

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4189 of 1992

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

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

T No. 4190 of 1992

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

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

COMMISSIONER IMLACH

HOBART, 14 January 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

**MR M. CLIFFORD:** If the commission pleases, MARTIN CLIFFORD appearing on behalf of the Construction, Forestry, Mining and Energy Union.

COMMISSIONER IMLACH: Thanks, Mr Clifford.

**MR G. COOPER:** If the commission pleases, I seek leave to intervene on half of the Australian Workers' Union, Tasmania Branch, COOPER, G.

COMMISSIONER IMLACH: Thanks, Mr Cooper.

**MR T. EDWARDS:** If it please the commission, EDWARDS, T.J., for the Tasmanian Confederation of Industries. We seek leave to intervene in matter T.4190 and we appear in matter T.4189.

COMMISSIONER IMLACH: Right. Thanks, Mr Edwards. Are there any objections to those applications to intervene? No objections. I grant the applications? Now, Mr Clifford.

MR CLIFFORD: Mr Commissioner, should we proceed as we have in the past or run through it again for the benefit of the AWU?

COMMISSIONER IMLACH: No, I don't think it's necessary to go through it. I'll advise all parties that in a previous matter to do with the Boiler Attendants Award, Mr Clifford went through the requirements of section 63, subsection (10)(c) in particular to do with membership of the organisation and the public interest and so on, orderly conduct of industrial relations and I indicated then that unless there were objections and he made submissions on each item and that's all - that - and this are objections I .... intended to accept that situation and I say the same in this particular - in these applications, that if Mr Clifford relies on what he said in that previous matter, it's acceptable to me.

MR .....

MR .....

MR CLIFFORD: Roadmakers.

MR .....

COMMISSIONER IMLACH: We'll just go off the record for a minute, Gay.

OFF THE RECORD

MR CLIFFORD: Yes, Mr Commissioner, that would be the way that we would wish to proceed in this matter, is identical to the previous matter and if there's any objections then we'll try and answer those as we go.

COMMISSIONER IMLACH: Thanks, Mr Clifford.

MR CLIFFORD: Thank you.

COMMISSIONER IMLACH: Just a minute - and the same applies does it, Mr Clifford, to the application to insert the name of your union in the parties and persons bound clause?

MR CLIFFORD: Yes, Mr Commissioner.

COMMISSIONER IMLACH: Yes. Thanks, Mr Clifford. Mr Cooper?

MR COOPER: Mr Commissioner, as you will recall we appeared or intervened - sought leave and were granted leave to intervene when this matter was before the commission previously as a result of the initial stages of the amalgamation that has now resulted in the Construction, Forestry, Mining and Energy Union.

I again have instructions from my organisation on how to deal with this matter and without trying to promote delays or frustrate the entry of the CFMEU into this award, my instructions are quite clear and they are that the CFMEU has been quite active with respect to serving of federal logs and it is my understanding that there aren't very many employees at all where the CFMEU are involved that are in fact respondent to this award.

My organisation has, in order to promote industrial - the orderly conduct of industrial relations - while we are only intervening and it is up to the commissioner to satisfy himself, the discretion is purely one that the commissioner has. We would like to have discussions with the CFMEU for the purposes of determining their membership in the industry covered by the scope of the award and also to further clarify in our own minds the type of work that our organisations respectively would perform in the industry, bearing in mind that the award is basically a civil construction award and nationally we are claiming the majority of members in the civil construction industry and we have had our disagreements from time to time, albeit they eventually settle themselves.

In order to maintain the orderly conduct of industrial relations in Tasmania with respect to this award prior to us agreeing or not objecting to the application that's before, we would like to have discussions with the CFMEU for the purposes, as I have outlined, of: (a) determining where their membership is; and (b) if we could come to some arrangement with respect to the respective work that members of the CFMEU

would perform as to opposed to members of our organisation.

COMMISSIONER IMLACH: Yes. Are you formally objecting to the interest being granted, Mr Cooper?

MR COOPER: Well, unfortunately, that's my instructions, commissioner.

COMMISSIONER IMLACH: Yes. So in that context you're seeking really an adjournment so you can have discussions with the -

MR COOPER: Well I've got no authority to question the adjournment. I did have a brief discussion with Mr Clifford. He advises me that he understands he does have members and my instructions are to just satisfy ourselves that that is the case and in fact the work that those people perform isn't in conflict with the work that our members would perform.

COMMISSIONER IMLACH: Yes. Thanks, Mr Cooper. Mr Edwards?

MR EDWARDS: Commissioner, my observations would be consistent with those that I made in the Produce Award matter and that is that the application for interest which has been pursued by the CFMEU must satisfy the requirements of section 63(10)(c)(1), (2) and (3) and I think the hurdle that needs to be specifically overcome in respect of this particular application is that contained in section 63(10)(c)(1) and as I understood Mr Cooper's comments, he is yet to be satisfied that the membership of the CFMEU does include members who are employees in the industry to which the Roadmakers Award applies.

I said in the Produce Award matter, commissioner, as you will recall that it is up to yourself to be satisfied that the applicant organisation does have that interest and I think you observed, sir, that in the absence of anyone suggesting that that wasn't the case, you would accept a submission from the bar table from the applicant organisation to be the effect that they did have such members.

In the context of an objection now being raised by the AWU, it would seem to me that the onus on Mr Clifford increases and the proof necessary for the commission to be satisfied likewise should increase and that is the commission should now enquire of the CFMEU as to whether it does or it does not have employee - members employed in this industry and some proof ought to be forthcoming from that organisation to that effect, otherwise the commission can never be certain that the onus that is put on the applicant by section 63(10)(c)(1) has been satisfied.

If that is done initially by an adjournment for the purposes of the AWU and the CFMEU conferring and reaching some accommodation, then that is obviously a very easy way to do

it. If that's not the case, I would submit that Mr Cooper - Mr Clifford should now put forward proof of membership actually employed in the industry to which this award relates. If it please the commission.

COMMISSIONER IMLACH: Yes. Thanks, Mr Edwards. Before I - I'm going to off the record for a minute, but before we do I make the point that I accept the submissions of the confederation that an objection having been raised and it was a formal objection, I agree that it does throw the onus back on the applicant to prove for - in particular that it has membership in this area. We'll just go off the record, thanks, Gay.

OFF THE RECORD

COMMISSIONER IMLACH: Mr Clifford?

MR CLIFFORD: Yes, Mr Commissioner. After listening to the submissions of Mr Cooper, Mr Edwards and also yourself, we'll seek an adjournment to have discussions with the AWU on membership issues and then reconvene before the commission.

COMMISSIONER IMLACH: Yes. All right. Well - and is that an adjournment sine die?

MR CLIFFORD: Yes.

COMMISSIONER IMLACH: Yes. Well I think that would be advisable in that it would be in the interests of your organisation to get that done as soon as possible, so the ball is in your court, shall we say. So we will adjourn this matter sine die until we hear from the applicant, but for the purpose of the unions in particular involved having discussions with a view to reaching agreement on the application. This matter is adjourned.

HEARING ADJOURNED SINE DIE