place the CPSU in a position where they will have to start being honest and open with their members about their intentions.

To get the agreement up and running ASAP, the AFPA will need the support of all AFP employees.

Remember this is not the fault of individual CPSU members. It's important that they have access to this information as they can send the ultimate message to the leadership of their union and vote with their feet.

Be Part of the Team that wants to Deliver Pay Rises

Please encourage non-members to be part of the AFPA team – the team that works for all AFP employees. They can do this by filling in the attached application, or contacting your local representatives or the National Office on (02) 62851677, or by joining online at <http://www.afpa.org.au/joinus.html> .

Please contact the AFPA on afpa.industrial@afpa.org.au or the AFPA Vice Presidents Peter.Engeler@afp.gov.au, Peter.Brown@afp.gov.au; Marianne.Tully@afp.gov.au, Andrew.Glew@afp.gov.au; Dennis.Gellatly@afp.gov.au or Chris.Collingwood@afp.gov.au for more information.