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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 56053

TASMANIAN INDUSTRIAL COMMISSION

**PRESIDENT P.L. LEARY
COMMISSIONER T.J. ABEY
COMMISSIONER J.P. McALPINE**

T No 12870 of 2007

T No 12871 of 2007

**ADMINISTRATIVE AND CLERICAL EMPLOYEES,
OPERATIONAL EMPLOYEES, PROFESSIONAL
EMPLOYEES, TECHNICAL EMPLOYEES AND COMMUNITY
AND HEALTH SERVICES (PUBLIC SECTOR) AWARDS**

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Minister administering the State Service
Act 2000 to vary the above award re arbitrated
safety net adjustment and award review process**

HOBART

2.15 PM, MONDAY, 4 JUNE 2007

Continued from 23.4.07

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

PN542

THE PRESIDENT: This is just for report back, I don't think there are any changes or additional appearances, are there since the last occasion? No. All right. We have done all of the awards. We think we have brought them all up to date in the appropriate way. So I guess what we need to hear from you is where you are at since the last time we met. Mr Baker, would you like to start?

PN543

MR BAKER: Yes, thank you, President and Members of the Bench. In relation - first if we go to the award matter first. Well, since our last meeting there was - since we were last together, there were some discussions in my office concerning the necessary change that may or may not be made to the wage fixing principles. And after having spent the - having the items - spend some considerable time on my white board in the office, I did, following a
- - -

PN544

THE PRESIDENT: I didn't know people still used those.

PN545

MR BAKER: A reminder for Mr Lynch as to what I was doing about it, I said, "Sorry, Tom, here it is." So I have sent it out and there has been, as I understand it and Mr Lynch can report on this in greater detail, some discussions between the unions and they have offered an in principle agreement to a proposed amendment to the wage fixing principles, which I will submit as an exhibit, for your information and comment.

PN546

THE PRESIDENT: We will mark it A1.

EXHIBIT #A1 PROPOSED AMENDMENT TO THE WAGE FIXING PRINCIPLES

PN547

MR BAKER: I thought I had some more copies. So what we are suggesting is that principle 13 be amended, that is the award review process - be amended by adding a further paragraph to it, which would read:

PN548

Consistent with this principle and principle 6.2 by extension, public sector awards ...(reads)... be agreed between the parties bound by relevant public sector awards.

PN549

And subject to comments from this Bench, as it is currently constituted, it would be my submission that we would flag that as an item for the State wage

case which is set down for Thursday 21 June. And we would circulate to the relevant parties prior to the hearing that that would be our intention and, obviously, seek to amend the wage fixing principles through that process, on or around 21 June this year.

PN550

THE PRESIDENT: Can I just throw a question into the mix?

PN551

MR BAKER: Of course, President.

PN552

THE PRESIDENT: If we are going to have awards and agreements saying the same things, why are having two, why don't we just have one? Because what you are seeking to do is to put into awards - - -

PN553

MR BAKER: Yes.

PN554

THE PRESIDENT: - - - the rates that apply in agreements.

PN555

MR BAKER: That is right.

PN556

THE PRESIDENT: I just raise it as a question, you don't have to answer me now. I all for saving trees and lack of duplication and all that sort of stuff. I reckon we might end up with a simplified system, which doesn't apply elsewhere.

PN557

MR BAKER: Off the top of my head, my view would be that we would finish up with an all encompassing award and there may well be agreements that sit on top of that which would go to specific items which are, perhaps, agency specific.

PN558

THE PRESIDENT: Employment type conditions, yes.

PN559

MR BAKER: Employment type conditions that would be agency specific and they would sit on top of it.

PN560

THE PRESIDENT: Yes. Because we look at awards and they are talked about in the principles, as safety net awards.

PN561

MR BAKER: Yes.

PN562

THE PRESIDENT: If it is going to reflect what is in an agreement, it no longer is a safety net award.

PN563

MR BAKER: I understand that, President, and clearly that was the basis of the discussion that we had when this matter was last before the Commission.

PN564

THE PRESIDENT: Yes. Anyway, it is just something for you to talk about, just in case you can't find anything else to talk about.

PN565

MR BAKER: Well, I understand we have actually got a meeting scheduled between us, that is the unions and the Minister, on 18 June, so that may well be a topic of some considerable conversation between us.

PN566

THE PRESIDENT: Because we are moving into a new era and it may be that we can almost wipe the slate and start again.

