

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2971 of 1991

IN THE MATTER OF an application by
the Federated Miscellaneous
Workers Union of Australia,
Tasmanian Branch to vary the
Boarding Schools and Student
Hostels Award

re title, scope and wage rates

COMMISSIONER IMLACH

Hobart, 10 July 1991
continued from 28/5/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR K. O'BRIEN: If the commission pleases, I appear for the Federated Miscellaneous Workers Union.

COMMISSIONER IMLACH: Thank you, Mr O'Brien.

MR A.J. GRUBB: If the commission pleases, GRUBB A.J., on behalf of the Federated Clerks Union of Australia, Tasmanian Branch, seeking leave to intervene.

COMMISSIONER IMLACH: Thanks, Mr Grubb.

MR P. BEVILACQUA: If the commission pleases, PETER BEVILACQUA, on behalf of the Tasmanian Catholic Education Employees' Association, permission to intervene, hopefully, in a very brief manner.

COMMISSIONER IMLACH: Thanks, Mr Bevilacqua.

MR W.J. FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD W.J.

COMMISSIONER IMLACH: Thanks, Mr Fitzgerald. Any objections to those interventions?

MR FITZGERALD: No objection.

COMMISSIONER IMLACH: Then it be granted. Now, before we commence, I've been in receipt of correspondence from the president of the Tasmanian Registered Teachers' Association. That was the cause of the delay. I wanted to speak to the president, Mr Barry McFarlane, to point out to him that he was seeking to, I suppose put colloquially, make some submissions in writing which I don't know whether - well, first of all, technically he's not able to do that anyway but there are some points in his letter that indicate he doesn't really know how to get into the system or into this matter, shall we say.

And I wanted to speak to him in the first instance to see if he wanted to withdraw outright. But I wasn't able to speak to him - he's gone away, which he indicates in the letter. So what I propose to do, gentlemen, is to disregard the letter but I think it's fair that you know that I have received it. But as it stands I would not be, first of all, considering anything he's put to me and, secondly, I'll be speaking to him and if he's agreeable I will give you a copy of it in due course or we might even withdraw it; it's up to him. Any comments on that?

MR FITZGERALD: I understand - and Mr McFarlane has spoken to me also about this award and I understand his problems today. I think in terms of natural justice criteria, unfortunately, he can't be here today. But I believe it would be in the

interests of this matter that Mr McFarlane be allowed to put his point of view at some stage. And I think it would be in the interests of this hearing also that the parties be made available of a copy of this letter as soon as practicably possible.

COMMISSIONER IMLACH: Yes. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, I find it unusual that an organisation such as Mr McFarlane's hasn't contacted us about the matter in any way, shape or form. And I can say that there's been no contact made, written or telephonic or personal, in relation to whatever is in the letter. I believe that unless Mr McFarlane is here I can't really address his point of view, and he's not contacted the applicant with regard to putting a point of view. So, I really don't know what his point is. I would be very keen to proceed today having been down the path of appearing in this matter, in effect, three times previously.

For the first time Mr Clues appeared in place of Mr Fitzgerald because Mr Fitzgerald wasn't available and it was adjourned for discussions. The second time Mr Fitzgerald found himself double-booked and the matter was adjourned and the third time we appeared and we were invited to enter into further discussions, which I'll report upon shortly. And we are now, effectively, before the commission on the fourth occasion and apparently, from what you tell us, Mr McFarlane wishes now, at some future time, perhaps, to put something.

My position would be there have been plenty of opportunities and if that organisation wasn't interested before then we shouldn't delay the proceedings now.

COMMISSIONER IMLACH: Yes. Well -

MR O'BRIEN: I do have some matters to put about the other interveners which I will put at the appropriate time.

COMMISSIONER IMLACH: Yes. Well, I must say that this letter only arrived during the morning. I wasn't here for most of the morning but it wasn't here early this morning because I was here earlier on. And, I accept most of the things that you've said, Mr O'Brien, and as I've indicated I propose to disregard the letter because technically it doesn't fill the bill anyway.

I do believe it's fair to Mr McFarlane and his organisation that I don't provide you with a copy as yet. But, I'm making it clear what I'm doing is the best I can to make it clear what the situation is and, on the basis, again, that it was late. Secondly, this organisation has to go through other processes to even aspire to be in here anyway. I can't see how I ought to go any further with it. Mr Fitzgerald?

MR FITZGERALD: Well, commissioner, the only thing I say, I suppose, in Mr McFarlane's defence is that the application has been in terms of the Boarding Schools Award. I assume, because his organisation is principally involved with teaching staff, he wouldn't have had knowledge that this application had any impact on his area because it doesn't relate particularly to the teaching award.

But, as we indicated at the last hearing, the way the application is framed it, in fact, impeaches on areas involving teaching and for that I reason, I presume, Mr McFarlane has sought to intervene even at this late stage. So, I think, it would be wrong, commissioner, with respect, to disregard it totally at this stage. I think there should be some opportunity afforded to Mr McFarlane to put his point of view.

MR O'BRIEN: Mr Commissioner, you've ruled on the matter. I propose to proceed.

COMMISSIONER IMLACH: Yes. And, I have - just further to what you've said, Mr Fitzgerald, I make the point that I haven't completely disregarded it and I advised the parties of what's going on. And, I make the point that in any case the other organisation has to go through processes quite apart from this proceedings anyway to get here. So, that's what I rule, yes.

MR O'BRIEN: Mr Commissioner, in relation to the two interveners, we've had discussions with, firstly, the Tasmanian Catholic Education Employees' Association. There is a demark arrangement between us. When we lodged the application our understanding was that their area of coverage was secured within an agreement registered under the act and the fact that there was an agreement would have put their coverage outside the coverage of this award.

I'm given to understand that the position is changing. That, in fact, an application has been lodged and a title and scope of an award relating to Catholic education has been approved by the commission and subject to proceedings which were held, I think, on Tuesday that Mr Bevilacqua's organisation will be granted an interest in that award when it proceeds - from now and it will now proceed further.

It's never been our intention to intrude upon that organisation's award coverage and we are quite prepared and would indicate we would be seeking to amend our application insofar as it would exclude from a coverage of the award, the subject of this application, employees and employers as to the coverage of the Catholic Education Award which, I think, is the title of the award now being made.

But, I would make the qualification that there is an arrangement between us with regard to excluding certain classes of work from that award and to the extent that the Catholic Education Award didn't cover classes of work in so called non-government schools. This proposed award would intrude there and that is understood between Mr Bevilacqua and myself as, indeed, the Miscellaneous Workers Award now applies to certain classes of work in Catholic education areas.

I have correspondence here from Mr Bevilacqua which reflects his understanding of the agreement and at the appropriate time I think that will go in both these and other proceedings so that the commission has on its record details of the agreement between us with regard to the coverage situation.

In relation to Mr Grubb's intervention on behalf of the Federated Clerks Union, we haven't had detailed discussions at this stage with the Clerks Union about their potential interest in this application. But, I think we have come to an understanding that if we are prepared to put aside and reserve the questions of coverage of certain classes of work in our proposed structure that pending certain discussions on an interim basis satisfies the intervention of the Federated Clerks Union.

Those references in the structure would be in the annexure to our application. In grade 4, the last two words 'clerical assistant' being reserved.

