What is meant by employer militancy? essay

MGTS2607 Essay What is meant by employer militancy? How have employer actions towards trade unions changed since the end of the 1980's? Why have Australian employers undertaken this change of approach? Student: Samantha Freeman Student Number: 41022715 Tutor: Dr Tom Bramble Due Date: 16th September 2008 WORD COUNT: 1, 900 This essay will answer the three essay questions put forward. Firstly, it will briefly explain what is meant by employer militancy. It will outline the main features of the aggressive approach adopted by employers in their relations with trade unions since the 1980's. Secondly, this essay will describe the changes in employer actions towards unions.

It will outline the different phases that have occurred during the change as well as discussing trends which illustrate the growing tendency of employers to either confront or avoid dealing with unions or circumvent dealing with them completely. Lastly, this essay will put forth reasons as to why Australian employers have undertaken this change of approach. It will outline multiple factors, such as economical, political and changes in legislation that will help to explain this change in approach. This essay will also incorporate the decline in trade union coverage as both a result and a cause of this change in approach. Since the 1980s, Australian employers have become increasingly hostile towards trade unions over and due their perceived excessive involvement in bargaining for employment conditions, arbitration and disputes.

This has created the phenomenon that's been termed employer militancy. Alexander et al. (2008: 97) define employer militancy as ' willingness of employers to use legal action to secure punitive damages against a trade

union’. It is an aggressive anti-union approach, in which employers actively seeking ways to marginalise trade unions, with the help of their employer organisation.

There are several main features of a militant employer, behavours such as offensive lockout (Briggs, 2004: 110) aims to reduce the bargaining power of the unions. Most of the heaviset impacting changes to the industrial relations system began to manifest in the late 1980’s. The process started with the ‘ managed de-centralisation’ of the ‘ second tier system’, where for the first time, representation for employees in regards to their wages and conditions of employment were able to be negotiated directly by employers and their associations and unions (McDonald and Rimmer, 1989 as cited by Cooper, 2005: 159). Prior to the 1990s, awards were a central and distinguishing feature of labour regulation in Australia (Bray et al, 2006: 45). Awards were technically a form of state regulation which was determined by the decision of a third-party arbitrator appointed by the government (the Australian Industrial Relations Commission) in resolving disputes between registered organizations.

As Bray and Waring (2006) explain, awards were in a realistic sense, the result of a complex structure of joint decision-making in which employees, their unions, employers, their employers’ associations, governments and tribunals contributed to the regulation of employment conditions – primarily wages and wage rates. The failure of the Second Tier to moderate macroeconomic pressures in combination with the rising pressure from business groups such as the Business Council of Australia encouraged parties within the system to develop new procedures. The most significant

among the new procedures was the possibility of a more decentralised system (Wooden and Sloan, 1998: 178) which provided greater opportunities for employers and workers to negotiate directly over wages at the enterprise and workplace level, without the unions. The AIRC was unhappy with the new collective bargaining principle, and worked hard to obstruct the implementation of it.

It was through these actions that the changes in the Industrial Relations Act 1988 were first made. These amendments reduced the ability of the Commission to become involved in the enterprise bargaining process, and inevitably lead to the passing of the Industrial Relations Reform Act in 1993. These ammendents included, among other things, the introduction of a non-union/collective bargaining system in the form of Enterprise Flexibility Agreements. The intention of the 1993 Industrial Relations Reform Act, for example, was to make enterprise bargaining the main process for determining wages and other onditions of employment. Awards continued to provide effective regulation for employees who were not enjoying the benefits of enterprise bargaining, even if award wages rose slowly and fell well behind wage increases in enterprise agreements (Bray etc al, 2006). The Business Council of Australia’s strong support for enterprise bargaining and for a weakened role for arbitration tribunals gradually became the mainstream position among most Australian employers, even among those who had previously supported centralized bargaining (Thornthwaite and Sheldon, 1996).

