

STANDING COMMITTEE ON LEGISLATION

WORKFORCE REFORM BILL 2013

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 7 FEBRUARY 2014**

SESSION THREE

Members

**Hon Robyn McSweeney (Chair)
Hon Sally Talbot (Deputy Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Amber-Jade Sanderson**

Hearing commenced at 11.15 am**Ms CHERYL HAMILL****President, Health Services Union of WA, sworn and examined:****Mr DAN HILL****Secretary, Health Services Union of WA, sworn and examined:****Mr RICHARD BARLOW****Lead Organiser, Health Services Union of WA, sworn and examined:**

The CHAIR: Good morning. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them; ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Given that the committee has already received and read your written submission, do you wish to make a brief opening statement to the committee?

Mr Hill: Thank you, yes, and I do have two documents which provide just a little bit of the workplace context for our submission. I am not sure whether that is appropriate to table those now.

The CHAIR: Yes. Would you like to table those and would you like to name the documents?

Mr Hill: Yes. The first is headed “HSUWA Enterprise Bargaining Agreement Survey”. It consists of four pages, which is an analysis of four questions which are part of a survey currently out with our membership, and these are the preliminary results of some of those questions.

The CHAIR: Would you like those to be tabled as public documents?

Mr Hill: I prefer not to at this stage.

The CHAIR: No? Table them as private documents then.

Mr Hill: A private document, that particular one.

The CHAIR: Yes.

Mr Hill: The second is a one-page document headed up “What pay increases are other health and public sector workers getting?” and that has been distributed to HSUWA members as we speak.

The CHAIR: Would you like to table that as public?

Mr Hill: That can be public.

The CHAIR: That can be public, thank you.

Mr Hill: Firstly, obviously our submission has supported that made by UnionsWA. We have made two specific references to issues of particular concern to our union and our members: one in relation to the redeployment–redundancy proposed changes, and I am sure we will come to that in more detail later; and the other with respect to government wages policy, and I assume we will come to that in more detail through questioning as well.

Perhaps by way of opening I could make some comments on the two papers that I have tabled, the first being the enterprise bargaining agreement survey. We have asked our members a number of questions in relation to their current employment. This is just in the public sector. We are entering into the bargaining process now for a replacement agreement that expires on 30 June 2014. The first question that I have given you provides some feedback, the question being —

... have you observed cutbacks in funding or resources that have impacted on the quality of care provided?

As of yesterday, 65.2 per cent of respondents have answered yes to that. Of the 266 that have answered yes, I think the count was about 190 that had provided input as to where they have seen those cutbacks and what impact that has been. I have not provided that information. The second question goes to security in employment and has asked the question —

Compared to 12 months ago, how secure do you currently feel in your job?

Only six per cent said more secure; 50.2 per cent about the same—whether that means about the same level of insecurity, perhaps we should have framed the question a little clearer—but I think very clearly 43.7 per cent feel less secure now than they did 12 months ago. Again, this is in government health services. The third question again goes to the issue of security in employment. We have asked members to rate the importance to them of a number of conditions, and the rating average of security of employment is 1.13, which is very high. So, it is the highest of those particular conditions which we have asked for feedback on.

Finally, the question in relation to salary increases and expectations, and members have been informed of the government wages policy. They have been informed of wage increases that have been delivered for doctors and nurses within government health over the last 12 months, and have been provided with the second document, the one-pager which is a summary table of increases that are included in current enterprise agreements for doctors, nurses, support workers in health, enrolled nurses, an agreement we have with Serco for Fiona Stanley Hospital and the WA Prison Officers' Union current agreement. All of those agreements have delivered far in excess of the state government wages policy, which was implemented with effect from 1 November 2013. Particularly in health, our members work in multidisciplinary teams in a lot of situations. They work alongside nurses, they work alongside doctors, they work alongside hospital support workers in the work that they do. Our union covers the full range of allied health professionals and health science professionals. Every professional in health, other than a medical doctor or a registered nurse or enrolled nurse, is covered by our union, so it is an extensive coverage of all health professionals working in health. And our members have made it very clear in the survey results in the fourth question that they overwhelmingly expect certainly more than the government wages policy and increases more in line with that that have been awarded to doctors and nurses.