COMMISSIONER IMLACH: Can you lead me to that without too much trouble?

MR O'BRIEN: Yes, it's the last two words in the definition for grade 4.

COMMISSIONER IMLACH: I don't seem to have it.

MR O'BRIEN: The annexure to the application.

COMMISSIONER IMLACH: Yes, I've got it.

MR O'BRIEN: The second page - I think it's the second page or is it the third? The second page, yes, the schedule.

COMMISSIONER IMLACH: Yes.

MR O'BRIEN: Grade 4. Now, you go to the bottom of that 'clerical assistant'. Those two words.

COMMISSIONER IMLACH: And, what are we going to do with them?

MR O'BRIEN: We will not be pursuing them immediately. We'll reserve our right to pursue them. We haven't said we won't pursue them. What we are doing is, effectively, reserving

that question until we've had further discussions with Mr Grubb's organisation. In grade 5 the last sentence 'Employees with specialist clerical skills et cetera would be dealt with on the same basis. And, in grade 6 in the alternative position there, after the word 'or' in the second line the words would have to be rearranged so they would now read, 'may hold post secondary or trade qualifications' and the word 'clerical' would be, again, reserved. They're specific purely clerical matters which I would be proposing to put on the reserved list.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: We'd be prepared to talk to Mr Grubb about Grade 8 in total, and the alternative in Grade 7 in addition. That is the second - the last two lines in Grade 7.

I understand that that satisfies Mr Grubb's intervention - concerns - of his organisation at this stage but, of course he is entitled to be present for the entirety of the proceedings, if he so wishes.

COMMISSIONER IMLACH: Thanks, Mr O'Brien.

MR GRUBB: With Mr O'Brien's indulgence, I would like to indicate that, yes, we have had very brief discussions earlier today, and the position that Mr O'Brien outlined is accepted by us and I will be referring it to our secretary for further discussions, and also with your indulgence, I'd seek leave to now disappear as some rather unfortunate urgent business has arisen which I will have to attend to.

COMMISSIONER IMLACH: I find that hard to imagine.

MR GRUBB: I wish I didn't.

COMMISSIONER IMLACH: Yes, alright, thanks, Mr Grubb.

MR GRUBB: Thank you.

COMMISSIONER IMLACH: Mr Bevilacqua?

MR BEVILACQUA: Thank you, Mr Commissioner. I further endorse Mr O'Brien's words that we have got agreement between us, and there has been a letter of exchange excluding groundsman and cleaners from our Catholic Education Award, and there would have been an overlap with the application here today. We do cover the other areas, etc., in our agreement and our award.

On Tuesday Mr Robinson verbally indicated that we have an interest in the Catholic Education Award and that will be following in writing.

So, at the moment we are under a catholic education agreement which will become the award as soon the format has been approved by the commission's Deputy President, and that will be in the next 3 or 4 weeks, I would imagine.

COMMISSIONER IMLACH: Yes. So just to confirm Mr Bevilacqua and Mr O'Brien, you will be forwarding to me a written confirmation of the agreement between the two unions over this matter?

MR BEVILACQUA: I have no problem with that. I have the letter here. If you wanted, you could copy the one I forwarded to Mr O'Brien yesterday. I'm quite happy.

COMMISSIONER IMLACH: Well, I am happy as long as we receive it, because I think it is good for the history in case there are problems later, that it is in black and white. Thanks, gentlemen.

MR O'BRIEN: Yes.

MR BEVILACQUA: There is a duplicate copy, I will leave it with Mr O'Brien and he can hand it up to you as evidence of the letter that I transferred yesterday and, again with your indulgence, too, I would like to disappear from these hearings as I have an appointment at 3.15 with a rather irate member.

COMMISSIONER IMLACH: Again I find that very hard to believe. Thanks, Mr Bevilacqua.

MR BEVILACQUA: Thank you very much. Thank you, Mr Commissioner.

MR FITZGERALD: I hope that doesn't involve us?

MR BEVILACQUA: No, hopefully.

COMMISSIONER IMLACH: Now, where are we?

MR O'BRIEN: Well, we're now in a position to report on what ensued since the matter was last before the commission when we certainly were given to understand that there would be some purpose in adjourning to have discussions.

Discussions, very, very brief ones took place. There was no agreements reached in those discussions and, as I understand, the position of the employers is one of complete opposition to the application and, that being the case, we would seek that the application be determined by the commission, and we would propose to proceed down that path forthwith.

MR FITZGERALD: Commissioner, it would be a bit of a surprise if I didn't get to my feet I think at this time.

From a matter of procedure, commissioner, we believe that the application which is being pursued by Mr O'Brien here today and previously has to be proceeded step by step, and as you are probably aware, the application is couched in terms of amending the scope of the Boarding Schools Award.

Effectively what it does do is extend the Boarding Schools Award, and I just refer you currently to the scope of that, and I quote, and this is from Print No. 4 of 1989, and I quote:

The scope is established in respect of -

- (a) boarding schools; and
- (b) hostels associated with boarding schools and other educational establishments other than hostels within the jurisdiction of the Welfare and Voluntary Agencies Award.

The intended change, and I am reading from Mr Application - Mr O'Brien's application - where he refers to clause 2 - Scope:

Delete subclause (a) and insert in its place the following -

- (a) independent schools, non-government educational establishments, boarding schools -

- and it goes on. I assume it would then follow on to the current Boarding Schools Award.

Now the effect of that, commissioner, is to extend it from simply boarding schools to virtually all - apart from catholic schools - all schools.

Now what that is doing is effectively creating a new scope clause. Now the practice and procedure adopted by the commission and by your fellow commissioners has been to establish the need for a change of the scope in the first instance and then once that is established and determined then the commission would go through the process of establishing parties and persons bound to the new award.

I believe and strongly submit, commissioner, that - even though not specifically laid out in the legislation of the Industrial Relations Act of '85, it's one which I'm aware of other commissioners in this jurisdiction have followed quite strictly and I would - I believe it would be wrong to allow the - Mr O'Brien to proceed with his application entirely at this point, and I believe the commission should properly determine it simply by determining the scope and then adjourning the matter to allow other parties who may believe they have an interest to apply for such an interest.

Clearly, commissioner, it's establishing the scope in respect to a totally new area - that's independent schools and that's independent schools without a boarding house or a boarding school. So if that's the case, then I believe it's incumbent upon you to follow the procedure of your fellow commissioners and simply go that far in the first instance and then adjourn the matter to allow the parties and persons bound to the award to be determined. If it pleases.

COMMISSIONER IMLACH: Mr O'Brien.

MR O'BRIEN: Mr Commissioner, I draw your attention to the fact that we did precisely the sorts of thing that Mr Fitzgerald says we're doing here in relation to the Cleaners Award when we changed the title to the Cleaning and Property Services Award and changed the scope substantially. You heard that, Mr Commissioner. It was a matter proceeded by consent, but the procedural aspects of Mr Fitzgerald's submission stand the test of that as well as if it was an argued matter, and in that matter no such process was necessary because we were proceeding to - upon an award in which there was an interest.

The difference between what Mr Fitzgerald is saying occurs in some matters and this matter is that where there is an application to create an award, the applicant organisation cannot have an interest in it to pursue it until the question an interest declaration has been attended to, and the certificate of registration amended accordingly. That's the technical problem under which the Act provides and that's the reason that organisations are required and the commission needs to follow a process of setting title and scope of a new award and then seeking to have an interest found in that award. That is not necessary; it is not required under the Act and it is not the exclusive practice followed in this commission.

