

AG

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2692 of 1990

IN THE MATTER OF an application
by Pasminco Metals - EZ Operations
to vary the Electrolytic Zinc
Award

re structural efficiency
principle

COMMISSIONER GOZZI

Hobart, 25 September 1991
continued from 9/4/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: I'll just take new appearances thanks.

MR J. LONG: If the commission pleases, JEFF LONG and with me, **MARSHALL REEVES** of the Federation of Industrial - Industrial Manufacturing and Engineering and Employees Union. I knew I'd mess it up one day, sir.

COMMISSIONER GOZZI: Yes, I'll accept FIMEE.

MR A.J. GRUBB: If the commission pleases, GRUBB A.J., on behalf of the Amalgamated Society of Carpenters and Joiners of Australia, Tasmania branch.

COMMISSIONER GOZZI: Thank you, Mr Grubb.

MR M. CLIFFORD: If the commission pleases, MARTIN CLIFFORD, appearing on behalf of the BWIU and the ATAIEU.

COMMISSIONER GOZZI: Thank you, Mr Clifford.

MR K.D. BECKER: If the commission pleases, BECKER K D, I still appear on behalf of the Electrical Trades Union along with **MR JOHN KARSZNIA**.

COMMISSIONER GOZZI: Thank you.

MR : He hasn't changed.

MR T. HARDING: Sir, HARDING T, appearing on behalf of the Metals and Engineering Workers Union.

COMMISSIONER GOZZI: Thank you, Mr Harding.

MR C. JEFFERIES: If the commission pleases, JEFFERIES C, on behalf of Pasminco Metals-EZ, along with **NALLY M**.

COMMISSIONER GOZZI: Thank you, Mr Jefferies. Who'd like to go first. Mr Jefferies.

MR JEFFERIES: Sir, this matter is a continuation of the application lodged by Pasminco Metals-EZ for the payment of the second structural efficiency adjustment. An interim decision awarding the second instalment position on 19 October '90 and the Electrolytic Zinc Award was varied from that date.

COMMISSIONER GOZZI: 17 December?

MR JEFFERIES: An interim decision was issued on the 19th and I was getting to that - on 17 December a further decision issued along with an order -

COMMISSIONER GOZZI: Oh, I'm just trying to find the interim - 19 December decision. What did that one say? What was that one about?

MR JEFFERIES: That was where you varied the award in total, deleting all clauses and replacement of new provisions. It was order 2 of 1990.

The reasons for interim decision that was - it was three matters all joined in together in that decision - was T.2314, T.2541 and T.2692.

COMMISSIONER GOZZI: That was headed interim decision?

MR JEFFERIES: That was an interim decision issued on 19 October 1990.

COMMISSIONER GOZZI: Oh, right.

MR JEFFERIES: And then the further -

COMMISSIONER GOZZI: Sorry, I thought you said 19 December.

MR JEFFERIES: No, sorry.

COMMISSIONER GOZZI: 19 October?

MR JEFFERIES: Yes.

COMMISSIONER GOZZI: Fair enough - and there was one on 17 December 1990.

MR JEFFERIES: Yes, sir.

COMMISSIONER GOZZI: Okay.

MR JEFFERIES: One of the new clauses coming from the order No.2 of 1990 was clause 10 - award review - in which the parties indicated their commitment to an ongoing of the Electrolytic Zinc Award. As a result of discussions held between the parties in line with the recent State Wage Case decision of 13 August '91 a process has been developed by which the parties will progress the issue of structural efficiency under the award review clause.

The process in brief aims to absorb a variety of allowances, and is, sir, provisions at more flexible working methods.

At this stage the parties wish to develop a scale of wage rates best described as 'what you see is what you get'. A relatively short time frame was agreed upon at the request of several unions. The absorption of allowances into a single rate was seen by the company as having some benefits of savings and administrative effort and a reduction in the

number of disagreements over the application of particular allowances.

In addition, a number of other issues will be addressed by the parties which are - some of these include annualised wages, flexible hours of work, obsolete provisions and union responsiveness.

I'd like to table an exhibit which details the three phase approach currently being addressed.

COMMISSIONER GOZZI: I think for the sake of the exercise we'll start with a new lot of exhibit numbers - we'll mark this one C.1.

MR JEFFERIES: I'd like to address each of these issues in turn, starting with Phase I. Firstly, common allowances. It's been proposed that the following allowances be incorporated into a single rate. The allowances are: tool allowance, the Risdon trades and special allowance -

COMMISSIONER GOZZI: Right.

MR JEFFERIES: - just in the case of tradesmen; disability allowance; the flexibility allowance -

COMMISSIONER GOZZI: Hang on, I just want to write these down. So it's the tool allowance, the Risdon trades -

MR JEFFERIES: Special allowance.

COMMISSIONER GOZZI: The Risdon trades special allowance is it?

MR JEFFERIES: Yes, sir. The disability allowance.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: Flexibility allowance -

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: - and the direct deposit allowance. The last three, disability, flexibility and direct deposit affect both production service personnel and tradespersons.

I'd like to table two exhibits which reflect how the wage rates we're proposing were obtained.

COMMISSIONER GOZZI: Appendix I is exhibit C.2, and Appendix II is exhibit C.3.

MR JEFFERIES: These rates and the amendments required are detailed by a draft order which I'll table later.

COMMISSIONER GOZZI: Fine.

MR JEFFERIES: Just going back to C.1, the next point under Phase I is hours of work. The parties have agreed to express their spread of ordinary hours for day workers from 5.45 a.m. to 5.45 p.m., and the parties provision can be found in the draft order also.

COMMISSIONER GOZZI: What is it currently?

