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## **TRANSCRIPT OF PROCEEDINGS**

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O/N 1964

### **TASMANIAN INDUSTRIAL COMMISSION**

#### **DEPUTY PRESIDENT P.C. SHELLEY**

**T No 12075 of 2005**

#### **HORTICULTURISTS AWARD**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Australian Workers Union, Tasmania Branch  
to vary the above award re hours of work**

**HOBART**

**9.40 AM, FRIDAY, 29 JULY 2005**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union, Tasmania Branch. With me is MR K. MIDSON.

PN2

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

PN3

THE DEPUTY PRESIDENT: Thank you. Mr Flanagan?

PN4

MR FLANAGAN: Thank you, Deputy President. Deputy President, this application seeks to vary the Horticulturists Award to insert into that award the Commission's standard in relation to hours of work. At the moment, clause 19 provides for a 40-hour week. So what we have sought to do is to amend clause 19 by converting it from a 40-hour week to a 38-hour week, maintaining the current standards, if you like, that are in place in clause 19 in terms of spread of hours, days of ordinary hours of work, but to adjust it to reflect the 38-hour week.

PN5

So in clause 19(a) it currently provides for 40 hours a week, and we convert that to 38. It currently provides for ordinary hours of work between 6 am and 6 pm, Monday to Friday. That is being maintained. In subclause (b) - or 1(b) of the proposed amendment - the union proposes that there be a menu available so that the method of implementing the 38-hour week is one which is agreed between the employer and employee. There are specific provisions in the proposed new 1(c) in relation to rostered days off.

PN6

Clause 1(d) indicates - well, provides an alleged establishment. The employer and employees concerned will attempt to reach agreement about the method that will be applied. Clause (e) maintains the current provision that ordinary hours may be extended from eight to 10 hours. Clause (f) recognises that different groups, individuals or sections may adopt the different method of implementing the hours of work. Clause (d) deals with the accumulation of hours for rostered days off. We do need to amend the proposed schedule of variation by inserting a new subclause (h) which should read:

PN7

*The spread of hours or daily hours prescribed by subclause (a) of this clause may be altered as to some or all employees by agreement between the employer and employees concerned.*

PN8

That is the current subclause (b) in clause 19, but we have missed that in the drafting.

PN9

THE DEPUTY PRESIDENT: Are you going to give us a fresh document?

PN10

MR FLANAGAN: We can provide that to the Commission. The other incidental variation which we would ask that the order deal with is, if one looks to the current clause 9(a), you will see there, Deputy President, that it says:

PN11

*All time worked outside the hours prescribed in clause 20, Hours, subclause (a).*

PN12

It should say clause 19. That is a numbering error. So we would simply ask that that variation also be incorporated into the schedule of variations.

PN13

THE DEPUTY PRESIDENT: We have just done a new consolidation.

PN14

MR FLANAGAN: Sorry?

PN15

THE DEPUTY PRESIDENT: I said we have just done a new consolidation. Never mind.

PN16

MR FLANAGAN: Well, hopefully it was picked up in the new consolidation.

PN17

THE DEPUTY PRESIDENT: No.

PN18

MR FLANAGAN: No. So Deputy President, as you would be aware, the 38-hour week was first introduced into awards in 1983. I can say that I am genuinely not aware of any other award that continues to prescribe a 40-hour week, at least in the AWUs set of awards. We would submit that simply the variation is consistent with the standards of the Commission in relation to the hours of work. It is not opposed by the employers. It does not offend the wage fixing principles or the public interest requirements of the Act. Under those circumstances, the Commission should approve the variation as sought. If it pleases the Commission.

PN19

THE DEPUTY PRESIDENT: With an operative date - - -

PN20

MR FLANAGAN: The first full pay period on or after today's date.

PN21

THE DEPUTY PRESIDENT: Thank you. Mr Watson?

PN22

MR WATSON: Thank you, Deputy President. I can confirm that there is consent to the order - the amended order as described by Mr Flanagan. It may

not necessarily require another consolidation of the award, perhaps just an order. But just a couple of points I just wanted to make, and they are that in relation to the standard, it is certainly the case that the vast majority of the Commission's awards have 38 hours as the hourly rate - weekly hours of work. I don't want to argue the point now, but we don't agree that there is a standard per se, because I don't think it has ever been tested as such. Certainly the principles talk about 38 hours a week, and we have agreed to this in this particular award. So I will just make that point.

PN23

Secondly, just in relation to the hours of work, obviously as Mr Flanagan has described there is a menu there for implementation of the 38-hour week, but we have discussed this and my reading of this is that it is actually the employer's discretion to determine which particular hours of work he or she may implement. It is not subject to agreement per se, although obviously we would encourage agreement in the first place, but if agreement can't be reached then the employer does actually have the discretion to implement the 38 hours as it sees fit. That is - - -

PN24

MR FLANAGAN: That is correct.

PN25

MR WATSON: Yes. So that is as we understand it, Deputy President. With those two comments, we agree to the variation. It doesn't offend the Commission's wage fixing principles or the public interest. If it pleases.

PN26

THE DEPUTY PRESIDENT: Thank you. Did you want to respond?

PN27

MR FLANAGAN: No, nothing further.

PN28

THE DEPUTY PRESIDENT: Okay. Well, I indicate that the award will be varied with an operative date of the first full pay period on or after today's date, and a decision and order will be issued shortly. The Commission is adjourned.

**ADJOURNED INDEFINITELY**