

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2587 of 1991 and
T No. 2473 of 1990

IN THE MATTER OF an application by
the Tasmanian Prison Officers
Association and the Tasmanian
Public Service Association (now
the State Public Services
Federation Tasmania) to vary the
Prison Officers Award

re structural efficiency
principle

COMMISSIONER IMLACH

HOBART, 22 April 1994
continued from 17/3/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any change in appearances?

MR P. NIELSEN: Yes, Mr Commissioner, I have to apologise for our president, Mr Masters. He's involved in a school at the Corrective Services this morning which he's unable to get away from.

COMMISSIONER IMLACH: Thanks, Mr Nielsen. No other changes?

MR K. GREY: Yes, sir, and with us today, the SPSFT, is **MR STAN HAWLEY**, a superintendent at the prison.

COMMISSIONER IMLACH: How do you spell that second name?

MR GREY: H-a-w-l-e-y.

COMMISSIONER IMLACH: Thanks, Mr Grey. Right. Now who is kicking off?

MR NIELSEN: Mr Commissioner, I will if I may.

COMMISSIONER IMLACH: Before we do, just a small point, I'm sorry to impose on such a serious occasion, but Mr Willingham's tie demands explanation.

MR WILLINGHAM: Commissioner, I'm glad you noticed.

COMMISSIONER IMLACH: Well I notice they're foreign colours.

MR WILLINGHAM: Indeed they are not foreign colours, commissioner, they are the colours of thoroughbred race horses which have won the Thoroughbred Championship of Australia, the W.S. Cox Plate, and I could roll off a few names - Tobin Bronze, Superimpose and Kingston Town. That is the Moonee Valley Racing Club W.S. Cox Plate tie.

COMMISSIONER IMLACH: I'm the one who is ignorant and foreign - except I know it's the late Tobin Bronze - I know that much.

MR WILLINGHAM: Very much late as of - as of this week, commissioner.

COMMISSIONER IMLACH: Right. Well I had to make that remark, Mr Nielsen - I hope I haven't stopped you at all.

MR NIELSEN: No, not at all, Mr Commissioner; actually you've given us the opportunity - Mr Grey would like to make a brief submission first -

COMMISSIONER IMLACH: Right.

MR NIELSEN: - if he may.

MR GREY: Sir, I would just like to tender as a formal exhibit a copy of the letter that was faxed to you yesterday.

COMMISSIONER IMLACH: And I think we'll call that SPSFT.3. Do you want to read that out, Mr Grey, just so it's on the record please?

MR GREY: Yes, sir. It's addressed to you, sir, regarding the Prison Officers Special Case: Further to our letter of 17th March 1994, regarding the presentation of submissions by the employee organisations involved in the special case, we can now advise agreement has been reached which enables the TPOA to represent the SPSFT in T.2473. We trust this arrangement meets with your approval and hopes this assists with the completion of the case.

COMMISSIONER IMLACH: Right. Mr Nielsen?

MR NIELSEN: Mr Commissioner, since our last hearing on Thursday 17th March, the employee parties to this special case, that is, the TPOA and the SPSFT, have held meetings on the following dates: Tuesday 29th March, Wednesday 30th March and Thursday - yesterday - 21st April. The objective of these meetings is to finalise the submissions on behalf of the employee parties.

Mr Commissioner, we wish to submit to you arising out of these meetings an amended exhibit, TPOA.91. This exhibit was one which covered nine levels of classifications detailing functions, responsibilities, supervision, insignia and salaries. The SPSFT and the TPOA now submit this amended exhibit, and I understand we've already given a copy to your good associate for distribution.

COMMISSIONER IMLACH: Yes, and so that I don't have to go and look through this mountain of paper here, Mr Nielsen, is that the old No.91 amended or is it a new number?

MR NIELSEN: Well I think we desire - I think we ought to give it a new number, Mr Commissioner.

COMMISSIONER IMLACH: And is 91 a new number?

MR NIELSEN: No, 97 as I understand, if my -

MR WILLINGHAM: It's 98, commissioner.

COMMISSIONER IMLACH: Ninety eight.

MR NIELSEN: Ninety eight.

COMMISSIONER IMLACH: I'll take your advice.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: Alright, so TPOA.98 and that - I'll put in brackets 'Replaces TPOA.91'.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: Yes, thanks, Mr Nielsen.

MR NIELSEN: Now, Mr Commissioner, if you desire, we can come back to this - we believe that the - this TPOA.98 is now more professional and a more efficient one. It takes in on page 1 there the - sorry - have we got a spare one for our -

MONITOR: on the microphone.

MR NIELSEN: Oh, I'm sorry, apologies for that.

