

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

**T. No 665 of 1987**

**IN THE MATTER OF** an application by  
the Tasmanian Public Service  
Association to vary nominated  
public sector awards to reflect  
movement in the Consumer Price  
Index for Hobart for the March,  
June, September and December  
quarters of 1986

**FULL BENCH**

PRESIDENT  
DEPUTY PRESIDENT  
COMMISSIONER KING

**HOBART, 27 February 1987**

**TRANSCRIPT OF PROCEEDINGS**

(CONTINUATION)

PRESIDENT:

Mr Evans, what does 3(b) mean if it doesn't mean just that?

MR EVANS:

Well 3(b), sir, as I said, gives you, having regard to the orderly conduct of industrial relations and certainly take into account the facts like I've just mentioned that for example my organization or the T.T.F. are the predominant organization in respect of a particular award and it would be ... a situation could well arise that if you did not proceed to hear it that it would give rise to disorderly conduct. So the onus is back on you - you have to acquaint yourself with a great deal of information about the industrial relations applying in this State.

PRESIDENT:

And this is something you believe the President should do in chambers, as it were, if he's not a member of the Bench that he convenes to hear the application and shall we say in the absence of any challenge?

MR EVANS:

Yes, whether you're a member of the Bench or not, sir, you have to make some arrangement if you want to inform yourself - inform your mind - as to what decision, or how you will exercise your discretion - you have to make other arrangements to ascertain the facts and the information that you think is necessary to make that decision - or exercise that discretion.

But once the Bench, or a Commissioner commences to hear that application then it's no longer open to you to exercise discretion.

Now it may not have been the intent of the draftsmen who drafted this legislation but it certainly is the way it's turned out and we're well aware, sir, that those who draft legislation sometimes don't quite achieve what was intended at the outset and unfortunately that's the way this one's turned out.

I mean, I think one could say that

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MR EVANS: it reposes a great deal of faith and trust in the President that he will exercise that discretion judiciously.

PRESIDENT: Does it also mean that in all cases of this kind the President has to conduct a preliminary hearing himself in order to enquire if there are to be any objections? That's a messy way of doing things, Mr Evans.

MR EVANS: No, you don't have to conduct a hearing. You have the sole discretion, so you could sit there and ...

PRESIDENT: Well that's a denial of natural justice, isn't it? Prima facie it is because ...

MR EVANS: Well prima facie, but the Act ... that's the way the Act's been framed. I mean, you can sit there in splendid isolation, consult no one, discuss it with no one and arrive at your own decision.

PRESIDENT: You wouldn't have been too happy had I simply written to you and said I've formed an opinion that this matter shouldn't go on.

MR EVANS: I would probably have to admit that I wouldn't have ...

PRESIDENT: I get the impression you're not too happy anyway.

MR EVANS: I would probably have to admit that you might have featured on the front page of 'Service' once again; maybe not in such glowing terms as the previous occasion.

But no, sir, it would have then caused us to see whether that was an appropriate way for the matter to be dealt. We would have eventually arrived at the same conclusion as we have now and it would then have been up to us and any other employee organization who felt ... indeed any organization who felt that that was not the appropriate way to seek to

MR EVANS: have some legislative remedy, but it's there and as I said, it places a great deal of faith and trust in you, sir.

PRESIDENT: Well we're inviting you to proceed, Mr Evans. We're not saying you can't proceed.

MR EVANS: Well, what I'm inviting you to do, sir and members of the Bench, is to consider those matters I've raised because I think there are certain risks for all of us if I proceed on false assumptions and, as I said in my submissions, I think there is a need to clarify both the intent and the purport of that statement so that no one is in any doubt as to the way the Bench is proceeding because if we proceed, sir, then it's us acquiescing to your decision - statement - with all the ramifications that may flow from that. I'm not only concerned for our organization, sir, I'm acutely conscious of the implications for other organizations and their concerns in respect of the decision made.

PRESIDENT: What would happen if the other organizations who are currently cited as parties to these awards, say, the clerical employees - if a similar application were to be lodged by those organizations seeking the same, what would one do in a case like that? Would we ... ?

MR EVANS: Well to go back to my first point, sir, that it is our submission that you've actually exercised your discretion, so to refrain from hearing there has to be other submissions not based around 25, to have that occur.

It is perfectly open to every other organization who's party to those awards to make an application.

It then comes into this, the matters you've raised, as to the actual



MR EVANS: status of the T.T.L.C. and it may be that some of us are going to have to exercise our minds much more acutely as to how we extract the T.T.L.C. from that rather difficult situation.

PRESIDENT: Well I suggest you take some advice on the deeming provisions. But what would happen, Mr Evans, if those awards that have been excluded from the hearing of this application, and you would know them, were then referred to individual Commissioners, sitting alone, for hearing and determination?

