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TRANSCRIPT OF PROCEEDINGS

O/N 155614

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No. 13741 of 2010

TEACHING SERVICE (TASMANIAN PUBLIC SECTOR) AWARD 2009

**Application pursuant to section 23(2)(b) of the Industrial Relations
Act 1984 lodged by the Australian Education Union, Tasmanian Branch,
to vary the above award**

HOBART

9.30 AM, TUESDAY, 25 JANUARY 2011

THE COMMISSIONER: Can I have appearances, please?

5 MR C. LANE: If the commission pleases, my name is Chris Lane, I appear in this matter on behalf of the Australian Education Union Tasmanian Branch.

THE COMMISSIONER: Thank you.

10 MS D. CRESPIAN: If it pleases the commission, Debbie Crespan appearing on behalf of the Minister administering the State Service Act.

THE COMMISSIONER: Thank you. Over to you, Mr Lane.

15 MR LANE: Yes. Commissioner, I will be actually handballing it over, a touch effort on my part, mainly because, if I could just briefly explain, Commissioner. The two people working on this project for approximately three years, has been Ms Crespan and Ros Madison from the AEU Tasmanian Branch. Ms Crespan has a far better knowledge and understanding of this matter than I do, especially the detail of it, and if the commission pleases, I would prefer to handball it over and allow
20 Ms Crespan to take you through the basic changes and the intent of what we're trying to do, and I will just come in and cheer from the sideline or whatever, if necessary to help you make the decision we would like you to make, Commissioner.

25 THE COMMISSIONER: Thank you. Over to you.

MS CRESPIAN: Firstly, just to explain the background, to my knowledge, this process started in 2008 and there may have been some discussion earlier than then, but when the change came in for bereavement leave, parental leave and personal leave, when they were updated for the wider public service, we made a decision then
30 to look at the teaching award, and whether or not those changes needed to be made in the teaching award as well. So that started the process, and then we further extended the process by looking at Ministerial direction number 3, to see what parts of that Ministerial direction could be transferred into the award so that there was only one reference point, and to avoid complications or confusion with multiple points of
35 reference.

The review kept going on, and when the Tasmanian State Service Award came in, there were a number of changes, and we made the decision to look at the common allowances between both awards and see – identify which ones we line and have the
40 same for both awards. So three years down the track, we've got a number of variations that we've made, and I will go through that now.

THE COMMISSIONER: Yes, please.

45 MS CRESPIAN: Now, do you have a – we did make some further changes from the one that was originally submitted, but I do have another copy for you.

THE COMMISSIONER: Thanks.

MS CRESPIAN: And I do have, if it assists, my own working document which does summarise, I guess, the changes - - -

5

THE COMMISSIONER: Excellent, that's excellent, thank you.

MS CRESPIAN: - - - which is what I will be working through.

10 THE COMMISSIONER: Okay, that's good, thanks.

MS CRESPIAN: I could probably go straight down to point 3, which is part 1, Application and Operation of Award, clause 7, Definition. And we've simply, in there, under expression of interest, the definition of expression of interest, we've simply updated the terminology from "temporary" to "fixed term". So there's a small change there. If you go down to the definition of "Secretary" it previously – or currently says – refers to "the Department of Education and the Arts", so we've updated that to "the Department of Education".

20 Okay, so if we now go to part 2, Employment Relationship and Related Matters, under clause 1, Employment Category, we've made another change. There's a reference to "temporary" under the definition, we've changed that to "fixed term".

25 THE COMMISSIONER: So in 1(b), "as employed temporarily for specific duties - - - "

MS CRESPIAN: Excuse me?

30 THE COMMISSIONER: Under 1(b), Employment.

MS CRESPIAN: Yes, yes.

35 THE COMMISSIONER: You've got it? A fixed term employment may be - is a person who is employed temporarily. So you do have facility for temporary employment.

MS CRESPIAN: Yes.

40 THE COMMISSIONER: Or is that – is that somewhere?

MS CRESPIAN: I'm not entirely sure.

MR LANE: I would – if I may, Commissioner?