And I instance your actions in relation to the Cleaning and Property Services Award in December last year which Mr Fitzgerald's organisation was involved in where no such process was followed.

And the second arm of what I have to say is really that I would have to say that there's been no secret about what we intended to do in relation to this award from day one, not only was the application clear but on March the 19th we immediately put on transcript - on page 1 of the transcript - the effect of the proposal to pull together the scope of the Boarding Schools Award, the coverage of the Miscellaneous Workers Award in relation to independent schools, and the areas that were potentially, by common rule, covered by other awards or were award-free. Now that's been the case from day one on March the 19th, and today we're told that procedurally we've got to deal with this question separate from the other question, that is the career and classification structure.

Now I frankly view this as a submission which is designed to have the effect of spinning out this application further and it being the fourth occasion when we're before the commission I believe that the matter ought to now proceed in full. There is no requirement under the Act to follow the course of action Mr Fitzgerald suggests and if there was, he would have pointed it out to you.

So the commission proceeding properly as it does now, and in my submission, we must now proceed and have the application determined in total.

COMMISSIONER IMLACH: Yes. Thanks, Mr O'Brien. Do you want to have another go, Mr Fitzgerald?

MR FITZGERALD: Well I understand that if - seeing I raised that preliminary matter, commissioner, I would have some right of reply. My organisation was indeed involved in the Cleaners Award and the award which replaced it, but Mr Sertori of my organisation obviously was there, but in that particular award Mr O'Brien indicated that it was by consent. In this instance it's not by consent.

I'm sure, commissioner, that the commission is entitled to - well, under the Act, to determine it's own procedure. As I indicated I would concede that there is no legislative requirement to follow the procedure which I'm suggesting, but it's one which has been followed very strictly by your colleagues and I just instance Commissioner Watling in the new Fish and Marine Products Award where that process was strictly adhered to. I understand, in fact, that it's also applied by Commissioner Gozzi in the - initially the Child Care and Children Services Award - I stand to be corrected there - but it's a procedure - and there are other instances which off the top of my head I can't cite at this time, commissioner, but it's a procedure which has been followed closely by your fellow commissioners. It's one which make logical sense in terms of its sequence. It's one which is not required by the Act but in terms of following logical sequences, it is logical.

For those reasons, commissioner, given that we're now seeking to effectively establish a new award, one which is extended beyond the realms of boarding schools and other similar establishments, one which now relates to independent schools as a whole, I believe it's incumbent upon you to follow those procedures determined by your fellow commissioners. And, I could be mistaken but it may have also been followed by you in other awards. I just speculate there.

But, at this time, commissioner wrong - I quite clearly indicate I understand Mr O'Brien has made it clear what his intention was. We've also been up front in terms of our

opposition to it. We were exploring some ways around it. Unfortunately, they weren't - didn't bear any fruit and for those reasons we have had to maintain our opposition. And, for those reasons, commissioner, I urge the commission to follow the procedures which I've outlined and those adopted by your fellow commissioners.

MR O'BRIEN: Mr Fitzgerald raised two points which he didn't raise initially and they only go to the question of the two awards named in the process in relation to the - both of those, the seafood processing one was, as I understand it, the case of setting aside previous awards and replacing with a new award.

MR FITZGERALD:

MR O'BRIEN: No, wrong. And, Child Care and Childrens Services. Removing from Welfare and Voluntary Agencies Award certain coverage and concurrently establishing a new award called the Child Care and Childrens Services Award. We are doing neither. We are varying an existing award in which we already have an interest. That is all I have to say.

COMMISSIONER IMLACH: Yes. Well, I propose to proceed. I don't accept your arguments, Mr Fitzgerald, and I'll do my best to tell you why now. And, I do accept the arguments, generally, of Mr O'Brien in that there's been no secret of the union's intentions from the beginning of this matter and the details were given at the original hearing. Whilst precedents are not everything, this type of procedure was followed in the Cleaning Award by agreement, I acknowledge that. But, it's not unprecedented.

I note that there's no requirement under the act for that process to be followed. I, myself, have adjourned after establishing the scope but, I believe, that's in the case of new awards. This is really expanding the scope of this award. And, I note that other unions have appeared. They, to ensure that their rights are protected. Presumably, they knew or found out somehow or other that this matter was in hand.

So, for those reasons, in particular, I don't accept the argument that we ought to, first of all, adjourn and also - well, I'll leave it at that because we still have to decide the whole matter. But, I propose to decide the matter of scope after we've heard all the submissions.

MR O'BRIEN: Mr Commissioner, I have a number of exhibits with the configuration of your assistance today. Perhaps, if I could have a couple of minutes I will organise them into bundles so that'll save going to and fro.

COMMISSIONER IMLACH: We'll go off the record for a minutes then.

OFF THE RECORD

MR O'BRIEN: Mr Commissioner, in relation to the proceedings, I'd firstly seek to tender an exhibit which is a proposed structure implementation exhibit in this form. It might be on the bottom of the pile.

COMMISSIONER IMLACH: Do you mind if I call that Exhibit K.1?

MR O'BRIEN: No, don't mind at all. I don't know what you'll do when you get to nine. In relation to the exhibit, Mr Commissioner, we would be seeking to amend our claim insofar as this exhibit is inconsistent with anything in the application in relation to rates of pay or percentages or minimum rates adjustments. There are a number of corrections which might arise from it in relation certainly to figures we discussed with Mr Fitzgerald in terms of the structure we were proposing. And, we did have discussions and, I think, we flagged this term when this matter was last before the commission.

The impact of the exhibit is to specify, given that grade 8 is not being proceeded with at this stage, subject to our discussions with the Federated Clerks Union about that matter. But, grades 1 to 7 are remaining under the coverage of the application today. And, we set down there the first stage rate proposed to take effect upon implementation of the classification structure that we seek in the column headed, 'Proposed Rate'.

The relativity is then set out which is a relativity to \$407.00 being the metal trades base trade level. And, other relativities set out below that level have a relationship to the relativities set under the Metal Industry Award when that award structure was varied. So, the proposed rate is the rate to be achieved with that relativity. Then you will see the column, 'Initial Rate' and that is the first stage, the rate we will be proposing that the commission set in relation to the classifications pending minimum rate adjustments, which are set out in the next four columns. And, I believe, subject to anyone's better mathematics than my own, that if you add the initial rate with the four minimum rate adjustment rates you will come to the proposed rate for each of the levels.

COMMISSIONER IMLACH: Shall we cut out Grade 8?

MR O'BRIEN: Well, we would leave it in the exhibit. We are not pursuing it, we make it clear we are not pursuing it at this stage. We leave it in the exhibit because we don't resile from it being a claim to be pursued at some stage, and leaving Grade 8 aside, the remainder of the application would

be - in terms of the grades per se - are probably covered there.

COMMISSIONER IMLACH: What do you say about that, Mr Fitzgerald - Grade 8?

MR FITZGERALD: Oh, it is up to Mr O'Brien, I think, to either pursue or not to pursue. I have to accept whatever he wishes to proceed, whether he wishes to proceed or not. It is not up to me, commissioner.