MR EVANS: They would, I presume ...

PRESIDENT: It wouldn't frustrate you, would it? It would delay proceedings but it wouldn't frustrate you, would it?

MR EVANS: 'Frustrate' me, sir? In what sense? That ...

PRESIDENT: It wouldn't frustrate your organization's desire to put a case in relation to all those persons. There's nothing in the Act that says the Clerical Officers Award couldn't be heard by Commissioner Gozzi, sitting alone ...

MR EVANS: No.

PRESIDENT: ... in relation to that application.

MR EVANS: No.

PRESIDENT: Notwithstanding this decision.

MR EVANS: Well it's open for the Bench to refer, though.

PRESIDENT: Well we wouldn't have to, would we?

MR EVANS: I'm not aware of what's in the Commission's mind.

PRESIDENT: No, you seem to ... you've left me with the impression that this decision could almost be a watershed decision so far as employee organizations are concerned and I'm suggesting to you that maybe it isn't

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PRESIDENT: as bad as you think. You can get a hearing on your applications if you simply lodge individual applications and request that those matters be heard by a single Commissioner.

Certainly you may run the risk of somebody seeking a reference to a Full Bench and we go through the whole process all over again.

MR EVANS: That's correct and that's why we're acutely aware of the common thread that runs through the application in respect of each of those awards. Indeed I think it may be appropriate for you to determine that they go to a Full Bench, if I recall.

PRESIDENT: The President has that discretion, yes. He is also able to decide that they shall not.

MR EVANS: That's correct, sir. So in order to save you from that onerous task of exercising your discretion again, we made the application in the form we did.

One might say it sought to shorten the process being acutely aware of what the likely outcome would be if we had made 50-odd separate applications in respect of each of those awards.

I mean, I would have to be fairly optimistic I think, sir, if I had signed an application in respect of each of those awards (individual applications) not to believe that they weren't going to end up before a Full Bench. I think I'm even prepared to bet on that and I don't bet, normally, but I think they would have.

But if what you're now saying, sir, is that it may be appropriate that you determine that each one of those is referred to an individual Commissioner then that is entirely appropriate.

PRESIDENT: What I'm really saying, Mr Evans, is

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PRESIDENT: that if people take technical objections then there's always a way of getting around them.

MR EVANS: There certainly is, but very often we walk down a path and find hurdles or obstacles or objects placed in the path which at first sight don't appear to be of any great substance but on closer examination do and I think you were correct, sir, in saying that I seem to see it as a watershed - I do, because there are grave implications from what fell from the Commission prior to the luncheon adjournment, not only for this organization but I'm acutely aware of the implications for other organizations and I think it's important that not only we, but others have the benefit of determining what was in the Commission's mind and the likely directions of proceedings before this Commission in similar circumstances, so that you can then have before you all the information necessary to ensure that you proceed down a path that may have technical or other objections removed.

I have just had it pointed out to me, sir, and I think it's correct that 35(d) provides that in respect of alteration of wages generally can only be heard by a Full Bench anyway and I think we're certainly saying that these wages should be altered generally - they're not ...

PRESIDENT: Well is this an application to alter wages generally or only for groups of people?

MR EVANS: It's wages generally, for members of our organization to whom we are the only ... they're the only people we can make application in respect of covered by those awards.

PRESIDENT: Yes, well we've said that you can proceed in relation to a significant part of the awards to which you are party and I would be the first to agree with you were you to put that

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PRESIDENT: to me that the awards that we have in mind that are unencumbered by our decision probably contain the same classifications as those that are excluded.

MR EVANS: That's correct, sir.

PRESIDENT: So what's your problem?

MR EVANS: Well, my problem is this and you may well be able to answer it: Is the Commission saying that they do not see now or in the future that there is any prohibition on an organization proceeding to have an award determined if in respect of that award there are other organizations who are party to that award who do not make application, do not make appearances and, consequently, submissions or indeed, taking the worst case, make appearances and object to the application proceeding?

That is in essence what we see is the thrust of the position adopted by the Bench before the luncheon adjournment. In fact what you are saying is that it is now open for the situation to arise where an organization which is, as I say, the party principal to an award, can be frustrated in the prosecution of that claim because another party to that award has not applied or makes submissions to the contrary of the application made by the party principal.



PRESIDENT:

I don't think we're saying that at all, Mr Evans. I think what we've said, is that a controlling - well, it's not even a controlling authority - it was the statutory intervener supported by the controlling authority and a representative of private industry have suggested that because they are multiple parties - multiple employee organization parties to some of those awards - we ought not proceed to hear those, or that part of your application.

Now, I didn't detect any real objection from the other two organizations who spoke.

MR EVANS:

No.

