WATERFRONT INDUSTRIAL RELATIONS IN THE LATE 1990S

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INTRODUCTION

When I originally offered to write this paper in March 1998, it was because I believed there may be some interest in developments up to that time on the Waterfront and in both Australia and New Zealand. Industrial Relations is in its way a very contemporary area of practice. Since that time there have been further significant events (the Patrick Dispute) [1]with its resolution and the Patrick Enterprise Agreement not being finally approved until the first week of September 1998.

This Paper is intended as an overview of those developments and to raise matters of interest to be noted and discussed. It does not presume to pass judgment. Employers, unions and individuals conduct their own affairs usually in the manner perceived to be in their best interests and not necessarily in the interests of other companies, other employers, other parties or even the community overall. This is not only a truism but it is also a factor to be considered in any study from an Industrial Relations perspective. Accordingly, an overall assessment of whether Australia is heading in the right direction or is undertaking the right method or processes of getting where it apparently wants to be is a decision for yourself.

There has always been a strong political element in industrial relations in Australia with the political parties having obvious ties to the community groups they are held to represent. This political element has gained a significant role during the 1990's.

BACKGROUND

To understand and assess the present 1990's we need to return to the mid 1980's and early 1990's to set the context. In doing so I will be discussing both the Stevedoring and the Maritime areas. In an interesting move of itself, both industries are now linked through the amalgamation process on the union side as both are covered by the Maritime Union of Australia, a combination of the Seaman's Union of Australia and the Waterside Workers Federation.

The 1980'S

From the mid 1980's it became clear to some that Australia's economy and internationally competitive position was in danger of slipping badly. For example, manufacturing had always been a major strength in the economy but in 1986 the Australian Manufacturing Council expressed serious concern about Australia's future due to what it considered was a poorly organised and poorly performing manufacturing sector, with high cost, a lack of international

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[1] In April of 1998 Patricks Stevedoring, one of Australia's two Stevedoring companies, dismissed its entire workforce of approximately 1,400 people, members of the Maritime Union of Australia as a means to bring about what it regarded as necessary labour reform. Not surprisingly this caused a considerable reaction from the workforce and the union.

competitiveness, a failure to properly train and develop the necessary skills and a failure to undertake necessary research and development.

Australia's labour regulation at the time was governed by a centralised wage fixation process with the Australian Industrial Relations Commission (AIRC) (Australia's Federal labour Tribunal) at its centre. These were rigid and prescriptive industry Awards applying to a wide range of employers and a number of unions usually negotiated between an employer association on one side and the union(s) on the other with the actual parties (the employers and the employees) having only indirect input into the process. The Maritime Industry Seagoing Award and the Stevedoring Industry Award are both examples of this process.

Wage increases or major changes in conditions would depend on national wage movements and other decisions of the AIRC following extensive submissions from centrally organised bodies such as the Metal Trades Industry Association of Australia, Australian Chamber of Commerce and Industry, major unions and the Australian Council of Trade Unions representing unions and workers. Other conditions could only change through detailed National Wage Principles which allowed increases in limited circumstances, for example for an increase in work value.

By the late 1980's the AIRC was endeavouring to have the parties include in these Awards and to itself include in the Principles provisions which allowed for structural changes and methods of re-writing work practices to bring about greater flexibility and efficiency. There was an overall trend away from the central industry-wide Award regulation towards Enterprise specific Agreements. By 1991 there was an Enterprise Bargaining principle included in the centralised National Wage Principles which was specifically designed to encourage companies and enterprises to introduce new arrangements which were specific to their requirements and their needs. The buzz words at the time were "international competitiveness", "benchmarking", "world's best practice", "the effect of globalisation", efficiency flexibility" and "cost competitiveness".

Deregulation of the labour market was perceived not only to be the most efficient economic position, it was also apparently designed to cure Australia's chronic current account deficit and rectify its trading position with the rest of the world generally. The deregulated labour market would apparently enable Australia to reset its economy and to compete successfully internationally in the world market and economy. [2]

Early 1990'S

Such philosophy was not, as might be expected, initially expounded and introduced by a Coalition Government representing employers. The 1993 Keating/Brereton Labor Government passed legislation under the Industrial Relations Reform Act which confirmed this attitude and approach. There was heavy emphasis in this legislation towards Enterprise Agreements.

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[2] No attempt is made by the writer to judge whether these underlying assumptions are correct or otherwise, but they do seem to place a heavy emphasis and burden on the labour market.

