

**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

PRESIDENT

Hobart, 18 August 1992  
Continued from 22/7/92

**TRANSCRIPT OF PROCEEDINGS**

unedited

PRESIDENT: Are there changes in appearances?

MR K.J. O'BRIEN: Mr President, I appear on behalf of the Australian Liquor Hospitality and Miscellaneous Workers today.

PRESIDENT: Very good, thanks, Mr O'Brien.

MR M. STEVENS: If the commission pleases, MICHAEL STEVENS and TONY PEARCE appear for the minister administering the State Service Act, replacing Mr Jarman and Mr Willingham, the last occasion.

PRESIDENT: Yes. Thanks, Mr Stevens. Mr Warwick?

MR WARWICK: Thank you, Mr President. Thank you.

Mr President, my organisation was hopeful of being able to provide you with a document this morning. We - unfortunately we aren't able to do that at this point in time. The - the government, for its part, has obviously had a full agenda in relation to its - its business, and unfortunately we haven't completed the process to an extent where we will be able to provide that document to you.

I am able to report, however, that we were told yesterday at 3.00 p.m. by the government that the Health Department has been authorised to continue negotiations on the basis of a Memorandum of Understanding that has been reached between the principals of both parties.

We are meeting, as we speak, sir, with our shop stewards at the Royal Hobart Hospital as a prelude to a mass meeting of non-nursing staff members at 10.15 this morning, which will take place. I would suggest, sir, that we couldn't really be much more expeditious in our process of - of obtaining authorisation from the membership of the memorandum of which I speak.

PRESIDENT: Will that conclude the process?

MR WARWICK: No, sir, certainly not. And I do intend to address you on that.

PRESIDENT: Yes. I was just getting excited about your comment that you couldn't expedite it any more.

MR WARWICK: Certainly, sir. It is a fairly interesting and historic phase that we're going through. There'll be similar meetings at the Launceston General Hospital on Thursday, and should - others will follow in other areas throughout the state.

At those meetings we will be recommending the adoption of the memorandum and that matter will be put to a vote of members of



all meetings. Sir, because the memorandum affects some workplaces in different ways than others, and obviously I don't want to go into detail about that, but that is a fact of the nature of the memorandum, and that means that we will have to take - undertake an extensive program of meetings throughout the state, and have to do so in some smaller areas and less central locations.

And because there will be an extensive program of - of meetings, we would seek an adjournment of some 3 weeks, if that's acceptable to the commission, to expedite that process of consultation with our members and - so that we can at that time bring a document which has been authorised by the membership.

PRESIDENT: Do you think there is any point in providing the commission with a copy of the package which will be put to members? I mean, my concern about that is, that if there are features in it which the commission might find inappropriate it would be counterproductive to put it to members for a vote, wouldn't it? It's sort of - it's really a question to you.

MR WARWICK: Sorry, sir?

PRESIDENT: It's really a question to you rather than a statement of intent.

MR WARWICK: Well, I understand the significance of the question, sir. Obviously I don't have instructions. I can certainly seek them and would need to discuss that with the department and the other unions involved. But subject to those discussions and those instructions, sir, and if the parties are in agreement, I would see no reason why that can't be done.

PRESIDENT: Yes.

MR WARWICK: If the commission pleases.

PRESIDENT: Yes. So, you're saying 3 weeks - is that a - is that a fair guess as to the time it will take you to get around all your small workplaces or -

MR WARWICK: It's a fair guess, sir.

PRESIDENT: You wouldn't want it brought on any earlier or any later?

MR WARWICK: Well -

PRESIDENT: The reason I ask that is because we have a full bench established, I think, for the - is it the 17th of September?

MR WARWICK: Well, we would certainly be able to -

PRESIDENT: 16th.

MR WARWICK: Yes, sir, the 16th. We'd certainly be able to address the bench at length on that occasion. But as I've indicated, we could also do it sooner if - I mean, if the commission had - or you have -

PRESIDENT: Well, 3 weeks would be the 10th.

MR WARWICK: Yes. And you have raised with us on previous occasions, sir, your concerns about time slipping by.

PRESIDENT: Yes, all right. Yes, I understand your submission, thanks.

MR WARWICK: Thank you.

