

POLICY FRAMEWORK FOR A FUTURE AUSTRALIAN INDUSTRIAL RELATIONS SYSTEM

SUBMISSION BY JOHN SUTTON ON BEHALF OF THE CFMEU TO THE ACTU CONGRESS HELD OCTOBER 2006

Since the early 1990s, collective bargaining via Enterprise Bargaining Agreements (EBAs) have become a fact of life for Australian workers. While we didn't want the EBA system in the first place we learnt through struggle to adapt the EBAs to our members benefit. And CFMEU EBAs have delivered strong wage outcomes for more than 100,000 construction workers across the country for the past decade and more.

But now John Howard's "WorstChoices" laws seriously restrict union access to the workplace and the industrial tribunals and have seriously undermined both the EBAs and the traditional Awards that underpin them.

Howard's laws breach core labour standards set by the International Labour Organisation. By undermining collective bargaining rights Howard is attacking basic democratic and human rights.

In late 2005 the ACTU Executive resolved to put together a working party to draft a blueprint of a new system that would guarantee collective bargaining rights and in April this year the ACTU working party went to Canada, the US, UK, Europe and New Zealand to have a close look at their approach. The study group comprised the CFMEU, metalworkers, education and other various major unions. The following summarises the results of the study.

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Principles

Fundamental to the new proposition will be a legal right for workers to organise and take industrial action. A collective bargaining system will be underpinned by a strong and fair award safety net, overseen by an independent tribunal. A strong "no disadvantage test" that ensures all fundamental minimum entitlements cannot be "traded" off is recommended.

The Commission must promote and foster collective bargaining as the principal means of determining pay and conditions.

There must be no individual contracts or AWA style agreements. Workers should have the right to have their pay and conditions enforced by a union.

In the proposed system there will be access to pattern bargaining and 'multi-employer' agreements. There will be no restrictions or prohibitions on the content of collective agreements. Employers will be unable to make workplace agreements among themselves (unilateral greenfields agreements).

At the heart of the new system proposed is something called "good faith bargaining".

How good faith bargaining works

Under this system employers cannot refuse to negotiate with unions. Parties cannot withhold relevant information and documentation. A party's right to bargain cannot be undermined.

The Commission is empowered to make orders regarding good faith bargaining including: programming negotiations; setting time limits for negotiations; preventing discrimination of union

members; suspending or preventing industrial action.

Good faith bargaining orders cannot require a party to agree on any matter for inclusion in the agreement or require a party, or prevent a party, from entering into an agreement.

The Commission has discretion to ascertain genuine employee support of the process. It may consider evidence from employees and representatives; consider petitions resolutions, consider ballots conducted by unions etc.

The Commission may order a secret ballot where there is conflicting evidence but it is not obliged to do so.

A serious breach of good faith orders can be remedied by penalties and/or arbitration. The taking of protected industrial action is lawful and consistent with good faith bargaining.

Last resort arbitration

Where the good faith bargaining process breaks down or is exhausted arbitration can occur.

This will only happen where no reasonable prospect exists of an agreement being reached and/or where there is a risk to safety, health or welfare; the risk of significant economic damage to the economy; or if arbitration is in the public interest - the public interest will include the objective for the commission to promote collective bargaining agreements and the needs of the low paid.

Arbitration will also be available where parties agree to submit any outstanding matters not able to be resolved by negotiation.

Supporting Collective Bargaining

The role of delegates in bargaining will be enshrined in legislation including the power to represent workers, communicate with workers, inspect the workplace and documents, and have time off for training.

Where the Commission has evidence of delegates being subject to unfair interference, the commission will have power to issue interim reinstatement orders within 48 hours.

Working in tandem with the new collective bargaining policy will be the existence of a strong and relevant award (and legislative) safety net that can be regularly adjusted to reflect increased community standards.

This policy blueprint was submitted to the ACTU Congress in October and will be submitted to the ALP National Conference in April 2007. The working party believes it represents a fair and efficient means of setting wages and conditions in a modern, democratic Australia.

By John Sutton