

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3788 of 1992

**IN THE MATTER OF** an application by  
the National Union of Workers,  
Tasmanian Branch to vary the  
Wholesale Trades Award

re classification structure,  
definitions, and wage rates

PRESIDENT

HOBART, 9 July 1992

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Well we'll take appearances again.

**MR P. RICHARDSON:** If the commission please, RICHARDSON P., appearing for the National Union of Workers, and with me is **STRICKLAND D.**

PRESIDENT: Thank you.

**MRS H.J. DOWD:** If the commission please, I appear on behalf of the Federated Clerks Union of Australia, Tasmanian Branch, DOWD, H.J.

PRESIDENT: Thank you, Mrs Dowd.

**MR P. NOONAN:** If the commission please, I appear of the Shop Distributive and Allied Employees' Association, NOONAN, P.

PRESIDENT: Yes, Mr Noonan.

**MR B.J. HANSCH:** If the commission please, HANSCH, B.J., appearing for the Transport Workers' Union of Australia.

**MR M. SERTORI:** If the commission please, SERTORI, M.C., appearing for the Metal Industries Association of Tasmania, the Tasmanian Sawmillers Industrial Association, and the Tasmanian Confederation of Industries.

PRESIDENT: Very good, Mr Sertori. Mr Richardson?

MR RICHARDSON: Thank you, Mr President, the NUW would intend with the commission's indulgence to make some brief submission on the record and then would appreciate the opportunity for a conference with the assistance of the commission in an attempt to establish what points of difference exist between the parties. This is an application made by the National Union of Workers to vary the Wholesale Trades Award in several respects.

When the application was originally lodged by the union on 30th April of this year, a copy of the proposed draft variations sought in the matter was also attached. The draft variations contained in the application were of a composite nature and we believe can be dealt with in part at least today. The application contains a number of matters which the union perceives as being of a threshold nature and subject to any submissions that might be made today and any conference that - or any outcome of any conference that may occur may necessitate further hearing.

Whilst the union indicates its preparedness to participate in further hearings, it will foreshadow at this early point in time that it will oppose any application that may be made by any of the parties today for the matter to be adjourned in its total.

We foreshadow that intention on a number of grounds; firstly the matters that are contained in the application are not new to either the commission or the parties represented - they are in fact matters that have been the subject commission hearings since at least 28th June 1990. The union believes secondly that the matters contained in the application require urgent and final resolution so that the process of applying the structural efficiency principle can continue and be completed within the Wholesale Trades Award.

Perhaps I should indicate to the commission that the draft variations sought have undergone some minor amendment and I seek to tender a revised copy of variation sought.

PRESIDENT: NUW.1.

MR RICHARDSON: I don't intend to take the commission through each of those variations - they are minor in nature and are subject to checking, but suffice to say that the variations are - are of two categories. Firstly, there are number of grammatical errors within the draft attached to the application, and secondly, in response to correspondence received from the Federated Clerks Union, the National Union of Workers has varied certain elements of the draft variations sought.

Mr President, the position as the National Union of Workers understands it is that this application is intended to effect an integrated classification structure within the Wholesale Trades Award. That is a matter, as I've already indicated, that has been the subject of some proceedings and some discussions before the commission as presently constituted since June of 1990. As the NUW understands its application, it is consented to in principle by the Federated Clerks Union, that is to say, that there is need for further discussion between the NUW and the Clerks Union over a number of proposed job descriptions contained within the integrated structure, but the principle in integration and the broad concepts contained in NUW.1 are supported by the Clerks Union.

You understand that in respect of the SDA, the position is the same - that is, there is the need for discussion but the principles are not opposed. In respect of the Transport Workers Union, the NUW understands that the application is opposed in its entirety, although the NUW has not been advised as to the exact reasons for the opposition, which I might indicate has made it hard for the union to prepare a case

without having to take into account all possibilities as to why opposition exists.

In respect to Mr Sertori's organisations, we understand that again there is support, that is, that there is consent for the principles contained in the application, but there is the need for further discussion.

Perhaps if I could tender a copy of numerous correspondence between my organisation and the Transport Workers Union.

PRESIDENT: NUW.2.

MR RICHARDSON: NUW.2 is a collection of correspondence between my organisation and the Transport Workers' Union of Australia, principally between the branches of those unions. At the first page of the exhibit is a letter addressed to Mr Darryl Strickland, dated 4th May 1992 and signed by Mr Ken Bacon, the branch secretary of the TWU here in Tasmania, in which he makes reference to correspondence of 30th April 1992 as addressed to Mr Hansch. That correspondence, for the assistance of the commission, was a copy of the application and draft order as a .... - as lodged by the National Union of Workers and as was sent by Mr Strickland by means of prepaid certified mail on 30th April.

Mr Bacon's letter goes on to say - if I could quote at length - from the second paragraph:

As you are aware the Transport Workers' Union position in relation to numerous State Awards, including the Wholesale Trades and Produce Awards, is that the transport classification should be removed from those Awards.

You are also aware that the only reason the Transport Workers' Union has supported the National Union of Workers S.E.P Applications to vary Awards, is because that there has always been a clear understanding between the parties that transport classifications would be removed from those Awards, and that the National Union of Workers would support any Transport Workers' Union application to remove transport classifications.

It was not until 17 January of this year, that the National Union of Workers advised the Transport Workers' Union in writing, that they oppose the Transport Workers' Union application (T3551/91) to withdraw classifications; it was at that time that it became evident to the Transport Workers' Union that the National Union of Workers had reneged on its agreement with the Transport Workers' Union.

Please be advised that the Transport Workers' Union will oppose both applications to the Full Bench to vary the Awards in the terms outlined in your drafts.

I would also take this opportunity to advise, that not only will we oppose your applications, but we will also take any action deemed necessary to protect transport classifications and to have those classifications removed from both the Wholesale Trades and Produce Awards.

End of quote.

Perhaps by way of expansion, the reference in the fourth paragraph to T.3551 of 91, was one of a number of applications made by the Transport Workers' Union and heard in part by yourself, Mr President, in January of this year, and the reference to the full bench which appears in the fifth paragraph is a reference to the fact that the union believe that this application should in its application be determined by a full bench.

At the second page of the exhibit NUW.2, is simply a short letter from Mr Greg Sword, the general secretary of the National Union of Workers to Mr Strickland, referring to attached correspondence, and then, attached to that, is the correspondence. Firstly, there's a copy of a facsimile message dated 22nd June 1992, from the federal secretary, Mr Hodgson of the Transport Workers' Union to Mr Sword and the National Union of Workers referring to attached copies of letters received from the Tasmanian branch, and indicating the Transport Workers' Union's extreme concern over the application and asking that Mr Sword contact Mr Hodgson.

There's then an extract of those copies of correspondence wherein in a facsimile dated 15th June, Mr Bacon to Mr Hodgson indicates his concern, refers to documents which either appear in exhibit NUW.2 or are the application, and indicates a concern that perhaps their correspondence has been ignored. And then finally, the last two pages of exhibit NUW.2 are a letter dated 3rd July to Mr Hodgson from Mr Sword which was a facsimile with a copy to Mr Strickland, and again, if I could quote from that letter in some detail, from the second paragraph:

Since 1990 the Tasmanian Branch of the NUW has been involved in the process of applying the structural efficiency principle to awards to which it is respondent, including the Wholesale Trades Award. This has included the development of new classification structures, the establishment of appropriate relativities and changes in work practices.