With respect to the redeployment–redundancy issue, one aspect not borne out in our brief submission was the unequal impact of changes on rural and remote areas in country areas, and we do have and have had examples of members working in country hospitals where positions have become redundant, where their opportunities for redeployment–retraining within their particular locality are very remote, very low; and therefore if the changes that are proposed are implemented

and government employers have the capacity to force redundancy to a far larger extent than they do now, then that may end up being the first choice or the primary choice for employers to deal with excess staff. So, that is a concern which we also wanted to bring to the attention of the committee.

Hon DAVE GRILLS: Do you have any numbers on that; how many people that has actually happened to in regional hospitals?

Mr Hill: How many, sorry?

Hon DAVE GRILLS: Have you a number for how many people it may have happened to in regional hospitals where we actually had that happen?

Mr Hill: Had that happen, yes. It is a little bit different in Health, and I did hear some of the earlier questions to the prison officers. Whilst our members all come under the jurisdiction of the Public Sector Management Act, and redeployment–redundancy is managed through that process, Health has certainly up until now taken the approach that they internally manage as far as they possibly can. So, we have an example in Albany, examples in Carnarvon, and more recently with the contracting out of radiology services at Albany Hospital and Busselton Hospital, we had to manage the redeployment and/or redundancy of radiographers and clerical staff at those two hospitals. They are more current examples but I have not got exact numbers. In the main we have been able to deal internally with Health without going to the extent of employees being registered under the provisions of the redeployment–redundancy regulations and redeployees, because that then sets in train a whole lot of procedures which will end up with possibly forced redundancy at the end of the day or having to be forced to take a position that is not suitable. So I am sorry, that is the best I can answer the question in terms of numbers.

Hon DAVE GRILLS: It is just that I do not know. I heard what you said but I just wondered how many numbers you had.

Mr Hill: One is too many in our view, particularly when it is impacting on an individual's lifestyle, their family life. There is the example of a person in Carnarvon whose job was made redundant. For them to relocate to the city, they would have to sell property and they would not be in a financial position to sell a property in Carnarvon and be able to buy property in Perth, given the property values. That has been a very real example and for the individual concerned it has been a very traumatic process. Fortunately, we were able to negotiate a way around that to ensure that they were able to maintain employment in their local town, but that took some doing in terms of being able to arrange a working-from-home arrangement and in fact doing data input, data analysis et cetera from Carnarvon but for health services located in the south west of the state. So being able to do that remotely has helped.

Hon DAVE GRILLS: It is a lifestyle thing, is it not? Really, in regard to moving away from the country or moving to the country, it is a bit of a lifestyle thing.

Mr Hill: There is certainly an economic impact on that as well. Particularly, many of our members are long-term residents in their country towns and the loss of a job within the local hospital and their prospects of being re-engaged within Health and staying in their country town are negligible at best. To be redeployed to another government agency in their country town, again there is a negligible opportunity for that as well. So it is a big impost on country people when they lose their jobs within government.

I think that is it from me in terms of an opening statement.

[11.30 am]

The CHAIR: We now have some questions and during the question and answer section the committee may ask questions as well. On the screen you will see a copy of recommendation 39 of the 2009 Economic Audit Committee's final report "Putting the Public First", which began in 2008

and called for submissions on its terms of reference. According to the final report, your organisation made no submissions to that committee's inquiry. Is that correct?

Mr Hill: That is correct, yes.

The CHAIR: Why not?

Mr Hill: It was not a matter at the time that was specifically considered by our management committee. In December 2010, we were beginning to get involved in the next round of our enterprise bargaining with government, which resulted in an agreement.

The CHAIR: Did you make a submission when the Treasurer called for more submissions on 17 May 2011?

Mr Hill: No, we did not.

The CHAIR: Was your organisation consulted by either government or the Public Sector Commission at the drafting stage of the bill?

Mr Hill: No, we were not.

The CHAIR: One of the things your submission did not address was whether the current policy relating to redundancy, redeployment and termination is working. The audit committee's final report made certain comments about that current policy and clearly the EAC report suggested that the existing policy of permanency for public servants was deficient. Does your organisation have any views about permanency in public service employment as a policy choice; and do you have any specific response to the views expressed in the 2009 Economic Audit Committee report?