Awards became a basic "safety net" against which Agreements would be compared to ensure that there was "no disadvantage" in working under such an Agreement. Collective Agreements focused on the enterprise could be registered which would supersede the industry Awards and were to encourage dramatic changes in work practices such as manning, rostering, penalties, allowances, training, career skills and remuneration. Surprisingly, as the 1993 Labor Government prepared for a political election, it introduced (as a vote catcher from business) provision for alternative Agreements which were non-union, the Enterprise Flexibility Agreements.

Current Industrial Relations Legislation

This trend has continued to where we are now. It was certainly picked up and encouraged by the Howard/Reith Coalition Government in Reith's (Minister for Industrial Relations) 1996 reform of the industrial relations legislation. [3] The treatment and priority by the previous Labor Government and the present Government to this area confirms the political nature of the approach to labour regulation in Australia during this time.

The Howard/Reith 1996 legislation continued the trend of reducing the role of the Industry Awards which for example were fundamental parts of the Maritime and Stevedoring areas. Under two processes, Section 150A the Award Review process and Section 89A the Award Simplification process, Awards have to be reviewed and could be dramatically reduced by the AIRC. The Award modification under Section 89A is on the basis that only 20 "allowable" matters can be contained in Awards. As from 1 July 1998, anything which is "non allowable" is void.

Whilst all the parties in the Australian Industrial Relations community were given 18 months to prepare, only approximately 2 of over 2,000 Awards were successfully fully reviewed up to the Full Bench level of the Industrial Relations Commission. The debate is continuing in AIRC hearings and disputes as to what are and what are not "allowable matters".

To Labor's collectively negotiated union Certified Agreement which was retained, the Liberal Coalition added a new collective Agreement negotiated only with the employees directly as a group, that is a non union Agreement. In addition, the present Government has formalised and introduced individual contracts of employment which could be negotiated and then filed and which would have greater force than any Award or other Collective Agreement. These are Australian Workplace Agreements (AWA). These AWA's are non union but still have the protection of the comparison with the relevant Safety Net Award to ensure that there is "no disadvantage" to the employee.

It must be remembered that the alleged basis for all these measures is a continuation of the greater flexibility, greater efficiency, greater international competitiveness, greater profit theme. The indirect consequence of excluding unions from the negotiation process of individual AWAs and the fact that they may be hampered by the physical limitations on their resources and ability to represent employees if all the enterprises in Australia negotiate their own Agreements and/or certainly if all employees in Australia negotiate their own AWA's, is not lost on the present Government, nor on the labour movement.

Economic Factors

In considering Australia's Industrial Relations at this time, some economic elements should also be kept in mind:

- Australia for years has had low or almost zero inflation.
- Australia for some time has had chronic unemployment around the 8 to 8.5% (public figure).
- Australia's growth since the 1987 Stock Market crash or the 1989/1992 recession has been slow
- Whilst there has recently been underlying economic strength and growth, the Asian meltdown and the current global economy is causing considerable uncertainty and caution.
- As a result of the perceived need for international competitiveness and as a direct result of globalisation, there has been significant enterprise "restructuring" in almost every sector of the Australian economy. As a result job insecurity rates as the number one concern for the Australian workforce. Obvious examples of what I describe as "icon privatisation" have only added to this insecurity (and the unemployment level through redundancy numbers). Examples of icon privatisation are the State power systems, such as the State Electricity Commission of Victoria being corporatised, privatised and sold in trade sales; water utilities going the same way; public transport of all types being privatised and Telstra being sold off and under private competition.
- In addition, "downsizing" and "outsourcing" have become common practice and well known words to Australian workers. The growing use of part timers and contractors (often downsized or outsourced persons) is perhaps not so well known but there is substantial recognition of the use of casuals which makes Australia one of the highest casualised workforce in the OECD countries.
- There is significant decline in the Australian unions' position with the overall membership average at 31% of the workforce now (and in the private sector 24%) down from 46% on average in the mid 1980's. This percentage has been falling not only as a proportion of the workforce but in absolute numbers since 1993. However, this reduction has not affected these two areas.

THE MARITIME INDUSTRY

The above developments set out the environment for the current position. I would like to look at the Maritime and Stevedoring areas to see what effect this has all had and the manner in which it has affected them.

We can consider five labor related aspects of the Maritime industry of the early 1980's:

- There was an Industry Award - the Maritime Industry Seagoing Award (MISA) which covered all unions and all Australian employers.

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[3] **The Workplace Relations Act 1996.**

- There were six unions.
- There was a national carrier and a number of private employers.
- There was a figure of 34 generally regarded as the industry number on ships under a 2 crew system.
- There was a labour pool for ratings under Part X of MISA.

