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Opinion Piece by Stephen Smith, Principal of Actus Workplace Lawyers

The pattern bargaining lessons of the past must not be forgotten

Comment

Stephen Smith

The government's announcement at the Jobs and Skills Summit that the expansion of multi-employer bargaining is now on its agenda will embolden the unions to push hard for the right to organise industrial action across industry sectors. This is not in the community's interests and it needs to be quickly and decisively ruled out by the government.

Industry-wide stoppages in the past have led to widespread economic damage. Between 1999 and 2001, the manufacturing industry ensured industry-wide strikes and stand-downs in pursuit of union pattern bargaining claims. In a 2002 inquiry, the Productivity Commission noted that the estimated cost of lost production from two industrial disputes across the automotive industry the year before was up to $630 million. This cost would be more than $1 billion in today's money.

In the 1970s, when industry-wide strikes were common, Australian industry operated behind high tariff walls. These days, Australia has a very open economy. Industrial action disrupting supply would severely damage Australia's international reputation as a reliable trading partner. This would lead to reduced exports, reduced economic growth and lower living standards.

Industry-wide industrial action has never been lawful in Australia. Since 1993, there has been a right to take industrial action in pursuit of an enterprise agreement, but there has never been a right to take industry-wide industrial action. The industry-wide strikes of the past were all unlawful.

The significant decline in industrial action in Australia aligned with the introduction in 2006 of protected action ballots to authorise industrial action at each enterprise. The level of industrial action has remained low since this time and that is a good thing for businesses, workers and the community.

The loss of protected action ballots as part of an industry bargaining system will undoubtedly lead to a big increase in the level of industrial action, with consequent big losses and disruption for businesses, workers and the community.

Protected action ballots are inherently democratic. It is unfair for employees to be pressured into taking industrial action and losing wages without having the right to express their views in a secret ballot.

When the Fair Work Act was being developed, the Rudd Labor government rightly rejected union claims for ballots to be abolished, given the democratic principles that underpin them and their role in protecting workers against intimidation and coercion.

The Fair Work Act outlaws the taking of industrial action in pursuit of pattern agreements. The pattern bargaining laws were introduced in 2006 in direct response to the unions' pattern bargaining campaigns of the early 2000s. When the Fair Work Act was being developed, the Rudd government recognised the need to retain the laws. This need continues and the repeal of the laws would give unions the ability to organise damaging industrial action across entire industries.

There is a low paid bargaining stream in the Fair Work Act that permits multi-employer bargaining for low paid workers. The stream was designed for sectors such as aged care and community services – the very sectors that the ACTU constantly refers to in arguing for an industry bargaining system.

To date, there have only been three applications under the low paid bargaining stream. In 2011, the Fair Work Commission granted a low paid authorisation for aged care workers, but the unions decided not to pursue the matter because the commission did not support existing enterprise agreements being overridden. In 2013, the FWC rejected an application for a low paid authorisation for nurses in medical practices because it concluded that nurses were not low paid. In 2014, the FWC rejected an application for a low paid authorisation for security workers on the basis that security employees do not face any special difficulties in reaching enterprise agreements.

What is needed at this time is a focus on productivity and flexibility.

After 12 years of operation, there is a legitimate reason for the government to review the low paid bargaining provisions to see whether any modifications are needed, but such a review must not lead to industrial action being permitted in pursuit of multi-employer agreements.

The lessons of the past must not be forgotten. What is needed at this time is a focus on productivity and flexibility, which are the means for achieving real wages growth; not inflicting economic harm and reduced living standards through an outbreak of industry-wide industry action. P

Stephen Smith is the principal of Actus Workplace Lawyers and was the director of National Industrial Relations of the Australian Industry Group during the manufacturing industry pattern bargaining battles of the early 2000s.

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