TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5237 of 1994

IN THE MATTER OF applications by the National Union of Workers, Tasmanian Branch to make the Wholesale Pharmaceutical Award

T No. 6158 of 1996

IN THE MATTER OF an application by Tasmanian Chamber of Commerce and Industry Limited to vary the Wholesale Pharmaceutical Award

re restructure of award

COMMISSIONER WATLING

HOBART, 18 April 1996
continued from 30/11/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

MR T.J. EDWARDS: If it please the commission, EDWARDS, T.J., and appearing with me **MS J. THOMAS** and **A. CAMERON** for the TCCI.

COMMISSIONER WATLING: Thank you.

MRS H.J. DOWD: If the commission pleases, I appear on behalf of the Australian Municipal Administrative Clerical and Services Union, DOWD, H.J., and I seek leave to intervene in these two hearings, if the commission pleases.

COMMISSIONER WATLING: Yes, and your reasons for intervention is?

MRS DOWD: The reason for intervention, Mr Commissioner, is the fact that the Australian Municipal Administrative Clerical and Services Union is the union that actually has coverage with clerical employees in this industry. I can't say at this stage whether we actually have any members in the industry but if we do, we will actually be seeking to be part of the award. If the commission pleases.

COMMISSIONER WATLING: Right.

MR EDWARDS: On that point, commissioner, if I might, we would not oppose intervention for exactly the same reasons I advanced in the earlier matter in respect of the Retail Pharmacy Award and that is that I think these matters before the commission today are inter related and as a consequence, I think it appropriate that anyone with an interest in the Chemists Award ought have a right to be heard by way of intervention, if necessary, on all of these matters. Whether or not that would be the case in any future application in respect of this award would obviously be a matter for consideration at that time.

COMMISSIONER WATLING: Yes, because we're really dealing with the Wholesale Pharmaceutical Award now and not the Chemists Award.

MR EDWARDS: I understand that, commissioner, but there is the inter relationship that I explained by way of exhibit TCCI.1. For those reasons, I would support the application as I did in 5172.

COMMISSIONER WATLING: Good. Any further appearances? Right. Well, you've got a pretty free hand then, Mr Edwards.

MR EDWARDS: I should have opposed intervention. I could have had the field to myself.

Commissioner, this is the third and the final stage of the proceedings today that I outlined in TCCI.1 and if I could perhaps seek, initially, to amend application T6158 of 1996 and if I could in that regard, table an exhibit.

COMMISSIONER WATLING: We'll mark this exhibit T.1.

MR EDWARDS: Thank you, commissioner. Commissioner, I seek leave to amend our application, T6158 of 1996 by substituting the details contained therein with that contained in exhibit T.1. By way of explanation, exhibit T.1 now includes provisions going to supported wage and to the tea money question, which in our view were dealt with by way of an order issued by the commission of recent days in respect of the Chemists Award, which had application to persons covered by the Wholesale Pharmaceutical Award up to today's date and as a consequence, we've incorporated those into T.1. We have also amended the supersession and savings clause to reflect that situation.

Again, they are minimal changes but I think it's appropriate to table an entirely new draft of the award as part of these proceedings and we would seek to amend in that way.

COMMISSIONER WATLING: Any objection to the amended application?

MRS DOWD: No objection, Mr Commissioner.

COMMISSIONER WATLING: No objections. Leave granted, Mr Edwards.

MR EDWARDS: Thank you, commissioner. Commissioner, obviously I'm not the applicant in respect of T5237 of 1994, which is an application by the National Union of Workers, which led to a decision by yourself dated 1 December 1994 in which you created a new award, titled the Wholesale Pharmaceutical Award, which had title, scope and definition of the Wholesale Pharmaceutical Industry at that time. The only subsequent alteration to that award as I'm aware is by way of T5346, which was an application by the National Union of Workers, Tasmanian Branch for interest in that award which was granted by reasons for decision of yourself, dated 31 January of 1995.

