

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 226 of 1985

IN THE MATTER OF an application by
the Australian Workers' Union,
Tasmania Branch for the making of
a new award

re Agriculturists Award

COMMISSIONER WATLING

Hobart, 28 August 1991
Continued from 8/8/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: That brings us now to application T.226 of 1985.

MR WILKINSON: Thank you, commissioner. This application currently - at the outset, Mr Commissioner, I believe, it's important just to review some of the history and -

MR K.J. RICE: Excuse me, commissioner. If I may on this particular one, commissioner, I'd like to make an appearance on this one. RICE K.J. for the TFGA Industrial Association.

COMMISSIONER WATLING: Thank you. Mr Wilkinson?

MR WILKINSON: Fine.

COMMISSIONER WATLING: Are you making an appearance in this matter?

MR J. WILKINSON: I beg your pardon, commissioner, yes. WILKINSON J. for the Australian Workers' Union.

COMMISSIONER WATLING: Good. Anyone else?

MR G. WARN: Mr Commissioner, WARN G., Transport Workers' Union. In this application we seek leave to intervene, thank you.

COMMISSIONER WATLING: And your reason for intervention is?

MR WARN: Purely as a sir.

PRESIDENT: Rightio.

MR P.E. TARGETT: Thank you, Mr Commissioner. TARGETT P.E. I appear on behalf of the Tasmanian Confederation of Industries and the Hop Producers' Association of Tasmania.

COMMISSIONER WATLING: See, Mr Wilkinson, it's hot to trot.

MR WILKINSON: Yes, excuse me for jumping the gun there, commissioner. I thought we were just -

COMMISSIONER WATLING: Leave is granted for the intervention, Mr Warn.

MR WILKINSON: - jumping the gun there, commissioner. I was anxious. At the outset, Mr Commissioner, I believe that - as I stated previously - it's important just to review some of the history and some of the reasoning that went into the creation or the intent to create a new title and scope for an award.

Mr Commissioner, I believe, it may be worthwhile just to reflect a little on these intentions. Indeed, they will form

the basis of the AWU's submissions here today. As I understand, the original application was made on 30 September 1985 and subsequently, at least, in relation to the Agriculturists Award a hearing took place on 14 January 1986 before the commission and in relation to the scope of the award.

I note, commissioner, from your decision in that matter dated 17 January 1985 that the main submissions presented in favour of changing the scope of the Agriculturists Award were, firstly, that the new scope would more clearly reflect the operation of the industry of agriculture as a great majority of enterprises carry on more than one operation; 2) that the new scope will embrace parts of horticulture and poultry production and 3) the poultry production prior to 1981 was carried out under the Agriculturists Award when it was included in the Poultry, Game and Marine Products. It created some confusion with smaller operators, especially those who just raise birds and eggs.

Fourthly, the new scope would do away with the confusion that occurs amongst individual employers or farmers who may employ people under more than one award. Fifthly, because of the nature of mixed farming a person could be employed in and during the fruit season he could be picking soft fruits covered by the Horticulturists Award. So, there were two other reasons but rather minor.

So, the basis of the AWU's submissions here today lie principally in relation to points 1, 2, 4 and 5. The unions objective in this remains to create a document which is capable of being implemented, is capable of being enforced by the commission and, from our point, is capable of providing fair and reasonable terms of employment and conditions under which the work is performed in the areas covered by the award.

In so doing that, Mr Commissioner, we would hope to meet the guidelines of award restructuring providing access to workers to more varied, fulfilling and better paid employment. In terms of structural efficiency the union remains committed to modernising the award for the industry and, in so doing, examine the work performed, the classifications and establishing a career path.

To this end, Mr Commissioner, the parties here today have held a number of discussions. Indeed, a without prejudice working document was created indicating that the parties have progressed significantly in many of the areas that will form the new award. However, I think it fair to say that in creating that document a number of difficulties were encountered, I think, quite naturally in determining what precisely would be the title and scope of the new award.

The union would contend that the difficulties that have arisen lie not so much in the polarisation of the parties but rather in losing sight, I believe, of the original intentions in creating a new award. Mainly, that the new scope would do away with the confusion that occurs amongst individual employers or farmers who may employ people under more than one award and, secondly, because of the nature of the industry a person could be employed on functions covered by a number of awards.

