IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No 226 OF 1985
T. No.227 of 1985

IN THE MATTER OF applications by the Australian Workers' Union to vary the Agriculturists Award and the Horticulturists Award

re scope of award and scope and title of award respectively

PRESIDENT

HOBART, 2 October 1985

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I'll take appearances thank you.

MR HANLON: **HANLON, D.P.,** appearing for the Australian Workers' Union.

PRESIDENT: Thank you, Mr Hanlon.

MR ABEY: **ABEY, T.J.** If the Commission pleases, I appear in both matters for the Tasmanian Chamber of Industries.

PRESIDENT: Thank you.

MR DURKIN: **DURKIN, D.** If the Commission pleases, I am here for the Tasmanian Farmers & Graziers Employers' Association.

PRESIDENT: Thank you, Mr Durkin.

MR PEARCE: **PEARCE, A.** If it please the Commission, I seek leave to intervene in these proceedings on behalf of the Director of Housing in relation to the employment of landscape gardeners under the Horticulturists Industrial Award.

PRESIDENT: Yes, thank you Mr Pearce.

MR WILLIAMS: **WILLIAMS, P.** If it please the Commission I represent the Director of Agriculture.

PRESIDENT: Yes, thank you Mr Williams.

I take it that there is not objection to the intervention by Mr Pearce?

Thank you. That intervention is granted Mr Pearce and likewise your appearance Mr Williams. This is only an enquiry and I am thankful for any assistance I can get.

Gentlemen, I have decided to formalize these proceedings, at least in the initial stages in order to provide a transcriptive record of the view expressed by parties to both proceedings or both matters.

Before inviting comment, I should indicate at the outset that without the benefit of second reading speech

PRESIDENT: notes on this section of the Act or any other information of that kind, I am in some difficulty in understanding what it is, precisely, I am supposed to declare.

The Commission's jurisdiction is, of course, made clear in sections 3 and 19 of the Act. It seems to me, therefore, that the need for the President to make a declaration about jurisdiction arising from proceedings of this kind must deal with jurisdiction of a different kind.

Perhaps, jurisdiction that devolves upon a member of the Commission when requested to include in an award or proposed award, classifications that can only be included in the Constitution - Registered Constitution of the organization seeking that inclusion is wide enough in its scope to embrace that class of labour.

There may, of course, be other factors regarding this question of jurisdiction but I shall leave that up to any party to address me on. At the moment I think we will hear from you Mr Hanlon.

MR HANLON: Sir, I think first before I go to the legislation I might provide an outline for the record of what the application seeks to do.

The current award of the Horticultural Industry provides that it is established in respect of the industries of fruitgrower, vegetable grower, seed farmer, nurseryman, packer of fresh fruit, landscape gardener and cultivator or layer of instant turf for lawns.

The difficulty that the industry and the union has with that clause is that `nurserymen' is a term which can be taken to mean anybody engaged in the landscape retail nursery or propagating nursery, yet the reference in `F' in this clause refers to the landscape gardener; that is an occupation.

MR HANLON: `Nurserymen´ is tended to mean a person who conducts a nursery. The classifications of occupations then within an actual nursery can range from a person who works in a laboratory doing propagation by the cloning or the use of other mediums which is a very technical occupation, down to the occupation as we would understand gardening or the `nurseryman´ - that of potting plants.

But for the individual employer in Tasmania, under the Horticultural Award, a person who may have fruit trees; a person who may have a vegetable operation; may even sell seed - at the same time they may keep animals; they may raise beef; they may have a dairy operation; they may even raise grain or engage in the production of any one of a number of other agricultural products. But when we then come to look at the scope clause of the Agriculturists Award we see that it defines the industry as being established in respect of:

> "(a) Agriculturists not including industries in respect of which the Horticulturists Industrial Board is established."

What that means is that if a person employs a person for 12 months of the year, they could be planting cauliflowers, onions. They could even be harvesting those.