45 THE COMMISSIONER: Please.

MR LANE: Can I suggest, Commissioner, that we simply take out the word “temporarily” as “employed for specific duties over a period of time determined by the employer - - -”

5 THE COMMISSIONER: Yes, yes.

MR LANE: It still means fixed term.

THE COMMISSIONER: Yes.

10

MR LANE: It’s a bit contradictory, when you say we’ve taken out “temporarily” and left it. So are you comfortable to take that out?

15 MS CRESPIAN: Yes, yes. Okay. Under the same clause, we’ve – under “full-time employee” and “part-time employee” we’ve included the word “permanent” in front of those, just to differentiate between a fixed term employee and a permanent employee.

THE COMMISSIONER: Yes, fine.

20

MS CRESPIAN: Okay. Under clause 3, New Appointments and Promotion, we’ve taken the reference out – in the third sentence it says “band level of a classification”. It previously said “band level, classification or grade”. So the latter two aren’t relevant anymore, so it’s just band and level. Okay. We’ve actually inserted a new clause under this part, which is clause 7, Notice of Termination. And there – they are the provisions that are in the State Service Award, and we’ve taken what’s across.

25

THE COMMISSIONER: Yes.

30 MS CRESPIAN: Okay, if we go onto part 3, Salary and Related Matters. In the first paragraph we’ve included a reference that says “inclusive of recreation leave”. Leave loading is now annual for teachers, so we wanted to make that reference at this point. We’ve also changed this into ascending order - it previously read the other way. We had a number of comments about that, so we’ve changed that across, and they are the current salaries for teachers that we’ve put in there.

35

Okay, if we go to clause 3, Classification Definitions – under the first definition, advanced skill teacher. Fourth line down, there was a reference to position description. The new terminology is statement of duty, so we simply updated that.

40

Okay, under the same clause, but further down, we’ve deleted the reference to “full-time employee”, because that’s now under the definitions in Employment Category, so we’ve taken that out of there. And we’ve put in a new reference to instrumental musician, which in the current award is an unfinished sentence. So we completed - - -

45

MR LANE: Unfinished Symphony.

MS CRESPAN: We've completed that one.

THE COMMISSIONER: Fair enough.

5 MS CRESPAN: Okay. Under clause 4, Classification Bands, once again, we've put them – simply put them in ascending order.

THE COMMISSIONER: Yes.

10 MS CRESPAN: And also, the table for school psychologists, which is in the same clause, ascending order. Okay, under the same clause, for instrumental musicians, we've updated the – the calculation for and the wording for instrumental musician – taking out the references to casual loading, and just putting in an explanation that the
15 Okay, clause 5, in that, we've changed all references to wages – from wages to salary, to be consistent where it appears, I think, 11 times - and also made reference to – that the salary is inclusive of recreation leave allowance and leave loading.

20 Okay, under clause 6, Higher Duties Allowance, there's – once again, there's a reference to temporary, in subclause (g), which we've changed to fixed term. Okay, in the same clause, subclause (h), we've taken out the reference to overtime, and it now reads:

25 *Where an employee receiving allowance as described in paragraph (a) proceeds on approved paid leave or personal leave, the employee will continue to receive that allowance.*

30 Our teaching staff don't receive overtime, so we've taken that reference out. And to that end, we've also deleted subclause (i), which related to overtime as well. Clause 7, Recreation Leave Allowance, we've changed to simply reflect what it is currently, and that is that recreation leave allowance is annualised in part of salary.

THE COMMISSIONER: Yes.

35 MS CRESPAN: Okay, I think, move onto part 4, Allowances. Once again, we've made a number of changes to try and bring these in line with the Tasmanian State Service Award. Clause 1, District Allowances, we've simply taken the wording from the Tasmanian State Service Award - there's no changes to the amounts in there. Clause 2, Leave Expenses for Bass Strait Travel, we did take the wording from the
40 Tasmanian State Service Award to a certain extent, with the exception in the third line. We have:

45 *...reasonably incurred by the employee for themselves and for any dependent member of their family.*

The custom or practice in the Department of Education is that we've paid for three trips for the employee and three trips for the family members, and we will need to reflect that in the award.

