Industrial relations in the Australian engineering industry, 1920-1945: the Amalgamated Engineering Union and craft unionism

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Part Three

Industrial Relations in the Australian Engineering Industry during the Second World War

Chapter Seven

Legal Framework

The examination of the institutional framework of industrial relations during the Second World War needs to take into consideration the special wartime situation. At normal times, it was the Federal Arbitration Court that determined the principles governing the working conditions of Australian engineers. Therefore, in Chapter One and Four, the analysis was focused on the provisions of Federal metal awards. However, because of the emergency situation in which the country was placed during wartime, a broad range of political, economic and industrial power was concentrated administratively in order to carry out an efficient and successful War effort. Thus, the Government's direct intervention in the economic and the industrial spheres characterised this period.

In the previous periods, the Federal Arbitration Court maintained its independence, and provisions of awards, which set the standard of working conditions, reflected Judges' personal views and ideas about appropriate industrial relations. The Court still played a significant role during the War. However, the Arbitration system itself was incorporated into the War program, the Government's legislation and regulations supplementing and sometimes
superseding the Court's decisions. Therefore, this chapter deals not only with awards but the Government's legislation and regulations in order to draw the whole picture of the legal framework of industrial relations shaped under the emergency situation. The aim of the study in this chapter remains the same as Chapter One and Four, that is, to examine how craft regulation was undermined or maintained through legal determination.

In September 1939, Prime Minister Menzies declared that Australia was at war alongside Britain. Subsequently, the National Security Act was enacted to secure 'the public safety and the defence of the Commonwealth', which endowed the Federal Government with immense powers to intervene with a wide range of economic and civil activities. Based on this Act, the Government issued a series of regulations to control production, supply, prices of goods and service, rents, foreign exchange, shipping, land transfer and so on. Under the Curtin Labor Government which gained office in October 1941, State intervention was further tightened, as the War situation became serious due to Japan's entry. In February 1942, the Curtin Government promulgated a new set of regulations that pegged wages, prices, profits and interest rates, at the same time necessitating the Government's sanction for share and land transactions.

Along with this economic control, industrial control also played a vital role in the War program. In order to run a wartime economy smoothly, the Government decided to use the Arbitration Court as a device to control industrial matters. Thus, in December 1940, the power of the Federal Arbitration Court was enlarged by regulations so that it could prevent or minimise the disruption of production due to industrial disputes. The jurisdiction of the Court was extended to handle all actual and potential disputes. In addition, the Federal Court now could deal with disputes which did not extend 'beyond the limits of any one State'. Moreover, the Court, the Minister for Labour and National Service, and Conciliation

1 *Commonwealth Acts*, No. 15 of 1939 and No. 44 of 1940
2 As to regulations made under the National Security Act of 1939-40, see *Statutory Rules* made during 1941 in the category of 'Defence (National Security)'.
Commissioners could investigate any industrial dispute and bring it to the Court if they thought it proper for the purpose of industrial peace and national security. Furthermore, the Court was also endowed with the power to make an award which not only bound the parties actually involved in the dispute but was applicable to the whole industry, that is, the power to make a common rule.  

Although the determination of wages and other working conditions was left within the jurisdiction of the Court, it became attentive to the intentions of the Government. One of the most important industrial issues which concerned not only the AEU but the whole labour movement at that time was the increase of the Basic Wage, which had not risen in real terms since the 1937 judgement which had only restored the pre-Depression equivalent. Despite the conspicuous growth of the national economy in the latter half of the 1930s, the Court rejected the ACTU's request for the Basic Wage increase in 1941, considering the Government's concern for inflation. Shortly before the judgement, the Menzies Government announced its plan for child endowment, which until then had been in operation solely in NSW. The timing of this announcement implies a secret deal between the Government and the Court over the judgement on the Basic Wage, because the calculation of the expenses to support family members was one of the contentious issues in the hearing.

The Curtin Labor Government adopted a wage pegging policy. Thus, there was no wage increase permitted by any official institutions after February 1942, save the seasonal adjustments for the Basic Wage. With regard to working hours, the ACTU's campaign for a 40-hour week, in which the AEU was a driving force, was rewarded neither by the Court nor the Government, although regulations were issued to restrict excessive overtime, prescribing the maximum working hours as 56 and 52 hours for men and women respectively.

