

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 4875 and 4892 of 1994

IN THE MATTER OF applications by the AWU-FIME Amalgamated Union, Tasmania Branch and the Australian Municipal, Administrative, Clerical and Services Union to vary the Cement Makers Award

re increase wage rates by \$8.00 per week in accordance with the State Wage Case Decision of 24 December 1993

T No. 4927 of 1994

IN THE MATTER OF an application by the Tasmanian Chamber of Commerce and Industry Limited to vary the Cement Makers Award

re Definitions, wage rates

COMMISSIONER IMLACH

HOBART, 23 February 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR COOPER: Commissioner, in respect to those matters that have been read out, I understand there's three separate applications there and there were two applications for \$8 and one application to vary the award re clause 7 and clause 8. Can I just clarify that with the commission, if I may please?

COMMISSIONER IMLACH: I believe that's to be - that's the case; 4875 is \$8 per week application by the AWU- FIME Amalgamated Union; 4892 is a similar application by the AMACSU and -

MR COOPER: And 4927 -

COMMISSIONER IMLACH: - and T.4927 - it's got definitions on the front here but I understand from my associate that it's quite extensive.

MR COOPER: Yes, so clause 4 - oh, T.4927 of 1994 is the application by the TCCI -

COMMISSIONER IMLACH: That's correct.

MR COOPER: - to vary clause 7 - Definitions, clause 8 - Wage Rates in respect to a fairly lengthy application. So there's three distinct applications then. Commissioner, in respect to just appearances, I appear for the AWU-FIME Amalgamated Union, Tasmania branch - COOPER, G., in all matters, but I would like to make submissions in respect to T.Nos. 4875 and 4892 as distinct from the other one when we proceed, if the commission pleases.

COMMISSIONER IMLACH: Yes, we'll see how we go.

MR M. HILL: If the commission pleases, HILL, M. I appear on behalf of the Automotive, Food, Metals & Engineering Union. Thank you.

COMMISSIONER IMLACH: Thanks Mr Hill.

MRS. H.J. DOWD: If the commission pleases, I appear on behalf of the Australian Municipal, Administrative, Clerical and Services Union - DOWD, H.J.

COMMISSIONER IMLACH: Thanks, Mrs Dowd.

MR B.J. HANSCH: If the commission pleases, HANSCH, B.J. I appear for the Transport Workers Union of Australia and the Construction, Forestry, Mining & Energy Union (FEDFA Division).

COMMISSIONER IMLACH: Yes, well I confirm that I've got correspondence from the secretary of that union appointing you

as agent, Mr Hansch.

MR P.E. TARGETT: Thank you, commissioner; TARGETT, P.E., I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER IMLACH: Yes, thanks, Mr Targett. Now perhaps we might go off the record for a minute thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Yes, now Mr Cooper, you sought to adjourn the \$8 application as far as you're concerned.

MR COOPER: In respect to the short adjournment, commissioner, yes. During that short adjournment we did advise you that in respect to the AWU-FIME application for \$8 we would be seeking an adjournment of that matter to a date to be fixed on advice from the union. If the commission pleases.

COMMISSIONER IMLACH: Right. And what - yes - who is the other applicant - Mrs Dowd?

MRS DOWD: Yes, Mr Commissioner, we would actually be seeking an adjournment of our application as well, which is 4892, for a date to be fixed.

COMMISSIONER IMLACH: Right. And what do you say to all that, Mr Hill?

MR HILL: I don't think I've got any problems with that, Mr Commissioner. I think I understand the intentions of the parties. I believe that their objective during the adjournment period is to have some discussions with the company about the application and I - I would support it - the adjournments requested.

COMMISSIONER IMLACH: Thanks, Mr Hill. Mr Hansch?

MR HANSCH: I agree with the other parties, Mr Commissioner.

COMMISSIONER IMLACH: Good.

MR HANSCH: Adjournment.

COMMISSIONER IMLACH: Yes. Now, Mr Targett. Now we'll take the \$8 ones to start with and then we'd better hear what you say about your own application.

MR TARGETT: I've no objections to the adjournment of the two applications, T.4875 and T.4892.

COMMISSIONER IMLACH: Right. Now, I don't think we're completely out of order; what do you say about your application as obviously the other parties don't want to know anything about it, Mr Targett - what do you say?

