

# Power put in unions' hands

Alan Wood | *September 10, 2009*

Article from: [The Australian](#)

**KEVIN Rudd has declared himself the only true inheritor of the Hawke-Keating economic reforms and the only national leader who can carry forward what he calls the great project of economic modernisation for Australia.**

It is a remarkably brazen claim for a Prime Minister who is presiding over the effective kneecapping of labour market modernisation in this country through his government's Fair Work Act, which came into force on July 1.

The modern era of deregulated Australian labour markets began three decades ago. And it started not with the Hawke-Keating government in Canberra but on the iron ore fields of Western Australia.

It began in July 1986, when the chief executive of Peko-Wallsend Limited, Charles Copeman, decided to sort out the union-dominated Robe River joint venture in which Peko had become the majority shareholder.

Copeman had to bear the brunt of a remarkable and at times literally violent onslaught by the unions, the ACTU, the WA state government, the state industrial tribunal, the Industrial Relations Club and prime minister Bob Hawke, who was in the unions' corner. He had little support from other Australian business "leaders" or Liberal politicians, who failed to see the importance of what he was doing.

Copeman's objective was to restore management's right to manage and to deal directly with its workers, instead of having Peko's business run and its profitability, or rather lack of it, determined by unions and their allies in industrial tribunals. Other mining companies, starting with Hamersley, followed.

Importantly, CRA, now Rio Tinto, successfully spread the battle to deal directly with its workforce to its operations across Australia, despite vigorous opposition from Bill Kelty at the ACTU and the Australian Industrial Relations Commission. This was extremely important as Australia expanded its role as a minerals and energy exporter.

And through the movement of former Rio Tinto industrial relations negotiators into other areas including telecommunications, banking and manufacturing, what Melbourne industrial relations barrister Stuart Wood calls the "Rio Tinto diaspora" spread more widely.

There were, of course, other important influences at work: globalisation; the dismantling of Australia's tariff walls and the floating of the exchange rate by the Hawke-Keating

government and Keating's introduction, after initially opposing it, of enterprise bargaining; the introduction of individual workplace agreements by the Court government in WA and Australian workplace agreements by the Howard government.

Unions and their tactics also had little appeal to a new generation of employees. As a result of all these influences the role of unions and their collaborators in industrial tribunals diminished substantially and was on a path to well-deserved irrelevance.

This is now being reversed by the substantial reregulation of labour markets being imposed by Julia Gillard's Fair Work legislation, which restores the role of unions, industrial tribunals and awards. Her supposed contribution to a modern labour market, her so-called award modernisation exercise, was never credible and is now degenerating into a destructive farce even the unions are beginning to whinge about.

But there is another section of her Fair Work Australia legislation that is only just beginning to attract some public attention: Division 8 of the act, which covers good faith bargaining. Over the next few years it will substantially expand the role of unions and the Fair Work Tribunal that replaces the Australian Industrial Relations Commission.

Along with other provisions of the Fair Work Act it gives the unions the key to the door of businesses large and small, and a rapidly growing number are finding the unions on their doorstep demanding the right to recruit members and engage in good faith bargaining.

Already Gillard's tribunal commissars are telling companies they cannot deal directly with their workforce, and much worse is to come. This much is clear from the experience of the US with good faith bargaining.

Wood, mentioned earlier, and Henry Skene, head of Arnold Bloch Leibler's workplace advisory practice, recently went to have a look at the US experience and it wasn't encouraging. If this is the future, it doesn't work.

Yet it is clear that Gillard's legislation has opened the way for that experience to influence decisions by Fair Work Australia on good faith bargaining matters.

Wood believes the legislation heralds a fundamental change in the way industrial relations have been practised over the last 20 years.

The key section of the Australian act, Section 228(1)(e), provides among other things that parties to good faith bargaining refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining.

According to Wood, this opens the door for a large body of US and international law to apply here, including a US prohibition on refusing to bargain. And despite a provision in the Gillard act that it does not require parties to good faith bargaining to make

concessions, US experience makes it clear that firms will be forced to bargain with unions.

US experience also suggests good faith bargaining will reverse the switch over the past 20 years to firms bargaining directly with their employees outlined earlier, and this is already happening.

Good faith bargaining was introduced by president Franklin D. Roosevelt in the US in the 1930s, but in 1947 the legislation was amended to allow US states to opt out. At the last count 22 states had done so, and been rewarded with a significant shift of industries from the states with good faith bargaining to those without it.

In Australia, companies will have nowhere to go, and the discretion provided to Fair Work Australia commissioners under the good faith provisions is huge, a virtually open-ended power. The history of arbitration in this country tells us that over time this will allow Fair Work Australia and the unions to expand their power and influence in ways that take us back to an earlier era.

Steve Knott, chief executive of the Australian Mining and Metals Association, which covers the industry where the modernisation of the Australian labour market began, described the Rudd government's industrial relations legislation to *The Australian* as the biggest increase in union power since Federation.

Even if you think this an exaggeration, Rudd's approach to the labour market hardly suggests he is the safest pair of hands in which to place the great project of the economic modernisation of Australia. If he were serious, he wouldn't have a 652-page act to reregulate the labor market.