

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2587 of 1991 and
T No. 2473 of 1990

IN THE MATTER OF an application by the Tasmanian Prison Officers Association and the Tasmanian Public Service Association (now the State Public Services Federation Tasmania) to vary the Prison Officers Award

re structural efficiency
principle

T No. 5092 of 1994

IN THE MATTER OF an application by the Minister administering the Tasmanian State Service Act for the making of an award

re Prison Service Enterprise
Award

COMMISSIONER IMLACH

HOBART, 7 July 1994
continued from 31/5/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR C. WILLINGHAM: Good morning, Mr Commissioner. CLIVE WILLINGHAM. I appear for the Minister for Public Sector Management.

COMMISSIONER IMLACH: Thanks, Mr Willingham.

MR P. NIELSEN: Mr Commissioner, NEILSEN's my name; initials P.L., and I appear on behalf of the Tasmanian Prison Officers Association, along with **MR B. MASTERS** and I put in apology for our secretary, **C. HUGHES**.

COMMISSIONER IMLACH: Thanks, Mr Nielsen.

MR K. GREY: If the commission pleases, KERRYL GREY for the State Public Service Federation Tasmania.

COMMISSIONER IMLACH: Thanks, Mr Grey. Well, Mr Willingham?

MR WILLINGHAM: Thank you, commissioner. Before we commence, commissioner, could I just provide the commission and other parties with a revised copy of the Prison Service Enterprise Award. There was a printing glitch on page 9 of the document filed with the commission in clause 12(c), so I have sufficient copies here, I wonder if the commission could just take these and -

COMMISSIONER IMLACH: What do you suggest, Mr Willingham, incorporate it in the claim or put it in as an exhibit?

MR WILLINGHAM: I think it might be better just to incorporate it within the application, commissioner.

COMMISSIONER IMLACH: So, it's an amendment really, isn't it?

MR WILLINGHAM: Yes.

COMMISSIONER IMLACH: Thanks, Mr Willingham.

MR WILLINGHAM: There are no other changes at all, commissioner, to the document that was filed with the commission.

Mr Commissioner, our submission is fairly brief. This application arises as a result of submissions made on the last day of hearing when you will recall as Exhibit M.2 we tendered this document in its earlier form. There was some debate, particularly from the Prison Officers Association as to whether the minister had a right to put forward such a document and have it considered by the commission, and the association queried the status of that document within the context of the special case.

You will recall that as a result of those discussions - those submissions, I had indicated to the commission and the parties that we would immediately thereafter file that document as an application under the minister's hand.

I think it only requires me to say, commissioner, that the application is validly made and properly made within the requirements of the wage fixing principles and particularly the structural efficiency principle, as contained in this commission's principles of 1989, 1991 and 1993.

The purpose of the proposed award is to reflect not only the intent and the spirit of structural efficiency as enunciated in the commission's principles, but to have a document that the parties who service this award, indeed the commission itself, can look and understand simply, plainly and clearly. It is conformity with the prescription to make awards more relevant and to make awards simple to understand for those who use it.

It conforms with the principle that awards should be relevant within their industrial relations environment. It conforms with the principle that increasing awards should be specific to the work place or the enterprise that they are intended to cover.

We have said, commissioner, and it's worth repeating, that this is our proposed award. Nevertheless, we say again that this document is capable of being varied through discussions and by agreement with the parties that are intended to be listed under provision of 63(10) of the act as registered interested parties.

There is nothing final about this document. There is no aspect of it that we would not willingly discuss with the parties in order to achieve an agreed, final document.

Mr Commissioner, in relation to the special case, that is, matters T.2473 and T.2587, it is a matter of record that those applications are be mounted pursuant to the structural efficiency and work value principles. As we say, this application is wholly and totally consistent with the structural efficiency principle.

You will recall that the association - the Prison Officers Association - supported by the SPSFT - has itself proposed significant alterations to the Prison Officers Award and their justification for so doing is partly based on the structural efficiency principle.

As a party to the Prison Officers Award, we have every right and we exercise it now to make such submissions and applications as we deem appropriate in relation to the structural efficiency principle.

