

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA04/158

**TITLE:** Balfours NSW Pty Ltd Enterprise Agreement 2004-2005

**I.R.C. NO:** IRC4/2520

**DATE APPROVED/COMMENCEMENT:** 13 May 2004 / 1 January 2004

**TERM:** 24 Months

**NEW AGREEMENT OR  
VARIATION:** Replaces EA02/349

**GAZETTAL REFERENCE:** 25 June 2004

**DATE TERMINATED:**

**NUMBER OF PAGES:** 10

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The Agreement applies to all employees employed by Balfours NSW Pty Ltd located at 312 Horsley Road, Milpera NSW who fall within the coverage of the Pastrycooks (Specified Wholesalers) Consolidated Award

**PARTIES:** Balfours NSW Pty Ltd -&- the National Union of Workers, New South Wales Branch

# BALFOURS NSW PTY LTD ENTERPRISE AGREEMENT 2004-2006

BETWEEN

BALFOURS NSW PTY LTD

AND

NATIONAL UNION OF WORKERS NSW BRANCH

AND

BALFOURS NSW PTY LTD AWARD EMPLOYEES

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### 1. Title

This Enterprise Agreement shall be known as the Balfours NSW Pty Ltd Enterprise Agreement 2004-2006 (the Agreement).

### 2. Application of Agreement

The Agreement shall apply at the Balfours NSW site located at 312 Horsley Road, Milperra NSW 2214, in respect of all the employees of the Company whose employment is within the coverage of the Pastrycooks (Specified Wholesalers) Consolidated Award (the Award).

### 3. Parties Bound

The Agreement shall be binding on:

3.1 Balfours NSW Pty Ltd (the Company);

- 3.2 National Union of Workers New South Wales Branch (the Union);
- 3.3 The employees of the Company referred to in Clause (the Employees).

#### **4. Date and Period of Operation**

Subject to its certification by the Industrial Relations Commission of NSW, this Agreement shall take effect on and from 1 January 2004 and shall remain in operation for a period of twenty four (24) months.

#### **5. Aims and Objectives**

Flexible application of the terms and conditions set out in the Award and this document will be a key feature of the Agreement. To this end the following is agreed:

- 5.1 The employees and the Union have agreed to introduce work practice changes that will improve the Company's productivity, efficiency, competitiveness and profitability.
- 5.2 Employees are to perform a wide range of duties, including work which is incidental or peripheral to their main task or functions.
- 5.3 Employees shall perform such work as is reasonable and lawfully required of them by the Company including accepting instruction from authorised personnel.
- 5.4 Employees shall take all reasonable steps to achieve quality, accuracy, and completion of any job or task assigned, however these must be within the scope of skills that the employee has.
- 5.5 Employees shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times.

#### **6. Wage Increases**

Employees will receive a 5.5% wage increase which will be backed to 1 January 2004, and a further 5.5% wage increase on 1 January 2005.

#### **7. Award Conditions Generally to Apply at the Site**

- 7.1 The employees and the Union agree that the provisions of the Award represent the terms and conditions of employment to be applied to the employees at the site, except as a consequence of the application of the following:-
  - 7.1.1 The over-award payments paid to employees by the Company;
  - 7.1.2 The Site Shift Allowances of:
    - 20% - Afternoon Shift,
    - 40% - Night Shifts,
    - 50% - Early Starts for drivers.
  - 7.1.3 The provisions of this Agreement relating to employees changing from full-time to part-time employment as set out in Clause 8;
  - 7.1.4 The probationary employment provisions set out in 7.4;
  - 7.1.5 Any other provisions set out in this Agreement that are inconsistent with the provisions of the Award.

## 7.2 Flexible Application of Award Provisions

The employees and the Union acknowledge the right of the Company to apply the terms of the Award in a flexible manner to meet the needs of customers and the requirements of the business. Such flexibility would be on the condition that the Company at all times complies with the terms and conditions prescribed by the Award.

