



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 9925 of 2001

IN THE MATTER OF an application by
the Australian Municipal, Administrative,
Clerical and Services Union to vary the
Community Services Award

Re: wage rates, work value changes and pay
equity

DEPUTY PRESIDENT WATLING

HOBART, 7 December 2001

TRANSCRIPT OF PROCEEDINGS

UNEDITED

**(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)**

HEARING COMMENCED 11.31am

DEPUTY PRESIDENT: I'll take appearances in this matter please.

MR I. PATERSON: If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union.

MR T. KLEYN: Deputy president, TOM KLEYN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

DEPUTY PRESIDENT: Thank you.

MS L. FITZGERALD: Deputy president, LYNNE FITZGERALD, appearing for the Tasmanian Trades & Labor Council.

DEPUTY PRESIDENT: Thank you.

MR M. WATSON: May it please the commission, MARK WATSON, I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT: Thank you. Today's proceedings are to try and thrash out how we're going to proceed with this particular matter and whether indeed the principles as stated in the application need to be dealt with. I'm interested for starters as to whether or not the bulk of this case will be pay equity principle or work value and I'm also interested – if it's going to be pay equity, then how are we going to deal with that. If the bulk of the case is going to be work value, then we need to have a look at the principles under which we're going to conduct that particular case.

I think we've got to get the ground rules right before we start on this application.

MR PATERSON: Thank you, commissioner. I can address on that. I have prepared a longer preliminary submission but part of it goes to that question.

DEPUTY PRESIDENT: Well, I'm happy for you to address your preliminary submission then if you address those issues.

MR PATERSON: Thank you. It may be that we still need to come back to the issues that you've raised.

DEPUTY PRESIDENT: Yes. We might even have to go off the record at some stage of the game to look at other matters.

MR PATERSON: Thank you, deputy president. If you and the parties are happy to proceed, I would make some preliminary submissions on this application. The primary submissions that the union intends to lead in this case is that the work under the Community Services Award has been undervalued,

given that the workforce is predominantly women and that there are a whole lot of – we believe there are a number of assumptions about the nature of work in this industry which are gender biased and it's those issues that we will seek to bring out.

40 We believe there is an undervaluation and that that represents a gender based
inequity and as such this application is open to the application of the pay equity
principle. In effect, this claim is based on the undervaluation of work
performed in an industry. The ASU intends to present material to the
45 commission that supports this approach. Particularly, I believe, there is
relevant guidance to be obtained from the New South Wales inquiry into pay
equity and the submissions to and the decision of the 1999 review of the Wage
Fixing Principles of this commission.

In relation to the New South Wales report and its subsequent incorporation
..[inaudible].. into a decision of the New South Wales Commission, at a broad
50 level that inquiry found that the profile of an industry or an occupation were
undervaluation on the basis of gender is possible or probable, includes a female
dominated workforce, female characterisation of the work often with no work
value exercise having been conducted, weak or low levels of unionisation, high
levels of casual workers, small workplaces in existence in the service industry.

55 We contend that on the face of it, the community services industry in this state
meets most of those tests. Another interesting observation that I'd make at this
point in time is that the New South Wales inquiry also concluded that
comparisons between female dominated occupations and industries and male
dominated occupations and industries should not be a prerequisite for a pay
60 equity claim. That report concluded that they're useful as a guide to the
reliability of rates of remuneration and that the central principle is the
assessment of the true value of the work.

The union contends that there is clear evidence, both in the private for profit
sector and the state service that indicates undervaluation of work performed
65 under the Community Services Award. The submissions made and the
evidence presented will largely relate to the professional specialist and
managerial levels of the Community Services Award, that is, Community
Services Award employees levels 4 to 7. The union accepts and acknowledges
that levels 1 to 3 of that award are appropriately valued and don't reflect any
70 substantial pay inequity.

As the commission is aware and as you yourself, deputy president, have raised,
the application cites both the pay equity principle and the work value principle.
I acknowledge that there is some tension created by an inclusion of both those
principles. My understanding is that the pay equity principle is in effect an
75 assessment of the current value of the work at this point in time. While the
work value principle, as we all appreciate, assesses changes in value of work
over time.

As I've said previously, we contend and believe that the evidence will support the application of the pay equity principle. What we're seeking to do is have the work appropriately valued.

My primary reason for citing the work value principle, in a sense, is that I believe there have been significant changes in the industry since Commissioner Gozzi handed down his decision on the Community Services Award. My submissions and my belief is that a pay equity claim and the pay equity principle is central and that the outcome of that will lead to a proper and true valuation of the work under the Community Services Award. In that case the work value principle would not need to be pursued. However, on the other hand, if for any reason the pay equity principle was rejected or found not to have any application then I believe that there is a subsidiary or secondary claim that can be made. It may need to be the subject of a separate application in relation to work value.

