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# Dollar Sweets

## Confronting Union Power

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**The long-running dispute at the Melbourne-based confectionery manufacturer, Dollar Sweets Pty Ltd, illustrates the iron law of Australian industrial relations: an employer is largely defenceless against a determined union leadership. Government support, the Accord, the Arbitration Commission will not protect him from crippling losses. Concerted government and employer action is required to redress the imbalance of power between employers and unions.**

Fred Stauder is an ordinary Australian businessman in all but one respect: he is risking the savings of his small business and maintaining employment in the face of union harassment and intimidation. He is receiving little or no government support in his resolve. Our State and Federal Governments have shown no stomach to withstand the kind of coercion Fred has resolved to fight, nor have they shown any inclination to support employers like Fred who lead the way with courageous action themselves.

Fred's father established a small family confectionery manufacturing business named "Dollar Sweets" about 40 years ago. The company is Australia's largest supplier of "hundreds and thousands" beloved of Australian children for generations. When his father retired 15 years ago Fred took the company over. He could have sold the business and invested the proceeds in interest-bearing deposits and been far better off financially today. Instead, he decided to keep the enterprise running and provide jobs for 27 people.

In September 1983 when the Arbitration Commission decided to implement centralised wage fixation based on the ALP/ACTU Prices and Incomes Accord it required unions which wished to take the benefit of the CPI-linked wage increases to undertake, in return, that they would not pursue extra claims outside the Commission's wage-fixing principles. The union covering Fred's employees, the Federated Confectioners' Association of Australia, balked at giving such an

undertaking. Because it was not prepared to give this necessary undertaking, its members were denied the benefit of wage indexation increments.

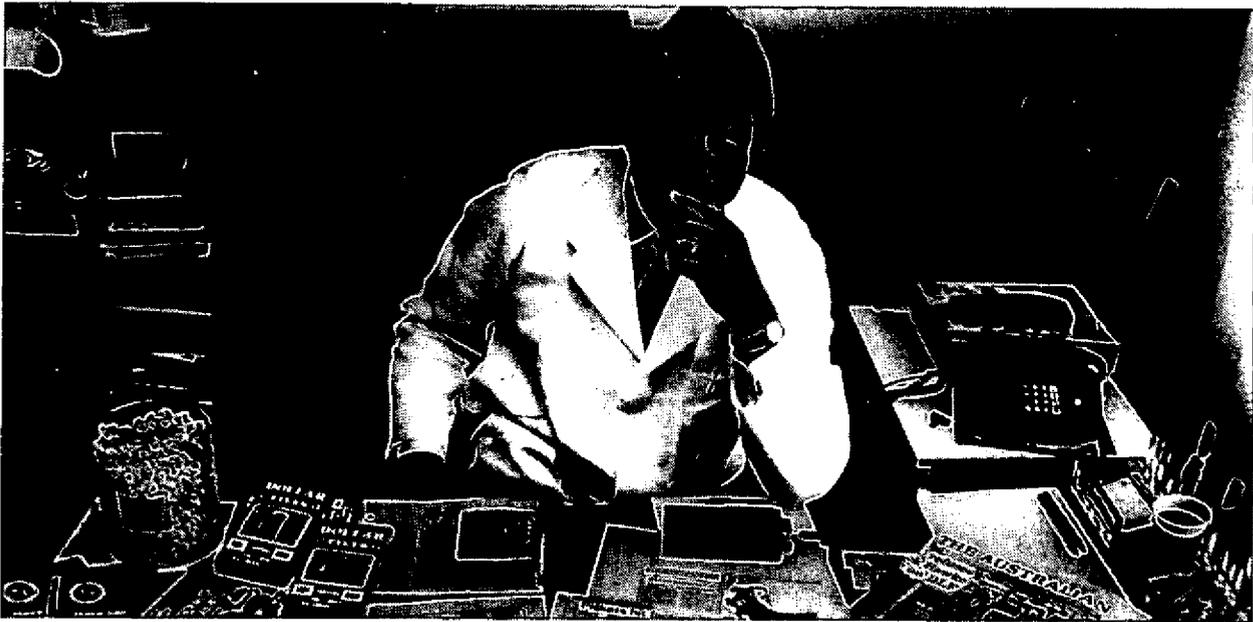
Although Fred, because of the union's intransigence, was not legally obliged to pay his employees wage indexation increases he informed his employees that if they (as opposed to their union) agreed not to make any claims outside the Arbitration Commission's wage-fixing principles he would pay them the increase awarded. This matter was fully canvassed by employees and they agreed through factory representatives, in writing, that they did not wish to pursue further claims. As a result, Fred began to immediately pay them the increases the union had denied them.

