

The new employer militancy essay



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The New Employer Militancy The purpose of this paper is to examine the issue of employer militancy in Australian workforce after the 1980s. The essay is divided into three parts, with more emphasis on the latter two parts - the 'hows' and 'whys' of employer militancy. In the first part, a generic definition of employer militancy will be provided, followed by the key features of the hostile approach adopted by employers towards unions. Then the second part is looking at expanding from the first point, briefly summarise the cooperative approach used by employers towards unionism from the period of 1940s to 1980s. After that, a longer portion of the essay will be devoted to case studies that illustrate trends which show how employers have 'bullied' unions.

Lastly, this paper will discuss why these militant behaviours were taken by employers, considering influential factors such as the macroeconomics environment, politics and legal frameworks. Moreover, evidence will support the argument that the decline in trade union coverage as both the outcome and reason of this gradual change in approach - "employer militancy". But what exactly is employer militancy? Since the 1980s, intuitive Australian employers are increasingly hostile towards trade unions over their excess involvement in arbitration and dispute matters, creating the phenomenon of 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, behaviours such as

offensive lockout (Briggs, 2004: 110) aims to reduce the bargaining power of the unions. They deliberately not letting the employees to return to work until unions have agreed to their conditions to lower or remove bargaining claims. Another tactic used by militant employer is individual contract which also undermines the power of unions. Bray and Waring (2006: 56-57) state that employers have been using AWAs to extend managerial prerogative and influence union behaviours.

Individual contract can offer better pay than the minimum wages set by awards, thus it motivates employees to work harder. Although it seems now that union exclusions and de-unionisation practices are more common, employers haven't always been aggressive towards union movement in the past. In the period from the 1940s to the 1980s, Australian employers were relatively cooperative towards unions for several reasons. Firstly, there was compulsory arbitration in the industrial relations system, where awards are legally bound to regulate workplace as a whole. Bray and Waring (2006: 48) explain that 'awards gave unions the power to arbitrate between employers and employees, and joint decision-making takes place in resolving disputes'. It was necessary for employers to deal with unions in an accommodating manner, because they had an equal amount of authority in determining the workplace regulations.

Secondly, because compulsory arbitration had not been able to maintain industrial peace, strikes had become more frequent in the late 60s to early 70s, notes Laffer (1972: 45). Employers couldn't afford the increasing number of working days lost due to the strikes, therefore they 'keep these standards continually in mind and contrive not to depart too far from them'

(Laffer 1972: 45). In other words, the arbitration system gave unions recognition and influence over employers in the forms of strikes, so when employers deviate from the minimum standard in awards, unions encourage workers to strike and employers suffer economic loss as a result. Therefore, employers have been brewing hostility towards unions for decades, with a number of innovative companies creating a shift in strategy since the late 1980s. CRA (Rio Tinto) led the way of anti-union managerial strategy.

Fetter (2002: 5) explains the reason that prompted CRA to drastically restructure the business, was due to increasing global competitions. CRA couldn't maintain a competitive advantage if they can only remunerate top staff minimum pay under the award, therefore individual contract were introduced. This achieved a 30% increase in efficiency and made unions very angry over CPA's breach of existing paid rates award (Fetter, 2002). In additions to the individual contract tactic, CRA have used other strategies to remove the involvement of unions. Evans (1996) states that in recruitment, discrimination in choosing an employee is a natural part of process. Just like a Chinese restaurateur would hire a Chinese chef, for CPA to achieve a union-free environment, they replaced striking workers with non-union labour.

Briggs and Cooper (2006: 14) describe this particular course of action as 'lock the show up before the union gets to dense that would enable a fair bargain to be done...' In essence, CRA has paved the ways for other mining companies such as BHP Billiton to follow, achieving greater success in terms of economic profit. In the late 1990s, BHP has followed the example of CRA to adopt individual contract. Fetter (2002: 5) notes that BHP examined CRA's

labour costs, realised that its rival had significantly lower cost due to the use of individual agreement, and absence of union activity. Why was CRA paying less labour cost? The answer lies in the reduced production time due to less union meetings. Subsequently, BHP had sought to change the clauses in the IR agreement and was eventually granted amendment by the Western Australian Industrial Relations Commission (WAIRC). This act of deliberately marginalising unions is also noted by Alexander et al.

(2008: 97). BHP rewarded those whom signed individual contract with generous pay, whereas the rest workforce remained with unions had their wages frozen. Employees whom signed the contract were skilled white-collar worker, note Van Wanrooy et al. (2007: 93).

They suggest that employees with specialised skills such as engineers and project managers have more bargaining power, thus they didn't need the help from unions as much as the lower-skilled labours. Like CPA had done before, BHP Billiton has also successfully alienated unions by freezing union-members' wages, giving other corporations the confidence to do the same. In late 2008, Telstra has done just that - stop paying union member wages until they sign AWAs, investigates Hannan (2008: 2) from The Australian. She notes that Telstra used Work Choices to sideline unions and cut pay, as well as conditions of workers. In a separate article, Hannan emphasises that although the Rudd government came to power in the late 2006 and vowed to abolish Work Choices, there are still some clauses remained from the Howard Government's policy. As for the existing employees on Work Choice AWAs, Rudd and Gillard (2007: 8) announced in 2007 that their contract will expire latest in Dec 2012.

