

Bargaining within the Business Enterprise :

Unions and the Free Market in Australia

An Essay About Industrial Relations Reform¹

Twenty years ago any discussion of industrial relations was typically about what was happening "out there" in the economy. Industrial Relations (IR) was one thing; the polite endeavour of the academy another. The academic work-place was not usually located within the circle of IR. But things have changed. These days any academic discussion of industrial change is in danger of only talking about how IR has come home to roost in the academy. The significant and far-reaching transformation of Australian industrial relations continues in all sectors.

- **Awards and Enterprise Bargaining**

In 1985 radical amendments to the Conciliation and Arbitration Act of 1904 - the Act which brought into being the Federal system of industrial relations - were formulated by a high powered Review of Industrial Relations Law and Systems. Apart from discouraging small Federal unions, it also suggested reforms that would see unions and employers reaching agreements outside the general award system.

But would de-regulation encourage free-for-all negotiations and the survival of the fittest? Mr Justice Hancock, the Review Committee's convenor, advocated de-regulation in agreements to be negotiated *over and above* the award. It remains to be seen whether owners, capital investors and employers can use this device to **undercut** awards in some way. By 1993 "enterprise bargaining" was in full swing with the retention of basic award levels. But the States have allowed "enterprise agreements" which undercut Federal awards. Sweat shops cannot happen so easily under federal award conditions.

By February 1989 a unified national system of industrial relations was in place. The legislation has had a dramatic impact on other "industrial" sectors like universities which have become Government-controlled institutions in ways which previously were

1. This paper was composed late 1994, the results of which were published in WRF Report of the Work Research Foundation in Mississauga, Ontario in December 1994 and March 1995. It discusses matters of industrial reform; developments may have rendered some of this discussion obsolete by late 1995, but I have not had the opportunity to extensively verify each and every aspect of the newly emerging industrial relations, enterprise bargaining, union developments and connections with the debate in the public-legal realm. It is based upon two articles "Australia - Searching for Solutions" Work Research Foundation - Comment Autumn 1994, 12:4, pp. 6-7, 10 and "Freeing Up Industrial Relations in Australia" Work Research Foundation - Comment Winter 1995 13:1

impossible. Research and curriculum is now funded according to national productivity goals as universities have taken on the role of being job-training institutions. They now form part of a "service sector", funded according to their industrial performance.

"Consumer demand" has a new meaning in terms of course requirements and curriculum reform.

Traditional labour relations ideas have been superseded. Labor came to power early in 1983 and has radically de-regulated the economy. The former system of statutory bodies was revamped. Many were abolished. Uniform policies and laws apply for all industrial and corporate sectors - at least where Federal awards operate.

And what of the industrial landscape? How are industrial relations developed? We will limit our discussion to unions, not only because of their strategic importance to Government policy but also because of their ongoing power to shape the meaning and structure of work in an Australian context.

- **Union Membership :**

As the Australian economy has become more and more geared to the "free market" a steady decline in Union membership has continued. Whichever way it is measured - gross numerical strength or participation rates - the picture is the same. The number of union members and unionised workplaces continues to fall.

Between 1976 and 1988 the fall in membership went from just over half (50.2%) to well under half (41.3%). Some late 1994 estimates were that it is now about 38%. The most that many unionists say in favour of the union is that it exists as a guarantee that some action will be attempted if management gets difficult in negotiations about awards and conditions. For the rank-and-file member the "union presence" is often merely a pay deduction every pay day, a kind of protection tax. Any pressure on non-unionists is usually informal. Some would say that such pressure belongs to the past.

For some time now the Unions have claimed to represent all workers including non-members. In some ways this is a positive development, but recently other sides to this inclusiveness has been revealed. After all there is a close ongoing involvement in national economic policy by officials of the ACTU, the "peak council" of the Union movement.

