

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 public sector awards and to vary the Teaching Service (Teaching Staff) Award respectively to increase salaries to reflect movement in Consumer Price Index for Hobart for March, June, September and December quarters of 1986

and

T. No 675 of 1987

IN THE MATTER OF an application by the Association of Professional Engineers, Australia (Tasmanian Branch) to vary the Professional Engineers Award to increase salaries to reflect movement in Consumer Price Index for Hobart for March, June, September and December quarters of 1986

and

T. No 712 of 1987

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council for variation of all public and private sector awards and agreements to increase all wages, salaries (and allowances) by 6.7% and to vary the Principles to conform with the decision of the Australian Conciliation and Arbitration Commission.

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER KING

HOBART, 26 March 1987

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: Unless persuaded otherwise, it's our intention to join all applications to these proceedings. In which case we'll take appearances, thank you, in all matters.

MR LENNON: If it please the Commission, **LENNON, P.A.**, for the Tasmanian Trades and Labor Council.

PRESIDENT: Thank you, Mr Lennon.

MR VINES: **VINES, G.J.**, for the Tasmanian Public Service Association.

PRESIDENT: Thank you, Mr Vines.

MS CROTTY: **GAIL CROTTY**, for the Tasmanian Teachers' Federation.

PRESIDENT: Thank you, Ms Crotty.

MR HENDERSON: If the Commission pleases, **HENDERSON, N.**, for The Association of Professional Engineers, Australia.

PRESIDENT: Thank you, Mr Henderson.

DR SENATOR: If the Commission pleases, **GORDON SENATOR**, for the Salaried Medical Practitioners' Society.

PRESIDENT: Thank you, Doctor.

MR TARGETT: **TARGETT, P.E.**, for the Shop Distributive & Allied Employees' Association.

PRESIDENT: Thank you, Mr Targett.

MR BEVILAQUA: I appear for the Tasmanian Catholic Education Employees Association, **BEVILAQUA, PETER, P.**

PRESIDENT: Thank you.

MR PHILP: If the Commission pleases, **GREG PHILP**, for the Police Association of Tasmania.

PRESIDENT: Thank you, Mr Philp.

MR WALSH: If the Commission pleases, **WALSH, STEVE** - Printing and Kindred Industries' Union, Tasmanian Branch.

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APPEARANCES

PRESIDENT: Thank you, Mr Walsh.

MRS HERBERT: If the Commission please, **SYLVIA HERBERT**, on behalf of the Tasmanian Prison Officers Association.

PRESIDENT: Thank you, Mrs Herbert.

MR HEAPY: If the Commission please, **DON HEAPY**, on behalf of the Royal Australian Nursing Federation (Tasmanian Branch).

PRESIDENT: Thank you, Mr Heapy.

MR FRY: If the Commission please, I appear on behalf of the Federated Clerks' Union of Australia, Tasmanian Branch, **FRY, D.J.**

PRESIDENT: Thank you, Mr Fry.

MR IMLACH: If the Commission please, **PETER IMLACH** for the Hospital Employees' Federation of Australia, Tasmanian No. 1 and No. 2 Branches.

PRESIDENT: Thank you, Mr Imlach.

MR GLISSON: If the Commission please, **JOHN GLISSON**, appearing for the Federated Ironworkers' Association.

PRESIDENT: Thank you, Mr Glisson.

MR BAKER: If the Commission please, I appear on behalf of the Association of Draughting, Supervisory & Tech. Employees, **P. BAKER.**

PRESIDENT: Thank you, Mr Baker.

MR STRICKLAND: If the Commission please, I appear on behalf of the Federated Storemen and Packers' Union of Australia, **STRICKLAND, D.**

PRESIDENT: Thank you, Mr Strickland.

MR NIELSEN: If the Commission please, my name is **NIELSEN, P.L.**, and I appear on behalf of the Ambulance Employees' Association of Tasmania, the Bakery Employees and Salesmen's Federation and the Federated Millers and Mill

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APPEARANCES

MR NIELSEN: Employees' Association.

PRESIDENT: Thank you, Mr Nielsen.

MR CUSHION: If the Commission pleases, I appear for the Musicians' Union of Australia, **CUSHION, D.A.**

PRESIDENT: Thank you, Mr Cushion.

MR ELLIOTT: **DAVID ELLIOTT**, for the Secondary Colleges Staff Association.

PRESIDENT: Thank you.

MR JARMAN: May it please the Commission, I seek leave to appear with **MR M. STEVENS** for the Minister for Industrial Relations, and for the purpose of the record, Mr President, I'd draw the Bench's attention to the fact that I am in fact replacing **MR WILLINGHAM** in matters T.665 and 691.

PRESIDENT: Thank you, Mr Jarman.

MR ABHEY: If the Commission pleases, my name is **ABHEY, T.J.** and I appear for the following organizations: The Tasmanian Chamber of Industries; Tasmanian Farmers and Graziers Employers Association; Master Builders' Association of Tasmania; Metal Industries Association of Tasmania; The Hop Producers' Association of Tasmania; the Retail Traders Association of Tasmania; Tasmanian Sawmillers' Industrial Association; Meat and Allied Trades Federation of Australia and the Australian Mines and Metals Association.

PRESIDENT: Thank you, Mr Abey.

MR WESTWOOD: If it please the Commission, my name is **WESTWOOD, F.D.** I appear for the Minister for Public Administration in all matters relating to public sector awards of which he is a controlling authority. Other controlling authorities which I represent are, His Excellency the Governor, Speaker of the House of Assembly, the President of the Legislative Council,

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APPEARANCES

MR WESTWOOD:

the Commissioner for Police, the Tasmanian Development Authority, North-West Regional Water Authority and the Southern Regional Cemetery Trust.

PRESIDENT:

Thank you, Mr Westwood.

MR GARNHAM:

If the Commission pleases, **JIM GARNHAM**, for the Tasmanian Council of Advanced Education.

