

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 265 of 1985

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IN THE MATTER OF applications
by the Tasmanian Public
Service Association and the
Tasmanian Trades and Labor
Council to vary salaries and
allowances in nominated public
and private sector awards in
accordance with the National
Wage Case decision of 4
November 1985

FULL BENCH

PRESIDENT

DEPUTY PRESIDENT

COMMISSIONER WATLING

HOBART, 11 November 1985

**TRANSCRIPT OF PROCEEDINGS
(CONTINUATION)**

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MR HANLON:

But they may not be for the purposes of carrying out examinations of those industries for that particular award.

PRESIDENT:

How then would you suggest the Commission inform its mind under section 36 (2) (a)?

MR HANLON:

I think the argument that I have already put to you is that section 36 has no application in the current matter that is before you. First of all, with regard to the economic position of an industry as referred to in section 36 (2) (a), you are excluded from looking at an industry in specific terms by section 35 (1) (d).

In looking at section 36 (2) (b), which says "consider the economy of Tasmania" - that also relates to section 35 (1) (d). So, by following section 35 (1) (d) you are doing exactly what is required by section 36 (2) (b). It seems to me that the public interest is being carried out because you are moving wages generally and not specifically, but if you move anything specifically, one has to have regard for the public interest and the public interest is defined for the Commission to the extent set out in (a) and (b).

The application under (7) is only on the economic capacity of Australia and, on this occasion, Tasmania happened to be part of it.

When it comes to the information put before the Commission it is interesting to look at the awards that are before you which have some connection with the dairy industry. They concern both private and public sectors.

In the public sector there are the agricultural officers, employees of

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the Herd Improvement Board, the Tasmanian Dairy Industry Authority Staff, veterinary officers and technical officers.

The private sector awards are the Agriculturists Award, the Dairymens Award, the Ice Cream Makers Award, Carriers Award and the Butter and Cheesemakers Award. All of those awards are involved in some way with the production of dairy produce.

All of them will receive the increase; all of them are subject to the same restraints in terms of the cost of the product, the demand for the sale - they are affected in different ways, but all of them form part of the Tasmanian economy. They also form part of the Australian economy.

There is no satisfaction for Mr Durkin in the fact that there is no Federal award specifically called 'The Dairy Industry Award'. A significant award in the rural sector is the Pastoral Award which has a very extensive scope clause but, at the same time, the structure of the award does not deal with the dairy industry.

However, there are very few farms in Tasmania which are single-product farms. It is quite common to see a mixed farm which will run sheep, cattle, have a dairy herd and grow vegetables. There are even variations on those groups that I have mentioned which cover hops and fruit. Both fruit and hops are covered by Federal awards so that there are employees employed by people who can be covered by a variety of awards, depending on the season of the year.

The application in the dairy industry seeks only to exclude the farm hand; it does not exclude the apprentice farm hand or the tradesman.

In the area of employees employed on

MR HANLON:

dairy farms, the highest number of apprentices is employed in the dairy area and they are mainly the sons of farmers (that is, owners of farms).

So, the application is not one that has been well thought out, either in terms of its extent or having regard to the industry.

The exhibit put forward by Mr Durkin is a decision of the Industrial Relations Commission of Victoria, and at page 2 of that exhibit the reference states, in paragraph 4, that the three awards concerned were the Agricultural and Pastoral Workers Board Award, the Shearing Industry Board Award and the Dairy Farm Workers Board Award. When the application seeking the flow-on of the 2.6% was before the Victorian Commission, the Federal Pastoral Award (which is the parent award to the first two; they have a direct nexus with it) had not been varied because even though the national wage case had awarded the 2.6% to all awards, the national farmers' associations took an application on the capacity to pay and, as a result of that application, a Full Bench was set up to examine whether or not the Pastoral Award should be excluded from the 2.6% increase. The Full Bench recently brought down its decision, granting the 2.6%. No decision has yet been written but a telex stated that it would operate from the same date - 6 April - as all other variations and therefore there would be back-pay to those persons respondent and employed under the Pastoral Award.

If the Dairy Farmers Award, in the State of Victoria, has a nexus with the Pastoral Award, then that could be the explanation as to why it forms one of three awards of which two have a direct nexus. That is something which I will ascertain for the Commission, but that is why the two awards, dealing with the pastoral area, do have that nexus and we

MR HANLON:

would say that that is why they were excluded - because the parent award had not been amended and had been excluded. That has since been taken care of and I would imagine that the 2.6% will now flow to the various State awards which are mirrors of the Federal Pastoral Award. This applies in most States, with the exception of Tasmania.

