

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3677 of 1992

IN THE MATTER OF an application
by the Australian Workers' Union,
Tasmania Branch to vary the
Agriculturists Award

re second structural efficiency
principle adjustment; first
minimum rate adjustment;
superannuation; 38 hour week;
further implement decision of 30
August 1991 (T.226 of 1985)

COMMISSIONER WATLING

HOBART, 3 March 1992
Continued from 28/2/92

TRANSCRIPT OF PROCEEDINGSs

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR G COOPER: If the commission pleases, I appear for the Australian Workers' Union, Tasmanian Branch, COOPER G.

COMMISSIONER WATLING: Good, thank you, Mr Cooper.

MR W J FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD W J.

COMMISSIONER WATLING: Good, thank you.

MR K J RICE: If it please the commission, RICE K J; I appear on behalf of the TFGA Industrial Association, and in saying that, commissioner, we - we do appreciate the relief given when this matter last came before the commission on 28 February for the morning of those proceedings, sir.

COMMISSIONER WATLING: Mr Cooper?

MR COOPER: Mr Commissioner, I have to present to the commission a document.

COMMISSIONER WATLING: Right, well we'll mark this document exhibit C.1, and let the record show that this document is in the form of a draft order.

MR COOPER: Commissioner, before I speak to the document I would like to say that this document, having the benefit of 12 hours of conference with the commission, yourself and your associate, and the parties, the TCI being represented by Mr Fitzgerald, and the TFGA being represented by Mr Rice, the parties have agreed to each clause as we have discussed it off the record, and this document I would put from the AWU's position is a consent document and it would be up to the other parties to confirm that.

Now having advised the commission of that, being as though the parties present here today do have a good understanding of the document, would you see it as necessary to speak to the document in detail, i.e., through each clause and read it into transcript?

COMMISSIONER WATLING: Well, I agree with comments made by yourself earlier - the commission has had the benefit of approximately 12 hours off-the-record discussions. I have examined every clause contained in exhibit C.1 and I've examined it during the course of the private conference to ascertain whether or not, a), it would be outside the wage fixing principles, and b), whether things such as the minimum rates adjustment were in accord with the principles, and I was examining - and I have examined with you all the other clauses contained therein.

I don't see any useful purpose being served by either reading into transcript all the clauses contained in the draft order, but I'm happy for you to put to me anything that you feel is appropriate, but I must repeat that the number of hours that we've had in private discussion has enabled me to thoroughly examine every clause.

MR COOPER: Thank you, commissioner. Well, I'll take your advice and I won't elaborate any further on the document than is required, but I must say for the record that during the course of the 12 hours that we had spent together on this document, a number of matters as a result of some questions and some further examining of provisions were raised, and I think it would be important to put those concerns on the record and they are - the first one I believe comes in at clause 8, subclause (f) and it relates to piecework and the union has a position with respect to piecework as it should apply to a casual employee, and that - we weren't able to reach agreement on that provision as to what rate should apply for piecework for casual employees who perform piecework.

We would be advising the commission that we will be, during the implementation stage of this award, when we do actually visit the work sites and discuss it with the employers, we will be further investigating that provision - or the lack of that provision as we see it - as it relates to the award, and it may very -

COMMISSIONER WATLING: So what - so what you're saying to me is that you've reached agreement on the provision -

MR COOPER: yes.

COMMISSIONER WATLING: - that from your perspective it's a provisional agreement and you want further time to examine the issue.

MR COOPER: Yes, commissioner.

COMMISSIONER WATLING: I do have a provision before me in relation to piecework and casual workers. You have reached agreement on that provisional clause.

MR COOPER: That clause as it is in the award - contained in the award with amendment is agreed, commissioner, but we do reserve our right to further investigate that provision. It may very well be that that is a satisfactory provision and the union will, you know, will not bring it back. But if we do find it does cause some concern we would like to advise the commission that we may very well be back addressing those concerns.

The other provision that is in the document, commissioner, and I believe it was amended during the course of the discussions,

and it went to overtime for casuals. Sorry, commissioner, it went to clause 14 - Contract of Employment - and it relates specifically to clause (c)(iv) - the union had it included in its document a provision : Casual employees as defined shall be engaged for a minimum of 3 hours per engagement and we have agreed to delete that clause - that is (c)(iv) - and advise again if that clause does present problems we reserve our right to bring that matter before the commission.

COMMISSIONER WATLING: The factual thing is that it's not in there now so you've decided not to pursue it -

MR COOPER: That's correct.

COMMISSIONER WATLING: - at this stage?

MR COOPER: That's correct, commissioner.

COMMISSIONER WATLING: Right.

