



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 8926 of 2000

IN THE MATTER OF an application by
the Minister administering the
Tasmanian State Service Act to vary
nominated awards

Re: part-time employees and annual
salary increments

FULL BENCH:
DEPUTY PRESIDENT WATLING
COMMISSIONER ABHEY
COMMISSIONER SHELLEY

HOBART, 12 December 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 3.26pm

DEPUTY PRESIDENT: I'll take appearances in that matter please.

MS S. CUPIT: SARAH CUPIT appearing for the Minister administering the Tasmanian State Service Act 1984 and
5 accompanying me is **MR TONY MARTIN**.

MS S. STRUGNELL: SUE STRUGNELL, appearing for the Community and Public Sector Union and also seeking to represent APESMA in this matter.

DEPUTY PRESIDENT: Good. Thank you. I have authority from
10 APESMA for you in this matter.

MR C. LANE: If the commission pleases, CHRIS LANE, representing the Australian Education Union in this matter.

MR T. JACOBSON: If it please the commission, TIM JACOBSON appearing for the Health Services Union of Australia, Tasmania No. 1
15 Branch.

DEPUTY PRESIDENT: Good. Thank you, Mr Jacobson. Ms Cupit?

MS CUPIT: If the commission pleases, application T8926 of 2000 seeks to amend public sector awards by omitting the subclause that deals with part-time employees only receiving annual salary
20 increments on completion of the equivalent of a full-time year of service.

The removal of the award provision will enable part-time employees to receive annual salary increments subject to the provisions of the relevant clause.

25 There was a small glitch today in the notification of this matter. It appeared as annual leave increments rather than annual salary increments in relation to part-time employees and I think that all the parties here are aware that the subject matter of application T8926 deals with part-time employees and annual salary increments and that
30 there hasn't been any major misunderstandings about our purpose here today.

DEPUTY PRESIDENT: No misunderstanding about what we're here for today is there? Everyone is nodding for the sake of the record. I think nodding means no misunderstanding.

35 MS CUPIT: Thank you. The matter, whilst lodged some time ago, was not able to be progressed due to regulation 606 of the Tasmanian State Service Regulations 1985 titled Conditions of Service which dealt with the same matter in subregulation [2]. The government has now

rescinded regulation 606(2) by way of the Tasmanian State Service Amendment Regulations 2000.

5 The Amendment Regulations were notified in the 'Gazette' on 19 July 2000. The Amendment Regulations were tabled in both houses of parliament in the House of Assembly on 29 August 2000 and in the Legislative Council on 5 September 2000.

The removal of this subregulation now means that when awards are varied salary increments for part-time employees would be available every 12 months.

10 The agreement between unions and government is part of the move by the government in consultation with the public sector unions to modernise work practices to reflect today's diverse workforce.

15 Application T8926 of 2000 seeks to amend the following awards by deleting the subclause that specifies that part-time employees entitlements to annual salary increments.

Mr Deputy President, we've identified another award that contains a clause referring to part-time increments and we seek to amend application T8926 of 2000 to include the Sea Fisheries Award - S121.

20 DEPUTY PRESIDENT: Any objection to including the Sea Fisheries Award in this application? No objection? Leave is granted.

MS CUPIT: I'd like to submit as an exhibit the draft orders detailing the amendments to the awards.

DEPUTY PRESIDENT: We'll mark this **EXHIBIT C.1**.

25 MS CUPIT: The awards to be amended are: S081 - Administrative and Clerical Employees Award, S105 - Fire Service Award, S095 - Inland Fisheries Commission Award, S086 - Operational Employees Award, S110 - Police Departmental Employees Award, S188 - Professional Employees Award, S121 - the Sea Fisheries Award, S143 - Tasmanian Museum and Art Gallery Employees Award, S135 -
30 Technical Employees Award, and S145 - Tasmanian Tourism Award.

We intend to delete from each of the mentioned awards the clause that deals with salary increments and replace it with a new clause which will not contain the similarly worded subclause dealing with pro rata service.

35 Would the commission like me to go through the specific details or are they happy with that?

DEPUTY PRESIDENT: No, I think we've got the copy of the draft orders here - I'm happy. Just one question - and you may not be able

to answer it - is there anyone covered by the Fire Service Award any more?

MS CUPIT: Yes, I believe so, commissioner.

5 DEPUTY PRESIDENT: What categories are covered by the Fire Service Award, do we know?

MR MARTIN: The Fire Service Award does still have some of the officers of the Tasmanian Fire Service Commission - they are the clerical operatives rather than the uniformed career fire fighters, commissioner.

