

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

- T No. 2399 of 1990 **IN THE MATTER OF** an application by the Tasmanian Public Service Association to vary nominated public sector awards
- T No. 2511 of 1990 **IN THE MATTER OF** an application by the Federated Engine Drivers' and Firemen's Association of Australasia, Tasmanian Branch to vary the Boiler Attendants Award
- T No. 2504 of 1990 **IN THE MATTER OF** an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the North West Regional Water Authority Employees Award
- T No. 2506 of 1990 **IN THE MATTER OF** an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the Professional Engineers Award
- T No. 2508 of 1990 **IN THE MATTER OF** an application by the Hospital Employees Federation of Australia, Tasmania Branch to vary nominated public sector awards
- T No. 2605 of 1990 **IN THE MATTER OF** an application by the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch to vary the Miscellaneous Workers (Public Sector) Award
- re structural efficiency
principle

T Nos. 2467, 2469, 2470
2471, 2472, 2474, 2475,
2476, 2477, 2478, 2479,
2480 and 2481 of 1990

IN THE MATTER OF applications by
the Tasmanian Public Service
Association to vary nominated
Public Sector Awards

T No. 2653 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Ward Clerks

T No. 2655 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Maintenance Staff

T No. 2656 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Trade Instructors

T No. 2654 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Laundry Machine Operators

T No. 2657 of 1990

IN THE MATTER OF an application by
the Health Services Union of
Australia to vary the Hospital
Employees (Public Hospitals) Award

re Attendants

T No. 1844 of 1989

IN THE MATTER OF an application by
the Tasmanian Teachers Federation
to vary the Teaching Service
(Teaching Staff) Award

re recreation leave allowance

T No. 2264 of 1989

IN THE MATTER OF an application by
the Secondary Colleges Staff
Society to vary the Teaching
Service (Teaching Staff) Award

re recreation leave allowance

T No. 3200 of 1991

IN THE MATTER OF an application by
the Tasmanian Public Service
Association to vary the Inland
Fisheries Commission Staff Award

re Coxswain's Certificate
Allowance

FULL BENCH

PRESIDENT
COMMISSIONER GOZZI
COMMISSIONER WATLING

Hobart, 6 October 1992
continued from 29/9/92

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Well, who wishes to go first? Are there any changes in appearances, by the way?

MR M. CLIFFORD: Yes, Mr President, MARTIN CLIFFORD, appearing on behalf of the Construction Forestry Mining Employees Union.

PRESIDENT: Yes, thank you, Mr Clifford.

MR WILLINGHAM: Mr President, if the commission pleases -

PRESIDENT: Mr Willingham?

MR WILLINGHAM: - MR MICHAEL STEVENS appears with me today in lieu of Mr Jarman.

PRESIDENT: Yes, thank you.

PRESIDENT: Just before you go, Mr Warwick, does the organisation you referred to, Mr Clifford - sorry, Mr Willingham - the organisation you referred to does that still exist.

MR CLIFFORD: In the state commission, Mr President, at this point in time, Mr President, yes.

PRESIDENT: Federally it has been - it has had a name change.

MR CLIFFORD: As far as I understand proceeded through the state commission as soon as possible.

COMMISSIONER WATLING: Well, is not it out of time?

MR CLIFFORD: Well, not as far as I know, Mr Commissioner.

COMMISSIONER WATLING: Well, you might check it.

MR CLIFFORD: Thank you.

PRESIDENT: Mr Warwick?

MR WARWICK: Thank you, Mr President members of the bench. The last time that the matters were before you the proceedings concluded with a request from the parties for an adjournment to consider, amongst other things, the question of the scope of the four proposed awards in respect to the public service as a whole, and we understand that one of the purposes of this mornings proceedings is to continue submissions on that subject.

PRESIDENT: We are - I should have alerted parties to the format. We will deal with the report back on the Memorandum of Understanding and other matters which were subject to matter T2399 and associated matters, then we will go to the title and scope applications later as separate matters.