Mr Commissioner, on page 1 of the new document, TPOA.98, the - basically all those columns - the functions, the responsibilities, and the supervisions and qualifications - they've all been reworded, and there's been quite a lot of effort put in by both the employee organisations on this matter. Actually, it was all day yesterday, to be quite frank with you, and some very heavy work on those previous dates and we believe that the - if you care to take note of the - of the wording in those various columns, that it does present a far more - a far more efficient and a far more effective document.

I was speaking to my colleague, Mr Willingham, earlier this morning in regards to giving more detail and more emphasis to this document, but we don't wish to repeat ourselves. What we have asked, which may concern the commission, is that in view of the discussions that have taken place between the SPSFT and the TPOA and the fact that previously there were no witnesses from the senior management level, we have - and it's only been finalised late yesterday and this morning, Mr Commissioner - that we do desire, which may not please the commission, to have the opportunity at a later date to bring a witness - or witnesses forward from the senior management. We hope to have another additional exhibit. As to whether we'll make that century figure or not remains to be seen, but we believe that in view of the closer understanding between the two employee organisations, it certainly will be beneficial to our case to have senior management - and by that I mean superintendents, Mr Commissioner - giving witness before the commission and also additional exhibits.

If I may proceed, Mr Commissioner, we did on the Friday 15th April ultimately get all the parties together and that is the minister's representative, the Corrective Services management and again the employee organisations and whilst it is on record that up till, I suppose, till the previous hearing, there was one - there was not one wit of agreement. It may be

surprising to the commission that, Mr Commissioner, we have given - we did report that to you at the last hearing for particular items. That was the loaded rate which was an exhibit of TPOA.88 and, Mr Commissioner, we believe from our position and subject to the minister's advocate confirming or otherwise, that we have an 'in principle' agreement 'without prejudice' on the loaded rate. In fact, we have - have a trial period, as I understand, 84 weeks and then at the end of that period we'll review the position together.

The TPOA - or I suppose that will be TPOA.98 - we believe there is optimism there that the discussions again with the - all the parties. There may be an ability to come to a closer understanding, if not, some agreement on the actual structure.

Mr Commissioner, item 3 was TPOA.84 and it was in reference to clause 19 of the award, page 17 of the award, and it's a back to back re overtime and the penalties paid and again to my understanding - that's the employees position - we do have close to an 'in principle' agreement 'without prejudice' position there. And the last issue that we had discussions, Mr Commissioner, was TPOA.84 again, and it was in regards to clause 19(c) - Overtime - excuse my voice - page 16, and it was on the notice change of rosters.

Now we didn't really get to a - to a - I suppose a complete 'in principle' agreement, but as I understand we're heading along the road there to - to where we seem to have some measure of understanding or agreement and that the - we believe with the opportunity of further discussions between the parties that the - there is an ability to report back to the commission with a - an agreement on these - or some of these positions.

That's as how we see the ball game, to be frank with you at the present time, Mr Commissioner.

COMMISSIONER IMLACH: Now, Mr Nielsen, we had this problem last time.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: So what are you going to do? Are you going to now plunge into your submissions or what?

MR NIELSEN: No, no - well - answering that question, the position, as I understand it, Mr Grey, I assume, would like perhaps to comment, is that for all intents and purposes the TPOA has finalised its submissions in regards to those ranks that Mr Willingham took issue with in the Anomalies Conference up to the senior prison officers position. We have now, as you have been reported to previously, of a very close cooperation with the SPSFT and out of discussions yesterday

comments made while we have people present in these proceedings.

COMMISSIONER IMLACH: Yes, well I have no objection. Do you want to make a point about that, Mr Willingham?

MR WILLINGHAM: No, commissioner.

COMMISSIONER IMLACH: Mr Grey?

MR GREY: Thank you, sir. I would just like to reiterate the submission made by Mr - Mr Nielsen, in that now that the parties have got together and have jointly gone through a number of processes and a number of submissions, what you have in TPOA.98 is the essence of the submissions put to you by the employee organisation, TPOA, to date. What TPOA.98 does is - is summarise the submissions put previously and we anticipate will require one further hearing date to consolidate that for the higher levels.

It is our belief that adequate submissions have not been made at that higher level and without that the case would lack some degree of credibility and until a final agreed document was worked out between the employee organisations it could be perceived that submissions by ourselves could potentially undermine submission already made or contradict or whatever. Rather than do that beforehand we thought it was far better to get an agreed united and consistent position so that submissions made from that would be supportive rather than be perceived in any other light.

On the basis that this has only just recently been achieved, we believe that there is a need for one further submission from the employee organisations to finalise the case. That may take some little time - an hour or so - at a further hearing date, and that would be the completion of the submissions from the employee parties - if that does help.