MR COOPER: So in speaking further to the document, commissioner, I think the best thing to do would be to advise discussions on this I understand occurred originally in 1985 under T.No.226. That matter was concluded before you last week, and we now have T.No.3677, which goes to what we're here today to talk about. In this award I think it would be important just to speak briefly to the principles, as this award does include the 2.5; it does include the second SEP and it is varied substantially to what it used to be. It does supersede the Agriculturists Award and in further proceedings to be held this afternoon, I understand, it will - it does incorporate a number of provisions from the Horticulturists Award.

So in speaking to the principles, commissioner, I think it would be a good idea to deal with Principle A - the parties have thoroughly examined the award as it relates to provisions and work classifications and have restructured the award accordingly. We have discussed the contract of employment as it relates to casual, part time and temporary, and the parties have agreed to further investigate whether we should implement part-time provisions. At this moment the award doesn't contain part-time provisions. It really contains provision for full-time employees, casual employees and piecework.

The arrangement for working hours is - is very flexible and does provide for by agreement substantial flexibility to allow for proper - proper functioning of the enterprises as covered by the scope of the award. The parties to the award have generally committed themselves to inserting facilitative provisions and as you would be aware, off the records we have discussed a number of those facilitative provisions as they relate to annual leave, as they relate to hours of work, et cetera.

The award does contain a provision in Principle C to establish a consultative mechanism and it also allows for negotiation of matters that affect efficiency and productivity. And with the remaining principles, the award, I would suggest, is more flexible than was previously available to the parties under the old Agriculturists and Horticulturists Award, and in that respect satisfies Principle D.

There is a provision as required under Principle E that the employees shall carry out duties as to his level of skill and competence and the parties have substantially implemented the October State Wage Case decision and are two minimum rates adjustments down the track. The parties to awards do - will continue that, and I think for the record, commissioner, it would be appropriate to say that the agreement we have is that we will be back in 12 months to complete the second and subsequent minimum rates adjustments. And they are, as I understand it, to occur in one go, but they will be occurring in 12 months time. So we'll have a further minimum rate adjustment which will be the third and fourth and they will occur in one go in 12 months from - well roughly 12 months from now.

COMMISSIONER WATLING: Which of course you appreciate that will be subject to application - it won't be automatically -

MR COOPER: Yes, commissioner. Yes, subject to application by - by the parties, yes. The other thing I think, commissioner, I think that it would be important to note that in restructuring the award too, with respect to wage rates, we have substantially implemented for junior employees provisions that we believe will allow the employment of juniors, also believe that the wage rates as they are structured are substantially different to what was there before and they do incorporate and allow for progression for an entry level person to, if they are capable, a Farm Hand or Orchard Hand, level 4, which is a trade equivalent. And we believe that to be a very important provision. The wage rates that are contained in the award do contain the 2.5 provision.

So in concluding, commissioner, I'd like to say that the discussions that I've had as a representative of union, with both Mr Rice and Mr Fitzgerald from the TCI, have been on very good terms and I think the award itself, as put to you in C.1, exhibits - or does tend to reflect the nature of the discussions we had and it does tend to reflect the good relationship that has occurred and does exist to this day with respect to the award and I think it is, it must be said on the record that the parties - the employer parties should be commended for the way they have conducted themselves throughout this discussion.

It has been at times difficult, but nothing insurmountable. I will therefore, commissioner, commend the award to you with the operative date as contained therein, which is the first full pay period commencing on or after the 13th of March, 1992, and would ask the commission endorse the application as made. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Mr Fitzgerald?

MR FITZGERALD: Thank you, commissioner. I agree with Mr Rice that I'd proceed first and Mr Rice would follow. Just some very brief comments in response, commissioner. I think Mr Cooper has more than adequately made submissions which, in presenting this document to you, document C.1, which we indicated has been presented as a consent document, subject to the reservations which Mr Cooper made in respect to piecework rates and a minimum engagement period which we would acknowledge are matters which Mr Cooper may in the future seek to have further discussions in the event of no agreement possibly even come back before the commission.

But in terms of the wage - and I think rather than going through each of the clauses which would be repetitious, I think we just simply address the wage fixing principles. In the main because it involves a combination of both the Horticulturists and the Agriculturists Award, subject to the increase which are allowable by the wage fixing principles, and I refer particularly to the minimum rates adjustments, the 2.5% and I think it's also a matter of superannuation as well, I would submit clearly falls within the wage fixing principles. It doesn't in any way offend the wage fixing principles.