PRESIDENT:

Thank you, Mr Garnham.

Now, Mr Lennon ... before you open, Mr Lennon, copies of the transcript of T.665 and T.675 will be made available to those parties who wish to address themselves to the part-heard proceedings.

Now, Mr Lennon, thank you.

MR LENNON:

Thank you, Mr President. Our application from the Tasmanian Trades and Labor Council comes before the Commission today, consequent upon the decision of the Full Bench of the Conciliation and Arbitration Commission, which handed down certain increases operative from 10 March, 1987, and I remind the Commission that it is within this Act that this Commission will determine such matters, consequent upon the decision of the Full Bench of the Commission.

I was just trying to look for the clause then so I could direct you directly to it.

I'd like to say from the outset before I deal directly with the hub of our claim, that the Tasmanian Trades and Labor Council, in conjunction with the A.C.T.U. and the trade union movement generally, remains firmly of the belief that full wage indexation should be retained.

We do not accept the need for discounting wages and reiterate our support for the maintenance of living standards.

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APPEARANCES - PRESIDENT - LENNON

MR LENNON:

However, we note and recognize the decision of the Conciliation and Arbitration Commission in its December 1986 decision, where they rejected full indexation:

"... because such a position is not sustainable in current economic circumstances."

Given that decision of the Conciliation and Arbitration Commission, the trade union movement moved to develop an approach to wage fixation based on a centralized system with the potential to sustain living standards of all workers, particularly low and middle-income earners. It is in that background that a two-tiered system was proposed as an alternative.

In the Conciliation and Arbitration Commission, the trade union movement claim was for \$20 in the first-tier increase with no objection to that increase being awarded in two steps, and a 4% second-tier adjustment to be available to all, via either arbitration or conciliation.

The rationale for these amounts was based on the need to balance interacting equity, industrial relations and economic pressures.

We argued, as a trade union movement, that these amounts would form the basis of a workable wages system for 1987. It is against that background that the Full Bench of the Conciliation and Arbitration Commission awarded its increases, operative from 10 March, 1987.

Mr President, we, as the affiliates and members of the Tasmanian Trades and Labor Council, do not shy away from the fact that we are not happy with the level of increases granted by the Conciliation and Arbitration Commission, and that we will remain part of the national trade union movement and that we will form part of the special unions' conference to

MR LENNON:

be convened early next month. We will be represented and we will be part of that decision, as we were part of its decision on 6 November.

I would like to now turn to specifically what our claim is, and there are copies here.

PRESIDENT:

We'll mark this T.T.L.C.1; the single page document T.T.L.C.2.

MR LENNON:

Examination of the documents, T.T.L.C.1 first of all, Mr President, will show you that we are seeking a direct flow-on from the decision of the Conciliation and Arbitration Commission, which, in their decision, was to operate from 10 March 1987, and we would ask that any increases granted in flow-on by this Commission operate from the same date as the Full Bench decision.

Again, the principles have been tailored to fit in with the terminologies of the Tasmanian Industrial Commission. Where the C. & A. Commission appeared, for example, the Tasmanian Industrial Commission appears, so on and so forth.

If I can refer you specifically to anomalies and inequities, close examination of the Full Bench decision would indicate to you that the claims for anomalies and inequities can be made by a number of organizations. Of course it has been accepted in the past, at this Commission, that that can only be made by the Tasmanian Trades and Labor Council. That remains in our claim.

But in substantive terms, in terms of money amounts et cetera, our claim is within complete conformity with that which was handed down by the Conciliation and Arbitration Commission.

Discussions have been had with the employers, the Tasmanian Chamber of Industries, and also with the Office of Industrial Relations. Although I'm aware they are quite capable of speaking for themselves, Mr President, I can indicate that some agreement has been reached between us, perhaps reluctantly, but it has been reached as to the nature of our claim and the money amounts contained

MR LENNON:

in it.

With respect to the minimum wage, which is T.T.L.C.2, discussions have been had with the Tasmanian Chamber of Industries, and agreement has been reached to move the minimum wage by \$10.

Mr President, the only matter that's left for me to deal with at this stage is the public interest criteria, which we are only too well aware.

Just before I do that, I'm sorry, I just want to make it perfectly clear to the Commission that in its decision, the Full Bench of the Commission recognized that increases in excess of 4% in the second tier may be available in isolated circumstances. If I can quote from their decision, they say they ...

"... would be rare but nevertheless they may occur. Consequently we consider that it would be realistic for them to be processed through the Anomalies Conference."

So they recognize 'isolated' and 'rare', but would be processed through the anomalies conference. We would ask this Commission, in its decision, to pick that point up as well.

Dealing with the public interest - can I say from the outset, Mr President, that in the past full weight has been put upon the trade union movement to be the only people who have to provide for a workable wages system.

We've been asked to make commitments; we've been asked to give no extra claims; we've been asked to do a whole range of things, and let me say that so far as we are concerned a workable wages system will not survive, not only in

MR LENNON:

Tasmania but in Australia, unless all parties to the system have an equal commitment to it, and an equal commitment to a sustainable workable wages system.

And that means the Commission, it means the employers, and it means the unions equally applying themselves, and not just the pressure being applied solely and wholly upon the union movement and employees.

And in recent times, of course, we've seen increasing public concern on the level of prices, as an example.

And may I say that we, as a trade union movement, have been somewhat critical of the Prices Surveillance Authority for the role that they have played in trying to check prices.

Perhaps I can give the Commission a couple of examples of some of their landmark decisions in recent times. For example, on fresh fruit and vegetables, the Prices Surveillance Authority, which receives \$2 million in public funding each year, I might say, their method of keeping the price of fruit and vegetables down was to buy them on Christmas Eve because they said that the greengrocer wouldn't want to have his fruit and vegetables right over Christmas.

So for \$2 million they've told us, the employees, that what we should all do is not buy our fruit and vegetables until Christmas Eve because they'll be rock bottom price.

