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TRANSCRIPT OF PROCEEDINGS

O/N 1005

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 11513 of 2004

T No 11540 of 2004

HENTY GOLD MINE ENTERPRISE AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Construction, Forestry, Mining and Energy
Union, Tasmanian Branch to make the above award**

HENTY GOLD LIMITED ENTERPRISE AGREEMENT 2004

**Application pursuant to the provisions of
section 55(3) of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmania Branch
and Henty Gold Limited for approval of the
above agreement**

HOBART

9.30 AM, THURSDAY, 5 AUGUST 2004

Continued from 21.7.04 in Ulverstone

PN2928

THE COMMISSIONER: Mr FitzGerald, I believe that you have concluded your evidence, is that right?

PN2929

MR FITZGERALD: Yes, that is correct, Commissioner. I think we were going to proceed with the AWU evidence. Before I - if I could just clarify one aspect of the evidence. If necessary this can be provided by some sort of statutory declaration; I don't think it is an issue which is of great contention. It related to the evidence of Mr Knott in cross-examination from Mr Bukarica and he did indicate that he was unsure of which instrument applied at Weipa and he said - in evidence though he said that he wasn't sure that it was actually either provided by AWAs or a section 170LK agreement.

PN2930

He did subsequently check that and I suppose it is a matter of public record and these various agreements of course sit there on the Commission's website and found that both of those were wrong. It wasn't an AWA or a section 170LK agreement but he says that the direct employment arrangements at Weipa are in fact facilitated by the award itself. So it is the award itself which makes that arrangement, not an AWA or an LK agreement. So I just make that for the purpose of clarification for the record.

PN2931

THE COMMISSIONER: I suspect that that is not contentious?

PN2932

MR FLANAGAN: No.

PN2933

THE COMMISSIONER: Right, okay, we will accept that explanation thank you, Mr FitzGerald. Mr Flanagan, what is your position?

PN2934

MR FLANAGAN: Before I deal with today's matter, Commissioner, there was a document which I referred to in the cross-examination of - I think it was Mr Hinds or Mr McLean and it was a copy of the decision of the ACTU Executive which identified that the AWU was the principal union in metalliferous mining. I don't believe it was marked.

PN2935

MR BUKARICA: It was.

PN2936

MR FLANAGAN: It was, was it?

PN2937

THE COMMISSIONER: Was that attached to one - - -

PN2938

MR FLANAGAN: No, it was a stand alone document.

PN2939

MR BUKARICA: If I could assist, Commissioner, I think it was marked as AWU2. I have got a copy in my bag - you may want to check that.

PN2940

THE COMMISSIONER: I will tell you in a second.

PN2941

MR FLANAGAN: It appears that it has been marked, Commissioner, I apologise, I hadn't realised that.

PN2942

THE COMMISSIONER: The file is getting pretty thick, I will take your word for it.

PN2943

MR FLANAGAN: Okay. Well, in terms of today, what we propose to do is call Mr Ian Jones but that needs to be by telephone.

PN2944

THE COMMISSIONER: Yes.

PN2945

MR FLANAGAN: We had originally anticipated also having Mr Cooper following Mr Jones, however his commitments are such that he is not available today. We have attempted to talk further with him this morning about whether he might be available tomorrow and we have been unable to confirm that position. So after Mr Jones what we propose to do is call Mr Wakefield and then, following Mr Wakefield, myself. Then what we propose to do is call Mr Lowe tomorrow morning and then move to submissions so that the matter can be completed in the next two days.

PN2946

Having said that, originally we had requested that tomorrow's matter be listed at 10.30 due to a commitment of the AWU elsewhere in this Commission at what we thought was 10. Checking the records it is indicated that that matter is in fact listed at 9.30 so we would be in a position to proceed with this matter at 10 rather than 10.30.

PN2947

THE COMMISSIONER: Well, we will certainly do that. Your own evidence, is that in relation to the section 55 matter?

PN2948

MR FLANAGAN: Yes, it is, Commissioner.

PN2949

THE COMMISSIONER: So you would seek to interpose that into these proceedings?

PN2950

MR FLANAGAN: That is correct, yes.

PN2951

THE COMMISSIONER: We just need to keep an eye on that. Mr FitzGerald, Mr Bukarica, have you got any problem with that proposed course of action?

PN2952

MR FITZGERALD: No, Commissioner, other than say that in relation to Mr Cooper the position will be that from our point of view that if he is not available then we just proceed and deal with the matter to conclusion if we can.

PN2953

THE COMMISSIONER: I hear what you say.

PN2954

MR FLANAGAN: We are not opposed to that course of action. If it would be helpful if he was available but if he is not available then he is not available.

PN2955

THE COMMISSIONER: Right. So we will deal with Mr Jones and I believe we have to make telephone contact, is that right?

PN2956

MR FLANAGAN: Yes, that is correct, Commissioner.

PN2957

THE COMMISSIONER: We will just go off the record for the moment.

OFF THE RECORD [9.45am]

RESUMED [9.54am]

**EXAMINATION OF THE FOLLOWING WITNESS WAS
CONDUCTED BY TELEPHONE HOOK-UP**

<IAN CHARLES JONES, SWORN [9.55am]

<EXAMINATION-IN-CHIEF BY MR FLANAGAN

PN2958

THE COMMISSIONER: Good morning, Mr Jones, it is Commissioner Abey here. Can you hear me okay?---Yes, certainly can.

PN2959

Can you still here me, we are just fiddling here at the moment?---Yes, I can still hear you, sir.

PN2960

Right. We have present in the Court Mr Robert Flanagan and Mr Alex Bukarica and Mr Bill FitzGerald. I will now hand you over to Mr Flanagan?---Thank you.

PN2961

MR FLANAGAN: Thank you, Mr Jones. Can you tell us what your occupation is, Mr Jones?---I am a union organiser for the Australian Workers Union Tasmania Branch.

PN2962

Can you tell us what the role of a union organiser is?---the role of the union organiser is to look after his members, to sign up members, to look people that are covered by award and agreements that the AWU is respondent to.

PN2963

Can you tell us which part of Tasmania you service AWU members in?---I service the members in what used to be termed the 004 area, telephone area, that takes in from Devonport through as far as the Arthur River - I've members at the Arthur River, down as far as Queenstown. I cover a multitude of different industries within that area.

PN2964

And as a part of that then you cover a number of mine sites, is that correct?---I virtually cover all the mine sites on the West Coast of Tasmania.

PN2965

Are you familiar with the company called Australian Bulk Minerals?---I certainly am, yes. I have been involved with Australian Bulk Minerals since they took over the Savage River mine site in 1997 - they restarted the mine back up then.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN2966

And can you tell us how many members you would have approximately at Australian Bulk Minerals?---I think we have about 150 to 60 members there, at Australian Bulk Minerals.

PN2967

Do you have an established delegate structure?---I certainly do. Australian Bulk Minerals have not only the mine site which is situated at Savage River but they also have the pelletising plant at Port Latta. On each of the shifts there is a delegate and we have four shifts in the mill, four shifts in the mine site. We have the trades which are all in the Australian Workers Union and it is the same at Port Latta where we have four shifts in the mill and the four shifts with the trades.

PN2968

Can you tell us whether the employment is regulated by an award and enterprise agreement?---That has been - since the start up has been under an enterprise agreement.

PN2969

And can you tell us who the parties to the enterprise agreement are?---The Australian Bulk Minerals and the Australian Workers Union Tasmania Branch.

PN2970

Are there any other unions which have a presence with Australian Bulk Minerals?---No, there aren't, it is a one union site, it has a one union agreement.

PN2971

Are you aware of any CFMEU presence with Australian Bulk Minerals?---No, I am not.

PN2972

Could you tell us how often you visit the sites?---Savage River, I would be there - sometimes I'm there on a weekly basis and sometimes it's a fortnightly basis. Port Latta is usually only each fortnight. But Savage River there is a - there's been a very high turnover of personnel in the pit through one reason and another and subsequently that has taken a lot more servicing than what the other sites take.

PN2973

So you are saying that the AWU would have 150 members in the Australian Bulk Minerals operations, how many employees would not be a member of the union, or the AWU, in those operations?---Probably 30 to 40.

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XN MR FLANAGAN

PN2974

Are you familiar with the Zinifex Rosebery Mine?---I certainly am, yes. I - - -

PN2975

And - sorry?---Sorry, I've more or less - initially when I started being an organiser back in '97 I became involved with it was then Pasminco with Mr Ian Wakefield - he is the now State Secretary of the Australian Workers Union Tasmania Branch. He - his main sphere was mining because that was the industry that he had come up through and I more or less assisted Mr Wakefield in servicing Pasminco at Rosebery and have more or less taken over the role of servicing that full time for the last two or three years.

PN2976

Can you tell me how many members of the AWU would be at Rosebery?---It's a hundred and - I'm not - don't hold me, I'm not 100 per cent sure but I believe it would be 140 or 50 members. You have the underground work force plus the mill work force. And a number of trades have also - in the Australian Workers Union as well at Rosebery.

PN2977

So do you have a delegate structure which is established?---We certainly do have a very good delegate structure, the same as Australian Bulk Minerals where each of the shifts are covered by delegates, appointed delegates or elected delegates - mainly elected delegates by their fellow colleagues they're elected. And at Rosebery we have a monthly meeting where the delegates and myself meet with the company to discuss any issues that will be coming up for the month or any issues that have happened in the previous month.

PN2978

Can you tell us if employment at the Rosebery site is regulated by an award or an enterprise agreement?---That is also by an enterprise agreement.

PN2979

Can you tell me who the parties to the enterprise agreement are?---Well, the parties were - used to be Pasminco but now will be Zinifex with the Australian Workers Union, the CEPU which was the electricians, or which is the electricians union, and the AMWU which is the Australian Manufacturing Workers Union.

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XN MR FLANAGAN

PN2980

Are you aware of any presence of the CFMEU at the Zinifex Rosebery operations?---No, I am not.

PN2981

Can you tell me if you are familiar with a company by the name of Copper Mines of Tasmania?---I certainly am. That is the operation at Queenstown, the copper mine down there which is Stirlite - which is owned by Stirlite and they have a contracted company in there underground, Barmenco, which does the underground mining for the - for the company.

PN2982

If we can just separate those two employers. If we start with Copper Mines of Tasmania?---Yes.

PN2983

Can you tell me how many members of the AWU would be employed there?---Approximately - with Stirlite?

PN2984

Yes?---The owning company - well, there would be 30 odd in the mill.

PN2985

Okay, in the mill. Can you tell me if you have an established delegate structure?---There is an established delegate structure there the same as the other mines where if there are any issues those delegates - any issues that the delegates cannot handle they contact me or Mr Ian Wakefield in Hobart, or the Hobart office, and we attend to the issues that need some help.

PN2986

So can you tell me whether employment at Henty is regulated by an award or an agreement?---That is also regulated by an enterprise agreement.

PN2987

Can you tell me who is party to that enterprise agreement?---The parties to that enterprise agreement are the Australian Workers Union Tasmania Branch, the CEPU and the AMWU, the three unions.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN2988

Can you tell me, Mr Jones, if the CFMEU has any presence at that operation?---Not as far as I know, no.

PN2989

Can we talk then about Barminco. Are you familiar with Barminco?---I am familiar with Barminco. I have had dealings with Barminco, not only at Queenstown but I've also been been - they were a contractor at the Renison Tin Mine which is - which closed down recently, went into liquidation recently. They also contracted other mining sites. There was a development done at Rosebery and Barminco did that development at Rosebery on account that at that stage Pasmenco could not - didn't have the workforce or the equipment to put in - to do the work.

PN2990

So the nature of the work performed by Barminco at these sites, could that essentially be described as underground mining?---It is underground mining, yes, they are an underground mining contractor.

PN2991

Can you tell me how many members the AWU would have with Barminco?---Approximately 80.

PN2992

Can you tell me whether or not there is a delegate structure established?---There is a delegate structure established within Barminco, the same as the other mines.

PN2993

Can you tell me whether the employment is regulated by an award or enterprise agreement?---I believe that is by an enterprise agreement.

PN2994

Can you tell me who the parties to the enterprise agreement are?---I believe that there are two parties to that agreement and one is the Australian Workers Union Tasmania Branch and the other is the Australian - AMWU, Australian Manufacturing Workers Union, looking after some trades.

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XN MR FLANAGAN

PN2995

Can you tell me how many of Barminco's employees would not be a member of the AWU?---Not very many. Not very many. I wouldn't know but most of them are because they travel from mine site to mine site, they will be spending - or they used to spend a certain amount of time at Queenstown and then they would probably come to Renison or they used to go to Renison and then some transferred to Rosebery and they used to be mad at them. They were members of the AWU and they just continued from mine site because the AWU was the predominant union covering - or is the predominant union covering the mining industry in Tasmania so they more or less were all in the union because the other mine sites were union orientated.

PN2996

So are you aware of a presence of the CFMEU with Barminco?---No, I am not.

PN2997

Are you familiar with the company by the name of Tasmanian Mining?---Tasmanian Mining?

PN2998

Tasmanian Mines, sorry?---Is that the mine - Tas Mines of Hampshire, yes, I am.

PN2999

Can you tell us how many members of the AWU would be at that mine?---We have 16 members there.

PN3000

Can you tell us how many employees there would not be members of the union?---None, because it's 100 per cent unionised.

PN3001

Can you tell me whether or not there is an established delegate structure at that site?---There is an established delegate structure at that mine.

PN3002

Now, can you tell me whether the employment is regulated by an award or enterprise agreement?---It used to be covered by - they used to have their own award but has now gone to an enterprise agreement.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3003

Can you tell me who the parties to the enterprise agreement are?---Australian Workers Union.

PN3004

Is there a presence of any other unions at that site?---There are two trades people. I believe they are with the AMWU but they are not in the enterprise agreement. I don't know whether they have their own agreement or not, I wouldn't have a clue.

PN3005

Okay. Is there a presence of the CFMEU?---No, there isn't.

PN3006

So are you familiar with Henty Gold Mines?---I beg yours?

PN3007

Are you familiar with Henty Gold Mine?---Yes, I am.

PN3008

Can you tell me how many members of the AWU would be employed by Henty?---Forty to 45 I would - I would guess between 40 and 45.

PN3009

Can you tell me what occupations or groups of activity they would be involved in?---Yes, there is the miners, underground. We have some guys in the mill and we have the SOs.

PN3010

Can you tell me whether you have an established delegate structure?---We do.

PN3011

Can you tell me if there is a presence of any other unions on that site?---Not that I'm aware of.

PN3012

Are you aware of a CFMEU presence on that site?---There was - at a meeting I held - had there with one of the shifts indicated to me that some of the guys on that shift had signed up with the CFMEU.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3013

Can you tell me, Mr Jones, whether there have ever been any difficulties with the AWU having right of entry to the Henty site?---Yes, there were there - years ago there was. Myself and Mr Ian Wakefield paid a visit to that site and were escorted off the site to the boom gate which was halfway between the road and the mine site. We were asked to leave the site.

PN3014

Did you leave the site?---We did leave the site under the instructions of the security officer which ordered us off. We parked at the boom gate - just outside the boom gate and spoke to the employees going to and leaving from work on that day.

PN3015

So can you tell us approximately how long ago that was?---I reckon it would be four years ago, three or four years ago.

PN3016

So since that point in time has it been the AWU's practise to talk to employees at that boom gate you are referring to?---No, it hasn't. Following us being ordered off and escorted off site, there was - I believe a dispute was going to be notified in the Commission with regards that we had right of entry to that site because we had members working on that site. And following discussions between the Australian Workers Union and Australian Mines and Metals Association - I believe following that discussion we were granted entry to the car park.

PN3017

So have you - was that entry restricted to the car park?---No, not specifically to the car park but the union elected to only go to the car park. The company did offer us to come in the gate but the workers felt that they would sooner speak to the union in the car park where they couldn't be observed if anybody had any problems.

PN3018

So how often would you visit the Henty site?---Approximately every six to eight weeks.

PN3019

And has that been the practise over that four year period?---Yes, it has been.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3020

Can you tell us what time you visit the sites?---I usually visit the site - the company is notified - following the dispute that we had and when we were ordered off the site we - there was come to an agreement that the union would notify the company, give them at least 24 hours notice of any impending visit. That was done through the Hobart office and then we would turn up at the mine site and carry on from there.

PN3021

Has the AWU assisted the employees of Henty at any time during that - your period as an organisation?---Yes, I have personally. There was a guy by the name of Jerry Collander that had workers compensation problems which I became involved in with the company. That's going back quite a while. There was another one - Jarrod McKenna name rings a bell. He was I believe into - as best as if my memory serves me - I haven't been able to get to my files on Henty since I suffered an accident and these are only names that ring a bell following that. Jarrod McKenna, he got a first and final written warning I believe for attendance, that he wasn't - the company felt that he'd set up a pattern and was having days off through sickness and I got that downgraded from a first and final written warning to just a written warning. I had meetings with a Ms Mandy Tunstall who was then the mine manager.

PN3022

So those - - -?---And there was another guy about 18 months ago that - he was a driller, charge-up driller, he'd finished, he was packing up his drill and he finished charging up the holes he had drilled. He got severe stomach cramps and he relieved himself at the face because he felt he couldn't make the toilet which was approximately 500 metres from where he was currently working. He relieved himself there, covered it up with rags and stones - threw a couple of stones. Something happened and the - it wasn't - they didn't fire that face. The incoming shift boss had to go down and disarm the face and on doing so found where he'd relieved himself. He was given a final written warning for that. He was already on a final written warning and subsequently the company terminated his employment. He immediately appealed and we had numerous meetings with the company but with their high environmental standards down there and because he was on a final written warning the company would not reinstate him. He is currently working with Barmenco in Queenstown. I just can't remember that guy's name but I did make about four trips down to Henty with regards him - but I just can't remember his name. He lives at Sheffield but at this stage I just can't remember his name.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3023

So in the case of the other two employees, Mr Collander and Mr McKenna, their issues were resolved on the site, is that right?---Their issues were resolved on site, yes.

PN3024

Do you recall Mr Barry Butler?---Mr Butler, I believe that Ian Wakefield from the Hobart office took up Mr Butler's case.

PN3025

Okay. So you have indicated that you recently had an accident, can you tell us what you were doing immediately prior to that accident?---Yes, I can. I'd paid a visit to the Henty Gold Mine on Tuesday, 6 July. It was a day shift at Henty where I got down through the snow and paid a visit to the day shift and there was a meeting set up for Thursday the 8th - I was to catch two shifts, the day shift just before they knocked off and the incoming night shift. I got a phone call from the mill manager to say that they had had a shut down on that day and that I could visit the site earlier, that a meeting would be set up at approximately 4 o'clock for me to go through the company's response to the AWU agreement issues. I had a meeting with that shift and went through the response from a meeting that we'd had previously with the company and our delegates. I can't remember all the issues that came up at the agreement talks but I can - because I just don't have any notes here at home where I am at the moment but one was - well it was some of the effects which were - was objective performance assessment system which allowed the - which was a reply to the workers need to achieve a particular outcome. They were also looking for a guaranteed minimum wages outcome to take into consideration movements in the CPI because some employees on site had not had a wage increase for a number of years. Another one was the payment of public holidays - should be paid on the day that it falls not the gazetted day. The company agreed to that. The company also agreed to enter into talks which wasn't an agreement matter with regard work arrangements for Christmas Day - that if a certain tonnage was on the stockpile that the miners would be able to have it off and maybe the mill workers we would ask for volunteers to run the mill on Christmas Day the same as what happens at other mines in the state. Where we have people that don't have families or have a split family or something like that which - guys which don't mind working Christmas Day because of family, you know, one reason or another we can usually get enough to run the mill on a skeleton crew and allow those with families to have the day off. There - also within the agreement, the rates appeared to be low and we needed it

**** IAN CHARLES JONES

XN MR FLANAGAN

to show a true picture of what the rates were. Another one was with the wages, the way the wages were shown in the agreement, they show as total cost of employment and the union was trying to get gross earnings instead of that. There were changes to the definition I believe of the shift and annual leave - to refer to the weekends and public holidays, rather than 24 hour coverage. Another main one, especially for the mill, was the mill personnel - I am sorry, with skills within the mill, a recognition of the skills that the mill workers utilised with regards their individual performance and - so that the people using all the same skills would get the same pay. And the company agreed to sit down with the union and employees and the delegates and the union to try and track - especially the mill employees, system through for recognition of the skills that they were currently using.

PN3026

So all of these issues were issues which you reported to mill employees on 6 July?---That's the reason for the meeting that I had - that I was having with all the shifts where we picked up the shifts in the mine but currently you can get there one place at a time so subsequently I'd gone - I'd been in attendance with Mr

Robert Flanagan, yourself, and we had met with the mine workers to discuss these issues and I was in the process of going through these issues or - and there were other issues but I just can't remember. As I said I'm handicapped because I don't have the paper - paper work with me. And I was going through the mill shifts as to explaining them the situation as to - as to where we were and what stage we were at with regards on that, an enterprise agreement for the site.

PN3027

So the employees that you were talking to in the mill, were you only talking to AWU members in the mill?---No, I was talking all mill members - all mill - all mill employees I was talking to. I wasn't - I didn't - there's no specific sign, you know, AWU or whoever, whether they were in here. I was talking to each of the shifts in turn. The shift I met with - on the Thursday that I had my accident I was due to meet two shifts. I covered the day shift and I was due to pick up the night shift but they'd had a shut down that day and I was informed by the mill manager that the incoming shift would be flat out for at least two and a half to three hours starting the mill up and she felt that they would not have time to sit down and have a meeting with me. And I'd agreed to - with her to come back the next week to catch up on that shift. So subsequently I went down and I only caught the one shift before I had the car accident.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3028

So were any - did any of the employees that you spoke with in the mill identify themselves as members of the CFMEU?---They didn't actually identify the members of the CFMEU, no. There was one person did ask me whether they could be in two unions and I said yes, they could hold dual membership as long as they were financial. I was also asked by the meeting on the 8th why nobody from that shift had been at the meetings with the company and the union with regards the enterprise agreement and I asked them whether they were all - any - whether they were all members of the AWU and whether they had elected a delegate for that shift and they said that they hadn't elected a delegate on that shift. Then there was some talk between the workers who would be - that they would look to elect and I informed them that they would need to sign up with the AWU and elect a delegate and then there was - I left it with them that they were going to come back to me when they had discussed this.

PN3029

Now, Mr Jones, you have identified a number of issues which you were reporting back on - - -?---Yes.

PN3030

- - - to the people in the mill?---Mm.

PN3031

Can you tell us how those issues had been negotiated between the union and the company - can you recall who was in attendance on behalf of the employees to discuss those issues?---We had - I can't remember just - can't off hand remember the guy. I only met him once. There was an AWU delegate on one of the shifts in the mill was attending - in attendance at the meetings but I can't - he was a big

tall guy, elderly guy. I cannot at this stage remember his name because of the circumstances.

PN3032

So can you tell us were there any other representatives of employees in attendance?---There were representatives from the underground work force, there were representatives from the emergency response guys and there was a representative from the mill.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3033

Now, Mr Jones, you are aware that there is an application by the CFMEU for the making of an award in respect to new employees. Are you aware of that?---No, I wasn't, I am not - no. See I'm on the North West Coast and if I'm not told that this happened well, you know. I have enough to do without - there are quite a few times that I had to call on help from Hobart to help service the mines at Queenstown especially when I have other issues that need resolving here on the North West Coast where I am - where my office is. But no, I was not aware of any award to be made, or being made.

PN3034

If the CFMEU have a legitimacy at the Henty Gold Mine to represent employees at that site, what impact would that have on industrial relations at that site would you believe?---I think it would have a major impact on not only industrial relations at that site but the industrial relations over a multitude of industries.

PN3035

Why do you say - - -?---I feel that probably what would happen is that they would poach our members, we would then have to turn around and look to poach their members so subsequently we would find through major - through industries throughout the state that there would be major confrontations between the two - two unions because they're poaching each others members.

