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TRANSCRIPT OF PROCEEDINGS

O/N 75671

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 13077 of 2008

T No 13078 of 2008

T No 13082 of 2008

T No 13083 of 2008

GENERAL CONDITIONS OF EMPLOYMENT AWARD COMMUNITY AND HEALTH SERVICES (PUBLIC SECTOR) AWARD

Applications pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 lodged by the Minister administering the State Service Act 2000, the Community and Public Sector Union (State Public Services Federation Tasmania) Inc and the Health Services Union of Australia, Tasmania No. 1 Branch to vary the above awards re principle 13 of wage fixing principles and review of the award in accordance with the wage fixing principles of the Tasmanian Industrial Commission

HOBART

10.40 AM, THURSDAY, 28 FEBRUARY 2008

Continued from 24.2.08

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

THE DEPUTY PRESIDENT: Thank you. I'll take appearances please? They're cross applications, I don't care who stands up first.

5 MR P. BAKER: Deputy President, I appear on behalf of the Minister administering the State Service Act 2000, and with me this morning is Jane Fitton.

THE DEPUTY PRESIDENT: Thank you.

10 MR T. LYNCH: Deputy President, I appear on behalf of the Community and Public Sector Union and with me this morning is Cristina Serra.

MR T. JACOBSON: If it please the commission, Tim Jacobson appearing on behalf of the Health Services Union of Australia, Tasmania No 1 branch.

15 THE DEPUTY PRESIDENT: Thank you. Well, we'll deal with the GCOE award first simply because that's closest to me, and who wants to kick off? Mr Baker?

20 MR BAKER: Perhaps if I can just give a report, Deputy President, since this matter was last before the commission some four weeks ago. Since then we have – my office has met with the CPSU on two separate occasions now and have gone through a range, or heard a wide-ranging discussion concerning the structure and content of the GCOE award. And I'd put on the record I think there is a great deal of agreement between us as to how that process – sorry, what should be in the award at the end of the day.

25 I think there are some issues at the margins which will need some further discussion between us, but I believe though that the CPSU and ourselves share a commonality of thought as to how that award should be structured, and we look forward to moving down that path. I was hopeful this morning, Deputy President, of handing to you a reformatted general conditions of employment award, but Mr Lynch advises me that
30 that's not possible.

THE DEPUTY PRESIDENT: Okay, well I have actually inserted it into the application, the one that you emailed to me, so what's the status of that, tear it out
35 again?

MR BAKER: Apparently, yes.

40 THE DEPUTY PRESIDENT: Okay.

MR BAKER: So we're simply proceeding with the personal leave provisions this morning, and my colleague, Mrs Fitton, will take you through that matter.

45 THE DEPUTY PRESIDENT: Okay. So you're seeking to I suppose have an interim decision, because this file will still remain open?

MR BAKER: Yes.

THE DEPUTY PRESIDENT: In relation to just varying it about the bereavement leave or - - -

MR BAKER: Bereavement leave.

5

THE DEPUTY PRESIDENT: Personal leave?

MR BAKER: Personal leave and bereavement leave, yes.

10 THE DEPUTY PRESIDENT: Yes.

MR BAKER: And we would seek – I mean, clearly there is an ongoing process here so we would seek to have the file left open.

15 THE DEPUTY PRESIDENT: Okay.

MR BAKER: And subject to the availability of the parties, I would seek that the matter be re-listed again in four weeks, normally in four weeks time, so that the process stays on track?

20

THE DEPUTY PRESIDENT: Okay, well we'll do that off the record shortly. Okay, Ms Fitton?

MS FITTON: Okay, thank you, Commissioner. In relation to the changes to personal leave, I would ask if we could just deal with the CAHSA and the GCOE concurrently because basically the provisions are pretty much the same?

25

THE DEPUTY PRESIDENT: Yes, we can, I mean, there's differences as to numbering and so on - - -

30

MS FITTON: Yes, but different with actual - - -

THE DEPUTY PRESIDENT: - - - and consequential amendments. But yes, the actual substantive changes are the same.

35

MS FITTON: Are similar, yes, I will note where the differences are. I do have two draft orders this morning, I guess they've been drafted on the basis that - of the new reformatted GCOE that's now been on hold, so I can hand them up but the numbering will be incorrect and I just need to advise you of the changes. So there's one for CAHSA and one for GCOE.

40

THE DEPUTY PRESIDENT: Okay. Now, I don't think any – okay, we don't need to number them as they're draft orders, yes.

45 MS FITTON: Okay, so in relation to the CAHSA award, the current sick leave provision is replaced by a new personal leave clause, and the current compassionate leave clause is replaced by a new bereavement leave clause. However, in the GCOE it's actually the insertion of new clauses that haven't previously existed within the

award. These new clauses are the result of extensive negotiation and consultation with both state service agencies and the unions. The provisions are an incorporation of the AIRC family test case decision, current award provisions in relation to CAHSA, some provisions currently provided for in ministerial direction number 2
5 and previous public sector wages agreements.

The new personal leave provisions combine both sick leave and carers leave into the one entitlement of personal leave for personal injury and illness and personal leave to care for an immediate family or household member. In relation to personal leave for
10 caring purposes, the main change is in the entitlement has increased from five to 10 days of your personal leave entitlement consistent with the family test case decision and national and state standards. By agreement with the employer, an additional amount of accrued personal leave can also be accessed for caring purposes and also
15 further unpaid leave if all leave is exhausted. The definition of immediate family has been expanded and is consistent with the new parental leave provision recently been inserted into the awards.

Other new provisions consistent with the family test case decision include being able to access personal leave to care for immediate family members or household who
20 require care due to an unexpected emergency. Also, casual employees who require care for caring purposes are now able to not be available to attend work or leave work for a minimum period of two days per occasion.