And I know that the President is a fan of fishing, and they have done a very big survey into the price of fish, in particular salmon. And at the conclusion of their survey - bear in mind they are a publicly-funded organization - their solution, for the high cost of fish in Australia at the moment, is to go and buy a fishing rod and a few hooks.

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LENNON

PRESIDENT:

It wouldn't do them any good if they were trout fishermen like me.

MR LENNON:

And I could go on. In every example, they take a jovial attitude towards a very serious problem, and as a trade union movement we are becoming increasingly concerned that all the pressure to keep the C.P.I. and the cost of living increases down is being placed upon us; is being placed upon us.

So we make the point, and we make it very sternly and very seriously, that if a workable wages system is to remain, not only here but nationally, there must be an equal commitment to it by everyone in the community, and within this Commission everyone who operates within it.

If this Commission was not disposed to grant the increase, the flow-on, from the National Wage decision, we would then have a situation operating within Tasmania where federally-award covered employees would receive an increase and State-covered employees would not, and that would create, I believe, disastrous industrial relations consequences.

If the Commission was not disposed to grant the flow-on then I believe it would, of its own motion, destroy the Conciliation and Arbitration Commission system as we know it in Tasmania.

At the A.C.T.U. Wages Committee recently, without dissent, the union movement that was represented at that meeting recommitted itself to the system of conciliation and arbitration as opposed to the law of the jungle.

And, indeed, it should be recognized that some of the unions and union members in this country would do far better outside the system of conciliation and arbitration than what they would do from within it. But as a trade union movement we are

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MR LENNON:

still firmly committed to a system of conciliation and arbitration.

Central to that, I think, must be to ensure that employees, covered under State awards, are not treated any differently to employees covered under Federal awards when it comes to National Wage adjustments.

There has been great pressure upon the trade union movement from our members to pursue increases outside of the system given the fact that prices went up ten or eleven percent, and more in some cases last year, but wages went up only 2.3%; clear evidence of the fact that the burden has been unfairly placed upon employees in the past.

But nevertheless, given all that, we recognize that we still have a role to play, as unions, in trying to get this economy back on the road, and it's for that reason we recognize that the full indexation system was not sustainable in the present economic circumstances and we moved to a two-tiered approach with particular emphasis for low paid and middle income employees.

I have nothing to add at this stage, Mr President, unless you have any questions.

PRESIDENT:

Mr Lennon, you've asked us to flow on the National Wage increase. You haven't assured us that there would be a commitment to that package of principles were we to decide summarily, for example, that the claim be granted.

MR LENNON:

Normal procedure ...

PRESIDENT:

Is your submission therefore qualified to that extent, that assuming that there will be a commitment given nationally, and that that commitment will be given locally, we should grant the claim?

MR LENNON:

Well, the normal procedure within

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PRESIDENT - LENNON

MR LENNON:

this Commission, Mr President, has been that once you've handed your decision down you have asked for individual unions to give the commitment.

And you have determined in the past that individual awards would not be moved by the amount granted in the National Wage Case unless all the unions, who had an interest in those awards, gave the commitment.

I'm sure that you are aware, and it has been in the press, that there is a special union's conference of the A.C.T.U. on 2 April, and as I indicated in my earlier submission we are part of the Australian trade union movement. We are not divorced from it, and we don't seek to be divorced from it now.

If the Australian trade union movement makes a decision we will be part of it.

Most of the unions who operate within this Commission, and indeed who are affiliated to the Trades and Labor Council, are State branches of Federal unions.

And I don't think that the situation we are in today is any different to the situation we were in last time we were here for a National Wage Case.

The T.T.L.C. sought a flow-on of the Full Bench decision. The Commission considered that matter, granted the flow-on, and then before it was prepared to vary the awards, sought a commitment from all the unions who had an interest in those various awards.

And I believe that that is the situation that we are in today.

MR LENNON:

Nothing different to what it was last time. I can't stand here, Mr President, and give an unequivocal guarantee to you now that all the unions who are party to this system will give a commitment. It's not a decision that I can make. It is a decision, in the past, I haven't been asked to make. It is a decision that the Commission has always demanded the individual organizations who oppose the awards give to the Commission and, in the past, they've done it.

PRESIDENT:

Would you, therefore, be of the opinion, Mr Lennon, that in the event commitments were not forthcoming from certain organizations, that the package of Principles that you would have us bring down, nonetheless, be applied to them whether they gave a commitment or not?

In short, apart from perhaps denying them any money increase - in short, were they to appear before the Commission as applicants, then the Commission would apply the Principles that it had promulgated to those applications in the same way as it would apply the Principles to applications coming from those who had given the commitment.

MR LENNON:

Mr President, I'll answer it this way: If the special unions' conference in early April rejects outright the decision of the Full Bench of the Conciliation and Arbitration Commission, it will in effect reject the system of conciliation and arbitration. We're part of the Australian trade union movement, and if the numbers of the trade union movement are such that that is the decision, then I believe that we will be in the law of the jungle; we won't be within a system of conciliation and arbitration. And it's not for me to direct the Commission as to how it should or should not ensure that its decisions are implemented.

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PRESIDENT - LENNON

MR LENNON:

We operate within the system. Our record has been exemplary, I believe, whilst the Principles have been in place within this Commission. There haven't been too many examples, if any, of the employers coming here complaining about the way in which unions are trying to operate outside the system.

It needs to be understood, that on 6 November last year, when the special unions' conference took the decision to support the two-tiered system, part of the decision it took was to convene another special unions' conference immediately following the Full Bench decision. Now that resolution has been carried through.

In the meantime, other States' tribunals have moved to flow through the Full Bench decision. We seek the same and we understand, I think, as a trade union movement, that if we don't comply with the rules and regulations that this Commission might put on any increase then it will not flow to our members. We are fully aware of that. That has been the situation in the past, and I'm sure that all the unions party to this system are aware that if they don't give a commitment satisfactory to this Commission, then as has happened in the past, they will not get the flow-on.