Throughout all of the discussions, Mr Commissioner, that have taken place between the parties I'm of the belief that at the end of the day the award must be relevant. And, we'd contend that, given the nature of the industry in 1991, that this will be best achieved by seeking to amend the original title and scope made in principle by the commission in its January decision - of '86 decision.

Mr Commissioner, I'm conscious of the fact that this would require you to some degree to change the original decision in this matter and at this stage we'd wish to table a proposed new title and scope.

COMMISSIONER WATLING: Right. It just does beg the question of you seeking leave to amend your application, whether the application becomes the making of a new award as opposed to just altering it - the current Agriculturists Award to a certain extent. And, it may be through the changing of your application, the original application that you are, indeed, making a new award. And, therefore, we'd deal with title and scope and it would be open to parties to seek an interest in it again.

I hold the view that sometimes we can change the scope to an extent but it does become an entirely new award. And, therefore, it doesn't, sort of reflect, what the current award is all about. So, I take it that you're saying to me that: Fair enough, there's been a decision. It was made on 17 January but circumstances have changed and you now wish to amend that original application which gave rise to that decision.

MR WILKINSON: Correct, commissioner. It's definitely not the union's position that we wish to change the thrust of what was intended. Rather we wish to, perhaps, widen it to take into account the original intention that was there in creating the new award. That was, in fact, in 1985.

Things have changed. It's now 1991. I believe Mr Rice will probably outline a bit better than I would be able to the nature of the farming operations that occur now.

COMMISSIONER WATLING: It might be - in view of my comments there might be a need for both sides to give considerations to

whether they feel it is really the making of a new award, or whether or not we're altering an existing award. I just have a little unease on the basis of this earlier comment that I made. I don't know whether you've discussed it amongst yourselves. Maybe we might just go off the record for a moment.

OFF THE RECORD

COMMISSIONER WATLING: Right, Mr Wilkinson?

MR WILKINSON: Thank you, Commissioner. Just continuing on from that discussion -

COMMISSIONER WATLING: You tendered a document, so we'll mark this AWU.1. Right.

MR WILKINSON: And the union intends to seek to amend its original application. The title as outlined on that document, Mr Commissioner, is known as the Farming and Fruit Growing Award. Accordingly, the union would contend it's more relevant and more meaningful to the industry.

We know from previous experience that with a little bit of luck and a fair breeze that a copy of an award may be in an employer's establishment. Accordingly, the union would contend that by having a farming and fruitgrowing award as the title it is more likely to avoid confusion in the industry, and be more readily recognisable by employers.

This reasoning has flowed through into the intended scope of the award and whilst still within, we believe, the thrust of your original decision on the matter it slightly expands, or better explains, the intent of the parties.

The proposed scope, Mr Commissioner, of the new award is that the award is established in respect of the industry of farming and/or fruitgrowing, and without limiting the generality of the foregoing shall include - they are listed as:

(a) The preparation, sowing, raising, packaging and harvesting of crops including grains, vegetables, peat moss, fungi, hops, nuts, or other specialised crops grown for the production of essential oils or pharmaceuticals.

(b) Livestock farming, including the management, breeding, rearing and/or grazing of horses, cattle, sheep, pigs, goats, poultry, deer and/or other livestock.

(c) Fruitgrowing, including the management, cultivation, picking, grading, packing, and/or forwarding of fresh fruits including grapes.

(d) Seed farming, and/or silviculture where such work is performed in conjunction with the activities specified in subclauses (a), (b) and (c) of this clause.

(e) Apiarists.

(f) Floriculturalists, as defined.

Mr Commissioner, in relation to the original decision I believe no order has been made, no operative date has been fixed, and the decision was made on the basis of the submissions made at that point in time.

Therefore, sir, the union would seek your approval to amend the original title and scope in line with what I have just outlined for the reasons made in these submissions, and we request that you leave open, or address at a later stage, the operative date. If the commission pleases.

COMMISSIONER WATLING: Good. Thank you. Mr Warner, do you wish to add anything?

MR WARNER: No, sir.

COMMISSIONER WATLING: Good. Thank you.

MR TARGETT: Thank you, Mr Commissioner. Certainly we don't have any difficulties with what Mr Wilkinson has had to say, and the document labelled W.1, I think it was, as the exhibit for the new title and scope -

COMMISSIONER WATLING: AWU.1.

