

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3871 of 1992

**IN THE MATTER OF** a referral of an application by the Australian Institute of Marine and Power Engineers, Victorian Branch for determination of award interest pursuant to section 63(10)(c) of the Industrial Relations Act 1984

re Marine Boards and Shipping Awards

DEPUTY PRESIDENT

HOBART, 7 October 1992  
Continued from 3/7/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

DEPUTY PRESIDENT: Thank you. Well my recollection is that when we were last here I had actually dealt with applications by the Australian Institute of Marine and Power Engineers to get interest in two awards. The first one was to - in relation to the Shipping Award which we disposed of, and a decision was handed down on that one. However, I had adjourned the application and referral from the Registrar as it relates to the Marine Boards Award, and I did that following an indication from the Merchant Service Guild of Australia, Victoria and Tasmanian Branch, that it was opposed to the granting of interests by the applicant.

And I did that - granted that adjournment in the hope that the parties concerned would have some discussions and see whether or not they could iron out their differences and to then to come back to the commission and report progress as to whether or not there was still an objection and if there is an objection, I'm prepared to hear argument on why interest should be granted or why it should not be granted, and that part of the act which deals with the criteria for the granting of interest is 63(10)(b) and I take it that all the parties are familiar with what the details of 62(10)(b) - sorry, 63(10)(b) require. However, the first thing is, is there anything to report? Oh, I haven't formally taken appearances.

**MR I. MATTHEWS:** If the commission pleases I appear on behalf of the Australian Institute of Marine and Power Engineers. My name is MATTHEWS, I.

DEPUTY PRESIDENT: Sorry, Mr Matthews. Yes.

**MR S. GROVES:** Thank you, Mr Deputy President. If the commission pleases, I appear on behalf of the Merchant Service Guild in replacing **MR B. SMITH**. My name is STEPHEN GROVES.

DEPUTY PRESIDENT: Thanks, Mr Groves.

**MR M. HILL:** If the commission pleases, HILL, M. I appear on behalf of the Metals and Engineering Workers.

DEPUTY PRESIDENT: Fine. Thanks, Mr Hill. Mr Matthews?

**MR MATTHEWS:** Thank you, Mr Deputy President. On the last occasion we were before you on this matter, Mr Deputy President, it - the arrangement was that the parties would go away and talk -

DEPUTY PRESIDENT: Yes.

**MR MATTHEWS:** - and the Australian Institute of Marine and Power Engineers, after the hearing, wrote to the Merchant Service Guild by letter addressed to the federal secretary of the Merchant Service Guild, Mr Michael Fleming, and if I could hand up an exhibit of that letter.

DEPUTY PRESIDENT: Yes. Thank you. Any more - further copies required? No.

MR MATTHEWS: And if I could perhaps read that letter to the commission, Mr Deputy President.

DEPUTY PRESIDENT: Right.

MR MATTHEWS: The letter is dated 21 July 1992.

DEPUTY PRESIDENT: I'll just mark that M.1 for identification purposes.

MR MATTHEWS: It's addressed to Mr M. Fleming, Federal Secretary, Merchant Service Guild of Australia:

Dear Comrade,

Tasmanian Industrial Commission - Matter T.3871 of 1992

I refer to page 4 of the attached Tasmanian Industrial Commission document of the 17th of July 1992 which deals with the above matter. In relation to the Guild's opposition to the granting of an interest to AIMPE in the Marine Board Award -

- Marine Boards Award it should read -

- it would greatly assist the AIMPE's understanding of the Guild's position if the Guild, at its early convenience, either provide AIMPE with a written exposition setting out fully the reasons for its opposition, or meet with AIMPE at an early date to directly explain its position. This was not clear to AIMPE at the hearing in Hobart on July the 3rd. AIMPE is keen to address the Guild's concerns in a consolidative process as directed by the commission. Your early response is sought to the above. Please contact either Henning -

- that's the AIMPE's federal secretary, Henning Christensen, Your Honour -

- or myself or both, whatever is most convenient for you.

Regards

Ian

And that's myself, Ian Matthews, industrial officer, Victorian Branch of the Australian Institute of Marine and Power



Engineers. Mr Deputy President, I received a response from Mr Fleming and I can hand that one up.

DEPUTY PRESIDENT: That will be M.2.

MR MATTHEWS: And it's dated 22 July 1992 and it is addressed to myself, Mr Ian Matthews, Industrial Officer, AIMP, P.O. Box 60, South Melbourne, Victoria, 3205:

Dear Sir

Re. Tasmanian Industrial Commission - T.3871 of 1992

We refer to your letter dated 21 July 1992 concerning the decision of Deputy President Robinson of the Tasmanian Industrial Commission in Matter No. T.3871 of 1992.

The Merchant Service Guild is available to participate in discussions as stated in the decision. We are available at any convenient time.

Yours faithfully

Michael Fleming  
Federal Secretary

Following that, some time elapsed, and eventually I realised the passing of time and I then sent Mr Fleming a facsimile.

DEPUTY PRESIDENT: Had you not otherwise contacted Mr Fleming prior to -

MR MATTHEWS: There was some discussion within our own organisation, Mr Deputy President, about who would do the talking. Initially I had envisaged that that would be done at a federal level. In fact, I think I may have said that at the hearing in front of yourself on 3 July. But it was decided that I should handle it, and I guess even in an organisation the size of the institute there is some bureaucratic inertia.

DEPUTY PRESIDENT: Right.

MR MATTHEWS: Anyway, when I was advised I should proceed with it, I sent the facsimile I have just handed up to you -

DEPUTY PRESIDENT: Which I have marked M.3.

MR MATTHEWS: - to Mr Fleming. And, if I can just read that. The message is - it's addressed to Mr M. Fleming, Merchant Service Guild, and it is from myself, I. Matthews. It was sent on 2.9.92 and it is headed: Re. Marine Boards Award - T.I.C. - meaning the Tasmanian Industrial Commission -

Dear Comrade

Further to my letter of 21 July 1992 on the above matter and your response of 22nd July I seek to schedule a meeting with you at your earliest convenience in order to hold the discussions suggested by the commission.

