

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4146 of 1992
T. No. 2225 of 1989
T. No. 2311 of 1990

IN THE MATTER OF applications by
the Australian Social Welfare
Union to vary the Community
Services Award

re making of a new award

COMMISSIONER GOZZI

HOBART, 18 October 1993
continued from 1/9/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Any changes in appearances this morning?

MR. T. KLEYN: If the commission pleases, TOM KLEYN, representing the Health Services Union of Australia, Tasmanian No. 1 Branch.

COMMISSIONER GOZZI: Thank you, Mr Kleyn.

MR. T. KAY: If the commission pleases, TERRY KAY, representing the Community Services Employers' Organisation of Tasmania.

COMMISSIONER GOZZI: Yes. Thank you, Mr Kay.

Well, we have finally got to the stage where you are going to put something into the award, by the looks of it. I mean, I am almost tempted to say where is your consent document? I'll have a look at it and I can endorse it. I suspect that's not going to be the case.

Mr Paterson, would you like to lead off?

MR PATERSON: If the commission pleases, we have only - well, we have lost two of our days this week - I suppose that's an issue to be addressed first.

The Community Services Employers' Organisation, the Chamber of Commerce and Industry, and the union met and have gone through the ASU claim document and the reordered one that I think you have before you.

I think that there is very little in fact that we can readily reach agreement on. I think we're not far away on annual leave, sick leave, parenting leave and bereavement leave.

I have a summary document which I can provide a copy to the commission if that is useful.

COMMISSIONER GOZZI: Yes. So that I am clear, Mr Paterson, your negotiations have been focused on Attachment A, is that the case?

MR PATERSON: I believe so. It is the one that has been reordered as you requested late last year. I think it is the only version that has 'Title', 'Scope', the extensive definitions through to clause 8, and then the alphabetical ordering of the subsequent issues.

I don't have my file with all the earlier evidence, numbers and things on it.

COMMISSIONER GOZZI: Did I identify that document, do you know?

MR PATERSON: I believe so. It is the only one that has the full scope as by the full bench. I believe it was part of the earlier proceedings.

COMMISSIONER GOZZI: It's made in respect of title and scope.

MR PATERSON: Title and scope. If you recall at the end of last year when we were almost at this same point you requested that the union redraft in order to reorder those items after clause 8, being the wages.

COMMISSIONER GOZZI: Right. That looks like it.

MR FITZGERALD: Just to clarify that to make sure I have got the right copy, commissioner, it is the one with the front page just with the word, 'Title', 'This award shall be known as the Community Services Award' and with nothing else on the page. Is that the one?

MR PATERSON: That's correct.

MR FITZGERALD: Thank you.

COMMISSIONER GOZZI: Yes, it is under cover of the letter dated 25 January '93. Right.

MR PATERSON: It's apparent to me that we probably will need to go to arbitration on significant matters.

At our last meeting the employers gave an undertaking to get back to the union on their position on a number of matters. That's not yet in my hands, but I think that principally the issues of wage rates and classifications and the issues around hours including hours, overtime, on call, recall, close call, sleep over, they will principally I would imagine be necessary to arbitrate to some extent or other.

I think most of the other matters where the union has put up positions some may be able to be resolved by redrafting and, in fact, I have redrafted two in particular that may actually take us closer to agreement - those two being the disputes and grievance procedures and the terms of engagement.

MR FITZGERALD: What was the last one? I just missed that.

MR PATERSON: Terms of engagement.

MR FITZGERALD: Thank you.

MR PATERSON: There are other matters where I believe that a conference with the commissioner may help to provide both parties with an indication as to the commissioner's view.

In particular matters such as redundancy, where obviously there has been a test case and a full bench decision that it would not proceed to make a TCR type standard in all awards.

I believe, well I know, I would like to explore in conference what that leaves open. Whether that means that nothing should go in in terms of redundancy or whether we can include provisions with respect to process rather than severance pay or prescription, and similarly with the introduction of change whether we can see despite that test case the decision of the full bench in that test case whether we can allow into this jurisdiction a processed type notify and discuss clauses or whether they are just written out of the equation altogether to be dealt with individual commissioners on an ad hoc basis.

The other substantial agreement I think that we reached is that the union's claim does include a lot of matters that are more facilitative, if you like, rather than prescriptive, and we have identified a number of clauses that I expect in terms of sitting down and going through the document we can say they are not part of the claim. We will pursue those in a supplementary document either produced by the employer and/or the union.

