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REVIEW ARTICLE

Industrial Relations in Australia

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(reviewing: Plowman, D., S. Deery and C. Fisher *Australian industrial relations* Sydney, McGraw Hill, 1980, pp.339. Price $A13.95; and Ford, G.W., J.M. Hearn and R.D. Lansbury (eds) *Australian labour relations: readings, (3rd Edition)* Melbourne, Macmillan, 1980, pp.595. Price $22.88)

The industrial relations systems of Australia and New Zealand are unique in using conciliation and arbitration as the main form of conflict regulation. Although the concept of compulsory arbitration was devised in Australia it was first introduced in New Zealand and only later adopted by the Australians. Because this common origin exists it is interesting for New Zealanders to examine the divergent development of the two systems. One advantage of this is that it exposes possible strengths and weaknesses of the New Zealand system.

Recently two books dealing with the Australian system were published. The first, *Australian industrial relations* by Plowman, Deery and Fisher (1980), attempts to meet the requirements of terminal and first year industrial relations courses in Australian tertiary institutions. The second, *Australian labour relations : readings* edited by Ford, Hearn and Lansbury (1980), is a collection of essays reflecting the major contemporary issues in Australian industrial relations. The two books are strongly influenced by the "systems analysis" approach to the study of industrial relations. In each case the main elements of the "system" selected for study are the concept of industrial conflict, the parties involved in conflict and the processes by which conflict is resolved. Plowman *et al.* provide a broad examination of these issues and establish an analytical framework which enables the reader to quickly comprehend the nature of the Australian system. Unfortunately the book has been criticized, by the former President of the Australian Council of Trade Unions (ACTU), as containing some errors of fact. In particular he argues that the Supreme Governing Body of the ACTU, as outlined in Plowman *et al.* (p.202), does not exist. There is also a tendency for some sections to be too descriptive and little attempt has been made to mask the philosophical bias of the authors. Nevertheless the book does bring together, in a logical and non-technical manner, a large volume of relevant material on industrial relations in Australia. Ford *et al.* is, because of its nature, a more disjointed book. However the issues canvassed are treated in greater detail and it therefore provides useful complementary material. This is the third edition of the book and while the general format of the previous editions has been retained essays on new topics, such as the role of management in industrial relations, trends in industrial democracy, migrants in trade unions and international unionism, have been included.

When reading the two books it becomes clear that despite a common origin the Australian and New Zealand systems have developed along different lines, thus leading to a number of striking differences between them. Two features in particular stand out. The first is that the processes of the Australian system have become relatively more complicated. The second feature is the greater willingness of

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Australian trade unions to become involved in issues of a non-traditional and non-industrial nature. The first part of this article argues that the complexity of the Australian system results from constitutional constraints and that the problems created are not as severe as they may initially appear. In the second part of the article it is argued that the more adventurous nature of Australian unions is evidence of a greater maturity which results from an historical acceptance of the concept of compulsory arbitration and a willingness to operate under its protection.

The State/Federal Dichotomy

Australia, in constitutional terms, is a federation of six states (Victoria, Tasmania, South Australia, Western Australia, Queensland and New South Wales) and a number of territories (e.g. the Australian Capital Territory and the Northern Territory). Together they are officially known as the Commonwealth of Australia. Prior to federation in 1901 each state was totally self-governing. At federation, however, the state parliaments were required to hand over some of their law making authority to the newly created Commonwealth (i.e. federal) Parliament. Since federation the Federal Government, working within the constraints of the Australian Constitution, has managed to gain legislative control over many additional areas. Despite this, state governments remain important because of the powers specifically given to them by the Constitution. These powers cannot be transferred to the federal sphere without an amendment to the Constitution. History has demonstrated that the Australian people are reluctant to allow such changes.

The complexity of the Australian industrial relations system is inherent in the distribution of power between the state and federal tribunals. There are a number of limitations to the powers of federal tribunals and some very important areas in which states and state bodies have considerable award making authority. This is because the Australian Constitution only permits the Commonwealth Parliament to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State". The national legislature lacks a general power to legislate on terms and conditions of employment and is limited to setting up tribunals which in turn are confined in jurisdiction to interstate industrial disputes.