It would be helpful if you could ring or fax this office with some dates when you are available. I did ring you a couple of times today with the objective of speaking with you directly but unfortunately called at times when you were not available.

Your early response would be appreciated.

I expect to be in the office most of tomorrow, 3rd November, so perhaps we'll have the opportunity to discuss appropriate dates then.

Regards

Ian.

I can report to the commission that I received no response from Mr Fleming that day. I did telephone the Merchant Service Guild on two occasions, on 4th - I beg your pardon - it would be 3 September, and endeavoured to speak with Mr Fleming. I was told by the lass at the desk - and her name is Maria - she used to be in our combined office when we were sharing premises - that Mr Fleming was at work and she would pass the message to him.

So, I - and I received no response. After some time had elapsed I decided to - I thought the best way to get the matter moving - was to ask for a report back to the commission, and I duly contacted yourself and -

DEPUTY PRESIDENT: Asked for a relisting.

MR MATTHEWS: Yes. And I should report to the commission that on Monday of this week - that's the day before yesterday - Mr Groves who is here today sent my office a facsimile.

DEPUTY PRESIDENT: Thank you. This shall be M.4.

MR MATTHEWS: M.4. Now, although it is obscure at the top, Mr Deputy President, I should point out that the time that was sent according to our facsimile machine it was 16.33 on Monday afternoon, that's 27 to 5 in the afternoon. I did not receive this until yesterday morning. I will read it to the

commission. It's from Mr Groves to myself, and it is dated 5.10.92. Message:

Re. Marine Boards Award - AMP Respondency

Ian

I advise that subsequent to our recent conversation on the handling of this matter I have been instructed accordingly.

Therefore, given that you have requested this matter be relisted before D.P. Robinson and a hearing date has been set for this Wednesday, I suggest we meet tomorrow or at your earliest convenience.

Regards

Steve

Just to clarify a couple of points there, Mr Deputy President. I have had a brief discussion with Mr Groves on Thursday of last week. We were attending a meeting together and he made an enquiry of me about what was happening with this matter. I said it had been relisted; he asked me how come it had been relisted; I said I had asked for it to be relisted; and that was the extent of that conversation, as I remember it.

I did not receive - I was not aware of this facsimile until yesterday morning. I then rang Mr Groves to advise him that I had a full book yesterday, which indeed I did. I suggested to Mr Groves that we might be able to talk on the plane coming down this morning, which was the best I could see.

DEPUTY PRESIDENT: At least no-one could get off.

MR MATTHEWS: Yes. But he advised me that he was coming down last night, and I had commitments yesterday evening which just made it impossible for me so, unfortunately, we haven't been able to discuss the matter up until this point. I must say that I feel, in all fairness, that Mr Groves' communication is a rather late communication.

DEPUTY PRESIDENT: Right, thank you for that report, Mr Matthews. Anybody else like to respond at this stage? Mr Groves?

MR GROVES: Well, Mr Deputy President, I rise simply to report that while I don't dispute or question Ian's report to you in the - in the communications that have taken place between himself and the federal officer of the guild and, of late, myself and Ian, I think it must be pointed out that mixed up in that time lag - and I'm not putting this as an



apology in any way I'm simply letting the commissioner know that oddly enough we all have other things to do including taking annual leave and I understand Ian has taken some annual leave, Michael Fleming has taken some annual leave, and the matter I'll refer to later on in this hearing, there is -

DEPUTY PRESIDENT: You're making me feel jealous.

MR GROVES: - there is an application before the federal court at the moment to deal with the question of jurisdiction and award responsency and that has taken up a considerable amount of time of the federal secretary of the Merchant Service Guild both in hearings and inspections and I think from my diary - I was just quickly looking at it during Mr Matthews' submission to you - in fact the question when he telephoned our head office on 3 September, if my diary is correct, Michael Fleming was involved in inspections on that day in any case.

So, sure, I don't - I confirm that the correspondence that I sent to Ian on Monday was at approximately 16.33 - I don't have a - I don't have a time - time of when it was sent, but it would be about that time because I'd spoken to Ian's secretary earlier in the day seeking to talk with Ian and when that wasn't possible I thought it might be appropriate to put something in the form of a note. And as you can see by the .... it's not a formal letter in the strictest sense, it was simply a note to say, look, can we have a talk with you. If the commission pleases.

DEPUTY PRESIDENT: Right. Mr Hill?

MR HILL: Mr Deputy President, might I suggest it might be advantageous if we were to have a slight adjournment.

DEPUTY PRESIDENT: Provided we lock the door and don't let anybody out except me and my associate.

MR HILL: I agree to that.

DEPUTY PRESIDENT: Yes, I - Mr Matthews, you could well utilise the time that you're here I think for those discussions. You'll find Tasmania a - perhaps a better environment for both of you to get together.

MR MATTHEWS: I'm not sure I don't need a chaperone, Mr Deputy President.

DEPUTY PRESIDENT: I'm sure you can look after yourself for the moment.

MR MATTHEWS: Two to one. But anyway, we'll see how we go.

DEPUTY PRESIDENT: Yes. All right, let us know when this - when you need my presence, if you do.

SHORT ADJOURNMENT

DEPUTY PRESIDENT: Are we back on record? Well, gentlemen, how did you go? Mr Hill?

MR HILL: Well, maybe, Mr Deputy President, I could indicate that during the course of the discussions, Mr Matthews on behalf of the institute have given the - a - undertaking to the metal workers and they have indicated that they are prepared to give the MEWU a written guarantee that if they succeeded in establishing an interest in the Marine Boards Award then they would not seek to involve employees who are currently members of the MEWU - I refer to onshore employees there - or employees engaged in classifications traditionally covered by the MEWU, and under those circumstances, sir, the MEWU would like to indicate that it has no opposition to the application made by the - by the institute. If the commission pleases.

DEPUTY PRESIDENT: Right. I was just making a note. Mr Matthews?

