

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

**T. Nos 665 and 691 of 1987**

**IN THE MATTER OF** applications by  
the Tasmanian Public Service  
Association and the Tasmanian  
Teachers' Federation to vary  
nominated awards to increase  
salaries to reflect movement in  
the Consumer Price Index for  
March, June, September and  
December quarters of 1986

**FULL BENCH**

PRESIDENT  
DEPUTY PRESIDENT  
COMMISSIONER KING

**HOBART, 6 March 1987**

**TRANSCRIPT OF PROCEEDINGS**

(CONTINUATION)

MISS BACKHOUSE:

I wish to speak about public interest, but my colleague here buried my quote.

The elusive public interest concept can, I believe, be best summed up in Mr Willingham's own words before this Commission in the last State wage case - transcript 51, page 10 of the decision - and I believe this is the quotation which has already been read into the proceedings by Mr Vines, but I think it bears repetition.

Mr Willingham stated:

"The strategy for 1986/1987 by the Government in respect of its budget has already taken into account the effect of this Commission passing on the 2.3 national wage increase. For reasons which I have already outlined, whilst it was a difficult decision for the Government to make and of course the Government recognized the apparent contradiction, it has on the balance of probabilities, decided that it is more within the public interest than without it, for Tasmanian wage and salary earners to be deprived of the 2.3 national wage case flow-on.

The Government is also concerned that any deferment or non-flowing of the 2.3 percent national wage increase, could have quite serious effects on the conduct of industrial relations throughout Tasmania."

PRESIDENT:

I think that was a submission that was made on behalf of the Minister for Industrial Relations, wasn't it, and not so much the Government?

MISS BACKHOUSE:

Well whether the Minister for Industrial Relations is not a member

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PRESIDENT - BACKHOUSE

MISS BACKHOUSE:

of the Government I don't know. I would have assumed that he was speaking on behalf of the Government.

Generally speaking we support the statements that have been put forward by my colleague, Mr Vines. I don't wish to traverse the same ground as he has. He has clearly put before you evidence relating to the Tasmanian economy; he has spoken of the movement in the C.P.I., the very good employment figures we have; the evidence that employees have exercised wage restraint; that industrial disputes have fallen, and that our foreign trade figures are excellent.

The Government has put forward claims that the Tasmanian economy is now in good shape and that there is economic growth.

We would believe that all parties have a responsibility to the maintenance of living standards in this State and have much to gain from it. And this relates, of course, to the public interest once again.

Obviously our own members have a very real interest in maintenance of the real value of wages. I believe the Commission has an interest in this because industrial harmony and the good conduct of wage claims is obviously in your interests as well.

And I believe that the Government and the people of Tasmania as a whole have an interest in it.

The strength of the Tasmanian economy affects every one of us and if there is not a maintenance of real wages then obviously the public sector employees, who constitute a large part of the work-force, are not going to be able to build houses, buy goods, travel, and this in turn is going to affect the economy.

I believe that not enough account has been taken of this factor in the

MISS BACKHOUSE:

past; that there has been the idea that the public sector must be cut to save money, without giving any relation to the fact that the public sector in fact puts large amounts of money into the Tasmanian economy and creates jobs and economic growth itself. And I think that factor is often overlooked.

The whole heart of the centralized wage system that we've had for some years is the maintenance of real wages through the passing on to employees of rises in the Consumer Price Index.

It is our submission that this should happen in this case and that there should be a flow-on of the Consumer Price Index to our members.

I would submit that the onus is on the respondent to show why wages should not move in line with the C.P.I., as allowed for in Principle No. 1, and as has been outlined by Mr Vines.

It is therefore our submission that this Bench should grant these present cases and we would seek an operative date, once again, from the date of lodgement of our claim which was 27 February 1987.

PRESIDENT:

Thank you, Miss Backhouse. Miss Backhouse, just off the top of your head - how many members do you represent?

MISS BACKHOUSE:

About 5,000.

PRESIDENT:

And I imagine Mr Vines represents about 9,000, Mr ...? Something of that order?

MR VINES:

That's correct, sir.

PRESIDENT:

So does it mean that 14,000, or thereabouts, union members who are also members of the Tasmanian Trades and Labor Council by affiliation, are now doing their own thing?

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PRESIDENT - BACKHOUSE - VINES



MISS BACKHOUSE:

As is allowed for by the A.C.T.U. The A.C.T.U. cannot actually direct its affiliates, and I would point out that we are affiliated with the A.C.T.U. through the Australian Teachers' Federation which has placed on record its opposition to the proposals being put forward on the two-tiered system for the very good reason that this system is going to be very difficult indeed for the public sector. And the Deputy General-Secretary of the Australian Teachers' Federation is herself a member of the A.C.T.U. executive and has put that point very strongly at the executive, and it was also put forward by Gail Crotty at a meeting of A.C.T.U. public sector affiliates held in Melbourne quite recently.

So we and the A.C.T.U. are under no illusions that we do not support the proposed two-tiered system, and that we do support the maintenance of real wages through the flow-on of the full C.P.I.

PRESIDENT:

Yes, thank you for that explanation. Then am I, as a member of this Bench, entitled to deduce from that that any assurances given by the A.C.T.U. or the T.T.L.C. for that matter that certain things will happen or won't happen, are not necessarily binding on the constituent members?

MISS BACKHOUSE:

Well I believe that has always been the case because in the past when we have had State wage cases following a National Wage Case it has been my understanding that you have always sought from each individual union at this level their commitment to the guidelines as put forward, or amended, by this Commission.

In any case, if I might just add to that, we cannot be bound by any statements until we ourselves give such a commitment.

PRESIDENT:

Well that's rather disturbing information that you are putting before us, Miss Backhouse, because it

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PRESIDENT - BACKHOUSE

PRESIDENT:

would suggest to me that if the T.T.L.C. made an application in good faith and gave certain assurances, there is no guarantee that those assurances would be abided by, unless all the members of the T.T.L.C. in this current context, came along and acquiesced in what it was, say, Mr Lennon was putting before us.

What I am really alluding to, Miss Backhouse, is that in the event, say, we received next week or the week after an application signed by Mr Lennon for a two-tiered system to be put in place in lieu of the current Principles, unless every affiliate member of the T.T.L.C. came along and said, 'Yes, we will go along with this and, yes, we will abide by any constraints or any obligations', then such an application wouldn't be worth the paper it is written on.

MISS BACKHOUSE:

Well I think if the T.T.L.C. was to make such an application, it would have to be following a meeting of its union members to determine that such a case be put forward. It is quite common for there to be meetings of unions affected by various aspects of industrial matters, called together by the T.T.L.C. and obviously we would have an input at that stage.

But once again, even allowing that what you say might happen, that we might object to it and the T.T.L.C. still went ahead with it, I believe that it has been the case in the past that individual commitments have been sought from the unions in addition to any commitment that may be made by the T.T.L.C.

The T.T.L.C., after all, is a peak council, but it is not a body which has the right to direct its constituents. It is more a body which is a means of co-operation and so on, rather than it having any authority to actually order people to do certain things.

