

DISPUTE RE NEGOTIATIONS FOR A REPLACEMENT INDUSTRIAL AGREEMENT**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

PARTIES THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICE BOARD, THE PEEL HEALTH SERVICES BOARD AND THE WA COUNTRY HEALTH SERVICE

APPLICANT**-v-**

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION,
WESTERN AUSTRALIAN BRANCH

RESPONDENT**CORAM** COMMISSIONER J L HARRISON**DATE** SUNDAY, 24 OCTOBER 2010**FILE NO/S** C 41 OF 2010**CITATION NO.** 2010 WAIRC 01064**Result** Consent order issued**Representation****Applicant** Mr M Warner**Respondent** Mr T Clark and Mr D Kelly*Consent Order*

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* (“the Act”) on 23 September 2010 whereby the Minister for Health (“the applicant”) sought the Commission’s assistance with respect to negotiations with the Liquor, Hospitality and Miscellaneous Union, Western Australian Branch (“the respondent”) for a proposed replacement industrial agreement; and

WHEREAS on 23 September 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at this conference the applicant and the respondent agreed to have further discussions with a view to finalising the terms of a proposed replacement industrial agreement and a report back on the progress of these discussions was set down in the Commission on 1 October 2010; and

WHEREAS on the morning of 29 September 2010 the applicant sought an urgent conference in the Commission on the basis that the respondent had foreshadowed that its members place bans in Western Australian hospitals with respect to a range of tasks which would have a significant deleterious impact on hospital operations and patient care; and

WHEREAS the Commission convened an urgent compulsory conference on 29 September 2010 at which the applicant sought an order preventing the union and its members from undertaking any industrial action in support of its claims for a proposed replacement industrial agreement; and

WHEREAS the respondent confirmed that its members had the following bans in place commencing 29 September 2010:

- “1. No moving linen
 - a. Do not tie up linen bags and do not move the bags to the collection point
 - b. No collecting extra linen orders from the linen room
2. No moving rubbish
 - a. Do not tie up rubbish bags and do not move the bags to the collection point
3. No picking up meal trays
 - a. Deliver all meals to patients but do not remove the tray when the patient is done with their meal
4. No sterilising equipment for PRIVATE hospitals
 - a. Continue all sterilisation of equipment for public hospitals
5. For Hygiene Orderlies: do not fill rubbish skips to the top, only fill them half way to move them”

WHEREAS with the assistance of the Commission the parties held further discussions on the evening of 29 September 2010 and the morning of 30 September 2010 with a view to reaching agreement on an in-principle agreement for a proposed replacement industrial agreement for the respondent to put to its members; and

WHEREAS after these discussions the parties advised the Commission that the respondent was prepared to put a proposal to its members with a view to finalising discussions with respect to a proposed replacement industrial agreement; and

WHEREAS the respondent advised the Commission that it required one week to consult its members in metropolitan and regional areas to obtain feedback on this proposal; and

WHEREAS the applicant agreed that this timeframe for consultation was appropriate; and

WHEREAS the respondent agreed to lift the bans instituted on 29 September 2010 forthwith whilst it consulted with its members and agreed that its members would comply with the requirements under their respective JDFs; and

WHEREAS the parties were required to attend a report back in the Commission on Monday 11 October 2010 to discuss the progress of the negotiations for proposed replacement industrial agreement; and

WHEREAS in the circumstances the Commission believed that it was appropriate to adjourn this application until a report back meeting was held in the Commission on 11 October 2010; and

WHEREAS on 30 September 2010 the Commission issued a consent order to this effect whereby the application was adjourned until 11 October 2010 when the Commission would hear further from the parties on the status of negotiations between the parties for a proposed replacement industrial agreement; and

WHEREAS prior to the conference commencing on 11 October 2010 the applicant advised the Commission that the respondent had issued a flyer to its members calling for a stoppage to take place on Tuesday, 12 October 2010 between 12 noon and 4.00 pm; and

WHEREAS the applicant also advised the Commission of a media statement put out by the Director General of the Department of Health in which he stated that there would be no privatisation of existing services at any public hospital during the life of the proposed replacement industrial agreement; and

