

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5296 of 1994

IN THE MATTER OF an application by the
Australian Liquor, Hospitality and
Miscellaneous Workers Union - Tasmanian
Branch for the making of a new award

re the Wholesale Plant Bakeries Award

COMMISSIONER WATLING

HOBART, 14 June 1995
continued from 29/3/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR K. O'BRIEN: If the commission pleases, I appear today with **MR DAVID O'BYRNE**, on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union.

5 COMMISSIONER WATLING: Thank you.

MR T.J. EDWARDS: If it please the commission, EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER WATLING: Good, thank you.

10 **MR P.J. NOONAN:** If the commission pleases, I appear on behalf of the Shop Distributive and Allied Employees Association, Tasmanian Branch, NOONAN P.J.

COMMISSIONER WATLING: And you're seeking leave to intervene, are you?

MR NOONAN: Yes, Mr Commissioner.

COMMISSIONER WATLING: And what's your reason for intervention?

15 MR NOONAN: Well we received notification of this hearing today. My reason for seeking leave to intervene is in relation to the scope - proposed scope of the new award.

MR O'BRIEN: That's made.

COMMISSIONER WATLING: That's made.

MR NOONAN: Right.

20 COMMISSIONER WATLING: That part of the award has been made. We're dealing now with the actual contents of the award - rates of pay, classifications, conditions.

MR NOONAN: Right, Mr Commissioner. Can I just propose a question in relation to the scope.

COMMISSIONER WATLING: Mm.

25 MR NOONAN: It has here: The award is established in respect to an industry for making or baking for sale predominantly at the premise covered then those on which it is made or baked or following articles.

Is it proposed in the scope there that there will be the sale of bread or rolls or crumpets or pikelets -

30 COMMISSIONER WATLING: Well we might just go off the record for a moment, I think.

OFF THE RECORD

COMMISSIONER WATLING: Right, any objection to the intervention?

35 MR O'BRIEN: Yes, well I object to the intervention. Firstly, I object on the basis that there wasn't even the courtesy of contacting us about a proposal or a discussion about what the matter was about. To roll along this morning and say, well we want to intervene, and then conduct a fishing expedition about what the award is about, it's

hardly an indication of a bona fide interest in the matter. Rather, it's an indication of an interest to fish in the matter and see what can be pulled out of what are obviously unknown waters, so far as Mr Noonan is concerned.

5 And I believe that prior to him being granted the right to intervene, he needs to establish that there is some effect currently arising in relation to his representational capacity.

COMMISSIONER WATLING: I suppose one would have to say that the organisation is party to the current award.

MR O'BRIEN: To the Bakers Award.

10 COMMISSIONER WATLING: Which is still in operation.

MR O'BRIEN: Yes.

COMMISSIONER WATLING: Yes.

15 MR O'BRIEN: But not to this award which is - there's nothing preventing Mr Noonan's organisation seeking an interest in this award and going through that process. I've heard nothing so far which indicates there's actually a direct interest in terms of there being members who are affected by it.

COMMISSIONER WATLING: Well no one knows yet, including myself.

20 MR O'BRIEN: Well that's right. The intervener has got to justify their rights to intervene, and my submission is that in the absence of some material which indicates to you that they have a very direct and bearing influence - interest in this matter, they not having sought an interest in the award and having had opportunity to do so, that there's no reason to grant intervention.

25 MR EDWARDS: I, too, commissioner, oppose the application for intervention. It would be our submission that Mr Noonan has an obligation under section 27 subsection (5) to advise the commission of the direct interest that organisation has in these proceedings in presenting any application for intervention. We believe Mr Noonan has clearly failed to establish a ground for intervention. The scope clause of the award has been made and defined. If Mr Noonan is able to advise us of members he has that will be affected by the award with that scope, then I may well change my view in respect of his application for intervention. But at this stage, unless Mr Noonan is able to indicate that he has members that will be affected in some way by the further making of this award, then I believe the application for intervention should be rejected. And we would oppose it on those grounds.