As to whether or not the Commission then proceeds to try and apply the rest of the Principles to those organizations, I think is a matter for the Commission to determine. It's not for me to tell the Commission how to do it.

PRESIDENT:

Mr Lennon, thank you for those comments. Have you familiarized yourself with the new package of Principles and what they really mean?

MR LENNON:

Do you want to question me about them?

PRESIDENT:

Well I would, because, bear in mind

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PRESIDENT:

that we are a Commission of five. The package was promulgated by a Commission of something like 40, and it seemed to me, anyway, (I'm sure my colleagues will speak for themselves) that on face value some of the proposed Principles may, in certain circumstances, impose great strains on the capacity of this Commission to deal with such important issues, say, as restructuring and efficiency.

I have in mind, Mr Lennon, a hypothetical situation, or hypothetical situations, where negotiations have or are taking place at a variety of enterprises simultaneously and something is being worked out. The end result might be that, in order to properly reward concessions on both sides directed at more efficient processes, something in excess of, say, 4% might be justified.

As I read the new package of Principles handed down by the Commission, a prerequisite to anything in excess of, say, 4% flowing from such an exercise would be that the matter might need to come before an anomalies conference.

So far as I am aware, there's only one President; there could be an awful lot of applications.

MR LENNON:

Sounds like you've got a claim for 4%, Mr President.

PRESIDENT:

Well, I wonder if that would be enough, Mr Lennon.

Seriously, do you believe that this Commission would have the physical capacity to handle a multiplicity of matters of that kind without bogging down completely?

MR LENNON:

Well, I understand and accept the problems that you foresee and to some extent I do foresee them myself. But, in the first instance, we would be hoping that employees, through their unions, and employers

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MR LENNON:

would be able to do most of the work through agreement and conciliation. And the role of the Commission in all the detailed work only applies from dates into the future where agreement can't be reached.

You may be right. I believe, in a lot of circumstances, in excess of 4% will be well justified. Apart from anomalies and inequities, there's also the question of superannuation that's dealt with within this decision. And there is a capacity for that to be part of it as well.

But in the first instance, this decision, I think, has more emphasis upon the conciliation aspect of the system with a fall back to the arbitration aspect. If indeed the new set of Principles places too much pressure upon this Commission to the extent that you can't handle the claims at the rate they're coming in which then has the potential of imposing industrial relations difficulties as a result, I believe you have one of two courses available, either that you seek the assistance of the C. & A. Commission, under a reciprocal arrangement to assist you, or you go to the Government and ask for more commissioners. That is the reality as I've indicated.

The Government, as much as anyone else, must be prepared to do what is necessary to ensure that we retain a workable wages system, and if it can be justified on merit, well then they must be prepared to play their part as well as everyone else, because the alternative, I believe, is not something that they will want and not something that any of us would want in the current circumstances.

So, I don't know what the magic formula is, but I believe that it is (as you, I think, have admitted) somewhat hypothetical. And I believe, in the first instance, we'll just have to see how the conciliation

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MR LENNON:

process operates, and if we bank up with too many applications before this Commission then, as I say, I believe there are one or two alternatives and I've explained those already.

PRESIDENT:

Yes.

Mr Lennon, it seems to me, on my reading of the decision, that we may, if we pick up this package, run into a few problems with individual employers seeking some exemption on the basis of incapacity to pay, particularly in circumstances where the question of supplementary payments is at issue, having regard for the fact that unlike the Federal Commission, who wrote the new Principles, we have what I'll loosely call 'common rule' awards and they don't.

Is it possible, do you think, that in those circumstances this Commission again might be bogged down, given that there was some mechanism available for individual employers to access this Commission, (I'm sure Mr Abey would be able to suggest a method that they could come here) and argue their cases separately?

Perhaps I'm 'tilting at windmills' or 'baulking at shadows' but it does seem to me that the thrust of the Federal decision ... I won't say it gives a green light but it does certainly envisage tribunals dealing with perhaps many more cases of that kind than we've had to deal with in the past - another problem that this Commission would have to try and take on board; I'm not terribly sure how we could do it. Perhaps you could offer some suggestions, other than the obvious one - refuse the claim.

MR LENNON:

Well, I was just going to suggest, when my friend here said, 'No, we could always delete that part from the Principles'.

Mr President, I think that this

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PRESIDENT - LENNON

MR LENNON:

Commission gave a very clear indication to employers in its last decision on what they will and will not accept as a valid argument on economic incapacity. And we've had certain organizations trot up before this Commission in the past and try and argue economic incapacity to pay for some spurious position.

If an employer can demonstrate genuine economic incapacity, then I think that that ought to be heard. We've recognized that that in the past, and I believe that you have set some very stringent statements down and regulations down in your last decision. It seems to me that they would still apply, and I just don't think that we're in ... you're in any position to hear those if they come before you. If they're frivolous, you have power under the Act to dismiss them immediately and if you believe they have a justifiable claim, well then you're in the position to be able to proceed to hear it.

But what has been attempted to be worked out in this, I agree, could be time-consuming compared with previous systems where we simply had indexation and that's the end of it, with various other small avenues through anomalies and inequities to get further increases in work value and there have been very few of those.

MR LENNON:

It is likely that there will be a lot more claims under this because there are more avenues available. But if we don't go for this system then you are going to have a lot more work in section 29's and section 30's and you will probably run into the same problem there.

So we have either got to take on the hard work and try and make this system work as a tripartite group or we go for the alternative which won't be very nice, I don't believe; won't be very good for Tasmania in the current circumstances and certainly wouldn't be any good for the country.

I haven't a crystal ball. I don't know how many employers will argue economic incapacity to pay. All I say is that I believe that we will be able to isolate them out in the conciliation process because I am sure that they will come forward at that stage. It may be that genuine cases, if they can be substantiated, will be fixed there and there will be no applications. But in the event that they come I believe they have a right to be heard if they can show this Commission that they have a justifiable claim as to why they should be exempted.