## 7.3 Flexible Application of Hours of Work

7.3.1 As part of the commitment in 7.2 by the employees and the Union it is accepted that the Company may alter the start and finish times of employees hours of work and the method by which employees work their ordinary hours in accordance with Clause 5 of the Award.

## 7.4 Probationary Period for New Employees

It is agreed that new weekly employees, who are affected by the notice of termination provisions of Clause 2 (ii) of PART 1 – General, of the Award, are employed on a probationary basis for the first month of employment.

## 7.5 Introduction of a Standard 38 Hour Week

The employees have agreed to the reintroduction of a standard 38 hour working week and the removal of Rostered Days Off (RDOs) from the business. Work in excess of 38 hours per week will be paid at overtime rates as prescribed in the Award. (REPLACES THE CLAUSE WHICH TALKED ABOUT DRIVERS BANKING THEIR RDOs)

# **8. Employees to Change from Full Time to Part Time Employment to Reflect Fluctuations in Demand**

## 8.1 Fluctuations in Demand for Full Time Labour

The employees and the Union recognise that each year there are fluctuations in the level of full time employees required by the Company because of changes in client demand for products and that this is a feature of the industry within which the Company operations and competes.

## 8.2 Preferred Approach

The parties agree that it is preferable for some full time employees to transfer to part time employment during these quieter times and then back to full time employment when demand again increases rather than replacing full time employees with either part time or casual employees.

## 8.3 Arrangements for Full Time to Part Time Employment then Back

When a fluctuation in the Company's labour requirements occurs as a result of a temporary reduction in demand for the Company's products, the Company will identify both the number of full time positions it needs to be changed to part time positions and the period for which they temporary change will last. The Company will then:

- (a) Advise all full time weekly employees working in the section(s) in which there is a need to reduce the number of full time employees to part time employees of the number of part time positions required.
- (b) The Company shall invite employees in the affected section to volunteer to transfer from full time to part time employment for the duration of the quiet period. No employee will be forced to transfer.
- (c) If the required number of employees volunteer then the volunteers shall transfer to part time employment from the date nominated by the Company.

- (d) If more employees volunteer than are required the Company will choose from the volunteers which employees will transfer to part time employment.
- (e) It must be recognised that if an insufficient number of employees volunteer for transfer to part time employment the Company will need to review the size of its workforce, which may result in redundancies. Any employee who is made redundant as a result of the implementation of the review outcome shall receive redundancy benefits as per clause 9 of the Agreement.
- (f) At the end of the period of temporary reduction in demand for the Company's products, those employees who have transferred from full time to part time employment in accordance with subclause (c), (d) or (e) will revert back to full time employment from the date nominated by the Company.
- (g) Where an employee who has been transferred to part time employment under this provision is terminated or resigns, the employee's accrued entitlements on termination shall be calculated as if the employee had been employed on a full time basis.
  - a. An employee who has been temporarily transferred to part time employment under this provision shall continue to accrue annual leave and long service leave as if the employee had continued to be employed on a full time basis.
  - b. Other benefits would be available to the employee during this period in the same manner as would apply to any other part time employee, in order to avoid an increase in the employees' benefits.

## **9. Redundancy**

- 9.1 All current employees are eligible for redundancy including all permanent and casual employees with twelve months continuous service.
- 9.2 Payments to employees, no later than the time of termination, of
- (a) Four weeks ordinary pay, in lieu of notice;
  - (b) Four weeks ordinary pay for each year of employment and pro rata for incomplete years of service calculated on the basis of a full month's service;
  - (c) All accrued untaken sick leave entitlement up to date of termination;
  - (d) Accrued, untaken, annual leave together with 17.5% leave loading or greater, up to the date of termination;
  - (e) A payment for long service leave to be made to all redundant employees who have completed three years service or greater, at the time of ceasing employment. This payment to be calculated to completed years and months of service.
- 9.3 Employees over the 45 years an extra four weeks ordinary pay.
- 9.4 Re-engagement
- An employee who is made redundant and is subsequently re-employed by the employer within six months of having been made redundant shall have continuity of employment so long as all statutory repayments are repaid.
- 9.5 Employee's Estate

In the event an employee dies while under notice of redundancy, an employee's entitlements under the redundancy scheme are to be paid into the employee's estate.

