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TRANSCRIPT OF PROCEEDINGS

O/N 154909

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT T.J. ABEY

No. T13738 of 2010

MINISTER ADMINISTERING THE STATE SERVICE ACT 2000

and

COMMUNITY AND PUBLIC SERVICE UNION INC.

Re: application under section 55(2) in relation to the rescission of the Inland Fisheries Commission Award

No. T13739 of 2010

MINISTER ADMINISTERING THE STATE SERVICE ACT 2000

and

COMMUNITY AND PUBLIC SERVICE UNION INC.

Re: application under section 23(1) re: new Appendix 13 – Inland Fisheries Service – to vary the Tasmanian State Service Award

No. T13740 of 2010

MINISTER FOR WORKPLACE RELATIONS

and

COMMUNITY AND PUBLIC SERVICE UNION INC.

Re: application under section 55(2) in relation to the rescission of the North West Water Authority Enterprise Award

HOBART

9.30 AM, TUESDAY, 21 DECEMBER 2010

THE DEPUTY PRESIDENT: Yes, good morning. Could I take appearances in all matters, please.

5 MR P. BAKER: Sir, I appear on behalf of the applicant in all matters. Sorry, I will rephrase that: I appear on behalf of the Minister administering the State Service Act in matters T13738 and 13739, and in matter 13740, I appear for and on behalf of the Minister for Workplace Relations.

10 THE DEPUTY PRESIDENT: Thank you, Mr Baker.

MR M. JOHNSTON: Deputy President, good morning. Matt Johnston appearing on behalf of the respondent in these three consent matters for the Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

15 THE DEPUTY PRESIDENT: Yes, thank you, Mr Johnston.

MR JOHNSTON: Thank you.

20 THE DEPUTY PRESIDENT: How do you want to deal with these, Mr Baker?
So - - -

MR BAKER: Sir, could we deal with 38 and 39 - - -

25 THE DEPUTY PRESIDENT: Certainly.

MR BAKER: - - - as a single matter?

THE DEPUTY PRESIDENT: Yes, certainly.

30 MR BAKER: And then deal with 40?

THE DEPUTY PRESIDENT: Yes, we will do that.

35 MR BAKER: In relation to 13738, that is an application to rescind the Inland Fisheries Commission Award. This is really just a tidy up of some old agreements and awards we've got lying around the place as part of our ongoing process. I think we've - we must be just about there; I don't think there's anything left, but I think it's the last one. So what we intend to do is actually rescind the Inland Fisheries Commission Award. There was also an agreement, which also applies, which we are
40 seeking to retire from, in matter T13737/2010, and we wish to take the provisions that apply in that agreement, which was T10534/2002, and incorporate those provisions into the Tasmanian State Service Award, which is application 13739/2010.

45 THE DEPUTY PRESIDENT: What's the T number on the agreement again?

MR BAKER: The agreement is – the former agreement is T10534/2002, and we’ve actually made an application to retire from that agreement.

5 THE DEPUTY PRESIDENT: Right. So you’re retiring from that.

MR BAKER: We’re going to retire from that agreement, we’re going to rescind the old Inland Fisheries Commission Award - - -

10 THE DEPUTY PRESIDENT: Rescind the award.

MR BAKER: - - - which is – in fact, has had no application since 2002.

THE DEPUTY PRESIDENT: Yes.

15 MR BAKER: And we’re going to replace the current agreement – well, the agreement that continues on, with the new appendix 12, which forms the basis of application T13739/2010.

20 THE DEPUTY PRESIDENT: Yes.

MR BAKER: And the final thing that I would like to add is that we would seek an operative date of 15 January 2010, for both the variation of the Tasmanian State Service Award, and the rescission of Inland Fisheries Commission Award, as that will be the day that I’ve calculated that the old agreement will expire.

25 THE DEPUTY PRESIDENT: Right.

MR BAKER: So there will be a seamless process that the agreement will on one day expire - - -

30 THE DEPUTY PRESIDENT: Yes.

MR BAKER: - - - and on the same day, the new award will come into being.

