

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 2322 and 2323 of 1990
T. No. 4287 of 1993

IN THE MATTER OF an application by
the Tasmanian Public Service
Association to vary the General
Conditions of Service Award

re workplace representatives and
payment of wages

DEPUTY PRESIDENT ROBINSON

HOBART, 3 June 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: I'll take appearances in relation to the three matters, please.

MRS S. STRUGNELL: If the commission pleases, MRS SUE STRUGNELL for the Tasmanian Public Service Association, with **MR ROD HUNT**.

DEPUTY PRESIDENT ROBINSON: Thank you.

MR D. HOLDEN: I appear on behalf of the Tasmanian TAFE Staff Society in respect of all three matters, HOLDEN D.

DEPUTY PRESIDENT ROBINSON: Thank you, Mr Holden.

MR J. McCABE: If the commission pleases, JOHN McCABE. I appear for the Minister for Public Sector Management, Mr Deputy President, I believe on the last occasion in 1990, but Mr Willingham appeared on behalf of the Minister administering the State Service Act, so I guess I would appear in conjunction with Mr Willingham in that matter. I believe he also appeared in the payment of wages, which is 2322 of 1990. So I guess I am putting in an additional appearance for the minister in those two matters.

DEPUTY PRESIDENT ROBINSON: Thank you. Two of the files are obviously concerning the same subject matter, and that is the payment of wages, and they have been listed together perhaps in anticipation that one might supersede the other.

The matter in relation to workplace representatives I think was requested for further mention. It is an old file and certainly I don't like files hanging around for that length of time without knowing their status.

Perhaps we might be advised, Mrs Strugnell, first of all on 2323 of 1990, if that's convenient.

MRS STRUGNELL: Thank you, Mr Deputy President. Well, obviously I wasn't around in 1990 so I can just pick up from where I see that particular matter being left.

DEPUTY PRESIDENT ROBINSON: Yes. I notice from the transcript that it was just adjourned to a date to be fixed.

MRS STRUGNELL: That's certainly correct, sir. It was adjourned to a later date so that a considered response could be prepared and made for this particular application, which was a little over 3.1/2 years ago.

So we are rather hopeful that that considered response might be available.

However, in the meantime some changes have taken place in the structure of the TPSA, and I would like to submit if I may a

further exhibit which helps to clarify and further outline the role of the workplace representative, the definition of a workplace, and the connection with the electorate committees in relation to that structure.

I believe there was some argument in the original submission in relation to the definition of workplace, which we believe are now contained in our objectives and rules is more clearly defined.

If we can -

DEPUTY PRESIDENT ROBINSON: It would seem that there have not been ongoing discussions?

MRS STRUGNELL: No, sir.

DEPUTY PRESIDENT ROBINSON: No. I don't remember what number exhibit was the last one. I think I can be excused for that.

MRS STRUGNELL: No, I am afraid I don't either. I couldn't see any numbering across the top of the last - we got up to four.

DEPUTY PRESIDENT ROBINSON: Did you, or your association did?

MRS STRUGNELL: Yes. We have a TPSA.4 in here.

DEPUTY PRESIDENT ROBINSON: Right. It might be safe to - here we are, yes. Yes, I think there should be then TPSA.5.

MRS STRUGNELL: I am not quite sure where we go with this - whether I would just speak to this exhibit firstly and then hand over to my colleague Mr McCabe.

DEPUTY PRESIDENT ROBINSON: Well, I guess it all helps to clarify the nature of the application, and will be of benefit to Mr McCabe and the commission.

MRS STRUGNELL: Right. Perhaps then I could just generally outline what our previous submission was relating to.

We presented, as I said, our submission to this commission as constituted on 6 March 1990 in relation to varying the General Conditions of Service Award to allow accredited representatives of the association to which the employee belongs necessary time during working hours to submit to the controlling authority matters affecting the employees that he or she represents. X

And, further, to allow reasonable time during working hours to attend to job matters affecting his or her union.

During our submission we presented exhibits which outlined the training program and course content prescribed for those accredited representatives.

We have now added TPSA Exhibit 5 which further clarifies some points that were raised in Mr Willingham's brief reply to our submission, and in particular I would like to point to Clause 17 - Workplace Representatives, section 10 of that particular clause, which although relating to the election of workplace representatives defines as we would see it what a workplace - how it would be representative.

The workplace shall be determined by the relevant electoral committee, as prescribed in clause 12, which is also on that exhibit, and may be any identifiable separate physical location where association members are employed.

