

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

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| T No. 2399 of 1990 | IN THE MATTER OF an application by the Tasmanian Public Service Association to vary nominated public sector award |
| T No. 2511 of 1990 | IN THE MATTER OF an application by the Federated Engine Drivers' and Firemen's Association of Australasia, Tasmanian Branch to vary the Boiler Attendants Award |
| T No. 2473 of 1990 | IN THE MATTER OF an application by the Tasmanian Public Service Association to vary the Prison Officers Award |
| T No. 2587 of 1990 | IN THE MATTER OF an application by the Tasmanian Prison Officers' Association to vary the Prison Officers Award |
| T No. 2504 of 1990 | IN THE MATTER OF an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the North West Regional Water Authority Employees Award |
| T No. 2506 of 1990 | IN THE MATTER OF an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the Professional Engineers Award |
| T No. 2508 of 1990 | IN THE MATTER OF an application by the Hospital Employees Federation of Australia, Tasmania Branch to vary nominated public sector awards |

T No. 2516 of 1990

IN THE MATTER OF an application by
the Police Association of Tasmania
to vary the Police Award

T No. 2586 of 1990

IN THE MATTER OF an application by
the Ambulance Employees'
Association of Tasmania to vary
the Tasmanian Ambulance Service
Award

T No. 2594 of 1990

IN THE MATTER OF an application
by the United Firefighters Union,
Tasmanian Branch to vary the Fire
Brigades Award

T No. 2605 of 1990

IN THE MATTER OF an application by
the Federated Miscellaneous
Workers Union of Australia,
Tasmanian Branch to vary the
Miscellaneous Workers (Public
Sector) Award

re structural efficiency principle

FULL BENCH

PRESIDENT
COMMISSIONER GOZZI
COMMISSIONER WATLING

HOBART, 15 October 1990
Continued from 20/7/90

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: Are there any changes in appearances? No?

MR D. ADAMS: I think, ADAMS, sir, representing the Miscellaneous Workers Union.

PRESIDENT: Yes. Thank you, Mr Adams.

MR C. WILLINGHAM: Morning, Mr President.

PRESIDENT: Mr Willingham.

MR WILLINGHAM: Today I appear for the Minister administering the State Service Act, together with MR F.W. OGLE.

PRESIDENT: Thank you. Right. Who would like to go first in this process of reporting? Mr Mazengarb?

MR MAZENGARB: Good morning, Mr President. I don't know if I'm accepting your offer 'who would like to go first'. Being on this side of the Bench I'll consider it incumbent upon me to get up to my feet before the employer representatives.

As indicated, sir, my understanding is this is a report-back to the Full Bench with regard to three main issues, that is: sick leave, special leave, and span of hours. This report-back emanates from the Full Bench's decision of 6 August 1990.

Sir, with regard to ... if I can take it in the order that it appears in the decision on page 19. With regard to sick leave, the working group established by the decision of this Full Bench has met on a number of occasions to consider that particular issue. The working group is still considering the issue of sick leave. At the moment we are gathering information both within the State sector and outside of the State sector. The majority of information that the working group believed to be necessary to consider prior to making a final recommendation or report to the PEAK negotiating group has been pooled together.

The group is even contemplating looking at some various systems that are operating in Tasmania that could, in effect, be utilised in the State sector. And that would involve physical inspections of the working group parties.

So the sick leave aspect, whilst I'm not in a position to be able to make a final report to you on that issue, is well in hand. And certainly, from my organisation's point of view, we're happy with developments even though we haven't reached a final position.

With regard to special leave, I can advise we have proceeded a little bit further on that particular issue in relation to sick leave. Special leave: a letter on Friday was signed by myself and representatives of the government that will be

going to all service organisations and to all government agencies on a review of special leave within the State sector; how it's to apply and when it's to apply. That letter will indicate that it is a proposal only and it will have attached to the letter a draft administrative instruction implementing the new special leave arrangements.

We have requested, from memory, that a report from the various service organisations and departmental heads be provided back to either myself or the government nominee representative on the working group by 24 October by which time the working group will be able to sit down again, examine the comments that have been made by the various organisations and again be in a position to make a final report to the PEAK negotiating group.

Relative to the final issue, span of hours, unfortunately we haven't prepared a report on that issue as yet. Information is being gathered from various sources, again, both within the State sector and outside of the State sector. Because of the intensity of the work that the working group has been involved with regard to sick leave and special leave, span of hours hasn't proceeded any further than that information gathering exercise. But again, we hope to be able to address that issue in the not too distant future.

With regard to the three issues, sir, and members of the Bench, I can assure you that there've been numerous discussions, debates, at the series of meetings that the working group has been involved in. There have been ongoing reports to the PEAK negotiating group where they have been advised of developments and, obviously, the fact that we are reporting back to you today without the necessity to come back to you with a dispute on the issue indicates that the parties are proceeding amicably along the path of reviewing those three areas.