I believe there is an indication, or an implied indication, from the government that in fact they would see that in their interest, and I think the employers need to pursue that with the government.

But things such as civil liability, our of pocket expenses, and things provided for by the Industrial Relations Act such as notice board and notification of award and union coverage.

There are some other matters that have been dated by time, particularly the structural efficiency clause, and I believe from my records that the Chamber of Commerce and Industry undertook to come back with an alternative in terms of facilitative provisions, which seemed to be the contemporary version.

And an item that I am yet to seek advice on, the question as to whether the superannuation clause is still required, given the federal act.

My view on a lot of these matters is that the award should have an educative and facilitative role rather than just a prescriptive one, and it may be that they are some of the issues where we probably need some attempt at conciliation to arrive at a position.

I don't think it is one that should necessarily shut certain clauses out of the award just because they are not the standard or not required, or they are above a minimum, and in this industry in particular the implementation of the award is

going to be a massive transformation of what has been quite ad hoc.

In terms of my preparation to proceed, I have prepared an alternative proposal, if you like, to the wages position which, in essence, takes - holds still to the position put in ASU.1, but provides for a transitional - in a couple of stages - a transitional phasing in of it.

I have also looked at the results of the survey and aggregated and rearranged and represented some of that information, and at certain levels within the classifications I believe there is ample evidence to justify the rates that we are seeking, or ones not much different to it.

I expect the course of action in the first instance today is to probably go into conference to see where we are up to and what timetabling we require.

If the commission pleases.

COMMISSIONER GOZZI: Yes. Thank you, Mr Paterson. Mr Kleyn?

MR KLEYN: I have nothing to add at this stage, Mr Commissioner.

COMMISSIONER GOZZI: Thank you. Mr Fitzgerald?

MR FITZGERALD: Thanks, commissioner. Very briefly I can say that the union and the employer representatives have met on a number of occasions since the last hearing in an endeavour to finalise this matter.

I think we have made significant progress. However, there are a number of matters, as Mr Paterson identified, which will need arbitration.

I think also your assistance in terms of conciliatory conferences I think that would be most desirable, and I can say from the employer's point of view we're happy that we proceed that way, and even if we can't resolve it by conciliation, then we have no problems with you ultimately determining the matter.

But I think that given the extent of the award it would be appropriate that we do go into conference.

There are some matters which remain outstanding in terms of the discussions. Mr Paterson has a document - I am not sure if that was presented as a -

MR PATERSON: No.

MR FITZGERALD: I think it probably more appropriate to go into conference just to advise the commission what progress we've made because I believe we have made progress but, as I said, there are some matters which need to be further discussed and maybe further conciliated and ultimately and possibly arbitrated.

And there are a couple of positions which I think are fairly recent from both sides which we need to further explore as well.

I suppose the one difference we have in terms of the way we approach this exercise is that I suppose we see this as an essential terms and conditions of employment exercise only, and some of the matters which form part of the employment relationship.

As quoted by Mr Paterson we feel that they shouldn't be necessarily included in the award to clutter it up, so in terms of structural efficiency, particularly the drafting stage of the award, we see that it should be reduced to its essential terms and conditions.

However, there are other matters which pertain to the employment relationship outside of the award, and we have undertaken to include those into the agreed document to be distributed to employers ultimately once the award is made.

So once the award is made not only the award will go through - go to employers - but also a supplementary document which will outline further obligations and rights under the employment contract.

COMMISSIONER GOZZI: What - what do you actually mean by it, Mr Fitzgerald?

MR FITZGERALD: Well, there - there are a number of matters within the award -

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COMMISSIONER GOZZI: well the employment relationship outside the award - what - what's that really mean?

MR FITZGERALD: Well, I - my view is that the award will govern - will effectively form the core contractual terms but there are other matters which clearly are outside the ambit of the award but do impact on the contract of employment such as workers compensation, such as long service leave, such as civil liability, as Mr Paterson indicated, and I don't think we have too many - too many arguments about the intent of those provisions but we - we believe they're better catered for in a supplementary document and I think as part of the educative process it's probably better that they are included and I think we also discussed ultimately about some sort of

joint training session on the award. But - so that would be the only difference we'd see in terms of approach. There are obviously differences in terms of wages and I agree with Mr Paterson the major areas of contention are the wages and relativity structures - sorry - the classification structures and the relativities attached to them and also the matters relating to hours and all those other things which naturally flow from it - recall, overtime, et cetera - I think as was indicated by Mr Paterson.