At other periods of the year they could be taming cattle, sheep and they would then be covered by the Agricultural Award. The employer hasn´t altered. All that has altered is the particular award. The two awards in question do not have a common hours clause. They are not structured the same as most industries are structured. Their spread of hours is different because they seek to cover, in terms of the agriculture, to cover a seasonal 7 day a week industry, whereas, under

MR HANLON: the Horticulture Award there are industries which are more traditional and operate Monday to Friday, 8 a.m. until 6 p.m. So that from the Union's point-of-view in the industries, there are many occasions where a farmer or landholder is caught by two awards with the same employee, but which award he should apply varies by the product in which he is dealing.

Our application seeks to delete the confusion, and it seeks to, in the long term, create two awards - one which will be an Agricultural Award dealing with agriculture as it is generally accepted - a Rural Award and a Landscape or Nurserymens' Award which will deal with the landscaping of gardens, parks; the growing of seeds, in whatever form and to go one step further, at a subsequent date, to modify the Poultry Marine Products Award whereby at present the production of poultry - the processing of it - is covered by that award, yet, again, there are farmers in the State of Tasmania, who raise poultry for eggs who are also engaged in other agricultural pursuits, and that causes confusion in that area.

In the fish industry, that is an entirely different industry to the Poultry Industry yet, again, it causes confusion with such things as the hours clause and the spread of hours.

We now have established a number of farms - or they are called farms - for the raising of fish, oysters, etc. They are not farms as we would normally understand them. They are in the marine products area and, again, they should be brought into that area clearly.

So, the application seeks to amend the Horticultural and the Agricultural Award only so far as their scope clauses go, because the parties would be different to the award in that, whereas, we may wish to deal with the Nurserymens'

MR HANLON: Association and the Department of Housing in regard to landscaping and nursery area and the Chamber in a broad sense, the Tasmanian farmers and graziers may not be interested in that and, therefore, it means that it is easier to reach agreement under which clause they should go in and then at some subsequent date if we have not resolved those discussions to come back to the Commission to have them argued solely within the horticulture or in the agriculture so that the parties are identifiable and the structure of the award - the exact nature of the hours clause, the annual leave etc. are then structured in a way which reflects the way in which the industry itself works. As a first threshold, it was the union's view, having had discussions going back to 1982, with both the Tasmanian Farmers and Graziers and the Chamber of Industries, to change the scope clauses (and at that time it required the agreement of the Department of Labour and Industry), the industry as a whole were in agreement with what changes should occur, but we were not able to secure the agreement of the Department of Labour and Industry, therefore, as a threshold point, it was the union's view that we should approach the Commission to seek the amending of the scope clauses.

If the Commission is in agreement with the proposals, then we would ask that to have an operating date yet to be determined so that the parties then could meet in an orderly manner to re-structure each of the awards and then come back to the Commission either with an agreed document or with the matters in dispute clearly identified.

On the question of the rules of the organization, I tender a copy of the Rule of the Australian Workers' Union.

PRESIDENT: That will be Exhibit H.1.

MR HANLON: The rules are the 1985/6 rules. In regard to the membership clause, that

MR HANLON: has not been ... The clause 6 on page 7, that is the current clause - I just say that because there have been a number of matters before the Federal Court where directions have been issued in the last month to amend other clauses in the rules. Other than those amendments there have been no adjustments to the membership clauses.

If I could just take you to the third line which - I'll just read the full rule in this section. It says :

> "Subject to these rules, every bona fide worker, male or female, engaged in manual or mental labour in or in connection with any of the following industries or callings, namely, pastoral - otherwise than as a shearing contractor, agriculture, horticulture, viticulture (which includes employees in wineries, except in the State of South Australia), dairy/fruit growing."

Clearly, we would say, that the Constitutional rule of the Australian Workers' Union entitled us to enrole persons engaged in mental or manual labour, male or female, in the areas of pasture, agriculture, horticulture, dairying, fruit growing, which are the areas embraced by the existing scope clauses and would be covered by the scope clauses of our proposals.

If I could just take you to page 8 which is over the page, at line 5 - half way across it has fish cleaning which, even though the matter is not before you today, it enables us to cover persons engaged in that. If you go to Clause 15 - sorry, line 16 which provides for the extraction and refining of vegetable oil, tea packing, employees engaged in or in connection with the dehydration of vegetables and fruit so that very clearly we have a rule that is quite broad in nature.

