THE LIGHT ON THE HORIZON:
ESSENTIALS OF AN ENTERPRISE FOCUS

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"There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all who profit by the older order, and only lukewarm defenders in all those who would profit by the new order. The lukewarmness arises partly from fear of their adversaries who have law in their favour; and partly from the incredulity of mankind, who do not truly believe in anything new until they have had actual experience of it." Machiavelli, *The Prince*, 1513

Change is seldom easy, even when by some objective standard there is strong evidence that society will benefit. Support for this proposition lies in most of the reforms embodied in public policy in the past 25 years: the shift to decimal currency and metric units of measurement; the introduction of daylight saving; requirements about the use of seat belts; random breath testing, and so forth. It is easy today to forget that each of these changes brought forecasts of dire consequences, ranging from those with philosophical objections to those simply anxious about the impact on their particular welfare or convenience. Of course, this is not to say that any proposed reform in public policy occupies the same moral high ground as RBT or decimalisation. The point, simply, is that even changes that eventually are accepted as worthwhile often, indeed usually if not invariably, have a rocky introduction. This much has been long recognised, although I might be better served by drawing on a fairytale as authority rather than Machiavelli!

In time, I believe, much of what is proposed in the New South Wales Green Paper will be accepted as ordinary good sense, particularly in light of developments elsewhere in the industrially developed world. Before the end of the decade, students of Australian industrial relations will wonder what the fuss was all about, and question why the public debate over the Green Paper concentrated so narrowly on a handful of issues, when there was much more to discuss. In time, hopefully, closer attention will turn to the significance of such forgotten issues as the proposals to legalise strikes and the closed shop, and the recommendations to do with pay equity, anti-discrimination, comity with federal arrangements, Moore versus Doyle and the training responsibilities of management.

I appreciate the opportunity to contribute to the initial volume of the Lloyd Ross Foundation, and, mindful that the broader thrust of the Green Paper is sometimes obscured in the exchanges over detail, I select as my contribution an address I delivered at Melbourne University in October 1989, the Fourth Foenander Lecture. The theme of that paper is change and reform in industrial relations, once an endangered species in Australia, but now apparently alive and well - at least, so long as the opportunity is not lost of putting the new order on a secure footing, and as the Green Paper argues, this requires re-regulation to establish the necessary infrastructure for an enterprise focus.

Over the past 100 years we can identify only a handful of shifts in substance, tempo or philosophy so significant that they qualify as reform. Most would agree on the first of these - the emergence of the conciliation and arbitration system at the turn of the century. More recently, the pursuit of flexibility and the quest for productive efficiency through the Accord (ALP/ACTU 1983) and Australia Reconstructed (ACTU/TDC 1987), and the facilitating role of national wage case benches (ACAC 1983 et seq) also constitute a sea of change in industrial relations. Whether anything in the intervening eighty years qualifies as genuine reform is more problematic, although such judgements are essentially a matter of personal taste. Certainly events of the past five years overshadow anything to be observed in the preceding twenty five years; it is hard to imagine something as interesting or as significant as industrial
relations developments since the mid 1980's - unless it is anticipating what might unfold into the 1990's.

What would Orwell de Foenander think of it all? A traditionalist at heart and a staunch defender of the system, presumably he'd not have taken much comfort in the abandonment of comparative wage justice, or in the distribution of productivity on an enterprise basis, or in the concern to balance attention to equality and equity with attention to flexibility, efficiency and productivity. Professor Hancock, in the first lecture in the series, noted Foenander's view that "the regulation of industry through the agencies of compulsory conciliation and arbitration offers ... the greatest prospect of success and satisfaction in the solution of labour problems and in the ensuring of a continuity of production" (Foenander 1952, 192). Be this as it may, the 1940's and 1950's were a very different period, and much of what we see unfolding today must be understood in terms of the pressures and needs of the last decade of this century, rather than according to the circumstances of luckier times. In particular, the contemporary concern is less for "a continuity of production" and more for the standards of efficiency that apply while the wheels (or microchips) of industry work away.

My paper divides into three parts. One area of attention is the profound changes to industrial relations policy and practice throughout the 1980's. This, of course, has been a decade of formal reviews, with attention directed to both the federal system (Hancock 1985) and to most of the state systems (Kelly 1978, Cawthorne 1982, Marshall 1986, Hanger 1988 and Niland 1989). Yet to date the key reforms have been achieved less through new regulatory mechanisms than through the strategies adopted by the main players. A second area is how we should capitalise on those changes into the 1990's, and the reforms that are still needed in the basic regulatory mechanisms. The issue is one of re-regulation, not of deregulation and the thrust of the Green Paper has a lot to do with building the infrastructures needed to sustain an enterprise focus. It is important to set this in a historical context, which is the third main part of the paper, and the one I turn to first.

**THE SYSTEM AS A NON-CHANGE AGENT**

In the 1890's Australia experienced its worst industrial disputes, and at the very time the Constitution was being assembled. This unhappy conjunction of events gave the industrial relations system several characteristics that bear strongly on the issue of reform, both in terms of its necessity and in terms of its feasibility.

The basic framework for the conciliation and arbitration system is ordained by the Constitution, a fact that hardly augurs well for change and adjustment when the need arises. The idea of productive efficiency and the inclination to do things differently are hardly likely to find much favour where the dominant paradigm emphasises uniformity and the value of precedent - two of the pillars of a judicial approach to regulation. The irony is that the judicial approach is primarily an accident of history, for the prescriptions embodied in section 51(XXXV) reflect the substantial industrial dislocation of the 1890's: industrial relations trauma gave rise to the idea that what the country needed in its new industrial relations system was "judges in industry". That may well have been a defensible position a century ago. But by being locked into the Constitution this way, the industrial adversarial climate of the 1890's came to cast an extraordinarily long shadow, a shadow whose effect built up over the years the rules and regulations, not to mention the attitudes, that the reform efforts of the 1980's and 1990's are struggling to address.
Beyond the inherent difficulty of achieving change to any section of the Constitution, the nineteen words of the industrial relations power are highly ambiguous, giving rise to considerable traffic to the High Court. It is said that section 51(xxxx) is among the most litigated parts of the Constitution, a fact strangely at odds with the peaceable intent of that particular placetum. The effect is that mooted change must inevitably run the delaying gauntlet of High Court challenges.