MR MATTHEWS: If I could just rise to confirm that position as put to you by Mr Hill, Mr Deputy President.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: I've listened carefully to what he's said and I believe the institute will have no difficulty whatsoever in giving such an undertaking to the metal workers. In fact, I'll rephrase that. The Australian Institute of Marine and Power Engineers will give an undertaking in those terms to the MEWU.

DEPUTY PRESIDENT: Well, you'll write to -

MR MATTHEWS: Yes.

DEPUTY PRESIDENT: - will you? Very well. Mr Groves?

MR GROVES: Mr Deputy President, unfortunately we're not in any position to report similar agreement and, in fact, the position of the guild simply remains as stated by Mr Smith at its hearing on - held on 3 July. And if I may, just in summary outline our objection, and that it's based on the belief that the application by the Australian Institute of Power Engineers at this time is not appropriate and would affect the orderly conduct of industrial relations as required under section 63 of the act.



We believe that the existing guild membership covers the classifications of employment which we - which the AIMPE would seek an interest in, Mr Commissioner, for the - oh, Mr Deputy President, rather. For the record, I would like to sort of identify, if I may, those engineers that the institute claim to - wish to represent. In doing so then they're to give the commission a clearer picture why this application shouldn't proceed at this time.

In Burnie Port Authority, there are no engineers employed by the port authority. In Devonport there is an engineer, a marine engineer, on the dredge called the 'Port Frederick', his name is Robert Rootes, and I understand has been with the port authority for some time. There's also a fitter and turner and a mechanic, both of which have limited marine engineer qualifications and under the mixed functions provisions within the Marine Boards Award, are required at the direction of their employer to carry out engineering duties on board either the 'Port Frederick' when the permanent engineer is absent or on the launch 'Mersey' on the small occasions that that is in use.

I'm advised that - that the engineer on the 'Port Frederick', as I said before, is a full-time position and that the requirement for the fitter and turner and for the mechanic is they are required to carry out marine engineering duties under the mixed functions clause between nought and 10 per cent of their working time.

The Port of Launceston Authority has one marine surveyor who is an engineering surveyor, and similarly in Hobart I understand the marine board has one marine engineering surveyor, as we've - as has been discussed before in this hearing they are somewhat quasi employees of the Navigation Survey Authority, as I understand it. I also understand that the Nav. and Survey Authority is currently conducting a reviewing for constitution of the board and the employment status of all those employees who - or those persons who would carry out Nav. and Survey Authority duties.

DEPUTY PRESIDENT: Right. And are the - those persons you've mentioned employed at Hobart and the Port of Launceston Authority also currently members of yours - your organisation?

MR GROVES: No.

DEPUTY PRESIDENT: No.

MR GROVES: But the point I was alluding to there, your Honour, is in relation to being able to cover them within the confines of the Marine Boards Award seems to me to be somewhat cloudy at the moment because -

DEPUTY PRESIDENT: Right.

MR GROVES: - of the review that is going on -

DEPUTY PRESIDENT: Right.

MR GROVES: - in that area.

DEPUTY PRESIDENT: Yes. They might all be swallowed up by the waterside workers, from what I hear.

MR GROVES: Maybe. Then - I'll refer to that a little bit later on. We - given - given the information I've just read onto transcript in relation to the number of employees we're talking about we, in fact, are only talking about one marine engineer employee covered, or employed, if you like, within the state by the marine boards or the Tasmanian - or sorry - port authorities.

The guild believes that - that with this in mind that the - and the fact that there are a number of employees of port authorities and marine boards which are currently members of the Merchant Service Guild traditionally have been covered by that - or this organisation in relation to the award. We - we believe that there - that the potential does exist for conflict between the parties in relation to membership, particularly in the case of - of areas such as Hobart and the Port of Launceston Authority where they do employ people with marine engineer qualifications.

We also believe, Mr Deputy President, that this application should not proceed as the AIMPE has an application currently before the full bench of the Industrial Relations Commission regarding coverage of all employees and all port authorities. We believe that that dispute should be dealt with prior to any decision in this matter.

DEPUTY PRESIDENT: That's before the Australian commission obviously?

MR GROVES: That is the Australian commission, Mr Deputy President. I do have the 'C' numbers and the panel that's before it, if you so require it.

DEPUTY PRESIDENT: Yes, please.

MR GROVES: The - the full bench is before their Honours Petersen, Harrison and Commissioner Johnson and the 'C' numbers are C 21084 of '90, 21774 of '90, 21641 of '91, 21651 of '91, 21665 of 1991 and 21682 of '91.

DEPUTY PRESIDENT: Fine.



MR GROVES: Alternative to the position that we put, and that is that the matter should not proceed at this point in time, our alternative position we seek the commission's decision on is that the institute give an absolute assurance that the guild's interest in Tasmania be maintained and that their interests - or the institute's interest, that is, be restricted to those employees that I've mentioned previously. If the commission pleases.

DEPUTY PRESIDENT: Thank you. Are you in a position to respond, Mr Matthews?

MR MATTHEWS: Well, I'd like to make submissions, Mr Deputy President, and I'd like to address other aspects as well that - apart from responding to Mr Groves.

DEPUTY PRESIDENT: Sure.

MR MATTHEWS: The first thing I want to say is that the last time we were - I was before the commission on behalf of the institute, the commission as presently constituted asked me questions about our membership and I gave information that I understood to be the situation at the time. I've obviously made some fairly extensive checks since - since that hearing on 3 July and I think, given that Mr Groves has made submissions about the extent of the institute's membership, it's only appropriate that I should perhaps add a little bit. We've got two members -

MR GROVES: Mr Deputy President, if I just may correct Mr Matthews there, I made submission in relation to those employees as marine engineers, not as members of the institute. I don't have the records of the institute in relation to who are members of who.

MR MATTHEWS: Well, I'd accept that correction, Mr Deputy President. That's of course what I meant. Mr Groves has put it much better than I did. The institute has got two members who - who carry out marine engineer functions in Devonport and I believe that was reported to you on the last occasion. We reported that there were three marine engineer-surveyors and at that time I believe that we had an engineer-surveyor in the port - I beg your pardon - the Hobart Marine Board, and I believe that we had two in the Port of Launceston Authority, one of whom I believe to be someone who operated on a part-time basis.