This may be in a small suburban or country branch location, or may be a room located on a particular floor in a given building, or it may be a section of a floor where open plan exists.

Now that definition is more than was available I believe in 1990, and I think it helps to clarify our perceptions of a workplace, and certainly our members' perception of workplace as it stands at the moment.

The electorate committees will in fact have some bearing in relation to representation in the workplace. That is the time that would be required at any time to consider matters relevant to a workplace or relevant union matters of a general nature.

And it would be, by the very course of the change of the structure of the TPSA, that those members of electorate committees will also be included in the submission as it was presented in 1990.

I don't know that there is very much more that we can add.

DEPUTY PRESIDENT ROBINSON: No.

MRS STRUGNELL: Our argument has been run and this is purely just to clarify 'workplace'.

DEPUTY PRESIDENT ROBINSON: It is difficult to pick up momentum to hit the ground running, isn't it, when something has been around all this while.

MRS STRUGNELL: Just a little.

DEPUTY PRESIDENT ROBINSON: But still - thank you, I am sure that's of assistance to Mr McCabe, and will perhaps enable the government to respond better to exactly what is

being sought, and to satisfy questions raised the other day, or other year, whatever it was.

Mr McCabe, do you feel quite comfortable with that now?

MR McCABE: Well, I am not quite sure, Mr Deputy President. It is a matter which, as you are well aware, was adjourned some time ago on the government's application and with the consent of the parties on the day -

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: - to enable further, as I understand, further discussions to take place, and to allow the government to make a 'considered response', I think was the term used. //

Now, as far as I can detect, there has been no discussions held between the parties, that I am aware of, and I suspect that there are good reasons for that in that both the matters listed today were subsumed into the award restructuring process, if you could describe it as that; which has been going on since that year, 1990, and if not before that, and a decision was handed down by the full bench dealing with those particular matters in the public sector very recently.

As far as we are concerned that process is still unclear as to how that process is to be finally resolved, even though suggestions were made by that full bench, and as I see it we are still in a negotiation phase, in a discussion phase, with the TPSA as to how the process of award restructuring, enterprise bargaining and wages policy is to be dealt with.

DEPUTY PRESIDENT ROBINSON: Well, this is not wages of course, it is a conditions matter.

MR McCABE: Well, I use that as a generic term for wages and conditions, of course. I think they are inextricably linked, and if I need to I can go into quite extensive submissions as to that, as to why these two particular matters should not be dealt with in isolation.

DEPUTY PRESIDENT ROBINSON: Two matters? Oh, you are talking about the other -

MR McCABE: Yes. If I could deal with the two matters together, because we don't -

DEPUTY PRESIDENT ROBINSON: - matter of payment of wages. — x

MR McCABE: - intend, or it would be our submission that neither of these matters should be dealt with on merit at the moment, for certain reasons on which I do have extensive submissions to make.

But, if at this stage of proceedings I could just hand up an exhibit, which -

MR HOLDEN: I wonder, Mr Deputy President, if it is appropriate for Mr McCabe to deal with both matters at once when the applicant haven't really made their full submission in respect of one of them? Just on a procedural basis.

DEPUTY PRESIDENT ROBINSON: Yes, well I guess he is perhaps foreshadowing a general response.

MR McCABE: Well, if I could, I don't know, make that suggestion that the matters could be joined? I don't know what the TPSAs feeling is about that.

DEPUTY PRESIDENT ROBINSON: Well, just before we leave 2323, I understand what you are saying but you haven't indicated to me what the process is to be.

I mean, you have indicated that it ought not be dealt with by me, and you are going to elaborate on why.

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: But, I mean I have the file, and I have the responsibility of dealing with it appropriately. I'm interested to know whether you are going to suggest how I deal with it appropriately.

MR McCABE: Yes, yes, I will be doing that.

DEPUTY PRESIDENT ROBINSON: And, you know, what the alternatives are, rather than just say, well I don't want you to deal with it.

MR McCABE: Well, as I say, I have got substantial submissions to put to you, but I think they relate to both the questions, both the matters that are before you today.

DEPUTY PRESIDENT ROBINSON: Right. Well, let us into the secret, what are you going to suggest, that you go away and have some talks and fix all these things up fairly promptly, or - ?

MR McCABE: Yes, we will be putting to you that negotiations should continue on all conditions matters.

DEPUTY PRESIDENT ROBINSON: At the same pace?