The element most restrictive of the freedom of federal industrial tribunals to regulate industrial matters through awards comes from the interpretation which has been given by the High Court of Australia to the word industrial. For the federal tribunals to become involved in dispute settlement an industry must be involved. Certain occupations have been held not to be industries because "they do not involve the co-operation of capital and labour in the satisfaction of human needs" e.g. policemen and clerks engaged in land registry offices or the activities of the law courts. Other occupations have been declared by the courts not to be industries e.g. teaching and fire-fighting. In addition, though an industry may be involved, the matter or dispute may not be industrial in nature. For this reason the regulation of shopping hours, the demand for compulsory unionism, the arrangements for the payment of pensions and the right of employers to employ independent contractors instead of wage paid employees have all been held to be outside the jurisdiction of federal tribunals.

The federal system of arbitration is comprised of three bodies, the Conciliation and Arbitration Commission, the Australian Industrial Court and the Industrial Relations Bureau (IRB). The Commission consists of a president (who must previously have been a barrister or solicitor of the High Court or of a state Supreme Court), deputy presidents (usually with legal training) and commissioners ("men of proven status, experience and ability"). Within the Commission there are two main institutions: the Full Bench (two presidential members and one other) which hears matters of national

economic importance and the panels (one presidential member and two others) which handle matters of lesser importance. The Court is the judicial arm of the federal system. Its work covers such matters as the interpretation and enforcement of awards; offences concerning the membership of organizations; secret ballots and union elections; breaches of union rules; and the recovery of wages when employers have not been paying award rates. The IRB performs an industrial police function. It was established to ensure that the provisions of the *Conciliation and Arbitration Act* are observed, not only by employers but also by employer and employee organizations and their officials.

The Australian Constitution provides each of the states with the ability to legislate directly on employment conditions. Thus in matters such as the reduction of standard working hours, equal pay and the extension of annual and long-service leave, state legislation has set the standard. The regulation of industrial disputes, however, is not a matter of direct state legislation. Rather, the states have opted to establish tribunals of one form or another. Queensland and Western Australia have compulsory arbitration based on the federal model. In Victoria and Tasmania a wages boards system operates. These are usually composed of an independent chairman appointed by the Minister and an equal number of employer and employee representatives. There are two important features of this system. The first is that the boards may make common rules within industries and across awards. The second is that the system does not rely upon the existence or use of trade unions for its effective operation (as does the New Zealand arbitration system and its Australian federal counterpart). The remaining two states, South Australia and New South Wales have hybrid systems of both wages boards and arbitration procedures. The most distinctive feature of these systems is the work of conciliation committees which have a wide range of award making powers in that they may determine any industrial matter on which agreement between employers and employees can be reached.

Perhaps surprisingly, the dichotomy between the state and federal level has not been allowed to distort more than marginally the application of the concept of conciliation and arbitration in Australia. This is due largely to the fact that the federal system has come to dominate proceedings. A number of reasons may be cited for this. First, and probably most importantly, is Section 109 of the Constitution. This section provides that, where a law of a state is inconsistent with a law of the Commonwealth, then the latter shall prevail and the former shall be void to the extent of the inconsistency. Though an industrial award of a Commonwealth tribunal is not a law of the Commonwealth, yet the same paramountcy has been held to attach to it, so that it prevails over both inconsistent state statutes and inconsistent state awards. Secondly the Australian Government employs, and therefore exercises exclusive control over, ten percent of the total civilian workforce. In addition the various trade and commerce powers place many large industries (including postal, telecommunications, maritime, stevedoring, tourist, airline, interstate transport, finance and banking) under federal control. A third factor is the desire by many labour unions to have their cases heard at the federal level. This desire arises from a long held belief that workers receive more favourable treatment from the federal tribunal. Although the *Conciliation and Arbitration Act* allows the federal tribunal to refrain from dealing with a dispute on the grounds that it should be left to the state authority it has only rarely disqualified itself and, in some cases, the Commission has attempted to impose federal awards in areas already covered by a state. Once a union has chosen federal registration and been granted a federal award it may move back to state jurisdiction only with the permission of the Commission. The Commission, however, has never been willing to allow movement of that sort. Finally, the federal Arbitration Commission is the body which sets the Australian pattern; its decisions on important national issues, such as the national wage, are invariably followed by state authorities.

It would be misrepresenting the situation to argue that the Constitution presents no problems in the control of industrial conflict by federal tribunals. However, many of the problems that have arisen have been overcome in a manner which suggests a strong desire by the parties concerned to make the system work. Federal tribunals operate at the national, industry and enterprise levels. Each level has its own difficulties and method, peculiar to Australia, of overcoming them.