If the Commission believes it is frivolous then I believe they should use their power and dismiss the claim there and then as you have done in the past. Economic incapacity isn't a new thing. We haven't had too many come before this Commission to date trying to argue under economic incapacity. I think as a result of the fact that we have had a few you have regulated and made it very clear to them what they have to do if they want to come.

PRESIDENT:

I don't want to be understood to be a critic of the new package, I simply

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PRESIDENT:

wanted to raise these matters with you while we have you here. We know that economic incapacity is not a new principle, but what is new is the concept of writing supplementary payments into minimum rate common rule awards.

Now, as I say, that is one way of getting compulsory unionism so far as the employers are concerned, I suppose, if those who wish to complain about that sort of procedure imposing economic strain on their ability to meet the costs that might become minimum award rates.

It is another thing for them to access this Commission in order to be heard. Unless they are members of an organization, a registered employer organization, I can't see how they can be heard. And if they can't be heard and consider that they have no capacity to meet the costs that have been foisted upon them, I presume they would then dismiss. Then we would hear them under section 29. Had you thought of that possibility?

MR LENNON:

Well, I think that possibility has been there in the past. We know that the system is not perfect, that is why we are having a special unions' conference on 2 April to discuss that. No system will be able to come up with a contingency plan for every set of circumstances. What we must try and do is work out a workable system within which the overwhelming majority can survive.

No matter what the level of increase that this Commission may grant at any given time it may well be beyond the capacity of some organizations to pay. It is a question of a fair day's work for a fair day's pay, I suppose. We are getting right into the philosophical question of what is a fair day's work for a fair day's pay. And we are getting to the stage in a lot of these smaller places where our members would be better off on unemployment benefits than what

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PRESIDENT - LENNON

MR LENNON:

they would be at work. And I know, Mr President, you had the case of Tasmaid Foods the other day. Some of that area might be an example of that.

All I can suggest to those organizations who haven't at the moment the ability to access this Commission is that they join their relevant employer organization. Then they will have the ability. It is not only - I mean, employees who aren't members of trade unions only have access to this Commission under certain circumstances as well.

So yes, I suppose the system has a bias towards organization. But that is the only way that we can operate within our democracy, if we have organization, otherwise we do have a mumble-jumble of everything. And really, if those people have a problem with people sitting in high places arbitrating wage increases down upon them then they ought to join their employer organization and come before this Commission and put their point of view.

We can only consider our claims on the evidence that is before us. If some employer has an economic incapacity well then there is the opportunity for them to access this Commission and put their point of view and they will be heard.

PRESIDENT:

Thank you. Mr Lennon, the concluding paragraph, page 34 of the National Wage Decision, print G6800 says:

"All matters presently before the Commission however constituted ... "

- that of course is the Federal Commission -

"... will be subject to the new principles except those matters which are substantially part heard."

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PRESIDENT - LENNON

PRESIDENT: Do you have a view on that?

MR LENNON: I must say, Mr President, I haven't discussed that matter in any depth with my colleagues. I am not a hundred percent aware of what matters are before the Commission in the first instance and secondly which of those matters which are before the Commission are 'substantially part heard' - or in fact what that means.

PRESIDENT: Yes, that is what I was going to ask you.

MR LENNON: But I really think common sense perhaps ought to prevail in this and maybe ... because I am sure at some stage we would perhaps be coming back before this Commission on commitments and what not if you are persuaded to our claim. If you are not it won't matter anyway. We could perhaps or would be in a position to give you some fuller or a better answer if you like - an answer - on what you have just put to me.

But certainly I am not aware of what you have got before you, Commissioner, or indeed what 'substantially part heard' means and I would need frankly some time to have a look at that.

PRESIDENT: Or indeed, if one should read that literally and say if they are substantially part heard, the whole of the old package is available.

MR LENNON: Or just that part thereunder.

PRESIDENT: It seems to me a little unfortunate that the Federal Commission wasn't able to elaborate a little more on that.

MR LENNON: Yes.

PRESIDENT: But if we are being asked to pick up the package holus bolus, it is important to us that we know what it is you are asking us to do and perhaps more importantly, you know what it all means.

PRESIDENT:

Yes, thank you, Mr Lennon. Mr Vines?

MR VINES:

Thank you, Mr President. I, as you would be aware sir, have put the bulk of my submissions in the hearing of T.665. Since those submissions were put, of course, we have had the Federal National Wage Case Decision being handed down.

As I stated repeatedly through my submissions, my association has a policy to seek full C.P.I. indexation. We also have a policy to continue with centralized wage fixation. It appears with the decision that has been handed down in the Federal Commission there is some conflict between those two policies. If we want a centralized wage-fixing system we can no longer have full C.P.I. indexation and vice versa.

We maintain our support for that full indexation. We believe that the Commission has two positions before it, one the continuation of a centralized wage-fixing system based on full C.P.I.; the second for a centralized wage-fixing system based on the two-tiered proposal.

Our concern with the two-tiered proposal has been increased since the release of that decision particularly in relation to press reports regarding the Premier of this State's attitude to State servants in the second tier of that two-tiered proposal.

The two-tiered package is aimed at negotiations between employers and employees preferably using the industrial tribunals as a last resort. In fact the way the second tier principle is worded so that the Commission can only arbitrate two percent this year and two percent next year, quite clearly encourages that work-place negotiation.

But the concern we have, sir, is that that work-place negotiation is not going to be available to our members

MR VINES:

if in fact those reported comments of the Premier are true and that our members are going to suffer a disadvantage compared to other workers in this State.

The two-tiered principles in our view also have a large degree of uncertainty - what some people call flexibility. There is some ambiguity in our opinion in relation to those principles and if they are to be adopted by this Commission we would seek some means of determining the Commission's interpretation of several of those principles.

