

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 4302 and 4309 of 1993

IN THE MATTER OF applications by
the Tasmanian Confederation of
Industries to vary the Catholic
Education Award

re salaries for clerical and
secretarial staff; and rates of
pay and conditions for part time
teachers

PRESIDENT

HOBART, 7 April 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances please?

MR W.J. FITZGERALD: Thank you, Mr President. If it pleases, I appear on behalf of the Tasmanian Confederation of Industries - FITZGERALD, W.J., and in announcing my appearance can I thank the commission for postponing the start of this matter this morning.

PRESIDENT: Yes, thank you, Mr Fitzgerald.

MR P. BEVILACQUA: If the commission pleases, PETER BEVILACQUA; I appear on behalf of the Tasmanian Catholic Education Employees Association.

PRESIDENT: Thank you, Mr Bevilacqua.

Mr Fitzgerald, what -

MR FITZGERALD: Than - thank -

PRESIDENT: - what should we do with these two? Treat them independently?

MR FITZGERALD: I think if they could be treated as separate matters and I'll speak to the earlier matter first and then the - if you like, you - we can handle that matter first and then go to the next one?

PRESIDENT: Certainly.

MR FITZGERALD: It might be the appropriate way to go.

PRESIDENT: Very good.

MR FITZGERALD: And the reason why I had - I sought just a slight postponement of this morning's hearing, is that there was a - slight problems in terms of the application - that being application T.4302. The instructions I had are from the Catholic Education Office - a member of TCI - and unfortunately in my haste I - the application which has been lodged is not completely accurate and I'd seek leave, commissioner - Mr President - to vary that application by the presentation of a - of an amendment, if I could.

PRESIDENT: Yes, certainly.

MR FITZGERALD: So if I could simply, in terms of the amendment, delete the original Attachment A and replace it with that copy. Mr Bevilacqua has a copy as well.

PRESIDENT: Very good. Very good. And is there anything you can direct me to which points out the actual amendments -

MR FITZGERALD: Well the - the actual correction -

PRESIDENT: - or changes.

MR FITZGERALD: - if I could for a start was simply the order of it in the additional duties allowance which is - is now shown. In fact - unfortunately I haven't a copy of the original application in that our computer was down at the time that the amendment was made and we had to revert to the cut - the paste - the cut and paste job and as a result they've pasted over my original copy, but it's -

PRESIDENT: I think I can - I think I can pick up what the differences are now, yes, thank you.

MR FITZGERALD: Yes. And I've made it clear in terms of the junior - junior rates for teachers aides at the bottom under (1), being a percentage of the adult rate above - that wasn't particularly clear in the - in the original application. And also there is a correction of a typographical mistake, one which I failed to pick up, for hourly rates at the bottom for teacher aides is in fact a percentage of the clerical and secretarial Class III and originally I think that was Class II. So those - those amendments, I understand -

PRESIDENT: Yes.

MR FITZGERALD: - have been agreed to and Mr Bevilacqua can confirm that later.

PRESIDENT: You've got no objection to the application to amend the -

MR BEVILACQUA: Not at all, Mr President.

PRESIDENT: Very good.

MR FITZGERALD: Thank you. Mr President, I think I'll be very brief in presenting this - this matter to you this morning. Without going in to all the detail, as you'd probably be aware, this - this award is, if you like, a discreet award in that applies to the catholic education sector. Teacher rates have moved - excuse me for a moment - teacher rates have moved previously by agreement differently to what has occurred in the public sector and to some extent there's a difference with the Teachers (Independent Schools) Award as well.

Now what that has caused in terms of the relativities which were previously established in respect to clerical and secretarial staff and also teacher aides is, if you like, a disruption of those previous relativities in that the teacher rates have been increased but there's been no increase in those two sets of rates for both clerical and admin and also teacher aides.