5 THE COMMISSIONER: Yes, yes. Now, we've had some confusion with that before.

MS CRESPAN: That's – we did think it was best to try and change the wording to that so there wasn't any confusion.

10

THE COMMISSIONER: Yes, no that's good.

MS CRESPAN: Okay. Clause 3, Special Allowances, we've simply updated the amounts in there to reflect what they currently are. That hadn't been updated for
15 some time. Clause 4 and clause 5, First Aid and Camp Allowance, are also simply just wording changes, picking up the Tasmanian State Service wording, there's no change to the amounts. Clause 6, Meal Allowances, it is the – they are the TSSA – it is the TSSA wording with the exception of maintaining or keeping the current
20 provision, which is in the Teaching Award, which provides a payment of \$3.50 for each meal provided by the employee. If the teacher brings their own meal, they are – they can claim \$3.50.

We did have a lot of discussions about that, and in the end, we agreed to keep that in there. I should point out that with the previous award variations we did in July,
25 where we picked up the 15.93 per cent, I think it was, means that these allowances for breakfast, lunch and dinner are slightly higher than what's in the Tasmanian State Service Award, but they will remain as is and the Tasmanian State Service Award, once that's updated, they will catch up.

30 THE COMMISSIONER: So the intent is that they will be on par?

MS CRESPAN: Yes.

THE COMMISSIONER: Yes, that's good.
35

MS CRESPAN: Okay. We've deleted what was clause 7, which was a Training and Conference Allowance, which is now covered under incidental expenses. It was agreed that we would delete that. Okay, clause 8, we've titled Use of Employee's Motor Vehicle. It once again mirrors the Tasmanian State Service Award in rates
40 and wording. Okay. Under what is now clause 9, Excess Travel, teacher appointment at two or more schools – under subclause (b), we've reworded the sentence to read:

45 *The allowance shall not be paid beyond the date that the employee ceases to be appointed and travels to two or more schools.*

I believe it currently doesn't have the word "ceases" in there and has caused confusion. Under subclause (b), I've changed the reference to clause 8, which just needs to be updated.

5 Okay, with clause 10, we've retitled this Travel Allowances. It's currently Living
Away From Home, in the Teaching Award. Once again, it's just picked up the
Tasmanian State Service Award wording and amounts, and will probably have the
most significant result for the teaching employee, because there has been quite a
difference, and it will be easier for us to administer it for - - -

10

THE COMMISSIONER: Yes, absolutely.

MS CRESPAN: Okay. If you can go across to Leave Entitlements - - -

15 MR LANE: Yes, part 6.

MS CRESPAN: Yes, part 6, Leave and Holidays With Pay. Clause 1, it is simply
taking across the Tasmanian State Service Award provisions.

20 THE COMMISSIONER: Sorry, what's an ex-nuptial child? Number 2(1)(ii). I
mean, I can guess, but - - -

MR LANE: I can – I can assume it's born out of wedlock.

25 THE COMMISSIONER: Yes, but it's still someone's child.

MR LANE: Yes.

30 MS CRESPAN: So, there is a process at the moment where they are a third party
child with the Tasmanian State Service Award, so there is scope to - - -

35 THE COMMISSIONER: No, it's just that – in printing adopted, okay, that's a third
party child, a step child, a third party child, but an ex-nuptial, it's your own kid, I
would imagine, regardless of – anyway – I guess proving it is the problem, because
you could be off every week. Well, some of you can. Okay.

MS CRESPAN: Okay. From here we've deleted carer's leave, because it will –
later in the party, it does form part of personal leave.

40 THE COMMISSIONER: Personal leave, yes.

MS CRESPAN: With jury service, which is now clause 2, they are the provisions
that were taken across from the – that are currently existing in the Ministerial
directions, so we've taken those across.

45

THE COMMISSIONER: Okay.