I fully endorse the comments made by Mr Lennon in relation to the equity of sacrifice in relation to wage-fixing systems and wage restraint by employees. There has been no evidence of any such restraint being shown by employers. Unfortunately they are still not required to show that restraint under this new set of principles which of course makes any system more difficult for employees to accept.

Having said that, sir, we do stay committed to a centralized wage-fixing system; we do continue to have a policy for full C.P.I. indexation. If the Commission pleases.

DEPUTY PRESIDENT:

Mr Vines, you have adverted to a statement allegedly made by the Premier but you haven't told us what it was and yet you have used it in the context of work-place negotiations. You really should tell us precisely what it is so that we all know.

MR VINES:

Sorry, sir, I thought I had gone into detail on that in my previous submissions. The Premier was reported - and it is only off the top of my head at this stage - as saying that the two-tiered proposal or the decision of the Federal Commission was acceptable to him but he believed that any increases under the second tier would be inappropriate for State

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DEPUTY PRESIDENT - VINES

MR VINES:

servants. It puts us behind the
eight ball when we go into any
negotiations on that second tier
basis.

MR VINES: Given that if we are relying on this Commission to arbitrate any second tier, it will put our members at a disadvantage to those who are able to reach agreement with their employer.

DEPUTY PRESIDENT: Did you get the message that there wouldn't even be any negotiations? Is that what you're trying to say to us?

MR VINES: Well, only from what we have read in the newspaper, sir. We haven't been formally notified one way or the other from the Premier in relation to that. We will, if this Commission hands down a decision in relation to the two-tiered proposal, we will of course seek discussions with the Premier to determine precisely what the Government's attitude is.

We have responded publicly to the alleged statements of the Premier. There has been no withdrawal of those statements by the Premier, so we can only assume that those initial statements were accurately reported.

DEPUTY PRESIDENT: Isn't it a little bit risky stating attitudes through the press, rather than face to face?

MR VINES: It is, sir. We didn't start it on this occasion, though.

DEPUTY PRESIDENT: Yes, Mr Vines.

PRESIDENT: Mr Vines, apart from your qualification regarding the money amounts and how they might be obtained, I think I understood you correctly - you were saying that your organization stands committed to full C.P.I.

Do you have any other quarrel with the revised Principles?

MR VINES: We have only, at this stage, sir, been able to go through these Principles at a staff level in my association. My council, at this stage hasn't had the opportunity to

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PRESIDENT - DEPUTY PRESIDENT - VINES

MR VINES:

determine a policy on these Principles.

The restrictions within the Principles, sir - within the second tier - are of concern to us, and largely the degree of concern will depend on the attitude of this Commission to claims beyond 4% - how they will be regarded in relation to anomalies.

At this stage, sir, there's too many unknowns involved in all of this for us to make a firm comment on it, and as Mr Lennon had said earlier, most unions are in that situation and possibly will be in that situation until the special unions' conference.

PRESIDENT:

Sorry. I was just wondering if you'd had a view on, say, restructuring and efficiency, and how that might work in your particular area. Say, for example, this Commission with its administrative hat on, was able to introduce some restructuring and efficiency changes of an order that, prima facie, justified some monetary recognition. Could that situation be accommodated within the Principles, say, if similarly classified clerical staff across the road at Public Trust weren't able to introduce similar changes, and if so, how would it work and how would it be given effect to?

MR VINES:

Well, to take the first part of that first, sir: Yes, I do believe it would be appropriate. I think that is a relatively good Principle, apart from the fact that it's limited by the second tier and consequent on that, if it's arbitrated, to 2% increases.

In relation to how it is going to be applied, as you said earlier, where under quasi-common rule awards, I believe it is going to be difficult for this Commission to apply that sort of decision if we show that there's, for instance, a restructuring of the Tasmanian Industrial Commission which improves

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PRESIDENT - VINES

MR VINES: the efficiency, if of course it can be improved, sir, of this organization.

PRESIDENT: Yes, it would be very difficult.

MR VINES: Well, possibly there, sir, the 4% wouldn't come into it anyway.

I don't know how that would apply to awards.

PRESIDENT: Could you recognize it by way of an allowance, or would it simply be 4% on everyone's classification, for example, if you applied the 4% cut-off, and then would you be faced with a situation of, say, a Class III Clerk getting 4% increase here, but a Class III Clerk over the road not getting a 4% increase?

MR VINES: I can't answer that, sir. But there's another option of course that confuses it even further - if the option of simply reclassifying people is taken.

There is a lot of ambiguity; there are a lot of problems with it and that is why I am suggesting that at some stage along the line, there be some conference so that we can look at those sort of aspects, because I'm fairly much in the dark as to what a lot of it means and my reading of it is that there is a lot of ambiguity, both within Principles and between Principles.

In relation to your comment to Mr Lennon - the last line in the 'Reasons for Decision' regarding 'substantially part-heard' - I believe that just about all of our applications would be substantially part-heard at this time, sir.

PRESIDENT: Maybe they're completed, Mr Vines.

MR VINES: Sorry, sir?

PRESIDENT: Maybe they're completed.

MR VINES: Well, not all of them, but they are

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PRESIDENT - VINES

MR VINES: all, at least, substantially part-heard.

PRESIDENT: Well then, perhaps you would address us on what you understand the word 'substantially' to mean?

MR VINES: Well, I suppose it means all things to all people - call of the card.

PRESIDENT: If, for example, an applicant has put his case - his primary case - and the respondent is yet to reply, and that reply is to be followed by an address in reply by the applicant, would that only be one-third part-heard? Would the case ...

MR VINES: To be serious on it, sir, I believe that the attitude the Commission would have to take is that if an applicant has come up before this Bench, outlined a case, or outlined an application to the Bench, advises the Bench of how it would like this matter to proceed under a set of Principles, I believe that applicant should be able to continue with that case under the same set of Principles because, clearly, when we are lodging applications we are mindful of the Principles that are in application at that time.