Now last year the award did change in respect to the classifications of librarians and laboratory technicians as part of the structural efficiency exercise and it seems - and I'd be corrected from Mr Bevilacqua if I am wrong here - but it seems that effectively these two categories of staff are the only ones which haven't received structural efficiency increases.

So what we've sought to do by this application is restore the previous relativities which they were to teachers rates prior to the increases being granted in respect to the teachers rates.

So -

PRESIDENT: And you're basing that solely on the historical nexus?

MR FITZGERALD: That's - that's correct.

PRESIDENT: Is there any change in - in the manner in which the work has been allocated or performed or has been changed to the structure of classifications?

MR FITZGERALD: Well without - what, in terms of work value considerations?

PRESIDENT: Well, yes, to - to establish whether or not there has been any structural efficiency improvements.

MR FITZGERALD: Well there's - in terms of the award as a whole, there's - there have been structural efficiency matters and I - I can't go to each of them at this time which relate to the award as a whole and those matters have been principally negotiated with respect to teachers, but also have application to clerks and teacher aides, so in that respect we'd - we'd say simply, Mr President, that those structural efficiency increases would have equal application to those - those groups of staff.

In terms of the - the actual granting of the increases which flow as a result of restoring the - the previous relativities, it is of course in one fell swoop in that we'd seek to have them operative from the 1st April - in fact that should be '93 - I think from - if I could seek to - that's so isn't it Peter?

PRESIDENT: That's a further -

MR FITZGERALD: A further amendment to the amendment.

PRESIDENT: - amendment.

MR FITZGERALD: Sorry, about that.

PRESIDENT: Very good. No, that's alright.

MR FITZGERALD: It was fairly hasty.

PRESIDENT: It's better to sort it out now.

MR FITZGERALD: Yes, well it should be 1st April '93 - the operative date.

PRESIDENT: Yes.

MR FITZGERALD: I'm sure Mr Bevilacqua would have picked that up in due course.

In terms of the increase we - we obviously seek to have that increase apply from - in one fell swoop. Now as part of - normally as part of the structural efficiency exercise and I'm sure you've - you've ratified those, there have been minimum rates adjustments which would have traditionally been granted in four six monthly instalments. As you'd be aware, the wage fixing principles do allow now, where there is agreement, and there is, as Mr Bevilacqua will indicate, agreement to have it in less than four. In this instance we've agreed to administratively apply them in one.

So in terms of the wage fixing principles, we would say, Mr President, that the application does comply with the wage fixing principles particularly in respect to the minimum rate adjustment process. In terms of the public interest provisions, we would say, Mr President, that this award is - is an award - a discreet award - which deals with the catholic education sector only. In terms of flow-on - or - if - if a comparison is made - and it's difficult to make a direct comparison with the Clerical and Administrative Employees Award - the rates generally line up. There may be some differences - and some slight differences - but the annual rates are comparatively - the scales already approved by the commission in the Clerical and Administrative Employees Private Sector Award.

So for those reasons we - would say that they don't offend the public interest provisions of the - of the Industrial Relations Act of 1984. As the matter is -

PRESIDENT: It's effectively an enterprise award in the new terminology.

MR FITZGERALD: Well in - in that respect, I suppose in - in that the system is such as an enterprise, but within that system there are of course a number of schools and colleges. But yes, effectively it is, and in that respect I -

PRESIDENT: In the sense that there - there is the one employer?

MR FITZGERALD: No, no.

PRESIDENT: It's not - not the case.

MR FITZGERALD: They're separate employers under the auspices of the Catholic Education Office.

MR BEVILACQUA: Yes.

MR FITZGERALD: The best way to describe it.

PRESIDENT: I see. Very good. Well I take back what I said about enterprise awards.

MR FITZGERALD: But - but it - you know - well it is probably difficult to consider the Catholic Education Office as an enterprise, but nevertheless it is a discrete sector and we don't see how there could be any flow-on implications to any other sector, whether educational sector or otherwise, as a result of that.