MR JEFFERIES: It's - there's no real definition of the spread of hours - it's just for day workers it restricts the hours from 7.45 to 20 past 4.00 with details on a crib break at 12.30 to 1.05 -

COMMISSIONER GOZZI: Right.

MR JEFFERIES: - and a morning tea break at 10 o'clock. Following on with Phase I- Obsolete provisions. The ETU has agreed to delete clause 31 - electrical trades - tools, electrical trades as it appears to be no longer relevant.

Finally under Phase I - Electronic allowance, the ETU has further agreed to delete this allowance as it has been adequately compensated for in terms of points in the electrical trades skills audit or the skills matrix.

At this stage I'd like to table a draft order which reflects the changes proposed under Phase I of the ongoing award modernisation

COMMISSIONER GOZZI: We'll mark that exhibit C.4.

MR JEFFERIES: I'd now like to turn to Phase II and give some details as to the two issues listed under exhibit C.1. Firstly, we would - it's our intention to absorb a number of skills based allowances. These allowances currently exist in clause 8 of the award and they relate to the A grade licence, the boiler certificate, the rigger's allowance -

COMMISSIONER GOZZI: Have you got an exhibit on those?

MR JEFFERIES: I'm sorry, sir?

COMMISSIONER GOZZI: Have you got an exhibit for those?

MR JEFFERIES: No, I haven't.

COMMISSIONER GOZZI: Right. You don't propose for these to be subject of the draft order. Are you just telling me that that's the next phase?

MR JEFFERIES: That's right.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: We'll be presenting a draft order at the end of each phase.

COMMISSIONER GOZZI: Yes. Fine. So, the A grade allowance, boiler certificate and the riggers allowance -

MR JEFFERIES: And the first aid allowance, the MIG welding allowance and the diesel certificate. These are all skill based allowances and as I indicated it's our intention to commence negotiation on these allowance once Phase I has been completed. In most cases, the allowances will be deleted and as the skills will be qualified - will quantify by an appropriate level of points in the skills matrix. These have yet to be determined - well, you know, we haven't had lengthy discussions on those at this stage, sir.

The second issue for Phase II is a development of a provision which allows for the analysing of wages. This need comes from the implementation of 12 hour shifts in two of our divisions and we have a number of other divisions who are interested on going onto a 12 hour roster. Whilst we have said -

COMMISSIONER GOZZI: Why does that give rise to annualised wages?

MR JEFFERIES: Well we have a situation that in a fortnight with the way the rosters would strike, they would have quite a large pay and then a small pay and then a large pay because of the way the penalties would fall and the days rostering over the weekends et cetera.

COMMISSIONER GOZZI: Right. Yes, fair enough.

MR JEFFERIES: So, it's more of an evening of the pays than an actual annualised salary concept as such.

Whilst we have set a target date of the 12th of the tenth to finalise these issues under stage - Phase II, the company is always prepared to have an issue decided on its merits before the commission should agreement not be possible. As I indicated, it's our intention to present further draft orders on a consent basis after each phase has been finalised with and hopefully we won't have any need for arbitration at that stage. We can just come along with a consent application.

The final phase in this round of award modernisation concerns several other allowances and union responsiveness. Firstly, it would be our intention to review and absorb the conditions based allowances as defined in clause 28 - special rates. The company has indicated to the unions that we wish to develop a

method of absorbing these rates once a study into the incidents and application of the rates has been undertaken. Our finance personnel have tasked with this job providing the information. Once it becomes available, the data will be presented to the unions and jointly we'll develop a method by which we can absorb those special rates.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: Secondly, it's our intention to review the application of a service and experience payment. It's our view that with a skills based structure such as ours an impediment such as service pay only hampers an employee's orderly progression through the career path. We have a situation where people would get a rate or an allowance after 6 months service and then in various jumps up to 15 years. So there's some difficulty with the proposal under restructuring or the way that our career path is set out that as you accumulate skills you go through and move up the level, and we don't really believe that all - we see problems if you have another issue on the side, whereas you could have a person who has been there quite a considerable period of time getting a higher rate than somebody else who's been there at the same time but both have equal skills.

COMMISSIONER GOZZI: I'd be interested to see how you handle that when it finally arrives.

MR JEFFERIES: I think we all do, Mr Commissioner.

COMMISSIONER GOZZI: It's got implications for me in another matter, hasn't it, Mr Harding?

MR HARDING: So I believe, Mr Commissioner.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: Once again -

COMMISSIONER GOZZI: And Mr Clifford's been present in those matters as well.

MR JEFFERIES: Once again, it would be our intention to absorb the service and experience allowance into the all-up rate after developing a procedure in conjunction with the unions.

Finally, the issue of union responsency will also be addressed in Phase III. We've indicated this to all unions of our intention to review those respondents to our award. At this stage detailed discussions have not yet commenced, so it would be difficult to presuppose what the eventual outcome would be.

I wish to address two further issues which relate to this application. Firstly, the specific work practices - work place changes outlined in exhibit N.7.

COMMISSIONER GOZZI: Which ones are you looking at?

MR JEFFERIES: At this stage it's the -

MR: I'll just get a copy of it.

COMMISSIONER GOZZI: In what area are we looking at?

MR JEFFERIES: Well what I - what's currently happening is that each - all the issues are being addressed by the relevant - progressively being addressed by individual managers, superintendents, with employees -

COMMISSIONER GOZZI: Right.

MR JEFFERIES: - in the relevant areas. So roast is looking after the roast issues and casting doing such -

COMMISSIONER GOZZI: Right. Yes.

MR JEFFERIES: In some areas, a number of the matters are being - have been resolved and finalised, others are currently having further discussions and the parties are going through and list down those ones that agreement at this stage is impossible or we aren't able to agree on, which we'll bring those back before the commission at a later stage.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: This process is being facilitated by members of the industrial relations team and by division of delegates.