COMMISSIONER IMLACH: Alright. Well, I will think about Grade 8, Mr O'Brien, but apart from that -

MR O'BRIEN: Thank you. Yes. Well, we put it merely as an exhibit at this stage. We'll make it clear we are not pursuing a variation today in relation to that matter.

COMMISSIONER IMLACH: Grade 8, are you pursuing the rest of them?

MR O'BRIEN: Yes, we're pursuing the rest of the levels today, and the qualifications which apply to those - the definitions of those levels - are those which I outlined on the record earlier as matters which we will be having further discussions with the Federated Clerks Union, but we obviously do not resile from that position, but rather we've adjourned it for discussion.

COMMISSIONER IMLACH: Yes, so I get it clear. This is actually seeking to amend the original application to these figures?

MR O'BRIEN: Yes.

COMMISSIONER IMLACH: Right. What do you say to that, Mr Fitzgerald?

MR FITZGERALD: Well, I assume it - I have, in fact, I think, the same exhibit, and I think from memory it might have been just produced but not actually produced to the commission last time.

MR O'BRIEN: Yes, that's right.

COMMISSIONER IMLACH: So, you accept the amendment to the application?

MR FITZGERALD: Oh, well, the applicant is entitled to amend. I see no problem with it, commissioner.

MR O'BRIEN: Thank you.

COMMISSIONER IMLACH: That's alright, as long as we know. Right.

MR O'BRIEN: And I will come back to some of that later.

In relation to the application as to the scope of the award, we have already put a substantial amount on the record in relation to that matter, but the national wage, indeed the State Wage Principles, have since 1989 stated that the question of rationalising the number of awards covering any one employing body ought to be placed on the agenda for the better administration of awards. Indeed - and that's the passage which was - and I have the National Wage Principles with me - but someone has my State Wage Principles. It is the passage pages 10 and 11 of the National Wage Case decision of August 1989 principles, and which are paralleled I believe in the State Wage Case principles.

The passage which appeared on page 11 of the National Wage Case decision of August 1989, Print H.9100, reads as follows:

In addition, we consider that the following matter should be placed on the agenda for better administration of awards.

And then the two dot points:

- . Updating and/or rationalising the list of award respondents; and
- . Rationalising the number of awards covering any one employing body.

It then goes on:

Proposals for changes of this nature should not be approached in a negative cost-cutting manner, and should as far as possible be introduced by agreement.

We've always made it clear that this award area covered a part of the industry - the Boarding Schools Award - covered a part of the industry. That other awards applied, and that certain areas were not the subject of award coverage.

Mr Fitzgerald referred to this, but I will formally tender an extract of Award No. 4 of 1989, the Boarding Schools Institute and Hostels Award, indicating the existing title and scope of the award and the classification structure, and definitions, such as they are.

COMMISSIONER IMLACH: Exhibit K.2.

MR O'BRIEN: Now, it is not my belief that there is any contest about this award currently applies to certain schools' establishments which would fall within the new definition, and I'll suggest that the award would apply to schools such as Hutchins School, Collegiate School, Scotch Oakburn, Friends School in - because I do believe it does have a boarding facility -

MR FITZGERALD: I think that is to be substantiated, commissioner. I have some doubts there.

MR O'BRIEN: Well, I put an alternative view about that, but if Friends School is not bound to it, it is certainly bound in relation to certain classifications to another award that I will come to shortly.

The position in the past, prior to 1986, was that the Boarding Schools Award was by regulation a common rule award in relation to the classification of groundsman under the Act, and that can be ascertained by looking at the Act and the Regulations.

When the Miscellaneous Workers Award was made in 1986 that effectively superseded the common rule provisions of the act because they only apply in the absence of award coverage and Miscellaneous Workers Award was made in 1986 containing the classification groundsman and I tender an extract from that - from award No.1 of 1990, Miscellaneous Workers Award containing the title, scope, definitions, and classification structure and, indeed, allowances I think.

COMMISSIONER IMLACH: K.3.

MR O'BRIEN: You will see in looking at that award, that the classification which may be relevant would go through caretaker, janitor, and possibly general attendant, cleaner, groundsman or yardman, possibly library attendant, and possibly domestic.

MR FITZGERALD: You haven't got another spare copy, have you?

MR O'BRIEN: Oh, sorry, yes.

MR FITZGERALD: That's all right. Thanks.

MR O'BRIEN: There are employees engaged in a clerical capacity which we're not proceeding with now so I won't go to the question of the application of the general Clerks Award at this stage. There would also potentially be, in some of these areas, common rule coverage from perhaps public vehicles, or perhaps Carrier Award as some of the schools employ staff partly on driving work and partly on other duties. In fact, it's not uncommon for people engaged on grounds maintenance or

similar duties to also be engaged in driving buses transporting children to and from school each day.

There are categories of work that are not the subject of award regulation at this stage, in particular, teachers aide or laboratory assistants - another form of teachers aide work - where there is at present no award coverage. Now if the commission has any doubts or indeed Mr Fitzgerald, I'm quite happy at the appropriate time to take you to our registered rule to indicate that there's no question that coverage for teachers aides and associated work exists under our rule.

MR FITZGERALD: I'd just like to indicate, commissioner, that to make the process a little bit easier, I have sighted that rule and I'd be prepared to concede that at this time.

MR O'BRIEN: So, I think there would be common ground that those areas of employment are not currently the subject of any award regulation and let me say that if our application were granted as to scope there would need to be attention to those classifications in any classification structure obviously, rather than leaving them with potential but not actual award coverage.

If we ignore the clerical sector the real impact of the new scope clause proposed is to take the existing coverage of the award, that is, the coverage of the award as it exists in those schools which run boarding schools because the scope of the award doesn't limit work. It simply says that it shall apply to boarding schools and adds to it coverage of those schools which do not run boarding houses, and that is, in a nutshell, the difference between the proposed scope and the existing scope.

We would have to qualify that to say that we concede that there needs to be an exclusion for persons covered by the Catholic Education Award for the reasons outlined earlier, but given that they were covered by - and are covered by a registered agreement, the practical effect of that change would be nil. So our position is not changed in relation to the scope clause, and that is that the scope clause ought to be set so that independent or non-government schools are covered by the award whether or not they run a boarding house.

Now in the case of those schools that don't run a boarding house or boarding houses, what is the position now? Well the position is that in relation to certain classifications they would be covered - because of its occupational nature - by the Miscellaneous Workers Award. Indeed, those areas of Catholic - the Catholic education area that are not covered by the current agreement - and I refer to cleaning and grounds keeping duties - observe and are bound to observe the terms of the Miscellaneous Workers Award. The two awards are therefore

currently applying in the area of employment substantially the subject of this application.

The effect of extending the scope of the Boarding Schools Award and, to a much lesser extent, the retitling that award, would be to remove the Miscellaneous Workers Award from this area entirely. And, that would have two effects. Firstly, that would that in these independent schools not the subject of the Catholic Education Award, that there would not be a differentiation between award coverage based on whether or not they operated a boarding house.

And, at the same time, those establishments which do operate a boarding house and which, for example, engage - let us say - a cleaner or a caretaker would not now - not as they are now be required to operate under the terms of the Boarding Schools and Student Hostels Award as to certain employees and the Miscellaneous Workers Award as to other employees but would operate under a single award, namely the Boarding Schools Award amended as we propose.