PN3036

Wouldn't it be a simple situation where the unions respect one another's membership?---Well, I don't think so - personally I don't think so. I think it would have major implications - that we've always looked after - when I see we I mean the Australian Workers Union has more or less looked after the - we've always looked after when there was the mining industry. The CFMEU, yes, they have looked after the coal industry. You'd probably find that we'd be heading off there to - into that industry which would certainly disrupt if we had problems within the two unions - would certainly disrupt the employment and viability of probably a lot of companies.

PN3037

Why would it affect the viability of companies?---Well, if we started arguing and started putting outlandish wage demands on companies, especially in today's climate, it would certainly put problems to the forefront.

**** IAN CHARLES JONES

XN MR FLANAGAN

PN3038

Why would the existence of the CFMEU in the metalliferous mining industry mean that the AWU would pursue outlandish wage claims, as you call them?---Well, they would be poaching our - our members, wouldn't they? Now, we would have to show to be able to achieve better results from what they could achieve to maintain our membership because if the other union came in and could get something better than we could get we would certainly finish up with no members, wouldn't we?

PN3039

Okay, thank you, Mr Jones. No further questions, Commissioner.

PN3040

THE COMMISSIONER: Mr Jones, I will now call on Mr Bukarica from the CFMEU to ask you some questions. Please indicate at any stage if you want a short break. I appreciate that you are under some difficulties but - - -?---I am, yes. I am sorry, I have had to take quite a few tablets again this morning. I'm taking Tramal which causes drowsiness and I'm also on Oxynorm for the severe pain so I have also taken them morning as well as panadol. But at the moment I'm hanging in there pretty well.

PN3041

THE COMMISSIONER: Okay. Well, I will ask Mr Bukarica to proceed.

<CROSS-EXAMINATION BY MR BUKARICA

[10.35am]

PN3042

MR BUKARICA: Good morning, Mr Jones?---Good morning.

PN3043

I hope you recover soon?---Thank you very much, so do I.

PN3044

Mr Jones, probably if we start maybe asking you some questions about Henty Gold?---Yes.

PN3045

Now, you have given some evidence that you presently have 40 to 45 members, is that right?---Yes, I believe so, yes.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3046

Now, it is the case, isn't it, that you haven't always had that number of members at the mine?---Yes - no, I've never had that many members at the mine but I'd say over a number of years it's varied between probably 7 and a dozen. I think we got up to a dozen at the highest point at one stage.

PN3047

Yes, and - - -?---But we've always had about 7 - there has been.

PN3048

Yes, and really the 40 to 45 members has only arisen since about June this year?---Yes, I believe so.

PN3049

And it is true to say isn't it, Mr Jones, that Henty Gold have been less than co-operative with you over the years. Would that be fair?---Yes, it's not only - put it this way, it's not only the Henty Gold, it was also some of the guys that worked there. They have been on very good remuneration in comparison to some of the other mines and subsequently like you'd be there - there's many a time I've been there in the rain and the snow - and summer time the March Flies nearly carry you away. But they just say to you, "Well, you can't do anything for us because, you know, we're on such a good pay rate we don't want you interfering in anything." It's only been now that some of the guys - and I believe some of the guys in the mill haven't had a pay increase and some of the guys underground haven't had a pay increase for in excess of two years but they have now realised that - and the new company coming taking over the mine site, that they are you know saying, "Well, hang on a minute, everybody else is getting pay increases, why aren't we. We need to maintain our living. Our cost of living is rising whether it's petrol or whatever it is, we should be - you know, we should have a pay rise too," and I think this is what has led to the workers now saying, "Yes, I think the union movement can help us."

PN3050

Okay. Now - so there has been some reluctance on the part of the work force but - - -?---Oh yes, there has. It's not only been the mine management, yes, but the work force as well because they have been in the past.

PN3051

Right. The position is isn't it, Mr Jones, that really until about May of this year that Henty Gold management actively resisted the AWU having a role on the mine site. That is correct, isn't it?---Yes, I would possibly say so, yes.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3052

Yes. And indeed Henty Gold resisted, actively resisted, any union having a role on the mine site?---Yes.

PN3053

You had great difficulty, as you have already said, getting right of entry?---Yes, we were escorted off the site on one occasion.

PN3054

And indeed the company still, as of now, still has in place a non-union agreement at the work place? That is right, isn't it?---I believe so. I'm not 100 per cent sure what's happened in the last month, whether an enterprise agreement has been - whether the enterprise agreement has been certified yet or not I don't know because, as I said, I've been out of action since 8 July and I - this is more or less the first time I've had anything to do with what's been happening within the - my area. So I don't know whether the agreement has been certified yet or not.

PN3055

Yes. But putting aside the agreement, your evidence is that prior to June this year your membership position there was what, somewhere between 7 and 12?---Somewhere between 7 and 12. That's without the contractors like Barmenco guys that they were bringing on. Some of those were members but they were not employed - they were employed by a local hire company so I'm certainly not counting those guys.

PN3056

Yes. Now, in relation to - you mentioned delegate structure?---Yes.

PN3057

You didn't have a delegate structure there either before June of this year, did you?---No, it would be that our members would contact me.

PN3058

Yes, on a direct base, but there was no - - -?---On a direct basis. They would either contact me or the Hobart office, there was nothing set in concrete there.

PN3059

Yes?---There were a couple of - one of our delegates that had transferred out of Barmenco from Queenstown but they're working with - as far as having a delegate structure in place at Henty.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3060

It's a recent thing, yes. Now, in relation to position at Henty, did you become aware at any stage that the company was proposing to introduce individual contracts at the mine site early this year?---I believe that is what happened. Once the workers were provided with a common law contract they saw what it contained and I believe this is where the guys said, "Well, hang on a minute, we've had a non-union agreement in place which has served us pretty well," or served them very well in the earlier days, now they're coming in with these common law contracts that virtually started to ring bells for the people, for the employees. And this is why they contacted the union and signed up with the union because I think that they were - well, I'm certain that they felt that they were going to need some representation and some support.

PN3061

Yes. Now, the position at the Henty Gold Mine - and correct me if I am wrong, is that up until recently and I am talking here again late May or early June, workers would have been reluctant to identify themselves as union members. Would that be right?---Yes, I think so. Yes, I would say so but this is one of the reasons why I used to meet them in the car park where management could not see who was talking to - who was speaking to me because you still had a percentage of people - even though I was in the car park in all weathers, that you would still get a percentage of people that wouldn't speak. You had your more or less, for the want of a better term, rank and file guys that had always been in a union were always prepared to say good-day to you and take your national magazine, The Worker, which I used to hand out.

PN3062

Yes?---I used to go down and hand that out to all the workers.

PN3063

Now, you mentioned some - you mentioned a number wouldn't be prepared to identify themselves?---Yes.

PN3064

Why is that? What do you attribute that to?---Well, I think that they were frightened that they would be, the old term, fingered, or you know seen to be trouble makers because they were speaking to the union.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3065

Yes?---Whether this is right or whether it's wrong or whether, as I said, that they had it so good that they didn't want to rock the boat.

PN3066

Okay. So really up until late May or early June the position in relation to unions on site would be that management wouldn't necessarily have any awareness of union membership. Is that right?---The only time, as I said - indicated, I think there were other guys that I did contact the mine for but there wee - there's the three guys and they were the only issues you know. But when a person was really in trouble, they really needed some help, well then they would identify themselves then. The company wasn't doing payroll deductions. The workers were on bank debits so the company virtually didn't know who was in the union, who wasn't in the union and that's the way that the workers operated.

PN3067

Yes. So really it only - the people who - the unionists on site, that would be an issue basically only within the knowledge of those particular workers and yourself?---Yes.

PN3068

Now similarly, if there was another union on site which operated in much the same way, you wouldn't necessarily know about - - -?---I wouldn't know, no. Definitely I wouldn't know, no.

PN3069

Now, you wouldn't - Mr Jones, you mentioned earlier you weren't aware of any CFMEU presence - - -?---Well, as I said, you know, like our guys kept to themselves. If there was a CFMEU presence I wouldn't have a clue, I wouldn't know because those guys wouldn't identify themselves to me because they had no reason to.

PN3070

Yes. And you wouldn't have any basis would you to dispute that the CFMEU has had a presence on the site for some time?---I wouldn't know - I don't know, you see, I wouldn't know this.

PN3071

No. Now, recently there has been a change of attitude on the part of the company towards the AWU, would you agree with that?---Yes, because there has been a change of ownership.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3072

Okay. When it - - -?---Plus with this - when they came out with the individual contracts I think the company are realising that virtually the whole underground work force had signed up with the union - realised that - I presume that they realised that they need to start - they need to start talking to us instead of holding us at arms length, more or less be prepared to sit down and have discussion with us.

PN3073

Mr Jones, the position is in reality, isn't it, that the company essentially allowed you back onto site after the CFMEU had made this application. That is correct, isn't it?---I wouldn't know. I didn't even know you'd made an application, mate, I really didn't.

PN3074

Don't you think - - -?---Like nobody had told me that that had been done. I've got no confirmation that there was even going to be an award being - or there was talk of an award being done.

PN3075

Mr Jones, who did the deal with Henty Gold regarding AWU presence on site?---That would have been - well, it certainly wasn't me because at the stage - Mr Wakefield the State Secretary and Mr Robert Flanagan, their Industrial Officer, when the contracts came out went down there because at that stage I was tied up with other commitments here on the North West Coast and I couldn't get down so it would have been Mr Wakefield and Mr Flanagan were the ones that
- - -

PN3076

Yes, they got the foot in the door?---Yes, I - it wasn't me, it certainly wasn't me. I came in on the tail end of the negotiations because my years that I've been there more or less servicing our members they're dropping in and saying good day because like I was looking after Queenstown, looking after Renison, looking after Rosebery and I used to - if I was at Rosebery for a meeting through the day I used to pop over, let them know - the company know that I'd be in the car park and I'd be there. Of if I'd done a shift change at Queenstown the previous night I would drop into Henty the next morning on my way back to the coast to do a shift change there between 5 and 7. I always used to get there a bit after half past 4 and I'd probably leave somewhere between there - might have left at half past 6

**** IAN CHARLES JONES

XXN MR BUKARICA

but I used to say 7 o'clock. And you'd have your blokes coming on and your guys coming off. Your mill people started at a different time to your underground miners. You'd always get a few leaving early, a few contractors leaving early and that's the way I used to operate it, the same as I do with the other mine sites.

Some weeks I spent virtually every day on the West Coast. Like the week that I had the accident I'd had the Tuesday at Henty, I'd had the Wednesday at Savage River and I was back to Henty on the Thursday. I tried to service all the members that I've got on the West Coast on a very regular basis.

PN3077

Okay. Mr Jones, you mentioned a little while ago that Mr Flanagan and Mr Wakefield did the negotiation with the - with Henty Gold. Do you know when that occurred?---No, I don't. I've got no idea whatsoever.

PN3078

All right. Would it be something like the last week of May or early June?---Oh look, mate, I honestly couldn't tell you because I've got mine areas, you know, up here and down there but I wouldn't have any idea when the two gentlemen would have been going to the West Coast. There was a lot of times that they were going to the West Coast of a Sunday to - for Barmingo, Saturday and Sunday, like they've been doing an agreement with them - were then in the throes of an agreement or we were - I was in the throes of doing an agreement with CMT at the time that I - we've meeting with them as well. I had had a lot on, on the North West Coast and subsequently if they didn't have much on in Hobart they went - they would accompany me to Queenstown. So I wouldn't - I could not honestly say when they were started or when they finished or when it was instigated.

PN3079

Mp?---I've got no idea what - - -

PN3080

No, that is fine. If you don't know, you don't know?---I just don't - I literally do not know. As I said, I didn't know that the CFMEU were doing an award to cover them - I had no idea till just now.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3081

Okay. Now, you mentioned earlier you did meetings with Henty Gold employees about the agreement and I don't want to go over the items you discussed. I just want to ask you, those meetings, they were facilitated by management, were they?---We asked the management. We approached management to - for time to be able to report back to all the shifts. Following the meeting that we had with the company we set up that we would like to come back to cover all shifts, underground and in the mill, to explain the company's position in response to what we put to the company.

PN3082

Okay?---And we'd asked the company that - we had the time - as I said, like the day that I had the accident is that I was supposed to be catching two - meeting with two shifts. I only met with one because they had a mill break down or shut down and it would probably be three hours before I could catch up with them. After they'd started they were going to be flat out so I left and made arrangements with the company to come back the next week and catch up with those guys.

PN3083

Okay. Now, Mr Jones, those meetings were during normal working hours, were they?---They were, yes.

PN3084

And the company, what, provided you with access to the workers in a crib shed or a meeting room?---Yes, we had some in the conference room with the miners, next to their change room. And I met the mill guys up in the mill control room.

PN3085

Yes. Now, prior to June of this year did Henty Gold ever afford you that sort of access to workers on site?---They'd offered a room for me to interview my members in - - -

PN3086

Yes?--- - - - but by me interviewing them in a room they would know exactly who was in the union.

PN3087

Yes, but they didn't give - - -?---And so subsequently the union never took up them up on that offer.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3088

But surely, Mr Jones, there was no suggestion of paid work time meetings prior to June, was there?---No, there was no suggestion of any paid time work time meetings because at that stage they were covered by a non-union agreement - - -

PN3089

Right?--- - - - and had indicated that they would probably prefer not to have us anywhere around.

PN3090

Yes. But when you were addressing the workers in June they were still covered by a non-union enterprise agreement were they not?---Yes, they were still covered by the - it was just after that I became involved - after that I offered them the contracts and that the majority or most of the work force, or virtually all the underground work force had signed up with the union, then the company thought well, hang on, we need to get the - resolve this. If we are going to be 100 per cent unionised or whatever - 90 per cent unionised or whatever, well then maybe we need to be talking to the union and not shutting them out.

PN3091

Mr Jones, the workers signed up into the union after you were granted access to the site, weren't they - didn't they?---Well, I don't know. I didn't sign many up but it was done by Mr Flanagan and Mr Wakefield. They'd be the ones that would need to answer that question as to - I have signed some up over the last couple of weeks there before I had the accident. Yes, I had signed some up then but that was in late June. But previous to that I don't know. You'd need to ask them when they started signing people up because I wouldn't know - I couldn't say because I wasn't involved in it. If people had signed up before the union became involved I wouldn't know but somebody must have contacted the union in Hobart for them

to get involved in it and so I presume the workers got signed up then because it's - the usual thing is that before the union can become involved is that we need a member presence and it needs to be a fairly considerable member presence if you're going to put time and effort into doing something.

PN3092

Now, prior to June there was no payroll deduction facility for the AWU on site?---Not that I'm aware of.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3093

Yes. And as you said earlier, you had great difficulties of right of entry?---Yes.

PN3094

Now - and your evidence is that you were not involved in reaching the agreement with the company about better access to the mine site, is that correct?---That is correct, yes.

PN3095

And indeed you were not personally involved in signing up most of the new members?---That is correct.

PN3096

Yes. Now - sorry, I withdraw what I was going to say. Could I ask you some general questions in relation to matters that Mr Flanagan took you to? Now, you are in charge, are you not - well, you have already said that a large part of your work is concerned with servicing the metalliferous mining industry, is that correct?---That is correct, yes.

PN3097

Is there a, to the best of your knowledge, an industry award applicable at the moment to the metalliferous mining industry in Tasmania?---No, not - we've always said the Pasma Award used to be but a recent case, Deputy President
- - -

PN3098

Leary, I think?--- - - - Leary said that it wasn't applicable - I believe in a case that we were running which more or less indicated that there was nothing there within Tasmania to probably underpin it. But everything is being done now through enterprise agreements which have been better satisfactory in my opinion up to date. I don't think we have any problems with any of our enterprise agreements that the guys are currently working under - and women, are currently working under.

PN3099

But your understanding is that there is no industry award - - -?---No.

PN3100

- - - at this stage?---No.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3101

Are you aware of when that decision of Deputy President - I think President Leary as she is now, occurred?---No, I'm not, not off hand, mate. I had it all on my files in the office when it was - and what case it was. To be totally honest with you I'm not - I've gone - - -

PN3102

No, look that is fine?--- - - - very blind with - sitting at home on a couch with absolutely nothing to refer to.

PN3103

No, that is - - -?---It's a bit of a struggle trying to remember and trying to place everything really.

PN3104

The negotiations with employers over an industry award have been occurring for some years, have they not, in Tasmania?---I believe so, yes.

PN3105

And do you know why the AWU hasn't made an application to have an award made?---No, I've got no idea - no idea.

PN3106

Do you know how long the negotiations have been going on over the industry award?---No, I couldn't - I couldn't tell you. I've had enough - as I said, enough to do in my own vegetable patch without - - -

PN3107

Sure?--- - - - going and trying to create and that. You know, we have been extremely flat out because - well, there's been a number of awards that we've been working on through - not so much in the metalliferous mining industry but, you know, we've done awards to cover the guys out at Forestry and all this. And we've had other things that we've been concentrating on - been concentrating on mining as well. We cover a diverse - a major lot of industries here in Tassie.

PN3108

Sure. Mr Jones, do you know Chris Hinds?---Yes, I do know - I have met Chris. Chris - I met Chris with his dealings with Goliath. He has represented his members at Goliath but that isn't a mine site, that's a quarry, isn't it?

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3109

Yes. Mr Jones, do you have any problems with Mr Hinds? Has he ever acted unprofessionally towards you or - - -?---No.

PN3110

- - - any such thing?---No.

PN3111

THE COMMISSIONER: Before you go on, Mr Bukarica. Mr Jones, you should be aware that Mr Hinds is present in the Court.

PN3112

MR BUKARICA: I am sorry, yes - I beg your pardon.

PN3113

THE COMMISSIONER: I didn't announce that at the beginning?---No, that is all right. Chris has never done unprofessional to me, he has always been very extremely professional in our meetings at Goliath.

PN3114

MR BUKARICA: Yes. And indeed at Goliath there is a number of different unions present, isn't there?---There is. There is - I think there is the AWU, the AMWU, CEPU and the CFMEU.

PN3115

Yes. Now, the presence of the CFMEU at the AWU at that site, has that led to outlandish claims being put on Goliath?---Not so much on Goliath, no. Goliath is a different company than a lot of other companies, is that our delegates at Goliath do all the negotiations - negotiating themselves and the unions only become involved at the sign off time of the agreement. There is virtually - you know, when everything has virtually been signed, sealed and delivered by the employees it's then that the unions become involved. It's fairly unique really with regards the way Goliath employees and the delegate structure at Goliath Works is that - you know, other places that the union is involved right from the start of proceedings when you're doing a new enterprise agreement, whereas at Goliath they have a lot of meetings without any unions being involved.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3116

Yes. Now, amongst the unions at Goliath - and you have explained the way the delegate structure works, is there a poaching going on or a turf war?---Not at Goliath, no, because what has happened at Goliath over the last six to seven years we've had that many retrenchments there we're struggling to keep our head above water because every time they've done a new agreement, except I think probably for this last one, is that there have been so many redundancies within the agreement through modernising the new quarry coming on line - you know there's so many things - the handling facilities now with the conveyors and all the rest of it, is that things have certainly changed.

PN3117

But the answer is there is no real demarcation issue at that site, is there?---No.

PN3118

And presumably there has been some sort of a settled or sorted arrangement about who covers who at the site?---Exactly.

PN3119

Yes. Now, in relation to - you recall you were asked earlier on some questions about ABM, Savage River?---Yes.

PN3120

Yes. Do you have any knowledge of the industrial arrangements which applied at that site prior to the single union agreement which was put in place there in approximately 1997?---No, I wasn't.

PN3121

I see. Do you know which unions the workers were members of at that site?---At Savage River?

PN3122

Yes?---No, I don't.

PN3123

I see. Is it your - do you - - -?---I only started with the union in July 1997 - that's when I started with the union. Previous to that I don't - I didn't - no, I don't. To be perfectly honest I haven't even seen any of their - whether they were under an agreement or award or whatever. I've never seen it, I wouldn't have a clue.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3124

Okay?---The only thing I do know is that Port Latta, we must - the AWU must have had a fair presence at Port Latta because of the delegates that were there are now shift bosses there. So I presume we had a presence at both places - I don't know whether we did or we didn't. I've never pursued that - no, I don't know.

PN3125

All right. No, that is fine. Now, in relation to Rosebery, you gave evidence there about the AWU position there. To the best of your knowledge has the CFMEU attempted to recruit AWU members on that site?---Not to my knowledge.

PN3126

Yes?---Although I wouldn't have a clue whether there's any CFMEU members on site there, I've got no idea.

PN3127

Yes, but you have not seen Mr Hinds there or any other official trying to recruit?---No, the only thing I did know there probably four or five years ago there were a lot of advertisements put around down there by - on the West Coast for the CFMEU. But as far as that goes or where it went to or what happened I've got no idea.

PN3128

Right. And it would be the same position, wouldn't, it at Copper Mines Tasmania?---Yes.

PN3129

And Barmingo?---I believe so.

PN3130

And Tas Mines?---Yes.

PN3131

Okay?---I've got no idea. You see like if people are members of another union I don't know that the other places here on the North West Coast - I've got people in the dairy industry that have two tickets.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3132

Yes, but - - -?---Some are in the AWU as well being in the Clerks Union, so, you know, so there is a dual membership going on but, you know, people don't tell me that but I do know that this has come out and different things have been said and that, that there's no person in two unions but I don't know until I have been told by somebody.

PN3133

But there is certainly - there is no suggestion is there that the CFMEU has tried to crash into those sites?---Not as far as I'm aware of.

PN3134

Okay, or poach AWU members?---Not as far as I'm aware of.

PN3135

Yes. Now, Mr Jones, obviously you are an experienced union official?---I've had seven years.

PN3136

Yes. And you believe the AWU provides a good service to its membership?---Oh yes, I do. Well, I've always endeavoured to service and to provide the best coverage and that - and help as I possibly can. You know, as I say, I take a lot of calls of a night and a weekend - - -

PN3137

Yes?--- - - - and as I say to members I'm on call 24 hours a day which - you know, I leave home to go to the West Coast at, you know, lot of times 2 am of a morning to catch a shift change at Queenstown or, you know, get home at midnight from shift changes and meetings on the West Coast.

PN3138

Yes. And obviously therefore you are confident that the - as a product, if you like, the AWU is a good product?---Yes, I am. I've been a member of the AWU since the - from the age of 14 when I left school. I joined the AWU then as a - I was shearing - boards. In those days if you didn't have a ticket you didn't have a start. I didn't have a ticket when I initially started at the AWU and the organiser came into the shed and asked for the tickets. I just said to him, "I'm not on, I'm training," and he just switched the power off to the shed and I'll say no more.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3139

I think those days have gone?---I was taken out into the sheep yards with the sheep by the cocky, the guy that owned the farm and told not to move. He came back with his cheque book and gave the union official a cheque. I was allowed to go back to work and I thought well, I got out of that pretty easy but when the shed

had finished I had 12 months union dues deducted out of the shed, I virtually finished that shed with nothing in my pocket.

PN3140

Thanks to the AWU?---They were the good old days.

PN3141

Yes, that is right. But the point is isn't it, Mr Jones, that you are confident you have got a good product?---Yes.

PN3142

You are not afraid of some other union attracting your members, are you?---Oh you've always got to be on your toes because it doesn't matter where you go or what you do you'll always find you cannot please everybody.

PN3143

That is right?---You will always find that you're going to have somebody disgruntled and if somebody gets peeved with you or, you know, feels that you haven't done a good enough job well, one apple can lead to half a dozen bad apples type of thing. That's probably not explained very properly but, you know, there's always a presence there that not so much myself but other parts of the union in Tasmania have - other areas of the AWU we have been hit hard by other unions where delegates - especially delegates that have been through one thing or another felt that they haven't been looked after properly and we have lost the whole shebang through one person.

