Is the IR price right for unions?

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4 September 2007

https://apo.org.au/node/5319

If John Howard and Joe Hockey are right, and “union bosses” are running the ALP, they are doing a pretty ordinary job. Labor’s industrial relations policy implementation plan, released last Tuesday, reveals the dwindling influence of union leaders on workplace policy formulation.

Kevin Rudd is not from the union movement and is not beholden to union powerbrokers. He is determined to shape a system of workplace regulation to replace WorkChoices, based on “flexibility and fairness” - but without providing a foothold for the assertion of “union power.”

Rudd is following the lead of former British prime minister Tony Blair, who faced down unions by promising there would be “no going back” to pre-Thatcher industrial confrontation.

Take a look at what unions “get” from Labor’s modified IR package:

- The strict limits on industrial action will remain, including mandatory secret ballots, bans on secondary boycotts, and quick access for employers and third parties to legal remedies against “unprotected” action.
- Labor’s “clear, tough rules” on strikes will also retain constraints on “pattern bargaining” (so, no industrial action in support of industry-wide wage claims).
- The WorkChoices restrictions on union “right of entry” into workplaces will stay.
- The much-loathed (by unions) building industry regulator, the Australian Building and Construction Commission, will operate until 2010, when it will be absorbed into Fair Work Australia.
- Even Labor’s pledge to abolish Australian Workplace Agreements is now heavily qualified - with existing AWAs able to run until 2012, the removal of the award base for common law agreements for those earning more than $100,000 a year, and the possibility of “transitional individual agreements” (AWAs in all but name) in the first two years of a Rudd government.

The ALP has also promised the unions that it will place collective bargaining “at the centre” of its industrial relations system. But close analysis shows that it falls well short of the collective bargaining framework the ACTU wanted.

Labor’s original IR plan, released in April, outlined a collective bargaining system based on voluntary negotiations between an employer and a union, or an employer bargaining directly with its employees. The will of the majority of employees in a workplace will determine whether collective

bargaining occurs. If there is majority employee support for collective negotiations, then "good-faith bargaining" rights and obligations will apply to all parties.

The system will be overseen by Fair Work Australia, which could make orders requiring the parties to meet, exchange information, respond to proposals within reasonable time limits, and adhere to agreed bargaining procedures. But no party would ultimately be compelled to enter into an agreement.

Fair Work Australia's role would be limited to assisting the parties to reach a deal. It could not arbitrate an outcome - unless the parties agreed, or where protracted negotiations involved protected industrial action that was causing economic harm or threatening public welfare.

The ALP explicitly rejected an ACTU proposal to give the industrial tribunal "last resort arbitration" powers. These would have enabled the tribunal to impose a resolution on the parties in the public interest, where they had been unable to reach agreement despite extensive talks - or (importantly) where one party has been acting in "bad faith", for example, by refusing to negotiate.

The upshot of all this is that Labor's policy fails to tackle a major problem of the bargaining framework that has operated since 1996 - the ability of an employer to simply ignore the workforce's desire to reach a collective agreement and to have their union negotiate on their behalf.

We have seen this play out in numerous disputes - at Boeing, Cochlear and Esselte, just to name a few.

Good-faith bargaining duties will no doubt assist unions in getting employers to the negotiating table. But where tribunal intervention is essentially a voluntary process and there is no spectre of arbitration, some employers will still decide to "tough it out" - and Labor's new IR laws, just like WorkChoices, would allow them to do so.

This is a far cry from the "compulsory union bargaining" system that employer groups have been recently complaining about.

In any case, Labor's more recent IR policy statement makes a huge song and dance about the virtues of "genuine non-union agreements." Rudd has made it crystal clear that unions will not get a guernsey in collective agreement negotiations in non-unionised enterprises. Non-union deals will be made without any union input, or union intervention rights. In fact, Julia Gillard has said that a union would not even know such agreements were being made - end of story.

Not so long ago, the adoption of such policies would have been unthinkable for a Labor government. Now they appear to be the price Labor is willing to pay to unseat the Howard government. The question is, to what extent are the unions willing to pay the same price?