I think that, sir, sums up the situation but obviously I'm available to answer questions from yourself or other members of the Bench but I understand Mr Ogle also has a fairly comprehensive report which may address some of the issues that may be exercising your mind.

PRESIDENT: I can understand it's been a fairly amicable arrangement because really nothing seems to have happened. If I could take you back to the agreed document that we were all so anxious to approve, it seemed there that the due date for conclusion of these matters was 30 August 1990. What's happened?

MR MAZENGARB: From my understanding of the schedule that was attached to the document was the working groups would be formed by no later than 15 August and I understand that did

occur with the working group examining this rationalisation or the rationalisation of conditions of service and that we were to report back to the PEAK negotiating group by 30 August. We have done that and we, as late as 12 October, last Friday, reported back to the PEAK negotiating group and advised that because of the information that needed to be gathered and that it was being gathered that we weren't in a position to be able to make our final recommendations to that group.

I am surprised at the amount of information that is needed to examine this. I have to say, in my naivety, I thought that we would be able to achieve a final position by 30 August but due to the complexity of the issues and the effect that these issues are going to have on employees in the State sector over the next 10, 20 or 30 years, I'm convinced there is a need to have a thorough examination of it.

When I say that the discussions have been amicable, they have been amicable to the stage where no-one has started throwing punches yet, but certainly there have been some very heated debates as to the various points of view from the various sides, but I can report that, fortunately, we are still talking to each other without throwing punches. So, as far as 'amicable' relates, it's in that sense that I make that comment.

COMMISSIONER GOZZI: Mr Mazengarb, in respect of the attachment to our decision, on page 4, the item that relates to working groups to oversee the implementation of the agencies specific items. Now, the agencies specific items, an outline of those were given in our decision of 9 November 1989, appendix A, at page 4. It talks about awards and/or departments supplementary agendas.

Now, can you indicate what progress, if any, has been made in progressing agencies specific agenda items. Some of the examples were, as I say, outlined in our decision of 9 November.

MR MAZENGARB: Unfortunately, Mr Commissioner, I haven't got a copy of that decision with me - we've split the file on this issue into two files, in actual fact - so, I'm unable to refer to that particular part of your November decision.

COMMISSIONER GOZZI: All right. Well, I'm just going to read from (C). It would be looking at:

Proficiency Allowances

Nurses' Certificate Allowances -

Of course, that doesn't concern us here any longer.

Time off in Lieu of Overtime
Higher and More Responsible Duty Allowances -

We've talked about special leave, but there's bereavement leave there.

.....
Teachers - Contact Hours -

Is part of the Teaching Full Bench.

Permanent Part-Time Employment

Of course there are other matters interwoven in the other paragraphs later in that particular item. I'm really raising it simply to seek some comment whether or not those specific agenda items are also being considered in the working party review process.

MR MAZENGARB: I can advise that on some of those issues, for instance, say, time off in lieu, I understand directions have already gone out to agencies as to how that is to apply as a result of the decision of November. With regard to the query you had relative to bereavement leave, and I apologise for my oversight, when I was referring to the special leave aspects of consideration that also include bereavement leave and sporting and cultural leave and I just threw all that in together. So, bereavement leave is certainly being examined. The commissioner's month, that will be considered in light of our deliberations regarding sick leave and I understand the government is monitoring any applications for commissioner's month at this particular point in time.

Proficiency allowances, that will be examined in light of award restructuring and obviously, more particularly, with regard to the aspects of the keyboard and clerical assistant ... or the Keyboard Award.

Some of those other issues, I have to indicate that I'm unaware what has occurred because it's areas outside of my, in effect, jurisdiction being some of those nursing issues. But those issues that you have raised are being addressed. Some will be addressed as part of the working group considerations but some, where there was no need for the working group to take consideration of them, have already been implemented. And I don't want to throw it to someone else but Mr Ogle might be able to elaborate to a greater extent on those specific issues that you've raised.

COMMISSIONER GOZZI: Yes, as I say, I'm just anxious that those agency specific items, if you like, at the grass roots level don't get left behind in this exercise.

MR MAZENGARB: Yes, I can assure you in some of those issues that the government has issued directives that reflect the decision and the specifics mentioned in the decision of November 1989.

COMMISSIONER GOZZI: Thank you, Mr Mazengarb.

MR MAZENGARB: Thank you, Mr Commissioner.

COMMISSIONER WATLING: Mr Mazengarb, when do you see the three items that should have been completed being completed and what's your timetable, revised timetable and program?