MR WARWICK: And, Mr President, just if I may clarify, where do you anticipate the report on conditions of service?

PRESIDENT: Now.

MR WARWICK: Now.

PRESIDENT: During the course of this - this particular matter -

MR WARWICK: First up this morning?

PRESIDENT: - that has been called. Yes.

MR WARWICK: Well, in respect to the question of conditions of service, both the unions and the parties to the discussions proper met yesterday afternoon. There are a series of propositions put by the unions in relation to the question of process. And I do not want to go into detail in relation to the propositions that have been put because obviously we have not had a response from the government as yet in relation to those.

There is a meeting scheduled this afternoon for all unions involved, at 2 o'clock where at the proposals that have been put will be put into writing, at least in part. And through that process the government will be able to know exactly what it is we are talking about. And on the basis of the discussions that have taken place we would see that there is a need simply to continue with the process. We believe that yesterday's discussions were fruitfully and we clearly have not - know what it is the business at hand for today and, indeed, we would simply seek to be able to have an opportunity to press on with it.

PRESIDENT: Very good.

MR WARWICK: The issue is, to some extent, a little confused in respect to what is contained in the Memorandum of Understanding in respect of conditions. Section 6 of that document, the memorandum, has words in respect to what will happen in relation to conditions of employment and the attachment, too, deals directly with conditions of employment as well.

We would say, in relation to that, that we fully intend to do what is set out in the Memorandum of Understanding in relation to conditions of employment, and we do not believe that that

is particularly inconsistent with the proposal that has been put by the unions and we hope that it will continue to not be inconsistent. But I think it is worth mentioning that there are words in the document which we have agreed to.

PRESIDENT: Which, do you see as cutting across the potential for a consistent public sector wide -

MR WARWICK: No, not -

PRESIDENT: - set of conditions of service?

MR WARWICK: Not at - there is no - well, I guess there might be potential for that but we certainly would be seeking to ensure that the two matters are consistent in the way that they are processed.

PRESIDENT: Yes. Well, of course, the - you will have to reach agreement with the employer on that and then be able to satisfy this bench that that consistency has been -

MR WARWICK: Certainly.

PRESIDENT: - maintained.

MR WARWICK: If I could, before I sit down, Mr President, clarify which matters will be dealt with in which order. There are - there seems to me to be the question of the scope of the four awards -

PRESIDENT: Yes.

MR WARWICK: - and also the question of the memorandum and the scope of the health award, generally. Will they be dealt with in that order, bearing in mind that there are a range of people who are not -

PRESIDENT: Yes. Well, we had planned to hear the report back on those issues going to conditions of service and the possibility, I understood, of some - some parties seeking confirmation as to the bench's view of the Memorandum of Understanding. That would have been dealt within this report back process. Then the four stream applications for establishing title and scope, followed by the health industry title and scope application.

MR WARWICK: Right. Well -

PRESIDENT: And they would be dealt with separately.

MR WARWICK: If I take your words to mean that the question of the commission's attitude to the memorandum is to be dealt with now, I seek leave for Mr Rees to address you on that particular aspect, if I may.

PRESIDENT: Yes. It is granted. Mr Rees?

MR REES: Yes, it has. At the wind up of the last session, Mr President, the atmosphere of some slight confusion because of the intermix of the four main stream awards plus the application for a new Health Industry Award, we would like some finality in respect of - or some statement or whatever from the bench in respect of the acceptance of understanding from the bench that the parties now have reached an agreement, all of the parties that have negotiated with the government in respect of the Memorandum of Understanding, and that we have the blessing of the bench to go away and do what the memorandum states and that is to build a draft health industry award that will be presented to the commission when that task is completed.

And I think it was indicated by Mr Jarman and myself, on the last occasion, that we would hope that to be around about Christmas or early next year. Now, if that is done today that completes now all of the submissions and arguments and torments that we have been through in respect of the development of that memorandum and will allow the parties to go away and deal with those matters that are contained therein.

