

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5044 of 1994

IN THE MATTER OF an application by
the Health Services Union of
Australia, Tasmania No. 1 Branch
to vary the Welfare and Voluntary
Agencies Award

re Clause 7 - Definitions

DEPUTY PRESIDENT ROBINSON

HOBART, 27 May 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. We will take appearances, please.

MS R. HARVEY: MS ROS HARVEY appearing for the Health Services Union of Australia, Tasmania No 1 Branch, if the commission pleases.

5 DEPUTY PRESIDENT ROBINSON: Thank you, Ms Harvey.

MR W.J. FITZGERALD: If it pleases I appear on behalf of Tasmanian Chamber of Commerce and Industry, FITZGERALD, W.J.

DEPUTY PRESIDENT ROBINSON: Right. Ms Harvey?

10 MS HARVEY: Yes, Mr Deputy President. The application here before you today actually may have been a little pre-emptive. If I can just give you a brief background by way of introduction to this hearing.

DEPUTY PRESIDENT ROBINSON: Yes.

15 MS HARVEY: The parties have established a state negotiating committee that has been meeting for nearly three years. When we come to our submissions I will present a full background to you on the work that has been undertaken, but in part it included a skills analysis done by the parties to work on the classification structure. So, what we had was an interim
20 broadbanding with minimum rate adjustments and at the very first hearing in which we started that process we indicated to the bench that we were in the process of doing some work on the skill-based definitions to try to get it right for this industry, and in those hearings the parties affirmed their commitment to the benchmarks established by the metal industry in terms of the certificate, advanced certificate and associate diploma level qualifications. So, we do have a framework in which we are operating.

25 Now, as a result of much work that has gone over 2½ years, on 18 April the TCCI was able to forward to my organisation a draft without prejudice proposal on a classification structure which was to be recommended to both my members and their members. We subsequently held meetings of our
30 members around the state and in all the major work sites and ensured that every member had all opportunity to participate in that. On 29 April we wrote to the TCCI indicating the position of our members in relation to the structure and to this point we have not actually had a response and the TCCI advocate has not been available to meet with my organisation or indicate a position.

35 So, therefore what we would seek at this time is an adjournment to allow the TCCI to inform me of what their position is and to see whether we can proceed by way of agreement or whether in fact we are going to proceed

by arbitration. So, I would seek an adjournment at this stage of the hearing, hopefully to reconvene before lunch to inform you of which way we intend to progress. If the commission pleases.

5 DEPUTY PRESIDENT ROBINSON: Right. Thank you, Ms Harvey. How do you respond, Mr FitzGerald?

10 MR FITZGERALD: Well, I certainly would endorse Ms Harvey's approach for an adjournment at this point in time, Mr Deputy President. As you would be aware no doubt, my former colleague, Mr Sertori, in fact handled this area and he has recently retired from our organisation and
15 regretably in the last week I have been unavailable to Ms Harvey, but we have a position which we want to put to Ms Harvey this morning. It is our wish or the wish of the employers that we proceed to further negotiate the documents which have been exchanged between parties. Our preference is that we present here with a consent position rather than put notice before you before arbitration.

20 My instructions - and they are limited in this in this very limited time, but my instructions are that there may have been the first claim three years ago, but most of the negotiation has occurred in recent times between the state negotiating committee and Ms Harvey's union. We are anxious to proceed with it, but in saying that, Mr Deputy President, we feel that it is important that we have this correct for the future, and despite Ms Harvey's
25 obvious concern about proceeding as quickly as possible, we would wish to hasten slowly in terms of ensuring that what we put before the commission finally does reflect the needs of the industry. So, in making those comments, Mr Deputy President, we are happy to go along with Ms Harvey's request for an adjournment and we hopefully can put to you before lunch time a position, or an indication of a position where we will proceed with this matter.

30 DEPUTY PRESIDENT ROBINSON: Yes. What people - I do not want the individuals names, but what people constituted the negotiating committee?

MR FITZGERALD: The individuals names I probably could not - - -

DEPUTY PRESIDENT ROBINSON: No, no, I do not want the names, as I say, I just - - -

35 MR FITZGERALD: No. Well, representatives of the industry in various sectors.

DEPUTY PRESIDENT ROBINSON: Representatives of the industry.

MR FITZGERALD: Yes, I think there are five - round that number, anyway.

DEPUTY PRESIDENT ROBINSON: Right.

5 MS HARVEY: Perhaps if I could assist Mr FitzGerald in this respect. The State Negotiating Committee was established, as I say, going back - I would have to check the minutes for the exact date, but my recollection is 2½ to three years ago.