PRESIDENT:

And they would have been parties to some of those awards that are, at this stage, excluded.

Now that wouldn't, in my opinion only - I'm speaking for myself - would not preclude you from saying, 'Very well, we will lodge individual applications in relation to those awards'.

MR EVANS:

Section 25 will still apply and that's what I'm ...

PRESIDENT:

Why would section 25 still apply?

MR EVANS:

Well, the basis of the Commission's position adopted before the luncheon adjournment, seems to have been based on the submissions made in respect of section 25 of the Act because certainly, there wasn't anything of substance in respect of the arguments advanced in regard to section 21 - certainly none of these matters.

So, what we're saying is that the Commission took a position which wasn't open to it to do in regard to section 25 and I think it is important and I can only stress this, that anyone looking at this case at some stage in the future, looks at the submissions, then looks at what the Commission proceeded to do before the luncheon adjournment, they could

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MR EVANS:

well come to the conclusion, be it erroneous or otherwise, that this Commission acted under the provisions of section 25 of the Act and precluded certain parts or certain awards covered by the application from being determined.

It also raises the question: Are you amending the application, or are you seeking for us to amend the application? Or what you are saying is, 'You can advance all your arguments but we're telling you at the outset that in respect of those awards which fall within the parameters established by us in our statement, (that one's still got to be tested at some stage, regarding whether the T.T.L.C. is capable of being regarded as an employee organization party to the awards) that those awards will be excluded from any decision of ours and only those ones which you are parties to will be able to be concerned with.' Sir, that raises serious problems and I wouldn't want to be in a position of proceeding down a path which has grave ramifications, not only for my organization but for every other employee organization who has another party to awards to which they're either just a party or the principal party and including the T.T.L.C.

DEPUTY PRESIDENT:

Excuse me, Mr Evans - aren't you really simply placing an argument against the inclusion of 25 (3)(a) of the Act? Aren't you just saying that you don't agree with the legislation?

MR EVANS:

No, I'm not saying I agree or disagree with the legislation. I think I have suggested that some may question whether that was precisely what was intended - whether the President should have that much discretion, but I accept completely that that is what is there now. That's the way we'll have to operate until such time as it is changed and I, quite frankly, have formed no view

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MR EVANS:

as to whether it needs to be changed.

Now I believe I know how the ground rules will operate, then we'll have to make sure that we take that into account at any stage in the future. But, no, I'm not arguing with the provisions of the legislation, Mr Deputy President.

What I was arguing was that in fact the President had exercised his discretion, so it wasn't open to anyone to seek to have that discretion re-exercised.

DEPUTY PRESIDENT:

I don't argue whether you're right to disagree with the legislation if you want to ...

MR EVANS:

No.

DEPUTY PRESIDENT:

... but in essence, I got the feeling that that's what you were really arguing against.

MR EVANS:

No. I think I might have been suggesting, sir, that some may see it as a flaw. I certainly have to admit, I didn't see it until this morning - the potential for a different position to be adopted than the one we envisaged - but having now seen it and having had it demonstrated, I accept it's there.

DEPUTY PRESIDENT:

Well, how do you interpret 25(3)(a)?

MR EVANS:

What it says, sir, is that he shall not hear it if there's another organization party, but then the President ...

DEPUTY PRESIDENT:

Then there's an out.

MR EVANS:

Then there's an out. He can come out the back door by exercising his discretion and determining to hear it.

So, prima facie the President, if we'd made that application and the President had informed us that having

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MR EVANS: exercised his discretion - subsection (a) of the Act would apply - 25 (3)(a) would apply, we've got no argument.

We, as they would say, sir, are up that proverbial creek.

DEPUTY PRESIDENT: By arguing that the President's discretion was no longer available to him on the advice that you'd received at this late stage, aren't you in fact arguing that that out is going to give some relief and that in fact all you can do is look at 25(3)(a)?

MR EVANS: What I'd say, sir, is this - and I unfortunately wasn't able to be in the President's mind at the time - but obviously the President, being acutely aware of the provisions of this Act, would have looked at 25(3), made a decision to prima facie - he couldn't hear this application, unless he exercised his discretion. Then he exercised his discretion and determined the matter should be heard and listed the matters for hearing.

Now, he may have chosen to consult with all or any of the affected parties. I'm not aware of that. I don't know that he did.

DEPUTY PRESIDENT: I hate talking about a third person in their presence. Perhaps it's better to talk in their presence than otherwise.

MR EVANS: We could get into trouble here.

DEPUTY PRESIDENT: If we assume that the President hadn't heard the sorts of arguments previously which were put up here today, then wouldn't it be reasonable that he consider those arguments when they occur - that being this morning?

