

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4146 of 1992

IN THE MATTER OF an application by
the Australian Social Welfare
Union pursuant to section 23 of
the act for hearing to vary the
Community Services Award

re making of a new award

COMMISSIONER GOZZI

HOBART, 31 March 1993
continued from 9/3/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Are there any changes in appearances this morning? Who'd like to go first?

MR PATERSON: I'm quite prepared to do so, commissioner. With regard to the matters raised by yourself at the last hearing, basically, I suppose, the threshold one was the status and standing of the Australian Social Welfare Union as it is still registered with the organisation. I can indicate that we have received notification from Mr James that a hearing will be set down for 15 April to determine the registration of the Australian Services Union, its full title being the Australian Municipal et cetera.

We anticipate that those hearings will proceed and we will get registration and subsequently the ASU will, in fact, seek an interest in these proceedings and take over from the ASWU as, in effect, the ASU has taken into its rules the ASU rules, into its membership the ASU membership and into its industrial activity, the industrial activity of the ASWU. My understanding is that there is no significant objections to the ASU's registration and no reason we're aware of as to why those proceedings shouldn't see the ASU before you in a manner not dissimilar to that which the Health Services Union of Australia has presented today.

So on the basis of that I would be proposing that these proceedings be adjourned until the earliest possible date after 15 April. And I presume that the appropriate way then to proceed would, in fact, be to do as we have done this morning to proceed the formal award. Submissions on the second matter that you raised at the last hearing as to why the state commission and yourself, as commissioner, should proceed with the making of this award, to proceed those matters by an award interest hearing unless such a matter can be set down to a more convenient earlier time and, presumably, if we don't have a full date for the substantive matters for some considerable time we could resolve the interest matter in a 15 minute hearing. I'll leave that up to your decision.

COMMISSIONER GOZZI: Yes, well if you're appearing on the 15th for the name change, then really immediately after that - what time is it on the 15th before the registrar?

MR PATERSON: I'm not sure - 9.30 I think.

COMMISSIONER GOZZI: Well, you see, I've got a matter on at 10.30 so if it was 9.30 I would be quite happy to hear your matter at 10.00. That's on the basis that the registrar gives an indication as to what he's going to do.

MR PATERSON: Well I suppose I could contact Mr James. I understand my reading of the act is that he can refer the matter for interest to you and contacting on the basis that he foreshadow doing that in whatever way is appropriate to him.

COMMISSIONER GOZZI: Well, look, let's just get those proceedings out of the way and we'll give you a hearing date for the determination of interest a bit further down the track. That's the easiest.

Now I suppose on the last occasion we discussed at some length the pros and cons, if you like, of making a state award given the federal decision that's been handed down by Senior Deputy President Hancock. I think you're indicating now you want to make some submissions about that following the proceedings before the registrar and following determination of interest of the new organisation in the award.

MR PATERSON: There are some preliminary comments, I suppose, or observations that can be made now but I don't know that it's anything more that I haven't already said.

COMMISSIONER GOZZI: No, that's fair enough.

MR PATERSON: The only point I would like to make is that the lack of commitment of staff and resources to the audio section of this commission is creating a problem in terms of access to transcript which I will need to rely on to prepare subsequent material, in particular, to get advice from our national divisional secretary on the matter.

COMMISSIONER GOZZI: Yes.

MR PATERSON: Not a reflection on the commission, its staff or its commissioners but on the resourcing of the audio section.

COMMISSIONER GOZZI: Yes, I certainly take note of that, Mr Paterson. I'll make some enquiries and see whether we can get that expedited because I think all the parties will need the transcript from the last hearing just to have a refresher on the topics we covered last time.

Mr Warwick, do you want to add anything?

MR WARWICK: Simply that I have no objection to the adjournment, Mr Commissioner, although as an intervener I don't think I can anyway.

COMMISSIONER GOZZI: That's fine. Mr Fitzgerald?

MR FITZGERALD: Thank you, commissioner. I think the only significant development since the last hearing of this matter is, in fact, a setting down - and I only just got notice of this yesterday - a setting down of an appeal against the decision of Senior Deputy President Hancock, and that appeal is made by this time - and I'm aware of other appeals being lodged - by the Queensland Government. Without going into the

full details, the Queensland Government, the Corporation of the Catholic Diocese of Brisbane, the Australian Workers Union of Employees, Queensland and the Uniting Church of Australia. I'm also aware of an appeal which has been lodged by the Uniting Church in Australia, Synod of Western Australia as well.