In respect of the Wholesale Trades Award the NUW has consistently sought the introduction of a classification structure that integrates stores, transport and clerical functions within an enterprise.

An application to achieve such a structure was adjourned in mid-1990 as a result of substantial differences between the relevant unions.

I am advised that since that time discussions have occurred between officials of both branches of the NUW and TWU but to no avail. This is despite a statement by Industrial Officer Hansch of the Tasmanian Branch given in proceedings before the Tasmanian Industrial Commission in T No. 3551 of 1991 that the TWU was confident that differences between the parties could be resolved.

The NUW's objective of an integrated classification structure is founded on three main premises:

1. That the Union has the constitutional capacity to enrol as members, persons employed in driving and clerical classifications within enterprises covered by the award.
2. That the Union has as members, persons employed as such.
3. That the application is consistent with the structural efficiency principle.

As this matter has remained unresolved the Union has sought to have the issue determined conclusively.

I am advised that the Union's application is listed before the Tasmanian Industrial Commission on 9 July 1992 at which time the Union will press for the matter to be heard.

In this regard it should be noted that persons employed in stores classifications have received two minimum rate adjustments whilst clerical and driver classifications have received none. To continue such a situation is inequitable and causes unnecessary unrest at individual workplaces.

The NUW remains prepared to hold discussions with the TWU on the contents and objectives of its application.

I trust that this clarifies the situation and hope that the parties can reconcile their differences.

And I end the quote there.

The main purpose for tendering exhibit NUW.2 is because I believe that the collection of correspondence that constitutes that exhibit highlights in Mr Sword's letter dated 3rd July, what, when taken in tandem with the union's application, are the applicants intentions with this matter and when looked at in conjunction with the Transport Workers' Union letter of 4th May 1992, highlights the lack of specific reasons for objection that the Transport Workers' Union have provided to the National Union of Workers with the application other than a somewhat unclear reference to an agreement between the parties not being honoured by the National Union of Workers.

The intention of the unions application is to, firstly, broadband the existing classifications within the award that have not been the subject of broadbanding, consistent with the structural efficiency principle. Secondly, to commence the process of minimum rate adjustments in those same classifications so as to establish proper and sustainable relativities between any new classification structure and the classifications therein. And thirdly, and most importantly, to establish an integrated classification structure.

Now the amended draft order, which is exhibit NUW.1, contains what the National Union of Workers believes is an appropriated integrated classification structure for the Wholesale Trades Award.

We don't come to the commission today and seek a decision in respect of the content of that classification structure, nor the specifics of that classification structure, but rather, if it is necessary to proceed to argument, a determination of what the union sees as the threshold issue that separates the parties, and that is the threshold issue of whether in fact an integrated structure should apply to the award or not, and I suppose, the supplementary question of whether the broad outline contained in exhibit NUW.1 constitutes or meets the definition of an integrated structure.

So, on that basis, Mr President, that the union would seek a brief conference between the parties with the assistance of the commission. As I've already said, we understand that there is a broad consent position with two of the unions party to the award, namely the clerks and the SDA, but the union has received no formal advice other than that contained in the correspondence of 4th May, as to what specifically the Transport Workers' Union objects to in the integration.

We know that the wish to remove the classifications from the award, and we were given undertakings on 17th January this

year that discussions between the parties may resolve those differences. Any discussions that have occurred have not resolved those differences. So it is important to the NUW submissions and perhaps also to the length that those submissions might go to, that before the union commences putting its submissions, that it has clear understanding from the Transport Workers' Union as to what it is that they oppose. If the commission pleases.

PRESIDENT: Mr Richardson, would that be better put on the record, rather than in conference, the TWU's position? It's just -

MR HANSCH: Mr President, if I may?

PRESIDENT: Yes, Mr Hansch?

MR HANSCH: We would like to put our position on record. I believe it is essential that it does go on record, particularly in relation to what's been said here this morning.

MR RICHARDSON: If Mr Hansch feels more comfortable that way we are happy to proceed that way.

PRESIDENT: Yes. I'd like to I think find out formally and have it on record just what the position of the TWU is, and then we'll see whether or not there is any room to manoeuvre through that. Mr Hansch?

MR HANSCH: Yes. Thank you, Mr President. Mr President, the National Union of Workers are correct in when they say that the TWU will oppose any application to include transport classifications in the current structure. That was indeed made quite clear in correspondence from the TWU. It is already tendered as part of an exhibit in NU.2. That was our correspondence dated 4th May 1992.

Our reasons are quite clear. I believe they are contained in that correspondence.

We stand by it. We believe there was always an agreement not only between the National Union of Workers but between all parties, particularly in relation to this award, that the transport classifications would come out of the award and would be supported by the other parties.

In fact, that correspondence contained in NUW.2 does indeed state that, and that is one of our major reasons.

The second reason is that we do not believe that the National Union of Workers, despite its claims in its correspondence contained in NUW.2 from the Federal Secretary, Mr Greg Sword, in his correspondence to our Federal Secretary Ivan Hodgson,



that the National Union of Workers are able to cover drivers of motor vehicles. We do not believe they can.

I think it is very, very important - I mean -

PRESIDENT: You're in a position to argue that?

MR HANSCH: Well, I believe I am in a position to argue that, although at this point of time, Mr President, and also is contained in the Exhibit NUW.2 in part of the letter from the Federal Secretary of the NUW, Mr Sword, where they propose further discussions with the Transport Workers' Union at a federal level.

And I believe that that is the way this matter should be resolved. One reason being there has been possibly 1 month ago discussions between the Federal Secretary, Ivan Hodgson, of the Transport Workers' Union and the Federal Secretary of the National Union of Workers in relation to a demarcation agreement in accordance with ACTU policy.

Now I have spoken to the federal secretary of the TWU this morning and he believes that problems can be overcome, and the concerns of the National Union of Workers will be fixed.

PRESIDENT: Would that, would that necessarily prevent an integrated classification structure being inserted into the award?

MR HANSCH: Well, I believe, sir, it is detrimental to the drivers of motor vehicles by going the way that the National Union of Workers propose.

An example would be, once again contained in the NUW's exhibit in the correspondence from Mr Sword, he does in fact say that the drivers have not received any minimum rate adjustments, whereas the Wholesale Trades Award they have received two.

Well, bearing in mind we have had an application before this commission to withdraw the transport classifications and they would be picked up under the general award, which has received four minimum rate adjustments.

PRESIDENT: Yes. But you didn't want to proceed with that application.

MR HANSCH: Well at that point of time, sir, because it was at the 11th hour, and as I did say in our correspondence contained in NUW.2 - I mean, it was the 17th of January of this year - 1 day before the hearing when the National Union of Workers came along and said we no longer agree with you to withdraw those classifications. The 28th of June 1990 it was very, very clear between the parties that the National Union of Workers would support our application. We were always of

the opinion that the drivers classifications would be brought out of the award.

Now the day before the hearing when we make the application they send us correspondence to say we no longer support that, we'll oppose it.

That was why -

PRESIDENT: There wasn't any support from the employers side either, was there?

MR HANSCH: Oh yes, there was, sir. I have exhibits I will tender when necessary. I believe that was always the position. Always from the employers. Supported by the National Union of Workers on transcript.