MR EVANS: We had this canvassed during the adjournment as well. Prima facie it appears to be, as you say, a denial of natural justice but unfortunately for all of us, that's the way the Act is written and therefore obviously

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MR EVANS:

the draftsmen had in mind when they were preparing this legislation - the legislation was passed - that that's what they wanted to do; that they were concerned to ensure there was an orderly and rapid process and therefore they chose not to make any provisions for the President, or did not put the onus on the President - I think that's a more appropriate word - did not require or put the onus on the President to inform himself by a variety of means.

They seemed to have taken into account that the President would exercise his discretion judiciously.

DEPUTY PRESIDENT:

Notwithstanding that belated argument, wouldn't one look at (b) as a discretionary power of 25(3) and (a) a non-discretionary provision of an Act?

MR EVANS:

25(3)(a) is certainly non-discretionary; (b) gives him the discretion.

But equally, it's open to all or any of the parties who could have been affected by this, including Mr Willingham, prior to the hearing commencing to raise this matter with the President - that he would seek that the President do not exercise his discretion in terms of 25(3)(b).

DEPUTY PRESIDENT:

With greatest respect, being wise with hindsight doesn't help us a lot.

MR EVANS:

No, it doesn't, but unfortunately that's the situation we're in and it may not have been what was intended at the outset, but that's the point we've arrived at.

PRESIDENT:

Mr Evans, if I could have another go at this. The statement that fell from the Bench was this: We have considered the threshold question raised by Mr Willingham and supported by the Minister for Public Administration and the Tasmanian Chamber of Industry that - 'that'

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PRESIDENT:

being the question - pursuant to section 25(3) or section 21(2)(c)(ii) we refrain from hearing this application ('we' have decided, not the President - 'we' have decided that we are not prepared to hear the application) in relation to those awards to which the T.P.S.A. is not the sole employee organization respondent thereto, and we have decided that insofar as those awards forming part of the application before us are awards to which the T.P.S.A. is the sole employee respondent organization we are prepared to allow the case to proceed.

Now I don't detect anything in that that would suggest that's the President communicating a decision he's made. Isn't it a decision of the Commission pursuant to section 21(1)(c)(iv)?

MR EVANS:

I think I heard you use the words, section 25(3) in that statement, sir.

PRESIDENT:

No, I said they were arguments raised. I will read it again: We have considered the threshold question raised by Mr Willingham and supported by the Minister for Public Administration and the T.C.I. that pursuant to section 25(3) or section 21(2)(c)(ii)...

That was that further proceedings are not desirable in the public interest - that those things we had been discussing shouldn't proceed and we responded and you know our decision and section 21 of the Act says:

"Subject to this Act, the Commission may regulate its own procedure."

And (c) says:

"at any stage of those proceedings, dismiss a matter or a part of a matter, or refrain from further hearing, or determining, the matter or

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PRESIDENT:

part if the Commission is satisfied - ...

(iv) that, for any other reason, the matter or part should be dismissed or the hearing of those proceedings should be discontinued, as the case may be;"

MR EVANS:

Well, if that's what you're saying, sir, then it might well put a different complexion.

PRESIDENT:

Well, I didn't say at any stage it was the `President's decision`.

MR EVANS:

What I was suggesting, sir, that it was a whole body of submission prior to that position being advanced the Bench, which turned around section 25. The Bench came back - I'm not unhappy with the direction this is going because I think we are getting to the point which concerns me.

There are two aspects of 25(3) - the time the discretion was exercised and the impact of that discretion in regard to hearing awards to which other organizations were party. As to 21(2) ...

PRESIDENT:

21(2)(c).

MR EVANS:

Yes.

MR EVANS:

Then, if I take what you're saying, sir, and I was going to suggest it might be appropriate, sir, that we have a short adjournment and maybe copies of that statement could be made available to the parties because I then might want to address the question which still concerns me as to the direction the Commission is taking in respect of hearing matters or applications in respect of awards to which more than one organization is party. I think that's a very fundamental issue, sir.

PRESIDENT:

Yes, well the Commission hasn't made a general ruling in that regard, has it? It's made a ruling in relation to the matters before it after hearing some threshold argument and that, it seems to me, is contemplated under section 21(1)(c)(iv) - (i), (ii), (iii) or (iv) for that matter. Well (iii) has been deleted. (i), (ii) ... Dear oh dear, I'm sorry, the Act has been amended I think. It's now ... what I said to you was (iv) now becomes (iii). (i) is,

"that the matter or part is trivial;

(ii) that further proceedings are not necessary or desirable in the public interest" (and I think that was canvassed by Mr Willingham and others) and "(iv) that, for any other reason, the matter or part should be dismissed or the hearing of those proceedings should be discontinued, as the case may be;"

MR EVANS:

But what you are suggesting to me, sir, is that even though the thrust of all Mr Willingham's argument turned around section 25, that the Commission, without necessarily being addressed by either the parties present or parties affected can make a decision of this import with all its ramifications under that provision ... that section.