10 DEPUTY PRESIDENT: So they're covered by that award and not the Clerical and Admin Award.

MR MARTIN: They're covered by that award and they're currently working under an agreement as well, commissioner. Officers of the state services fire -

15 DEPUTY PRESIDENT: All the rest are under a federal award aren't they?

MR MARTIN: Correct. There's a distinction between the office worker who is under this award and the actual fire fighter who is under the federal United Firefighters Union.

20 DEPUTY PRESIDENT: So there are clerical officer classifications in that award are there?

MR MARTIN: Yes.

DEPUTY PRESIDENT: Thank you. Ms Strugnell?

25 MS STRUGNELL: If the commission pleases, I'm very pleased to be here today to commend this. This is a long awaited move in terms of recognising employees who work less than what is seen as a full-time position actually having that recognised as a job in itself as opposed to simply being a part-time of something else. And bearing in mind that this award variation really will apply to a great number of women in
30 the state sector who value the opportunity for working less hours than a full-time position, but then also have the recognition of their skills and competence in that position being awarded on an annual basis as it occurs for full-time employees, and we commend the variation to you.

35 DEPUTY PRESIDENT: Thank you. Mr Lane?

MR LANE: If the commission pleases, the Australian Education Union welcomes this move by the employer to provide annual increments for part-time employees. Fortunately for teachers this was something we gained some years ago and it's due to the joint work of

unions that we have been able to convince the employer that such a change is to the benefit of a vast number of employees and we believe, in the long term, to the service.

5 We believe it will encourage rather than discourage people to take on part-time work and as has already been alluded to, these employees who are mostly affected by this are women who already still, regardless of what people may say, suffer discrimination in the workforce and this is one aspect of that which will now be removed and there are a few more to go, but we'll get there eventually. So I would commend this
10 change to the commission and ask that it be approved and put into operation as soon as possible.

DEPUTY PRESIDENT: Have you any submission on the operative date?

15 MS CUPIT: If the commission pleases, we're seeking that the operative date of the award amendments should be retrospective to 1 March 2000 pursuant to section 37(5)(a) of the *Industrial Relations Act 1984*.

MR LANE: Yes, well, you won't hear an argument from us on that one.

20 DEPUTY PRESIDENT: As that it's an agreed matter.

MS CUPIT: It's an agreed matter, yes.

DEPUTY PRESIDENT: Mr Jacobson, did you have any submissions to make?

25 MR JACOBSON: Not too much further to add other than certainly for employees under the Community and Health Services (Public Sector) Award, whilst that's not part of the matters before the commission today, this does pre-empt, given that the changes to the regulations have only occurred recently, a change to the entitlements for part-time employees working in the Department of Health and Human Services of which the predominance are women. And certainly from the HSUA's
30 perspective this is an issue that we had sought to have resolved on a number of occasions previously and I guess it is a milestone today, one of many previously and probably further to come in order to create some equality in the workplace, and that it does provide some
35 consistency in terms of categories of employment and status of employment and the fact that all categories - or the status of employment will be the same for now part-time employees as it is for full-time employees across the public sector and commend the variation to the bench.

40 DEPUTY PRESIDENT: Thank you. Ms Cupit, you just might enlighten me; I thought you said that 19 July was the day that the rescission of the regulations were gazetted.

MS CUPIT: That's correct.

DEPUTY PRESIDENT: So how do we backdate something prior to the rescission of the regulation, because the very problem that you presented in your submission will apply between 1 March and 19 July.

5 MR MARTIN: Commissioner, if we could just perhaps call for a short adjournment.

DEPUTY PRESIDENT: Yes. Good.

MR MARTIN: So that we might get our heads together and see what we can come up with in response to that.

10 DEPUTY PRESIDENT: Yes, I'll just say that prima facie if your submission is correct - and I believe it to be correct - if there was a regulation in place then I'm not too sure how we can backdate it prior to the removal of the regulation. But anyway, we'll adjourn and take a short adjournment for you to consider it.

15 **SHORT ADJOURNMENT 3.42pm**

HEARING RESUMED 3.50pm

DEPUTY PRESIDENT: Mr Martin?

MR MARTIN: I think, commissioner, that falls to myself. I'm referring to the *Tasmanian State Service Act 1984* and in particular section 81
20 which deals with regulations and for the purpose of the commission, I'd like to actually read what that states, and that's to do with the making of regulations pursuant to the *Tasmanian State Service Act*.

