

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2587 of 1991 and
T No. 2473 of 1990

IN THE MATTER OF an application by
the Tasmanian Prison Officers
Association and the Tasmanian
Public Service Association (now
the State Public Services
Federation Tasmania) to vary the
Prison Officers Award

re structural efficiency
principle

COMMISSIONER IMLACH

HOBART, 17 March 1994
continued from 17/2/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any change in appearances?

MR P. NIELSEN: Yes, Mr Commissioner, I just wish to apologise for our secretary, Mr Hughes, who is unavailable today.

COMMISSIONER IMLACH: Right. Who is kicking off?

MR GREY: Sir, I think at this stage if I kick off proceedings by tabling a letter for your consideration, that I think will have some influence on proceedings certainly today.

COMMISSIONER IMLACH: Well we may as well make that an exhibit, Mr Grey.

MR GREY: Certainly, sir.

COMMISSIONER IMLACH: And that will be SPSFT.1.

MR GREY: Two, I think, sir.

COMMISSIONER IMLACH: Two - do we have another letter previously? I vaguely remember that. And I won't even read it, Mr Grey, I'll ask you to tell me all about it.

MR GREY: Pardon, sir?

COMMISSIONER IMLACH: I won't read it, I'll ask you to read it out and tell me all about it please.

MR GREY: Sir, this letter is addressed to you and it says:

Following discussions between the TCOA and our organisation, preliminary agreement has been reached which would enable the TCOA to present submissions for T2473 in addition to T2587.

It is expected both organisations will be able to definitely confirm these arrangements in the near future and certainly before the next hearing date.

We have been advised the Minister does not object to this alteration of representation.

Thank you for your consideration.

Signed - myself.

COMMISSIONER IMLACH: Yes, thanks, Mr Grey.

MR GREY: Sir, I've just been advised it's still the TPOA in this hearing. Sorry about that, sir.

COMMISSIONER IMLACH: In this hearing?

MR GREY: Yes.

COMMISSIONER IMLACH: Yes, we'll just go off the record for a minute, Coral.

OFF THE RECORD

MR GREY: I would envisage that there would be a - well there's a definite need for the TPOA and ourselves to get together to formalise these preliminary arrangements. What impact that is going to have on proceedings today, I'm not quite sure how the minister's representative will continue to address this case is certainly up to him, sir. So in that respect I don't believe that there is any further need for ourselves to involve ourselves in anything else to date.

COMMISSIONER IMLACH: Thanks, Mr Grey. Are we back on the record?

MONITOR: I - we were for that bit, is that alright?

COMMISSIONER IMLACH: Good, yes thanks, right. Now who is going to tell me some more about all this?

MR NIELSEN: Well, Mr Commissioner, I would only say that we are rather pleased that this situation has developed and that this letter has been forwarded to you this morning - point 1. Point 2, sir, as you were aware of, some hearings ago you did say, if my memory serves me correctly that you considered to be one of the - your major problem was this particular previous situation where the two employee parties to the award one particular party wasn't that active, and you were concerned as to some of the issues that the minister's advocate had raised at various times regarding Anomalies Conferences and various comments on record as you refer to those minutes at various times and we are only very hopeful and very optimistic that this will overcome that major worry of yours that you'd indicate earlier - in earlier proceedings and that also that the - that the both parties now will - within ourselves the TPOA will certainly have discussions and meetings with the SPSFT and to ultimately finalise those representations to you. I don't want us to rake up old ground, but that always was a desire of the TPOA and we did attempt to do that some period in the past. But that's the past and again we're very pleased that this letter has been sent to you today and we're very optimistic and confident that we'll certainly work with the SPSFT to put ourselves in a position to these proceedings before you, sir.

COMMISSIONER IMLACH: Where does that leave us today, Mr Nielsen?

MR NIELSEN: Well we have made major submissions to you and the honourable minister's advocate has responded to those submissions and I understand it was his intention to respond today. It's not for me to speak for the minister's advocate but in view of this letter it will need that we - to have discussions with the SPSFT and to go to that - to that section of the - of the award - to those employees of the award and ultimately to speak to them. As I said, we previously did do that and to I suppose satisfy the employees and the SPSFT in regards to their position today.

Now you ask me what - where does that leave us today? I suppose we've got to say up front that we - we desire the ability to - to - we don't wish to delay this case - I've said that repeatedly, but this has happened and I - with respect, Mr Commissioner, I think it's a positive step - one - and two, now that it has happened, we will respond to it as efficiently and expeditely as we possibly can, and that means, I would assume, having a meeting with the SPSF - (1), (2) - ultimately having a meeting with those senior officers - (2), (3) - then as to whether those senior officers desire to make any further submissions or witnesses were unable to advise the commissioner at this stage.

COMMISSIONER IMLACH: Mm. Yes, perhaps we'll hear what Mr Willingham has to say. Thanks, Mr Nielsen.

MR NIELSEN: Thanks, Mr Commissioner.

COMMISSIONER IMLACH: The ball is being passed around rather gingerly today, Mr Willingham.