With regard to the submission as to who is going to be affected in the dairy section of the Agriculturists Award, Mr Durkin wasn't in a position to tell us today and I don't think he is going to be in a position to tell us, should you accede to his submission that there should be an examination of the industry.

For a person to intervene and argue that there should be an adjournment, there should be sufficient prima facie evidence to justify that decision.

At the moment what we have from Mr Durkin is that if we go and have a look we may discover something. The onus is on that person seeking the adjournment to establish that there are sufficient grounds (and sufficient grounds in a case of the importance of this case) such that the Commission should stand back from making a decision.

I make those comments even though I have already argued that it is not open to the Commission to accede to his request but, should you not agree with my view of the Act, that still brings back the question of merit and at the present time the merit argument has not been sufficient for this Commission to say, "We should go on a search operation which may or may not justify your position".

If it doesn't justify the position, then we have carried out an exercise which wasn't soundly based and in relation to which there was no

MR HANLON:

evidence to support the original application.

One could almost say that it was designed to do no more than delay an increase which rightfully should have flowed to the employees covered by that award.

It is the submission of the Australian Workers' Union that the fact that this case would be coming on before this Commission has been known to all the professional practitioners who operate in the jurisdiction, for some six months prior to the date when the national wage case was brought on and in the two months which have elapsed while that hearing has gone on.

There has been nothing that has suddenly occurred to the dairy industry overnight which would lead this Commission to think that it was going to venture into something new. The industry has been experiencing hard times for some years and they will not be offset by any decision of this Commission in terms of the status of that industry.

The Federal Government has conferred with all of the State Governments and the industry, and there is a plan that is proposed and is before the industry for its rationalization and long-term survival.

I would have thought that if the Farmers and Graziers Association was serious, then its proposals would have gone to the numbers of employees affected, incomes and earnings, and that it would have been in a position to persuade you that there was some benefit in going further in an examination. It isn't enough for someone to come forward and say, "I think if we go on a search mission we will find these matters, but if we don't, well, no harm has been done". I don't think that that is a submission sufficient to persuade the Commission in what is the most

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important case that comes before the Commission. That is the case that will determine a movement of wages generally in keeping with the movement that will apply to all Federal award employees and, at the same time, any matter which comes before you has to be sufficient to show that it is different from the situation in Australia as a whole.

Nothing has been put to you to show that the dairy industry in Tasmania is worse than that in New South Wales or Queensland and, in actual fact, the circumstances are that in terms of survival, the dairy industry in Tasmania and Victoria is in a much more substantial position than it is in any other State. That does not mean that the situation is good, but in terms of markets, climate et cetera, they are in a better position than the remaining States.

We would say that there has been insufficient evidence put before you today to justify the course of action recommended, and that it is also not open to you to carry out that investigation along the lines suggested by Mr Durkin.

PRESIDENT:

Thank you, Mr Hanlon.

DEPUTY PRESIDENT:

Mr Hanlon, could you tell us if there is a Federal dairy industry committee or plan, and, if so, what its objectives are and how far it has gone?

MR HANLON:

There has been a series of negotiations conducted between the governments and the industry. I think it is referred to in the media as 'The Kerin Plan'.

The first round was rejected by the industry and the Federal Government has now adopted the industry's amended proposals, and my understanding is that they are before the Federal Parliament.

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MR HANLON:

I am not aware of the details, or the timing of it, but it concerns the industry as a whole in terms of the production of milk and the distribution of milk, and that which goes to manufacturing and that which is for domestic distribution. It also concerns the question of the mix from any one State and what that price will be internally in Australia, as against the price for the export manufactured item, and how those earnings are distributed so that you have a healthy domestic and manufacturing market, because they are two distinct parts of the industry and each State has a different mix. That is all I can offer on that.

DEPUTY PRESIDENT:

Would you say that it is the place to take your problems, to see if they can be sorted out at that level?

MR HANLON:

Yes. The matter must be dealt with nationally. There is no single State capable of resolving the problems in the domestic market because of the nature of the industry.

PRESIDENT:

Mr Butler?

MR BUTLER:

Sir, perhaps if I could comment on the application that has been made by the Tasmanian Chamber of Industries as it is intended to affect the Aerated Waters Award.