Industry Award - The Maritime Industry Seagoing Award (MISA)

The MISA was last formally negotiated in 1983. It has been added to by another Award negotiated in the same way in 1989, the Maritime Industry Modern Ships Award. Since then Maritime employers have, in the mid 1990's moved to Enterprise Agreements.

This change has been hampered by the industry employment of ratings which will be discussed later but even with the Company employed officers and engineers, there seems no doubt that the Maritime industry seems remarkably suited to Enterprise specific Agreements. The particular needs of a ship or the trade upon which it is engaged; the particular needs of a fleet; the particular needs of a maritime company, all seem suitable for the installation of a tailored Enterprise specific Agreement which best suits all concerned in the ship or trade. Enterprise Agreements are in place and we can only anticipate their advantages being fully utilised once company employment of ratings becomes fully established.

Manufacturing and other companies have indicated that it was not until at least the second or third generation Enterprise Agreement that genuine and real productivity gains were achieved.

The Unions

The six unions have now reduced to three (Officers - AMOU, Engineers - AIMPE and crew - MUA). The question can be asked whether there should in fact be only two with the past flirtation between the AMOU and the AIMPE ultimately being consummated.

Such amalgamations were strongly advocated and encouraged by the Australian Council of Trade Unions (ACTU) and its secretary, Bill Kelty in the late 1980's. Certainly they allow unions to pool resources, to become more professional and to offer better services. In addition, amalgamation removes many demarcation disputes of turf coverage and membership poaching which Kelty believed distracted the union movement in its proper negotiation with employers.

Amalgamation can also lead to more flexible career paths, with greater training and more multi-skilled employees able to be engaged in areas where previously there may have been a limiting demarcation. For example, the development of the Integrated Rating. Perhaps the future may see Engineers trained in navigation, or Deck Officers having a mechanical or engineering qualification with both exercising those skills.

Such flexibility could also stretch across the two industries for example, if the MUA (SUA) were able to undertake MUA (WWF) duties in port. This would also open up the opportunity for MUA (WWF) members to include going to sea as a career option. Such possibilities for the future aside the amalgamations which have occurred in the Maritime industry seem to have worked well.

Doubts have to be expressed whether an amalgamation of the AIMPE and the AMOU would be politically feasible for sometime. The two have often pursued their own agendas in the past resulting in them occasionally being at odds. Hierarchies of merging unions must each be comfortable with their ultimate positions in the newly formed organisation and personalities, politics, egos and philosophies all play a part in that comfort. Any suggestion of a "take over" one by the other, would not be attractive to these two unions.

In many unions despite obvious savings and advantages, the amalgamated unions have simply formed separate divisions. There are still separate hierarchies even years after amalgamation and in some cases, there are still different philosophical or practical approaches between the divisions. Further, some of these differences are at the stage where there are rumours of disamalgamation which may occur if there was any reasonable opportunity.

It is also unlikely and probably unsuitable, that there would ever be one Maritime Union. Accordingly, Enterprise Agreements now involve each Company in the type of round robin bargaining that used to occur on an industry-wide basis with each of the unions who maintain their independence during the negotiations for their own Enterprise Agreement but also being keenly aware of developments in the negotiations with the other unions.

At present the Maritime Unions have also attempted to maintain same or similar conditions for their members in any vessel across Companies. While this may at first instance appeal on the grounds of fairness and equity, it does run counter to the rationale of enterprise bargaining. This approach and the unions involved will be tested as differences gradually appear in the Enterprise Agreements of the different shipping companies to suit particular trade or ship characteristics and the EA's move away from the common conditions of the industry Award. It must be noted that even with the industry Award, particular or unique ports, trades or companies were noted, usually in schedules or in provisions within the Award itself.

The Employers

The employers in the Australian Maritime Industry have changed and there is now no national carrier, a major event in itself. These changes constantly provide a note of caution against extravagant claims or extreme disputation. The industry seems always to be facing an uncertain future and has now for the past, at least since 1982, been in a constant state of self examination with the view to securing its future.

The disappearance of the national carrier (ANL) and the fight for industry survival must have and in my view has had, an impact on the industrial relations activities of the parties involved and the negotiations that take place between them. There has to be an inherently more co-operative and far sighted approach if the industry is to survive. It has been alleged, however, that this has not always been the case and that general economic reform and change is strongly supported until it directly affects a Maritime Union or any particular employer.