- 9.6 Where a plant or section of a plant is to be closed down on a given date and the Company wishes to maintain production past that date then the Company must pay an attendance bonus on an additional days pay at the ordinary rate of pay for each completed week of service.
- 9.7 Permit the employee to take leave of up to 32 hours without loss of pay, during the period of notice for the purpose of attending interviews for other employment at times mutually agreed with the employer, and production of evidence may be requested that the interview has been attended for the purpose of the payment of this allowance.
- 9.8 Any employee under notice of redundancy who finds other employment may leave at any time during the period of notice and receive full entitlements under final agreement as of the date of termination.
- 9.9 All payments referred to are based on the weekly shop rate applying at the date of redundancy.
- 9.10 All redundant employees shall have preference of re-employment with the company should positions become available. This provision is valid for twelve months.
- 9.11 Superannuation payments to be in accordance with the trust deed of the Employee Superannuation Plan.

### **10. Grievance and Disputes Procedure**

Subject to the *Industrial Relations Act 1996*, any grievance or dispute shall be dealt with in the following manner:-

- 10.1 The aim of this procedure is to ensure that grievances or disputes are prevented or resolved as quickly as possible at the level they occur in the workplace.
- 10.2 When a dispute or grievance arises the following steps are to be followed:

#### Step 1

The issue is to be discussed between the employee(s) involved and the immediate supervisor. If the issue remains unresolved, follow Step 2.

#### Step 2

The matter shall be referred to the Operations Manager by either the supervisor or the employee(s) involved. The employee(s) may refer the issue to the Operations Manager either by phone or in writing or by any other appropriate means. The Operations Manager shall attempt to resolve the issue. If the issue remains unresolved follow Step 3.

#### Step 3

The matter shall be discussed between the NSW Manufacturing Manager or Operations Manager, the supervisor, the employee(s) involved and, if the employee(s) choose, a representative of the employee(s). The employee representative may be either a union site delegate, a Union official or any other party nominated by the employee. If the issue remains unresolved follow Step 4.

#### Step 4

If the matter in dispute is not resolved it may be submitted to either party to the Industrial Relations Commission of NSW for conciliation and, where this fails, arbitration. The arbitrated decision of the IRC shall be final, subject to any appeal process available in accordance with the Act, and shall be accepted by the parties.

- 10.3 At any stage of the procedure after consultation between the parties has taken place, either party may ask for and be entitled to receive a response to their representations within a reasonable time. If there is undue delay on the part of the other party in responding to representations, the party complaining of the

delay may, after giving notice of their intention to do so, take the matter to a higher level in the procedure.

- 10.4 While this procedure is being followed, normal work must continue, provided that no employee shall be required to perform any task which may affect the employees' health or safety.

### **11. Disciplinary Procedures**

The Application of the Provisions of this Clause shall be subject to the operation of PART 6 – UNFAIR DISMISSALS of the *Industrial Relations Act 1996*.

The parties to the Agreement shall observe the following Disciplinary Procedures.

#### 11.1 Disciplinary Procedure – Relating to Poor Work Performance or Unsatisfactory Conduct

Without limiting the scope of application of this procedure "poor work performance or unsatisfactory conduct" shall include the following:

- (a) Unacceptable work quality;
- (b) Unacceptable level or rate of work performance;
- (c) Unsafe work practices;
- (d) Wilfully failing to abide by reasonable and lawful directions;
- (e) Excessive absenteeism;
- (f) Abuse of sick leave entitlement.