COMMISSIONER GOZZI: So you just want to highlight that it may be a possibility for commission involvement in respect of the unresolved matters?

MR JEFFERIES: That's right - it's in exhibit 7.

COMMISSIONER GOZZI: It's in exhibit 7.

MR JEFFERIES: They're saying - it's difficult to turn around at this stage and say, yes, issue number one, two or three has been finalised -

COMMISSIONER GOZZI: Right.

MR JEFFERIES: - or whatever, because they've just been done over a period of time.

COMMISSIONER GOZZI:

MR JEFFERIES: Secondly, the restructuring exercise has been completed for production service persons with the exceptions of employees in EZ fertilizers, safety health and environment, and transport services. Currently, these areas are involved in discussions to resolve disagreements over, as I understand, the quantum of points assigned to various skills. So that process is still going on.

However, for the majority of our employees we have assessed, graded and awarded any retrospective payments they've been entitled to.

Tradespersons have commenced their assessments and gradings - oh sorry, - commenced assessments and from that the gradings will commence in a short period of time. The only exception is the field mechanical maintenance area which are in the process of finalising their audit. As they cover all the operating divisions, that's quite a large audit trying -

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: - to get people together takes time.

COMMISSIONER GOZZI: Well that sounds good.

MR JEFFERIES: The commission is no doubt aware of the problems associated with this area, having been involved in a number of employment conferences just across the board.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: To summarise, the position reflected in the draft order is presented with the consent of the parties - as the remaining phase is concluded, a further draft order will be presented at that time.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: Pasminco Metals-EZ is seeking a commitment from the unions that we finalise this process within the time frame specified. However, in line with the principles outlined in the recent State Wage Case, either party is able to involve the commission should agreement not be forthcoming.

The negotiations have commenced and will hopefully continue in a consultative manner, involving not only state officials but senior delegates. May it please the commission.

COMMISSIONER GOZZI: Thank you, Mr Jefferies. So clause 10 of the current award provides for continuing reviews?

MR JEFFERIES: That's right, yes.

COMMISSIONER GOZZI: Mr Long?

MR LONG: Yes, if the commission pleases, it's true to say we've had various - a number of meetings since the last hearing. We come here today on an agreed matter and we see it as another stage in the step towards award modernisation.

Obviously, this will be the simple phase - the next two will be the difficult ones. I spoke with the company last night, Martin Nally, and I've still got some slight concerns, although we have agreed to it in relation to the spread of hours, simply because I haven't had the opportunity to talk to all the groups concerned. That's all I wish to say, sir.

COMMISSIONER GOZZI: Well, -

MR LONG: Yes.

COMMISSIONER GOZZI: - what - what doubt are you putting in my mind?

MR LONG: Well the intent, sir, is - it's the application I'm worried about at EZ - that there will be an award change and people will be required to start earlier.

Now, in the past they've received overtime if they've started before their normal starting time.

COMMISSIONER GOZZI: Well certainly that doesn't comply now - what's in here - that they get overtime. I mean what you've agreed to - my understanding is that the spread of hours will be 5.45 a.m. to 5.45 p.m. and presumably that means that somebody on day work could be rostered to start at 5.45 a.m. -

MR LONG: And get ordinary time for the first 8 hours?

COMMISSIONER GOZZI: Yes.

MR LONG: Yes, sir. Yes, we were aware of that and I haven't had the opportunity to explain that to all the groups who will, in effect, namely the day services and the leach, cell room, the riggers, people on the wharf and the PED gang and some tradesmen. Now I haven't had the opportunity since Monday to speak with those groups and explain to them exactly what's going to happen.

COMMISSIONER GOZZI: Yes, I understand that, but it's been put forward as a consent document. Are you giving consent on behalf of your organisation to this change?

MR LONG: Yes, sir, but I just thought I'd put it on record. I have myself got some concerns until I speak with these people.

MR JEFFERIES: I suppose just to help you, commissioner, if we - if we referred to the clause concerned, it said - it's in the draft order and it says:

Subject to mutual agreement between the employees and their supervisor ordinary hours may be - may commence at 5.45 but not extend beyond 5.45 p.m. at night.

COMMISSIONER GOZZI: Where is that?

MR JEFFERIES: That's the second last page of the draft order.

COMMISSIONER GOZZI: I mean -

MR JEFFERIES: So it's by - so it's by mutual agreement and we wouldn't be in the situation where we'd be directing people to work that time unless it was agreed by the parties.

COMMISSIONER GOZZI: Yes, but nobody in their right mind would agree to start their day at a quarter to 6 in the morning.

MR NALLY: Well, sir, if I may, it's actually designed to cover situations where people want the flexibility to stay there and consequentially finish early.

COMMISSIONER GOZZI: I mean -

MR NALLY: Which currently occurs.

COMMISSIONER GOZZI: It is not unusual in some industries for that to be the start of the normal day and I think you have to make up your minds whether day workers can be asked - because you've a directed to work provision in the award - and I don't want to have further conflicts down the road about this, where you come to me and say, look, we've got this clause in the award which was put in for the 2.5 per cent and this person won't do it. If you're saying to me that it's mutual agreement, pure and simple, and I should read it as that, then that's fine.

On the other hand if you want to change it away from 7.45 to 4.20, which, as Mr Jefferies said, is the current day work, well then that provision only leads to disputation down the track.

So if it's simply a mutual agreement situation, then fair enough. But I don't - I don't know whether you're leaving yourself open for problems by having a provision where maybe one or two or three people in a team will want to start at 5.45 and the rest of your day work starts at 7.45. I mean, have you - really what I'm saying is,

have you thought it all the way through? And secondly, I don't want to have a problem with this particular provision further down the track. Mr Jefferies?