So for all those reasons, Mr President, we'd seek ratification of the application before you. I do thank the commission for their flexibility in terms of the amendments and the amendment to the amendment, but we'd seek ratification of this matter with the operative date from 1st April 1993. If it pleases.

PRESIDENT: Yes, thanks, Mr Fitzgerald. Mr Bevilacqua?

MR BEVILACQUA: Thank you, Mr President, and as Mr Fitzgerald mentioned, we are in agreement entirely in this matter. I could help a little bit with the regards to the classifications, et cetera, and the work value, that there is an incentive there if you look at the additional duties allowance, et cetera, that people are encouraged to gain further skills, et cetera, although they might not qualify for the next higher classification they can earn a higher rate by doing further skills towards that classification so that there is work value incentives there as well, and there have been work value changes over the years in that - in that area - in the clerical, secretarial and teacher aide, just as there have been in the teacher areas which were argued in the special case for teachers at that time.

And it is the last area, you might say, in that in a particular award in catholic education that last year not only was it laboratory and technicians but also librarians were also covered in an agreement earlier last year as well, so that we're - we're doing each sector at a time. And it's an ongoing thing with restructuring and I dare say we'll be back

later on again in all those areas again to show areas where we believe through restructuring, there's structural efficiencies going on all the time, and that the people that are concerned are concerned in that they gain the further skills required, the flexibility and the broadbanding to fill all those duties et cetera.

So I'm more than happy to support and state again that we are in agreement in those areas. I don't think we affect the - any other area in the state as far as costs are concerned by having these granted in the one phase rather than phased in, et cetera. The area is a small area compared to the statewide public system and the private system through the independent schools, not catholic.

The operative date is on and from 1st April '93 as indicated by Mr Fitzgerald in his correction of the correction, and I'm more than happy to say that we reach these agreements without any stress whatsoever on either side, et cetera - not often.

PRESIDENT: Very good, Mr Bevilacqua. It's pleasing to hear that that's the manner in which these have been conducted and it's also pleasing to note that your organisation's capacity to become involved in continually reforming workplace activity.

MR BEVILACQUA: Thank you.

PRESIDENT: Yes, thanks very much. Mr Fitzgerald, did you want to add anything?

MR FITZGERALD: No, I don't think I'd - I want to add anything further, thank you, Mr President.

PRESIDENT: Yes, well I don't have any difficulty in informing the parties that the decision will issue in due course in written form which confirms that the application as varied on a number of occasions will be approved from the date sought.

So now the next application, Mr Fitzgerald?

MR FITZGERALD: Mr President, I just spoke to Mr Bevilacqua. This - this matter I think either party could have made application. We - we in fact made application in that - and again I thank probably the registry in this instance for expeditiously joining the two and hearing the two matters today - that was most appreciated.

PRESIDENT: I should interpose there, Mr Fitzgerald, and say that I was concerned to - to move into the territory normally occupied by the deputy president, but I - but I thought that in the interests of getting things moving while - whilst he was on leave I should do that.

MR FITZGERALD: I - I think that's why I thanked you.

But either party could have in fact made the application because it does relate to - in part at least - to circumstances we're - which we're relating to and I haven't got the 'T' number - dispute relating to Mt. Carmel College which was previously before DP Robinson. And I think in this instance it may be appropriate if Mr Bevilacqua in fact leads off and I'll respond to the application even though we have made the application ourselves. As I said, either party could have made it.

PRESIDENT: I see. You're happy with that, Mr Bevilacqua?

MR BEVILACQUA: I've had many experiences where you've got to be prepared by the time your seat gets cold. I'm quite happy to lead off, Mr President.

I believe you may have a letter there that I addressed to Mr Robinson with regards the other matter - that would have the 'T' number on it.

PRESIDENT: No, I only have the two applications - the application itself.

MR BEVILACQUA: Oh, I - because I haven't got the other 'T' number with me unfortunately either.