MR McCABE: Well, that's up to the union movement, if I might suggest, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Right.

MR McCABE: I mean, they have shown no enthusiasm to date to seriously talk about condition matters, as the full bench has noted on a number of occasions - the state wage case full bench dealing with public sector matters.

That is quite an acknowledged fact, if I might say so.

MRS STRUGNELL: Mr Deputy President, if I may, I don't believe that the slowness of proceedings in relation to conditions can be entirely put upon the union's head; and, secondly, I would like to point out that in relation to another matter that we have listed today we have made various applications to this commission in order to try and progress that particular matter; and have had to wait to see what further developments take place in relation to the full bench considerations.

If there is any consideration at all from today to further delay these in relation to conditions matters I don't believe that the association could possibly condone the further delay of the second application, that is the payment of wages, as being two matters joined.

DEPUTY PRESIDENT ROBINSON: I see. Well, what is the TPSA's real position so far as these applications are concerned? How are they to be dealt with?

MRS STRUGNELL: Sir, we are happy for the second application of 1990, the payment of wages, if this commission pleases, for that to be withdrawn, because we now have a current application in relation to that matter.

DEPUTY PRESIDENT ROBINSON: Well, okay. We're talking about 2333 of 1990, are we?

MRS STRUGNELL: 2322 of 1990.

DEPUTY PRESIDENT ROBINSON: Yes. Okay. You seek leave to withdraw that, and I take it there is no objection, Mr McCabe, to the withdrawal?

MR McCABE: No, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Right. T. No. 2322, 1990, leave granted to withdraw. ←

We have disposed of a third of the problem. We are going well. I like progress. I am getting nervous. What's the date, the 2nd?

MRS STRUGNELL: The 3rd.

DEPUTY PRESIDENT ROBINSON: The 3rd? Lovely. Now we are down to only two matters instead of three. Two files. Mr McCabe is on his feet.

MR McCABE: I think that may clarify what is actually before the commission, but it still doesn't make any difference to our submission, Mr Deputy President, that we don't think it is appropriate at this stage that either of the matters, either the payment of wages or the workplace representatives clauses should go into - should be dealt with - by the commission in isolation from other matters.

DEPUTY PRESIDENT ROBINSON: Well, as I recall it, Mr McCabe, and I am referring merely specifically now to the payment of wages matter. You had put an extensive argument to me before - presumably it was on 15th March -

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: - a number of reasons why I shouldn't deal with it, and I am conscious of that and acknowledge it.

One of the reasons was that it was the same subject matter that was before the public sector full bench.

MR McCABE: Yes, indeed, yes.

DEPUTY PRESIDENT ROBINSON: Right. Now the public sector full bench has handed down its decision in relation to all those matters which were before it, and to that extent it is appropriate I think to again revise the reasons why this, 4287 of 1983, should or should not remain with me.

MR McCABE: That's the decision of the -

DEPUTY PRESIDENT ROBINSON: Yes. Are you going to take me to -

MR McCABE: Yes, I shall.

DEPUTY PRESIDENT ROBINSON: - are you going to take me to that part of the decision which is relevant to this file?

MR McCABE: Yes, I'll be doing that, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Yes. I have just asked for it to be brought down so that I can follow what you are going to say with you.

MR McCABE: Shall I continue, or do you want me to wait?

DEPUTY PRESIDENT ROBINSON: If we could just wait a couple of minutes, if you don't mind.

MR McCABE: Certainly.

OFF THE RECORD

DEPUTY PRESIDENT ROBINSON: Yes, Mr McCabe, I think you were going to quote the full bench decision of -

MR McCABE: We may as well deal with it at this point, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: What was the date?

MR McCABE: If I can take you to page 2 of the full bench's decision of 23rd April, I believe.

DEPUTY PRESIDENT ROBINSON: Page 2?

MR McCABE: Page 2, yes. And about a third of the way - at the third full paragraph on that page, if I can quote it, it says:

In addition, the Commission will ensure that any award or agreement that is proposed to be made or approved has effectively addressed the issues of conditions of employment, efficiency and productivity either on an Agency or enterprise basis, or where appropriate on a service-wide basis.

And they go on to say this may facilitate the process, rather than working on an agency by agency basis. It may have a more beneficial effect.

Now it's quite - quite clear that even though the full bench has brought down its final decision it's still saying that the conditions of employment must be effectively addressed.

DEPUTY PRESIDENT ROBINSON: Well that's we're going to address.