Now, that would seem to us to be one compelling ground for the bringing or the changing of the scope clause as we propose. And, I guess, the question of bringing together the coverage can be dealt with on that basis alone if you didn't touch upon the question of the new classification structure. We, of course, believe that it's a total picture and you must look at the total picture. But, the bottom line is that by giving effect to the change sought in the application, the commission would reduce the need for many employers to have regard to the multiplicity of awards that they would now be required to have regard to in relation to administering their obligations under the Industrial Relations Act.

And, it can't simply be done with the scope clause but that is a necessary part of the process. If the commission on the one hand merely changed the scope clause without doing something about the classification structure, we could come up with a situation, for example, where the establishments now solely covered by the Miscellaneous Workers Award would find themselves covered by both the Miscellaneous Workers Award and the Boarding Schools Award because the Boarding Schools Award doesn't cover all of the classifications contained with the Miscellaneous Workers Award.

So, it is a necessary component of the application that the scope clause be amended. As I say, in what I would have thought was an eminently sensible approach to award regulation by bringing together the boarding schools and non-boarding schools in the non-government schools sector.

The question of the coverage of the various categories of work now outside award coverage or those which may be covered in part by some other common rule award, is another compelling

reason for bringing the scope clause and, indeed, a new structure into being. The intent of the principles, as I read them, are to do away with as far as is possible the obligation on employers to have regard to a multiplicity of awards in administering their obligations under this act.

If our application on scope is rejected then the commission will not have done anything in this area to give effect to that (a) in the principles. If our application on applications on structure is not substantially accepted, then it may be that a change in relation to the scope will not have the fully desirable effect because the award will only apply within its scope but to those classifications or areas of work that are delineated. So, it is necessary, in our view, for there to be a very broad view taken on the classification structure.

Now, we have not withdrawn our position in relation to the clerks, rather we've reserved it because it's our view that it's desirable under the principles that they also be covered under this award. But, we're prepared in the spirit of proper negotiations with an organisation which we would concede at this stage would have an interest in the award as we proposed it to have an input in that matter.

So, Mr Commissioner, we think arguments against this proposition would be, at least, tenuous and certainly destructive to the sorts of principles which lie behind the current wage fixing principles.

And perhaps as importantly, the refusal of the application will leave a number currently award-free areas award-free rather than dealing with them properly in terms of the application of appropriate standards.

I might say that in relation to areas currently award-free, that is, teachers aides and laboratory assistants, that the principle of award coverage, as I understand it, has been accepted in the current Catholic Education Agreement and will be reflected in the new award when it contains classifications.

On that basis, it would seem to me to be an unusual position for the employer organisation to take - and I'm sure there will be some justification put for it - but nevertheless, an unusual position to take that on the one hand in one area of education - the Catholic education area - that award coverage is appropriate, but in another area of private education that award coverage is not appropriate and that would seem to me to be a hurdle over which Mr Fitzgerald would have to jump if we were to satisfy you that there ought not to be coverage of certain aspects of the work.

I think a further point needs to be developed there and that is the question of whether indeed the current principles encourage the development of new career structures because our application is based on the establishment of an appropriate career structure in this award, and I might say that it has been unfortunately developed without any input from the employers because the position in this matter has been simply to say: we oppose your application, and we have drawn together a structure which seems to us, having regard to certain other structures which have been agreed to and certain relativities which have been designed in other areas, a structure which is workable and capable of being tested and we would preface our comments in relation to a structure in saying that obviously a new structure introduced on this basis, that is, in the context of a full arbitration, will need to be the subject of testing and review by the commission as this matter develops.

But in setting a structure now in the light of matters that we're able to put to the commission, we will be suggesting that the commission ought to have regard to structures which have been established in other areas, their relativities, the sorts of work that they cover and the potential for the developing an appropriate structure for testing in this area.

I just tender a very brief extract from the Mechanical Engineers and Founders Award. It's a lengthy decision; I've only got a short page from it to make a very small point. It's effectively a summary page because the definitions of this classification structure relate to a production area rather than a service area and I find it difficult to align the wording of its structure to any proposal here. But I just think it -

COMMISSIONER IMLACH: K.4.

MR O'BRIEN: Thank you. I just draw the attention to the matters appearing on the second page, in particular, level 14, engineering production employee level 1 at a relativity of 78 per cent which is the base relativity we're proposing in our application, and -

COMMISSIONER IMLACH: Just a minute, Mr O'Brien, where is that?

MR O'BRIEN: On the second page.

COMMISSIONER IMLACH: I've got the wrong one.

MR O'BRIEN: I hope it hasn't been put together incorrectly. It's only a two page -

COMMISSIONER IMLACH: I don't think I even have it.

MR O'BRIEN: It must be there. That's the one. That's it.

COMMISSIONER IMLACH: Oh, hang on, what's that - that's it. K.4. Yes. I'm sorry, I marked the Caretakers and Cleaners Award. Right. K.4 -

MR O'BRIEN: Just the second page.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: You'll see that the relativity of 78 per cent has been allocated to an employee who is undergoing up to 38 hours induction training, and we have relied upon that principle, that is, that that relativity applies to someone undergoing initial training to their position and have imported that principle into our structure, and we've actually extended it somewhat as in Grade 1 our definition and you'll see Grade 1 attracts a relativity of 78 per cent, identical to the Mechanical Engineering Award provision which has been approved by the commission.

And Grade 1 reads:

An employee at this level shall be an employee who is undergoing induction and initial job training. Typically, this grade may apply to employees during the first four weeks of employment.

And so it is clearly meant to be a starter rate. A rate while a person is undergoing basic training. And we say that that principle has been approved by this commission in relation to the Mechanical Engineering Award.

The next level, level 13, a relativity of 82%, and there is reference to in-house training.

As I said, the definitions are difficult to align as between this Production Award and the Service Industry Award, and I will be going to service industry-type, or occupation-type positions shortly, but we thought that this decision approved by the commission, identically to the Metal Industry Award approved by the Federal Commission, approves the concept that a training rate relativity ought to be 78%.

The next levels are little bit more difficult to demonstrate. I was very interested in looking at the decision of this commission in relation to the Restaurant Keepers Award, the Hotels, Resorts, Hospitality and Motels Award, and the Registered Clubs Award.

I found that those decisions in an abbreviated fashion have given support to - I can't find it now - have given support to the decision of the Federal Commission in relation to the federal counterpart award. I'm not going to tender them, but

merely refer to those passages, and I will show Mr Fitzgerald the passages.

In the decision matter T.2839 of 1990 on the Restaurant Keepers Award the President said: 'The more fundamental -', sorry, referred to a list of matters subject of the variation, and he says: 'The more fundamental of those matters were made the subject of extensive exhibits and are in all essential aspects the same as have been accepted by the Australian Industrial Relations Commission and are now contained in the Hotels, Resorts and Hospitality Industry Award 1988', because I am proposing to take you to that award structure because it is more demonstrative of the position developed in relation to the ongoing structure than is the current order in the decision in relation to any of these three matters. The - perhaps I can leave these decisions with your associate, Mr Commissioner.