MR HARDING: Mr -

COMMISSIONER GOZZI: Mr Harding?

MR HARDING: - Commissioner, maybe I can help -

COMMISSIONER GOZZI: Yes, Mr Harding?

MR HARDING: - a little bit with that one. We've got a little bit of experience in the metal industry and it's basically by mutual agreement by the majority of the people in that work section. That's basically what it really means. If there's 10 in the work section and nine agree to start early and one doesn't, well, the other one starts early with them.

COMMISSIONER GOZZI: Well, should we put it in then - majority - -

MR HARDING: I think that wouldn't hurt to have it in like that. I've already explained that to them.

COMMISSIONER GOZZI: - between the majority of employees -

MR CLIFFORD: Mr Commissioner, we would object to that. It reads: for individuals to say yes or no. That's the way it reads and that's the way we intend it to stay.

COMMISSIONER GOZZI: Well -

MR HARDING: I'd better sit down. I'm just casting an opinion.

MR NALLY: I'd like to make a comment on that. Sir, the actual provision was designed to cope with specific circumstances which already exist. And there is a desire for some work teams to actually be able to commence early, particularly to enable them to get to a - an area where a shutdown is occurring -

COMMISSIONER GOZZI: Look -

MR NALLY: - and get out before, you know, in a reasonable time to allow the shift to continue.

COMMISSIONER GOZZI: Yes, I have got no problem with endorsing this type of provision. Quite frankly, if somebody, by agreement, the employer and the employee, wants to start at 5.45 and knock off 8 hours later on, that's fine by me, I've got no hassle about it. As soon as you start talking about work team, that doesn't mean an individual. I mean, if you

have a work team of five and four want to start at 5.45 and the other person doesn't, then the difference is that, Mr Clifford is saying, that other person starts at 7.45, and Mr Harding is saying the majority aspect should apply.

Now, I dare say you'd be saying to me if that individual didn't start at 5.45 he should be starting at 5.45 because the rest of the work gang is starting at that time. And then you'd be saying to me: Well, that employee is not starting at 5.45 and he should be working as directed. And then you've got a dispute.

MR NALLY: Sir, I - I understand the points made by yourself and the union officials. However, the situation is that it is designed mainly to get a job of work done, and the majority of times we are able to assign a number of the work team to various tasks. And it would be on those occasions when we need to have five tradesmen, say, from the lead burning gang in the - the PGU members, to be involved in a - in a - in - lagging or cladding in the acid plant, which has - has occurred.

And we need a number of the work team. And that's what - that's how it will be actually applied. We need to fill it - fill a - to complete a job and we need 'X' number of tradesmen to do that, and they will be selected from the work team. So, we'd be saying that of the 10, say, we need five to commence early. The other thing is that it can't be sustained that all of a work team would start early and none start in the normal times, because they've still got their normal work to cover. So, it's designed to cover specific tasks.

COMMISSIONER GOZZI: Oh well, I mean, if you start working 12 hour shifts and you could have a - and that is a 12 hour shift that you've got there, you know, you could have as in the meat industry where they work 10 hour shifts. They work 10 hours without penalty until such time as 38 hours are accrued. Once 38 hours are accrued then penalties apply. So you've also got the potential here, if you pursue the 12 hour shift arrangement, to work - to work 12 hour shifts between 5.45 and 5.45 p.m. without penalty.

MR CLIFFORD: But also, Mr -

COMMISSIONER GOZZI: But I just want the cards on the table so that we haven't got the problem further down the track.

MR CLIFFORD: Again, sir -

COMMISSIONER GOZZI: Mr Becker?

MR BECKER: Firstly, for the record, Mr Commissioner, I also appear today for the Plumbers and Gasfitters Union.

COMMISSIONER GOZZI: Right.

MR BECKER: I couldn't say that earlier.

COMMISSIONER GOZZI: We can accommodate that easily.

MR : Are you sure?

MR BECKER: I - my understanding - and in consultation with the delegate - is that it is an individual choice. I do understand also that as far as the work is to be performed, there are people now who - who by various means have to or can do start work, not everybody - not everybody wants to and not everybody does. I hear what you're saying about the disputation down the track.

I think Mr Harding and myself have got a view that the disputation down the track at EZ Risdon is going to be less than what it was before, particularly with award modernisation and with the way in which we're going. But for - for our - both for the plumbers and gasfitters and the ETU, we did see it as an individual's choice. Maybe the words need tidying up, but if takes experiences there now, is that people - people are out of work teams, if you like, starting early, and not all of them want to and not all of them are.

So, maybe it needs some tidying up and a word change, but I think clearly the intention of the majority of the parties was that it was the individual's choice. And I mean it was the individual's choice to start early, not to refuse not to. I think that's really the context of the way we saw it.

COMMISSIONER GOZZI: All right. Well, I think there's enough on - on the record, to make it clear how this clause is intended to work. And if that's understood, well, that's fine. And in which case you wouldn't have a problem, Mr Long.

MR LONG: No, I've got no problem with the intent of it, it's the application where I've got problems, without fully discussing it with the people concerned because there are all sorts of arranged - and EZ with shutdowns and agreements in roaster shutdowns and what have you, and I - I just haven't had the time in the last 2 days to speak with those people.

COMMISSIONER GOZZI: Yes. Well look, I understand how it's intended to work, and one of the reasons I've pursued it, quite honestly, is because it is the subject of disputation, this very type of arrangement, and very bitter disputation at another major employer at the moment, where the arrangement is being sought to be invoked during periods of plant maintenance. And the employer's saying: Well, we have the capacity to start these people at this point in time as part of the ordinary spread of hours. And it's ongoing.