COMMISSIONER WATLING: Right. Mr Noonan?

35 MR NOONAN: Well, Mr Commissioner, I take objection to the statement coming along here on a fishing expedition. That's clearly not the case. We were notified of this hearing today and I'm here to seek -

40 COMMISSIONER WATLING: Well I agree with that comment. You were notified, and you were notified because you have an interest in the award that applies in the industry at the moment.

MR NOONAN: Yes, Mr Commissioner. And basically why I'm here today is to protect our interests as far as having institutional coverage is concerned. Now I don't know if any of the parties who have come along here today and notified you or given you

evidence of what members they have, where they have members in this particular industry.

5 COMMISSIONER WATLING: Yes. I'm not really interested in, I'd have to say, membership. Membership doesn't worry me one iota. What I am interested in and what I don't know at this stage is what classifications of people it will cover.

MR NOONAN: Yes.

COMMISSIONER WATLING: That's really the issue, not membership. Union membership, to me, is not the issue in this. That's an issue that needs to be sorted out at the time when one seeks an interest in the award.

10 MR NOONAN: Well again, Mr Commissioner, our sole interest is if there are going to be sales classifications in the award, we would like to know if there's going to be people employed under sales classifications. If not, we don't have an interest in this proposed award.

15 COMMISSIONER WATLING: Yes, well can I just say to the parties, look, I'm a bit concerned. I don't know what's going to be in the award either and I think that it might be appropriate for organisations who don't know, the same as I don't know, to have some intervention rights. Certainly they're parties to the award at the moment, that applies in the industry. But there may come a stage where other organisations don't have an interest in it and may not seek an interest in it, if we find out what
20 classifications it's going to contain.

Maybe before we get into agreeing to formal interventions - maybe the applicant might want to talk to the potential interveners to settle their concerns. I don't certainly know what's going to be in it. And whether or not it might be appropriate for the applicant to talk with potential interveners before I make any ruling on it.

25 MR O'BRIEN: Mr Commissioner, we would be happy to talk to them and would have preferred that that took place before today. And we would undertake to be available to meet individually with the Shop Distributive and Allied Employees. And I take it - I'm not sure whether the ASU is intending to intervene.

30 COMMISSIONER WATLING: We haven't heard from Mr Grubb yet, but he seems to be anxious there to -

MR O'BRIEN: But any case, we would indicate that we would meet individually with the ASU if they wish to discuss the question of - any questions which exercise their mind in relation to the Wholesale Plant Bakeries Award.

35 And would undertake to do so. At this stage we would be available fairly shortly, indeed, at the conclusion of proceedings today.

40 COMMISSIONER WATLING: Right. Well, Mr Noonan, I won't grant you intervention rights at this stage. But I've taken Mr O'Brien's comments on board. I think there is a need for the applicant, in particular, to talk to any potential interveners because the applicant does have a view as to what the award will cover more so than I do. And if the ASU - I notice they haven't sought leave to intervene, but that may save them taking the floor. Mr Grubb is nodding. Both your organisations and Mr O'Brien should get together and just have a chat about, I think. Then it may be clearer for you in the future and you may even want to consider whether or not you seek an interest in the award. Mr Grubb?

45 MR GRUBB: If I may, Mr Commissioner, I'm not going to seek an intervention. But just indicate that what Mr O'Brien said would satisfy us in talking with them. And our

intention was at this point to just see the process in that respect. And the meeting with them would suffice. In fact, we'll probably leave now.

COMMISSIONER WATLING: Right. Well that's settled for the moment. Mr O'Brien?

5 MR O'BRIEN: Commissioner, as you're aware, following the process of establishing this award, the parties have been engaged in discussions about matters that they feel are fundamental to the future award. And I don't think it's inappropriate for me to say that we are discussing the appropriate classification or career structure and certain very important conditions matters. At this stage, we met with the employers in early May. We did understand we would have responses well before today's date. It's now 10 the middle of June. We have not received any responses.