In relation to matter T.2622 of 1990, a decision by the Deputy President to vary the Hotels, Resorts, Hospitality and Motels Award. On the first page the Deputy President said: 'This matter is one of consent and follows the handing down of a decision by the Australian Industrial Relations Commission -', sorry, the Australian Industrial Commission - 'in a like manner affecting the federal Hotels, Resorts and Hospitality Industry Award by Commissioner Smith in Melbourne on 21 June 1990. The Tasmanian award is a mirror award in every sense and covers a small minority of establishments which for one reason or another escaped the broad responsiveness into the federal counterpart award.'

And in relation - there is a - somewhere - a similar decision in relation to the Motel Keepers Award. But what I am really leading to is to tender a document which was prepared by the Federated Liquor Trades Union which sets out the current rates and future rates for the Hotels, Hospitality and Resorts Federal Award on the basis of the implementation of the minimum rates adjustment, and it is a document entitled, 'Award Restructure - Hotels, Hospitality and Resorts'.

COMMISSIONER IMLACH: K.5.

MR O'BRIEN: If the commission will look down under the heading, 'Guest Service', there are a variety of rates struck here. For example, guest service grade 1, which is actually set at 78% refers to cleaner, messenger, car park, laundry and billiard attendant, guest service grade 2, which is set at 82% - and I would assess those at their final January '92 figure against \$407.00 - refers to, for example, a housemaid. The level of the rates, I guess, has to be compared to the proposal in our application which is grade 2. And, what we have is a very general definition which is quite different from the in this award stating employees graded at this level may be

engaged on tasks requiring direct supervision performing routine tasks involving minimal training and little or no discretion on the part of the employee. Indicative tasks at this level should include the work of a pantry hand, kitchen hand or laundry hand as examples.

Now, we would concede that there is a difference in that some of those rates would fall at 78% in the federal award - hotels, hospitality, resort structure - and some at 82%. But, we believe, having regard to the metal industry structure that the fairer rate is the 82% structure, there being a between the two. Within this, effectively, service industry award the commission, in our view, would have regard to the 82% rate as being the appropriate rate. When one looks at the effect of change we are looking at increases which would be based on \$12.50 and then those four minimum rates adjustments as set out in Exhibit K.1 as being the effect of the change in relation to this award.

I'll come back to Exhibit K.5 because we have to deal with the question of the duties of a cook in relation to grade 4. And, K.5 has five cook levels. I don't believe that anyone will argue in this area that five levels are necessary. And, I also note that currently in the Boarding Schools Award there are two levels. And, we propose, in our application, to fix a single level having regard to the nature of this industry.

Mr Commissioner, grade 3 in our application would cover employees engaged on tasks requiring the employee to work without supervision from time to time and may require the performance of a task involving the use of some discretion on the part of the employee. Typically, the employee will have undergone some on-the-job training on this work. Indicative tasks at this level shall include the work of a cleaner, groundsman and yardman.

We rely upon, firstly, your approval of the structure in the Cleaning and Property Services Award in relation to the cleaner as a substantial reason for approving this level, having regard to the fact that the rate, the relativity proposed in this application is identical to the rate and relativity to be achieved for a property service employee grade 1. And, if you look at page - not of the decision but of the award, which is included. It's in the second part after the decision, page 5 of the print. And, there's the definition of the property service employee grade 1: An employee who performs generic cleaning tasks to restore or maintain premises by the removal of soiling and waste to a clean condition provided that a property service employee grade 1 shall also mean a person who is employed by a contractor in a private residence and/or establishment to perform work of a hygienic nature including, but not limited to cleaning and washing, and in addition includes an employee engaged to perform basic office duties. That's irrelevant -

basic office duties but the other part, we would say, is quite relevant.

Then you look at indicative tasks - duties and responsibilities. Include clean, general hygiene - domestic, industrial, commercial, retail et cetera. Refuse removal - use of chemicals, locking doors and windows for access and egress to ensure the building is secure. Transportation - and then there's a reference to record keeping and receptionist duties.

COMMISSIONER IMLACH: This is K.6 we're talking about, Mr O'Brien.

MR O'BRIEN: Yes, thank you.

COMMISSIONER IMLACH: And, what were you saying about those last - you did mention them but what exactly are you saying - basic office duties.

MR O'BRIEN: Well, they're irrelevant for the purpose of the application at this stage. They may be relevant later on but at this stage it's just - I note they're there. We're not relying upon them at this stage of our argument.

And, without going to the entirety of the decision - the relativities are referred to on page 4 of your decision where you quoted Mr Sertori at the top, saying: Mr Sertori advised that between the parties the agreed rate for the Grade 3 classification, the maximum in the award, was \$407.00 per week, or 100% of the tradesmen's rate, approved in the federal Metal Industries Award. This was on the basis that the skills and responsibilities were considered to be equivalent. And that's an important point, I might say, because later in our application we come to the question of who gets 407, and we'll be saying here similarly that you don't actually need to be a tradesperson to access the 407, provided that the skills and responsibilities are considered to be equivalent.

And it goes on: In the same manner, the Grades 1 and 2 classifications in the award were to be set respectively at 87.4% and 92.4% of the Metal Industries Award tradesmen's rate. He confirmed that these relativities and the amounts were the same as those endorsed in three other jurisdictions for the same area of industry or types of classifications. And then the passage goes on to refer to calculations on the application of the increase.

We say virtually in relation to Exhibit K.6 that if you look at the definition proposed for Grade 3 the type of work involved, and having reference to the indicative tasks, is so similar in terms of its skill level, responsibility level, discretion level, as to be able to be easily allocated to the same award relativity level.

COMMISSIONER IMLACH: As what?

MR O'BRIEN: I beg your pardon?

COMMISSIONER IMLACH: As what?

MR O'BRIEN: As the - an employee, a Grade 3 employee under this award. Having said that, obviously it would be useful if there was some generic title given to those grades. We didn't presume to put them in the application. I guess with the feeling that some discussion would lead us to a common view on that. That not being the case, we would I think be seeking to suggest that some generic title such as a schools attendant would be sufficient as a generic title to be applied in this area. It is after all an award specifically to apply almost totally to schools. But that's a matter that I guess we're not opposed to some form of common approach on, if such were possible.

COMMISSIONER IMLACH: What's the application, just calls them grades, Mr O'Brien?

MR O'BRIEN: Yes. As I say, we're quite happy to have them given some broader title, some generic title with has broad acceptance, but we did think when we lodged the application that might have come out in discussions, and as it hasn't we would suggest the term schools attendant.

COMMISSIONER IMLACH: What, for all of them?

MR O'BRIEN: For all of them. I don't think anything really turns on it.

COMMISSIONER IMLACH: No, I think the current fashion is as long as you've got grades that's all that matters.

MR O'BRIEN: Yes. As long as they can be identified and slotted in somewhere, it - I forget whether it was Romeo or Juliet that made the - is accredited with the famous passage - not being one - 'a rose by any other name', etc.

COMMISSIONER IMLACH: Oh, thanks, thanks, yes, right.

MR O'BRIEN: Not being a great -

COMMISSIONER IMLACH: I'm enlightened a little bit.

MR O'BRIEN: - scholar on Shakespeare I can only hazard a guess at to which of the two it was.

COMMISSIONER IMLACH: I can't help you either. Perhaps Mr Fitzgerald can.

MR O'BRIEN: Mr Fitzgerald might know.

MR FITZGERALD: No, I can't, certainly not.

MR O'BRIEN: Well, we have all failed the quiz.