Numbers

Over time there has been significant change in the numbers involved on board Australian vessels. Expressed as a general number, or per trade, or numbers per berth, in round terms the reduction is often discussed as a fall from 34 to 18 (bearing in mind that it is a two crew system). Such crew numbers during the 1980s and to some degree to the present have developed the same magic symbolism as crane lifts per hour have in 1998 developed for the Stevedoring industry. In both cases debate concerns the proper definition of the number and whether true comparisons can be drawn between the Australian figures and the overseas countries held up as examples.

With each wave of reform in the Maritime industry particularly affecting crew numbers, intense jealousies have been exhibited by the different departments in the ships (represented by the different unions). This resistance has often seemed to have little regard to operational factors such as the working of the ship and was more a defence of what was obviously perceived to be an attack on that particular department of the ship's crew. It may be, but in my view it is unlikely, that significant change will be able to be introduced to any company's Enterprise Agreement which will interfere with the precarious apportionment of crew numbers between the AMOU, the AIMPE and the MUA in any vessel.

Nevertheless the general thrust of most commentators at present seems to be that Australia is either "on target" or "in the ball park" of comparative foreign fleets regarding manning, although they too have been undergoing their own shrinkage arising from their own change and technology improvements. In addition, attention must continue to be focused on the associated crew costs involved with an Australian seafarer such as wage level, insurance, leave and injury compensation.

Industry v Company Employment

One of the greatest recent changes in Australia's Maritime Industrial Relations is the removal around June 1998 of the Part X roster system which provided industry employment of ratings. The roster has been a major feature for many years but was under increasing pressure with the focus on each enterprise's own needs for efficiency, flexibility, productivity and profit.

To achieve these aims, a Company needs to establish a relationship with its workforce to enable it to assess abilities, to develop loyalty and to undertake training and rehabilitation from injury. The benefits, both operationally and regarding labour costs should be obvious. Nevertheless, the step to Company employment had been strongly resisted in the past. It is a matter of debate if and when it would have eventuated if the Government had not taken the step it did in withdrawing its support in the administration of the roster. The Australian Maritime Safety Authority was withdrawn (with notice to all the parties) from running the roster which was the final step to encourage the parties to introduce Company employment. This will be discussed further later.

It must be noted that the roster was also of benefit for employers enabling the provision of substitute, alternative or temporary employment when required. It is unlikely that such labour shortages will be allowed to be covered by casuals or contractors in the Maritime industry. The preferred solution is a more limited roster which the employers, through an industry body, will maintain (in co-operation with the MUA) but without the restrictions of the old roster. Further, it is likely that each Company will develop, if they have not already, a fall back list of employees to be called upon.

The Role of Government

There has always been a major Government influence in Maritime industry developments. The importance of a national maritime fleet for economic and political reasons is usually acknowledged. Costs of labour reduction have often been met, at least in part, by the Government. All the publicity, pressure and influence that the Government can bring has been, in the 1990's, in support of Enterprise specific Agreements, both for economic efficiency and commercial viability reasons and perhaps the political aim of the marginalisation of unions.

The provisions of the Government's legislation (the Workplace Relations Act) regarding Freedom of Association has the direct consequence or ability to:

(a) Introduce other unions who might be more compliant or who, at least through competition, may bring about more "acceptable" relationships and claims; and

(b) Encourage non union employees - which is unlikely to significantly succeed in these two areas at least in the short term.

Nevertheless, it is an attempt by the Government to break down the "closed shop" practices (union labour only) and/or union preference arrangements or other labour monopoly practices even if, taken to extremes, if it means that land based unions can endeavour to enrol and represent seafarers. Despite the expressed wish of many employees to deal only with one or two unions rather than with several (and in some cases rather than the workforces) Peter Reith, current Minister for Industrial Relations has indicated that the Government's policy of political correctness in such freedom of association legislation outweighs employer inconvenience or opposition.

As mentioned before, the Workplace Relation Act also deals with award simplification which by making void all the "non allowable" matters forces people out of the Award. Many of the conditions such as union preference or union delegate training which are void in the Award are then forced to be negotiated into Enterprise Agreements if they are to continue. This puts pressure on the unions to negotiate with a large number of employers rather than rely on the centralised industry Award for such conditions. No doubt in the negotiation process the Government may intend that there will be a "clawing back" of some conditions by employers and resistance to new claims. Frequently, however, at the moment through industrial strength most of the terms of the industry Awards are being transferred wholesale into Enterprise Agreements, (sometimes simply as annexures or schedules to the Agreement). This has occurred in the Maritime area.

