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TRANSCRIPT OF PROCEEDINGS

O/N 2097

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) SALARIES AND
CONDITIONS OF EMPLOYMENT
AGREEMENT 2005**

**Application 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 agreement**

HOBART

9.30 AM, WEDNESDAY, 7 SEPTEMBER 2005

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

HEARING COMMENCED

[9.30am]

PN1

MR C. LANE: I appear in all these matters on behalf of the Australian Education Union, Tasmanian Branch.

PN2

MR C. WILLINGHAM: I appear for the Minister Administering the State Service Act 2000. With me is MR G. PAYNE.

PN3

THE COMMISSIONER: Thank you. Will Mr Payne be saying anything, or are you just observing?

PN4

MR WILLINGHAM: I am not sure.

PN5

THE COMMISSIONER: Okay.

PN6

MR WILLINGHAM: I think probably he will be silent, but who can tell? He is at liberty to roam.

PN7

THE COMMISSIONER: Okay, thank you. All right. Well, Mr Lane, over to you.

PN8

MR LANE: Thank you, Mr Commissioner. Mr Commissioner, can I begin by saying that this occasion marks a momentous day for the Australian Education Union, Tasmanian Branch within the context of our industrial relations activities. As always, Mr Commissioner, the actions of the union in these matters are motivated by one consideration, that being what is in the best interests of our members. Some 12 years ago and with perhaps the same motivating factor the Education Union sought to move into the jurisdiction of what is now the Australian Industrial Relations system and consequently we gained a Federal award which covered the teaching service members and employees in Government schools.

PN9

During the intervening years since then, Mr Commissioner, the union has been able to maintain a positive working relationship with this Commission by being a party to four other awards and a number of agreements within its jurisdiction. Mr Commissioner, the AEU, Tasmanian Branch does have a choice. It can remain in the Federal jurisdiction or it can seek to move back into the State system. However, it has become increasingly evidence throughout our activities within this jurisdiction and the actions, policies and proposals of the current Federal Government that the only jurisdiction and therefore the only Industrial Commission that will be able to

provide a fair and equitable industrial relations system where all parties including unions and employees will be treated with respect and fairness is this jurisdiction and this Commission.

PN10

It is on that basis, Mr Commissioner, and with that in mind that we have lodged our current applications. While not wishing to dwell in detail on the proposed changes within the Federal arena of workplace relations, the industrial environment and landscape in that jurisdiction is about to undergo some dramatic and radical changes. These changes will not only impact on the ability of employees to work collectively for their mutual benefit, but also on the ability of the Australian Industrial Commission to effectively regulate workplace relations and ensure that employees are treated fairly and with respect. I must say it is a sad inditement of our politics and the motives which dictate the development of our public policy at a national level that a union as strong as the Australian Education Union believes that its capacity and ability to represent, protect and serve the best interests of its members would be greatly restricted, if not extinguished, if we did not return to the Tasmanian jurisdiction.

PN11

These thoughts and comments, Mr Commissioner, should put into context the motivation and reasons for our current applications. Today, Mr Commissioner, we bring before you in this Commission three applications in what should be the first step in a process which we hope will result in the public school teachers of this State having their conditions of employment regulated by this Commission. These applications concern a proposed award, the Teaching Service (Tasmanian Public Sector) Award, and two proposed agreements: the Teaching Service (Tasmanian Public Sector) Salaries and Conditions of Employment Agreement and; the Teaching Service (Tasmanian Public Sector) Principles Leadership Agreement.

PN12

If through the consideration by you of our applications we are successful in having the award and agreements approved and/or made, it is then the intention of the union to seek to have the awards and agreements currently registered by the Australian Industrial Relations Commission rescinded. It would be our hope, Mr Commissioner, that as part of this process you will give consideration to the notion that in approving our application you will approach the question of date of effect or the date the award and agreements would operate from in the following way. Naturally, under the Australian Constitution, so long as we continue to have our award and agreements in the Federal jurisdiction they will have primacy over those made or approved within this Commission at least to the extent of any inconsistency.

PN13

Consequently, we would ask that you consider ruling that the date of effect of any award or agreement of which you approve will coincide with the date the relevant awards and agreements are rescinded by the Australian Industrial Relations Commission. Mr Commissioner, we submit that our application for the making of an award, namely the Teaching Service (Tasmanian Public Sector) Award, complies with the requirements as set down in section 23(1) of the Industrial Relations Act 1984 in that it is accordance with the form prescribed, it contains names of the award that we seek to have made, it contains the name of the applicant and contains a statement, namely a copy of the proposed award, which contains the full particulars of the award we seek.

