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**AUSCRIPT**

## TRANSCRIPT OF PROCEEDINGS

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O/N 2096

### TASMANIAN INDUSTRIAL COMMISSION

**COMMISSIONER J.P. McALPINE**

**T No 9925 of 2001  
T No 12212 of 2005**

### COMMUNITY SERVICES AWARD

**Applications pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Municipal, Administrative, Clerical and Services Union to vary the above award re wage rates - second instalment - work value changes - Part Heard and Part II, Clause 2; Part III, Clause 1; Part IV, Clause 6; Part V, Clauses 2 and 3.**

**HOBART**

**10.30 AM, TUESDAY, 6 SEPTEMBER 2005**

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

**HEARING COMMENCED**

**[10.30am]**

PN1

MR I. PATERSON: I appear for the Australian Municipal, Administrative, Clerical and Services Union.

PN2

MR C. STRINGER: I appear for the Health Services Union of Australia, Tasmania No 1 Branch.

PN3

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry. Thank you, Commissioner, for changing the time. That was actually my request.

PN4

THE COMMISSIONER: Thank you. Now, we have got some work to do.

PN5

MR PATERSON: Thank you, Commissioner. I will walk you through these. There is one limit that we will make on the way through, but otherwise, subject to Mr Watson's advice, I believe that we have consent on these changes. I will go through them in the order that they are in the application, making reference to the award as it exists at the moment on the way through. The first of the variations to Part II, clause 2, paragraph (c) is to correct a typographic - couple of typographical mistakes in subparagraph (ii). That currently reads:

PN6

*Where the period of engagement of a casual employee is tied to a specific project ...(reads)... initial term, the employer shall offer the employer -*

PN7

that should be "the employer shall offer the employee" -

PN8

*permanent employment for a fixed term -*

PN9

and that should be "or a fixed term". That is what this part of the application seeks to make; those two minor amendments. The second part seeks to put not only the 2005 work value variation into the award arising out of T Number 9925, I believe, 9925 of 2001, which puts in the rates that would apply following the second step of that decision of yours last year on top of this year's safety net. It also seeks to include the schedule that would apply from 1 October next year so that in the event that there are any shifts in the landscape, the full effect of the decision is embodied in the award

and not open to being left behind at some stage should Federal changes overtake this variation.

PN10

It is just a matter of security for the union to make sure that we have in this - in the award itself that part of the original decision, and that is our intent in that. It is important that I put on the record that the proviso which is in at the end of paragraph (a) of that, that any State wage case or any variation to the general orders of awards in this State that applies from October this year and before October next year - effectively, any 2006 wage case - would be added to this total and not in lieu of in any way. That is the purpose of that part of this application.

PN11

The third part of the application is to amend the travelling allowances for an employee who uses their own motor vehicle. These rates, I think they have only been varied once since they were made, and that was in 2000. So they are being varied again here. I don't have with me the application - the T number that included that variation in 2000, but reference made to that was through the - the rates were last varied to take the increase up to including the June quarter 2000. I have attached with this application the formula for calculating the June 2000 with the June 2005 increase, which produces a 12 per cent increase over that five-year period in the CPI figures.

PN12

The variation at IV is the one in which we have not yet reached a consent position in respect of the variation to the definitions. There are a number of problems with the definitions in the shift work clause as it occurs at the moment. I would say that they are not issues that have given rise to any disputes that I have had to deal with. However, I believe there is some overlap between what may be an afternoon shift and what might be a night shift. If a shift is less than eight hours - a part-time shift - and the award allows for a shift to be a minimum of four hours I believe. A shift that started at 4 and finished at 8 could be both - could be either an afternoon shift or a night shift.

PN13

The other issue is that the current definition of a dayshift is at odds with the definition of day work, and the application that is drafted by the ASU was intended to bring day work into line with dayshift. However, I am advised by Mr Watson that there isn't consent on that matter at the moment. So we will be seeking to set that aside. However, there is a further variation which is given effect in the application that I would wish to proceed with, and that is at paragraph (d). The current paragraph (d) contradicts paragraph (c). Paragraph (c) says:

PN14

*Ordinary hours of shifts may be rostered Monday to Sunday inclusive.*

PN15

And then provides for penalty rates for weekend and public holiday shifts. (d) says that:

PN16

*Ordinary hours shall be worked between midnight Sunday and midnight Friday -*

PN17

and that hours outside that will be overtime, and that I don't believe was the - that produces a contradiction there. So I would like to amend Part IV of our application to delete the provisions at (a), (b) and (c). For the sake of clarity, I think probably just to proceed with paragraph (d). So just 2 and then delete clause 2(d) and insert a clause 2(d) as in the application. I think that would clarify and be the easiest way to give expression to what we wish to proceed with, which just varying clause 2, shift work, paragraph (d). The fifth part of the application - and Mr Stringer has drawn my attention to a typographical mistake in this is - the fifth part of the application is to give effect to the reasonable overtime standard provision. The third paragraph should be (ii).

