

The Foccacia

IPA WORK REFORM UNIT

How the process of industrial relations deal-making works in a café latte society.

TIME and excuses are fast running out for those supposedly in charge of Australian workplaces. It has been one thing for business in Australia to call for industrial relations (IR) reform and get it, but it will be something else altogether for management to implement the required reform on the ground.

With further reform of Australia's IR legislation a key priority of the newly elected Howard Government, Australian management faces its biggest test. As the reform focus moves squarely on to management—who will no longer be in a position to hide behind the rhetoric that IR reform is 'too hard' because 'IR laws need to be changed'—two fundamental questions arise:

1. Is IR reform about the legislative environment or is it about management leadership and determination?
2. Once legislative change occurs, will the deal-makers be able to sustain their concealed agendas?

BACKGROUND

The hidden truth behind Australia's IR system is that the key venues for the IR deals struck between Australian management (including their employer associations) and unions has not been the industrial tribunals, but rather the back bars of pubs and the private cigar-and-port rooms in gentlemen's clubs. This is why many Australian companies (including their Boards, CEOs, financial controllers and shareholders) have long been sold out under the well-worn banners of 'industrial peace' and 'it was the best we could do'.

The traditional deal-making remains even though there is now a modern veneer of sophistication. Now

the players in Australia's IR Club have chosen chic coffee shops as the new place to continue their old game of IR subterfuge. Indeed, it appears that the biggest barrier to IR reform in Australia has not gone away, but now comes in the form of deal-making over a skim-milk café latte and a shared foccacia.

DISSECTING THE FORMAL VS THE INFORMAL

Although it is clear that the role of institutions which formally influence labour market and IR outcomes in Australia have changed dramatically since the late 1980s, informal bargaining practices and cultures in many industries have essentially undergone little change. In this regard, not even IR academics such as Lansbury and Kitay are 'convinced that the old model of employment relations has completely disappeared in Australia'.

Before the introduction of enterprise bargaining at individual workplaces in the early 1990s, Australia's IR system of conciliation and arbitration had deeply embedded within it a culture of deal-making between privileged third parties (aka 'industrial settlement by agreement between unions and employer associations'). This deal-making culture has been willingly moved into the workplace by much of Australia's management. Hence, a significant proportion of businesses for the last 10 years have been privately or openly surrendering to union demands that impede management capacity, reduce operational responsiveness, lower competitiveness and expand union control in the workplace. Support for this claim was demonstrated in the thorough analysis of enterprise bargaining agreements in the IPA's 'Capacity to Manage Index' Reports into the food, construction,

automotive, transport and petrochemical industries.

So even if we accept that the compromised reforms of the *Workplace Relations Act 1996* have not created the perfect environment for resisting union demands, the pre-1990 deal-making culture fostered by unions, certain managers and employer associations has continued unabated in many individual enterprises now making enterprise bargaining deals. These shared 'foccacias' are portrayed under a mix of scripted distortions along the lines of 'we can live with it' or 'as a package, it's a win-win result'. In some cases, the deal-making serves the purposes of many businesses because it can be used to prevent competitors gaining commercial advantage over, and market share from, dominant players.

SATISFYING OUTCOMES

'Satisfying outcomes' are the result of decisions which are compromises and thus have the potential to please no-one. As Stewart (1994) describes it:

Because the groups cannot organise a 'best' outcome, they reach a 'satisfactory outcome'. They are encouraged to participate in 'satisficing behaviour' as it is called. 'Satisficing' decisions are compromises, they are satisfactory, they are not too bad but they are not the best outcome for society or the economy.

There is a tendency at some levels of management to obtain only satisfying outcomes via a 'path of least resistance'. Many companies have allowed collective bargaining in the form of enterprise agreements to move beyond a mechanism for simply setting the market price of labour. Instead, collective bargaining now amounts to an assertion that the workforce should be

entitled to participate in the actual management of the enterprise concerned.

Management's failure to attach significant importance to its right to manage the enterprise adequately and instead allow for joint self-regulation between management and the workforce in the running of the business was described by Fox (1966) as an incompatible result:

In the sense that groups are mutually dependant they may be said to have a common interest in the survival of the whole for which they are parts. But this is essentially a remote long-term consideration which enters little into the day-to-day conduct of the organisation and can not provide the harmony of operational objectives for which managers naturally yearn.

In attempting to explain why management does not seek the best possible outcomes on IR matters, two issues warrant closer attention:

1. The 'best interests' of industrial organizations; and
2. Legally sanctioned anti-competitive behaviour.

THE BEST INTERESTS OF INDUSTRIAL ORGANIZATIONS

Notwithstanding their not-for-profit status, industrial organizations of employers and employees (employer associations and unions respectively) are essentially like any other business in that they seek their own on-going survival. They recognize their monopolistic power within, and symbiotic relationship with, the IR system. As Spicer (1984) acknowledges:

The whole concept of compulsory arbitration depends upon viable representative organisations of employers and employees and the quasi-legal system of arbitration, if it was to operate, required those bodies to appear before it.

In taking a pragmatic view of their own survival, employer associations, in particular, must strike a balance for themselves between their members' (or businesses') interests and the movement towards further decentrali-

zation of Australia's IR arrangements. As the CEO of a peak employer association stated at the Centenary Convention of the Australian Industrial Relations Commission (AIRC) in Melbourne on 22 October 2004 on the issue of further reform to Australia's IR system:

We are cautious in advocating radical policies [such as further award simplification and a unitary system] ... The new regime will create an increased role for the Commission ... Its role will become more important than ever ... The need to ensure the AIRC contributes to a productive and progressive IR system is not an option but a necessity.

It seems that employer associations have determined that their continued

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survival lies in various self-reinforcing arrangements including: the maintenance of industrial privileges and the IR system; ongoing deal-making between management and unions; and the achievement of only 'satisfying outcomes'. Employer associations (and the IR system) will survive because of their members' (businesses') highly dependent position in the IR landscape and because employer associations hold a so-called 'private government' position in the IR system. But being so dependent upon their associations means that individual businesses face a classic 'principal-agent' problem—how can a business make its employer association operate in the business's own long-term interests on IR?

LEGALLY SANCTIONED ANTI-COMPETITIVE BEHAVIOUR

Even before the introduction of the *Trade Practices Act 1974* (the TPA), it was well recognized that union privilege and labour market regulation combined to effect anti-competitive conduct in the market for goods and services. For various reasons, this issue has only been sanctioned to a limited respect under the TPA. It has provided wide scope for IR deal-making to encompass sometimes subtle, yet broad-ranging and significant, anti-competitive conduct.

Given these facts, it is not surprising that 'satisfying outcomes' in enterprise agreements, arrived at through management and union deal-making, may not be as much an object of concern for the businesses involved as was first thought. Here, IR deal-making by unions and the managements of larger or colluding businesses, under a banner such as a need to obtain 'industrial peace', can effectively exclude other business competitors from the decision-making process and its intentionally anti-competitive outcomes. From the perspective of the free market this is a complete disaster as the Trade Practices Commission itself noted:

Whilst industrial harmony may be important ... it is equally important that this objective not be pursued to the exclusion, or the undue expense of, other considerations—eg the benefits of competition.

IPA SPECIAL REPORT TO FOLLOW

This article serves as the entree to the full 'Special Report' on 'The Foccacia' to be released by the IPA Work Reform Unit on the IPA Website in early 2005. The full Report will further expand upon the themes developed in this article using actual IR deal-making case studies.

References for this article may be obtained from the IPA on request.

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