Yet despite a plethora of non-change agents, the Australian approach inevitably developed characteristics that in time would require significant reform attention. The imperative toward statutory based tribunals significantly increased the likelihood that the system would take on particular features: comparative wage justice, wage indexation, the uniform distribution of productivity and, perhaps most significantly, a strong sense of duty toward the public interest and a greater concern for whether productivity was distributed equitably and uniformly than with the processes of efficiency that might enhance productivity in the first instance. Added to this is the near-fatal flaw of management's massive disinclination to launch change programs, specifically the absence for decades and decades of any idea of strategic counterclaims in the rule-making process. That, it seems, was seen to be too much like bargaining, and if nothing else Australian management became staunch defenders of the tribunal system. As an approach, collective bargaining was identified uniquely with the North American scene, which is hard to reconcile with the fact that this same approach is found in other OECD countries, including such supposed exemplars as Germany, Sweden and Japan. Perhaps there was confusion in the minds of some over the process of bargaining in North America and the approach there to regulating trade unionism, and it was really the latter which should have drawn the opposition. It is odd that a bargaining approach was seen so negatively in Australian public policy, when one of its virtues is that the parties usually address efficiency restructuring (to a greater or lesser extent) every time they negotiate, because the management counterclaim is an inescapable part of the process, not to mention the culture.

The concerns for equity, the public interest and avoiding serious industrial dislocations no doubt were well intended and contributed to the system's repute as a humane dispenser of social justice. But it must also be said that over the years little encouragement was directed toward efficiency and restructuring, at least not until after the economic traumas of the 1970's. The events of the 1980's, ranging from the collapse of the terms of trade to the manifest uncompetitiveness of Australian manufacturing industry, made profound change a matter of survival. The irony is that these changes came not from a management suddenly awakened to the opportunities of bargained counter-claims, or from a review committee, or even from a tribunal test case; they were sponsored almost entirely by the union movement, with support from a Labor federal government.

Some cite this as evidence that the conciliation and arbitration system is indeed flexible and can change when need be (or when forced to). But against this background an important question should be raised: if efficiency restructuring in the 1980's and now in the 1990's is making such a significant contribution to social welfare and economic survival - and I have no doubt it is (or has) - why could not these massive gains have been reaped by having those same reforms undertaken a decade or two earlier? Did the need for reform arise only in the mid 1980's? The clear evidence is that the practices targeted in the 38 hour week negotiations (1981-82), the two-tier decision (1987) and the award restructuring decisions (1988-89) have been around for a long while. Thus, the failure to realise these savings earlier must be seen as a cost of the system that allowed the inefficiencies to arise in the first place, and which delayed their reform. It is fair and reasonable to give credit to the ACTU, which has acted as architect of the changes, and to the Industrial Relations Commission, which served subsequently as licensed builder, so to speak (with management, to continue the analogy, filling the role of the cantankerous neighbour lodging objections to the local council). But the question persists: what about the
horrendous cost of delaying, when the gains were there to be had in the 1970's and 1960's and earlier? Rather than being self congratulatory about change from within, the system should accept its fair share of responsibility for helping create the inefficiencies it now struggles to rectify.

But I am getting ahead of my theme.

Once the words of section 51(xxxv) had been struck in 1898 (by a narrow 22 to 19 majority) it was only a matter of time before the federal tribunal would enunciate (or reaffirm) the principles it did in the 1965 General Motors-Holden case. While there are many elements in the tribunal's regulatory approach to industrial relations that created (or at least sustained) the conditions and attitudes that brought about the need for reform, none better illustrate the problem than the GMH case.

GMH, which had been doing rather well by all accounts, was targeted by the vehicle industry unions for a six dollar wage increase on the basis of corporate prosperity. The substance of the union case, as described by Justice Wright and Senior Commissioner Taylor in their judgment, was that:

"The movements and levels of production, productivity and profits of the company have created not only a capacity but an obligation to pay higher rates to the employees whose combined efforts have, in large measure, been responsible for these achievements. (GMH Case 1965, 936).

Those presenting the union case were "Mr Hawke and his colleague Mr Willis". Although the union advocates "frankly acknowledged that the weight of authority is against the present claim", their retort was that "such authority has no everlasting quality and should be liable to revision and modification". In particular, Mr Willis quoted from the judgments of Justice Gallagher and Justice Moore in a then-recent Basic Wage and Margins case to support his contention that "wage fixation is a dynamic factor, and not something that should be rigid and fixed". "Things do change", he said (p. 941). I hope you can share my sense of historical irony in these words - I'm sure the airline pilots would in their recent dispute with the government and the ACTU.

