

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3926 of 1992

IN THE MATTER OF an application by
the Tasmanian Confederation of
Industries to vary the Nursing
Homes Award

re wage rates, classifications,
definitions and conditions of
employment

T No. 3987 of 1992

IN THE MATTER OF an application by
the Health Services Union of
Australia, Tasmania No. 1 Branch
to vary the Nursing Homes Award

re wage rates, classifications,
definitions and conditions of
employment; restructure award in
accordance with the structural
efficiency principle

COMMISSIONER WATLING

HOBART, 9 November 1992
Continued from 19/10/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: Right, well I am not joining all of those so don't get any ideas about it, but maybe we will only take appearances in the matters dealing with the restructuring in accordance with the wage fixing principles. They are the applications from the Confederation of Industries and the Health Services Union.

MR R. WARWICK: If the commission pleases, RICHARD WARWICK for the Health Services Union of Australia, Tasmania No. 1 Branch in respect to both of those applications.

COMMISSIONER WATLING: Right.

MR P. TARGETT: Thank you, Mr Commissioner. TARGETT P.E., I appear on behalf of the Tasmanian Confederation of Industries in both matters.

COMMISSIONER WATLING: Good. Thank you. Right, how do we wish to proceed today? Mr Warwick?

MR WARWICK: Mr Commissioner, the most appropriate thing to do would be for me to give you a short report on the developments that have taken place in relation to the question of restructuring. I'm sure Mr Targett of course would also seek to give you a report.

And, from our point of view, we would seek to press on and continue with the document that we were discussing at the last hearing, and from memory we are up to Clause 28 - Meals. We seek to do that, to have that informal discussion, in relation to the rest of the document and go through that in a fine-tooth comb manner.

COMMISSIONER WATLING: Right. Mr Targett?

MR TARGETT: I have no problems with that process, Mr Commissioner.

COMMISSIONER WATLING: Right. Well, do you want to report now?

MR WARWICK: Certainly, sir. Mr Commissioner, we have in the intervening period undertaken mass meetings in all of the nursing homes throughout the state. That process is not quite concluded. There's a handful of nursing homes still to be consulted, and it is important that we do conclude that consultation because we have in fact conducted a ballot in respect to a number of the matters which we have previously indicated to the commission off the record that we do not have agreement with the TCI in relation to.

So, those meetings are - and the ballots that are going on as part of those meetings - haven't concluded, and the results

obviously haven't been collated as yet. We are in a position to indicate to the commission the areas of non Agreement. We would, however, seek to do that off the record. I can't say to you yet that our position is absolutely finite in relation to those, partly because we haven't conducted - we haven't finalised the ballot - and it looks like from the exit polls that a couple of those are going to be pretty close-run things.

We are expecting, or anticipating, further negotiations this week with the TCI, and time has been put aside for that, and we see a need to go through that process of negotiation before we do have a finite position. The parties have discussed a translation agreement in respect to what will happen once the award is made, and we believe we have a reasonable measure of agreement on that, although that again is not finalised.

We've had discussions with the TCI in relation to a document which we would seek to put to the commission next week, and we do see a need for a document which sets out what the intended consequences of the restructuring are in dot form. The various drafts of the award that have been circulated are significant in the extent to which they change the award and alter the award.

We are mindful, perhaps even a little fearful, that there may be some unintended consequences as a result of a massive redrafting of that sort. So we would clearly be looking next week to put a document to you which very clearly stipulates what the intended consequences of the restructure are so that the parties can have a reference point looking back poste to making of the new award and they will be able to say whether -

COMMISSIONER WATLING: But that wouldn't carry any weight, though, would it?

MR WARWICK: Certainly, if it was an exhibit before the commission it would.

COMMISSIONER WATLING: But, surely the award has got to say what it means, doesn't it? That's what we are doing now.

MR WARWICK: That's the intention of it. But we would simply seek to specify what the intended changes are. Awards can change because of all sorts of reasons. They are very, very complicated documents.

COMMISSIONER WATLING: Yes. I'll have to say to you that I would be very reluctant to take on board your view of the world if you put a draft order to me. It's what's contained in the draft order is the thing that counts, not your interpretation of it. So

MR WARWICK: I'm not suggesting that would be an interpretation.

COMMISSIONER WATLING: Yes, well I will be interested to -

MR WARWICK: Well, it is simply a matter of safeguarding against the sorts of things that can happen. In the process of developing a complicated restructure such as this, and where a number of drafts of documents are provided, there can be typographic errors made and certain things can fall out of the document by accident.

