

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4189 of 1992

IN THE MATTER OF an application by the Construction, Forestry, Mining and Energy Union, Tasmanian Branch to vary the Roadmakers Award

re insertion of Construction, Forestry, Mining and Energy Union into clause 6 - Persons and Parties Bound

T No. 4190 of 1992

IN THE MATTER OF an application by the Registrar for determination of interest in the Roadmakers Award

re Construction, Forestry, Mining and Energy Union, Tasmanian Branch

COMMISSIONER IMLACH

HOBART, 7 July 1994
continued from 14/1/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Now these matters relate to T.4190 and 4189 and it's a determination of interest in respect of the Roadmakers Award. From the files it appears that a hearing has been heard in respect of both of these matters back in January '93. So I suppose at that time they were joined for hearing purposes, as I read it. Now I propose to do the same if there is no objection to that.

Can I have new appearances.

MR N. HAMPTON: Yes, sir. HAMPTON N. appearing on behalf of the Construction, Forestry, Mining and Energy Union and **MS DIANE MONCRIEFF** will be assisting me. And, sir, I'd like to submit my accreditation from the CFMEU to appear on -

COMMISSIONER GOZZI: I have received a copy.

MR HAMPTON: You have?

COMMISSIONER GOZZI: Yes, thank you, Mr Hampton.

MS MONCRIEFF: It's the original.

MR HAMPTON: It's the original, sir.

COMMISSIONER GOZZI: Yes, thank you. If I could prevail - we're very short staffed this morning so thank you very much for that. We have to improvise a little bit this morning.

MR HAMPTON: Not a problem, sir.

COMMISSIONER GOZZI: Thank you.

MR G. COOPER: If the commission pleases, I appear on behalf of the AWU-FIME Amalgamated Union, Tasmania Branch, COOPER G.

COMMISSIONER GOZZI: Thank you, Mr Cooper. Who would like to go first? Mr Hampton?

MR HAMPTON: If the commission pleases. Sir, I think I should start by referring to where the last hearing finished where in fact Commissioner Imlach stated that the matter would be adjourned sine die for the purpose of the unions to get together and discuss some of the problems brought up by the AWU-FIME. And unfortunately that hasn't happened, though we have endeavoured to do so. And in the first instance we sent letters to - or a letter to Mr Cooper or to Mr D. Hayes, the Joint Branch Secretary of AWU-FIME, asking that a meeting in fact take place between them and our Assistant State Secretary, Ms Diane Moncrieff, and I'd like to tender those, sir, if I might.

COMMISSIONER GOZZI: Yes, thank you. Thanks for your assistance. Mark it exhibit CFMEU.1.

MR HAMPTON: Sir, in addition to that our Assistant State Secretary did in fact attempt to contact Mr Cooper with a view to acceding to the request of Commissioner Imlach but - left messages but unfortunately for reasons that we aren't aware of those meetings didn't take place.

So that, sir, is just bringing you up to date and how the last hearing finished.

COMMISSIONER GOZZI: Yes.

MR HAMPTON: And the reasons why it finished. Now as to the objections, sir, I've got to say that the FEDFA, Tasmania Branch were respondents to the award and have been historically from the days of the Roadmakers Industrial Board. And certainly since the introduction of the Roadmakers Award the FEDFA were reregistered with that award in this commission.

Sir, there have been no demarcation or disputes that I'm aware of and certainly I'm advised there are not - that compromises this award and there is certainly evidence within this commission and indeed the Boards that the FEDFA as was serviced its members and was actively involved in the full gamut of involvement with its members with regard to the award.

Sir, we would like to tender or at least we have evidence of members which was the second most large problem of Mr Cooper, the fact that he required proof that we in fact had members. We have members and we have a list here of these members, though we do have some reservations about Mr Cooper getting -

MS MONCRIEFF: No, them being made available. Sorry, sir, if I may -

COMMISSIONER GOZZI: No, I understand what you're saying.

MS MONCRIEFF: Yes.

MR HAMPTON: But quite happy for Mr Cooper to have a look at them and in fact question them. But, sir - yes, we don't believe it would be in our members' best interests for a public listing to be made.