PN14

While it seems we have not provided a statement outlining the particulars of the interests that the applicant, namely the Education Union, has in the making of the award, I intend the rectify that situation now. The Australian Education Union, Mr Commissioner, the Tasmanian branch of that union is an employee organisation registered as such under Part V of the Industrial Relations Act. Our rules provide that we can have as members teachers and others who are employed by the State Government. In particular, our rules provide the following; that we can have as members:

PN15

...teachers, including teacher librarians, student counsellors, supervisors and educational officers or any such other classification of employment incidental to education engaged in kindergartens and preschool, infant, primary, secondary, senior secondary and technical and technical and further education under the control of the Government of Tasmania, and such teachers seconded as officers or permanently employed as officers of the service and guidance services braches of the Education Department of Tasmania.

PN16

(b):

PN17

Can have professional officers employed by the Government of Tasmania in the Education Department to perform professional duties requiring teaching qualifications.

PN18

And lastly, it can have:

PN19

Part time and/or temporary relieving teachers employed by the Government of Tasmania.

PN20

Our interest then in this matter, Mr Commissioner, is evident. And ever since this Commission was established under the auspices of the Industrial Relations Act 1984, the Australian Education Union, Tasmanian Branch and its predecessors, namely the Tasmanian Teachers Federation and the Secondary Colleges Staff Association, have been the only employee organisations or associations or unions named as a party to the award for teaching service employees. Mr Commissioner, the award we have proposed is a mirror of the existing award which is within the Australian Industrial Relations Commission. Obviously - and I hope I am correct saying this - we have endeavoured wherever appropriate to refer to the Tasmanian Commission and legislation rather than its Federal equivalent. Should that not be the case, Mr Commissioner, we will seek leave to have the appropriate amendments made to our application.

PN21

We have suggested that the award be referred to as the Teaching Service (Tasmanian Public Sector) Award 2005. The contents of the award are set out in the arrangement clause, which is clause 2 of the proposed award. With the exception of very brief comments on a few aspects of the proposed award, or in response to questions from you, Mr Commissioner, it is not my intention to comment in details - comment on the details of the award. However, obviously if you wish me to take you through the document I would be more than happy to do so. Clause 4, Mr Commissioner, of the award states who the parties bound are, while clause 5 provides a proposed life of the award. The definitions are numerous and are set out in clause 6.

PN22

THE COMMISSIONER: Excuse me, before we go on, that is contrary to what you have already asked for, and that is that this award is effective date to coincide with the rescinding of the other award.

PN23

MR LANE: My apologies then, Mr Commissioner, you are probably - yes, I put 1 September. Well, if can make that "The award shall come into operation from a date to be determined by the Commission and remains in force for a period of six months," I would be more than happy to make that change. An oversight on my part, Mr Commissioner. Thank you. I believe that the award is set out clearly, and unless you wish me to elaborate on specific aspects of the proposal, I intend to make no further comment on its contents. I now wish, Mr Commissioner, if I could, to move on to the agreements.

PN24

THE COMMISSIONER: Okay. Well, before we do that I have got a couple of questions.

PN25

MR LANE: Okay.

PN26

THE COMMISSIONER: Are you comfortable to wait to the end or do you want to - - -

PN27

MR WILLINGHAM: Mr Commissioner, it might help if I perhaps came in now on this aspect.

PN28

THE COMMISSIONER: Yes, okay. Well, before you do can I ask a few questions?

PN29

MR WILLINGHAM: Certainly.

PN30

THE COMMISSIONER: Because this may well answer some of yours.

PN31

MR WILLINGHAM: Certainly.

PN32

THE COMMISSIONER: If we look at section 8, salaries.

PN33

MR LANE: Yes, Mr Commissioner.

PN34

THE COMMISSIONER: It is from 2002 to 2004.

PN35

MR LANE: Yes, Mr Commissioner. We haven't put in the latest safety net adjustments for 2005. That is a - I think the State Commission has only just looked at the State wage case. You could correct me if I am wrong on that.

PN36

THE COMMISSIONER: My understanding is - of course it wouldn't have affected this - but my understanding is that they are already all out.

PN37

MR LANE: Yes. We have not yet had our 2005 adjustment made, and that would be one of the things that we would be seeking to do soon after any proposed award was approved, Mr Commissioner, and we decided simply to leave the award in effect as it is currently in the other jurisdiction.