And I just want the parties themselves to be clear in their minds what it is that the clause means, and what's intended as far as the future is concerned. And if of course to change what your intention currently is, well then, you need to renegotiate the circumstances. But from my point of view, as I say, I've got no problem with this type of provision, with this type of flexibility for a group of employees or individual employees or whatever, as long as you yourselves understand what it is that this particular flexibility means to the arrangement or work of individual employees concerned. And as I say I think that's quite clear on the record. Anything else, Mr Long?

MR LONG: No, that's all I've got to say, sir.

COMMISSIONER GOZZI: Right, Mr Grubb?

MR GRUBB: Thank you, Mr Commissioner, but I thought I might oppose it all after that.

COMMISSIONER GOZZI: You what?

MR GRUBB: No, our position is we haven't been able to attend all the meetings through other commitments, but in discussions with my colleagues here this morning they indicate to me that the position is an agreed position by the unions and we're not going to hold up the process for anyone so we will be submitting our agreement to the Phase I. Rather than waste too much time we'll obviously have some problems and discussions in relation to the other two phases, particularly union responsiveness. I think that's a matter that should be dealt with by the unions themselves, but we'll get to that. Other than that I have - and to acknowledge what was said on transcript in relation to the intent and what is designed for the spread of hours, because I obviously had a concern when I saw that, you know, increase of some 4 hours in the ordinary hours. Thank you, Mr Commissioner.

COMMISSIONER GOZZI: Yes, thank you, Mr Grubb. Mr Clifford?

MR CLIFFORD: Yes, Mr Commissioner. Also we would say that we believe it is a consent application today. Like Mr Long, the only reservation I would have - and that's something that I'm going to have to take on the chin - is from the rank and file that we have not had time to consult and it's something fraught with a little bit of danger to do things of such. But as to what we've put before you today, we are agreed on as far as stage I.

A couple of other points I'd like to make, we've already spoken on the spread of hours. We are very firm in our mind exactly how it's supposed to apply and I'm pretty sure the wording in there states that it's very clear. The 12 hour shifts that were mooted, that could be talked about and

discussed at this point in time certainly only applies to the FIA and does not apply to us. That was, I believe, made very clear to the company on many occasions going through the SEP and I'm pretty sure it's on transcript as well in the SEP areas, that the 12 hour shifts are not for the day workers.

The stages II and III, we have no problems sitting down again with the employer and going through the discussion points that they have listed. The stage III, union response, we would certainly say, as we have on many other occasions in front of many commissioners, that the union response question is really an issue for the unions to discuss and to try and sort out. If the company have a view, then we would certainly listen to that but the final outcome, I would hope, could still be left to the unions to finally restructure their programs without any additional pressures put to bear. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Mr Clifford. Mr Becker?

MR BECKER: Thank you, Mr Commissioner. Just a few comments with my ETU hat on, rather than my Plumbers hat on. We support the submission put forward by Mr Jefferies. We also support very strongly the target dates; I think that's something that's been lacking a bit and hopefully we'll be able to work to those target dates and complete this saga of almost as long as Blue Hills.

In supporting - the players have changed; that's the only difference. In supporting it in dot point 4 of Phase I, the electronics allowance, I would just like to place on record that for many moons at EZ Risdon the special class tradesperson as we know it has been treated differently at EZ Risdon than possibly anywhere else in the country where, in fact, the decision of '65 or '66 in the federal jurisdiction was an either/or situation whether you had the certificate or you had the experience. At EZ Risdon it's been having the certificate and then doing the experience. So in other words rather than it being a 2 year program, it's been a 4 year program. I just place that on record that somewhere down the track in future discussions that may not become relevant or it may.

As far as Phase II -

COMMISSIONER GOZZI: So what are you saying again with the electronics allowance, that as far as Pasminco Metals is concerned you're saying that the tradespeople concerned need to hold the certificate. It's a prerequisite.

MR BECKER: Yes.

COMMISSIONER GOZZI: Yes. Well see, there again, as you'd be aware that's been the subject of some disagreement at other

places, one in particular in the north-west where the experience aspect versus the certificate has come into conflict.

MR BECKER: It's not - I mean, we're not in conflict now; it's a point to be made for the record for some future -

COMMISSIONER GOZZI: Yes, that's fine.

MR BECKER: - I mean, this is going to go on. As far as Phase II goes, we place on record also that the company will want to convince us very strongly, particularly in this climate, that the A grade licence will disappear. I'm sure there would be others around this table who would say it ought; I'm just placing it on record that it will want to be a very convincing argument.

For the rest, as I say, I guess it goes without saying the union responsiveness is something that's already occurring out there and I think needs to be said by the fact of amalgamations. The fact that others can't amalgamate is probably the problem about the union responsiveness, rather than the company wanting to exercise their right to get rid of it. So basically that, I think, is in the hands of the unions and will be dealt with in that manner.

COMMISSIONER GOZZI: Thank you, Mr Becker. Mr Becker, what is the prerequisite again? Is it industrial electronics certificate? What's the name of that course, do you know it off hand?

MR BECKER: I think it's just called in this state industrial electronics but I guess what's happening with it is that as the national core curriculum comes down it will be condensed somewhat. But that's what it's called at the moment but the way in which it's going to be taught is going to be the subject of very varying and different - at the moment it's a set course in this state where you do a set amount of modules.

COMMISSIONER GOZZI: Through TAFE.

MR BECKER: Through TAFE and it takes 2 years.

COMMISSIONER GOZZI: How long?

MR BECKER: Two years, 480 hours.

COMMISSIONER GOZZI: Yes, right, thanks. Mr Harding?