We have consulted with our members who are anxious that this matter be processed. And in the absence of some clear view from the employers as to where we are headed in relation to the matter, we believe there is no other appropriate option but to set dates to commence to have at least some of the questions which are outstanding 15 determined by the commission.

We would intend that there would need to be a process of the parties laying before the commission at that time their preferred position in relation to the key matters which are in dispute and for a process to be established for the hearing of the particular matters. I am curious in making this submission, Mr Commissioner, to ascertain what 20 your belief would be as to the need for any industry inspections and whether those inspections need be formal or informal, having regard to the fact that I really do have a view that it is difficult to have an inspection process which is going to be referred to in submissions without there being some transcribing process or agreed process as to what has actually been seen.

25 It is my view, Mr Commissioner, that there would be a number of witnesses on our side in relation to any hearing, and I'm uncertain as to Mr Edwards' position. But suffice to say, a number of days would need to be programmed for the hearing of this matter following an initial hearing date. All that I can indicate is that at this stage the parties appear to be a long way apart and in those circumstances, unless Mr Edwards 30 can put something to the contrary, it would appear that it's unlikely we're going to reach agreement, and the appropriate course is that the matter be determined by you, Mr Commissioner.

COMMISSIONER WATLING: Right. Mr Edwards?

35 MR EDWARDS: Commissioner, the TCCI position in respect to the matters raised by Mr O'Brien is that, firstly, we agree that there have been some discussions between the parties on perhaps the fundamental issues that will come up as part and parcel of the making of this new award. I don't think it's any secret to anyone that - and I've put them on transcript on an earlier day of hearing when dealing with the title and scope matter, that they revolve around the hours of operation of this industry and what 40 penalty rates, if any, ought to attach to various hours of work during which work is undertaken.

And to say that they are very fundamental issues is probably to understate it. To also say that it's an extremely difficult issue in the context of this industry, is again probably to understate the facts. The industry has wrestled with this question for 45 certainly as long as I can remember. My knowledge is that it goes back certainly beyond 1973 when the commission as currently constituted was in some way involved in another way. And certainly to expect it to be resolved quickly is probably unlikely to be the occurrence.

I certainly had no understanding that any response would be made to Mr O'Brien after our last meeting within a week. If that was the understanding and I haven't met it, then I apologise. There's no intent on my part to delay this issue. In fact, in two circulars to my members since that meeting, in which I have sent out two documents
5 forwarded to me by Mr O'Brien, I have impressed on my members in the industry the urgency of getting these issues resolved because there is no point to be made by employers in delaying the making of this new award, because we are currently labouring under a regime of hours and penalties which does not suit the operations of the industry, both in its global context and, more recently, as a result of the
10 introduction of all day Saturday trading.

So there is no reason why employers would delay this particular exercise. I certainly agree with Mr O'Brien that the parties at this stage are a long way apart on these most important of issues. And it could well be that the appropriate course is to set some dates for the commission to resolve those issues for us.

15 COMMISSIONER WATLING: Are we talking about wage rates as well?

MR EDWARDS: Certainly classifications structure, and in that context, yes. I think we are agreed on basically what number of levels we ought to have, or certainly the top and bottom points within that structure, where people will fit in, in the middle, is a matter that's still between us and not resolved. Mr O'Brien has put -

20 COMMISSIONER WATLING: So in terms of translation schedule.

MR EDWARDS: The employers have put a detailed proposal on the table. I won't table this because it's a 'without prejudice' document and it's the property of the parties.

COMMISSIONER WATLING: No.

25 MR EDWARDS: But it is a detailed 'without prejudice' proposal. It deals with a variety of issues including the new structure, the definitions, the translation, which is dealt with in detail, the proposed MRA structure, and the hours of work and penalty rate loadings et cetera that would attach to it. And Mr O'Brien equally has put fairly detailed responses to those in writing, which are currently in the hands of the
30 industry. And I've asked them to cost Mr O'Brien's proposal, particularly on penalty rates and hours against both ours and the existing Bakers Award, so that we can have some better idea of what the total cost of this whole operation is going to be, because that is an important element from the industry's point of view, as to how we might be able to resolve these issues.