MS CRESPAN: Clause 3, Parental Leave. Once again, Tasmanian State Service Award provisions, with the exception of a reference to eligible casuals, both parties agree that we do not see any eligible casuals in the teaching profession. Clause 4, Recreation Leave, this provision – or the calculation for recreation leave currently
5 exists in the Ministerial direction, and over time, the parties have agreed, and the calculation has changed. The Ministerial direction doesn't reflect the calculation for recreation leave, and hasn't for some time. So we've done our best here to simplify what is the calculation, and include it in the award.

10 We've also extended this clause to include recreation leave provisions from the Tasmanian State Service Award to cover instances where teachers go into non-teaching conditions. It really just covers their recreation leave, they maintain – they keep their salary, but it's when they go from the 11 weeks leave to the 20 days.

15 THE COMMISSIONER: To four, yes.

MS CRESPAN: And there is – that is a complex process and we wanted to have that in the award as well.

20 THE COMMISSIONER: Yes.

MS CRESPAN: Did you need me to go through - - -

25 THE COMMISSIONER: No, I'm comfortable with that, I understand it.

MS CRESPAN: Clause 5, Personal Leave. Now, the Tasmanian State Service Award provision that maintains the accruals of 28 in the first year and 10 days each year after, and also, included is a provision for communicable disease, which is currently in the Ministerial direction, so we've included that as well. Under clause 6,
30 Special Leave, I've just changed a reference to carer's leave – from carer's leave to personal leave. Clause 7, Holidays With Pay, is simply taken from the State Service Award.

35 THE COMMISSIONER: Yes.

MS CRESPAN: Clause 8, Defence Force Leave. They are currently the provisions that are in the State Service regulations, and we agreed at the request of the Australian Education Union to include that in the report.

40 THE COMMISSIONER: Yes.

MS CRESPAN: Okay, over to part 7, Consultation and Dispute Resolution. Clause 1, Avoidance and Settlement of Dispute. Under subclause (b), there was a reference – we've changed the reference here to secretary. I believe it said - - -
45

MR LANE: Chief executive - - -

MS CRESPIAN: - - - chief executive officer, previously. So the end result is what we believe to be an award that's consistent, where possible, with the Tasmanian State Service Award.

5 THE COMMISSIONER: Yes.

MS CRESPIAN: And it will enable future variations to be administered easily across the two awards. I believe the application is consistent with the principles of the commission, and does not offend the requirements of the Act relating to public
10 interest consideration, and unless you have any questions?

THE COMMISSIONER: Effective from?

MR LANE: Sorry, Commissioner?
15

THE COMMISSIONER: Effective from 1 January this year? Or is it first full pay period from today or what?

MR LANE: Well, couldn't we make it just a simply dated decision, Commissioner?
20

THE COMMISSIONER: That's fine by me, I don't mind.

MS CRESPIAN: We - - -

25 THE COMMISSIONER: Yes, all right. Well, that's been a tremendous job getting that off to - I can imagine it's - I can understand why it has taken three years, and it makes - certainly makes life easier for people like us if it's consistent with the State Service Award. I agree, it certainly doesn't offend public interest and it has been a very, very good job. Well done. Mr Lane, anything apart from loud cheers?
30

MR LANE: Yes, loud cheers and congratulations and thanks to the people who - I mean, gestation periods and other things may be a long time but this was even lengthier, I think, and I do think it's a job well done and the perseverance shown both Ms Madison and Ms Crespan are to be commended, because it wasn't easy at times,
35 and there were some issues that needed a lot of talking around and talking through, and I think they've done exceptionally well, so thank you, Commissioner.

THE COMMISSIONER: Thanks. What we need though is a complete clean copy, I see there's still marks on here of change this, do that, so if you could send
40 Marguerite the complete copy, as soon as we get that we will sign it - hopefully today if you can get it to us.

MS CRESPIAN: Yes, we will do that, Deputy President.

45 THE COMMISSIONER: All right, I will adjourn. Thanks, and once again, that's a great job. Well done.

MATTER ADJOURNED at 3.12 pm INDEFINITELY