MR WILLINGHAM: Well I was noted for my proficiency at point and gully, commissioner, so I'll hang on to it for a little while. I'll just indicate to the commission before I respond to the comments by Mr Grey and Mr Nielsen, that you'll recall on the last day of hearing, commissioner, I had flagged an intention to speak with the Prison Officers Association and the division of the corrective services in relation to some of the matters that had been discussed during the course of our submission in response, and in particular those matters included the question of the loaded rate, the same aspects of the classification structure proposed by the association and the question of call outs and overtime and the question of notice period for changes of shift on roster.

We did attempt to arrange a meeting but circumstances seemingly beyond everyone's control the meeting hasn't taken place. So, commissioner, to the extent that I'd hoped to be in a position to at least give you a preliminary outline of what progress, if any, had been achieved, I'm unable to do so this morning.

Now I further understand, commissioner, that the secretary of the association is presently on well deserved, well earned leave and it is unlikely that we would be able to convene that meeting which I had foreshadowed before the end of this month. There's very little more I can say in relation to that, but our enthusiasm for the meeting remains undiminished.

Now as to the implications of exhibit SPSF.2 I say this, commissioner, as I've said frequently in the past, it is about time. It begs the question, commissioner, as to what it means to our position and our intentions of how it affects what we had presumed would be the course of the proceedings today and indeed for the next two days of hearings which have been scheduled somewhere around mid April.

We had expected to concluded our substantive submission in response today - or at least to have gone very close to it, commissioner. It would seem from the comments that have fallen from Mr Nielsen, that his organisation, together with the SPSFT is going now to consider its position and determine what must be done in relation to those other classifications in order for the associations to produce sufficient and compelling evidence before the commission as would support the applications.

My assumption is, at the very least, evidence will be led - fresh evidence will be led - and that there is a distinct likelihood that some additional witnesses may be called. Whatever the situation may emerge to be, it is quite clear that the primary submissions of the associations are unfinished.

To the extent that our submissions were based and would have been couched in terms directly responding to what has fallen from the associations thus far, it is clear that we are not in a position to finalise our response. It would similarly be clear that much of what we might have intended to say in relation to, for instance, the work value principle, the structural efficiency principle. With the concept of change and its interpretation and in particular the classification structure as is before you in exhibit TPOA.94, must all now wait, commissioner, until the full picture is before us. I would be most unwilling - reluctant indeed - save only for the pleasure of the commission to proceed further at all under these circumstances. I think we are entitled to have revealed before us the entire case that the associations wished them out before finalising our response.

I think it also ought to be said, commissioner, that depending on what does subsequently fall from the associations as they continue to finalise their primary submissions we may well have to revisit what we have thus far put. If the commission pleases, that's probably all I need to say.

COMMISSIONER IMLACH: Yes, thanks, Mr Willingham. Off the cuff, I sympathise with your position and agree with it entirely, which brings the ball back into your court, Mr Nielsen; what do you want to do?

MR NIELSEN: Well we'd like to see a conclusion to this case, Mr Commissioner. I've been saying that for a long time. Having said that, Mr Commissioner, I understand that you're saying the ball is back in our court and we accept that. What Mr Willingham says is a situation that ultimately we don't have any objection to, but we're not master of all the situations that have developed in this case. We do believe this is a positive step that's been taken this morning and with great respect to you, Mr Commissioner, I think with some - perhaps light of comment or thinking that may have been developed in the earlier proceedings and now that it has established I think it is a positive step. We've certainly - our organisation hasn't - and will do its utmost to ultimately bring a - a speedy - a speedy conclusion to this - to these submissions, but we - in view of this letter we committed to speak to the other organisation and - and to give some reflection as to the - where we go. I've just had my colleague here beside me suggest with respect, Mr Commissioner, that we might seek a short adjournment amongst ourselves perhaps to - to give reflection as to these proceedings and the questions that you've asked us this morning.

COMMISSIONER IMLACH: Yes, there's only one answer, Mr Nielsen; it's pretty obvious to me, but maybe your eyes are a bit dimmed this morning - you haven't asked me to do the obvious, and it's not - as I read, Mr Willingham's submissions it's not his responsibility this morning, it's yours.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: Pretty simple. Do you want time to think about it or -

MR NIELSEN: Yes, if I -

COMMISSIONER IMLACH: Alright - well we'll adjourn for a few minutes.

SHORT ADJOURNMENT

MR NIELSEN: Mr Commisisoner, thank you for that adjournment. It will be my request to ask you to adjourn these proceedings to the next hearing date of the 21st and 22nd April as previously set down, but before doing that I would like to put on record the TPOA and the SPSFT's position that they accept and desire the invitation of the minister's advocate and the

Corrective Services management to participate in discussions on those matters of the loaded rate, the classification and the call out, overtime, and the notice period of the change of rosters and for that matter any other item that may proceed and also an undertaking that we certainly will be meeting the SPSFT and proceeding to - to deal with those upper level classifications which may or may not mean additional submissions or additional witnesses. Also we would like to place in - on the transcript the requirement that the SPSFT be present and parties to these submissions and also to be present and parties to the discussions before the management of Corrective Services. And, Mr Commissioner, again it's our desire with all these - all this position to try to proceed as speedily and as responsibly to a conclusion.

COMMISSIONER IMLACH: Yes, alright, Mr Nielsen. Is there objection to that proposal - that request? No, well I'll grant the adjournment till the next hearing date and just note that the ball is back in the parties' court and particularly the employee organisations. Nothing else? Thank you.

HEARING ADJOURNED