INSUFFICIENTLY APPRECIATED ASPECTS OF INDUSTRIAL RELATIONS

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ABSTRACT: *This paper examines a number of issues in the area of industrial relations which have been somewhat neglected in the past but which will become increasingly important in the future.*

Paper for Presentation in Session 2

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The great myth in the field of industrial relations is that it is possible to master its management, or even to be adequately prepared for its challenges and confident of solving the problems it presents.

If that proposition is accepted, one can recognise with equanimity the probability of intermittent failure to maintain industrial peace, whichever side of the industrial fence between employers and employees from which one happens to be operating.

Fortified, and chastened, by that recognition an industrial relations practitioner (whether he be in the transport industry or not) would seem to be in the correct frame of mind to appreciate issues in his specialised field which are of significance, although they may be only subsidiary to the principal one.

Of course "conciliation and arbitration" springs to everyone's mind as being the issue in industrial relations.

This paper will not deal with that issue. Nor will it labour on the inconvenience to the public caused by strikes, especially those in the transport industry - or the loss of productivity through industrial disputes - or the disruption to the community's enjoyment of life and general well-being through industrial strife - or the economic hardship caused to other members of the workforce when grievances are allowed to fester into causes leading to industrial confrontations. Those aspects of industrial relations have been treated almost ad nauseam by many experts over the years.

The aim of this paper is to draw attention to the contributions which can be made to improvement of industrial relations by several lesser known or, rather, less emphasised facets of the discipline.

MANPOWER PLANNING

One of these is manpower planning, a much underutilised technique. This, surely, could have a very significant influence on industrial relations through its potential for improving employees' prospects of job

security on the one hand, and on the other protecting the interests of both employer and employees against the exasperating inconvenience of lack of availability of appropriately skilled manpower.

This certainly is a facet which has not received nearly enough attention or encouragement. The need for development of manpower planning in this country is most pressing, especially when regard is paid to the rapidity and extent of technological and industrial changes now confronting us. It must be acknowledged that the establishment of Industry Training Committees and the subsidising of Manpower Development Officers (M.D.Os) are relatively recent efforts to tackle the basic problems in assessing future labour needs in various sectors and meeting them through training and retraining programs. However, this is being undertaken on a relatively small scale and will not provide, in its present form, an adequate framework whereby the productive capacity of the labour available can be effectively utilised and co-ordinated at a regional, State, or national level. Much of the research and development has been, and will continue to be, undertaken by Governments, due to the high costs involved. Moreover it is the responsibility of Governments to ultimately establish a broad national manpower plan which could be used to anticipate future needs for labour with specific skills in particular areas of the economy.

Unfortunately, in the past year the Federal Government has rejected suggestions that it should sponsor further research into medium and long-term manpower planning.

It apparently took the view that feeble attempts by other countries in this research area have not been able to produce techniques capable of foretelling and preparing for the recent economic downturn with its associated invalidation of previously estimated (or rather blindly guessed) manpower needs. Therefore expenditure on further research on the subject by Australia would not be warranted!

It seems that these are the very circumstances which do call for greatly increased research into the problem with a view to developing effective manpower planning techniques as soon as possible. Otherwise, when the world and Australia's economy is eventually rejuvenated we shall have to face the prospect of coping with a lack of skilled manpower resources in some areas and a surfeit of skills (or of people with none) in others. Eventually of course the cycle will turn again and the workforce will once more be faced with the dreaded prospect of wholesale redundancies.

INDUSTRIAL RELATIONS

Fortunately the Commonwealth Government has recently shown some signs of interest in this field by its establishment of the Crawford Inquiry into Industry Restructuring and its setting up of another inquiry into the ramifications of technological change. The Commonwealth Government seems to have been so concerned by the latter phenomenon that it made one of its senior Commonwealth public servants available on secondment to the A.C.T.U. to help that body formulate its policy for dealing with technological change.

Such ad hoc efforts, however, seem to be poor substitutes for on-going research on the subject and more particularly for implementation of a co-ordinated manpower policy based as far as possible on informed planning and soundly-based strategies.

In the N.S.W. Department of Industrial Relations and Technology we are attempting to make known to Industry Training Committees and to M.D.O.s the full extent of the assistance available from sources such as our Apprenticeship Directorate and the Division of Vocational Guidance Services. Although these sections already perform a valuable service in a number of ways, there is scope for greater utilisation of their services in the development within industry of more comprehensive manpower policies.

