

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4284 of 1993

**IN THE MATTER OF** an application by  
the Australian Liquor Hospitality  
and Miscellaneous Workers Union  
pursuant to section 23 of the Act  
to vary the Security Industry  
Award

re security officer - level 4 and  
firearms

COMMISSIONER GOZZI

HOBART, 5 April 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please?

**MR K. O'BRIEN:** If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union.

COMMISSIONER GOZZI: Thank you, Mr O'Brien.

**MR T. EDWARDS:** If it please the commission, EDWARDS, T.J. I appear for the TCI. Appearing with me is **MR D. WEIR** - W-E-I-R.

COMMISSIONER GOZZI: Thank you, Mr Edwards. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, this application deals with, as announced, two matters. The first relates to the application of the classification structure to the employment of contract security officers employed at the EZ Risdon premises and the contention is that the appropriate level ought to be set in the award for whichever user of the award at level 4. For the purpose of that we will be seeking to conduct inspections and call evidence in proceedings to indicate the level of skill and responsibility applicable to that position to that it is distinguishable from lower levels - classification standards in the award.

The second issue relates to the provision in the award which deals with the licensing of employees to use firearms. Recent changes to legislation in this state have imposed several financial obligation on holders of licences in terms of necessary training to satisfy the qualifications to hold a licence and we seek to amend the award in so far as it is necessary to ensure that that cost burden does fall upon the employee.

COMMISSIONER GOZZI: Isn't there already something in the award to that - ?

MR O'BRIEN: There is something. It's - there is an argument to say that it - the cost of the licence is certainly covered. We're having some difficulty persuading employers in the industry that the associated costs - that is, cost of training, are also covered. So we seek to remove that - what's the word - ambiguity, if any.

COMMISSIONER GOZZI: So this -

MR O'BRIEN: But in any case we would seek to make sure that the costs of the licence and associated costs ought to be covered. Now I -

COMMISSIONER GOZZI: Yes, it is just specified as a licence cost at the moment, is it?

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: Yes.

MR O'BRIEN: In terms of any difficulties with drafting, we have proposed a draft. If there is some difficulty and Mr Edwards had an interpretation which I - didn't line up with my interpretation of the draft that we put forward, we would certainly be prepared to look at reasonable modifications which didn't harm the intent of the application but nevertheless dealt with concerns which Mr Edwards might have about unintended consequences of drafting.

I spoke with Mr Edwards late last week and I had a - we had a discussion and he has not advised me whether he still intends to pursue an adjournment of the question of the firearms application or on the basis of some other course of action. It might be appropriate to hear from Mr Edwards as to whether he has any question in relation to that matter.

In relation to the other, we would need to establish a mutually convenient time to inspect the work at the EZ premises at Risdon and I haven't presumed to make any arrangements about that at this stage, so we'd need to make those arrangements and program dates at mutually convenient times. Mr Edwards is talking about other inspections. I'm not sure where or at what time of day those inspections are suggested to be carried out, but obviously we could program them in the same context.

COMMISSIONER GOZZI: All right. Thank you, Mr O'Brien. Mr Edwards?

MR EDWARDS: Thank you, commissioner. Going to the first part of the application, commissioner, that is that dealing with the provision of security services at PMEZ premises at Risdon. As Mr O'Brien has already identified, in our view too there will be a need for inspections and evidence to be gleaned in respect of that matter. Suffice to say, for the record, at this point in time is that the application, as presented, will be strenuously opposed. In our view, the work embraced by the contract that this held at the moment by Wormald at PMEZ is clearly embraced by the existing definitions in the award and there is no need for a change. We don't believe that the skill levels and responsibilities are such that any higher level than that already prescribed by the award, that being level 1, is required for this particular work, and in order to demonstrate that is the case, we would be looking for inspections to be a little more wide ranging than just the PMEZ premises. I think it's important that the commission gets an overview of the work undertaken in the industry and that which is already classified at the lower levels so that a proper comparison can be made.

As - the best of my knowledge, the commission, as currently constituted, hasn't undertaken any detailed inspections of the security industry. The new classification structure that's found its way into the award has done so by consent without the need for detailed submissions or indeed any detailed evidence of the appropriate structure and/or wage relativities that are associated with that structure and it's important that the commission does get an understanding, in our view, of the work already embraced by those agreed definitions.