MR HARDING: Thank you, Mr Commissioner. I'd just like to congratulate the - the company parties this morning for their more modernised approach from what I understand it was in the past, and hopefully we can continue down this path. And I quite agree with the absorption of allowances and those types

of things. The only thing I'd like to place on record is in relation to the skills assessments taking place now. And I've indicated to the company that we would expect the people that have got the - the TAFE requirements of 360 hours to slot in at five; whereas there's 700 hours the EZ-type training.

Now, I'm assured by Mr Whittle that that will be the outcome. Now, I'm just awaiting that to see - and I just put it on record so that you know that if we come to you with that, that would - that's what it's about.

COMMISSIONER GOZZI: So -

MR HARDING: But it's starting to look okay.

COMMISSIONER GOZZI: Yes. The TAFE training would put somebody in at grade 5, that's what you're saying?

MR HARDING: Yes. With the 360 hours plus their experience on the job.

COMMISSIONER GOZZI: Three hundred and sixty - yes. And that would equate to 700 hours in-house training, did you say?

MR HARDING: Yes.

COMMISSIONER GOZZI: Seven hundred hours. All right.

MR NALLY: Sir, in relation to that minor problem - minor comment, that is a departure from the agreement that the unions have made. And obviously the company and the unions will be having discussions in relation to that - that - the application of that, because of the fact that we have a situation where our grade system is based on accumulation of points.

Points relate to training delivery time. And an agreed level of points has been set and brought before this commission. So that is an issue that we have to raise. However, there are probably very few tradesmen in that position, so it doesn't seem to be a major obstacle to our restructuring.

COMMISSIONER GOZZI: All right. Thank you, Mr Nally. Anything else, Mr Harding? That's it? Mr Jefferies?

MR JEFFERIES: Nothing further. I just note - just one thing in the draft order, since we've - since we've varied the - or deleted the electronics allowance. Maybe it needs to - the definition of industrial electronics course in clause 7 - Definitions, also needs to go. I've just noticed that oversight. So I can make a variation in the draft order and fax it to you.

COMMISSIONER GOZZI: Needs to be deleted?

MR JEFFERIES: Yes, as well.

COMMISSIONER GOZZI: Yes, I don't see any problem with that I don't think.

MR JEFFERIES: Well, I suppose the fact that it - that it's being included in the skills audit, you know, is just an oversight when I was drafting the order at that stage.

COMMISSIONER GOZZI: Yes, that's right. So it's - it's catered for there, isn't it?

MR JEFFERIES:

COMMISSIONER GOZZI: All right. All right, thank you for those submissions. I intend to - oh, just one final question I have - or a couple. The absorption of tool allowance, the Risdon trade special allowance, they apply to tradespeople specifically?

MR HARDING: That's right, sir.

COMMISSIONER GOZZI: Right. Now, what's the current tool allowance?

MR JEFFERIES: There is actually two tool - pardon me - there's two tool allowances; one of, I think, \$5.20 for - for non-carpenters; and one of over \$11 for carpenters. So that what - what the end result or what the draft order would have is that we would still have a lesser allowance - tool allowance for carpenters, but the - the basic \$5.20 allowance

COMMISSIONER GOZZI: All right. I guess -

MR JEFFERIES: - be absorbed.

COMMISSIONER GOZZI: - what I'm asking for is what is the quantum of allowance being absorbed into the wage rate for tradespersons and what is the quantum of allowance absorbed for production service persons?

MR JEFFERIES: Well, they would be reflected by the - by the exhibits C.2 and C.3.

COMMISSIONER GOZZI: Right, C.2 -

MR JEFFERIES: So we'd have a -

COMMISSIONER GOZZI: Tradespersons you've got \$31 -

MR NALLY: Thirty dollars 60 for service persons.

COMMISSIONER GOZZI: Thirty dollars 61, isn't it?

MR JEFFERIES: Well, we - yes, I suppose it is \$30.61 but we round it to the nearest 10 cents.

COMMISSIONER GOZZI: Rounded. Rounded.

MR JEFFERIES: That's been our normal practice.

COMMISSIONER GOZZI: And for - for tradespersons it's 11.70.

MR NALLY: It would be 43.30.

MR JEFFERIES: Forty-three 30, sir.

COMMISSIONER GOZZI: Forty-three 30. Now, I assume that those allowances are paid for all purposes and form part of the weekly wage, do they?

MR JEFFERIES: That's right, yes.

COMMISSIONER GOZZI: It's all -

MR JEFFERIES: After this proposal they would be - the new - the new award would be paid for - you know, just divided by 38, and that would give you the all-purpose hourly rate.

COMMISSIONER GOZZI: How appropriate is it to put all of that into the total amount per week as opposed to showing it separately?

MR JEFFERIES: Well, it's just - as we indicated in our submission, it -

COMMISSIONER GOZZI: So, you would still finish up with 453.20 for the grade 1 tradesperson.

MR JEFFERIES: Yes, sir. Then as the other allowance -

COMMISSIONER GOZZI: For future reference, do you lose track of what those amounts represent? Should it be shown as a supplementary payment?

MR JEFFERIES: Well, it could be, sir. But I suppose the idea of having a - an all-up rate of - like I said, what you see is what you get. You know, you -

COMMISSIONER GOZZI: What you're - that's what you're - you'll still finish up with 453.20, I'm just saying that -

MR JEFFERIES: Yes, I suppose what -

MR NALLY: columns and the total.

MR JEFFERIES: Oh yes, we could have two columns with the total, or whatever.

COMMISSIONER GOZZI: That's what I'm really saying.

MR JEFFERIES: I suppose with the details that we've documented so far in these - these proceedings, it indicates where we've - we've come to so we wouldn't lose - lose sight of where we - where we started and where we arrived at.

