

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5664 of 1995

IN THE MATTER OF an application by the
Australian Education Union, Tasmanian
Branch to vary the Technical and Further
Education Staff Award

re hours of work

COMMISSIONER GOZZI

HOBART, 16 August 1995
continued from 21/7/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Are there any changes in appearances in this matter?

MR R. MILLER: By your leave, sir, I think that this matter does not concern the SPSFT and I should be very shortly leaving.

COMMISSIONER GOZZI: Yes, all right, thanks, Mr Miller. Now Mr Evans.

5 MR EVANS: Yes, commissioner, the commissioner may be both surprised and pleased to be informed that some discussions have occurred between the parties since the last time this matter was before the commission and - whilst I wouldn't say that we have entirely exhausted all the concerns that exist around these matters, I think we are in a situation where we are able at least in relation to the first matter, that is,
10 the teaching load reduction for beginning teachers, able to present a joint position to the commission in relation to their proposed award variation.

COMMISSIONER GOZZI: Very good.

MR EVANS: I have - well - I guess this means I'm amending original application to vary the award in the terms that we originally put in and I think were subsequently
15 amended by the commission - by leave of the commission.

COMMISSIONER GOZZI: Yes, it was.

MR EVANS: Yes.

COMMISSIONER GOZZI: It was amended on the 21st July '95 but only -

MR EVANS: Only minor - in a minor way.

20 COMMISSIONER GOZZI: - yes, in a minor way, yes.

MR EVANS: Well, subsequently - before I perhaps tender that as an exhibit - our new position, if you like, as an exhibit, subsequent discussions have led to an agreement between the parties that we hope the commission will endorse, that a teaching load reduction - or that the annual teaching load of permanent - of teachers
25 in their first or second year of permanent employment undertaking an approved course of teacher training should be 612 hours - their annual teaching load.

COMMISSIONER GOZZI: Right.

MR EVANS: That figure is arrived at on the basis of a nominal reduction of three hours for the nominal 36 teaching weeks in the year, plus two which therefore
30 nominally makes the weekly teaching load of these people 18 hours.

COMMISSIONER GOZZI: Eighteen hours by 36 weeks, is it?

MR EVANS: Yes - minus the two week reduction which is inherent in the award which is two times 18 in this case, that is, 36.

COMMISSIONER GOZZI: Right. So 18 times - 36 minus 36 hours -

35 MR EVANS: Minus - minus 36 - that's right.

COMMISSIONER GOZZI: - gives you 612, does it?

MR EVANS: Yes, yes.

COMMISSIONER GOZZI: Right. Okay.

MR EVANS: And whilst obviously the AEU, you know, is concerned about this and not entirely happy about it, in the scheme of things and the way business has been done between the parties in the recent past, I guess it is pleasing that we are able to be in a situation where we can have this sort of agreement.

5 We have accepted that the - I guess the basis for the three hours is that - and this is only a very general statement - that the majority of classes in TAFE colleges run for three hours, so basically these people are getting one class a week reduction. And having said that, I'm only speaking very generally, because of course -

COMMISSIONER GOZZI: Yes, sure.

10 MR EVANS: - because there are eight hour and 12 hour and four hour and one hour -

COMMISSIONER GOZZI: Yes.

15 MR EVANS: - periods of teaching as well. But as a general thing a three hour class is the norm. And it's on that basis that the three hours is struck. Obviously we would much prefer it to be as it was before but given that and given that obviously we will be bringing a matter like this up in the context of further discussions under the State Wages Agreement between the parties in terms of concessions we may have made, on that basis we would recommend that agreement that we have reached be endorsed by the commission by way of award variation, which I have a copy of.

20 COMMISSIONER GOZZI: Very good. Mr Miller - Mr Evans rather - that's AEU.9, is it?

MR EVANS: Yes. Yes, it is - it would be nine.

25 COMMISSIONER GOZZI: Thank you, we'll mark that exhibit AEU.9. Now just before we proceed any further, I don't think there's a need to amend the application because it could well be that what's been put before me is comprehensive within that application in any event.

MR EVANS: Yes, yes, I think that's right, commissioner. As you can see - and I apologise for the brevity of presentation of this variation - it would add a new subclause, 13(c)(i) it should say there -

30 COMMISSIONER GOZZI: Yes.

35 MR EVANS: - which would state: that the teaching load of teachers in their first or second year of permanent employment and undertaking an approved course of teacher training shall be 612 hours. I think that would cover the situation. It doesn't just say the teaching load of beginning teachers. We've attempted to spell that out so there's no misunderstanding in relation to what does that mean - what is a beginning teacher. We clearly understand that it means a permanent teacher in their first or second year of employment. And on that basis -

40 COMMISSIONER GOZZI: And that really would apply only in effect to beginning teachers. By taking beginning teachers, there aren't any other type of teachers in first or second year, are there?