MR TARGETT: Oh, I'd suggest that that doesn't surprise me in the slightest. In relation to the applications being lodged by the TCCI, I intend to put to you that we put forward the whole program which will include inspections of the plant followed by which will be submissions and arbitration on the structures both in wage rates and definitions and we seek the commission to arbitrate those matters to reach a decision as to what goes into the award and what doesn't.

COMMISSIONER IMLACH: Yes. I presume - or I put to you, Mr Targett, are these matters cold or have they been subject to negotiations before now?

MR TARGETT: The classification structure and definitions that have been provided to the commission attached to our application numbered 4927 have been documents provided to the union as long ago as 18 months; they've been the subject of lengthy negotiations in the context of award variations as well as enterprise agreements over the continuing period of 18 months, the outcome of which was hopefully to put together an enterprise agreement with the clear intention of varying this award in the context of the classifications and definitions I've put forward.

Agreement was unable to be reached between the parties at the conclusion of very lengthy negotiations and as a result of the breakdown of those discussions, the company have instructed me they wish to proceed. I have therefore lodged an application.

COMMISSIONER IMLACH: And you're seeking - can I put it this way - my words, not yours - an adjournment for inspections to take place.

MR TARGETT: Well I'm seeking the setting of dates for inspections and for hearings for the matter to be arbitrated on the basis that I assume the unions are opposing the application. I also intend to hand up a single page exhibit which is a minor alteration to our application because there are a couple of points that were actually left off. So I'd seek to - I might do that now.

COMMISSIONER IMLACH: Yes, I think that would be a good idea. We'll call that exhibit T.1, just for the record. It's a - really it's seeking to amend the application isn't it.

MR TARGETT: It's seeking to amend the application by removing the existing page 22 and inserting the new page 22 I've just supplied. The reason I'm asking for that to be done is in the - at the bottom of page 22 in the allowances, the

Railton Maintenance Tradesman Allowance. In the original document the last four levels were left out unintentionally and we've merely amended the document by inserting those four into the document.

COMMISSIONER IMLACH: Is that all, Mr Targett?

MR TARGETT: Yes it is, Mr Commissioner.

COMMISSIONER IMLACH: Now, Mr Cooper, what do you say about that?

MR COOPER: Commissioner, I'm - obviously Mr Targett's convinced that the arbitration is necessary because he's asking for it straight up. I'm not one to stand here and mislead the commission or delay things, but I do take some objection to the comments made by Mr Targett that - that things have broken down at Goliath. I do think that that is not quite correct.

In terms of the document that is before you in respect T.4927 of '94, it is true that that document does look similar to a document that has been floating around for a period of time, and that period of time would be, as Mr Targett has outlined, some 12 or 18 months, but to say things have broken down, I think is a little bit wrong and if I may just indulge the commission for a couple of moments.

In respect to Goliath, it is correct that discussions have been going on for some considerable amount of time in respect to restructuring. Those discussions have at times been overtaken by other matters which the commission would be aware of as a result of some inspections that occurred recently as a result of a dispute that the AWU-FIME union had with the company.

And that - that has involved considerable upgrade of plant and understandably the attentions of the parties have been directed to making sure that upgraded facility does operate properly. And just in terms of a couple of instances in respect to that upgrade, the AWU as it was then, the amalgamated union now, did seek and have discussions with the company on interim rates that would apply to people that would work that new equipment. Those interim rates are obviously not in the award, but they are being adhered to by the company, so I think that in itself demonstrates the commitment by my union to ensure that facilities that have been upgraded do work.

In terms of this application though, if I can be specific; this application seeks to undermine I think one of the parties anyway, and that being the employees in respect to what it's seeking to do in terms of the total rates that are contained there in it, and apart from some concerns we would have with

the definitions that are contained therein, we would certainly have strenuous objections to any absorption in terms of wage rates that are being paid at the moment in terms of total rates or weekly rates that would be contained in this agreement.

And I think the parties need to apply their mind to that situation because as the commission would be aware and I've recently become aware in reading transcripts that go back to 1990 in respect to restructuring and even '88 in respect to structural efficiency - sorry - 1990 in respect to structural efficiency, and '88 in respect to varying award in respect to allowances.

