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TRANSCRIPT OF PROCEEDINGS

O/N 2100

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 12222 of 2005

T No 12223 of 2005

T No 12224 of 2005

TEACHING SERVICE (TASMANIAN PUBLIC SECTOR) AWARD 2005

**Application pursuant to the provisions of
section 23 of the Industrial Relations Act 1984
by the Australian Education Union, Tasmania
Branch for the making of the above award**

TEACHING SERVICE (TASMANIAN PUBLIC SECTOR) SALARIES AND CONDITIONS OF EMPLOYMENT AGREEMENT 2005

TEACHING SERVICE (TASMANIAN PUBLIC SECTOR) PRINCIPALS LEADERSHIP AGREEMENT 2005

**Applications pursuant to the provisions of
section 55 of the Industrial Relations Act 1984
by the Minister Administering the State Service
Act 2000 and the Australian Education Union,
Tasmanian Branch for approval of the above agreements**

HOBART

2.30 PM, THURSDAY, 8 SEPTEMBER 2005

Continued from 7.9.05

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

HEARING COMMENCED

[9.30am]

PN193

THE COMMISSIONER: I take it it is the same appearances, so, Mr Lane, over to you.

PN194

MR LANE: Thank you, Mr Commissioner. Mr Commissioner, if I understand correctly, I was returning today, and I think I have sent you by email copies of - redrafted copies of the proposed award and the agreements, and I hope in formulating that redrafting I am now more - well, at least more compliant with the normal way of doing things in the Tasmanian Industrial Commission than previously. The main changes I have made in the award application are in fact the scope, the date of effect clause. That scope is clause 3, the date of effect is clause 4, and we have got it so that this award will take effect immediately upon the rescission of the equivalent award, which is in the Australian Industrial Relations Commission, which, as I have pointed, there is print L7731 AW799802.

PN195

The super session and savings clause, which is clause 5, and has been inserted, and the award interest and parties bound you will notice there, Mr Commissioner, that there is no employee organisation listed, and I have brought down a letter to be given to the President, seeking to have our certificate of registration amended, so as to list this award, should you be able to at least say that it will move ahead, and it will be approved and made, we will then seek to have that certificate of registration altered to list this award, as one that we, as a union, have an interest in.

PN196

THE COMMISSIONER: Okay.

PN197

MR LANE: So I will leave it with the awards, and see what other comments are forthcoming before I go to the agreements, Mr Commissioner.

PN198

THE COMMISSIONER: Any comment?

PN199

MR WILLINGHAM: Good afternoon, Mr Commissioner. Thank you. We might, and this has been a bit of a rush exercise, and must have involved Mr Lane in all sorts of painstaking switching around of numbers and everything, and so I won't point out the missing full stop in 31, and the changing from - but at clause 6 of the document before you, the award interest and parties bound Mr Lane has actually been too kind to the employer, by including at 6.2 the employer deemed to be an employer organisation is the minister.

PN200

Well, of course, because it is a deemed interest that the minister has in all public sector awards, it is not conventional for that to appear as an interest, and in any event even if it did it would have to be the Minister Administering the State Service, not the Minister for Public Administration. But I think that could be safely covered by simply deleting - - -

PN201

THE COMMISSIONER: Taking out, yes.

PN202

MR WILLINGHAM: - - - 6 point - I do apologise, yes. Yes, by deleting 6.2, and then making what is before you as 6.3, changing that to 6.2, and that would get over the difficulty quite easily, if my friend, Mr Lane, has no - really if the Commission has no difficulty with that.

PN203

THE COMMISSIONER: None at all.

PN204

MR WILLINGHAM: Other than that, Commissioner, I believe that the changes before you will have the effect that we were foreshadowing yesterday.

PN205

THE COMMISSIONER: Okay. Can we just go off record?

OFF THE RECORD

[2.40pm]

RESUMED

PN206

THE COMMISSIONER: Mr Lane?

PN207

MR LANE: Moving on, Mr Commissioner, to the agreements, again, on advice of the Commission, and with the assistance of Mr Willingham, we have made some amendments to the initial clauses of those agreements, namely, the title has been - the wording has been changed. We have inserted the clause, or at least a title clause to have application, rather than, I think it was parties bound, or some such thing that we had in there previously. And the - again, the date of effect and duration is again - there have been changes made to that to ensure that it is more in line with what the parties had agreed would be the format, or the means by which the date of effect would be determined.

PN208

Can I just say, Mr Commissioner, that it is likely we will be putting an application in today for the award rescission in the Federal Commission, but I may have to take some further advice on the agreement, because a check today, in going through some of the procedures of the Australian Industrial Relations Commission, has highlighted the fact that we do need to have a vote of employees, because the life of the agreement - or the agreements, both of them, has not come to an end, and therefore to seek a termination of the agreement we need a majority vote of the employees concerned, and we need a statutory declaration to take to the Australian Industrial Relations Commission to that effect, that we have conducted a ballot, and that the ballot results do show a majority favour the rescission, or termination of those agreements.

PN209

I have already put in place the documentation at work for the conducting of that ballot, but because we have got another ballot going on at the moment, it would not be a good idea to send this out at the same time. It is surprising how easily people get confused, wondering which ballot they are voting in. So there may be a slight delay in that, but I will have the paperwork done, and if possible what I might do is seek from the Federal Commission, the Australian Industrial Relations Commission, a format where I can lodge the rescission applications, or termination applications for those agreements, and seek that they put them on hold, until such time as we are ready to proceed. And that will be when we have got the ballot results.

PN210

THE COMMISSIONER: If - and I am putting this up - if, for example, the rescission of your award comes through, then these will have nothing to hang on?