COMMISSIONER GOZZI: I guess the requirement - I think the requirement in accordance with section 63(1)(c) is for the commission to satisfy itself on that issue. And I think I can be satisfied a number of ways. If it's a problem between the two unions and Mr Cooper is happy to look at that and satisfy himself, well I'm prepared to accept that outcome. I don't necessarily want to go through the list, or alternatively Mr Cooper might feel that if I have a look at the list and

satisfy myself that meets the requirements of 63(10)(c). Either way I'm relaxed about it.

MS MONCRIEFF: We would of course prefer the second choice, sir. Our concern was public record, that if there was a requirement that it be handed up and went into the file that there then would be access via public record. Our concern is based on our members' interest, not so much our interest as an organisation.

COMMISSIONER GOZZI: Well given all this harmony and no demarcation problems and no industrial problems I wouldn't anticipate that having a look at a few members' names can alter that long-standing arrangement. But can I have a look at them, Mr Hampton?

MR HAMPTON: Yes, sir.

COMMISSIONER GOZZI: Thank you. Well what's this demonstrate?

MR HAMPTON: That is a list of members, sir, that are in fact working under the Roadmakers Award.

MS MONCRIEFF: Working for employers not respondent to federal awards - that we don't have respondent.

COMMISSIONER GOZZI: So you're saying that there is something like 35, 48 - about 77 members.

MR HAMPTON: Yes, sir.

COMMISSIONER GOZZI: Subject to the Roadmakers Award.

MR HAMPTON: Yes, sir.

COMMISSIONER GOZZI: Some of those last pay deductions of course are quite out of date. What does that mean? In the last column - last pay.

MS MONCRIEFF: It can mean one of two things, sir. Either they are very lax in paying their payments and we're chasing them or the employer has ceased payroll deductions and they're paying directly, if it's the weekly deduction column that you're looking at.

COMMISSIONER GOZZI: Yes, I am. I mean, some of those obviously would no longer be members, would they?

MS MONCRIEFF: No, that doesn't follow, sir.

COMMISSIONER GOZZI: Doesn't it?

MS MONCRIEFF: No. Well it may - I'm sorry, I'll say this. It could be that they have dropped off but we do get employers who from time to time when they become upset with us take their employees off weekly deductions.

COMMISSIONER GOZZI: Anyway there are quite a number of current '94 last pay - I assume they're deductions, are they - last pay deductions?

MR HAMPTON: Yes, sir, they are.

MS MONCRIEFF: And it may well be that they have dropped off the membership list. I couldn't say that they have or have not or indeed that they're not employed with another employer. Quite often the men just move employers.

Commissioner, the nature - and I am going to persevere through my sore mouth. The nature of this type of coverage that we have in this state jurisdiction by and large the smaller operators -

COMMISSIONER GOZZI: Yes, I know.

MS MONCRIEFF: A lot of these members are people who from time to time fill in for owner/operators. Some are owner/operators. By and large within the industry we do have within civil construction as such a high degree of federal award coverage. But with the smaller operators we do have the coverage under the Roadmakers Award. And again I think the record that we have handed up there would reflect that people move in and out. Quite often when we track them down, when they do become behind in fees and we actually get to the stage of putting them into a debt collector they'll turn up and say: I've left Fred Smith; I'm now working for Billy Bloggs. It's a quite mobile area of employment.

COMMISSIONER GOZZI: Thank you. All right, thanks, Mr Hampton, would you like to continue?

MR HAMPTON: Thank you, sir. Sir, I think we've addressed all the concerns raised - certainly raised during the last hearing. But I'd like to continue on in any event.

The fact is that, as Ms Moncrieff has already stated, the great majority of these employees are in small operations and we would be less than prudent if we didn't advise the commission that the work practices and dropping of artificial demarcations under the changing work practices has meant that some of these plant operators have in the past, and I have no doubt will continue to do so into the future, work other than pure plant operating but that which is incidental and peripheral to the actual tasks performed by a plant operator.

And again with the amalgamation the BLF, sir, has now come under the umbrella of the CFMEU and there may be some concern that the CFMEU intend to extend its coverage of pure labouring work into this award area. But I've got to say, and as the commissioner is aware, there is nationally recognised agreement between the unions on demarcation, and we do not see that as a problem.