I would like to make it clear that the Federated Liquor and Allied Industries Employees' Union opposes the application that the 3.8% flow-on not apply to the Aerated Waters Award, on the grounds that a hearing has been called before this Commission to take place tomorrow morning to discuss the dispute which, for the record, involves employees at Cascade Cordials and Cadbury Schweppes at their cordial plant in North Hobart.

We feel that it would be premature for any other action to take place before the hearing tomorrow.

I could add at this stage that

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MR BUTLER:

employees at Coca-Cola in the north of the State are also covered by the Aerated Waters Award, in the same classifications that Mr Abey would seek to deprive of the increase, and that those employees at Coca-Cola are not presently engaged in industrial action.

As I understand it, the procedure for the operation of the 3.8% pay increase is that after your decision is given, each of the unions would be required to give commitments.

I would suggest that that would be the appropriate time to deal with the problem of the Aerated Waters Award. If you ask me for a commitment today, I couldn't give you one as far as that award is concerned, but between the time when you give your decision and the time when the commitments have to be given, I have no idea what the situation would be, at this stage. That is our position.

COMMISSIONER WATLING:

Mr Butler, are you saying that the commitment that you have given previously doesn't exist now?

MR BUTLER:

No, I am not saying that at all.

COMMISSIONER WATLING:

Well, what about the commitment that exists now? Are the employees who are currently on strike familiar with the commitment that they are involved with now?

MR BUTLER:

The employees of Cascade Cordials and Cadbury Schweppes who are on strike are familiar with the commitment that has been given.

PRESIDENT:

Is it likely then that if this Commission was favourably disposed to grant this application, those same employees would authorize your organization to give a similar commitment to the future?

MR BUTLER:

Could you clarify the question?

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PRESIDENT - COMMISSIONER WATLING - BUTLER

PRESIDENT: The question I am asking is that if we are against Mr Abey and, in fact, increase rates in the Aerated Waters Award by 3.8% and demand, in exchange, a commitment as outlined in the Federal decision, is it likely in those circumstances that that commitment would be forthcoming from your members?

MR BUTLER: At this stage I would honestly have to say that I don't know the answer to that question.

PRESIDENT: They have already given a commitment which they do not appear to be honouring now.

MR BUTLER: Yes. I do accept that there is a problem as far as that award is concerned. All I am saying is that between the time when a decision is given and the time when the unions sign on for a further three years, as I understand it, the position could be different. But as for predicting what their attitude could be, I am afraid I couldn't do it.

PRESIDENT: Well, why should we accept your argument for a flow-on and not Mr Abey's argument?

MR BUTLER: Well, as I indicated, and as I understand it, there isn't any union which, as a result of the decision, would receive 3.8%. They would only receive the 3.8% when the undertakings are given and that would be our position.

PRESIDENT: As far as I am aware, your union appears to be the only one which, having given a commitment some time ago, now is not honouring that commitment.

MR BUTLER: I am not denying that there is a problem at the moment.

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PRESIDENT: Are you seeking to address that problem yourself, Mr Butler?

MR BUTLER: In what sense?

PRESIDENT: Are you trying to get your members to lift the bans?

MR BUTLER: We have outlined the position regarding the commitments that we have given under the Principles and, at all times, we have been very careful to explain to our members the possible implications of actions. In fact, we distributed printed copies of the recommendation of the Commission, given on a previous occasion, and we have gone out of our way to ensure that the people are exactly aware of the position.

We are not keeping anything secret from them and we have canvassed those issues.

PRESIDENT: Thank you, Mr Butler.

DEPUTY PRESIDENT: Mr Butler, I have here a copy of the 'National Wage, Tasmanian Jurisdiction Commitment' which the Federated Liquor and Allied Industries Employees' Union of Australia, Tasmanian Branch, gave to the then Chairman of Industrial Boards on 26 October, 1983. I am sure that you have a copy.

In it is the advice that the Committee of Management of the Tasmanian Branch has determined:

"... that for a period of two years it will not pursue any extra claims, award or over award ..."

The question I ask is: What faith can we put in a commitment by the Committee of Management of the Tasmanian Branch of the F.L.A.I.E.U., if it gives a commitment at that time and it doesn't appear to be able to

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DEPUTY PRESIDENT: have any control over its members, if it is of such a mind?