This Government has also indicated that it will consider further financial and taxation support provided reductions in labour numbers and crew costs generally are achieved as a precondition. Currently the industry and the Government is considering the Shipping Reform Group's recommendations.[4] The industry believes it has reduced crew costs, either per berth or by productivity improvements, and with the move to Enterprise Agreements and to company employment for ratings, has qualified for Government fiscal assistance. The Australian Shipping Association has announced that it is looking at setting up a committee to work with Minister Reith should he be re-elected (and no doubt with Shadow Labor Minister Tanner should he be elected) to consider the implementation of those fiscal measures.[5]

There is no doubt that such Government activity and economic support have played a major part in the industry in the manner in which change in the labour area has been introduced and implemented. This is not the first time that such workplace reform has been undertaken in this way;

1. The Crawford Report 1982 - 1984 recommended that financial incentives be made available provided manning levels on ships met levels determined by a manning committee which would take into account overseas levels.

2. The report to the Transport Industry Advisory Council together with the Maritime Industry Development Committee covering 1984 - 1987 studied overseas manpower and training developments and confirmed reduced crews to 21 with training to produce Integrated Ratings in return for example, depreciation allowance assistance.

3. The Shipping Reform Taskforce started similar reforms in 1989 and in 1995 the PAYE Rebate Scheme was introduced in light of the reforms which had been undertaken since that time through to 1994 with the Shipping Industry Reform Authority.

4. Now in 1998 crew cost reductions and enterprise employment specifically are apparently required as a condition of fiscal assistance to help the industry survive.

   This is a position which is recognised consciously or unconsciously by employers, unions and seafarers generally. The general economic pressure which influences industrial relations in the Maritime area has been on the reduction in numbers per berth or the cost per berth, multi skilling of crew members for greater efficiency and flexibility, (eg. as integrated ratings), improved work practices and work performance generally with better rehabilitation and better training, leading to a reduction in crew and operating costs.

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[4] The Shipping Reform Group was established by the Liberal Minister for Transport, John Sharp in August 1996 to provide a mechanism for industry to advise the Government on options to increase the competitiveness of Australian shipping. Its report was handed to the Minister in March 1997 and recommended amongst other things, significant labour market reform with measures such as company employment, changed leave provisions and changed workers compensation.

[5] Daily Commercial News, Friday, 4th September 1998.

There is no doubt the Maritime Industry overall in Australia has introduced real change and achieved efficiencies for example with the removal of industry employment and the significant reduction in the number of seafarers per vessel. At this time, with the development of Company Enterprise Agreements, Australian shipping companies have begun the process of seeking further operational efficiencies for each of their vessels.

An interesting aspect is that these changes have taken place usually involving co-operative tripartite industry bodies of employers, unions and the Government undertaking the necessary investigation and the implementation of any recommendations. Whilst there has been inevitably disagreement about the rate of change required or the actual extent necessary, nevertheless changes in the labour market and its regulation have been made in an endeavour to maintain the viability and international competitiveness of the Australian Maritime Industry.

THE STEVEDORING INDUSTRY

The other half of the industry is Stevedoring. Five aspects of this industry in the past were:

- One union
- Government regulation
- Few employers
- Industry Labour pool
- Industry Award

Its features today are:

- A continuation of government regulation and interest.
- One union.
- Very few employers.
- Company Employment.
- An Industry Award overlaid by Enterprise Agreements.

Enterprise Agreements & Company Employment

Each of the major stevedores have moved to Enterprise Agreements and have them in place. To a considerable extent they reflect the underlying industry Award [6] but some improvements have been achieved. Clearly, as the Patrick dispute shows there is considerable disagreement in the views of the parties about the success or otherwise of the changes achieved. As there is only the one union, the Stevedoring Industry Award 1991, and only two major Employer players (generally known as Patricks and P&O), the industry did have a reputation, as an area which was resistant to change taking place elsewhere in the Community.

However, there has been a move from the industry labour pool to company employment in or around 1993 which is earlier than with the Maritime industry. Nevertheless, as with the Maritime industry, there is tremendous allegiance towards the union first before the Company which pays the wages.

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[6] **Stevedoring Industry Award 1991.**

The Patrick's Dispute

A paper on Australian waterfront Industrial Relations inevitably leads onto a discussion of the Patricks' dispute which occurred during 1998 and provides an encapsulation of these industrial relations.

A lot has been written separately about the dispute, its characteristics, its meanings and its consequences.[7] It is worth studying as a major example of Industrial Relations in Australia at this time. It is not intended, however, to simply repeat all the steps, negotiations and litigation which occurred and which have been outlined elsewhere.