In its judgment in the GMH case the Commission was concerned that "we may be excessively obsessed with the virtue of uniformity under each award and maximum consistency as between various awards" (p. 948). But their Honours went on to reject the claim outright. As they put it, "To grant it would, in our opinion, amount to irresponsible promiscuity" (p. 948). However, by way of a somewhat prophetic afterthought, the Commission noted:

"The time may possibly come when the whole body of trade unions may see fit to put forward a comprehensive plan based on profitability through increased productivity, when its implications for all classes of employers and a wide range of employees may be open for examination, but that is not the case at present, and we are not prepared to make an odd exception to the general rule of uniformity upon the case put to us in the present proceedings." (p. 948)
The proposition at stake in the GMH case was the virtue of the central disbursement of productivity - a concept as sacred to a centralised system of wage fixation as the companion doctrine of comparative wage justice. Some twenty years later, Professor Hancock put it this way:

"It is a merit of the conciliation and arbitration system that it affords a mechanism for a centralised wage policy ... the principal advantage of a centralised wage policy is that it may assist in the curbing of inflation, allowing other instruments of macro-economic policy to be less restrictive of aggregate demand. In this way, a centralised wage policy can contribute to the reduction and avoidance of unemployment. There is little or no basis for the view that industrial regulation, by its effects on wage relativities, has had damaging micro-economic consequences. Nevertheless, it would be an advantage if the tribunal had a greater capacity to vary relativities. This would involve giving less weight in setting wages for particular categories of labour, to comparative wage movements. We do not think, however, that the conciliation and arbitration system should lend any support to the practice of productivity bargaining." (Hancock Report 1985:205)

That was 1985, yet as we all know, within two years of this the March 1987 National Wage Case decision specifically embraced the productivity bargaining technique so clearly rejected by Hancock. That decision is one of the five major National Wage Case decisions since the introduction of the Prices and Incomes Accord in 1983, and which have so much set the tone and direction of reform in the 1980's.

**THE CHANGING SCENE OF THE 1980's**

In the major National Wage Case decisions since the introduction of the Prices and Incomes Accord in 1983, the evolving picture is of a stronger emphasis on negotiation for final resolution, and a stronger emphasis on dealings between labour and management at the industry and even enterprise level. This is not to say that Australia now has a decentralised bargaining system, but these decisions certainly do begin to lay the groundwork. We have not gone nearly so far in this direction as New Zealand, the only other country in the OECD world with which we could have compared ourselves in terms of industrial relations styles and methods (New Zealand Green Paper 1985, New Zealand White Paper 1986). But we may well do so in the 1990's. And certainly it is fair to say that through the decisions of September 1983, June 1986, March 1987, August 1988 and August 1989 we have progressively ushered in arrangements that are ground-breaking in the direction of decentralism and a stronger industry or enterprise focus.

The September 1983 National Wage Case decision (ACAC 1983) gave unions the opportunity to opt in or to opt out of the overall package envisioned. Wage increases were not to be automatic, but rather were conditional upon certain compliance and assurances. Of course, such assurances have been given before, but not on a union-by-union basis. What we thus had was something very similar to the ratification process inherent in the collective bargaining approach. By and large, union members, through their senior officials, had to vote regarding whether they would accept the proposed package and abide by it for a designated period. The setting of a special time frame was achieved through the no-further-claims clause, another practice more typical of bargaining than of statutory-based arbitration. This can be viewed, almost, as a nascent awareness of the interest/rights distinction to be discussed in the next section. Also relevant to the prospect for significant reform is the fact that the unions began accepting a much stronger role in the enforcement of the negotiated package.
The September 1983 National Wage Case decision is without precedent. But so too is the decision of June 1986 (ACAC 1986), although its significance is perhaps more subtle. In that case, the ACTU focused on superannuation gains, and linked these to the distribution of productivity gains over the previous decade or so. This gave rise to a rather elegant argument: productivity, the unions said, had not been distributed for some time and now constituted 4 or 3 per cent of average weekly earnings. In effect, this was being held in trust for the workers by their employers and it was now time that the money held in trust be dispersed. As the economy worsened, the Commission backed away from any suggestion that the 3 per cent be paid automatically and across the board. But by leaving the resolution to enterprise-level negotiations, the Commission in effect overturned the General Motors-Holden case and the Oil Industry case of the late 1960s. These hallmark cases had confirmed one of the two principles essential to a centralised wage-fixing system: that productivity be distributed at the centre and in a uniform fashion. By its nature, the National Wage Case decision of June 1986 meant that the dispersal of productivity gains was left to negotiations between unions and management at an industry and even an enterprise level.

The other main principle of a centralised system of wage fixation is comparative wage justice, which was dealt a seemingly fatal blow in the decision of March 1987 (ACAC 1987). This decision ordained a $10 wage increase at large and across the board, but required that any of a further 4 per cent increase be conditional upon productivity offsets. This classic case of productivity bargaining continued the tradition of the previous decision, in that at least some of the gains possible were made conditional upon offsets of one form or another at the enterprise level.

Because of its significant break with tradition, it is doubtful whether the March 1987 decision could have achieved the results it did without the groundwork laid through the two earlier decisions. These served to set the scene, but no more than did the March 1987 decision for the award restructuring decision in August 1988 (ACAC 1988), and the wider efficiency restructuring decision in August 1989 (AIRC 1989).

The amount of industry and enterprise level bargaining now under way at the federal level as a result of the award restructuring decisions is welcome, but it is too soon to make any conclusive evaluation. What we can say, however, is that in the past six years, either Australia has adopted a more decentralised system of regulation of wages and efficiency, or centralism now means something significantly different from what it meant in the 1970s. Now there is an overall umbrella with guidelines that increasingly encourage resolution and solutions at an industry or enterprise level.

Significant as these changes are by Australian standards, it is important to realise that while in the 1980's we are moving to catch up with arrangements long operating in other OECD countries, those same countries were further in transforming their own industrial relations arrangements. Countries such as France, Germany, Britain and the United States are also experiencing pressures for enhanced productivity, often through more decentralist arrangements.