MR BUTLER: I am not exactly certain from which correspondence you are quoting.

DEPUTY PRESIDENT: Perhaps we can show it to you.

MR BUTLER: This is the correspondence of which I am aware. Perhaps if I could clarify the difference between undertakings given for the various awards of this jurisdiction.

As far as the Hotels Award, the Restaurant Keepers Award and the Licensed Clubs Award are concerned, the undertakings were given by the Committee of Management of the union.

MR BUTLER:

Before the undertakings were given for the Aerated Waters Award - I cannot remember the exact dates - meetings were held at Cascade Cordials, at Schweppes and at Coca-Cola to obtain from them the authorization to give that undertaking.

There was a difference in the past, in the way that undertakings were given by the committee.

Does that answer your question?

DEPUTY PRESIDENT:

I asked the question, having in mind the unfortunate experience that has occurred, involving the giving of an undertaking in the present reported industrial action. What does this do to the credibility of the Committee of Management of the Tasmanian Branch of the Federated Liquor and Allied Industries Employees' Union of Australia?

MR BUTLER:

In respect of three out of four of those awards - the awards with regard to which they gave a direct undertaking - I do not think that it affects our credibility at all, because in three out of those four awards, there has been a 100 percent compliance.

DEPUTY PRESIDENT:

One hundred percent compliance, by three out of four?

MR BUTLER:

I can see that there is a problem with the Aerated Waters Award. I suppose that it is the perennial problem that trade unions have. On the one hand, we are criticised because we are not democratic and we do not refer these issues to our members. On the other hand, we are criticised when they exercise that democracy and perhaps go against the overall direction of the union.

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MR BUTLER: In this instance, the employees belong to the union; the union which at Cascade Cordials and Schweppes has taken that decision.

DEPUTY PRESIDENT: I do not want my question to be interpreted as a criticism. A question is not a criticism. It is only the answer to it that perhaps could be harmful.

MR BUTLER: Perhaps if I could just add, by way of supplementing my answers, that the Tasmanian branch of the union has not embarked upon a campaign to destroy the Indexation Principles. That is not our intention.

DEPUTY PRESIDENT: No. I see.

The same thing presumably would apply in a futuristic sense. If the Commission were able to decide in favour of the present application and if, as you forecast, it were to ask for a re-commitment, how much weight could the Commission put on the receipt of a document signed by the State secretary of the union, where it purports to speak for employees under the Aerated Waters Award? Should we attach a great deal of weight to it, or not, given the democracy that exists in the trade union movement?

MR BUTLER: Again, that is an issue that is certainly going to be raised tomorrow at the hearing. I would hope that any further commitments that are given eventually to cover the Aerated Waters Award are treated with the credibility that I hope they would have.

DEPUTY PRESIDENT: It is a question of weight though, is it not? If the Commission is to be persuaded to do something, it has to consider probabilities and possibilities et cetera.

MR BUTLER: All I can say is that, if you are asking me for that undertaking today for that particular award, I could

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MR BUTLER: not give that undertaking. To say anything else would be dishonest.

DEPUTY PRESIDENT: Thank you, Mr Butler.

COMMISSIONER WATLING: Mr Butler, we are hearing this case under the Principles that already exist. The Bench came back this morning with that in mind.

Are you saying that the commitment that you gave earlier is not in effect today, here at this moment?

MR BUTLER: I would not offer an opinion on that. I was quite surprised this morning when that issue was raised. I am not arguing that today.

COMMISSIONER WATLING: Do you believe that the commitment given under the Principles applies today? Not what might happen in future, or what may arise out of a decision of this Bench on the matter before it, but the commitments given to the Principles; are they in effect at this very moment?

Let me refresh your memory. Your commitment said, in an address signed by Mr Sherry and addressed to the Chairman of the Industrial Commission:

"You are also advised that the F.L.A.I.E.U. has returned the question to members employed in the industry covered by the Aerated Waters Award, with the acceptance by them of the above statement."

There is specific reference to that industry.

They have given a commitment. What is the status of that commitment now?

MR BUTLER: At this point in time, I would have to agree that it is in some jeopardy.

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MR BUTLER: There is a problem and I am not seeking to deny that in any way.

PRESIDENT: Thank you, Mr Butler.

MR HANSCH: Mr President, I would like to support the comments made by Mr Butler. I would ask that the Aerated Waters Award should not be excluded from receiving 3.8 percent increases and allowances.