And particularly in respect to the public interest, as you'd be aware, commissioner, before the commission - sorry, if I just go back one step - particularly in respect to the making of a new award, although this is not so, it's merely an amalgam and extension of the existing awards, there is a need as you'd be aware to reflect prima facie the existing rates and conditions and I would submit, commissioner, subject to those variations which are allowable by the principles, the award document as presented to you does, in fact, comply with that prima facie requirement to recognise existing rates and conditions.

Commissioner, in respect to the requirements of the Act - the Industrial Relations Act 1984 - section 36 requires you as you'd be well aware I'm sure to be fully satisfied that the document - the award in it's form is consistent with the public interest and there are three criteria there laid out in section 36. We're aware in this particular industry that it's one of those industries that are particularly affected during - during the recession which we're currently in, where in

doing that, commissioner, there has been I would think a degree of flexibility acknowledged by the union and we would commend the union for - in terms of the negotiations we had was particularly in respect of the hours clause which - which does present much more flexible arrangements for those subject to the award.

So, in that respect, from an economic point of view, particularly, and I don't believe there's anything where it would offend the public interest, the award does comply with the public interest criteria as laid out in section 36 of the Act. The - we would acknowledge, of course, being involved with both the union and yourself in formal discussions off record, which we believe were most useful in achieving an overall consent position. And I think it's, for our part, on behalf of the employers, the relations I would recognise - clearly the relations - the good relations we've had with the AWU, and particularly in respect to the way which we've been able to achieve in a most amicable fashion the consent document which is presented to you as C.1.

In terms of the document, commissioner, we would endorse the prospective operative date, from the first pay period occurring on or after the 13th of March. And in every other respect, commissioner, we'd seek your endorsement of the document as presented. If it pleases.

COMMISSIONER WATLING: Thank you. Mr Rice? Mr Rice, thank you.

MR RICE: Thank you, commissioner. Well, this brings to a culmination some 7 years, I think, of negotiations that have taken place. While in some areas that may - I think, may have set a record as far as the commission is concerned in bringing an amalgam or amalgamating a number of awards. But during the intervening period we had the introduction of the wage fixing principles and a number of community standards have been established during that time which have needed to be taken into consideration, sir.

On behalf of the Farmers and Graziers organisation, I would support the submissions made by my colleague - or my colleague, Mr Fitzgerald, and those of Mr Cooper from the AWU. And I would particularly endorse the comments of Mr Fitzgerald that we appreciate the time, the effort and the consideration given by the union in arriving at this consent document. It does represent, as far as we're concerned, an enormous amount of work and I believe, while the wage rises will be significant, and will be of concern to our employer members, it does represent a compromise by all parties in reaching this consent situation. And I'm most appreciative of that and of the responsible consideration given by the AWU.

With the matters reserved by the AWU going to piecework and casual rates, we would also mention that's a matter we haven't been able to address at the present time and which we would reserve our right to bring on at a later date, is that of the inclusion of a part-time clause within the award. It does need further consideration and we will be looking at the implementation of this new award to see if part-time is warranted, and what restrictions and so forth that we'll place on that.

We believe the new award, C No.3677 of '92, which supersedes the Agriculturists Award and will incorporate part of Horticulturists and Poultry Game Award, does not offend the state wage fixing principles in any way, shape or form. It has some important - it meets some important principles, and also meets some criteria laid down in previous principles; that is, the second structural efficiency, the introduction of minimum rates adjustment, the 2.5 state wage case, occupational superannuation and 38-hour week.

We believe it also meets the criteria of public interest. And we would ask the commission to adopt the document as it has before it with amendments. And again, I would like to take this opportunity of thanking the commission and its good officers for the 12 hours and off-record consideration or off record discussions that we've had over recent times. And for the time that's been given quite freely over the last 5 years and 6 years in various stages of the implementation of this particular document. With that, we'd ask you to adopt the new award, commissioner, from its prospective operative date of the 13th of March 1992. If it please the commission.

COMMISSIONER WATLING: Good, thank you. Any further submissions? Mr Cooper?

MR COOPER: In listening to the submissions of the employers it was remiss of me not to also recognise the efforts of yourself and your associate in the substantial off-the-record discussions and I would like to place those comments on the record. I would also like to mention too, commissioner, that I'm sure that our members will be quite pleased with this award, if it is actually accepted by the commission. And I would just further add that we'd commend the document too, if the commission pleases.

COMMISSIONER WATLING: Good, thank you. Well, I can indicate to the parties that I'll hand down a written decision in due course, but it will be in favour of the application and in the terms agreed to by the parties and as outlined in C.1, with the various amendments that have been made during the course of private discussion. As I say, it's only an intention at this stage because the Act requires me to hand down a written decision, but it will be in favour of the application. This matter is now closed. The next matter please.

HEARING CONCLUDED

03.03.92

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