In pursuance of the State Government's election undertaking a Technological Change Unit is being established within the Department of Industrial Relations and Technology.

Initially this Unit will operate on a research basis and will be responsible for assessing the impact of modern technology and automation on employment opportunities. It is hoped that its findings will provide the foundation on which a comprehensive manpower plan for the State's future can be formulated.

The improvement in industrial relations that should result from the development of a rational system of manpower planning is necessarily quite a way off. Consequently it would be easy to overlook the significance of such a development in the current industrial relations climate which in most peoples' minds is determined by more immediate (and more easily settled) disputes over wage rates and specific working conditions.

However, one has just to look at the industrial unrest over the last few years that has been caused by such an issue as redundancy to see the need for a deliberate, well-known and well-understood system of planning.

The transport industry, perhaps as much as any other in recent times, has been confronted by the problem of redundancy. The development of Jumbo Jets, for example, has caused many redundancy headaches in the air transport field. Nearer to home our own Government Railways has been faced with the dilemma of minimising redundancies on one hand and allocating limited resources on maintaining uneconomical services on the other.

The emotive issue of redundancy, and the problems associated with it, have been recognised for a long time. In 1964, the Industrial Arbitration Act, 1940, was amended to include provision for the insertion into any State award of a clause which would require that not less than three months' notice (or the equivalent in pay) had to be given to those made redundant through mechanisation and/or technological change.

However, a minority of awards contain such a provision and even these have been subject to disputation over such matters as the order in which workers are retrenched, the quantum of severance pay received, etc.

Disputes have also arisen over the ways in which retrenchment decisions have been made. Despite some comments made "obiter dicta" by Kirby C.J. in Federated Clerks' Union of Australia v. Golden Fleece Petroleum Ltd (1968) 122 C.A.R. 339 to the effect that an employer should include employees in the decision making process if it is likely that the employees may be retrenched, that is not yet a widely practised technique. Many employers still contend that it is management's right to manage the business in whatever way is seen fit, whether it be by retrenching staff or even the closure of the whole business and such decisions are ones to be made by the employer alone. Current thinking throws grave doubts on the wisdom of such an attitude.

It remains general trade union policy for retrenchment to be on a strict "last to come, first to go" basis, a policy which sometimes conflicts with the desire of management to be left, after retrenchment, with a smaller but more efficient group of the better employees. Moreover it does not have unbending support from industrial tribunals. In Re Colliery Deputies, &c. (North) Conciliation Committee (1935) A.R. (N.S.W.) 85, at 99-100, it was held by Browne J. that:

> "As the safety of the mine is the ultimate responsibility of the manager ..... it seems to me essential that the manager should be quite untrammelled in his choice of deputies so that he shall have a free hand to choose the most competent person available when appointing a deputy and to retain the most competent person on any reduction of the numbers thereof. The 'last to come' may not be the most competent deputy employed at the mine but then again he may be, and I think the manager should be entitled on a reduction in hands to retain him in place of another whom he regards as less competent".

While this may have expressed the attitude of the 1930's, in this age of enlightened personnel practices management of companies contemplating the retrenchment of staff could be well advised to consider the interests of their employees and involve them and their unions in devising an acceptable redundancy plan against the contingency of their manpower planning being rendered ineffectual by factors outside their control. This would further prospects of industrial peace, quite apart from the justification for it on more altruistic grounds.

WORKER PARTICIPATION

The involvement of employees and/or their unions in devising redundancy schemes should not be seen as the only avenue through which joint consultative processes can be utilised to bring stability to the industrial relations sphere.

In the past few years much interest has been shown in transferring the concepts of worker participation into the reality of the Australian workplace. To this end, in January 1976 a Work Advisory Unit was established within the Department of Labour and Industry (now Industrial Relations and Technology) to promote job satisfaction and encourage voluntary worker participation programmes in the private and public sector.

Its promotional activities have been deliberately low-key and have consisted mainly of education and consultancy sessions given to management groups and employee organisations. To date the Unit has found that greatest interest has been shown in joint consultation schemes and in the formation of self-managing groups, although there has also been widespread recognition of the potential benefits for both employer and employees in co-operative work restructuring and job enrichment.

