

DEPUTY PRESIDENT JOHNSON: I'll take your appearance, Ms Fitzgerald.

**MS L. FITZGERALD:** LYN FITZGERALD, for the Tasmanian Trades and Labor Council. Thank you.

5 DEPUTY PRESIDENT JOHNSON: Thank you. When this matter was before me on last Friday I adjourned the proceedings in the hope that the parties might be able to come to some accommodation by way of consent in respect of this application. I now understand that that is not the case. Ms Shelley, perhaps you'd like to bring me up to date,  
10 please?

MS SHELLEY: Thank you. Yes, well, we did meet with Mr Gates of the TCCI and we put a proposition to him that we felt could settle this matter and we could proceed by consent. Mr Gates was to get back to us after consulting his principals, by Wednesday. In fact, he didn't do that but he did fax a document to us yesterday, which in our view, was  
15 a completely outrageous proposal which we couldn't agree to.

At a quarter to - this afternoon, we've received per fax a second proposal which is equally outrageous and we're unable to agree to that either. It is a 'without prejudice' document, so obviously I can't refer to it on the record but, in our view, it offends past, present and future  
20 principles and on that basis we can't proceed any further at this stage and really, if it's going to be arbitrated there's some very significant issues at stake here, not least of which go to the effect of agreements reached in good faith between principal bodies in this state, principal  
25 industrial bodies in this state, and we would want to, I think, mount fairly significant arguments and on that basis, so I don't think we're in a position to continue this afternoon.

DEPUTY PRESIDENT JOHNSON: Ms Shelley, I've been careless enough to forget that this is the first time you appeared in the matter.  
30 Would you like to make your appearance, please?

**MS P. SHELLEY:** Yes, Mr Deputy President. I'm replacing JILL ARCHER and I'm appearing on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, SHELLEY, P.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Shelley. The  
35 matters that you mention, the serious matters that any arbitration in this - in the case of these applications might raise, are they matters that in the union's belief can be heard by a single member of the commission sitting alone?

MS SHELLEY: That's a very good question. I might actually need a  
40 minute to confer with my colleague, Ms Fitzgerald, in relation to that question.

DEPUTY PRESIDENT JOHNSON: Certainly. We'll go off the record.

## OFF THE RECORD

MS SHELLEY: Well given the issues which do go to the application of the principles of the Tasmanian Industrial Commission, I, with your leave, would ask that Ms Fitzgerald respond to that question because  
5 it is something that is broader than just this particular application, in our view.

DEPUTY PRESIDENT JOHNSON: Yes, certainly. I don't know what the order of things is in the circumstances. Perhaps it's best that I hear from you, Ms Fitzgerald, and then Mr Gates can respond to what  
10 he hears from you. Yes, if you will, please?

MS FITZGERALD: Thank you, Mr Deputy President, and I'd be guided by you, to some extent, but the response by the TCCI to the ALHMWU's application seems to me to go to the matter of our application, which was before the full bench, which sought to flow on  
15 to the decision of the AIRC regarding the 10 dollar safety net adjustment.

Now, that was an agreed matter. It was a consent matter and the wage fixing principles were predicated upon the agreement that was reached between the TTLC, our affiliates and the TCCI. Now, the TCCI's response significantly challenges that agreement and is at odds with  
20 that agreement. So, as I said, I'd be guided by you somewhat but given that our application was a matter for the full bench and the decision was of the full bench, I would think that this matter, which as I said, challenges that decision and certainly is at odds and inconsistent with the agreement that was reached, therefore it would seem to me to be a  
25 matter for the full bench.

DEPUTY PRESIDENT JOHNSON: Yes, thank you, Ms Fitzgerald. Mr Gates?

MR GATES: Yes, thank you, deputy president. There are probably three aspects to what I wish to say. The first is the matter of the full  
30 bench. I don't believe this is a matter which goes to the full bench nor do I believe in regards to that matter for the case being referred to the full bench.

The Wage Fixation Principles clearly set down the manner in which these applications be dealt with by the commission. The principles clearly set out in section 7:  
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*That in the absence of agreement that the commission is to determine -*

That is the matter which the commission, constituted by a single commissioner, can ....., and there is nothing to exclude him from  
40 hearing the matter.

The matter is not, I would suggest, of such importance, that is a matter which is to be .... in the commission. Any matters that have been in agreement or lodged with an agreement or challenged an agreement between the TTLC and TCCI is a matter which is  
5 appropriately raised between the TTLC and the TCCI but which has already been raised between the organisations and I would simply say that those discussions will obviously keep occurring into the future and they will I should have thought and the issue of timing pertaining to the Veterinary Award and what the instructions of the employers  
10 are in the veterinary industry, is something which ought to go before a single commissioner of this commission.

Indeed, I should have thought that would expedite the hearing and conclusion of this matter.

Let me say to you, that - let me ask one thing to clarify and I seek a  
15 clarification from Ms Shelley, and that is that it has been put to me already today, that I have lied on an undertaking, which I know that I accepted something to which has been put that I did accept last week and I say, very clearly, that I've accepted nothing and I'm sure Ms Shelley's aware of the terms as to what I am alleged to have accepted.  
20 So perhaps that point can be clarified on record.

In relation to the report-back - Tuesday - I was waiting for some responses by 5.00 pm on Tuesday. When I became aware of those responses I responded to the union on the Wednesday. Now, my understanding is that - well, I put it in writing to avoid any confusion  
25 as it appears there has been some confusion and those matters were sent by my organisation by facsimile. The transmission was okay and went through at three o'clock on that day.

The separation of the parties is not what I would call significant. It is not what I would call offensive in its proposals. The line which we have  
30 taken has been a consistent line to date, on a very sound basis and it quite astounds me that it hasn't been accepted.