PN3144

Yes. But if you are doing the job that situation is not going to - likely to arise, is it?---No, but you - you know, it certainly keeps you on your toes all the time.

PN3145

Yes. And so in a way a bit of competition is probably not a bad thing in terms of the service that goes to the membership, is it?---Possibly not but I can't answer that, you'd have to ask the members as to how they feel about it.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3146

Yes. Now, you made some comments about poaching laws and the like - and outlandish claims. Have you in your experience been in that situation with the CFMEU in the metalliferous mining industry?---No, because as I said haven't had them in the metalliferous mining industry. I've had to worry about them - more or less to try and service my members so the other unions - that they didn't just get disgruntled and go to the AMWU or whatever. I always had to be, you know, on the go all the time to service them and, you know, to look after them.

PN3147

The AWU co-exists with the CFMEU in a number of work sites around the state, don't they?---Yes, I believe so.

PN3148

And are you able to say - talk about any turf war or outlandish claims in relation to those sites?---No, probably I - I was running a bit scared but you know, you get

somebody else new on the block - you know, like a new model car comes out, there is always somebody that is going to - going to want to try it, aren't they - and head for it and then see what the outcome is going to be.

PN3149

But you can't point to anywhere where there has been that sort of circumstance have you - can you?---No. I do know that when we had the - in 1997 when I was elected we lost 300 members I believe at Risdon - went to the CFMEU - were taken by a delegate. Virtually he was unhappy with way the election went. So that, you know, you've always got to be on the look out. This is - what happened there was the senior delegate on site at Risdon wasn't happy with the way the election - when I was elected and in them days - Mr Don Hayes and Mr Ian Wakefield were elected - us three were elected. And Mr John Glisson was voted out and subsequently 300 members went to the CFMEU there. And I suppose this is why I'm running shy, I'm frightened of what could happen.

PN3150

Yes. But you have already said, Mr Jones, that you are doing a good job?---Well, I believe I am but, you know, it's up to other people to say, you know, we can - like the work I'm doing whether it's a good job. But whether I am not it's up to other people to say, isn't it - it's up to the members to say whether they are satisfied with the service I'm giving.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3151

And your position in relation to union membership as such is that members have a right to choose whether they join a union, is that - - -?---Yes, yes.

PN3152

And they have a right to choose which union they want to be a member of?---I believe so.

PN3153

Nothing further, Mr Commissioner.

PN3154

THE COMMISSIONER: Thank you, Mr Jones. Mr FitzGerald?

PN3155

MR FITZGERALD: Can we - - -

PN3156

MR FLANAGAN: Do you think we could have a five minute break?

PN3157

MR FITZGERALD: Yes, I was going to make the same suggestion. I think, given Mr Jones' incapacity I think it is a fair request.

PN3158

THE COMMISSIONER: Yes. We will have a five minute break. We will just go off the record for a moment.

SHORT ADJOURNMENT

[11.15am]

RESUMED

[11.33am]

PN3159

THE COMMISSIONER: Are you there, Mr Jones?---Yes.

**** IAN CHARLES JONES

XXN MR BUKARICA

PN3160

Right. We have Mr FitzGerald who is representing the company, so it is over to Mr FitzGerald.

<CROSS-EXAMINATION BY MR FITZGERALD

[11.34am]

PN3161

MR FITZGERALD: Mr Jones, I certainly sympathise with you. I cracked a rib a few weeks ago and I was on the same medication. I realise it does cause drowsiness and also nausea so I hope you are feeling better and I hope you recover quickly?---Thank you very much.

PN3162

Mr Jones, it is true that you have dealt with me representing my organisation, Australian Mines and Metals. Is that the case?---Yes, it certainly is.

PN3163

Right. Can you ever recall mentioning to me about Henty and the fact that they are under a non-union agreement?---I may have done, Mr FitzGerald, but trying to remember everything at the moment, it's a bit of a struggle.

PN3164

You can't recall sort of in a joking sort of way saying that Henty should be under a union agreement?---Oh yes, many a times I've said that to you that we'd like to do - to be party to their agreement.

PN3165

Okay, all right?---On numerous occasions.

PN3166

All right. You mentioned the Butler case. You didn't have any particular involvement in that, did you?---No, I didn't. Mr Wakefield I believe - and possibly Mr Flanagan looked after that. I had nothing to do with that case.

PN3167

All right. But you know how that case progressed and what the outcome was?---Not particularly, no.

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3168

Okay?---I didn't.

PN3169

Would you be aware that it took some considerable resources of the AWU to run that case?---Yes, I believe it did.

PN3170

Okay. You don't know to what extent?---No, I don't. Not off hand, no.

PN3171

You can't recall an application made by another employee around about the same time employed at Henty for an unfair dismissal?---What - what was the guy's - - -

PN3172

I thought it was Jones but I could be wrong there, I would have to look at my files. But can you recall another individual around about the same time making an application?---That may have been - I've been trying to think of the guy's name from up at Sheffield that was terminated for - and I believe it was going on around about the same time as the guy from Sheffield - - -

PN3173

Okay?--- - - - with regards - that relieved himself at the face.

PN3174

Okay, thank you. You said in response to Mr Bukarica that, you know, Henty had been uncooperative with the union. Would you like to review that? Would you still say that is the case?---No, not at the moment they aren't. No, they're not uncooperative but as I also said, Mr FitzGerald, is that the workers were on a pretty good wicket there.

PN3175

Right?---That they felt that possibly by being in the union and they were currently under a non-union agreement which was, in their eyes and possibly a lot of other people's eyes, was an extremely agreement.

PN3176

Okay?---They were very well paid and I think possibly one of the reasons why people then came to the union movement was when the contracts came out and some people hadn't had a pay rise for a number of years.

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3177

Right?---And then also what did throw a number of people is instead of saying what the people's gross earnings were, they were told the cost of employment, you know, taking everything into consideration.

PN3178

Okay, all right. No, I think we will leave that, I think you have been through that. Is it true that there was quite a cooperative arrangement in terms of right of entry and visits and that has been in place for some time at Henty?---After we were virtually escorted off site - - -

PN3179

Okay?--- - - - it did come around that we would notify the company on a - two or three days, I usually always try to give two or three days notice to the Hobart office of - that I would be paying a visit and from that time there was never any hindrance then of - - -

PN3180

So would you describe it as cooperative, you know, that you rang and gave them 24 hours notice and - - -?---It would be cooperative, yes.

PN3181

Okay?---I would have to admit that.

PN3182

All right. And is that since Placerdome have taken over or was it - did that exist?---No, previous to Placerdome taking over.

PN3183

Okay?---It was after that we were escorted off. I believe the union probably got in touch with Australian Mines and Metals, explained the situation that we did have members. We were prepared I believe to sign a statutory declaration that stated we did have members and then the company I believe on advice from Australian Mines and Metals then gave us right of entry.

PN3184

Okay?---What they also said is that they did also offer us an office if we wished to interview - - -

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3185

Okay, all right. And you didn't take that offer up, you chose - - -?---No, we did not take that offer up.

PN3186

All right. Would you agree with me that given Henty have a section 61 non-union agreement in place that they - it's natural that they wouldn't in fact promote the role of the union, given that agreement exists?---Yes.

PN3187

Okay. But at the same time you would wish to change your evidence which you gave Mr Bukarica that there was no active discouragement or aggression shown by the company to the union?---No, there was no - you know, we weren't - I suppose, to put it this way, is that we were tolerated because we had - we weren't party to their agreement at that stage. We did have members on site, the company acknowledged that and we just took it up that we saw those members in the car park.

PN3188

Okay. So is it - - -?---Those times that I did have dealings with the company through the three issues that I did bring up, the company was always very professional - Mandy Tunstall was very professional. The time I dealt with - regards Mr Jerry Gallagher, with regards workers comp, I believe there was a

young lady, I can't remember her name now, from the Hobart office of Australian Mines and Metals was relieving there - - -

PN3189

Allison Pidd, if I could - - -?---That's the one, she was relieving their HR person on site and it was very professional.

PN3190

Okay?---With the chap that was terminated, the process we went through there was very professional. I won't deny that it wasn't professional, it was very professional. The union was treated with courtesy and respect at all times.

PN3191

Okay, thank you. Okay, you mentioned that Barmenco had a role at Henty at one stage. Do you know what that role was?---Yes, they were doing development.

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3192

Okay. And Barmenco I think you said had members - sorry, the AWU members engaged by Barmenco at Henty, do you know that?---Yes, yes.

PN3193

Okay. So you would have visited - or did you visit your members employed by Barmenco engaged at Henty?---Only in the car park, yes. I did see them because we had a delegate - a couple of the delegates transferred out there from Queenstown at different times.

PN3194

Okay. You said you had no knowledge of the mining award. You have no knowledge of at least, if I can call it, a basic shell award being in place, being the Mining Metalliferous Processing Award?---No, I had no idea.

PN3195

No knowledge, I won't press you on that. Are you now aware that the CFMEU have a number of members engaged at the mill at Henty?---I've been told now, yes.

PN3196

Yes, okay?---I don't know how many, I've got no idea. I don't even know what shifts they were on - only from your previous person that interviewed me, I take by the comments and what he had to say is that they do have members there.

PN3197

Okay. Mr Bukarica was the person who - - -?---Yes.

PN3198

Do you - and the AWU hold a number of members in the mill as well at Henty, do they?---Yes, we do.

PN3199

Do you see any practical difficulties in terms of competition for members in the mill or anywhere else as a result of that?---Well, you do. This is what Mr Bukarica - I could point out there that you will get a disgruntled person and that

person can - you know, if they have a following or have people that support their views then it does cause a bit of a headache.

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3200

In view of your comments about the defection of members of Pasminco Hobart following the elections there, do you think the CFMEU and AWU can peacefully co-exist at Henty?---That's a - that's a question I wouldn't like to answer.

PN3201

All right. Have you any view on that?---Well, my personal view is that the AWU has done a good job within the metalliferous mining industry in Tasmania for quite a number of years. We've kept to our backyard, haven't gone out trying to encroach on other areas and possibly I look it at that with the application from the CFMEU for making this award is more or less encroaching into AWU territory.

PN3202

So is it true that this - given that both unions hold membership at Henty, this could be problematic for the future in terms of negotiations and the like?---Could be, yes.

PN3203

Okay. You mentioned about advertisements by the CFMEU on the West Coast. Can you just provide some more detail about that?---Yes, there was - it was in the press, the Western - is it the Western Herald, the newspaper that is published down there, going back from '97, '98, '99 - in probably those three years there was quite a bit of advertising done down on the West Coast with regards them chasing membership. There was also I believe - I'm trying to rack my brains now - is that they did have - stated they would be at certain hotels if people wished to see them.

PN3204

So what did you understand the purpose of those advertisements?---Well, they were trying to attract members.

PN3205

Right. And what was your view in that regards?---At that stage I was told, "Well, you'll need to service those people down the West Coast very strongly otherwise you'll lose your members."

PN3206

Right. Did you see the CFMEU in promoting this service was in fact going to encroach on areas run by the AWU?---Yes, I did.

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3207

And how did you respond then?---Well, I spent a lot of time on the West Coast.

PN3208

Okay. Are you aware of, for the want of a better title, the demarcation decision by the Federal Commission in the early '90s?---No, I'm not aware of that.

PN3209

You are not aware that the CFMEU were excluded from particular sites?---No, that was before my time I believe.

PN3210

Okay. All right. You haven't been briefed on that?---No, I haven't been briefed on that at all.

PN3211

No, okay. You said to Mr Bukarica that you saw it that individuals would have the right to join a union of their choice. Would you agree with me that within the mining industry, the metalliferous mining sector, that that is subject to being the appropriate union, that being the AWU?---Yes, exactly. You know it's the same as in the unions that cover the dairy industry or the forestry or whatever, you know, you would look to the relevant union that was a respondent to the current agreement or the current award is their - you know, as I've said, we all have our own backyards which we've looked after and if we're going to start jumping into somebody else's backyard well then I think it could cause problems.

PN3212

So given that, Mr Jones, as you put it their own backyard, you would acknowledge that the CFMEU, their backyard is in fact the coal sector in Tasmania particularly?---Exactly.

PN3213

Right?---And not only that, the quarrying. I'm not, you know, specific - they do look after quarries and so forth.

PN3214

So if a potential member from Cornwall Coal approached you, how would you respond to that?---Well, I would - the same as I respond to members from say the AMWU or the ETU. I ask - advise them to contact their relevant organiser - - -

**** IAN CHARLES JONES

XXN MR FITZGERALD

PN3215

Right, and that would be the CFMEU in this case, would it?--- - - - I do contact that organiser and inform that organiser that they do have a problem or that there is a person with a problem.

PN3216

So you would in fact refer them to the CFMEU in this case, would you?---Yes, yes. No, I wouldn't go out and - I'm not a respondent to that award, I wouldn't go out and sign anybody up and say, "Well, you know, I'll look after you," because it's not my backyard, that is somebody else. So I would - the same as I do up here now, if I get somebody from the call centre calls me I put them in touch with the relevant union - - -

PN3217

Okay?--- - - - or if somebody, a trades person, contacts me I put them in touch with the trade union, which ever union is respondent to the award or agreement that those people work under.

PN3218

So can you - can you recall any instances where you have actually referred those employees to the CFMEU?---Not specifically to the CFMEU. I have done to the AMWU, I have done to the Electricians Union, the Tramways Union with regards people with problems especially the call centres, a get a lot of calls from the call centres which I pass on to their relevant unions. The Clerks Union, there is a - the clerks - I run into a lot of clerks on a lot of different sites with problems and I refer them to the relevant union that they need to be - - -

PN3219

Well, thank you, Mr Jones, I do appreciate your evidence under some great difficulties. I appreciate that?---Thank you.

PN3220

THE COMMISSIONER: Mr Jones, I will now give Mr Flanagan an opportunity for any re-examination.

<RE-EXAMINATION BY MR FLANAGAN

[11.49am]

PN3221

MR FLANAGAN: Thank you, Commissioner.

**** IAN CHARLES JONES

RXN MR FLANAGAN

PN3222

Mr Jones, just a few brief questions. Can you tell me who is the chief negotiator for enterprise agreements with Australian Bulk Mills - for the AWU?---Robert Flanagan.

PN3223

And for the AWU who is the chief negotiator at Zinifex Rosebery Mine?---Yourself.

PN3224

And - - -?---And Mr Wakefield but I sit in there as well. You would be the - or Mr Wakefield. If you can't attend Mr Wakefield will attend and I would be assistant to - because of the expertise that you have with regards to the way things need to be raised and worded and so forth.

PN3225

Can you tell me who the chief negotiator for the enterprise agreement with Barmenco?---Yourself.

PN3226

And tell me who the chief negotiator is with the enterprise agreement at Copper Mines of Tasmania?---Yourself.

PN3227

Are there any mines where I am not the chief negotiator for the AWU?---As far as mines?

PN3228

Yes?---No, because you have - if I have anything it is all referred back to you.

PN3229

Now, you have indicated that - well, can you tell me who the chief negotiator for the AWU was with the Henty Enterprise Agreement?---Yourself.

PN3230

Now, you have indicated that there is sort of CFMEU and AWU membership at the Goliath Quarry. Do you recall that?---Yes.

**** IAN CHARLES JONES

RXN MR FLANAGAN

PN3231

Can you tell me what occupations the CFMEU represents at that site?---They have some, I believe - or they did have some guys in the quarry. I don't know how many. That was when I was representing the union on that site that - Mr Don Hayes has now taken over that site in the last agreement so at this stage I wouldn't know but they did have a guy in the quarry and I believe that there was one other - that there was another delegate. I am not sure on what his position was and where he was.

PN3232

So at the time that you were the organiser of Goliath what occupations did the AWU represent?---We covered the majority of the work force there. We had the guys in the bagging area, the yard, the control room. We also had members in the quarry. I believe the CFMEU also had a truck driver or two - I think we had four or five truck drivers. We also had the guy that did the - the powder monkey but a majority of the workers were in - in those days, in the early days, were in the AWU.

PN3233

So you talked about a settled arrangement about who covers who at Goliath. Can you elaborate on that?---Well, as I explained, is that they have a fairly strong delegate structure there and they do all their own negotiating. They do - they look after their own individual areas and the union is not really involved a great deal. It is mainly done by the delegates, whoever is fairly strong - not only the AWU but the ETU and the AMWU and the - have very strong delegates and they look after their own little patch.

PN3234

Okay. So everyone knows what their backyard is?---Everybody knows what their backyard is and we do not encroach on each others - we used to have the carpenters was another one until they were all retrenched. We - everybody looked after their own little cabbage patch.

PN3235

Mr Jones, if you were approached by a builders labourer on a building site in Burnie for representation, would the AWU represent that person?---No, I would pass him on to the CFMEU.

**** IAN CHARLES JONES

RXN MR FLANAGAN

PN3236

Why is that, Mr Jones?---Well, we don't represent the builders labourers, that is done through their union. We do not cover that type of work. We cover concrete finishers and that type but not builders labourers.

PN3237

Well, if a builders labourer was unhappy with the CFMEU wouldn't it be reasonable for the AWU to represent that person?---Well, if you don't have coverage of that person how can you represent him to 100 per cent. You would need to contact the relevant official that covered that area, Bill - can't remember his name now, for the CFMEU. I'd contact him and tell him he had a problem, that he had a member up here that was very dissatisfied with what was happening.

PN3238

Can you tell me - you have had consultation with both the mine employees, the SOs and the mill employees at Henty prior to your accident. From that - those processes of meetings, was there any suggestion or are you aware that the employer in any way attempted to encourage people to enrol in the AWU?---Not at all, not at all.

PN3239

Now, you spoke about the contracts and you referred to the common law contracts of employment being of some concern to the employees. Can you tell us what the concern was that was communicated to you?---Yes. You know, as I just roughly touched on, was the - the big thing was the pay, the way it was worked out. The system that they felt it was - instead of indicating it was going to be gross - you know, what they'd get gross earnings, it was total cost of employment. They thought that, you know, we could have a problem with somebody paying child maintenance, you know which is assessed on taxable income. There was the issues there with the classifications of the employee structure within the - you know, whether you were a bogger driver or whatever, where you fitted into the things. There was issues there I believe with their - probably their sick leave. You know, people had had no - and what it was being done was also on a performance base. Their pays were going to be performance based.

PN3240

So is it fair to say from those comments you have made that there was some dissatisfaction amongst the work force?---Oh, there was major dissatisfaction. The feeling from the work force with the contracts that they were offered is that they were, to put it in fairly crude terms, is that they were going to be shafted - - -

**** IAN CHARLES JONES

RXN MR FLANAGAN

PN3241

So - - -?---- - - and this is what more or less drove to the workers to the union is that they felt that they were going to be shafted.

PN3242

No further questions, thank you, Commissioner. Thank you, Mr Jones.

PN3243

THE COMMISSIONER: Thank you, Mr Jones, for your perseverance in difficult circumstances - - -?---That's okay.

PN3244

- - - and I too wish you a speedy recovery?---Thank you very much, Commissioner.

<THE WITNESS WITHDREW

[11.57am]

PN3245

THE COMMISSIONER: What is the position, Mr Flanagan?

PN3246

MR FLANAGAN: Mr Wakefield is out there. What I do need to do is go to the car. I have got some reasonably bulky exhibit books that I need to get, sir, I didn't bring them up. So if I can just go across the road and grab them and come straight back.

PN3247

THE COMMISSIONER: We will adjourn for five minutes.

SHORT ADJOURNMENT

[11.58am]

RESUMED

[12.05pm]

PN3248

THE COMMISSIONER: Yes, Mr Flanagan?

PN3249

MR FLANAGAN: Thank you, Commissioner. Commissioner, I would seek to tender an exhibit book in these proceedings?

PN3250

THE COMMISSIONER: Yes, how do you want that marked, as a bundle or do you want it identified - - -

PN3251

MR FLANAGAN: As the one bundle I think, Commissioner.

PN3252

THE COMMISSIONER: Right.

PN3253

MR FLANAGAN: I believe it is AWU3.

PN3254

THE COMMISSIONER: Yes, I will mark that as a bundle, AWU3.

EXHIBIT #AWU3 EXHIBIT BOOK BUNDLE

PN3255

MR FLANAGAN: Thank you, Commissioner. Commissioner, I wonder if I could call Mr Wakefield.

<IAN ANTHONY WAKEFIELD, SWORN

[12.06pm]

<EXAMINATION-IN-CHIEF BY MR FLANAGAN

PN3256

THE COMMISSIONER: Yes, Mr Flanagan?

PN3257

MR FLANAGAN: Thank you, Commissioner.

PN3258

Mr Wakefield, could you please tell us your current occupation?---I am the Branch Secretary of the AWU Tasmania Branch.

PN3259

Could you tell us how long you have had that role for?---Three and a half years.

PN3260

Could you tell us what your occupation was prior to being the Branch Secretary of the AWU?---An organiser for seven years.

PN3261

For?---Seven years - the AWU.

PN3262

And prior to being an organiser with the AWU, who were you employed by?---Pasminco Rosebery.

PN3263

How long were you employed by Pasminco Rosebery?---Fifteen years.

PN3264

During that period of employment what was your occupation?---It varied from mining, trucking, bogging - whole range - surface crew - a whole range of duties.

PN3265

So in those duties and occupations in your employment with Pasminco Rosebery, what union were you a member of?---Australian Workers Union.

PN3266

Did the AWU have a high membership presence at Rosebery?---Yes, total.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3267

Total?---Total membership, yes.

PN3268

Was there an established delegate structure?---Yes.

PN3269

Did you participate in that delegate structure?---I was either a level rep or delegate and also site secretary. All the time I was there I was either a delegate or a site secretary. I was site secretary for the last four years.

PN3270

Can you tell us, in your capacity as an organiser for the AWU which sites you serviced on the West Coast in the mining industry?---All of them except Savage River.

PN3271

So if we can go through each one of those. As your time as an organiser servicing the Rosebery Mine, how many members of the AWU would there have been?---As an organiser it was varied - there's been a couple of lots of redundancies so currently there would be about 120 I suppose.

PN3272

But during your time as an organiser?---Probably as high as 200.

PN3273

And during that time as an organiser were there any negotiations for enterprise agreements with the company?---Several, yes.

PN3274

And who were the parties to those negotiations?---The Australian Workers Union, AMWU and CEPU.

PN3275

Was the CFMEU or FEDFA ever a party to those negotiations?---Not while I was an organiser, no.

PN3276

Not while you were an organiser. When did you commence as an organiser?---About ten years ago.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3277

So about 1994?---Mm.

PN3278

During your time as an organiser did you service the Renison Tin Mine?---Yes.

PN3279

Can you tell us how many members the AWU had at the Renison Tin Mine?---Again, it would vary from when I first started - probably up around the 150, 200 - down to about 80 in the end I think.

PN3280

And did the AWU have an established delegate structure at that site?---Yes.

PN3281

And were there any negotiations for enterprise agreements with that company?---Yes.

PN3282

And who were the parties to those negotiations?---Again, the three unions, AWU, AMWU and CEPU.

PN3283

Can you tell me what role the CFMEU had at the Renison Tin Mine during your time as an organiser?---None.

PN3284

Do you recall the Hellyer Mine?---Yes.

PN3285

Can you tell me during your time as an organiser how many members the AWU had at Hellyer?---Be a guess, about 100 I reckon.

PN3286

Was that a high density membership?---Total, 100 per cent membership.

PN3287

Did the AWU have an established delegate structure?---For both, yes, both the mine and mill. Each of those sites had both separate structures, mine and the mill.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3288

So there were separate delegate structures for the mill - - -?---And the mine, yes.

PN3289

- - - compared to the mine?---Yes.

PN3290

And both sides had mills and mines?---Yes.

PN3291

So at Hellyer, did you have negotiations for an enterprise agreement?---Yes.

PN3292

And who were the parties to those negotiations?---AWU, AMWU and CEPU.