It is our submission, Mr Commissioner, that it makes eminent good sense for this application to be dealt with contemporaneously with the applications that currently form the special case. However, if the commission is not disposed to accept that proposition, it gives me no great inconvenience for the application to be dealt with in isolation from the special case in which circumstances, commissioner, we would be seeking from you early hearing dates for the prosecution of this application at the convenience of the commission.

And unless I can be of further assistance to you, sir, that concludes my submission.

COMMISSIONER IMLACH: Yes. Well I propose to join this application to the other applications, Mr Willingham.

MR WILLINGHAM: Thank you, Mr Commissioner. If - subject to the what the other parties have to say in response to your pronouncement, commissioner, I'd seek the opportunity to - a little later - to address you on scheduling.

COMMISSIONER IMLACH: Thanks, Mr Willingham. Mr Nielsen?

MR NIELSEN: Well, Mr Commissioner -

COMMISSIONER IMLACH: Well first of before you - I'm sorry to cut you off in midstream, Mr Willingham produced the corrected copy shall we say of the application, you've got no objection to the original application being so amended, have you?

MR NIELSEN: Not in that particular position.

COMMISSIONER IMLACH: Thanks, Mr Nielsen. Now, what else?

MR NIELSEN: Well, Mr Commissioner, actually you've already indicated the direction of proposal. Prior to your comment your attitude would have - was that this is a separate application. There are two applications by the employees before you in regards to - and have been for some time and it was our desire that those two separate applications should have been dealt with and finalised, with respect to you, Mr Commissioner, and then with the minister's advocate, consideration then to deal with this T.5092.

Having said that, we're mindful of some of the issues that the minister's advocate has referred to this morning and there has been some dialogue and discussions to arrive at those agreement in those areas, and some of those issues in regards to the first class custodial officer - other issues have pleased us to see that we're heading in a direction but as I understand my instructions - and they're a little bit belated now in view of your comment, Mr Commissioner, that we would

have desired that T.5092 should have been dealt with after these - T.4783 and T.2587 had ran their course.

COMMISSIONER IMLACH: Yes, Mr Nielsen. As you've no doubt guessed, my position in this matter is pretty well taken for granted in that Mr Willingham did produce this during the hearing of the other two matters and I received it at that time without any problem because it does deal with all the matters we are dealing with in those other two matters -

MR NIELSEN: Well -

COMMISSIONER IMLACH: - and -

MR NIELSEN: - sorry -

COMMISSIONER IMLACH: - that's all right - and I feel it's quite proper, in order and reasonable to do it all together as one. I can understand your position and I take note of it - it's on the record - but as far as I am concerned we ought to deal with it all at one - in one.

MR NIELSEN: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Mr Grey?

MR NIELSEN: If I may, Mr Commissioner, Mr Masters would like to address you.

COMMISSIONER IMLACH: You're prepared to concede that, Mr Grey, are you?

MR GREY: Yes, sir, yes.

COMMISSIONER IMLACH: Yes. Mr Masters?

MR NIELSEN: I'm sorry, Kerryl.

COMMISSIONER IMLACH: That's all right.

MR MASTERS: Mr Commissioner, it's with great pleasure that I hear of your decision because in fact, as indicated by Mr Nielsen, this was submitted during the course of a special case and we have taken it in that course and in fact have - in our rebuttal status which our preparations are and the work is at present under way in completing those rebuttals to such an extent that we hope to certainly be before you again, Mr Commissioner, before the end of the month or at least early August subject to it being convenient to you, and during the course of those rebuttals, as you have now - I understand quite clearly indicated - we will be raising numerous points that are in this document and from that point I - we, the TPOA, are very pleased to hear that you have combined it with that because in fact that's the manner in which we had thought

it had - or taken it as being presented so we would be able to respond during the rebuttal stage of this special case, and I thank you for that, Mr Commissioner.

COMMISSIONER IMLACH: Thanks, Mr Masters. Mr Grey?

