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TRANSCRIPT OF PROCEEDINGS

O/N 9400

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER P.C. SHELLEY

T No 10779 of 2003

IMPACT FERTILISERS ENTERPRISE AWARD

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

HOBART

10.30 AM, THURSDAY, 8 MAY 2003

HEARING COMMENCED

[10.30am]

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union Tasmanian Branch. Appearing with me is MR CROSSEN.

PN2

MR D. HANISCH: I appear for the Australian Manufacturing Workers Union.

PN3

MR W. FITZGERALD: I appear on behalf of Impact Fertilisers.

PN4

THE COMMISSIONER: Thank you. Now, we have had a fresh application since - a new application since the previous days hearing, from Australian Mines and Metals Association Inc, which appears to deal with the same issues and we have joined it, for the purposes of today's proceedings but I would need to get an indication from the parties whether there is any objection to that being joined.

PN5

MR FITZGERALD: I think that is most appropriate, Commissioner.

PN6

MR FLANAGAN: Yes, but it is not their call actually. Likewise, we don't object to that, Commissioner.

PN7

THE COMMISSIONER: In the correspondence that was received accompanying that application - an indication that you will be raising a point, Mr Fitzgerald, in relation to application T10794 in which you say it is not in accordance with section 23 of the Act and you said you would be seeking a ruling in regard to that matter and probably we should get that out of the way at the beginning.

PN8

MR FITZGERALD: Well, I think - unfortunately I don't have the correspondence with me. Is that in respect to the AMWU application or the
- - -

PN9

THE COMMISSIONER: It is the AMWU application, yes.

PN10

MR FITZGERALD: Well, it has always been my view, Commissioner, that given the Act, which requires full details, the AWU have full details of the award intended to be made - the AMWU application doesn't do that and it is incapable of a response. I suppose in terms of what Mr Flanagan is going to say about these discussions which we had it is probably going to be fairly academic because we have had discussions around both the AMA document and the AWU document so whether the AMWU want to put a fresh application

is there business but in my view, given that there is little or no detail in respect to the AMWU application, then that in itself is an invalid application and it is not in accordance with the Act because it doesn't provide the full details as required - it provides no details.

PN11

I am not particularly hung up on it because they are all documents which facilitate discussion and at the moment all three parties - or four parties if the CFMEU have been negotiating around a set of documents, so it is not necessarily an inhibitor to any further discussion. But I think in terms of proper process it is not an application in accordance with the requirements of the Commission.

PN12

THE COMMISSIONER: No, I mean you are probably right. Certainly 23(1)(d) does say that it must contain a statement giving the full particulars of the award sought to be varied but it could perhaps be provided at a later date I think if the parties agreed, or indicated that it is the same as that sought by the AWU or whatever the situation is.

PN13

MR FLANAGAN: Perhaps I can assist the Commission. I have asked Mr Hanisch if he doesn't mind if I could address the Commission before he responds to the issue. The situation is this, Commissioner. On the last occasion that the parties were before you in a hearing room there was an application before the Commission which the union indicated very clearly that we intended to arbitrate, given the frustration and the very long period of time during which, as far as the union was concerned, there had been no progress in developing regulation of employment. Now, since that point and following the inspections, there have been some very constructive discussions - and I intend to sort of take the Commission to that.

PN14

So in our view, whilst I am sure Mr FitzGerald reserves the right to pursue that issue, indeed as we reserve the right to pursue certain issues, in the context of a breakdown in discussions it may very well be that through the process of discussions that it is occurring, in fact any arbitration might be quietly - if there is any at all. So I think the issue raised by Mr FitzGerald in his correspondence needs to be considered in that context. If I can just move on and explain to you exactly what is happening; what has occurred is the parties have met and we have had the benefit at that point in time of Mr Fitzgerald's application in 10804/2003 and we have been able to work from our application, having regard for his application and borrowing from other documents such as the Metal Industry Award, to work through some issues.

PN15

Now, the AWU's position - and we have communicated it very clearly, at the time that the negotiations started is that we reserve the right to pursue an award in the terms of our application before this Commission. However, we are prepared to have discussions with the company to see whether or not we can identify common ground in lieu of any or all aspects of the application which is before the Commission. Now, consistent with that there have been very

constructive discussions and in fact what occurred is that on 23 April the parties were able to work through the issue of categories of employment, if you like, in significant detail and we have in fact reached in principle agreement on that.

PN16

The employer is currently waiting for the union to - and other parties, for the AWU to provide the typed up clauses to reflect those discussions but they will be receiving them quite shortly but we do in fact have the in principle agreement. Now, this morning we also met and started to work through the issue of hours of work and indeed we have some found really good constructive common ground in relation to that and there is a further meeting scheduled for 27 May when we will work through that plus the issue of overtime and any related issues such as the overtime meal allowance. So the way things are travelling provides the AWU and I think the other unions with some optimism that we might in fact be able to develop a way forward on a consent basis.