DEPUTY PRESIDENT ROBINSON: Yes. I am interested in its status, that is all.

10 MS HARVEY: It was an agreed committee with an agreed status by both the parties, which is reflected in the initial minutes, and it is constituted of representatives from the employers and they constituted both the TCCI advocate at the time, plus a cross-section of the industry, and from the union's side two union officials. Plus, we had a representative from our
15 shop stewards statewide committee.

DEPUTY PRESIDENT ROBINSON: Right. Thank you. Very well. Thank you for that brief explanation. I will grant an adjournment and retire to my room and get on with something else, and hope for a report of progress as soon as you are ready.

20 INTO CONFERENCE

DEPUTY PRESIDENT ROBINSON: Well, what is the situation after the adjournment?

25 MS HARVEY: Well, Mr Deputy President, I thank you for granting us that short adjournment. Unfortunately it is only within the last five minutes that I have even been told what the problems were with HACSU's proposal - the proposed agreement between our organisation and the employers. My understanding now is - or I can now tell you - that no such agreement exists between our organisations, and as I say I have only had five minutes and an oral overview of what some of the concerns are. They are such that
30 my organisation - I have very clear instructions from my members. They have endorsed a package as a minimum and what has been proposed is not acceptable.

I now propose, Mr Deputy President, given the history of this matter - and I will run through some of the dates in terms of the negotiations that have occurred, that we now proceed to arbitration. If I can just by way of introductory comments to my request in this regard, we have had a State
5 Negotiating Committee meeting and organised for in excess of 2½ years. In that time we have had a very co-operative relationship with the employers and we have tried very hard to come together with an agreement for the future of the industry and what is best for both the needs of the employers, employees, and indeed, the people that are members cared for
10 in this industry.

We have always been very mindful of that as an organisation and I can point to, in fact, concessions we have made in this industry that we would never make in any other. For example, agreeing to five minimum rate adjustments rather than 4. We have worked very closely with the
15 employers in trying to secure funding and commitment that we always would maintain. But, however, there comes a point where you have draw a line in the sand and you have to say, okay, we cannot reach agreement, that is unfortunate let us see, we have to make a decision on this we cannot allow it to go on forever.

So, as I say, we have been meeting with the employers in the form of the State Negotiating Committee in excess of 2½ years. There has, in fact, been negotiations before that, I am just citing the date from the formal
20 establishment of the committee. Indeed, I had some involvement with this award when I was working for the Trades and Labor Council, which goes back 5 years. So it is not something that has all of a sudden come upon us. In terms of the actual negotiations on the skills analysis itself, the State Negotiating Committee in its very first hearing indicated to the bench that we were seeking funding to undertake a skills analysis of the industry. We were eventually successful in that and in April - April/May that was
25 commenced last year, as skills analysis with a consultant.

That report was provided to the parties before Christmas and due to unavailability of the TCI advocate we were not able to actually formally start meeting again till towards the end of January. But on 25 May we met
35 as a SNC, a State Negotiating Committee. On 16 February we met with it as a State Negotiating Committee; 12 April we met as a State Negotiating Committee. On 15 April I met with the advocate of the time, Mike Sertori, and finally drafting a proposal for both our members to consider. On 26 of - and in between that time I might hasten to add there has been a flurry of faxes between my organisation and the TCCI trying to get
40 agreement in relation to a structure.

We finally thought we had, we went to our members in the week beginning 26 April, our members endorsed a package provided it was an agreement.

Unfortunately between - I then notified the employees immediately of that decision, and on 3 May the employers met, and as I say, between that time and now I have had no indication of what the - formal indication of what the concerns are. I will also say that on 10 May when I discussed with Mr Fitzgerald the issue about these forthcoming hearing dates, I said to Mr Fitzgerald, and had made it indeed very clear through this whole year, that this was to be the line in the sand.

And I said, if we could not reach agreement that I would be seeking arbitration. And that occurred on 10 May, so you know, I think that there has been fair warning and fair notice of my organisation's intention to draw the line in the sand at this particular date. And so, you know, I think it is incumbent on all people in industrial relations to act in good faith, and I believe that I have done. I have been very up front with the employers about our intentions and I think it is incumbent on me to now proceed with that.

So, I would seek a determination from you, Mr Deputy President, that we in fact do proceed to arbitration. And if between now and then the employers were to ring me up or to put any document to me, as I said to the advocate, that you know, I will always be prepared to discuss matters, but as far as I am concerned the period of conciliation is well and truly over and it is time to just make a decision. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Yes. Well, I respond to that first, if you do not mind, Mr FitzGerald, by stating the fairly obvious, I suppose, that it is the Health Services Union of Australia, Tasmania No 2) Branch's application, if that is still the name of the application.