I have some understanding of how things have worked at Goliath and I have some understanding as to how the principles that have been espoused in the August '89 decision can be used by the company in terms of this award, and I believe what fundamentally this application is seeking to is morally wrong and my union is totally opposed to it and I think that it would be more prudent rather than to set dates for inspections and to get you to arbitrate on something that hasn't been fully discussed on site, is that the TCI apply their mind to a more conciliatory approach and have discussions with us in terms to see that we can preserve for our members what they currently enjoy on site in terms of wage rates and to see if we can't cooperatively implement facilitative provisions that allow for more flexible work practices to occur through the implementation of an appropriate career path.

In terms of other matters that have been going on, that is, terms of training and consultative committees and discussions, Mr Hill will no doubt report those steps forward have been quite significant and I think it would be foolish - and it foolish that this application, you know, should be brought forward to proceed to undermine all that work, and I would simply on the basis of preliminary submissions in respect to this matter advise the commission that my union through votes of the membership are opposed to this variation and I'll put that quite strongly on the record and we will be opposing this application at every step and call where we are required to address the commission and I want to put that quite clearly on the record before we start, so that the commission, if it does form a view that it should proceed, is of a mind of what it's letting itself in for. If the commission pleases.

COMMISSIONER IMLACH: Before you take your seat, Mr Cooper, having in mind that quite a large number of awards probably the majority of awards have been restructured, in other words, that this award has not, and it's been quite some time, shall we say, that I, for one, have been expecting something to happen in relation to it, having that in mind, how long do you think you would think would be a reasonable time for discussions to take place?

MR COOPER: Commissioner, I will put it to you simply this, that it would be more appropriate for one not to consider it in terms of a time frame but to consider it in terms of a consent position and if that happens to take a bit longer than - than one would like, then I think that should be viewed in - in the context of getting something that will last, rather than getting something that's forced upon you.

Now as I said, those discussions, I've been involved with them since I've been involved with the AWU and they have been extensive and they have been at times heated, but at times they've been quite constructive and I think this application outlines all that and I think we should - if this is the view of the company, we should make that known to the people quite strongly, and I think the company would then view its application more realistically, if I may.

So the time frame, commissioner, I can't answer that, but I would say that it should be considered on the basis of having a consent position to bring to you rather than one that you should have to arbitrate on and foist upon workers in terms of structural efficiency I don't think that process will work. It won't deliver the real changes that are required.

COMMISSIONER IMLACH: Yes, well, I'm with you to quite a large extent, Mr Cooper, in that I've always said to the parties in various awards that restructuring is expected to be done by agreement and actually I can't think of any particular award where it's been done by arbitration. Perhaps one or two points in an award, but generally not by straight out arbitration.

But nevertheless, remembering what I said about this particular award, I'd like you to exercise your mind as to a reasonable time and you - I mean I've - I've indicated to you which way the wind blows today, shall we say, but I still think that time is running on. I'll leave you think about that.

MR COOPER: I will ponder that, commissioner. I do just make this comment, that some flexibilities have been introduced at the plant which are outside the current classification structure that is contained in the award and, you know, on the basis of goodwill and understanding that those work practices are continuing at this very minute and I think the TCI and the company should be aware of that when they frame applications such as the one that is before you and the impact that that may have on the site.

COMMISSIONER IMLACH: Thanks, Mr Cooper. Mr Hill?

MR HILL: Yes, sir. Firstly, I'd like to indicate that I haven't received a copy of the application T. No. 4927. Now I

don't know whether it's in one office, another office or somewhere, but I think I understand the - the basic proposals that are contained in that - that document.

Mr Targett indicated earlier that discussions that commenced 18 months ago between the parties in respect to this matter - and I would certainly confirm that to be a fact - the company submitted rather a comprehensive proposal then which had the potential to form the basis of ongoing discussions. Insofar as the maintenance section of the work force, the proposal put forward by the company was similar to the metal industries national career path and training matrix and - and there was a significant similarity between that the state metal industry structure.

We indicated to the company at that time that we agreed in principle with the career structure that was contained in their document, however we felt there needed to be quite a deal of more fine tuning done to it, particularly in terms of the training aspects of it and the types of training which needed to be made available in order to enable workers to access the career structure.