At the industry level, before commencing award proceedings, the Commission must determine that a dispute exists within its jurisdiction. This requires one party, usually the employer, to reject some demand, called a "log of claims", by another party, usually a union, on a multi-state basis. It is a requirement that is generally easily met. All labour unions of any significance are organized on a national Australian basis. Many employers are similarly grouped in Australia - wide associations which, on being registered, rank as one legal person. In such a situation as the latter, all that is necessary is for the union to serve the employer association with a written demand. Even if a number of unassociated single-state employers are involved, all that is required is service upon employers in different states, provided that they are engaged in similar operations and the demand raises a matter of common concern so that there is really only one dispute. Having been notified of a dispute by the Industrial Registrar, the appropriate Presidential member (i.e. one who has special knowledge of the industry concerned) will attempt to conciliate or refer the matter to another member of the Commission.

In New Zealand an award is binding on unions and employers in the industry in the area to which the award relates even though they are not parties to the particular proceedings. This is not so in Australia where only parties to the dispute are bound by the ensuing award. Consequently Australian unions must serve their log of claims on every individual enterprise or employers association that they wish to have bound by the award. Some appreciation for the size of this task is given by the fact that there are over 10,000 respondents to the Metal Industry Award, over 6,000 to the Pastoral Award and over 1,000 in each of the clothing trades, builders' labourers, graphic arts and dry cleaning awards. In addition a dispute exists and only exists until all the items in the log of claims have been met. Together, these two regulations have resulted in some rather extravagant claims. Unions, wishing to avoid the expense and inconvenience of drawing up and presenting a new log of claims at short intervals, have resorted to the device known as an "ambit log". At face value the "ambit log" appears to be a ridiculous document. It may demand ten weeks annual holidays, pay rates of $2,000 per week, a thirty hour standard working week and so on. Neither the union nor the employers expect these demands to be acted on immediately. The "ambit log" is merely a ploy to keep a dispute current and to allow the real issues, and any subsequent claims, to be settled within the jurisdiction of the Commission.

When the employers, with the help and advice of their employer associations, have submitted their counter claims the ambit of the dispute is established. This is followed by pre-arbitral bargaining in which the issues of current concern are made clear. If no agreement is reached at this stage the Commissioner will call a compulsory conference which operates in an informal atmosphere similar to that of the Conciliation Councils in New Zealand. If still no agreement is reached the Commissioner moves into relatively legalistic arbitration proceedings and makes a decision on the basis of the evidence presented by each of the parties.

The enormous task of finding all of the employers who should be covered by the award invariably means that unions become aware of the existence of some establishments after the award has been made. To overcome the Commissioner's inability to make common rulings and thus extend the award to enterprises not covered by its provision the "roping-in" device has been developed. Under this system the union serves the original log of claims on all those firms it now wants covered by

the agreement and simply asks the Commission to settle the dispute by varying the list of respondents.

At the national level one of the most important processes in the Australian industrial relations system is the determination (by the Full Bench) of minimum and national wage variations. The Australian Constitution forbids the creation of a legally operative general wage. The Commission can deal only with disputes between parties. Consequently the pattern established has been for the Commission to periodically conduct detailed enquiries into wage issues and to make an award in what is termed a "test case". In subsequent cases before the Commission the parties abstain from re-arguing the issues determined in the test case. Although this procedure is more complicated than the system operating in New Zealand, where the Arbitration Court makes a general wage order that automatically adjusts the wage rates prescribed in awards and collective agreements, the final outcome is similar.

An area that federal tribunals are poorly equipped to handle is the "personal grievance" dispute confined to the single plant. Very often these fall outside the Commission's jurisdiction. Unlike the New Zealand system, which requires all awards to include the procedures to be followed as set out in Section 117 of the *Industrial Relations Act,* the Australian system operates in a very uncertain manner. Even if the parties are willing to accept the Commission's help, the generalized level of operations of the tribunal system still hinders the effective handling of plant grievances. The act does make provision for the insertion into awards of a Board of Reference which may consider plant level grievances. However, since the Boards may not interpret or enforce awards they are little used. In the event, the settlement of many plant disputes cannot be achieved except by way of industrial action.