MR MAZENGARB: The special leave, if I can take that first, I would hope that that would be completed within the next 3 to 4 weeks. A lot of that, to a degree, or that time framing will be dependent upon the comments that we receive back from the various service organisations and the departmental representatives.

Sick leave, I'm unsure if we've actually determined a time frame on that issue, but obviously as we're under the direction and guidance of the Commission we would want to address that issue fairly quickly. We believe now, as I indicated before, that we have enough information to be able to sit down and start working on that. And that will be the next item on the agenda for the working group which meets, I believe, next week or the week after next. And as soon as that is completed spread of hours will be addressed.

COMMISSIONER WATLING: So what do you see for sick leave: 4 weeks, a month, 5, 10 weeks?

MR MAZENGARB: I haven't put a specific time frame on it nor have I addressed ...

COMMISSIONER WATLING: Well, we might like to so we're trying to give you the opportunity to give us some indication of how long you think you might be.

MR MAZENGARB: I haven't put my mind to it and having been asked the question now, and bearing in mind the complexities of it, I would not like to put a time frame on it. Obviously, if I said 4 or 5 weeks I think that would be too soon. I would say even 8 weeks could be rushing it and the impact that it's going to have on the State sector, I would not like to say that we should be rushing it. But I would hope that within 8 weeks we would have a position of understanding and - possibly even shorter - but it would be very difficult to gauge at this stage.

COMMISSIONER WATLING: What date do you think we should put on it, given the fact that you should have had it completed by now?

MR MAZENGARB: I think it would be appropriate if this Bench requests the parties report back within a 6-week time frame, that being the end of November. I think any shorter, especially for sick leave, I think would be putting too much of a responsibility or too much of an onus of responsibility on the working group, considering the information that's been gathered. If I hadn't seen the information that's been gathered and the material that needs to be examined by the various representatives on the group, I would say I wouldn't get it done in 4 weeks. But that would be a position where I'm not privy to the information that's come in to the working group on that particular issue.

PRESIDENT: Have the parties made any 'in principle' agreement on whether or not there should be or shouldn't be a no-credit scheme for sick leave?

MR MAZENGARB: That's still being debated.

PRESIDENT: That's still being considered.

MR MAZENGARB: It's certainly still being considered. We've become aware that there is an establishment, a private establishment in George Town, as we understand, that uses a no-credit scheme. And we're fairly anxious to have a physical look at that to speak to both sides of the parties to gauge their reaction as to the pitfalls that they fell into when they introduced ... we understand it was introduced fairly recently. So we'd obviously like to know what pitfalls they encountered and how they overcame those pitfalls.

We've gone through various aspects of the no-credit scheme and both parties acknowledge that there are inherent problems with it. But at the moment we still believe that that is a possible scheme that can be introduced. It certainly hasn't been dismissed. And certainly can I say at the moment that's the highest one on our agenda that we're considering. I don't think the working group has considered any other scheme other than a no-credit scheme.

PRESIDENT: Right. Yes, thank you.

COMMISSIONER GOZZI: Can you say whether the criteria has been developed?

MR MAZENGARB: Certainly the working group representatives and government have produced some documentation on it with regard to their requirements and their necessity for it, and that's being examined and is still being examined by the various service organisations on the working group. So there are certain guidelines. I wouldn't go so far as to say they are criteria, I'd be more inclined to regard them as guidelines. For consideration, of course.

COMMISSIONER GOZZI: I mean, the criteria was also going to be finished by 30 August.

MR MAZENGARB: I understand that, Mr Commissioner.

PRESIDENT: Yes. Well, thank you, Mr Mazengarb.

MR MAZENGARB: Thank you, Mr President.

PRESIDENT: Who is the next volunteer? Mr Ogle?

MR OGLE: It looks like me, Mr President. I would like to present a hand-out for your information, which details the workings of the working group and the considerations and what's gone on with the PEAK negotiating group. I don't intend to speak to that word for word, but you may wish to peruse that at your leisure later on. Specifically, I'd like to address the specific issues.

PRESIDENT: We'll identify this document 0.1. And are you addressing us on ... specifically on this document?

MR OGLE: Yes.

PRESIDENT: Yes, thank you.

MR OGLE: I won't go into the background, Mr President. It's an introduction, but more specifically it talks about the matters before us.

PRESIDENT: Yes, thank you.

MR OGLE: At the first meeting of the working group it was required that detailed research needed to be undertaken into, first of all, the different provisions existing in the State Service, and that became quite a detailed task. And even to this date we presented that to the working ... or that was presented to the working group on Friday last and still needs some purification. But as you would appreciate the different awards, different regulations that exist through the State Service we felt that it was necessary to at least have a starting point to examine the whole issue. Now, that document hasn't been attached to that hand-out, but I can provide that later on, if necessary. But it needs a little bit of purification.