I think there is a misconception, and

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PRESIDENT - BACKHOUSE

MISS BACKHOUSE:

I freely admit many of our members are under the mistaken belief that the A.C.T.U. or the T.T.L.C. could, for example, direct them to go on strike - which of course it can't. It can recommend that they consider going on strike, but that would be as far as it could go, and I believe in wage-fixing terms it could certainly recommend that we go for a two-tiered system and no doubt if the majority of unions agreed with that it would put in such an application.

But I would believe that this Bench would still, in handing down any new Principles or any award, seek individual commitments from unions, in which case no doubt there could be argument on this matter.

PRESIDENT:

Yes. Is it likely then, and this of course is only a suppositious argument, is it likely that in the event the T.T.L.C. lodged with this Commission an application for a two-tiered system with which your organization and perhaps Mr Vines' organization was not in total accord, that you might find yourself in the position of opposing it before this Commission?

MISS BACKHOUSE:

I think that is something we would have to consider at the time. I wouldn't like to give you any commitments or otherwise in advance.

PRESIDENT:

Yes, thank you, Miss Backhouse.

DEPUTY PRESIDENT:

Miss Backhouse, the claim of the Tasmanian Teachers' Federation and that of the T.P.S.A. currently before us, has to my knowledge been portrayed by certain elements of the press as being based in part upon some sort of a catch-up for the loss of the postponed leave loading. Are you in a position to be able to clarify that?

MISS BACKHOUSE:

I would love to be able to clarify what the press puts in about various things.

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PRESIDENT - DEPUTY PRESIDENT -  
BACKHOUSE



DEPUTY PRESIDENT:

Well you can clarify it for us.

MISS BACKHOUSE:

As far as we are concerned, we are seeking the C.P.I. increase, as provided for in Principle No. 1. We are not in this claim seeking back the leave loading (but of course if the Bench were disposed to grant it to us, we would have no objection to accepting it), but our claim is quite clearly the flow-on of the C.P.I. That is what we are looking for.

DEPUTY PRESIDENT:

Yes.



DEPUTY PRESIDENT: A pity the press weren't here to have the correction.

MISS BACKHOUSE: It wouldn't matter if they were here or not. What actually appeared tomorrow morning may not be the same as what is said here.

DEPUTY PRESIDENT: I wouldn't disagree with that. Thank you.

PRESIDENT: Thank you, Miss Backhouse.

MR VINES: Mr President, could I just also respond to that question on behalf of my association.

We have no idea, whatsoever sir, where that story came from in relation to the 17.1/2%. It's never been part of this claim as far as we're concerned and we have never put it to our members that that has anything whatsoever to do with that claim. That was a completely unfounded story.

PRESIDENT: Those who support the applications before us are now invited to address us, following which we would expect to hear from the statutory intervener and any other intervener and then we would hear the controlling authorities. I think that would be the appropriate order of address.

Does anybody else wish to - and I'm looking at you, Mr Elliott?

MR ELLIOTT: I'll be mercifully brief, Mr President, on the basis that I represent less than 400 members.

The economic arguments in favour of granting the applications have been put by my colleagues. From your ruling last week I assume that our support was necessary for the Federation's claim to proceed. We are happy to see the claim tested on merit and we await the outcome.

I have nothing more to add.

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PRESIDENT - DEPUTY PRESIDENT -  
BACKHOUSE - VINES - ELLIOTT

PRESIDENT: Your organization, I hope, didn't conclude from our statement that we invited you to acquiesce in it? We simply declined to join the Teachers' Federation application with that of the Public Service Association because we were aware that your organization had not been, at that stage, served with the claim.

MR ELLIOTT: I understand that, Mr President. The point I was making was that so far as I'm aware the Federation is not the sole union party to any award. And I wondered - and perhaps you could clarify this for me - without our support, could they have proceeded with their application?

PRESIDENT: They may have been in some difficulty.

MR ELLIOTT: On that I rest, Mr President.

PRESIDENT: Yes. Well now we indicated the statutory intervener and any other intervener, and we were looking at Mr Fitzgerald at the time.

MR WESTWOOD: Mr President, if it please the Commission, we had agreed on a certain batting order and unless it offends the wishes of the Commission it was decided that as controlling authority I should represent the Minister's views first; that the Minister for Industrial Relations ought to pick up the debris at the conclusion of my submissions, and that the intervener from ... I'm uncertain what Mr Garnham's role is - I don't think he's got one at the moment.

PRESIDENT: Well he's probably an intervener now because ...

MR WESTWOOD: Not officially, anyway.

PRESIDENT: The T.P.S.A. having nominated one award to which the Council of Advanced Education is not party, I guess Mr Garnham, if he wishes to continue his appearance, would do so

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PRESIDENT - ELLIOTT - WESTWOOD

PRESIDENT: in the capacity of an interested and maybe concerned intervener.

MR GARNHAM: That was my understanding. I was going to raise the point at the appropriate time. It seems as though now is the time, sir, that I would wish to continue as an intervener.

PRESIDENT: Yes, well I'm sure there would be no objection to that, Mr Garnham.

Mr Westwood, unless the Minister for Public Administration and the Minister for Industrial Relations are almost one and the same I'd find it difficult to understand why an employer would want to be heard before a statutory intervener, bearing in mind that the employer has no right of reply. Wouldn't he want to hear what the statutory intervener has to say so that if the intervener torpedoed him he might be able to recover something from the wreck? This way you're asking him to recover the wreck, as it were.

MR WESTWOOD: Well I did say it in those words. I didn't mean it in that sense. I don't think there'll be any difficulty with the Minister for Industrial Relations torpedoing the Minister for Public Administration on this particular matter.

PRESIDENT: You mean he won't find it hard to torpedo him or that it's unlikely ...?

MR WESTWOOD: I don't think there'll be any need for him to.

PRESIDENT: Well then where does that leave Mr Fitzgerald and Mr Garnham?

MR FITZGERALD: Well Mr President, I would like to acquiesce with Mr Westwood's batting order. I'm quite happy to follow Mr Westwood and Mr Willingham at this time, sir. I have no problems with that.

MR GARNHAM: Unfortunately sir, I'm almost like

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MR GARNHAM: the Tasmanians in Adelaide - I don't think we've got a batting order.

PRESIDENT: Has there been a batting collapse?

MR GARNHAM: Well they were 3 for 22 at one stage, sir.

PRESIDENT: I'm not too sure what this score is here at the moment.

MR GARNHAM: No, I'd like to support the suggested order by my colleagues in front.

PRESIDENT: We are feeling very liberal this afternoon, so we'll let you have your way, Mr Westwood.

MR WESTWOOD: Thank you, Mr President, I thought you were being rather liberal all day frankly, (small 'l').

If I could commence my submissions by saying that I propose to address the Principles only during the course of this afternoon's hearing, and I should explain that probably is the reason why the batting order was suggested as I put it to you. I will be addressing Principles only.

And it seems that that's where this Commission and the parties are having a great deal of difficulty. We seem to be reading two different sets of Principles, or if we're not reading different sets, we're certainly inferring different meanings and applying different intentions.

As I mentioned this morning the Principles that operate in this jurisdiction, which were enunciated by the Australian Conciliation and Arbitration Commission on 26 June last and adopted, slightly varied by this Commission on 22 July 1986, provide in their preamble:-

"... that the great bulk of wage and salary movements and improvements in conditions will emanate from national wage adjustments ..."