Now they can't come along a day before the hearing and say we object to you doing 'X' 'Y' and 'Z'. That is why at that point in time, and from my memory when we had the application contained in T.3551 to withdraw classifications of some ten awards, I still believed at that point in time there could be discussions between the National Union of Workers which could resolve it.

I did request at that hearing that that part of our application be set aside for that point of time to allow further discussions, and also in relation to the Produce Award.

And I have which I believe is a key exhibit, sir. I don't know whether I should be tendering it at this point of time - which clearly points out what I am saying - there was an agreement.

PRESIDENT: Alright. Okay, well that's your threshold position in response to the NUW's threshold position, so perhaps that's taken as far as we ought to go on the record for the moment.

Does anybody else want to say anything for the record? Alright, we'll adjourn into private conference.

INTO CONFERENCE

PRESIDENT: Well, Mr Richardson, I was going to make some sort of summary but if you'd like to I would be very happy to hear your version.

MR RICHARDSON: Mr President, I think there are a number of issues that separate the party, but for the purpose of at least today's proceedings it seems that the principal issue

that separates the parties is the threshold question of the union's constitutional capacity to enrol persons as drivers.

As I understand the position of the Transport Workers' Union they reject any suggestion or any assertion that the NUW does have that right and that capacity, and my union responds by indicating that it does have, and indicates that it is prepared to make such submissions here and now.

PRESIDENT: Yes, that's the general understanding I believe of all the parties, so I would be happy if you proceeded, Mr Richardson.

MR RICHARDSON: If I can tender an exhibit, Mr President?

PRESIDENT: This exhibit will be marked NUW.3.

MR RICHARDSON: Mr President, Exhibit NUW.3 is in two sections. The first section concerns a number of policies of the Australian Trade Union Movement and relates more so to arguments of merit than the argument of constitutional capacity, as does section 2. However, there is a divider that appears about halfway through the exhibit and it is that second part of the exhibit that appears after the divider for which there are three entries under the title of 'Contents' that the union seeks to rely on in its submissions this morning.

Essentially the union will make its submissions in two parts. Firstly, it will make submissions as to the rules of the National Union of Workers and the general principles that should apply in interpreting the rules of a trade union and, secondly, it will call briefly Mr Strickland as a witness to give evidence as to the NUW having members within the wholesale trades industry who are employed as drivers.

To facilitate the ease of the submissions the exhibit contains at point 3 some written submissions which I intend to read into transcript and then briefly interpolate with the rules of the National Union of Workers.

In anticipation of this being a threshold issue the union has prepared these written submissions and I intend to read them on:

Firstly, the union understands that the issues are the question of whether the National Union of Workers possess the constitutional capability to enrol as members persons engaged in any or all of the classifications outlined within the Wholesale Trades Award that pertain to the occupation or duty of driving.

Insofar as the act requires that organisations of employees be registered in terms of their membership coverage and interest

of their rules, that organisation may only have interests in awards if there is constitutional capacity that provides such.

It follows, therefore, in our submission that if it were found that the NUW had the capacity to enrol as members in the classes of work described, that is driving, then it would be appropriate and proper for the union to make application to vary the award in respect of those classifications, subject only to the necessary limitations of state wage case principles being placed upon those applications.

Now, clearly from the outset and in conference, the union contends that it does possess constitutional coverage for driver classifications.

It goes further, though, and contends that it possesses constitutional coverage for all work covered by the award, but has not pressed the point of, for instance, clerical duties in the context of these proceedings as there is no difference of substance between ourselves and the clerks union.

Perhaps, firstly, a brief examination of the Wholesale Trades Award is necessary, and specifically an examination of its scope and incidence clause.

The award is established in respect of a number of activities or industries which are broadly described as wholesale trades.

They include wholesale groceries - I beg your pardon - wholesale grocers, and/or wholesale wine and spirit merchants, wholesale tobacconists, manufacturers of any one or more of a number of specified articles which appear as condiments, coffee, baking powder, self-raising flour, soap powder, soap, washing soda, blacking, sandsoap and candles.

Fourthly, manufacturers of grocers' sundries, millet brooms and/or cereal breakfast foods.

Fifthly, manufacturers of products containing dried fruits, pudding and cake mixes, icing sugar, and other sugar based products.

Next, and a reasonable expansion to the scope, wholesale sellers of electrical goods; and finally wholesalers that are not specifically subject to the jurisdiction of any other award of the state commission.

And I will return to the scope later in my submission, but I would indicate to the commission that in respect of the word 'grocers' sundries' grocers' sundries is a term that has been defined by the courts of this land in a matter between the Manufacturing Millers and Grocers Union, and I believe it was the Confectionary Workers' Union, to define any product that is readily available upon a grocer's shelf.

So, in terms of the word 'grocers' sundries' the union would submit, or would assert, that the word grocers' sundries has the capacity to encompass any and all food products that are readily purchased in a retail outlet.

PRESIDENT: Limited to food?

MR RICHARDSON: No, not limited to food, but principally concerned with food products, as will become apparent when we go to the rules. It would also cover a number of products that perhaps traditionally were available in a grocer's store, things such as boot polish, dubbo and so on, but principally food-related products.

Now as has been evidenced in earlier submissions today and in conference, the union bases its submissions on the fact that it is only a difference between itself and the Transport Workers Union that requires submission upon constitutional capacity to enrol.

If I can turn next to the union's rules which appear slightly earlier in the exhibit. The union says that there are a number of industry and eligibility rules that require examination by the commission. I'll take you briefly through those rules. Firstly, there's a copy of the certified page dated 1 June 1992 and then the total exhibit contains the first 14 pages of the NUW's rules. Page 1 outlines the name and objectives of the union. Page 2 and on page 3 is also the objectives. And then at the bottom of page 4 the industry - I beg your pardon, page 3, the industry rule, which is clause 4, appears. And then further at page 6 to page 14 is the eligibility rule which is considerably longer.

The union submits, without necessarily limiting itself at this point in time, that the relevant industry rules which are relied upon in these proceedings are industry rules (B), (C) and (G) and the eligibility rules that are relied upon are also (B), (C) and (G). If I could briefly take you through the entirety of the rules and then identify those three in particular, there is no rule (A) as is clearly stated in the copy of rules. Rule (B) in its entirety relates to a number of industries that could be broadly described as storing, packing and distribution or warehousing, broom and brush making, wool cleaning, the oil industry, the industry of manufacturing chemists, the wool broking industry and then, at the bottom of page 4 there is a specific industry rule in respect of the state of Queensland, which is not relevant to these proceedings.

Rule (C) requires little explanation. It is simply the rubber industry. Rule (D) relates to the industry of sales representatives and/or commercial travellers. Rule (E) relates to the calling of forepersons within the Commonwealth

public service. Rule (F) relates to a number of related industries concerning freezing and refrigeration and meat preserving, which are normally referred to as cold storage. Rule (G) relates to candle, grain milling, soap, soda and starch industries.

The eligibility rules, rule 5 of the union, follow very closely the corresponding clauses in the industry rule, except insofar as there are additional eligibility rules from page 11 onwards at clause (H) which have been inserted over time into the National Union of Workers' rules as a consequence of proceedings in the Australian Industrial Relations Commission that have been brought about as a consequence of section 118(A) applications. In brief, clause (H) places limitations upon the union's coverage in respect of the container depots industry which is part of the water front.