COMMISSIONER GOZZI: Yes. Because the same question will arise with service and experience payments. Do the parties have a view if those amounts were to be shown in a supplementary column?

MR CLIFFORD: Depending on what happens to supplementary payments in the future.

COMMISSIONER GOZZI: Well I guess supplementary payment is not necessarily confined to the specific meaning of supplementary payment.

MR NALLY: Sir, in relation to - for administrative ease both our EDP - our computer people as well as our payroll people have expressed a view that if we can minimise the allowances it certainly makes the administration of the payroll in general a lot more simple. It was our intention or the parties had expressed a view in our discussions that we would minimise the number of components of the total wage.

It may be - one view may be that for the purposes of the award it is expressed as supplementary payment. However, for administrative ease it will be paid as a total.

COMMISSIONER GOZZI: Yes, the relevance of your question, Mr Clifford, is that you wouldn't want to have anything absorbed against supplementary payments and certainly that's not the intention here and it wouldn't be my intention either. I mean, that is part of the total wage rate and therefore it's not like an over award payment you absorb against as to getting to the \$407 a week, which is you absorb against over award payments to the extent that that applies. That is not the intention here and that would be one of the areas that you'd have to guard against, that you don't put something in a supplementary payments column which years down the track you then start absorbing against, you know, that column.

I'm really just concerned that: (a) from a - knowing what's in the wage rate, that doesn't get lost but I suppose these proceedings are a guide - will show that. Yes, look, I'll certainly have a think about it; it may be it's best not to depart from the existing arrangement.

MR BECKER: I think from the unions' point of view or fairly collective view is that we support the submission of Mr Jefferies clearly when he says what you see is what you get.

COMMISSIONER GOZZI: Yes.

MR BECKER: I think the problem with the supplementary columns and associated columns is what you see is what you get after you've looked for half an hour.

COMMISSIONER GOZZI: Well it wouldn't be in this case because you'd start off with a base amount, which is the existing amount, a column in the middle which adds up to 43.30 or whatever the amount is, 30.60, with the total.

MR BECKER: I understand what you're saying about supplementary payments but I would imagine that in other areas union officials times or trying to track down supplementary payments because people don't see them as - some people. Presently what we've got at the moment people will understand but in the future people may want to transgress away from that and that's only our problem.

COMMISSIONER GOZZI: Right. So this exercise with the amount of the allowance absorbed, is RBF or WERAF, in your case, applied to that amount?

MR NALLY: Sir, it was applied to the base rate. Now in actual fact there are discussions between the WERAF trustees as to the appropriate rate that should be adopted at the moment. And they would pick a dollar sum which can be then - or is currently related to the June '90 mechanical trades rate and that figure would be reviewed.

COMMISSIONER GOZZI: Well what's the current occupational superannuation provision say in the award? I haven't got the latest amendment here. Have you got the order there with you?

MR NALLY: It's not included in our award.

MR : It's not included in the award.

MR : That's a special agreement on its own.

COMMISSIONER GOZZI: It's not, right. It was left off because of why?

MR NALLY: Well it's actually a separate -

COMMISSIONER GOZZI: It was before me some time ago.

MR NALLY: It's a separate agreement, sir.

COMMISSIONER GOZZI: Yes, right.

MR NALLY: It sits outside the award so in actual fact what it does say is that it is a percentage rate of the base mechanical trade rate and we've taken grade 1. So at that stage it is without allowances so that would have to be amended to a dollar rate which is then increased as the increases occur. That could be amended in the WERAF agreement rather than necessarily

COMMISSIONER GOZZI: Well, of course, as far as the commission is concerned, if there was a dispute on it, the principles permit a 3 per cent contribution at ordinary time earnings as defined. Now the argument last time why the award proposals for a transport workers super fund or any other fund was excluded from the - well it wasn't put in the award because at the hearing the company was able to satisfy the commission that the ACTU actuarial studies showed that the amount of contribution being made by the company was at least equivalent to 3 per cent ordinary time earnings.

MR HARDING: Maybe I could help to tidy that up, Mr Commissioner.

COMMISSIONER GOZZI: Yes, thanks, Mr Harding.

MR HARDING: I had a bit of involvement in that. And the percentage paid into WERAF, because it applies to Emu Bay, Pasminco Rosebery and Pasminco - EZ, is a figure based on what the highest wage is for a mechanical tradesperson.

MR : On its base.

MR HARDING: Yes, on its base. Now what happened with the 3 per cent was that the - when the actuaries had a look at the figures, because people were leaving prior to 20 years at that time, there was 'X' amount of dollars staying in the fund and not being redistributed. Now there was a one-off redistribution of that excess fund to people on the lower levels and that took care of the 3 per cent because the fund was in existence before the 3 per cent occupational super came in. Now that's what happened there and I'm not sure how many millions of dollars it was but it was quite a few dollars and that was redistributed and that took care of the 3 per cent argument. And that's how that happened and that's how it was left outside the awards.

COMMISSIONER GOZZI: Right.

MR LONG: Well there were - just one correction there. The money that was left behind by people who left early, what was left in the fund that was returned to the company.

MR HARDING: Used to be.

MR LONG: Yes. And also the company contribution was increased from 1.5 for each dollar that the employee put in, to 1.61 to satisfy the 3 per cent.

MR NALLY: Those points are good historical value but I don't think they address the real problem that we've got here, to be quite honest, because of the fact that the point that, Mr Commissioner, you're making is that once we change the new award rate to 453.20, that can be read as the new base rate whereas in actual fact we're using 409.00 - in actual fact I think we're using 412.00 now as the rate which is a rate struck in anticipation of an increase, if you like, and it didn't go that high. So around about 410.00-411.00 is being used at the moment and as it turns out technically it should be 409.90.