This slow phase-out period helped Telstra to kick unions out of the business, cut workers' pay and conditions, and paying their executives large amount of salary. Van Wanrooy et al. (2008: 55) support Hannan's findings, exerting the importance that AWAs are not only locking out unions, they do not 'provide real opportunities for direct negotiation between the employer and employee'. Offered on a 'take it or leave it' basis, AWAs are only fattening the pockets of the senior executives.

Interestingly, Telstra had always had a strong union presence prior the 1980s, its change of strategy was partly due to the instability of the macroeconomic environment in the 70s (Hannan, 2008). Some economic factors can explain Telstra's change of strategy. Gahan and Harcourt (1999: 4) explain that the growth rates were steady and the unemployment rates were low during the 1950-1960 in Australia. When the economy was stable, unions were able to extract wages from employer, whereas when the unemployment rose in the 70s, the opposite was true - unions represented fewer employees and had less bargaining power. Another important economic factor is the shift from high tariff to free trade in the 80s, resulting union-dominated industries such as textile being wiped out by Chinese imports. Therefore, the trade union coverage has declined dramatically in the past 30 years, from 50% of all workforces to just fewer than 20% in 2008 (Van Wanrooy et al.

2007: 86). The decline in union coverage is both the result and cause of employer militancy. Union presence is traditionally strong in mining and manufacturing, as younger people choose 'easier' jobs such as retail over blue-collar, hard working jobs, union-membership inevitably declined. Big

corporations can now target the remaining union members with more ease because union coverage is rapidly dwindling in the current economy. In addition to economic factors, changes in legal structure also contributed to employer militancy.

In 1983, arbitration system incorporate trade unions into the state reached its peak, notes Petersen (2008). He comments that ACTU had an extraordinarily amount of power under the Hawke-Keating Federal Cabinet, it however didn't help unions to grow strong and effective. The detrimental blow to unionism came in 1988, when the Government introduced the Industrial Relations Act and gave IRC the power to outlaw strikes and freeze union funds (Petersen, 2008). A famous example is union's dispute with Ansett, when the Hawke government and ACTU supported the AIRC to cancel the award and put pilots on individual contract. Unions weren't allowed to strike because the Federal Court prohibited them to do so and threaten to seize union assets (Petersen, 2008).

When the Howard Government came to power, the table had turned - ACTU lost its former glory to employers, with the introduction of the Work Relations Act in 1996. Unions were greatly undermined by this change of legislation, for example in the Jetstar case where flight attendants were forced into signing AWAs (Creedy and Macnamara, 2006: 2). They believe this change in legislation is closely linked to the political agendas of the government. The rise of employer militancy in Australia can be explained by political factors.

Traditionally, State government had more powers over federal government in both procedure and substantive rules. That is until the two main legislative

reforms at federal level, one in 1993 by the Keating Labour Government and the other one in 1996 by the Howard Coalition Government (Baring and Waring, 2006: 50). Keating's Industrial Relations Reform Act 1993 overrode the local government awards and made enterprise bargaining the main process for determining work-related conditions, while Howard's Workplace Relations Act 1996 did much more damage to unions. The famous 1998 Australian waterfront dispute led by Patrick Stevedoring is a good example of attempting to remove the influence of unions with the support of AWAs.

The dispute involved Patricks Stevedoring trying to sack entire staff to replace them with new staff on AWAs (Alexander et al. , 2008: 97). This act of employer hostility wouldn't have been as extreme if Patricks didn't have the support of the Coalition Government. Interestingly, Peetz (2006: 123) compares government policies with the term 'newspeak' in George Orwell's novel 1984. Newspeak is the official language of Oceania in the story and primarily helps to shape thoughts in particular way. Similarly, employers use government policies to reinforce the idea of 'union is evil' to employees.

The idea that union is the 'third party' is what employer militancy is all about. Employers have the laws on their side, so they can spread their propaganda, deunionise the workplace and extend managerial prerogative. After an in-depth investigation, it is discovered that companies such as CRA, BHP Billiton and Telstra have used the following tactics to exclude unions - offensive lockouts, penalise union members, recruitment discrimination and most importantly, individual contract (all the companies described in this study have tried to force employees signing individual contract AWAs). In the

last section, this essay has attempted to explain the rise of employer militancy through several economic, legal and political factors.

The economic factors of rising unemployment and shift to free trade, along with the legal factors such as decentralisation of collective bargaining, have had major impact on employers' militant attitude. However, it is fair to say Keating IR Reform Act (1993) and Howard Workplace Relations Act (1996) have had the greatest impact on employer militancy, as it gives employers the legal power to exclude unions and exercise their managerial prerogatives. WRA's successor Work Choices (2006) was not popular amongst Australian employees, which led to Howard Government's defeat to Kevin Rudd in the 2007 Federal Election. Although Mr Rudd is introducing Fair Work Australia to replace Work Choices, some existing AWAs won't phase out until 2012.

This means employer militancy is likely to remain a difficult problem for unions in the next couple of years. ? Bibliography Alexander, R. , Lewer, J. and Gahan, P. (2008) *Understanding Australian Industrial Relations*, 7th edition, Sydney: Thompson. Bray, M.

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