PN38

THE COMMISSIONER: Sure. I understand that, but if we are going to go ahead with this we just need to make it clear that this doesn't reflect how it is going to be.

PN39

MR LANE: Yes, that is right.

PN40

THE COMMISSIONER: Okay. So what we are saying is that you would be seeking to amend it as soon as it is approved?

PN41

MR LANE: Yes.

PN42

THE COMMISSIONER: With regard to the State wage. All right, that is fine.

PN43

MR WILLINGHAM: I wonder, Mr Commissioner, could I come in there?

PN44

THE COMMISSIONER: Yes.

PN45

MR WILLINGHAM: In the normal course of events, a public sector award like this wouldn't be varied to reflect the State wage decision. There wouldn't be a need. You will perhaps have noticed in the most recent round of State wage adjustments that no public sector awards have been varied. It is a variation that only applies in relation to wages of salary earners that haven't moved as a result of an agreement - - -

PN46

THE COMMISSIONER: I see.

PN47

MR WILLINGHAM: - - - which of course is not the case with any public service employee. Therefore, I think there is perhaps not a need at this stage to come back and reflect salary rates that incorporate the safety net adjustment, but rather to come back and incorporate rates of pay that reflect actual salaries paid under the rates prescribed in our various agreements.

PN48

THE COMMISSIONER: Yes.

PN49

MR WILLINGHAM: So I think we would necessarily need to come back for that, but not with the safety net adjustment.

PN50

THE COMMISSIONER: Okay. Are you comfortable with that, Mr Lane?

PN51

MR LANE: Yes, Mr Commissioner.

PN52

THE COMMISSIONER: Yes, okay.

PN53

MR LANE: I am grateful for the explanation.

PN54

THE COMMISSIONER: All right. Now, if we go to section 10(5)(i), I don't know if it is just my copy, but the bottom has been cut off:

PN55

Teachers in charge of special classes not -

PN56

something or other.

PN57

MR LANE: It goes over the page:

PN58

...not including the principle -

PN59

Mr Commissioner.

PN60

THE COMMISSIONER: I see.

PN61

MR LANE: Unfortunately, yes, perhaps our layout could have been a little better and we could have moved that down one, but it goes over the page to - well, certainly with my copy at the top of page 16 we have the three words "including the principle".

PN62

THE COMMISSIONER: Yes. No, we do have that also. So it has just gone over the page. That is fine. And finally, item 19(3) it says that - with reference to settlement of disputes:

PN63

If the dispute matter cannot be resolved as prescribed, it may be referred to the Tasmanian Industrial Commission.

PN64

Who else are you going to refer it to?

PN65

MR LANE: It may be decided to refer it to nobody, Mr Commissioner. I guess that is the option that one might have.

PN66

THE COMMISSIONER: Okay.

PN67

MR LANE: But it certainly couldn't be referred to any other body.

PN68

THE COMMISSIONER: No.

PN69

MR LANE: Well, I certainly wouldn't be wanting it to go anywhere else.

PN70

THE COMMISSIONER: Certainly. We are normally the fall-back.

PN71

MR LANE: Yes.

PN72

MR WILLINGHAM: Again, just on that one, Commissioner, I always regard that a superfluous provision because no one can inhibit or entrap someone's right to come to the Tasmanian Industrial Commission in relation to a dispute, whether it is written into an award or not.

PN73

THE COMMISSIONER: Yes.

PN74

MR WILLINGHAM: So we interpret that clause as meaning, look, if we are not happy with the way the other side is handling a particular matter - which is almost invariably the case, of course, when we are dealing with the Teachers Union - then we will go to the Tasmanian Industrial Commission at a moment of our choosing.

PN75

THE COMMISSIONER: Yes. I think though that we have got a look at this: this document is also for everyday teachers who want to know what is going on.

PN76

MR WILLINGHAM: Certainly.

PN77

THE COMMISSIONER: So it is important that it is referred to.

PN78

MR WILLINGHAM: Certainly.

PN79

THE COMMISSIONER: And that was the reason for raising it. Okay. Right, now you may go ahead.

PN80

MR WILLINGHAM: Okay. Thank you, Commissioner. Just a couple of things. Again - and look, may I just sort of - if I could indicate to the Commission, what I would like to do is address some general comments when we have gone through this detail which I am content to wait until we have addressed all three applications, and perhaps you would permit me to give a general overview by the - - -

PN81

THE COMMISSIONER: By all means, if that is how you would prefer.