35 It would seem to me that the setting of some dates would be an appropriate way to proceed from here, although I'm a little in the hands of the commission whether that should be to commence a process of arbitration or whether the commission would want to use any processes of conciliation before the arbitration role commences. I'm completely in the hands of the commission in that regard. It might be that some of the
40 issues that divide us may be narrowed down with some assistance from the commission. I don't believe all of the issues between us would be resolved through that mechanism, and there will be some arbitration necessary, it would seem to me, at this stage, unless there's some dramatic shift in position from one side or the other or two half shifts in position, as it were.

45 So I've got no objection to some days being set aside. I think the first of those ought to be for some conciliation, and I would undertake to have my four members affected by this award in attendance during those conferences so they can in detail deal with the issue as they affect their individual enterprises. And then I've no difficulty after that for some dates having been set down for arbitration.

In response to Mr O'Brien's question about witnesses, I would expect that we would probably have at least four witnesses as part of the proceedings and possibly more. The question of inspections, I think there ought to be inspections of all four work places, but I think they should be informal inspections where we simply jointly take the commission around. The commission can, in inverted commas, update the commission's already existing knowledge of the industry in light of mechanisation that's occurred since the commission was last involved in the industry, and the way in which the industry now operates so you've got a better picture in your mind, when we are talking to you and the witnesses are talking. But it would only be an aide memoir, it wouldn't be a formal part of the proceedings, as I would see it.

I think the commission is, in full bench session, already on the record as to how inspections can or can't be used. And they were always, I think, said to be informal exercises to assist -

COMMISSIONER WATLING: Well I always take the view in inspections over the years that I've been involved in and with, is that it's only a view. And I don't like taking evidence on the job, for a couple of reasons. Both sides, as you're walking around, want to give you their view of the world and I think if people are going to give evidence they should do it in formal session because then the other side can respond. You'd be surprised what people want to tell the commissioner on the way around and if it was formal evidence and the other sides don't have a right - or don't even hear it and don't have a right to respond, I think it's inappropriate.

MR EDWARDS: With that in mind, we'd suggest there be two sets of inspections, the one involving both the parties and the one involving just the commission and myself going around and make some private submissions on the way round.

COMMISSIONER WATLING: The usual standard procedure for you, you reckon.

MR EDWARDS: Indeed, commissioner, yes. And I'd like the commission to have its boot clear before we go.

COMMISSIONER WATLING: We might just go off the record and have a look at some of these things then.

OFF THE RECORD

COMMISSIONER WATLING: Well we've had an off the record discussion and this matter is going to be adjourned until the 30th June at which time we'll commence with a conciliation conference. We will then have some inspections. The parties are to arrange the inspections and provide a schedule of events for me. And those inspections will be on the 12th, 13th and 14th, if necessary, of July this year. And we will commence formal submissions in relation to arbitrating outstanding matters on the 19th July. The 19th, is that the right date?

ASSOCIATE: Yes, 19th and 20th.

COMMISSIONER WATLING: And 20th, yes. Right, any further comments, discussions? So do you want to have your boot open as well, Mr O'Brien?

MR O'BRIEN: I'll take a station wagon.

COMMISSIONER WATLING: You'll take the station wagon, right.

MR EDWARDS: A greedy seat.

COMMISSIONER WATLING: Mr Edwards is very generous.

MR O'BRIEN: anything fork lift truck.

COMMISSIONER WATLING: This would be to carry the money home, I hope.

MR O'BRIEN: Well that is what I was hoping.

COMMISSIONER WATLING: Get the dough.

5 MR O'BRIEN: Yes.

COMMISSIONER WATLING: Right.

MR O'BRIEN: I'm sick of crumbs.

MR EDWARDS: We always get a rise out of that.

10 COMMISSIONER WATLING: Yes. There's a few old crusty ones in the industry though. You might be lucky. Right, we'll now stand adjourned.

HEARING ADJOURNED