WHEREAS at the report back conference held in the Commission on 11 October 2010 the parties had further negotiations over several hours with a view to reaching agreement on a proposed replacement industrial agreement however these negotiations were unsuccessful and the parties were unable to reach agreement on a number of issues; and

WHEREAS the Commission then asked the parties to make submissions about whether or not conciliation between the parties with respect to a proposed replacement industrial agreement had been exhausted; and

WHEREAS after hearing from the parties with respect to this issue the Commission indicated to the parties that it was her view that conciliation with the assistance of the Commission with respect to finalising the terms of proposed replacement industrial agreement had been exhausted on the basis that the parties could not reach agreement on a range of issues including the quantum of wage increases, privatisation of new hospital operations, the definitions of fixed term, agency and part time employees and the duration of the proposed replacement industrial agreement; and

WHEREAS the applicant then sought an order that the respondent and its members be prevented from taking any industrial action, including the four hour stoppage scheduled to take place on 12 October 2010 until a proposed replacement industrial agreement was arbitrated by the Commission pursuant to s 42H of the Act; and

WHEREAS in support of the issuance of this order the applicant argued that the four hour stoppage not occur the following day or until a proposed replacement industrial agreement was arbitrated on the basis that proposed industrial action to be undertaken by up to 1,000 employees would adversely impact on patient movement in hospitals, catering for patients could be delayed and there could be possible adverse outcomes for patients with respect to their care and health and safety; and

WHEREAS the respondent argued that the Commission does not have jurisdiction to issue the order being sought by the applicant as the four hour stoppage on 12 October 2010 was in relation

to a political issue – that of the privatisation of future Western Australian hospitals and was therefore not an industrial matter; and

WHEREAS the respondent argued that the four hour stoppage was to occur at a time when there would be minimal disruption to the operations of Western Australian hospitals and as employees worked over 24 hours a day, seven days a week this was therefore an appropriate time for the respondent and its members to demonstrate its opposition to the privatisation of Western Australian hospitals and to attempt to pressure the applicant for a better wage outcome for its low paid members; and

WHEREAS the respondent argued that patient care would not be significantly compromised by the four hour stoppage taking place as food preparation had already been done for lunches given the timing of the stoppage, food could be brought in for evening meals, duties undertaken by the respondent's members including orderlies could be undertaken by other employees for this short duration and the applicant has had sufficient notice of the four hour stoppage to make alternative arrangements; and

WHEREAS the respondent argued that as the bargaining process pursuant to s 42 was not in place it would be unfair to order that the respondent and its members not take any industrial action for an unlimited time until an enterprise agreement under s 42I was applied for and arbitrated; and

WHEREAS the Commission was of the view that it had jurisdiction to deal with the stoppage to take place on 12 October 2010 as part of the reason for this four hour stoppage relates to the respondent seeking an increased wage offer which is an industrial matter; and

WHEREAS the Commission was unaware if the respondent and its members planned to undertake any further industrial action after 12 October 2010; and

WHEREAS on the information before it the Commission was not convinced that the four hour stoppage scheduled to take place on 12 October 2010 would have a significant adverse impact on patient care and the health and safety of patients in Western Australian hospitals; and

WHEREAS the Commission had particular regard to the public interest which must be balanced with the interests of the parties directly involved, which includes low paid employees who work on a continuous shift basis; and

WHEREAS the Commission, and in accordance with the provisions of the Act, therefore declined to issue the order being sought by the applicant; and

WHEREAS the Commission stated that if the respondent and its members were to take any industrial action subsequent to 12 October 2010 the Commission would list this application at short notice to hear further from the parties as to whether any orders should issue with respect to this industrial action; and

WHEREAS on 11 October 2010 the Commission issued an order whereby this application was adjourned; and

WHEREAS on 13 October 2010 the respondent sought an urgent conference in the Commission as it claimed that the respondent's members had imposed the following work bans across metropolitan and country hospitals:

- No collecting and disposing of soiled linen, waste material and rubbish.
- No collecting of patient meal trays.
- No sterilisation of equipment for other hospitals (King Edward Memorial Hospital).
- Refusal to wash patient dishes (Fremantle Hospital).
- No external patient movement (Royal Perth Hospital).
- Transport officers not phoning in after completing tasks (Royal Perth Hospital).
- No courier duties being undertaken while acting as a patient transport officer (Royal Perth Hospital).
- No transportation of patient belongings (Royal Perth Hospital).
- No transportation of specimens (Royal Perth Hospital).
- No transportation of patients to appointments (Royal Perth Hospital).