MS MONCRIEFF: I'll just elaborate a little further, Commissioner Gozzi, on the BLF. Part of the amalgamations there was an agreement between the BWIU, the BLF, the FEDFA - I think, Greg, that's the main three for the - yes. I'm sorry, Mr Cooper. Yes, and the - on demarcation which without going to the full particulars of it, has clearly defined the areas where it is seen that the AWU and FEDFA demark on plant coverage. But more importantly, in this context where the AWU, as it was, and the BLF, as they were, demarked on labouring.

That demarcation very clearly saw the BLF out of the civil construction area. That agreement has been honoured nationally and indeed reaffirmed to my knowledge recently nationally. It has been referred to and acknowledged in this commission and what is being put forward by Mr Hampton is that it is not the intention of the CFMEU and re-applying for our interest in this award, to in any way step away from that agreement.

However with award restructuring going into enterprise agreements the recognition of incidental and peripheral work and the multiskilling of work forces nowadays, it is - I choose my words carefully - it would become apparent that plant operators are doing labouring work. However in the area of smaller operations this isn't new; it simply wasn't recognised in awards before.

In the area of civil operations, plant operating and labouring work has never been clearly demarked or defined. We're raising this simply to allay any fears that we may be going out seeking to cover pure labouring work. The CFMEU does not intend to do that however as a union which through its FEDFA past has had a major coverage of plant operators in this state, we would see our interest in this award as being proven and being a continuum and that it should not be clouded by any arguments regarding labouring because it is not our intention to cover pure labouring work.

COMMISSIONER GOZZI: Ms Moncrieff, one aspect that could possibly impinge on this of course is with all the amalgamations that occurred and mergers of unions and so on, no doubt there is a change to the constitution as well. And

one of the factors that you have to address in this hearing this morning is whether indeed the CFMEU have got constitutional coverage for the classifications contained in the Roadmakers Award.

There are three to section 63(10) -

MS MONCRIEFF: Yes.

COMMISSIONER GOZZI: Now you've addressed the membership, I think you've addressed the industrial relations aspect but you haven't addressed the constitutional coverage.

MS MONCRIEFF: The constitutional coverage.

COMMISSIONER GOZZI: And I recognise of course that the FEDFA did have an interest in those awards, and it carried forward I think the provisional interest was there in respect of the Roadmakers Award. I think that's the history of it. But I'm not aware now of what the constitutional coverage is in respect of the CFMEU and whether indeed that is the same or incorporates the constitutional arrangements that were inherent when the FEDFA was an organisation in its own right.

MS MONCRIEFF: Sir, I have to admit that for several reasons I have not addressed that particular point, and I apologise for that. I can give verbal evidence today and give undertakings to the commission to provide an up-to-date copy of the constitutional coverage of the CFMEU with respect to the classifications contained within the award.

It is my understanding, sir, that our constitutional coverage of plant within the award has not changed.

COMMISSIONER GOZZI: Well is your understanding supported by fact?

MS MONCRIEFF: I would have to follow that, sir, with the written evidence. At this stage I could not satisfy the commission as to that point.

COMMISSIONER GOZZI: No.

MS MONCRIEFF: No.

COMMISSIONER GOZZI: All right. Mr Hampton, anything further?

MR HAMPTON: No, sir. If the commission pleases.

COMMISSIONER GOZZI: All right, thank you. Mr Cooper?

MR COOPER: Commissioner, I was going to basically seek some guidance from the commission in respect to this matter. I

don't wish to cast aspersions on the CFMEU but exhibit - and I'm not quite sure what you've titled that exhibit that was handed up in terms of the correspondence from the CFMEU Honorary Secretary.

COMMISSIONER GOZZI: CFMEU.1.

MR COOPER: CFMEU.1.

COMMISSIONER GOZZI: Yes.

MR COOPER: Well, commissioner, I will say for the record that is the first time that I have sighted that correspondence. The address that is contained in that correspondence is our address, P.O. Box 129, North Hobart, but I haven't seen that correspondence until this morning's proceedings.

Now where that went to I don't know. As I said, I don't wish to raise that to cast aspersions on the CFMEU, just to say that I haven't seen that correspondence.