For all of a sudden the whole rules to be changed half-way through the game, it can put an unfair disadvantage on the applicants. I would believe that any application that has been outlined to the Commission - submissions have commenced on that application - should be heard under the old Principles, or the earlier Principles.

PRESIDENT: The appropriate Principles.

MR VINES: The appropriate Principles.

PRESIDENT: Yes. Thank you for elaborating on that, Mr Vines.

Mr Vines, one last question. Again, if I've understood you correctly, you

PRESIDENT:

made it clear that your organization supports the notion of a centralized system of wage fixation, but it prefers one that envisages full C.P.I. However, it acknowledges that there is another form of centralized system currently the subject of an application that envisages two tiers.

In the event the Commission opted for the two-tiered system, would your organization, in those circumstances, give a commitment - the same commitment - as the other organizations might be asked to give?

MR VINES:

Well unfortunately, sir, I'm not in a position to advise the Commission either way on that at this stage.

Firstly, we don't know what your decision is going to be. Secondly, my council hasn't had the opportunity to consider the decision of the Australian Commission in any detail, to determine a policy. So I'm not in a position to say whether that commitment would be given or not.

All I can say to you is that we support a centralized wage-fixing system. We preferably support a centralized wage-fixing system that's based on full C.P.I. indexation because we don't believe any other system will, in fact, last the distance.

PRESIDENT:

Would your ultimate decision, as to whether a commitment might be given, be coloured or in any way influenced by the outcome of the special union conference scheduled for, is it 2 April?

MR VINES:

Well, quite possibly, sir, to the extent that we would imagine there would be fairly detailed information provided to that meeting by the A.C.T.U. on the factual implications of these Principles. Quite possibly it could influence our decision either way. It's hard to say at this stage, sir.

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PRESIDENT - VINES

PRESIDENT:

Yes. Thank you very much, Mr Vines.

Ms Crotty, are you going to say anything at this stage in relation to your application?

MS CROTTY:

I'd like to. Sir, as far as the T.T.F. is concerned, our application still has as much weight as it did when we put our substantive submission before you a number of weeks ago.

We have grave reservations about the two-tier system and indeed our national body, The Australian Teachers' Federation, at the special unions' conference that was held during the hearing of the National Wage Case, put that to the A.C.T.U. and I have reason to believe that they will be putting it equally strongly at the special unions' conference on 2 April.

We take the view that our national body is our peak union council and according to our constitution, we take direction from them. If our national body refuses to give the commitment to the two-tier system for the obvious reason that it doesn't bring anywhere near maintenance of salaries to our members (in fact one could argue that there's substantial reduction in their wage if we buy into the two-tier system), then I can categorically state that we would have to take our direction from that national body.

Sir, in respect to the application that we placed before you a number of weeks ago, we put substantive argument as did our colleague, the T.P.S.A., on section 36, public interest. We applied the application to Principle 1 of the current guidelines, which we believe are still in force in this jurisdiction and we ran substantial economic argument to attempt to prove that this State can, at least, consider applying C.P.I. adjustments to the public sector work-force.

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PRESIDENT - CROTTY

MS CROTTY:

We've also attempted in our substantive submission to show that the current guidelines that now apply indeed do have a life-span of 2 years and we refer to transcript and to decisions to show that all parties in this jurisdiction acknowledge that fact, and as far as we are concerned those Principles still stand. They have not been superseded by any Principles that have been handed down by the National Wage Case, and we say, nor can they be in this jurisdiction until such time as this Commission adopts those Principles and the unions give their commitment to the Principles.

PRESIDENT:

Ms Crotty, the 2-year life span would have probably run its full time had it not been for the fact that an application was made by the A.C.T.U. to change all that.

Now, are you saying that notwithstanding that, that this Commission should be held to a decision it took in good faith based upon the submissions and the applications of the Trades and Labor Council and other interested organizations at that time?

MS CROTTY:

Sir, the Principles that this Commission adopted in July last year were distinctly Tasmanian principles.

You've alluded to that fact in the Principles you adopted by direct reference to the Tasmanian economy when we look at Principle number 1.

I understood that this tribunal, this State tribunal, is distinctly independent from the Federal Conciliation and Arbitration Commission, and I think that we've heard that sort of remark as regular as clock work.

And I believe that it's within the power of this Commission to continue with those Principles for the life span of 2 years, as it said it would, regardless of what happens on the national level. That is still possible.

If it doesn't choose to do that, it's still open under the Industrial Relations Act to apply whatever principles it likes to adopt, be it modelled on the Federal Commission or totally different.

And I say that we seek, in the application that we have before you, a retention of the Principles applying in this Commission for a further 2 years.

PRESIDENT:

Did you say you seek continuation for a further 2 years? I didn't

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PRESIDENT - CROTTY

PRESIDENT: quite get it.

MS CROTTY: Sorry, for the duration of the 2-year span.

PRESIDENT: Yes. Then I take it, Ms Crotty, you repudiate the application that's been addressed by Mr Lennon.

MS CROTTY: Sir, I don't wish to speak to Mr Lennon's application, bearing in mind that he puts an application on behalf of all his affiliates of the Trades and Labor Council.

However, I believe that we do have autonomy in our teaching area and any flow-on that might go to that teaching area, you will require from us some form of commitment, and I believe that at that time that that commitment's required, then I reserve my right to then speak to Mr Lennon's application.

PRESIDENT: But isn't your organization an affiliate of the T.T.L.C?

MS CROTTY: Sir, we are an affiliate of the Trades and Labor Council and, like my national union, had difference of opinion with the A.C.T.U. at the special unions' conference, and will in the one on 2 April. I believe that we are within our rights to have difference of opinions to the Trades and Labor Council in this State too.

PRESIDENT: It's a very fundamental difference of opinion that you are now postulating, Ms Crotty.

MS CROTTY: Sir, we heard from Mr Lennon, this morning, that the two-tier system's modelled on fairness to lower income earners.