PRESIDENT: Do you wish to add anything more to that, Mr Hansch, or do we have to read the statement?

MR HANSCH: No. I have listened very attentively to what you have said to Mr Butler.

At this stage I would like to say that I do not necessarily believe that the Transport Workers' Union has broken a commitment to the Principles. I believe that, as there is a hearing tomorrow, we would be prepared to discuss what I have already said at that time. I do not believe that I am in a position at the moment, to say any more on the matter at all. Most certainly, I cannot give any commitments.

However, I do not believe that we have broken any commitment, or that we have broken a commitment to the Principles.

COMMISSIONER WATLING: Why do you say that?

MR HANSCH: I do not agree with Mr Abey's submission. However, at this stage, I do not believe that it is appropriate for me to go any further than that. Tomorrow I believe I will be in a position to do so.

COMMISSIONER WATLING: There has been an application made in this hearing, that the Aerated Waters Award be excluded. Your union has made a commitment to this

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COMMISSIONER WATLING: jurisdiction in a letter dated 24 October 1984 and signed by the secretary.

It is a commitment to the Principles. Under the Principles it states quite clearly that claims for a reduction in hours below 38, will not be entertained at any cost.

I am led to believe that your organization is part of a campaign for a 36-hour week. You have told us that you do not believe that you are acting contrary to the Principles.

I would like to hear argument on why you think that you are not acting contrary to the Principles if the Principles specifically state that. It is all right to say, "We do not think we are", but why do you think that?

MR HANSCH: As I have already indicated, I am not prepared to say any more at this stage. However, tomorrow I hope to be in a better position to explain myself as to what I have stated here.

COMMISSIONER WATLING: That means that you do not really want to rebut Mr Abey's submission?

MR HANSCH: No sir, not at this stage.

PRESIDENT: But do you accept his submission?

MR HANSCH: Not in total, sir.

PRESIDENT: It will not be a Full Bench that shall hear the matter tomorrow. It will be Commissioner Watling sitting alone. I understand that these proceedings will conclude today.

MR HANSCH: I cannot make any comment about that. I most certainly would hope that the proceedings do conclude today. Allow me to say this: The Transport Workers' Union will accept anything that comes out of this hearing at this stage, in relation to the 3.8 percent.

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MR HANSCH:

As far as commitments are concerned, I have already indicated that I am not too sure that we have broken any commitment to this Commission. I am yet to be convinced of that. That is my opinion and my opinion only at this stage. I will seek some guidance later in the day, and hope to be in a better position tomorrow.

I understand what you have said, that the hearing will only be before Commissioner Watling.

PRESIDENT:

Did I understand you to mean, when you said that the Transport Workers' Union will accept anything that comes from these applications, that you really meant that if we decide (notwithstanding Mr Abey's submission) to award 3.8 percent, then your organization would give a commitment for the six months? Is that what you meant, or do you mean that you would accept any decision that we might take to include or exclude your organization, insofar as the Aerated Waters Award is concerned, from participating in the 3.8 percent, if granted?

MR HANSCH:

As far as that goes, sir, like it or not, we would have to accept what this Commission rules in relation to the 3.8 percent. As far as commitment goes, I have already indicated that I am not in a position to give a commitment one way or the other. I believe that it has been the policy, of the Transport Workers' Union, and will always be the policy of the Transport Workers' Union to abide by its commitments.

PRESIDENT:

Yes, thank you. Mr Noonan?

MR NOONAN:

If the Commission pleases, in relation to the award known as the Aerated Waters Award, the Federated Clerks' Union of Australia has members covered under that award in clause 4.

I would like to say that we have given a commitment to the Commission.

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DEPUTY PRESIDENT: And abided by it.

PRESIDENT: What do you say about excluding them?

We appreciate your brevity on this occasion, Mr Noonan, but need you be so brief?

MR NOONAN: Yes, Mr President.

PRESIDENT: We have before us, a request for the Aerated Waters Award to be excluded. What do you say to that?

MR NOONAN: I certainly do not want their clerks excluded from section 4.

PRESIDENT: Thank you. Mr Evans?

MR EVANS:

In respect of the submissions made by Mr Abey, I noted with some pleasure that he did not oppose the flow-on of the 3.8 percent. However, I do not think that his remarks regarding the decision of the national wage Bench being totally devoid of sense, should go unnoticed.