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Statutory Rules, No. 290 of 1940. See also, S. Butlin, War Economy 1939-1942, (Australian War Memorial, Canberra, 1955), pp. 245-246.
Wartime control was restrictive and forced sacrifices on everyone. Australian workers had to give their best effort, while enduring frustrating working conditions under which they would not have consented to work at normal times. It is against this general background that the legal framework of working conditions set for skilled engineers in this period has to be investigated. The investigation should also take into consideration the strategic importance of skilled engineers in the War economy especially with regard to munition production.

In 1941, Justice O'Mara, who had taken over from Beeby, prescribed a new Metal Trades Award, the only comprehensive one issued during wartime. One of the major issues on the agenda was margins. The determination of margins was a complicated matter in the situation where the Government issued one regulation after another with regard to working conditions concerning munition production. Before the outbreak of the War, the Government, in anticipation of hostilities, had offered, at its munition factories, better terms than awards, including war loadings added to margins, in order to attract skilled workers. Once the War broke out, it turned out to be that the Government munition factories alone could not provide adequate production. Thus, private employers were also brought into munition production either under contract with the Government or by building munition annexes to their existing workshops. As the munition production expanded by such means, the categories of workers to whom the better working conditions were applied were also extended gradually by regulations, although at the same time the employees' right to transfer from one establishment to another was restricted.

In the extension of the categories, the principle was that the application of war loadings should be applied to those employees who could be regarded as engaged in munition production. This caused confusion and discontent, because of the difficulty in clearly distinguishing those engaged in munition production from others. Judge O'Mara himself had to admit the difficulty in determining margins under these circumstances.4

4 44 CAR 564 at p. 567.
Eventually the Judge decided to extend war loadings to all workers covered by the Metal Trades Award, be they engaged in munition or civil production. However, this conclusion was drawn not only from the technical difficulty in defining 'employees engaged in munition production'. It should be noted that his regard for skilled workers also contributed to this generous decision. As expressed in the following comments, O'Mara was concerned about injustice done to tradesmen by the current situation:

Wage discriminations were set up for which there appeared to be no justification, and in some instances I had to hold that skilled employees engaged on work essential for the production of raw material for the manufacture of munitions were not entitled to the regulation rates while the process workers who were later working on such material were subject to the regulations and entitled to the additional rate thereby prescribed. It appeared that to maintain the discrimination made by the regulations both as to maximum rates and transferability of labour would lead to further disputes and discontent.5

Thus, O'Mara awarded a war loading of 6s. per week for tradesmen including fitters, turners and first class machinists; 4s. for second class machinists; and 3s. for third class machinists and process workers. Favouritism towards the more skilled was notable. As shown in Table 7.1 below, highly skilled workers were given even more. For instance, toolmakers had 10s. added to their margin of 36s. per week. Refuting the employers' complaint about this generous offer, O'Mara justified his decision, appreciating the contribution of skilled engineers to the development of Australian manufacturing:

I think that in very many sections of the industry the development of the metal trades under the vast extension of manufacturing in Australia has been such as to call for a reconsideration of very many of the margins. Furthermore, it must be kept in mind that margins in these trades were depressed for many years by reason of the economic position of the industry, and that in considering the margins fixed in 1937 there are passages in the judgement accompanying the decision which indicate that they were by no means final assessments of the value of the work.6

5 Ibid., pp. 567-568.
6 Ibid., p. 568.
In general, the Court's judgements made during this period were favourable for metal workers, especially for the skilled. It should be remembered that even Judge Beeby held tradesman engineers in high regard. He did bring significant changes into the traditional tradesmen-apprentices system in his 1930 Metal Trades Award. However, it was to help develop manufacturing in Australia at the time of the economic crisis, and he had no intention of dissolving the craft community. Therefore, once the economy started to pick up in the latter half of the decade, he increased margins for tradesmen ahead of lower grades machinists and process workers. It can be said, therefore, that since the 1920s the Court always regarded the craftsmen community as the basis for industrial peace. It was following this traditional line that Judge O'Mara made his decisions.