The introduction of these concepts could have a dramatic effect on the operations of the industrial relations system, as we now know it, in Australia. There is a rapidly developing need for industry to be flexible and adaptable and the survival of some organisations may well depend on the co-operation and involvement of the workers in reacting to those needs.

DISPUTE AVOIDANCE TECHNIQUES

There has been increasing criticism that the present system of conciliation and arbitration is not able to attend quickly enough to certain industrial disputes, thereby in many cases allowing disputes to escalate before any concerted effort is made to settle them.

While more localised developments, e.g., joint consultation procedures, etc., may solve many of these problems, it has become apparent that there still is a need to develop more responsive dispute avoidance mechanisms which would complement existing facilities for dispute settlement.

For this reason the Department of Industrial Relations and Technology has recently adopted, under the oversight of its Minister, an active mediatory role in resolving differences between employers and unions before they develop to the stage of disruptive industrial disputes. This role is not intended to cut across the jurisdiction of existing industrial tribunals in settling disputes, and care has been taken to ensure that no overlapping of functions occurs between Departmental mediators and those tribunals.

However, it is hoped that an active role by departmental officers will not only provide a valuable means for avoiding the development of industrial disputes but also assist in settling some disputes such as:-

1. Those involving employees who are on strike with strong views against an early return to work. As industrial tribunals normally will not hear any claim by the striking men until they return to work, the Department may be able to confer with the parties in an attempt to resolve the stalemate, encouraging the striking men to take their claim to arbitration.

2. Many strikes are only an outward manifestation of more deep-rooted industrial problems. Industrial tribunals can only deal with a specific industrial dispute referred to them. It frequently occurs that employers or unions refer one dispute to an industrial tribunal, only to find that, when it is resolved, it is merely replaced by another dispute on a different matter, but stemming from the same

underlying grievances. The Department may have more scope to mediate in such complicated disputes where the traditional conciliation and arbitration processes may fail. By informal contacts and discussion it is hoped to improve industrial relations at the shop floor level, thereby overcoming the root cause of the industrial trouble.

3. Demarcation disputes, which are probably the most difficult and damaging disputes for industrial tribunals to face, may be more easily resolved through the Department's mediation. This would particularly be the case where the demarcation dispute is between a State-registered and a federally-registered union. The lengthy demarcation dispute between the Transport Workers' Union of Australia and the Waterside Workers' Federation of Australia over the handling of containers at conventional berths in the Port of Sydney which tied up wharves for a great amount of time in 1976 is an example of the demarcation situation which is so difficult to solve through industrial tribunals. That dispute was complicated by the fact that the T.W.U. was a State-registered union and the W.W.F. was federally registered, leading to legal and constitutional difficulties in making any binding determination on both unions in either the State Industrial Commission or the Australian Conciliation and Arbitration Commission.

It must be stressed that the role of a mediator will only come within the framework of the conciliation process, either when a dispute is in existence or threatened. It will not be included in the process of arbitration. At all times, therefore, a certain amount of flexibility will be retained in resolving industrial disputes.

INDUSTRIAL RELATIONS CO-ORDINATION UNIT

While supporting the general principles and application of the wage indexation package, this State has become aware of the need, as far as the public sector is concerned, to co-ordinate industrial relations policies pursued by governmental organisations and to ensure that a consistency of attitude is maintained. An Industrial Relations Co-ordination Unit has been established in the Department of Industrial Relations and Technology to pursue those objectives in respect of claims for wages and conditions made in the public service and other State government instrumentalities. Industrial disputes must also be brought to the notice of the Minister and the Unit for determination of action to be taken, and consistency will also be sought on questions of whether or not appeals against decisions of arbitral tribunals are warranted.

While this co-ordinated approach will not affect the right of unions to seek arbitration, it will ensure that no "sweetheart" agreements are made and that no justified increase in one area is unjustifiably passed on to workers in other areas.

PENALTY RATES AND HOURS OF WORK

Another matter which reflects the increasing awareness of how industrial standards impinge upon the effective operation of the economy as a whole is the current interest in the effect of penalty rates on both employment and inflation.

Presently, there are applications before both the New South Wales and Commonwealth Commissions for a reduction in penalty rates paid to employees in the tourist and entertainment industries. On other fronts there have been calls to remove week-end penalty rates entirely. Naturally these developments have activated an immediate knee-jerk response from the union movement which is, of course, implacably opposed to any suggestion that their "hard-won rights" to penalty rates should now be withdrawn.