MR HANLON: Line 25 provides for persons engaged in the destruction of prickly pear or noxious weeds and vegetation or in treatment of prickly pear and/or other products thereof.

Line 27 starting with "Fibrelight articles", says :

> "The formation and maintenance of racecourse tracks, golf links, bowling greens, tennis courts and of all gardens, lawns and greens in connection therewith."

PRESIDENT: That was your instant turfs or lawns?

MR HANLON: The problem with instant turf or lawn is deciding whether or not it is agriculture in that you are raising turf and how does that differ from raising any other product? We say that that covers us when they are laying it elsewhere than in the farm and we believe that we are covered in the growing of it at the farm under the broad heading of agriculture. Whether or not we cover the persons who are taking it from point A to point B, we would say would be covered by `incidental´ or `in or in connection with´.

PRESIDENT: It would be in connection with, would it?

MR HANLON: We believe that the general scope of the union´s rules are broad enough to cover the matter. It has been the acceptance before the Wages Board that the A.W.U. was represented on those two boards. We have members in the industry. We have extensive presence both on various rural boards to do with training and the handling of the product and we are generally accepted by the employers as being the organization which covers persons engaged in rural activities.

PRESIDENT: Would any of these awards and, if so, which one in particular, extend to the cultivation of opium poppies Mr Hanlon?

MR HANLON: Well, I would say agriculture. They are now grown on existing farms.

PRESIDENT: I am aware of that.

MR HANLON: They are now covered, in my view, by the Agriculture Award. They are not specifically covered by classification. Again, many of the farms that raise poppies also raise other agricultural products. There was an earlier history where there was, if not the establishment of a board, there were preliminary discussions about the Poppy Industry. I think the industry went no further than that because it never became large enough to become a significant agricultural activity on its own. The majority of poppy growers are engaged in other agricultural activities.

PRESIDENT: Thank you.

MR HANLON: In regard to the Act, we had taken the view that we were merely seeking to amend the existing awards by the deletion of the scope clause - the amending of it. I am also conscious of what section 33 has had to say.

PRESIDENT: Perhaps you could explain it to me then Mr Hanlon, because I frankly don't understand it.

MR HANLON: I don't know whether I can explain it to you other than to say that it appears to have two sections to it of which in regard to section 33 1B, we are not seeking to establish that classes of employees employed in an occupation; we are not seeking an award in that way. We are seeking to have the industry of the employer covered and not the occupation of the individual.

PRESIDENT: Isn't that what 33 1B says on a literal interpretation?

MR HANLON: No, I would have said that 33 1B deals with classes of employees employed in an occupation engaged in by private employers.

PRESIDENT: Yes, yes.

MR HANLON: It could be said that a person employed by a landscape gardener is engaged in that occupation and an award could be made for landscape gardeners. The difficulty comes about when a person who owns a nursery and also engages in landscape gardening as to whether or not there is such an occupation as `nurseryman´ and how wide it is in that there are persons who are employed in selling plants and providing advice and who are not in the retail trade as we understand it. The same persons may then engage in the planting of seeds; the preparing of soil; the propagation of the seedlings; the potting of the plants; the care of those plants while they mature.

Whether all of those activities are the occupation of a nurseryman (given the fact that it is also done by scientific means. There is a laboratory in the City of Hobart with some 12 employees who propagate millions of plants per year who wear white dust coats and do it all inside laboratories).

Now, it could be said that that is the work of `nurserymen´, but it is not the work of `nurserymen´ as we understand it. The name which it goes under is, technically, `tissue culture´ and they are employed by `nurserymen´. `Nurserymen´ also accept contracts for the maintenance of indoor plants in large office buildings; the maintenance of golf courses; public parks and private homes.

It seems to me that one of the problems of the occupation engaged in is it has to be an occupation which is definable. It is possible to say what a carpenter does. It would be possible to say what a farm tradesman would do under the same guise, but the range of work carried out by a farmer would be so broad as to say "what would be an occupation for farmer X is not necessarily the same

MR HANLON: occupation for farmer Y.