Kochan (1990, 19-52) notes that, in the United States, "Labour concessions, including wage and benefit cuts and freezes and productivity-enhancing work rule changes can be found in fully 44 per cent of all major collective bargaining contracts negotiated in 1982 and 1983" (p. 37). He also observes a growing emphasis in the United States on "lump sum bonuses rather than on increases that are permanently built into the wage and benefit base". France, too, has seen an increase in the variety of bonuses, which is made possible by a significant trend, encouraged by legislation, toward company-level negotiations, which have increased by 34 per cent since 1984 (Delamotte 1990, 90-114). In West Germany a significantly greater role is being played by the Works Councils in work practice negotiations, particularly those to do with working time arrangements, even though these are still officially the preserve of union and
employer regulation at the industry level (Streeck 1990, 53-89). A similar decentralising effect through works council involvement is identified for France where Delamotte estimates that, in 1985, nearly a third of the 9,700 firms monitored by the Ministry of Labor had failed in their legal obligation to negotiate with unions, but of these just on a half had "conducted negotiations either with the works council or with employee representatives" (Delamotte 1990). Britain is another country with a growing tradition of decentralism, with strong growth in the practice of single-employer bargaining at the plant or company level in private manufacturing. Like France and Germany, Britain has seen more and more negotiation taking place within the consultative mechanisms located within the enterprise, rather than at an industry, region or some other geographically determined level (Hunter 1990, 115-146).

Perhaps the most surprising reports of decentralism are those coming from Sweden. Nils Elvander, newly appointed to the first chair of industrial relations in Sweden, in a recently completed manuscript for the ILO reported as follows:

"During the 1980's the negotiation system in Sweden has been decentralised, as in many other western countries, the central negotiations ... are no longer as important as they used to be. Twice (in 1984 and 1988) pay talks were held exclusively at the national level without any central co-ordination, as was the custom before SAF succeeded in establishing a centralised system in the middle of the 1950's. There has also been some shift in the emphasis in wage formation away from the national union level and towards the local level, partly because the agreements have allowed more scope for distribution between companies at the local level ... now, unlike the 1950's, the employer side is providing the impulse toward decentralisation." (Elvander 1989, 2)

A positive aspect of the economic traumas of the 1980's is the greater attention we pay to international factors. For too many years we took the view that the Australian industrial relations system was essentially beyond reform. Or rather, beyond the need for reform. But the need for survival has made us less xenophobic in such matters. Indeed, the opening up to new ideas and approaches, particularly from our main trading partners in a world economic sense, may well be the most positive sign on the horizon of Australian industrial relations. But to take advantage of this, public policy needs to look closely at the supporting mechanisms; micro economic reform requires an industrial relations infrastructure, which currently is sadly lacking. What this entails is the focus of the third main segment of the paper.

INFRASTRUCTURE FOR THE 1990'S

Clearly, things are changing, but there is some doubt as to whether the system has the appropriate infrastructure to sustain the changes. A major policy question, therefore, is whether to allow change to proceed only to the point that the existing system can accommodate that change, or whether moves should be made to refashion the infrastructure to better accommodate the shift to even more decentralised arrangements. The position adopted in the New South Wales Industrial Relations Green Paper (Niland 1989) is that we should view changes encouraged by the Accord, by the Australia Reconstructed regime and by the five key national wage case decisions of the 1980's as the first step, not the last, in a process of industrial relations revitalisation. The next vital step is to develop, through policy and through regulation, the necessary elements in the infrastructure for an enterprise focus. These are the supporting mechanisms, and they include the incorporation of the distinction between interest disputes and rights disputes into the regulatory process; the establishment of effectively operating grievance procedures for rights disputes or
disagreements; acceptance of sanctity of agreement, in particular the legitimacy of the no-further-claims clause; a devolution style of industrial relations management; the provision for enterprise bargaining units and enterprise agreements; and the provision of minimum conditions to meet equity concerns and to reduce the need for tribunal vetting of negotiated agreements.

THE INTERESTS/RIGHTS DISTINCTION

In a broad sense, two contemporary models for processing industrial disputes can be identified. The first, the Tribunal Model, entails the establishment of an agreement or an award, usually with the close involvement of an industrial tribunal, which sets the duration of the award's operation typically at two to three years. While some distinction may be seen between the two phases of award setting and award operation, in reality the designated time frame has little meaning. Awards (and registered agreements) are frequently "reopened" in the sense that claims emerge during the second phase to bring terms and conditions settled in the first phase into line with the subsequent movement in what are seen to be comparable areas. If the flow-on is not smooth, which itself can create problems for containment of unit labour costs, strikes and other industrial action emerge. In such an environment of instability, employers seek sanctuary in uniform settlements. Inherent in the Tribunal Model is the view that industrial tribunals exist to settle industrial disputes, and that if a claim arises during the operation of the award, the tribunal's responsibility is to process it.

A second approach, which is evident in virtually all other OECD-type countries, is the Bargaining Model. Here a clear distinction is drawn between the process of setting the agreement or contract in the first phase of the industrial calendar and the operation of that agreement or contract in the second phase. In the Bargaining Model, strikes are generally accepted as legitimate in the first phase, but they are not legitimate in the second phase, (except perhaps where particular issues in the collective agreement are recognised as still unresolved and through a "leave reserved" clause it is further recognised that each party can continue to pursue its interest in such designated issues). Once the agreement is set, difficulties that arise should be handled according to established grievance procedures, which usually entail discussions, consultations and negotiations through successively higher levels in the enterprise, with eventual reference, if necessary, to an arbitrator for a binding decision.

In this model, strikes in the second phase of the industrial calendar are minimised, in part because the inevitability of some strike action is channelled into the first phase, in part because the agreement can only exist if employees specifically ratify it and because effective penalties apply to rights strikes. Certainly the Bargaining Model is quite firm in its requirement that, once settled, the contract or agreement should not be reopened to reconsider agreed terms and conditions during the course of its operation. This must await the arrival of negotiations in the next round of first-phase activity, such is the sanctity of agreement.