And that may be lost when we make this change. That's the point that we all make. So there needs to be some - we need to be mindful of how to make an amendment or -

COMMISSIONER GOZZI: As far as I'm concerned the new - by showing it the way that you've shown it here, the base rate is in fact what's in the award.

MR NALLY: Yes.

COMMISSIONER GOZZI: In fact the new award rate becomes the base rate, because you've only got one column. And you would be up for, in the normal circumstance, 3 per cent of ordinary earnings as defined.

MR NALLY: That's right.

COMMISSIONER GOZZI: And in your case I think, as Mr Harding said, it's grade 1 of the -

MR NALLY: That's right.

COMMISSIONER GOZZI: - tradespersons. Mechanical tradespersons rate.

MR NALLY: Yes.

COMMISSIONER GOZZI: Which now goes to 453.20. Which in the context of ordinary time earnings, 3 per cent of that is a bit different to 3 per cent of the 412.

MR NALLY: Would it - would it be, sir, a - to amend the - would it be - it would be probably an option for us to amend the actual terms of the - of the superannuation agreement to - to reflect - to reflect in some way the actual rate that's currently being paid. In actual fact the trustees, as I said, are reviewing the application of that principle at the moment, because you have the same problem. Because Rosebery's base

rate is 466.60; or was, prior to the 2.5, or thereabouts. And in actual fact there possibly is an argument that we should be - for the same reason - exactly the same reason as we here -

MR BECKER: We'll make yours the same. Sorry.

MR NALLY: So, from that point of view, we already have that argument and the trustees are reviewing that situation. So perhaps the rule needs to be changed to accommodate that. We do have a problem though, I accept that, if we simply change it to these rates.

COMMISSIONER GOZZI: Well, you have more of a problem, don't you, because from an enforcement point of view - if, for instance, inspectorate branch do the policing as they do, and if somebody doesn't comply with the 3 per cent, can't they be prosecuted? Or they can be and are being prosecuted.

MR CLIFFORD: Mr Commissioner, in ordinary times earnings, the definitions, there are certain allowances built into those as well, isn't there? In the ordinary times earnings. Especially reading in some awards that -

COMMISSIONER GOZZI: Well -

MR CLIFFORD: - certain allowances and additions to the base rate are calculated as ordinary times earning.

COMMISSIONER GOZZI: Well, there have been in my - to my knowledge, Mr Clifford, there's only been one decision of this commission where the Deputy President, I think it was in a hearing, endorsed 3 per cent being deducted where the over award was included. And that was by consent. But that's the only one I'm aware of. There might be others, but I don't know of any others. Yes.

MR NALLY: Sir, I think the solution in the immediate - immediately would be that we do express as a base supplementary payment. It's quite clear in the provision of the superannuation agreement that it is the - the base rate - the base wage which, in our rule, has been reflected as the - what was the base wage plus margin for skill. In actual fact I think that - that is the reference that's used.

So the basic - the basic wage plus margin for skill was, I believe in about 1985, translated to a total basic wage in the EZ Award.

COMMISSIONER GOZZI: Look, the point is you've been deducting or making contributions at 412, which is tied to -

MR NALLY: Or there - or thereabouts, yes.

COMMISSIONER GOZZI: Yes. Well, which is - which is the 409.90.

MR NALLY: That's right.

COMMISSIONER GOZZI: So there's relevance to it.

MR NALLY: That's right.

COMMISSIONER GOZZI: So, there would be no reason why that shouldn't be based on 453.20, if you put that in the award.

MR NALLY: Yes, that - that's the point I'm making. Because it - however, though - however, it is - it is actually quite - that is if we define 453 as the - as the basic wage. In the superannuation -

COMMISSIONER GOZZI: Because there's no such thing as the basic wage. There's a rate in the award.

MR NALLY: Well -

COMMISSIONER GOZZI: The base rate.

MR NALLY: Well, that's the point. In actual fact -

COMMISSIONER GOZZI: And you're establishing a new base rate.

MR NALLY: The - the - the provision in the superannuation agreement still relates to basic wage plus a margin for skill.

COMMISSIONER GOZZI: Well, I think you'd better change it.

MR NALLY: Well, if we can - if we do change it, we can change it to a - perhaps if we're going to have to change it - at the moment it's not a problem because actually being - it will be applied for 12 months, as of June this year.

COMMISSIONER GOZZI: Look, I don't want to create any problems for you.

MR NALLY: No, you allude us to a concern though.

COMMISSIONER GOZZI: I - I think you need to think about it. From my point of view I'm at the stage where I can say I'll endorse what's been put before me. I'll show it the way that you want me to show it, as per exhibit C.4. And I'll be writing the decision that in - how that's comprised. And if consequently WERAf considerations need to be addressed then I guess you need to sort it out at that time. From my point of view there is probably - well there is no logic or reason why you'd go from 412.00 to 453.00 just as a consequence of this exercise. But I'm saying from a technical point of view the award will show a base rate which was previously 409.90, which

will go to 453.20 and if you extrapolate that, then the other ramifications flow.

MR NALLY: I accept that, sir. I just would again take the liberty of putting on record that the parties at this commission hearing are aware of the make-up of the new base rate and I'd also note that currently the WERAf contribution is struck from grade 1 base, which is shown in exhibit C.3 on the left hand side of that column - 409.90. And so if the parties are mindful of that I think we can amend the appropriate WERAf rules to accommodate.

COMMISSIONER GOZZI: Anything else anyone? If not, the variation will remain operative from the - I don't think anything hangs on it as far as that's concerned - operative from the date of this decision. I just note that. So it will be date of decision.

These proceedings are concluded - well, are further adjourned. Thank you.

HEARING ADJOURNED