In relation to sick leave or now described as personal leave for personal injury or
25 illness, the main change here is in relation to medical certificates. A medical certificate issued by a registered health practitioner will now be acceptable if issued in the area of practice of the health practitioner. And under the new provisions, fixed-term employees, now in line with the standard, have access up to 10 days for subsequent use of employment whereas previously it was nine.
30

Now if I can take you to bereavement leave. Here the entitlement is the same in both awards. We've had some discussions this morning in relation to this clause and we've agreed to amend that bereavement clause slightly by the first paragraph of that clause deleting the second sentence in relation to part-time employees. So that's
35 both for GCOE and CAHSA.

The provisions have also been expanded from the current entitlement of three days to allow for up to 10 days leave on the death of immediate family or household member which we would -have also had some discussions this morning around. Our current
40 public sector union wages agreement provided for 10 days for certain family members. This now increases 10 days for most relationships and we would consider in most cases everybody would be entitled of access to 10 days.

There is also the discretion for the employer to grant additional leave or even unpaid bereavement leave. Consistent again with the family test case provisions, casuals are
45 entitled to not be available to work or leave work on the death for a period of up to two days. Also in the order there are references to sick leave within the award, that will need to be amended to now read personal leave. We submit that the application

applies with the wage fixing principles. We would ask for an operative date to be 17 March 2008, this is just to allow agencies some time to amend their system. And subject to the union's support, that concludes my submission.

5 THE DEPUTY PRESIDENT: Thank you. Mr Lynch?

MR LYNCH: Deputy President, I would say since our last meeting here we have had several constructive meetings with the Public Sector management office on the awards and all the matters that are outstanding from previous agreements and ministerial directions and from various other places that we're all keen on
10 consolidating into our award. That process has gone very well and I would acknowledge the work that PSMO have undertaken in drafting up documents. I did have a problem however today with the draft document that was put forward and it was simply the fact that I haven't had sufficient time to go through that in detail and
15 these are complex matters that can change the meaning with a few changes to reference, and I believe that we need to be very accurate in making these changes through these awards.

That sort of was the reason why we were unable to go forward with that consolidated version today but as long as we can get an opportunity to go through that and build in
20 any other changes that are proposed over the next four weeks, I'd be hopeful we would be able to come forward to you with a consolidated version. With regard to the changes that are proposed today, we endorse the new personal leave and bereavement leave clauses to be inserted into the General Conditions of Employment
25 Award and also into the Community and Health Services Public Sector Award.

This has been a difficult process, particularly with the training sick leave where the provisions are so complex. It has been the intention of the parties, and we believe we have accurately presented the provisions as they currently operate within that award,
30 they're certainly not meant to be any changes to people's sick leave entitlements under the new arrangements and I'd be hopeful that we have captured that correctly. Again, with the bereavement leave provisions with that change to the pro rata for part-time employees, we believe we've brought together the existing entitlements.

35 THE DEPUTY PRESIDENT: Yes. As I understand it, that just means that part timers aren't discriminated against, they also get 10 days off in line with previous decisions, yes?

MR LYNCH: That's right. It's the old double dipping of whether you're pro rata-
40 ed twice and they have 10 days at their normal hourly rates.

THE DEPUTY PRESIDENT: Well, that's right, their families don't get any less sick or any less dead.

45 MR LYNCH: So the CPSU endorse the clauses put forward for each of the awards. Thank you.

THE DEPUTY PRESIDENT: Okay, thank you. Well, we'll amend both awards in - - -

5 MR JACOBSON: Excuse me, I probably need to consent to the application as well?

THE DEPUTY PRESIDENT: You may then, Mr Jacobson. How could I forget you?

10 MR JACOBSON: Well, that's right, there are those that would choose to, prefer it to be that way. Similarly we concur with the applications with respect to personal leave and bereavement leave and those amendments that are being sought. And obviously believe that they don't offend the wage-fixing principles nor the public interest test as it's set out in section 36 of the Act.

15 THE DEPUTY PRESIDENT: Okay. So all of those other places where leave and so on has been expressed before such as the ministerial number 2 and so on, they will just disappear, is that the case or remain?

20 MR BAKER: The process is somewhat complex, but yes in time the sick leave provision that exists in ministerial direction 2 will be removed. I think we've captured it pretty much in its entirety, so it will in time disappear.

25 THE DEPUTY PRESIDENT: That will be a very good thing too, I can't tell you the number of times people have said where do we find where are leave entitlements are, and obviously they go to the award and they're not there and so - - -

MR BAKER: We have the same problem.

30 MR LYNCH: Annual leave could be next. I think certainly, to just follow on from that, I think it is a bit of a watershed and I think we are seeking to do some things here in this process that many people have spoken about before, and I think from our perspective the cooperation between the parties around this issue is extremely good, and it certainly would be of some value to employees more particularly into the future to simply have to go to one document to refer to all of their conditions of
35 employment, so I think we're moving in the right direction.

THE DEPUTY PRESIDENT: Yes, excellent, very good indeed. I will take great pleasure in amending awards in the manner sought, and they'll be issued in due course. But as mentioned earlier in respect of the GCOE award, that file will still
40 remain open, but the CAHSA award, can that file be closed?

MR BAKER: No, no.

45 THE DEPUTY PRESIDENT: You want them both – yes, outstanding issues?

MR BAKER: Both still open thank you, Deputy President.

THE DEPUTY PRESIDENT: Okay. So we'll just issues decisions to amend the awards without closing the file. Now, can we discuss the records. These matters are adjourned until 10.30 am on 28 March. Thank you.

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MATTER ADJOURNED at 10.55 am UNTIL FRIDAY, 28 MARCH 2008