You'd be well aware that members that I represent are not in that category, and the two-tier system, in effect, will give them no guarantees of any other increase than a \$10.00 flat increase which substantially represents \$5.13 a week to my members, and those in a higher

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MS CROTTY:

category, \$3.00.

I have a mandate from my membership, because we have met on this matter, to seek the C.P.I. increases under the current system that now applies in this jurisdiction.

What may happen at the special unions' conference on 2 April may have some bearing on what we may take in the future, but at this point in time I can only do as I am instructed by my members.

PRESIDENT:

Yes, thank you, you've made your position clear, Ms Crotty.

MS CROTTY:

Just another point on that too. We had some reservations, well, a lot of reservations about the two-tier system, and we are aware that the Premier did go to the Press and stated that the increases of the second tier would be totally inappropriate, but I question this, probably the authenticity of putting that sort of exhibit, if you like, a copy of 'The Mercury' before this Commission.

But, I can say that over a week ago we did write to the Premier, (the Tasmanian Teachers' Federation). We sought an urgent meeting with him to discuss the outcome of the National Wage Case and any increases to the Tasmanian Teachers' Federation could hope to achieve in the second tier. And the Premier has sought fit not to even acknowledge receipt of that letter, let alone talk about talks on that level.

PRESIDENT:

Thank you, Ms Crotty.

Mr Henderson, we haven't heard from you on your application.

MR HENDERSON:

Thank you, Mr President.

From my Association's point of view we endorse the application made by Mr Lennon, and acknowledge the comments that he made about the benefits of

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PRESIDENT - CROTTY - HENDERSON

MR HENDERSON:

having a similar system in place in the Tasmanian Industrial Commission to that which operates in the Federal Commission.

But in doing that we would like to highlight to the Commission a concern which particularly affects the A.P.E.A., and that is the notion of equitable base increases in the anomalies and inequities principle, and also the comments made by the Federal Commission about the acceptability or otherwise of market rates, surveys and assessment, where an equitable base might lie.

And in saying that, I'd refer the Commission to page 29 of the Federal decision, in paragraph 'h', where the Commission notes that it will hold conferences to discuss a number of things, one of which is:

"the method of adjusting paid rates awards, in particular the role of market surveys;"

And we would submit to the Commission that this Commission should hold a similar conference, either as a special conference chaired by the President, or through the auspices of the anomalies conference which will continue to exist under these new principles, to discuss what role, if any, market rate surveys have in the wage fixing in either the public or private sector in Tasmania.

And if the market rate surveys do have any effect in the Tasmanian Industrial Commission, what type of awards, be they paid rates or minimum rates awards, should be affected by such surveys.

And in saying that, there are a number of decisions which have been made in the Federal Commission regarding market rate surveys, which I wouldn't propose to advert to now, but which we would think would be relevant to consider at such a

MR HENDERSON:

conference.

PRESIDENT:

Would you also support the notion that flows from the Federal decision, as I understand it, that there be a minimum rate in the award for, say, a professional engineer and anything above that would be supplementary payment?

MR HENDERSON:

Yes, I noted those comments, Mr President, but also the Bench indicated that equitable-based arguments could only be applied to those awards which were really and truly paid rates awards.

There's certainly no problem from the A.P.E.A.'s point of view in going along that line, but we would oppose any attempt to re-interpret, say, for example, the Professional Engineers Principal Award into a minimum rates award with a supplementary payment.

We would see that award as operating in a fairly clearly defined part of the industrial system, in that the Public Service awards seem to operate generally on a fairly similar basis.

But we would certainly not have any problem with that in respect of what I've already considered to be minimum rates awards, or what are paid rates awards which, in essence, operate as minimum rates awards. In that respect we have no problem with what the Commission said there.

But, in any event, we would see that it would still need to be considered by some other conference other than these proceedings.

PRESIDENT:

Yes, thank you, Mr Henderson.

Mr Imlach.

MR IMLACH:

If I may be permitted, Mr President, to make a few comments.

PRESIDENT:

Yes, Mr Imlach.

MR IMLACH:

Mr President and members of the

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PRESIDENT - HENDERSON - IMLACH

MR IMLACH:

Bench, I support the submissions made by the Tasmanian Trades and Labor Council, particularly the reference Mr Lennon made to the work value principle.

...

If the Commission pleases, I support the application of the Tasmanian Trades and Labor Council, particularly I would like to take up the reference Mr Lennon made to the work value principle.

I could say that we have a particular matter part heard, Mr President, but through no stretch of the imagination could I say it was substantially part heard, nevertheless it is a most important and significant work value case.

Therefore I would endorse what Mr Lennon said, that I would request the Commission to endorse also the words of the Federal Commission in relation to special work value cases. While I can think of one case, there's no doubt in my mind there will be many more to come.

And in that context I would like to put to this Commission that we are seeing our system starting to creak even further, and I don't think anyone in this room would deny that.

What we've had previously was a fully indexed C.P.I. system that has gradually been curtailed, and in this present decision it's been clamped well and truly. Not only that, that clamp has now been transferred over into the Principles of Wage Fixation.

Now that is a highly significant step, and I think it's really applying too much pressure on the wage fixing system altogether.

So, I repeat, it's starting to creak, which our organization takes very seriously, Mr President, and members of the Bench, because you know that

MR IMLACH:

we have, along with nearly every other union, supported the system and we propose to continue to support the system, but we are going to find it much, much harder under this decision.

Therefore, I'd raise the point that within the foreseeable future someone, or some authority, is going to have to 'break out' - in my words.

In other words, this Commission could conceivably, and with propriety, say that it won't be enforcing the 4% clamp in the second tier. It will apply the Principles as they are written, and the words of the decision, without strict reference to the 4%.

And I believe that if the Principles, the new Principles, as stated under this decision, were applied, and this Commission, for example, were to continue to apply the fairly strict interpretation that it always has, of the guidelines, and I take in the new parts of the new guidelines, the 4% becomes an impossible barrier on many occasions.