DEPUTY PRESIDENT: Excuse me, when you say you believe you have -

MR MATTHEWS: Yes, Mr Deputy President?

DEPUTY PRESIDENT: - this is well and good, but really I have to be satisfied that you can comply with - with all the



requirements of the act and I wouldn't like to decide a matter as delicate as this one way or the other on the basis of reasonable belief in relation to such things as membership. I would - I think it would be appropriate for proper evidence to be produced of - of any claims made in respect of either membership or constitutional coverage as well as the broader issues which have been canvassed here this morning. And I hope you don't think I'm unreasonable about that.

MR MATTHEWS: Mr Deputy President, I gave information to the commission on the last occasion I was in front of you in good faith. I seek to correct that information in - in terms of what I have gone away and checked and I can give the commission an unequivocal undertaking about the extent of our membership in the marine boards and indeed that was what I was about to do. And the - the information I was going to make available to the commission was simply that the person I believe - the second person in the Port of Launceston Authority I believe to be a member of the institute was not and that is the only alteration that - that there is in the information that I tendered to the commission about our membership on the last occasion.

And, as I say, that information on the last occasion was tendered in good faith and I can assure the commission that the information that I now tender is correct.

DEPUTY PRESIDENT: Well that wasn't the way you expressed it. You see - you said that you believed that the -

MR MATTHEWS: Well, perhaps my phraseology should be more precise.

DEPUTY PRESIDENT: Yes, well - I stand -

MR MATTHEWS: And I apologise to the commission for that.

DEPUTY PRESIDENT: - I stand by what I said. I require evidence. The commission shall be satisfied that the membership of the organisation consists of or includes members who are employees in the industry or occupations concerned. But wouldn't you have cards or something -

MR MATTHEWS: Well, I can get our membership cards faxed down from our office.

DEPUTY PRESIDENT: Fine.

MR MATTHEWS: I could have - that could be in 10 minutes.

DEPUTY PRESIDENT: Right, right.

MR MATTHEWS: And - and -

DEPUTY PRESIDENT: But alternatively you give sworn evidence.

MR MATTHEWS: Well I'm prepared to give - I would have to check with Gail about the name of the - the lass in my office - about the name of the second member in the Port of Devonport Authority, but I'm certain of it and I can give sworn evidence immediately.

DEPUTY PRESIDENT: Right. I mean it's in your own best interest I think -

MR MATTHEWS: Yes, I understand.

DEPUTY PRESIDENT: - to satisfy me evidentially at this hearing otherwise you might have to satisfy a full bench that - that any decision I made was properly based.

MR MATTHEWS: Yes, I understand that, Mr Deputy President. I have no difficulty in - in providing evidence or making - giving sworn evidence on the matter - on the information that I've just placed before the commission.

DEPUTY PRESIDENT: Fine.

MR MATTHEWS: And if it would suit the commission, I can get the membership cards faxed down within minutes.

NOT ON?  
FILE

DEPUTY PRESIDENT: Right. Well that - that - that sort of evidence would assist me.

MR MATTHEWS: Okay. Well how do we proceed at this particular point. Would you like to do that immediately?

DEPUTY PRESIDENT: Oh, no, no. Look, if you assure me that that's going to be made available and - that would just be helpful as part of your overall argument. As I say, and I said right at the beginning, if I hadn't said before, that all this falls under that section of the act 63(10(c) and I've got to be satisfied on all criteria.

MR MATTHEWS: Yes.

DEPUTY PRESIDENT: Now I assume that you'll - you'll satisfy me, or do your very best to satisfy me on all of that criteria.

MR MATTHEWS: Well, I'm sure that on the question of the membership I can certainly satisfy the commission.

DEPUTY PRESIDENT: Fine, fine.

MR MATTHEWS: Well, if I could perhaps move on for the moment?

DEPUTY PRESIDENT: Yes. Yes, I'm sorry for the interruption.

MR MATTHEWS: I suppose the - the thrust that I would like to advance argument to the commission on at the moment is the statement made in the last hearing, and repeated by Mr Groves in this hearing, that - and if I can quote Mr Smith from the last hearing: The guild traditionally represented - and I'm quoting from 28 - page 28 of transcript:

The guild traditionally represented all marine operative employees.

And I think the word there of significance is the word 'all'. And we'd like to challenge that; the institute would like to challenge that and advance evidence as to why we believe that is not strictly correct. And if I could do so, your Honour, I'd like to hand up -

DEPUTY PRESIDENT: This exhibit would be your first, I think, Mr Matthews?

MR MATTHEWS: Well there were - we had M.1 to M.4 -

DEPUTY PRESIDENT: Yes, right. We did indeed. Well, we'll just call you X.1 eh? Do you mind that?

MR MATTHEWS: X.1. Your Honour, the exhibit I've handed up entitled X.1 is a collection of extracts from the Tugboat Industry Award from 1974 through to 1982, and if I could take you through it. It wasn't always the case that - let me start again - I beg your pardon. Marine boards did operate tugs before in Tasmania they were privatised and I've taken the liberty of highlighting these extracts to demonstrate that the various marine boards were parties to the federal Tugboat Industry Award and that simultaneously the Australian Institute of Marine and Power Engineers did have members on those tugs.

Consequently, for the argument to be advanced that - that, as I understand the guild has advanced, that the guild has traditionally covered all marine board operatives who are water borne, it's not - it's not - it is not borne out by, I think, the evidence here. The institute has had tug engineers working on tugs that - that were operated by marine boards in Tasmania for at least since 1974. And if I can take you through, there's the variation to the Tugboat Industry Award 1974 - is that first page, as you can see I've highlighted the Marine Board of Burnie, the Marine Board of Devonport and the Port of Launceston Authority - and were added to the list of respondents at that time to the federal Tugboat Industry Award and the institute had members on those tugs as engineers.

So, consequently those people, those marine engineers, were employees of the marine boards at that time. So to say that



the Merchant Service Guild covered all of them, all marine board employees who are water borne, is not borne out by the facts. And I think the word 'traditional' is significant because it cast the net back over time. Well, I'm trying to cast the net back over time to show that that was not the case in 100 per cent of situations.