MR WESTWOOD:

That is the overriding preamble to the Principles, above Principle 1.

Principle 1 then goes on under its heading 'NATIONAL WAGE ADJUSTMENTS' to say that:-

"... the Commission ..." (and the employee Associations are saying that the Commission there is this Commission and I concede that that's a reasonable interpretation) "... will adjust its award wages and salaries every six months in relation to the ... eight-capitals CPI ..."

Clearly these Principles have been drafted to deal with the national scene. We all know that, that's a fact. That's why there are references to national wage adjustments, and that's why there are references to the eight-cap. CPI.

During the revision of the Principles to make them apply to the State we changed the word 'national' in 'national economy' to 'Tasmanian economy' - that was the only variation that was made to that provision.

What was overlooked was the fact that some organizations - call them maverick or smart or simply greedy - have taken advantage of the poor choice of words and converted the intention of the Principles to suit their own ends.

Now logically this Commission cannot make a national wage decision. It's impossible. That power resides with the national Commission.

This Commission could consider the flow-on of a national wage decision or an adjustment that might be made but it can't make a national wage decision.

MR WESTWOOD:

It cannot hear any of those matters until after the Australian Conciliation and Arbitration Commission has made its decision.

This State Commission could, if it was so persuaded, make a State wage decision, given the appropriate applications, the appropriate signalling of intentions, the appropriate union representation and employer representation and the appropriate submissions if everybody knew that that was going to happen.

If Principle 1 is going to be used or relied upon, they must first satisfy the Commission that this is a National Wage adjustment. It certainly isn't. We say they cannot justify that in any way.

Secondly, they must justify why such a National Wage adjustment should have only sectional application to a minority of the State public sector work-force.

In our submission, it is illogical and indeed fanciful to try to draw such comfort from the Principles as to claim that a set of guidelines copied from the Australian system can be read as if they apply to Tasmania, or indeed any other State, alone.

The guidelines have been prepared in the national arena for the purpose of shoring up an orderly, centralized wage-fixing system - an orderly centralized wage-fixing system.

My friends on the right have been repeating ad nauseam their commitment to an orderly centralized system. Their very application flies in the face of any proposition that this is an orderly or centralized method of operation. The orderly centralized system is currently concluding its deliberations in Melbourne - a decision will emanate, then the parties and the States can do what they want with those centralized guidelines. If they don't like them,



MR WESTWOOD:

they can throw them out. But until such time as the orderly centralized system has made its decision, it is pointless and in fact hypocritical to say that doing something that is contrary to that orderly centralized system is upholding the system.

The three applications are in fact directly opposed to any notion of an orderly centralized system of operation.

The whole point of the system is to give the Australian Commission a central and to some extent, controlling influence in determining the extent to which wages and conditions of employment would vary during the life of the system across Australia. In fact this Commission in its own decision of 22 July - I don't want to bore you with it - but at pages 25 to 27 the Commission makes a great play about the need to uphold the centralized system.

It supports a statement taken from the previous decision of the Commission - Australian Conciliation Commission. At page 27 it says:

"We therefore concur with the following statement of the Australian Commission appearing at page 5 ...

"... the centralised system which has operated since September 1983 with the general support of all industrial tribunals has, overall, produced better economic and industrial results.

It is our judgment that these results would not have been achieved under a decentralised system."

Now under whatever guise the association are putting, they are now endeavouring to create a decentralized system and if this

MR WESTWOOD:

Commission accepts their notion - their proposition - this will signal the breakdown of a centralized system.

No matter what can be said about the Government's submissions to the C. and A. Commission and this Commission, we support the centralized wage-fixing system and we have always said that.

The P.S.A. in its submissions at the commitment hearing, expressed its commitment to the Principles, and to the centralized system of wage fixation.

Mr Evans for the association went further to say one had to take the good with the bad.

That was when he was lecturing the Government - 'one must take the good with the bad' and 'one must work within the system'. They are certainly working the system. I don't know about working within the system.

As I say, the last two expressions were used when he was lecturing the Government.

The Tasmanian Teachers' Federation made a much more unequivocal statement when it said its commitment was on the basis of the five criteria outlined by the T.T.L.C.

But it went further and said its commitment was until the next national wage decision.

Here, we've got an application on our hands that's been made before the national wage decision. But on 29 July they were quite happy to say they wouldn't do anything further until the national wage decision was handed down.

Now, I hesitate to do it, Mr

MR WESTWOOD:

President, but I think there are two questions that must be put to the Commission to consider. The first is, does it intend to observe and support the Principles that are purported to operate in this system?

The second one is, does this claim fall within the Principles?

We are proceeding, perhaps rather naively, on the basis that the Commission does intend to ensure the protection of the Principles as we understand them.

In our submission, the associations have failed to demonstrate how their sectional claims, with all their potential to bring down the centralized system, could be construed as being acceptable under the Principles. If the claim is a National Wage Case application, it should properly be considered and dealt with at the State wage case flow-on hearing, following the National Wage Case.

If the claim is not a National Wage Case application, in our submission, it can't be processed under Principle 1.

Earlier, on the first day, Mr Evans stated that the application was on all fours with the A.C.T.U.'s application before the National Wage Bench and if that is the case, it ought to be considered on all fours with whatever application the T.T.L.C. ought to put, or will put following the National Wage Case decision.

To try and make this Commission rule on this particular claim while the Australian Commission, after months of conferences and hearings and negotiations, is on the verge of handing down its decision is totally irresponsible. It is also embarrassing, it would appear, to the applicant's colleagues. Only the three organizations on my right had



MR WESTWOOD:

the gall to proceed with this spurious application.

No other organizations want any part of it and that's quite obvious. The P.S.A. and T.T.F. officials know as well as the Bench, as well as others closely associated with the industrial relations scene and the practitioners, that their applications are out of court.

It is our submission that the application should be found not to conform with the requirements of the Principles - that the intent of the application should be held to be contrary to sustaining the centralized system and that further proceedings are neither necessary, nor desirable and accordingly they should be dismissed.

An alternative - one which is not preferred by us - is for the applications to be referred to the Full Bench appointed to deal with the forthcoming State wage case.

Members of the Bench will recall and in fact, Mr Imlach, for the H.E.F. suggested such an option in the first 20 minutes of the first day. That's how clear it was to most of the practitioners.

If the Commission does not find favour with either of these two options, I must seek your indulgence at the conclusion of my colleague's statements, to seek an adjournment to enable the Minister to be properly briefed on the seriousness of this application, to have the available transcript and to prepare the obviously detailed economic submissions which the associations and undoubtedly the Bench will need to deal with the matter. If the Commission pleases.

PRESIDENT:

Thank you, Mr Westwood. Mr Willingham?

MR WILLINGHAM:

Mr President and members of the

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PRESIDENT - WESTWOOD - WILLINGHAM

MR WILLINGHAM:

Bench, I had prepared what I hoped would be a relatively straightforward response, but the increasing complexities of this case are going to require that I depart from that to some extent. I hope you will bear with me as I wander around.

MR WILLINGHAM:

The first point (and I only want to refer to it briefly because it shouldn't be seen to be an integral part of the submission I now make) is just to put to rest what seems to be a continuing theme about the Government's attitude and position towards a centralized wage fixation system and particularly the current Wage Fixing Principles.