Turning now, sir, to - I can't - sorry - just on that point, I can't at this point indicate where else we would want inspections but I'll undertake in conjunction with Mr O'Brien as we set up the program for inspections and further reconvening of these proceedings to - to nominate alternative places where we would see inspections being necessary.

COMMISSIONER GOZZI: Isn't that - isn't it able to be ascertained by reference to the definition?

MR EDWARDS: Yes, it is, commissioner. In our submission it is - that the work is very clearly embraced by the existing definition of level 1. However, as I understand the argument that will be presented by Mr O'Brien and I don't pretend to try and put his case, but as I understand it, Mr O'Brien will be arguing that the work at Pasminco is above and beyond that required of a normal security guard and should be comprehended at level 4.

At the moment there are no guard provisions within level 4; what is in level 4 at the moment relates to a control room operator and doesn't correlate back to the work of a guard, so I don't think there's any great contest on that point.

MR O'BRIEN: No, that's - that's putting it very well, I think, as to what our application seeks.

COMMISSIONER GOZZI: Right.

MR O'BRIEN: And I think Mr Edwards highlights if we're going to inspect, we probably should inspect the control room as well.

MR EDWARDS: That could well be the case, commissioner, inasmuch as it is the work of the control room operator that's currently embraced by level 4 and if - I guess if Mr O'Brien wishes to draw some correlation between the work of the two, then that could well be necessary as part of the inspection program.

COMMISSIONER GOZZI: So anyway, you and he - you're proposing to sit down with Mr O'Brien and work out an inspection program.

MR EDWARDS: Yes, commissioner - the timing of which obviously would need to be devised around your timetable as well, but what we'd do is try and agree on the places where inspections may be necessary.

COMMISSIONER GOZZI: Mm. I'm not quite clear where reference to 'guard' comes in here.

MR EDWARDS: It's not referred to in precisely that terminology, commissioner.

COMMISSIONER GOZZI: I mean looking at the award that's not comprehended there is it?

MR EDWARDS: If you could bear with me for a moment, sir.

MR O'BRIEN: It is .... terminology.

MR EDWARDS: At security officer, level 1, under the heading of 'The indicative tasks' it talks about an employee who is to watch, guard -

COMMISSIONER GOZZI: Oh, watch, guard, and protect.

MR EDWARDS: - or protect persons and/or premises and/or property.

COMMISSIONER GOZZI: Right.

MR EDWARDS: And secondly, the static guard part is, be stationed at the entrance and/or exit -

COMMISSIONER GOZZI: Right.

MR EDWARDS: - his principal duties shall include, et cetera.

COMMISSIONER GOZZI: Right, okay.

MR EDWARDS: And it's our submission that - that that is adequate for the undertaken at Pasminco. I guess it's also fair just to record for correctness' sake, there are also possibly some guard duties that could be performed under the words in level 2, but that's by nowhere near as clear as it is at level 1.

COMMISSIONER GOZZI: Yes, but -

MR O'BRIEN: I think, just for clarity's sake all - all levels above that could indeed include guarding work.

COMMISSIONER GOZZI: Yes, that's quite clear, I was just going to make that point. The definition of security officer level 4, in (d) comprehends that of course.

MR EDWARDS: In, sorry?

COMMISSIONER GOZZI: The definition of security officer level 4 in (d) comprehends that duties performed by security officers level 1, 2 and 3.

MR EDWARDS: Yes, may be able to perform those, but that - I would submit that that -

COMMISSIONER GOZZI: May be required.

MR EDWARDS: - would be in addition to other things.

COMMISSIONER GOZZI: May be required.

MR EDWARDS: Yes - they would do that as part and parcel of being at level 4. You will note that at each level it indicates that the person classified at the higher level could be required to perform the duties at the lower levels.

COMMISSIONER GOZZI: Yes, that's true. Alright.

MR EDWARDS: But we'd flesh that out obviously more, commissioner, as the case proceeds and unravels. In respect of the second of the issues embraced by the application, commissioner, and that is that relating to the costs associated with firearms, this is -

COMMISSIONER GOZZI: Or for training - for qualifying?

MR EDWARDS: Well there are two parts to it -

COMMISSIONER GOZZI: Yes.