PRESIDENT: Mr Vines?

MR VINES: Thank you, Mr President. Sir, we too were presented with a proposal from the Health Department yesterday that we'll put to our members in due course as well. However, I don't share the optimism of Mr Warwick in terms of that document being acceptable to - to our members, and nor am I in a position at this stage to say that the TPSA would be recommending the endorsement of that document to - to members.

It's become a little bit complicated because the HSUA has determined that it wishes to proceed from here, from what I understand, not in a cooperative way with the other unions. So that means there is one group of unions who are trying to work cooperatively and there's another union that is operating independently of the others. So that has potentially complicated things a bit, I think.

The TPSA will be calling meetings of its workplace representatives from tonight and through this week to discuss what is a very complex document with them. And we will be calling meetings of our members next week for members to consider the document at that time and the recommendation will depend very much on the meetings that we have with our representatives tonight. In terms of that document coming to the commission before it goes to our members, the TPSA does not believe that is appropriate. This is something that we believe affects our members in the first instance rather than the commission. At the end of the day it is up to the commission whether it accepts it or rejects it but I would, from our point of view, be saying that the TPSA would want to look at it on the basis of how it affects their members rather than how it affects the Industrial Commission.

In relation to the issue generally of the -



PRESIDENT: That's a fair comment, Mr Vines.

MR VINES: Sorry?

PRESIDENT: That's a fair comment.

MR VINES: I would assume you were to take it as a fair comment, sir, and I'm quite sure you would accept there is no disrespect intended with it. But particularly in these days of freedom and choice and democracy and all the rest of it in the workplace, we think it's just appropriate that members get that opportunity. And we will assume that the commission will still have a say in such things by the time the - any document does come to it.

The issue of the award restructuring generally is of great concern to not only my union but to the remainder of the public sector unions, and this concern was expressed at a meeting of combined public sector unions that was held yesterday.

PRESIDENT: Before you move on to that. I take it that's a slightly different issue. Before you move on to that, when would you be in a position to report back on the responses?

MR VINES: Well we hope to conclude our meetings next week so sometime after next week.

PRESIDENT: Right, thank you.

MR VINES: In relation to the rest of the award restructuring, the combined public sector unions committee of the Trades and Labor Council continues to have extreme concern with where the rest of the exercise is happening. In our view, as far as the implementation of the four streams go, nothing at all has happened since the last formal hearing of the Industrial Commission and, indeed, nothing had happened between that hearing and the one before it. The Trades and Labor Council wrote to the premier on 26 June this year. If I could tender a copy of that letter, Mr President.

PRESIDENT: Yes. I'm informed, Mr Vines, this is exhibit V.29.

MR VINES: V.29. We'll be into triple figures by the time this one is finished, sir.

PRESIDENT: It's not the first case that's gone that long.

MR VINES: This letter, sir, was written after a combined public sector unions meeting in late June. It was to the premier indicating that:

The Tasmanian Trades and Labor Council requests that the Government advise this office of its intentions with regard to the implementation process put forward by your Government and endorsed by the Tasmanian Industrial Commission.

It is essential that the proposed working groups be established in order that the implementation process proceed as soon as possible.

The TTLC requires a response by 8 July, 1992 if not earlier. If a response is not forthcoming by this date we will ask the Commission to chair a conference between the parties.

That letter, sir, was written as a result of continued inaction on behalf of government and also recognition that more than half of the period set down for implementation had lapsed with no progress being made.

As a result of no response being prepared to that letter, the secretary of the Trades and Labor Council wrote to you on 30 July indicating that that letter had been sent to the premier, that no response had been received at the time of writing and therefore asking the commission to put this matter on the agenda for this hearing of today's date.

Since that time we have received - or the Trades and Labor Council has received a letter in response from the premier which also if I could tender.

PRESIDENT: V.30.

MR VINES: This letter from the premier dated 4 August 1992 states that:

I refer to your letter of 26 June 1992 concerning the position of the Government in relation to the November 1991 decision of the Tasmanian Industrial Commission on Structural Efficiency.

While the Government continues to have serious concerns about aspects of the decision, and the commitment of the unions to the process of award restructuring, the government's intention is to proceed with the implementation of the decision of the Tasmanian Industrial Commission in regard to the establishment of working parties on Award Restructuring in the public sector.