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PRESIDENT: Well it seems to me, Mr Evans, that it says at any stage the Commission can make a decision of that kind, and for any other reason.

MR EVANS: Yes, I don't quarrel with those. But we then go back to the Deputy President's position raised about what might be perceived as a denial of natural justice and unless the Act specifically precludes it I would argue section 25 does.

DEPUTY PRESIDENT: Well I wasn't advocating anything. They were questions, surely.

MR EVANS: I didn't think you were advocating it. What I'm saying is that I think there is a need, if the Commission is going to refrain from hearing our application in respect of those awards to which other organizations are party, then there needs to be further and detailed submissions by all the parties, including I would think some of those that are present this morning. And I would think, given its ramifications, that there would need to be a detailed explanation of the Commission's decision ...

PRESIDENT: Well surely ...

MR EVANS: ... in order for parties not to use this capriciously in the future. I mean, I could well see that we could turn up at a hearing in the next couple of weeks and say: 'Well, look, we don't want this to proceed. And given your decision on the 27th, you should not proceed', and we all get caught.

PRESIDENT: You're not suggesting for one moment, I feel sure, that we didn't invite all interested parties to address us this morning...

MR EVANS: Oh no, sir.

PRESIDENT: ... including someone who didn't choose to address us at all?

MR EVANS: No, I'm not questioning that. The

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PRESIDENT - DEPUTY PRESIDENT - EVANS



MR EVANS: opportunity was there for all parties. I'm sure they were all well and truly informed and were well aware.

PRESIDENT: We were given certain reasons why no part of the matter should proceed. We didn't accept that argument. We accepted part of it. And I don't think I need to repeat that when we said some matters could proceed, we intended that a significant number of those awards could become the subject of proceedings if you were minded to pursue your claim.

MR EVANS: Well, what I think I suggested ...

PRESIDENT: You, yourself, have taken jurisdiction on yourself. We didn't ...

MR EVANS: No, I think I indicated, sir, that I would have to proceed on the basis that the application stands as it is. If the Commission chooses to amend the application then so be it. But I think I indicated that it's not open to me, because of both the constitutional position of my organization and, indeed, a decision of the governing body of the organization. I'm not at liberty to make that amendment. So I have to proceed on the basis that the application addresses all those awards which are contained in it. It may be that the Commission as it chooses to amend the application, may choose in its decision to exclude those awards from whatever benefits may flow from the decision.

PRESIDENT: The argument would be the same in relation to all awards anyway, I take it, Mr Evans?

MR EVANS: Oh, it certainly wouldn't vary, no sir. We don't have any special provisions for any of those awards, they are all being approached on exactly the same basis.

PRESIDENT: What do you want us to do?

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MR EVANS: Well I think I suggested, sir, it might be appropriate, if it's possible, for a short adjournment so that we could obtain a copy of your ...

PRESIDENT: ... statement.

MR EVANS: ... statement.

PRESIDENT: Yes, well that should be available. It's only handwritten here. I've read it twice now.

MR EVANS: If I could seek the Commission's indulgence to have it properly ... Whilst I ...

PRESIDENT: You'd like it typed up, would you?

MR EVANS: In whatever form you're prepared to give it to us, sir. I'm sure ...

PRESIDENT: If I read it one more time, are you prepared to write it down?

MR EVANS: Oh, yes.

PRESIDENT: We have considered the threshold question raised by Mr Willingham and supported by the Minister for Public Administration and the T.C.I. that, pursuant to section 25(3), or section 21(2)(c)(ii), we refrain from hearing this application.

We have decided that: 1. We are not prepared to hear the application in relation to those awards to which the T.P.S.A. is not the sole employee organization respondent thereto. 2. Insofar as those awards forming part of the application before us are awards to which the T.P.S.A. is the sole employee respondent organization we are prepared to allow the case to proceed.

MR EVANS: Thank you, sir.

Just before I ask for a short adjournment then, I'll ask you one final question. Are you determining that the T.T.L.C. is not an employee organization respondent to those

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MR EVANS: awards named in our application?

PRESIDENT: We're not determining that, I've suggested that you take further instruction on the deeming provisions.

MR EVANS: Well I think I have to ask it again, sir, because unless I get an unequivocal answer, I'm faced with the impasse of saying that, at the moment on the face of it, they are named employee respondent organization and therefore, what you're effectively saying to me is I cannot proceed with any of them.

PRESIDENT: Well, if that were to be the case, Mr Evans, we would have misled you wouldn't we, because we said we are prepared to allow the case to proceed. So clearly, we intend that some awards are not encumbered by this decision. If you can't identify them, we will.