Another example to confirm this point was his decision to give the same amount of loading as tradesmen to those on slightly lower classifications. The same 6s. was awarded to both tradesmen who were receiving 30s. a week as margins and the class of workers who were receiving 27s. O'Mara commented on this decision as follows:

Employers opposed the addition of a loading of 6s. to margins of less than 30s. on the ground that the National Security Regulations did not prescribe for a loading as high as that for any margin of less than 30s...[B]ut on the whole I think that those employed in classifications for which a margin of 27s. has hitherto been prescribed are, having regard to past fixations and the nature of the work, to be treated as having the status of craftsmen and to be fairly entitled to the loading prescribed generally for such.7

The class of workers prescribed the margin of 27s. included, for instance, 'motor mechanics', whose work was close to that of tradesmen but to whose trade there was no apprenticeship. By treating them like tradesmen, O'Mara's tried to prevent the craft community from falling apart, as Justice Higgins prescribed for machinists the same margin as tradesmen for the same purpose. The preservation of the craft community continued to be the Court's main concern.

7 Ibid., p. 570.
Table 7.1 shows the new classificatory framework for 'General Engineering Division' of the Metal Trades Award in 1941. While war loadings were set at various rates, the classificatory framework and the basic marginal rates themselves were not changed from the previous Award. Nor were there any significant alterations in the definitions of key terms like 'manufacturing', 'process worker' and 'machinists'. Thus, although manufacturing was developing at an accelerated pace in this period, due largely to the expansion of repetitive munition production, no further re-structuring of the conventional industrial hierarchy was implemented so far as the engineering trades were concerned.

Table 7.1 The Classificatory Framework and Margins Prescribed in the 1941 Metal Trades Award

\[\text{(s. per week)}\]

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8 45 CAR 751 at p. 755.
Apart from the increase in margins, O'Mara awarded other benefits to workers. Among the most important was annual leave, which the AEU had been so ardently seeking since the late 1930s. Now, a week of paid annual leave was granted to all employers after twelve months' continuous service, in addition to paid sick leave not exceeding 44 hours of working time a year. O'Mara was to extend annual leave to a fortnight in 1945, soon after the termination of the War. The Judge also decided in his 1941 judgement to revive weekly hiring. As mentioned, since the 1927 Beeby Award, the employers had been able to make a contract of employment either by the week or by the hour.

As have been demonstrated, the Court's judgements during wartime were, in general, advantageous to the metal unions. It should be borne in mind, however, that the metal unions' case was rather special, compared to unions in other industries. For instance, war loadings were not extended beyond the metal industry. It was the crucial role metal workers played in the War program that put them in a privileged position. Yet again, getting better legal terms did not necessarily mean that their actual working conditions improved. In fact, as will be shown in the following chapters, the opposite was the case and excessive overtime became the order of the day.

More importantly, although the metal unions won appreciable terms from the Court in this period, they had to make the most serious concession in their history to the Government. Compromising the very fundamentals of craft unionism, they admitted the introduction of dilutees and females into their trades.

When the Government was still preparing for a war, its policy to increase munition production was to attract skilled workers to munition establishments by offering them better working conditions. As soon as the War broke out, however, this measure proved to be insufficient and the munition production was beset by the dire lack of the skilled workforce. At the end of 1939, the Air Force needed about 3,000 fitters, when the number of whole

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9 Ibid.
engineering tradesmen in the country was estimated to be around 19,000. In early 1940, it was forecast that more than 30,000 skilled workers would be needed in the next 18 months, while less than 15,000 skilled workers were currently employed in the Services and munitions.\(^\text{10}\)

The maximum legal ratio of apprentices to tradesmen had been loosened by a Government regulation to 1:1 from the official Award ratio of 1:3. However, this hardly improved the situation in the face of the absolute dearth of tradesmen. Under the circumstance, the Department of Supply and Development entered into a negotiation with the AEU as to the introduction of dilutees. The Union for its part had been attentive to a dilution scheme even before the War, holding that if it was inevitable, the Union had to make sure that it would get the best deal.\(^\text{11}\) Eventually, an agreement was reached between the Government and the AEU in May 1940, which was later consolidated into regulations.\(^\text{12}\) Following the AEU, other metal unions, i.e., the ASE, the Boilermakers', the Blacksmiths', the ETU and the Sheet Metal Working Industrial Union of Australia also concluded the same deal with the Government.

The deal had both negative and positive aspects for the AEU. On the negative side, the AEU, for the first time in its history, had to accept the diversion of labour into skilled trades from other sources than through an apprenticeship. For the Union, it was a serious setback with regard to the very core of craft regulation. At the same time, however, the Union was able to draw from the Government attentive and detailed protective measures to safeguard legitimate tradesmen.