If I can turn the page, Mr Deputy President, and take you to the extract from the Tugboat Industry Award 1978 and we need to go over - oh, well, on the next page over from that you can see that the Marine Engineers Institute is mentioned there, meaning the Australian Institute of Marine Engineers, and indeed, I think the guild will be mentioned there - yes - the guild means the Merchant Service Guild of Australia.

We need to pass over a couple more pages and on page 4 of that particular extract from that award we'll see that I've highlighted the Marine Board of Burnie, and the Marine Board of Devonport, and the Port of Launceston Authority as having been respondents for the federal Tugboat Industry Award at that time and operating tugs on which the Australian Institute of Marine Engineer members - marine engineers were members.

If I could take you - the commission now to the next extract from the Tugboat Industry Award and that's the Tugboat Industry Award of, in fact - well, it's entitled on page 2: Tugboat Industry Award 1980 and I've highlighted that to assist the commission and my colleague to my left.

And once again we find that on page 4 - we've got to turn over a couple of more pages - I've highlighted in the list of respondents, the Marine Board of Devonport and the Port of Launceston Authority. So, presumably, between the last award and this one, the Marine Board of Burnie dropped out. But anyway, we've still got members on these tugs and they were employees of the port authorities and in fact we still have, I believe, a couple of members who were - current members who still work on tugs and who were, in fact, members of the marine boards.

If I could take the commission's attention now over to the last couple of pages of the Exhibit X.1 and this is an extract from the Tug Boat Industry Award 1982, as I've highlighted, and I can take you over the page and you'll see there that in the meantime the Port of - I'll just see which one dropped out - the Port of Launceston Authority has dropped out - those tugs were privatised - and we're left with the Marine Board of Devonport, and I can say that in my time as an employee of the Australian Institute of Marine and Power Engineers I do, in fact, recall when the Marine Board of Devonport - or the Port of Devonport Authority I think we called it - did, in fact, operate the tug and we had a member on it. His name is Bill McKinnon.

In fact, he now works on that tug for Brambles, and as Mr Groves has said, there a traditional nexus there because we had a couple of other members that worked at the Port of Devonport Authority on the dredge - or at least we've got two now. I'm not sure whether we had one or two then - I can't remember - but in any case, we've still got those couple of people in Devonport, although Bill McKinnon is no longer an employee of the Marine Board of Devonport.

So I would - I think that what I'm doing is I'm endeavouring to satisfy the commission that to say that the Merchant Service Guild traditionally covered all employees is not borne out by - the guild traditionally represented all marine operative employees and I think it should read: In the marine board and port authorities. In actual fact there it says: And the marine board and port authorities. So, that's the purpose of that evidence - that exhibit - to try to demonstrate that that is not one hundred per cent correct. Now, if I could perhaps lead another exhibit.

DEPUTY PRESIDENT: Are you going to advise me about what's happening before the federal full bench and what that application is about?

MR MATTHEWS: Well I haven't come equipped to do that, Mr Deputy President. I regarded this as a matter for this jurisdiction and -

DEPUTY PRESIDENT: But you can tell me whether you've got an application in, haven't you?

MR MATTHEWS: Yes, we have.

DEPUTY PRESIDENT: What's it about?

MR MATTHEWS: Well it's a section 11(8)(a) application. The Australian Institute of Marine and Power Engineers within the processes of the trade union movement has been accorded the status of a principal union in respect of the maritime industry, along with the Merchant Service Guild of Australia, the Seamen's Union of Australia, the Waterside Workers Federation - I think - of Australia, and the Australian Stevedoring Supervisors Association. So there are five - I suppose what you could say loosely, what we think as the five maritime unions.

DEPUTY PRESIDENT: Right. And what - are they to cover marine boards or port authorities in -

MR MATTHEWS: Well the section 11(8)(a) is respect of all marine boards in Australia -

DEPUTY PRESIDENT: Right.



MR MATTHEWS: - and so consequently it involves Tasmania as well -

DEPUTY PRESIDENT: Right.

MR MATTHEWS: - and applications - section 11(8)(a) applications have been made by all of those unions, including the Merchant Service Guild.

DEPUTY PRESIDENT: Right. And what will happen if you are successful on that application?

MR MATTHEWS: Well, what would happen is that the - there'd be - the port authority employees on mass - I believe I've got this correct - would become - would move from the state jurisdiction into a federal jurisdiction and they'd be covered by federal awards. I believe that's what that's about, and also - well I want to be sure. I'm -

DEPUTY PRESIDENT: See, your organisation wants them to be covered by federal award and not a state award. Why am I worrying about it then?

MR MATTHEWS: Well, there's always the possibility, Mr Deputy President, that the full bench that's looking at that matter may - I mean, I cannot anticipate what the outcome from that full bench will be, I don't know what they will decide. The other thing about it is, of course, this is something that's been on foot for some time in respect of this matter and, of course, developments there have occurred in the meantime. I mean, at the time that the institute sought coverage here that was in it's -

DEPUTY PRESIDENT: You might be able to have the fat into the fire perhaps in the next 12 months even. Would you want that to be coming back to the state jurisdiction if you are successful with your application to go federal, but covered by their industrial arrangements for - in the future.

MR MATTHEWS: Well, your Honour, I don't know what will be the outcome, as I have said.

DEPUTY PRESIDENT: I can -

MR MATTHEWS: We came here and it's - as I made submissions on the last occasion in relation to this matter, that we have come here in the past under the banner of the TT - I beg your pardon, the Tasmanian Trades and Labor Council for the odd matter that we've needed to represent our members on, and it seems strange to us, having been a maritime union for a good many years, that we couldn't come here in our own right, and as I think I could fairly point out, our feeling is one that



is not unique. The Merchant Service Guild went down exactly the same path two or three years ago.

DEPUTY PRESIDENT: I don't have any difficulty in understanding and appreciating that. It's just that if you've got two applications before different tribunals, it's an unusual situation to be in, isn't it?

