



AUSTRALIAN SERVICES UNION

# NEWSLETTER

SHIRE OF MUNDARING



LOCAL GOVT

Collective Enterprise Agreement 2011

25<sup>th</sup> September 2011

## **INJUNCTION ISSUED BY FEDERAL MAGISTRATES COURT TO RESTRAIN SHIRE OF MUNDARING & CEO**

At 3.39 pm on Thursday, 22<sup>nd</sup> September 2011 Mr Throssell distributed an email to all staff as a result of the application by ASU seeking a Court Injunction to restrain the Shire of Mundaring (first respondent) and Mr Throssell (second respondent) from taking any adverse action against ASU members.

The Shire and Mr Throssell were both represented by Neil Douglas, Partner, McLeods Barristers and Solicitors when this matter was heard before Federal Magistrate Lucev earlier on Thursday.

At 4pm on Friday, 23<sup>rd</sup> September 2011 the Courts Decision to make an Order for an interim injunction, together with the Reasons For Judgement, were issued in the following terms:

“Until 4pm on 3 October 2011, or further order of the Court, the First Respondent (Shire of Mundaring) and Second Respondent (Jonathan Throssell) by themselves, and by their servants and agents, be restrained and an interim injunction is hereby granted restraining the First (Shire of Mundaring) and Second (Jonathan Throssell) Respondents from threatening to take, or taking, any adverse action against any employee of the First Respondent (Shire of Mundaring) who electioneers in respect of the elections currently underway for positions of Councillors of the First Respondent (Shire of Mundaring). ‘Electioneers’ includes:

- (a) Advocating in a manner; or
- (b) Printing, publishing or distributing any advertisement, handbill, pamphlet, notice, letter or article,

that is intended or calculated to affect the result of those elections.”

A copy of the sealed interim injunction Order and Reasons For Judgment are available from ASU upon request, as these are public Court issued documents.

The Court has scheduled the matter for final hearing on 28<sup>th</sup> & 29<sup>th</sup> September 2011.

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Authorised by Wayne Wood, Branch Secretary

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ASU initiated these proceedings as a result of the fact that on 16<sup>th</sup> September Mr Throssell addressed Depot workers about not distributing an ASU Flyer titled "Depot Workers Ask For Your Support", and he then issued an email to all staff with the subject line "CEO directive to employees regarding advice from ASU to canvass support for candidates":

This email directive to employees made it clear that the CEO considered it a breach of the Shire's code of conduct for an employee to distribute the flyer, advocate support for any candidate in the Council election, disseminate the information contained in the flyer or comment on what are clearly political issues. It also made it clear that the CEO would "take appropriate action" against any employee who breached the code. The email directive concluded "I advise those who may be considering supporting this action to carefully reconsider."

Many ASU Members saw this email as an outrageous attempt to significantly limit their engagement within their community in their own time and to effectively gag them. ASU took legal advice that confirmed that there was a very strong case to prosecute as the Fair Work Act 2009 provides employees with protection against adverse actions as a result of their engagement in industrial activity.

The Court decision is based on the principles that there is both a serious question to be tried and that the balance of convenience between the parties favours the granting of an interim injunction. Due to the fact that the postal ballot papers for the Council have already been issued, ASU successfully argued that it was necessary to have the injunction issue to enable Shire of Mundaring employees disseminate information and electioneer during the immediate and critical voting period.

ASU was contacted by the Returning Officer to advise that our flyer should include the name of the person who authorised and printed the material. We have thanked him for this advice and have confirmed that all materials will now include the words "Authorised & Printed by Wayne Wood" and not only "Authorised by Wayne Wood".

ASU will continue to seek an acceptable resolution on all outstanding matters with the Shire of Mundaring as that is clearly in the best interests of Members & Ratepayers.

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