MR FITZGERALD: I'm not sure whether the bursars will be thrilled with the prospect of being called a school attendant, but, in any event -

COMMISSIONER IMLACH: He might come into that clerical section.

MR O'BRIEN: A further stage in this application arises at Grade 4, and the definition as it is says: Employees graded at this level may be engaged on tasks requiring the exercise - (sorry) require an employee (I should say) to exercise a significant degree of discretion regarding the performance of their work and/or liaise with teaching staff and students regarding lesson preparation and delivery. Typically the employee will have undergone some training either at work or at a post-secondary institution, but shall not be required to hold any post-secondary qualifications, to be paid at this level. Indicative duties at this level will include those of a cook, teachers aide, laboratory assistant.

We, on reflection in relation to this, would have thought that, whilst the indicative task there mentioned would be included in this grade, we also believe that the work of a caretaker-type classification would have to be included bearing in mind that that's a classification now existing in the Miscellaneous Workers Award and used in this area. And, to substantiate that I'll tender part of the personnel staff record of a member of ours who is employed at Friends School.

COMMISSIONER IMLACH: K.7.

MR O'BRIEN: And, just for the record it shows that Mr John Day, who was appointed to the maintenance staff employed under the Miscellaneous Workers Award as a caretaker/groundsman. I just intrude that to indicate that that's a classification in the Miscellaneous Workers Award now in use - well, it was as at 12 April when we received this.

COMMISSIONER IMLACH: Do you want to include those names in here?

MR O'BRIEN: Sorry?

COMMISSIONER IMLACH: Do you want to include that name, caretaker, in the grade 4 indicative duties.

MR O'BRIEN: It would probably be useful, yes please, if the commission pleases.

COMMISSIONER IMLACH: Just caretaker or caretaker/groundsman?

MR O'BRIEN: Well, I think caretaker at this stage. A groundsman we've already put at grade 3, someone who solely had that responsibility, would be someone with less responsibility than, for example, this gentleman who has a broad level of responsibility, doing both caretaking and grounds duties.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: In relation to the placement of the caretaker there, we would tender a copy of Mr Commissioner Stephens decision from the South Australian Industrial Commission which established the relativities for two levels of caretaker under the Caretakers and Cleaners Award of the Industrial Conciliation and Arbitration Commission of South Australia.

The commission in that case set the relativities for the two levels at 92.4% and 100% respectively for the caretaker/building attendants grade 1 and 2, the definitions of which appear on page 3 of that decision.

COMMISSIONER IMLACH: K.8.

MR: Page 3, is it?

MR O'BRIEN: Yes, the third page.

MR FITZGERALD: Sorry, what were the percentages again?

MR O'BRIEN: The percentages are 92.4 for grade 1 and 100% for grade 2. And, that is set out on page 4 of the decision where the commissioner said: Leaving aside the aspect of supervision referred to earlier I am quite satisfied that the percentage relativities claimed by the union for caretakers have been amply justified and will therefore be awarded, that is 92.4% at grade 1 level and 100% at grade 2 level.

And, there are there contained definitions of those two classifications, as I said, at page 3. The commission, it will be noted in the decision, had regard to the fact that the South Australian Commission had approved a similar relativity for a cleaner at 87.4% and had regard to that relativity when it set the relativities for the caretakers under that award. And, that can be ascertained at page 2 in the last full paragraph where it says: As the parties have already agreed the cleaners' relativity as 87.4% for grade 1, 92.4% for grade 2 and 100% for grade 3. It is appropriate that I take those relativities into account in determining this issue. So, Commissioner Stephens acknowledged that with approval and then used that as a basis for establishing the relativity of the caretaker.

COMMISSIONER IMLACH: Just a minute, Mr O'Brien. Are you saying that in accordance with your exhibit, K.1, grade 4 at 93% is a fair assessment?

MR O'BRIEN: I think it is. I would concede that it isn't precisely the same as the assessment in the matter referred to in K.8. If the commission goes to Exhibit K.4 you'll find the fourth level is, again, 92.4%. We, I guess, have allowed a little latitude for that considering that we're also including the cook's position at that level. And, also the teacher's aide and laboratory assistant.

In relation to the cook, the Exhibit K.5 sets out the rates federally which were basically for some unknown reason set at 82 per cent for Cook 1. 87.4 per cent for Cook 2. 100 per cent for Cook 3. 105 per cent for Cook 4 and 110 per cent for Cook 5.

MR FITZGERALD: Sorry, what was Cook 2?

MR O'BRIEN: 87.4 per cent.

MR FITZGERALD: Thank you.

MR O'BRIEN: The -

COMMISSIONER IMLACH: What was the 100 per cent for?

MR O'BRIEN: Cook 3 which is described as a qualified cook or a qualified butcher. The position that we take is that the responsibility for a cook in this area is akin to those responsibilities described in Grade 4, that is: Employees graded at this level may be engaged on tasks requiring the employee to exercise a significant degree of discretion regarding the performance of their work.

These cooks in these area, at the very least, tend to establish their own cooking processes and in many cases their own menus and their own ordering. We would be suggesting that it would be inconsistent for the commission to put a cooking position at a lower level than a one which was to be lined up with, for example, the level of responsibility for the caretaker when one has, for example, regard to Exhibit K.8 on page 3 where a caretaker was responsible for security and normal maintenance of a building who may in the course of duties answer all alarms and take preventative action to safeguard the building and contents against damage, but it not responsible for the maintenance of any mechanical or electrical plant as defined and may undertake incidental clerical duties, such as keeping records or providing reports in relation to duties performed.

Our strong view is that a cook working in a - in one of these schools which would inevitably be a boarding school, would be engaged on a process where they would be required to exercise a significant degree of discretion. There's no-one there telling them to turn the oven on or off. They're cooking large quantities of food for generally a significant number of students with a potential for food waste or spoilage and also with the need, one would have thought - although one hears stories of boarding house food - to supply an adequate quality of food, bearing in mind that the people attending these premises are paying significant amounts of money for their - sorry, the parents of the children attending these places are paying significant amounts of money for their care and general board and keep. So we would -

COMMISSIONER IMLACH: Yes. Would it be fair to say, Mr O'Brien, - tell me you don't wish that if you like - that it's really an unqualified cook's rate.

MR O'BRIEN: Well it is really because Grade 5 would be someone who held trade qualifications, yes, and that would be on all fours with the rate struck as outlined in Exhibit K.5, qualified cook. It is an unqualified rate. Our suspicion is that the majority of employees in this area would be unqualified because cooks - qualified cooks are at a premium as I understand it. There may be some at some of the more elite establishments, but in the main, I think most of the cooks in this area are unqualified. So, effectively, there would be two rates and they would be Grade 4 for unqualified and Grade 5 for qualified cooks.

Mr Commissioner, in relation to the other indicative tasks, that is, teachers aides and laboratory assistants, we have not been able to come upon any authoritative approach to the question of setting rates. There are, to our knowledge, no minimum rate adjustment-type decisions relevant to that. There are some cases pending, but it would seem to us, having regard to the importance and the nature of the work involved of assisting the - and the preparation of lessons and the delivery of lessons for the rate to be set at one which, whilst it's not up the level of someone undergone formal qualifications because as we understand it, many teachers aides would not necessarily have a formal qualification.