PN82

MR WILLINGHAM: Commissioner, thank you. Some of the formatting - and I apologise, because I should have actually picked this up and didn't. Some of the formatting may be a consequence of my colleague, Mr Lane, having spent too many years out of this jurisdiction. And - but can I take you to clause 4, Parties Bound. We don't have parties bound clauses in our State awards any longer, as you know. We have a clause which I think from memory is clause 6 in the Standard Awards which talks about parties with an interest - registered interest in the award.

PN83

And although Mr Lane may not be aware of it, we moved on from saying that employees were bound by an award because it is the minister who has got a registered interest in the award. It is the union that has a registered interest in the award. And that from fading memory is about all that our standard clause 6 has put in, so we will need to vary that in accordance with the convention currently of the Commission. My suggestion perhaps if it is agreeable to you, Mr Commissioner, is that perhaps Mr Lane and I should quickly come to an agreed amendment and have that sent to your associate at the earliest possible opportunity.

PN84

THE COMMISSIONER: Certainly.

PN85

MR WILLINGHAM: And then the clause that currently lists as 5, duration, again in this:

PN86

...remain in force for a period of six months.

PN87

That is:

PN88

The award shall remain in force for a period of six months -

PN89

is again wording from the Federal Commission and it is not a feature in any of the awards of the State Commission. My suggestion to my colleague Mr Lane through you, Mr Commissioner, is that we don't in fact need to have the six-month period, we should just simply say when the award is going to come into force. I have got a slightly different view, and it is a suggestion almost from my colleague, and only hearing him talking this morning has brought it to my mind. I would rather think that we perhaps ought to have words that on a pro-ten basis would say this award will take effect at the rescission of the nominated awards and agreements, and that would be in the Federal Commission. So that in other words, this Commission will have hopefully approved the award and the agreements and; that at any given date, which we can't specify because we are unable to, when the Federal Commission and if the Federal Commission agrees to our joint request to rescind the award and the two agreements, the awards here will automatically come into force. And again, if I may, I would like to discuss that wording with my colleague, Mr Lane, possibly even this morning after the hearing and we will get you back - - -

PN90

THE COMMISSIONER: I am happy to adjourn if you want to discuss it now.

PN91

MR WILLINGHAM: I think probably what we will do is just whiz back to the office and look at some standard formatting and get something knocked up and have it to you by lunchtime, Mr Commissioner, if that is - I will send it to your associate.

PN92

THE COMMISSIONER: We are going to be here at lunch time.

PN93

MR WILLINGHAM: Pardon?

PN94

THE COMMISSIONER: I said I thought we were still going to be here at lunch time.

PN95

MR WILLINGHAM: I wouldn't have thought so.

PN96

MR LANE: No.

PN97

MR WILLINGHAM: I wouldn't have thought so, Mr Commissioner, not unless you have got some surprises in store for us.

PN98

THE COMMISSIONER: I can drag this out for a while, you know?

PN99

MR WILLINGHAM: Look, I mean, we could too but we promised to be good. So with the exception of those two qualifications, clauses 4 and 5 on the proposed award, which we undertake to get back to you just as quickly as we can, I don't have any further cavils. Can I indicate, Mr Commissioner, that we make the submission to you, as Mr Lane did, that the award is in conformity with the provisions of the Act under section 23, and moreover it is - and perhaps even more importantly, it is in conformity with the provisions of section 32, the award-making powers of the Commission, and quite specifically, section 34, which is the Commission's power to make public sector awards.

PN100

It is certainly in conformity with section 36. The public interest is not only unoffended by the making of this award, it is demonstrably in the public interest for this award to be made by this Commission, in our respectful submission. We would also bring to your attention, Mr Commissioner, that in our respectful submission this application is totally consistent with, totally in conformity with wage fixing principle 11 of this Commission, which goes to first awards and extensions to existing awards. So in short, Mr Commissioner, there is no harm, no disadvantage, that could come from this Commission endorsing this submission, but only good and only positive benefit to all concerned. So respectfully we would join with Mr Lane in urging the Commission to approve this application for the new award, subject only to the amendments that we foreshadowed. If the Commission pleases.

PN101

THE COMMISSIONER: Thank you. Mr Lane?

PN102

MR LANE: Mr Commissioner, can I thank Mr Willingham for his submission of support and also for his suggestions, and say that I am more than happy to work with Mr Willingham after this hearing has adjourned and seek to get to you amendments as outlined to those specific clauses by - well, as soon as possible after this hearing.

PN103

THE COMMISSIONER: Yes.