Rule (I) grants exclusive coverage with a few exceptions to the National Union of Workers in respect of the cable making industry. Rule (J) prevents the union from enrolling persons who are members of the Australian Federal Police. And rule (K) prevents the union enrolling persons, with specified exceptions, in the paint industry. Finally, at rule (N) the union may also consist of persons who are elected officers or appointed officers of the union.

Before turning specifically to what the union relies on as the relevant industry and eligibility rules, the union seeks to make a number of general submissions on interpretation of the union's rules. And in doing so relies for the purpose of reference upon the authorities that are specified at the first page of the second part of the exhibit. The union submits that in interpreting the relevant rules of the union a generous approach should be adopted by the commission. This approach should encompass two main factors. Firstly, it should be cognisant of any errors in drafting or conforming with legal conventions where the practical affairs of an industry may have been predominant in the minds of the authors of a union's rules.

Secondly, the commission should assign a broad rather than a narrow meaning to the words that are used within the relevant rule or rules. Where there is uncertainty as to the meaning of an eligibility rule, then the industry rule may be properly used as a means of resolving the uncertainty. That is to say that the two rules should be read in conjunction and not in isolation of each other. The commission should place due emphasis upon the industrial usage afforded to the words employed within the appropriate rule, the subject of proceedings.

It may also be necessary to ascertain the common understanding ascribed to terms that may be in dispute to establish whether in fact a union has coverage of a matter or not. So as to

ascertain the industrial meaning of words, the commission should be prepared to look at a number of things, including awards, agreements and judgments of various courts. Importance should be attached to awards of the commission even when they are created by consent as they constitute an .... industrial coverage of the work or occupations in question.

The meaning of words within rules should not be considered as static, that is fixed, but rather should - and should not be confined to the meaning ascribed to the words at the time that they were inserted into the rules, but rather should be seen in a dynamic way. When considering the particular expression 'in or in connection with' such expression should be taken as relating to the industry of the employer and not necessarily the industry of the employee.

Further in determining the expression 'in or in connection with' the critical question should be one of fact and should concern the relationship between the work of the employee and the industry or callings that are brought into question. Further the work of the employees in question should in its very nature and quality have some immediate significance in relationship to the work of other employees covered by the industry and/or eligibility rule.

Weight should be given to the relationship of the work in question and the industry as a whole. And finally, a relationship between the work of the employee and the industry which the employee is said to be in or in connection with should also be present. Simply to say that somebody works in mere physical proximity to work isn't sufficient, the work in some way must be bound up within the industry so as to be supportive of or dependent upon the activities of the employer.

If I could go back to the union's rules, in brief, the occupation or classification or duty that is subject of these proceedings is the occupation of driving, which for the purpose of these proceedings the union submits is the activity undertaken by an employee in - in operating a mode or device from one location to another. We say that to a large extent what is carried by that vehicle is irrelevant to these proceedings, except insofar as the commission should have regard to the sort of articles that might be moved by a driver as contained in the scope clause of the Wholesale Trades Award.

Now, firstly, within the industry description at (B), the - and paragraph 1, the union's rule reads, and I'll quote:

Storing and packing goods and merchandise (but not so as to limit the generality of the expression 'Storing and Packing'), the reception, handling, storing, preparing, bottling, packing and/or

delivery of goods and merchandise so far as such reception and/or handling and/or preparing and/or delivery of such goods and merchandise is in any way incidental or ancillary to their storing and packing as above described including the pulping, testing and/or processing or eggs.

Now, the union says that in affording an ordinary meaning to the words contained within that paragraph, and having regard to an accepted industrial usage, quite clearly the word 'delivery' and its relationship to the activities of storing and packing which are not limited by the industry rule of the union, encompasses the activity or the occupation of driving a vehicle to deliver goods from one premise to another, or goods and merchandise from one premise to another.

Now, that is, in our submission, supported by the corresponding eligibility rule, which appears at page 6 at subclause (B)(a) where the eligibility rule reads:

The Union shall consist of an unlimited number of employees engaged in, or assisting -

(a) The reception, handling, storage, preparation, bottling, packing and delivery of goods and merchandise, and processes and activities incidental or ancillary to such reception, handling, storage, preparation, bottling, packing and delivery -

So, clearly in our submission the eligibility rule is such, when read in conjunction with the industry rule, that it has the capacity to cover any number of employees, providing that the principle activities are those defined in the eligibility rule of handling, storage, et cetera. And specific reference appears to the activity of delivery, which the union submits, that upon any ordinary interpretation, let alone any industrial interpretation, refers to the locomotion or the movement of goods from one place to another; and in this day and age by means of a motor vehicle.

The union's industry and eligibility rules at B though are not limited to the storing and packing rule, but also cover a number of other rules which, to some extent, may have interrelationship with the activity of wholesale trades.

For example, at page 4 within rule B, the industry - or one of the industries in which the union is connected with is that of wholesale and/or manufacturing chemists. Now, there is an award of the State Commission called the Chemists Award which contains a classification for wholesale chemists, and arguably for manufacturing chemists. But the union points to the fact that there is an industry of wholesale and/or manufacturing chemists and it is registered in respect of it.



And further, at the corresponding eligibility rule, at page subclause C: The union shall consist of an unlimited number of employees engaged in or assisting - and then goes on to read: all persons engaged in or in connection with the business of a wholesale and/or manufacturing chemist. So, in our submission, it would be possible for an establishment which is a wholesale chemist to operate under the Wholesale Trades Award, and that all persons that that employer engaged would be eligible under the relevant rules to be members of the National Union of Workers.

In a similar fashion, immediately above wholesale and/or manufacturing chemist at paragraph 6 on page 4, is a reference to the industry of manufacture of toilet preparations, food preservatives and/or vermin, insect and fungi destroyers, which the union submits, for the purposes of these proceedings, can be broadly described as grocers' sundries.

And that again, at page 6, in the eligibility rules, subclause (B)(b), the union is entitled to consist of an unlimited number of persons engaged in the process - all persons, I beg your pardon, all persons engaged in the process trade business or production activity of, and then over to page 7, the manufacture of toilet preparations et cetera.

So again the union's rules in relation to these activities, as with the general storing and packing activity and industry, are not limited in any way to prevent, in our submission, the coverage of drivers or the occupation of drivers.

Furthermore, our industry rules see the union is enrolled in respect of the industry, the rubber industry. And in the corresponding eligibility rule, which appears at page 8, the eligibility is such that the union shall also consist of all persons engaged in or in connection with the manufacture or repair of rubber goods of every description in the Commonwealth, or goods comprising rubber components or constituents in the manufacture of substitutes for rubber, or any kind of linos et cetera. And it goes on.

And in our submission, quite clearly the union can consist of all persons engaged in the activity of manufacturing or repair of rubber goods, which is the eligibility rule. And then by reference to the industry rule which is quite clear the rubber industry, it therefore has the capacity, in our submission to cover and all persons engaged in any activities related to the handling or manufacture or repair of rubber goods within the rubber industry.