Union management implements membership drives knowing that Industrial Relations on the traditional adversarial model is harmful to numbers. The de-regulating policies of the Labor Government do not allow Unions to exploit worker uncertainty, because to "get the economy going" the Government has conceded that provision for non-unionised agreements must be an ongoing part of national economic policy. As well union members, and advocates of union membership, are well aware that the ACTU has been a key player in the Labor Government's free market policies. Union dues usually include a levy to the ALP. The political success of the ALP throughout the 80s and into the 90s has not stopped the declining numerical strength of the labour movement in the work-places of the nation.

- **Union Character :**

With decline in membership there has been strong internal pressure for amalgamations and flexibility organisation. Flexibility means allowing Government to make allow agreements between management and groups of non-unionised workers when award provisions are in place, when employers see that non-exploitative work-places are in their own interests. Flexibility also means that Unions change their marketing approach and bid for increased membership by arranging exclusive packages of services and products for members. A worker does not join a union these days; he or she buys a "membership package" which has been put together by the union's *own* corporate management.

Unlike Canada, Australia does not have any in-built provision for competition between Unions. Canada's de-centralised form of "collective bargaining" contrasts with Australian industrial relations which have been heavily centralised at both Federal and State levels by the legal provision of awards. Now Federal awards presuppose "enterprise bargaining" at a local level where unions (or groups of workers acting in concert) are required to negotiate above award agreements. In Canada union-management negotiation seems to be basically de-centralised with patterns within, across and between industrial sectors emerging over time. In Australia however the reverse is true. It has been fundamentally centralised (at Federal and State levels) with awards now setting the basic pattern before on-sight negotiations allow a measure of decentralisation. "Freeing up the work place" is seen as the corollary of "freeing up the market" and local enterprise agreements are viewed as part of ongoing "micro-economic reform" which employer groups have been advocating for some time. "Enterprise bargaining" in theory encourages the development of local diversities, and non-unionised work-places are envisaged as part of the process. But some State jurisdictions, like Victoria, no longer operate in terms of awards.

In this situation Australia has moved further down the track of "sectoral unionism". Australian Unionism is not willing to free up the work-place to the extent found in Canada where Unions compete for representation rights. Sectoral unionism has the effect of confirming Union monopolies. But then it must be kept in mind that these sectors are recognised at the Federal level. Currently at the State level most Governments are Liberal (which means politically "conservative") resisting Canberra's centralism. Since some States have abolished awards for workers organised under State awards, State Unions find themselves somewhat at odds with federally organised unions.

Meanwhile Unions have become corporate employers. Employees of the union have become either unionised or members of professional associations. They bargain about their awards and conditions with Union management and the result has been a new awareness that Unions are dreadful employers.

- **Union practices :**

What about the "closed shop"? What was once a Union enforced practise, has now been rendered somewhat irrelevant. In some places it has become a *management device* for streamlining control of the firm. The "closed shop" does not loom large on the industrial horizon. The Federal Government in its bid to keep business on side does not dare to give even a bare hint of support to the idea. Union monopoly does not sit easily with the industrial climate brought in by ALP's designer socialism and free market.

The work of union officials and shop stewards has changed markedly over the past decade. They have become "managers" on issues such as equal opportunity, occupational health and safety, training and the analysis of the implications of technological change. No longer is the Shop Steward concerned solely with pay and factory grievances, enrolling new members, collecting subscriptions and ensuring the observation of award conditions by management. But the irony is that while the union official's work has become **more important** to the efficient working of the economy as a whole, the number of unionists still steadily declines. The Accord between the ACTU and the Labor Government has strengthened the Unions as players in the political scene even whilst Union solidarity in the nation's work-places fades away.

