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WORKS COUNCILS AND EMPLOYEE CONSULTATION IN AUSTRALIA

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18 September 2001

There could be no more appropriate setting for me to be addressing the issue of worker democracy than at a function organised by the Dunstan Foundation, in light of the enlightened position taken by Don Dunstan's Government more than 20 years ago.

As in so many things, Don Dunstan was ahead of his time in encouraging and sponsoring research into industrial democracy, through the Centre which he established, together with public and private sector initiatives to provide mechanisms for real employee involvement in the enterprises where they worked.

At that time it seemed that Australia could stand with the progressive countries of the world in recognising the significant stake which employees have in their workplaces, and the benefits which flow to all parties from their informed participation in consultative processes and decision-making.

Sadly, the promise of those early years has not been fulfilled. The last five years, in particular, have seen Australia go backwards in its commitment to worker rights generally, including the right to be consulted.

Australia has not had legislated provisions for employee consultation, although until 1997 awards generally included provisions, based on the 1984 Termination, Change and Redundancy test case, providing for employers to consult employees and their representatives once a firm decision had been taken about major changes in production, program, organisation, structure or technology which were likely to have a significant effect on employees.

While the award provisions represented the first legal obligation on Australian employers to consult with their employees and their unions, they had two significant weaknesses. The first was that the obligation was not triggered until after the relevant decision had been made, while the second was the lack of any structural mechanism by which consultation was to take place.

This meant, in practice, that consultation could amount to little more than the employer informing the union state secretary that a decision had been taken, leaving employees in a totally reactive position.

Many awards also contained provisions for consultative committees, as a result of the Commission's decision in its 1991 Wage Fixing Principles to make wage adjustments conditional on awards requiring enterprises to establish mechanisms for consultation with employees on matters affecting efficiency and productivity.

Inadequate as these provisions were, the effect of the Coalition Government's 1996 amendments to the Workplace Relations Act removing so-called "non-allowable" matters from awards is that awards no longer include any provision for workplace consultation or for consultative committees. All that remains is a minimal requirement in the Workplace Relations Act for employers who have made a decision to terminate the employment of more than 15 employees on grounds of redundancy to consult with relevant unions.

It is extraordinary that at a time when the European Union is extending its requirements for employers to consult with elected works councils from companies operating in more than one EU state to those operating in one country only, that Australia has gone backwards by repealing most consultation requirements.

Much of the pressure for these changes in Europe came about as a result of public outrage at companies making structural changes, such as closing down or relocating, without any consultation with the hundreds or even thousands of affected workers.

We take this kind of corporate behaviour for granted in Australia, with employees considered relatively lucky if their employers pay them their redundancy pay and accumulated entitlements.

The principle is simply that employers ought to acknowledge that the lives of employees and their families are largely dependent on decisions they make about the future of their businesses.

The outdated model of treating shareholders as the only legitimate stakeholders in a business has been increasingly discredited in favour of a view that the interests of customers, suppliers, employees and the community generally should be taken into consideration in corporate decision-making and that they should be consulted about decisions which could affect them.

The key questions in a debate about employee consultation are, first, what issues must be the subject of consultation and, second, with whom must the employer consult.

In relation to the first question, I say, unequivocally, that it is not enough for the process of consultation to kick in only after a decision has been made by the employer. Companies covered by the European Union Works Council Directive must regularly consult on issues including the economic and financial situation of the business, its likely development, probable employment trends, the introduction of new working methods and significant organisational changes.

On the second question, consultation should occur at the workplace level, although it is not necessarily to be confined to the workplace. Employee consultation should also take place at the corporate and industry level, as well. This could be through elected union delegates, directly elected committees or a combination of both.

The ACTU is not saying that unions should have a monopoly on consultation, but we are emphatic that consultative mechanisms should not be available to be used by employers as a means of minimising, or avoiding altogether, the role of unions in the workplace. In particular, consultative mechanisms are not a substitute for collective bargaining with unions.

