

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

- T No. 2399 of 1990 **IN THE MATTER OF** an application by the Tasmanian Public Service Association to vary nominated public sector awards
- T No. 2511 of 1990 **IN THE MATTER OF** an application by the Federated Engine Drivers' and Firemen's Association of Australasia, Tasmanian Branch to vary the Boiler Attendants Award
- T No. 2504 of 1990 **IN THE MATTER OF** an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the North West Regional Water Authority Employees Award
- T No. 2506 of 1990 **IN THE MATTER OF** an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the Professional Engineers Award
- T No. 2508 of 1990 **IN THE MATTER OF** an application by the Hospital Employees Federation of Australia, Tasmania Branch to vary nominated public sector awards
- T No. 2605 of 1990 **IN THE MATTER OF** an application by the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch to vary the Miscellaneous Workers (Public Sector) Award
- re structural efficiency
principle

T Nos. 2467, 2469, 2470
2471, 2472, 2474, 2475,
2476, 2477, 2478, 2479,
2480 and 2481 of 1990

IN THE MATTER OF applications by
the Tasmanian Public Service
Association to vary nominated
Public Sector Awards

T No. 2653 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Ward Clerks

T No. 2655 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Maintenance Staff

T No. 2656 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Trade Instructors

T No. 2654 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Laundry Machine Operators

T No. 2657 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Attendants

T No. 1844 of 1989

IN THE MATTER OF an application by
the Tasmanian Teachers Federation
to vary the Teaching Service
(Teaching Staff) Award

re recreation leave allowance

T No. 2264 of 1989

IN THE MATTER OF an application by
the Secondary Colleges Staff
Society to vary the Teaching
Service (Teaching Staff) Award

re recreation leave allowance

T No. 3200 of 1991

IN THE MATTER OF an application by
the Tasmanian Public Service
Association to vary the Inland
Fisheries Commission Staff Award

re Coxswain's Certificate
Allowance

FULL BENCH

PRESIDENT
COMMISSIONER GOZZI
COMMISSIONER WATLING

Hobart, 1 July 1992
Continued from 17/6/92

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Well, good morning everybody, what is the position and who is going to report to us on the negotiations which have occurred, if any, on the Memorandum of Understanding the health area?

MR WARWICK: If I may, sir, I would -

PRESIDENT: Mr Warwick.

MR WARWICK: - seek to bat off. Mr President members of the bench, since the matters just listed were before you on 17 June, the unions have met and a significant amount of work in respect to a collective position and in addition to that the unions and the government, that is, the parties have met three times, on the 18th, 24th and 25 June and again significant work has been undertaken at those meetings.

It is reasonable to report, Mr President members of the bench, that there is a significant degree of consensus on a health award, although there are some matters still to be resolved in relation to incidence - the incidence and application of that award. The parties have not met since 25 June because we have asked the department, this is the Department of Health, to provide us with certain information which we see as central to negotiation.

The department has agreed to provide us with that information, but obviously it is not something they can do overnight. It is our understanding that we would be in receipt of certain facts and figures today or - later today or tomorrow, although Mr Jarman can elaborate on that. I think, in summary, in relation to negotiations we, from our point of view, and I think it is a collective union point of view as well, we see that progress is being made and we certainly see that there is a need to continue to talk and to - and certainly to consider the information which will be provided to us.

There is a further development which I would seek to make the commission aware of by way of an exhibit. And I would seek to table that now, if I may.

PRESIDENT: I believe this is - this exhibit is HSU.16, Mr Warwick.

MR WARWICK: Thank you, sir. I think it would be appropriate if I read through the document. It is from the Tasmanian Confederation of Industries, as you can see, signed by Mr Paul Targett, dated 24 June to the secretary of the Health Services Union, and reads:

Dear Sir,

re: Hospitals Award

It is evident that the H.S.U.A. and the Health Department are seeking the approval of the Tasmanian Industrial Commission to commence Award Restructuring negotiations in isolation from the rest of the Public sector.

Because of the Formal Nexus that exists between this Award and the Public Hospitals, the T.C.I. representing Private Hospitals, seeks your agreement that the T.C.I. be involved in any negotiations between the H.S.U.A. and the Health Department that may impact on the Hospitals Award

It is, in overview, a matter of natural justice that you agree to this request and I look forward to your positive response.