A particular advantage of an industrial relations calendar based on an effective distinction between rights and interest disputes, is the way it handles the issue of strike legitimacy. The Tribunal Model sees all strikes as illegal (or at least illicit), which is unrealistic as well as flawed philosophically. Most would agree there is a right to strike, although most would also probably see that right as being constrained in much the same way as defamation action can limit the pure right to freedom of speech. The Bargaining Model, or at least its distinction between interest disputes and rights disputes, provides a simple and effective guide to the issue. Leaving aside the special case of emergency services, strike action over interest disputes is lawful while strike action over rights disputes is unlawful.
If an effective operating distinction between interest disputes and rights disputes is to emerge, three key elements need to be accommodated. First, the right to strike in phase one negotiations must be acknowledged. Second, unions must forego making claims during phase two. The no-further-claims clause is crucial to stability in industrial relations, which itself is essential if localised enterprise settlements are not to threaten a national blowout. As was noted earlier, considerable progress has already been made on this score with the no-further-claims-clause concept ushered in during the 1981-82 metal trades negotiations, and subsequently reaffirmed in the September 1983 National Wage Case decision. Third, unions and employers must develop, operate and maintain effective grievance procedures.

Against this background, the Industrial Relations Green Paper recommends that four specific elements should be incorporated into the legislation to give effect to the operating distinction between interest and rights disputes.

First, the Industrial Relations Commission should be empowered to determine whether a dispute is an interest dispute or a rights dispute, and its authority to arbitrate will be limited to rights disputes and to those interest disputes where: (a) the Minister refers the matter as a matter of public interest; or (b) the parties involved jointly request arbitration. (In Volume 2 of the Green Paper, released in March 1990, this approach was further refined by the introduction of an Industrial Court, which by jurisdiction would handle rights issues, leaving the Industrial Relations Commission to handle interest issues.)

Second, damages and penalties against strikes shall apply only in respect of rights disputes or where the action is taken in contravention of a specific order of the Commission.

Third, grievance-handling procedures should be mandatory in agreements and awards, and, in handling any rights dispute the tribunal should require the parties to genuinely follow the procedure before it can offer substantive assistance.

Fourth, agreements and awards should operate for a designated period. Further, a no-further-claims clause should be required in all agreements, and the Commission should be barred from allowing an award to be reopened during its life (although the Industrial Court could be petitioned to permit consideration of a genuine new matter).

The combination of a grievance procedure mechanism and a no-further-claims undertaking are crucial in minimizing the likelihood of strikes in phase two of the industrial relations calendar.

**GRIEVANCE-HANDLING PROCEDURE**

A grievance-handling procedure spells out the steps to be taken during the life of the award or agreement when a disagreement arises between those who are party to the award or agreement. The rationale of grievance-handling procedures is that they provide greater stability in industrial relations by focusing stronger efforts on the resolution of disputes within the workplace or enterprise. They also provide employees with a guaranteed hearing, and to some extent represent an appeal mechanism. However, it is important to recognise that such procedures are designed for processing rights disputes within the second phase of the industrial calendar and not for dealing with interest disputes in the first phase. The failure to acknowledge this distinction in the Tribunal Model has caused grievance procedures to fall into disuse and disrepute in Australia over the years.
It is important that grievance procedures be negotiated and not imposed. As the Hancock Report notes, the "form of the grievance procedure should be initially a matter for agreement between the parties, with the Commission empowered to include an appropriate grievance procedure in the award or certified agreement if the parties fail to reach agreement" (vol. 1:33). The Industrial Relations Green Paper proposes that this be taken one step further in New South Wales, by adding the requirement that agreements cannot be filed or registered without an appropriate grievance-handling procedure being incorporated. In addition, both management and labour should be required to file a plan setting out details of action they will take, separately and jointly, to ensure that line managers, employees and delegates understand the rationale of the grievance-handling procedure, its particular form and structure, and their obligations concerning it.

The fundamental problem for grievance procedures in Australia is that they have emerged without practitioners and potential users having any clear perception of the distinction between interest disputes and rights disputes. Grievance-handling procedures tend to be seen in a rather mechanical sense; there is little apparent commitment to the idea of grievance processing as part of a two-phase industrial calendar, little attention is paid to design aspects of the procedures themselves, and the training needed to make them work is not provided.

NO-FURTHER-CLAIMS CLAUSE

The tribunal approach to industrial regulation, typically, encourages conciliators and arbitrators to offer their services whenever either labour or management seeks assistance over an industrial dispute. On some occasions, this provides useful input. However, it also means that an award is likely to be "reopened" during its life as the union seeks to re-establish traditional relativities. This tendency to adjust in the interests of comparative wage justice creates an up-draft effect in wage settlements, with the industrial tribunals playing a more deterministic role than would be the case with an enterprise focus.

To achieve an enterprise focus, and to give sanctity to the agreement, the terms and conditions settled upon during phase one negotiations must be allowed to run their course. In particular, there should be an undertaking embodied in the settlement conditions that forbids the reopening of an agreement simply for the purpose of re-establishing some erstwhile relativity. This is achieved through a no-further-claims clause.

The no-further-claims clause, when combined with an effectively operating grievance procedure, helps achieve a strike free period in phase two of the industrial relations calendar. Since it is unlikely that Australian trade unions would willingly assent to a no-strike clause, the issue needs to be approached in a more lateral fashion. If one of the main contributors to the strike strategy is the bringing of pressure to overcome a management rejection of a union claim, then the likelihood of strikes will be reduced if the union sees it to be worth its while to forego making claims, at least for a designated period. Thus, a key element in the rationale for no-further-claims clauses is to ensure that all potential disagreements about terms and conditions are settled during the phase one negotiations, and that once agreement has been reached there will be a period free of industrial dislocation...or at least a period in which the unions are prepared to hold off making claims, which will reduce the probability of industrial dislocation.
Of course, disagreements also arise over the interpretation of the existing agreement, and in that case the use of strike action is also inappropriate. Such disputes should be processed through the grievance procedure, in the manner discussed in the previous section.