The Bench itself addressed the question of the economy, and noted a number of facts. I think those facts need to be on the record, because one needs to look at this whole issue of variations for increases in the C.P.I. on a macro-economic basis. One should not try to get into micro-economic discussions.

It is clear that there has been a 5 percent increase, in the last financial year, in the gross non-farm national product. On the predictions of the Treasurer, in bringing down the budget - and I am talking about the Commonwealth Treasurer - a similar increase was expected for the 1985-86 period.

There have been significant increases in the share of the gross domestic product going to profits. At the same time there has been a decline

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MR EVANS:

in the share of the G.D.P. going to wages.

What we are really being faced with here, is an application to adjust the wages of people employed under the awards of this Commission for increases in costs that have occurred in a period of time, substantially in arrears of when they are going to receive the money in their pockets.

MR EVANS:

We are now in November looking to this Commission to bring down a decision to increase the salaries and wages of those persons employed under its awards.

I think that the Commission should not dwell too long on the economic matters. They have been dealt with, I think, quite extensively at a national level. We should treat them the same here.

I want to touch on one or two points that Mr Abey made. Firstly, he suggested to the Commission that it should exempt the Aerated Waters Award. We do not have any direct interest in that particular matter. However, we do have an interest in the proposition that the Commission should seek to exempt awards from a general decision, on the basis that there are particular industrial disputes affecting those awards.

As we see it, the Commission would be pre-empting its own decision, in a sense, because the matter is already under the jurisdiction of a Commissioner, albeit a Commissioner sitting alone. We believe that the Commission should show enough faith in itself to exercise, or to be of the view that that Commissioner can exercise, enough influence and responsibility to bring this dispute to a satisfactory conclusion.

I would further say to the Commission, that in exempting an award from the provisions of a general decision, it should take into account that bound up in that decision are the Principles and, indeed, following on from those Principles, commitments. You would have a situation where there would be a group of employees virtually at large in the industrial relations climate. They may well see that as something they would like in a particular circumstance.

MR EVANS:

So I think that there is an inherent danger in exempting that group of employees. It would be more appropriate that the Commission, in bringing down a decision to increase the rates of pay by 3.8% and in putting any qualifications it so wants on that decision, note that those qualifications or conditions would have to be met before anyone would receive the benefits.

I noted with interest that Commissioner Watling asked whether or not the commitment still exists. As I alluded to in my earlier address, we see this 3.8% as the last leg of the original 2-year commitment. That does not mean that we do not believe that the commitments still operate.

It is patently obvious that the union movement has seen that those commitments continue to exist. Indeed, it has sought to reach an arrangement which would allow some form of commitment to continue for the forthcoming two years.

So I think that the matter has to be taken very carefully by this Commission, and has to be seen in an overall context. The Commission ought not to exempt awards because of a particular industrial dispute which may well be resolved in a very short space of time.

Further, I would support the remarks of my friend Mr Hanlon, in response to Mr Durkin's submissions. Again, however, I would suggest that there is a risk inherent in the Commission accepting the propositions put forward by Mr Durkin. If he really wants to argue, as a threshold matter, that a particular classification should be excluded, and only that classification in the award, then he has to produce some fairly substantial threshold arguments.

MR EVANS:

We were given untested assertions. Albeit there was one untested observation as to what the likely implications would be if the Commission granted the 3.8% increase.

I would submit that it is not sufficient in the present climate, to exclude that particular classification from a decision of this Commission. Albeit that Mr Durkin suggested that there are some particular economic problems. I would echo Mr Hanlon's comments. There has been sufficient time for those particular problems to be gathered together, and brought to the Commission in some form which would throw up a signal or sound a very large alarm bell to this Commission, so that they would be of a mind to examine the matter further.

I did not hear any loud alarm bells. I did not see any signals. I merely saw a party seeking to delay the application of whatever increase this Commission may be of a mind to grant, to a particular class of employee.

I say that there is a danger. If the Commission accedes to that request, then we could well be faced next time, with further employers turning up before this Commission saying, "Well we think we have a particular economic problem in respect of this class of employees and we want you to set them aside from any decision and at some stage down the track we want you to examine them." If you had two or three hundred people putting those submissions, then the Commission would be in a very grave quandary.

I would suggest that if you accept those submissions, then that is the path you are likely to follow. So I would respectfully suggest that the Commission should reject Mr Durkin's submissions. The Commission should grant the increase on a basis which

MR EVANS:

will allow all parties to receive their due entitlement.