There was a recent experience involving the Chamber and ourselves where the person was employed in a piggery doing maintenance work. I think that it was generally accepted that the range of work carried out by that person was not maintenance work as would be normally carried out by a welder or a carpenter, but it was the maintenance of a piggery. It was the work of a person who had the skill of a tradesman.

The ... but he certainly wasn't working in the occupation of - I don't know what you would call a person who operates a piggery. They are the sorts of problems that I see ...

PRESIDENT: Probably a farmer.

MR HANLON: The position that we would see as an occupation as being one that was capable of definition, we would prefer, firstly, that where an award is made it is to alter any private employees employed in an industry. We think agricultural industry is capable of definition. We think that the members who are employed in or in connection with that, are those who are definable by the industry of the employers, whereas the occupation in the agricultural industry would be dairy farmer, grain grower, animal husbandry.

That is exactly the problem we are trying to avoid, by the sorts of definitions that now appear in the Horticulturists Principal Award.

If section 33 is application to our application, it would be section 33 (1)(a) and section 33 (2) really says:

> "That where the President, after consultation, with such organizations as he considers appropriate by notice in the Gazette declare an occupation in which classes of employees are employed by private employees to be an occupation in respect of which the Commission has jurisdiction under this Act."

I would see that that power is the power where you define a carpenter or a definable occupation, in what I would say, a traditional sense, that if a person was engaged as a cabinet maker employing people, then an award should be established for the occupation of cabinetmaking.

PRESIDENT: That would be a kind of craft award.

MR HANLON: Yes.

I think there can be a need for that in certain circumstances. It is not something (again because of my previous comments) that we would

MR HANLON: want that to apply in the Agricultural Award.

We see Section 3 as having the exercise of the Commission's power:

> "Where the Commission in making an award under this section shall specify the industry to which or the class of employees to whom the award applies."

We see Section 3 as being the exercise of the power whereby the Commission determines in accordance with Section 3(i)(a) that persons who are employees in the private sector and employed in that industry.

Whether or not that section was intended to apply on a new application is not made clear but it talks about `may make an award, having regard to all or any private employees employed in the industry'.

Where an award already exists, it seems to me that we are really dealing with the transitional power of the Commission.

I accept that an application to vary can have other ramifications when it goes to such things as the scope clause and therefore the Commission would need to be wary of how it was going to go about that and who should be advised as distinct from the parties to the award.

I am still of the view that, it is a general application to amend, certainly as far as agriculture goes.

In regard to horticulture, then it may be necessary to say that the Horticulturists Principal Award no longer exists at the end of the day when we get to the final point and that therefore Section 33 (i) (a) has some application to a new award involving landscaping and a nurseryman's award but certainly ...

MR HANLON: I think agriculture is a straight out amendment.

PRESIDENT: Do you feel that the now Agricultural Officers Award is a host word that describes many facets of agriculture?

MR HANLON: I have had a look at the definition of agriculture and horticulture. If you look in the Oxford dictionary - the definition of agriculture it says: `see horticulture´. If you go to horticulture, it see `agriculture´.

I take horticulture to mean the interference by man in the organization of the landscape to have a pleasing effect and agriculture being the production of food and services for the use by the human race.

PRESIDENT: In order to produce that result, that may embrace persons performing functions in more than one related industry.

MR HANLON: I think the difficulty only occurs when you start to process an agriculture product and in broad terms when that product is processed on the farm, whether that is cleaning, packing, or bagging, it is still an agricultural product.

Where that product is peas, up until the time the peas leave the farm it is agriculture. If those peas are transported by the farmer that is in or in connection with farming. If they are transported by a carrier, then that is in the carrying business and when they arrive at the plant, irrespective of whether they are carried by the carrier or the farmer, then that is in the food processing industry and therefore it is no longer agriculture.

There are grey areas here and there for different sorts of products but that broadly is how it applies to agriculture.

MR HANLON: Our suggestions about horticulture are, that that takes away the confusion that exists between industries and between awards as to which awards cover them. There are in existence a number of Federal awards in the rural sector, such as hops, fruit growing and wineries.