Now that appeal has, in fact, been set down for Tuesday - sorry, Monday the 10th, Tuesday the 11th and Wednesday 12 May in Brisbane. It would be our view, and I have sought instructions on this matter, commissioner, that until the status of federal jurisdiction or otherwise is determined by the conclusion of that appeal, it would be wrong for us to proceed in this commission. We believe - and apart from that aspect relating to some aspects, particularly services, there is, of course, the other log of claims by the ASU which, effectively, picks up the balance of employees in this industry sector.

So we really don't want to be caught in a double jeopardy situation where we don't know whether we're proceeding yet in the federal jurisdiction, depending on the result of those appeals, or the state. We will be reluctant to proceed with our application until those - until the issue of jurisdiction is finally determined in the federal jurisdiction.

COMMISSIONER GOZZI: Yes, look, I understand that, Mr Fitzgerald.

I suppose the thing that's changed for me primarily is this, that I was quite prepared to go along with the making of a limited type of award, if you like, given that the federal proceedings were caught up in all sorts of complexities, but the fact is that a decision has issued - a very significant decision and the decision rejected the argument for state awards - that argument was lost by not only Tasmania but by other states, and of course, Mr Paterson, it was your union that argued for a central award - a federal award - and as I say, senior president - Deputy President Hancock rejected state awards and indicated quite strongly it's his intention to move to comprehensive coverage of the industry in its entirety and I think I indicated last time it gives me a problem in that continuing to proceed to make an award would be cutting across that decision.

Now if it's subject to appeal - I don't know what parts are subject to appeal but I don't think - I think it creates a general if you go ahead with the making of a specific award, if you like, when the organisations that you represent federally argue for a total comprehensive award with roping-in and goodness knows what goes - you know, all the things that go with that, and I don't want to put anybody through a proceeding which is going to be overtaken at some stage by - by federal proceedings. And given that the decision has been

made, the argument has been run in the federal commission that state awards are not appropriate.

So I think you really need to think about it and given the difficulties at the moment or the technicalities with your name, between now and when that's rectified as far as proceeding in this commission is concerned, I think the parties should seriously consider their respective positions.

It's not that I don't want to make an award, I mean I've been prepared to do that - I've given very clear indications about that - what I wanted to do, but I think the situation has changed quite significantly having regard to that decision. And I think you really need to assess your position in light of that.

MR PATERSON: I just foreshadow - I mean I think it's the argument I put at the last hearing though that as well as indicating the rationality of proceeding that way, Senior Deputy President Hancock also made it clear that his decision wasn't the, you know, pre-emptive or exclusive of 111(i)(g) proceedings in further matters, and the broader the brush the more opponents to the federal regulation are going to come.

I mean the AWU in Queensland is at the - you know, has got the narrow interests, and the broader the brush the wider the reach of other unions that would be seeking to delay - well would effectively, unless quick demarcations are settled in the way we have here.

I'm not - I'm not at all convinced that the decision clears the way for the making of a federal award in respect of the third log, if you like, because the intent to cover the broader industry raises many, many other problems and I think the thing that the deputy president has overlooked when criticises our narrowness of that cash award application, is in the fact the rationale for doing it, was in fact to narrow the process and the objection and to get something moving.

If it is the case that the federal award process has got real legs under it, then yes, that's our intent to proceed that way. The arguments I presented all along in terms of the nature of the industry, its turnover of employers, and the reality of quick and reasonable progress in the determination of awards still remain.

COMMISSIONER GOZZI: Alright, well as I say, I'm certainly not unaware of your views on it but I think there would be merit in the parties sitting down - all of you sitting down - to look at the issues in light of the federal decision and try and put something to me on the next occasion.

If I - you know, as I say, if I'm persuaded to make a state award then of course processes would flow fairly quickly and

certainly a lot quicker than what's going to happen in the federal jurisdiction, but I accept the double jeopardy situation as well, not that I probably use jeopardy as the right - right word, but you know, the first awards principle applies too - it would be conceivable that you'd having something up in the state jurisdiction a long way ahead of what happens federally, and then you're caught everybody, not just the employers, by the first awards principle.

So - alright, well we'll look for a date. We'll go off the record for a minute.

OFF THE RECORD

COMMISSIONER GOZZI: We'll adjourn these proceedings to 28th April at 10.30 in the morning. Thank you.

HEARING ADJOURNED