MR McCABE: But it can't be done, I don't - I suggest just on - on a piecemeal basis, and this is what the TPSA is effectively trying to do - is to put through two clauses which will have wide ramifications with the public sector without having had - the government having had the benefit of serious discussions on either of them, and we just don't know where we're at because these applications were raised out of the blue, as I understand, and I - I do appreciate what you say about having files which are incomplete but we certainly didn't ask for the matters to be revived, and I'm not sure whether the TPSA did.

DEPUTY PRESIDENT ROBINSON: Well what do you think I should just do - just dismiss them?

MR McCABE: Well that would be our preferred option - or to -

DEPUTY PRESIDENT ROBINSON: On what grounds?

MR McCABE: That the -

DEPUTY PRESIDENT ROBINSON: Be careful because they're going to be used in the appeal.

MR McCABE: Yes - on the grounds that the unions at the direction of the full bench need to seriously address conditions of employment matters not piecemeal but as a - as a package. We're not interested in talking to unions about -

DEPUTY PRESIDENT ROBINSON: When you say a package, you mean - would you elaborate on that?

MR McCABE: Yes. The - you're not - you weren't on that full bench -

DEPUTY PRESIDENT ROBINSON: No, no, no, I wasn't, no, no.

MR McCABE: - of the state wage - and as I understand it the - the government on the direction of the - of that full bench put forward a full document of conditions of employment - a working document - which included work place representatives, included - I'm not sure that it included work place representatives - but it certainly included payment of wages.

DEPUTY PRESIDENT ROBINSON: Yes, yes, I think that's right.

MR McCABE: Now that hasn't been addressed. It hasn't been discussed seriously between any of the parties and that's one of the matters which is still hanging over from that full bench process -

DEPUTY PRESIDENT ROBINSON: But didn't -

MR McCABE: - the public sector full bench.

DEPUTY PRESIDENT ROBINSON: - but didn't the full bench dismiss the matter before it, in relation to all those conditions of employment - there were certain matters which it has kept alive, I think, but payment of wages isn't one of them.

MR McCABE: Well it is - I mean it is part of the - the - it's one of the matters that the government raised with the unions to be looked at a part of the conditions of employment which is - that you referred to in that - that paragraph which I quoted from the - from their decision - the full bench's decision.

DEPUTY PRESIDENT ROBINSON: But it was talking there - it - I mean that paragraph that you quoted just about in the middle of the page followed the one that was talking about classification standards and presumably -

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: - with the wage increase implications -

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: - and I don't know that it was saying - that the full bench was saying - and tell me if - correct me if I'm wrong - that no conditions matters can now be dealt with by a single commissioner at all unless it's some sort of a - well -

MR McCABE: Oh, unless there's some agreement.

DEPUTY PRESIDENT ROBINSON: - I'm not sure what the conditions are - who is to deal with - a full bench or -?

MR McCABE: Well, yes, I've got submissions which deal -

DEPUTY PRESIDENT ROBINSON: Have you?

MR McCABE: - with that question.

DEPUTY PRESIDENT ROBINSON: Right.

MR McCABE: But certainly if there was agreement between the parties then I would think that it would be possible for the commission, however constituted to deal with - deal with an issue of conditions of employment.

DEPUTY PRESIDENT ROBINSON: If it's consent.

MR McCABE: But if there's no agreement -

DEPUTY PRESIDENT ROBINSON: If it's consent. If there's no agreement I can't deal with it.

MR McCABE: Well, we don't - we suggest that arbitration is the last - very last resort and we certainly haven't been through the conciliation process at this stage.

DEPUTY PRESIDENT ROBINSON: But getting back - what's this package you were talking about that had to apply? I mean what's - what's that?

MR McCABE: Well as far as the government is concerned we want to talk to any of the unions - all of the unions in the public sector about conditions of employment as a whole - we

don't want matters to be - we're not interested in dealing with matters piecemeal and in isolation and I think that the full bench in their decision of 23rd April does give some support to that.

DEPUTY PRESIDENT ROBINSON: Why - why - tell me this - why hasn't this file - or why has this file been allocated to me by the President if he's got in mind that the subject matter ought to be dealt with by a full bench or joined with other matters? Why has he just given it to me?

MR McCABE: I've no idea, Mr Deputy President, but I've certainly got some submissions to make about that if I need to, sir.

DEPUTY PRESIDENT ROBINSON: What - what, to the President or to me?