Mr Hill: I will just have to refresh my understanding of that.

The CHAIR: I guess the first part was: does your organisation have any views about permanency in public service employment as a policy choice?

Mr Hill: Certainly, within Health it is the position of our union that permanency is important and should be maintained for our membership within the government health system. It is important for a number of reasons. It is important that members have a clear career path and career structure, and when public money is invested quite extensively in the training of health professionals, we should ensure that wherever possible they are kept within government health to provide much-needed services in that area. We see permanency as a significant factor for our members.

Hon DONNA FARAGHER: Could I just seek some clarification, and it perhaps goes back in part to your opening statement. You talked about a couple of examples of people who had lost their positions—perhaps I am talking in terms of a country perspective more than metro—and you indicated that they are part of the community and the like, and I understand and accept that. In your experience, though, is it routine for employees, where their position is no longer required at a particular hospital wherever that may be, that they might be transferred to another region? I take that in the context of, say, teachers, where there obviously is movement at any point in time in terms of redeployment, not perhaps in the same circumstances as we were talking about here in terms of the field, but they go where the need is more likely. Do you find that that occurs regularly or do you find that employees actually stay in a certain place for a significant period of time?

Mr Hill: It is not a regular occurrence within our membership. In the context that you have raised, it is not regular. Certainly in the admin and clerical range of employees, you generally find that they are local—local born and bred in a lot of cases. Health professionals, depending on what profession they are, may very well stay put for long periods of time and years; others are much more mobile, but that is the nature of their profession. If you have a new graduate physiotherapist, they may move around the state as part of seeing the state and getting experience before they take off overseas.

The other comment I would make is that fortunately within Health, certainly up until now, we have not had a big loss of positions in the country or restructuring that has reduced positions. I say up

until now because that, in our view, is a good thing and given the demand for health services that probably should not be surprising. Health demands across the community are growing and the need to address those demands is there. Health is a big employer of staff; delivery of health services is a human services industry and you are going to require more staff rather than less staff. It becomes a question of where they are allocated in terms of getting the most out of the economic input of those professionals. In Health I think it would be safe to say that it is not a regular occurrence, but I could stand corrected. I note my colleagues are nodding, so I have answered that. For those members, permanency has been an issue. We have in our industrial agreements the modes of employment provision that promotes permanency and goes to a process of temporary positions being made permanent, and applications able to be made to convert temporary positions to permanency. Permanency is a fundamental cornerstone of working within government health.

The CHAIR: Has your organisation identified any technical drafting errors in the bill?

Mr Hill: No, we have not.

The CHAIR: Would you like to make any comments about the proposal to put the government's public sector wages policy in the Industrial Relations Act?

Mr Hill: Yes; we have made comments within our submission. To add to that, we see the government wages policy as an employer bargaining position. Why should the government be in such a position that every other employer in the state is not in—that is, to have their bargaining policy enshrined in legislation? In our view it puts the employer, in this case the government, in an unfair bargaining position and it is one that we clearly do not support for that reason. We acknowledge the government has a wages policy; it has a whole range of budgetary considerations. The act already provides that the commission take into account the state of the WA economy, amongst other things, in terms of the commission deliberating or arbitrating on matters. Whilst I do not have specific examples, there are plenty of occasions on which the commission has taken those factors into account when they have arbitrated matters that have come before them. First, we do not see there is a need. Second, we do not believe it is fair and equitable that the government wages policy, which is subject to change from time to time, should be enshrined in legislation. Further, we do not believe that the government should in effect nobble the independent arbitrator—umpire—by putting into legislation that their wages policy must be given due consideration in any decisions they make.

Hon SALLY TALBOT: Mr Hill, you have negotiations going on at the moment, have you not, for July?

Mr Hill: They are just commencing. We are at the early stage in the early process of consulting with members and finalising a claim. In terms of wages, it is clear that the claim will be no less than four per cent per annum for the next three years.

Hon SALLY TALBOT: Are changes taking place already prior to the measures contained in this bill? Are you negotiating now in a different climate to the one you were negotiating in, say, three years ago?