There are several views which could be taken of the events. On one view, a successful businessman who acquires companies which are under-performing saw an inefficient but surviving half of a duopoly and believed that with little change, but some significant restructuring, a great improvement could be made to the bottom line. A second view is that the Australian waterfront was certainly not competitive internationally; that there was a labour monopoly by a union which had entrenched work practices; that there was no management control and that it was an area resistant to change, imposing significant cost and inconvenience on the whole nation contributing to its non competitive and poor economic international position.

Some might say that the businessman, as he had with other companies, commenced a reform process but it did not work by 1995. The labour force was difficult and his equipment was alleged to be deficient. Encouraged to significantly invest in capital he did so but saw productivity and profits fall rather than improve. Apparently unable to negotiate the appropriate improvements and his patience exhausted, he decided dramatic steps were needed to clear the way for major change. On the way he managed to enlist a Government motivated by the economic goal of waterfront reform (and/or the political goal of the destruction of the MUA) and that Government ultimately became a player and certainly a banker in the outcome. The end result for the businessman, apart from considerable stress and public examination, may have taken significantly more time and money than planned but this may only mean more time for the investment to be repaid and then the appropriate profits will be achieved.

Features of the Settlement

It should be noted that throughout the entire process, rarely if ever did the MUA National Secretary, John Coombs deny the need for change and improvement in productivity and efficiency on the docks. Indeed to listen to John Coombs at times the need for reform was agreed and the only differences were on the extent (read numbers involved) and the manner of its introduction (read numbers only and not terms and conditions or customs and work practices).

The highlights of the dispute reflected in the settlement are:

- The MUA are still there as the only union on the waterfront for the moment.

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[7] See for example, the Australian Financial Review - four part series, 29 & 30 August - 2 September 1998.

- From approximately 1300 people, around 630 jobs by voluntary redundancy were removed.

- It would be interesting to know whether these are true voluntary redundancies or otherwise. There is with many Australian unions particularly the stronger ones, a real resistance to involuntary redundancy. If the redundancy which has been negotiated by Patricks is truly only voluntary there is a significant limitation on management. Whilst pure voluntary redundancies may work as a sheer number reduction they are of little use as a management tool for greater efficiency and productivity. Experience has shown that good personnel take the severance "package" and immediately seek re-employment elsewhere and underperformers ignore the process and remain with the organisation.

- 220 maintenance security and cleaning positions will come back into the waterfront with contractors engaging MUA members. Preference is to be given for re-employment of those MUA members who were made redundant. There is however already some debate on the terms of this re-engagement as to whether the contractor Fluor Daniel's general conditions, or those of the usual waterfront conditions, should apply to this work and the contractor.

- A new Enterprise Agreement will specifically allow management control and introduce changed work practices such as new rostering arrangements which will minimise overtime and eliminate "double headers", the removal of "order of pick" provisions and the removal of adherence to equalisation of earnings. It will allow manning on the principle of one man to one machine or function, introduce annualised salaries based on a 35 hour week with 25 hours overtime, and include a productivity bonus together with target crane rates of 25 moves per hour or higher. There will be the ability to call on casual labour, flexible start times and the end of labour allocation restrictions. Read literally and if implemented these are substantial gains.

- Redundancies will be funded by the Government through the Stevedoring Levy (Collection) Act 1998. The advantages to the employer are obvious!

- A discontinuance of all cases of litigation, each against the other with a payment of the MUA's costs by Patrick. Such payment is not a usual step. If Industrial Relations parties are forced to litigation each party usually bears its own costs.

- A discontinuance of other litigation against the MUA by the Melbourne Port Corporation and by the Australian Competition and Consumer Commission (ACCC) (with Patricks paying up to $7.5 million to the fund for the ACCC to meet claims for those who suffered losses by the MUA's actions).

- It is a three year Enterprise Agreement with a 4% wage increase included per year. This is not a unreasonable figure. It represents the across the board average in the community at present and is under the warning limit of the Reserve Bank of 4.5%.

- Undertakings by the MUA to obey the law!

Interesting Aspects

The dispute was obviously based on the "big bang" theory of industrial relations i.e. a major crisis is needed to overcome an impasse in negotiations or to seriously escalate matters to such an extent a resolution emerges. A number of other features can also be noted:

(a) **The union reaction**. There was extensive anger at the dismissal of the entire workforce and an immediate picket line was established together with the usual activity. However, the dispute was on the whole controlled and certainly tactically maintained in the area against Patricks. Australia's waterfront, albeit with substantial inconvenience and obvious bad publicity, otherwise continued to function.

