

**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

**FULL BENCH**

**CORAM: BOLAND J, President  
WALTON J, Vice-President  
HARRISON DP  
STAFF J  
TABBAA C  
MURPHY C**

**27 June 2008**

**Matter No IRC 103 of 2008**

**STATE WAGE CASE 2008**

**Application by Unions NSW for a State Decision - State Wage Case 2008  
under section 51 of the Industrial Relations Act 1996**

**STATEMENT**

1 Unions NSW, the State peak council for employees, has made application for a State Decision pursuant to s 51 of the *Industrial Relations Act* 1996 ('the Act') in which it seeks a general wage increase in awards of 4.5 per cent. In addition, the Catholic Commission for Employment Relations ('CCER') has sought that an order or an award be made in accordance with s 52 of the Act, the effect of which, if granted, would be to provide:

... a minimum wage for those adult employees within the Commission's jurisdiction whose employment is not currently governed by an industrial instrument as defined in s 8 of the Act.

2 The responses to the claim by Unions NSW varied, with the Minister for Industrial Relations supporting an increase of \$20.00 per week as being economically sustainable and responsible, and employers either supporting the Minister's position (The Local Government Association of NSW and

Shires Association of NSW ('LGSA')) or proposing increases of either \$10.00 (the Australian Federation of Employers and Industries and its affiliated associations ('the Combined Employers')), or \$13.00 per week (Australian Business Industrial, the Australian Industry Group New South Wales Branch, the Australian Hotels Association (NSW), Furnishing Industry Association Ltd ('Joint Employers')). No party heard in the proceedings advocated a nil increase.

3 In relation to CCER's proposal to establish a Minimum Wage for employees whose employment was not governed by an industrial instrument, only Unions NSW supported it with respect to the making of an Order as opposed to the making of an Award. The remaining parties and intervenors actively opposed the proposal.

4 The parties and intervenors referred to and relied upon an extensive amount of material - economic, industrial and social in nature - in support of their respective positions and five witnesses were cross-examined on their affidavits or witness statements. The material adduced, and the submissions of the parties, required the Full Bench to give consideration to the following matters:

- (i) the state of the Australian economy and the influence of international forces on the direction of that economy;
- (ii) the state of the New South Wales economy;
- (iii) the economic state of those industries most affected by the claim including retail, accommodation, cafes and restaurants, tourism, distribution, community services and manufacturing in unincorporated businesses within the private sector in New South Wales;

- (iv) income and expenditure characteristics of low paid workers and households;
- (v) wage dispersion and income inequality;
- (vi) vulnerable workers including women, Indigenous, migrant, young people, non-unionised workers, those employed in small firms, and workers with a disability;
- (vii) the impact of the claim on employers if it were granted, including the cost impact and as well the likely impact on employment, labour market participation and productivity;
- (viii) the lack of access by low paid workers to enterprise bargaining and the implications of that for any minimum wage adjustment;
- (ix) the wages environment, current and forecast;
- (x) the problem of lagging awards, that is, those awards that have not been varied to incorporate previous State Wage Case adjustments and what to do about them;
- (xi) whether the increase should be a flat dollar amount or a percentage adjustment;
- (xii) what should be the amount of increase and why;
- (xiii) what adjustment should be made to the Award Review Classification Rate;
- (xiv) whether the Commission possessed jurisdiction to establish a minimum wage for adult employees whose employment was not

governed by an industrial instrument and, if so, whether there was merit in establishing a minimum wage as proposed by CCER; and

- (xv) any relevant amendments to the Wage Fixing Principles.

5 In relation to these matters we have found (in summary) as follows:

- (i) **Australian economy:** the outlook for the Australian economy remains broadly favourable. Whilst there are risks they are not of such a nature that they would preclude an increase in minimum wages at a level that would provide real assistance to the low paid in New South Wales;
- (ii) **New South Wales economy:** Given the current state of the New South Wales economy and its forecast performance over the next 12 months it is able to comfortably sustain an increase in minimum wages struck at a level that will adequately recognise the position of low paid workers, especially given the increase in food and fuel prices, without any adverse consequences for growth or employment;
- (iii) **Low paid workers:** The challenges and difficulties faced by low paid workers as evidenced in the 2007 State Wage Case have, if anything, become even more problematic for this group. On any consideration of equity and fairness, the low paid should not be left behind in the economic progress of the State or be required to bear the burden of wage restraint;
- (iv) **Impact of the claim:** The direct impact of the claim on the wages bill and the economy of New South Wales would be negligible. It would only affect between 187,000 and 246,000

