Howard's Way

It's little wonder the only thing John Howard wanted to say about the dispute at Associated Pulp and Paper Mills (APPM) was that politicians should keep out of it. The dispute's result is a headache for the Coalition, which has been arguing that its plans to radically deregulate the labour market will usher in a brave new world of harmonious and productive workplace relations. For what was really at stake in the APPM dispute was not a union wage claim or the employer's keenness to overhaul work practices, but the more fundamental issue of union representation.

The dispute began in February when APPM cancelled a series of over-award industrial agreements it had struck over the years with its unions, arguing that they were preventing line management from improving efficiency. APPM said it was only prepared to recognise and deal with the unions to the extent it was required to do so under industrial awards and other legal instruments. From the outset, the company insisted it was happy to 'talk' directly with its employees over the changes it was seeking in work practices. But it would not 'negotiate' with the unions because the changes it was seeking were a matter of managerial prerogative.

But the problem for APPM, and for the Coalition's emphasis on direct employer-employee industrial relationships, was that its workers insisted on union representation on the work practices issue. A clear majority of the 800 or so blue-collar workers at APPM's big pulp and paper mill in the conservative Tasmanian industrial town of Burnie were prepared to strike to defend the principle of union representation.

Union representation is one of the most potentially explosive issues in any industrial relations system, because it involves a fundamental ideological clash between the competing notions of freedom of contract between individuals and the right of workers to organise collectively. This is why most western nations have taken the issue out of contention altogether by establishing legal procedures to determine union recognition and bargaining rights.

In Australia, after the massive industrial conflicts over union representation in the 1890s, the issue was resolved by the adoption of the system of compulsory arbitration. The arbitration model was the brainchild of an antipodean unity ticket of 19th-century liberals like Sir Charles Kingston and Fabian socialists like William Pember Reeves, who believed state intervention could render industrial disputation obsolete. Under the arbitration system unions gained legal rights to represent workers and be recognised by employers as bargaining agents through their registration with state and federal arbitration tribunals.

By contrast in the North American collective bargaining systems the state abstains from regulating industrial relations. But even these more voluntarist systems are generally underpinned by a legislative code establishing union rights and requiring employers to negotiate 'in good faith'.

The main exception to this is New Zealand, which began dismantling its compulsory arbitration system under the Labour government in the late 1980s and has now moved to an almost completely voluntarist framework for industrial relations under the National government. Under New Zealand's 1991 Employment Contracts Act, employers and employees are free to choose whomsoever they like to represent them in negotiating either individual or collective employment contracts. Unions' former exclusive rights to represent workers in particular occupations or industries have been abolished. And no new mechanisms to regulate how employees choose their bargaining agent have replaced them. Where an employee authorises a bargaining agent, the employer is required to recognise that authority—but is not required to reach a settlement, to bargain in good faith, or even to enter into negotiations.

In Australia during the 1980s industrial relations was one of the areas of principle most clearly dividing the major parties. But since the government-ACTU drive for a more decentralised wages system under last year's so-called Accord Mark VI agreement the federal Coalition has had difficulty in portraying its industrial relations policies as a genuine alternative.

The existing Coalition industrial relations policy retains the compulsory arbitration system but opens up a new stream of enterprise-level 'voluntary employment agreements' to replace industrial awards where employers and employees both agree to 'opt out' of the arbitration system. This would effectively retain the existing arbitration system as a safety net for cases where employers and employees do not agree on whether to opt out.

But the Coalition is now revising its industrial relations policy, and it is considering embracing the far more radical, New Zealand-style model. This approach would turn 'opting out' on its head. The industrial relations parties would automatically be ejected from the arbitration system into the deregulated stream of voluntary employment agreements unless they both agreed to 'opt in' to the existing award stream. Compulsory third-party arbitration of industrial disputes would be abolished, and union representation would be up for grabs. Closed shops would be outlawed, while new enterprise unions would be formed in workplaces where existing unions already have coverage. Individual employment
contracts would legally override industrial awards.

Dr Hewson has already declared labour market deregulation to be the centrepiece of the Coalition’s *Fightback* manifesto, and he admits to being attracted to what he terms New Zealand’s ‘big bang’ approach to policy change. But industrial relations spokesperson John Howard—a committed industrial relations volunteerist—appears to be concerned about the political practicality of such a radical policy blueprint. Asked recently what he thought of the ‘big bang’ approach, he described it as ‘a very misleading term’.

In each of the last two federal elections the Coalition has attempted to portray industrial relations as a major issue, yet the electorate has shown far more interest in whether the trains are on strike than on the respective merits of centralised versus decentralised wages systems. Thus the dilemma for the Coalition: how can it sharpen the ‘product differentiation’ between the major parties’ industrial relations policies without exposing itself to the charge that its policy would generate industrial conflict and confrontation?

This is where APPM comes in. By demonstrating the degree of conflict that can be unleashed by disputes over union representation, the dispute at APPM has thrown into focus several questions about how a voluntarist industrial relations system in Australia would work. What happens under Coalition policy when employees exercise their freedom of choice in favour of union representation but the employer steadfastly insists upon dealing with individuals rather than unions? Under the 1988 Coalition ‘opting out’ formula the award and arbitration system would presumably continue to operate. But under a New Zealand-style policy which abolished compulsory arbitration, either side would be able to veto any reference of an industrial dispute to a third party for arbitration.

In the absence of either arbitration or legislative regulation of bargaining procedures, such disputes would very likely degenerate into protracted trials of industrial strength. Employers would stockpile their products in anticipation of long strikes or lockouts (APPM imported more than 6 million tonnes of paper before the dispute began). Unions would amass strike funds to sustain their troops through the hardship of long stoppages (the ACTU set up a $5 million fighting fund during the APPM dispute).

But Australia provides less legal protection for workers who engage in industrial action than just about any other western nation (even post-Thatcher Britain and voluntarist New Zealand provide more legal recognition of a limited right to strike than does Australia). Hence the balance of bargaining power under such a regime would be tilted in favour of employers.

If the Coalition decides to plump for the more radical industrial policies it is currently examining, the federal government will no doubt remind the electorate assiduously of the violence on the Burnie picket lines. The challenge for John Howard will be to convince the electorate that the Liberal policy does not condemn 1990s Australia to a replay of the great industrial conflicts over legal representation of the 1890s.

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