Award Stripping

The Government and employer agenda

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AWARD STRIPPING

The Government and employer agenda

Employers are drawing up their wish lists to wipe out more than a century of workers' hard won gains. Under Peter Reith's Workplace Relations Act all Federal Awards are due to be stripped back to 20 or less "allowable award matters" (see list opposite) by July 1, 1998. Where awards have not been stripped, "non-allowable" award provisions in awards will cease to be enforcable by law.

Award stripping is part of the Coalition Government's multi- faceted attack on workers and their right to collectively bargain.

The government's aim is to destroy the centralised award system and give employers absolute freedom to exploit workers as they like while curtailing the ability of workers to defend their rights or fight back.

The Howard Government's Workplace Relations Act and changes to the Trades Practices Act, along with enterprise bargaining, are designed to weaken the union movement.

The Act shifts the focus from the centralised award system to the enterprise and individual worker.

There are three important facets to the stripping back of awards: removing the rights of unions; "non-allowable" award provisions; and what are called "facilitative provisions".

These are backed up by measures to curtail the ability of unions to strike back or prevent attacks on their wages, conditions and other rights.

Allowable Award Matters

* * classification of employees and skill-based career paths ordinary time hours of work & times within which they are performed, rest breaks, notice periods & variations to working hours rates of pay generally (e.g. hourly rates, annual salaries), for juniors, trainees or apprentices, rates for employees under supported wage system piece rates, tallies & bonuses annual leave & leave loadings long service leave personal/ carer's leave — sick, family, bereavement, compassionate, cultural and other like forms of leave parental leave, including maternity & adoption leave public holidays allowances

- * loadings for working overtime or for casual or shift work penalty rates redundancy pay notice of termination stand-down provisions dispute settlement procedures jury service type of employment, such as full-time, casual, regular part-time, shift work superannuation pay & conditions for outworkers but only to extent necessary to ensure overall pay and conditions are fair & reasonable in comparison with relevant award covering workplaces.

Matters not allowed

* The following are among "non-allowable" award matters and are being removed from awards*: restrictions on proportion of part-time, casual or junior employees Occ Health & Safety equal employment opportunity preference to unionists (outlawed)

* * right of entry of trade union officials (limited rights given in Workplace Relations Act) union delegate rights employer deduction of union dues employer obligation to consult union if contemplating redundancies

* * unfair dismissal provisions (allegedly covered by separate, inferior legislation)

* * employer obligation to ensure workplace free of sexual harassment (allegedly covered by Sexual Discrimination Act) preference to full-time employees to work overtime instead of employing casuals closed shops (outlawed)

* * amenities call back arrangements training (some measures can be retained) trade union training leave provision of protective clothing, tools, unless in the form of an allowance

* * maximum or minimum hours of part-time or casual work

* *There are matters which appear non-allowable (e.g. protective clothing), which if re-drafted in another form, could be deemed allowable award matters.

Union rights removed

Awards are being simplified and rewritten in easily understandable language. This process of rewriting was commenced under the previous Labour Government. However the Coalition's legislation goes further because it prescribes which conditions are to be allowed in awards.

Most references to unions in awards will no longer be allowable or enforceable in awards from July 1998. The rights of trade unions to be consulted over changes in the workplace, to have access to information, or the requirement for consent by unions before changes can be introduced will have to be removed from awards. Most of the rights of unions to be represented in negotiations are being removed.

The legislation also requires that any reference to the role of union delegates or training for union delegates is removed.

The Workplace Relations Act shifts the focus from employers dealing with unions to enabling employers to negotiate directly with individual workers.

According to Peter Reith, this has been done “to empower employers and employees”. The real purpose is to break down or prevent workers from collectively determining their wages and conditions and increasing their bargaining power when dealing with employers.

The legislation will force individual employees to compete with each other, instead of collectively working together.

Imagine how successful individual workers would have been dealing with the likes of employers such as Rio Tinto, Patrick’s and MIM!

Past gains removed

So far, two major awards — metal and hospitality — have been stripped.

The unions involved have been able to retain their basic provisions such as annual leave, holiday loading, hours of work, leave entitlements, public holidays and sick leave but dozens of other conditions and entitlements have been removed from these awards or weakened.

A number of these are perhaps not so important but none-the-less they do improve the quality of working life. Others like trade union rights are extremely serious. See list opposite.

They all represent hard won gains of past struggles and will have to be defended in the workplace.

Not all of the changes will necessarily have an immediate affect. For example, only the most hard-nosed, anti-worker employers are going to remove lockers, take back protective clothing or remove the first aid kit from the workplace.