PN3293

If we can go down the road then to Queenstown, during your time as an organiser for Queenstown has the Queenstown site always been - or was it during that period a unionised mine?---Initially - I don't think I was there when the mine actually closed, I think it was about the same time as I started or just before I started so prior to my starting it was a total union mine but following that it reopened on a non-union arrangement.

PN3294

Okay. So how did the AWU react to the fact that we have a non-union mine operating in Queenstown?---Well, myself and our industrial officer at the time, Greg Cooper, spent weeks and months at the site, almost on a weekly basis trying to talk to people, trying to approach them to join the union. And it took quite some time - took a couple of years actually, a few years, before we actually started to make inroads into that.

PN3295

So if we can go back to when you first started as an organiser and the mine had re-opened with non-union arrangements, can you tell us who at that time was doing the mill and crusher functions at the site?---The mill crusher functions were direct employees of Copper Mines of Tasmania.

PN3296

And who was doing the underground mining?---McMahons.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3297

McMahons. And McMahons employed their people under a what?---I think it was a section 61 under the State system.

PN3298

And what about Copper Mines of Tasmania?---Same - the same thing.

PN3299

So you spent a number of years attempting to re-unionise the site. When, if at all, were you able to establish a union enterprise agreement with Copper Mines of Tasmania?---Well, we gave them membership there but there was still a reluctance from the company to do a collective agreement. But I think on one of the renewals we - there was two or three managers and I think - there was a new manager there at the time and I think they had a different style and different attitude towards unions and they agreed to do a union agreement but it was on the same terms as the non-union agreement.

PN3300

Same terms as the union agreement?---Mm.

PN3301

Did they agree to do payroll deductions?---Yes.

PN3302

Did they agree to recognise union delegate's rights?---Yes.

PN3303

So can you tell me now, how many members would the AWU have employed by Copper Mines of Tasmania?---I can tell you, there's 28 mill operators and there's only three that are non-union.

PN3304

Okay. So you spent the time and you recognised the employees of Copper Mines of Tasmania?---Yes.

PN3305

Despite the attempts of the employers to pursue non-union arrangements?---Yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3306

If we can go underground, you said that McMahon was doing the underground mining. Are McMahons still doing the underground mining?---No, they've moved on - they lost the contract.

PN3307

Can you tell me approximately when they left?---About five, six years ago.

PN3308

Can you tell us who replaced McMahons with the underground mining function?---Barminco.

PN3309

That would have been a pleasurable experience, wouldn't it, Mr Wakefield? In any event could you tell us, the industrial arrangements with Barminco, did they have a section 61 agreement with their work force?---No, they do the collective agreement with the union.

PN3310

The AWU?---The AWU, yes.

PN3311

Did they agree to do payroll deductions?---Yes, initially.

PN3312

Initially?---Mm.

PN3313

How many employees of Barminco would be members of the AWU?---I don't know exact numbers but the density I guess would be 80 per cent.

PN3314

Eighty percent?---Mm.

PN3315

So you have replaced the non-union arrangements of McMahons with the union arrangements of Barminco, is that correct?---We did at the time.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3316

You did at the time?---Yes.

PN3317

So there were some difficulties after that, were there?---Yes, a few problems after that, yes.

PN3318

Can you tell us in a broad sense - - -

PN3319

THE COMMISSIONER: Mr Wakefield, could you just speak up a little big please, thanks?---Yes, there were a few problems after that, quite a few.

PN3320

MR FLANAGAN: So did that affect the relationship between the AWU and Barminco?---Yes, it did.

PN3321

And how did Barminco deal with that issue in terms of employment regulation for its new employees?---They introduced Australian Workplace Agreements for all new employees and aggressively pursued them.

PN3322

So is Barminco still operating under AWAs?---There are still some current AWAs but employees have received elections to retire from those AWAs in the last week and as late as - I was up there yesterday, still received them, filled them and returned them yesterday.

PN3323

So the employees of Barminco, are they now working under a collective agreement with the union?---Under a collective agreement, yes.

PN3324

And when was that renewed?---Only recently, only a week or two ago. It was registered a week or two ago, it was negotiated probably a month ago.

PN3325

Right. So in this renewed collective agreement with the union, does Barminco do payroll deductions?---Yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3326

Does Barminco recognise union delegates rights?---Yes.

PN3327

has Barminco agreed to the provision of training for union delegates?---Yes.

PN3328

Can you tell us what sites Barminco operates in the state of Tasmania?---Almost all of them - Queenstown, they have worked at Henty from time to time, I'm not sure if they're still there at the moment but at Henty - Allegiance, the new Allegiance mine, they're in there. The Renison Tin Mine. From time to time they're at Rosebery and from time to time at Beaconsfield.

PN3329

What about Henty?---I mentioned Henty, yes.

PN3330

Oh did you, sorry. Now, can you tell me if you are familiar with a site called Beaconsfield?---Yes, very familiar.

PN3331

Can you tell us how long Beaconsfield has been in operation since it re-opened, accepting that it closed in about 1916?---Well, it's been - there's been work going on there, rehabilitation type work, for quite a long time - pumping it out and refurbishing the shaft. I think it's been back in production and we actually did the - the AWU did the construction agreement for the mill - I think it must be about six years, five or six years.

PN3332

Okay. So after the construction phase was completed and mining proper commenced, was the employment regulation a union arrangement or a non-union arrangement?---Australian Workplace Agreements.

PN3333

Australian Workplace Agreements. How did the AWU react to having AWAs at Beaconsfield?---As we usually do, make a lot of noise, there was a fair bit of publicity, unwelcome publicity - Beaconsfield didn't welcome the publicity about employees not having the right to choose their own employment regulations. I think the - Deputy President Leary actually - there was a dispute and she actually sat at a hearing at Beaconsfield.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3334

Who notified the dispute?---The AWU.

PN3335

And what was the outcome of those proceedings in the Federal Commission?---There was - well, it was a while ago now but as a result of that the company sat down with the union and started negotiating collective arrangements.

PN3336

Okay. So in other words the AWU has actively sought to re-unionise a non-union mine?---Yes, it is very much re-unionised now.

PN3337

And how many years did it take us to achieve that?---It wasn't long. We've had members there right through, as we do at all mines because they certainly move from one mine to the other. But I think once we started I think about 12 months, 18 months, intensively.

PN3338

So what do you mean, "As we do in all mines, they move from one mine to another." Could you just elaborate on that?---You know, my involvement in the mining industry is 25 years now and I think I probably know personally 80 per cent of the miners in Tasmania, except for the ones that fly in from Western Australia, they're probably the only ones I don't know. But they move from site to site. Once you're in the mining industry you tend to stay in the mining industry.

PN3339

So how many members - - -?---Especially underground mining, it's a bit different with the mill operators.

PN3340

Okay. So what would the membership of the AWU be at Beaconsfield now?---Probably 30 to 40 underground miners.

PN3341

And what percentage tendency would that be?---Around 70, 60 to 70 per cent.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3342

So do we have an established delegate structure at Beaconsfield?---Yes, we have delegates on each of the shifts.

PN3343

And the enterprise agreement discussions with the union and the company, can you tell us which unions have been involved in those negotiations?---I think the AWU - the AMWU and CEPU have played a minor part from time to time but I don't think they've had much input into it.

PN3344

Who played a minor part, I'm sorry?---The AMWU and the CEPU.

PN3345

So the AWU has presence at the carriage of those discussions?---Yes, yes.

PN3346

Can you tell us if the CFMEU was involved in those negotiations?---No.

PN3347

So if we can move on from Beaconsfield, is there actually a registered agreement with Beaconsfield at the moment?---No.

PN3348

How far away from completion is that?---It's very, very close. Actually I think one of our organisers is actually talking to delegates today about they've just introduced a new roster arrangement for the miners, or about to, and he is talking to them about that so it's not very far away at all.

PN3349

Were you present when the work force endorsed in principle the proposed new agreement?---Yes.

PN3350

If we can go then to Rosebery, can you tell us what the current situation at Rosebery is? How many AWU members would be there?---About 120.

PN3351

And is that in the mill and the mine?---Both, yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3352

And what level of membership density would that be?---I think it's total membership, yes, 100 per cent.

PN3353

One hundred per cent?---Yes.

PN3354

So does the AWU still have a delegate structure at Rosebery?---Yes.

PN3355

If we go to Australian Bulk Minerals. Can you tell me who the organiser is that services that site?---Ian Jones.

PN3356

Can you tell me who the organiser is that services Rosebery?---I think we all - we all - we've got four officials that all service the mining industry but the day to day running of the operation is Ian Jones.

PN3357

And how long has he had that responsibility for?---Since he's been an organiser I suppose - 7 years.

PN3358

And Beaconsfield, who is the organiser who services the day to day requirements?---The day to day, Don Hayes.

PN3359

Don Hayes. And Copper Mines of Tasmania?---It's recently been sort of given to Ian Jones.

PN3360

And prior to that?---I've looked after that.

PN3361

And Barmingo, who is the organiser responsibility?---Ian Jones now.

PN3362

Now - and prior to Ian Jones?---I did, yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3363

The Renison Tin Mine?---Ian Jones.

PN3364

Ian Jones. And Henty?---Ian Jones would be, yes, and - he has been, along with myself and yourself.

PN3365

So can you tell me who the chief negotiator is for the enterprise bargaining that happened at Beaconsfield in terms of chief negotiator for the AWU?---You are.

PN3366

Can you tell me who the chief negotiator for the negotiations with Rosebery for the AWU?---You are.

PN3367

Can you tell me who the chief negotiator for enterprise agreements for the AWU is in connection with Australian Bulk Minerals?---You are.

PN3368

And Copper Mines of Tasmania, who is the chief negotiator for the AWU?---You are, as well as myself.

PN3369

Barmingo?---Yes.

PN3370

Henty?---Yes.

PN3371

Renison?---You will be.

PN3372

So, Mr Wakefield, you have had some involvement in the past with the Henty Gold Mine, haven't you?---Had?

PN3373

Some involvement with the Henty Gold Mine?---From when it opened, yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3374

So from when it opened has the AWU had members at the Henty Gold Mine?---Yes, from day one. A lot of the Henty Gold Mine employees actually came over from RGC at Renison, they transferred from the Renison Tin Mine to Henty Gold Mine when it re-opened so we kept the membership from day one.

PN3375

Has there been any difficulties with the AWU having right of entry at Henty?---Yes, we were denied right of entry a couple of years ago I think.

PN3376

Can you recall how the AWU responded to that?---Again, we - the media got hold of it somehow or other, I don't know but - - -

PN3377

Let us make out Mr Wakefield - - -?---The media played it up a bit and it ended up we actually made submissions to the Legislative Council on right of entry.

PN3378

And are there any difficulties now with right of entry?---No, it was all sorted out at the time. The company gave us access to the site and we chose to not have access the site, rather we stay in the car park and talk to people as they're coming out.

PN3379

So have Christmas parties ever been an issue for AWU members employed at Henty?---Yes.

PN3380

Can you tell us what sort of issue that might be?---I think - it's going back a while but the company put on a Christmas function for all the staff at Queenstown and I think one of the workers, one of the security guards actually had a bit too much to drink and I think he jobbed the manager and got the sack.

PN3381

Did the AWU - - -?---Yes, we ran an unfair dismissal for him.

PN3382

Does the name Mr Butler ring any bells?---Yes, yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3383

Can you tell us how you recall the relationship between Mr Butler and Henty Gold Mine?---At the end?

PN3384

At the end?---It wa pretty sad at the end, yes.

PN3385

What happened to Mr Butler?---He was dismissed.

PN3386

He was dismissed. And how did the AWU react to that?---We ran an unfair dismissal and were successful in getting him reinstated but it was later appealed.

PN3387

Let us talk about the first phase. We ran a reinstatement?---Mm.

PN3388

Was that a very long reinstatement case?---Yes.

PN3389

Can you recall how long?---Not really. I'd just be guessing - I think it was the best part of a year.

PN3390

No, in terms of - - -?---Days?

PN3391

- - - days before the Commission?---Five or six, it's just a guess.

PN3392

And did the AWU win in the first instance?---Yes, we won.

PN3393

And how did Henty react to that?---They appealed.

PN3394

Did the AWU represent Mr Butler in the appeal?---No, we - a lawyer did.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3395

But on behalf of the AWU?---Yes.

PN3396

Now, Mr Wakefield, does the name Scott Elkin ring a bell?---Yes.

PN3397

Can you tell us what your recollection is of Mr Elkin in the context of long service leave?---He was an employee - he was a miner at - he's worked at quite a few sites around Tassie but - he has worked at Henty I think. He was a miner that worked for McMahons - well, he worked for the Mt Lyell mine initially and then McMahons and then transferred to Barminco and collectively his service - he came up to 10 years long service leave with Barminco.

PN3398

And when he claimed that long service leave did Barminco accept that application?---No, they wouldn't pay it, no.

PN3399

Wouldn't pay it. So how did the AWU respond to that?---We ran a case for him.

PN3400

And what was the outcome of that case?---He got his long service leave money.

PN3401

Did that case establish any particular precedent for the industry?---Well, it identified - it was an issue with the churning nature of contractors - you know, turning over, contractors turning over and continuity of service for long service leave.

PN3402

Following the determination of that matter for Mr Elkin, how many long service leave claims did the AWU process for former employees at the Queenstown location?---I think it was 10 or 11 or it might have been a little bit more but I know the value was around two to \$300,000 in long service leave.

PN3403

And those settlements were as a direct consequence of the Elkin matter?---Yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3404

Who ran the Elkin matter for the union?---You did, didn't you?

PN3405

I don't think so, Mr Wakefield. Do you recall engaging solicitors for that?---Oh yes, yes, yes - can't remember who though.

PN3406

Okay. Right, do you recall if the union actually engaged solicitors to run that case?---I do now you remind me.

PN3407

Okay. That would have been at some expense to the union, wouldn't it?---Quite an expense, yes - very expensive.

PN3408

Would the union ordinarily engage solicitors?---No.

PN3409

So why did you engage solicitors on that occasion?---Because it was a matter that was - that potentially affected the whole industry, particularly with the increase in the use of contractors and, you know, it affected quite a few people at the time and it was something that was going to continue if it wasn't fixed.

PN3410

And which industry are you referring to?---The mining industry.

PN3411

All of the mining industry?---Yes, all the mining industry.

PN3412

If I can take you to AWU3, Mr Wakefield? If I can take you to the first yellow tab on the first page of that which is got a 56 on it. Find that?---Yes.

PN3413

Can you tell us what that is all about?---What, that page?

PN3414

Yes?---That's the slogan we designed for the 56 hour week campaign - had posters done up in that design, we had T-shirts done up in that design and this is the logo that we used for the campaign.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3415

If I can take you over two more pages. Do you see there is a heading called Background:

PN3416

The metalliferous industry in Tasmania is comprised of certain operations.

PN3417

Do you have that page?---Yes.

PN3418

Can you tell us what this document is?---It's the report that we did.

PN3419

The report to whom, Mr Wakefield?---The National Executive of the union.

PN3420

Can you just read on to the record the background starting in 1994?---

PN3421

In 1994 the copper mine which was at the time owned by AGC was closed with all employees being made redundant. Those employees worked a 42

hour roster, four on four off. Shortly after the closure the mine was re-opened by new owner CMT who elected to engage a contractor to perform the mining activity rather than as had previously been the case engage its own work force. The contractor, McMahon Underground, engaged employees under a State non-union enterprise agreement introducing for the first time in Tasmania a new roster which saw employees work seven consecutive 12 hour shifts split between day and night work which over a 12 month period averages a 56 hour week. Until May 2001 CMT was the only mine working such a roster. Since 1998 the AWU has been calling for a review of the three panel 56 hour week and other practises in the mining industry which the union believed comprised the health and safety of employees. The issue exploded in May 2001 when the operator of Renison Tin Mine announced it was replacing its own work force with a contractor and along with the change the four panel equal time roster system would be scrapped and replaced with a three panel 56 hour week with employees being engaged on AWAs.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3422

Can you just continue on under the heading, Union Identifies Strategy?---

PN3423

The union was faced with the task of either accepting a 56 hour week and seeing it spread to other mines or alternately adopting a strategy to minimise its expansion and desirably eliminating the roster. With the Renison work force newly engaged under AWAs an industrial campaign was not a viable strategy. The union therefore decided to drive a community and media campaign to expose the issue and persuade the State Government that the hours of work issue required government intervention.

PN3424

Thank you, Mr Wakefield - and I simply ask the Commission to examine the rest of that report - - -

PN3425

THE COMMISSIONER: Yes.

PN3426

MR FLANAGAN: - - - when considering the matters before you.

PN3427

If I can take you now, Mr Wakefield, to the next orange tab and you will see that there is a number of newspaper articles around this 56 hour week issue. Can you tell us what role the union had in generating that publicity?---We generated it all. That is only part of what we actually generated.

PN3428

Was that a very resource demanding activity?---Oh yes, yes. Spent a lot of time on it. We - a hell of a lot of time on it.

PN3429

On the media?---Mm.

PN3430

So we received non-print coverage as well?---We received it all. We organised the 7.30 Report twice, it went national twice - on national TV twice, radio, TV, regularly on TV.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3431

If I can take you then to the green tab?---Yes.

PN3432

If I can take you to the bottom of the page under the heading, Mining and Industry Review?---Yes.

PN3433

Well, can you tell us first what this document is an extract of?---It looks like a transcript from Hansard.

PN3434

Yes. Can you tell us Hansard what?---State Government.

PN3435

Yes, okay. If you can go down to the heading Mining Industry Review ---?---Yes.

PN3436

--- to the question from Mr Ken Bacon. Can you just read the response of Mr Lennon which starts at the bottom of that page and continues over to the next page. I am sorry, no, if I can take you to the second page to the heading, Mr Lennon?---Yes.

PN3437

If you can read that first paragraph?---

PN3438

Mr Speaker, about five weeks ago I announced the intention of the Government to conduct a review of safety in the mining industry and that announcement came following direct approaches that I have had from the Member for Lyons, Mr Bacon, along with representations from the Australian Workers Union and the Unions Tasmanian representative and the balance of the unions involved in the mining industry. Mr Speaker, I advise the house today that Ms Kathryn Heilor will conduct a review. The first stage of two stages of the review, Kathryn Heilor, who is a senior analyst at the Australian Centre for Industrial Relations Research and Training and the University of Sydney and I expect that the review will be complete within three months. As I say, there were will be two stages but they will be linked.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3439

Can you just stop there. Mr Lennon refers to representations from the Australian Workers Union and Unions Tasmania, representing the balance of unions

involved. Can you tell us that reference to the balance of unions involved, what is that a reference to? Which unions?---The AMWU and the CEPU.

PN3440

So what role did the CFMEU play in this issue?---None.

PN3441

If I can take you to the red tab, the next red tab?---Yes.

PN3442

Can you identify what that document is?---That is Kathryn Heilor's report into the hours of work.

PN3443

Can I take you to the blue tab? Can you find that?---Yes.

PN3444

Can you tell us what this document or letter, dated 23 January 2003, is?---That's the union's response to the report.

PN3445

Are you aware of any response to a report by the CFMEU?---No.

PN3446

If I can take you to the next tab, this yellow tab? A document titled, The Systemic Crisis in Tasmanian Metalliferous Mining Industry. Can you tell us what that document is?---That's a document that we - that we prepared for a report to the National Executive of the AWU.

PN3447

So is the second report on the issue, is it?---Yes.

PN3448

Okay. Can you tell us why this report was put together?---Well, it's not just about - we were very concerned about OH and S in the industry and there's been a number of deaths recently and we tried to demonstrate what we believe were some of the causes for those deaths and the OH and S problems in the industry which included hours of work but it included other things as well.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3449

Thank you. I would ask the Commission to review that document in total when considering the outcome of the applications before you.

PN3450

THE COMMISSIONER: Yes, Mr Flanagan, thank you.

PN3451

MR FLANAGAN: If I can take you to the next orange tab and take you to the second page of that, the heading Mining Occupational Health and Safety Proceeding, the Systemic Crisis. Do you have that document?---Yes.

PN3452

Can you tell me what that is all about?---Well, the report that we just had a look at where there was a resolution that came from the National Executive to convenors urging crisis meetings as a result of I think three deaths in rapid succession, or fairly rapid succession anyway. So that was a forum that we set up to discuss the issues in the mining industry.

PN3453

And was that well attended?---Very well attended, yes.

PN3454

Was that a very expensive thing for the union to do?---Yes, it cost us a bit of money, yes.

PN3455

What was the purpose of the meeting?---To make people aware, educate people on the issues and the problems that we were having in the industry and, you know, hopefully by educating people, people would have a better understanding of what the issues are and help us address the problems.

PN3456

Was there any intention in both the report the union filed with its National Executive and the organising of this forum - was there any intention on the part of the union to pressurise the State Government to respond to the Heilor Report?---That was part of it, yes. They were sitting on it for a while and this was to sort of bring it to a head.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3457

So if I can take you to the next page - I am sorry, the next tab, the green tab? Commissioner, I would ask you also to thoroughly review that documentation, together with the publication issued by the union which is attached at the back of it. It is a little handbook, Hours of Work, Fatigue and Safety, AWU Occupational Health and Safety Industry, Mining Industry.

PN3458

THE COMMISSIONER: Yes, thank you.

PN3459

MR FLANAGAN: The second green tab, Mr Wakefield, can you tell us what that document is?---That's a direction issued to Copper Mines of Tasmania in relation to the hours of work which directed them to cease operating 56 hour weeks.

PN3460

And how did Barmenco respond to that - I am sorry, CMT. This is issued to Copper Mines of Tasmania?---Yes.

PN3461

Was there a similar order issued - -?---A similar one was issued to Barmenco.

PN3462

And did those companies comply with the direction?---CMT did immediately and Barminco sort of hesitated for a while but it wasn't long before they complied as well.

PN3463

There was a date identified by which they had to comply, wasn't there?---Yes.

PN3464

And they complied with that time frame?---Yes.

PN3465

Albeit the very eleventh hour?---At the eleventh hour, yes.

PN3466

So what was the effect of this order on the 56 hour week being operated by Barminco?---The effect.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3467

Yes?---It saw employees go onto a four-on four-off roster - even time roster.

PN3468

But do you think it was to reduce hours of work?---Reduce hours of work, yes.

PN3469

Rostered hours of work. Are there any other mines that are operating three-panel rosters in Tasmania today?---No. There is a couple of isolated contractors that are working it but I don't think it's any mine site working it but there's a couple of small contractors that are still working it.

PN3470

So all of the large mining companies have scrubbed the 56 hour week?---Yes.

PN3471

So there is one particular drilling contractor at Savage River, is there not, that is operating still under a three-panel roster?---Yes, a diamond driller at Rosebery.

PN3472

What is the union doing about that?---Pursuing Workplace Standards to try and get a direction on that company as well.

PN3473

If I can take you to the next tab - the red tab?---Yes.

PN3474

Can you identify what this document is?---That's the AWU motions to the ALP State conference this year or next year, whenever it's held.

PN3475

So if I can take you to resolution 1:

PN3476

This conference calls on the Lennon Labor Government to implement legislative amendments to facilitate portable long service leave in industries or parts of industries whose nature deprive employees from the accumulation of such leave after use of service in that industry.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3477

Is there a particular industry that the AWU is concerned about?---The mining industry.

PN3478

Is this the first time the AWU has raised this issue?---No, it has been ongoing. It goes back to the Scott Elkin case. That's where it all came from.

PN3479

Now, if I can take you to resolution 5 - - -

PN3480

THE COMMISSIONER: Just before - sorry.

PN3481

MR FLANAGAN: Yes?

PN3482

THE COMMISSIONER: I can't identify a date on that document. Is there one?

PN3483

MR FLANAGAN: Yes, there should be one but you are right, it is not there. I forwarded that document, Commissioner, to the Labor Party and it would have been forwarded probably about four weeks ago in accordance with ALP rules. There was a deadline by which the resolutions had to be put in so it is approximately four weeks ago.