This was an example of **real** consensus. Fred and his employees mutually agreed in the interests of both, and in accordance with principles laid down by the Arbitration Commission, to preserve industrial peace in return for wage increases.

Enter the Federated Confectioners' Association.

Notwithstanding the voluntary, written agreement between employees and management, the Federated Confectioners' Association chose Dollar Sweets as the target to pursue its claim for a 36-hour week. Led by their Federal Secretary and in breach of their written agreement the employees struck in support of this claim in July 1985.

Fred Stauder notified his employees that if they wished to work a 36-hour week they would have to find employment elsewhere; he could only



*Fred Stauder, owner of Dollar Sweets.*

afford to pay them for working a 38-hour week. He even offered to open the books of his company to the union officials so they could examine them and ascertain for themselves that, by reason of financial necessity, Dollar Sweets could not afford such over-award claims outside the principles laid down by the Arbitration Commission.

The Union refused the offer to inspect his books but 12 of Fred's 27 employees accepted the offer of work and decided to remain with Dollar Sweets on a 38-hour week. The other fifteen said they would not work with Dollar Sweets unless it had a 36-hour week and commenced an indefinite strike with the active support of their union. When Dollar Sweets advertised for employees to fill their places, it was flooded with offers and 15 new workers commenced with the company and have remained loyal to it since that time on a 38-hour week.

Commencing in July 1985, the Dollar Sweets factory has been subject to a picket which has now run continuously for over 130 days. Super-glue has been used to jam the locks of the factory, there was an attempted arson, Dollar Sweets has received bomb threats and Fred has received death threats by persons unknown.

The federal secretary of the union has been charged with assault upon a driver delivering supplies to the factory, employees at the factory have been harassed and Fred has been required by his insurers to employ armed security guards

to protect the premises.

In August 1985, the telephone and telex wires to Dollar Sweets were cut. Telecom employees refused to cross the picket line to fix them and the factory was incommunicado for a number of weeks. As a result, when the child of one of Fred's employees was injured at school the school authorities were unable to contact the mother at work. When she arrived home late one afternoon she was greeted with the news that her son had been admitted to hospital for surgery without parental consent or knowledge because the school had been unable to telephone her. Eventually the telephone wires were partly restored by a frightened Telecom management late at night.

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In support of an employer who scrupulously honoured the ACTU/ALP Accord, the State and Federal Governments have done nothing other than send belated telexes of support.

The Victorian Premier has refused to order additional police protection for the premises, notwithstanding the fact that the armed security required by the insurer is costing the Company thousands of dollars a week. The ACTU has failed

to use its considerable influence to get the union to abide by the Accord. Although Mr. Hawke was prepared to send a telex of support to Dollar Sweets, further support from Canberra has been wanting.

By reason of the disruption to supplies and deliveries, Dollar Sweets is suffering a mounting loss and Fred Stauder has made it clear that unless the matter can be resolved shortly he will accept the invitation of the Queensland Government to move his operations to Queensland, effectively adding 27 more Victorian employees to the unemployment statistics. He would have been better advised not to use his capital in creating jobs in the first place. He could have led an easy life, made a better profit, and the only people who would have suffered would have been the employee members of the union. The claim which initiated the Dollar Sweets dispute was clearly in contravention of the Arbitration Commission's wage fixing guidelines. The Commission has recommended that the picket be lifted. Nonetheless, in defiance of the Commission, the picket remains, and a small Australian business is facing extinction.

The Dollars Sweets dispute neatly illustrates the problem facing the Australian industrial relations system. Unions and employers do not compete on an equal footing; it seems that unions can flout the law and the Arbitration Commission as they wish. As a result, many employers take the view, regardless of the Arbitration Commission, to give in to militant unions even if it means setting off wage and price increases and reducing employment.

What should be done to prevent this kind of industrial disruption and protect employment?

### **Union Responsibility**

This case study raises the important issue of an ethical basis for union behaviour. The Dollar Sweets dispute is a major challenge for the ACTU — a challenge which it has failed to meet to date. It has a clear responsibility to use its influence not only to see that its members abide by the Accord reached with the Federal Government but to behave in a way which does not discredit the union movement. The absence of a concerted effort in this regard will only serve to bring unionism into further contempt. Trade union bodies should establish and enforce a clear code of ethical conduct in relation to the conduct of pickets. The

kind of behaviour involved in this strike is inimical to the objects of legitimate trade unionism and strengthens the demand for tighter government regulation.