Mr Hill: Most definitely. Health has already indicated that its wages policy is CPI at 2.5 per cent and what is the point in negotiating. That is an off-the-cuff comment, but one that is relatively serious. Given the government wages policy and what they are seeking to do with this legislation, I can understand that position. We have health employers within government who would want to bargain, would want to see productivity improvements implemented, but they in effect are being nobbled themselves by government policy, which does not allow them to negotiate in good faith those changes and to deliver fair and reasonable wage outcomes.

Hon SALLY TALBOT: I note in your submission that you make the point that public sector workers, were the provisions of this bill to be enacted, would actually be disadvantaged compared to private sector workers in that bargaining environment. Can you elaborate on that?

Mr Hill: It does to some extent go to the point that I just made previously in relation to government wages policy being their bargaining position and it being enshrined in legislation. In the private sector, we are not faced with that same sort of situation. In the private sector, the union does make claims, employers make counterclaims, we have robust enterprise negotiations and we either reach agreement or go to arbitration. In the main, we are able to reach agreement. You will see in the table that we reached a greenfields agreement in the Fair Work Commission with Serco for those categories of employee who will eventually be employed at Fiona Stanley Hospital who would fall under our coverage. In the usual manner of things they would be government health workers, but the government in its wisdom has decided to contract out those particular services to the private sector. We have reached agreement with them through negotiations that has delivered 3.75 per cent from 1 July 2014, this year, which is the commencement date for our government agreement. The state government wages policy at CPI is sitting at 2.5 per cent. That would put private sector workers ahead of their counterparts at Royal Perth Hospital, Sir Charles Gairdner Hospital and other areas. There is a further 3.5 per cent, again, which is at least one per cent over the projected CPI for 2015 at Serco, which would put them further ahead. They are the inequities that we see will arise with the enforcement of the wages policy at CPI.

The CHAIR: You have actually answered 8 and 9 in the previous question, and that was about requiring the WAIRC to consider the financial position of the public sector entity and also the financial position and fiscal strategy of the state. I believe you have covered that, but if you would like to add anything more to question 8 and 9 that is fine.

Mr Hill: No, that is fine. I think I have covered those.

The CHAIR: Question 10: would you like to make any additional comments about the proposal to limit the WAIRC's jurisdiction over involuntary separations to looking at whether the regulations and commissioner's instructions were fairly applied and whether the appropriate termination benefits have been paid?

Mr Hill: The only additional comment in relation to that is what we would see as the restriction on an employee who was terminated as a result of those regulations—the restriction on an employee in fact taking an unfair dismissal claim to the WA Industrial Relations Commission. In our view, it should be a fundamental right of any employee that if they feel they have been unfairly treated in their employment or if they feel they have been unfairly terminated, they should have right of appeal and redress to that and government workers should have that right as much as any other employee within the country. We see that as a fundamental right. We believe that employees should be able to take that particular question to the WAIRC.

[11.45 am]

The CHAIR: That goes to the heart of question 11 about involuntary separations. You believe they need a right of appeal for involuntary separation, so you have answered that.

Mr Hill: We do, yes. It is a fundamental issue.

The CHAIR: Do you have any comments about the regulation-making powers relating to involuntary separation being sub-delegated to the Public Sector Commission in the form of commissioner's instructions?

Mr Hill: I think that goes to the issue of transparency and accountability. The making of regulations and the delegation of that to another party, in this case the Public Sector Commission, avoids public scrutiny and the scrutiny that would normally come to proposed legislation and proposed regulations if they are required to come before Parliament. For that reason, it is our view that it is not appropriate that that should be sub-delegated to the Public Sector Commission.

The CHAIR: That answers the next question. Do you have any comments about regulation-making powers and Public Sector Commissioner's instructions extending to perhaps overriding legislation, industrial instruments or contracts?

Mr Hill: The same comment would be made. Yes; it is the same principle.

The CHAIR: Do you have any further comments about the proposal to put the government public sector wages policy into the Salaries and Allowances Tribunal?