PRESIDENT: The only one I've got is the TCI application - 4309.

MR BEVILACQUA: No. I'd - alright, well without being able to give you the 'T' number you can quite easily -

PRESIDENT: We can adjourn for a moment if it's going to be helpful.

MR FITZGERALD: Probably not necessary.

MR BEVILACQUA: It's not necessary - it's just a matter that it was raised and it was lodged by the TCEEA. It was over a matter that had happened at Mt. Carmel College - or was going on - and what it did, it highlighted the part of the award which we need to look at and reword and resubmit, and that's what has happened here. Either of us could have submitted the application.

PRESIDENT: I see.

MR BEVILACQUA: And basically what it's doing there, it's stating the fact that part-time teachers - and this is what we've been negotiating for some time - are required to

participate in proportion what their part-time salary and responsibilities should correspond. In other words, if a full-time teacher is responsible for so much curricular with extra curricular supervisions, yard duties, et cetera, then the part-time teacher is also responsible in proportion to his part-time and the salary corresponds that way.

I believe what is set out now in the award explains that more fully than what originally it did do, and as a result of that, I think that the - well an interpretation - although I don't like that word myself - the interpretation is consistent around the state in our sector as a result of this application - or will be as a result of this application.

It lists there in order the hours of attendance, for example, and also the fact that not only are they responsible for face to face delivery, but also they may have classroom or home duties which a full-timer would normally have, rostered supervision for absent teachers, or supervisions or sometimes called DOTT periods in some of our schools. They're also responsible for timetable liturgies, assemblies and pastoral care duties in proportion to their part time, et cetera. All those responsibilities are agreed and have been agreed that they are responsible and have to adhere to.

Then on the part time teacher as far as rates of pay, there - there is an - ongoing negotiations going on there all the time. We - we will in the near future hope to try and clarify some other matters, et cetera, but what it is saying there is that part time rates of pay - and the example is given for a school that has 40 periods - a full-timer is expected to teach 32 periods face to face.

Now if a part time teacher teaches 16 periods face to face, then the value of his or her salary is then that 16 teaching periods over the 32 teaching periods. Now - but that does not absolve the teacher from being on duty at that school in proportion to that same time compared to a full-timer. It helps to clarify that matter and it also restates the fact that anybody teaching 0.2 of full time equivalent, if an excess of one full year is classified as a part timer and receives proportionately the benefits or - yes - the benefits that go to a full-timer, but if employed at less than the 0.2 full time equivalent, then that person is treated as a casual employee and is paid at the casual rate.

And I'm very happy to talk on that behalf and I believe it has clarified part of the award which was a little confusion.

PRESIDENT: Yes. I know there have been lots of problems in that area, not only in - in your particular jurisdiction. And this is - this will sort that out. I think it now virtually, or almost conforms with the state arrangement.

MR BEVILACQUA: It forms closely to the state, yes.

PRESIDENT: There are still some - there are still some problems there with -

MR BEVILACQUA: Yes.

PRESIDENT: - the additional duties which are required.

MR BEVILACQUA: I think it's clarified in ours as regards to additional duties.

PRESIDENT: Yes. That - that seems to pick it up very well.

MR BEVILACQUA: Thank you, Mr President.

PRESIDENT: Yes, thanks, Mr Bevilacqua.

MR FITZGERALD: Thanks, and I'm sorry to put Mr Bevilacqua on the spot like that. It was just a thought that given his prime involvement was appropriately the new proceeding -

PRESIDENT: Just before you go on - I'm sorry, Mr Fitzgerald - what does that do to the - the dispute application?

MR BEVILACQUA: It - it closes the dispute application, Mr President.

PRESIDENT: So -

MR BEVILACQUA: And what I did in the letter - I'll chase it up to make sure it went away because I thought you may have had it because it was written last week to Mr Robinson -

PRESIDENT: Oh well it may be waiting for his return.