It ought to be struck at a rate which has regard to the sorts of duties which one would accept that a teachers aide would perform, and that would be in the preparation of lesson material, and in the assistance in the delivery of the lesson.

In the case of laboratory assistants some laboratory assistants do have a tertiary qualification. In that case they would attract, in our view, the Grade 5 rate, having regard to those post-secondary qualifications relevant to their duties.

Employees having such qualifications had been, if not now in the past, engaged at certainly Collegiate and, in our view, also at the Hutchins School, and it would be our submission that those qualifications, post-secondary qualifications, if they are relevant to the duties being performed, ought to be recognised by the payment of the trade rate.

I understand it is a further education - technical and further education certificate which is held by such employees.

Grade 5 employees would be those who hold trade qualifications, or who perform Grade 4 tasks and hold additional supervisory responsibilities, or who hold post-secondary qualifications relevant to their duties. We example the teachers aide as an area such as that.

So, let's be clear. For example, a cook who was a head cook, for example, would be paid at Grade 5 irrespective of trade qualifications. A teachers aide in charge, a laboratory assistant in charge, would be paid at Grade 5. A caretaker who had supervisory responsibilities would be paid at Grade 5 under our proposal.

And I think that that is consistent, for example, with the approach in the Cleaners Award. If we go back to Exhibit K.6 the definition of a property service Grade 3 on page 7 of the order: (iii) Tasks, Duties and Responsibilities, and one of the dot points is: Supervises, directs and guides other employees and assists in the provision of training and induction. That's one of the additional tasks, duties or responsibilities which might be added to those in terms of performance required of an employee at that level. An employee at that level attracts 100% of the base trades rate.

If one has a look at the Exhibit K.5 the rate for Cook 4 which is described there as 'First Cook', and I can see that we'd need to look very closely at the definition to just establish this, is at 105%, so it is actually above the rate we are seeking here for first cook.

But we would concede that the sort of circumstances in that industry where you would have a first cook would no doubt be a little bit ahead of the sort of circumstances that would apply to a first cook in this much smaller type of establishment than, say, a large hotel kitchen where one is preparing meals at high quality for 50, 100, 150, 200 people that are sitting, with a kitchen with a large number of cooks engaged. I think Cook 5 is best described as the executive chef-type rate applying under that award.

Grade 6 has a description in two parts. The second part is a post-secondary trade, or trade qualified person, who has additional supervisory or program responsibilities. That

would refer to, for example, a trade qualified cook who would be being paid 100% because they were trade qualified, but who in addition would be paid an additional amount having regard to their supervisory function, which we have fixed at an additional 10%.

It would also apply to someone with post-secondary qualifications, for example in the teacher's aide area, who had additional supervisory or program planning responsibilities.

Now it may be said that that would be unlikely to be used, and we would concede that it would be a rarity for that to occur, but we would not concede that it would not be a reality that persons at less than teaching level would be used in a supervisory or program planning capacities in areas where there are large staffs and where the establishment would delegate responsibility in a - would be similar to a leading hand responsibility. And so we believe for completeness there ought to be this additional supervisory responsibility level fixed in the structure.

The first aspect of that grade is really related to the classification which appears in the Boarding Schools Award now and that is the classification of matron. We believe that the responsibility of that position, that is, to be in charge of an establishment, to supervise a number of children - let's say, - a not uncommon figure might be 40 children, and in many cases significantly more than that - would be one which ought to attract a level commensurate with that level of responsibility.

It would be fair to say that a number of people holding that position would hold qualifications, and for example, the award talks about a special rate for matron holding a general nursing certificate. That would not be, in our view, a necessary difference to be related in the structure, but it would be indicative of the - one of the functions of any matron would be to attend to any of the health needs of the persons - the children in a boarding school or the hostel. And we believe that a person at that level ought to be attracting a rate significantly beyond the base trades level.

It's fair to say that in the current structure there is a large difference between the - let's say, the laundry hand at the moment on \$299.10 and the matron with a general nursing certificate at \$351.60 or a difference of something in excess of 16 per cent. We feel that differential is not adequate. It, in fact, would devalue the real worth of the position.

If one has regard, for example, to - again, a matter that you approved, Mr Commissioner, in K.6, the 100 per cent rate and what's required to obtain the 100 per cent rate under the Cleaning and Property Services Award, there would be no doubt

that all of the skills required there would be - well perhaps not all of them, but a great many of the skills set out there would be required of a matron, such as coordinating other employees, administrative and clerical duties, liaising with management, staff and clients, exercising discretion, supervising, directing and guiding other employees, assisting in the provision of training and induction, use of well developed level of interpersonal and communicative skills, the implementing and overseeing quality control techniques and procedures.

In addition to all of that, having enough common sense and knowledge to administer an establishment where a great many children are staying away from home, under their care and responsibility would be, in our view, a responsibility significantly above the - what might be described as that sort of base trade or equivalent level of skill and responsibility, and we would believe at level 7 those classifications would not be over rewarded.

The other areas are of course the clerical areas which we will not be touching on today and will have to be determined if they are proceeded, but we would expect that they would be at some future date, but as we have certainly have said, we will not be proceeding without further discussion with the Federated Clerks Union.

COMMISSIONER IMLACH: Yes, Mr O'Brien, I forgot to mention at the start of the proceedings, as we had other matters - or as I had other matters on my plate - I had a phone call yesterday from the ANF - a representative of the ANF -

MR O'BRIEN: Oh, Mr Heapy.

COMMISSIONER IMLACH: Yes - saying he will not be able to attend, but will be advising the ANFs views as to the classification of matron in writing. Well, I haven't received that, so take it for what it is.

MR O'BRIEN: I have spoken to Mr Heapy, I might say. I'm not sure what his position is.

COMMISSIONER IMLACH: I've reported to you what happened, so -

MR O'BRIEN: Thank you.

MR FITZGERALD: Commissioner, what time do you intend to break tonight? I thought we were going to observe normal commission hours and I have some other engagements.

COMMISSIONER IMLACH: Mr Fitzgerald, subject to Mr O'Brien, I'm in your hands. I'm agreeable to stop now if you wish. Whatever you say, Mr O'Brien.

MR O'BRIEN: Yes, I would be happy to do that. I won't take very much longer, so if we break now, I'll conclude very briefly on Friday.

COMMISSIONER IMLACH: Friday. Yes, I must confess I don't really know what the commission's hours are at this time of the time. It's not often, really, that we come to this hour of the day. What's -

MR FITZGERALD: Always thought it was quarter past four. I stand to be corrected on that.

COMMISSIONER IMLACH: What about you, Mr O'Brien, what do you know?

MR O'BRIEN: I think the commission has set its own hours having regard to the circumstances. In some cases I've known to sit to five and even beyond and some have been punctual in terms of finishing at around the time that Mr Fitzgerald suggests, or even a little before or after, depending upon the circumstances.

COMMISSIONER IMLACH: Yes. Well -

MR O'BRIEN: I think it really isn't a matter that the commission has a policy on and probably shouldn't have, but I'm happy to adjourn at this stage.

COMMISSIONER IMLACH: Yes. Well I advise these parties that I think generally speaking I'd be agreeable to finish anywhere between four and half past, so, if you appear again and need to - just remind me of that - I'm quite agreeable, Mr Fitzgerald. This matter is adjourned to Friday of this week.

HEARING ADJOURNED