PN3484

THE COMMISSIONER: Yes. Thank you.

PN3485

MR FLANAGAN: Now, if I can take you to resolution 5:

PN3486

This conference calls on the Lennon Labor Government to ensure the current standards of medical facilities and expertise are maintained at Queenstown and Rosebery.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3487

Is there any reason why the AWU would have a particular concern about medical facilities at Queenstown and Rosebery?---The AWU has always had concerns about medical facilities on the west coast.

PN3488

Why is that?---We've campaigned whenever there has been changes to hospitals or medical services.

PN3489

Why would the AWU be particularly concerned about ---?---Because it is a dangerous industry, it's an isolated location and we want to make sure that workers on the west coast have got the best available health services.

PN3490

So which industry is the dangerous and isolated one?---Mining.

PN3491

Mining, so this is targeted at mining employees?---Yes.

PN3492

And can you tell me what mine sites would be serviced by the Queenstown and Rosebery medical facilities?---Queenstown mine, the Allegiance mine, the Renison mine, the Rosebery mine.

PN3493

What about Henty?---And Henty mine, yes.

PN3494

If I can take you to the next resolution:

PN3495

This conference calls on the Lennon Labor Government to amend section 24 of the Coroners Act to include workplace fatalities and to ensure that such public inquests are concluded within six months.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3496

Can you tell us what is the basis of that resolution, why the AWU is pursuing that issue?---We are pursuing that on behalf of members that we have had killed. What's happened is it takes up to two to three years to get an inquest. In one case in particular a good friend of mine and a member was killed at Williamsford mine some years ago and the inquest was held and it wasn't a public inquest and the coroner's finding was questionable and the family haven't had any closure so that's one of the reasons we have put it in there plus the other three deaths at the Renison Bell tin mine, that took two to three years to go to inquest.

PN3497

So the target industry or the basis of this resolution is concerns which have arisen out of metalliferous mining?---Out of the mining industry, yes.

PN3498

And the families and communities?---Yes.

PN3499

If I can take you to resolution number 8:

PN3500

This conference calls on companies operating in Tasmania's metalliferous mining industry to fund dollar for dollar, the ongoing cost to the State Government for the provision of medical services at Queenstown and Rosebery.

PN3501

Does the AWU have some sort of concern about the social obligations not being met by metalliferous mining operators?---Yes, we certainly do. They don't have the social conference they used to have.

PN3502

So when you say, "They don't have the social conference they used to have," can you just elaborate on that?---Well, take Rosebery and Zeehan for example, the companies maintain the towns, looked after the towns, they supported the schools and the hospitals and you know, provided services to them and those things have sort of - they still take place, they take place on a much smaller scale now.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3503

So this is designed to target some of that social responsibility is it?---Yes, try to get them to contribute to providing services to their workers and community of the west coast.

PN3504

Can I take you to the next page. You see, Commissioner, that this is correspondence addressed to the secretary of the Labor Party and it deals with State conference resolutions for the year 2003?

PN3505

If I can just get you to read onto record the first dot point which appears under the second point there, Mr Wakefield?---On the second one?

PN3506

No, the first dot-point on the second page?---

PN3507

This conference calls on the Bacon Labor Government to implement reform on the Long Service Leave Act and any other relevant legislation to ensure portable long service leave arrangements can be applied in appropriate industries.

PN3508

So was that still the concern about portable long service leave in the mining industry?---In the mining industry, yes.

PN3509

Can I take you to the third dot point. Can you read that?---

PN3510

1. *This conference calls on the Federal Government to ban the use of AWAs in Tasmania's metalliferous mining industry.*

PN3511

2. *Amend the Workplace Relations Act to ensure employees cannot be compelled to sign AWAs condition of employment.*

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3512

3. *Initiate a Senate inquiry into the impact of AWAs on worker empowered -*

PN3513

Must be a typo there. I reckon it's supposed to be:

PN3514

- worker empowerment and employee earnings.

PN3515

Okay. So it looks from that resolution that the AWU might be reasonably passionate about non-union arrangements in the mining industry. Would that be a fair description of that?---I think we get quite upset by it now.

PN3516

If I can take you to the last dot point on that page?---Yes.

PN3517

Can you just read that?---

PN3518

1. *The conference calls on the Bacon Labor Government to respond to the struggle for time, report on hours of work in the State's metalliferous industry by setting enforcement parameters for hours of work.*

PN3519

2. *Amending the Workplace Health and Safety Act to ensure right of entry for unions.*

PN3520

3. *Increasing Workplace Standards Tasmania in respect of resources.*

PN3521

In fact though the State Government had responded to that report by the time this matter came to conference wasn't it?---Yes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3522

If I can take you to the next page - the next document which is headed up 4 September 2002?---Yes.

PN3523

If I can take you to the second page?---Yes.

PN3524

If I can take you to the third resolution on that page?---Yes.

PN3525

Do you see that?---Yes.

PN3526

Can I just get you to read that?---

PN3527

This conference calls on the Bacon Labor Government to amend the Workplace Health and Safety Act to include as a dangerous system of work, rosters which require employees to work more than four 12 hour shifts in any seven days or where rosters average more than 38 hours a week over a 52 week period.

PN3528

Okay. And if I can take you to the last resolution on that page?---

PN3529

This conference calls on the Bacon Labor Government to introduce legislation to provide for a portable long service leave fund for employees in the mining industry.

PN3530

So this reportability of long service leave, like hours of work, has been one close to the heart of the AWU?---It's one that we have constantly been pushing, yes.

PN3531

I think it is worth interest the resolution above that, Commissioner, but nothing in these proceedings actually turns on it.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3532

THE COMMISSIONER: Yes, I did note that. That was annexed here too I understand.

PN3533

MR FLANAGAN: If I can then take you to the next document titled 29 June 2001. Again resolutions by the AWU to the Labor Party. Can you read the first resolution?---

PN3534

The State conference call upon the Bacon Labor Government to initiate an inquiry into the effect of working hours in the mining industry on employees, their families and their communities.

PN3535

Can you read the second one?---

PN3536

The Australian Workers Union (Tasmania Branch) calls upon the Bacon Labor Government to establish portable employee entitlement scheme to ensure no Tasmanian worker loses employment related entitlements as a consequence of poor business performance.

PN3537

And can you read the third one?---

PN3538

The Australian Workers Union (Tasmania Branch) calls upon the Bacon Labor Government to amend the Industrial Relations Act to include transmission of business.

PN3539

Can we talk about this third one. Why was the AWU concerned about having transmission of business provisions in a State act? Do you recall?---Because of Pasmaenco Rosebery mine.

PN3540

What in particular?---Change of ownership.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3541

Change of ownership?---Yes. Well, the Zinifex type arrangement.

PN3542

What caused the change of ownership as you call it?---They went into receivership.

PN3543

Okay. So was it the fact that they went into receivership that this became an issue for the AWU?---Yes.

PN3544

And what other Pasmaenco work force was fundamentally affected by this?---The Risdon plant.

PN3545

Okay. Do you recall any other union pushing this issue?---No.

PN3546

Did the Government respond to this issue?---We got transmission business provisions and service into the act.

PN3547

Okay. Now, obviously if we have a look at the first resolution, that matter has been dealt with by the State Government. That relates to hours of work?---Yes.

PN3548

And so of these three resolutions, which all relate to the mining industry, the only issue which has not been resolved is the middle resolution - resolution number 2?---It hasn't been resolved yet but it's ongoing.

PN3549

Yes. And can I take you to the next blue tab, Mr Wakefield?---Yes.

PN3550

Now, if you have a look at the first page, headed up Long Term Tensions Flare, can you recall what caused that article to appear in the Australian Weekly?---Yes, that was the dispute over the non-payment of the long service leave and it was the changeover of operator from McMahons to Barmenco.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3551

Okay. So can you recall whether there were any difficulties in the union pursuing in the Industrial Commission, long service leave claims on behalf of employees?---Yes. Under the - only an individual could pursue long service leave. The union couldn't pursue it on their behalf.

PN3552

Was it an individual or Workplace Standards?---Workplace Standards, yes, that's right.

PN3553

Can you tell me how the AWU became aware of this difficulty?---As a result of this

PN3554

Okay. Do you recall that at the time McMahan's contract came to an end employees had sought the union to refer the then disputed issue of long service to the Tasmanian Industrial Commission?---Yes.

PN3555

Do you recall that?---Yes.

PN3556

Do you recall Commissioner Imlach convening a conference?---I don't recall a conference.

PN3557

You don't? Do you recall the AWU pursuing legislative amendment with the State Government so that employees could have direct access without recourse to Workplace Standards?---Yes.

PN3558

And did that happen?---Yes.

PN3559

So the legislation was changed?---Yes.

PN3560

Who did the AWU lobbying on that occasion?---The Government.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3561

Was there any lobbying of the Legislative Council?---I don't know. I can't recall.

PN3562

You can't recall?---No.

PN3563

Okay. Can I take you to the next page. Can you just identify what that is referring to? Perhaps if we go to the back of that for starters, Mr Wakefield, that might help you. If you go to the last document behind the blue tab, it is headed up Portable Long Service Leave in the Mining Industry Draft Discussion Paper February 2003?---Mm.

PN3564

Do you recall why that paper was developed by the Government?---As a response to our approaches.

PN3565

So if I can take you to - and I would ask the Commission to examine that document in detail together with the other reports that we have referred to in this exhibit book. If I can take you to the next document, as it were, in front of that date of 13 May 2003. Do you recall that document? It is dated 13 May 2003. It is addressed to Denise Brown?---Yes, that's our submission to Workplace Standards on long service leave.

PN3566

Okay. And if we can go to the document in front of that dated 3 February?---Yes.

PN3567

Can you tell us what that is? If you just want to take your time to refamiliarise yourself with it, that is okay?---That's when we wrote to the Government and told them what we wanted.

PN3568

Okay. Now, are you aware that there is currently a review of the Industrial Relations Act being considered by the Government?---Yes.

PN3569

What is the AWUs intention in relation to portable long service leave in the context of that review of the Industrial Relations Act?---It's trying to seek changes.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3570

THE COMMISSIONER: Mr Flanagan, would this be a convenient opportunity to adjourn for lunch?

PN3571

MR FLANAGAN: Yes.

PN3572

MR FITZGERALD: Commissioner, before you do, Mr Daly may have to be excused this afternoon. He has an appointment with Minister Green on site. Ms Arlene Rofe who is acting in Mr Daly's place as my manager will be representing the company and the other thing is I just - I assume we will be closing around about 4.30 today or thereabouts. Would that be the Commission's practice?

PN3573

THE COMMISSIONER: That is the normal practice. We have got the balance of Mr Wakefield's evidence then Mr Flanagan is going to be interposed, but you are available tomorrow morning, Mr Flanagan?

PN3574

MR FLANAGAN: Any time, yes.

PN3575

THE COMMISSIONER: So it will be of that order, Mr FitzGerald, yes.

PN3576

MR FITZGERALD: Yes, I would certainly request that because I do have another urgent commitment at 4.30 if that is possible.

PN3577

THE COMMISSIONER: Yes. Okay.

PN3578

MR FLANAGAN: The critical thing, Commissioner, is that we get the full evidence of Mr Wakefield because he is not available tomorrow.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3579

THE COMMISSIONER: Yes. We will adjourn till 2 pm.

LUNCHEON ADJOURNMENT [1.01pm]

RESUMED [2.08pm]

IAN ANTHONY WAKEFIELD:

PN3580

THE COMMISSIONER: Yes, Mr Flanagan?

PN3581

MR FLANAGAN: Thank you Commissioner.

PN3582

Mr Wakefield, you indicated in your evidence that in about 1996 I think, you entered into an agreement with CMT in the terms of the existing non-union arrangement?---That's right, yes.

PN3583

Can you tell me why the AWU would do that?---Because that was the only way we were able to get in. They were going to continue with non-union arrangements unless we agreed to that. We took the view that you are better off -

and the workers endorsed that obviously, that concept - better off being inside the tent being able to change the - than sitting outside.

PN3584

Has the AWU been able to achieve any improvements for those employees?---Yes, significant changes. I have actually just come back this morning from Queenstown and they've effectively got a 15 per cent outcome over the next three years in their latest round of agreements.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3585

And you are aware that there is an application by the CFMEU to make an enterprise award in relation to the mill at Henty are you?---Yes.

PN3586

Obviously the AWU opposes that?---Violently.

PN3587

Can you tell us why the AWU is opposed to the making of that award?---Well, the metalliferous mining industry is, under the union's rules, an AWU area and all we'd see is that there would be disruption, there would be competition in membership and it wouldn't be good for industry or either of the two unions.

PN3588

But, Mr Wakefield, the evidence of Mr McLean earlier in these proceedings was that the AWU and CFMEU are both mature organisations that can sit down and resolve these issues?---Yes, we've sat down and resolved issues with the construction division and also the forest division along traditional demark lines so, in the forestry industry for example, we are not looking at - we don't go out and cover timber fallers or harvesters. We go and cover silviculture workers so that's the arrangement that we have got there. We cover silviculture workers. They cover the other people so that's the arrangement we have got.

PN3589

Yes?---It is a demark arrangement.

PN3590

So why wouldn't there be some arrangement in place between the AWU and the CFMEU in relation to metalliferous mining?---Because they've got no place in the metalliferous mining industry.

PN3591

Now, if I can just - it has been suggested in previous evidence with Mr Daly that the reason why Placerdome entered into an industrial agreement with the AWU was because the AWU is a compliant union. Can you tell me what your response to that is?---It's just ridiculous. It's a joke. We have - I think if you go and ask any of the mining companies whether we're compliant or not - go and ask CMT if we're compliant. We have just had a 24 hour stoppage this weekend. Industrial action has been going on there for two weeks, if not longer. Zinifex has regular stoppages and disruptions. Barmenco, they'd hardly call us compliant. Beaconsfield, I don't know anyone that would call us compliant. It's just a ridiculous statement.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3592

Now, you have talked about all this disputation, if you like, with all these people who would regard you as not compliant. Let us start with Barmenco. Barmenco do payroll deductions?---Yes.

PN3593

Do they recognise union reps?---Yes.

PN3594

Do they provide training for reps if requested?---Yes.

PN3595

Copper Mines of Tasmania, do they do payroll deductions?---Yes.

PN3596

Do they recognise union reps?---Yes.

PN3597

Do they provide training for reps if requested?---If requested, yes.

PN3598

Zinifex, Rosebery, do they do payroll deductions?---Yes.

PN3599

Do they recognise union reps?---Yes.

PN3600

Do they provide training for reps if requested?---Yes.

PN3601

THE COMMISSIONER: Is the correct question, do they provide leave or do they provide training?

PN3602

MR FLANAGAN: They provide the leave?---They provide paid leave.

PN3603

Yes. Sorry, Commissioner.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3604

Australian Bulk Minerals, do they provide payroll deductions?---Yes.

PN3605

Do they recognise union reps?---Yes.

PN3606

Do they provide paid leave for training for reps?---Yes.

PN3607

Beaconsfield, do they do payroll deductions?---No.

PN3608

Do they recognise union reps?---Yes.

PN3609

Will they provide leave for the training of reps if requested?---We haven't requested it yet but I believe they will.

PN3610

Okay. Henty, do they do payroll deductions?---Yes.

PN3611

It is a reasonably recent development isn't it?---Yes.

PN3612

Do they recognise union reps?---Yes.

PN3613

Again that is a reasonably recent development?---Yes.

PN3614

And will they release delegates with paid leave for trade union training?---That's part of the deal we've done, yes.

PN3615

Okay. So the only company in Tasmania - large mining operator - that does not do payroll deductions is Beaconsfield Gold. Is that the case?---That's right.

**** IAN ANTHONY WAKEFIELD

XN MR FLANAGAN

PN3616

No further questions. Thank you, Commissioner.

PN3617

THE COMMISSIONER: Mr Bukarica?

<CROSS-EXAMINATION BY MR BUKARICA

[2.15pm]

PN3618

MR BUKARICA: May it please the Commission.

PN3619

Mr Wakefield, can you describe the industries and callings that the AWU covers in Tasmania?---The mining industry is probably one of our biggest, construction industry, dairy industry, fish and aquaculture, quarries, horticulture, agriculture
- - -

PN3620

Food?---Food, yes. Smelters and the like and those sorts. Probably others.

PN3621

Roughly speaking, how many industries would you put at that?---I'd only be guessing. Everybody knows that the AWU has got the broadest coverage of any union. There are not many industries that we're not in.

PN3622

So maybe in excess of 20 different industries. Would that be reasonable?---Yes, I'd say so. Yes.

PN3623

And the evidence earlier I think of Mr Jones was that - I beg your pardon, your earlier evidence was that there are four officials in the AWU in this State?---Yes.

PN3624

So four officials covering 20, 30 different industry pools. Is that fair?---Well, we have actually - it is usually broken up in regions so we have got the north-west region. Ian Jones looks after the north-west region. Don Hazell looks after the northern region. I look after the southern region but because of my background in mining I have also had a lot to do with mining in the last 10 years.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3625

Is anyone allocated on a full time basis to mining?---Well, Ian Jones would be.

PN3626

Is that the only thing he looks after?---He looks after other areas as well.

PN3627

Yes. Such as?---Dairy, a bit of forestry but the majority of his work is mining.

PN3628

So is the position that there is no-one that is allocated full time to metalliferous mining from the AWU in this State?---No, it's not practical to have someone dedicated to mining when you have got Beaconsfield Gold that's located quite a way away from the other mines.

PN3629

Okay. Now, are you aware of how many officials the CFMEU has in Tasmania?---Mining division?

PN3630

No, CFMEU?---Total CFMEU?

PN3631

Yes, CFMEU?---There would be three in Launceston and three down in Hobart.

PN3632

So six officials from your understanding?---Yes.

PN3633

And do you know which industries primarily the CFMEU covers?---Construction, forestry, coal mining and energy, isn't it?

PN3634

So say four, four main industry sectors. Now, do you recall the evidence a little while ago about the efforts that the AWU have made recently in relation to portable long service leave?---Yes.

PN3635

Is there any precedent for portable long service leave in this State?---In the country there is a construction industry.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3636

Yes. And specifically in Tasmania?---Yes.

PN3637

And do you know what the principal union is in that area covering those workers under the portable scheme from Tasmania?---We are in there as well. The AWU and the CFMEU.

PN3638

CFMEU?---And AWU.

PN3639

I see. And how long has the portable scheme existed in the construction industry in Tasmania?---It has been there a long time. It has been there all my time.

PN3640

About 30 years?---I don't know about 30 years but I know it has been there all the time that I have been an official.

PN3641

If I said to you it was set up in 1974 would you dispute that?---I wouldn't dispute it, no.

PN3642

Now, are you aware of any portable long service leave scheme that exists in the mining industry?---No.

PN3643

If I was to suggest to you that there was a national portable long service leave that applies to the coal mining industry would you dispute that?---No, I won't dispute it. I don't know.

PN3644

And do you accept that the CFMEU is the principal union in coal mining?---Yes.

PN3645

And do you have any knowledge of how long the national long service leave scheme has existed in the coal mining industry?---No.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3646

Again if I suggest to you that it was 30 years or so you couldn't dispute that?---I'd believe you.

PN3647

Now, in relation to the shorter hours campaign Ms Heilor produced the report that led to the changes, is that right?---Yes.

PN3648

And that report was fundamental to the Government intervention. Is that your evidence?---It certainly helped.

PN3649

Do you know where Ms Heilor is at the moment? Who she works for?---The CFMEU in New South Wales.

PN3650

Yes, nationally you think. Now, are you aware of what the hours situation is in the coal industry in Tasmania? What the standard working hours is there?---No.

PN3651

Would it be - you don't know at all or - - -?---No, coal mining is not an area we go into. We respect our rules.

PN3652

I see. What about Temco? Do you know what the hours of work situation is there?---I believe it's a 42 hour week.

PN3653

Zinifex Risdon?---A 42 hour week.

PN3654

Goliath?---Not sure.

PN3655

And it wouldn't be a 56 hour type - - -?---No, it's not a 56 hour week. No.

PN3656

Now, earlier on you made a comment about traditional demarcation lines and respecting those. Do you recall that position?---Mm.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3657

Is it your position that the CFMEU or its predecessors have never had coverage in the metalliferous mining industry in this State?---In certain roles, in certain areas. Never in the milling area.

PN3658

I see. Are you familiar with, in broad terms, the coverage of what used to be called the FEDFMA?---I am familiar as far as Zinifex Rosebery, yes.

PN3659

Yes?---I know what functions they performed at Zinifex Rosebery.

PN3660

Yes, and what were they?---Miner drivers and loco drivers and a boiler attendant I think.

PN3661

Yes?---I signed them all up so I should know.

PN3662

Yes. And have you had any familiarity with Savage River? The history of coverage in Savage River?---I understand that - not really. I know a little bit. It's just a bit hazy stuff. I understand the CFMEU had a role there.

PN3663

Well, I suggest to you that it was an entire CFMEU site prior to 1997?---I suggest it wasn't. There were other unions present.

PN3664

Okay. Well, that is a matter for what the evidence shows. Now, the FEDFA coverage was, in your understanding related to what sort of function, what sort of occupations?---Miner drivers. Loco drivers.

PN3665

Is that it?---That was it.

PN3666

What about dozer drivers?---Never.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3667

Front-end loader drivers?---Never.

PN3668

Mr Wakefield, have you ever seen the CFMEU eligibility rule that I am referring to?---You are asking me about Rosebery. They have never driven - - -

PN3669

Sorry, I meant for the industry in general in Tasmania?---Construction industry; I am aware that those rules apply to those.

PN3670

Okay. Do you have any knowledge of the position at Savage River?---Now?

PN3671

No, prior to 1997?---I know the TWU were in the pit.

PN3672

Yes?---I know the CFMEU were there somewhere in the mill and the AWU had Port Latta. That's as far as I know. I know there were a heap of unions there. A lot of demarcation.

PN3673

Do you know what sort of classifications the CFMEU members occupied?---No.

PN3674

Again in 1997 the mine reopens with a greenfield site agreement. Is that right? AWU the sole party.

PN3675

THE COMMISSIONER: Please say yes or no, Mr Wakefield?---Yes.

PN3676

MR BUKARICA: Did the AWU have any regard to traditional demarcations in that site when it entered into that agreement?---No. I understood that there was some arrangement. I wasn't around at the time - I was around but I wasn't involved at the time when the 118 was about. I understand that Savage River was excluded from the 118 because it was just about to close anyway so it did close and closed for a period and then reopened and I understand that the only reason the CFMEU were allowed to stay there was because the place was closing anyway.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3677

I see. Mr Wakefield, you earlier made strong comments about traditional demarcations and respecting other people's patch, to paraphrase?---I do, yes.

PN3678

Is Savage River an example of how the AWU puts such a policy into practice?---It's a metalliferous mine.

PN3679

I see. So your view is that you have got the right to cover anyone in metalliferous mining?---That's right.

PN3680

And traditional demarcations, if you like, don't apply at least in metalliferous mining?---No.

PN3681

Well, if there was a traditional position of FEDFA, CFMEU coverage at the mine up till 1997 and then after 1997 that position is removed, that is not respecting a traditional demarcation is it, Mr Wakefield?---That's your view.

PN3682

Well, to say that - - -?---Well, I said earlier that I believe that the only reason that you weren't demarked out of it with a 118 was because the place was closing. It was imminent and that was the only reason I left it alone.

PN3683

I see. The 118A you refer to, are you familiar with its terms?---I am not totally familiar but I am aware of the mines that were listed in it.

PN3684

Yes. Does the 118A order exclude the CFMEU entirely from the metalliferous mining industry?---From particular mine sites I think - the listed named mines.

PN3685

So the answer is it doesn't - the order?---Well, it listed all the mines that were present at the time.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3686

In 1992?---Yes. There were no mines, that I am aware of, apart from Savage River that were excluded from that 118 order. There have been some new mines that have come on line since.