MR McCABE: Oh well, I'll make some to you and it's your responsibility to deal with it as you see fit, but -

DEPUTY PRESIDENT ROBINSON: Yes, I mean to say, it is a significant matter for a large organisation to put in an application and for the President to allocate it to one of his commissioners and it shouldn't - it shouldn't be assumed that some error has occurred along the line that I'm not to deal with it. I mean -

MR McCABE: Oh no.

DEPUTY PRESIDENT ROBINSON: I mean I'm not - I'm not touting for work, I - please understand that - but I have a file and I have a responsibility - or two files - and a responsibility for disposing of them in accordance with the acts and wage fixing principles and all that, and I'm looking for - for guidance as to what I should do with it and -

MR McCABE: Mm. Yes, I - well I guess what we're doing at the moment is - is addressing a threshold issue dealing with - with both of the -

DEPUTY PRESIDENT ROBINSON: Yes, yes - yes, right, and the first part of it was what the full bench had said on 23rd April 1993.

MR McCABE: Yes. Certainly is. And if I could hand up this exhibit which may throw - shed further light on the -

DEPUTY PRESIDENT ROBINSON: Thank you. How should I label this?

MR McCABE: I'm not sure. I don't think we got around to handing up any -

DEPUTY PRESIDENT ROBINSON: Right.

MR McCABE: - exhibits in the - in the workplace representative applications.

DEPUTY PRESIDENT ROBINSON: Right. Government.1 or -

MR McCABE: Yes. And this is a TPSA circular which we don't take issue, but it certainly points out quite categorically that the TPSA has commenced discussions with the State Government on a range of budget-related issues and these include the new TPSA - sorry - Tasmanian Public Sector superannuation arrangements.

DEPUTY PRESIDENT ROBINSON: Mm.

MR McCABE: The second item is Options for a Public Sector wages policy, and obviously if there's to be a public sector wages policy then conditions of service are a part of, I would suggest, a wages policy. You can't isolate significant conditions of service from a wages policy.

And the third item is Collection of union dues, which is something which may have ramifications in respect of workplace representatives although the commission can no longer deal with collection of union dues as an industrial matter. It still will have ramifications in respect of workplace representatives.

DEPUTY PRESIDENT ROBINSON: Bit of a long bow isn't it?

MR McCABE: It's not a long bow -

DEPUTY PRESIDENT ROBINSON: Oh?

MR McCABE: -, no. And there is amendments to the State Service Act. Now quite obviously the TPSA are saying that it is prepared to talk with the State Government about wages policy and we're - we're more than happy about that.

DEPUTY PRESIDENT ROBINSON: Right.

MR McCABE: Now we would see that - these - these sorts of matters as being part of those discussions as to where we go with them.

Now if as a threshold issue you don't find - well I suppose I should ask you whether you would be prepared to adjourn these proceedings - perhaps leave the files open - to allow that further negotiation process to continue.

DEPUTY PRESIDENT ROBINSON: Look, I'm prepared to do anything which will facilitate a settlement of the matters before me, but I would be anxious before embarking upon any particular

course to ensure that it was - to facilitate satisfactory resolution of whatever the subject matters are. So if you can give me a timetable for discussions and report back at - then that would go perhaps some way towards making me disposed towards the proposition of an adjournment, but on the other hand I'm not going to just adjourn and adjourn and adjourn matters that aren't making any progress and haven't got any prospect of making any progress for obvious reasons I would think. I've got a duty to make sure that - that the matter is progressed at an appropriate rate in a time sense.

MR McCABE: Yes, certainly, yes, I think that message should be appreciated by both - all parties, if I could put it that way.

DEPUTY PRESIDENT ROBINSON: Yes. I take what you're suggesting then is that I should adjourn both these matters for report-back at an appropriate time.

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: I'm not going to wait 3 years though, I tell you.

MR McCABE: Well, yes, I would hope something may happen within that time, but I mean that - it really isn't, I think, you know, the onus is on all parties to -

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: And if I might just add, I don't see any particular urgency for - I mean when the dispute was alive at the Department of Education and the Arts, perhaps then there was a need for a - a payment of wages clause. Now the TPSA had let that application lie dormant. If they had thought there was some urgency about it in 1990 then perhaps they would have perhaps tried to progress it before the commission even though it was caught up in the wider net, but that was revived again in reaction to an immediate problem. The - I can't see any immediate need for workplace representatives clause.