employees, two-thirds of whom were not full time employees, and thus further mitigating the impact of the claim. The employment market remained very healthy. Unemployment was at record low levels and participation was at its highest ever. There was surplus demand for labour, especially for skilled labour. In these market conditions, it would be highly unlikely that even with the increase sought that minimum award wages would attract skilled employees and thereby displace less skilled workers. Further, there was little evidence to suggest that employers lacked the capacity to pay for wage increases. Profit margins for businesses and the percentage of profits in relation to national income were at record highs. Evidence was put forward by the Australian Retailers Association, which forecast that smaller retailers faced greater risk and volatility in 2008. We accept this is so and it will have a moderating effect on the view we take about the size of the increase given the retail sector is one of those most affected by any decision as to minimum wages;

- (v) **Potential for flow on:** It was submitted that the minimum wage increases set by this decision would be the benchmark for wage increases throughout the economy. We must stress that the increase that we have decided upon in these proceedings is based on the peculiar considerations relevant to the position of low paid workers and the challenges and hardship they face, particularly in a period of escalating prices in such basic things as food and transport. There can be no justification for using an increase that we might determine as a benchmark for increases for the general body of employees in an industry or enterprise in the private sector or in any part of the public sector;

(vi) **Lagging awards:** At all future State Wage Case hearings the parties will be required to identify any awards which have not been varied to give effect to increases available under the previous State Wage Case so that the situation as to such awards can be considered and addressed. Secondly, consistent with the approach adopted in the State Wage Case August 1997, outstanding increases available under State Wage Cases should be phased in by agreement or, in the absence of agreement, by decision of a single member of the Commission. The requirement that increases available from this decision not be made available in an award until 12 months after the award has been varied for the 2008 increase will not strictly apply to these awards, but will be a matter to be dealt with either by agreement of the parties or by decision of the Commission. The aim is to make available, at the appropriate time, wage increases to which employees are entitled, but without affecting employment or business viability. We would expect all such applications for variation, and particularly those referred to us in the present proceedings, to be filed and served within 28 days of the date of this decision, and in this respect Unions NSW should perform a role in co-ordinating such arrangements;

(vii) **Flat or percentage increase:** In our view, no party has advanced a convincing argument why the position of Unions NSW should not prevail. That is, any increase should be a percentage adjustment. In the previous two State Wage Case decisions the Commission has voiced its concern about the effect on award relativities of flat dollar increases, which have now been awarded consistently in the last ten State Wage Cases. The response of the Minister and employers has been the same as that put on this occasion. Whilst it has been consistently recognised by the Minister and employers that flat dollar

increases have had a distorting effect on wage relativities and that at some time in the future the problem will need to be addressed, the Commission has not been provided with any assistance as to when or how that should occur. The only answer has been, "not this time". We have decided that the increase in these proceedings shall be a percentage increase;

- (viii) **Amount of increase:** In the proceedings, the parties and intervenors proposing a flat dollar increase were invited to advise the Full Bench of what the increase should be in percentage terms if that is what the Full Bench decided. None of the parties or intervenors took up the invitation. Such a response was quite unsatisfactory. We would observe that parties and those who represent them before this Commission have an obligation to assist it in its deliberations. In the result, in deciding to award a percentage increase it has been in the absence of any assistance from the Minister and employers as to what that percentage adjustment should be. In arriving at a determination as to what is an appropriate outcome in these proceedings, it is necessary that we strike a proper balance between the needs of the low paid and the capacity of the economy of New South Wales to sustain the increase. A strong case has been made out for an increase in minimum award wages for the low paid. Their precarious financial circumstances, their lack of bargaining power, the evident inequality that exists between general community wage levels and the wages of low paid, and the obligation upon the Commission to provide fair and reasonable employment conditions, are matters that weigh heavily in favour of an increase that is pitched at a level that will provide real assistance to such employees, but which at the same time is economically responsible, having regard to the requirements of s

51 and s 146(2) of the Act. We consider the proper balance between economic considerations and the needs of the low paid and the capacity of the economy of New South Wales to sustain an increase, results in an overwhelming case to increase minimum award wages by 4.0 per cent. Relevant allowances shall be increased by a similar percentage increase;