That was all one sentence.



In particular, meetings of the agency working groups associated with the agency specific agenda items commenced in the week of 13 July 1992. The relevant departments have initiated discussions with those unions affected by agency issues.

Yours sincerely

Ray Groom  
(Premier)

I can say, sir, that my organisation, as the commission is aware, is represented in every one of those departments. So far as we are aware, discussions have only actually commenced in three of those departments, being Health, Roads and Transport and Construction. There has been no proper development in any of the other agencies.

And the premier, by that letter, is still refusing or failing to apply the implementation decision that was handed by - down by the Industrial Commission and to that extent -

PRESIDENT: Yes, that's not what - that's not what the letter says though, is it?

MR VINES: Well the letter that we wrote him asked him to do something about setting up the implementation committees -

PRESIDENT: Yes.

MR VINES: - there is nothing in that letter saying that those implementation committees are being established.

PRESIDENT: I thought that was being encompassed last part of the second paragraph.

MR VINES: No, that's only the agency-specific items.

PRESIDENT: No, that's the last para. isn't it?

MR VINES: No - in particular meetings of the agency working -

PRESIDENT: No, I - the point I made was that I thought that the intention to proceed with the award-restructuring decision was encompassed in the comment that the government was intending to -

MR VINES: An intention to -

PRESIDENT: - proceed with the implementation.

MR VINES: - to proceed is but there is still no agreement to establish any of those committees aimed at implementing the four streams. There has been no progress on that whatsoever.

PRESIDENT: There's been no - no discussion at all?

MR VINES: Not one second of discussion, despite that request to government. Now the TPSA and the other public sector unions have simply had enough, that we've been coming back to the commission now for I think probably the last 4 or 5 months saying that nothing is happening on this whole process. Each time we've come back, the commission has effectively said, well, go along with the process a little bit longer. The time has come in our view where the commission needs to take a stronger role. We have done everything possible to try and get this process up and running. There is a decision which is now some 9 months old which has been virtually totally ignored by one half of the equation - being the government - and we request that the commission proceed to determine this matter.

The commission indicated that it would be prepared to chair conferences if matters got bogged down. Matters are more than bogged down at the moment and on that basis we request that a conference be convened to get this matter up and running. If the commission pleases.

PRESIDENT: Thanks, Mr Vines. Mr O'Brien?

MR O'BRIEN: We have no specific submission to make at this stage other than to support the application for an adjournment as requested by the Health Services Union. With regard to the request for the convening of conferences, we would support that request.

PRESIDENT: Yes. Thank you very much. Mr Stevens?

MR STEVENS: Thank you, Mr President. If I could, firstly turning to the developments, health specific, I would endorse the requests by the various parties here that the matter be put back for a period of 3 weeks to allow the union to canvass their membership as to whether or not they want to continue the process that we have embarked upon, and -

PRESIDENT: The unions?

MR STEVENS: The unions. As I understand it, all the union parties today have requested that an adjournment be granted to enable them to go back to their membership to seek instructions as to the next stage to be followed and I would also endorse the comments from the PSA in that there's not a great deal to be gained at this stage from giving the commission a copy of the Memorandum of Understanding until it's been to those people that of course it will affect.



As to the submissions from Mr Vines as to the general situation about award restructuring, obviously I have no instructions on that but I would just make a couple of comments. Firstly, that V.30 certainly does respond to the PSA and the combined unions concerned. I know that certainly agency-specific items have commenced and I don't think there is any disagreement with that. They've certainly commenced in the major agencies and I just point out that that letter from the premier is dated 4th August and announces the intention to proceed with the implementation of the decision in the regard to the establishment of working parties.

And the only other comment I would make is that there is a report-back, as I understand it, before the full bench on the totality of the decision on 16th September, and maybe those issues are better addressed there.

PRESIDENT: Why do you say that?

MR STEVENS: Well it's my understanding that report-back has been set down to monitor the development on award restructuring, workplace reform, for the state service as a whole.

PRESIDENT: Yes. By the same token that's another month away and we are so fast running out of time, which has always concerned me and the rest of the bench.

MR STEVENS: Yes.

