APPENDIX E

REPORT OF THE COMMITTEE ON OVERSEAS CORRESPONDENTS*

LABOR RELATIONS DEVELOPMENTS IN AUSTRALIA, 1973

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After 23 years in opposition, the election to Federal Government of the Australian Labor Party heralded important changes in labor law. The policy speeches of the A.L.P. had foreshadowed these changes, which were articulated in a bill introduced to the House of Representatives in April. However, the Government lacked a majority in the Senate which rejected the bill. Rather than precipitate a dissolution of both Houses, an emasculated version of this bill, making only marginal changes in the law, was passed by both Houses in November.

The forthcoming Senate election may give the Government the few seats it needs to implement the remainder of its program of labor law reform. Meanwhile, the general picture of labor relations is dominated by accelerating inflation (currently at a rate of 13 percent), a high incidence of strikes, and an increasing proportion of big pay settlements taking place by mutual consent of the parties rather than by compulsory arbitration determinations.[1]

In this report a brief summary will be given of the more important changes that the new Government has proposed and which of these were finally enacted.

1. Encouragement of Trade Union Amalgamation

A characteristic feature of Australian trade unionism is its large number of small unions. There are just over 300 unions

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1 This being the first report on Australia, readers who are not familiar with the background of Australian labor relations may wish to refer to J. E. Isaac and G. W. Ford, *Australian Labour Relations Readings* (2d ed.; Melbourne: Sun Books, 1971).

with a total membership of about 2.5 million. Half of these unions have less than 1,000 members each and only 14 have a membership of over 50,000, the largest of which numbers about 200,000 members.

The previous Government had legislated a requirement that in any union-amalgamation ballot, the poll should include at least half of those eligible to vote and that more than half of these must vote affirmatively for the amalgamation to succeed. The new Government has argued that the minimum poll requirement imposes an undesirable barrier to amalgamation, which, in view of the large number of small unions, should be encouraged for a variety of reasons ranging from economies of scale to the reduction of jurisdictional disputes. However, its proposal to delete this requirement was rejected by the Senate, ostensibly on the grounds that it would result in an increased concentration of power for the large and more militant unions without doing much to encourage the amalgamation of the numerous small unions.

2. The Law Relating to Civil Actions for Tort in Industrial Disputes

Apart from the State of Queensland, Australia is still subject to the common-law interpretations of the British Trade Union Act of 1871 and the Conspiracy and Protection of Property Act of 1875, which were replicated in the various states before federation (1900). Only Queensland enacted the equivalent of the British Trades Disputes Act 1906 that gave unions and their members immunity from tort in connection with industrial disputes. In practice, civil action for tort in industrial disputes occurs very rarely, labor relations matters being generally resolved through the extensive network of state and federal tribunals especially created for this purpose. However, recently two tort actions occurred in quick succession and, although they were of small consequence, the new Government pledged to ensure that registered unions operating within the federal jurisdiction would be given the necessary immunity from civil action for tort in furtherance of industrial disputes. For reasons that may make political sense but which are difficult to understand on labor relations ground, the opposition was not prepared to allow this piece of legislation.

3. Penal Sanctions Against Strikes

The *de facto* power of federal arbitration tribunals to fine unions for striking against awards has been greatly reduced by the unions' defiance of legal sanctions and their refusal to pay the fines imposed. For mixed reasons of doctrine, expediency, and a preference for collective bargaining, the new Government proposed to remove all vestiges of legal disabilities against striking unions. Again, this attempt was thwarted by the Senate majority which disapproved of the "anomaly" that would result if arbitration awards were legally enforceable only upon employers.

4. Provisions for Greater Democracy and Participation of the Membership in Union Affairs

There were three aspects of the new Government's proposals, all of which found approval in both Houses and were accordingly enacted: First, all full-time union officers must be elected by the direct vote of the membership and not by the collegiate system in force in many unions. Second, such officers may not be dismissed during their term of office by the union committee of management unless they are found by due process to have been guilty of serious misbehavior and breach of union rules. Third, the management of any election, including the acceptance and rejection of nominations, shall be conducted by a returning officer who must not be either a holder of union office or an employee of the union. The common provision enabling union officials and contenders for union office to decide on the eligibility of others to contest the election is no longer possible.

It is interesting to note that a new section was introduced to the objects of the Conciliation and Arbitration Act, as follows: "to encourage the democratic control of organizations so registered and the full participation by members of such organization in the affairs of the organization."

5. Conciliation and Arbitration Procedures

Toward the end of its term of office, the previous Government, in order to encourage conciliation processes, amended the Act to provide that all disputes had to be processed by conciliators first; and when this step failed to achieve agreement, the matter would then proceed to the arbitrators of the system for resolution. The

words of the Act suggested that the arbitrators could not exercise conciliation functions once the matter had been brought to them. Perhaps through defective drafting rather than deliberate design, this provision created considerable bottlenecks and other difficulties; and in practice, arbitrators closed their eyes to the letter of the law when conciliation provided a reasonable opportunity for a settlement.