(ix) **Award Review Classification Rate:** There was an application by CCER to set an ARCR above the level proposed by the other parties. We do not consider that CCER made out a sufficient case to warrant granting an additional \$5.79 and so we intend to increase the ARCR by 4.0 per cent, which produces a new ARCR of \$552.70 per week;

(x) **Minimum Wage:** We have decided that CCER has established an overwhelming case on merit for the establishment of a minimum wage, and that there is no jurisdictional impediment to granting its application in that respect. We do not, however, consider it is appropriate to make an award. We are satisfied that we should make an order providing for a minimum wage for the class of employee referred to in the CCER application, namely, adult employees who are employed in the jurisdiction of the Commission and whose employment is not subject to the terms of an industrial instrument. The Minimum Wage will be fixed at the same quantum as the Award Review Classification Rate. We intend to make the order operative for six months and hold the proceedings over for full hearing, at the end of that time. We will take appropriate steps to re-list the matter to hear any person, body or organisation affected after the issuing of an appropriate notice. In the interim, we give liberty to apply to any interest to raise any particular issue arising from the order we have made; and

- (xi) **Wage Fixing Principles:** all parties argued for the retention of the Wage Fixing Principles with necessary amendments to accommodate the giving of the State Wage Case 2008 Decision. Subject to those amendments, the parties reached a consent position as to the terms of the principles (save as to the CCER position in relation to the ARCR which we have earlier dealt with). The Commission's Wage Fixing Principles have been amended accordingly.

## ORDERS

6 We make the following orders:

- (1) Pursuant to s 51(1) of the Act the Full Bench of the Industrial Relations Commission of New South Wales orders that the Commission's Wage Fixing Principles shall be as set out in Appendix A to this decision.
- (2) Pursuant to s 52 of the Act, the Commission orders that awards which do not contain wage increases awarded since 29 May 1991, other than safety net, State Wage Case and minimum rates adjustments, may be varied in accordance with the Commission's Wage Fixing Principles upon application to include a State Wage Case adjustment of 4.0 per cent per week. At the hearing of any such application, the Commission may, in its discretion, award the whole or part of the amounts referred to in the Principles or determine that no amount should be awarded.
- (3) Pursuant to s 52 of the Act, the Commission orders that the following rates may be increased by 4.0 per cent upon application in accordance with the Commission's Wage Fixing Principles.

- (i) Existing allowances which relate to work or conditions which have not changed, including shift allowances expressed as monetary amounts are service increments; and
  - (ii) Junior rates expressed as monetary amounts.
- (4) Pursuant to s 52 of the Act, the ARCR is increased by \$21.30 from \$531.40 to \$552.70.
- (5) A party to the proceedings in the State Wage Case 2008 shall have liberty to apply on reasonable notice in the event that any decision made by the AFPC in 2008 has adverse implications for more than one New South Wales award. Adverse implications shall not include the mere fact that the AFPC has granted an increase in the Federal Minimum Wage that is different to the increases awarded in this decision.
- (6) Orders (1), (2), (3), (4) and (5) shall operate on and from today until further order of the Commission.
- (7) Pursuant to s 52 of the Act, the Commission orders that:
  - (i) The minimum weekly rate of pay payable to an adult employee (as defined in s 5 of the Act) engaged on a full time basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be an amount of pay equal to the Award Review Classification Rate, as varied from time to time by the Commission;
  - (ii) The minimum hourly rate of pay payable to an adult employee (as defined in s 5 of the Act) engaged on a part-time basis whose employment is not subject to the terms of an industrial

instrument (as defined in s 8 of the Act) shall be an amount of pay equal to the Award Review Classification Rate, as varied from time to time by the Commission divided by 38;

- (iii) The Orders in paragraph (7) will not apply to those employees who are trainees, apprentices and employees on a supported wage or those employees employed on annual remuneration which is greater than the amount specified in regulation 12.3 of Chapter 2 of the *Workplace Relations Regulations 2006* of the Commonwealth from time to time or that amount as indexed from time to time in accordance with regulation 12.6 of Chapter 2 of those Regulations;
- (iv) With respect to the Orders in paragraph (7), any party or intervenor in these proceedings or any other person, body or organisation affected by the Orders is given liberty to apply to the Commission so that it might be heard; and
- (v) These Orders will take effect on and from the date of this decision and shall be in force for a period of six months.