We do understand, and I put it to the commission during my main address in respect of support of the memorandum, that there are matters contained therein that cuts across the jurisdiction of the bench and of this commission. So, obviously you cannot, and we do not expect the full bench to: yes, we as a full bench endorse the memorandum tendered by the HSUA, but we would like some understanding to flow from the bench in respect of an endorsement to deal with those matters that fall within the jurisdiction of the bench and allow the parties to proceed as they desire to, as speedily as possible to develop all those matters contained within the Memorandum of Understanding.

I will rise later on to deal with the title and scope of the Health Award because we are seeking to further amend both the title and scope, sir.

PRESIDENT: Yes, thanks Mr Rees. Does anybody else want to address the matter raised by Mr Rees?

MR STEVENS: Thank you, Mr President.

PRESIDENT: Mr Stevens.

MR STEVENS: Yes, I would just like to say, on behalf of the Minister, we would endorse that approach. A statement from the bench endorsing the concept of the Memorandum of Understanding allowing the parties to go away and negotiate

the detail on the clear understanding, of course, that everything would come back to this commission for a final decision to be made here, but I think it would be very useful to have an ambiguous statement to that affect to allow the parties to go and commence the negotiations on the detail. If the commission pleases.

PRESIDENT: Yes. In respect of that matter that you have raised, Mr Rees and supported by Mr Stevens, we will put on record the fact that we note the contents of the Memorandum of Understanding, and as Mr Rees has indicated it is not rally within the purview of the bench to endorse the - many of the items that are contained in that agreement. We encourage the parties to continue their negotiations to develop and award the details of which can be submitted to the commission for consideration at a later date to determine whether or not the award shall be made at all and in what form.

Does that - does that clarify the position? We should, perhaps, add that we do not want to create unnecessarily the expectation that the Award will be made. The bench will want to have a good look at what is contained in the agreement before that endorsement will be finalised.

PRESIDENT: Very good.

MR REES: That is no different from any other award application, is it?

PRESIDENT: Not really.

MR REES: That attitude?

PRESIDENT: Not really, Mr Rees.

MR REES: You know, we do not want to be sold a double dooker, in other words, Mr Chairman. We do not want to go away and spend yet another six months in developing a better understanding and workplace reforms and translations and all the rest of it to come back here and be told well you have wasted your time.

PRESIDENT: Yes, well -

MR REES: We understand -

PRESIDENT: - well, similarly -

MR REES: - I understand what you say, that you will give -

PRESIDENT: - similarly -

COMMISSIONER WATLING: That is the risk you take.

MR REES: - the framework of an application to develop a new health award no less scrutiny than any other application -

PRESIDENT: That is quite so.

MR REES: - that comes before this commission.

PRESIDENT: That is quite so, Mr Rees.

MR REES: Thank you, Mr President.

PRESIDENT: We do not want to, in terms similar to what you have just expressed, the bench cannot accept at the moment that there will be an award because we do not know what will be contained in it.

COMMISSIONER GOZZI: It would be quite wrong, Mr Rees, for us to create expectations - an expectation that it will be automatically endorsed by the bench. Against the background of what has happened thus far we have rejected the initial approach to do something different in health and we need to be convinced that whatever you come forward with is something that we can endorse and in the appropriate way having regard to all the elements that we would have regard for.

MR REES: Fine. Thank you.

COMMISSIONER WATLING: I just endorse the comments of the bench. I think it must be pointed out that it would be quite improper and inappropriate for us to make some determination at this stage on an award that we do not know anything about. But I think the indication is there that you should continue your discussions. We will examine it at the time when you finish your discussions and get the same treatment as any other application.

MR REES: Thank you, Mr Commissioner, Mr President.

PRESIDENT: Thank you. Were there any other comments in relation to the first matter that Mr Warwick raised?

MR VINES: Just on -

PRESIDENT: Mr Vines.

MR VINES: - the conditions matter, do you mean, sir?

PRESIDENT: Yes.