An amendment was inserted by way of 59 of 1992 which actually went to the making of regulations and the effective regulations and it stated
25 that if a regulation - subsection 12 of 81 was amended to say - that if a regulation under section 2(a) or 2(b) and I'd like to read section 2(a) and that goes to:

30 - *the payment of salaries and wages to employees or specified classes of employees and the rates and amounts of payments to employees or specified classes of employees for overtime work, and the conditions applicable to those payments;*

that if it is inconsistent with an award it is to the extent of inconsistency of no effect.

35 We would contend that that then would permit the commission to backdate the operative date of 1 March. The reason for my recollection of the former president requesting us to rescind the regs was so that there would be no ambiguity between the two and we would contend

that that provision of the Act would enable the commission to make a retrospective date - an operative date of 1 March.

DEPUTY PRESIDENT: So the previous president's view was still there between March and July though, wasn't it?

5 MR MARTIN: The previous president's view would have been because of the regulations ..[inaudible].. successive to.

DEPUTY PRESIDENT: Yes, yes, the ambiguity.

MR MARTIN: Yes.

10 DEPUTY PRESIDENT: Because the regulations cover this issue as well.

MR MARTIN: Yes, but as I've said, I will put a suggestion forward that the actual *State Service Act* - the amendment back in 1992 which made that if there was a regulation made that dealt with salary matters, that it was to the extent of an inconsistency in an award of no effect. Then by the commission backdating our application to 1 March then that section of the *Tasmanian State Service Act* would apply.

DEPUTY PRESIDENT: What's the significance of 1 March? Is there any story behind that?

20 MS STRUGNELL: If I could answer that question, Mr Deputy President, yes, that was part of the agreement of the negotiated outcome in relation to awarding part-time increments on an annual basis. The agreement was negotiated with government and that was the date of implementation.

DEPUTY PRESIDENT: Thank you. Further questions?

25 COMMISSIONER ABEY: Yes, one to Ms Cupit or Mr Martin. I don't want this to be interpreted as me being the killjoy again because I don't have any inherent difficulty with the merit of the application - and I'm speaking personally - but in terms of the public interest section of the Act, has there been any estimate of the cost impact of this award variation been made?

MR MARTIN: Commissioner, the actual impact would not be extensive. Obviously we haven't done any full costings which is, as I take it, the question that you're asking. The answer to the full impact statement is, no, we haven't done any costings on that.

35 COMMISSIONER ABEY: Well, apart from anything else, the public interest test requires that in deciding whether a proposed award or proposed agreement is consistent with the public interest, the commission shall consider the economy of Tasmania and the likely

effect of the proposed award or proposed agreement on the economy of Tasmania, with particular reference to the level of employment.

5 Now if we are dealing with public sector wide award variations, that may or may not traverse that particular section of the Act, so I'm simply asking the question, if you assure me that it will have no negative impact on the economy or the level of employment in Tasmania on face value, I'd probably be prepared to accept that, but I think these sort of questions are fair.

10 MR MARTIN: Yes, commissioner, I'm certainly prepared to give that, given the commitment by the government as indicated by Sue Strugnell from the CPSU, the assurance and the indication was given by the Premier himself for that, so I would confidently say yes.

COMMISSIONER ABEY: Thank you.

DEPUTY PRESIDENT: Further submissions?

15 MS STRUGNELL: Could I just add to that last question, commissioner, in terms of the impact. It was an area that was discussed quite extensively without figures actually being available to us in terms of what the initial impact is, and really it is only in the first year that there would be an impact.

20 If we take for example a person who is employed point five of the time, they in fact are getting point five of an increment a year earlier than they would normally have got it after which time they're back on par again anyway in terms of what they would be being paid.

25 COMMISSIONER ABEY: It's not necessarily true, Ms Strugnell, is it? In the second year if they remained on point five they'd get the second increment, if there was one a year, earlier than they would otherwise.

MS STRUGNELL: Yes, that's true until they reached the top of their classification.

COMMISSIONER ABEY: Yes.

30 MS STRUGNELL: That's correct. But in the long term - if you take an award level that only has three increments in it, yes, I suppose the impact is there after three years as opposed to being there after six.

COMMISSIONER ABEY: That's right.

35 MS STRUGNELL: Yes. But there certainly was not a grave concern in relation to the government's approach to this when this was being negotiated and I would have presumed that the costings would have been well and truly looked at.

COMMISSIONER ABEY: Thank you.

DEPUTY PRESIDENT: Any further submissions? No further submissions.

We will reserve our decision and hand down a written decision in due course.

5 **HEARING CONCLUDED 4.00pm**