The industry rule (G) is candle, grain milling, soap, soda and starch industries. Which read in conjunction with the

eligibility rule, which appears at page - on the bottom of page 10 onto page 11, provides that:

The Union shall consist of persons who are bona-fide employees, wholly or partly engaged in any capacity in the manufacture or preparing for the sale of -

And then goes on to specify a very wide range of consumable or domestic goods that I don't intend to read. Which in their totality, but not limiting the definition of, are described as grocers' sundries. But further that, at paragraph (ii) on page 11, the union shall also consist of persons:

Other than in the Northern Territory and the State of Queensland, all persons engaged in any capacity in or in connection with the Grain Milling Industry.

So again it would be possible for a grain milling establishment to operate a wholesale operation under the Wholesale Trades Award and that for all persons engaged by that employer to be eligible to be members of the National Union of Workers.

Now, rule (G) is relevant insofar as it relates to those elements, those enterprises covered by the Wholesale Trades Award that are principally wholesalers. And that's perhaps something that is often ignored in - in the arguments between the parties, and they are the manufacturers in a number of specified articles and the manufacturers of grocers' sundries, .... and /or cereal breakfast foods, and the manufacture of products containing dried fruits, puddings, icing sugar and sugar based products.

So there are a range of activities that are not distribution operations or distribution centres that are also covered by this award which the union says, by virtue of industry rule (G) and eligibility rule (G), it has the capacity to enrol all persons engaged therein. And that by virtue of saying all persons therein that includes persons who are engaged principally or solely in driving classifications.

PRESIDENT: It doesn't really say that in (G) though, does it?

MR RICHARDSON: In the industry rule or the eligibility rule?

PRESIDENT: In the eligibility rule.

MR RICHARDSON: The eligibility rule provides that:

- persons who are bona-fide employees, wholly or partly engaged in any capacity in the manufacture or preparing for sale of -

And then specifies a number of tasks.

PRESIDENT: Yes. And - and the words 'or preparing for sale' includes distribution, does it?

MR RICHARDSON: Well, we go -

PRESIDENT: In your submission.

MR RICHARDSON: - don't make that particular point. What we say is, that if you read the eligibility rule in conjunction with the industry rule -

PRESIDENT: Yes.

MR RICHARDSON: - the industry rule describes the industry of which the employer associates him or herself, and that's again subclause (G), it's more broadly described as the:

Candle, Grain Milling, Soap, Soda and Starch Industries.

PRESIDENT: Yes.

MR RICHARDSON: And somebody who is employed as a driver by, let us say for example, Sanitarium, which is a company that operates under the Wholesale Trades Award, and is an employee of Sanitarium, and Sanitarium, in our submission in turn is part of the industry described at subclause (G), and as contained in clauses 3, 4 and - 3, 4 and 5, (c), (d) and (e) of the scope clause of the Wholesale Trade Award.

PRESIDENT: Yes. Look I - I accept those - those items that are described there are encompassed in the scope of the wholesale trades. I'm just coming to grips with the slightly different verbiage in (G) in the eligibility section compared with some of the other descriptors in (G) which goes to being all persons engaged in -

MR RICHARDSON: Well, the commission - the commission need - if there is uncertainty in the mind of the commission, then the commission - and that uncertainty is based around or focused around the eligibility rule, which the union acknowledges refers to, for instance, manufacture and preparation, then the commission need only apply the test of the Dunlop Rubber case, which is one of the authorities relied upon, where it may rely upon the industry rule to give a proper means of resolving the uncertainty that exists.

If the eligibility rule appears constrained reference may be had to the industry award rule. In our submission the industry rule is quite clear in that it describes a number of industries that are, for the sake of description, allied in nature. And that as a consequence of that one may read the industry rule up, whilst - where the eligibility rule does not satisfy in one's own mind whether in fact the capacity to cover such persons exists or not.

PRESIDENT: Thank you.

MR RICHARDSON: So, Mr President, in summary in terms of the union's rules we say that we do have coverage for persons involved - engaged principally or solely as drivers. That coverage is derived from a number of rules. Firstly, the rules that relate to the activity of storing and packing, which is not limited, and specifically provides for the duty or the description of activity of delivery of goods and merchandise.

And secondly, we have that coverage in relation to a number of industries which the union is registered and has eligibility to, in our submission, cover all employees engaged in; and those industries include the manufacture of grocers' sundries, the activities of wholesale chemists, the rubber industry in its entirety and the industry of candle, grain milling, soap, soda and starch.

Now, Mr President, the union would not make these submissions if it did not have a bona fide interest in these classifications, and so the union would seek to briefly call Mr Darryl Strickland to the witness box to give evidence.

PRESIDENT: Yes. Just before we do, Mr Richardson, could we go back to the description of industry clause in the rules?

MR RICHARDSON: Yes.

PRESIDENT: (B)(i) the storing and packing of - and packing - storing and packing goods and merchandise, but no so as to limit the generality of the expression, the reception, handling, storing, preparing, bottling, packing and delivery of goods and merchandise, so far as reception and/or handling and/or delivery, is any way incidental to the storing or packing - or storing and packing.

Are you saying that delivery out of the warehouse to a - is it a retail establishment or to some other wholesale establishment?

... is delivery insofar as storing and packing is concerned? I mean, if for example goods are transported from a warehouse to a retail establishment, and that would be a major part of

the driving function, is that in connection with storing and packing?

MR RICHARDSON: In relation to the industry rule that appears at (B) we say yes it is.

We would say that broadly speaking there would be two types of establishments that are covered by this award that are involved in the activity of wholesaling. They would be the larger establishments such as Purity and so on that are involved in retail and wholesale operations. They have a distribution centre or a series of distribution centres that provide goods on a regular basis to their retail outlets.

There would then be a number of smaller operations, and it is those smaller operations where the union who has members who are drivers that would be engaged in the activity of delivering a good to another wholesaler or picking up a good from another wholesaler, or providing a good to a customer; and that might not necessarily be a retail customer, it might be to a building site for example. And the best example to use in respect of that would be the electrical wholesaling establishments that are covered by this award where, for example, an electrical wholesaler would purchase goods wholesale from a cable wholesaler, would then hold them, he might then sell some to a customer over the shelf, he might then in order to meet an order deliver some to a building site. And the person who was engaged in all of those activities would be, in our submission, the same person or the same group of people and they would perform that variety of functions, delivery, sales and store work.

So we say that the rule covers both, and that when in conjunction with the industry rule - I beg your pardon, the eligibility rule - where that limitation - where the reference to incidental or ancillary exists also - that it provides coverage.

If somebody is involved in the activity or the industry of wholesaling then the delivery of products surely, in our submission, is incidental or ancillary to the activity or the business of wholesaling. That it is an integral part, as are the clerical functions an integral part -

PRESIDENT: Yes.

MR RICHARDSON: - of the overall activity.

PRESIDENT: Yes, the eligibility rules seems to be - seems to be clearer in respect of delivery than the industry rule, in my view at the moment.

MR RICHARDSON: I wouldn't necessarily -

PRESIDENT: And I'm seeing this for the first time as you'll appreciate.

MR RICHARDSON: I wouldn't - I wouldn't necessarily disagree with that, Mr President. But -

PRESIDENT: And you're saying the two need to be read in - in conjunction with one another?

MR RICHARDSON: They should be read in conjunction to the extent that the eligibility rule doesn't provide the commission with a definitive answer as to whether coverage exists or not, then the industry rule can be relied upon.