The existence of a Horticulturists Award, which covers some aspects of those and not others and an Agricultural Officers Award which covers some aspects and not others.

We think the elimination of the Horticulturists Award will remove problems about, what is vegetable growing, fruit growing et cetera. We have a provision for soft fruits in the Horticulturists Award.

Most fruit when it is ripe is soft. So I am never certain what that really means but it is taken to mean, fruits such as blackberries, raspberries et cetera.

PRESIDENT: That do not have stones.

MR HANLON: They are covered by fruit growing but in the Horticulturists Award there is a section which deals with soft fruits.

We think that by the elimination of a Horticulturists Award, then the confusion that now exists where it moves into other industries will be eliminated - not totally - but it means the farmers will know where they stand and what practices are engaged in in agriculture will be clearly agriculture.

In closing, I take the point you made. This is by way of an inquiry which I then take to mean, that the parties have been called; our application is seen for what it is and we are quite happy to confer with the Commission to ensure that the application is dealt with or processed in the way the Commission best sees fit.

PRESIDENT: Thank you, Mr Hanlon.

You recall that the letter I wrote indicated that I had formed an opinion that these applications required me to deal with them in accordance with Section 33.

Do you agree with that prima facie view? I felt you were saying that you do not.

I did not know quite what would follow if you issued an award to create an industry of agriculture as set out in our claim - that having made an award there was nothing really part of that award.

I saw it merely as a declaration of an occupation or an industry. If the two of them already exist, then I saw that as being part of the amendment process, Section 23.

I was in two minds about whether changing the title was a mere change of title or whether it really went to the establishment of a new industry. Certainly, the agriculture one is an amendment. The horticultural one is a bit of both, in that it does clarify the industry much more clearly than it is done under the present Horticulturists Award but it is wide enough to cover anything done by landscapers, nurseries and gardeners.

If the parties were in agreement then it could be done under Section 23. If there were opposition to that, then I think we would need to make certain we were on the right foot.

PRESIDENT: Do you pretend to understand what Section 33 (i)(b) when read in conjunction with Section 32 really means?

MR HANLON; I would say you could only make an award to the extent that you can declare in it an occupation - whether that is a one line award or a six line award. That seems to me it

MR HANLON: could do no more than that. I do not believe it has power to make an award in the accepted sense of 26 clauses et cetera.

It seems to me, an award doing no more than confining itself to the establishment of a scope clause.

PRESIDENT: There is a requirement put upon the president to make declaration which of course might be a statement of the law or a statement of fact or a statement of what is. In this case, he is required to declare that classes of employees employed in an occupation engaged in by private employers is something in respect of which the Commission has jurisdiction and frankly, that is the point to which I tend to become lost.

If you could substitute the noun `industry´ for the noun `occupation´ then it would make a great deal more sense to me but it may not to others and in fact may not have been intended.

MR HANLON: I have always taken that section to be directed to the establishment of craft awards and that it was put there to deal with those areas where the industry was the occupation and under the Wages Board system, which only dealt with industries, was inappropriate and could not deal with the matter.

In terms of how it applies as a practice, the award that is being made under Section 33, is only in regard to which industry or occupation that group of employees would apply.

My problem of whether or not it should apply in this circumstance is, we already have a declaration or an award which states:

> "It may be necessary once the award is made to make a declaration if the

MR HANLON: Agricultural Officers Award is wider than the word Agriculture."

I do not see how it can be. It is as wide as it has to be.

In regard to the Horticulturists Award, all we have done is substitute a more appropriate title for the activities of horticulture to be carried on by that scope clause.

I do not see that helping the Commission much. I think Section 33 is an initial declaration if someone wishes an occupation group or a new industry being established.

PRESIDENT: Thank you, Mr Hanlon. Mr Abey what can you tell me about that and other matters that have been discussed.

MR ABEY: If I can deal with the jurisictional question first, Mr President.

In our view the applications as lodge do not invoke Section 33 in any particular respect.

I accept the point that the drafting of Section 33 (i)(b) in particular is an abonimation and is almost incapable of interpretation if read literally.