We also felt that there needed to be an examination of absenteeism rates. Again, this has proved to be a bit difficult. You may have been aware of some difficulties the government has been having in obtaining numbers. Well, the

same thing happens with sick leave provisions. But in order to examine if a no-credit system does work, I think it's necessary to present the now so we can examine it against and assess it against any new scheme.

As Mr Mazengarb pointed out, there was some difficulty actually establishing who ran a no-credit system so we could examine it. We've come up with a few companies we believe that run no-credit systems, and these again will have to be checked, but we believe TEMCO at George Town, ICL in Sydney and there's ... we have received some documentation from overseas, from our library sources, but as yet we haven't had these translated, because they're in the native tongues of the different countries. So the research has been very detailed, but the difficulty is ...

COMMISSIONER WATLING: That might be a suitable provision.

MR OGLE: Beg pardon?

COMMISSIONER WATLING: That might be a suitable provision.

MR OGLE: That's right. But we felt also, even though we're still doing this research, we should at least present a government position, which we did to the working group, to outline items we felt that need to be included in any no-credit system - any no-credit system. Such things were included as when absences were to be reported, how leave applications were to be supplied, when medical certificates were required, when reviews were necessary, when persons or employees took a number of working days off, whether that should be after a period of time or whether you just let it go on indefinitely. And we had a position that needed to be a review period in any sick leave. So they're the sorts of issues we've presented to the working group for them to have a look at. They've undertaken to come back to us by our next meeting on 24 October.

PRESIDENT: 23rd or 24th?

MR OGLE: Sorry, 23 October.

COMMISSIONER GOZZI: You didn't intend us to have a copy of that proposal, did you, Mr Ogle?

MR OGLE: I hadn't at this stage ...

COMMISSIONER GOZZI: No. Just in the document here it's ...

MR OGLE: ... Mr Commissioner. No, I'm sorry. Not at this stage. So the timetable we have on sick leave is 23 October to negotiate the no-credit system, after we've had the visits, after the union side has had a chance to examine management's position and after the research details have been

purified and completed, we believe on 23 October we'll be in a position to negotiate no credit. I believe by 31 October we'll be in a position to indicate whether no credit is the way we're going to go or not.

If no credit is not the way as per the agreement then we'll have to investigate a service-wide accrual system. So I think that 30 October is first of all the day and it's very much dependent on that whether we proceed the no credit line or the accrual line.

I mean, in terms of a further timetable it is really dependent on that issue. If it goes the no credit way, well, I'd expect that probably Mr Mazengarb's indication at the end of November is realistic, but if no credit can't be agreed then I believe that the end of the year is probably more applicable if we have to negotiate accrual and particularly the standardised accrual throughout the service.

I'd have to make it clear at this stage that the management or the government's side of those negotiations has indicated that sick leave and special leave need to be considered as a package. You may remember in TTLC Exhibit 3, where it talked about conditions, and it was under the heading of Protections, item 2.1, when it talked about conditional ... packaging conditions and improving conditions in certain areas being conditional on an acceptable mean across the Tas. State Service and balanced against additional benefits. And you'll see why our position is like that, from our point of view, when I talk about special leave.

As far as special leave is concerned, as Mr Mazengarb quite rightly pointed out, we circulated to both agencies and unions a copy of a draft instruction on special leave which detailed or provided guidance to agencies on when special leave should be granted. And when I talk about special leave in these circumstances I also incorporate bereavement leave and all the other leaves that could be considered under that heading like sporting and cultural.

So they were actually circulated on Friday under a joint heading. Mr Mazengarb representing the TTLC and Mr Paul Gray representing the government side, circulated that for comment for those comments to be received back by 27 October.

You would appreciate under special leave again that special leave in these circumstances is part of the government's intention to standardise conditions and for some employees throughout the State Service this will mean an improvement in their conditions because some don't presently have special leave, but the government's side believes before we can actually implement that special leave decision we need a decision or reach a position on the sick leave situation.

The expected timetable, as I pointed out, of the 27th is the date to receive back comments from all parties. We believe once those comments are received back we can finalise the wording of the instruction pretty well straight away within a couple of days, so by 2 November we would be in a position, however, implementation will be ... and any amendments will need to be for regulation or award coverage will be dependent on the sick leave.

Span of hours, as Mr Mazengarb quite rightly points out, has been a little bit neglected in this exercise although we have undertaken some detailed research into the prescribed hours and the span of hours that exist in the State Service. While on face value this exercise was seen as a very easy exercise it has turned out to be quite a monster. And in fact it's very difficult to determine what the prescribed hours and what the span of hours are in certain cases. They're just nonexistent in award or under regulation which causes us concern and I think is the perfect opportunity to at least address that issue so at least prescribed hours and span of hours can be included in awards and at least covered by some authority.