PRESIDENT: And vice versa?

MR RICHARDSON: I'm not aware of any authority that allows that - that I suppose the absence in authority, at least to which I'm aware, sir, is that you could do that.

PRESIDENT: Yes, thanks.

MR RICHARDSON: As I indicated, Mr President, if we could briefly call Mr Strickland to the witness stand?

PRESIDENT: Yes, certainly.

**DARRYL MORRIS STRICKLAND, sworn:**

MR RICHARDSON: Could the witness state his full name and address for the record?... Darryl Morris Strickland, 118 Louisa Street, Bracknell.

Thank you. Now, Mr Strickland, are you employed by the National Union of Workers?... I am.

Could you tell the commission in what capacity you are employed?... I am employed as the State Secretary Tasmanian Branch.

And is that an appointment position or an elected position?... It's an elected position.

Now, Mr Strickland, how long approximately have you held that position?... Approximately 5 years.

Thank you. Now, Mr Strickland, could you briefly describe for the benefit of the commission what your principal duties or activities as state secretary involve?... Well they, first of all, involve the administration of the branch. And probably more importantly, or as equally importantly, is visiting

workplaces, representing members, maintenance of awards, the full range of industrial issues.

Now are you familiar with an award of the commission known as the Wholesale Trades Award?... Yes. I'm familiar, it's the award that the Tasmanian Branch would have the majority of its members employed under.

And approximately how many members in total would the Tasmanian Branch have under state awards of the commission - or awards of the State Commission?... I would think somewhere round about 600.

Right. Now, if I could take you - if I could ask you some questions in respect of the Wholesale Trades Award. Are you able to provide to the commission an approximate number of establishments that you would members at under the Wholesale Trades Award?... It would have to be a very rough guess. All the establishments or the majority of the establishments are very small so we have a reasonably large number, somewhere probably around 100.

Now you say that the majority of these establishments would be small. Are you able to give the commission an approximation of the average number of employees that might exist at any one of these establishments?... Well I think if you look at the Tasmanian branch you have a couple of very large warehouses. If you put them to one side I would think the average number in an establishment for the union would be five or six.

Now Mr Strickland, are you familiar with a company by the name of Abate Brothers?... Yes, I am.

Is that a company that uses the Wholesale Trades Award?... Yes, it does.

Are you aware of how many members you have at that company?... I would think we would have probably three.

Now Mr Strickland, are those three employees engaged as storemen - I beg your pardon, storeworkers?... Yes.

Is that the only activity that they're involved in?... No, as part of their engagement they're required to drive and deliver and small vehicles, drop 'off - they're wholesale fruit and vegetable merchants and they deliver from time to time products that have been sold. But principally, they would be storemen.

But it's considered part of their normal duties to drive - to deliver goods from time to time?... Yes.

And those goods are wholesale - those goods are fruit and vegetables?... Yes. The company also has a retail establishment as well. It has retail and wholesale.

So are these people picking the fruit and vegetables up from the market and bringing it back to the warehouse or are they taking it - or are they doing something else?... Well probably not so much picking it up. From time to time - the majority of their product would be delivered by carrier to the store and then a customer would purchase some product and have it delivered - it could be - have it delivered to his retail establishment.

Now Mr Strickland, if I can move on Abate Brothers, are you familiar with the company called George Harvey Electric?... Yes, I am.

And does that company use the Wholesale Trades Award?... It does.

And what business activity is George Harvey Electric principally involved in?... The wholesale selling of electrical goods.

Now approximately how many members do you have at George Harvey Electric?... About eight, I would think.

And are they engaged solely as storeworkers?... No, some people that we have there are engaged purely as drivers.

And what are their principal activities when they're driving?... They drive what's commonly referred to as a ute and they deliver orders to building sites, offices and a number of different places basically all day. They principally - probably two or three of those eight - George Harvey operates in both Launceston and Hobart and two or three of those eight would basically be driving all the time.

Now if I could move on from that -

PRESIDENT: Could I interrupt you there, Mr Richardson.

MR RICHARDSON: Sorry, Mr President.

PRESIDENT: You say these people who drive all the time. You said they drove utes?... Yes.

Do you mean the generally accepted utility which is the standard sort of sedan with a utility rear?... Yes, I think probably referred to as a one tonner or something like that.

Yes, thank you.



MR RICHARDSON: Now Mr Strickland, if I could move on to another company. Are you familiar with the company General Electric?... Yes, I am.

And what business activity is that company involved in?... They're also a wholesale seller of electrical items. A very similar operation to that of George Harvey.

And does the National Union of Workers have members employed as both storemen and drivers at that company?... Yes, that's more - it's a smaller operation and that's more of a dual function. Like it would probably be true to say that the driving task of the person's job there would be less than 20 per cent of his work.

PRESIDENT: And how many employees are there, General Electric?... We'd probably have two or three.

Thank you.

MR RICHARDSON: Mr Strickland, if I could move on again. Are you familiar with a company called Mauri Foods?... Yes, I am. They supply catering products, I guess, would best describe them, like flours, self-raising flours, cooking utensils, a wide range of products used in the catering industry.

And approximately how many members do you have at that company, Mauri Foods?... One or two, I think.

And is that person or are those persons engaged solely as storeworkers?... No, their principal task would be that of storeworker, but they from time to time deliver, again, in a vehicle - a one tonner, just a flat tray vehicle - deliver some product. But the majority of their products are picked up by customers.

Now again, Mr Strickland, are you familiar with a company known as Purple Pig?... Yes, I'm familiar with Purple Pig.

Perhaps you could demystify their business?... Well they're into the wholesale sale of rubber belting, matting, just that type of arrangement. And again it would be true to say that the stores function is the main task and the delivery function just makes up a very small part of the storeman's day's work.

And approximately how many members do you have at Purple Pig?... I would think around about 10. They have two establishments, one at Somerset in Burnie and another one here in Hobart.

Now Mr Strickland, I'll just read those companies back to you: Abate Brothers, General Electric, George Harvey Electric, Mauri Foods and Purple Pig. To the best of your knowledge at

any of those companies does the Transport Workers Union have any members employed as drivers?... Not to my knowledge.

Now Mr Strickland, are there other companies that use the Wholesale Trades Award where you have members who are also engaged in driving activities?... Yes, we have a number of companies and it's a fairly important for the employer to have the flexibility of the storeman basically to drive a vehicle, but it's not to say that in the larger areas where we have members that there are needs for people to drive those - and I'd have to concede they're smaller type vehicles - all day on a daily basis.

Would it be fair to say though that you have no members employed wholly or principally to drive what's commonly known as a semi-trailer?... It's true.

But it would also be fair to say, would it not, that you do have a variety of members who drive small motor vehicles, described as utes or one tonners?... Yes, but that would be the vast majority of people in driving functions, but we would have members employed in two or three companies, at least, that drive vehicles up to, I think, seven or eight tonnes, I'm not too sure of the tonnage of them.

Perhaps you could just identify those two or three companies for the commission's benefit?... Well they're mainly in the distribution of cigarettes and paper bag distributors, I think, one and probably the one that drives the largest vehicles that we have members employed at would be Spicer Paper. That would be the top end of the trucks that we have members in.

I have no further questions of Mr Strickland, Mr President.