There is some concern amongst unions that work councils or other consultative mechanisms will be used by employers as a means of bypassing unions. I share this concern in an environment where we have seen an unprecedented assault by a significant number of employers, strongly backed, if not incited, by the federal government, on collective bargaining and unionism.

It is hardly surprising that the current environment invites many workers to see no alternative to the ongoing bitter conflict between their employer and their unions. The idea of partnership between employers and employees looks like a pretty sick joke to workers who see employers set on destroying their collective bargaining ability while imposing unrestricted managerial prerogative in relation to fundamental issues like hours of work, and utilising every corporate law loophole to avoid legal entitlements.

The ACTU does however, recognise that union membership has been declining, particularly in the private sector, and that we need to ensure that all workers have access to basic rights and entitlements. In highly unionised workplaces, with active job delegates, for example, there may not be a need for an additional employee consultative structure. Our first priority is to ensure that delegates have the rights they need to properly fulfil their representative role.

In the face of employer attempts to replace collective employment relationships with individual agreements, mandatory consultative mechanisms at the workplace can assist in developing some collective organisational structure and culture—indisputably a positive development.

European experience, for instance, is that in unionised companies union representatives overwhelmingly win elections to works councils. This is not to say, however, that workplace level consultative structures don't present a challenge for unions. An analysis of works councils prepared for the Australian Services Union by the University of Newcastle's Employment Studies Centre, concluded that councils work most effectively where there is active union involvement, but that for unions to gain maximum benefit they need to focus on workplace organisation and the provision of information and expertise to council members.

Consultative structures at the workplace must be subject to a number of principles, to ensure that they are genuinely independent and cannot be misused by employers.

First, a works council or committee should be established only where it has been initiated by the workers themselves.

Second, the council should be either elected by the workers or consist of union delegates, or a combination of both. In any event, relevant unions should be entitled to participate in the work of the council.

Third, the council should be properly resourced by the employer, including meeting time during work hours and access to resources, including independent research and advice.

Fourth, the council should not become the representative body for collective bargaining in place of unions. In Germany, for example, 'co-determination' means that certain issues must be agreed with the works councils; however, in most countries unions negotiate pay and working hour agreements at the industry, sectoral or company level.

The debate about whether employees should have the right to establish consultative bodies, such as I have described, will no doubt continue in the union movement, in academic circles and amongst employers.

Labor has committed itself to removal of the restriction on issues included in awards to the so-called "allowable matters". Although the Democrats supported the removal of many provisions from awards in 1996, including those dealing with consultation, I would hope and expect that they will support their reinstatement.

The ACTU is currently considering mounting a case in the Industrial Relations Commission on matters of consultation rights and improved redundancy entitlements.

Any such case would give priority to:

- The right of employees and their unions to be consulted about changes in the workplace and the establishment of structures to facilitate such consultation.

- The obligation of employers to inform employees immediately once consideration commences on issues sch as closure, relocations, restructuring, outsourcing and the like.

This course of action is, of course, dependant on the Workplace Relations Act being amended to allow such an application.

In Europe, employers must meet on a regular basis with works councils established in accordance with the EU Directive, and provide them with relevant information about matters including the general state of the business, its future prospects and the existence of any plans or proposals which might have an impact on employment. While I am not advocating the simple adoption of any European model (and there are a number of models, with significant differences between them) the need for a similar approach in Australia is greater than ever. The tumultuous changes in employment structures and organisation resulting from the transformation of our economy to meet international challenges, leaves many workers bewildered, fearful and angry. Information, they say, is power, and it is critical that we address the relative powerlessness of workers whose lives are overturned by corporate decision-making about which they not only have not say, but do not even know until it's too late.

Employers in this country should have to give workers the facts about their future prospects and consult them about future plans and decision. However, I want to stress that consultation is only a first step towards providing a greater role for employees and their representatives in decision-making.

Some useful suggestions have been made about ways in which, short of legislation, Government could encourage real employee participation, including tax relief, preferential consideration in awarding of government contracts or direct funding through a 'best practice' type scheme.

Certainly it is time for this issue to come onto the national agenda, so that we can work towards the industrial democracy for which Don Dunstan was a pioneering voice in this country.