On December 20th 1994 the Union Movement's new "enlightened" approach to the "closed shop", was thrown into a new light by the Federal Industrial Relations Commission's judgement that according to the provisions of the 1988 Industrial Relations Act the Automotive, Food, Metals and Engineering Union (AFMEU) was legally entitled to bargain

with management in a non-unionised work-place. The implications of this judgement are far-reaching and a political storm has broken. The work-place in question is a factory of industrial harmony, over-award wages, profit sharing among workers, but where workers have not joined, and did not want to join, the union. Nevertheless, the Commissioner ruled that the AFMEU is the **legal** representative of these **non-unionised workers** according to the Act. The Labor Government, employer groups, and of course the Liberal Opposition, have expressed strong dissent from the Commissioner's ruling, but the Union has now taken up its right and entered into "negotiations" with management and owners of the factory on behalf of the workers. The ACTU has welcomed the ruling.

In other words the reforms which have neglected discussion of the "closed shop" have not **in principle** dispensed with monopolistic practises at all. The new-style **IR** means that all workers have to be represented by a legally accredited Union at the highest negotiating level of national economic management whether they are individually members of a local union or not. This may well further erode union membership even as it further entrenches union power; worker cynicism about union pressure is confirmed.

Some might be tempted to think that this opens a window of opportunity for the development of an alternative Christian union movement as in other parts of the world. Such a movement would have to be a "cross-sectoral union" and in terms of the Act sectoral unionism is the norm and small unions (ie under 1000 members) simply will not be registered. If such a Christian union was already a significant player in the field the situation would be different, but the problem is how to become a relevant player in the field. Education among Christian workers remains the appropriate way to go, but that will not be easy.

- **Union amalgamations**

How did we get into this situation? The ACTU has been convinced for many years that there are too many unions. In their view diversity is a prime cause of the persistence decline in membership. The workers at the factory mentioned above cannot legally organise into their own local union. Yet smaller unions are registered at the *State* level. 20,000 has now been fixed as the legally required minimum number of members for Federal registration. Small and diverse unions at the State level have thereby been able to avoid the moves on the Federal level of industrial relations and maintain their independence, even as it is made precarious by State Government legislation which almost invites sweat-shop conditions.

In 1988 the ACTU with the Trade Development Council published **Australia Reconstructed** which proposed the reduction in the number of unions to no more than 20 within two years. In 1956 there were 375 separate unions, in 1988 there were 308. As of August 1994 there were 52 employee organisations registered federally with the Australian Industrial Registry. The goal of 20 was not achieved but policies are now formulated with the view that the national economy is divided into 17 industrial sectors. These figures however are complicated and ambiguous because unions can also be registered at a State level. In this way the Federal-State structure of industrial relations militates against wholesale reform. Moreover, the large sectoral unions are complicated organisations, with local (State) and specialist wings.

In a 1990 study for the ILO, ACTU researchers concluded that considerable economies of scale would be created if there were only seventeen unions with between 100,000 and 400,000 members. This they said would permit the employment of more union organisers and specialist officers, the expansion of research and legal departments, and the reduction of what is called "wasteful duplicated efforts".

- **Unions and Politics :**

The combined power of the ALP in Government and the ACTU has not been able to stop the reduction in union numbers. But the re-organisation of the Union movement represents an increase in the **potential** power wielded by unions. Union officials who implement Government reforms are well-placed for pre-selection in safe Labor seats in future elections. The ACTU, now an integral part of national and corporate economic management, has effectively pushed the union movement away from its traditional role as advocates of social justice in the market economy. There are now fewer and larger unions with their own healthy corporate structures. The potential power to shape the entire economy had increased before the IRC ruling; the power to make a stand against the excesses of market-oriented policies has decreased.

A Federal award now becomes the co-ordinated outcome of complex multi-layered negotiations between Government, unions, employers and major capital investors. The Union movement, represented by the "Peak Union" body, the ACTU, claims to have represented all workers in negotiating the Federal Award. This covers wages, but also terms and conditions and prices are included as a necessary part of the equation. And now "above award" negotiations are supposed to begin. But according to the IRC ruling such negotiations give Unions right of way in non-unionised work-places.