I want to touch on one final point. That is the methodology that may be adopted to ensure that if the Commission is of a mind to grant the 3.8% increase, then it can be given as speedily as possible.

I know that Mr Stevens commented that they would require orders. At this stage we do not know precisely what the decision will be, or what may be required of the respective organizations in order to gain that increase. However, I would suggest that there may be some form of commitment required of us. I would suggest that it should not be different from the requirement envisaged by the Conciliation and Arbitration Commission. That is the commitment to Principles which already exist for a period not exceeding 6 months.

If the Commission were of a mind to do that, then I am sure that the unions for their part, could quickly examine that decision. They could then advise the Commission as to whether or not they would be able to meet that requirement.

I know that the Australian Council of Trade Unions - of which we are an affiliate - intends to examine this question. Hopefully within the next 24 hours or so, it will be able to advise its affiliates as to the attitude they should adopt in respect of that undertaking.

It may be of some assistance to the Commission in determining how it wants to proceed, if I hand up copies of all of the awards in regard to which we have made applications for the variation of 3.8%. I have already given a copy to the Office of Industrial Relations. If any other parties should require copies I will make them available at fairly short notice.

JS/CD - 11.11.85

EVANS - SUB

PRESIDENT:

We will not mark those as exhibits but as information, Mr Evans.

MR EVANS:

I thought that it might assist the Commission in its deliberations as to how it will deal with the matter. We want to prevent the rather unfortunate situation we had last time. We all seemed to go around in circles for quite some time as to whether we required an order or if a decision of the Commission was sufficient. Given that Christmas is soon to be upon us, then I would hate to see people being denied their increase.

Having Christmas in mind, I was pleased to see Mr Blackburn support the increase. However, I think that he needs to sort out some things with the Treasurer of this State. In his budget statement on page 3, the Treasurer said: "Retail sales are growing at almost twice the national average." So either we are in for a very bleak Christmas, if Mr Blackburn's predictions are true, or something has gone wrong with the Treasurer's figures and he had better be told very soon.

PRESIDENT:

Thank you, Mr Evans.

Mr Lennon?

MR LENNON:

There is a number of matters that I think I briefly need to address in the short time available; matters that were raised by the employers.

Adding to the comments already made in respect of the Aerated Waters Award, we are very mindful of the seriousness with which the Commission has viewed the dispute in the Aerated Waters Award. It is not something that we can pretend does not exist. It is real, and there is a claim (as far as I am aware) for a 36-hour week, which would appear to be outside the Principles.

JS/CD - 11.11.85

PRESIDENT - EVANS - SUB
LENNON - SUB

MR LENNON:

To attempt not to recognize that fact, I think, is an act of foolishness.

However, I do believe that the most appropriate course of action for the Commission to take, with respect to the Aerated Waters Award, would be to deal with the question as to whether or not the 3.8% should apply to that award at the time when it is dealing with the orders.

I say that because if the decision is made today to defer the 3.8% to the Aerated Waters Award, then most definitely it will weaken the case of the union officials who are attempting to explain to their membership that they are outside the Principles. Union officials are not always able in cases like these, to put the position to the membership in a way that they can accept. This is particularly difficult in a case where they see (as these workers do) their fellow workers working a 36-hour week, or at least less than 38 hours, in their own establishments.

If the decision to withhold the 3.8% is to be made by the Commission, with respect to the Aerated Waters Award classifications for transport workers and liquor trades members, then I believe that it should not be beyond the Commission to limit that to the time of the order. This would allow the matter to proceed as part of our general claim, which will hopefully allow us some extra time for the matter to be settled.

It will allow time, not only for myself and the Trades and Labor Council, but also for the unions concerned, to attempt to resolve the dispute. This would mean that the general commitment given by the union movement will be able to continue.

That is the sensible approach to take at this time, in my opinion.

JS/CD - 11.11.85

LENNON - SUB

MR LENNON:

If it is agreed by yourselves that the Aerated Waters Award should be excluded, then a fresh application from the unions concerned would be necessary to bring that matter back on. It could be some time before workers employed under the Aerated Waters Award in those particular classifications would get the 3.8%, if indeed they do get it.

However, if it were left until the orders were dealt with, in other words if the matters were not processed to finality until such time as you were convinced and satisfied that the members employed in that industry were abiding by their commitments, previous and future, if any, then the matter would be as requested by Mr Abey, still open at that stage.