At the - at the company request, shortly after that document having been discussed by the parties, it was proposed that we should also consider the question of converting the wages to a salary and it seems to me that this is where considerable time was spent going practically nowhere. What we agreed to do from the outset was to separate the two discussions - separate the discussions into two parts, one for production and one for maintenance.

Having the belief that the maintenance group had a substantial start inasmuch that we had an agreement in principle, we felt that we could have made some quick progress, however that was not to be the case and about 12 months after starting that process we decided we were not going to make it in terms of a salary structure. And it was at this time that we suggested to the company that we'd better go back to the original proposal which was submitted by the company and agreed in principle by the unions.

And we would rely virtually upon the standards that have been set in metals, both federally and state.

We suggested to the company that it would be appropriate if we are going to deal with that matter properly, for them to conduct a skills audit of the work force. This was - this discussion commenced about November last year and Mr ... the engineer was given the task of putting together the skills audit in consultation with the members that are making the on the job.

Early January I think it was this year, there was a discussion between Mr Nevins, Mr Becker from the ETU or EPU and myself as to what progress was being made in terms of the skills audit and what efforts were being made to - by the company to put a training matrix together so that the structure that was agreed in principle would make some sense.

Mr Nevins said, well, the skills audit is fairly well progressed and he said as far as the training matrix is concerned, he said, we've done no work on that at all but I will ask Mr Targett to prepare a training matrix which he considered suitable and forward it to you. We've heard nothing from Mr Nevins, Mr Targett or anybody else from the company from that time to this other than this application, sir, and given those circumstances, I think to say the least I think it's a bit rude of the company's representatives to stand up and suggest that the unions were not participating properly in these discussions.

MR TARGETT: I didn't say that.

MR HILL: Thank you.

COMMISSIONER IMLACH: Thanks, Mr Hill. Mrs Dowd?

MRS DOWD: Mr Commissioner, the Australian Services Union, Tasmanian Clerical and Admin Branch has had discussions with the company through the TCI with our industrial officer Doug Costello who is based in Launceston. I'm not as familiar with this award as I possibly should be, but I have seen the application put forward by the TCCI and I do note that the classification definitions start at administrative employee, yet the wage rates that have been proposed start at adult entry grade - and then grade 1. There are no definitions been supplied for adult entry Grade 1A, Grade 1B, Grade 2A, Grade 2B, Grade 3A or 3B and yet in the junior rates that have also been supplied, the percentage is for the employee Grade 1A, so I would actually ask Mr Targett if he could explain why the application only contains some definitions to go into the award.

We are not really happy in relation to the deletion of some of the clauses that are applicable to the clerical division at this stage. I believe we'd have to have more discussions on that. If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mrs Dowd. Mr Hansch?

MR HANSCH: Yes, Mr Commissioner. Mr Commissioner, the position of the TWU and the FEDFA is somewhat similar if not identical to the position as put by the previous speakers. We have also been involved in discussions with the company for the past 18 months, 2 years and I must say that our understanding is very similar as that put by Mr Hill in

particular in relation to a career path, skills audit, et cetera.

Now I am not the officer that has the responsibility for the Cement Makers Award so I don't know all the details, but I have spoken to other people involved who has attended numerous meetings with the company over the past 18 months and it appears from my notes that they've said to me it is very similar to what Mr Hill has said in relation to career paths, skills audit, et cetera, and for those reasons, Mr Commissioner, we would oppose the application on the basis there needs to be further discussions between all parties involved. Thank you, sir.

COMMISSIONER IMLACH: Thanks, Mr Hansch. Well what do you say to all that - have we not another appearance or not?

MR K. BECKER: Sir, please excuse my late entry, but I would like to put an appearance in, if that's possible. BECKER, K.D. I would like to appear on behalf of the Electrical and Plumbing Union.

COMMISSIONER IMLACH: All right. Well I accept that, Mr Becker. Did you want to put your finger in, shall we say? Do you want to say something?

MR BECKER: I think my finger's been put in by Mr Hill, sir.

COMMISSIONER IMLACH: Right. Thanks, Mr Becker. Now, Mr Targett, if you haven't got anything to help us with, I'll have to same something.