PRESIDENT: Another month lost now is the equivalent of around about 20-odd per cent of the time remaining.

MR ....: Time has not been lost by management.

MR STEVENS: You can rest assured, Mr President, that the comments from today's hearing will be addressed by the government, but -

PRESIDENT: I mean is there - is there any savage opposition to creating these proposed committees and working parties?

MR STEVENS: I have no instructions on that. I should imagine there's not, but -

PRESIDENT: I mean it seems a fairly simple operation as far as I understand. I thought the establishment of committees was a fairly easy task for most organisations.

MR STEVENS: Well I guess I'd take comfort from the second paragraph in the premier's letter where he in fact has said it



is the government's intention to proceed with the implementation in regard to the establishment of working parties in award restructuring in the public sector, and that was 4th August - 12 days ago - 13 days ago.

PRESIDENT: Yes - yes, look, I understand that, but the thing has been going on now for so long, it's just incredibly - it's almost impossible to believe that it could happen.

MR STEVENS: Well I can assure you, Mr President, that there are things happening right across the state service going to workplace reform and award restructuring from my certain knowledge.

PRESIDENT: And of course the establishment of these committees would - would fit, I would have thought, very nicely within the proposals for enterprise agreements and workplace reform. I can't understand why they're not being done.

MR STEVENS: Well, all I can do is fall back on the premier's letter, Mr President, which says they will be done.

PRESIDENT: Well, you'll - you'll convey the concern of the commission about the - the delay in establishing the necessary implementation processes.

MR STEVENS: I certainly will, Mr President. If the commission pleases.

PRESIDENT: Yes, all right. Is there - there's no other - no other comment? Mr Warwick?

MR WARWICK: Sir, I really can't let the comments made by Mr Vines earlier go without some response. I think it was - they were words to the effect that my union's going it alone and not acting in a coordinated way. Those remarks really are quite gratuitous.

The Public Service Association is on record as having said before this bench that it agrees with the process of developing a Memorandum of Understanding. The TPSA has been to all meetings involved and has every opportunity to negotiate the terms of the - that memorandum. And the question of whether or not finally it is acceptable to them is a matter for them, just as it is a matter for us. To suggest that there is something nefarious in our attitudes or activities really is entirely unnecessary. If the commission pleases.

PRESIDENT: Yes, thanks, Mr Warwick. Nothing - nothing further?

Well, we can arrange a further report back on the proposed health industry agreement, and I think probably 3 weeks is -

is convenient. That would be some time in the week commencing the 7th of September. If we set down 9 o'clock on Tuesday the 8th? Now, in respect of the implementation process. If could just go off the record for a moment.

OFF THE RECORD

PRESIDENT: Well, Mr Stevens, after that rather dramatic outburst -

MR STEVENS: Yes, it's a difficult act to follow, Mr President.

PRESIDENT: We're on the record so you will - you requested a -

MR STEVENS: Are we on the record or off the record?

PRESIDENT: Yes, I think we'll all stay on the record.

MR STEVENS: Thank you, Mr President, I guess I'll have to stand. Yes, the situation is, Mr President, that we are - will take the concerns of the bench as constituted back to the government and we will endeavour to get you a response as soon as we possibly can about the matters that have been raised here.

Unfortunately, there's not a great deal more I can do at the moment. I need to seek instructions from my principals from the government about this particular issue, bearing in mind that we were here to talk about the health agency specific matters. So I would seek your leave to seek instructions from the government and get back to you as soon as we possibly can.

PRESIDENT: Well, what does that mean in real practical terms?

MR STEVENS: Well -

PRESIDENT: About when - when can you get back to me?

MR STEVENS: I'd hope to get back to you within the next two or so days, certainly that's what I'll be seeking to do. It really is my ability to get to the principals. As you know these are fairly demanding times for everybody, but -

PRESIDENT: Yes.

MR STEVENS: - I certainly recognise the priority of this and will endeavour to make sure that -

PRESIDENT: Yes.

MR STEVENS: - I get those instructions as soon as I can.

PRESIDENT: You see, my - my concern, which I was about to elaborate on earlier, is that I don't know what the commission can do in terms of getting the committees established. I mean, we can't appoint the people. The government has to nominate its membership for the various committees.