MR EVANS: Well, there is in fact one. One.

PRESIDENT: The Governor of Tasmania, is it?

MR EVANS: No, the Legal Practitioners.



MR EVANS: That is the only award to which there are no other employer organizations respondent ...

PRESIDENT: I would have thought ...

MR EVANS: ... and maybe there's some message for all of us in that.

PRESIDENT: I would have thought there would be something like 32, Mr Evans, if that helps you.

MR EVANS: On the face of it, I said, sir. On the face of it.

PRESIDENT: I know ...

MR WILLINGHAM: Mr President, may I just assist Mr Evans. I believe that the Tasmanian Trades and Labor Council is in fact cited as a party bound to the Legal Practitioners Award.

MR EVANS: I've just thrown my last one out - that's quite awful.

PRESIDENT: Mr Evans, I think we would hear you on at least 32 and if you're not prepared to identify them maybe we will, but ...

MR EVANS: I might well ask you to do that, sir.

Could I seek a short adjournment then, sir?

PRESIDENT: You may, Mr Evans.

MR EVANS: Thank you.

...

PRESIDENT: Mr Evans ...

MR EVANS: I think at this stage, sir, I would defer to my friend, Ms Crotty, who has a submission to make, I think.

PRESIDENT: Well, I was going to raise that same subject matter with you, but ...

MS CROTTY: Actually I haven't got a submission, sir.

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PRESIDENT: Yes, Ms Crotty.

MS CROTTY: I just wish to notify the Commission that I've lodged an application for the Tasmanian Teachers (Teaching Service) Award to be varied by the March/June/September/December quarter C.P.I. for 1986. And in doing so I seek permission for our application to be joined with the Tasmanian Public Service application before you.

PRESIDENT: Yes. Do you think the President should be given an opportunity to conduct a preliminary hearing, Ms Crotty, to decide for himself whether or not this is a Full Bench matter?

MS CROTTY: Sir, having the privilege of knowing what's in your mind I think you've already been given that opportunity.

PRESIDENT: Yes.

MR EVANS: Thank you, Mr President. Thank you for that short adjournment which enabled us to consider our position.

At this stage, sir, we would make the following submission to the Bench and seek a response.

In respect of the statement by the Bench regarding the decision to not proceed to hear those applications to which we are not the sole party, if in fact they are not related to section 25 (3) of the Act, but in fact relate to section 21 we would ask that the Commission give a clearer outline of the reasons for its decision to not proceed to hear those awards to which we are not deemed to be the sole party.

Because we are unable at this stage to proceed, to have only part of the application dealt with, because the organization has determined that we should make an application for the indexation of the wages of all our members. And therefore for that decision to be altered it would require a decision of my

MR EVANS:

organization, and in order for that decision to be properly arrived at we consider that they would need a clear indication (as I've suggested, the reasons in writing from the Bench) as to why they refrained from hearing the application in respect of some awards.

The second point, sir, that I would also seek from the Bench is that they indicate those awards to which they consider the T.T.L.C. is not a respondent employee organization - because at the moment as a prima facie we are faced with the fact that in the documents which come from this Commission they are named as a party bound and the Act provides that they are to be regarded as an employee organization.

So I would ask that the Commission indicate those awards which it considers the T.T.L.C. is not a party in the terms of this application in the terms of your statement prior to the luncheon adjournment.

PRESIDENT:

Just excuse me.

...

PRESIDENT:

When would you expect those reasons, Mr Evans?

MR EVANS:

Well, I would request them as a matter of urgency, sir. The matter is of some major significance to my organization.

But I was just about to raise another point, sir, is in those reasons if the Bench could address the question as to whether the application falls within the Wage Indexation Principles - particularly Principle 1.

And as well, whether the organization ... if the organization made separate applications in respect of each of those awards whether that would do any violence to the Principle, or to the Principles of Wage Indexation, given that they are going to be

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PRESIDENT - EVANS



MR EVANS: applications to alter wages generally, albeit they will be applications for each separate award; whether in fact we can, in the Commission's view, make an application, or make individual applications for each award to move the rates of pay in accordance with movements in the consumer price index and not do violence to the Wage Indexation Principles.

PRESIDENT: But aren't you now going outside our decision, Mr Evans? I'm well aware that during the course of discussion or debate I said there'd be nothing to stop you lodging individual separate applications, and of course you know that I'm right in that regard.

MR EVANS: I know you're correct, sir, in that regard.

PRESIDENT: Yes.

I can't answer ...

MR EVANS: Well, whilst ...

PRESIDENT: ... or I can't indicate what the fate of those applications ...

MR EVANS: No, sir. I not asking ...