MR VINES: Only that the combined public sector unions have put a proposal to government in relation to progressing of conditions matters and that will be continuing this afternoon and later this week, and that we do not expect that we - well,

we do not need further action from the bench in relation to conditions matters at this stage.

PRESIDENT: Very good. Yes, thanks, Mr Vines. No other comments on that issue? Have the parties any view as to when we should reconvene for the purpose of dealing with those issues?

MR VINES: The -

PRESIDENT: Two weeks, three weeks?

MR VINES: - proposal that we put to government yesterday does have - includes some time lines on it, sir, which at this stage we are talking about a period of four weeks for trying to include an initial set of negotiations, so we would say that sometime after four weeks hence. But our preference would be to, once that first round of discussions was over, was to continue negotiations to conclude the remainder of it. So, possibly if the bench can set aside time for report back in about five weeks time and then we would request further dates at that stage.

PRESIDENT: Right.

MR VINES: That is in relation to conditions matters.

PRESIDENT: Yes.

MR VINES: There may be other submissions on scope and what not, but we would believe that there is potential for the CPSU and the government to have those negotiations over the four week, four to five week period.

PRESIDENT: Very good. Yes, thank you. Mr Willingham do you have a comment on that matter?

MR WILLINGHAM: Yes, thank you, Mr Commissioner. Mr President and members of the bench, I would prefer a report back hearing earlier than five weeks. We are not, as I said on the last occasion, overly optimistic of the outcome of this round of proceedings which were set in train as a result of yesterday's meeting with the combined public sector union. We have undertaken to embark upon a process with them to see what counter proposals they have to put and whether those counter proposals would influence the position that we have adopted.

But, as I discussed I think with Mr Commissioner Gozzi on the last hearing our pessimism was not being heightened -

MR....: Oh, Clive.

MR WILLINGHAM: - and, indeed, Mr President members of the bench, since the without prejudice documentation is now in the

public domain, courtesy of one of the organisations before you, it might be useful if the bench itself has copies of all relevant documentation by way of information. If I could tender those for the convenience of the bench. I believe it is correct to say that all other organisations before the commission having an interest in these proceedings already have copies.

PRESIDENT: Yes, thank you.

MR WILLINGHAM: If I can just explain further, Mr President members of the bench, that is the documentation which is currently before the relevant unions acting the umbrella of the combined public sector unions.

PRESIDENT: Good. Have you made it - have you tendered any other exhibits?

MR WILLINGHAM: I certainly hope not, Mr President.

MR VINES: Yes, W.2. was one of yours.

MR WILLINGHAM: Its shelf life has not expired either, Mr President.

PRESIDENT: We will - we have changed numbers so we will go to MATSSA.2. - mark this exhibit MATSSA.2.

MR WILLINGHAM: If the commission pleases. If I could just continue, Mr President?

PRESIDENT: Yes.

MR WILLINGHAM: We still believe that because of the frustration which the minister's representatives have experienced in trying to come to grips with these issues of conditions of employment, and in order to ensure the commission can play its part in expediting the process, we would prefer that a report back be scheduled inside the time line suggested by Mr Vines, possibly in conjunction with other scheduled hearings of these overall matters or, perhaps, as a discrete report back date. We would suggest within a fortnight.

PRESIDENT: A fortnight?

MR WILLINGHAM: Yes.

PRESIDENT: Very good. The documents is headed: 'Draft without prejudice'. Do we just delete the 'without prejudice'?

MR WILLINGHAM: Look, the documentation is that which was presented to the relevant organisations, Mr President. It was

not the minister's representatives who put it into the public domain, but since it is there that is an inescapable fact of life, I think the 'without prejudice' part of it can now only be read as the position advanced by the minister.

PRESIDENT: Very good.

MR WILLINGHAM: If the commission pleases.

PRESIDENT: We will go off the record for a moment.

OFF THE RECORD

PRESIDENT: This particular matter then will be adjourned until 11 November at 10.30. That concludes today's hearing of that - those applications.

HEARING ADJOURNED