So I think we can most usefully use this day - and I acknowledge we haven't the other two days - but I think we could use this day to further progress the matters which we've discussed already including, with your consent, you acting in a conciliatory role to see whether we can again further progress some of those matters and then ultimately, I suppose, we can see what matters need to be determined and set further days down for hearing those matters and arbitration.

But we certainly - I think we can say quite clearly that the intent is to - from the employees side that an award be made. The Reverend Dr Bob Raynor is no longer with us in this environment and has moved to greener pastures, I suppose, and it depends on who you speak to there, clearly indicated on behalf of CSC.... and Mr Kay has now taken his place, that there was a desire to make an award and we're - we're keen to follow that desire through. If it pleases.

COMMISSIONER GOZZI: Yes, thank you, Mr Fitzgerald. Mr Kay?

MR KAY: No, nothing further to add.

COMMISSIONER GOZZI: Do you want to respond to anything?

MR PATERSON: There's just a couple of brief other comments that I'd like to make that's come back to the timing of it. In the last - or in the last two weeks I've had probably three or four requests from organisations to know where the award is up to. One in particular, Drug and Alcohol Foundation, that we visited in our inspections is resubmitting for funds - it's Commonwealth funded - and the Commonwealth has indicated that there is money set aside and they want to know what and when.

Another organisation similarly with federal funding - that is the Speak Out Association - in a similar position of currently resubmitting for funds, being told by a federal funding body that they will fund to award wages effectively in line with the Federal Government policy which is that sitting on the top of your pile there below our rules, and other organisations such as Richmond Fellowship, very anxious to see the progress.

I also recall a meeting that the unions had with state and Commonwealth departments some three to four years ago. I believe Mr Holden was the health services - or the Hospital

Employees Federation representative at the time - where the department strenuously put a position to us that we should take into account their funding cycles. And clearly, most funding bodies do have a capacity for a realignment of budgets mid term and the essential position, I believe, is that we have something in place by the end of the year so that very early in the new year when people are drawing up their funding submissions looking forward into the new financial year when budgets are being prepared in the February to May period, there's a clear understanding of what the minimum position is driven by this award.

I've nothing further at this stage to add except that perhaps when we look at setting aside days, really there are probably two days required - one for wages and classifications and relativities and one for the hours related and perhaps there will be through conference today identify other areas that will need to go to arbitration.

The intention of the parties when we met last time was to say these are the - to try and reach a number of lists - lists of those matters that we agree on here and now - those matters we believe we can reach agreement on and we'll set aside for the moment those matters that we want arbitrated and those matters that, for one reason or another, we leave aside indefinitely.

COMMISSIONER GOZZI: Yes, I must say, I've - I thought you were collectively a bit further down the track than what you appear to be today. I really thought that today I might be hearing arguments on the outstanding areas and obviously the question of hours, wages and those issues that you summarised so well are the ones that I really think are a waste of time to try and conciliate on, because ultimately they are going to come down to an arbitral situation.

You're not going to agree on wage rates, you're not going to agree on the recall, the overtime and all that sort of situation.

I suppose before adjourning into conference one of the things that's exercising my mind, Mr Fitzgerald, is whether or not the employers and Mr Kay are contemplating a minimum standards type document to run alongside various enterprise or industrial agreements.

Now it would be useful for me to know what your thinking is on that because obviously that has an impact on the discussions and it may have an impact on the position that the union might want to take.

MR FITZGERALD: Well, I'm not sure that I can actually respond to that without taking some instructions. All I can say at this stage is our intent is to - to - to obviously continue with this industry award. I have no instructions at

this time as to industrial or other agreements which - which would go alongside and award.

COMMISSIONER GOZZI: Well, I suppose -

MR FITZGERALD: That's not to say that that may not occur in the future - of course that may occur in the future, but it's not our intent to - to proceed with an award with some sort of hidden agenda that at the same time we're also looking at industrial agreements and I certainly haven't got any instruction on it.

COMMISSIONER GOZZI: Alright, well that clarifies it for me, because I picked up on your comment going to an essential terms of conditions of employment document only covering core contractual items. Now if you are really talking about an award making process in the normal sense well then I think that clarifies it.

MR FITZGERALD: Thank you.

COMMISSIONER GOZZI: Mr Kleyn, anything further you want to add at this point?

MR KLEYN: No, sir.

COMMISSIONER GOZZI: Alright. Well we'll adjourn into conference and we'll go through the document. Thank you.

INTO CONFERENCE

NO FURTHER PROCEEDINGS RECORDED