I've nothing further, deputy president, and at this point, other than to say that I believe this is a matter for a commissioner sitting alone. If it pleases.

35 DEPUTY PRESIDENT JOHNSON: Mr Gates, I don't doubt for a moment that the Veterinary Services Award is a matter for the commission sitting alone and I don't think there's any difficulty in entertaining that thought, but the implication of what Ms Shelley and more particularly, Ms Fitzgerald, have had to say is that over and  
40 beyond the Veterinary Services Award, the position of TCCI in respect of those applications goes to the root or the core of the consent agreement between the parties in relation to the 10 dollar increase that was heard and determined by a full bench with the parties' consent, towards the end of last year.

Now, it seems to me that if that is the case, perhaps I should be asking Ms Fitzgerald and Ms Shelley to give me, what I would call, further and better particulars so that I can then refer those matters to the president for his advice but there's more to it than simply the  
5 Veterinary Services Award, as I understand what the other advocates say.

MR GATES: Do you wish a response to that?

DEPUTY PRESIDENT JOHNSON: I think so. Yes, please?

MR GATES: I'm not convinced there is. From what they've said, I'm  
10 not convinced there is and I'm not saying there isn't but to me it's not prima facie apparent what that is. All that there is, there is a reference to some understanding between two of the parties that the Wage Fixation Principles are clear and that's a matter to be addressed by the parties.

15 I am not in a position to see what a full bench would add by reviewing it, unless they are saying they are now going to change those Wage Fixation Principles.

DEPUTY PRESIDENT JOHNSON: The full bench is not saying that  
20 but I think the implication of Ms Fitzgerald and Ms Shelley, in their submissions, is that the proceedings if they go ahead to arbitration in the case of the Veterinary Services Award should - and I'm putting a lot of words in their mouths but this is what I understand the import of their submission to be, that should I in that regard uphold TCCI's submissions, then that knocks down, destroys or prejudices the  
25 agreement between the peak bodies in relation to the 10 dollar State Wage Case.

MR GATES: Yes. I don't know if I'm in a position to say anything in relation to that.

DEPUTY PRESIDENT JOHNSON: Yes. All right, Mr Gates. Thank  
30 you. Ms Shelley, what I think I ought to do is set the matter down for arbitration and hope that the commonsense and goodwill of the parties can find a way to sort it out before we get to the relevant date.

It seems to me and I don't say this offensively, but this is a very small  
35 matter that suddenly has blossomed into balloon-like proportions and it struck me that way last week and I thought the best thing for me to do was to push it back into the parties' hands. That effort failed, but partly my response today ought to be to grant what your implied application is for an adjournment today, fix a date for an arbitration and then direct the parties to confer again with a view to resolving the  
40 matter.

Ms Fitzgerald, does that seem to you to be a sensible way to approach the matter?

MS FITZGERALD: I'm at somewhat of a disadvantage without being able to detail the proposals that have been put but my recollection is quite clear and my understanding of our application regarding the 10 dollar safety net. The way in which we proceeded was predicated on  
5 some assumptions about outstanding increases, whether they be eight dollar safety net adjustments or structural efficiency amounts or minimum rates adjustments and I don't know how informed Mr Gates is about the detail of the discussions between the peak bodies but I and my affiliates reached agreement with the TCCI and this is a very  
10 substantial matter because what this application does or what Mr Gates' response to the ALHMWU's application does, is attempt to set aside the agreement that was reached.

Now, I consider it a very substantial and very significant issue. I would like it to be resolved. I think if it is not resolved satisfactorily, it very  
15 much prejudices any agreement that we would enter into with the employer body in the future and little comfort that we would have about the durability or the lastingness of that agreement and the dishonourable way in which I think Mr Gates has in fact acted.

So, I actually do see this as a very, very significant matter but I would  
20 like the opportunity - I have attempted to talk to Mr Edwards. I did yesterday afternoon and I obtained some assurances from him, which are not reflected in Mr Gates' responses to the ALHMWU today. I have not had - I made an attempt to talk to Mr Edwards before coming here this afternoon and was not able to do so but I would like the  
25 opportunity to do that.

DEPUTY PRESIDENT JOHNSON: Yes. Well, I think if I put the matter out for about three weeks hence, then you do have the opportunity to take the matter up at a peak body level as well as with Ms Shelley, perhaps resolving the issue - both issues.

30 Is Wednesday the 1<sup>st</sup> or Thursday the 2<sup>nd</sup> of April suitable?

MS SHELLEY: Unfortunately, I didn't bring my diary with me so - the 1<sup>st</sup> or 2<sup>nd</sup> you said.

DEPUTY PRESIDENT JOHNSON: That's a Wednesday or a Thursday.

MS SHELLEY: I'm unable to answer my availability but I would  
35 ensure that somebody from the organisation would be here.

DEPUTY PRESIDENT JOHNSON: Well, I think I'd best set it down for Wednesday 1<sup>st</sup> April because depending upon your negotiations and your discussions, Ms Fitzgerald, there may be a request to deal with the matter sooner if everybody reaches consent or alternatively, people  
40 may want more than just one day or so to deal with the matter.

Is the 1<sup>st</sup> okay with you, Mr Gates?

MR GATES: Yes, the 1<sup>st</sup> is fine.

DEPUTY PRESIDENT JOHNSON: Yes. I'll set these matters down for continuation at 9.30 am on Wednesday 1<sup>st</sup> April. In the meantime I direct that the parties confer with a view to resolving the differences that have arisen in the context of these applications. That concludes the hearing of this matter for today.

**HEARING ADJOURNED**