The timetable we've put together with respect to span of hours is by 27 October to complete research into the present hours, and the prescription of those hours, and then by 9 October ... sorry, 9 November we believe we'll be in a position to circulate guidelines. You might remember that while the span of hours was agreed, there needed to be guidelines circulated on how these span of hours might be changed to address issues like consultation, notice to the employee and notice to the unions if hours were to be changed.

So as is the focus of this working group, we believe in consultation so we expect that we will circulate those guidelines to agencies and to agencies ... agencies and to unions as a joint paper to receive their comments back. They should be received back by 21 November and we'll be then in a position to finalise guidelines and circulate those guidelines to agencies by 28 November.

The remaining issues that didn't require a report back at this meeting, or this hearing, related to protections and appeals. Just to inform the Bench with respect to those two issues, no action has yet been taken on the issue of protections for those people who don't have protections at the moment, and when I talk about protection, we're talking about appeals, permanency of employment, certain conditions where some of our employees you could say have been treated as second class employees. That is definitely on the books of the working group, but as yet no action has been taken.

With respect to appeals, actually with respect to the appeals matter and the jurisdictional matters and the set-up of the

Commissioner for Review in particular, a draft legislation has been circulated to relevant parties for comment.

PRESIDENT: I have seen a copy of that.

MR OGLE: It is the intention of the government to have that legislation put through in this sitting of Parliament but we require feedback from all the relevant parties before we can proceed on that matter.

One thing I might indicate, as with the delays in the issue of sick leave, special leave and spanable hours, the TPSA did write on behalf of the peak negotiating group, to get a delay of 1 month because when we did the original papers, and the time delay in the decision being handed down, there was 1 month delay from our point of view. We would also be requesting that the same time be given by the Commission in report-back on the issue of protections and appeals, although with appeals we feel that we will be in a position maybe by 24 December to finish that but it's very much dependent on the legislation.

PRESIDENT: Yes, thank you, Mr Ogle. Does anybody else wish to make a contribution? Yes, Mr Devine?

MR DEVINE: If it please the Bench, Nick Devine from the United Firefighters Union.

PRESIDENT: You might have to come forward, I suspect, to get the microphone.

MR DEVINE: You can't hear me, Mr President?

PRESIDENT: I can hear you.

MR DEVINE: Gentlemen, just so we can be conversant to where the United Firefighters Union is and the Fire Brigades Award, there's a couple of things I would seek leave to point out in regard to, especially the sick leave and special leave. The Fire Brigades Award, firstly, are not privy to triennial or quinquennial provisions of sick leave and in fact they've got a purely basic cumulative-type scheme.

We are and hope to continue to be a party to negotiations with the reorganisation or a set structure of sick leave across the State Service. So I'd just point out that we've not got triennial or quinquennial, which seems to be the main problem for the government.

Secondly, with special leave, the Fire Brigades Award presently enjoy 3 days special leave with regard to bereavement or, what we call within our award, compassionate leave, and I'd say that that reflects the government's

position, or what the government hopes to be their position across the service.

When last I was before the Commission on this matter, I indicated that there'd been ongoing discussions between the union and the immediate employer, the Fire Commission, and to a lesser extent, with the Office of Industrial Relations, with regard to the 3%, or the 6% in fact, over a period of time.

Now, I stated at that time that I believe in the not too distant future we'd be in a position to come forward with some specific award variations with regard to the 6%. Now, we've continued along those negotiations with the employer. Whilst not directly involved with the PEAK negotiating group with the specific changes to the award, they are in line with the SEPs and particularly with standard hours and I'd seek leave to present those award variations to the Commission today.

PRESIDENT: Has this been the subject of ... does it have to be considered by any other particular negotiating group, or are you able to move independently?

MR DEVINE: I'm led to believe, sir, that from the PEAK negotiating group that there's nothing prohibiting any union from coming forward within this Commission with specific award variations which deal specifically with its award. That's the case with these proposed variations and in fact they don't encroach upon anybody else because the United Firefighters Union is the only one a party to the Fire Brigades Award and, I say again, when last I was before the Commission, I indicated that because of our (and I was searching for a better term) because of our rank and structure within our award and the specifics involved with the award and the way we actually carry out our profession and occupation, that we felt that there would be changes that we could make and that we'd all but agreed to at that time but we'd not come up with the wording to bring before the Commission, sir.

PRESIDENT: Are these, to your knowledge, agreed variations?

MR DEVINE: Well, they are specifically and definitely agreed between the union and the Fire Commission. When I questioned the Fire Commission on Friday and again this morning they said that they believed that they reflected the position between the immediate employer and the Commission.

I spoke to Mr Willingham about it this morning and he's not aware of the document, or hadn't been until this morning, but I've furnished him with a copy of it. And I'm quite sure in the immediate future or otherwise he'll raise objection, if he sees fit.