Thus, an enterprise focus is significantly enhanced if the collective agreement clearly establishes, for phase two of the industrial relations calendar, a grievance procedure as the agreed alternative to strike action (with regard to interpretation disputes) and the no further claims clause to forestall strikes that might otherwise arise over the clash of economic interests. These are fundamental to the infrastructure for the enterprise focus.

THE DEVOLUTION APPROACH

For grievance procedures to be effective, union leaders need a demonstrated commitment to the idea that issues should be exhaustively handled at the front-line level before full-time officials get involved, and management must emphasise the transfer of authority and responsibility from the industrial relations specialist to the senior line manager, and then down as far as possible.

Throughout the Green Paper a guiding principle for directing any change is the need for a stronger enterprise focus; by being more directly and immediately involved in resolving their own terms and conditions of employment, employees will be more likely to achieve outcomes in negotiations that best suit their needs. At an enterprise level, employers are more likely to obtain agreement to worthwhile flexibility and efficiency arrangements. And wage outcomes can vary with a lesser risk of flow-ons to a wider plane. But perhaps the most important feature of an enterprise focus is the scope for fostering the workplace resolution of grievances, which in turn contributes to stability and the avoidance of strikes in phase two of the industrial relations calendar. There is much more to this than simply setting up a procedure and expecting it to work as designed. Crucial are the workplace culture, which tends to be different with a strong enterprise focus, and the style of management. If industrial claims and grievances are to be handled and resolved as closely as practicable to the workplace, line managers must play a more considered role in industrial relations. The more active involvement in industrial relations by front line supervisors is also essential if management is to effectively monitor agreed work practice changes. And there is the complimentary point that such line managers would be better placed to ensure management meets its undertakings. The philosophy and practice of forcing responsibility for a range of functions onto line managers, away from specialist staff (and in some cases employer associations), is known as the devolution approach. It is another important element in the infrastructure for an enterprise focus.

The rationale for the devolution approach to industrial relations management entails a number of considerations: the need for management to become more preventative and less remedial; the need to further enrich the jobs of line managers, given the rising levels of education and competence of younger individuals appointed to those areas; the need to develop an effectively operating grievance procedure, in the interests of ensuring the integrity of the distinction between the first and second phases inherit in the industrial relations calendar; and, as mentioned above, the need to foster an enterprise focus and, in particular, to monitor the agreement and ensure that offsets achieved and obligations made by management in phase one are in fact being honoured in phase two of the industrial relations calendar.

While the devolution approach is concerned with methods and procedures across the gamut of management, it is directed primarily to industrial relations, at least in the initial stages of its development. The lynchpin in devolution is the triangular
relationship between the employee, his or her front line supervisor and the union delegate. It emphasises communication, supervisor involvement with employees and the efficient resolving of floor-level problems through finding common ground in potentially contentious areas. Grievance-handling procedures and agreed procedures for counselling and discipline play an important role. In this sense, the devolution approach embodies elements of a human resources style with a negotiating approach to work conflict, with the role of trade unions acknowledged and built in. The devolution system also involves a type of bargaining between upper and lower levels in the management structure: the "contract" reached must ensure, for example, that certain functions are guaranteed as the supervisor's responsibility, and more senior managers are barred from involvement unless all the agreed steps have been completed. While front line supervisors might be given greater authority, there is a concomitant obligation on them to be responsible for their actions and to be accountable, and particularly to operate within the set guidelines, thereby achieving consistency with the actions of other supervisors upon whom authority has also devolved.

The application of the devolution approach will vary from organization to organization, influenced by such factors as size, production process, corporate structure, personnel history etc. Even so, a set of design principles can be identified, and these should be applied, or at least aimed for.

First, industrial relations specialists adopt a low profile, encouraging line managers to handle an increasing number of problems that arise in the employer-employee relationship. Industrial relations specialists are essentially a source of information and strategy. They should promote themselves as an accessible, useful resource, guiding line managers toward an appreciation of the various options available to arrive at their own solutions. It will be the exception rather than the rule that an issue is so complex or potentially precedent setting that the industrial relations specialist, rather than the appropriate line manager, will have prime responsibility for the final decision.

Second, line managers should be prepared for and trained to accept responsibility for developing good industrial relations in their own area of operation. Senior managers must devolve responsibility for particular issues, ideally to the front line where possible. The starting point is to presume that any given item can be handled at a lower rather than a higher level in the management hierarchy. Within the enterprise, those who feel that an item is sufficiently important to warrant a higher locus should be in the position of justifying that arrangement; not that those who favour devolution should be the ones to so justify.

Third, front line supervisors can bear a prime responsibility for good industrial relations only with the necessary training. This will entail close familiarity with the enterprise's policies and procedures and the various rights and obligations imposed by the relevant awards and industrial agreements. Equally important, all managers must understand and be comfortable with the essential philosophy underpinning the devolution approach.

Fourth, since consistency in decision-making is essential to perceptions of fairness, and therefore to stability, decisions and actions by managers must conform to a common standard. This is achieved through a clearly specified set of guidelines, an important element of which is an up-to-date policies and procedures manual. Equally important in achieving consistency is a series of special training programs through which supervisors come to absorb the management ethos of the particular workplace. There should also be a monitoring mechanism by which individual line managers can be held accountable for actions taken.
Fifth, it follows that all line managers need to develop a clear concept of where the limits of their own authority and competence lie. Important as it is to successfully handle one's own problems, it is equally necessary to distinguish the issues that have such plant-wide significance, or are so inherently complex, that they need to be passed one step up the line. This ability to know when one is on the edge of deep water, so to speak, is very important to the devolution system.

Sixth, devolution imposes on supervisors an obligation to research issues by reference to the award or agreement section of the policies and procedures manual and through contact with the industrial relations specialist to establish the probable solution or prudent line of action. They approach the specialist to check the proposed response, not to ask what should be done.