PN567

MR BAKER: Well, yes. That is - - -

PN568

THE PRESIDENT: As far as wage fixing principles and process and things are concerned.

PN569

MR BAKER: Yes. Times have changed and they continue to change.

PN570

THE PRESIDENT: So they tell me.

PN571

MR BAKER: So I suppose we - as we indicated on the last occasion, we can only sort of do what we can do in the current environment. And if that changes next week or next month, then presumably we will move with the times.

PN572

THE PRESIDENT: Sure. But it has changed already - - -

PN573

MR BAKER: Yes.

PN574

THE PRESIDENT: - - - there is some room to move now that, perhaps, there wasn't.

PN575

MR BAKER: That is right.

PN576

THE PRESIDENT: So much so in the past.

PN577

MR BAKER: Yes, and I acknowledge federally, that they are a thing of the past.

PN578

THE PRESIDENT: We won't ask you which thing of the past.

PN579

MR BAKER: In relation to the award review process.

PN580

THE PRESIDENT: Yes.

PN581

MR BAKER: I think we are almost at the point in time where it is time that we actually met with the unions, because I think we have done our homework as far as looking at the awards are concerned, and also the agreements that accompany them. We have certainly found some anomalies, as far as bits and pieces are concerned, as you would expect. And we would anticipate meeting with the unions to go through where we are at, because there are a number of questions which we can't answer because some of the agreements go back many years.

PN582

And I am sure people like Mr Jacobson will be able to provide us with some accurate advice as to why some of those agreements exist.

PN583

THE PRESIDENT: Is that meant - that Mr Jacobson has been around for years.

PN584

MR JACOBSON: As you can see.

PN585

THE PRESIDENT: Or is the fountain of all knowledge.

PN586

MR BAKER: So I would anticipate that we should have a meeting, certainly probably on 18 June - we should be in a position to advise the unions exactly where we are or sorry, we should be able to tee up meetings either today or from the 18th onwards about coming together and going through the award process. But as I indicated on the last occasion, it may be appropriate that awards be allocated to various members of the Commission so that we can actually put in place some time frames to review each and every one of them.

PN587

THE PRESIDENT: What sort of anomalies - are they big or little?

PN588

MR BAKER: No, they are just things that we don't understand, the little things.

PN589

THE PRESIDENT: That could, in some places, apply to the whole award.

PN590

MR BAKER: There are just little clauses which - - -

PN591

THE PRESIDENT: I see.

PN592

MR BAKER: - - - or agreements have been made and - - -

PN593

THE PRESIDENT: That have some curiosities about them.

PN594

MR BAKER: Yes, curiosities more than anything else.

PN595

THE PRESIDENT: Okay.

PN596

COMMISSIONER ABEY: Such as translation schedules that might have had relevance in 1996.

PN597

MR BAKER: Well, that is one of them, yes. And a number of awards have got the translation tables in them, which are no longer relevant. And there is a number of clauses like that in many awards. The tourism award, for example, has a whole - there is a whole clause that goes to contracted positions which are about to come to an end. So there are things like that which we need to just set out and work through, so we have all got a clear understanding of what on earth they are all about. And where we are going to in to the future.

PN598

THE PRESIDENT: Okay, that can be done.

PN599

MR BAKER: And I will pause there, President.

PN600

COMMISSIONER ABEY: Just before you do, Mr Baker, as I understand it when we were last - this was last on, there was general support for the notion that the awards would be varied, the awards in totality as I understand it, would be varied to reflect previous State wage decisions.

PN601

MR BAKER: Yes.

PN602

COMMISSIONER ABEY: That is still your position?

PN603

MR BAKER: Yes. That is still my position.

PN604

COMMISSIONER ABEY: Right.

PN605

THE PRESIDENT: And I think administratively we have done that.

PN606

MR BAKER: Yes.

PN607

THE PRESIDENT: And copies have or will be provided, so that will then give you at least some up to date documents to work from.

PN608

MR BAKER: Yes, that would be very much appreciated.

PN609

THE PRESIDENT: Okay.

PN610

COMMISSIONER ABEY: So there is no impediment to the Commission issuing orders to that effect immediately.

PN611

MR BAKER: Not at all.

PN612

THE PRESIDENT: As far as the awards are concerned, yes.

PN613

MR BAKER: That is as we indicated, I think that was step one.

PN614

THE PRESIDENT: Yes.

PN615

MR BAKER: And then step two was that we bring them up to date, whole and solely.