COMMISSIONER IMLACH: Thanks, Mr Grey. Well I think that's what's going on - yes - thank you.

MR GREY: Thank you, sir.

COMMISSIONER IMLACH: Now, Mr Willingham, I don't know whether I'm being unfair to you, but did you want to say anything at this stage?

MR WILLINGHAM: No, you're not being unfair, commissioner, and yes, I do, please.

COMMISSIONER IMLACH: Right. You do understand there's a burning question not answered, of course.

MR WILLINGHAM: Yes, not a question of me though, commissioner.

COMMISSIONER IMLACH: That's what I thought - that's what I'm saying.

MR WILLINGHAM: Yes, you made reference in an exchange with Mr Nielsen, that you thought it was akin to a game of chess. Well in tournament playing chess you've got to produce 40 moves in 2.1/2 hours and on that basis this game is about 1400 moves long already and a fair way to go yet, and again, as in tournament play, Mr Nielsen has sealed his move overnight so that we don't get a look at it till the next day's play.

Can I just go to the discussions which have taken place with the employee organisations; I think Mr Nielsen has accurately conveyed to you the tenor of those conversations, but for the purposes of the record, Mr Commissioner, I'd like to indicate to you where we stand from the minister's perspective on those four issues detailed by Mr Nielsen.

I don't want to go into the details of what divides and where we're agreed, Mr Commissioner, because the discussions were on a confidential and 'without prejudice' basis and observing the convention I don't intend to broach the confidence of the parties, but in relation to the loaded rate there is essentially 'in principle' agreement. There are a number of, what I would categorise, peripheral and minor issues to be settled, but I think it's fair to say that there is an 'in principle' agreement on the concept.

In relation to the overtime, that is, the back-to-back shifts, there is 'in principle' agreement. On the issue of notice of change of roster there is not 'in principle' agreement but there is an understanding between the parties and with some good fortune that may well lead to 'in principle' agreement. However, let me make it clear that in relation to the proposal originally advanced by the TPOA, we are in a position to say that at worst we accept that proposal.

And the final matter was the structure which was initially TPOA.91 and that was the document that the parties discussed on 15th April; it's now TPOA.98, and I have not had an opportunity to study that, commissioner, and compare it with TPOA.91 and to be able to identify the alterations. But, in general terms let me say, just in relation to the structure itself, that is, the levels proposed in the structure in both TPOA.91 and TPOA.98, there is not agreement. There remain significant differences between us in respect of some of those levels. Equally it is fair to say that there is agreement on a number of other matters contained in the structure including some of the levels.

I might also indicate to you, commissioner, for the purposes of the record, that the meeting on 15th April was attended by the newly appointed director of the Office of Public Sector Management, Mr John King, as well as the minister's representatives that usually appear before you in proceedings under special case.

Now in relation to Mr Nielsen's and Mr Grey's foreshadowed intention of calling further witnesses, I have no objection to that. It is clear that the commission does not regard the association's cases as having been completed to the extent that their substantive submissions have not yet been finalised. That's been the case now for some two sitting days, and so our position, commissioner, remains that at the conclusion of those substantive submissions which I think Mr Grey said he expected would be finalised of sitting we will then be in a position to recommence our major submissions in response. However, having said that, commissioner, I'm still in a position where if it pleased the commission I could usefully take up quite a substantial slice of the day by going on with my interrupted submissions. However, since it would necessarily mean that I would have to revisit parts of them and maybe in quite a significant way, it does seem to be a waste of the commission's time and the parties if I went that course of action and unless I can be of further assistance to the commission that is all I need to say.

COMMISSIONER IMLACH: Thanks, Mr Nielsen - Mr Willingham. You've been of great of assistance. It brings the ball back to your court, Mr Nielsen - the same as last hearing, I believe. What do you say?

MR NIELSEN: Well, Mr Commissioner, in view of what we've said this morning, we desire with respect that the commission set a date so that we're to able to pursue the request of bringing in a - a management witness, an exhibit, and finalise the - our submissions before you, sir.

COMMISSIONER IMLACH: You are seeking an adjournment, Mr Nielsen?

MR NIELSEN: We are seeking an adjournment prior to setting - to a date, Mr Commissioner.

COMMISSIONER IMLACH: Are we able to fix that date now?

MR NIELSEN: Yes, Mr Commissioner, we're - we have some diary dates in mind as to whether that -

COMMISSIONER IMLACH: We'll go off the record, thanks, Gay.

OFF THE RECORD

COMMISSIONER IMLACH: Thank you, gentlemen. This matter will resume at 2.15 on Wednesday 4th May, when the TPOA will finalise its submissions and bring witnesses if required and then again on Friday, 6th May, commencing at 10.00 am.

Thank you. This matter is adjourned.

HEARING ADJOURNED