PN104

MR LANE: Mr Commissioner, if I may I would just like to focus now on the two agreements which by application we have asked for you to approve. As with the proposed award, Mr Commissioner, these agreements - namely the Teaching Service (Tasmanian Public Sector) Salaries and Conditions of Employment Agreement listed as T Number 12223 of 2005 and the Teaching Service (Tasmanian

Public Sector) Principle Leadership Agreement listed as matter T Number 12224 of 2005, they mirror the agreements that are currently registered in the Australian Industrial Relations Commission, again of course with the hope that we have found all those places which refer to the Australian Government or the Australian Industrial Relations Commission we have made appropriate changes.

PN105

Our application seeks to have these agreements approved under Part IV of the Act as industrial agreements. It is submitted that in compliance with section 55(1) of the Act, both proposed agreements deal with a range of industrial matters as defined in section 3 of the Act, namely matters pertaining to the industrial relationship of employees and employers. In particular, a number of terms of conditions of employment. In line with the provisions of section 55(5) of the Act, the agreements are in an approved form and both provide for a specified time not exceeding three years. While I understand that a ballot is not a statutory requirement under the Act, I can assure you, Mr Commissioner, that the two agreements were freely entered into by the parties following an overwhelming vote of approval by the employees affected by both agreements.

PN106

Matter T Number 12223 of 2005, namely the Salaries and Conditions of Employment Agreement, applies to all employees in the teaching service and to whom we hope the new award that we have discussed earlier will apply. As you will have noted, Mr Commissioner, it is intended that this agreement will replace a similar agreement or the same agreement which is currently registered with the AIRC. Clause 5 provides a duration of the agreement of less than three years, as already mentioned, specifically in fact for 18 months until the end of February 2007. The arrangement clause sets out the contents of the agreement, and as is evident from that, it concerns a broad range of industrial matters.

PN107

Many of the clauses are the same or similar to clauses in the Public Sector Union Wage Agreement which this Commission has already approved, I think in 2004. However, there are some exceptions, some which are just discrete to the teaching service, some clauses, and I will focus more on those. Of most interest, Mr Commissioner, is the salaries clause which is clause 8 of the proposed agreement and also covered in schedule 3 of the proposed agreement. Specifically, this clause and the schedule provide for an annual review of teacher salaries. A comparison is made at a specific salary point with the average paid in other States and Territories, with an adjustment then being made to the salaries paid to employees covered by this agreement.

PN108

I am reminded though, Mr Commissioner, in fact there is a slight omission in our - in the copy that I have handed to the parties, namely on page 3 of the proposed agreement. In the arrangements clause, in fact schedule 3 doesn't even get a mention - no, not - yes, schedule 3 doesn't even get a mention. So if I could hand those up and ask that if possible you could replace page 3 of the agreement with this one so that in fact the arrangement clause then does mention schedule 3, salaries, at the very end of it. Other matters which you may find of interest, Mr Commissioner, include the teacher transfers and/or assignments which are covered by clause 10 of the agreement and again are dealt with in detail in schedule 2.

PN109

This is of great importance to the teaching service because approximately 10 per cent of teachers are transferred under these provisions every year. Over 400 teachers are transferred under these provisions, and therefore it is of fundamental importance to teachers that we have an agreed process that most people are satisfied with. Another matter which is unique to the teaching service is the incentive payments for isolated schools, which is dealt with in clause 13 and again in schedule 1. This provides for additional payments to teachers who work in a limited number of schools that have been classified as isolated. The payment actually applies for their first - for up to six years and it is intended to be an incentive for them to remain at least for that length of time in those schools to provide a greater amount of stability.

PN110

Another clause which is unique to the teaching service is the beginning teacher time release program in clause 14. This allows for first year teachers to have a slightly reduced instructional load so that they will have more time to undertake tasks incidental to the instructional load such as preparation and assessment, and to participate in professional development activities to help them make the transition from I guess being a student to being a teacher. Now, unless there are other specific aspects of these agreements - or this agreement which you would like me to elaborate on, I would intend to move on to the next agreement. Again, I guess my - the clause dealing with date of implementation may need looking at. Again, I have probably made the same error that I made in the award application. If that is the case, Mr Commissioner, I am more than happy to - with Mr Willingham to work out appropriate wording for that particular clause.

PN111

THE COMMISSIONER: Yes. Again you have got 1 September in here.

PN112

MR LANE: Yes.

PN113

THE COMMISSIONER: All right. Just before we move on, there is a couple of things. This is dated 19 September, four and five. I guess that is - is that in anticipation?

PN114

MR LANE: No, it should be 19 August.