MS HARVEY: Number 1.

DEPUTY PRESIDENT ROBINSON: But I am dealing with an application for a hearing to deal with certain proposed changes to the award concerned. Naturally the commission always encourages that these matters be settled so far as practicable by the conciliatory method. I can only be guided by the responses of the applicant, in particular, as well as other parties, as to when - as how they wish to proceed and the commission is ready, willing and available to play its, whatever role is required of it. And if it is required to hear formal submissions then it will do that.

And we are quite happy to program whatever the methodology is, whether it involves inspections, calling of witnesses, formal submissions, reliance upon exhibits, that sort of thing. It is up to the parties how they proceed. Mr FitzGerald?

MR FITZGERALD: Thanks, Mr Deputy President. I will put a brief response to those submissions of Ms Harvey. As you would be aware I have only recently had an involvement with this industry, as indeed yourself.

5 DEPUTY PRESIDENT ROBINSON: Although I can go back a few years when I think I have been involved - - -

MR FITZGERALD: In terms of - - -

DEPUTY PRESIDENT ROBINSON: - - - probably not to the knowledge of any of those present.

10 MR FITZGERALD: Sure. In terms of current issues, obviously it is a fairly recent involvement, Mr Deputy President. We would believe it is a hasty approach to proceed to arbitration without allowing the conciliation processes to be exhausted. We have put a position to Ms Harvey this morning, and I cannot quite understand - it seems to be somewhat a
15 contradiction that on the hand she says, well let us proceed to arbitration, on the other hand she says, my door is always open.

Our door is certainly open and we believe that what we have put to her is - this morning is not irreconcilable and we believe that the positions can be further progressed via further discussions, or indeed, by the process of
20 conciliation involving the commission, which we are happy to be involved in. The commission has a duty under the act to ensure that those processes, with respect, have been exhausted before proceeding arbitration and we - and it is in our view - in our view that those processes have not been exhausted and the commission should not adjourn for - to proceed
25 matters - - -

DEPUTY PRESIDENT ROBINSON: Can you take us to that part of the act that says we shall not proceed to arbitration till we are satisfied that the conciliation procedure has been exhausted?

30 MR FITZGERALD: No, that is certainly not - not within the act but the spirit of the act I would suggest is very much on conciliation and I think you might have indicated that before.

DEPUTY PRESIDENT ROBINSON: Well, I certainly have said that it is practice to - - -

MR FITZGERALD: Certainly.

35 DEPUTY PRESIDENT ROBINSON: - - - to ensure - - -

MR FITZGERALD: And particularly in the area like there were - it is a major change. I think it is a hasty approach just to simply proceed into arbitration without the commission being satisfied that those processes have been exhausted.

5 DEPUTY PRESIDENT ROBINSON: Yes, it has been put to us that there have been 2½ years of discussions and negotiations.

MR FITZGERALD: Unfortunately I am not in a position to indicate a position, this

TAPE ALERT

10 however from my former colleague - is it right to proceed?

DEPUTY PRESIDENT ROBINSON: We will tell you if not.

15 MR FITZGERALD: Thank you. My former colleague are such that even though they might have commenced 2½ years ago the more detailed discussions have occurred, in fact, very recently. And I can say that I have had an involvement in another area quite similar to this, and that is in the Community Services sector with Commissioner Gozzi, and we have also had long periods of discussion there and - for good reason because it is indeed a complex question as it is in this industry.

20 And the commission has involved itself in the conciliatory processes there with the ultimate aim to see an agreed document put before it. Not - I say in this instance the commission should take a similar line. So, in - we would simply oppose the application by Ms Harvey to proceed to arbitration, we believe that for the sake of the industry, and that includes
25 employers and employees, it would be far better to ensure that we maintain the integrity of the negotiating documents which have been the subject of discussion between the parties and attempt to negotiate those difference which have been highlighted to Ms Harvey this morning.

30 DEPUTY PRESIDENT ROBINSON: Well, the commission is a situation where, as I said, it encourages settlement of matters so far as is possible by the conciliatory method but by the same token it is difficult for the commission to say to any applicant organisation I will not hear, I will not hear you on what you wish to proceed with. And I would indeed be - - -

MR FITZGERALD: I can understand those - - -

DEPUTY PRESIDENT ROBINSON: - - - deemed open to the serving of a peculiar sort of writ as - - -

MR FITZGERALD: I understand those - - -

5 DEPUTY PRESIDENT ROBINSON: - - - whatever it is called, to - you will perform your public duty.

MR FITZGERALD: I mean, I do not - yes, I can understand that and it is a matter for judgment of the commission to decide those two competing approaches.

