

Australian Labor Relations Regulation
by
Charles W. Baird

In mid-March, at the behest of the H. R. Nicholls Society, I traveled to several Australian cities speaking on the subject of the American labor market and the lessons that it might have for labor law reform in Australia. Along the way I discovered that Australian labor relations regulations are much more irrational, contradictory and oppressive even than our own National Labor Relations Act.

Since early last century relations between employers and workers in Australian workplaces have been subjected to “awards” by a quasi-judicial body, the Australian Industrial Relations Commission (AIRC). Collective bargaining as we know it in the United States did not exist at least until the late 1980s. The AIRC’s awards, not agreements, determined the terms and conditions of employment. Employees and employers were regarded as insufficiently knowledgeable to come to sensible agreements, even collective agreements, at the enterprise level. Employees were assumed to have an overwhelming disadvantage in bargaining power relative to employers so any agreements between them had to disadvantage workers. Only the anointed wise men of the AIRC could know what was proper and just.

While there were some baby-step reforms in the late 1980’s and the 1990s, the awards system still dominates industrial relations in Australia. A union or a group of unions, representing workers in an industry or sector of the economy, presents its demands to the AIRC, and an employers’ organization, representing employers in that industry or sector, takes the other side of the “dispute.” The AIRC grants a detailed, prescriptive award in the dispute which, by force of law, is imposed as a minimum

standard throughout the industry or sector. The unions and employers' organizations are assumed, respectively, to represent all workers and all employers in the industry or sector. Prior to 1996 individual workers and employers were not permitted to opt out of either the representation or the awards. Opting out is still difficult. Because the AIRC accepts the hoary bargaining power disadvantage myth as an article of faith, unions exert much greater influence on awards than employer organizations, which often feel impelled to make concessions. This tripartite arrangement, not dissimilar to that of fascist Italy, is known in Australia as the "industrial relations club."

Awards are typically hundreds of pages long and they prescribe in infinite detail what can and cannot happen in covered industries and sectors. In addition to wages and salaries, all rules for work, breaks, leaves, promotions, demotions, transfers, layoffs, terminations, holidays and even jury duty are prescribed. Once an award is made a union has a right of entry into workplaces, even where none of its members are employed, and even in union-free workplaces, to ensure the award is being applied. Once the AIRC imposes an award it may adjust other awards in other industries and sectors in order to preserve appropriate "wage justice and fair relativity." Prior to the late 1980s, the high prices for labor that emerged from this system were supported by tariffs and other barriers to competition in product and services markets. Except in the underground economy, market considerations were irrelevant.

In the 1980s, because of increasing globalization of commerce and competition, it became increasingly clear that this *dirigiste* arrangement harmed almost all consumers, employees and employers, not to mention the unemployed and the underemployed. Like their neighbors in New Zealand, Australians implemented liberalizing reforms in

financial, product and services markets, but only very marginal ones in labor markets. The myth of labor's bargaining power disadvantage held even the reformers in its thrall. New Zealanders cast the myth aside in 1991 when they enacted the Employment Contracts Act (ECA) which almost completely liberalized their labor markets.

Australia legalized union-based collective bargaining at the enterprise level in 1988 and union-free collective bargaining at the enterprise level in 1993. Individual agreements between an employer and an employee were still banned, and collective agreements were subject to a "no disadvantage test" with respect to comparable awards. That is the agreements had, in the eyes of the AIRC, to provide compensation and other employment conditions which, overall, made workers at least as well off as workers covered by traditional comparable awards.

In 1996 a coalition of the Liberal and National Parties took control of the lower house of the Australian Parliament from the Labor Party. John Howard, a Liberal MP, who had promised to move toward greater liberalization of labor markets, became prime minister. That year Parliament enacted the Workplace Relations Act (WRA) which is still the law today. The principal stated intention of the WRA is to move Australia away from centralized awards toward decentralized enterprise-level agreements. It also permits individual bargaining for individual employment contracts called Australian Workplace Agreements (AWAs), although the Office of Employment Advocate (OEA) is required to check whether they pass the no disadvantage test.

By any reasonable measure the WRA has not accomplished its principal goal. While there are now many collective and individual decentralized workplace agreements in place, they all must comply with the centralized AIRC awards. The AIRC, not

Parliament, sets legal minimum wages in Australia, and it does not impose one legal minimum wage at a time as Congress does in the United States. It imposes literally thousands of them in its awards. The AIRC is made up almost exclusively of people who have a vested interest in preserving the old union-dominated awards system. They take advantage of every actual ambiguity, and invent ambiguities that do not exist, in the WRA to try to preserve the old *dirigiste* system.

The fecklessness of the WRA is largely due to the fact that in 1996 the Howard government controlled only the lower house of Parliament. The Labor Party controlled the Senate. While the lower house elects the prime minister, both houses have to agree on legislation before it is enacted so the liberal reformers were forced to compromise with defenders of the status quo. The result was a law of over 500 pages of incredible complexity consisting of confusing, contradictory and often ambiguous language which makes it possible for the members of the AIRC to interpret it according to their own predilections.

The 2004 election gave Howard a fourth term as Prime Minister and the coalition continued control of the lower house as well as eventual control of the Senate . Australian liberals thought that it might at last be possible to enact substantial labor market liberalizations, perhaps even going so far as New Zealand did in 1991. Alas, those hopes have been dashed.

In May 2005 the Howard government announced an outline of measures it would try to enact after the change of control of the Senate in July 2005. The no disadvantage test would be dropped. The AIRC would lose its powers to set minimum wage rates and to approve enterprise collective agreements. Its role would be reduced to resolving

industrial disputes and simplifying existing awards. However a new bureaucracy, the Australian Fair Pay Commission (AFPC), would set minimum wage rates no worse than existing awards, which would be new awards in everything but name. The OEA would approve enterprise collective agreements and continue to approve individual AWAs. The AFPC and OEA would be instructed to take economic factors into consideration when making their decisions. (Imagine that!) A special task force would be charged with reviewing existing awards. Hopefully, to the extent there would be new decisionmakers they would be less wed than the AIRC to the old regime.

Compared to New Zealand's ECA, the Howard government's proposals look more like a sell out to the industrial relations club than meaningful labor relations reform. A golden opportunity has been lost for want of moral clarity and political courage.