We are all aware I think, that there is to be a hearing before Commissioner Watling tomorrow. We are hopeful that perhaps that could play a major role in leading to a resolution of the dispute.

Nevertheless, if we were to adopt the approach that I suggest, then it certainly does leave the gate open for both sides. I think that we are all hopeful that the dispute can be resolved to the satisfaction of everybody.

With respect to the form of awards, I am inclined to agree with the submission by Mr Taylor, from the Mines and Metals Association. That submission was that no alteration should be made to the form of awards. I am well aware that observations were made by the Commission at the last hearing, of the private sector, where the basic wage and margins exist. Nevertheless the union movement has not considered it in any detail as yet. The matter has now been brought back to mind by Mr Abey.

MR LENNON:

We would be in a position and will be in a position to consider the matter in some detail.

I am in the hands of the Commission. If necessary, I can make submissions, at the very latest, at the next national wage hearing in April next year.

It may be that the Commission might determine that a separate hearing would be appropriate. That being the case, then we would give an undertaking that we would be in a position to put submissions at such a hearing.

I am certainly not in a position at today's hearing to answer affirmatively or negatively with respect to the submission put by Mr Abey. I am more inclined to agree with the submission of Mr Taylor, which was, in effect, to defer the matter until a future hearing.

As to the question raised by Mr Edwards, with respect to the exemptions, we do not oppose the exemptions sought for the Building Trades Award, Sections I, II and III and the Plumbers Award, Section I.

We do not oppose the traditional effect of the shift allowance in the E.Z. Award.

As to the submissions made by Mr Durkin, in respect of the Agriculturists Award, I agree with the view held by Mr Hanlon. I think that it is important that if employers are going to come to hearings like this and argue incapacity to pay, that they do have a strong prima facie case. The trade union movement is not in the business (I should say from the outset) of watching employers go broke, because of its claims succeeding.

If the charge is to be laid against us, that the granting of the claim will in effect cause that, and cause

MR LENNON:

loss of employment, then I think that it is incumbent upon those persons who make such claims to provide evidence in support of them. To say that we will meander down the river to see what we can find around each corner, is not good enough in my view. It is not enough for us to agree to the deferment of an award to a special enquiry, to see whether or not the industry or parts of the industry have the capacity to pay the national wage increase.

If a strong prima facie case could have been established by Mr Durkin today, then that may have been influential upon us to agree (as it appears they did at some stage in the Industrial Relations Commission of Victoria) to some form of investigation in areas where there may be a problem with capacity to pay. Certainly nothing has been put before the Commission today, in my view, that in any way would incline me towards the view that the Agriculturists Award should be deferred for a special inquiry as to incapacity to pay.

If the employers are going to raise those arguments, then they should be prepared to put on the table a prima facie case in support of them.

I do not have anything else to add except to say that we would request the Commission, if possible, to make its deliberations short, sharp and sweet. I did not detect any opposition to our claim in its general terms, except in the minor area of the Aerated Waters Award. I think that all parties who made submissions today supported our application. As such, it should go through uncontested in my opinion.

I would simply remind the Commission that some industries do close down for all of Christmas, and therefore January pay is also received at

MR LENNON:

Christmas time. Therefore in order for employees to receive the increase by Christmas, before the Christmas break, the decision would need to be made at the earliest possible opportunity to allow for the necessary orders et cetera to be processed.

PRESIDENT:

Thank you, Mr Lennon.

We will reserve our decision on the T.P.S.A. and T.T.L.C. applications.

We would also reserve our decision on Mr Abey's application regarding the amalgamation of the basic wage and the margins. We will reserve our decision on Mr Durkin's application relating to the dairy industry.

As to the Aerated Waters matter, the Commission cannot, and will not, condone deliberate breaches of undertakings freely given. We therefore expect the T.T.L.C., the F.L.A.I.E.U. and the T.W.U. representatives present today, to use their good offices to bring about an immediate resumption of work at the sites affected.

We are of course aware that the dispute in question is listed for further hearing before Commissioner Watling tomorrow. For that reason we are of the opinion that any deferment of, or disqualification from, any C.P.I. increases which might flow on from these applications, will be a matter for the Commissioner concerned. He will deal with the matter in the light of our decision when given, and the future conduct of the employees concerned.

HEARING CONCLUDED