They may become slack about replacing clothing or keeping the contents of the first aid kit up to date.

Many unions have already protected these “non-allowable” award conditions in enterprise agreements.

Others are attempting to do so, like the workers at Patrick’s in Sydney and Queensland.

Productivity & efficiency to reduce wages & conditions

One section of the Workplace Relations Act that hasn’t received much attention to date concerns efficiency and productivity.

Section 143 of the Act prescribes that provisions that restrict or hinder productivity (even if these provisions are allowable) cannot be written into awards.

The employers in the hospitality and stevedoring industries are using this provision to argue that penalty rates should be reduced because they hinder productivity and efficiency in the workplace.

Unions however have argued that the rate some one is paid does not in any way determine how they carry out their duties.

The Industrial Relations Commission is yet to hand down its decision in this case.

If the employer argument is accepted by the Commission it will enable employers to argue to reduce all award conditions including rates of pay

Widening the net

The award may also contain provisions incidental to the allowable award matters and necessary for the effective operation of the award.

So far the Commission has taken a fairly broad approach to what is incidental, often rejecting employer demands for important details to be decided in the workplace.

For example, in the metal award decision, the section on rates of pay went much further than just specifying minimum wage rates. It included provisions on safety net adjustments, when and how wages are paid, payment on termination of employment, incremental increases based on experience.

Likewise parental and other leave provisions were not restricted to specifying the length of leave or length of service to qualify for leave.

They contained considerable details such as transfer to a safe job, returning to work after parental leave, replacement employees, etc.

The Commission may also include “non-allowable” award matters in special circumstances on the basis that it is a necessary protection for employees.

Provisions prohibiting deductions from wages for breakages and till shortages were retained in the Hospitality Award on this basis.

Making matters “allowable”

Unions have found some clever and creative ways around the Act.

The provision of clothing (e.g. uniforms or protective clothing), equipment and tools are not allowable award matters but allowances are.

So the Commission accepted the inclusion of a clause providing an allowance where an employee is required to provide special clothing, equipment or tools in the Hospitality Award. Likewise for laundering.

The Act makes it illegal for an employer to pay, or for workers to accept payment from employers, for any period during which industrial action is taken.

Employers sought to delete a provision for paid stopwork meetings from the Hospitality Award. The Commission accepted the union's clever reformulation, arguing: "If an employee is given leave by the employer to attend a union meeting that leave cannot be described as industrial action."

So, a provision for one or more stopwork meetings (at least one paid) was included in the award in the form of "leave for consultation meetings".

But there are other important areas like penalty rates where the Commission has given employers an opportunity to undermine award conditions through "facilitative clauses".

Curbing union struggle

The Act outlaws all forms of industrial action except for what is called "protected action". That is when the strike, work bans or other action is in support of demands for an enterprise agreement which is being negotiated by those workers directly affected.

The Act makes it obligatory to give at least 72 hours notice of what action is going to be taken so that the employer can organise to defeat it.

There are many instances of unions ignoring these requirements and employers not pursuing them in the courts.

It is illegal to take solidarity action, to support other workers struggling for an agreement.

Unions taking illegal industrial action face fines and damage actions of millions of dollars, possible deregistration and their members and

officials massive fines or even jail if they disobey court orders to cease industrial action.

The Workplace Relations Act makes it illegal to pay a worker for a period when any form of industrial action is being taken, whether it is strike action, bans on certain tasks, or refusing to work as directed. It is also illegal to accept any payment.

Individual contracts

Some employers are trying to force workers onto secret individual contracts — another feature of the government's unfair laws.

Individual contracts, known as Australian Workplace Agreements (AWAs), exclude the union and put individual workers at the mercy of employers. They deny workers the very basic right guaranteed in international law to collective bargaining.

They are another means of splitting the union movement and preventing workers from fighting back.

Individual workers are not in a position to stand up to employers or take industrial action. It is a united working class that the government and employers fear.

Second wave legislation

So far unions have been able to work around the Act and even use sections of it against employers.

Reith has gone back to the drawing board with his friends from the National Farmers' Federation and other employer outfits to draft the second wave of legislation after the next election — if they win.

The second wave is likely to be modelled on the WA laws.

Reith would like to make secret postal ballots compulsory before strike action. At present many unions determine their members' views with voting at mass meetings.

The process with its postal ballot and cooling off periods in WA takes up to seven weeks! That gives employers plenty of time to try to intimidate workers and prevent unions striking at the most strategic moment.