The abolition of minimum awards within State jurisdictions has further hastened the *federalising* of industrial relations. In the past few years State company law throughout the Commonwealth has been overhauled to prevent any one State's legislation becoming the reason for any company or investment re-locating to another State. And now the Federal Government has also enacted legislation which allows those formerly covered by State awards to protect themselves by transferring to the Federal award.

"Enterprise bargaining" throughout the Commonwealth is supposed to enhance productivity, raise profits and further strengthen the economy. But the political situation is very volatile; the rules can change on all levels at a moment's notice. The new coherence and co-ordination which has emerged at the federal level is on shaky foundations.

Ironically the ACTU has become a major *conservative* political player. Now known as the "peak" union body, it retains its place as "chief executive officer" among the various peak councils, of the 52 unions in the 17 industrial sectors. It has increasingly become the "management team" for the national labour movement and the connection with its "political wing" the Australian Labor Party has been transformed.

With the corporatising of the ACTU, union membership has undergone important changes. As enterprise agreements become an integral part of industrial culture it is possible there might be attempts to re-introduce a more formalised closed shop.

- **Conclusion :**

Trade Unions in Australia in general, and the ACTU in particular, may have given up the aspiration to monopolise access to employment for the time being. But there is now good reason to state that the "closed shop" is "on hold" for as long as Labor is the governing party in Canberra. The ACTU and the Labor Government, endorse the view that the Union movement should represent all workers, despite declining membership, and this has been at the expense of it fulfilling its traditional role as advocate of social justice in a market economy.

- **Bibliography**

John Benson **Unions at the Workplace - Shop Steward Leadership and Ideology** Oxford University Press. 1991

Simon Crean and Malcolm Rimmer **ILO Study on the Adjustment Problems of trade Unions in Industrialised Market Economies - Australia** ILO Geneva 1990 (mimeo).

Department of Industrial relations (Commonwealth) **Workplace Bargaining - the First 1000 Agreements** AGPS August 1993

Steve Dowrick **Wage Bargaining Systems and Productivity in OECD Countries** EPAC May 1993 Background Paper No.26 AGPS

Robert Drago et al **Productive Relations? - Australian Industrial Relations and Workplace Performance** Allen and Unwin 1992.

Chris Engels and Brian Brooks **Trade Unions in the 1980's**

University of New South Wales IRRC August 1990.

Peter Ewer et al **Politics and the Accord** Pluto Press 1991.

Peter Gahan **The Frontiers of Pluralism : An Analytic Adventure - A Study of Pluralism in Industrial Relations Theory** UNSW IRRC August 1990.

Flora Gill and John Zappala' **The Closed Shop Revisited : An Essay on Method** ACIRRT Working Paper No.6 October 1990.

Joyce Hocking **Union Amalgamations - A Journey from Mythology to Reality** UNSW IRRC August 1990

Mark Irving **Enterprise Bargaining and the Law** CCH Australia Ltd 1991

Diana Kelly **Defining the "Workplace" in Workplace Industrial Relations** ACIRRT Working Paper No.4 July 1990.

Labour Research Centre **Participative Work and Job Design in Seven Easy Steps** Pluto Press 1992

Max Ogden **Towards Best Practice Unionism : the Future of the Union Movement in Australia** Pluto Press 1993.

Mark Short, Alison Preston and David Peetz **The Spread and Impact of Workplace Bargaining : Evidence from the Workplace Bargaining Research Project** AGPS 1993

Gianni Zappala' **The Closed Shop : Help or Hindrance for the Union Movement** ACIRRT Working Paper No.9 May 1991.

Gianni Zappala' **Mapping the Extent of Compulsory Unionism in Australia** Australian Centre for Industrial Relations Research and Teaching ACIRRT Working Paper, September 1991 No.18

Gianni Zappala' A New Framework for the Closed Shop in Australian Industrial Relations ACIRRT Working Paper No.13 July 1991.

29 December 1994