MR MATTHEWS: Yes, but I can't say that I see a conflict between one and the other because if Tasmania remains in the state jurisdiction, the Australian Institute of Marine and Power Engineers would like to be able to represent its members in the marine boards in its own right.

DEPUTY PRESIDENT: But in the meantime you are seeking to represent them federally.

MR MATTHEWS: Well, I work in the Victorian office of the institute, your Honour.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: I don't work in the federal office of the organisation.

DEPUTY PRESIDENT: No.

MR MATTHEWS: I would like to think that whatever jurisdiction we are in marine engineers will be able to be represented before the appropriate industrial tribunal.

DEPUTY PRESIDENT: But not both at the same time.

MR MATTHEWS: Well I imagine not -

DEPUTY PRESIDENT: No.

MR MATTHEWS: - but then that's going to be a situation that applies not simply to the institute.

MR GROVES: Mr Deputy President, if I may assist.

DEPUTY PRESIDENT: Yes.

MR GROVES: And I do have copies of the notification of dispute by the institute and the Merchant Service Guild and a copy of a log of claims by the Merchant Service Guild in relation to those application 108s and the dispute notification numbers that I mentioned before. I can table them, and in doing so, I'd just like to point that the timing is not just recent. In fact, we did this in July and August last year, so it's not something that came about in the last couple of weeks, so if it may assist you in understanding the federal --

DEPUTY PRESIDENT: Well the more information the better .... of course. Has a dispute been found in relation to that matter?

MR GROVES: I believe so.

DEPUTY PRESIDENT: Right. I wonder whether or not then the question of jurisdiction could even arise at this stage. Thank you. We'll label this - oh, there are two documents, are there? Yes. The log of claims will be M.5 and the notification of alleged industrial dispute will be M.6. Yes, thank you for that. I'll read it with interest.

MR MATTHEWS: Which one is which, Mr Deputy President? I'm sorry.

DEPUTY PRESIDENT: The one marked log of claims is M.5, and the smaller document, 2-page document, is M.6.

MR MATTHEWS: M.6.

DEPUTY PRESIDENT: M.6, yes. Anyway that might assist me further.

MR MATTHEWS: Well, Mr Deputy President, I think I've given such information as I had -

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: - arising out of that matter.

DEPUTY PRESIDENT: Yes. I appreciate that it's probably, as I detect, not a matter that you are directly involved in or the prime - primary involved in.

MR MATTHEWS: Certainly not a prime operative I suppose, is the word.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: Talking about operatives before, perhaps, Mr Deputy President, I could hand up another exhibit.

DEPUTY PRESIDENT: Yes. An X.2. Something come back to haunt me, is it?

MR MATTHEWS: Well I don't think it's a sheep station at stake here, Mr Deputy President.

DEPUTY PRESIDENT: Right.

MR MATTHEWS: It's just to demonstrate to the commission that on 28 April, a Mr R. Davidson, who is a member of the

institute, appeared here to represent the institute in much the same way as Bernie did the last time, under the banner of the Trades - the TTLIC, representing the Australian Institute of Marine and Power Engineers -

DEPUTY PRESIDENT: Right.

MR MATTHEWS: - and so - and this is in relation to the Marine Boards Award.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: And if I could direct your attention to page 2 - page 2 which is not the second page but it's actually the third page -

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: - and if I could just read the bottom paragraph of the page:

According to the submissions of the applicant -

which was in fact, I think, Mr Abey on behalf of the Confederation of Industries -

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: -

According to the submissions of the applicant and endorsed by the TTLIC representing the Australian Institute of Marine and Power Engineers there had been proper consultation with other maritime unions and the proposal put forward could be regarded as a true consent matter.

I suppose all it does do is demonstrate that from time to time the institute has come to this place in relation to Marine Boards Award and it's done so with the concurrence of other maritime unions. I mean, Mr Davidson, on that occasion was standing up not just for the institute but, I believe, in - also probably for the guild. ?

So I would say that this reinforces my argument that it's not entirely correct that the Merchant Service Guild has traditionally covered all marine employee operatives, marine board maritime operatives, or whatever we call them, in the marine boards and I think it's - I've tried to demonstrate that there's some reason to believe that is not 100 per cent correct. If I could now pass up to the commission a further exhibit.

DEPUTY PRESIDENT: X.3.



MR MATTHEWS: X.3.

DEPUTY PRESIDENT: How will we describe this document?

MR MATTHEWS: Well it's an extract from the Merchant Service Guild rules, your Honour. It's a draft order -

DEPUTY PRESIDENT: Right.

MR MATTHEWS: - which is the most recent change to the Merchant Service Guild eligibility rule, and that is a very recent change. I think it may be - I haven't the exact date, but I think it maybe within the last month.

DEPUTY PRESIDENT: Has it been made within this commission?

MR MATTHEWS: No, it was made in the federal commission, your Honour.

DEPUTY PRESIDENT: Well how does it help us?

MR MATTHEWS: Well, I can assure the commission that the passage that's - that is - which refers to marine engineers in the - in this eligibility rule is identical to the one that is lodged with this commission, that the particular -

DEPUTY PRESIDENT: Well, I think you've answered my question in two ways though, haven't you? I mean, if we go to 63(10)(c)(ii) it talks about that one of the criteria .... is:

that membership is consistent with the organisation's rules or constitution, a copy of which has been lodged with the Registrar.

And all I'm asking, is X.3 a part of what is lodged with the registrar here?

MR MATTHEWS: Well the answer to that is that it isn't.

DEPUTY PRESIDENT: It isn't.

MR MATTHEWS: Unless they have lodged it within the last month.

DEPUTY PRESIDENT: Right.

MR MATTHEWS: But I would point out to the commission that that relevant passage is word for word and identical -

DEPUTY PRESIDENT: With?

MR MATTHEWS: - with the rules that are lodged here, and in fact, I'm looking through my file to see if I have a copy of the rules that are lodged here.

DEPUTY PRESIDENT: Well I'm confused.

MR MATTHEWS: I'm sorry, Mr Deputy President.