Having said that, I think there can be no doubt at all of what the intent of Section 33 (i)(b) is meant to be.

If we go back prior to the enactment of this legislation, under the Industrial Relation Act of 1975 it was only possible to create an award in respect of the industry of an employer. It was not possible to organize a craft award.

As a conscious decision the Government wrote into this legislation the ability of the Commission to make what is known as the craft award.

JR - 02.10.85

HANLON - SUB
ABEY - SUB

MR ABEY: There can be no doubt in my mind, that that ability was intended to be written into Section 33 (i)(b).

I do not propose to debate it any further than that. I have already agreed that it is an abomination. In my view the wording should in fact be, `classes of employees employed in an occupation an employed by private employers´ and then it would make more sense.

Having said that, the applications do not ask the Commission to make a declaration as to an occupation or craft award and therefore Section 33 is not invoked.

These applications do no more than seek to vary the scope of two existing awards and therefore they fall within the terms of Section 23.

There have been a number of applications come before the Commission dealing with amendment to the scope and I note in particular the Aerated Waters Award and currently applications in relation to the Restaurant Keepers Award and I think, Licensed Clubs Award, dealing with the scope and they have been dealt with simply as award variations.

If an application came before this Commission to establish a new award based on the industry of an employer, then again, that would be a matter which would come before the Commission pursuant to Section 23 and not invoke Section 33. It does not require a declaration of the president, if the application is based on the industry of the employer.

Having said that, turning to deal with the merit of the application, we would say that in principle they represent eminently sensible applications. I understand the thrust of Mr Hanlon´s submission and except for some detail of the applications, we would endorse what

MR ABEY: he has said and support a move in that direction.

We do have some problems. Perhaps questions is a more appropriate term in relation to the detail of the applications and we would seek the opportunity to discuss those further with Mr Hanlon's organization.

I do not think the Commission is being asked to make a decision on these matters today, other than perhaps a statement of intent and as such, our position would be simply to have the opportunity to confer with Mr Hanlon.

PRESIDENT: Thank you, Mr Abey. Mr Durkin?

MR DURKIN: Thank you, Mr President. We agree with the sentiments expressed by Mr Abey that what is before us in these two Section 23 applications is merely a variation of an award and does not appear to necessite the use of Section 33, which as I read it, is a discretionary power placed on you to use if you feel that the applications go outside or creates a new scope which was not previously there.

The actual applications themselves, are designed to place, as we understand it and this is what we agree with, to effectively take out of Horticulturists Award and Agricultural Officers Award and create the one agricultural award for Tasmania and leave within the existing framework of the Horticulturists Award, that scope to include nurserymen, landscape gardeners et cetera, we then only have the one agriculturalists award.

The two awards have created a lot of confusion in the industry, particularly for the laymen and the whole purpose of our agreement is that the one award would certainly serve the industry better.

PRESIDENT: Thank you, Mr Durkin.

JR - 02.10.85

ABEY - SUB
DURKIN - SUB

PRESIDENT: Mr Pearce or Mr Williams, I would like to hear from both gentlemen on the question of how the Government and how the Department of Agriculture see themselves affected, if at all, by any rationalized award or awards that might issue as a consequence of these applications.

MR PEARCE: If it pleases the Commission, in relation to the continued application of the Horticulturists' Award as it is currently known in relation to landscape gardeners at the Housing Department, it would be highly questionable that the continued observance by the Crown of private awards should continue, particularly having regard to the statutory requirements of this Commission in relation to section 34 (2).

I suppose that, preferably in the short, but perhaps in the longer term, awards will prevail in relation to all public sector employment including those areas which I would loosely describe as "grey" areas. Mr President would be familiar with the sorts of problems which have confronted Crown employing authorities over the years particularly with regard to legislation which is no longer relevant. I suppose because of this grey area these employees, for example at Housing, might be regarded as perhaps being award free, given that we would move to a process of obtaining an award for those persons - and one would assume that that award would be in keeping with existing conditions and existing rates of pay as might prevail for landscape gardeners in the private sector. Then, perhaps not legally, but certainly at common law, we would continue to observe the conditions of the Horticulturists' Award, or indeed a Nursery Landscape Award which might obtain in the near future via this application, until such time as we are in a position to secure a public sector award in relation to the

MR PEARCE: activities of landscape gardeners at the Housing Department.