This case study also illustrates that confrontational attitudes are deeply entrenched in sections of the union movement despite the Accord. Neither the Accord nor the Arbitration Commission can offer much protection against them. One may conclude that the Accord is only a thin veneer covering the harsh reality of industrial life in Australia.

### **Government Responsibility**

Governments must be prepared to enforce the law. They should not be squeamish about ensuring that there is adequate police protection for employers prepared to abide by the law and to honour the rulings of the Arbitration Commission. The Thatcher government showed no such squeamishness when picketing ran out of control during the recent British coal strike.

Further, government instrumentalities must carry out their responsibilities to provide services to all citizens without discrimination. It is not the responsibility of management to repair telephone lines which have been vandalised. This is the obligation of Telecom employees, and it is an obligation they should perform quickly and efficiently. If Telecom cannot perform its statutory obligations, one can only conclude it should be privatised sooner rather than later.

Government should also require the ACTU to comply with its obligations under the Accord, namely to pressure and discipline constituent member unions to abide by the wage-fixing principles. Governments should not be reluctant to use their powers to deregister recalcitrant unions and to remove their privileges if they do not meet their commensurate obligations.

### **Employer Responsibility**

It is high time that employers realise that if they do not hang together they will hang separately. Employers, like unions, should establish strike funds to protect their fellows financially when they take a stand that will ultimately benefit the whole industry. If Fred Stauder is forced to capitulate and grant a 36-hour week, other employers will be targetted for the same treatment. Once the whole industry follows suit, individual

employers will then be targetted for new demands. It is nothing more than self-preservation for employers to assist each other through a common fund to which they each contribute. The Melbourne Chamber of Commerce has taken a lead in this regard and established a fund to assist Fred pay the legal costs for action in the Victorian Supreme Court, where he is seeking compensation for his damages and injunctions to lift the picket. Other Employer Associations would do well to follow suit.

It is disgraceful that Fred has been unable to receive deliveries to his factory from large, well-known domestic and international companies. These manufacturers refuse to honour their contracts and make deliveries to Dollar Sweets as a result of the picket. If drivers are paid to deliver goods, suppliers should insist that they do so and not acquiesce in what would otherwise be unlawful conduct by their drivers. The present situation, where employers are at the mercy of union coercion, has only come about as a result of years of such timorous conduct.

### **Legislative Action**

The time has come for legislation to enable employers and their employees to enter binding and enforceable collective labour contracts. If employees agree, through their shop-floor representatives, to work on specified terms, then

they should be liable to pay compensation if they breach their agreements. (So, too, should their employer.) Since this would lessen the control of a union over its members, one might expect this to be vigorously opposed by the trade union movement. If a union intervenes and induces its members to breach their contracts then the way would be open to pursue compensation against them through the civil courts.

Unions should be required to lodge appropriate bank securities with the Arbitration Commission as a condition of their registration (which confers on them valuable privileges in law). This security could be used to pay damages to employers who successfully sue and obtain judgements against them. As it is, successfully obtaining a court order is only half the problem in obtaining compensation for unlawful union action; obtaining payment pursuant to a court order is expensive, difficult, and sometimes impossible. Union officials often vow to go to gaol rather than pay fines and this tactic is used to escalate the dispute, cause further disruption, sway public sympathy and force the employer to back down without receiving the benefit of enforcing his legal rights.

Unless there is concerted action by unions, employers and governments the Dollar Sweets dispute will not merely be a case study in coercive union power, it will be a role model for it.

### ***Editor's Note:***

*In November 1985 Dollar Sweets commenced an action in the Supreme Court of Victoria against the Federated Confectioners Association of Australia seeking damages for the losses caused to its business by the picket and injunctions to prevent further disruption by union picketing in the future.*

*On 12th December 1985, Mr. Justice Peter Murphy in the Supreme Court of Victoria made orders restraining the Federated Confectioners Association from doing any act by way of picketing to obstruct or interfere with the passage of supplies to and from Dollar Sweets until the trial of its Action against the Union (expected early in 1986). This brought 143 days of continuous picketing to an end, although the union has vowed to continue its industrial campaign against the company.*

*In describing the union's conduct as "anarchy", "stupid" and "nihilistic" Mr. Justice Murphy said that as the union had thumbed its nose at the Arbitration Commission apparently aware that the Commission is powerless to apply any sanction there was justification for the courts to step in and remedy the situation. Legal sources have described the effect of the decision as representing a new benchmark in the struggle to control unlawful union behaviour.*