This was the first time in history, in which the unions were excluded from having any involvement in all forms of agreement in relations to employment

conditions in the federal jurisdiction. It was at the time of this introduction that it became evident that these agreements would allow employers to begin to de-unionise their operations and to accelerate their move towards a non-union status. The most radical industrial relations reforms of the past 20 or so years was brought in soon after the election of the Howard government in 1996. Whilst speaking at a Young Liberals' Conference he alluded to his goal of de-centralising Australian employment relations. ' The goals of meaningful reforms, more jobs and better, higher wages, cannot be achieved unless the union monopoly over the bargaining processes in our industrial relations system is dismantled' (Howard 1996, quoted in van Barneveld & Nassif, 2003). Not long after this, the Howard government was elected into power.

Soon after the government was brought into position, The Workplace Relations Act 1996 was introduced. This Act cut back the content of awards significantly. This ended up forcing the unions to go about trying to protect workers' entitlements by attempting to push award stipulations into enterprise agreements. (Cooper, 2005: 160). The act drastically cut short the ability of the Australian Industrial Relations Commission (AIRC) to intervene in industrial disputes and introduced rather heavy fines for unions attempting ' unprotected' action, such as strikes. The Act also introduced individual Australian Workplace Agreements (AWAs) which excluded unions.

Cooper, 2005: 160) With the implementation of the new Workplace Relations Act 1996, Australian unions lost their monopoly bargaining rights (Bray and Walsh, 1998: 373). This, among other changes in the Act made it a lot more difficult for the unions to access or to represent workers, but it made it easier

for employers to choose whether, and to what extent, they would negotiate and bargain with collective representatives of their employees. Along with changes to industrial legislation, unions have also had their right to access workplaces, members and non-members restricted. Since 1996 union officials have had right of access only when they had union members at a site and then only when they gave employers notice of their intention to visit.

As outlined by Wooden and Sloan (1998), the number of registered agreements has continued to increase since 1991 when formalised collective agreements first became possible. Between October 1991 and October 1997, approximately 15, 000 federal agreements had been formalised by the Australian Industrial Relations Commission, with the number of employees estimated to be covered by these agreements reaching 1. 4 million by late 1996, or 64 per cent of employees within the coverage of the federal awards system. In 2004 the Howard government won an increased majority in the House of Representatives as well as complete control in the Senate. Not long afterwards, the WorkChoices bill was passed.

This new act further reduced the power of the AIRC as well as diluting the standards against which workplace agreements were to be compared to before becoming into effect. It also assisted in the creation of individual employee contracts and abolished the unfair dismissal protection for any business that had less than 100 employees working for them. WorkChoices restricted unions' ability to take industrial action as well as being able to enforce collective bargaining. It also made organising any non-union worksites significantly more difficult than in had been in previous years.

When WorkChoices was implemented, the process for unions in taking legal industrial action became difficult, costly and had the potential of making both unions and their members susceptible to significant fines and tort damages. In contrast, due to WorkChoices, employer access to protected lock-outs is almost unlimited. Under WorkChoices there was no requirement for employers to take any steps at all to negotiate with a union, regardless of the percentage of their employees who were either union members, or had expressed their wish to enter into a union collective agreement with their employer. This new legislation gave employers the ability to marginalise unions, avoid unionisation as well as basically having the ability to circumvent the unions completely.

Changes in legislation, a growing aversion toward unions from the both the previous, and the newly elected governments, as well as the growing managerial prerogative have made it difficult for the unions to now try to organise workers, to bargain o behalf of or be able to ‘ effectively’ represent workers. The changes to rights of access and the different legislative changes as well as employers’ increasing willingness to enforce the legislative provisions have led a shift in the balance of power between unions, and employers, where employers are no significantly stronger than the unions. This essay has explained what is meant by employer militancy, and outlined the main features of the approach adopted by employers since the 1980’s. It has also outlined how employer actions have changed over the last 30 or so years. It has also explained the different factors that have contributed to this change in employer strategy overall when dealing with the unions.

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