MR BEVILACQUA: - right - it indicates that I believe that we've reached a resolution and that it would be an application for award variation was going ahead through the TCI.

PRESIDENT: And you've virtually asked him to close the dispute file?

MR BEVILACQUA: Yes, that's correct.

PRESIDENT: Yes.

MR BEVILACQUA: As far as I'm concerned the dispute is now closed.

PRESIDENT: Yes. Yes, thank you.

MR FITZGERALD: Thanks, Mr President, and I thank Mr Bevilacqua also for leading off.

In terms of - and I had an involvement certainly from the commission's point of view, with the Mt. Carmel dispute and I acknowledge Mr Bevilacqua's acknowledgement that dispute now is in fact being finalised - and I appreciate that - that - that dispute in many ways involved a dispute and an interpretation of the award and I suppose one means which was available to the parties to have that ratified was by means of a section 43 award interpretation matter, one - one course of which is not always desirable, and I think it's been acknowledged by the commission, that it's probably more desirable that the matters be sorted out on merit rather than those sort of matters - section 43 matters to come before the commission and that's effectively -

PRESIDENT: Yes, I will have to add my support to that view, Mr Fitzgerald.

MR FITZGERALD: Right, okay, thank you. Yes, I can certainly understand your view in sitting in judgment for some of those matters. But - so what - that's what the parties have done in this instance is that they have negotiated the issue as a whole, not just in respect to Mt. Carmel College and effectively corrected an anomaly or an oversight which appeared in the award before. So in my view, without going through each of the particular clauses which correct that anomaly as the matter is agreed it does indicate the anomaly has been corrected and reflects the agreements of the parties.

Now in terms of the cost implication we would say that the application is - is one of clarification and has no cost implication. In that regard it - it meets the wage fixing principles and the public interests provisions particularly in the award because I think it is in the public interest for all concerned in the catholic education system that there is clarity in respect to the award, and that's what this provision seeks to do.

In terms of operative date, and I - that hasn't been addressed - but my instructions are - and nothing much may swing on this - but we'd be seeking an operative date from the first complete pay period occurring on or after the ratification by - and assuming it is ratified by the commission today - we'd be seeking today's date. If it pleases. Mr Bevilacqua may want to address that aspect.

PRESIDENT: Do you wish to do so, Mr Bevilacqua?

MR BEVILACQUA: I'm a little confused in myself - I just spoke briefly to Father Williams as to whether we had agreed at one stage that the operative date from - be from the date of application for the hearing or from the date of the hearing itself. But if -

PRESIDENT: What sort of - what sort of administrative difficulties might it create?

MR BEVILACQUA: I don't think it creates all that much difficulty because usually we have the first full pay period on or after whatever date we -

PRESIDENT: Yes.

MR BEVILACQUA: - settle on, so -

PRESIDENT: I must say it's not - the commission is not really keen to award retrospectivity unless there is a definite need.

MR BEVILACQUA: Well in that case we'd be happy to accept today's date as the operative date in that situation

PRESIDENT: Yes, and I take it then that this understanding which has been reached will be used - or has been used in order to settle the other matter which was before the deputy president.

MR BEVILACQUA: Yes.

PRESIDENT: And that - that is settled; there's no -

MR BEVILACQUA: Yes - no, there's no -

PRESIDENT: - no possibility of the thing blowing up again. Alright. Yes, thank you very much for your contributions.

The matter being agreed in the form it has, particularly in relation to the need to properly clarify the award, I think it is most worthwhile and I can see no reason why the award shouldn't be varied. There may need to be a discussion at some stage between Mrs Geer and the parties in order to insert the proper words in the award. But if everything goes according to Hoyle the - the award will be varied with effect from the first full pay period to commence on or after today's date.

Very good. Nothing further?

MR FITZGERALD: No, nothing further.

PRESIDENT: That being the case these matters are concluded.

HEARING CONCLUDED