PN115

THE COMMISSIONER: Okay. We will go on. If I could take - - -

PN116

MR LANE: It is too. We didn't - neither of us picked that up, Mr Commissioner.

PN117

THE COMMISSIONER: Hang on, there is more.

PN118

MR LANE: We both signed and - - -

PN119

THE COMMISSIONER: There is more. On 8.4.2, if this agreement finishes at the end of February 2007 - - -

PN120

MR LANE: Yes.

PN121

THE COMMISSIONER: - - - you have got:

PN122

...each salary adjustment will apply from then, commencing on the last pay period -

PN123

of that. So will this anticipate going into a further period beyond the scope of this agreement?

PN124

MR LANE: No, Mr Commissioner. Mr Commissioner, the beginning of the last pay period in February will be before 27 or 28 February - 28th, isn't it? - 28 February, and therefore it will take effect from the beginning of a pay period that starts before 28 February. So it will in effect come into effect but they won't actually receive their pay until probably after the date, but they will start getting - accruing the new salary level.

PN125

THE COMMISSIONER: Okay. And on 17.4:

PN126

It is anticipated that the salary sacrifice arrangements will be implemented and accessible to employees by 1 January 2005.

PN127

MR LANE: Yes. Again, Mr Commissioner, I guess we could have made some change there, but it was more intending to make sure the same agreement that is registered in the Federal Commission comes across. I am more than happy to - I mean, it is in effect superfluous in many ways.

PN128

THE COMMISSIONER: Yes. Well, they either have or they haven't been.

PN129

MR LANE: I think that basically they haven't been. Well, we ran into trouble, Mr Commissioner, because the tax office brought out some rulings which didn't assist in us being able to do some of things we wanted. Some of the things had been implemented.

PN130

THE COMMISSIONER: Yes, but would it be more factual to put some date on it that you can achieve?

PN131

MR LANE: I think it would may even be better to simply eliminate it altogether if any change is to be made.

PN132

THE COMMISSIONER: Yes.

PN133

MR LANE: Because what has been done has been - what can be done has been done, and at this stage I would think it would be - - -

PN134

THE COMMISSIONER: Has been done. I think we should remove it.

PN135

MR LANE: I am more than happy to comply with your suggestion, Mr Commissioner.

PN136

THE COMMISSIONER: So let us remove 17.4. Okay. Do you want to respond to this yet?

PN137

MR WILLINGHAM: Thank you, Commissioner, very, very briefly apart from the re-wording of the coming into operation clause which we will do in tandem with the award, I am in complete support with Mr Lane's submissions to you.

PN138

THE COMMISSIONER: Thank you.

PN139

MR WILLINGHAM: Thank you.

PN140

THE COMMISSIONER: Okay. Mr Lane, you are on again.

PN141

MR LANE: Mr Commissioner, can I just ask whether or not with agreements we do also have to look at the parties bound clause, or is that - - -

PN142

MR WILLINGHAM: No, you don't. Parties bound is different.

PN143

MR LANE: You don't? Parties bound different because it is an agreement, okay.

PN144

THE COMMISSIONER: Yes, it is just an agreement between - - -

PN145

MR WILLINGHAM: Well, if I may, it is parties to the agreement which would just be ourselves and you in respect - and the employees are not parties to the agreement, they are bound by it.

PN146

MR LANE: Well, we may also look at that particular clause in both this agreement and the one I am just about to comment on, Mr Commissioner.

PN147

THE COMMISSIONER: Okay, parties bound.

PN148

MR LANE: Commissioner, just very briefly on matter T number 12224 of 2005, namely the Teaching Service Tasmanian Public Sector Principals Leadership Agreement, I just want to make a few brief comments. This again mirrors an agreement which is registered in the Australian Industrial Relations Commission. It concerns employees, Mr Commissioner, who are classified under the award as band three employees and who are responsible for the running of a school, a college or a specific educational related program.

PN149

As a consequence it excludes assistant principals in schools and colleges who are band three employees, but for the purposes of this agreement, they are not included in its provisions. In the main it provides the targeted employees who are mostly school and college principals with the ability to access salary levels of up to 11 per cent in excess of the, if you like, the base salary rate in return for agreeing to implement agreed programs or priorities, either in their school or in their area of work if they are outside a school or college.

PN150

As with the previous agreement it is proposed again that the duration be of less than three years as required under the Act. And in fact again it is 18 months until the end of February 2007. The agreement is a relatively short document and spends most of its time explaining how the different groups of employees covered by it can access the enhanced salary levels. Now, again, unless there are specific aspects of the proposed agreement, I don't intend to comment any further on it.