PRESIDENT: Thank you. Are you able to give any indications as to the number of larger vehicles that might be operated by your members?... Oh, it would be a very small number, probably somewhere around about 10.

Thank you very much. Yes, Mr Hansch?

MR HANSCH: I would just like to ask a couple of questions of Mr Strickland, if I may, sir.

PRESIDENT: Yes, certainly.

MR HANSCH: Mr Strickland, in relation to - there was some five companies where you did say that you had members that were engaged as drivers or involved in doing driving delivery. Could you just clarify that for me because I tended to get somewhat lost. An example, Abate Brothers, you said you had, I understand, three members who were drivers?... No, well if you understood, that's not what I said. I said that they

would drive from time to time. Their principal function would be that of storeworker.

Well that's the question that I'm asking. George Harvey Electric, I understood you to say there that you did in fact have two that the majority of their time was spent driving?... That's right.

Are you aware that George Harvey Electric is respondent to the Transport Workers (Mixed Industries) Award?... No, I'm not.

Would you then agree that if the majority of their time was spent driving they would be paid under the Transport Workers (Mixed Industries) Award, or they should be paid under it?... Well I would agree that they should be, yes.

Do you know if those members of yours employed by George Harvey Electric are in fact being paid under the Wholesale Trades Award or the Transport Workers (Mixed Industries) Award?... I believe that they're paid under the Wholesale Trades Award.

Also in response to a question from Mr Richardson you did say to the best of your knowledge you wasn't aware that any of these drivers from the companies you mentioned were members of the Transport Workers Union?... That's true, to the best of my knowledge they're not.

Well I understood you to say to the best of your knowledge. Well in fact they are, as is the case with Mauri Foods.

PRESIDENT: So would you repeat that again or repeat that, Mr Hansch? What was that?

MR HANSCH: Well what I'm saying there is members - Transport Workers Union does in fact have members employed by George Harvey Electric, we do in fact have members -

MR SERTORI: If the commission pleases, this is cross-examination of a witness. Mr Hansch is being allowed to give evidence and I object to that process.

PRESIDENT: Yes, I'm sorry, I was just simply trying to ask Mr Hansch to repeat that last point, which was really a comment I thought to Mr Strickland.

MR HANSCH: Just to clarify that, sir, I do recall saying in response to a question Mr Strickland said he was not aware if they were members of the Transport Workers Union. I didn't ask that question, that was put by Mr Richardson. And I understood him to say he wasn't aware or there weren't members, did he have any knowledge of there being members. Just to inform him that in fact they were members.

PRESIDENT: Yes, and that was the part that I wanted you to repeat for me. Yes, thank you.

MR HANSCH: Mr Strickland, you mentioned a company by the name of Spicer. I'm not too sure but could you tell me if that was formerly known as E.C. Blackwood?... Yes.

Do we have the same company?... To the best of my knowledge it was, yes.

Are you aware that they're respondent to the Transport Workers (Mixed Industries) Award and therefore their drivers would in fact or should be paid and I believe are paid under the Transport Workers (Mixed Industries) Award?... No, I'm not.

I have no further questions, Mr President.

PRESIDENT: Yes, thank you, Mr Hansch. Mr Sertori?

MR SERTORI: .... questions in the circumstances. There is one company I would like you to answer some questions on, Mr Strickland, if you may. That's the Sanitarium company where I understand you do not have union members. Are you familiar with that particular operation?... Yes, I am.

And what is the - can you describe for the commission the nature of how employees are engaged under the Wholesale Trades Award at that establishment?... Well as I understand Sanitarium, they employ their people under the Wholesale Trades Award. They're manufacturers of breakfast cereals and health foods, I think here in Hobart into the health food biscuit cereal nature and they have - as part of their operations they have a number of employees, all their employees, to the best of my knowledge, employed under the Wholesale Trades Award and they are a company that, in actual fact, have drivers of the large end of the scale, that is semi-trailers.

Do they have drivers on smaller vehicles as well?... Not to my knowledge. I think that they basically deliver their product in semi-trailers to warehouses.

You said you had 600 members engaged under state awards and I understand 100 - I may have misunderstood. How many members did you claim to have under the Wholesale Trades Award?... I don't know that I claimed to have. I said that it was our principal award and probably 600.

And do you have any knowledge of the number of employees engaged under the Wholesale Trades Award?... In Tasmania?

Yes?... No, I don't. For all employees in Tasmania under the Wholesale Trades Award I don't have any knowledge. I would

think it to be one of the larger employers in the state though, second probably to retail.

Are you only familiar with establishments under this award where you have members?... Basically, yes.

So you're not able to give evidence in respect of companies where you don't have members?... No, only probably to say that the majority of places are small in nature and - two and three and sometimes one man operations and they obviously take a lot of time, from our point of view, to visit and organise and that's probably why we don't have so many members because of the size of the establishments.

Other than that you can't advance evidence on their behalf? I have no further questions.

PRESIDENT: Thank you, Mr Sertori. Mr Richardson?

MR RICHARDSON: I have no re-examination so I'd ask that the witness be released.

PRESIDENT: Yes, certainly. Thank you, Mr Strickland.

MR RICHARDSON: Mr President, that concludes the submissions for the National Union of Workers on this question. If the commission pleases.

PRESIDENT: Yes, thank you. Mr Hansch?

MR HANSCH: Sir, the TWU has heard nothing to change our mind in relation to the constitutional coverage of the National Union of Workers. In fact, they tend to rely on the word 'delivery'. Nowhere during their rules does it say drivers of any type of vehicles. I don't even - I thought I did see it before, not contained in this exhibit but I have a copy of their rules for fork-lift trucks but I can't find it in here.

But to rely on the wording of 'delivery', once again I believe it must be read in conjunction, not bits and pieces and say what it could mean or it may not mean but it is in connection with the storage and handling of goods. Now if we looked at the word 'delivery' I would suggest it would be - one could well argue that it's from the store to the customer across the counter. I mean it might be delivery by aeroplane, it could mean a lot of things, but nowhere does it say 'of motor vehicles'.

I don't believe, and I stand by that, their rules does in fact allow them to cover persons engaged in the driving of motor vehicles. Now even if it did, sir - and I don't believe it does - if we go back on the witness called Mr Strickland, I mean, what's he really talking about in relation to the number of people they're concerned about? I mean the way I

understand the situation, the majority of those people that Mr Strickland claims to be members of the National Union of Workers, are in fact occasionally involved in the driving of a small vehicle, of a small vehicle. We heard the word ute, one tonner. And they drive from time to time which would be covered, I believe, under the mixed functions clause of the award. We don't have any problem with that. We've never had a problem.

If we go to the situation whereby we take the award, the carters and drivers classifications in total, I mean they go through to drivers of vehicles up to 12 tonne.

We must also have a look at really what their witness, Mr Strickland, has said, is that we're really talking about people that drive utilities from time to time. Their duty is that of a storeman, or they're small operations, I mean, and they may become storeman-driver, they may do a lot of things. I mean, they're smaller operations; one-man operations I think was his words. Three and four-man operations.

Yet they're seeking - seeking to broadband all of the classification structure which could - and the major companies are bound by Transport Workers Federal (Mixed Industries) Award for sure. Now, I've already mentioned, so Mr Strickland says he is not aware of a George Harvey Electric. I mean, Sanitarium is another one. And for Mr Strickland or Mr Sertori's information, they don't have semi-trailers, it's in fact done by TNT. So they don't have semi-trailers full stop.