I was going to tender an exhibit to the commission that outlined that we did correspond with the CFMEU in the first instance. And if I could do that as a preliminary matter.

COMMISSIONER GOZZI: Yes, if you wouldn't mind handing it up, to prevail on you. And we'll mark that AWU-FIME.1. Thank you. Mr Cooper.

MR COOPER: I hope this doesn't set any precedents, commissioner.

COMMISSIONER GOZZI: Well you know, it could work so well that we might have to make some efficiencies.

MR COOPER: I might have to get a job security statement

In terms of that correspondence, sir, we did take the initiative to correspond to the CFMEU because, as Mr Hampton has pointed out, at the conclusion of proceedings before Commissioner Imlach in T.4189 of '92 and 4109 of '92, that was on the 14th January, we did have discussions with the CFMEU at that point in time with a Mr Martin Clifford.

Our concerns at that point in time were that the Roadmakers Award was a civil construction award, one that is badly in need of restructuring nonetheless.

And in terms of the amalgamated union, as the commission would be aware, the CFMEU became the new union which realised the cancellation of the certificate of the FEDFA. And as the act was structured then they had to seek a new interest, and they

had to satisfy the commission in terms of section 63(10) of the act.

At that hearing we weren't provided with the constitutional clauses that provided coverage. We weren't provided with any records of membership and we weren't given any advice in terms of demarcations. And the reason I raise that is because the CFMEU with an expanded constitutional coverage does have rights to cover carpenters, it does have rights to cover, as has been pointed out, labourers.

In terms of the civil construction industry the FEDFA only had constitutional coverage for plant operators, the extent to which they had a role in the award. So the new organisation had a significantly expanded constitution which we believe unless it was properly clarified between the unions could lead to demarcation and could lead to unrest in terms of orderly conduct of industrial relations in this state of Tasmania.

So when we received the notice that the hearing was to be called on we did correspond to the branch secretary for the purposes of arranging a meeting. In terms of the history of that correspondence we rang first and were advised that Ms Moncrieff was handling the matter and she was on leave and that we would be contacted as soon as she returned from leave. We never - as I said, I haven't seen that other letter that responded to ours until today so I can't comment any further on that.

When Ms Moncrieff did return from leave she did contact my union and left a message that she was after me. I tried on a number of occasions to talk to her but I never caught up with her for whatever that reasons that occurred it didn't happen. I have had some discussions with Mr Clifford but we haven't finalised those concerns that my organisation have.

So rather than putting detailed submissions to the commission this morning it was hopeful that we may have been able to sit down and talk with the CFMEU because we would be concerned that the orderly conduct of industrial relations in the state of Tasmania may be upset by the entry into this award by the expanded organisation. And I really don't seek to go much further than that, although I am prepared to put exhibits in terms of history in this commission that have demonstrated that that is a key point that needs to be considered. I think it's a matter for the unions to sort out and I'd rather it be sorted out by the unions, with no disrespect to the commission at all. I'd rather it be sorted out by the unions and I think we should really be given the opportunity to do that. However if in these preliminary submissions you don't think that's appropriate then I am prepared to proceed and put argument as to why the CFMEU shouldn't be granted interest. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Mr Cooper. Anything further you wish to add?

MS MONCRIEFF: Yes, in response, commissioner. Mr Clifford did advise me that he had been handling this matter previously. There was some confusion when I made application to come back in to this award. As part of looking into this, Mr Clifford sought a copy of transcript to see what matters were to be addressed when we came back to the commission with the other matter, that's a copy of the transcript of the hearing before Commissioner Imlach on January 14th in Hobart.

Sir, at that stage - and I must confess that I hadn't looked at the act, quite obviously, with respect to satisfying the constitutional coverage, but at that stage Mr Cooper raised the issue of orderly conduct of industrial relations and our membership -

COMMISSIONER GOZZI: What page are you looking at?

MS MONCRIEFF: Sorry?

COMMISSIONER GOZZI: What page are you looking at?

MS MONCRIEFF: Oh, sorry, that's at page 3.

COMMISSIONER GOZZI: Right.

MS MONCRIEFF: Where Mr Cooper in paragraph -

COMMISSIONER GOZZI: The last paragraph.

MS MONCRIEFF: Second last, he first picks up on it.