PN3687

Yes?---So it would follow that - - -

PN3688

Other closed. Others come up?---Yes, so it would follow that, you know, if you are excluded from those mines, you would be possibly excluded from any new mine.

PN3689

Well, does the order say that?---It doesn't say that but, you know, common sense says it.

PN3690

What common sense, Mr Wakefield?---My common sense.

PN3691

The order doesn't exclude the CFMEU from anywhere other than those specific named mines does it? That is the position?---That's right, yes.

PN3692

And in relation to this matter what is relevant is there is no exclusion in relation to Henty Gold is there?---Not in the 118, no.

PN3693

And has the AWU, since the 1992, 118A decision still sought to extend that 118A order to other mine sites that have opened since?---No.

PN3694

Are you aware of the employers making such an application?---No.

PN3695

Now, you are a member of the national executive of the AWU, is that right?---Yes.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3696

And in that position you receive reports from other branches?---From time to time, yes.

PN3697

And national officials?---Yes.

PN3698

And you were be aware, would you not, in general terms of ACTU decisions regarding union coverage and the like?---Yes, some.

PN3699

Some?---Yes.

PN3700

You are aware, aren't you, that the AWU is nominated as principal union in metalliferous mining by the ACTU?---Some time ago, yes.

PN3701

And that the CFMEU is nominated as a significant union?---If you tell me - I don't know.

PN3702

Well, it is the same decision I think, Mr Wakefield?---Yes. I just know there were principal miner - that happened when I was still a miner.

PN3703

I see. Do you have an understanding of what the term significant union means in the context of ACTU demarcation?---To be honest I don't, no.

PN3704

Does it mean at least, Mr Wakefield, do you understand that it means a significant union has no role, no ongoing role in the industry? Is that what it means?---I wouldn't think so, no.

PN3705

I put to you, Mr Wakefield, that what it does mean is a significant union has got an ongoing right to recruit and exist in an industry in which it is nominated. Would you accept that?---In the areas that are traditional.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3706

Yes. Now, the position of union density in metalliferous mining. Would you agree with the proposition that there has been a dramatic decrease - if we can start nationally first - dramatic decrease nationally in union density in metalliferous mining since the early 90s?---As well as coal mining, yes.

PN3707

Well, we will get to that in a moment. Okay? But you accept there has been a dramatic decrease in membership?---Yes.

PN3708

In relation to Tasmania would you accept that that is the same?---No.

PN3709

Would you accept that there has been significant decrease during the course of the 1990s in metalliferous mining in Tasmania?---It sort of goes in cycles, yes, but there was a bit of a decrease but it has returned now.

PN3710

I see. If I put to you that as of the year 2000 the ABS figure for union density in metalliferous mining nationally was 18 per cent, would you dispute that?---I don't know.

PN3711

You don't know?---No.

PN3712

If I put to you the proposition that the corresponding figure for coal mining is 78 per cent, would you dispute that?---I know it's declining though.

PN3713

Well, I am asking you a question about the figures. You have got no basis to dispute that?---No, just that it's declining still.

PN3714

I see. But obviously not as much as 18 per cent, Mr Wakefield?---It is still happening.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3715

I see. Now, the position of the AWU nationally is that the CFMEU doesn't have a place in metalliferous mining. That is correct, isn't it?---That's right, yes.

PN3716

And happily that seems to be the position of AMMA as well as you understand it?---I don't know what position AMMA has.

PN3717

Now, in relation to Henty Gold the truth is, isn't it Mr Wakefield, that prior to June this year Henty Gold was substantially a non-union site?---No, that's rubbish.

PN3718

How many members did the AWU have to prior to June of this year at Henty Gold?---Without looking at the records I'd say that we have had members there from day one from when the place opened and I think we have had, in all the time that it has been opened, in the order of 10 to 12 - they go up and down a bit, about those numbers.

PN3719

Okay. And the total work force is what, something like 60?---I don't know. I'd say about 60, yes.

PN3720

I see. So we had evidence from Mr Jones this morning, he says the figures would have fluctuated from about seven to about a dozen. Would you accept that?---I'd say it would be a bit higher than seven. I'd say they'd be around 10 to 12 all the time.

PN3721

I see. Do you have information that Mr Jones doesn't have about membership on that site?---Yes, I do.

PN3722

Okay. Now, based on a membership of say 10 to use your figure, do you accept that that represents a unionised site in terms of the majority of employees?---I wouldn't have that view, no.

PN3723

Beg your pardon?---I wouldn't have a view that it is a totally unionised site with 10 - it is not a unionised site.

PN3724

Okay. Mr Wakefield, I put to you a couple of minutes ago that prior to June it was substantially not a union. In view of what you have just said do you accept that position?---It all depends on what you say union and non-union is. If you say a union is - the majority are union members then it is not the union but, you know, 10 to 12 members is not insignificant.

PN3725

No, that is not the question I am asking. The question I am asking is prior to June do you accept that the Henty Gold Mine site was substantially non-union in terms of the membership composition?---I suppose, yes.

PN3726

Now, and you say as well that a figure of 10 to 12 or so is significant?---It is significant to our union.

PN3727

And to others no doubt?---One is significant to us.

PN3728

So by the same token if the CFMEU had a dozen members at the site that would be regarded as significant by you?---And he shouldn't be there.

PN3729

Mr Wakefield, I ask the questions and you try to answer them. That is what this is all about?---Well, it would follow that if I said 12 is significant for us then 12 is significant for you, isn't it.

PN3730

And would you have any basis to dispute evidence that has been led in these proceedings that the CFMEU has had membership at Henty Gold for at least two years?---I'd dispute you would have had 12 members for two years.

PN3731

No, that is not the question - membership for a period of two years?---Yes, I am aware you have had one or two members for two years.

PN3732

Are you in a position to dispute the CFMEU has got 12 members at Henty Gold at present?---Somewhere around that, yes.

PN3733

Now, you are familiar with the mill operations at Henty Gold?---I have been there, yes.

PN3734

Do you have any people employed in the mill?---Yes.

PN3735

How many?---I think there is currently five and two more applications coming through now.

PN3736

In total?---Seven all up, or it will be when the two applications come in.

PN3737

I beg your pardon?---There will be seven mill operators in the AWU when the two applications are forwarded for - - -

PN3738

No, that is not the question. The question was how many employees are employed in the mill section?---In the mill? I think it would be in the order of about 20.

PN3739

Mr Daly from the company gave evidence the other day that it was, the last time we sat, that it was 16. Would you - - -?---Well, I won't dispute it. He's the boss. He's the manager at Zeehan. I was just working on four a shift and a couple of day workers.

PN3740

So if there were 12 CFMEU members including the mill, that would be the overall majority in the mill, wouldn't it?

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3741

MR FITZGERALD: Objection, Commission. It is based on the premise that Mr Daly gave evidence that there were 16. That is not our recall. We would need to be able to check that. Certainly I have had instructions from the mill manager that we were up to 19 and that is the evidence I am sure Mr Daly would have given but if I am wrong there, I would need to be corrected.

PN3742

THE COMMISSIONER: Mr Bukarica, can you point to where - - -

PN3743

MR BUKARICA: I can, Commissioner?---If there was only 16 and we have got seven, you have only got nine then.

PN3744

The transcript at paragraphs 2717 to 2718 - - -

PN3745

THE COMMISSIONER: Paragraph?

PN3746

MR BUKARICA: 2717 to 2718 and at paragraphs 2828 to 2830.

PN3747

MR FITZGERALD: Sorry, I was just taking advice. I am sorry to have to ask you again, what was the number again?

PN3748

MR BUKARICA: Paragraphs 2717 to 2718 - - -

PN3749

THE COMMISSIONER: I don't see any reference to 16 in 2717 and 2718.

PN3750

MR BUKARICA: I am sorry, that is a summary of what happened there about issue of reasonably high or reasonably significant and then I think the sum has come up in 2828 - - -

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3751

THE COMMISSIONER: Paragraph 2828?

PN3752

MR BUKARICA: Paragraphs 2828 to 2830.

PN3753

THE COMMISSIONER: 2820?

PN3754

MR BUKARICA: 2830.

PN3755

THE COMMISSIONER: Again that doesn't jump out at me as reference to 16 employees in the mill.

PN3756

MR BUKARICA: If the Commission bears with me I will find the reference to what is an exchange between me and Mr Daly where he described there being four employees per shift, four shifts, equalling 16 but I will - - -

PN3757

THE COMMISSIONER: All right. There is no dispute about that is there?

PN3758

MR FITZGERALD: Commissioner, sorry, I mean we have the mill manager here and he can clarify it under oath if necessary. It is not as simple as Mr Bukarica is making out and we can clarify the exact numbers under oath if you wish to.

PN3759

THE COMMISSIONER: Well, - - -

PN3760

MR BUKARICA: The question is asked about the evidence already given and I am trying to locate that and - - -

PN3761

THE COMMISSIONER: Yes. Well, I don't want to hold proceedings up. I will allow you to proceed but I hear that Mr FitzGerald has flagged an objection

contesting that evidence was given but I just don't want to hold this up while we debate something which is surely a factual item.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3762

MR BUKARICA: Yes. Commissioner, I was moving off the point anyway but I will find the reference. I must have missed quoted it.

PN3763

Now, prior to June 2004 how many members did the AWU have at the Henty Gold Mine?---Ten or 12.

PN3764

Ten or 12. And since then it has picked up how many?---In the order of 50; 40 to 50.

PN3765

And how did the AWU come to recruit those employees? What started the process of recruitment?---We went on site and signed them up.

PN3766

I see. So quite coincidentally in early June you went to the site and there was all these willing takers?---Like I said earlier in my early evidence, I know probably personally 80 per cent of the workers in the mining industry. A lot of those guys I have worked with at Henty Gold Mine. I know them personally. I have worked with them. They have been members of the AWU before and up until that point in time we regularly visited those people, talked to those people, up until that point in time they were very happy with their working arrangements at Henty Gold Mine and it was only when the company tried to move from the non-union collective agreement to some sort of common law contract or individual agreement that they saw a need to join.

PN3767

So when did you become aware of that individual contracts move?---We believed - I don't know the exact date but it was prior to Chris Hinds contacting me, we actually had contact from our members about what we believe was an AWA at the time. We were actually on the west coast the same week that we received the phone call about the AWA and at that point in time we were planning a strategy to sort of move in and - - -

PN3768

What was the strategy?---To go in and - well, there was obviously a concern there about the AWA so we were going to go in and talk to people.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3769

Now, the position prior to your agreement being made with the company just recently was that it was a non-union agreement on site?---Yes.

PN3770

AWU didn't get a look in?---We were party to it though.

PN3771

You approached the company on previous occasions and they knocked you back?---On several occasions when they opened and several occasions since then.

PN3772

And each time the response from the company was, "We are not interested"?---Yes, the response from the workers was the same. They were happy with the arrangements.

PN3773

And in late May there is a notification to the Industrial Relations Commission by the CFMEU. Are you aware of that?---I wasn't aware of it at the time, no.

PN3774

You were contacted by Mr Hinds?---Yes.

PN3775

He asked you to support the CFMEU application?---He asked if we wanted to be a party to it or something like that, yes.

PN3776

And your response was, "No way"?---No way, yes.

PN3777

Or words to that effect and then what, your or Mr Flanagan contacted the company. Is that right?---Well, we actually contacted mines and metals when we first found out about the AWA. I personally called Bill FitzGerald about the AWAs - when we heard about the AWAs or what we thought were AWAs and said, you know, we want to do a collective agreement. The way we sort of deal with companies that we don't have a really good relationship with is use their agent.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3778

What was Mr FitzGerald's response to you?---He said he'd take it up with them.

PN3779

Take up what, the collective agreement position?---Obviously he'd talk to them about it.

PN3780

Now, was this - - -?---That was prior to the conversation with Mr Hinds.

PN3781

Okay. Was it after the CFMEU application had been made?---Look, I don't know.

PN3782

About, let us say, the middle of May. Was it after that time?---Possibly.

PN3783

And the history of relations between the AWU and the company have not been brilliant have they?---They have always been civil. There was one problem that

we had when we were denied the right of entry but they have always been civil, cordial, no problems, no animosity apart from that.

PN3784

Yes. But they haven't always opened the door to you, have they?---We were allowed on site. We have always been allowed on site after the demarcation, and prior to that we were actually given access as well.

PN3785

I see. But there was never any invitation from the company to participate in the industrial agreement on site was there?---No.

PN3786

However, that changes dramatically in June, is that right, this year?---I don't know about dramatically. It's changed.

PN3787

Yes. Well, let us just look at the situation in May. In May 2004 the AWU has got 10 or 12 members?---Mm.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3788

Not party to the agreement. That is correct?---That's right, yes.

PN3789

Two weeks later you have got 40, 50 members?---Yes.

PN3790

And you have negotiated an agreement with the employer. That is correct?---Yes.

PN3791

Is that unconnected to the CFMEU's activities on site, Mr Wakefield?---I think so, yes.

PN3792

Totally coincidental?---I think so. I think the catalyst for all was the employment arrangements they wanted to enter into. It scared the shit out of the blokes.

PN3793

Mr Wakefield, you are under oath. Okay?---I'm not lying.

PN3794

The position is, I put to you, that the catalyst for your increased membership on the site was the presence of the CFMEU and the application by the CFMEU?---No, definitely not.

PN3795

I put to you that the company would not have negotiated with the AWU had there not been some fear that the CFMEU might succeed in its current application?---No. The problem the company had at the time was that miners were refusing to sign the bloody contracts.

PN3796

Yes?---They weren't going to sign them.

PN3797

Yes?---So where were they going to go.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3798

The position though is that the company had not availed itself of union agreements in the past. That is right, isn't it?---That's right.

PN3799

And by your evidence the employees were quite satisfied with the previous arrangement. That is right?---Up until that point in time, yes.

PN3800

I see. Now, you maintain that the company's change in attitude is completely unrelated to the CFMEU application?---Well, you might be able to relate it. I can't relate it. I am not relating it to your application.

PN3801

I see. So the current non-union agreement, Mr Wakefield, what date does it expire?---September I think.

PN3802

I see. And the agreement with the company, Henty Gold, was made when - the current agreement you have made with the company?---I think it's only just recently been endorsed. I am not personally dealing with it.

PN3803

I see. When did the AWU lodge the proposed section 55 agreement in the Commission?---Prior to my going on leave, it would have been in June some time I think.

PN3804

Early June?---If you say it is, I don't know. I can't recall. It would have been in June some time.

PN3805

And by that stage these proceedings would have commenced. Is that your understanding?---I wasn't aware of that, no.

PN3806

The section 55 agreement, why was it necessary to lodge it in early June?---I was going on leave.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3807

So it is entirely related to you going on leave?---I wasn't here, I was up in northern Queensland.

PN3808

Mr Wakefield, the existing agreement does not expire until September. That is right, isn't it?---That's my understanding, yes.

PN3809

So what was the urgency of having the agreement filed in early June?---Well, we had met with the company and negotiated it and agreed in principle subject to the endorsement of employees so, you know, I signed it because I was going to be away and Robert was going to go and - Robert was dealing with the negotiations and the presentation to members and if they got the endorsement from the members they were going to put in an amended copy. An amended copy or put in the original copy and get it registered.

PN3810

Mr Wakefield, have you got any knowledge at all of the agreement that was lodged with the Commission in early June?---I understand it's the current working arrangements.

PN3811

So it was simply a replication of the existing section 61 agreement?---With a couple of inclusions like the - - -

PN3812

The name of the AWU?--- - - - delegates rights and the AWU and stuff like that.

PN3813

Yes. And really the position is, isn't it, it has only been the last fortnight perhaps that there has been an agreement reached at the site?---It would be two to three weeks ago, yes.

PN3814

Why was it necessary to lodge the agreement you lodged in early June which wasn't the final - - -?---Well, that was the advice I got from our industrial officer.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3815

And what was the advice?---We have got an agreement. Why can't we sign off on it. We were happy with it subject to checking it with employees to see if there was any additional concerns. It was ready to go.

PN3816

Yes, but you just said the agreement is the existing section 61 agreement for all intents and purposes, the one that was lodged in early June?---Yes, well, I understood the employees didn't have a problem with the working arrangements. They had a problem with the regulation that goes with it. They were happy with the 61 agreement. They wanted to renegotiate a 61 agreement but because the company was going down this new path it scared them. It scared the employees and they wanted some certainty.

PN3817

Yes?---Some security.

PN3818

And so you lodged the document in early June to address that issue and is that document the same as the one you are currently proposing to have certified?---No.

PN3819

In fact there has been quite a lot of changes hasn't there, Mr Wakefield?---I just said it was subject to going to talk to employees, seeing if they had any additional concerns and addressing those concerns and I understand that those concerns have all been met.

PN3820

I see. So your evidence is that you lodged it in early June. Your first answer was because you were going on holidays. Is that right? And the second one was to allay concerns of employees. Is that what you are saying?---The members we'd spoken to said that they wanted the union involvement.

PN3821

Now, lodging the agreement in early June has nothing to do with these proceedings. Is that what you are saying, Mr Wakefield?---As far as I am concerned they haven't no.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3822

Okay. Totally unrelated to the CFMEU application?---In my view they're not. We always intended - and I mentioned earlier the industry was, some years ago, well, with the influx of contractors there was a lot of non-union members there. Henty was always the hardest nut for us to crack because workers were always happy with their working arrangements. It was one of the highest paid mines in Tasmania, their working conditions are better than anywhere else so we always intended to knock the other mines off first and then come back to Henty and that's what happened. There was an opportunity there for us to go in.

PN3823

Yes, and the opportunity really was, Mr Wakefield, that the company invited you in because they were aware of the CFMEU being in the place?---We approached the company. The company never contacted us or invited us.

PN3824

Yes, but when you approached - when you knocked on that door this time instead of the door being jammed shut, it was thrown open for you?---Well, don't you think that might have been because employees weren't signing their contracts.

PN3825

Mr Wakefield, is that your evidence is it? It has got nothing to do with the CFMEU?---They didn't want to sign the contracts. They wanted union involvement.

PN3826

Mr Wakefield, are you asking the Commissioner to accept that the whole chain of events in relation to this matter, the section 55 agreement, these proceedings, the overnight unionisation of the site, the granting of payroll deductions by the

company, the entering into of an agreement, the lodgment of that agreement as a matter of urgency, has got nothing to do with the presence of the CFMEU? That is all coincidental?---Not as far as the AWU are concerned.

PN3827

I see?---I can't speak for the company or AMMA or anybody else but we saw - there was a need there and what they were fearful of was the contracts. They just weren't going to sign and as far as overnight unionisation, no-one twisted arms up their backs. They willingly wanted to join and they had been approached by the CFMEU in the past but they recognised that the CFMEU wasn't the appropriate union to look after them.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3828

You know that for a fact do you, Mr Wakefield?---That's what they told us.

PN3829

Mr Wakefield, the CFMEU has 12 members on site. Do you accept that?---If you tell me it has. I don't know.

PN3830

And are you saying that those people didn't join voluntarily in the CFMEU?---I don't know.

PN3831

Mr Wakefield, there has been a presence of the CFMEU at the site of around about two years. You have already accepted that?---I understand there has been one or two for two years, yes.

PN3832

I see?---And the rest of them recently signed up.

PN3833

How recently?---This year.

PN3834

You know that for a fact?---That's my understanding.

PN3835

Yes. Mr Wakefield the position in relation to award coverage in the industry, is there an industry award at present?---Just about.

PN3836

Is there an industry award at present?---Made in title and scope.

PN3837

I beg your pardon?---Made in title and scope.

PN3838

I don't - - -?---Title and scope.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3839

What does that mean?---I believe it has been made in title and scope. It has got a name and it has got a scope.

PN3840

I see. But there is no substance to the award as such?---No.

PN3841

How long has the process of making that industry award been occurring?---Quite some time. I guess it has been quite a few years.

PN3842

And what, you say it is now ready to go?---It's always been not far off. We always relied on the Pasmenco Rosebery award. We claimed the Pasmenco Rosebery award was a State award and that was tested a couple of years ago in the Industrial Commission and shown not to have any - couldn't be flowed onto any other mine site in Tasmania so there has been ongoing discussions. Over the last two years they have been building up.

PN3843

Now, what is your understanding of the current status of those discussions?---Very close to agreement I believe.

PN3844

Not spurred on by these proceedings of the CFMEU presence in the industry?---I think it has been spurred on more by the Commission. The Commission is getting a bit sick of it hanging around I think.

PN3845

Now, you have a knowledge of a number of sites and industries where the CFMEU have membership in this State, do you Mr Wakefield?---No, a couple.

PN3846

Some where the AWU also exist?---Yes, a couple.

PN3847

Temco is one?---Yes.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3848

Zinifex Hobart?---Yes.

PN3849

Goliath?---I haven't got much knowledge of Goliath. I know there is a CFMEU presence there and an AWU presence there, yes.

PN3850

Civil Construction Corporation?---They no longer exist.

PN3851

It is entirely out of business is it?---It's gone, yes.

PN3852

I beg your pardon. I am behind the times. Forestry Tasmania?---Yes.

PN3853

Are there turf wars going on in those enterprises?---There has been out at Zinifex, yes. They had a bit of a turf war out at Zinifex.

PN3854

I see. When was that?---It has been ongoing. It has settled down now. We have got an arrangement with the construction division of the CFMEU who look after the Zinifex site and whose members they are.

PN3855

Anywhere else?---A few problems at Temco with the CFMEU signing up traditional AWU members.

PN3856

How long ago was that, Mr Wakefield?---I think it was about amalgamation time - around about.

PN3857

What's that, early 90s?---Amalgamation election I think it was, probably six, eight years ago.

PN3858

That wasn't a case of the metal workers signing up AWU members was it? You are not confusing that?---No, I understand that the CFMEU at Temco traditionally looked after what they called the drivers, the loader drivers or something, and they moved into the furnace type work which is traditionally AWU work.

**** IAN ANTHONY WAKEFIELD

XXN MR BUKARICA

PN3859

Now, are you aware of any stoppage of production at any of those sites relating to union demarcation issues that you have just mentioned?---Not stoppages, no.

PN3860

No. Are you aware of any stoppages in the metalliferous mining industry since 1992 over demarcation issues?---Only because we have had it to ourselves.

PN3861

I see. But the answer is no?---Yes, no.

PN3862

Nothing further. If the Commission pleases.

PN3863

THE COMMISSIONER: Mr FitzGerald?

<CROSS-EXAMINATION BY MR FITZGERALD

[2.59pm]

PN3864

MR FITZGERALD: Thank you, Commissioner.

PN3865

Mr Wakefield, I just have a few questions. Mr Wakefield, both Mr McLean and Mr Hinds I think used words to the effect that, "The CFMEU and the AWU are mature organisations and we can work out the issue of union membership in the metalliferous sector." What is your view on that?---It would never happen.

PN3866

Right. Why do you say that?---Because metalliferous mining is, we believe, an AWU site. We have never, even though we have had calls from places like Cornwall Coal over the years, we have never approached the site, never gone near the site, you know, if they are going to open up the metalliferous mining industry then I say the whole industry would be open to us as well.

PN3867

Right. So your response would be you would seek their traditional members as members of the AWU?---It would be a full on turf war.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3868

There was evidence of a heated discussion between yourself and Mr Hinds, I think at what they call the AMWU deck. Can you recall that?---I don't know if it was heated. We had a bit of a disagreement.

PN3869

What was the nature of the discussion?---Over coverage in the metalliferous mining industry.

PN3870

And what was the position taken by you in that regard?---Same as it always has been. It's AWUs and CFMEU don't belong in metalliferous mining.

PN3871

Right. And what was Mr Hinds' response to that?---He believed he had a right to be there.

PN3872

Do you believe that there is a peaceful co-existence between the AWU and CFMEU at Temco say?---I think it's tolerated.

PN3873

It is tolerated?---Well, we are not happy about it.

