

*THE LEGISLATIVE FRAMEWORK,
UNIONS - AND COLLECTIVE
BARGAINING RIGHTS
RESOLUTION
ACTU CONGRESS 1997*

1 INTRODUCTION

- 1.1 Congress notes with concern the aggressive anti-union assaults contained in Commonwealth and certain State industrial laws. Congress considers that such legislation deliberately attacks the right of organised labour to bargain collectively and undermines unions as the principal representative of employees in the bargaining process.
- 1.2 The Commonwealth Workplace Relations Act 1996 seeks to impose its anti-collective principles upon all workers regardless of their satisfaction with existing award or agreement protections. This process is achieved by forcing workers into unfair agreement making that enhances an employer's bargaining power by reducing employees' award and no disadvantage safeguards.
- 1.3 Conservative Governments have introduced legislation that includes the following common themes:
- i] Reduces the role of awards and independent arbitration;
 - ii] Restricts workers' collective bargaining rights;
 - iii] Increases the prohibitions on legitimate union activity including industrial action;
 - iv] Increases the opportunity for inter-union conflict;
 - v] Interferes with the democratic decision making processes of unions.
- 1.4 The new political and industrial environment presents both challenges and opportunities for the Australian union movement. Encouraged by the new laws some employers have become willingly complicit in their opposition to union involvement in the workplace.
- 1.5 These employers seek to extend their power in the workplace by offering "*feel good, deliver nothing*" concepts such as "*faith*" and "*trust*" in substitution for collective bargaining rights and enforceable employment entitlements.

- 1.6 In spite of these impediments, unions continue to negotiate positively and co-operate effectively with a large proportion of employers, many of whom recognise that the new legislation gives priority to ideology over the needs of industry. Over time the encouragement of industry consultative structures that concentrate on constructive policy for industrial relations in an industry will deliver beneficial outcomes rather than continuing simplistic and divisive attacks on worker rights.

2 STRATEGY FOR RESPONSE

- 2.1 Congress endorses the view that an effective response to the new legislative regime can only be achieved through the involvement of workers at both the industry and workplace level and must go beyond the development of legal strategies. This response must involve a total organisational approach to the manner in which unions operate and how they relate to members and potential members in the workforce.

- 2.2 There can be no single or common response to the challenges of the new legislation. They will necessarily be as varied as the circumstances in which they arise. However, the following principles are relevant:

- 1] In light of the reduced powers of the Commission, greater emphasis needs to be placed on achieving industrial objectives directly in the workplace or on an industry-wide basis. Maximizing linkages between workplaces is a necessary response to the concerted attempt to isolate workers from each other.
- 2] Effort and resources of unions should be strategically targeted to achieve relevant and timely outcomes for members.
- 3] Recourse to industrial tribunals should be in the context of a coherent organising and industrial strategy, with a clear focus on the achievement of improved outcomes.
- 4] Unions and members, where possible, should conduct a campaign of civil disobedience and non co-operation with investigators from the Office of the Employment Advocate (E.A.) who are involved in intimidating or victimising workers.

3 COLLECTIVE ORGANISATION AND INDIVIDUAL CONTRACTS (AWAs)

- 3.1 Congress considers that effective unionism is linked to successful organising and other membership empowerment strategies, which are not solely dependent on legislation.
- 3.2 Awards and certified agreements assist in maintaining collective entitlements in the workplace and across industries. The more difficult task is maintaining a collective culture, achieved by maximizing the active participation of all members around issues of common concern.
- 3.3 Congress considers that the Australian union movement must remain committed to the development, promotion and maintenance of collective organisation, including

collective bargaining and inter-union co-operation. As a foundational part of this strategy awards are recognised as collective instruments that are an equally important means of protecting and advancing the collective entitlements of the workforce.

- 3.4 The requirement for all employees, whether members or not, to participate in the approval of agreements, gives unions a greater imperative to recruit members and activists.
- 3.5 Congress is unequivocally opposed to the use of individual contracts, such as AWAs, and warns employees that these are devices designed to worsen wages and employment conditions and reduce bargaining power by isolating workers from each other.
- 3.6 Where AWAs have been offered, union support for employees will assist in the campaign of opposition, combined with the opportunity for reinstating collective organisation.
- 3.7 Where a collective agreement has not been achieved the response of unions to AWAs should be based upon the need to continue to remain relevant, to continue to provide useful services and inevitably re-establish the value of collective organisation.

4 INDUSTRIAL ACTION

- 4.1 Congress condemns the increased scope in the legislation for legal action and punitive measures to be taken against unions and workers who take industrial action.
- 4.2 In addition to breaching Australia's international obligation to provide for a right to strike, the legislation represents the Government's failure to ensure that practical mechanisms are available to assist in the resolution of industrial disputes.
- 4.3 Congress affirms that the Australian union movement will not be deterred from supporting members' legitimate claims by threats of legal action.

