



Australian Manufacturing Workers' Union NSW & ACT Branch

Impact of Technological and other change on the future of work and workers in NSW

Question on notice

Has the ability of workers to bargain over the use of technology surfaced as an issue of whether it is a permissible matter under the Fair Work Act 2009 (FW Act)?

The AMWU has not had any reported experiences where bargaining over the use of technology at a workplace site was opposed by employers as not permitted matter under the Fair Work Act. That is, it has not been raised as a breach of Part 2-4 of the FW Act. ¹

Matter pertaining to the employment relationship

The FW Act provides that an enterprise agreement may be about matters pertaining to the relationship between an employer and that employer's employees who will be covered by the agreement. It is the AMWU's view that an employee's relationship with the technology to be used by the employer, whether for surveillance or for the adaptation of technological advances in the workplace, fall squarely within the matter of pertaining between employers and employees.

It is the AMWU's experience that that workers maintain that the use of technology for the purposes of surveillance and the implementation of privacy parameters should be the subject of bargaining. This is because the monitoring of employees directly affects the conditions of employees and the environment, they work in.

NSW Workplace Surveillance Act 2005

Section 26 of the Fair Work Act sets out that the FW Act is intended to apply to the exclusion of all state and territory laws, so far as they would apply in relation to national system employers and employees. State and territory laws not excluded by the Fair Work Act are iterated at s27 of the Act, including surveillance laws².

This means that terms in enterprise agreements in NSW, provisions that breach NSW *Workplace Surveillance Act 2005* (NSW) (WS Act) are unlawful. This enables workers in NSW, whose terms and conditions and employment are subject to enterprise agreements under the federal system, to ensure their privacy and the use and disclosure of their personal information is protected by virtue of the Surveillance Act. The protections to workers privacy and prohibiting the misuse of worker's data or their privacy is only as robust as the regulatory framework offered by the WS Act. It does not address the various forms of surveillance used, the use or rather misuse of technologies.

¹ Section 172 and 186(4), s194 and s195

² S27 (2)(m) Fair Work Act