Does that address the sort of question?

PRESIDENT: Yes, it does. It addresses what was in my mind. What is also in my mind is a further question as to whether or not any party to these proceedings today has a view that would support the proposition of an industry award, which we all know, by definition, applies to the industry of the private employer. It could also have application to State employees whose employers, of course, are not private employers naturally, and who may or may not be engaged in industry. It is a question of whether persons performing the same function as employees of private employers, in order to be catered for, must of necessity in future have their own award, mirroring the conditions of the private industry award or vice versa; or whether or not somehow or other it might be possible either by inclusion of a special division or an appropriate form of words, to make the one award have application not only to the industry of a private employer but also the activities of a State authority or a Government department. I would not expect that you would give me an answer to that immediately unless you have such an answer, Mr Pearce.

MR PEARCE: No.

PRESIDENT: I would suggest that all parties might flag that question because it is something that is exercising my mind and I know other members of the Commission and no doubt will be of some concern to those employee organizations who have traditionally covered these people as members prima facie engaged in private industry but who may now or at some future time be sought to be covered by another organization. I don't know if another organization will seek to

PRESIDENT: cover them, but they are State employees. It is at least arguable that they might. I am not sure if you wish to comment further on that, Mr Pearce?

MR PEARCE: No, I have no specific instructions to make on that particular threshold aspect but we certainly hear what you are saying and we will certainly address the questions with the relevant organization.

PRESIDENT: Yes, thank you, Mr Pearce. Mr Williams, you have been invited to come along because I understand that you might be one of the organizations that could be affected.

MR WILLIAMS: Yes. It it pleases the Commission, I might just preface my remarks - preface by a general remark - and that is that I could see that the Agriculturists' Award is a sort of umbrella term and the horticulture is actually a specific branch of agriculture and generally horticulture could probably be defined as perhaps "the cultivation of fruits, flowers and things of an ornamental nature" and it is actually a sub-set of the general term "agriculture". I think the T.F.G.A. people might agree with that, wouldn't you? In Tasmania what Mr Hanlon was saying is quite true. Many farmers have a whole range of activities. Even within our organization we are often uncertain as to which branch of our department certain crops belong. Oil poppies would be an example which had traditionally been covered by the agricultural group. On occasions in our organization they have been covered by the horticultural group. So what Mr Hanlon is saying is quite sensible and to rationalize them would seem to be a good idea and would pose no problems for us. If it was only for the fact that the two awards have identical pay rates, there would have been an awful lot of problems in the past where people are

MR WILLIAMS: performing mixed functions. So I would support that.

Regarding your further remarks about the appropriateness, or the inappropriateness of the award, it certainly seems from reading the legislation that there is a problem there. I would believe that from our organization's point of view, certainly management-wise, that things could be simpler for us as an organization to be employing all employees under the one sort of award rather than two. I don't wish to dwell on that today but I would concur with your remarks there. Thank you.

PRESIDENT: Thank you, Mr Williams. Mr Hanlon, I was hoping you might exercise the right of reply on this.

MR HANLON: I have some difficulties - or the union does - about the private sector and the public sector.

PRESIDENT: I rather thought you might.

MR HANLON: It is the union's view that the private sector is a clear, distinct group and that we see the introduction of the Industrial Relations Act in its current form and the State Services Legislation as at last tidying up an area that does create confusion in that you have a two-way structure in the Government sector which doesn't lend itself to comparison with the private sector. We have a Government authority which is carrying on activities for quite different purposes than is a private employer, therefore the risks of the business, the way in which it is conducted and the hours under which it is conducted, are entirely different. The Australian Workers' Union is a member of a committee under the Commissioner for Public Employment which has for some twelve months been working through identifying various pockets of employees in all sorts of parts of

MR HANLON: employment. We see that process of identifying those individual groups with the introduction of the State Services Legislation and the proclamation of all the appropriate regulations as then meaning that we will be capable of approaching the various controlling authorities where there are people doing the same thing, who may be individuals; with either putting them into the General Services and Conditions or establishing a separate award if the group warrants that sort of coverage.