I thought I might have done that on the morning of the first day's hearing, when I simply acknowledged that it was not in question that the Government accepted that the Wage Fixing Principles emanating from the State wage case of last year were those which were currently in force and we don't seek to argue that they should be changed, or amended, or viewed in some different light. They are the Principles which are in force; they are the Principles under which organizations must justify applications and they are, I trust, the Principles by which this Commission will make its decisions.

In light of the substantial references that have been made to the Tasmanian Government's position in the recently concluded National Wage Case, for the purposes of informing the Bench I make the following comments: Mr Vines quoted, as is his right, selectively from those parts of our submission which suited his purpose, but he has not made any reference - indeed as far as I'm aware, neither did Miss Backhouse - to the submission that we made following the handing down of the Australian Commission's interim decision. And it is important for this Bench and parties to realize that that interim decision having been handed down, the Tasmanian Government, as it always has, indicated to the Full Bench of the Australian Commission that it would accept what was handed down by the Australian Commission, notwithstanding their views on what was best for the national or indeed



MR WILLINGHAM:

the State economy.

Mr President and members of the Bench, that is totally consistent with the Tasmanian Government's position in every National and indeed State wage case since September 1983.

We may have argued and indeed we have argued quite different lines from those of the major advocates in these cases, but we have always accepted the decisions that were ultimately handed down and indeed, as you would be only too well aware, Mr President, we have urged this Commission to adopt decisions of the National Wage Bench.

And just in concluding my remarks on that particular point, may I just enlighten this tribunal that both in the November submission to the National Wage Bench and in the subsequent submission on the two-tier system, the Tasmanian Government argued that neither the national nor the State economy could sustain an increase of any sort at all.

I, at the outset of the rest of this submission, would wish to adopt the submissions so eloquently put to the Bench by Mr Westwood. In fact, I have the feeling that anything following that is going to be quite superfluous because no one is going to be able to capture the essence of what this is all about better than Mr Westwood did.

But I'm instructed by my Minister to make a point in the public interest, and I shall do so. I suspect it's going to be a bit like having one glass too many of port after a really good meal.

Mr Vines and his fellow travellers (and there are not many of them) made continual reference to the centralized wage fixation system, continual reference to the Principles and continual reference to what they mean to Mr Vines or what Mr Vines

MR WILLINGHAM:

claims they mean to his members (I'm not sure that they're necessarily the same things, but we'll go to that a little later).

The continuing theme throughout Mr Vines' submission was that the Principles are designed to maintain living standards, and that's a theme that this Bench has heard before in State wage cases.

Mr Vines is ignoring what is obvious. Mr Vines is not listening to his Prime Minister. He's not listening to the Minister for Industry and Commerce. He's not listening to the Minister for Industrial Relations. He's not listening to the Minister for Finance who all, in the last two weeks, amongst others have said: 'Australians gird your loins, you are going to have to accept a lower standard of living. Don't expect to live in the land of the lotus eaters anymore. The halcyon days are over. What you've got in front of you is a belt-tightening exercise and you must accept and you must acknowledge that living standards cannot, for the immediate future, be maintained.'

That is what our national economic policy is, if that's a policy, but it's certainly what the Prime Minister claims it to be. And I don't think that the Premier of Tasmania would suggest differently.

I recall in vivid detail the case last year, Mr President (the 17.1/2% leave loading case) when the Government put overwhelming material to this Bench pointing out the parlous state of the Tasmanian economy, and put to the Commission the Government's policies in trying to protect what was there in an equitable manner. And, as it turns out I think I'm entitled to assume that at least the Commission had regard for those submissions.

MR WILLINGHAM:

The Wage Fixing Principles have as one of their objectives the maintenance of real wages; there's an awful lot of `buts` behind that.

In the 1983 National Wage Case which ... and continuing to the present time, it was accepted by all major parties, at national and State levels, that a centralized approach to wage fixation was the most equitable means by which the objectives of the new system could be met.

And, whilst recognizing the autonomy and the independence of State wage-fixing tribunals, it has also been accepted since 1983 that the Australian Conciliation and Arbitration Commission should provide the framework for the operation of centralized wage fixation throughout the country.

Mr President, I want to draw to your attention and to your colleagues on the Bench, what the Australian Commission said at the time of reintroducing the centralized wage fixation system in 1983, September. I quote - in their decision which can be found in Print F.2900.

"... there should be no doubt whatsoever that the success of the course we have embarked upon does not depend only on the Commission and other wage fixing tribunals. We agree with the ACTU that `the challenge which we confront is enormous` and that it `will certainly not be capable of being met without the necessary consensus and co-operation of all groups`"

DEPUTY PRESIDENT:

Could you give us a page please, Mr Willingham?

MR WILLINGHAM:

If I may take a moment, Mr Deputy President, I will see if I can find that for you.

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DEPUTY PRESIDENT - WILLINGHAM



DEPUTY PRESIDENT:

Sorry, I thought you were quoting directly from it.

MR WILLINGHAM:

No, I've just got it down in my notes. I think I can find it for you.

It's in the decision summary on page 48, 'CONCLUDING OBSERVATIONS', Mr Deputy President.

DEPUTY PRESIDENT:

Thank you.

MR WILLINGHAM:

"No one group, unions, governments or employers can act in isolation from other groups' ... The task ahead requires a commitment from all."

That by the way is the A.C.T.U.'s viewpoint, which the Australian Commission was quoting within the quote. The Commission goes on to say:

"We have set out the requirements of the new ... system in some detail. These impose obligations and responsibilities on unions, employers, governments and tribunals. They must all accept commitment to these requirements for the system to work."

Those sentiments, Mr President and members of the Bench, were reiterated and they were reinforced in the National Wage Case decision of June 1986. That decision amended the system slightly by introducing new Principles and making minor amendments to the old Principles and it really was giving effect to no more than the Australian Commission's consideration of the submissions of the various parties and the passage of time and the changed economic climate.

As we have said, that decision reiterated and reinforced the intent and the spirit of the centralized

MR WILLINGHAM:

wage-fixing system and its attendant Principles. In fact, if anything, the Commission strengthened its view, that extreme caution must be applied because of the grave economic position, which of itself demanded the strictest adherence and continuing commitment to the Wage Fixing Principles.

Mr President and members of the Bench, you above anyone would know that the Principles were formulated and established on the basis that the great bulk of wage and salary movements should emanate from national wage adjustments.

It is so basically explicit, implicit, inherent and intrinsic to the whole system as surely to go without saying but having heard the submissions of my friends on the other side of the bar table, it's worth repetition.

The Australian Commission has expressed its concern at the capacity for sectional claims about pay, hours and conditions to unsettle relativities and to generate flow claims which are inconsistent with the Principles.

These applications before the Commission are one of two things, Mr President. They are either sectional claims or this is a State wage case. In my submission they are sectional claims and as I said earlier today, they are sectional claims in the very narrowest sense.

Irrespective of our attitude to the merit or otherwise of the claims before you, we acknowledge the right of any organization to submit applications for variations to wages and conditions to this tribunal for determination.

MR WILLINGHAM:

However any such application must comply with the strict tests imposed by the requirements of the Industrial Relations Act and the Wage Fixing Principles adopted by this Commission.