Seventh, all of this implies that the first supervisor will be the most important contact between management and the workforce. Employees are encouraged to approach their supervisor to discuss any matter of concern. Devolution means that the immediate supervisor should have the first opportunity to deal with any problem or potential problem. There is an emphasis on communication between supervisors, delegates and employees, for this is the basis for gaining mutual trust and cooperation. With trust each side is prepared to give the benefit of the doubt in ambiguous situations, at least until things can be clarified. This helps avoid unnecessary walk-outs and bans, which in any event can often be unlawful in a system that effectively distinguishes between interest disputes and rights disputes.

The devolution approach, thus, is distinct from a specialist approach in which the industrial relations manager, perhaps through an open door policy, encourages (or at least tolerates) issues coming directly to her or his office, effectively by-passing line managers. For many decades the formal conciliation and arbitration system in Australia has encouraged this specialist approach. A change in attitude and style by management won't come overnight, particularly as the devolution approach is much more the exception than the rule in Australian organizations. Also, while the theory may be clear, impediments do arise to endanger its smooth operation. My experience with its implementation suggests there are five basic truths about the actual operation of a devolution approach.

First, the natural style of things within organisations is for decision-making responsibility to drift upward over time; bureaucracy is an anti-gravity machine! The devolution approach does not come naturally; rather, it is pushing against the tide of the natural inclination within organisations. A frequent mistake is to believe that once introduced, the devolution approach will operate by its own force or momentum. In fact it requires constant monitoring and refurbishment.

Second, many organisations profess a commitment to the devolution approach, but in reality this usually amounts to lip service. Only in a small minority of the cases are sufficient resources available and enough of a infrastructure in place to guarantee that the spoken commitment translates into actual deeds and practices.

Third, senior line managers often are reluctant to let go. Lower level line managers frequently resist the devolution of responsibilities and accountabilities because they do not understand the rationale for such an approach; they question why it should be happening now when such an approach has not been common in their living memory; they feel that they are not adequately prepared to handle the new responsibilities; they fear that they might not be backed up by senior management if they take decisive action; and they object to taking on other people's work without receiving something of the remuneration that those who previously handled the responsibilities receive.
Fourth, while the devolution approach requires employees to raise issues and concerns at the lowest possible level in the organisation, inevitably "step jumping" will occur and the employee will raise an issue at a higher level than is appropriate. In such circumstances the manager approached should never deal with the issue without involving the lower level manager who is more appropriately responsible for the issue and, ideally, should simply direct the matter to the latter's attention.

Fifth, the devolution approach cannot be effectively introduced without a strategic plan that entails the possibility of organisational redesign, provision of appropriate training and a review of awards systems linked into the performance appraisal.

The point to be emphasised is that while many chief executives profess their commitment to a devolution approach, and this is certainly a necessary condition, it is far from a sufficient condition. Devolution requires a commitment of considerable time and resources as well.

ENTERPRISE AGREEMENTS

It is difficult to contemplate a proper enterprise focus without the terms of the remuneration and reward package being set within a voluntary agreement. The main alternative would seem to be an award issued by the Industrial Relations Commission in which common rule coverage typically would extend beyond the enterprise. But with an enterprise-focused agreement, the parties have a better chance of setting terms and conditions best suited to their particular circumstances; of developing stronger work relations building on co-operativeness and consultation, rather than confrontation (although elements of conflict will always be present); and of being better able to develop effectively operating grievance-handling procedures. Also, work relationships and working conditions set through negotiation of voluntary agreements help draw an effective distinction between interest issues and rights issues, which is inherent in promoting the industrial relations stability essential for genuine wages flexibility without generating a greater risk of flow-on and blow-out.

More flexible work arrangements are not uncommon in some of the more innovative agreements of the past five years. There is, for example, the model represented by the Sanctuary Cove and Expo cases, where management negotiated with existing unions, combined through their negotiating committee, to establish a single site award. Another model is presented by Williamstown Dockyard in Victoria and the South Australian Submarine Project, both of which produced a single site award with ACTU support for the reduction of the number of unions represented, and therefore a more cohesive bargaining unit covering the establishment. Both these models are also evident in the flexibility agreements of the Hunter Region in New South Wales, which have been developed primarily in manufacturing, and which are particularly "concerned with workplace and task restructuring, job flexibility and skill enhancement, thus improving the effectiveness and efficiency of production/manufacturing processes" (Brady, Killin & Paradise, 1988:11). A third model entails the contracting out of bargaining units within the enterprise, and this has been the strategy of Shell, CUB and CRA. A fifth case can be identified in the CRA and the Western Mining initiatives in inviting fewer unions and even sometimes a single union coverage in greenfields plants. Finally, there is the well-established model, represented by BHP, of shifting focus from head office or State branch to more locally based management and union officials, particularly within an enterprise-specific award.

In all of these arrangements, however, existing award structures and current award patterns still inhibit permanent reform. To avert recidivism and put the enterprise agreement on a more secure footing, the Green Paper proposes the regulation of
enterprise-focused bargaining units, with the objective of developing enterprise collective agreements that are coherent to the enterprise or establishment, perhaps even with rationalised union coverage within workplaces. To this end, four specific steps were recommended: first, a majority of unions representing employees in a workplace, or a defined proportion of employees themselves, may apply to the Commission for a change in award coverage at that workplace with a view to subsequently filing an agreement or seeking an award appropriate to the new coverage arrangement; second, the Commission notifies all other interested and affected parties and, in a subsequent hearing, determines whether a secret ballot of employees in the workplace is warranted, given the proposals and the range of objections advanced; third, following a secret ballot, the Commission indicates a change of coverage if at least 50 per cent of the votes cast are for a union already represented in the workplace, or where at least two-thirds of the votes cast are for a union not currently represented in the workplace; fourth, the change in coverage becomes effective upon the filing with the Commission of a new agreement between the employer and a majority of the employees in the newly designated bargaining unit, or when the Commission makes a new enterprise-focused award. The new agreement or award overrides all other awards and agreements that would otherwise have covered employers and employees in the designated bargaining unit.