WHEREAS at a conference held in the Commission on 14 October 2010 the applicant claimed that the number of employees on each shift implementing the above bans was significant within all but two of 11 metropolitan hospitals as over half of the employees the subject of this application working at these hospitals as at 1.00 pm on 14 October 2010 had bans in place. Furthermore, at Fremantle Hospital there was a 100 percent participation rate and Royal Perth Hospital over an 80 percent participation rate with respect to employees implementing these bans; and

WHEREAS the applicant argued that even though it had made arrangements to deal with the impact of the bans in Western Australian hospitals and it was currently coping with the impact of the bans, by the end of the coming weekend there was the potential for adverse outcomes to occur with respect to patients in the area of infection control; and

WHEREAS in support of this claim the applicant stated that the risk of infection in Western Australian hospitals was compounded the longer the ban on the removal of rubbish and linen remained in place given the nature of matter contained in rubbish and soiled linen and this risk was greater in a hospital environment where the health of patients is already compromised; and

WHEREAS this risk of infection could also impact on staff and visitors; and

WHEREAS the applicant therefore sought an order that the respondent and its members lift the bans on rubbish and linen removal and undertake their roles in accordance with normal operating procedures with respect to these activities; and

WHEREAS the respondent confirmed that its members had the following bans in place, commencing on 12 October 2010:

- “1. No moving linen
Tie up linen bags but do not move the bags to the collection point.

2. No moving rubbish
Tie up rubbish bags but do not move the bags to the collection point.
3. No picking up meal trays
Deliver all meals to patients but do not remove the tray when the patient is done with their meal.
4. No sterilising equipment for PRIVATE hospitals
Continue all sterilisation of equipment for public hospitals.
5. For Hygiene Orderlies: do not fill rubbish skips to the top, only fill them half way to move them.”

WHEREAS the respondent maintained that no other bans were in place and apart from these bans no additional industrial action was taking place at Royal Perth Hospital or any other hospital; and

WHEREAS the respondent argued that having the bans in place was a legitimate form of industrial action given its members were low paid employees who remained in dispute with the applicant about future wage increases; and

WHEREAS the respondent stated that it was currently seeking urgent discussions with the Minister for Health to progress negotiations with the applicant; and

WHEREAS the respondent maintained that the impact of the bans was more of an inconvenience to the applicant than a clinical risk and no patient was at risk as a result of the bans being in place; and

WHEREAS in support of this claim the respondent’s members at the conference who worked at a number of Western Australian hospitals stated that there was little likelihood of an adverse clinical outcome occurring as a result of the bans as rubbish and linen bags were being collected and removed on a regular basis variously by management, agency and casual staff at King Edward Memorial Hospital, Princess Margaret Hospital, Osborne Park Hospital, Sir Charles Gairdner Hospital, Shenton Park Campus, Fremantle Hospital, Bentley Hospital, Royal Perth Hospital and Bunbury Hospital; and

WHEREAS on the information currently before it the Commission was not convinced that the bans the respondent and its members had in place with respect to the removal of rubbish and linen was having or would have an adverse impact on patients, staff and hospital visitors in the immediate future; and

WHEREAS the Commission, and in accordance with the provisions of the Act, in all of the circumstances and at that point in time therefore declined to issue the order being sought by the applicant; and

WHEREAS as the Commission was concerned that the impact of the bans with respect to the removal of linen and rubbish may have an adverse effect on patients and staff in the longer term the Commission listed this application for a report back conference on 19 October 2010 to obtain feedback from the parties with respect to this issue.