35 THE DEPUTY PRESIDENT: Right. Very well.

MR BAKER: And we would suggest, sir, that that is consistent with the public interest act - - -

40 THE DEPUTY PRESIDENT: Public interest.

MR BAKER: Sorry, the public interest test, as contained in section 35 of the Act.

45 THE DEPUTY PRESIDENT: Mr Johnston, your position.

MR JOHNSTON: Thank you, Deputy President. Look, we concur with the submissions from the applicant in those three particular matters, being their

retirement from the Inland Fisheries Agreement, the rescission of the Inland Fisheries Award, and the inclusion of new appendix 12, with regard to the Inland Fisheries Service in the Tasmanian State Service Award. The genesis of these matters has regard both to the cleaning up of our instruments, which Mr Baker has alluded to, but also the intent from, as I understand it, Inland Fisheries to broaden the scope of the bundling capacity contained in the provision, which was in the agreement, but now will be in the TSSA to a broader group of people, which is something that we have no objection to.

10 So I also commend those three matters, as outlined by Mr Baker to the Commission, and also submit that it doesn't offend against the public interest.

THE DEPUTY PRESIDENT: Yes. Having heard the parties, I'm satisfied that the applications are consistent with the public interest requirements of the Act. The applications will be granted, operative from 15 January 2010 – and I've just been handed a note from a very efficient associate, that we're actually talking about appendix 13, not 12, I think; is that right?

MR JOHNSTON: It has - - -

MR BAKER: My apologies, sir.

MR JOHNSTON: It has 12 on the detail, but 13 on the application, but I don't mind either way.

MR BAKER: Okay.

THE DEPUTY PRESIDENT: Right. I think we will get it sorted. We will get a decision out, to that effect, in the next hour or so. Right – 13740.

MR BAKER: Thank you, sir. This is actually my – our third attempt to remove this award from the list of the Tasmanian Industrial Commission. We fell off, all the way back in December 2009, but Mr Lynch, on behalf of CPSU and myself, agreed at the time that we should actually stand it over for a little while, and wait and see so the scene was actually clear, as to whether the Northwest Water Authority were to be covered by award/agreement of the then Workplace Relations Act. Subsequently, an application was made – sorry, the application was proceeded with in September of last year, being matter T13605/2009.

40 And that application was made in my capacity as acting for and on behalf of the Minister administering the State Service Act 2000. It was subsequently learnt that in fact the Minister is not a respondent, or cannot be – cannot make an application in relation to that award, and so the matter sort of was – has been subsequently stood over. And so a fresh application has been made, for and on behalf of the Minister for Workplace Relations, in respect of section 24(2)(b) of the Industrial Relations Act, and that is the Minister, if in his opinion an application is one that in the public

interest is appropriate to be dealt with by the Commission, and so an application has been made to rescind this award.

5 The basis for the rescission is twofold: one is that the organisation, that is the Northwest Water Authority, is covered by an award of Fair Work Australia, and in addition to that, they are also covered by a relative enterprise agreement, also made under the terms of Fair Work Australia. The detail of those – of the award and the act are contained in the transcript of matter 13605 of 3 September 2010. Therefore, 10 sir, we would say that this award has no application, and accordingly should be rescinded.

THE DEPUTY PRESIDENT: Yes. Mr Johnston.

15 MR JOHNSTON: Thank you, Deputy President. Look, we concur with the summation of Mr Baker in terms of this matter. The award, and to which we're speaking now, is to all intents and purposes redundant, and has been for some time. By way of update, Fair Work Australia has modernised the instruments that apply to the water industry nationally, and that they now have a modern award that is now the operative underpinning and safety net for workers in the industry, including those 20 who are now employed by Cradle Mountain Water. It's not quite correct to say that they have an agreement yet, but it has been balloted, and it did get a majority support ballot up, and it will be registered very shortly with Fair Work Australia.

25 There is no detriment to any worker by the rescission of this award, as it is – primarily, not operative.

30 THE DEPUTY PRESIDENT: Yes. Having heard the parties, it's clear that this award no longer has any application; accordingly, the award will be rescinded with effect from today. A decision to that effect will be issued in the next day or so. On that basis, the Commission stands adjourned. Thank you.

MATTER ADJOURNED ACCORDINGLY