Australian Union Involvement in Non-Industrial Issues

While it would be misleading to argue that New Zealand unions have shown no inclination to become involved in non-industrial issues it is true that they have not shown the same endeavour nor met with the same success as their Australian counterparts. The reason for this appears to lie in the historical development of unionism within the two countries. The maritime strikes of the 1890s left the trade union movements of Australia and New Zealand in complete disarray. In both countries the defeat convinced the unionists of the need for political representation. In New Zealand the trade union backed Liberal Party won the election of December 1890 and in 1894 implemented the *Industrial Conciliation and Arbitration Act.* The Australian unionists formed their own political group, the Labour Party, and succeeded in introducing arbitration procedures in a number of states. After federation, the national government passed the *Arbitration Act* of 1904. Following this period the pattern of union development within the two countries diverged. Both union movements owed their arbitral system to political involvement. In Australia the unions continued to foster the linkage with politics and prospered under the shelter of the system they had helped create. In New Zealand, on the other hand, discontent with the Arbitration Court over its increasingly legalistic and restrictive stand emerged. Many unions, particularly the New Zealand Federation of Labour (Red Feds), determined that they would boycott the system. By 1912 a new anti-union government had replaced the Liberal Party. Tensions increased and the parties clashed head-on over the registration of a Waihi mining union and again in the waterfront strike of 1913. The result of this conflict was a devastating defeat for New Zealand unionism. Although the proportion of workers who were union members continued to rise, it did not rise as rapidly as was the case in Australia. The antagonistic approach of New Zealand unionists to arbitration appears to have created circumstances in which the growth of the New Zealand labour movement was restricted at a time when union

membership in Australia was rising at a rate unmatched (in relative terms) elsewhere in the capitalist world.

Following the First World War and aided by an amendment to the *Arbitration Act* in 1936 New Zealand unions gradually recovered in strength. Again they pressed their claims for free bargaining and again, in the waterfront struggle of 1951, they were soundly defeated. In Australia, on the other hand, the rapidly growing trade union movement used the period between the wars to consolidate its position under the protection of the arbitration system. In the boom conditions of the 1950s, and the 1960s, while New Zealand unions were recovering from the 1951 set back, Australian unions were able to operate successfully a system of free collective bargaining that had been prematurely attempted in New Zealand. By the 1970s, although the Australian Arbitration Commission had reasserted its control over wage fixing, the unions had developed to a stage from which they could pursue their non-industrial aims and objectives.

During the 1970s the Australian unions began to expand the boundaries of union activity in a way which has only been seen to a limited extent in New Zealand. The ACTU, through its joint ownership with private industry of the retailing outlet ACTU-Bourkes, the travel company ACTU-New World Travel and the petrol distributor ACTU-Solo, sought to enter the business world with the avowed purpose of making it more competitive. The ACTU is also firmly committed to developing wider business commitments in the area of consumer credit, insurance and housing and recently has begun to develop plans for the creation of a national trade union superannuation scheme. In the social and political area Australian unions have demonstrated their willingness to participate in community affairs especially in support of environmentalist causes. Perhaps the most innovative form of union intervention of this type has been the "green bans" applied by the New South Wales branch of the Builders' Labourers Federation. Between 1971 and 1974 the union imposed bans on over $3,000 million worth of development projects which they, in co-operation with resident action groups, deemed to involve either inadequate planning or the destruction of buildings of an historical or architectural significance. Union action has also been taken against sand-mining on Fraser Island, the construction of a power station at Newport in Victoria and the continued mining of uranium.

Conclusion

The books reviewed serve the function of providing readily accessible material for those wishing to understand Australia's industrial relations system. They differ fundamentally in concept from texts currently available on New Zealand industrial relations. rather than treating separately the legal, historical, political and economic aspects of industrial relations they integrate these features in an open systems approach which focuses on the basic elements in industrial relations (i.e. conflict, parties, processes and rules). Although alternative methodologies exist, the approach taken by the two books provides an analytical ordering of the material that recognizes that industrial relations take place in a broad historical and social context. Perhaps the time is ripe for a similar text and complementary book of readings to be published on the New Zealand industrial relations system.

This paper has examined two aspects given detailed coverage in the books reviewed; the division of power between federal and state tribunals and the non-industrial endeavours of Australian unions. To the outsider the Australian system of industrial relations appears complex. However this complexity has not created any serious distortions because of the willingness of all parties to make the system work. In the absence of serious confrontations the unions in particular have developed a firm foundation from which they are now able to tackle issues of wider implication for the well-being of labour. There are perhaps three lessons to be learnt from this brief

survey of the Australian experience. First, even a complicated system of industrial relations can work provided all parties have some degree of commitment to it. Second, unions must seek to obtain political influence and public support if they are going to be fully effective. Confrontations with authority of the type New Zealand unions have experienced in the past will only be detrimental to the aspirations of the labour movement. Finally, the increasing strength of New Zealand unions, nurtured in the 1970s by the astute leadership of the Federation of Labour, has placed this country's labour movement in a position from which it can begin to make its own non-industrial demands. The success of Australian unions, and the tactics they have employed, could provide the necessary encouragement, and serve as a model of action, for New Zealand unions wishing to make public their social conscience.