A refinement of this procedure could open the possibility (though perhaps not the probability) of an enterprise-wide union. In cases where more than 200 employees vote in the bargaining unit election, the Green paper proposes the option of establishing an enterprise-wide trade union and having it recognised by the Industrial Relations Commission for the duration of the agreement. The size requirement imposed here is to ensure a sufficient resource base from which the enterprise union would exist and operate. The enterprise-wide union, in such circumstances, would be free to contract in services from outside bodies, including other registered trade unions and the Labor Council, in order to serve the interests of its members and to better meet the Objects of the Act. The New South Wales labor movement has been particularly concerned about the emergence of enterprise-wide trade unions on the grounds this would weaken employees' representation in the cut and thrust of things. While the enterprise-wide union is not crucial to the enterprise focus, on balance it is a desirable option. In any event, a more likely consequence of enterprise-wide unions is a strengthened system of genuine representation, and one with the potential to reverse the decline of the last decade in union membership. What better strategy is there if we wish to see more rather than fewer union members?

MINIMUM CONDITIONS

Ideas about equity take various forms, but given the emphasis on an enterprise focus, the most important equity consideration is the provision of minimum conditions to cover all employees. With such a provision, the tribunals have no real vetting role and the industrial parties face a less bureaucratised system because they simply file for the public record their negotiated agreements. However, the mechanisms for regulating minima need to be carefully designed. Five guiding principles are laid out in the Green Paper (Niland 1990, 41):

First, efficiency - an ability to achieve the desired effect for the target group, without generating unwanted side effects for non-target groups, such as bringing them within the scope of the provision when this is not intended or warranted;

Second, effectiveness - an ability to achieve the full desired impact for the target group;
Third, flexibility - an ability to remain relevant to changing circumstances, but without the minima moving upward against the operating average over time;

Fourth, enforceability - breaches of minima are readily and effectively brought to task;

Fifth, equity - full and equal access to benefits for all those who are entitled to receive those benefits.

With some work conditions, such as annual leave, long service leave, maternity leave etc the provision is unlikely to change regularly, and such adjustments, when they are warranted, can be handled through legislation. How to handle the minima for wages its less clear cut, for it needs to be adjusted more regularly, but in a way which does not invite de facto vetting of collective agreements by the tribunal, nor should the minima drift up over time to match the operating average.

The approach adopted in the Green Paper is that the level at which minima are set should reflect the social safety net concept, which is to say the level set for each element should not fall below the floor society sees to be fair and reasonable; but by the same token, the level should not be cast higher than that. How can this be achieved? While the level of wages set by New South Wales awards varies from award to award, the minima in even the lowest instances must still be at or above the social safety net, as it is inconceivable that the Industrial Commission, with its concern for the public interest, would assent to anything less. Thus, the "not too low, not too high" standard for the prescribed wage to apply as a floor in enterprise collective agreements should be calculated by having regard to provisions in the five common awards at the lower end of the scale. A simple averaging method of calculation means that in October 1989 the prescribed floor wage to apply to enterprise agreements in New South Wales would be $284.30, which should be adjusted periodically using this formula.

CONCLUSION

The industrial relations reform movement has come a long way since the early 1970's. Too often the debate has focused on rigid alternatives - arbitration versus bargaining was an early theme, then centralism versus decentralism. More recently the juxtaposition has been regulation versus deregulation.

Events of the past five years have helped settle many of the issues. Negotiation is much more widely practised, an inescapable and welcome consequence of two-tier productivity bargaining and efficiency restructuring. These developments have had an equally salutary effect on the centre of gravity, with attention now directed much more to an industry or enterprise focus. Yet there is still much contention over which of these two points of focus - industry or enterprise - should be the rule and which the exception. Equally contentious in the policy debates between the various interest groups are the vetting role of tribunals for negotiated agreements, the proper structure for trade unions, the role of a court versus that of a commission and the application of penalties and sanctions. These issues will be sorted out in the next few years, and my forecast is that by the mid 1990's our approach will look more and more like that found in other OECD countries. The real tussle is over the ownership of ideas about reform and who controls the pace of change; its direction will be less and less an issue, except perhaps for those at the extremes of full regulation versus full deregulation.
Thankfully, the reform agenda is considerably more subtle (and supple) than a stark choice between regulation and deregulation. The issue, really, is one of re-regulation, and in this the high priority should be to fashion the necessary infrastructure for an enterprise focus. The key is the interest/rights distinction, this depends less on the right regulation than on the right attitudes among the parties, the tribunals included. But regulation - or re-regulation - can help, and for this reason the New South Wales Green Paper seeks to have an industrial court (for rights issues) as well as an industrial commission (for interest issues). Grievance procedures and no-further-claims clauses require a legislated base, but the comprehension and commitment of the industrial parties is crucial for effective operation. Enterprise bargaining units facilitate enterprise negotiations, and this is an obvious area for re-regulation, not deregulation. The provision of minimum conditions obviously requires regulatory intervention or guidance. Of all the infrastructure requirements, only the devolution approach is a matter primarily of management and union policy. But even here, the tribunals through their regulatory stances could certainly encourage such an approach.

I do not see outright deregulation of industrial relations to be a viable, or indeed desirable, option for Australia. Reform should be targeted through re-regulation, and this needs to be fashioned to support the work of unions and managers as they move to that light on the horizon, stronger and stronger enterprise focus in the 1990's.
REFERENCES


19
GMH Case (1966), The Vehicle Builders Employees Federation of Australia v. General Motors Holdens Pty Ltd, 115 CAR 931.