MR EDWARDS: - as I would understand it, commissioner, the first is the requirement of a security guard to obtain a licence -

COMMISSIONER GOZZI: Yes.

MR EDWARDS: - to have a gun. And the second part is, as part of the legislation - it's under the Guns Act of 1992 - there is two parts to it. The first is, and there is a cost associated with this of being licensed, and the second part is to undertake training which there are two different costs involved.

COMMISSIONER GOZZI: Well there are only six - only six - the cost of qualifying for and obtaining a licence - so the qualifying part, and the licence costs -

MR EDWARDS: Well the qualifying is the training part -

COMMISSIONER GOZZI: Yes.

MR EDWARDS: - and obtaining is the costs associated with the issue of a licence.

COMMISSIONER GOZZI: Yes. And then of course where an employee elects to use his or her own firearm there's \$5 -

MR EDWARDS: And there is a -

COMMISSIONER GOZZI: - per week.

MR EDWARDS: - further cost involved there for the provision of a firearm.

COMMISSIONER GOZZI: Mm.

MR EDWARDS: The drafting issue that Mr O'Brien was referring to earlier is that currently the award indicates that where an employer requires an employee to supply their own firearm there becomes a cost involved to the employer.

COMMISSIONER GOZZI: Right.

MR EDWARDS: Whereas what I believe the word used in the application which reverses that where the employee, of his own volition may elect to supply his own firearm instead of using one supplied by the employer, and that that attracts further additional monies.

COMMISSIONER GOZZI: Mm.

MR EDWARDS: Certainly we're not comfortable with that reversal of who has the election to supply the firearm. I have no problem at all where the employer requires an employee to supply a firearm, but there should be some payment made to the employee. But if the employer has a firearm available to the employee and the employee elects to supply his or her own then we do have a problem with that.

But, going -

MR O'BRIEN: Sorry. If I could just make it clear that we really were trying to rearrange the words so that the situation was one where the employee could not be required against his or her will to supply the firearm, and Mr Edwards has sort of taken the next step along where the employee wants

to use his or her own firearm and the employer says, 'Well, I have got one for you'.

It's not our intention to force that. What we're talking about is making sure that if the employer requests it it has got to be acceded to by the employee to provide a firearm; because in this day and age that's not necessarily a simple thing.

That's where I think we can probably come up with words rather easily to deal with the mutual agreement about the supply of - the employees supplying - the firearm in whatever form.

That's what our intention is, anyway.

MR EDWARDS: I'm only operating on the words in the award, commissioner, which is at clause 16 which says, 'An employee required to carry firearms shall be supplied'. If the employee is required to supply his or her own firearm.

MR O'BRIEN: Well, that's contradictory, isn't it?

MR EDWARDS: Which is, in my view, a little different to that which is dealt with by way of the application. But not a lot swings on that at this time, commissioner.

As Mr O'Brien has indicated, we do wish to ask for an adjournment of this matter.

That adjournment is predicated upon certain other activities that TCI is undertaking on behalf of the security industry wherein we are talking with the government - and specifically the Minister for Police, Dr Madill - about this whole issue where the cost involved in the licensing of the security industry in the carrying of firearms is a prohibitive cost.

In the case of one employer it is estimated to be somewhere at about \$25,000, which we are saying the industry shouldn't be asked to bear, particularly when there is already a fairly rigorous preselection criteria for people on entry to the security industry where they are required to undergo an examination by the police as to their background and character.

That we see what is required under the Guns Act is a direct double counting of that investigation, and we are indicating to the government that there are better ways of dealing with this whole question.

In addition to which, we have been talking to the government about the undenied fact that training in the use of firearms is already supplied by the industry to a standard which has been hitherto acceptable to Tasmania Police, and we don't see that it is appropriate for the government to simply take that



away and give it to some alternative private provider who is in direct competition with the security industry in this regard under a contract from the government.

Now, we are undertaking, and have been since October, fairly detailed discussions with the Minister for Police and Emergency Services, Dr Madill, and it is fair to say that we have been getting a fairly sympathetic hearing to date.

Unfortunately, we haven't had any response in writing to any of our proposals.