DEPUTY PRESIDENT ROBINSON: Well the payment of wages matter of course did blow up into a serious dispute and - and I must say that it received a - a prompt and thorough response and I think it - you may have given me a report of - of what - what measures were in place to get over that particular problem.

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: And I acknowledge that - and appreciate that it was - steps were taken to improve the situation in that regard on that particular matter.

I would hope that we wouldn't have to get to a situation where the resolution of an outstanding matter can only get attention if it becomes critical and blows up into a serious dispute.

MR McCABE: I think it's, you know, perhaps the TPSA should tell us why they think these matters - if they can convince us that they ought to be dealt with in isolation - then we would be prepared to perhaps look at that. But we need to have discussions with them along those lines.

DEPUTY PRESIDENT ROBINSON: I see. Thank you, Mr McCabe. Mrs Strugnell?

MRS STRUGNELL: Mr Deputy President, I think I got a little lost there. I'd like to go back I think to Mr McCabe's reference to the full bench decision, and I believe that paragraph that he is quoting there is being quoted out of context of the preceding paragraph which relates to classification standards and a departure from current standards, and the need for the commission to ensure in ruling on any of that matter that the relevant conditions of employment have been addressed in relation to efficiency and productivity'.

Now it would seem to me from that paragraph that Mr McCabe referred to that there is absolutely nothing there that says that conditions need to be addressed as a package. Absolutely nothing at all. Just to assure the commission that conditions of employment are addressed if classification standards are being addressed.

And, therefore, I think his argument that this decision prohibits the address of conditions of employment as they are seen to need to be addressed is not sufficient.

We would be happy to look at - if 3.1/2 years is not long enough for the government to come forward with a considered response to our submission - we would be happy to allow a little bit more time for that considered response to be prepared in relation to workplace representatives and time allowable to those people to effectively carry out their role.

However, sir, in view of the proceedings that we have had in this commission in the last 6 months even, we would not be prepared to see that adjourned with the other matter, and would like the opportunity to present our submission in relation to the payment of wages clause to vary the general conditions of service.

There are reasons why it needs to be done. They are immediate reasons, and while we acknowledge that problems that we have had with a certain department in particular in relation to payment of wages have been addressed promptly.

We believe that there is a reason why in the name of fairness and equity that a payment of wages clause should be inserted in the General Conditions of Service Award for the benefit of all public sector employees covered in the scope of that award.

However, we are more than happy if the government would like to discuss with us further, or need further time to consider a response to our workplace representatives claim, we are more than happy to hear what date would be appropriate to report back here and to resume some discussions in the meantime in relation to that particular matter.

But we are very reluctant to see both matters joined to be adjourned in that way.

DEPUTY PRESIDENT ROBINSON: Thank you. Mr Holden?

MR HOLDEN: Mr Deputy President, if nothing else, Mr McCabe's submission is audacious.

Mr McCabe seems to place the onus on the TPSA and employee organisations to discuss the matter with them following the adjournment in 1990.

I'm afraid I don't read the matter in that way.

It was adjourned to allow a government's considered response. The government should have prepared that response and set in train the discussions with the TPSA.

As I see it, there was no onus on the TPSA at that time. It was purely and simply on the government, and as they have done with so many other matters, they simply chose not to proceed.

As Mrs Strugnell has said, if there is to be an adjournment it certainly should be under tightly controlled conditions.

However I question the value of an adjournment.

Mr McCabe has made clear the government's position. They do not want to deal with the matter in isolation. That's one of the major thrusts of his submission.

So if they do not want to deal with the matter in isolation, one can hardly look forward to those discussions proceeding very successfully.

When all said and done, a 3-year delay is really quite amazing, and I would suggest that the blame cannot be put on the employee organisations. The reason they have accepted the delay of course was that there was some expectation of the award restructuring process bringing the matter to finality.

However, as the four applications for new awards in that area has now been rejected, there is absolutely no reason why individual condition matters cannot be processed, particularly condition matters which do not go to major outlays of cost; and, certainly it is not suggested - or I haven't heard it suggested - that the application of the workplace representatives as applied for by the TPSA would impose significant costs upon the government.

In fact, it could help improve the government's sad performance in terms of its industrial relations and, in fact, help to lift the morale of its workforce, which certainly doesn't appear to be very high right across the public sector at this point in time.

There may be exceptions to that, of course. The morale may be high within the industrial boards, but if it is I assure you it is an exemption.