PRESIDENT: All I'm saying is that if you detect a conscious effort on the part of someone to frustrate your organization in its anxiety to have a matter heard before this Commission, that frustration comes about because of technical-type objections, then I said there are always ways of getting round them.

MR EVANS: Yes, I recognize that, sir. And I did not necessarily see it as an invitation for us to make separate applications. However, sir, given that it did fall from your lips during the interchanges that that was an option that may be exercised by this organization, it did cause me to raise in my own mind the question as

MR EVANS:

to whether that would do violence to the Principles. And therefore when I'm advising the governing body of my organization as to the appropriate course to follow I would not want to give them advice which would do violence to those Principles, and therefore I took the opportunity ... to ask you to indicate whether you thought it would do, or this Bench would consider such an application would be outside the Principles, because I would not want to waste the time of the Commission in lodging applications which were outside the Principles; nor would I want to be party to an application which is not in accord with the Principles.

We are committed to the Principles and therefore I would not want to, either erroneously or otherwise, make an application which fell outside those Principles.

PRESIDENT:

So far as the Trades and Labor Council is concerned, Mr Evans, you pose a difficult question for us. We're all aware that that very question is the subject of another important exercise that hasn't really progressed very far.

Were we to give a decision on that aspect, I think we would be effectively cutting across a matter that's before another Bench.

I don't know how many times we have to tell you that we, in ruling the way we did, had in mind that there were a number of awards included in your application in respect of which our ruling cleared the way for you to proceed.

MR EVANS:

Well sir, in that case, if you're not able to respond in the manner I originally sought, it may be that you're able to give us a list of those awards which you consider conforms with the statement made by you. I'll put it in those terms.

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PRESIDENT:

Well would you then be prepared to proceed with your case if we go to that list?

MR EVANS:

Well sir, it would then put me in the position of being able to go back to the council of the P.S.A. and inform them of the position we are at now and those awards which we'll be able to proceed with. And it may be that they would then consider it appropriate to proceed with the hearing on those.

I can assure you that can be done within a very rapid space of time, once the information is available.

But at this stage I would not feel it appropriate that I proceed on the basis that we are only seeking an increase in wages and salaries in respect of a limited number of our members, given the decision of council which was to proceed with an application to increase the wages and salaries of all our members in all awards to which we are party in line with the increases in the cost of living. And they are very clear instructions.

I mean, I've transmitted those through a whole series of places and I would be in somewhat of a difficult situation if I detracted from that position without having at least had the opportunity to canvass the views of the council.

PRESIDENT:

Yes.

And what do you say about Ms Crotty's application?



MR EVANS: Do I have to say anything?

PRESIDENT: Well someone should say something. Ms Crotty has raised that matter in these proceedings, and without going to your claim I ...

MR EVANS: Sorry, well I was ...

PRESIDENT: Did you seek to vary the Teaching Service (Teaching Staff)?

MR EVANS: Are you asking me?

PRESIDENT: Yes.

MR EVANS: Yes, well that was included in our application, and I certainly see no impediment to the Tasmanian Teachers' Federation application being joined to ours, and in fact believe that it is appropriate in all the circumstances.

Sorry, sir, I didn't understand the import of your question, sir.

PRESIDENT: That's what I was driving at.

MR EVANS: No, we certainly have no objection - indeed quite the opposite - to the application by Ms Crotty, and we certainly believe that it would be appropriate for it to be joined and proceeded with in conjunction with our application, sir.

PRESIDENT: Yes, all right, thank you. Does that prompt any response from you, Mr Willingham?

MR WILLINGHAM: Specifically what, to prompt any response Mr President?

The matter of the Teachers' Federation's application?

PRESIDENT: Yes.

MR WILLINGHAM: Not having had the benefit of seeing it, and I assume it not yet having been ascribed a T. number, I would have thought the question of joining might have been a bit irrelevant. But if you can enlighten me further?

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PRESIDENT - EVANS - WILLINGHAM

PRESIDENT: It is T. No. 691 of 1987.

MR WILLINGHAM: Well in that case, Mr President, we have no objection to the joining of those two matters.

MS CROTTY: Sir, I ...

MR WILLINGHAM: In fact we would say that it is fundamental to the crux of the threshold position we put to you this morning.

Can I just respond briefly, Mr President, to a couple of matters that Mr Evans has raised in his three questions that he wishes the Bench to provide him with responses to in, as I think he put it, as a matter of urgency.

I leave it to the Bench to determine whether it is appropriate to provide reasons for the decision that you handed down before lunch today. I don't have fundamental objections to the request of Mr Evans though.

In terms of indicating the awards to which the Commission believes the Trades and Labor Council is 'not an employee organization', again I don't really have any problems with that, although I am sure Mr Evans could do that exercise for himself without the Commission having to do it. If he has any difficulty, I am sure that we could assist him.