5 UNION ORGANISATION

- 5.1 Congress notes that the Workplace Relations Act makes provision for the creation of enterprise unions. Such organisations have the potential to destabilise and divide the collective strength of workers. Further they are designed to divide workers and distract them from effectively pursuing claims for their mutual benefit.
- 5.2 Enterprise unions that are the product of employer preference or merely a guise for inter-union rivalry should be opposed. The ACTU will in conjunction with concerned affiliates examine the events and motivation leading to the emergence of an enterprise union. When confronted with the emergence of an enterprise union

the ACTU and concerned affiliates will work together to develop a considered and strategic response that in the circumstances furthers the cause of unionism.

- 5.3 The Workplace Relations Act includes a number of other measures that undermine effective trade union organisation including the erosion of union coverage and representation rights. Organisations that seek registration or coverage extensions under these less rigorous rules should be required to demonstrate that they are not a device representing employer preference or alternatively a guise for inter-union rivalry

6 CONCLUSION

- 6.1 Congress views the Workplace Relations Act and comparable conservative state legislative schemes to be part of a deliberate strategy to shift the balance of bargaining power significantly in favour of employers.
- 6.2 The likely consequences of such legislation is the erosion of employees' wages and working conditions, particularly those employees who are unorganised and/or who have limited bargaining capacity.
- 6.3 The legislation represents a transparent breach of the Government's so-called "*rock solid guarantee*" that no worker would lose take home pay or be worse off.
- 6.4 These attacks upon employees' wages and conditions of employment demonstrate the importance of unionism. The legislation brings into sharp focus the important role unions play in achieving social and industrial equity within the community.
- 6.5 Congress calls on affiliates to continue the process of insisting that individual employers maintain and over time improve all current wages and conditions of employment. It is also important that such claims include a commitment from the employer to conduct future negotiations collectively through the union.
- 6.6 Congress commits itself to the pursuit of legislation which includes the following aspects:
- 1] An independent Commission with:
 - a] wide powers over the scope and content of awards;
 - b] the power to maintain relevant and effective awards;
 - c] an obligation to, over time, improve real wages particularly for the low paid and extend meaningful protections for vulnerable workers;
 - d] broad powers to deal with industrial disputes through the utilization of conciliation and/or arbitration functions.
 - e] the ability to quickly extend federal award coverage to employees without access to adequate state legislation.
 - 2] Promotion and encouragement of collective bargaining rights specifically by requiring:
 - a] bargaining in good faith;

- b] involvement of unions;
 - c] subject all formal agreements to a Commission based approval process;
 - d] approval of formal agreements should be subject to a real and effective no disadvantage test.
 - e] bargaining and agreement making options to be available on an industry-wide basis.
- 3] The protection of workers rights including:
- a] a broad right to strike and take other forms of industrial action - without penal or civil sanction;
 - b] a recognition of the representative role of unions in negotiations;
 - c] right of entry provisions which allow unions proper access to members and potential members;
 - d] the encouragement and promotion of collective bargaining;
 - e] an effective right to organise; and
 - f] protection for all workers from dismissals and procedures leading to dismissal that are unfair, harsh or unreasonable.
- 4] The abolition of AWAs and the Office of the Employment Advocate.
- 5] The removal of anti worker, anti union provisions which :
- a] reduce the protection and security of part time workers to be provided with minimum weekly hours of work
 - b] restrict the powers of the Commission to deal with award matters which are only "allowable"
 - c] impose unfair burdens on organisations through the imposition of prohibitive court fees for industrial matters.
 - d] impose restrictions upon an independent Commission determining that preference should be afforded to union members in employment or with respect to beneficial conditions during work.
 - e] provide for special registration and operating requirements for enterprise unions.
- 6] An agreement stream which has the following features:
- a] capacity for representation by and resposdency to agreements by unions
 - b] no-disadvantage tests providing wages and conditions which are not inferior to awards
 - c] employers being unable to impose outcomes

- d] workers having access to appropriate information from which to come to informed conclusions
 - e] processes for collective meeting and decision making
 - f] union participation in the registration/certification processes
 - g] no secrecy in outcomes
 - h] strong enforcement/compliance of agreements.
- 7] Strengthening of the Workplace Relations Act to protect the rights of independent contractors and in particular owner drivers in the transport industry.
- 6.7 Congress accepts the responsibility to vigorously pursue governmental recognition of international labour conventions and action to ensure this assists the development and maintenance of worker rights domestically and overseas through trade, industry and foreign policy initiatives.