On that grounds, the TTSS will oppose any adjournment. In fact, we believe the matter should be dealt with. However, as the applicant has said, they are prepared to accept a short adjournment, although I stress they have placed conditions and I think the commission should set down a date by which it will rehear this matter, and I would suggest a month at the outside, the very outside, and if there is not agreement at that stage the commission should certainly hear submissions on merit and make a decision.

In respect of the non-joining and non-adjournment of the matter of payment of wages the TTSS fully supports the TPSA's submission.

There is a very serious need for a proper payment of wages clause in all awards as it is central and fundamental to any contract of employment as set out in an award.

That concludes the TTSS's submission, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Thank you. Well, it seems fairly obvious that there is fundamental difference of opinion as to whether or not I ought to at least proceed to deal myself with the payment of wages matter at all.

It seems that there is a measure of consensus that the matter of employee committees - if that's the right title - could be made subject to some further discussions if they are held promptly.

I am inclined to accede to that, but I agree with Mr Holden that it should not be a long adjournment, and that the commission should be kept advised of progress and bring it back on at a set date, I think, to ensure that it's not

allowed to suffer the fate of the application which was withdrawn a little while ago.

I think I probably need a little bit more time to consider Mr McCabe's argument on whether the full bench meant for single items such as payment of wages, as an example, to be dealt with by a single commissioner.

It won't take me very long to have some discussions with the president in relation to that, and I feel that I have got an obligation to discuss it with him because he allocates the applications, and has been involved of course in the public sector full bench matter and I haven't been involved in it.

So I think probably the best thing I can do is adjourn both matters briefly, to encourage discussions by the parties during the interval, and also utilise the interval, as I have already said, to approach the president and seek his comments before I make up my own mind as to whether - as to what I deal with - both the files, I suppose, particularly in view of the full bench's comments which have been referred to here today.

I mean, I have a view already, but I think that circumstances do require that I confer with the president, and get it clear for everybody's sake I guess for the future as to how these types of matters are to be processed. Any final comments on that?

MRS STRUGNELL: Mr Deputy President, I just have one final comment in relation to this.

I would just like to refer back to a decision that you made in relation to a payment of wages application made by the Tasmanian Teachers Federation in 1989.

DEPUTY PRESIDENT ROBINSON: What was the T.No. on that one?

MRS STRUGNELL: It was T.1886 of 1989.

DEPUTY PRESIDENT ROBINSON: 1886?

MRS STRUGNELL: Yes. And part of the government's argument then in 1989 prior to the commencement even of the award restructuring process that commenced in 1991 was that, and I quote:

The commission was urged to rule that the present claims be deferred and the parties be required to consider the TTF proposals in the context of the next structural efficiency exercise pursuant to the current wage fixation principles.

So as long back as 1989 the government has used structural efficiency, award restructuring, or whatever, as a means of delaying any access to varying for conditions of service.

And I would just like to bring that to your attention, sir, in the course of your discussions with the president. Thank you.

MR HOLDEN: One further matter I would like to raise, Mr Deputy President, and that is this, that if the submission by Mr McCabe is successful it effectively means all matters in respect of conditions of employment are not going to be dealt with by this commission until such time as there is some settlement of the general overall context of award restructuring in the public sector, and that is no longer being done on a single basis but is to be done on an agency by agency basis.

And in effect that could be a very long time away in some respects and, in fact, I could foresee a possible appeal to a different tribunal seeking to have the commission carry out its responsibilities if Mr McCabe's submission is to be successful.

DEPUTY PRESIDENT ROBINSON: You don't mean a tribunal, you mean another - another -

MR HOLDEN: A tribunal of superior jurisdiction, I believe, is the word, though of course certainly some of your colleagues -

DEPUTY PRESIDENT ROBINSON: A tribunal or a court?

MR HOLDEN: Some of your colleagues would of course know that I frown on that description.

DEPUTY PRESIDENT ROBINSON: I see, thanks, Mr Holden. Okay.

MR McCABE: Always - always rely on Mr Holden for some entertaining submissions, Mr Deputy President. It's interesting to see the way that he and his colleagues are turning their backs, if I might use that expression, on the state commission in droves. We -

MR HOLDEN: I object to that comment about the TTSS, Mr Commissioner. Mr McCabe may direct it to those others as he wishes, but the TAFE Staff Society repeats the comment it made in the government's application in respect of incapacity to pay. The TTSS in Tasmania has not sought a federal award, notwithstanding the assertions of Mr Willingham and apparently by implication, Mr McCabe.

MR McCABE: Very sensitive today, isn't he, Mr Deputy President?