PRESIDENT: It doesn't pre-empt anything that's otherwise going on?

MR DEVINE: Well, from our position, sir, it is agreed. From our position we think that it fully justifies the ongoing negotiations on this matter for the past 6 or 8 months, and we've got some concern with regard to the special case that's pending, in that we feel that we need to set something in concrete and actually vary our award and place it there so as we can move on.

PRESIDENT: You don't see it as at all being part of the special case?

MR DEVINE: As that? No, sir. No. No. Special case ... special case discussions which have progressed to date are aside from anything which is in those proposals.

COMMISSIONER GOZZI: Are there any other agency specific matters to come forward besides these?

MR DEVINE: With regard to the 3%?

COMMISSIONER GOZZI: Yes.

MR DEVINE: Well, as far as the union is concerned, sir, we believe that we have more than justified it, except that ... except to quantify and say that with special leave ... special leave and sick leave that we are a party, again, to the conditions across the board.

COMMISSIONER GOZZI: Yes. There's nothing else agency specific, leaving the special case to one side, that was perhaps identified in the first round along with the 3% first instalment adjustment?

MR DEVINE: Over and above those variations?

COMMISSIONER GOZZI: Yes.

MR DEVINE: Well, it's my understanding that those variations satisfy the Fire Commission, bearing in mind that there is extensive multiskilling in there as well.

COMMISSIONER GOZZI: Right.

PRESIDENT: We'll take ... without confirming the acceptance or otherwise of these for the moment, Mr Devine, we'll take them on board and consider the position with ...

MR DEVINE: I could have furnished them to you sooner, sir, except that it might have been seen as anything but above board.

PRESIDENT: Well, we'll hear from the employer representative on it shortly.

MR NIELSEN: Mr President, I'd just like to make a brief ...

PRESIDENT: Mr Nielsen?

MR NIELSEN: ... comment, if I may. My comment, Mr President, is in regards to Exhibit W.2 and to these negotiations, and then on that particular page 5, it makes reference to the custodial emergency services group. And my comment, Mr President, is that the Trades and Labor Council under that particular section has conveyed meetings on 2 October and 10 October with the custodial emergency services union's meeting, and also on the 10th under the chairmanship of Mr David Metcalf of the Premier's and Cabinet Department. We have formally come together and given attention to various issues, and have even set up various dates in regards to time schedules, broad classification structures and relativities for each award. And we've put up a timetable there, that's 23 November 1990.

In regards to broad classification structures ... I've just ... I'm sorry, I'm repeating that.

Also in regards to definitions, we've put up another dateline, of February 1991. The new award ...

PRESIDENT: So the November date ...

MR NIELSEN: Is the ... yes, 23 November '90.

PRESIDENT: Is for what classification?

MR NIELSEN: Broad classification structure and relativities for each award.

PRESIDENT: Yes.

MR NIELSEN: For definitions within the award, February 1991.

The new award restructures, March 1991.

Translations into restructured awards is April 1991.

PRESIDENT: And that is ... that's the combined group, is it, for all ...

MR NIELSEN: That's the combined group ...

PRESIDENT: That covers ...

MR NIELSEN: ... representative of the union.

PRESIDENT: ... Fire Service?

MR NIELSEN: The United Firefighters.

PRESIDENT: Ambulance.

MR NIELSEN: Prison Officers.

PRESIDENT: Prison Officers.

MR NIELSEN: The ambulance employees, the Police Association and the TPSA. I think we've set a date, from memory, that we're to meet back in 23 November.

PRESIDENT: Yes.

MR NIELSEN: Thank you, Mr President.

PRESIDENT: Thank you, Mr Nielsen. Mr Willingham, are you able to give ... shed any light on the proposals in relation to the Fire Brigades Award?

MR WILLINGHAM: Can I work backwards a moment, Mr President, in relation to what Mr Nielsen has just put?

PRESIDENT: Yes.

MR WILLINGHAM: I was previously unaware of those dates that Mr Nielsen has put forward and I'm not quite sure who the Minister's representatives were on that working party, but as I understand it, those dates have not yet been confirmed with the PEAK negotiating group and before I was able to confirm them from my standpoint, I'd want to discuss with the various parties the impact of those time lines in relation to the special cases, because it may infer that special cases won't run prior to those objectives and those time lines being achieved.

It may of course mean that the individual employee organisations are going to run their special cases independently and not necessarily concurrently with those working group meetings and I'd need to discover what the factual situation is before I could say yea or nay to what Mr Nielsen's put forward.