Strangely, and most regrettably, none of the antagonists in this potentially explosive industrial relations hassle has deemed it worthwhile to draw specific distinctions between week-end penalty rates (which are of the greatest significance by far) and other penalty rates for such inconveniences as rotating shift work and for truly "casual" employment. Nor, unfortunately, have any of the advocates of withdrawal or reduction of penalty rates been prepared to acknowledge publicly that what they are seeking could not possibly be obtained without some trade-off in respect of other conditions of employment for the workers affected.

The practicability of withdrawing or even reducing penalty rates (whether or not they are unwarranted having regard to current philosophies) cannot be rationally contemplated other than on the basis that those workers who are now regularly paid penalty rates would have to be given some form of compensation e.g. a higher paid rate for the job overall and/or extra time off. It does seem that in the near future serious consideration must be given not only to the rationale behind week-end and holiday penalty rates, but also to the general question of whether the conventional five-day working week followed by a two day break is an outmoded convention in to-day's society. It may be that alternative systems such as eight-day work periods in tandem (four days on, four days off for each half of the workforce) - thus eliminating "week-ends" altogether - may have to be introduced. Such a system may provide the means by which labour and capital equipment

can be more fully and more productively utilised without dramatically increasing production costs, at the same time permitting a reduction in working hours, and providing additional job opportunities. Such a question is too complex to hope that an acceptable solution can be obtained overnight. Even if consensus were reached, many statutes and conventions would have to be drastically altered. This in turn would have repercussions in the industrial relations sphere, where statutory requirements have always been of major influence in the history of industrial regulation in Australia.

But perhaps the time has now come when a complete reshuffle of our industrial relations cards is essential if we are to survive - other than with a greatly eroded comparative standard of living - in competition with other countries.

DEVELOPMENTS IN INDUSTRIAL LAW

Two recent legislative developments are of particular significance to the transport industry.

The first concerns proposals to amend S. 88E of the Industrial Arbitration Act, 1940. As you may be aware, the section deems, for the purposes of the Act, certain contractual relationships as being ones between employer and employee, thereby bringing such contractual relationships in certain respects within the jurisdiction of State Industrial Tribunals.

After an extensive inquiry conducted by the Industrial Commission in Court Session, recommendations were made in 1970 to ensure the effective operation of S.88E in respect of those classes of operators in the transport industry. The ramifications of the recommendations were quite substantial and, for this reason, it has been extremely difficult to develop a consensus amongst those concerned before incorporating the suggested amendments into law.

The Department of Industrial Relations and Technology has been continuously involved in drafting and re-drafting the amendments in an attempt to establish an even-handed approach to the problem which would ensure that it will not be the cause of further industrial disputation.

In the meantime, with the growth in the numbers of contractors and sub-contractors operating in the transport industry many disputes have arisen as employees in the industry have, rightly or wrongly, felt that their livelihood has been threatened. A solution that is satisfactory to all parties is essential and, hopefully, such a solution will be forthcoming through amendment to S.88E.

The second example is a more recent legal development which has aroused strong feelings. This was the insertion in June, 1977, of S.45D into the (Commonwealth) Trade Practices Act, 1974.

Briefly, the section, inter alia, prohibits secondary boycotts and other forms of industrial action which have, or will likely have the effect of substantially damaging a third person's dealing with a corporation or substantially lessening the competition in the market in which that corporation operates. An injunction can be granted to prevent such action taking place, and subsequently damages may be awarded if substantial damage is proved. Individuals and unions are not prohibited from engaging in such conduct where the 'dominant purpose' for which the conduct is engaged is 'substantially' related to matters of remuneration, conditions of employment, hours of work, or working conditions of the employees directly involved (S.45D(3)).

The meaning of the phrases 'conditions of employment' and 'working conditions' used in S.45D(3) is not clear and it remains to be seen how widely or narrowly these phrases will be interpreted by the courts.

Indeed, it has been suggested that the section has, in fact, very little 'bite' as it would not be difficult for a union to make it appear as though a strike has been called over legitimate union concerns. It may eventuate that civil torts (i.e. conspiracy, intimidation, interference with contractual relationships), will, in the future, have greater impact on the conduct of industrial relations than that currently speculated in regard to S.45D. Even so, although as far as damages are concerned the section may become insignificant, it will still retain influence through the use of the injunction. Where such an injunction is granted, the dispute will effectively be brought to an end; continuation of the action on the part of the union would make it liable to penalty under the Act.