It may be, I acknowledge, appropriate to limit this application solely to the pay equity principle and by the leave of the commission and the parties, I'm open to doing that. My concern is that the evidence that we would gather in a pay equity claim would be relevant to a work value case in the event that a pay equity claim was rejected. That, primarily, is my reason for citing both. The union's intention in this is to pursue a pay equity principle around the true value of the work.

On a slightly different level, the union submits that this application is probably going to be quite distinct from other applications that could be brought to the commission under the pay equity principle. Other instances that have been cited as occupations that could be open to a pay equity claim have been – for instance, the occupation of teachers' aides and whether that work has been properly value or undervalued on the basis of gender. Similarly, there have been examples cited, I believe, in the New South Wales report and certainly in discussions among unions about circumstances such as women working in poultry and meat processing industry compared to men in an abattoir in the red meat industry.

The issue for me is that I believe the inequity and the undervaluation is demonstrable across the industry and it has to do with the recognition of the value of work performed in the industry. I see the issue as being one of whether there is an inequity in the first instance at the level of the industry while clearly the assessment of work done will have to be at the award classification and occupational level.

I just wish to make a few comments on the nature of the industry that this application goes to that I think again make yet a case that is separate and distinct from a number of other circumstances where similar claims may, or pay equity claims may arise.

120 Employers in community services, I believe, tend to have a natural affinity
with the principle of pay equity but are constrained by funding arrangements.
This view is confirmed by the responses received by the union from around 40
organisations. Similarly, the state government at this point in time has a higher
degree of recognition of the impact of award movements and has over the past
three years moved to deal more effectively with cost increases arising from
125 award and other statutory obligations.

A number of these aspects do not find expression in the private for profit
sector. The union proposes to enter into a constructive dialogue with the
Chamber of Commerce and Industry, particularly given that we believe that a
number of the affiliates of the Chamber have indicated their in-principle
130 support in direct response to the union. We are happy and keen to commence
that dialogue as soon as practicable and may be in fact today in conference
facilitated by the commission may be a useful way to go.

The union acknowledges that there's been no prior discussion with the TCCI.
The imperative for making this application as much as anything had to do with
135 the time of year and the stages in the development of our claim and our
keenness to have the matter brought on before 2002.

The union recognises that the critical issue for employers is the willingness of
state and federal governments to supplement funding and response to any
award-based costs. The union has briefed the budget subcommittee of cabinet
and the Minister for Health and Human Services in the Tasmanian government.
140 While no specific undertakings were sought or given, we do have processes in
place for raising the issue. That concludes the submission I have prepared for
this morning's appearance, although the other issue I'll turn to while I'm on
my feet is the timing of this matter. For practical reasons of my availability in
145 January, I would be seeking that the next appearances and hearings in relation
to this matter not be before the commencement of February and also that
clearly may even need to be later than that in order to allow the other parties
present today to consult with their affiliates. If it pleases.

DEPUTY PRESIDENT: Thank you. Mr Kleyn?

150 MR KLEYN: Deputy president, it's not the HSUA's intention to make any
submissions today. I do foreshadow that we will be making some submissions
at future hearings specifically in terms of the specificity of this claim to the
Community Services Award. So, I'll leave it at that at this stage. Thank you.

DEPUTY PRESIDENT: All right. Mr Paterson, I forgot to ask you whether
155 or not there's any application being made by you that this matter be dealt with
by a full bench? There is a need to address section 24(4)?

MR PATERSON: I'll have a look at that and respond but at this point in
time, I'm not making any submissions to that effect but I will have a look at
that section of the Act.

160 DEPUTY PRESIDENT: 24(4B) says that that sort of thing has to be done before we get under way.

MR PATERSON: I don't believe that this application directly affects any other award. It may be the spur and provide some encouragement to other unions taking comparable action in their own areas. I don't believe that there is
165 any particular public interest issue that requires the matter to be dealt with by a full bench. The principle has been set, the Wage Fixing Principle is there. I see nothing in the principles that says, prima facie, that the first application of a new principle should be so dealt with. I make no other submissions at this point in time. Obviously, I'd want to respond and perhaps take time to consider
170 a response if that proposition is put by yourself or by any other party.