MR EVANS: Well they may be temporary, for example, commissioner. They may be teachers who are employed -

COMMISSIONER GOZZI: And what about teachers with past experience who are not beginning teachers? Does that mean that anybody hired with previous experience from

another TAFE system in another state, say, would only in their first year undertake 612 hours?

MR EVANS: If -

COMMISSIONER GOZZI: How do you differentiate?

5 MR EVANS: Well if that - well the differentiation, I guess, is whether or not the person has teaching qualifications, and if - and whether or not they're undertaking the course of teacher training. If that person is not doing the course -

COMMISSIONER GOZZI: Right.

10 MR EVANS: - they don't get the teaching load reduction the way that clause is phrased.

COMMISSIONER GOZZI: Right.

15 MR EVANS: So that's the critical thing. The reduction is to accommodate in - you know - in undertaking what is a course of full time study essentially. So whether or not they've had teaching experience or otherwise, I don't think matters. If they're doing the course we say they need the time.

COMMISSIONER GOZZI: Yes. Well you've obviously thought this through and it's in negotiation and it's not - hopefully not going to set up an award interpretation argument further down the track when the present parties may no longer be involved.

20 MR EVANS: Well that's why I haven't - we haven't written in the words 'beginning teachers'. That's why we've said a teacher in their first or second year of permanent employment undertaking an approved course of teacher training, so both those conditions have to be met.

COMMISSIONER GOZZI: Yes.

MR EVANS: Well there are - I guess there are three - well three conditions in there.

25 COMMISSIONER GOZZI: Yes.

MR EVANS: The teacher must be permanent.

COMMISSIONER GOZZI: Yes.

MR EVANS: He or she must be in their first or second year of employment and he or she must be undertaking an approved course of teacher training.

30 COMMISSIONER GOZZI: I think that covers it pretty well, doesn't it? It's a fairly substantial brick wall around it.

MR EVANS: Yes. Well you never know, commissioner, but I think that's as tidy as we could make it.

COMMISSIONER GOZZI: Yes. No, I can see that.

35 MR EVANS: So on that basis I would recommend that variation to the commission and I understand my colleagues opposite will be doing the same.

COMMISSIONER GOZZI: All right.

MR EVANS: I can either move onto the second subject matter of the application - yes - perhaps I'll do that and they can respond.

COMMISSIONER GOZZI: I think - yes - I think so.

5 MR EVANS: The second matter related to the number of teaching hours which should be credited towards the annual load of a person or a teacher who is absent on basically sick leave or long service leave. The commission will recall that the previous practice had been to deduct the nominal weekly load from teachers who had been in excess of one week, but teachers who had been absent who had been fewer than five working days, their actual teaching load had been deducted. This was changed earlier
10 this year to the 17.4 hours per week when the absence was in excess of a week.

In our previous submissions in relation to this matter, the AEU had put to the commission that whilst obviously 21 hours is the nominal weekly load in our view under the award and whilst it's obviously of benefit to our members to be 21 other than 17.4, the major factor which we were unhappy about in relation to this matter
15 was that the - the 17.4 figure which is obtained by using a divisor of 41 weeks divided by the annual teaching load -

COMMISSIONER GOZZI: Seven fifty six.

MR EVANS: - yes - was not consistently applied; that there were other instances where that figure was relevant where the figure of 21 or some other figure, for that
20 matter, was applied and that was, more than anything else, what was causing us and our members concern.

Subsequent discussions with the employing authority have led to a situation where the AEU is prepared to say that in relation to this matter at this stage we are not pursuing the award variation as before the commission, and we understand that the employer
25 will, for periods in excess of one week give a credit of 17.4 hours towards the annual teaching load of teachers who are absent. For periods of less than one week they will continue the past practice which is to deduct the teacher's - the time the teacher was actually timetabled to teach on that day or those days.

COMMISSIONER GOZZI: So more than a week, 17.4 less the actual timetable?

30 MR EVANS: That's correct.

COMMISSIONER GOZZI: Mm.

MR EVANS: We do that though on the basis and on the understanding that further discussions will occur between the parties in relation to all areas that we can identify where these divisors and numbers are relevant in an attempt where both parties
35 believe it to be desirable to obtain consistency of application in relation to these numbers and these divisors across areas, I guess, in relation to the award and perhaps even some which aren't contained in the award.

We have a bit of a problem, commissioner, I think, in terms of the annual load, ideas of nominal weekly load, ideas of 41 teaching weeks, but then 36 weeks of actual teaching, then 34 weeks of teaching and then 52 weeks of a calendar year and 48
40 weeks of a TAFE year.