DEPUTY PRESIDENT ROBINSON: And has no intention to.

MR McCABE: I wasn't necessarily referring to -

MR HOLDEN: The TTS will determine matters as they arise, Mr Deputy President, and the factors that apply at the time will no doubt affect the decision. I have no idea what they will do in the future.

DEPUTY PRESIDENT ROBINSON: No, minister - I'm sorry.

MR McCABE: Just for the record, Mr Deputy President -

DEPUTY PRESIDENT ROBINSON: Yes, Mr McCabe, sorry -

MR McCABE: - the structural efficiency principle did actually commence in 1989, not 1990 as Miss Strugnell pointed out. In fact the commission's decision of 30th October 1989 actually set the structural efficiency principle in place. But I do admit we didn't get into - seriously into trying to progress it until 1990. However - and it does raise an interesting question - and I'm not going to go into it now. I'm not going to - even back as far as 1990, Mr Willingham did raise in the workplace representatives matter - I understand it was - he raised the question as to what wage fixing principles the applicants hoped to progress their claims through and I think that's probably a more significant question today, but I won't go into that any further. I suggest the applicants might study their wage fixing principles and - before they, you know, decide to try and attempt to progress the matter any further.

DEPUTY PRESIDENT ROBINSON: Well we really at the stage as to whether we commence to hear, let alone -

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: - what the merit arguments will be.

MR McCABE: Indeed. But what the point of viewing the merits if the matter can't be progressed - or how can it be progressed under the current principles? But I'll leave that till -

DEPUTY PRESIDENT ROBINSON: Yes, but it is a different question as to whether or not the matter be heard. I mean that's -

MR McCABE: Oh, certainly, yes.

DEPUTY PRESIDENT ROBINSON: - that's the threshold question.

MR McCABE: I think all the merit under the sun has - is of no use unless the commission is able under its own principles to - to put those - put any decision into effect. So - and how it's done.

DEPUTY PRESIDENT ROBINSON: Mm.

MR McCABE: Anyhow - I have no further submissions to make.

DEPUTY PRESIDENT ROBINSON: Don't you? Alright we'll adjourn both these matters for about a month. We're looking at 29th June which is a Tuesday for both of the remaining matters before us - that's 2323 of 1990 and 4287 of 1993.

It might be appropriate that I'll put something out in writing before that time.

Miss Strugnell?

MRS STRUGNELL: If the commission pleases, I would request that a shorter time be considered for the payment of wages matter. Is that possible?

DEPUTY PRESIDENT ROBINSON: Well compared to 3.1/2 years I - I thought I was applying the blow gun - blow torch.

MRS STRUGNELL: Sir, in fact the payment of wages matter is T.No. of 1993 now because we have withdrawn the 1990 application.

DEPUTY PRESIDENT ROBINSON: Yes, did I say 90 - but the - I'm sorry - where did I go wrong - didn't I say 4287 of 1993?

MRS STRUGNELL: Yes. I was just referring to 3.1/2 years.

DEPUTY PRESIDENT ROBINSON: Well -

MRS STRUGNELL: I was asking whether it be - there be a shorter adjournment for the payment of wages matter.

DEPUTY PRESIDENT ROBINSON: Do you think it will do any good?

MRS STRUGNELL: I would certainly be very eager to present our submission, sir, in relation to that.

DEPUTY PRESIDENT ROBINSON: Easier to present your submission?

MR HOLDEN: Eager.

MRS STRUGNELL: Eager to, sir.

DEPUTY PRESIDENT ROBINSON: Eager to - eager to.

MRS STRUGNELL: Yes, yes.

DEPUTY PRESIDENT ROBINSON: No, look, I'm going to stick by the 29th. I must be fair to the government to give them a good opportunity to have some discussions and to bring itself up to date on these matters. I know they're very busy on other matters. So I'll make it 10.30 am on Tuesday 29th - I'm sorry, Miss Strugnell - Mrs -

MR HOLDEN: 29th June?

DEPUTY PRESIDENT ROBINSON: June.

MR HOLDEN: At 10.30.

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: Yes, indeed, Mr Deputy President. Much of my time is taken up in the federal commission at the moment.

DEPUTY PRESIDENT ROBINSON: Oh goodness gracious.

MR HOLDEN: And what's that - a jurisdiction of - tribunal of lesser jurisdiction is it?

DEPUTY PRESIDENT ROBINSON: Thank you very much. We'll now adjourn.

HEARING ADJOURNED