DEPUTY PRESIDENT: It's not put by me. I'm just wanting to know whether it's going to be raised. The Act says, these issues have to be raised before we get started. Section 24(4B) says:

175 *(4B) A party to the hearing of an application intending to request the Commissioner to refer the application to the President is to notify the Commissioner and the other parties to the hearing of that intention before the day on which the hearing is scheduled to commence.*

I don't want to get down the line and then in the next few days of hearing and someone say, look, I want to go now to a full bench. So, I want to get all these
180 things cleared out of the way before we get started.

MR KLEYN: Deputy president, I support the submission made by Mr Paterson. It's the HSUA's contention also that it is not a matter that necessarily needs to go to a full bench and we believe that it is appropriate to be handled by a commissioner sitting alone, such as yourself. Thank you.

185 DEPUTY PRESIDENT: Ms Fitzgerald, have you anything to add at this stage?

MS FITZGERALD: Deputy president, only to support both the Australian Services Union and the Health and Community Services Union on that issue in terms of whether it's a matter for the full bench or the commissioner sitting
190 alone.

I think we envisaged that applications under this principle would in fact vary. This application seeks to address the category of employees covered by the Community Services Award, not all employees, and Mr Paterson made reference to, for example, an occupational group such as teacher aides, so we
195 envisage that other unions and maybe a number of unions will bring applications to the commission in accordance with the pay equity principle that looks at the undervaluation of work performed by an occupational group and the undervaluation being because that work has been considered women's work and therefore undervalued and we will be able to demonstrate that and
200 the history of the identification, the skills and the ..[inaudible].. of it.

So this application is not necessarily as broad as others that will come before the commission.

DEPUTY PRESIDENT: Right. Mr Watson, have you any view at this stage?

205 MR WATSON: Thank you, deputy president. I guess my submission today comes from a slightly different point of view. The application that's been lodged, there haven't been any discussions at all between the parties, as Mr Paterson has said to you. I think this matter has been raised from time to time over the years about the obligations on parties to consult with other parties, particularly with award variation matters which then leads to an easier passage
210 once the matter comes before the commission.

I'd have to say that from our point of view, we believe that a matter such as an important matter like this, that there should be an obligation on parties to consult with other parties, not only us, and in the reverse as well, to tease out issues so each party can get an understanding about what the application is
215 about.

The application itself, as presented, I've got absolutely no idea what it's about. The application doesn't tell me anything. I've got nothing to go to our members on, in terms of saying, this is what the union wants to do, to get their views. I'm not for one minute suggesting that we're going to oppose this
220 matter outright but without knowing anything about what the application is about, I'm in a very difficult position to even put a preliminary submission to you today.

I guess what I'm saying, deputy president, is, that I think, before this matter goes any further whatsoever that there should be – we'd be interested in your
225 views, but certainly, we'd be saying that the matter should be adjourned to allow the parties to have some discussions so as I can get a handle on what this application is actually about, so I can then go and consult our members and then when we come back to the commission, we can come back to you – on the positive side, we might have an agreement but otherwise, I'll know exactly
230 what the union wants to do and it's going to make it easier for all parties including the commission, I'd suggest.

That issue that you've raised about whether or not it should go before a full bench, I guess all I can say to you at this point is, that I really can't put a submission to you because I don't know what the application is about and I
235 think just on that issue I'd probably also take a bit of a lead as to what other states have done, particularly New South Wales with their pay equity principle, as to whether or not the matter was dealt with by a full bench initially and perhaps take a lead from that.

I've got an open mind about it so I'm not taking a position now but I really do
240 think, deputy president, there needs to be some discussions, extensive discussions, because this application, on the face of it, according to Mr Paterson's preliminary submissions is quite wide-ranging. It is the first

245 application that I'm aware of that's come before the commission under the pay equity principle and I think we need to proceed on the basis of proper procedure so as all parties know exactly what it's about before we go haring into inspections or even taking this matter any further.

I guess that would be my preliminary submission on the issue. If it pleases.

250 DEPUTY PRESIDENT: Right. I'd have to say that I don't think it's unreasonable that you require some discussions to take place and it is, as far as I'm concerned, any work value case or any pay equity case is a fairly significant issue. I've been on a number of work value cases before and they're not simple cases and there's a lot of underlying issues that need to be discussed. I'm going to adjourn these proceedings to enable discussions to take place on the application. I will relist it at some date in the future after I'm
255 advised by the applicant that discussions have been completely exhausted and at that time when we do reconvene I expect, Mr Watson, you'll be in a position then to address some of the matters that I've raised today.

Unless there's any further comment, I'm going to adjourn these proceedings sine die to enable discussions to take place between the parties.

260 The matter is adjourned.

HEARING ADJOURNED SINE DIE 11.53am