PN211

MR LANE: That is right.

PN212

THE COMMISSIONER: So would that mean we are going to have to wait until these - you have had your ballot, etcetera, before we can actually do the award? Because if you rescind your federal award, and your federal agreements are still hanging on that award, there will be an issue, because there would be no agreement then.

PN213

MR LANE: Well, there would be no award, yes, to hang them on.

PN214

THE COMMISSIONER: Yes, that is right. There would be no award to hang them on.

PN215

MR LANE: Well, that is the type of thing I probably need to take further advice on, and I am not certain at this stage.

PN216

THE COMMISSIONER: Yes.

PN217

MR LANE: So we may in fact have to hold the process, so it probably mightn't be for another three or four weeks before we can move to have that step taken.

PN218

THE COMMISSIONER: Yes.

PN219

MR LANE: It completely slipped my mind that we would need a ballot of employees to - before we could move to terminate those agreements, but that does appear to be the case, and if that is the way it has got to be then we are going to have to do it in a way that enables all employees to have that opportunity to vote. Otherwise the process will be questioned.

PN220

THE COMMISSIONER: Yes. I would see it as an issue though, if the federal order is rescinded prior to that happening, so - and so therefore it would then push out the reversion to the state award?

PN221

MR LANE: Well, that, in itself - I mean, a matter of two or three weeks really doesn't bother me that much. I think if we are still ready to go, if we can proceed with the process we have set in train here, it just means they are going to have to sit and wait a little longer before they become operational, and come into effect.

PN222

THE COMMISSIONER: Yes. Fine.

PN223

MR LANE: If the Commission pleases.

PN224

THE COMMISSIONER: Okay. Mr Willingham, anything?

PN225

MR WILLINGHAM: Yes. Thank you. We all learnt out of this, and I didn't realise - it didn't register with me that Mr Lane would need to ballot his members in relation to the agreements, but of course that comes from the simple fact that the agreement is currently in force, and hasn't reached its notional expiry date, you are still in the Federal Commission required to go up and formally seek approval to end an agreement, even though it goes beyond its expiry date. So we haven't factored that in, but I thoroughly agree with what you have said, Commissioner, the award underpins the agreements.

PN226

The agreements can't hang by themselves, so to speak, and clearly the exercise before the Australian Industrial Relations Commission will

need to be a simultaneous exercise of all three, and Mr Lane is the best judge of how long his balloting will take, but I assume that would be a couple of weeks before you could organise that properly. There is only one other suggestion I would make, and it is probably my fault.

PN227

I did actually send through some suggestions on the formatting of it, and it doesn't need deleting, I think, Commissioner, but the proposed clause 3 in both of the agreements before you, that are called Type of Agreement, would be totally unnecessary, because it is self evident what type of agreement it is, when it comes out of the Commission. So in future we would delete that, but rather than scruff it, we might as well leave it in.

PN228

THE COMMISSIONER: Well, the thing is we do have time. I mean, I think that - I would much rather we - - -

PN229

MR WILLINGHAM: Okay. Well - - -

PN230

THE COMMISSIONER: If we have got a few weeks. This is only a typing issue - - -

PN231

MR WILLINGHAM: Yes.

PN232

THE COMMISSIONER: - - - my preference would be that maybe the two parties get together, and develop the agreement you want us to sign, with all the nomenclature, etcetera, sorted out. We have now got time to do that.

PN233

MR WILLINGHAM: But that is the only other area I have discovered - - -

PN234

THE COMMISSIONER: No. That is comfortable.

PN235

MR WILLINGHAM: - - - and I know my colleague, Mr Payne, will be wanting to go through it with a fine tooth comb, with - no, because I mean it is one of those things. It is so easy to see things in a sort of taken for granted approach, and make errors of omission, in the switch from one set of jurisdictional formatting to another, and these are the results of them, Commissioner, so I am very happy and very pleased to be able to take your invitation up and get together with Mr Lane, and - - -

PN236

THE COMMISSIONER: Can I suggest what we do, as I adjourn this, is that we agree to meet for a feed back session, whether it is in

chambers or here it doesn't matter, prior to things happening? So we have all signed off on it, and then when it comes here it is for me to say, "Well, I approve this on this effective date, from when ever the other one is rescinded."

PN237

MR WILLINGHAM: No, I think that is a splendid suggestion, Commissioner. Very happy.

PN238

THE COMMISSIONER: So if you are both comfortable with that, what I am happy to do now is to adjourn, allow you to re-hash this, and we will accept whatever you put up next is going to be what is going to go forward. We can sign off on it informally, come back here on a formal date, and do it properly. Are you comfortable with that?

PN239

MR WILLINGHAM: Excellent suggestion, yes.

PN240

MR LANE: It is fine, Mr Commissioner, yes.

PN241

MR WILLINGHAM: Yes, thank you, Commissioner.

PN242

THE COMMISSIONER: All right. Right, well, I will adjourn, but I think just since you are not used to this Commission, Mr Lane, we don't normally have very much patience with incorrect numbers, and page numbers and the like, so we do tend to like things to be run smoothly, and certainly I am sure Mr Willingham will be very keen to help you do that.

PN243

MR WILLINGHAM: Oh, absolutely. It is - absolutely. Every time, Commissioner, that there is an error in something that I am associated with, it is as big an annoyance to me, if not more so than it is to the Commission, let me assure you.

PN244

THE COMMISSIONER: And from my part, in support, I will make sure you hear about it each time.

PN245

MR WILLINGHAM: Thank you, Commissioner. I am sure you will.

PN246

THE COMMISSIONER: Okay. We will adjourn.

ADJOURNED INDEFINITELY