MR TARGETT: Sorry?

COMMISSIONER WATLING: AWU.1.

MR TARGETT: Sorry, AWU.1., for the new title and scope, is certainly the agreed position as far as the TCI is concerned. The exercise that we are going through today as far as we're concerned, Mr Commissioner, is a continuation of a decision issued by yourself, and the decision related to T.No. 226 of 1985, which is this matter, and also T. No. 227 of 1985, with the preliminary decision being issued on the 17th of January '86.

In that decision the commission established a new scope clause for the Agriculturalists Award, and that particular decision

was issued after submissions being made by the parties as to the reasons for the change in the scope clause.

We do not seek in these proceedings to make any substantial alteration to the scope which was contained within that original decision, but certainly since that time a number of things have come to light as far as the industries we're attempting to cover are concerned, both with the ability of the parties over 5 years, I guess, to have substantial discussions on what the implications may be of a new scope in those terms, and also examining more closely the impact of removing some parts of the Horticulturists Award and putting them into the Agriculturalists Award, as it is currently known.

The document AWU.1 which reflects the agreement as to what we believe is now more appropriate than the original decision is based purely on the fact that there has been that additional time to get further information, and a closer examination of what is being removed from horticulturists.

It is merely an attempt to ensure that the scope clause within this award can be clearly and easily understood by the average person working in the industry when they pick it up. It is an attempt to make it clear as to what is covered, and it certainly is an expansion on the original decision, but we do not see it as being an alteration to the original decision. It is expanding it and clarifying it in terms which is more easily understood in the field.

On the question of the scope clause itself that's been put forward by Mr Wilkinson, I might just briefly refer to item (f) floriculturists as defined. And as Mr Wilkinson suggested that's there because of what has happened in the making of another award, that is the Plant Nurseries Award, in T.3111 of 1991. In the establishment of that award the scope clause contains an exclusion for floriculturists as defined, and the intention in that award is to ensure that it is clear that it does not include or does not involve the - involve employers that take part in the growing of plants through to bloom and then marketing those blooms.

The reason with item (f) we've put 'as defined' there is to ensure that a similar definition can be put into this award so that there can be no confusion or conflict between floriculturists definition in Plant Nurseries Award and the floriculturists in this award. So we would envisage a definition of floriculturists in both awards in identical terms along the lines of that which I've just indicated. And it's in line with that decision which has already been issued in Plant Nurseries Award.

We would certainly ask the commission to endorse the new title and scope of this particular award and would ask that the

commission do so on the basis of not issuing an operative date or draft orders for the changes to be made, but that the matter be further adjourned following today's proceedings to enable preparation to be done so that the parties can come back to the commission and put submissions on the question of the necessary changes that need to be made to the body of the award, as far as importing some parts of the Horticulturists Award and classifications are concerned.

Also as to the question of an operative which would be appropriate, taking into account other issues that need to be addressed on other awards. If it please the commission.

COMMISSIONER WATLING: Has this award got the second structural efficiency increase?

MR TARGETT: Not at this stage, no, it hasn't.

COMMISSIONER WATLING: Right. So, is this part of that program as well?

MR TARGETT: The process that we're currently going through is part of the structural efficiency process, yes. And we certainly envisage that in coming back to the commission to establish what is required within the body of the award to take into account the changes of the scope, we would certainly be looking at the structural efficiency increases and those issues.

COMMISSIONER WATLING: Right. Good, thank you.

MR RICE: Mr Commissioner, we support the comments made by my colleague, Mr Targett. And again we would see ourselves or see the decision of the 17th of January 1986 as not being greatly altered, but further - and a further explanation or expansion upon - on your decision of that particular date. And we would urge the commission to grant the application as it is at the moment and alter the scope to as has been put before you today in AWU.1. If it please the commission.

COMMISSIONER WATLING: Good, thank you. Any further submissions?

MR WILKINSON: No, commissioner.

COMMISSIONER WATLING: Good. I can indicate to the parties that I'll hand down a written decision in due course which will be in favourable terms to the application that's made. Now, maybe we might go off the record and just have a look at the timetabling.

OFF THE RECORD

COMMISSIONER WATLING: Right. This matter is now concluded
for the time being, thank you.

HEARING ADJOURNED