WHEREAS at the report back conference held on 19 October 2010 the parties agreed to confer on a range of matters and report back to the Commission on 25 October 2010; and

WHEREAS on 22 October the applicant requested that an urgent conference be convened as it claimed that there had been a substantial deterioration in industrial relations in Western Australian hospitals and a series of adverse events had arisen as a result of a range of further bans being implemented by hospital support workers; and

WHEREAS the Commission convened an urgent conference on the afternoon and evening of 22 October 2010; and

WHEREAS after the commencement of the conference further discussions took place between the parties and the Commission was informed that the parties had reached agreement on all issues in dispute except the length of the proposed replacement industrial agreement; and

WHEREAS the applicant argued that the proposed replacement industrial agreement should be for three years and this timeframe was part of a package and the timeframe of the proposed replacement industrial agreement would not be reviewed in isolation of the rest of the package; and

WHEREAS the respondent argued that a two year agreement was appropriate as a three year agreement would disadvantage its members as the quantum proposed in the third year of the proposed replacement industrial agreement could be greater if the Western Australian economy improved; and

WHEREAS as the parties remained in dispute with respect to this issue the Commission heard further from the parties with respect to ongoing industrial action; and

WHEREAS at this conference the applicant claimed that bans had escalated in the past 48 hours and now covered a broader range of activities including the non cleaning of operating theatres between elective surgery cases, refusal to collect patients to move them to operating theatres, the supply of sterile equipment to operating theatres was slow, clean linen was not being taken to wards, there was a failure to remove waste, there was a decrease in the delivery of general supplies and two stage infection cleaning was not being done; and

WHEREAS the applicant expressed concerns about the possibility of multiple emergencies arising over the weekend which would be difficult to cope with given the bans in place and this would then adversely impact on hospital operations next week; and

WHEREAS the applicant stated that elective surgery proposed to take place Monday had been cancelled at Royal Perth Hospital and Sir Charles Gardiner Hospital; and

WHEREAS the respondent confirmed that since 20 October 2010 the following additional bans were in place:

- No washing dishes.
- Two staff to a bed.
- No emptying of rubbish bins in administration/office areas.

- Only transporting patient notes/head sheets/records for urgent patients.
- No removing linen from skips (currently linen is being bagged but not moved).
- No use of radio or CARPS except for emergency patients. Only take jobs by hand or via phone.
- No driving of forklifts.
- No restocking of paper products in administration areas, eg toilet paper.
- No collection of dirty cups and saucers delivered at morning and afternoon teas; and

WHEREAS the respondent confirmed that no additional bans as claimed by the applicant were in place; and

WHEREAS the respondent argued that casual and agency staff can be used to undertake duties which were not being completed as a result of the bans being in place; and

WHEREAS at the end of conference the Commission asked the parties to re-consider their respective positions with respect to the proposed replacement industrial agreement's timeframe given that the parties had reached agreement on all other outstanding issues in dispute; and

WHEREAS a further conference was sent down for 23 October 2010 to hear from the parties with respect to their positions on the timeframe of the proposed replacement industrial agreement; and

WHEREAS at this conference the Commission was informed that the applicant would not alter its position with respect to having a three year proposed replacement industrial agreement and the respondent stated that it was prepared to reconsider its position with respect to a two year proposed replacement industrial agreement; and

WHEREAS the Commission recognises that the escalation of the bans is having a deleterious impact on hygiene at Western Australian hospitals and is causing elective surgery to be postponed at some of Western Australia's main hospitals; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to issues pertaining to the employment relationship between the applicant's members and the respondent and the rights of an organisation; and

WHEREAS the Commission is of the view that it has jurisdiction to issue the following recommendations pursuant to s 44 of the Act as s 44 enables the Commission to make such suggestions and give such directions it considers appropriate with respect to industrial matters; and

WHEREAS having heard from the applicant and the respondent and having considered the submissions made by both parties and when taking into account the deleterious impact the escalated bans are having on Western Australian hospitals; and

WHEREAS when taking into account that the only issue in dispute between the parties is the timeframe of the proposed replacement industrial agreement; and

WHEREAS when taking into account the public interest and the interest of the parties directly involved including the interests of low paid employees the Commission has formed the view that the following recommendations should issue

1. THAT the proposed replacement industrial agreement be for a term of 30 months and the quantum of the wage increase for the last six months of the proposed replacement industrial agreement be 1.75 percent.
2. THAT this timeframe of the proposed replacement industrial agreement shall operate in addition to what has already been agreed between the parties with respect to the terms of the proposed replacement industrial agreement.
3. THAT if these recommendations are accepted by the applicant and the respondent the union, by its employees and members will cease all industrial action being taken with respect to a proposed replacement industrial agreement.

