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TRANSCRIPT OF PROCEEDINGS

O/N 0469

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 11434 of 2004

BUILDING AND CONSTRUCTION INDUSTRY AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Construction, Forestry, Mining and Energy Union,
Tasmanian Branch to vary the above award re vary
clause 38 - amenities**

HOBART

2.00 PM, MONDAY, 24 MAY 2004

HEARING COMMENCED

[2.18pm]

PN1

MR B. STIRLING: I appear for the CFMEU Construction and General Division, Tasmanian Branch.

PN2

MR R. FLANAGAN: I appear for the Australian Workers Union, Tasmania Branch.

PN3

MR W. WHITE: I am from the CFMEU.

PN4

THE COMMISSIONER: Appearing with Mr Stirling, yes.

PN5

MR C. ATKINS: I appear for the Master Builders Association of Tasmania.

PN6

MR P. MAZENGARB: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN7

THE COMMISSIONER: Yes, Mr Stirling?

PN8

MR STIRLING: Commissioner, this is an application to vary the Building and Construction Industry Award. Specifically, it is an application to amend clause 38. The union contends that an anomaly exists in the award where division A provides for amenities for building work undertaken within the award. It then provides no further prescription for amenities other than that which is contained in occupational health and safety legislation. The award then goes in division B to prescribe a series of amenities that will apply to civil maintenance and other work.

PN9

This is simply an application to insert into clause 38 of the Building and Construction Industry Award some prescription as to amenities. The union has put forward in its application what it makes application to be inserted. My understanding, Commissioner, is that that application meets with the support of the Australian Workers Union but I have not been able to arrive at any position or, indeed, have any detailed discussion with the employer respondents to this matter. The union does not consider that its arguments in support of the application would be particularly more detailed and more complex than that.

PN10

We simply have a view that there ought to be an adequate provision in division A of clause 38 of the award for some sort of prescribed amenities. There has been a longstanding position amongst our members that conditions as to amenities on building sites around the State are inadequate and the union has done some work in terms of putting together photographic evidence, and the

like, of what it considers to be substandard, unsafe and, indeed, unhealthy amenities provisions, or a lack of amenities provisions.

PN11

Given that we do not consider that the arguments that would be advanced in the Commission in arbitration would be particularly complex, the union, as it foreshadowed earlier, would make application that some degree of conciliation of this matter, with the assistance of the Commission, might be useful to bring the parties closer together. The union is in a position where it is willing to negotiate and to come up with an agreed outcome but it has been difficult to bring the respondents to this application into that process and the union considered that that might be something that the Commission could assist the parties in achieving, or at least go some way towards achieving this afternoon. If the Commission pleases.

PN12

THE COMMISSIONER: Yes, Mr Atkins, what do you say to the proposal and, perhaps, what is your response to the proposal in principle values to have some form of prescription in relation to amenities, etcetera, actually in the award as distinct from the detail of the application?

PN13

MR ATKINS: If the Commission pleases, certainly, let me place on the record that the Master Builders Association supports provision of appropriate amenities on building sites but we need to take into consideration that a construction site is not a factory and it is not an office block. The issue here is that the issue of insertion into the award be done as support as we believe there are other appropriate methods allowed for under other various pieces of legislation that will achieve the same outcome through codes of practice.

PN14

Certainly, the association and a number of other industry organisations, including the unions, have already made joint representation to the Workplace Standards Tasmania in a co-signed letter by myself and member FitzGerald seeking the involvement of the acting direct in relation to those matter to develop an industry code of practice. So, from where we are sitting, we actually support specification of amenities for construction sites.

PN15

The issue of placing it into the State award may create conflict on building sites as there are no provisions under the National Building and Construction Industry Act, and those particular respondent employers would need to comply with the Workplace Health and Safety Act. So we have potentially two sets of issues to resolve and I believe that existing legislation rather than the award, which has a limited scope, is likely to create a better outcome. That would be our contention.

PN16

THE COMMISSIONER: Mr Mazengarb, what do you say?

PN17

MR MAZENGARB: Yes, thank you, Commissioner. With regard to the comments and observations made by my colleague Mr Stirling, I can indicate that there have been some discussions with the TCCI involving the State Secretary of the CFMEU and myself with Mr Stirling. It appears though there is a little bit of a misunderstanding with regard to getting to a position where we may be able to reach agreement and, because of that misunderstanding, that is why we are here before you today, in effect, at this point of time, in arbitration.

PN18

In relation to the application, our position is exactly the same as the MBA. There is legislative and statutory obligations placed on employers at the moment. We understand that there is the development of a code of practice which has been a joint approach by both the employers and the unions and we would see that the potential exists for conflict if there was an application successfully made to incorporate it into the award. Certainly, from the TCCIs perspective, make it quite clear that, again, along with the MBA, that it would be our view that it would be appropriate that employees have adequate amenities when they are working on building sites, but it is not necessary for that to go into the award. If the Commission pleases.

PN19

THE COMMISSIONER: What is your response to Mr Stirling's proposal that we go into a conference situation at the moment?

PN20

MR MAZENGARB: Certainly, from my perspective, I am always willing to go into a conference with a view to reaching some sort of conciliatory process or outcome, so I certainly wouldn't oppose the request from Mr Stirling along those lines.

PN21

THE COMMISSIONER: Mr Atkins?

PN22

MR ATKINS: I, likewise, would be in the same position.

PN23

THE COMMISSIONER: Yes, well, in the circumstances, I propose to adjourn these proceedings. There is no likelihood of them resuming here later today, I wouldn't think, Mr Stirling, in a formal sense.

PN24

MR STIRLING: Do mean to suggest by that Commissioner that - - -

PN25

THE COMMISSIONER: Well, I have got to take into account the convenience of Auscript, you see.

PN26

MR STIRLING: Certainly, Commissioner. If we were to go into conference, then - well, unless there is an outcome and - - -

PN27

THE COMMISSIONER: If there is an outcome, we will deal with it in another way. Yes, we will adjourn in private conference. Thank you.

NO FURTHER PROCEEDINGS RECORDED

[2.30pm]