COMMISSIONER GOZZI: Yes.

MR EVANS: And these figures are variously used in different places -

COMMISSIONER GOZZI: Right.

MR EVANS: - and I think it's both parties' view that there is a need to look at all the places where these figures are used and where possible and where desirable to attempt to obtain some consistency in their usage, and at least so it's explicitly understood. If it's not consistent so it's explicitly understood why, in one figure - in one calculation the divisor of 41 is used and in another calculation it's 34 or 48 or 52. So -

COMMISSIONER GOZZI: Thirty four being less than two weeks for marking and -

MR EVANS: Yes, yes. So there are really a number of weekly divisor figures that are used. Fifty two weeks is used in some cases, being obviously the calendar weeks of the year. Forty eight weeks is used in some cases, being the TAFE year so to speak. Forty one weeks is used in some cases, being the number of teaching weeks in the year or the number of weeks in which a teacher can be required to teach. Thirty six is used in some cases, being the nominal number of hours and 34 are used in others. And this is what really is at the nub of this problem that we've brought to the commission in relation to the reduction.

COMMISSIONER GOZZI: Yes.

MR EVANS: And I believe that profitable discussions can occur between us. If we both approach them on the basis of not attempting to get an outcome which, to put it crudely, get us - either of us the greater amount of benefit, but if we both genuinely look to, you know, what will be a fair dinkum and consistent approach across all those areas then there is room for productive discussion. And it's on that basis that we are at this stage prepared to accept the 17.4 issue at this time.

Having said that however, of course, if those discussions don't bear the fruit that we hope, we reserve our rights to return to the commission in relation to that particular issue.

COMMISSIONER GOZZI: All right. That's very good.

MR EVANS: Okay.

COMMISSIONER GOZZI: Thank you, Mr Evans. Mr Willingham?

MR WILLINGHAM: Yes, thank you, Mr Commissioner. There is very little for me to add to what Mr Evans has said. He's again conveyed to you in precise terms the position that was reached between the parties, and apart from reinforcing the issue which has always been a matter of concern to me, that the main problem which has bedevilled the minister's thinking, relates to the six separate annual numbers of weeks. As Mr Evans described them 52, 48, 41, 38, 36 and 34, I'd add another one which is 39, but that's - I'll dwell on that another time if Mr Evans chooses to bring the matter back here.

However, I would say this, I'm most grateful to Mr Evans and the AEU officers who met with us a few days ago to try to resolve these outstanding issues and not often I would give the AEU a plaudit, but it may be especially appropriate today to say that on that occasion and in respect of these matters theirs was a most constructive approach and it was appreciated, and as one era, I suppose, closes the mists of time descend upon it, Mr Commissioner, then maybe another one opens up.

I'm reminded, Mr Commissioner, that I said only a few days ago in this hearing before you, that looking at the files, you and I had been associated on this particular case - T.2417 for the best part of seven years and it was time that both of us moved over. I didn't realise you were going to take my suggestion so seriously at the time and I'm not at all sure that I shouldn't have been the one to go.

Can I just say very briefly, Mr Commissioner, I understand this may be the last occasion upon which we will have the pleasure of appearing before you - or that I shall have the pleasure of appearing before you. I've lost track well and truly of just how many occasions that's been and I would think that some of the exchanges between you and me have rightly deserved some sort of place in the folklore of this commission. I hope they're not forgotten too quickly. Let me say that it has been a pleasure and I shall remember those years with great fondness. If the commission pleases.

COMMISSIONER GOZZI: Thank you, Mr Willingham, I appreciate those comments.

I would like to take the opportunity of thanking the parties here today for the contribution they've made to the operation of the commission. You're right, Mr Willingham, it is time for someone to move on and in this case it is my time - I feel very comfortable about that. I have enjoyed our cut and thrust opportunities from time to time and some of the transcripts, when you read them after time, you sort of wonder, you know, just what led to it all. But the good thing about it has been that the relationship has been able to move on, and I think underpinning it has been a friendship which I have valued, and I've appreciated that in particular. And I'm very gratified today that there appears to be between the AEU and the minister represented by the parties here today a more constructive and conciliatory approach to dealing with issues, and I think that's fantastic and that's the way it ought to be.

I'd like to take the opportunity of thanking you for the submissions you've made and making my job easier - in the main that's been the case - and we've always had the ability to communicate with one another on issues as we needed to. And I must say I've valued the confidentiality that is important in those matters and the integrity that the parties have brought to these proceedings. And whilst I mightn't be sitting on the bench, rest assured I'll be in and about the place somewhere or other and our paths will cross, I'm sure, along the way - maybe out at Elwick.

All right. These proceedings are concluded.

HEARING CONCLUDED