PN17

Now, clearly as I have indicated, if that process falls through then our position is clear and we will go down that path. But as I said the discussions so far this time seem to be quite constructive. There are different players at the table to what has been the case in the past and perhaps that is a contributing factor. So in those circumstances our view is that the most appropriate way forward is that the matter be adjourned, perhaps listed for a report back date and that the issues which might need some determination by the Commission not be visited at this stage until the process that we are working through has been given its best opportunity. If it pleases the Commission.

PN18

THE COMMISSIONER: Certainly does. Do you wish to add anything, Mr Hanisch?

PN19

MR HANISCH: Yes, Commissioner. I support the views of the AWU. I think we are following a process that is showing some signs of coming out of it with common ground. As far as the application by the AMWU is concerned, I am not too sure on what has happened there. As you know, I am sort of new to this scene - - -

PN20

THE COMMISSIONER: If it does become an issue, in the applications I think the AMWU is listed as a party bound by the agreement and other applications so it could simply intervene anyway, even if the original application is out of order.

PN21

MR HANISCH: And that is where I was about to head to, Commissioner. I think that that is probably the most appropriate course to take. As far as I am concerned, obviously I would have to seek directions from the State Secretary, but as far as I am concerned I don't think our application is really relevant

considering the process we are going through at this stage. So yes, I guess we would set it aside for the time being.

PN22

THE COMMISSIONER: It could sit there for now and you discontinue it at a later stage.

PN23

MR HANISCH: That is right, yes.

PN24

MR FITZGERALD: And that would obviously be my view, Commissioner.

PN25

THE COMMISSIONER: Thank you, Mr Fitzgerald.

PN26

MR FITZGERALD: Thank you, Commissioner. Well, just on that particular point, I won't press for the dismissal of the AMWU application. I will just let it lie as you have suggested, notwithstanding I still think it is an invalid application.

PN27

THE COMMISSIONER: Yes.

PN28

MR FITZGERALD: But in order to sort of progress the good will which Mr Flanagan has indicated to the Commission, I think it would be simply playing games for us to pursue that so we are happy for that to let it sit. We are also happy for the discussions to continue in the way they have been. I would agree with the comments made by Mr Flanagan. I am not sure of the particular reasons, I think it is probably the reasonableness of Mr Flanagan and myself which has probably progressed the matter. But certainly there has been progress - - -

PN29

THE COMMISSIONER: Certainly seems to have been.

PN30

MR FITZGERALD: - - - and there is a great deal of good will. The position of Impact Fertiliser is that we, as consistent with the first award principles, we are attempting to reflect the existing customer practise and arrangements which have been in place, as we have called it. I was one of the executives in Impact Fertiliser's no pain, no gain, if you like and I believe the discussions we have had so far and further discussions which we have programmed reflect that approach and the parties have been in some pretty friendly discussions, even as late as this morning - and we have programmed further dates. If - and I have got no objections, the matter is listed again for a report back or even just a telephone report to you if that is more appropriate. But Mr Flanagan seems to want to maintain some structure in the approach of this and I have got no objection to that either.

PN31

THE COMMISSIONER: Well, it is a good thing to have reports on the record anyway, I think. Do you want to say anything in addition?

PN32

MR FLANAGAN: Yes. As I have indicated to Mr Fitzgerald, we are more comfortable with the report backs being formal, being on the record, so there is in fact a recording of where we have moved to from time to time and also to maintain - - -

PN33

THE COMMISSIONER: It is an historic record as well.

PN34

MR FLANAGAN: That is right. Also to maintain a focus for all of the parties so that should the process become stalled, and we would hope that is not the case, but should it be then we can revert back to our original intention. If it pleases the Commission.

PN35

THE COMMISSIONER: Okay. Thank you. Well, I must admit to being pleasantly surprised at the progress that has been made, given the tenure of the discussions the last time we were here. So that is very good indeed. We just need to find an appropriate date for a report back. Now, you are having a meeting on 27 May I think it was so after then would be suitable, or even further out?

PN36

MR FLANAGAN: I think probably it would be about 8 weeks. That would give us some time I think. Eight weeks Bill?

PN37

MR FITZGERALD: Yes.

PN38

THE COMMISSIONER: Okay, eight weeks from now is - well, it can't be eight weeks - well, it would have to be July - 3 July?

PN39

MR FITZGERALD: No, I am going to be away.

PN40

THE COMMISSIONER: Okay. Give us another date?

PN41

MR FITZGERALD: I am going to be away until - - -

PN42

MR FLANAGAN: Are we on the record or off the record?

PN43

THE COMMISSIONER: Well, we can go off the record - we are actually on.

OFF THE RECORD

RESUMED

[10.50am]

PN44

THE COMMISSIONER: Okay, well this matter is adjourned until Thursday 17 July 2003 at 9.15 am and that is for the purposes of a report back. That concludes today's proceedings.

ADJOURNED UNTIL THURSDAY, 17 JULY 2003

[10.50am]