

## Coles pay deal forces union rates retreat



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Ewin Hannan, The Australian, 12:00AM August 30, 2016

The shop assistants union has been forced to drop its decades-old practice of trading off penalty rates for higher base rates of pay in the wake of the Fair Work Commission's rejection of its controversial deal with Coles. The union, the largest affiliated with Labor, confirmed the retreat in a letter to union leaders yesterday, claiming the commission's stand challenged the "very notion" of enterprise bargaining in the services sector. Gerard Dwyer, national secretary of the Shop, Distributive Allied Employees Association, told unions that the commission's approach would make it harder for them to secure over-award conditions in negotiations with employers. However, he also said employers would inevitably be required to pay higher penalty rates or even higher base rates of pay on weekends. Coles announced in June that it would put workers back on a 2011 enterprise agreement rather than lift the pay of casual and part-time employees whom the commission found were worse off under the rejected deal.

Union officials have conceded the deal would have potentially disadvantaged more than 11,000 of the supermarket chain's 77,000 employees, despite 90 per cent of employees voting to support it. In his letter to union secretaries, obtained by The Australian, Mr Dwyer said the commission's finding that the Coles deal failed the Fair Work Act's better-off-overall-test had "significant repercussions across many industries, including retail". "Since the 1980s, the 'rolling up' of penalty rates to secure significantly higher base rates has been common practice, endorsed by the ACTU and implemented by many affiliates," Mr Dwyer wrote. "While elements of the media have characterised this as 'selling out members', the reality is that this has been an effective avenue of securing superior wages and conditions for workers as the economy has moved away from the traditional five-day working week."

He said the strategy had provided employers with flexibility while ensuring the value of penalty rates was retained and spread across the workforce. “The Coles decision has effectively ended the process of ‘rolling up’ rates across the workforce, because it requires that the position of every single worker be better off at every single hour under an agreement,” he said. “By implication, this challenges the very notion of bargaining in the service sector.”

In the wake of the commission decision, the union had reviewed almost 100 agreements, with Mr Dwyer acknowledging there could be a number of agreements approved by the commission since 2009 which might not meet the better-off-overall-test. The union’s national executive had decided that when an agreement in the retail and fast-food sector expired, it would seek to bargain for a new agreement or apply to the commission to terminate the deal. “With the Coles decision drawing into question the existing framework of many EBAs the SDA will review all expired agreements, and those that do expire, to ensure they are BOOT compliant ... with a particular focus on the rates for weekend and late-night workers,” he said. If an employer did not agree to bargain, cancellation or termination of the agreement would be pursued. However, he said the union believed this would be “an enormous project and it will take time to complete”.

“Transitioning large numbers of employees on higher loaded rates to agreement frameworks where some of the value of those loaded rates will need to be transferred to reintroduced penalty hours will be a complex exercise,” he said. “If applied immediately, overnight this could mean a substantial pay cut for vast numbers of members and the SDA will be strenuously opposing any such approach. “Any transition to new EBA frameworks must be staged and must protect current earnings.”

The commission’s interpretation of the better-off-overall-test would mean employers must ensure every individual worker covered by an agreement was not worse off. “Inevitably we think this will require revisions of weekend remuneration — either through higher penalty rates or even higher base rates of pay and the interaction of those rates with rostering principles,” Mr Dwyer said.

The commission is due shortly to hand down its decision on the employer application to reduce Sunday penalty rates in certain industries. Mr Dwyer said many employers were refusing to fully engage in bargaining ahead of the decision.