PN616

COMMISSIONER ABEY: Yes.

PN617

THE PRESIDENT: Okay.

PN618

MR BAKER: Not solely, but wholly.

PN619

THE PRESIDENT: Right. All right.

PN620

COMMISSIONER ABEY: Then at least we will have a document that is not written on parchment.

PN621

MR BAKER: That is right.

PN622

THE PRESIDENT: That will be nice. All right, who is going to do the - Mr Tullgren, hiding behind the - no.

PN623

MR TULLGREN: Not at all.

PN624

MR BAKER: He is just worn down with the pressures of work.

PN625

THE PRESIDENT: Is that all it is.

PN626

MR TULLGREN: As Mr Baker said, there has been discussion, at least in relation to the proposed wording of an amendment to the wage fixing principles. And I have just been handed a copy of that, my understanding is that the unions have all consented to the proposed change and therefore, as Mr Baker suggests, it would be necessary to circulate that more widely and indicate that when the Commission deals with the application to vary awards for a State wage increase that this matter will be part.

PN627

Presumably, if not of the union's application, will be an application by the Minister to vary the wage fixing principles, as far as he is concerned, in relation to those matters. I think that that probably is about as far as that matter can go today. Unless any of my friends have got a different position or have got something that they want to add. That would leave then two remaining issues.

PN628

The first is to facilitate the varying of the awards, as Commissioner Abey has raised, to deal with the State wage increases. And clearly I think that abundant caution would dictate that if they have been - if the administrative process to deal with them has been attended to, circulating those on the basis of there being agreement that the rates are actual rates, it would seem to me that if, again, that if there was consent to that or there were issues, agreement that a rate was different for whatever reason, that those changes could be made.

PN629

And once the parties have formally consented to those changes or to those rates, then the Commission could simply vary the awards of its own motion as it has undertaken - - -

PN630

THE PRESIDENT: And issue the orders.

PN631

MR TULLGREN: - - - to do. My own, with respect, view would be that prior to the Commission doing that, if it was satisfied that the rates were agreed, would be to actually seek some formal consent in whatever form from all of the relevant parties. That would then leave this matter of dealing with

updating the awards for non-wage matters. And my friend, Mr Baker, has put effectively, a proposal for - a timetable for that discussion.

PN632

My own view, with respect, is that I think that his proposal about allocating awards to Members of the Commission so that they - the Commission can effectively oversee the work of actually tidying those awards up, is one that has merit. And it would allow awards to be dealt with fairly quickly, and if issue arise that are unique to a particular award, they can be dealt with. The only issue would be that if an issue arose, that perhaps had effect across more than one or a group of awards, that is that there was a particular service wide or departmental wide issue, then that might need to be flagged to the President, to the Full Bench, to deal with those matters.

PN633

But saving those, that matter could proceed at pace effectively. And built around the fact that the existing awards will have already been varied for wages, so that that matter - well, for State wage increases, that matter will have been disposed of, the rest of the awards can effectively be altered around that. One would presume that by the time all of that process is finished, if the Commission is minded to vary the State wage fixing principles in the form that is proposed, or something similar, then the final step would probably be, then varying the varied awards for the last set of variations which would be the enterprise agreement rates of pay and conditions that are appropriate.

PN634

The only other comment again, my own individual observation is that the issue about whether how many awards there might be is perhaps a matter that needs to be discussed in some detail. For instance, again I posit my own at this stage, would be that if you have got particular awards then - and that there may well be a wider agreement or a group of agreements which have some industry or departmental or site specific arrangements, it would seem to me that there is a respectable argument at this stage for looking at some annexure or appendices in the awards to actually reflect those.

PN635

So that if picking your Honour's position about a truly simplified system, where you are looking at, one hopes, one document or may be two, then a series of annexures or appendices to an award, and as we are all aware that those arrangements - not necessarily common in this jurisdiction with respect, but in the Federal jurisdiction and in some States to varying degrees - - -

PN636

THE PRESIDENT: Certainly.

PN637

MR TULLGREN: That principle has been adopted to try to reduce the number of sources of where the information is that has to be consulted. But as I say, that is a personal view, it is not something that has been discussed. And my friends may well have disagreement.

PN638

THE PRESIDENT: There is something that can be developed in your discussions, depending on what sort of curiosities that you come across.

