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TRANSCRIPT OF PROCEEDINGS

O/N 0512

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY
DEPUTY PRESIDENT P.C. SHELLEY
COMMISSIONER J.P. McALPINE

T No 11412 of 2004

**APPLICATION PURSUANT TO THE PROVISIONS OF
SECTION 23(2)(b) OF THE INDUSTRIAL RELATIONS
ACT 1984 BY THE AUSTRALIAN LIQUOR, HOSPITALITY
AND MISCELLANEOUS WORKERS UNION - TASMANIAN
BRANCH TO VARY NOMINATED AWARDS RE NAME
CHANGE TO LIQUOR, HOSPITALITY AND
MISCELLANEOUS UNION**

HOBART

2.00 PM, FRIDAY, 4 JUNE 2004

**This transcript was prepared from tapes recorded
By the Tasmanian Industrial Commission**

HEARING COMMENCED

[2.00pm]

PN1

MR P. TULLGREN: I appear for the applicant in these proceedings.

PN2

PRESIDENT LEARY: Thank you. There is no other appearance. Could I just advise you that we have had an email from Mr Paterson of the Australian Services Union whom you will be pleased to know supports your application.

PN3

MR TULLGREN: I am fortified to know that that is the case, your Honour.

PN4

PRESIDENT LEARY: I thought you would be, yes.

PN5

PRESIDENT LEARY: Your Honour and members of the Commission, this is an application that was made on 18 March 2004 to vary the name of the union from the Australian Liquor, Hospitality and Miscellaneous Workers Union to the Liquor, Hospitality and Miscellaneous Union. The application is made consequent upon a decision of his Honour Vice President Ross of the Australian Industrial Relations Commission made in Melbourne on 27 February 2004 in print PR944160 where his Honour determined to grant the application by the union to vary its name, to insert the new name, and he, in that decision, had an annexure which set out the name and also where the word "union" was used to be the reference to being the Liquor, Hospitality and Miscellaneous Union.

PN6

Subsequently the union has made or has written to the Acting Registrar of the Commission advising of the name change including a copy of the decision of his Honour, and enclosing a revised copy of the union's Federally registered rules which, as the Commission is aware, under the Tasmanian legislation those rules are accepted for the purposes of operation in this jurisdiction, and having done that the union has made application to vary all of the relevant awards to delete the words, "Australian Liquor, Hospitality and Miscellaneous Workers Union and/or the initials ALHMWU," and replace with "Liquor, Hospitality and Miscellaneous Union or LHMU."

PN7

PRESIDENT LEARY: Are you going international? Is there some reason for dropping "Australia", is it too hard to spell?

PN8

MR TULLGREN: Between that and the "W" there are an endless series of variations as to how we are described, even by ourselves from time to time or officials. It was thought that it makes it easier but as far as I know we are not proposing to go international.

PN9

PRESIDENT LEARY: Attractive thought though.

PN10

MR TULLGREN: No, I am instructed we do have very close connections with our colleagues in the United States.

PN11

PRESIDENT LEARY: Having just inspected casinos around Australia - - -

PN12

MR TULLGREN: Yes, yes, the Service Workers Union in the United States.

PN13

PRESIDENT LEARY: Yes.

PN14

MR TULLGREN: So, your Honour and members of the Commission, this seeks simply to reflect the changes that have been made in the name of the union and also the initials. There is one other matter that is perhaps a practical matter, if the Commission is minded to vary the award in the terms sought, there are two issues I think. One is the operative date which would normally be from the date of order and although the alteration to the name was notified to the Acting Registrar on 9 March, I am not sure much revolves in terms of what day it is because the legal entity of the union has been changed.

PN15

PRESIDENT LEARY: Yes.

PN16

MR TULLGREN: The second one perhaps is more a matter of logistics, and that is when or how the award will be varied, and I understand that in normal circumstances perhaps an order would be made and then all the awards would be varied. An issue that the Commission might seek to deal with, and I don't seek to tell the Commission how to operate, but that it might be if the Commission was to make an order to vary the name that for the purposes of reducing what I think would be an eminent amount of paperwork that would issue, that the Commission might actually save up changing the names until the State wage case decision is made because if the Commission maintains its usual practice of either reissuing the award or reissuing a variation of the award
- - -

PN17

PRESIDENT LEARY: Well, I don't know whether that is going to be the case.

PN18

MR TULLGREN: - - - the two matters might be brought together. I don't have a - - -

PN19

PRESIDENT LEARY: I think by only changing the name you don't need to re-create the whole award surely, be it a practice in the past or not.

PN20

MR TULLGREN: Possibly not, I note that in relation to State wage cases that in some cases the whole award is reissued and in some only a variation. Now, clearly if it was only going to be a variation it is a matter that could be done, I mean there would have to be all the variations, but I just suggest that if there was a view that it might be more economical to issue the order but make the change from the State wage case, the orders, we don't have a particular opposition to that.

PN21

PRESIDENT LEARY: We don't have an application before us for a State wage case but presuming that there will be one we will take into account your submission.

PN22

MR TULLGREN: Yes, I think it is in the post.

PN23

DEPUTY PRESIDENT SHELLEY: But normally in such a circumstance we would merely issue the order and at various times, depending upon what is happening in the world of the Commission we would do a consolidation, this would be no different.

PN24

MR TULLGREN: That would - I wouldn't have a problem. I note that I think that - I know that on one previous occasion when the unions - the name that is now proposed to be altered was first introduced, at least in the Federal Commission, his Honour the President issued one compendious order varying every clause in every award which I wasn't certain that your Honour wasn't going to follow his Honour's practice in relation to that.

PN25

PRESIDENT LEARY: I don't plan to. You can be assured that I will be looking for the most expeditious way of doing this with the least paperwork possible.

PN26

MR TULLGREN: We are happy with that but I just raised it for the purposes of completeness. Clearly if an order is made the awards to vary - it has no immediate effect if the awards are not varied.

PN27

PRESIDENT LEARY: I think you said the legal entity of the union hasn't changed, it is merely the name.

PN28

MR TULLGREN: Well, the name has changed but the legal entity generally hasn't, and bearing in mind that upon his Honour Vice President Ross issuing the order and subsequently the variation being made to the rules, and we just are approving those rules, there is an argument that the union's name has been changed for all intents and purposes and there could be no legal argument that the LHMU and the ALHMWU were different bodies. If the Commission please.

PN29

PRESIDENT LEARY: All right, thank you. I don't think there is any objection to the application.

PN30

DEPUTY PRESIDENT SHELLEY: No, and the name will match the badge.

PN31

PRESIDENT LEARY: Yes, and if it is going to be simplified we are all in favour of that. We will look at the most efficient way of doing it with a minimum of fuss.

PN32

MR TULLGREN: If your Honour please.

PN33

PRESIDENT LEARY: So the operative date doesn't appear to be critical and if it is convenient to do it if and when we receive the State wage case application we can deal with it then, if not we will deal with it as soon as is practicable.

PN34

MR TULLGREN: I will be seeing my learned friend, Ms FitzGerald, this evening and I will pass that comment on to her, your Honour.

PN35

PRESIDENT LEARY: Good, thank you.

ADJOURNED ACCORDINGLY

[2.10pm]