COMMISSIONER WATLING: Well, it won't be on our part, it might be on your's.

MR WARWICK: No, certainly not. I am not suggesting for a moment that it would be the commission's responsibility.

COMMISSIONER WATLING: Yes. Anyway, we can discuss it off the record, but I would have to say to you that I'll be looking very much to any document that you put to me as being the factual position. Anyone's intention or an exhibit tendered to show the intention I am not too sure would carry any weight when it is placed against the order.

So, it is really up to the parties to get the order right. Because when it comes to - even if there is a problem in relation to interpretation, it is - it will go back to what the award says.

MR WARWICK: Indeed.

COMMISSIONER WATLING: It will not go back to someone's - either parties' view of the intention. The intention has nothing to do with it. At the end of the day the parties will work to get a -

MR WARWICK: I did not say that the intention - I said the intended consequences.

COMMISSIONER WATLING: Well, we will wait till the time.

MR WARWICK: Indeed. And that really concludes what I - all I had to report by way of discussions on the developments to that. As I understand it, we are up to Clause 28 - Meals, going through the document off the record.

COMMISSIONER WATLING: Good. Thank you. Mr Targett?

MR TARGETT: Thank you, Mr Commissioner. Since the last hearing date I have undertaken quite a number of changes to the document which was submitted at the last hearing, exhibit TCI.2., to take into account the issues that were discussed at

that particular time including suggested changes and agreed changes between the parties reflecting those discussions - those off record discussions. I would seek to tender that document today to - hopefully that will then be of assistance in processing this matter.

COMMISSIONER WATLING: This then replaces - we will mark this TCI.3. and I take it that it replaces TCI.2.

MR TARGETT: That is correct, Mr Commissioner. Also, Mr Commissioner -

COMMISSIONER WATLING: And -

MR TARGETT: Sorry.

COMMISSIONER WATLING: Good. And this, sort of, then picks up some of the matters we discussed off the record or -

MR TARGETT: That is correct, yes.

COMMISSIONER WATLING: - on the previous occasion when we were discussing TCI.2? So, mark this TCI.3.

MR TARGETT: Also, Mr Commissioner, I have given a further document to your associate which I will also seek to put to you which is a list of subject matters I would seek to amend my application to put that document, that list of subject matters, as being the subject matters contained in our application. It is slightly different to that which was put forward by me at the last hearing date.

COMMISSIONER WATLING: Right. We can mark that TCI.4. and so you seek leave to amend your application to include those subject matters. Any opposition to that?

MR WARWICK: No opposition to the application.

COMMISSIONER WATLING: No opposition, then leave is granted to amend your application to include all those subject matters as highlighted in TCI.4.

MR TARGETT: Thank you, Mr Commissioner. Subsequent to or since the last hearing date, as I have mentioned, I have amended the document which is now TCI.3. There have been in no real way any discussions between us because Mr Warwick has been very busy, I believe, with his meetings with his members to look at the questions that we differ on. I have had meetings with out members since that time to discuss those issues that were raised at the last hearing date and those changes which were raised at that particular time, and the members of the TCI that are involved in this particular industry certainly accept all of the suggestions and agreed

changes that have taken place between the last hearing date and today.

So, on that basis there is not really much that I can report to you. There have been - there has been nothing happen other than that because of the involvement Mr Warwick's had in looking at the issues as far as his members are concerned.

COMMISSIONER WATLING: So, when we go off the record I take it that you are going to take us to those points as well?

COMMISSIONER WATLING: I would seek to, in fact, when we go off the record start at the beginning of TCI.4. again. Illustrate those points that I have made changes to as a consequence of our discussions and then proceed with those other matters which were not fully discussed at the last hearing.

COMMISSIONER WATLING: Right. Right, any further comments. No further comments, then we will go off the record and we will examine TCI.3. Thank you.

OFF THE RECORD

COMMISSIONER WATLING: Let the record show that we have had considerable of the record discussions on the two applications before me and it is my understanding that the parties wish to adjourn now until Tuesday, 17 November at 10.30. Is that your understanding, Mr Warwick?

MR WARWICK: That is correct, Mr Commissioner, yes it is.

MR TARGETT: Yes, that is correct.

COMMISSIONER WATLING: Right. Well, this matter stands adjourned until Tuesday 17th. Thank you.

HEARING ADJOURNED