I make the broad submission that application T5237 has the same effect as our application, T6158. To that effect, sir, we'd seek leave that the two matters be joined and dealt with concurrently.

COMMISSIONER WATLING: Good. No objections? No objections.

MR EDWARDS: Thank you, commissioner.

COMMISSIONER WATLING: It will be joined. Which will mean that as a result of this hearing, we will dispense with both applications and any future applications will have to be by way of separate application.

MR EDWARDS: That was the sole purpose of my seeking the joinder, commissioner. Commissioner, in my earlier comments in T5172, where I presented exhibit TCCI.1, I talked of the consultative processes that we had tried to follow in respect of all of the issues that are before the commission today and I, at that stage, alluded to correspondence from Mr Strickland. Before going to that, I would like to table my correspondence from ourself to Mr Strickland.

COMMISSIONER WATLING: Mark this exhibit T.2.

MR EDWARDS: Following on from our correspondence now identified at exhibit TCCI.1, commissioner, there was a telephone conversation - or a personal conversation in fact between Mr Strickland and Jenny Thomas from our office in respect to what was sought by the TCCI and some concerns that Mr Strickland expressed, that his organisation felt that they may be precluded from prosecuting a full-blown structural efficiency exercise as to the content of the new Wholesale Pharmaceutical Award, because of the nature of our application, T6158. Consequently, whilst Ms Thomas discussed that with me, we wrote to Mr Strickland on 15 April in the terms of T.2, saying:

> *Let me say at the outset that your fears appear to be unfounded. The first award and extension of existing award principle makes it clear that prima facie the existing rates and conditions shall apply. The application sought by the TCCI seeks merely to insert provisions which are in keeping with this principle. In our view, the application does not then prevent the NUW from making an application at some time in the future to review the award under the structural*

efficiency principle. This exercise conducted jointly by the parties would address issues including wages, an appropriate classification structure and any other award matter identified by either party which is sought to be reviewed as part of the structural efficiency review process. It is not the TCCI's intention to oppose such an application when it is made.

That shouldn't be read to mean that we wouldn't necessarily just simply agree with whatever is put forward in an application, but we wouldn't seek to raise technical argument against it on the basis of any perception that any party could be precluded from making such an application. And T.2 goes on: I trust that these comments help to allay most of your concerns. If not, please contact either myself or Jenny Thomas by close of business, Tuesday 16 April 1996. The TCCI would prefer that this matter be one of consent and we would therefore ask that we be given the opportunity of discussing any further concerns you may have prior to the hearing on the 18th. Yours faithfully - and it was signed by Jenny Thomas on behalf of myself.

Following on from that documentation, commissioner, I had a conversation with Mr Strickland yesterday morning and indeed with a Mr Tim Lyons from the national office of the National Union of Workers fairly late yesterday afternoon, the net result of which is correspondence, I believe, directed to the commission dated the 17th April 1996.

COMMISSIONER WATLING: Yes, and I received the fax at 16:20 hours.

MR EDWARDS: And they must have sent it to you first, commissioner, because I received it at 16:22.

Commissioner, for the sake of the record I'd like to go through that letter even though it is addressed to you, if I might, and that is it's from the NUW and Darryl Strickland addressed to yourself re T.6158 of 1996 - application by TCCI to vary Wholesale Pharmaceutical Award. Further to the above matter the NUW regrets that it is unable to attend proceedings scheduled for 18 April 1996. The union has discussed the above matter with the TCCI and consents to the proposed application on the following basis: 1) that the application consists of the transfer of all existing terms and conditions from the Chemists Award to the Wholesale Pharmaceutical Award without alteration; 2) that the variation does not prejudice any further review of the terms of that award by the parties. In particular the NUW has indicated to the TCCI that it will pursue such an approach and that organisation has agreed to be involved in that process. See attachment. If you require further information please contact the undersigned.