DEPUTY PRESIDENT: Are you saying that this is something which is new and there's a rule change and now you're telling me that it has been lodged with the registrar here.

MR MATTHEWS: No, I - perhaps I need to go back and try again.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: Your Honour, the - I perhaps should have stuck with the rule that was lodged with the commission, but it's just that it has been recently changed again in the federal commission - whether it's been changed - whether the new rule has been lodged here in the Tasmanian Industrial Commission yet, I do not know -

DEPUTY PRESIDENT: No.

MR MATTHEWS: - but if you wish I can find the - I believe I do have it and -

MR GROVES: Mr Deputy President, I may assist, if you like. I could confirm that whilst these are not the rules that are registered with this commission, in fact, the only difference is the last paragraph and that is to do with the ROV pilot technicians. That's an addition to those rules that would be registered with this commission. I may address that -

DEPUTY PRESIDENT: Yes, but crikey, it's a bit of a mine field I've got here if I'm to stick to the rules. ||

MR MATTHEWS: Well, I just wanted to make a point in relation to the section which is -

DEPUTY PRESIDENT: Yes, well go ahead.

MR MATTHEWS: Thank you, Mr Deputy President. If I could refer - in terms of the guild's eligibility rule which has been handed up to you - the third paragraph and the relevant section reads, and I'll start from the beginning of the paragraph:

Marine engineer so engaged, including third class and port engineers and marine engine drivers may be admitted to membership provided that this rule as to engineers shall only apply in cases where such

an engineer is not eligible for membership in or has been rejected by the Australian Institute of Marine and Power Engineers. This rule as to the eligibility of engineers shall include engineers upon vessels owned by the government, but engineers who have become ship owners, superintendents, or are otherwise acting in the interest of employers shall be strictly debarred from membership.

And that's the extract that I wanted to refer you to.

DEPUTY PRESIDENT: Right.

MR MATTHEWS: I would just draw that to the commission's attention. In the discussions that - I mean, basically to my way it's an exclusion clause - it can be read as an exclusion clause in the sense that the section where it says: this rule as to engineers shall only apply in cases where such engineer is not eligible for membership in or has been rejected by the Australian Institute of Marine and Power Engineers. Now, I - the institute came here today, your Honour, prepared to give the Merchant Service Guild an undertaking in relation to any marine engineer members that they may have - current members that they may have in the port authorities that we would not seek to recruit those people - we would not seek to recruit those people. We're prepared to give that unequivocal undertaking in relation to those. It's a similar undertaking I gave to Mr O'Brien in relation to the Shipping Award and we are prepared to give that undertaking.

DEPUTY PRESIDENT: Well, then you would presumably feel that it would be quite appropriate to recruit people who are not already a member of another organisation; is that it?

MR MATTHEWS: Yes, that would be our situation. If a marine engine who worked in the marine boards or someone who was eligible for membership under our rules, I should - would be a better way to put it - a person such as that who was not a member of the Merchant Service Guild approached us for membership, we would feel able to enrol that person.

However, we would give, we are prepared to give an undertaking in relation to any members in the Marine Boards in the marine engineering area, as described, who are marine engineers or marine engine drivers who are members of the guild and, i.e. a no poaching agreement. Now, I can't think how we could be - well, it seems to me it is a reasonable position.

DEPUTY PRESIDENT: I understand what you are saying.

MR MATTHEWS: So, in my submission I have tried to address the arguments presented by the guild in relation to their traditional coverage, and I have no dispute with the fact that the guild has traditional coverage, coverage of marine boards,



but I do cavil at the assertion that it was all marine operatives, and I have endeavoured to lead evidence to give support to that.

I've endeavoured to demonstrate that the institute has been here in relation to the Marine Boards Award. I've indicated, commissioner, that I give sworn evidence that we do have the members we say we have and, indeed, our motivation as I said at the outset in this matter - not at this hearing - is simply to be able to represent our own members who are in the marine boards in our own right. It is as simple as that.

DEPUTY PRESIDENT: Do you draw any distinction between classifications employed on shore-based or working on the water?

MR MATTHEWS: Well, I think really I have responded on that in relation to what Mr Hill said. I mean, the reality of it is that the institute has not been around trying to recruit tradesmen shore-based, nor will we do so. To be quite frank, that's not what we regard this as being about. It is not a recruitment drive; it is not a poaching exercise.

DEPUTY PRESIDENT: What about the people who are used in a mixed functions capacity?

MR MATTHEWS: Well, I can assume, and I would have to ask someone like Mr Hill about this. It's possible that some of his members - and I don't actually know that this is the case - but it is possible that some of his members may perform functions for the water board. I presume that may be the case. And I believe that what I have done is that I have given an undertaking in relation to those members already, because if I understand the situation, we're talking about people who are predominantly shore based, who may occasionally do something on a vessel. And we are certainly not going to be going around knocking on doors and trying to recruit any people that might be in that situation.

MR HILL: Mr Deputy President, Mr Matthews has pretty well accurately described the circumstances. The award currently, as you would well know, sir, has got a mixed functions provision in it, and each port authority applies that somewhat differently. Some more liberally apply it than others. But it is true that from time to time members of our organisation who are predominantly shore based are required to relieve on certain vessels, tugs, and so forth, and when that occurs - to the best of my knowledge the mixed functions provision in the award applies - and so far we have not had any major problems with the seagoing unions in terms of sorting that out and reaching some amicable arrangement, and I am sure that we won't experience any problems in the future, sir.

MR MATTHEWS: Your Honour, the other matter is, I suppose, in Mr Groves' submission - thanks, Mr Hill - in Mr Groves' submission, he did, I think, refer to what I - I don't know if he named it by the clause and that - but to me it's 63 - section 63(10(c)(iii) of the act.

DEPUTY PRESIDENT: Yes.

MR MATTHEWS: And that reads:

The organisation being granted an interest in an award or awards will not prejudice the orderly conduct of industrial relations in Tasmania.