Now we have already raised with the Commission the question of whether these applications meet the requirements of the Industrial Relations Act and that question has been ruled upon by the Bench.

At the time that threshold matter was debated we indicated the further test of conformity with the Principles could not be precisely established until the applicants had put their substantive submissions in support of their claims.

And as I said I think earlier today in response to Commissioner King, it would have been wrong of us not to have waited until that submission was concluded before putting the position that we are putting to you now.

But that submission has occurred, along with other organizations, and it does transpire that the applications rely entirely on Principle 1; or more correctly, they rely upon the applicants' construction of Principle 1.

Now at first glance, Mr President, one could be excused for considering this was just a smash and grab exercise. It is a claim that is made without great regard for intrinsic merit, or the centralized wage fixation system.

And yet inherent in what we view as a 'cavalier' application, a cavalier application that is bordering on the irresponsible, are matters that are of much significance to the conduct of industrial relations in Tasmania.

We submit most strongly that the continued hearing of these matters, and indeed the success of the



MR WILLINGHAM:

applications themselves, stands or falls on the capacity of Principle 1 to accommodate these claims.

If Principle 1 is not available for the prosecution of these claims, that alone is fatal to the applications.

In our respectful submission, this threshold issue (and that is what we believe it to be - a threshold issue) is of absolute critical importance, given the nature of the claims and the ramifications of flow-on throughout the State, both in conceptual and economic terms.

The potential consequences are of immense magnitude to this State. Without placing too fine a point on it, Mr President, we suggest the potential consequences could well extend beyond the jurisdictional boundaries of this tribunal.

We respectfully submit that this tribunal should address and should determine the threshold issue of Principle 1 and do it at this stage of the proceedings.

PRESIDENT:

Why should we do that, Mr Willingham? Why can't we hear a case in full and address considerations of that kind in handing down our decision? Why must we give you and Mr Westwood and other representatives two bites of the cherry, as it were?

MR WILLINGHAM:

Well, indeed I anticipated that question, Mr President, and if you will be patient with me I think it will be answered as the submission continues. If you feel that it isn't, I will be quite happy to address it further.

PRESIDENT:

No, proceed, so long as you do address that question.

MR WILLINGHAM:

But we are certainly not looking at two bites of the cherry, Mr President, and indeed we are in something of a quandary anyway, because we are still not certain

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PRESIDENT - WILLINGHAM

MR WILLINGHAM:

whether we should be responding to these applications in the light of them being considered to be a State wage case or not. And that is why at this stage we have chosen this threshold submission.

But in our submission it is patently apparent that the claims before the Commission are not in conformity with the Principles. And to some extent, Mr President, I would hope that that starts to answer your question.

We say that the unions' applications, tied as they are inextricably to Principle 1, must fail.

We say because of that the Commission should refrain from further hearing of these applications.

We submit that it is crystal clear that Principle 1 is available for the carriage of national and State wage cases and national and State wage cases only.

This hearing cannot, by definition, or certainly not by our definition, constitute a State wage case, and indeed Mr Vines after having said that he thought it was a State wage case, withdrew that and said that it wasn't.

And I am no wiser either, but we are proceeding on the basis that it is not a State wage case, but by anyone's definition is not a National Wage Case.

The unions have not in any way suggested that this case should be in some fashion regarded as a precursor to the State wage case, in fact, quite the opposite and were very deft in avoiding answering the questions that you raised about that dichotomy.

We submit that the applications can only be seen as what the unions themselves have argued - sectional claims - reinforced by Mr Vines'

MR WILLINGHAM:

concluding comments when he said that he sought the Bench's sanction of these increases for his members.

You can't get any more sectional than that, Mr President.

It is a classic case, in our view, of Principle 2 - 'Other Claims'. It can be no other.

Any reading of the preamble to the Principles and the wording of Principle 1 itself can lead to just one logical conclusion - it is as it states in black and white, the 'National Wage Adjustment' Principle.

It is not asserted by the unions that this hearing is a State wage case, and in our submission a State wage case is the exclusive vehicle for determining State wage adjustments.

The unions may, and in fact they have, attempted to argue otherwise, but their arguments seek to defy logic and deny the obvious.

No amount of cute and specious reasoning can gainsay the logical and the obvious. These claims do not in any way fall within the perimeters of Principle 1.

We believe, with the greatest of respect, Mr President, that this Bench should not entertain the notion that Principle 1 is designed, intended and available, for any matter other than a national or State wage case.

We believe these applications, and Principle 1, are totally incompatible. We have submitted to you that alone, in our view, is fatal to the applications in the context of this particular case.

In our respectful submission the Commission should reach a similar conclusion. If you do so find, I would endorse what Mr Westwood has said previously, that we submit two



MR WILLINGHAM:

courses of action are available to you.

Firstly, and primarily, we submit that the Bench should exercise its powers of discretion under section 21 of the Industrial Relations Act and refrain from further hearing of these matters.

Alternatively, the Bench should stand these applications over without further hearing and remit them to the Full Bench constituted to hear the next State wage case.

If the Commission was disposed to adopt this second course, there would at least be no question that the applicants would be fully entitled to prosecute the instant matters without violence to the Principles generally and Principle 1 specifically.

If the Commission pleases.

PRESIDENT:

Assuming there is a Principle 1 in the next State wage case.

MR WILLINGHAM:

At the time of the hearing of the next State wage case, Mr President, there certainly will be a Principle 1 extant. I imagine that a great deal of debate will go on to determine whether Principle 1 continues past that point. But at the time of the convening of the State wage case, Principle 1 will still be in existence.

PRESIDENT:

Thank you, Mr Willingham. Mr Fitzgerald.

MR FITZGERALD:

Yes, Mr President. If you will bear with me for just one moment.

Yes, thank you, Mr President and members of the Bench. I, like Mr Willingham, should in fact be refusing that final glass of port, but on behalf of the private sector I do and I am required to make submissions because we view this claim with some great concern.

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PRESIDENT - WILLINGHAM - FITZGERALD

MR FITZGERALD:

We see the claim as not one relating just simply to the public sector, but one which could potentially flow to the private sector, and in fact it would be naive of us to believe that if the claim were prosecuted successfully that a flow-on claim would not be made in the private sector.

So when considering this application before you, Mr President, we would submit that you should consider it as a claim against both the public and the private sector.

The consequences of the claim, if it were allowed to succeed would, in our submission, in economic and social terms, be no less than catastrophic.

I, like Mr Willingham and Mr Westwood, wish to address the aspects of the Principles only, and I will be submitting that the application does in fact run completely counter to the Wage Fixing Principles of this Commission.

I preface my comments in respect to those Principles in that I don't believe that it is appropriate for this Commission to slavishly follow the decisions of the Australian Commission in every instance.

Of course many remarks have been made by both sides in this case in respect to the autonomy of this Commission, and I would reiterate that, sir, that I don't believe it is necessary or appropriate that this Commission slavishly follows each and every matter in respect to any decision of the Australian Commission.

But, nevertheless, in respect to guarantees of the continuation of the centralized wage-fixing system, there is a need to retain an element of consistency - at least in the adoption of the basic framework - and Mr Willingham particularly referred to how he believed that it was for the Australian Commission to at least

MR FITZGERALD:

put the framework together and for  
this Commission to at least stay  
within the framework.