To remove this anomaly, the new Government, with the concurrence of the opposition, legislated for all members of the commission to have powers of both conciliation and arbitration; but provided also that a member of the commission, who had dealt unsuccessfully with a matter by conciliation, could go on to arbitrate on that matter only if both parties raise no objection to his doing so.

These then were the more important labor relations issues debated in 1973. A federal committee is currently enquiring on a vexed issue of union government arising from Australian federalism. Under federal law, union branches (locals) have no separate corporate existence but are considered as part of the national union body. However, in some states, the body enjoying statutory recognition is the branch that is registered under state law as a union in its own right. The law is obscure as to primacy of rights in disputes between federal and branch officers. Although not frequent, internecine conflicts within unions have created intractable difficulties; consequently, the recommendations of this committee will be of special interest.

Another committee has been enquiring into the quality of work. A third committee (still to be appointed) is expected to make a detailed study of the whole Australian system of labor relations.

LABOR DISPUTE SETTLEMENT IN THE UNITED KINGDOM IN 1973

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It was supposed by some that the passing of the Industrial Relations Act in 1971 and its coming into force in 1972 would increase the impact of third-party settlement of disputes in the United Kingdom. There were two grounds for this: Despite the denials of the conservative politicians, the new law owed much of

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its shape to a study of U.S. experience. In particular, s.34 attempted to tip the scales in favor of legally binding collective agreements by means of a statutory presumption that written agreements were to be binding unless they contained express words to the contrary. Thus it might appear that rights disputes would increase and would require third-party intervention by way of settlement. In fact, these thoughts were wide of the mark. Trade unions opposed the introduction of the legally binding agreement, and employers, too, were not disposed to adopt what would be a radical change in attitude and practice. Although the Commission on Industrial Relations, in its *Annual Report for 1972,* did refer to several examples of the legally binding agreement, they were most unusual, and the old system was secured by the appearance in written agreements of the so-called "TINA LEA" clause (not a legally enforceable agreement). Thus the report in 1973 covers a situation that has not radically changed from previous years.

The Department of Employment Conciliation and Arbitration Service is said to be under a cloud because of trade union fears that governmental pressure has prevented a truly independent role. Indeed, the services of this body have been deliberately withheld on occasion when the offer made and rejected exceeded the amount the Government felt should be permissible under an incomes policy. Despite this suspicion, which may affect the more explosive and well-publicized dispute, the amount of work done by the service has increased, although the figures are minute. In 1973 there were just 62 disputes sent to arbitration. Of these, 50 were dealt with by the Department's list of single arbitrators, and four by boards of three arbitrators (usually the more important cases). The remaining disputes went to well-established permanent bodies—five to the Industrial Arbitration Tribunal and three to the Post Office Arbitration Tribunal. There have also been a handful of independent courts of inquiry.

It is worth noting here the figures of conciliation. In all, 866 disputes were dealt with by the Department of Employment Service. A large proportion—42 percent—were interest disputes (*i.e.,* pay settlement). Others involved trade union recognition (34 percent) and redundancy, dismissal, and discipline (13 percent). Only the last category clearly fell within the area of rights issues. It is interesting to note, in view of the somewhat strained industrial relations climate, especially between the trade unions

and the Government in 1973, that 53 percent of these references originated with the trade unions and 22 percent were joint.

Unfortunately it is impossible to estimate the number of "private" third-party settlements in 1973. No record is kept. Indeed, there is no machinery for discovering the extent of such work. The Commission on Industrial Relations is currently carrying out a survey of those known to work in this field, *e.g.*, those on the Department of Employment list. This can in no way be regarded as comprehensive, but it will certainly reveal a substantial part of the work that has been done. The figures again are tiny. The five years up to 1973 provided evidence of under 300 arbitrations, and a substantial proportion of these sprang from two established procedures—one of disciplinary notice on construction sites and the other on demarcation in shipbuilding. At least 120 of the 300 were generated in this way.

It may well be that the 1974 report may be of more interest. Two factors will ensure this: The major disputes—on the railway engine drivers' position on restructuring and the coal miners' wages—led to industrial strife in 1973. It is notable that both industries had procedures providing for third-party settlement. The train drivers' issue was finally referred to the appropriate machinery in 1974, but only after there had been considerable industrial disruption including the cessation of train service on several Sundays. The miners' dispute was settled more spectacularly. It led to a government refusal to breach incomes policy and a dissolution of Parliament followed by a general election. The return of a Labor Government meant a swift end to the strike since the incomes policy was not enforced.

The new Government has as one of its major features the establishment of an independent Conciliation and Arbitration Service. The idea is apparently to merge the Department of Employment's services with some of the functions of the Commission on Industrial Relations and set up a government-financed but independent service. The driving force behind this reform is the desire on the part of trade unions to have a body that might enable them to avoid the shackles of incomes policy in certain cases. They have clearly expressed a desire to return to free collective bargaining, and the new body is seen as part of this process. It is expected to be created late in 1974 so its shape should be clear in time for the next report.