PN3874

Do you believe that the operators there are legitimately members of the CFMEU?---No.

PN3875

Why do you say that?---Because I don't believe it's their traditional coverage.

PN3876

Well, okay. Do you believe that there is a peaceful co-existence of employees at - members of the CFMEU and AWU at Zinifex Hobart?---Again I think there is an understanding and we tolerate it.

PN3877

Right?---We are not happy about it and we don't like it.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3878

Do you believe that the operators there are legitimate members of the CFMEU?---No.

PN3879

Okay. Why is that?---Same. I don't believe they have got rules to cover it.

PN3880

Okay. Can you recall, and I think it was around about 2000, when Pasminco Hobart, as it then was, was negotiating their enterprise agreement and all unions, apart from the CFMEU, in fact signed off on it?---Just vaguely.

PN3881

Right. My prompting doesn't - - -?---I vaguely remember it.

PN3882

And there was - can I just remind you there was a difficulty - the CFMEU held out for quite some time and there was some impatience by the rest of the employees, particularly members of the AWU, to actually implement the agreement?---It's very vague but I can't remember.

PN3883

Okay. All right. Would you agree that in terms of Henty with members - sorry, employees in the mill with members of the CFMEU and employees also members of the AWU, that that creates a fertile ground for demarcation disputes. Would you agree with that?---It's an absolutely intolerable situation.

PN3884

Right. And what difficulties do you think that would face in say a renegotiation of an agreement?---Well, there's going to be one-upmanship.

PN3885

Okay?---One union will come in and beat their chests harder than the other and try to deliver better benefits, you know, than the other.

PN3886

Would you agree with me that in a multi-union site such as Temco that it is more difficult to reach a final outcome through a single bargaining unit concept than it is say with your union alone?---We experience that everywhere, yes.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3887

Right. So would you agree that the negotiations at ABM where you have the only union in fact are generally easier than they are multi-union sites?---Definitely, and that probably goes to the rest of the mining industry as well because the AWU leads negotiations in all the metalliferous mines and the others just follow on.

PN3888

Okay. Would you agree with me that where there is competing coverage such as there is at Zinifex Hobart, Temco and Henty that it is again even more difficult to reach an agreed outcome where the two unions are involved?---I don't think it has been the case at Temco. I think it has got the potential to - I couldn't say it has happened there. I think they negotiated quite well.

PN3889

Right. And at Pasminco Hobart or Zinifex?---In the past there has been a problem at Zinifex but there is an understanding now between the two people that look after it.

PN3890

Okay. So it is one-upmanship, as you call it, it is all about providing the best deal to members. Is that what it is?---Yes. What happened at Zinifex was that there was - the CFMEU were going out signing up AWU members, trying to talk AWU members into signing up. We were doing the same to CFMEU members and it was just getting out of hand and it was actually derailing discussions and negotiations so there is some sort of arrangement now where, you know, they won't sign up any AWU members. I think they've actually tried to demark it.

PN3891

Just moving on, you had an involvement in the Butler case, if I can call it that?---Yes.

PN3892

Right. Can you also recall a case before the Commission run by the AWU on behalf of a Wayne Brown which was running much the same time as the Butler case?---Only vaguely remember it.

PN3893

All right. If I can prompt your memory it was regarding an employee who allegedly was, and was summarily dismissed, was allegedly throwing rocks through the grizzly when there were two employees below the grizzly. Does that prompt your memory?---No, I can only vaguely remember it.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3894

Okay. Just moving on to another area, are you aware of the CFMEU consulting with employees at the Henty Gold Mine in respect to the award application which is currently before the Commission?---No.

PN3895

Did your members advise you that they had been consulted about that application?---No.

PN3896

Okay. What degree of consultation did you have with your members at Henty regarding the agreement which is lodged with the Commission?---Extensive. I personally visited the site initially with Mr Flanagan and then I went on holidays

following that and I understand that himself and Ian Jones have had regular visits there over the time since.

PN3897

Okay. So you would have had meetings with all mill employees for instance?---I actually personally met with all the mill employees, yes.

PN3898

Okay. So some of those mill employees would have been CFMEU members?---They definitely were, yes.

PN3899

The evidence is not that, Mr Wakefield. The evidence is that they weren't consulted. What do you say about that?---By who?

PN3900

By the AWU?---That's not right.

PN3901

So how many meetings would you have had with mill employees which included those members of the CFMEU?---I only had the one.

PN3902

Right?---And Robert would have had the others.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3903

Right. So there were a number of meetings where the CFMEU members would have been involved?---Definitely.

PN3904

Are you aware of any concerns or any issues raised by those particular employees when you were consulting with them?---They were a bit concerned about a few issues. I can't recall what they were. I think it was mainly the classification issues.

PN3905

Right. But they didn't say, look, we are members of the CFMEU and we want to consult the CFMEU about this rather than you?---They did mention - some of them did mention they were members of the CFMEU and they said that the CFMEU had had an application in for an award interest and I said, "Yes, I was aware of that. I spoke to Chris," and they said - we explained to them that we're the appropriate union, asked them if they wanted to join and they said, "We better really wait and see what the CFMEU application covers but if they lose it then we will join you."

PN3906

Okay. So they were reserving their position. Is that a fair way to put it?---Definitely. They were prepared to join us.

PN3907

So what they were saying is - tell me if I am wrong - that they weren't sure as to who was the appropriate union but if you could prove it they would join

you?---Well, they felt an obligation because the CFMEU had commenced some sort of action and they felt, you know, they'd joined the CFMEU and they were obliged to sort of hang out with CFMEU because they'd started some proceedings.

PN3908

Okay. So you - sorry?---If they were to lose that they would join the AWU.

PN3909

Okay. So you advised them that they weren't appropriately members of the CFMEU in this sector?---I didn't push it too hard but we did say that we're the appropriate people.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3910

Okay?---And that they may have been confused by their confusing name - the union's confusing name.

PN3911

Okay. We have talked a lot about - maybe I should just ask you some questions about the current common rule award. You are aware - and I think we are all guilty and probably somewhat ashamed - of the delay which has occurred in the making of the common rule award. Would you agree?---Someone's being deliberate, yes.

PN3912

Okay. If I have admitted that, I hoped you would do the same. Would you agree?---Yes.

PN3913

Would you agree that there were fundamental differences as a result of on what basis the award should be made, whether the prima facie should be existing rates and conditions or would you agree that is a major hold-up?---That was the only real hold up - the wage rates.

PN3914

And would you agree that my organisation - are you aware that my organisation has consulted with employees to formulate particular positions which have been put to the AWU?---Employees or employers?

PN3915

Employers, I am sorry. Thank you?---I am aware that you have consulted with them, yes.

PN3916

And we have put positions to you?---Yes, you wanted to pay them nothing.

PN3917

I think we might suggest that might be somewhat mis-stated, Mr Wakefield, but would you agree that AMMA was put in a position it reflected a minimalist award based on - so as to allow enterprise bargaining to be on top of that?---Yes. The union's position was current rates.

PN3918

Yes, all right. Would you agree that in recent years, certainly the last 12 months, possibly two years, that the AWU have had the sole coverage on behalf of employees of those negotiations?---Yes. Well, the other unions hadn't been involved up until - - -

PN3919

Okay. So it is only recently other unions have been involved?---They were involved from time to time but it's the AWU who have run it.

PN3920

Right. And you would consult with those two other unions, the AMWU and CPU?---Yes.

PN3921

Okay. But you are confident that that award, despite its delay in making, is not far away?---Well, my understanding is we are just waiting on a response from industry.

PN3922

Okay?---And it's a done deal then.

PN3923

All right. The CFMEU in their evidence I think by Mr McLean and Mr Hinds allege that there is some link between a declining OH and S performance and the so-called non-union arrangements. Have you got any evidence to reinforce that, Mr Wakefield?---I wouldn't disagree with it.

PN3924

Have you anything to back it up?---Well, we believe it has impact on, you know, non-union arrangements have impact on health and safety.

PN3925

But you haven't got any particular measure or performance standards to actually prove that. Is that so?---What can you do? What can you put? I know what I have seen, particularly with mining contractors, not so much Henty but particularly Barmingo and the like and how our workers are treated when they raise health and safety issues.

PN3926

Okay. We will just take Henty, if you like, a non-union site, are you aware of the OH and S performance there?---I understand it's very good.

PN3927

Right. So in that case the opposite is proved, is it, that being a non-union site they still have a very good OH and S performance?---Yes, definitely.

PN3928

Okay. Did you ever, over the last at least two years, either casually or formally - and you can state which - state to me that our association should advise the non-

union sites, being Henty and Beaconsfield, to enter into union arrangements?---More than once.

PN3929

Right. And over what period of time would that have been?---Probably the last four to five years.

PN3930

Right. And do you know what the response has been from AMMA in that regard?---You do as you're instructed I suppose.

PN3931

Okay. You are aware, and you have made mention, that you are aware of the 118A order. Do you think, just from your knowledge of the industry and that goes back some time, that that has generally been complied with by the CFMEU?---Up until they signed people up at Beaconsfield, yes.

PN3932

Right. And when was that? When you were aware that they signed people at Beaconsfield?---A couple of years I think.

PN3933

So up until that - from the early 90s up until 2002 or thereabouts, we had a 10 year period of compliance. Would that be right?---We had compliance but in the last - CFMEU were trying to get in.

PN3934

Right?---They had been trying to get in. They used to advertise weekly in the Western Herald newspaper and they used to send a couple of honorary officials on a junket down the west coast and spend the night and try to talk people into joining and that's happened for a few years.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3935

So what was your response to that? Did you see that as a legitimate recruitment strategy?---Well, again we didn't believe they had a right but they weren't having any success because people know that the AWU is a mining union.

PN3936

Do you believe that even though Henty is not specifically known because it didn't exist at that time but do you believe the intention of the 118A was to effectively demark the industry in favour of the AWU?---Very much so. The only reason they weren't named is because they weren't there.

PN3937

Right. And what is your view on the particular sites named? Let us take for example Beaconsfield, is the corporate entity that operates that site, is that the same entity named in the 118A?---I believe so.

PN3938

Right. Okay. And Rosebery, is that the same entity known as Zinifex?---Changed names but it is still transmission of business.

PN3939

Okay. Copper Mines of Tasmania, what would you say about that?---Same entity as what? They have been there since they reopened.

PN3940

Okay?---It is still the Mount Lyell mine.

PN3941

Okay. The advice - sorry, the evidence by Mr Hinds was that his legal advisers advised him to leave the Beaconsfield gold site alone. Are you aware of that?---No.

PN3942

Do you believe that is correct advice?---It's what they should have advised, yes.

PN3943

But would you agree that that hasn't been actually complied with given that the CFMEU have recruited members there?---No, it hasn't been complied with.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3944

How do you think the CFMEU actually recruited members at the Beaconsfield gold mine?---I believe it was - and it's only my opinion, I don't know for a fact but I know Chris was working there as a security guard and he would have been on the gate at the mill every day, searched their bags as they came out as part of his job, talking to them every day and that's where he signed them up.

PN3945

Okay. He didn't sign them up in the mine. He signed them up in the mill.

PN3946

He alleges they were long time Beaconsfield town friends?---That's possible.

PN3947

It is possible?---Mm.

PN3948

Okay. But you think it is more than likely it was a result of his involvement on site being a security guard?---In my opinion would be that that was the case, yes.

PN3949

Okay. Would you agree with me that - and I suppose this can only be answered by the CFMEU but would you agree with me that it is your understanding that Kathryn Heilor is in fact on secondment to the CFMEU currently?---I understand that because prior to her going to the CFMEU, there was some discussion to come to the AWU as well.

PN3950

Right?---And that was on a secondment basis so I would say that could be right.

PN3951

Okay. So she is actually still employed by ACCIRRT or the Australian Centre of Industrial Relations and Research - - -?---I think - she told me that when she was talking about coming to us that she had some sort of release from work for a

period of time but you are still actually employed by that person - by that organisation.

PN3952

Okay. And when she was engaged by the current government to conduct the report would you agree with me that she was actually employed by ACCIRRT?---She was at the time, yes.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3953

Okay. Would you agree with me that there was a significant period of closure for the Savage River mine at least 12 months, probably longer?---Probably longer. They were pulling it to pieces. They started pulling it to pieces.

PN3954

And would you agree with me that the mine reopened under a different owner entirely?---Different owner?

PN3955

Yes?---Definitely, yes.

PN3956

Okay?---There was no transmission of business and that.

PN3957

Would you agree with me that the reason why you entered into an arrangement with that new owner was because you always traditionally regarded that as the AWU turf?---We did, yes, but also again I think the intent was to go non-union there. They didn't want a repeat of the basket case it was in - the demarcation disputes that were there previously.

PN3958

So are you saying the demarcation disputes, which existed at Savage River, were significant in the downfall of that mine?---Well, that's what we were told.

PN3959

Right?---I don't know about the downfall of the mine but there were problems there. I think they run out of ore, that's why the closed it.

PN3960

But there were significant problems with certain union stoppages and the like. Are you aware of those?---In the early days, yes.

PN3961

Right. And significant demarcation issues with the AWU. Are you aware of those?---Only vaguely.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3962

Okay. Given that the Beaconsfield Gold award operates for Beaconsfield, what role do you think the CFMEU can play in representing members at that site?---None.

PN3963

Can I ask you the same question in respect to Australian Bulk Minerals?---None again.

PN3964

Just talking about the numbers in the mill and you say you have had around about - at Henty this is, sorry, the Henty site total you have had around about 10 to 12 since its inception, would you agree with me, given that it is subject to a non-union agreement, that that, in that context, number is significant?---Yes, it's significant.

PN3965

Compared to say one of your sites which is subject to a section 55 or a section 170LJ agreement, would you agree that that number of 12 is in fact significant?---Yes. If you do a comparison with Barmingo when we first went there, there was no members and now we have nearly got total membership.

PN3966

Okay. Are you aware of the major proceedings in the Federal Commission relating to an application by the CFMEU to change their rules to extend their coverage?---Well, construction?

PN3967

Yes?---Yes.

PN3968

Are you aware of what the result was?---We won it.

PN3969

Right. And what was the position taken by the AWU generally?---We are protective of our rules.

PN3970

Okay?---And we honour our rules.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3971

Right. Just to clarify your reason why you went into Henty, you were always of the impression that the so-called contracts which were advised by employees were in fact AWAs. Is that right?---That's what we believed, yes.

PN3972

Right. Okay. So that is when you made the move essentially?---Mm.

PN3973

Is it true that Henty has always recognised the AWU in terms of dealing with disciplinary issues and the like?---There's been no problem with that since day one.

PN3974

So the unions negotiated different outcomes or reinstatements, those sorts of things. Is that right?---Yes, we have been involved in disciplinary matters and dismissals and classifications issues I think even once.

PN3975

Right. Were you aware - sorry, let me rephrase this. Was it a significant factor that the company changed ownership in recent times which caused the change of attitude towards the union?---It appeared to me to be that, yes.

PN3976

Right. Were you aware of similar arrangements which they had in place at other sites with the AWU?---I was aware that they had it in operation in Queensland. I believe it was over-viewed.

PN3977

And subject to the AWU, okay. So did you see that as a means of justification of the AWUs involvement at the Henty site?---Yes, it was certainly - the current management of different management than what we had a couple of years ago. We actually had someone seconded from AMMA there. I think she was there at the time of the refusal to entry.

PN3978

Okay. Thank you, Mr Wakefield. I have no further questions.

**** IAN ANTHONY WAKEFIELD

XXN MR FITZGERALD

PN3979

THE COMMISSIONER: Mr Flanagan?

<RE-EXAMINATION BY MR FLANAGAN

[3.25pm]

PN3980

MR FLANAGAN: Mr Wakefield, you indicated that the CFMEU have got six officials in Tasmania. You indicated that three of those officials were in the south and three of those officials in the north?---Yes, but they don't work together though.

PN3981

Well, let us come to that. Let us talk about the three officials in the south. Who do they work for?---Construction division. Tony Benson.

PN3982

And what sort of capacity, as you understand it, would the construction division have to represent people in metalliferous mining?---None.

PN3983

So what is the focus of that division of the CFMEU as you understand it?---Construction?

PN3984

When you say construction are you referring to the building industry?---Building, yes.

PN3985

In fact in terms of civil construction what sort of role would they play?---Very little.

PN3986

Now, in terms of the three officials in the north can you tell us what industries they would be involved in?---I understand two of them are forest division.

PN3987

Right. And when you talk about forestry, what in fact are you talking about?---Harvesting and milling of timber, that sort of thing.

**** IAN ANTHONY WAKEFIELD

RXN MR FLANAGAN

PN3988

Right. So what capacity would these forestry officials have to service people in the metalliferous mining industry?---I think very little. They'd have no experience in the industry. They wouldn't know what they were talking about.

PN3989

Now, the evidence in these proceedings is Mr Hinds is sort of shared between the mining and energy division and the forest and forest products division, would you say that Mr Hinds has very little knowledge of the metalliferous mining industry?---Yes, definitely.

PN3990

So out of those six officials, how many officials would actually be servicing employees in the metalliferous mining industry if the Henty award was made?---One, you would think.

PN3991

And who would that be?---Chris Hinds. He's in mining division.

PN3992

Now, there have been some discussions about the section 118A order in 1992. Can you tell me - I understand that was in 1992. In a practical sense what has the presence of the FEDFA or CFMEU been in metalliferous mining since that order in 1992?---They haven't been there.

PN3993

Now, I would like you to provide you with a copy of AWU2 and I take the Commission to page 3 of AWU2.

PN3994

THE COMMISSIONER: Page 3?

PN3995

MR FLANAGAN: Page 3, yes.

PN3996

THE COMMISSIONER: Yes.

**** IAN ANTHONY WAKEFIELD

RXN MR FLANAGAN

PN3997

MR FLANAGAN: Can I take you to the heading Metalliferous Mining?---Yes.

PN3998

Can I just get you to read that?---

PN3999

That in the mining industry other than coal the AWU be regarded the principal union except in relation to the Northern Territory where the FMWU should be regarded as the principal union and Broken Hill where the UMWFA is the principal union.

PN4000

Can you got to the heading Significant Union?---Yes.

PN4001

Can you see there that it identifies the CFMEU?---Yes.

PN4002

Can you tell us what is in brackets after the initial CFMEU?---FEDFA excluded.

PN4003

Thank you. If I can just recover that AWU2. Now, you have said that you have always regarded the Pasminco Rosebery award as the industry award, or the AWU has, what was the basis of that thinking?---I think it was in the scope of the Rosebery award when it talked about metalliferous mines I think and we were actually successful - as a delegate on site at Rosebery we were actually successful in getting a contractor to comply with it because we told what it was, you know, the union told him at the time that it was a State award because this is what the scope says so we always believed that there was always an opportunity there to push that through as a State award.

PN4004

So did that view obstruct the finalisation of the metalliferous mining award?---Very much so.

PN4005

Why is that?---Because it was never tested. We always believed it. I don't think either AMMA or ourselves were prepared to test it.

**** IAN ANTHONY WAKEFIELD

RXN MR FLANAGAN

PN4006

So what was it that was in that award which was so attractive to the AWU?---The rates of pay.

PN4007

Why were they so attractive?---Because they were pretty high. I think entry level rate for a minor was about 860 or 870, something like that.

PN4008

Are you aware of any other award of this Commission, or any other Commission, which prescribes rates of pay at that level for metalliferous mines?---Not at that level, no.

PN4009

So what was it that led the union to accept that Pasmenco Rosebery award was not the industry award?---I think the AMWU actually took the matter to the Commission and had it determined or had an opinion from Deputy President Leary - or President Leary.

PN4010

So do you know roughly when that was?---About two years I reckon. Two, a bit longer.

PN4011

And what is your understanding of the progress, if any, that has occurred following the determination by President Leary?---I think it has been ongoing. There has been meetings and there has been discussions. I think, like I said before, it's nearly coming to an end.

PN4012

Now, you have said that you are not aware of any demarcation disputes in metalliferous mining between the AWU and the CFMEU since 1992, in your words, "Because we have had it to ourselves". Are you aware of any demarcation disputes between the then FEDFA and the AWU in the industry prior to 1992?---There wasn't any disputes because the AWU wouldn't allow them to move out of the areas that were their traditional areas. They just weren't allowed to do any other job. If they did then we'd go and the same with them, we weren't allowed to do their role.

**** IAN ANTHONY WAKEFIELD

RXN MR FLANAGAN

PN4013

Right?---They had the easy jobs. We done all the hard work.

PN4014

Yes. I am not surprised by that, Mr Wakefield. Okay. You have also referred in your evidence to Kathryn Heilor?---Yes.

PN4015

Can you tell us who funded the Struggle for Time report that Kathryn undertook?---The State government.

PN4016

No further questions. Thank you, Commissioner.

PN4017

THE COMMISSIONER: Thank you, Mr Wakefield. You are excused.

<THE WITNESS WITHDREW

[3.31pm]

PN4018

THE COMMISSIONER: Just go off the record. Mr Bukarica?

PN4019

MR BUKARICA: Commissioner, while we are still on record if you don't mind, the issue was raised about a transcript reference and I gave you an incorrect transcript reference earlier to evidence of Mr Daly. I have now found the relevant section. Perhaps if I can just deal with that quickly and we can leave it there. It begins at paragraph 2807 which is on 21 July proceedings.

PN4020

THE COMMISSIONER: Yes.

PN4021

MR BUKARICA: It reads - and this is my question:

PN4022

I think in your statement you refer to a small number of members?---Yes, I understand it's about fifty-fifty in the plant.

PN4023

In the mill are you saying the mill area in the plant?---Yes, the mill, sorry.

PN4024

Now, the mill consists of four shifts?---Four shifts.

PN4025

Four operators per shift?---Yes.

PN4026

That is 16 isn't it?---Yes.

PN4027

Twelve of 16 doesn't sound like half to me?---Yes, I don't know whether they have got 12 members.

PN4028

I think referring to the CFMEU but that is the evidence of Mr Daly.

PN4029

THE COMMISSIONER: Yes.

PN4030

MR FLANAGAN: Commissioner, I wonder if we could have a five minute adjournment before I give my evidence?

PN4031

THE COMMISSIONER: Just before we do that - can we just go off the record for a moment.

OFF THE RECORD

SHORT ADJOURNMENT

[3.32pm]

RESUMED

[3.50pm]

PN4032

THE COMMISSIONER: Firstly, is it agreed that we proceed with joint transcript?

PN4033

MR FLANAGAN: With joint transcript, yes, Commissioner.

PN4034

THE COMMISSIONER: Yes, but separate decisions.

PN4035

MR FLANAGAN: With separate decisions.

PN4036

THE COMMISSIONER: Yes. Can Auscript cope with that? I don't need to do anything else?

PN4037

THE MONITOR: No, Commissioner.

PN4038

THE COMMISSIONER: Thank you very much. We will proceed on that basis.

PN4039

MR FLANAGAN: Thank you, Commissioner. Commissioner, I call myself.

<ROBERT JOHN FLANAGAN, SWORN

[3.51pm]

PN4040

THE COMMISSIONER: Yes, Mr Flanagan?---Thank you, Commissioner. Commissioner, I am the industrial officer for the Australian Workers Union, Tasmania Branch, and have held that position since February 1998. In that role I am responsible for a number of matters including heading up negotiations for enterprise agreements for the AWU particularly in the mining industry and providing support to AWU officials, delegates and members. On some date between 20 and 28 May this year I was contacted by an AWU member employed underground at the Henty Gold Mine. That employee indicated to me that he had been asked to sign an individual contract of employment and return it to the employer. I cannot recall whether he indicated that he had three days to return it or seven days but the document was dated 28 May.

PN4041

Right?---At that time I had not seen the document and believed it was an Australian Workplace Agreement. I asked that employee to forward a copy of the document to me, not to sign the document and to advise other employees on the shift not to sign the document. I then spoke to the union's administration

officer and enquired about how many members the AWU had as members at the Henty Gold Mine. I was advised by the office administrator that the AWU had 10 members who were engaged or whose membership was in the form of direct debit. I spoke to the union secretary, Mr Wakefield, about the call I had received and arising from that he indicated he would contact the Australian Mines and Metals Association to see if we could talk to the company about a collective agreement.