We believe the problems with the Agriculture Department whereby one farmer is covered by the Agriculturists' Award and another farmer is covered by the Horticulturists' Award was quite inappropriate. I think the legislation has been capable of being read so that you could have employees who should be covered by an award for the purposes of the Act as public employees, could be covered by a private sector award. I think that can be read into it. But from our philosophical position in terms of what is appropriate, we believe all employees of the Crown should be covered by the broad set of same terms, conditions and regulations, whether they be about hiring, discipline, termination and their general conditions. So that we see the current process of resolving the Agriculturists'/Horticulturists' Award. Then the next step is with the proclamation of the legislation and the regulations, we will then have to put Agriculture and the Department of Construction on a proper footing at that time.

We are at present negotiating with the Director of Industrial Relations for the Government on a new public employment award in the construction-road making area, which will tidy up another major area so that all of the departments who, in the name of the Queen think they are, will be

MR HANLON: actually covered by that award. That will then identify the sorts of people we are referring to today and we will take care of them as we move further along with the effect of the public sector legislation.

I don't think it is appropriate in the industries we are talking about today to involve Government departments and at any time in the making of these two new awards we would argue very clearly that they should not be made parties to them.

PRESIDENT: So long as, de facto, current rates were maintained?

MR HANLON: Well, in actual fact I don't really believe they are covered by them now. We haven't been able to regulate in the way in which we wanted to. The parties managed to make the adjustments where necessary. It needs to be formalized.

PRESIDENT: Yes, I think that satisfies me, Mr Hanlon, thank you. Does anybody else wish to say anything?

Gentlemen, having heard all the parties who have been good enough to come along today I have now decided to resile from the view that I earlier expressed in writing. I am satisfied in fact that these two matters are not matters that require any declaration by the President pursuant to section 33 of the Act. I believe that has been clarified today although I do not accept for one moment that section 33(1)(b) makes that in any sense clear, but there is no point in pursuing that here.

Having said that, gentlemen, I think that all I could suggest on behalf of the Commission is that the negotiations referred to in the applicant's letter now proceed unfettered by any further proceedings of this kind and that at the appropriate time I presume suitable

PRESIDENT: application or these applications, which now have been allotted numbers, can proceed to finality before the appropriate Commission. If that is a satisfactory result, then perhaps you might indicate now before I formally conclude this morning's proceedings.

MR HANLON: Thank you, Mr President. In regard to the subsequent procedures, this would be my suggestion as to how we would proceed: that the parties conferred - as Mr Abey has already outlined he would like some further discussions about the scope of the award. When they were concluded, the Australian Workers' Union would apply for a date to be set to determine the scope clause of the various awards so that we could get a decision on that so that when all the rest of the negotiations were then finalized, nobody could come along and - who the respective parties were likely to be would know which horse in which race they were running rather than to confuse it all at the end; and we would know what opposition we had, and not get to the end of the race and discover someone really objected to the scope clause, which then undid all the other work. So that I would just outline that when I have satisfied Tasmanian Farmers and Graziers and the Chamber, then we would ask for the matter to be brought on to deal specifically with, I suppose, clause 2 of any potential award, the scope clause, to have the Commission determine its satisfaction with that at that time.

PRESIDENT: Yes. Thank you. And, as I understood you to say, Mr Hanlon - correct me if I am wrong - you don't believe that any award or awards to be made or varied as a consequence of future proceedings would necessarily involve Government departmennts?

MR HANLON: No.

PRESIDENT: Thank you. Mr Abey, is that satisfactory from your point of view?

MR ABEY: Yes, Mr President.

PRESIDENT: Mr Durkin?

MR DURKIN: Yes, Mr President.

PRESIDENT: Then apart from indicating that for completeness it would be my intention to include transcript of today's proceedings in the files for the information of the Commissioner concerned - in this case Mr Commissioner Watling - I think I can now say that these preliminary proceedings are terminated. Thank you, gentlemen.

HEARING ADJOURNED