Under the agreement, dilutees, or 'added tradesmen', comprising both trainees, who were given intensive training either at technical colleges or at approved factories, and elevatees, who were elevated from the non-skilled ranks, were assigned to operations which until

\(^{10}\) S. Butlin, op. cit., p. 231.


\(^{12}\) Statutory Rules, No. 102 of 1941.
then had been performed exclusively by 'recognised' tradesmen who had served five years' apprenticeship.

However, the agreement also made sure that the employment of dilutees was placed under a strict supervision of the Dilution Committees consisting of equal representatives of both the employers and the Union with a Chairman from the Minister of the State for Labour and National Service. The Dilution Committees were endowed with a power to determine industrial establishments suitable for training, the content of the training, how many dilutees should be recruited, to which establishments they should be allotted, whether the number of dilutees should be increased or decreased and so forth. No employer could use dilutees unless he could prove to the Dilution Committee that 'his production was prejudiced or retarded by a shortage of recognized tradesmen'.

As to the wages of dilutees, no less than the equivalent of the Basic Wage was paid while they were being trained. Then, once they were engaged as added tradesmen, no less than the full tradesman's rate had to be paid, so that the wage would not become the incentive for the employers to hire added tradesmen ahead of recognised tradesmen.

In addition, the Department of Labour and National Service was charged with the responsibility to keep detailed records of dilutees and provide the Union, as well as the employers, with information about applicants for training, the kinds of operations for which dilutees were being trained, employers applying for the allotment of trainees, their transfers and dismissals and so forth. This enabled the Union to keep track of dilutees.

The agreement also guaranteed that 'an employer shall not engage or elevate or continue to employ an added tradesman on work ordinarily performed by a recognised tradesman if a recognised tradesman of the same classification who is competent to perform the work required is available and offering for such employment'.

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13 Ibid.
14 Ibid.
In addition, if an employer intended to reduce the number of his employees, he could not, without a consent of a Dilution Committee, dismiss a recognised tradesman while any added tradesman of the same classification was employed.

Moreover, it was also confirmed, for the protection of recognised tradesmen, that they should not be debarred from employment by reason only of their age or minor disability. Incidentally, tradesmen, be they recognised or added tradesmen, were not to be enlisted in the Defence Forces unless their trade skills were fully utilised.

With regard to apprentices, added tradesmen were excluded from the number of tradesmen on which the proportion of apprentices was calculated. The employers with added tradesmen also had to pay any engineering apprentices in their final year, i.e. the fifth year, of training the same wage as recognised tradesmen.

As can be understood, the gist of the agreement was to maintain a clear distinction between the industrial status of recognised tradesmen and that of added tradesmen. Every conceivable measure was taken to safeguard the precedence of the former. Of course, as had always been the case with any legal determination, the actual observation of these protective provisions was, in the end, dependent on the industrial power of the Union at the shopfloor level. Especially with regard to elevatees, as shown in the previous chapters, the employers had always sought to substitute non-skilled workers for legitimate tradesmen wherever possible even at normal times. Therefore, the Union's vigilance was even more crucial, because the employers were now in a position where they could take advantage of the irregular situation of wartime. In fact, as will be shown, the employers did attempt to elevate their non-skilled employees contravening the agreement, where the Union was insufficiently watchful.

As the wartime economy expanded rapidly, the shortage of labour, be it skilled, semi-skilled or unskilled, became more and more serious, urging the Government to provide a workforce from another source; this time, from another sex. Although female
workers had already been employed in the metal industries in jobs of light nature even before the War, now the employers and the Government sought to assign them to operations which had hitherto been performed exclusively by men. The introduction of women looked inevitable; the Union demanded a proper safeguard for male workers in return for its co-operation. Then, in December 1941 Curtin announced the Cabinet's planned to extend the employment of women into industries where men were not available in sufficient numbers to carry out War objectives. At the same time the Labor Prime Minister gave a pledge, to alleviate the Union's fear, that women would be employed only for the duration of the War and be replaced by men as soon as they became available.\(^{15}\) Thus, the Women's Employment Board was established in March 1942 to supervise the deployment of women.