PN4042

Yes?--Following that we received an indication from Mr FitzGerald that the company were prepared to meet and discuss with us what we were proposing but that was in no way to be considered as an indication that the company would definitely enter into an agreement with the AWU. I can't recall the exact time frame but approximately a week after that myself and Mr Wakefield met with representatives of the company at the offices of the Australian Mines and Metals Association. At that meeting we put to the company that we would like to enter into an industrial agreement with them and that subject to consultation with employees what we were proposing was the current section 61 agreement amended to reflect actual arrangements which were on site because there was a classification contained within the section 61 which simply identified a single occupation, as I recall it, with a base rate of pay and that classification structure actually bore no relevance to what appeared to be applying from the discussions I had with our member who had contacted us.

PN4043

Right?--We also had asked for clauses to be included to recognise the rights of union delegates and for the provision of leave for training of delegates and also, as a part of the package, that the company agree to do payroll deductions for union membership. The company discussed that with us and - I can't recall whether it was at that meeting, agreement in principle was reached or whether there was subsequent discussions with the company. Ultimately, however, the company did agree to the union's proposal and by then the contract of employment had turned up from the employee and I had in fact identified that rather than it being an AWA that in fact they were common law contracts of employment. Following that a document was drafted up to reflect the discussions that we had had with the representatives of the company. The document was signed and filed.

PN4044

Yes?--I then proceeded to meet with employees during the period approximately 16 June to 18 June. The process was that - the union was currently, at the same time concurrently, involved in a consultation process with employees of Barmingo who was also renewing their enterprise agreement so we were doing - the way the schedule was set up we were able to cover Barmingo and Henty concurrently. So in the context of Henty what we did was we met with employees of the mine, introduced ourselves to them and at this stage I was accompanied by Mr Wakefield, indicated to them the discussions we had, provided them with a copy of the proposed agreement, asked them to have a look at it and tell them if there were any problems, got them to elect union delegates and enrolled any that were not currently members of the union. That process was also applied to the mill and to the ESRs.

PN4045

Yes?---In the context of that preliminary set of discussions I identified that there were employees who were already members of the CFMEU. Following that set of discussions we went away and employees identified their concerns to the union about what they weren't happy with. We - I am sorry, that initial meeting would have been prior to the 16th to the 18th. I am not sure when they happened but during the 16th to the 18th we actually met with the employees who identified the concerns - that was the second phase of meetings - they actually identified the concerns they had about the proposed agreement.

PN4046

Right?---So following that the union met with the company within the space of a week or so of identifying the issues to the employees. I am sorry, within a week of the union identifying the issues from employees, we reduced that to writing, sent that to the company, the company responded with their responses and we got together to negotiate the issues. At that time I took copies of bulletins which are headed up and marked in these proceedings as CFMEU4 and distributed them throughout the mill, the mine and the ESRs. Following the - and that distribution of the bulletin was done at the same time as I went around and spoke again to the mill, the mine and the ESRs.

PN4047

Right?---Following that there were a number of issues which the company agreed to change in the proposed agreement. There were a number of issues which were agreed to be non-enterprise agreement issues which would be subject to further discussion. The enterprise agreement was varied and circulated to the employees. I went on leave and Mr Jones was conducting consultation with the work force during that period but as you are aware unfortunately he had an accident and couldn't complete that process so when I returned to work I went around and spoke further with the employees. The impression that I formed from the discussions with the employees and delegates was that the work force was generally content with the proposed agreement and therefore arranged for voting to occur.

PN4048

Yes?---The form of the voting varied depending on the section and the agreement which you will be given today as an amended agreement, or tomorrow - probably today - is the agreement which was endorsed by the employees. I should add that following the second visit which would have been the period the 18th to 20 June, in the discussions with employees in the mill one of those employees indicated that he was all - well, they all indicated - they all told me whether they were CFMEU or non-union because I approached them all to join the AWU - one of the CFMEU members requested that I contact Chris Hinds, which I did. Nine of the individuals identified themselves as CFMEU members. The others generally we enrolled although there were a couple that weren't prepared to sign up that were in no union.

PN4049

Right?---The discussion I had with the members of the CFMEU was that in our view the CFMEU was not entitled to enrol and represent their industrial instruments. It was the same discussion I had with Mr Hinds. They indicated that

they wanted to wait and see what the outcome of the proceedings are that are before you now and I indicated to them that I would find out what the proceedings were. I phoned Mr Hinds, told him our view that they had no rights to represent them. He indicated to me that there was an award application before the Commission. I then made attempts to get the award which verified the fact that there was in fact an application on foot. On the following visit after that I indicated to the employees that we accepted that they were in the position where they are between a rock and a hard place and it was agreed that we would sit back and see what happens in the current proceedings. So that is an outline, if you like, Commissioner, of what happens.

PN4050

That is your evidence?---I think it will want to be examined but that's essentially
- - -

PN4051

Yes, no, but you have concluded your statement?---Yes.

PN4052

Mr FitzGerald?---

<CROSS-EXAMINATION BY MR FITZGERALD

[4.06pm]

PN4053

MR FITZGERALD: Yes, Mr Flanagan - I think this is the second occasion I have actually had you in the witness box isn't it?---I believe you might have done with ABM, yes.

PN4054

You shouldn't present these occasions but any way, just to clarify the numbers you said that there were nine members of the CFMEU. Is that your understanding?---In the mill?

PN4055

Yes?---There was also at least one member of the CFMEU in the mine who we enrolled in the AWU.

PN4056

Do you know how many people in total in the mill - how many employees, sorry?---I believe it's four on each shift.

PN4057

Yes?---From the discussions I had with the guys there's a couple of floaters and I understand from discussions with the company that in total it's actually 20.

PN4058

So just to put the figures to you, if you could confirm this, as Mr Daly said and I think Mr Bukarica correctly pointed out, that there were four on each shift so four by four is 16, so that is increased by two swingers if you like, if we can call them that, one in the gold room and one as a process co-ordinator?---Yes.

PN4059

So it is 20 effectively who are there?---Yes.

PN4060

So you say you have had nine employees identified as members of the CFMEU?---Yes. Look, the employees are in a difficult position because they have got two unions holding themselves out as being able to represent their interests.

PN4061

Yes. All right. Do you know how many members the AWU actually have within the mill there at Henty?---I understand that we have five and there are two more coming.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4062

So effectively the membership profile - it is a bit hard to say but you are saying it is nine for the CFMEU?---Yes.

PN4063

Seven potentially for the AWU?---Well, look, the forms have been filled in, as I understand it. We have left membership books on site both at the mill and with all the delegates.

PN4064

Okay. You were about to say that you saw as problematic with competing membership there. Can you just expand on that?---Well, I mean the reality is that the AWU and the CFMEU and its predecessor, the FEDFA, not only in this State but in other States that I am aware of, not only metalliferous mining but generally, have a history of confrontation and disputation. That's the reality.

PN4065

The sentiments expressed by both - and quite confidently by both - Mr Hinds and Mr McLean was that we are both mature unions and we can work it out. What is your view of that?---If that was the case these proceedings wouldn't be happening, Mr FitzGerald.

PN4066

Okay. So would you agree with me there has been major proceedings at a State level, given these sorts of proceedings, and also major proceedings at a national level where the AWU have taken on the CFMEU and vice versa?---Yes, I'd agree with that.

PN4067

Okay. Do you have any knowledge of the CFMEU's rule case which occurred in the last few years?---I am aware of it.

PN4068

And the outcome of that?---My understanding of the application is that the CFMEU sought to expand its coverage to reflect the coverage of the AWUs rules. That initial proceedings before, I think it was a Senior Deputy President someone - I can't recall - found in favour of the CFMEU. That was appealed by the AWU to a Full Bench of the Industrial Commission and my recollection is that the Full

Bench of the Industrial Commission found in favour of the AWU appeal to the original decision. That was subsequently appealed I think to the High Court, although I am not certain of that, and that court confirmed the decision of the Full Bench of the Industrial Commission.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4069

Okay. So some lawyers have made a lot of money out of that case on both sides it seems. Mr Flanagan, just a couple more questions. Can you recall - and I can't recall the exact date myself - but around about 2000 when Pasminco Hobart, as it then was, was negotiating a new agreement and the CFMEU were the only union not to sign off on it?---Yes, I do.

PN4070

Can you elaborate on those circumstances?---At that time there was a lot of tension between the AWU and the CFMEU. The AWU was involved in a campaign of actively attempting to get back the members that we believed the CFMEU had stolen from us. There was a disagreement between the AWU and the CFMEU about what the wages outcome should have been from that agreement. The CFMEU were holding out for more. Ultimately that held the process up by a period of 12 months and the wages outcome, which we eventually got, was the same as the wages outcome that the other three unions had signed up to 12 months ago.

PN4071

Okay. Have you experienced similar circumstances in multi-union sites, particularly where you are competing with coverage with the CFMEU at other sites?---Well, in other jurisdictions where you have a problem with a union attempting to enrol your members, traditionally you have been able to make applications to industrial tribunals to seek orders about exclusive representation.

PN4072

Yes?---I have initiated those proceedings against the then FEDFA in the quarrying industry in New South Wales where they had attempted to enrol AWU members. They purported to - well, they relied on what they purported were their rules and an examination of their rules found that during re-registration proceedings they had misrepresented the nature of the proceedings before the registrar, that certain parties should have been involved that were not and in fact they had been excluded from that industry about 30 years beforehand and in that situation the then FEDFA withdrew its attempt to enrol our members and had their rules changed to reflect the findings of the 1950s.

PN4073

Yes?---I also initiated proceedings against the FEDFA at the then Pasminco Elura mine where the FEDFA had attempted to enrol AWU members and the New South Wales Industrial Commission issued a demarcation order in favour of the AWU to the exclusion of the then FEDFA.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4074

Okay?---In Tasmania we do not have such a facility available to us although the AWU has, on several occasions, sought to have such a mechanisms included in the State act through the Labor Party conference process. Unfortunately our comrades and brothers in the Labor movement do not appear to value that mechanism to the extent that the AWU does and it hasn't had the support to get endorsement.

PN4075

Right. You are aware of the CFMEU rules in terms of their coverage?---Yes.

PN4076

Right. And what do you say about those rules applying to the metalliferous sector?---Look, I think - it depends, you have to break it down into a couple of areas I think. In 1992, as I understand it, the then FEDFA was, in practical terms, demarked out of the industry except for Savage River mines and there have been no problems that I am aware of with the now CFMEU until a period of approximately two years ago when we became aware that the CFMEU had enrolled some employees at the Beaconsfield mill. In terms of their rules if you say that the 1992 exclusion was not intended to remove the organisation from the industry then they arguably would have the capacity to represent the majority of the employees underground and the majority of employees on the surface arguably.

PN4077

Right?---Certainly the FEDFA rule was used to rout the AWU, as I understand it, out of the brown coal sector. Because of the nature and breadth of the coverage, their rules had the capacity to cover most of the work and over a period of time the FEDFA moved in.

PN4078

So how did you see that to the AWU's rules and also the extent of traditional coverage?---Sorry?

PN4079

So where do you see that in terms of a conflict between the current AWU rules and traditional coverage and the CFMEU rules?---Okay. If it was determined that the CFMEU was within its rights to enrol employees in the mill at Henty, in the mill at Beaconsfield, in the mill at Savage River if that's where the Savage River people are, then the expectation of the AWU is that the FEDFA would use that base to begin an expansionous program to infiltrate other sites on the surface and underground in metalliferous mining in Tasmania.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4080

Okay. Would you agree with me that in terms of enterprise discussions it is more problematic with a multi-union site than a single union site?---It only becomes problematic if you have got two unions which are competing and you have a testosterone test.

PN4081

Okay. So would you call it - I think Mr Wakefield called it one-upmanship. Would you agree with that?---Yes, that's probably a better way of expressing it actually.

PN4082

Okay. I think we all knew what you meant but that might be better understood. So it is specifically so. So in terms of Henty future negotiations, if the CFMEU award were to be granted, obviously AWU would seek an interest in that. How would you see - what is your view of any future negotiations with two unions competing for the same coverage?---It is going to make it messy. I mean the CFMEU, and the FEDFA before it, have always portrayed the AWU as a right wing boss' union run by shearers and in return the AWU sees the CFMEU as deceitful as the name it gives itself in that the name does not genuinely reflect, in our view, the industries that that organisation covers. So what I am saying is there's going to be rivalry and each union will be attempting to gain the loyalty of those employees.

PN4083

Okay. So you have been an advocate in this industry now, with your New South Wales experience, for how many years?---Approximately 15.

PN4084

Okay. So in your experience what do you think this would do if the award were granted to the industry generally in Tasmania?---Well, I think there are two things that happen. One, we would hope that the enterprise agreement would be registered because that agreement has been endorsed by our members. If the enterprise agreement is registered and the award is approved then the enterprise agreement will override the award. The award in a practical sense will have no application but the making of the award will give the CFMEU a legitimacy and status in the industry which otherwise would not be the case.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4085

Right. And what do you see the future implications of that?---Well, you know, the reason why the 1992 demarcation order was given was in response to issues that arose out of the Renison tin mine, as I understand it. Tasmania is a small community and the mining industry is a small community. The majority of mining employees are aware that the only union which represents industrial interests of employees in metalliferous mining is the AWU and much of that view is on the basis of what happened with Renison.

PN4086

Okay?---So if it then emerges that the CFMEU does have legitimacy, has established an award at Henty, then it's reasonable to expect that at least some other employees in the industry may wish to achieve a similar outcome through the CFMEU.

PN4087

And I think you have dealt with many of these awards. Have you dealt with the following enterprise awards; the Temco enterprise award?---yes, I have.

PN4088

The Goliath award - I don't think it is called that - the Australian Cement award, have you dealt with that?---Yes, very sort of much at a distance.

PN4089

Okay?---We have certainly sort of made applications but I haven't been involved in the negotiations for that particular award.

PN4090

The Pasminco Rosebery mining award I think it is still called; have you dealt with that?---Yes, we take an active interest in maintaining that award and the Temco award.

PN4091

Right. And the Pasminco Hobart smelter award; you have dealt with that?---Yes. Again we take an active interest in maintaining that award.

PN4092

Right. And have you dealt with a recently made enterprise award of the Commission in the impact fertilisers award?---Yes.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4093

Right. Would you agree with me that all those awards deal with the totality of the operational work forces at those particular sites?---Yes, I would.

PN4094

Okay. How would you see - if the award application of the CFMEU were granted, how would you see then the award applying to one discrete section, being the mill only, at Henty?---Look, I don't think it would. Ultimately if that was approved my view is that the CFMEU would say to the rest of the employees, the AWU told the blokes in the mill they couldn't join. They were wrong. We can represent you. Join up. And ultimately the award would be expanded to apply to the Henty site.

PN4095

Right?---That would be our view.

PN4096

Would you agree that if this award were granted it would be against the orderly industrial relations in Tasmania? It would be adverse to it?---Our view is if it is granted it will lead to competition. That competition will be fairly dramatic. Certainly the AWU will fight to maintain its membership. The CFMEU will fight to encroach upon our membership.

PN4097

Would you agree with me that it could have potentially adverse implications for the rest of the industry in the nation?---Well, look, I think my understanding of the history and my involvement with disputes with the former FEDFA in New South Wales is that prior to 1992 there were issues in the Tasmanian industry. Those disputes and that disruption and altercations were brought to an end by the 1992 demarcation order. Prior to that there was stoppages, there was disruption

and there were altercations between officials over competition between membership between the AWU and the then FEDFA.

PN4098

Right. Would you agree with me that if the CFMEU by their application were given a foothold in the industry in the metalliferous sector that that would be very much against the overwhelming trend through the rest of the country?---Look, I think the evidence of Mr Hinds was that his view is that the CFMEU, through the FEDFA rule, has the right to represent people in the mill and has also got the right to represent a number of occupations underground so it is pretty clear from that evidence that - catch and kill and good luck to whoever's got them.

**** ROBERT JOHN FLANAGAN

XXN MR FITZGERALD

PN4099

Would you agree with me that the members which the CFMEU currently hold at Beaconsfield, that the CFMEU cannot provide - because of the constraints provided by the Federal act - any useful representational role for those employees?---Yes, obviously I have that view.

PN4100

Right. Would you agree that that would apply also to Australian Bulk Minerals?---Yes, I'd agree with that.

PN4101

Okay. I have no further questions, Commissioner. Could I also just suggest that maybe it is an appropriate time to adjourn. I think we discussed this but - - -

PN4102

THE COMMISSIONER: Yes. Mr Bukarica, what do you say. I mean - - -

PN4103

MR BUKARICA: I am not going to be very long, Commissioner. There is only probably three or four questions I want to put to Mr Flanagan?---I know I'm the witness, Commissioner, but my view is it would be better if we could conclude this phase and then we have only got the one witness in the morning.

PN4104

I was hoping the same.

PN4105

MR FITZGERALD: Well, if it is three or four questions, my next appointment can wait. I must admit I was just - I think the usual sitting hours is 4.30 or thereabouts.

PN4106

THE COMMISSIONER: Well, we are pretty flexible?---Let's see how we go but if it goes past 4.30 perhaps - - -

PN4107

Sorry, this is going to sound a bit messy on the transcript. Well, I would like to conclude this witness if we could. If you need to excuse yourself, Mr FitzGerald, that is fine. You have concluded your cross-examination so it is Mr Bukarica.

PN4108

MR FITZGERALD: Yes. Okay. That is fine.

<CROSS-EXAMINATION BY MR BUKARICA

[4.26pm]

PN4109

MR BUKARICA: Mr Flanagan, are you legally trained?---No.

PN4110

But you have got considerable experience in industrial relations?---Yes.

PN4111

Under the Tasmanian Industrial Relations Act, is the position that you can simply register a Federal union under the State system?---If you are registered federally then by virtue of that Federal registration, that becomes your effective registration in a State jurisdiction.

PN4112

Yes. And is that the case of the AWU?---Yes, that's correct. Yes.

PN4113

And is it your understanding that that is the same position for the CFMEU?---Yes, that's my understanding.

PN4114

Yes. So in effect the State act confers upon the Federal jurisdiction the organisational issues?---In the context of the rules it does that, yes.

PN4115

Yes. So issues like - - -?---When I say the rules I mean the constitutional rules.

PN4116

Yes. So in terms of issues like rule changes and even exclusive representation orders, they are matters that are determined at the Federal level?---Partially. The traditional structure within the State system has been that you obtain the rules registration. You then, having got that rules registration, make application for award interest for the awards where you say, one, that you have the members; two, that you have the rules; three, that it's not against the orderly conduct of industrial relations for you to be granted that award interest. In being granted award interest the effect of that is to say that you legitimately represent employees within the scope of that particular award.

PN4117

Based on what you have said would it be fair to say that the issue of organisational coverage is really, in Tasmania, a matter that is determined federally?---Only that first part. The second part is how the State Commission then applies it to the award.

PN4118

Yes. But in terms of union rules and the like, you would accept that at least that much is determined federally?---The constitutional rules, yes.

PN4119

And you are aware, are you not, there has been fairly significant changes to Federal legislation since the early 1990s?---I accept there has been very significant changes to Federal legislation by introduction of the Workplace Relations Act.

PN4120

Yes. And when the Vice President Moore order was issued in 1992 it was under the then Industrial Relations Act 1988. Is that your understanding?---Yes, that's correct.

PN4121

And since then we obviously had the Workplace Relations Act 1996 introduced?---I thought it was 1997 but yes, I accept that's correct.

PN4122

Yes. And do you say that the issues of organisational coverage are dealt with in the same way as between those two pieces of legislation?---No, I do not.

PN4123

Do you accept that under the Workplace Relations Act now there is a strong emphasis on friendly association and indeed union competition?---I am not sure. I haven't researched that issue. Yes, that's all I can say to you on that.

PN4124

Okay. Now, section 118A orders or their equivalent, do you have any understanding of them under the Federal system as it stands?---Under the current act? No.

**** ROBERT JOHN FLANAGAN

XXN MR BUKARICA

PN4125

I see. Would you accept that it is now, or do you have any basis to disagree with me that it is now much harder to obtain a 118A order or its equivalent?---I don't know.

PN4126

Don't know? Now, in relation to the FEDFA ruling you have referred to a couple of times, is that an industry or a craft rule?---It's a craft rule.

PN4127

And are you aware of any relevant limitation upon that rule in respect to particular industries?---Look, the rules of the FEDFA and the arguments with the AWU have littered industrial tribunals with determinations around that issue.

PN4128

Are you familiar with the High Court decision re Coldham and Others?---No, we will have a upon it tonight.

PN4129

And in terms of the existing section 118A order, do you accept that that order does not contain a relevant restriction in terms of employees at Henty Gold?---Our view is that what the Commission sought to do with that section 118A order was to remove the FEDFA from Tasmania's metalliferous mining industry with the exception of one site and that is the Savage River mine. At the time that that order was given there was no Henty Gold Mine in place.

PN4130

Do you know why, if that is the case, the AWU didn't apply for or why the Commission didn't grant simply an order which says the AWU shall have the right to recruit in metalliferous mining to the exclusion of the FEDFA?---No, I am not aware of why it wasn't done that way but I can indicate, Mr Bukarica, that if we keep having this trouble we will be making those applications if there is jurisdiction to do it.

PN4131

Yes. And in relation to the decision - section 118A decision - have you recently referred to or read VP Moore's - both his 1992 or 1994 decisions?---I've read one which was issued after the FEDFA had become part of the CFMEU so I am not sure which one that is.

**** ROBERT JOHN FLANAGAN

XXN MR BUKARICA

PN4132

Do you recall Vice President Moore being very particular about accurately reflecting the nature of the agreement reached between the ACTU unions over the issue?---I don't recall the ACTU situation being raised but what I recall being raised in the decision that I read was that the CFMEU and AWU had both put in proposed orders, as it were, and that he didn't accept either of them reflected the earlier decision in relation to the 1992 decision so he issued the order in that form.

PN4133

Just one or two more questions and I will let you be an advocate again?---Sure. It's better on that side of the table, Mr Bukarica.

PN4134

It is. I have been in the same position. I prefer this side. The situation - you have made mention of discussions with CFMEU members at Henty Gold?---Yes.

PN4135

Are you aware of whether any of those members were previously members of the AWU?---Yes. There was at least one of the employees in the mill who had been a member of the AWU at Renison.

PN4136

I see. But at the time he joined the CFMEU was he a member of the AWU?---At Henty?

PN4137

Yes?---Not that I am aware of.

PN4138

And is it the case that none of the other CFMEU members were, at the time of joining the CFMEU, members of the AWU?---My assessment of the mill work force is that, with the exception of I think two employees, none of them had any previous experience in the metalliferous mining industry at all.

PN4139

Yes. Now, the position as well is that prior to June of this year the evidence is somewhere between seven and 12 AWU union members on site?---I only know that at the time that I inquired it was 10.

**** ROBERT JOHN FLANAGAN

XXN MR BUKARICA

PN4140

I see. But as Mr Wakefield has explained since then it has considerably increased?---Yes, that's correct.

PN4141

Nothing further.

PN4142

THE COMMISSIONER: Yes. Thank you, Mr Flanagan. You don't wish to re-examine yourself I assume?---No, I don't think so. Thank you, Commissioner. I don't know how I would do that.

PN4143

You are excused.

<THE WITNESS WITHDREW

[4.35pm]

PN4144

THE COMMISSIONER: We will just go off the record for a moment.

OFF THE RECORD

RESUMED

[4.40pm]

PN4145

THE COMMISSIONER: We will resume at 10 am tomorrow.

ADJOURNED UNTIL FRIDAY, 6 AUGUST 2004

[4.40pm]

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