PN639

MR TULLGREN: Yes and bearing in mind that if the curiosities would fill up the old curiosity shop, then I might have to look at it but if the curiosities are limited, then perhaps they can best be managed in the - without the previous position that I have put as an observation. But with some concern I think that the matter is proceeding on. I would submit that it would be worth, perhaps, setting a report back date to hear a report of those discussions that take place around the 18th.

PN640

And that would also perhaps tie in with being able to report, perhaps, that there is agreement to vary awards for State wage principles and that has been done, so that the matters are brought together and closed off, one at a time. And perhaps at that stage, if the parties have developed a view about how the Commission might manage the remaining parts of the process, that could be ventilated at that stage. And the Commission could express a view, perhaps give some directions about how that would occur. Members of the Commission, they are respectfully, our views in relation to the matter.

PN641

THE PRESIDENT: Thank you.

PN642

COMMISSIONER ABEY: Mr Tullgren, just so I understand clearly your position on the successive State wage decisions, your proposal is that the draft orders that the Commission has prepared, to be circulated to the parties for checking.

PN643

MR TULLGREN: Yes, but my only concern and perhaps it is being too cautious, that normally when awards are varied, they are varied from one safety net to the next. The only issue and with no disrespect to the learned associates that have probably been tasked with this, that entering varying wages, say from 1991 to 2007, if any of them have - if anyone has limited mathematical abilities, such as my own, there may well be an error and it would just be to try and avoid, for instance, issuing an order and then, perhaps, having to issue a correction.

PN644

But for no other purpose than just checking them, not to have a debate about whether this one goes in or not. Simply to say, yes, those figures are right.

PN645

COMMISSIONER ABEY: I just say that and that is the normal course of events, that the parties do check draft orders informally or formally. But I just hope you understand the size of the task. It is ginormous. It was about 10 times what I personally anticipated. And some of those awards have a multitude of classifications and when you are going back to 1990, it is a big task.

PN646

MR TULLGREN: Look, I agree and I would suspect, having recalling some of those awards, that the task really fitted in to being - could have fitted in as one of the labours of Hercules, effectively, to do. If the view is that that shouldn't occur or that perhaps it may be a bit difficult, I don't necessarily push that but it was because there was a long period of adjustment involved about
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PN647

THE PRESIDENT: And it wasn't consistent because some went back to '96, some went back to '90, some went back to '91.

PN648

MR TULLGREN: Yes, if there is another way or my friends take the view that, you know, it can be accepted at what has been done then that would be fine. I mean, effectively, most of the variations are going to have little or no effects, so even if an error was found - - -

PN649

THE PRESIDENT: That is right, in practice - - -

PN650

COMMISSIONER ABEY: That is precisely the point that in every case they are going to be below what is actually paid.

PN651

MR TULLGREN: Yes. The only concern is one can never protect oneself from the pedants that lurk who may well, one day, on a moment decide to sit down and trace their own particularly unique pay rate and then come along and say that it is out by 32 cents and this is exactly how - I think we have all struck those situations, they are, with respect, an enormous pain in the neck. If they can be avoided and I am happy to support that. As I say, I don't have a set view but I just raise that perhaps for consideration, as to how the thing might be managed.

PN652

THE PRESIDENT: It is approached with abundant caution from your perspective.

PN653

MR TULLGREN: Yes. And on the basis, accepting that the learned associates and the learned Commissioners have overseen this, are absolutely correct at all of their calculations. The Commission approves.

PN654

THE PRESIDENT: All right, thank you. Mr Lynch.

PN655

MR LYNCH: Commissioners, yes, having been one that asked for the draft orders last week so I could quickly run my eye over them before this hearing
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PN656

THE PRESIDENT: What was that work you used?

PN657

MR LYNCH: I am sort of of the feeling now that those orders are very much a step forward. And I think it is probably pointless all of us sitting down and going through them in detail, because they certainly made very little sense to me. The governor's - the house of the governor's classifications and the changes therein. I suppose the important thing would be that the orders and the intention of the orders were clear, so that, as my learned colleague points out, if there was somewhere - it was something that we could go back and deal with at a later date but hopefully, we will have intervened and had the actual pay rates put in in the meantime. And all that will be done and dusted.

PN658

THE PRESIDENT: Because we are keen to get the orders issued so that that cleans up that particular stage.

PN659

MR LYNCH: Well, that would certainly be my submission, that we move forward on that now. There are a number of those awards that I do think we do need to review, however, as to whether they even should be there - there is quite a few of them, just noticing now that are, I think the term now is transitional Federal agreements. Certainly the Cradle Coast water or the North West Regional Water Award, the Retirement Benefits Fund Board, the Printing Authority. We have registered agreements with all those - - -

PN660

THE PRESIDENT: They are GBEs.