DEPUTY PRESIDENT ROBINSON: Yes.

10 MR FITZGERALD: All I say that, what - if the commission does find favour with our submissions not to proceed to arbitration then it is not in any way by doing that denying the applicant to ultimately put the matter before you in arbitration.

15 DEPUTY PRESIDENT ROBINSON: Well, that is a question of judgment as to how - when that process is exhausted. So - well, I will be ready this afternoon - later this afternoon if people want to have a bit more time and perhaps resume at 3 o'clock or something like that.

20 MS HARVEY: Mr Deputy President, if I can just respond to the submission that Mr FitzGerald has put. I want to - there is a clear difference between the Community Services Award and this award. For a start the Community Services Award has had no until quite recently have in fact had to deal with a vast array of issues that are extraordinarily more complex than this area which already has some award regulation. And, indeed, over those 5 years of which I refer to, at least
25 my involvement in this award is we have in fact consolidated and dealt with a whole of conditions, matters in an equivalent that has been happening in the Community Services Award. And I would also say I do not believe it would be in the public interest if it takes 14 years, as it has taken in that award to finalise - - -

30 MR FITZGERALD: Oh, but look, that - I would just object to those sort of comments, that is an emotional comment - - -

DEPUTY PRESIDENT ROBINSON: I did not - you were not interrupted.

35 MR FITZGERALD: - - - and it is without substance too, so I would ask that that be withdrawn.

DEPUTY PRESIDENT ROBINSON: You are - all right, your objection is noted.

5 MS HARVEY: Yes, I note the objection. If I could then go on to say that I have instructions from my members, and there is some - the flexibility in my instructions from my members is that what they voted on is a minimum as a package. And so whilst I say the door is always open, it is not open to go downwards, which is what I understand the advocate for the TCCI is seeking. And therefore if it makes it easier in terms of this commission's decision about to proceed to arbitration, I make it quite clear that it will not be going downwards, and I am not prepared to discuss it in those terms, because I have instructions from my members in that respect.

10 So, all I can say, Mr Deputy President, is that I urge you to accept my application to move to arbitration and if I could also indicate that the application you have before you did reflect, I suppose, in anticipation that we would have agreement, and I will be forwarding to you today some slight amendments in relation to that application which the employers have already been informed of. If the commission pleases.

15 DEPUTY PRESIDENT ROBINSON: Well, I assume from those sort of comments that the parties are not in a position to require my involvement for any later part of this week.

20 MS HARVEY: We already have some dates, Mr Deputy President; the 10th and 16th, I believe.

25 DEPUTY PRESIDENT ROBINSON: Well, I would urge the parties to utilise the time between now and the resumption to have one final shot at trying to find some common ground to what, if any, variations to the award are appropriate to occur but, however I think that in the event when we next resume that there is not still some common request for further time or a situation reached where parties are ready to proceed to explain their consent arrangement, that they ought to be ready, willing and available to at least hear the applicant's case and then be prepared to respond within a reasonable period. Are we settled on the resumption dates.

30 MR FITZGERALD: Well, I understand they have been set down; I was unaware of the 10th, but I am aware of it now, and my diary only indicated the 16th, but it has been set down for the 10th, so - - -

35 MS HARVEY: Mr Deputy President, perhaps I could - - -

DEPUTY PRESIDENT ROBINSON: Sorry, just give us a moment. Well, I understand that the future resumption dates are 10 June and 16 June.

MS HARVEY: Mr Deputy President, perhaps - that is correct, if perhaps the parties could confer with your associate because my estimation is that I will need approximately five days of hearing at this stage.

5 DEPUTY PRESIDENT ROBINSON: Right, but we have got the 10th and the 16th and then if you want further dates you can arrange them.

MS HARVEY: Right. I was just wondering whether we should program them in to avoid sort of delays which make it difficult for everybody in terms of continuity.

10 DEPUTY PRESIDENT ROBINSON: Well, I think we can go off record and that can be done off record, and if it involves the commission in that again after lunch, well, I will be ready when you are available.

MS HARVEY: You will be available, thank you.

15 DEPUTY PRESIDENT ROBINSON: Well, if everybody is quite clear we will adjourn until 10 June, and 16 June is also set aside and the parties are to confer in relation to the setting of further dates. In the event that they cannot arrive at those further dates then the commission will assist. Mrs Devine has my diary so she can handle that. Any questions? No. Thank you.

20 THE MATTER WAS ADJOURNED
UNTIL FRIDAY, 10 JUNE 1994