MR GREY: Sir, I basically just want to reiterate that, that I'm - our initial position was that they ought not be joined. Bearing in mind that I've been on leave and haven't had a chance to go through the government's proposal with our members to see exactly what effects they've got that I've very pleased to hear Mr Willingham say that there is nothing final and no aspect of this proposed award that wouldn't be subject to further negotiation and refinement. So in that sense, I don't think it does any great damage to the employee organisation's submissions regarding the special case or the work value arguments.

COMMISSIONER IMLACH: Thanks, Mr Grey. Now before we get round to any fixing of times, have you got anything to say about all of that, Mr Willingham?

MR WILLINGHAM: Well I put on record, commissioner, that the brief submission of Mr Masters seem to be different tenor than that of Mr Nielsen, but as long as he is happy I am happy. Certainly the first time this morning he's been happy, in my experience.

The second point I'd raise is this that the document that was before you as M.2 and is now before you, commissioner, as application T.5092 - I would like to make this point very clearly so that there can be no misunderstanding by the parties, commissioner, but the application that is before you as now as T.5092, in respect of that, we have made our substantive submissions. There is not a need for us upon the resumption of the special case to make further major submissions in relation to our proposed award.

They have been put to the commission in the form of Exhibit M.2. For our part it only requires us to hear the formal response of the two associations. I'm sorry, the association and the federation - and to make such comments as we are entitled to in relation to that application.

I noted Mr Masters' comments that he had proceeded on the basis - that the association on the basis that that is in fact what would happen, so why the objection to joinder I'm unsure, however, the document is put forward for more than one purpose; it is not just the document which sets out the minister's preferred position in relation to its contents, Mr Commissioner. It is a working document from which all parties can proceed towards the sensible resolution and finalisation of this case. It does not purport, as I have said, to be our final position. It is capable of being discussed ad

indefinitum with the parties if they so choose. However, Mr Commissioner, if the parties choose not to enter into such discussions, if the parties choose merely to make their response to our proposed award by way of formal submission in this commission, in the special case, then that's their choice. That's their choice and our position will be as is set out.

So I alert the parties to the fact that whilst our position is flexible, it is flexible to the extent that it takes two to make that flexibility have a practical application. If they choose not to use it, then what we have put before you is what we put before you and it stands unchanged.

But I want to make the point one more time, Mr Commissioner, in case there is any lingering doubt that the purpose of us making this application was simply to set down our overall view of what this special case is all about and how the outcome of it should be reflected in an award of this commission. There is no suggestion and nor could there be that it is a delaying tactic or that your joinder of this matter will result in further days of hearing being required by the minister to talk to this endlessly. Our submission - our substantive submission has been made. I just thought it might be worthwhile, commissioner, placing that emphatically on the record. If the commission pleases.

COMMISSIONER IMLACH: Yes. Thanks, Mr Willingham. Well I think everything has been said about this application and the previous two that are all now joined and there's no need for me to add any more except to say that I think the parties ought to look closely at all that's before the commission and certainly prepare their response as mentioned, but certainly also try and reach settlement on as much as possible, because if it comes to me to decide one way or the other, inevitably someone is going to a harder deal than the other and it's happened many times before and I think it was the Automotive Industries case in the private area, the unions virtually left the ball park to the employer who ceased the opportunity and put up all sorts of things, many of which were granted, and the unions did nothing.

Now I'm not saying that's the case in this particular example, but all I'm saying is if it comes to me for arbitration, what I come out with could well be worse than what is put up already. I don't think so, but what I'm saying is the end result could be worse than what you could have obtained by negotiation.

Now we'll go off the record just to try and fix a date.

OFF THE RECORD

COMMISSIONER IMLACH: This matter, T.5092, plus the other two claims, T.2473 and T.2587, will be - resume on Monday the 1st of August at 10.30 am, and continue if necessary on into the next day, Tuesday the 2nd of August, 10.30 am; and then the minister will give his final reply on the matter and then it will be closed on Friday the 5th of August at 10.30 am.

Anyone want to say anything else? I look forward to seeing you then. Thank you, gentlemen.

HEARING ADJOURNED