From recent experience in this area (such as the tanker drivers strike in Victoria) it seems probable that there may be a trend towards a more legalistic approach to industrial relations. This might well include greater reliance on collective bargaining with the possibility of such contracts being guaranteed under the threat, otherwise, of damages being awarded to "wronged" parties by the civil courts, rather than industrial relations being regulated by the specialist industrial tribunals. Such a move could have significant repercussions, especially in the private transport area where, until now, most of the litigation concerning S.45D has occurred.

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OCCUPATIONAL SAFETY AND HEALTH

Whilst industrial disputes are the most publicised aspect of industrial relations, in many respects the most important aspect is that of occupational safety and health.

It is generally recognised that occupational accidents and ill-health cost the community more, in hard monetary terms, than industrial strikes, quite apart from the considerable suffering and hardship experienced by the victims of those accidents.

If one merely considers man-days lost as a measure of cost to the community a comparison of recent figures from the Australian Bureau of Statistics and the Workers' Compensation Commission shows that in a single year some 2,000,000 man-days were lost in N.S.W. due to strikes but over 2,500,000 man-days were lost by injured workers. Of course this is only part of the total cost as far as accident costs are concerned as damage to plant and equipment is believed to cost many times more than the losses in working time.

We often hear industry complaining about the heavy cost of workers' compensation premiums. The short but unpalatable answer to this is that safety is a management prerogative and that compensation premiums reflect injury experience. It is largely the responsibility of management to improve safety performance and reduce compensation costs, preferably in consultation with and through the co-operation of employees and/or their representatives.

Of course the safety manager's task in the transport field is a particularly difficult one as he must not only deal with many potentially dangerous types of equipment but also work in an environment which he does not control. The task of the factory manager is much less onerous in this respect than that facing a manager in the transport industry.

Last year the N.S.W. Government introduced a 'Code of General Principles on Occupational Safety and Occupational Health', which for the first time brought all State Government undertakings formally under the umbrella of State occupational safety and health measures.

The new Code laid the foundations for a better approach to safety matters within the government sector and lent weight to the long-established work of the Department of Labour and Industry in this most important field.

The Code is based on well-established safety and health principles. Responsibilities of senior officers are clearly defined and all Government organisations are required to produce and disseminate a statement of safety policy. Employees must be informed of safety matters and there are provisions for employee participation on safety committees. Special action is required in a number of known problem areas including the use of machinery, harmful chemicals, where there is a risk of fire or explosion and where language difficulties could jeopardise safety. Finally, accident experience is to be recorded for use in corrective action and planning.

Additionally, the Department's Safety Inspectorate is always ready to assist both public and private undertakings with the development of safety programmes and practices which need to be continually reviewed and updated, often to take account of technological changes. In fact, over the years, the occupational safety function of the Department has moved away from the traditional 'policeman on the beat' role, and today provides a safety consulting service with experts in a wide range of safety fields including pressure vessels, construction work, dangerous chemicals, lifting appliances and explosives.

It is hoped that the responsible people in industry (especially transport) will utilise these facilities as part of a concerted drive to improve safety and health standards. In this regard it is significant that a recent survey by the Australian Bureau of Statistics revealed that some 20% of industrial disputes during the survey period had their genesis in grievances over industrial safety, health and welfare issues. Obviously then this is an aspect bearing upon industrial relations which merits a great deal more emphasis than it has been given in the past.

CONCLUSION

This paper has attempted to draw attention to some unfortunately neglected issues which influence industrial relations in Australia today; problems which have no ready made solutions. Some problems are directly related to rapid technological change and others not. All, however, impinge upon the operations of the industrial relations system which in turn has a very significant impact upon the economy and society in general.

As the transport industry plays such a vital role in the proper functioning of the economy, such problems are of real consequence to that industry.

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While solutions are not readily available at the present time - and in this rapidly changing world, permanent solutions may never be obtained - the answers, however short-term, may only be found through continued co-operation and exchange between employers, unions and governments alike, with the facilities and expertise of each being effectively utilised. It is to be hoped that a trend in that direction will develop and be maintained, especially in the transport industry.