MR TARGETT: Oh, I'm quite happy to make some further comments, Mr Commissioner. I've listened to all of the comments made by the union officials, that whilst I agree with some of the comments that they've made, I substantially disagree with other comments that they've made, but the reality of life is that the TCCI has lodged an application which, if necessary, we wish to proceed to arbitration. We have requested of the commission that dates be set for inspections to take place and further hearing dates. If the unions wish to hold discussions with the company and the TCCI while that process is under way, we're only too pleased to. But at the end of the day we seek to vary the award. If discussions do not bear fruit then we will seek arbitration. If they do bear fruit, then we can come back to this commission with consent. This process is not an uncommon process and as a matter of fact, I've undertaken this identical process before the commission, as currently constituted, in another award and that process was a very successful process at the end of the day.

Now we have not, at any stage, suggested to the unions and I would defy them to suggest that I have or how I have that I

will not talk to them, but I would point out to the unions, especially Mr Cooper which some of his diatribe, that he has not on this award, raised it with us since the union took a vote - or the union members took a vote and declined to proceed with the discussions on the enterprise bargaining agreement.

I have advised all of the union officials that are here today, expect for Mr Hansch because he wasn't at the meeting and Mrs Dowd who had another official there, and I have repeated the statements to Mr Cooper on other occasions, most recently at other proceedings before this commission at Railton, that if we could not conclude this matter, we would lodge an application to vary the award in the terms that I have lodged the application. For them to stand here and act so surprised about this application I find astounding because I've been telling them this for the last 12 months.

Having said that, I'm delighted if they wish to discuss the matter and will quite happily do so, but I do not resile from the right of the TCCI to lodge the application and if necessary have it heard.

COMMISSIONER IMLACH: Yes. Thanks, Mr Targett. Well just by the by, what was that award we were - you were talking about?

MR TARGETT: Independent Schools.

COMMISSIONER IMLACH: I thought it might have been. I don't know that there was all that much antagonism, shall we say, in that area.

MR TARGETT: There was initially, if you recall.

COMMISSIONER IMLACH: Yes. Well in any case, I adhere to what I said earlier, that I'm of the view that restructuring ought to be by agreement and with that in mind, I do not propose to proceed with this particular application at all at this stage, and I request that the parties meet and discuss whatever points they wish to raise on both sides and that I will reconvene this hearing in a month's time and I'll be looking for a report as to how far the discussions have gone. Then I'll think about continuing with the hearing. In other words, I'm adjourning it as it is at the moment for that purpose. What's the trouble, Mr Targett?

MR TARGETT: I just want to get a point of clarification, Mr Commissioner. You're not suggesting that you refusing to hear the matter. You're merely adjourning it, is that correct?

COMMISSIONER IMLACH: That's correct.

MR TARGETT: Thank you.

COMMISSIONER IMLACH: But you can take it for the time being that I'm not going to hear it, that's for sure, because -

MR TARGETT: So you're refusing to hear it?

COMMISSIONER IMLACH: Today, yes, on the grounds that I've said - that I've always said to yourselves - I hope some of you remember it but certainly to other parties in other awards - that I expect restructuring to be carried out by agreement and I've added to that, nevertheless, in the long term, if agreement cannot be reached, I am prepared to arbitrate, but I don't think I've ever been really put on the spot to arbitrate fully, and so in that context, I don't think today is appropriate to even think about proceeding with the application.

Nevertheless, it is on the record and I don't propose to dismiss it today. It's on the record, but I hope I've made myself clear. I don't think today is the time to start - for the commission to start taking any action on it, nevertheless I'll reconvene in a month to hear what the parties have to say, then I'll think about where we go from there. Is there any objection to that procedure?

MR TARGETT: Are we setting a date now?

COMMISSIONER IMLACH: Well a month - what's today?

MR COOPER: Commissioner, we just state we have no objection to that proceeding. I think that's quite a sensible way to deal with it.

COMMISSIONER IMLACH: We'll just go off the record for a minute, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Now I've set down Monday the 28th of March for this hearing to resume or to reconvene. Is there any objection to that?

MR TARGETT: I have no objection to the date that you have set. I have an objection to not proceeding.

COMMISSIONER IMLACH: Well that's too bad.

MR TARGETT: Oh, I accept that.

COMMISSIONER IMLACH: But I hope all parties understand the position that we're in. Thank you.

HEARING ADJOURNED

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