MR FITZGERALD:

This claim, if it were allowed to proceed with some success, would see a situation where this Commission is outside - totally outside - that basic framework. Indeed, not only would it be with the Australian Commission but also with every other State industrial commission in this country. So it would be totally out of step with those jurisdictions, sir.

To allow this application to proceed any further at this point of time, would see a flagrant inconsistency which, I believe, would pre-empt any decision of the Federal Commission, which we've all heard is very imminent.

I made some earlier submissions at the last hearing of this matter in respect to the need for consistency. Indeed, the Full Bench or the National Wage Bench in the Australian Commission made some very strong statements and I don't wish to reiterate those statements and in fact they have been repeated by both Mr Westwood and Mr Willingham today.

But nevertheless, the comments were made in the vein that there was, in terms of the guarantee of the centralized wage-fixing system, very much a critical need to maintain an element of consistency between the Federal jurisdiction and the State industrial jurisdiction.

Surely that Bench, nor indeed this Bench would have contemplated at any time, at the framing of those Principles or indeed during the course of those Principles, that a State registered union would in fact initiate a claim dealing with precisely the same subject matter as is now before the Australian Commission and for that claim to proceed now, even prior to the handing down and determining of that matter.

Now, we've heard Mr Vines say this

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FITZGERALD

MR FITZGERALD:

morning that he's simply pursuing in accordance with Principle 1 and it's simply adjustments for the relevant quarters.

It is indeed ironical that - in fact if that is their philosophy why not then was the application made 6 months after the last National Wage Case which of course was made in July last year. To proceed at this time can, in my submission, only be construed as mischievous.

The decision of the Australian Commission in December 1986, Print G.6400 was a decision which has been referred to as a 'Clayton's decision', but it was a decision in principle to look at a two-tiered system. As to how that system is to be structured and the quantum attached to the claims, or as a result of the claims that have been made, remains to be seen. But to allow the applicant unions' claim to proceed, runs totally opposite to the concept which is currently before the Australian Commission.

I would just like to comment on a number of other aspects too, regarding the submissions made by Mr Vines. Indeed this morning, he indicated that the claim was controversial. In my submission, sir, it seems that he wasn't committed - it seems that he had an element of lack of commitment to proceeding this morning in terms of whether it met with the Wage Fixing Principles.

Indeed it is controversial because I would submit, sir, that it falls very much outside the Wage Fixing Principles. He also submitted this morning, that in respect to why - and I think it resulted from a question from the Bench - whether in fact his claim, based on the C.P.I. for the Hobart district, was within the Principles.

He indicated quite clearly he's

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FITZGERALD

MR FITZGERALD:

prepared to amend his application to fall within the average concept of the eight national capitals.

It's quite clear that the Principle doesn't refer to any particular State capital - it refers to the eight national capitals and for that reason, sir, I would submit, sir, that it falls clearly outside of the Principles - that particular Principle 1.

It seemed also - which I had some concern with - that there was some veiled threat in terms of industrial action and I won't refer specifically to it, but there was an exhibit which related to what he alleged 'a decrease in industrial activity in this State'. He further submitted that if this claim were unsuccessful, then the former high levels of disputation could recur. Well, I would submit, sir, that that is very much a veiled threat and that statement should be disregarded by this Bench.

MR VINES:

Could I rise to my feet at this stage, sir. That is not what I said in relation to that exhibit - that if this claim did not succeed it would result in increased industrial disputation. I referred to the Bench the fact that if a centralized wage-fixing, or the current centralized wage-fixing system did not continue, that would lead to an increase in industrial disputation. At no stage did I say that if this claim was not successful that there would be any hint of our members taking industrial action.

MR FITZGERALD:

That is not my recollection, sir, but only the transcript will in fact show what was said.

PRESIDENT:

Well, does that make you feel a little happier?

MR FITZGERALD:

If that is the case, sir - certainly, I would withdraw that submission.

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PRESIDENT - VINES - FITZGERALD



MR FITZGERALD:

I'm also concerned that it's very much a 'two bob each way' approach. We have, as indicated by Mr Vines, a situation where his organization is affiliated with the peak union body in this country which currently has a claim before another tribunal.

The approach of the former industrial jurisdiction in this State was to prevent any matter proceeding in the State jurisdiction where in fact the same subject matter was being debated in the Federal jurisdiction and I submit that that - and I'm referring to the industrial board jurisdiction, sir, in that regard - approach is one which is a sensible approach which should be followed and should be in fact adopted by this Commission.

It's inappropriate for a matter to proceed in two jurisdictions.

PRESIDENT:

Do you think then that the Federal Commission should have issued a restraining order on this Commission? It has the power to do so.

MR FITZGERALD:

It is possibly a course of action which is open, sir, but obviously that wasn't taken advantage of but in any event apart from the remedies which exist in that regard, I'm submitting, sir, that I don't believe it is appropriate that the Commission should adjudicate a claim which has been also adjudicated in another place.

So, I would very much support and adopt the submissions Mr Willingham and Mr Westwood so eloquently put and seek that this claim be rejected in that, I would submit, sir, that it falls quite squarely outside the Wage Fixing Principles. To allow it to proceed, I would submit, sir, would see a situation where the centralized system is placed very much in jeopardy. If the Commission please.

DEPUTY PRESIDENT:

Mr Fitzgerald, just one slightly

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PRESIDENT - DEPUTY PRESIDENT -  
FITZGERALD

DEPUTY PRESIDENT:

mischievous question. It's got something to do with the hour of the day and the time of the week. I take it that your support for the centralized system of wage fixation is one which is not likely to change for the future. You don't think that there ought to be some freeing-up of the system by putting some so-called flexibility in it to allow industries or enterprises to work out their own problems, as opposed to a very centralized approach?

MR FITZGERALD:

Our organization, Mr Deputy President, has other views on that very topic, not only in its own right but through its parent body, the Confederation of Australian Industry, and they are fairly well known, but we have a commitment to the centralized system at this point of time. We don't necessarily support an automatic flow-on of the Consumer Price Index but we have at this point in time a strong commitment to the centralized system, sir.

PRESIDENT:

And you'll always counsel your members to likewise adopt the centralized system, Mr Fitzgerald?

MR FITZGERALD:

They always follow advice, sir, of course.

PRESIDENT:

Did you say, 'they always', or 'they don't always'?

MR FITZGERALD:

No. They always follow our advice, sir.

PRESIDENT:

So that if we apprehend the claim coming before us that appears to be outside the system, we can assume that you have already approved of it?

MR FITZGERALD:

It's a very difficult situation to answer, sir. I don't think I should make any further comment at this time, sir.

DEPUTY PRESIDENT:

You might want to take advice, Mr Fitzgerald.

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PRESIDENT - DEPUTY PRESIDENT -  
FITZGERALD

PRESIDENT:

Yes. Thank you, Mr Fitzgerald. Mr Garnham?

MR GARNHAM:

Thank you, Mr President.

I won't use the same analogy as the other speakers in front of me. I think we've had enough ... but if I may use my earlier analogy, like any tail-end batsman, I won't be around for very long.