PN661

MR LYNCH: - - - parties in the Federal jurisdiction. So the need for us to continue to bring on State awards, I suppose, would be questionable. Although in the current environment - - -

PN662

THE PRESIDENT: You may want to wait until after the election to decide what you do there.

PN663

MR LYNCH: It might be something that we hold off on. Yes.

PN664

THE PRESIDENT: If we ever understand what the policy is.

PN665

MR LYNCH: A point you made earlier about the - whether we needed a separate award and agreement rate or stream. I just make the point that as long as we have an agreement making stream, we have an opportunity to trial things, and I think that is my only concern with simply going down an award stream. But there will be things that we will got out and say let us do this for 12 months and you can convince people to do it for 12 months, I think they

might be a little reticent to have their award, their safety net adjusted to reflect that.

PN666

And at the end of the 12 months we can agree that it was a good idea and put it in the award, or we can agree it was a poor idea and move on. So I think there are roles there but, certainly having reviewed the awards and the agreements that we have out there at the moment, it is a dreadful mess and - - -

PN667

THE PRESIDENT: And there is lots of duplication where perhaps that can be confined.

PN668

MR LYNCH: Certainly one of our objectives from the whole review process is to be able to empower our members so that they can actually sit down with a set of wages and conditions and see where they stand. And at the moment
- - -

PN669

THE PRESIDENT: I mean, the intent of an instrument of employment is so that the employee and the employer can pick up a document, look at it and know exactly what they are entitled to and what they are obligated to pay. I mean, you have got to keep looking for different documents and different extracts and so forth, it is understandable where mistakes are made.

PN670

MR LYNCH: I think that does follow, however, the difficulty the process for us and that there are things such as annual leave, which don't appear in there at all. That they are still controlled by Ministerial direction, I think. And that is clearly something that we would like to, from the CPSU perspective, we would like to tidy up and have it is clearly an industrial entitlement and it is best controlled by an award.

PN671

And I don't think there is any resistance from the Government in doing that, they are just historical things. But there is a range of Ministerial directions that
- - -

PN672

THE PRESIDENT: I doubt they are planning to take your annual leave from you.

PN673

MR LYNCH: You don't think that is likely to happen, why not?

PN674

THE PRESIDENT: Not at the moment.

PN675

MR LYNCH: So you are including, I think, the proposed amendment to the wage fixing principles will achieve what it is that we set out to achieve. It

seems to be a fairly robust tool and so I would - that would be our submission, thank you.

PN676

THE PRESIDENT: Right. Any one else wish to say anything? Mr Baker, any further comments?

PN677

MR BAKER: I will just put this on the record. I made a comment to the meeting of HR managers the other day that my aim out of all of this is that for the HR person, for the employee, they should be able to pick up one document and say this is my conditions of employment. And that is the goal that myself and my office want to get to at the end of the day.

PN678

THE PRESIDENT: That is going back to the good old days when they talk about the dinosaur and things like that - - -

PN679

MR BAKER: That is right.

PN680

THE PRESIDENT: - - - but I find it rather attractive.

PN681

MR BAKER: Before I made a comment about Mr Jacobson, before like - - -

PN682

MR JACOBSON: It could be I am aligned with comments about simplified systems next time.

PN683

THE PRESIDENT: Operative date 1 August last year, would that be - because we have taken them up to and including from last year. 2006.

PN684

MR BAKER: Yes, I think that would be appropriate, President.

PN685

THE PRESIDENT: That doesn't create any anomalies, entitlements that don't currently exist.

PN686

MR BAKER: No.

PN687

THE PRESIDENT: No one has any difficulty with that. On that basis, what we will do is, we will issue orders in respect to the awards that have been done, we shall make copies available to the parties. Effective from the first pay period on or after 1 August 2006. And perhaps we will look at a report back date sometime after the 18th. What I would ask is that one or other of the parties advise us of what progress has been made.

PN688

We don't want to cramp your style or to hurry you up unnecessarily, but we certainly want to keep our finger on what is going on but we will give you till after the 18th. Let us know where you are going and what we need to do, if anything. And then we can process it further from then on. All right, on that basis we will adjourn to a date to be fixed. Thank you.

ADJOURNED INDEFINITELY

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