(b) **The role of the media** which all parties sought to use with a view to enlisting the Australian public's support. Considerable attention was given to this side by the MUA for example who endeavoured to make the picket lines a community event and who had its National Secretary appearing constantly in all forms of media.

(c) **The introduction of corporate law** into the Industrial Relations Arena due to the nature of the approach by Patricks:

(i) The introduction of the labour supply companies, the restructuring which was alleged to have occurred, the removal of assets from those companies, the trigger clauses in the labour supply contracts and the appointment of administrators were all legal and proper corporate moves.

(ii) However, such steps were found to have been so efficiently organised that in this the industrial relations area Mr Justice North an ex union barrister, now a Federal Court Judge, was, in the interim injunction hearing (which is an initial hearing of prima facie impression) able to satisfy himself that there was some endeavour to undertake a conspiracy. As its only target appeared to be the MUA, he could also find the necessary improper purpose of that conspiracy, namely discrimination or action against employees for being members of the MUA. (It must have been apparently overlooked that whatever actions were taken by Patricks in relation to its workforce it would always only ever be against the MUA as it was the only union on the waterfront.)

(iii) Further, having apparently succeeded with reinstatement under the first decision of Mr Justice North, the union then had to face the commercial reality (later confirmed on appeal) that Administrators appointed to a Company at law follow an independent path. While Mr Justice North could apparently make the appropriate orders upon which the MUA claimed victory in returning to work, his other orders which might have otherwise limited the Administrators were removed and it then became a commercial proposition as to whether the returned waterside workers' employment was to continue. Being under statutory obligations, the Administrator was not easily subject to industrial pressure nor necessarily a willing party to any usual industrial negotiation.

(iv) This insecurity and the role of the labour supply companies has had far reaching consequences in Australia. There are now moves in Parliament to introduce legislation to protect employees against adverse consequences of corporate restructuring and reshuffling in this way. Further, there is no doubt that industrially unions are far more aware of the risks involved with labour hire companies.

(d) **The involvement of the ITF** was a significant step. Australia's industrial relations went global. The ITF had a major effect in Dubai where the alleged training of a "military" alternative labour force came to an end when publicity and the ITF influenced the U.A.E. to discontinue that training.

The ITF were also heavily involved in acting as a deterrent to shipping companies in the abortive attempt to establish non-union labour in a North Queensland port not far from here.

In that case, ITF/MUA pressure on Freport, the overseas owner of the vessel destined to berth caused it not to become involved in the non union berth and the venture faded.

It may be anticipated with increasing globalisation that industrial action will also become global more often. The Waterfront and Maritime areas are obvious examples with the ITF. However, other examples include Australia's retail union which attended an international conference of similar unions where it discussed the non-union approach of Toys R Us around the world including Australia. Car manufacturers and their unions also have strong international links and worldwide unions involved in clothing have taken international action against international producers over the issue of cheap "sweat" labour.

(e) **The involvement of the ACCC**

In our study however the ITF lead to another feature of this dispute being the involvement of the ACCC in Industrial Relations.

The ACCC constantly warned that some of the actions being taken by the MUA generally and particularly involving the ITF, could contravene the Trade Practices Act secondary boycott provisions which is an Act it must uphold. After what was described as much "posturing" the ACCC as an independent statutory body activated its own action against the MUA for the protection of small business affected by the MUA and the ITF's actions in allegedly interfering with international trade, causing loss and damage to those businesses.

This introduced a different beast into the jungle with its own charter and its own independence. Many employers, whilst reacting to losses and even threatening or taking litigation with a view to recovery, absorb such losses if a resolution is achieved. The entire settlement of the Patrick action has been delayed however because, amongst other reasons, the ACCC would not, when the other parties had negotiated a compromise and resolution, simply overlook the fact that it had instituted its own proceedings. The ACCC indicated to all concerned that it did not

intend to ignore apparent breaches of the law which had caused loss to parts of the Australian community simply because it was expedient to do so, or because there had been a settlement between other parties, or because such a step was urged as being in line with industrial relations "reality".

Not surprisingly while still sorting out the terms of the resolution all other parties placed heavy pressure of the ACCC. When it refused to move, its demand for a payment which would be used to compensate the businesses who were adversely effected by actions of the MUA/ITF became a further bargaining chip between the direct parties, Patricks and the MUA. Ultimately Patricks agreed to pay up to $7.5 million towards the ACCC fund for those compensatory purposes.