The attachment, commissioner, is exhibit - what is now exhibit T.2. I've been a bit laborious in that process quite deliberately, commissioner, because I think it's appropriate that the consultative process is on the table firstly, and secondly the commitments we've given to the NUW and they to us are appropriately before the commission, and not only that, it probably will truncate my submissions in any event because I think it adequately describes what it is we're seeking to pursue and achieve out of today.

In keeping with the approach we adopted in T.6157, commissioner, this too is an application which is dealt with on a minimalist approach where we've simply sought to pick up the existing wage rates and conditions from the current Chemists Award and put them into the Wholesale Pharmaceutical Award so far as they are relevant to the wholesale pharmaceutical industry. In doing that we obviously haven't sought to include pharmacist classifications, we haven't sought to include other classifications which we perceived to be irrelevant and any conditions that applied solely to, say, a pharmacist would not have been included in exhibit T.1.

I can't however say on the record with any degree of truthfulness that the application before you doesn't constitute a transfer of all existing terms and conditions from the Chemists Award to the Wholesale Pharmaceutical Award without alteration and I'd like the record to simply show that there are of course alterations and they're the ones that are a necessary prerequisite to the making of a Wholesale Pharmaceutical Award from an award which covers three different segments of the so-called chemists industry firstly, and secondly, there are the consequential changes which are required as well. But so far as the terms and conditions of employment of people currently covered by the Chemists Award who are employed by wholesale pharmaceutical companies, there is no change intended in the application. If there is any change it is accidental and I'd be more than happy to remedy it should it be brought to my attention at a later date. So again, it's the minimalist approach we've sought to adopt.

This award has been long in the making as has the Retail Pharmacy Award, commissioner, as you are only too well familiar, and in fact in respect of the Wholesale Pharmaceutical Award the result as at today's date is - is still unacceptable inasmuch as it hasn't addressed the - in any detailed way the requisite wage rates and conditions which are appropriate for that industry.

That process will proceed after this date with a view to a detailed structural efficiency exercise being undertaken and completed as soon as is reasonably practicable. The National Union of Workers in their correspondence to you have committed themselves to that process and my organisation does likewise.

Commissioner, I put the submission that this application is consistent with the first awards and extension of existing awards principle. It is also consistent, in our view with the structural efficiency principle of the commission, and again I refer the commission to the principle as it's caught on page 2 of the package of principles of the commission where the scope and incidence of the award is being examined and we're now seeking to simplify the award coverage issue so far as people in the wholesale pharmaceutical industry are concerned.

To that end whilst it's not a satisfactory outcome, it's probably an important interim step on the way through the process. We further make the submission that the public interest test would not be in any way impinged by the successful prosecution of our application 6158 now joined with 5237.

So, commissioner, having said those things and without going to the detail of the award, we would ask that our application and T.5237 in concert be granted with operative effect from the beginning of the first pay period to commence on or after the 1st May, 1995 which is the date in common with the three segments of the industry that will now become the three separate awards after today's date.

COMMISSIONER WATLING: Ninety six or '95?

MR EDWARDS: Did I say '95? Almost Freudian.

COMMISSIONER WATLING: A year does go quick.

MR EDWARDS: It's 1996.

COMMISSIONER WATLING: It's '95 that we started this; you're probably getting confused.

MR EDWARDS: I think it was probably even earlier than that. I note that the NUW application was even '94, so -

COMMISSIONER WATLING: Mm.

MR EDWARDS: - and their earlier ones in fact go back to '92 and they overtook ones that were made in '91, as I recall the serial of events. So we ask that the application be varied in that way - be granted in that way. If it please the commission.

COMMISSIONER WATLING: Thank you. Any further submissions? No further submissions? Right, well I can indicate to you that your application meets with the approval of the commission. It will mean that this is the first step to get wage rates and conditions into the Pharmaceutical Award. I'll hand down a written decision in due course and it will be operative from the date you requested and we'll try and get the orders out as soon as possible.

That looks like it's the end of the day for us - certainly in this room. Thank you for your efforts and this now brings all matters to a close.

HEARING CONCLUDED