Yours faithfully

In respect to that letter, Mr President members of the bench, I would point out that the bench, as constituted, but in relation to a different matter or constituted in relation to a different matter, that is private sector nursing homes, sir, was made aware of the existence of the nexus, certainly Commissioner Watling is more than aware of it because he wrote a decision late last year which in fact put that nexus in place, but our position on that - and I would seek to make it a matter of public record - is that we offer no objection to the Tasmanian Confederation of Industries being involved in those discussions and we certainly gave that body a commitment that we would be mindful of their position in relation to any negotiations which take place - which do take place. That was a commitment we gave when we - when the nexus was made.

And I suppose I should one qualification on that and that is that it is up to them whether or not they finally agree to a Memorandum of Understanding or not. But, certainly in respect to their position of seeking to be involved in the discussions, we will certainly agree to that.

In relation to the question of how we proceed from here, Mr President members of the bench, we would, as I have previously indicated, see a need to continue to discuss the matter and on that basis I would request an adjournment. It would seem to us the most logical way of going about that would be to seek from the bench its agreement that the parties be allowed to advise you of the - I guess if you like, the reaching of an agreement and the processing of it subsequent to that.

We do not have an objection to a date being fixed, but at this stage I guess it is a matter of speculation as to when we will have an agreement, although obviously we will be doing everything possible to ensure that it is done as soon as possible.

PRESIDENT: Mr Warwick, what happens if you do not reach agreement and considerable time elapses as a result of the negotiations? Will there be any pressure then on other parties to conform to the agreed dates which have been established by way of our decision of 29 November?

MR WARWICK: Well, that is something of a difficult question, sir, because the matter of how any outstanding matters from an agreement are processed is one which is under discussion as part of, I guess, the package as a whole, if you like.

PRESIDENT: Yes. But if you do not reach agreement then the whole - then a considerable - it seems to me a considerable amount of time, further time, will have been lost.

MR WARWICK: Indeed. I appreciate the point.

PRESIDENT: And what I do not want to happen is that it becomes a public issue and there is much belabouring of each other by the parties because of the inability to meet certain dates.

MR WARWICK: Indeed. Well, as I say, I am in a little bit of a difficult position because we have not finally reached an agreement on how we process any outstanding matters.

PRESIDENT: And -

MR WARWICK: I think the most logical thing I can say to you in reply is if the bench does have a concern about that then the best solution would be to fix a date. And the bench can make a -

PRESIDENT: I am -

MR WARWICK: - determination.

PRESIDENT: - I am still concerned about the loss of time in any event, no matter what date we fix, because I - well, what sort of time would you be anticipating; another three weeks, a month?

MR WARWICK: Certainly. We would want to have it resolved by then.

PRESIDENT: Which means that a further six weeks will have been lost.

MR WARWICK: They have been fairly fruitful negotiations, sir -

PRESIDENT: Good.

MR WARWICK: - I am not sure that we would say that they have been lost.

PRESIDENT: No, I am just - I am concerned about the thing falling to pieces at the end of the day and then -

MR WARWICK: Indeed, indeed.

PRESIDENT: - there being recriminations -

MR WARWICK: I understand your concern.

PRESIDENT: - left, right and centre.

MR WARWICK: Well, certainly we will be doing everything possible that we can to reach an agreement. I think our submissions last time were sufficiently clear that on the matter of our concerns about our destiny, now we have to do something about that from -

PRESIDENT: Yes.

MR WARWICK: - our organisations point of view and we will be seeking to do so. I cannot, obviously, guarantee that we will have an agreement in three weeks time because the government may not agree with us.

PRESIDENT: Yes. Now, in terms of the Memorandum of Understanding, I trust it will be a fairly detailed document -

MR WARWICK: Well, in draft form it will -

PRESIDENT: - which will be sufficient for the bench to make some sort of judgment as to whether or not the agreed issues are satisfactory?

MR WARWICK: It will be an extensive document.

PRESIDENT: Yes, very well.

MR WARWICK: If the commission pleases.

PRESIDENT: Thank you. Mr Mazengarb?

MR MAZENGARB: Mr President and members of the bench, with regard to the comments made by my colleague, Mr Warwick, I can confirm that there has been some significant consensus reached with regard to the establishment of a Health Award and we are certainly working along that line. With regard the document that has been tabled on 24 June from the Tasmanian Confederation of Industries, it should be noted by the bench and supposedly more importantly by the confederation that the association has not received a similar letter.