For its part the MUA gave a solemn undertaking that it would abide by the Trade Practices law and would not undertake industrial action which breached such law. The undertaking is enforceable and is to last for 2 years. Cynics may say that it really does not go much further than obligations the MUA already had. Whilst that may be true it should be noted it has been given to an independent third party who can enforce it, rather than perhaps to an employer who has a continuing relationship with the union or even the AIRC, either of whom may be reluctant or unable to take such enforcement action. Legal industrial action such as protected industrial disputation under the Workplace Relations Act or properly founded action arising out of occupational health and safety concerns are excepted from the undertaking.

CONCLUSION

The two areas provide an interesting study in Australian industrial relations in the 1990's:

1. Both have had significant change as Australia faces the demands of globalisation and international competitiveness with all the moves towards benchmark efficiency, flexibility and greater productivity and the pressures to reduce labour costs, workforce numbers and improve work practices.

2. Both areas have had significant Government involvement. However, in one, this involvement has been over time with the Government participating in co-operative tripartite industry committees or groups encouraging improvements in the labour area in return for fiscal support of the industry by the funding of redundancy payments, tax measures and other steps to help ensure its viability.

   The other area finds the Government accused of being a major player in a short term dispute, focused on a confrontationist approach with an alleged hidden political agenda being the annihilation of one of the other players rather than the claimed basis of being a last desperate measure to bring about much needed waterfront reform.

3. In both areas labour regulation has only comparatively recently involved significant moves away from regulation by industry Award towards Enterprise specific Agreements which are intended to involve a review and rewrite of work practices and working terms and conditions so as to be tailored to the specific requirements of

the enterprise. In both cases such progress had not been rapid and could be said to be several years behind other areas of the Australian economy who felt the need for such change in the early 1990's.

4. Both areas remain strongly unionised. While there have been a number of attempts at non-union ventures such attempts have not succeeded. They will continue to draw a significant hostile reaction on any future occasion but such attempts may be part of any necessary change.

What may happen with the introduction of new stevedores following continuing Government attempts to deregulate the industry is of interest particularly if that introduction brings with it the possibility of another union onto the waterfront. The Government is doing all that it can in this area aided by the wave of corporatisation and privatisation of Port Authorities which is regarded as appropriate infrastructure developments. [8]

Note should be taken of the waterfront Enterprise Agreement of Toll Port Logistics with the TWU in Newcastle which will involve 15 drivers also undertaking Stevedoring work. No doubt every attempt will be made to prevent such developments or if that is not possible to educate the newcomers and have them adopt the traditional or "acceptable" working conditions and industry customs and practices.

5. The Maritime area has been under considerable threat to its viability and survival and has undertaken, through a series of enquiries, the introduction of change often in return for Government support. The Stevedoring industry, being more tightly knit private, and less immediately vulnerable to competition has ultimately become exposed to community (global) pressure to reform and improve. It may well have undertaken that change in a less dramatic manner if one major element (at least as perceived by the MUA) was not the destruction of the MUA as a political body.

6. In both cases substantial Government funding (one way or the other) has been provided to assist in labour dislocation and severance costs.

7. It is unlikely that a change of Government in the approaching federal elections on October 3, 1998 will dramatically effect the processes of change which are occurring in the Maritime/Waterfront area. Maritime reform largely since 1982 has been under a Labor Government and has a major element of economic necessity. The reform commenced in the Stevedoring industry is now possibly irreversible and such reforms are also perceived as being economically necessary for benefit of the Australian economy.

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[8] See for example, the developments regarding the Geraldton Port Authority with its blue print for the future and the MUA's reaction as reported in the Daily Commercial News, Friday, 10 July and Monday, 13 July 1998.

8. Two particular aspects will need to be addressed for the continuation of reform. They are the need for **greater training and retraining** of the workforce to continue improvement and the need to consider the **issue of job insecurity** and its effect on the workforce. If the move to Enterprise Agreements continues with attention on greater labour efficiency and flexibility leading to productivity and profit then there will also need to be greater emphasis on these two aspects to result in a well trained, secure, and productive workforce. This would hopefully result in an efficient and competent waterfront and will also ensure the existence and perhaps expansion of the national fleet.

If that occurs then the Maritime industry with its gradual Government supported labour reform which has taken place since the early 1980's, and the recent waterfront industrial confrontation in 1998 which had the Government as a major player and which introduced dramatic labour change amidst considerable upheaval, will have achieved an appropriate end result, although in quite different ways.

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