Like the Dilution Committees, the W.E.B. consisted of the equal representatives of the employers and the unions with a Chairman appointed by the Minister for Labour and National Service.\(^{16}\) Now, an employer seeking to engage women on operations which had hitherto been performed by men or which had not existed before the War, and therefore, for which the female rates had not been prescribed by awards, had to make an application to the Board for permission. On receipt of such application, the Board was to decide whether females should be employed on the operations and, if so, on what wage rates. The actual rates were decided case by case according to the productivity of the female workforce compared to the male.

Wages of female workers became one of the most contentious industrial issues in this period, women's flooding into various industries causing a threat to the male-dominated labour movement. In order to maintain men's precedence in employment, unions insisted that the wages of males and females on the same work should be equal. The ACTU espoused this principle and the AEU was the driving force of the equal pay campaign in this period.

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16 *Statutory Rules*, No. 146 of 1942.
It should be remembered that the policy of the same wage for the same work had always been the means craft unions had used to prevent the inroad of the non-skilled, and now the same logic was used by male workers to fend off the challenge from the opposite sex.

Eventually, however, the equal wage principle was not adopted in this period either by the Arbitration Court or the Labor Government. Nevertheless, the wartime situation helped narrow the wage disparity between men and women, in some industries very considerably. The Government encouraged the mobilisation of female labour by making their wages attractive. This policy was reflected in a regulation that prescribed the minimum rate the Women's Employment Board was entitled to set at 60 per cent of the corresponding male rate. This percentage was higher than the rates of most awards the Court had prescribed for women in various industries, so that the employers were largely discontented with the Board, trying to circumvent its operation through the conservative-dominated Senate. In the end, the Women's Employment Board was practically mutilated in August 1943 and its central tasks were relinquished to the Arbitration Court.

With regard to the metal industries, until the War broke out, the Arbitration Court had permitted the employment of women only in a limited number of simple and light operations like core-making, canister-making and the assembling of small parts of electrical and other machineries. As to wages, the 1941 O'Mara Award prescribed 73 per cent of the Basic Wage for adult females employed for twelve months or more. For those with less than twelve months' experience, 64 per cent of the Basic Wage was awarded. In August 1942 O'Mara varied the Award, prescribing 75 per cent to those females with more than three months' experience and 65 per cent to those with less experience. These rates were among the highest the Court awarded to any female employees.

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17 44 CAR 564 at p. 589.
18 45 CAR 751 at p. 762.
It should be noted that the metal industries received special treatment from both the Court and the Government with regard to the employment of women, because of their strategic importance for munition production and the need to draw co-operation from the unions concerned. The female wage rates in the metal industries, which were regarded as 'vital industries' alongside, for instance, the clothing and the rubber industries, were kept especially high compared to other industries. In fact, the full Court refused in May 1945 to make 75 per cent (i.e. the rate it prescribed for vital industries) the standard proportion of all female wages to male counterparts.\(^\text{19}\) Whereas, the Women's Employment Board decided to give 90 per cent of the male wages to those women performing men's work after two week's probation in munition and metal establishments.\(^\text{20}\)

While male workers in the metal industries were thus protected, skilled tradesmen in the industries were protected even more strictly. Initially, the Government regulation did not admit the employment of women into skilled operations.\(^\text{21}\) Female dilutees were admitted in the engineering trades in May 1943.\(^\text{22}\) However, at the same time the Government guaranteed equal pay for women on tradesmen's and 2nd class machinists' jobs. In practice, the presence of tradeswomen in the metal industries was felt only in limited areas like boilermaking.\(^\text{23}\) It was mostly semi- and unskilled workers who were affected by the introduction of women, and their influence was relatively limited with regard to tradesmen. So far as the AEU was concerned, women did not seriously threaten its core members, i.e., fitters, turners and toolmakers, even if process workers and lower grade machinists were in direct competition with their female counterpart.

Wartime was the period when the AEU had to make serious concessions to its fundamental principles as a craft union. However,

\(^{19}\) 54 CAR 613
\(^{20}\) As to the W.E.B.'s decisions, see T. Sheridan, *op. cit.*, pp. 161-2.
\(^{21}\) *Statutory Rules*, No. 92 of 1942.
taking advantage of its strong negotiating position deriving from its crucial role in the War program, the Union succeeded in securing the maximum safeguards to protect the industrial status of legitimate male tradesmen. Taking into consideration this legal framework, the following chapters examine actual industrial relations in the engineering industry.