There has been no request made to the association, bearing in mind that we are part and parcel of the negotiations with regard to the Health Award. I have to also note there in the first paragraph that the TCI indicates that there has been agreement or approval from the commission to commence award restructuring negotiations in isolation from the rest of the public sector.

Certainly from the PSAs perspective we are not negotiating in this degree of splendid isolation or the isolation referred to there. We are fully mindful of the decision of 29 November and in our negotiations with the Department of Health we are keeping that in mind when we are negotiating our position. With regard to the adjournment sought by Mr Warwick, the association has no concern with that adjournment but we are also mindful, as you have indicated Mr President, of the time factor involved.

We are hoping that the documentation that has been alluded to by Mr Warwick will be received from the department shortly. We were - or it was indicated last week that it will hopefully be available on Monday or Tuesday of this week. But I understand that there is a fair degree of work involved in that, so I appreciate the current time lag but certainly as soon as we have that information we will be examining it in some detail with a view to reaching a final position. If the commission pleases.

PRESIDENT: Yes, thank you. Mr O'Brien.

MR O'BRIEN: If the commission pleases, speaking on behalf of my organisation we concur with the request that the matter adjourn and that the parties be given additional time to seek to reach agreement in relation to the proposed Memorandum for this area. There are a number of matters to be considered and I think, having been involved in discussions, I would say there is an extensive agenda on the table at this stage to be discussed.

So we think that it is reasonable that some additional time be allowed considering the range of issues that need to be attended to in the discussions. In relation to HSU.16, it is the first we have seen of it today. It raises some issues which we would want to give some consideration to. We have not, obviously, had an opportunity to discuss that with the HSU nor with any other party to the discussion and we would be seeking to do so following the hearing of today's matter. If the commission pleases.

PRESIDENT: I think it would be reasonable for - well, I will say anyway though the other members of the bench can disagree if they wish - but who you have at the meetings is your - is up to you to determine.

MR O'BRIEN: Well -

PRESIDENT: I do not think we will be directing you who you should include or exclude.

MR O'BRIEN: Indeed, it raises issues beyond that very question, but I do not want to make any comment on that at this stage because the matters are more appropriate to be dealt with, at least initially, between the parties. Thank you.

COMMISSIONER WATLING: I suppose the action and activity that has gone on in these discussions will raise its head when the Hospitals Award is brought back on and obviously Mr Warwick and the TCI will debate these issues at some length, I think, given their agreement to vary the Hospitals Award, the private sector area.

MR O'BRIEN: Well, I am not familiar with that and we certainly would not seek to intrude into the area of coverage of that award.

COMMISSIONER WATLING: I would have to say -

MR O'BRIEN: There may be issues that arise from this that flow into that area that do concern us, for instance - you know, and I do not know, all that I am saying is that this raises issues that we might want to address between now and when the matter is further considered.

COMMISSIONER WATLING: Yes, that is fair enough.

PRESIDENT: Thanks, Mr O'Brien. Mr Jarman or Mr Willingham? Mr Jarman?

MR JARMAN: Thank you, Mr President. May it please the commission, I endorse those comments made by Mr Warwick and Mr Mazengarb going to the content and the extent of the discussions that have taken place between the parties over the past two weeks or so. We believe that there is a range of consensus now on the creation of Health Award. As Mr Warwick has indicated there are some other matters going to scope and incidence that need to be worked through.

We have, as both Mr Mazengarb and Mr Warwick have indicated, been asked to provide the unions with certain information. We have endeavoured to do that. It has taken longer than we first believed that it would. We do have some information that we can give them today and we would hope that that information will enable us to progress our discussions on this matter.

Mr Warwick has indicated that the parties should be in a position of being able to contact the commission to inform you that we are prepared to report back on our deliberations on this matter and hopefully present a Memorandum of Understanding. It would be our position, if the commission pleases, that a report back date be set because I believe that gives the parties a target to work to. If we do not have a date I believe that these tend - these sorts of issues tend to roll on and they do not reach any sort of culmination.

As far as HSU.16 is concerned, I would inform the bench that the Department of Health has received a similar letter. At this point in time we have not yet formed a position on the request contained in that letter. We will be notifying the unions and the TCI in due course of our position. If the commission pleases.

PRESIDENT: Yes, thanks Mr Jarman. No comments, Mr Willingham? No. We will just go off the record for a moment.

OFF THE RECORD

PRESIDENT: This matter is adjourned. The parties will report back to me sitting alone on 22 July at 10.30.

HEARING ADJOURNED