I'm quite prepared to provide copies of all the relevant correspondence to Dr Madill to Mr O'Brien and, in fact, in our discussion of late last week to which Mr O'Brien has already referred I did indicate that I could see some merit in fact of a joint union industry approach to the government on this issue.

In our submission, this is one further exercise of taxation by stealth by the government, and we have told them as much, and it is being inquired into by the Independent Inquiry set up by the government into hidden taxation costs and charges against industry, which is being undertaken by Mr Val Smith.

I think you may well have perhaps read some Press reports on that inquiry, commissioner.

Having said that, we would ask that this matter be adjourned because we believe that rather than us argue the toss between us as to who should bear the cost of this issue, rather it is better that we make sure there is no cost in the first instance, or at least minimise the cost.

Now that would be of advantage of either side, regardless of who were to win a case before the commission on this issue. That if there were no cost then there is no great problem to my clients and, indeed, if there were no costs then there is no problem to Mr O'Brien either.

But, we believe that that's a better way of dealing with it, and as I indicated, we see some merit now in a joint approach from industry and the union movement to the minister on this issue, or indeed even to the Premier if necessary, who of recent times has become embroiled in the discussions; and we would like the opportunity to see those negotiations through to fruition before this issue comes before the commission.

COMMISSIONER GOZZI: Well, I will certainly be guided by the submissions of the parties, but whatever the outcome I guess the clause is framed in such a way that if it was to go into the award, if, I guess the impact of it depends on the success or otherwise of your negotiations.

The negotiations can really reduce the impact of any cost that might, or any clause that might go in there, and on the other hand it is really six of one and half a dozen of the other.

MR EDWARDS: It's not quite, commissioner.

COMMISSIONER GOZZI: The clause is not really dependent upon the outcome or otherwise of your negotiations.

MR EDWARDS: Well, it can be. There is a bit more to this and I have deliberately tried not to go into too much detail of the requirements of the Guns Act because it is a fairly big act and is fairly complicated.

But we will, if necessary, go through what the requirements are.

One of the issues that the security industry has raised with me is that a licence granted to an employee to carry a gun as a security guard is a lifetime licence. It is not a licence that is restricted to his work for that instant employer.

And one of our concerns could be, and it is a fairly costly exercise to get that licence issued, that the employer could bear the cost of the issue of the licence. The employee then sets up either in competition with the employer or goes and works for one of his opposite numbers with the first employer bearing the cost for the lifetime of that licence, which we consider to be inequitable and unfair.

COMMISSIONER GOZZI: Yes. I mean, that could well be a valid argument. Let me just say, I am not opposed to an adjournment, if you have agreement on it, I am just simply saying the legislative process doesn't necessarily impact on determining the inclusion or otherwise of a proposed clause.

MR EDWARDS: Except to the extent that those negotiations with the government, sir, could obviate the necessity for any application.

COMMISSIONER GOZZI: It could.

MR EDWARDS: If we could, for example, reach the agreement we would choose to reach with the government, and perhaps with Mr O'Brien's assistance that may well be possible, then there would be no need for any application to come before the commission.

COMMISSIONER GOZZI: Oh, well, if that was the case -

MR EDWARDS: And that's our ideal outcome, and I am sure at the end of the day Mr O'Brien would be equally happy with that outcome as the full grant of his claim.

COMMISSIONER GOZZI: Mm. But I think basically what I am saying is that legislative considerations don't really impact on determining this issue on the merit one way or the other.

MR EDWARDS: Not in a direct sense no. No, I accept that, commissioner.

COMMISSIONER GOZZI: I mean, what you are putting to the minister could well form the basis of a merit argument here.

MR EDWARDS: It may do.

COMMISSIONER GOZZI: But, as I say, if there is agreement on it, well then obviously -

MR EDWARDS: All I guess I am putting to the commission is that we would like the opportunity to fully explore that avenue before we utilise this avenue, because we believe that if we have the success we are looking for in that approach to the government then, as I indicated earlier, Mr O'Brien's application is somewhat obviated.

If, however, there is some residual cost which has got to be borne by one side or the other, then that would come back to the commission and be argued, as you rightly point out, commissioner, on its merits, and we would be quite happy to debate that.

But at this stage we would ask that the matter be adjourned to give us an opportunity.

We are not looking for a lengthy adjournment. Whilst the negotiations to date have been tediously slow, as is often the case when dealing with governments of any persuasion, if we could get a joint approach together ...