Where it is alleged an employee's work performance or conduct is of a poor or unsatisfactory standard the following procedure will be adopted:

#### 11.2 Interview Process

An interview of the employee should be conducted by the Company's representative. It is appropriate for another member of management to be present as well as the Union delegate (if requested by the employee or the Company if the employee is a member of the union) or other nominated or responsible employee acceptable to the employee being disciplined. At the time of the interview, the employee should be informed of the nature of the problem and be given the opportunity to explain his/her actions.

If the employee is not able to give a satisfactory explanation of his/or her actions then disciplinary action shall be taken by means of the issuing of a formal written warning, which shall record certain details of the interview, such as:

- (a) The nature of the alleged poor work performance or unsatisfactory conduct and the specific details.
- (b) The date/s of the alleged poor work performance or unsatisfactory conduct.
- (c) An explanation of the consequences of a continuation of such poor work performance or unsatisfactory conduct.
- (d) The date and time of the interview.
- (e) The signature of the parties present at the interview. If the employee being disciplined refuses to sign, this fact should be recorded.

A copy of this written warning should be supplied to the employee concerned.

### 11.3 Discipline

If the written warning resulting from the initial interview is unsuccessful, a further interview similarly constituted should take place.

At that time management should produce further evidence of the continued poor work performance or unsatisfactory conduct and the employee should be given the opportunity to explain his/her continued poor work performance or unsatisfactory conduct.

If the explanation is deemed unsatisfactory management shall issue a further written warning. It may also be appropriate that additional disciplinary measures be taken and these may include:

- (a) Relocation in the work place.
- (b) Reclassification to a lower grade of work.
- (c) Restriction of privileges.
- (d) Admonishments recorded on the employee's personal file.

These forms of disciplinary measures may be either permanent or of a temporary nature, in which case previous entitlements may then be restored provided the employee's work performance or conduct has improved in the intervening period.

The employee shall be dismissed if these disciplinary measures are found not to be a satisfactory solution and the employee's unacceptable conduct continues.

### 11.4 Dismissal Following Disciplinary Procedure

The employee should be notified in writing of the dismissal and the reasons for same. If the employee is a member of the Union and the employee agrees, the Union delegate should be notified as soon as practicable that this course of action is to be taken.

### 11.5 Instant Dismissal

The above procedures dealing with poor work performance or unsatisfactory conduct are not intended to interfere with the right of the Company to dismiss an employee without notice for serious misconduct that justifies instant dismissal.

In such circumstances the following procedure should be followed prior to the dismissal of the employee:

- (a) An investigation should be conducted to establish the facts.
- (b) An interview of the employee should be conducted by the Company. It would be appropriate that at least two members of management be present.
- (c) It is appropriate for the Union delegate (if the employee is a member of the Union), or other nominated or responsible employee acceptable to the employee being disciplined, to also be present.
- (d) At the time of the interview, the employee should be informed of the alleged misconduct and be given the opportunity to explain his/her actions.
- (e) If no satisfactory explanation is provided by the employee, the employee shall be dismissed.
- (f) The employee should be notified in writing of the dismissal and the reasons for same. If the employee is a member of the Union and the employee agrees, the Union delegate should be notified as soon as practicable that this course of action is to be taken.



## 12. Transmission of Business

12.1 For the purposes of the Agreement, where the business is transmitted from the Company (in this clause called the Transmitter) to another Company (in this clause called the Transmitemee) and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transmitemee:

- (a)
  - a. The continuity of the employment and the service of the employee shall be deemed not to have been broken by reason of such transmission;
  - b. The period of service which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmitemee;
  - c. The employee shall not have an entitlement to either severance pay or redundancy entitlements as a consequence of the transmission of the business;
- (b) In this clause, business includes trade, process, business or occupation and includes part of any such business, and transmission includes the sale, transfer, conveyance, assignment or succession whether by agreement or by operation of law, and transmitted has a corresponding meaning.