COMMISSIONER GOZZI: Oh, yes.

MS MONCRIEFF: Yes. And halfway through that second last paragraph at about line 5: Determining their membership in the industry. And yes, in the final paragraph, as you quite properly point out he did not address constitutional coverage. I just raise that.

COMMISSIONER GOZZI: Well it's not up to him to raise it, is it? It's up to the commission to be satisfied about it and it's up to the applicant to satisfy the commission.

MS MONCRIEFF: Indeed, sir. Well I guess -

COMMISSIONER GOZZI: I take your point, it wasn't raised.

MS MONCRIEFF: Yes, sir. And Mr Edwards raised the matter of membership on page 4 at paragraph 1, 2 - 3 - paragraph 1 of when he comes in. So I again apologise not covering constitutional coverage but I don't think any of the parties

at that point did and certainly the commission did not indicate. But I take on board that that requirement is there.

And following on what Mr Cooper has said I would seek leave to adjourn the matter but in doing so, sir, I would seek the commission's indulgence in having a hearing at the earliest possible time so that we could have this matter settled. In the past I have, in dealing with the Roadmakers Award, quite often said to the TCCI that even though we continue to service this award we don't have many members in the area. I was surprised to find that we had the number of members that we do there. It's not insignificant in the context of the civil construction industry and I would be very distressed if we weren't able to get to and do the structural work that is needed in this award to assist those members. So the earliest date would assist, sir. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Ms Moncrieff. Mr Hampton, anything further you want to add?

MR HAMPTON: No, sir.

COMMISSIONER GOZZI: Well I must say I'd like to deal with this matter in some sort of full context looking at all aspects of 63(10)(c)(i), (ii) and (iii). Now essentially that goes to constitutional coverage, membership and industrial relations. I can see from this list here that there are some members, although the dates - I think the most current date in terms of last pay deductions there's one here for the 7th June '94; 17th June '94, there's one, 24th June '94 and 1st July '94. And there are quite a number of others in May and so on going through to '94. So the thing that concerns me is how do I know that this relates to members in respect to the Roadmakers Award - subject to the Roadmakers Award? How do I establish that?

MS MONCRIEFF: I would have to go to - for clarification on the payments. Our fees are annual. Quite often members pay annually. They do fall behind. We do chase them. That's a fact of life.

COMMISSIONER GOZZI: Yes, I'm sure it is.

MS MONCRIEFF: Some pay quarterly, some pay half yearly, some pay annually, some pay weekly, some pay fortnightly. It depends. I hear what the commission is saying. I deliberately asked that the financial status of members be deleted in case that did become public record. And there are a couple of members in there who are collectors and I - if people cared to work out our system on the computer that would clearly identify them. So I asked for that to be removed.

COMMISSIONER GOZZI: Well look, I'm clear from here that there are members there - I guess membership in the context of coverage in the award is the thing that needs to be somehow clarified.

MS MONCRIEFF: They may be -

COMMISSIONER GOZZI: And I guess what I'm coming round to is that, look, I am going to adjourn this matter and I agree with Mr Cooper that from my perspective the ideal approach would be for the organisations to be able to sort it out amongst themselves. Now it appears that really there hasn't been any meaningful discussions on that for some time, if ever, and I think those discussions should take place.

If those discussions resolve the issue that's all well and good and then you can brief me on that when we next resume. If you can't agree then really given that the matter is contested then the tests provided for in the legislation should be properly complied with in the fullest possible way. And that goes to constitutional coverage, establishing that membership is current and relevant to the award and aspects going to the conduct of industrial relations.

So I'll hand you back this list, Mr Hampton, that you handed up.

MR HAMPTON: Thank you, sir.

COMMISSIONER GOZZI: Thank you. And we'll go off the record and set a date for resumption.

OFF THE RECORD

COMMISSIONER GOZZI: All right, I just want to re-emphasise that I will want to look at those sections of the act that I've referred to very closely when we next resume if the matter is still in a state of disagreement. And notwithstanding you'll need to satisfy the commission in any event in respect to those issues. And we'll adjourn for you to have some discussions for resumption on the 23rd August at 10.30 in the morning. Thank you.

HEARING ADJOURNED