In relation to what Mr Devine put to you, I appreciate that he's put this forward and I have no doubt that what he has said to the Commission is correct, however I cannot confirm it at this point in time because I've had no discussion with the Department of Police and Emergency Services. And again, as I understand it, the correct procedure would be that this document and these changes would be cleared through the PEAK negotiating group and once they've given it their seal of approval the matters could properly come before the Commission, and I would appreciate an opportunity to check both of those aspects out before the ... before coming hand in

hand with Mr Devine to get those award variations effected. It would not take me very long, Mr President, members of the Bench.

PRESIDENT: What time frame are you talking about?

MR WILLINGHAM: Oh, probably 4 hours, subject to the PEAK negotiating group having the appropriate opportunity to examine it and ensure that it in fact does stand alone and doesn't have any unforeseen repercussive effects anywhere else. Thank you, Mr President.

PRESIDENT: Yes. Thank you.

COMMISSIONER GOZZI: Mr Willingham and Mr Devine, just looking at that exhibit handed up ... the document handed up by Mr Devine on the clothing issue, it proposes to ... what the clothing issue is going to be, does that cut across ... it may not, but I'm asking you, does it cut across Exhibit W.6 which was the appendix to the November '89 decision? Now, in November '89 you said in respect of uniforms, or the parties said in respect of uniforms, that they would participate cooperatively in a review of the frequency of uniform issue, laundering and cleaning of same.

MR DEVINE: Sir, I might be better ...

COMMISSIONER GOZZI: Mr Devine.

MR DEVINE: ... situated to answer the question. Mr Willingham would be on the spot I'd suggest there, not to say that I enjoy or otherwise seeing him there, but again I'd ask you to cast your mind back to last time I was before the Commission on this matter, and I indicated at that time that this part of the discussions in agreement was one that was close to the heart, particularly of the Fire Commission. They've seen for some time that the issue of dress uniform was not only not all that cost effective but more importantly it was managerially not all that good either, and I indicated at that time that the union didn't necessarily believe that it was in line even with the structural efficiency principle, but we were prepared to move in the direction of trying to formalise it in a much better way within the award.

Now, we continue to do so and in fact we reached a compromise whereas initially it was proposed all uniform issue be on an as-and-when-required basis and the union rightly pointed out to management that that would create more problems for management than it would from the employees because there were certain parts of the uniform issue which were ... that simply wear out over a 12-month period and it referred particularly to working clothing.

COMMISSIONER GOZZI: Yes.

Tape alert.

So, whether it cuts across or not, from the point of view of the United Firefighters Union a lot of time and effort went into discussions with the Fire Commission to find a way to better phrase it within the award and that's what we did, and we felt that that was the minimum that we could deal with without creating any managerial difficulties as far as issuing clothing to staff members, bearing in mind that different individuals might view 'as and when required' in a different way and we wanted to avoid a situation where our staff are walking up with holes in their shoes and saying, 'Really, this is worn out'.

COMMISSIONER GOZZI: Yes. I suppose what I simply want to follow up on is that there are more than one area in the service where uniforms are issued. It was on the agenda back in November and it's on the most current agenda under item 2 on page 4 and I suppose at the end of the day the PEAK group, or whoever, will have to satisfy themselves that if there is going to be a consistent approach that that is it. If it's not, there may be a problem.

MR DEVINE: Well, Mr Willingham, when he discusses it with the PEAK negotiating group might be better positioned to speak on it at a later time but I would indicate that although you've got a number of services within the State Service that have a uniform issue, because of the variances in the occupation or their specific occupation, you'll find ... or we adopted the position that it was going to be difficult to standardised clothing issues across the service for each individual service because although they've got issue uniform they do different jobs.

COMMISSIONER GOZZI: Yes. Look, I understand precisely what you're saying on that point. Anyway, I've raised it and no doubt Mr Willingham or somebody can take that issue on board to see how it ties up with the particular agenda item.

PRESIDENT: When do you think it might be an appropriate time to deal with the matter, Mr Willingham?

MR WILLINGHAM: Deal with the matter before the Commission, Mr President?

PRESIDENT: Yes.

MR WILLINGHAM: Mr President, I'm advised that the PEAK negotiating group does not now meet next until 2 November, so it would be some time subsequent to that that I'd be seeking in terms of the Commission bringing the matter on to see whether it will in fact vary the award as sought by the Firefighters.

PRESIDENT: Yes, thank you, Mr Willingham. I presume the most appropriate mechanism would be for the Bench to determine a time some time after that and we'll let the parties know.

MR WILLINGHAM: I'd appreciate that, thank you.

PRESIDENT: Any other contributions? Mr Nielsen?

MR NIELSEN: Mr President, I'd like to make two corrections if I may. In reference to the chairman, I mentioned the gentleman's name was David Metcalf, but that's corrected to David Colgrave.

PRESIDENT: That's a subtle change.