Now, I could do no more constituted as a member of the commission hearing a report back than to recommend to the government that those committees are established within, say, 24 hours. Chairing a conference is not going to create them any more quickly. And once - once those committees are established then they can - they can meet. I could recommend that they meet quickly, within 3 days or something to that effect.

MR STEVENS: Well again, Mr President, I'll go back to ascertain where - if in fact there is a problem. I'll go back to V.30 and certainly the premier has stated that it's his intention to establish the working parties. So on documentary evidence we don't have a problem, but I do need to -

PRESIDENT: Yes, well -

MR STEVENS: - talk to my principals to find out -

PRESIDENT: Yes. Well, will you - will you tell your principals that I'm recommending to them that they appoint those committees within 24 hours.

MR STEVENS: I'll certainly take that back.

PRESIDENT: And arrange to meet with the union parties affected within 24 hours from that.

MR STEVENS: I'll certainly take that back, Mr President, and find out.

PRESIDENT: Because really you - I'm sure you understand, time is running out and whilst Mr Vines explained it in very colourful language, I agree with him, that time is running out and it does - something needs to be done about it. We've been fiddling around with this matter for 9 months.

MR STEVENS: Well, we'll certainly get a report back to you, Mr President, on exactly the status of those working parties and where we are .... in the process, and I'll take your comments back to my principals.

PRESIDENT: And if there's no response within the 48 hours, well, perhaps we could have another report back.



MR STEVENS: I don't think there will be a problem, Mr President.

PRESIDENT: Yes. Thank you. Mr Vines, at the end of this period of time, if there's been no further development, what do you do?

MR VINES: Well I think it's a cop out, sir. In all frankness, I think it's an absolute cop out. What's the point of making this -

PRESIDENT: By who?

MR VINES: By the commission. We asked you last time we were before the full bench to ensure that a full bench would be available to hear these matters. You said there'd be no need for a full bench, we can do it by an individual commissioner. Now we get to -

PRESIDENT: That wasn't -

MR VINES: Now we -

PRESIDENT: Excuse me, that wasn't quite the way it developed at all. You were well aware that Commissioner Watling would not be present so the full -

MR VINES: Well that's not our problem, sir.

PRESIDENT: I understand that, but could -

MR VINES: That's your problem, not ours.

PRESIDENT: Very well. But the point is, that was the reason why the timing was set back until September.

MR VINES: Well, I'm afraid we don't sit by and allow these things to drag on because somebody wants to go overseas for 3 months. That's your problem. You're the president of the commission. You - I believe -

PRESIDENT: Yes. Look, okay -

MR VINES: - have a requirement to -

PRESIDENT: - look, Mr Vines -

MR VINES: - make sure there is a full bench available to hear these matters.

PRESIDENT: There cannot be a full bench.

MR VINES: Well what's the point of coming here?

PRESIDENT: Well if you don't -

MR VINES: So you're allowed to be conned along by -

PRESIDENT: If you are dissatisfied -

MR VINES: - the government for another 3 months. Is that what it boils down to?

PRESIDENT: That's not what it boils down to at all -

MR VINES: If - if -

PRESIDENT: - Mr Vines. Please -

MR VINES: - if they're happy to come to a conference -

PRESIDENT: - please - please, Mr Vines -

MR VINES: - I've never heard those sort of requests being put to a union. Why is it that we're always told to do things? The government - you go cap in hand. It's just nonsense.

PRESIDENT: I have no power to direct anybody as a person sitting as -

MR VINES: Well, I suggest you do something about -

PRESIDENT: - in a report back position.

MR VINES: - convening a full bench that can hear this matter properly.

PRESIDENT: I take your point, and it's convened for the 16th of September.

MR VINES: Well that's too far away. We'll take action in the meantime -

PRESIDENT: Very well -

MR VINES: - to get one convened earlier.

PRESIDENT: - very well.

MR VINES: If you won't make decisions, we'll get somebody who will.

PRESIDENT: Very well, Mr Vines. Thank you very much for your assistance today. The hearing is scheduled for the 8th of September for a report back on the health industry matter. The recommendations I've made can be delivered and I hope

acted upon and the full bench will resume on the 16th of September. Thank you.

HEARING ADJOURNED