PN151

Just in summing up, Mr Commissioner, can I just say we submit that our applications and the orders we seek, that is namely the making of an award and the approval of two industrial agreements are in compliance with the provisions of the Industrial Relations Act 1984 and do not infringe any wage fixing principles which may be relevant. I believe that we have explained how the Education Union, Tasmanian Branch, an employee organisation which is registered with this Commission does have a valid interest in the making of the award and therefore the agreements which would flow from it.

PN152

As is fairly evidence, Mr Commissioner, the employer does appear to be in agreement on these issues and naturally of course we would hope that would be the case when we are bringing agreements to you anyway. Finally, Mr Commissioner, the matter of date of effect, I agree with Mr Willingham's suggestion and will come back to you with some appropriate wording that you may think is appropriate to put into the agreements. I would commend all three applications to you.

PN153

THE COMMISSIONER: Okay, thanks. Just once again this is also an anticipatory one, 19 September. It just goes to show that we actually do read these things, you know.

PN154

MR LANE: Yes, I don't think we did it to make sure you did, Mr Commissioner. I apologise for that, I don't know how that one slipped through. As I say we both signed those documents and neither of us picked up on it. I apologise.

PN155

THE COMMISSIONER: Okay.

PN156

MR WILLINGHAM: Thank you, Commissioner. If I may I will just conclude my remarks relating to the applications and then briefly address you on the Minister's more general view in relation to this application. My colleague, Mr Payne, would in fact like to take advantage of giving you a short address in relation to the perspective

from the Department of Education which of course is the major employer interest and focus in this particular set of applications.

PN157

I again in support just to close this issue off with Mr Lane in relation to application 12224. Again, with the caveats relating to the parties to the agreement clause and the date of effect. It occurs to me, Commissioner, that what we should sensibly do is actually re-do the documents with the changes in, so that they are tendered to you in a form that you can approve and send to the Registrar, rather sending you pieces of paper that have to be inserted. So we will undertake to do that, but that will take us just necessarily a few hours longer for Mr Lane to get back to his computer. If that is convenient to you?

PN158

THE COMMISSIONER: Well, it was going to be my proposal that I adjourn rather than approve anything now, I will adjourn and whether it will be in an hour, two hours or a couple of days, doesn't matter.

PN159

MR WILLINGHAM: Fine.

PN160

THE COMMISSIONER: This is so important that it has got to be seen to be right.

PN161

MR WILLINGHAM: Certainly.

PN162

THE COMMISSIONER: We don't want people picking nits out of it.

PN163

MR WILLINGHAM: Absolutely not, Commissioner. On that basis I need to spring a slight surprise on my colleague, Mr Lane, because
- - -

PN164

MR LANE: Can't help himself.

PN165

MR WILLINGHAM: No, well it just occurred to me and it won't be an imposition upon him, I promise him; is that given the importance of what we are putting to you about the existence of current arrangements the parties have been remiss, both myself and - myself anyway, in not ensuring that you had up-to-date copies of the registered documents relating to the current Federal award and agreements before you, so that you can in fact satisfy yourself that the provisions for the wage fixing principles and what we have put to you, is in fact correct. So between us we will also undertake to produce those by way of papers for your consideration. Because you

are quite right, Commissioner, it is very important exercise we are going on and the Commission needs - - -

PN166

THE COMMISSIONER: I am sorry, I have already got it.

PN167

MR WILLINGHAM: You have done that, have you?

PN168

THE COMMISSIONER: Yes, we don't rely on - you know, we are pretty well self-sufficient.

PN169

MR WILLINGHAM: Well, it is just as well you don't, by the sound of it, Commissioner, because we are not that reliable, Mr Lane and me, it seems.

PN170

THE COMMISSIONER: Excuse me, the Registrar is away for two weeks, so this has a two week period before the Registrar can sign off anyway.

PN171

THE COMMISSIONER: Okay.

PN172

MR WILLINGHAM: So I am grateful, Mr Commissioner, to Mrs Devine for her usual efficiency. So unless there are any questions I can answer in relation directly to the applications before you, I would like to conclude by a few remarks of a more general nature.

PN173

THE COMMISSIONER: Please.

PN174

MR WILLINGHAM: Commissioner, it is no secret in this place about my views and those of the Minister - indeed the Ministers that I represent about the efficacy and the wisdom and the practicability and the efficiency of all Tasmanian employees being covered by the State Industrial Commission, but most especially State sector employees. It was a matter of considerable sorrow and regret when for reasons which Mr Lane has outlined to you, the public sector teachers in this State went across the big water. And all I am going to say is subject to your decision, well, welcome back to a large body of employees, very important employees in our community to the place where we passionately believe they correctly belong.