Your Honour, I would submit that in terms of the undertaking that we've given here to the MEWU, the undertaking that I have indicated we are prepared to give to the Merchant Service Guild, and another matter which your Honour is aware of, an undertaking we gave to the Miscellaneous Workers' Union in a matter related to this, I would submit that we have, I believe, demonstrated goodwill, and I believe the bona fides of our organisation. And I do not believe that if we are granted an interest it will prejudice the orderly conduct of industrial relations in Tasmania. If the commission pleases.

DEPUTY PRESIDENT: Thank you. Mr Groves, do you want to put anything further?

MR GROVES: Thank you, Mr Deputy President. If I can simply respond very briefly by taking you back to Exhibit X.1, and whilst I don't want to imply that the deputy president is ignorant of the fact of the federal award, what this X.1 is is simply extracts from the federal Tug Boat Industry Award.

The responsency of that award, in my opinion, does not require or make it necessary for active membership within that award. It simply means that a number of employers and a number of employee organisations can be a respondent to the award whether they actually have members employed or employers actually engaged in the industry. It comes and goes with the rise and fall of that industry itself.

But, I make the point simply to say that we don't dispute that the marine engineer, or the Australian Institute of Marine and Power Engineers were a respondent or are a respondent to the Tug Board Industry Award, nor do we dispute that at some previous period the Port Authorities of Tasmania were a respondent to that award, because they did operate their own tugs.

Our claim and the claim that X.1 was seeking to address, and that was that we traditionally covered marine operative employees. I would just like to remind you, Mr Deputy President, the term 'marine operative employees' which are



employees covered by the Marine Boards Award, was developed during the award restructuring negotiations and hearings that, if my memory serves me correctly, came before you some 2 years ago.

DEPUTY PRESIDENT: Yes.

MR GROVES: So, prior to that there was a long list of classifications of employees, and the intent clearly was to reduce that down to, I think from memory, seven or eight levels of -

DEPUTY PRESIDENT: I have been looking at it only recently, Mr Groves.

MR GROVES: So, that's where the term 'marine operative employees' came from. I turn to Exhibit X.2. Again I just simply want to point out to the commission my brief reading of that was that I don't have a question - I don't have an argument with the fact that Mr Davidson represented the Australian Institute of Marine and Power Engineers on that. He also, he probably was in somewhat of an error that it wasn't recorded that he represented a number of employees - a number of employee organisations, including the Merchant Service Guild, and I would imagine the FEDFA at that stage, because we were talking about going from a consent arrangement.

We were going from a previous arrangement of nominating an old dredge that no longer existed with the port authority and the introduction of a new one and the appropriate way about it, et cetera, so it really was there as a consent arrangement for a number of bodies, not just the institute.

DEPUTY PRESIDENT: The commission I think has got a history of acknowledging organisations which have traditionally operated in this state whether they were registered in their own right at that time and we have allowed in through the TTLC acting as the agent.

And, strictly - that strictly speaking, that was the situation, however it was described, and -

MR GROVES: And, on that basis, we would -

DEPUTY PRESIDENT: - as you would appreciate.

MR GROVES: - support that the institute similarly come before this commission via the TTLC if they have a matter affecting one of their members within the marine boards now. So, we don't see that that should change in any way. The - as you - we pointed out before the X.3, the copy of the rules submitted, is not registered before the Tasmanian Registrar.



If I just may add for the benefit of the commission that those - the reason for this is that we are currently in the process of amalgamation. An application which is before the Australian Industrial Relations Commission, Deputy President Williams, this Friday. So we would hope that -

DEPUTY PRESIDENT: Who is amalgamating?

MR GROVES: The Australian - I was about to give you the name of the new organisation.

DEPUTY PRESIDENT: Oh, please don't do that yet.

MR GROVES: It is the Merchant Service Guild of Australia and an organisation called the Australian Stevedoreing Supervisors Association.

DEPUTY PRESIDENT: Oh, right.

MR GROVES:

So with that - and there'll be a new set of rules developed as a result of that amalgamation, we hope. Those rules have been lodged with the Australian Industrial Registrar, and after this Friday I hope to be in a position where we can lodge those similar rules with the state registrar.

DEPUTY PRESIDENT: Oh, right. My heart gave a flutter there. I wondered whether you were going to merge with the Australian Institute of Marine and Power Engineers.

MR GROVES: We would have hoped to have been. That's another story. Mr Deputy President, we believe that the undertaking necessary to cover those - should be to cover those existing employees that the institute claim that are members. We believe that any more or new members would lead the guild to believe that the orderly conduct of industrial relations would most likely be affected. In other words, we are saying that if for some unknown reason the Port Authority embarked on an expansion program where they were going to put new employees on, then the question of what union members they .... were, et cetera, I think would cause some conflict. The question of mixed functions that was raised -

DEPUTY PRESIDENT: Do we need to adjourn until after lunch? I am quite happy for us to continue, but I am a bit worried about others who are - about their good industrial conditions that they enjoy here, or hopefully.

MR GROVES: I'm quite happy to take your guidance, Mr Deputy President. I'll only be about 15 seconds, and -

DEPUTY PRESIDENT: Oh, 15 seconds shouldn't worry us. I don't want to stop you -

MR GROVES: I just simply want to finally say that the question of mixed functions has also been raised, and it certainly also applied to guild members, and these employees that are guild members are required to carry out a number of duties, and if I give you a couple as an example.

There are the engineering functions on board vessels other than the 'Port Frederick' and the 'Mersey'. The clerical, administrative duties that we now perform as a result of the last award restructuring and the manner in which we put forward the offsets to an increase where clerical duties of an incidental nature, et cetera, are performed.

So, there are a range of duties that we perform, but if you took them in isolation you'd say, well, probably the guild is not the appropriate organisation to cover that particular employee. But, in an overall sense, it is an agreement that has worked very well within the marine boards, and I think this commission would recognise that there have been no industrial disputes within the Victorian - sorry, the Tasmanian port authorities of marine boards that I can recall in recent times. If the commission pleases.

DEPUTY PRESIDENT: Thank you. Well, I think I have given everybody a fair run. I'll reserve my decision on this matter and hand it down a little bit later.

HEARING CONCLUDED