I think we need to look at the historical situation in which the Principles arose. It's been alluded all day. I think it's very important to realize that it was in a national system that the Principles first arose. It was to develop a centralized wage-fixing system - words used by Mr Vines when he rose to his feet just a few minutes ago, once again emphasizing the fact that the success that has been shown in the industrial scene within Australia over the past 3 to 4 years has been based upon a centralized system, whereby there hasn't been a situation of leap-frogging that has been a history of Australian industrial disputation.



MR GARNHAM:

And in this context it's very important to the Council of Advanced Education that that continue, so I had occasion on a number of times to remind you, sir, and the Bench that the Council is in a unique situation whereby we are subject to State legislation and the State Industrial Commission but our purse strings are held by our Federal masters in Canberra. And they have made it quite clear to us that if we move outside of the Federal system of wage fixation, we are on our own. So it is imperative to the council that the Federal system established which we have supported, we acknowledge still exists and that the Principles are still in existence and we support them, should continue.

However, I would support the claim made by my colleagues that the claim before the Commission at the moment is a sectional claim; it's not placed in that historical context in which the system arose of a centralized wage-fixing system - it is based on Principle 1 outside of what the title of Principle 1 is stated, national wage adjustments, and in that sense I don't believe that it can be upheld in relation to the Principles upon which it is based to be claimed. If the Commission pleases.

PRESIDENT:

Thank you, Mr Garnham.

...

PRESIDENT:

Mr Vines, we will extend to you, and of course Miss Backhouse, an opportunity to respond, if you are minded to do so, to Mr Westwood's request for an indication from this Bench whether or not (I'm paraphrasing) it's the Commission's intention to continue to observe the Principles and, secondly and perhaps more importantly from Mr Westwood's point of view, and from the point of view of others who have already addressed us, the claims now before us in fact fit comfortably within the

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PRESIDENT - GARNHAM

PRESIDENT:

Principles.

Would you wish to address us on that request?

MR VINES:

I think I would fairly easily submit, sir, that obviously at some time the Bench has to consider that particular argument as to whether our claim falls within the guidelines or not.

From our part we don't have any difficulty at all in stating that they do clearly fall within those Principles. Mr Willingham on 2 occasions in his submissions to you before stated that the State Government has argued in great detail firstly before the Federal Commission and then also in the rec. leave loading case here last year, the issue in relation to the Government's finances.

I don't see that there should be a need for this case to be held up with an interim decision on whether it falls into the Principles or not, that the Government representative should be able to put the whole of their submissions in response and allow you to determine the matter at the time of making your final decision, as is, I would suggest, normally the case with any application that is put to you. It was not ...

PRESIDENT:

I hope I haven't misled you, Mr Vines, into believing that this Commission might be contemplating giving a written interim decision. It would be another one of those rulings that you addressed us on this morning.

MR VINES:

Yes sir. That's a difficult ...

PRESIDENT:

I'm not saying that we would give such a ruling - I'm saying that we apprehended Mr Westwood's submission to mean no more and no less than that.

MR VINES:

Yes, well I don't have any real

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PRESIDENT - VINES

MR VINES: difficulty with it either way I don't think, sir. I don't believe there's a need for it; on the other hand if you don't believe it's within the Principles and therefore you believe that you can't hear it within the Principles, we may as well know now as spend another day or so on this case. I don't have any major submission to put as to whether you should give a ruling on whether it's within the Principles now or not.

PRESIDENT: But if we gave such a ruling that it was or it wasn't, in those circumstances, I imagine you would want reasons for decision.

MR VINES: I'm quite sure we would, sir, if it was decided that it wasn't within the Principles and I'm quite sure that you would feel compelled to give such reasons.

PRESIDENT: That's what I mean.

MR VINES: Yes sir.

PRESIDENT: One way or the other if we were required to rule.

MR VINES: That's right, sir, because I think, clearly, my association and the Teachers' Federation have a different interpretation on those Principles to what the respective Ministers' representatives have and the T.C.I. has and I think if a decision is to be made on interpretation of those Principles we should have the background to that decision and the reasons for that decision, most definitely.

PRESIDENT: Yes.

DEPUTY PRESIDENT: Mr Vines, I don't know if you fully appreciate that we've got 2 proposals before us; you've addressed one.

One was, as I've written it down, that we should refrain from further hearing the matter on the basis that the claims rely upon Principle 1 and we've been asked to rule according to



DEPUTY PRESIDENT:

the 2 advocates that it will founder on that. Alternatively, we should stand this matter over and adjourn until the time of an anticipated State national wage hearing comes on.

MR VINES:

Well sir, I did hear both of those put several times, although unfortunately I didn't pick up any reasons that any of the advocates gave for doing that. They did state it several times in several various terminology but I didn't quite come to hear any of the reasons for it.

There is nothing at all - nothing at all - within these Principles that apply in this Commission that say a single union can't come to you and ask for something which is effectively or can be seen as a national wage increase or a State wage increase. There is nothing at all that prohibits that. In fact, even in the Federal Commission the A.C.T.U. doesn't lodge a claim; the A.C.T.U. doesn't appear in its own right - it appears on behalf of a union. The A.C.T.U. representatives are there appearing for the Storemen and Packers or the Metal Workers or whoever.

There is nothing at all that prohibits us or any other trade union here seeking to put an application in to have our awards varied by the mechanism set out in Principle 1.

If the Federal Commission decides that Principle 1 in its current form will no longer apply and other unions here or the T.T.L.C. here make applications to this Commission for a flow-on of that or for some other thing, that's well and good - it does not prohibit us or any other union at that time coming to you with a similar claim to ours. There is nothing that prohibits it.

We are aware of the intent and all of those sort of things but one must remember that when these Principles were being drawn up, the overriding

MR VINES:

intent was that they would operate for 2 years; that they would continue to be in existence for 2 years. Now that, in the Federal sphere, has gone out the window. We maintain that they should continue to operate for 2 years in Tasmania and we have put our claim in.

And, as I say, there is nothing in there that prohibits us or any other union lodging that claim.

COMMISSIONER KING:

Well Mr Vines, for that statement to be totally accurate wouldn't it depend on the timing of those applications?

MR VINES:

Well, I said sir in relation to the parameters of Principle 1. Quite clearly the timing of ours was immediately after the relevant C.P.I. figures became available - if that's what you mean by your question.

COMMISSIONER KING:

Well wouldn't the timing of any application such as this have something to do with, in particular, Principle 1 and the National Wage Case?

MR VINES:

Well it would in relation to Principle 1 in terms of the release of the C.P.I. figures. That's why when we lodged our claim it was for the 2 6-month periods totalling the 12-month period.

In relation to the decision of ...

COMMISSIONER KING:

Perhaps what I'm really saying to you is that if this application had been lodged after the national wage decision, the next national wage decision had been lodged, then most of what you have put in response to the Deputy President I could readily accept, but the reality is the application has been made before - some time before - that decision has been released.

MR VINES:

Well sir, the reason for that is quite simple really.

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COMMISSIONER KING - VINES

MR VINES:

The original application that was put before the Federal Commission, back in October last year I think it was, was in relation to the C.P.I. movements for the first 2 quarters of last year - the March and June quarters of last year. We are now in March 1987. We do not believe it is necessary for us to wait that amount of time to have these sort of cases heard and dealt with.