But I do have problems with his third request of you, which was that this Commission determines whether all or any of the applications that he may have either placed before the Commission or may intend to place before the Commission, should be predetermined by this Commission as to whether they conform with the Wage Fixing Principles.

I think I would have to refer to what I said earlier this morning, that Mr Evans has already made the claim that

MR WILLINGHAM:

his applications can be sustained within the Wage Fixing Principles, and I acknowledged at the time that he was entitled (subject to other threshold matters that we had raised) to put that claim before the Commission and have it tested.

And it would certainly be my submission that we are entitled to provide argument if we find there are some flaws in Mr Evans' argument.

But as a question, as it has been put to you by Mr Evans, that you determine firstly whether this or any other application conforms with the Principles, I would have thought was even beyond the wisdom of this Commission, because without you hearing the substance of this claim, how can that be determined?

And that was certainly the point that my colleague Mr Westwood and I advanced in the skirmishes on that subject earlier today.

PRESIDENT:

Yes, thank you.

MR WESTWOOD:

No, I have got nothing further to add to that, Mr President.

PRESIDENT:

Yes, very well. Well it seems that we are going to have yet another adjournment.

MR EVANS:

It seems that way, sir. It certainly does. I don't think I will bother to respond to Mr Willingham's submission. If he didn't understand the import of my submissions, then I am quite happy to inform him afterwards, as he will inform me of the awards to which the T.T.L.C. is not an employee organization respondent. And I am sure that will be a pleasant interchange.

PRESIDENT:

Ms Crotty, have all interested parties been served with this application?

MS CROTTY:

Sir, I have got copies of the

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CROTTY - EVANS



MS CROTTY: application here. I can place these up as an exhibit or give the parties a copy, but when you say 'all parties' do you mean parties to the award?

PRESIDENT: All employee organizations ... The only parties to the award would be the Minister for Public Administration, the T.T.F., the T.P.S.A. and isn't there another organization?

MS CROTTY: Yes, sir, there is. There is another organization and I have not served an application on them.

PRESIDENT: But they would have been served with the notice to these proceedings as the T.P.S.A. has sought to vary the Teaching Service (Teaching Staff) Award.

MS CROTTY: On that matter, sir, yes, they did ...

PRESIDENT: So they would have been served with a notice of hearing?

MS CROTTY: Yes, sir, because they were here present this morning.

PRESIDENT: They were present were they, because they didn't enter an appearance.

MS CROTTY: No.

MR EVANS: There are some reluctant debutantes around apparently.

PRESIDENT: Yes, I see. Thank you, Ms Crotty. Well then we will adjourn yet again.

MR EVANS: It is a long path we are proceeding on, sir.

PRESIDENT: I beg yours?

MR EVANS: It is a long path we are proceeding on.

PRESIDENT: Yes, indeed. I think the next time we come back we will be talking about when this matter can be heard again, or debated again, Mr Evans, because

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PRESIDENT - CROTTY - EVANS

PRESIDENT:

we only had today set aside for the hearing which hasn't yet begun.

We will adjourn for a brief period.

...

PRESIDENT:

As to question 1 raised by Mr Evans, we are not persuaded why this Full Bench should give reasons for an exercise of discretion relating to a procedural matter.

Question 2: We are of the opinion that the association may proceed to prosecute its claim in relation to those awards to which the T.P.S.A. and the T.T.L.C. are the only cited employee organizations.

As to question 3: We are unable at this stage in proceedings to give any ruling or guidance in respect of individual applications that seek wage increases said to fall within the scope of Principle 1, and a related matter, that is the T.T.F. application, we have decided in respect of that matter that it should be stood over to allow service as required by the Act to be effected.

Well now, Mr Evans, are you prepared to proceed on the basis of that, or do you wish to consider your position and we will make another date?

MR EVANS:

Well I think, sir, we would have to take that back, in light of the position I advanced earlier, that at this stage we cannot see our way clear to proceed on only some of those awards on which we are the subject of the application.

I would ask for an early hearing date so that we can come back and proceed further with matter, hopefully.

PRESIDENT:

Well this wasn't of our making, Mr Evans.

MR EVANS:

I won't make any comment, sir.

COMMISSIONER KING:

I think you ought to look straight at

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PRESIDENT - COMMISSIONER KING - EVANS

COMMISSIONER KING: Mr Willingham, Mr Evans.

PRESIDENT: Now as to a resumption date, how long do you think you would need?

MR EVANS: Only a matter of days, sir.

PRESIDENT: A matter of ...?

MR EVANS: Days.

PRESIDENT: Days?

MR EVANS: Days. It is a long weekend this weekend, so we would be ready to indicate our position by Wednesday, sir.

PRESIDENT: Well we will go off record for a moment.

...

HEARING ADJOURNED