PN175

And where not only their interests, their best interests in an industrial relations regulation sense, but the employers as the other half of that equation are best served in this Commission. It is what this

Commission has been established for is to deal with employment matters and industrial relations issues between employers and employees in this State. No one better, no body better than the Tasmanian Industrial Commission. It is unfortunate but in a sense fortuitous that events elsewhere have been a primary motivation to the Australian Education Union to return home. And those events elsewhere of course, it is a matter of public record, are of considerable concern to the Tasmanian Government.

PN176

And it is and it will be taking measures that the Government believes are appropriate in the circumstances of what is considered to be a concerted assault on not only the State Industrial Relations jurisdiction, but on the balance and the fairness that is an essential ingredient of any industrial relation system. It will be, I think, not a surprise to the Commission to learn because the Premier has already announced it, that amendments are already under way to the Tasmanian Industrial Relations Act 1984 to endeavour to counter some of what are regarded by the Government as the more regrettable features of the proposals announced by the Federal Government. They will be going to the Parliament in the next month.

PN177

For our part, and where I say our I mean the Government's part, it will continue to talk with unions of those who have Federal award coverage, both in the private sector as well as the State sector, and say to them quite simply look this is what you get in this industrial relations jurisdiction, this is what increasingly you don't get elsewhere. But if for no other reason we have moved on a long, long way from the late '80s and the early '90s when all sorts of reasons, some of them not particularly related to good industrial relations, motivated people to do all sorts of things in the jurisdictional sense.

PN178

I think those years are behind us and I think increasingly the kind of approach taken by the Australian Education Union is going to be seen as something of a beacon for others to say well let us vote with our feet; let us take the approach that Mr Lane and his organisation have articulated so well and said we need, we are mandated to make a judgment as to where in our view the best interests of our members are going to be served. And they have said it is the Tasmanian Industrial Commission and I am really, really glad that they have. As I say, I repeat and I will keep repeating it welcome home.

PN179

But we hope that that will be an exemplar to other unions who will examine not just the question of jurisdiction but the question of having a look at what this jurisdiction can and does offer to employees and employers. As I say it is not about tallying up the pluses and the minuses, it is a question of saying where can you get a traditional, old fashioned fair go all around and there is but one place,

Commissioner and I am very happy to say in my passionately held view it is the Tasmanian Industrial Commission. So I hope this is the forerunner of an increase in business, not the much pessimistically proclaimed decrease in business for you. If the Commission pleases.

PN180

THE COMMISSIONER: Thank you, very much. Mr Payne?

PN181

MR PAYNE: Commissioner, can I just endorse what Mr Willingham has put to you and endorse the application. I am employed by the Department of Education so we are significantly involved in the administration of these awards and agreements on a day-to-day basis.

PN182

THE COMMISSIONER: Sorry, forgive me, what is your role?

PN183

MR PAYNE: I am currently the manager industrial relations within the department, so that is my role.

PN184

THE COMMISSIONER: Okay, thanks.

PN185

MR PAYNE: So I just sort of welcome the AEU back to the fold. We have had many interesting hearings in this Commission prior to the AEU going to the Federal jurisdiction. I welcome them back to the fold and we will look forward to appearing before you in these and other matters. Thanks.

PN186

THE COMMISSIONER: All right. Gentlemen thanks for that. From what has been presented to me now I don't see any reason that this award can't be made. But what I will do, as I said because it is so important and the eyes of the world are on us, I would rather adjourn now and at your convenience re-convene. Hopefully if it is today we can get it all signed and sealed, but if not - so are you comfortable?

PN187

MR WILLINGHAM: I am just seeing if - - -

PN188

MR WILLINGHAM: I haven't got my diary, but look any time will be fine. If I have to move something, I will move it.

PN189

THE COMMISSIONER: I mean I think this thing is so important that - - -

PN190

MR WILLINGHAM: I was wondering if - I am not sure if you have your availability, Commissioner, but if we were to say Friday morning.

PN191

THE COMMISSIONER: Not for me. Yes, just go off the record.

OFF THE RECORD

RESUMED

PN192

THE COMMISSIONER: Okay, so I will adjourn until tomorrow at 2.30. We will review the amendments that have been suggested. Okay.

ADJOURNED UNTIL THURSDAY, 9 SEPTEMBER 2005

[11.30am]