Mr Hill: I do not think I made a comment on that particular aspect of it. The union's view would remain the same with respect to public sector wages policy being inserted into the Salaries and Allowances Act, as it is, or insertion into the Industrial Relations Act. However, I think the difference between the two acts is that, unless my recent reading of the Salaries and Allowances Tribunal act is flawed, there is no equivalent provisions in that act to those in the Industrial Relations Act with respect to acting in accordance with equity and good conscience. I think 26(1)(d), which requires the WA Industrial Relations Commission to take into account the state of the WA economy and those sorts of things, there are no mirror provisions in the SAT. Perhaps that is something that could be looked at but that is a separate issue. I make that observation that perhaps it would be prudent to include similar provisions in the Salaries and Allowances Tribunal act that currently exist within the WA Industrial Relations Act.

Hon DONNA FARAGHER: My question goes back to the issue surrounding permanency and, I suppose, the policy of the bill itself. We have heard evidence over the last couple of days from the Public Sector Commissioner that the workers it is primarily interested in in relation to this bill are around 70 to 80 officers who, effectively, are on the list and have been on the redeployment list for a period. I think the longest length of time is around six and a half years. One of the questions put to the commissioner is in terms of redeployment before getting to the point of involuntary redundancy. Appreciating that the actual process has not been set out yet because that is to be put in regulations under this bill, it has indicated there would be a number of steps in relation to redeployment, retraining, counselling, priority access to vacancies and the like. The commissioner put the view that it would be effectively only an option of last resort in terms of involuntary redundancy. That is the opinion that has been put forward. I am interested in your view about whether you think there is a reasonable point in time in which an employer would be able to manage the process of an employee within the provisions of this bill in terms of the involuntary severance if they have gone through all the steps of retraining, counselling and the like. There will always be a question of whether that has been done appropriately or enough. I am interested to hear whether you think there is or is not a reasonable point in time for that to be considered.

Mr Hill: I certainly would not want to see either in regulations or in legislation a time frame put in. I think every case is unique. The other observation I make is that the Public Sector Commissioner is saying there are at the moment 70 to 80 long-term redeployees. Do we need legislative change to deal with 70 to 80 people? It shows a failure of management to manage, to be honest. If they are unable to manage the process within the existing legislation, I think they need to look at their management processes around redeployment, redundancy, retraining—the processes that are already available that put significant pressure, even under the current legislation, on individuals who are registered redeployees to accept suitable alternative employment. We have regulations now that cover all those issues. That would be my observation in relation to that. I would not want to see any particular time and I do not have a time in mind. I think I mentioned an example of a member in Albany who is being managed as not a registered redeployee but internally as a redeployee, whom Health has managed to keep gainfully employed now for at least six years on particular project work. While he is not appointed to any substantive position, he is being gainfully employed within the agency but still without a permanent position.

Hon DAVE GRILLS: We heard before people talk about employment and sustainability and, as you said, feeling secure in the job. How can someone in that position on project work feel secure?

Mr Hill: At the end of the day, they cannot feel absolutely secure; they are only secure to the extent that they are in a country town where they do not want to or cannot move for whatever reason. In this case, the employer, the health service, has managed to keep them gainfully employed.

Hon DAVE GRILLS: Is the management strategy for you guys then to manage that person within six years to keep that person employed in that position?

Mr Hill: Until such time as a position might become available or the person's circumstances change, when they may be able to move to another locality into a suitable job. As I say, it is a management issue; it goes both ways. The individual circumstances may change, which would allow them to take a position in Perth, Kalgoorlie, Esperance or wherever and allow them to relocate. But if they have family commitments, a life within that locality, it is fortunate and we have been able to manage it.

Hon DAVE GRILLS: Is the person in the project position on the same pay with the same leave allowances?

Mr Hill: They are paid at the same level and, to the best of my knowledge, engaged in work which is at that level.

Hon DAVE GRILLS: It is full-time, not part-time pay?

Mr Hill: He suffered no disadvantages other than the fact that he does not have a permanent position.

Hon DAVE GRILLS: Over six years?

Mr Hill: Yes.

The CHAIR: Does the committee have any more questions? We would like to thank you for your time in appearing before us today. This session is now closed.

Hearing concluded at 11.53 am