The government can intervene during that period in "the public interest" (read "employer's interest"), something that Reith has been longing to do in the maritime area.

It shifts the approach from collective decision-making to a more individual type of arrangement.

Reith would also like to hit union finances. The likes of Rio Tinto and Patrick's are already trying it in the courts.

It's possible that the second wave of anti-union laws will require members to sign-up with the union of their choice every year. Unions would be restricted from donating money to various political organisations.

The government may also be considering methods of reducing to the barest minimum conditions in awards.

Unions fight back regardless of Reith

When the Howard Government was elected it declared war on the trade union movement. Rio Tinto, Patrick's, the National Farmers' Federation and Simplot are some of the employers who joined the battle cry and took up arms.

They are testing their latest weapons, the Workplace Relations Act and the new provisions in the Trades Practices Act.

The Department of Workplace Relations and Minister Reith are extremely pro-active in advising employers how to use the Act against the trade union movement.

Unions are fighting back regardless of the restrictions and attacks.

Maritime workers at Patrick's and mine workers in the Hunter Valley, Mt Thorely and Gordonstone have used the legislation to take strike action. They are throwing it back in Patrick's, Rio Tinto's and Reith's faces.

Unions are finding ways of turning provisions of the Act on their head to use against the more aggressive employers.

There are still many aspects of the legislation to be tested.

The struggle to defend award conditions and penalty rates brought members of the Liquor Hospitality and Miscellaneous Workers' members into action for the first time in 15 years.

They stopped work, marched and protested against the big hotels.

There are many other struggles and strikes around enterprise agreements.

Many unions have won wage increases and had their existing award conditions incorporated in enterprise agreements.

Unions now have before them the immediate tasks of defending wages and conditions and basic trade union rights, building a strong militant union movement and establishing a decent centralised award system.

This can be done by:

* Protecting award entitlements as they existed before award stripping.

This can be done by their incorporation in enterprise agreements.

Most of the conditions that have been stripped from awards because they were not “allowable award matters” are allowable in enterprise agreements and in practice.

They may have to be won again in struggle but they are not illegal and workers have every right to enforce their continuation in practice.

* Improving wages and conditions.

It is important that unions go on the offensive with demands for wage rises, shorter hours without loss of pay, limits on overtime, job guarantees, reduced casualisation of the workforce, paid training, recognition of training skills and experience, paid family leave, etc.

* NO to individual employment contracts.

Individual employment contracts are the enemy of workers. They split the unity of the working class and render it powerless. They are used by employers to pit worker against worker and drive down wages and conditions.

They must be defeated.

* Centralising the struggles.

These and many other important demands can be pursued through enterprise agreements. This does not prevent unions organising national campaigns or negotiating with employer representatives on an industry basis. It only makes it more difficult.

While one of the aims of enterprise bargaining is to weaken the union movement, it can be used to strengthen and build the movement through greater contact with and involvement of members in struggles.

In the longer term it is important to restore a centralised system of determining wages and conditions which would strengthen the

bargaining position of unions and give greater protection to workers who are not in a strong position.

* Building a stronger, more militant trade union movement.

Unions will attract more members if they are seen to be fighting for workers' interests.

This means a class conscious, independent union movement which is prepared to take on employers and governments who act against those interests.

* Defending trade union rights.

The Workplace Relations Act and anti-union provisions of the Trades Practices Act must be defeated and buried.

They must be replaced by legislation which restores a modern, centralised system governing wages and conditions, outlaws individual contracts, guarantees the right to organise, to bargain collectively and the right to strike.

* Broad movement.

Such goals will necessitate a great deal of campaigning and struggle and the building of alliances between trade unions and between trade unions and progressive community organisations. It means building united fronts within each union.

It will necessitate political struggle as well as industrial and economic struggles. This means helping to unite all the left and progressive political organisations in the community.

The Coalition Government must be defeated. It is one of the most reactionary, anti-worker, anti-people, anti-union governments on record.

Unfortunately former Labor Governments began the deregulation process, began “unhitching workers from awards”, introduced “facilitative provisions” in awards and decentralised bargaining, legalised individual contracts and introduced savage penal provisions. It must also take its share of the blame for the present attacks on workers conditions, rights and wages.

As ACTU President Jennie George told the 1997 ACTU Congress, “There can be more than one source of political support for our claims and for our defence.”

Uniting every honest worker and trade union activist whether Labor, Communist, Green, Democrat or Independent, whether Catholic or Protestant, union member or non-union worker is the urgent priority now.