WHEREAS a further conference was set down for 24 October 2010 to hear from the parties with respect to the above recommendations; and

WHEREAS prior to this conference taking place the Commission informed the parties that the quantum in Recommendation 2 was incorrectly calculated and should read 1.88 percent; and

WHEREAS at the conference held on 24 October 2010 the parties informed the Commission that they had reached agreement on all issues in dispute with respect to this application; and

WHEREAS the parties informed the Commission that they had signed a Heads of Agreement which confirmed that the application of the wage rates agreed between the parties would be included in this consent order, both parties undertook not to make any further claims until after 31 July 2012 and the Heads of Agreement confirmed the date for the commencement of negotiations for a further Industrial Agreement; and

WHEREAS as a result of this agreement being concluded between the parties the respondent agreed to immediately lift all bans which were in place in Western Australian hospitals and undertake to inform its members of the lifting of all bans as soon as practicable; and

WHEREAS the Commission is of the view that as the parties have reached an agreement to settle this matter and as the respondent has undertaken to lift all bans forthwith that the order as proposed by parties should issue.

NOW THEREFORE having heard Mr M Warner on behalf of the applicant and Mr T Clark and Mr D Kelly on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* and by the consent of the parties, hereby orders:

1. THAT the following wage rates apply to employees of the Minister for Health in his incorporated capacity under Section 7 of the Hospitals and Health Services Act 1927 (WA) as the hospitals formerly comprised in the Metropolitan Health Service Board, the Peel Health Services Board and the WA Country Health Service, whose contracts of employment are regulated by the Hospital Workers (Government) Award No. 21 of 1966.

2. THAT the following weekly rates of pay apply in substitution for the corresponding weekly rates of pay prescribed in Hospital Workers (Government) Award No. 21 of 1966 for the periods herein specified.

Classification	Increment	24 October 2010 to 31 July 2011	01 August 2011 to 31 July 2012 and thereafter
Level 1/2	1st Year	\$767.63	\$794.50
Level 1/2	2nd Year	\$776.23	\$803.40
Level 1/2	3rd Year	\$795.04	\$822.86
Level 3/4	1st Year	\$782.89	\$810.30
Level 3/4	2nd Year	\$802.47	\$830.55
Level 3/4	3rd Year	\$819.98	\$848.68
Level 5	1st Year	\$800.59	\$828.61
Level 5	2nd Year	\$806.50	\$834.73
Level 5	3rd Year	\$816.87	\$845.46
Level 6	1st Year	\$804.85	\$833.02
Level 6	2nd Year	\$809.21	\$837.54
Level 6	3rd Year	\$818.50	\$847.15
Level 7	1st Year	\$814.52	\$843.03
Level 7	2nd Year	\$820.54	\$849.26
Level 7	3rd Year	\$830.76	\$859.84
Level 8	1st Year	\$831.71	\$860.81
Level 8	2nd Year	\$839.33	\$868.71
Level 8	3rd Year	\$851.11	\$880.90
Level 9	1st Year	\$850.73	\$880.50
Level 9	2nd Year	\$858.20	\$888.24
Level 9	3rd Year	\$870.45	\$900.91
Level 10	1st Year	\$861.72	\$891.88
Level 10	2nd Year	\$867.26	\$897.61
Level 10	3rd Year	\$877.14	\$907.84
Level 11	1st Year	\$884.93	\$915.90
Level 11	2nd Year	\$892.94	\$924.19
Level 11	3rd Year	\$905.88	\$937.59
Level 12	1st Year	\$904.62	\$936.28
Level 12	2nd Year	\$913.13	\$945.09
Level 12	3rd Year	\$926.33	\$958.75
Level 13	1st Year	\$935.46	\$968.21
Level 13	2nd Year	\$944.74	\$977.80
Level 13	3rd Year	\$958.45	\$992.00

COMMISSIONER J L HARRISON