PN18

THE COMMISSIONER: Yes.

PN19

MR PATERSON: Otherwise that is the model clause produced by the Commission's decision on reasonable hours for overtime. Subject to any other clarifications or any explanation further you require, I would submit to you that these variations are for the most part either clarifying the intent in the operation of the award, except in respect of part 2 of our application, which is to further give effect to the decision in 9925 of 2001. I would submit to you that they are in accordance with the principles the Commission adopts in the making and variation of awards and not contrary to the public interest, and ask that you approve them.

PN20

THE COMMISSIONER: Thank you.

PN21

MR STRINGER: Mr Commissioner, I just rise to give support to the submission made by Mr Paterson. If the Commission pleases.

PN22

THE COMMISSIONER: Thank you. Mr Watson?

PN23

MR WATSON: Thank you, Commissioner. Just in relation to each of the matters, the part 1 is a consent matter given that it is simply a typographical correction. The second part to do with the wages I think is a sound approach to it, and that is by consent as well. In relation to the third matter, which is the vehicle allowance, those calculations have been checked and that is in accordance with the normal adjustments for those types of expenses, so that is consent. The fourth issue which Mr Paterson alluded to, there are some issues around that issue about redefining night-shift, and the parties have agreed to have some further discussions on that and hopefully come back to the Commission with some consent position on that one.

PN24

The second part, which is Mr Paterson's proposed amendment to (d) of shift work is consent, and also Part V which is the standard reasonable overtime clause as approved by the Full Bench of this Commission is consent as well. So on that basis, Commissioner, those are our submissions. We don't believe that the application offends the principles or the public interest. Is it first full pay period on or after today? Is that the - - -

PN25

MR PATERSON: I am happy for that to be the operative date, except for the wages clauses which have their own operative dates embedded within them

PN26

MR WATSON: Yes, sure. Yes. On that basis, Commissioner, there is consent.

PN27

THE COMMISSIONER: Okay. So the only thing that we don't have consent on is the definitions of night-shift?

PN28

MR WATSON: Yes, which is the Part - - -

PN29

THE COMMISSIONER: Part IV.

PN30

MR PATERSON: Part IV, point number 4 of the application.

PN31

THE COMMISSIONER: Yes.

PN32

MR WATSON: Which is the first in (a) which was effectively the change.

PN33

THE COMMISSIONER: The definitions, yes.

PN34

MR WATSON: Yes.

PN35

THE COMMISSIONER: But you are on your way to resolving that?

PN36

MR WATSON: Yes.

PN37

MR PATERSON: We will continue our discussions.

PN38

THE COMMISSIONER: Well, look, I am comfortable to obviously approve it up to the point - now, I don't know if you want to wait until you have full agreement before we enact this or if you want it to be the first full pay period after today - or in line with whatever the schedule is.

PN39

MR PATERSON: I would be suggesting that we proceed to process what we have consent on today and set the other matters aside. There are a couple of other matters that we will need to continue discussion on which I think we were probably going to try and roll those up into a general discussion, which may take some time.

PN40

THE COMMISSIONER: Yes.

PN41

MR PATERSON: It would be the shift work and two of the other matters that we have had discussions on over a number of years. They are proving difficult to reach a common position on, so I wouldn't want to hold these matters up subject to those being settled.

PN42

THE COMMISSIONER: Okay. All right, well - - -

PN43

MR PATERSON: So to proceed with this application as amended  
- - -

PN44

THE COMMISSIONER: As amended.

PN45

MR PATERSON: - - - which is to only proceed with the variation to Part V, clause 2, shiftwork (d) in that part of the application, which is point 4 of the application. That is the only variation we would be seeking.

PN46

THE COMMISSIONER: Okay.

PN47

MR PATERSON: So subject to that amendment to the variation - to the draft order, I would - the application as provided to you, we would seek to proceed.

PN48

THE COMMISSIONER: Okay. Are you comfortable with that?

PN49

MR WATSON: Yes. I am, Commissioner, yes.

PN50

THE COMMISSIONER: Yes, okay. Well, then let us agree to do that. We will approve it as you have suggested and I will await your return on the matter or matters outstanding. Thank you.

**ADJOURNED INDEFINITELY**