With this proposal that's happening in the Commonwealth system, what started out as a claim to operate for the first 6 months of last year is now going to have a decision - or possibly have a decision - which will include a monetary decision which is going to accommodate for 2.1/2 years.



MR VINES:

It bears no resemblance whatsoever to the guidelines we're operating under now.

COMMISSIONER KING:

Yes, I understand what you're putting, but in relation to the claims that have been made, and the submissions that have been put in opposition to those claims, isn't the timing of any application, i.e. either before or after a National Wage Case decision, important in relation to those submissions?

MR VINES:

No, I don't know that it is, sir. I think by putting ours in before a Federal Commission decision was handed down, as soon as the C.P.I. figures were released, demonstrates on our behalf the view that this tribunal is completely independent of the Commonwealth tribunal or any other tribunal. It has its own Principles, it has a right to hear claims pursuant to those Principles in its own right. It can, of course, have ... consider what happens in other jurisdictions. It might be of interest to this Commission what happens in the Western Australian State Commission, but it is not bound by those decisions.

And what we're saying is that the application that we're supporting is far more appropriate for Tasmania than what the A.C.T.U. and some other unions have supported for the Commonwealth.

COMMISSIONER KING:

Yes, thank you, Mr Vines.

PRESIDENT:

Well then, I take it from that, Mr Vines, that in the event the Federal decision, which is expected any day, may not be picked up by your organization and, if that's the case, it's unlikely your organization would be able to give a commitment to it.

MR VINES:

Well, we don't know if commitments are going to be required this time around. We've got no idea what we're going to be committing ourselves to.

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PRESIDENT - COMMISSIONER KING - VINES

MR VINES:

I'm not in any position whatsoever to say that we'll give a commitment to anything. We are in a position to say, we'll give a commitment to the continuation of this current system; of this current Principle 1, because we know what it is; we know what's involved. We've got no idea, at this stage, what's going to be involved in the final decision that's brought down by the Commonwealth Commission.

So, I'm afraid, sir, I'm not in a position to say whether we would give any commitment to it or not.

PRESIDENT:

What you have told us is that, in relying upon Principle 1, which you say is extant, then you are in effect seeking an increase from this Commission which will become a general increase, because the third paragraph to the preamble to the Principles says, and I'll quote:

"The Commission ..."

meaning this Commission.

"... will guard against any Principle other than Principles 1 and 3 ..."

3 being superannuation.

"... being applied in such a way as to become a vehicle for general improvement in wages and conditions."

Obviously, we can't have two vehicles being used for general improvement in wages and conditions. If you rely on Principle 1 for a general improvement, (and you've already told us that it's open to any union, and I would agree with you, to make such an application at the appropriate time) then is it not equally open to another union or your own organization to come along when the Federal decision is announced and make a similar application for a flow-on of whatever might fall from that by way of a general improvement?

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PRESIDENT - VINES

MR VINES: There's nothing to stop that at all, sir. There's nothing to stop every union in the State putting in a separate claim in relation to Principle 1 as long as it is within Principle 1.

In relation to what would happen if, say, next week other unions came and put in a claim for some future decision, pending a decision of the Commonwealth Commission, if that ...

PRESIDENT: Well, there's one in as a matter of fact.

MR VINES: Sorry?

PRESIDENT: There is one. The Commission already has one, lodged by the Association of Professional Engineers.

MR VINES: I know they have some intelligent leaders there, sir, but I didn't know their foresight was quite that good. I wonder who they've been speaking to.

PRESIDENT: Well, it's in.

MR VINES: They are confident.

But, the engineers aside, any other union that puts ... or any other applications that are lodged before you to flow any decision of the Commonwealth Commission down, which is proposing changes to these Principles, will in terms of the Principles as they stand at the moment, have to be very, very strongly argued. You have to be convinced as to why there's a need for a change in those Principles before you can change them. Nobody has come today to say there is a need for a change in those Principles. We regard this as our application under the National Wage adjustment Principle, Principle No. 1, and we seek that the Commission decide that on its merits.

We are not seeking a change to the Principles. We are not seeking a



MR VINES: change to anything else. We are simply coming here under the current Principles that were handed down some eight months ago.

DEPUTY PRESIDENT: Mr Vines, would the second proposal of what I'll call the employers' representatives to stand the matter over until the next State wage case be of any great moment or disadvantage for your organization?

MR VINES: Well, it's difficult to know, sir, because I don't know what that is going to involve.

The State wage case might result in an application from the employers rather than the employees, and I doubt very much that we would want this joined with an application from the employers, because I would imagine that it would not be an application that would be to the benefit of our members. I can't answer that question, sir, because I've got no idea what is going to happen.

DEPUTY PRESIDENT: But at the moment, you are unable to demonstrate a known consequence which would be to your detriment or to your disadvantage, is that right? A bit of a lawyer's question, I'm sorry.

MR VINES: Sorry ...?

DEPUTY PRESIDENT: It's a bit of a lawyer's question, and a bush one at that.

MR VINES: No, well I'm not in a position to say that there is anything that I can see that would either advantage or disadvantage us in relation to that, because I don't know what's involved. It's a mystery at this stage.

DEPUTY PRESIDENT: I think you've answered the question.

MR VINES: Thank you.

PRESIDENT: Thank you, Mr Vines.

Miss Backhouse, do you wish to

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PRESIDENT - DEPUTY PRESIDENT - VINES

PRESIDENT:

address those points raised by Mr Westwood and if you wish Mr Willingham, insofar as both Mr Westwood and Mr Willingham have made specific requests to this Commission for rulings at this stage in the proceedings?

MISS BACKHOUSE:

Fairly obviously a ruling's going to have to be given at some stage in proceedings. Whether it should be given at this stage I don't know. I think it would be rather a pity if a ruling at this stage, for example, prevented a full response by the unions to the other matters that were put forward from the other side. And I believe also that Mr Willingham and Mr Westwood indicated that, in the event of the case going ahead, they would have to bring forward further argument relating to the economy, and I think it might be rather a pity if anything was done to pre-empt those arguments being put forward, because they may be of some value.

But certainly, I would agree that at some stage there must be a ruling, and I would assume that it would be a written ruling. Whether it was an interim decision or a later one combined with the decision on the body of the case is, I believe, your prerogative to decide.

On the general matter of the Principles, I would just point out that a lot of people around this room have said what they think the Principles mean, and have said that they mean that it can only refer to the National Wage Case, federally, but I point out that isn't what it says, and I believe that in legal tribunals or industrial tribunals it's what's said, not what people read into it that should matter.

If this Principle No. 1(a) meant that you could only bring forward a case following the handing down of a National Wage decision at the Federal level, then that's what it should

MISS BACKHOUSE:

have said, but it doesn't say that at all. It simply talks about quarterly movements in the C.P.I. and that information is available to us. And therefore, I believe that we had every right to bring forward these claims at this stage and to have them ruled on.

PRESIDENT:

Yes, thank you, Miss Backhouse.

We propose to adjourn the proceedings at this stage.

When we resume, at a date to be fixed, we will indicate ... I say 'indicate' whether or not we are prepared to rule on the matters raised by Mr Westwood and Mr Willingham and supported by the other interveners.

As to the date of resumption, bear with us ...

HEARING ADJOURNED