MR NIELSEN: Forgive me, it's Monday, Mr President. Secondly, the reconvening date is 16 November, not the 23rd and in reference to Mr Willingham's comment, I understand on that Wednesday, Mr David Colgrave is making every effort to report back to the PEAK council ... a certain amount of pressure that day and that may not have happened. Thank you, Mr President.

PRESIDENT: Thank you, Mr Nielsen. Thank you very much for that report. It remains for the Bench to determine an appropriate date for a further report-back.

The Bench is of the view that it might be appropriate to give a more extended time to ensure there's a finality to these matters, rather than to have a number of report-back proceedings with little to advise of each time. Could we expect any conclusion by Christmas?

MR MAZENGARB: Yes, Mr President.

PRESIDENT: So in the last fortnight of December sometime the matters concluded?

MR WILLINGHAM: I had no problem until you said those last few words, Mr President. I've always been a little ...

PRESIDENT: I always sneak up, as you know, Mr Willingham.

MR WILLINGHAM: Oh, but you know me, Mr President, I will respond. I've always said, and I said it in the main hearings on the State Wage Case, that I thought the time lines were too short. And to some extent I'm grateful to hear Mr Mazengarb confirm that when you get down to the nitty-gritty of it there's a great deal more to be done than we've expected.

But I wouldn't confidently expect that all the matters would be concluded by 24 November, no.

PRESIDENT: 24 December.

MR WILLINGHAM: Yes, I'm sorry, 24 December.

PRESIDENT: Any of the three matters concluded?

MR WILLINGHAM: Well, Mr President, I suppose it's more or less to conversation, if the no-credit sick leave scheme, for instance, does not get off the ground we then have to go back to the basics of determining an accrual system which, hopefully, can be standardised and implemented across the State Service for all classes of employees.

Now, I just don't think that is capable of being agreed, let alone all of the analysis and detailed research that's required by that time. That's a personal perspective. I'm not specifically engaged in the task of researching and negotiating those matters, but I feel very sorry for the people who are if they've got to have it concluded by the end of December. If, on the other hand, the no-credit scheme comes through, then the time line should be well and truly met.

PRESIDENT: As to special leave?

MR WILLINGHAM: Special leave I think is a little easier. I would imagine that that could be ... or positions which should be finalised by December. Of course there's always the possibility that the employer and employee groups can't reach agreement.

PRESIDENT: Which might ...

COMMISSIONER WATLING: That means we'd have to arbitrate the issues.

MR WILLINGHAM: Well, it's at least one solution, Commissioner Watling, yes. You may, of course, give us more time.

COMMISSIONER WATLING: Well, if you could wave the magic wand, what time would you want?

MR WILLINGHAM: Personally, I think it's appropriate to have a report-back in December, possibly the second or third week. I was just rising, I suppose, to ensure that that wasn't a commitment that these matters would be finalised because, again from personal experience, I don't think that would be wise.

COMMISSIONER WATLING: Well, what do you think would be an appropriate time to finalise them? I'm more interested in the finalisation rather than anything else.

MR WILLINGHAM: Well, I suppose the PEAK negotiating groups charter is the end of 1992 for everything. That's for everything, including restructured awards ...

COMMISSIONER WATLING: Certainly not ...

MR WILLINGHAM: ... and everything else.

COMMISSIONER WATLING: Certainly not these issues that were singled out as special matters to be dealt with by now.

MR WILLINGHAM: I understand that, Commissioner. I'm just conscious of the fact that if, with the very best intentions in the world, setting finite time lines can go astray, as has already been proven by this morning's hearing. And I'm just not confident that all of these matters will be properly agreed and concluded between the parties by December. Experience tells us that much if nothing else.

COMMISSIONER WATLING: Well, given that I accept that, my question was really: when do you think it will be completed?

MR WILLINGHAM: I'd be more comfortable, personally, with an April 1991 date. If you're looking to have people locked up to the situation where either agreement can be reached and brought back before the Commission or whether the parties have to come back to the Commission and say 'arbitrate' - that's very much a personal perspective.

PRESIDENT: We've decided we will adjourn for a brief period. Thank you.

SHORT ADJOURNMENT

PRESIDENT: Well, we've decided we should resume again for a further report-back on those matters which have been canvassed this morning at 2.15 on Monday, 12 November.

We are of the view that we should be able to obtain a fair degree of progress as a result of those time lines which have been established in 0.1.

Mr Devine, we will ... we'd better label your ... the document you tendered this morning, that will become known as D.1.

MR DEVINE: Sir.

PRESIDENT: That matter will also be dealt with on that date - 12 November - and I think that just about takes us as far as we can proceed at this stage.

Are there any questions, comments? No? That being the case,
we will adjourn until 2.15 on 12 November, thank you.

HEARING ADJOURNED