## 13. No Extra Claims

It is a term of the Agreement that both the Union and the Employees undertake not to make or pursue any extra claims for either increases in wages or allowances or improvements in conditions of employment for the life of the Agreement.

## 14. Union Recognition

The Company recognises the National Union of Workers NSW Branch (NUW) as the Union representing employees in related classifications who are covered by this agreement. This representation extends to all terms and conditions of employment whether those terms and conditions are subject to this agreement.

The Company understands that employees may join the NUW if they choose to do so.

The Company will upon authorisation deduct Union membership dues, as levied by the NUW NSW Branch in accordance with its rules, from the pay of employees who are members of the NUW at the beginning of each month together with all necessary information to enable the reconciliation and crediting of subscription to members' accounts.

## 15. Casual and Agency Employees to Be Paid Site Rates

It is agreed that Casual and Agency or Labour Hire employees working at the site and who would be covered by the terms of the Award, will be paid at site rates, including casual loading.

## 16. Trade Union Training Leave

The Company agrees to six (6) paid days per annum for each of the six (6) Job Delegates. These days must be requested in advance in writing and will be approved subject to the business requirements. Any days unused in a year are not accumulative.

## 17. Picnic Day

The Company recognises that the Picnic Day was originally introduced in recognition of Union membership and is now a benefit enjoyed by other than Union members. The Company agrees to continue to providing the Picnic Day for paid NUW members.

In the spirit of providing equitable treatment of its employees, the Company will also pass this entitlement on to other eligible employees.

The granting and taking of such leave will be as outlined in the Award.

### **18. Superannuation**

The Company agrees to allowing the following choice of Funds:

1. Betabake Fund
2. LUCRF
3. Balfours Superannuation Fund

### **19. Sick Leave**

Sick Leave usage will be in line with the Award.

The exception will be that employees may use 2 single days per annum without providing a medical certificate, provided those days do not fall on either side of a weekend or Public Holiday. Employees may also use 2 single sick days without a certificate for the purposes of Carer's Leave, provided those days do not fall on either side of a weekend or Public Holiday.

### **20. Payment to the Nearest Tenth of an Hour**

Wages will be calculated to the nearest tenth of an hour, or nearest six (6) minutes.

Employees will be paid to their rostered finish time if they clock off within 3 minutes of their finish time, or paid from their rostered start time if they are up to 3 minutes late. Overtime and other penalties will apply once 4 minutes or more are worked in the applicable penalty period.

The Company will set rosters for a 7.6 hour day for fulltimers, and according to business requirements for part-timers and casuals. Rosters will not be set with the intention of exceeding these times.

It is expected that if employees finish earlier than their rostered finish time that all allocated tasks will have been completed. It is also understood that deliberate and regular late starts will not become a normal or accepted work pattern.

### **21. Employee Entitlements Protection**

The Company will undertake to identify and implement a mutually satisfactory form of Employee Entitlements Protection during the term of the Agreement – ie Insurance/Guarantee/Trust.

The Company reserves the right to review and relinquish any arrangements put in place should a mutually satisfactory Government Scheme be put in place – subject to employees being no worse off in the Government Scheme.

### **22. Not to be used as a Precedent**

The terms of this agreement shall not be used by any person, union or company in any manner whatsoever to obtain similar arrangements or benefits in any other plant, enterprise, business or company.

### **23. Endorsement of Agreement**

The signatories below accept the terms of the Balfours NSW Enterprise Agreement 2004-2006 on behalf of their organisations and endorse its terms and in doing so declare that the Agreement is not entered into under duress by any party to it:

Signed 30<sup>th</sup> on the day of March 2004

For and on behalf of Balfours NSW Pty Ltd

(NAME)

Jennifer Lee

(POSITION TITLE)

Group Manager Organisational Performance

For and on behalf of The National Union of Workers, NSW Branch

(NAME)

Wayne Meaney

(POSITION TITLE)

Assistant State Secretary