We believe the issue is now gaining some momentum within the ranks of government after a number of letters of complaint last week on the tardiness of the government in dealing with this issue.

We believe now that some response to our original proposal is imminent, which could enable us then to go to Mr O'Brien and say, okay, this is where it is at, this is what we'd like to do, will you come with us.

That's where we would like to go with this thing, commissioner.

COMMISSIONER GOZZI: Right. Thank you, Mr Edwards. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, I have expressed some concern to Mr Edwards about the proposition of an adjournment.

In terms of discussions with the government we are certainly not adverse to speaking with the industry, presuming we understand that we are talking about the same thing, with a common purpose, and I haven't seen any of the correspondence, I don't know what propositions have been put, and therefore don't know whether we'd support them or not.

But, given that there is a possibility that we would, we certainly wouldn't rule out being of what assistance we could to resolve the problem in that regard.

I guess of late we have to say we haven't been all that influential on a government stance, but perhaps they might have learnt something in recent days that changes things.

COMMISSIONER GOZZI: GST is the common catch cry.

MR O'BRIEN: There are a few other factors, Mr Commissioner, and I think there's a few sleepers that haven't been given the attention they should have.

But the other concern we have got is that maybe we hope this issue has got more priority than selling boats, because if we are waiting for this issue to be resolved in an equivalent period of time, well this application will run longer than the health and fitness centres' application did.

MR EDWARDS: Or even the teachers.

MR O'BRIEN: Oh, no, the teachers was nothing compared to that one.

COMMISSIONER GOZZI: That's right.

MR EDWARDS: Yes.

MR O'BRIEN: The concern I have is that, you know, time runs on employees' costs if we adjourn for any lengthy period. I did put certain propositions to Mr Edwards. I take it they are not acceptable.

He hasn't specified what a 'short period of time' is in terms of an adjournment.

Obviously this matter is going to run one way or the other. In the context of the other argument it will take some time, anyway. We are going to have some inspections first and then run two arguments.

My suggestion would be that we get on with things and, as you put it, legislative change or not the application stands or falls on its merits.

Perhaps it isn't as necessary if there's legislative change, but we don't know whether that is going to occur.

We can get on with programming firstly the inspections, and run the arguments on the two matters concurrently, and then argue about deferring decisions as we get down the track, if need be.

That would be my preference, and given I suspect we are going to be a number of weeks before we come to argument, anyway, there's a short adjournment there in effect, anyway.

COMMISSIONER GOZZI: Right. Thank you, Mr O'Brien. You owe him another go, Mr Edwards.

MR EDWARDS: Yes. Just on the point that Mr O'Brien was making about the definition of a short time, albeit he got somewhat sidetracked into the selling of boats and health and fitness awards -

COMMISSIONER GOZZI: Just as a measure of time, Mr Edwards.

MR EDWARDS: Yes. There's all sorts of measures of time, commissioner.

COMMISSIONER GOZZI: Well, they were two of them.

MR EDWARDS: Indeed. Indeed they were.

COMMISSIONER GOZZI: One involving the TCI - the long one of the two.

MR EDWARDS: I'm sure we don't make any apology for that.

MR O'BRIEN: You haven't yet.

MR EDWARDS: I am sure whichever of my colleagues is involved, and I think I could probably hazard a guess, that he is doing a wonderful job of work.

COMMISSIONER GOZZI: If there are no apologies on it, then you are looking down the barrel of about 5 years. You are not going to get 5 years from me on this one.

MR EDWARDS: Nor are we seeking to.

The proposition that Mr O'Brien has put before you, as I understand it, is that we adjourn this in the same context as the adjournment of the earlier matter, and that the two arguments could run somewhat concurrently.

We have no real objection to that. It achieves the end that we're after, which is simply the opportunity to continue to

explore what we consider is the preferable means of dealing with this particular matter.

So, in that context, we'd have no objection to the suggestion Mr O'Brien has made that this be adjourned in concert with the other matter.

COMMISSIONER GOZZI: Alright. We'll go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: Alright, these proceedings are adjourned to 6th of May for inspections, and the resumption of hearing on the 18th of May.

Thank you, gentlemen.

HEARING ADJOURNED