We have two members at Sanitarium, a Mr A. Gard and I believe the other one's name is a Mr Fender. The reason that came about was some 7 or 8 year ago. We has a situation whereby management from Sanitarium Health Foods approached the Transport Workers Union, said it had to sign people up in the TWU. And they - that's the names we were given. We know that's not their names. I could produce those cards et cetera.

What I'm saying, those people are involved in the driving of larger vehicles. Sanitarium, once again, are a company that's bound by the Transport Workers (Mixed Industries) Award. So, no, those people would not be paid under the - or should not be paid under the Wholesale Trades Award.

We come to these companies we've mentioned, distributors of cigarettes et cetera, spices, all bound by mixed industries awards. So what are we really talking about? What is the National Union of Workers seeking to do? Those people are covered, they should be getting a higher wage rate than what they're getting if it was under the wholesale trades.

PRESIDENT: I think we're getting off into merit arguments at the moment -

MR HANSCH: Well -

PRESIDENT: - and I'd like you to address the - more the threshold points that have been made by the NUW. That the eligibility coverage -

MR HANSCH: Well, the threshold point -

PRESIDENT: - the eligibility and constitutional coverage there.

MR HANSCH: Well, quite simply, I believe - I don't believe, sir, they can solely rely on the word 'delivery'. I mean, one reads in context with all their rules. I mean, well, it will be tested you can bet on that. I mean, it's - anyway find out once and for all, that's why I'm not particularly worried about that part of it.

PRESIDENT: So I -

MR HANSCH: I say that they can't. And they cannot tend to rely on it, that gives them the right to cover the drivers of motor vehicles. Simply, it doesn't.

PRESIDENT: But the - in numerous parts - sections of the eligibility conditions there's reference to all employees engaged in certain activities.

MR HANSCH: Yes, sir. And it keep coming back to the word 'delivery'. I guess one needs to define -

PRESIDENT: Well, no, no, that - that only - that's only in relation to item B.

MR HANSCH: Well - well, if we go to - well, if we go to item B, I mean, under the - all persons engaged in the process, trade, business and production. Production is not - isn't it? Producing something, making something.

PRESIDENT: But if you go to candle, grain milling, soap, soda and starching industries it's all persons, presumably.

MR HANSCH: But here, sir, the application that we have before this commission today, I mean the Wholesale Trades Award, the scope clause of the Wholesale Trades Award covers a great range. It covers nearly all industry. They are seeking to have a blanket coverage which can apply to everything else, it may not even be picked up in their own rules.

PRESIDENT: Well, of course the union's claiming that their rules are so broad that it picks up -

MR HANSCH: Well -

PRESIDENT: - all these things that are in the Wholesale Trades Award.

MR HANSCH: Well, I'm - I'm fully aware of what they're claiming, sir. What I'm saying is, I think they're tending to rely a little bit too much you know on what their rules do say, and particularly when it comes back to the delivery of, what it's in relation to. I don't believe - I mean, and it's - I raised that question this morning, I mean with other people, as far their rules go. And I did ask for some decisions in relation to it, and they said that at that point in time it hadn't been tested. Or we was not aware of whether in fact it had been tested.

But that's why I believe - and once again I'll probably get knocked points, sir, that there would have been some - some merit - I mean, had there of been an adjournment to allow the two organisations to reach an agreement once and for all. We don't want to challenge the rules of the National Union of Workers, just the same as we don't want ours challenged. But I believe that was the intention of the federal secretary of both organisations that there be further meetings.

That's why I'm somewhat reluctant to go too far in relation to these rules. But, no, I don't believe that they do have the right to cover drivers.

PRESIDENT: Yes.

MR HANSCH: And I don't think there's any comfort from what's in here - in their eligibility rules or industry or anything at all that they can rely so much on, in relation to this award anyway, the Wholesale Trades Award.

PRESIDENT: Yes thanks, Mr Hansch. Anyone else? Mr Sertori?

MR SERTORI: If the commission pleases, I don't choose to make submission on the respect of merits of the constitution of the unions, other than to note from the industry viewpoint particularly at this time of deep recession in the need to very quickly speed up the process of structural reform.

It's a great tragedy that this matter has been reduced to this level. But I would ask the commission, in whatever way it chooses having heard the submissions, to handle this matter expeditiously. If the commission pleases.

PRESIDENT: Yes. Yes, thanks, Mr Sertori.

MR RICHARDSON: Mr President, I'll be brief. And I'll be brief because really Mr Hansch has given me nothing to respond to.



His submission is that the union tends to rely upon the word 'delivery' which appears at least on two occasions within the union's rule, and that nowhere does he find the word 'driver', at least in a positive way, appearing within the NUW's rules. I say positive because there is a reference to engine drivers within a rule which I didn't take the commission to, and I say is not relevant to these proceedings.

But he tends to focus wholly and solely on rule B, which is the reference to storing and packing. And he does that to the detriment, in my submission, of examining those other rules which are clearly industry based in both their industry construction and, in my submission, their eligibility construction.

I illustrate by way of one quick example referred to in Mr Strickland's evidence, and that is the example of Purple Pig, which Mr Strickland described as a wholesaler of various rubber goods, and I think he said rubber belts and the like, which, in his evidence, employed, I think he said, some 10 or so person who were engaged in store working and driving functions. It would be my submission that even if the commission could not find that under eligibility and industry rule B, that constitutional coverage existed for drivers, he'd need look no further than those industry and eligibility rules that relate to the rubber industry.

But we say that as a totality, not picking each rule off singularly. The union does have coverage in the activities covered by the Wholesale Trades Award and the activities of driver.

A further example of Mr Hansch's misinterpretation of the union's rules is that he says that nowhere does he find mention of the word 'motor vehicle'. Now, that may well be the case, but if that were the case then the commission could and, in our submission, should apply the logic of, if the word is not mentioned, be it in the positive or the negative, then are the rules of the union necessarily constrained to prevent the delivery of goods - sorry, the coverage of persons engaged in the delivery of goods by motor vehicle.

And we say that the very absence of such words which Mr Hansch concentrates on only broadens the interpretation that can be plied upon the union's rules, rather than restricting it, which is what he attempts to do.

After that Mr Hansch makes a number of references to his union having no problem with mixed functions application, he refers to Mr Strickland's evidence and residency, or alleged residency to federal awards. Really they are arguments of merit and should not be considered at this time by the commission, and the union - the application lets those pass, other than to point out that at no point in the proceedings

other than by assertion did Mr Hansch demonstrate to the commission that the companies on which named were in fact respondent to the federal award.

Mr President, that really concludes the union's submissions. Simply to recap, we submit that we do have the constitutional capacity to enrol persons engaged in driving classifications under the Wholesale Trades Award. And we seek, as Mr Sertori's organisation seeks, the earliest possible decision from the commission. If the commission pleases.

PRESIDENT: Yes, thank you, Mr Richardson. Well, handing down a decision on this matter might take a little while. I might call upon the parties at some stage prior to handing down the decision to explore further other possibilities, but I'm not saying I will but I just flag that as a possibility.

Having said that, we'll adjourn and I'll hand down a decision on the threshold question. Very good.

HEARING CONCLUDED