

# Australian Federal Court decision sets the stage for further spread of non-union contracts

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Australian Federal Court judge Susan Kenny handed down a decision on January 10 upholding the right of the giant mining and steel corporation BHP to offer individual non-union contracts to workers at its iron ore operations in the Pilbara region of Western Australia.

Even though the ruling will be appealed by Australian Council of Trade Unions (ACTU), it heralds a significant shift in Australia's industrial relations, bringing to a close a period in which large employers relied primarily upon agreements with unions to deliver sweeping changes to working conditions.

There have been previous attempts by major companies to impose individual contracts—the most notable being the move by mining giant CRA in 1994 to sign over the remaining 75 union workers at its Weipa operations in northern Queensland. But until now, the unions have been able to use legal action or reach deals with employers to restrict individual contracts to particular companies.

The court case mounted by BHP is the first broad challenge to the trade unions' collective bargaining rights using the provisions of the federal government's Workplace Relations Act. Kenny's ruling sets a legal precedent clearing the way for other employers to marginalise the unions or possibly remove them altogether from their workplaces.

BHP offered individual contracts to its employees after the 1999 collapse of its plans to merge its WA iron ore operations with those of Rio Tinto, its main rival. Rio Tinto, which has long employed its workforce at Hamersley Iron Ore on such contracts, objected to BHP's workplace arrangements, claiming that union involvement reduced productivity by 20 to 30 percent.

The unions took their dispute with BHP to the Federal Court last year, winning an interim injunction barring the company from offering further individual contracts. The

union argued that the BHP had breached the “freedom of association” provisions of the Workplace Relations Act by offering incentives to entice workers to leave the union.

Kenny ruled that while BHP clearly wanted to “rid itself of collective union structures,” it had not breached the Act because there was no intention to prevent workers from being union members. She made it clear that companies were not bound to negotiate with unions on wages and working conditions even if they employed union members.

BHP unions will next week ask the Federal Court to extend the interim injunction against BHP pending an appeal. But BHP Iron Ore chief Graeme Hunt said the company was confident Kenny would reject the request. “Our intention is as soon as the injunction is lifted we will re-offer workplace agreements,” he said.

BHP's victory is certain to encourage other companies to follow suit. First cab off the rank is likely to be the Commonwealth Bank of Australia, which was prevented from offering individual contracts to its 22,000-strong workforce last year by an interim injunction. “The BHP decision on a preliminary reading supports our view on life and is very encouraging for us,” CBA deputy general manager John Matthews commented.

Other major banks will follow. An ANZ spokesman said last week that the bank was considering the extension of non-union contracts to its 16,000 employees after successfully signing up 4,400 managerial staff over the last few months.

The media and the government enthusiastically greeted the Federal Court decision. An editorial in the *Australian* proclaimed: “Mark down January 10, 2001, as a day Australian industrial relations took a big step into the modern world... [S]trong arm tactics have been returned

to where they belong—in the strike-torn daze of the last century.”

Outgoing Workplace Relations Minister Peter Reith said Kenny's decision would now “encourage other employers to follow to do the same” because “individual arrangements had now been endorsed at the senior levels of corporate Australia”. Reith had been actively encouraging employers to use the Workplace Relations Act to press ahead with non-union contracts.

The reliance of the unions on the courts to stem a further exodus of members reveals the inner decay of these organisations. They no longer command the active support of broad sections of workers, even in industries such as mining that were previously considered union strongholds. In the not so distant past, workers would simply not have accepted individual contracts and would have fought any encroachment on union rights.

After two decades of systematic attacks on jobs and working conditions, often with the complicity if not direct support of union officials, many workers now view the trade unions with hostility and contempt. In the 12 months to February 2000, overall union membership in Australia dropped a further 2.7 percent to just 25.7 percent of the workforce—down from 40 percent in 1990. In the private sector union membership stood at only 19.6 percent as against 31 percent a decade ago.

More than 600 of BHP's 1,000-strong workforce in the Pilbara iron ore mines have already signed up to individual contracts despite the protests of the union. While management no doubt employed threats and petty bribes to get its way, many workers see little difference between management and the unions—except that in the latter case they are forced to hand over hundreds of dollars in union fees.

In the 1980s and 1990s, particularly under the Hawke and Keating Labor governments, the trade unions increasingly operated as an arm of management, enforcing the destruction of jobs and conditions in the name of “competitiveness” and “productivity”.

In fact, a 1986 industrial dispute at Robe River in the Pilbara marked a key turning point in the transformation of the unions. With the backing of major sections of big business, the mining company Peko-Wallsend launched a frontal assault on so-called restrictive work practices—all the trade demarcations, job-controlled rosters and shift restrictions won by workers in years of struggle.

The ACTU not only betrayed the Robe River workers but in 1987 enshrined the demands of employers for the dismantling of conditions in its manifesto *Australia*

*Reconstructed*. Since then, through award restructuring and enterprise agreements the union bureaucracy has bent over backwards to meet corporate requirements and to ensure itself a continued place within the industrial relations framework. In the course of the latest dispute with BHP, the ACTU sought to assure the company that the unions could meet its demands for productivity and flexibility.

BHP is not turning to non-union contracts because it is organically hostile to the trade unions. In the past, BHP management has collaborated closely with the unions to implement the cutbacks to jobs and conditions it wanted and was labelled “union friendly” by the ACTU. But under conditions of intensifying competition, management regards the process of working through the union leadership with its protracted negotiations, job meetings and arbitration procedures as far too cumbersome and time-consuming.

Especially in capital-intensive industries such as mining, managements require total flexibility in working hours and labour deployment to slash costs and match the ever-changing international benchmarks required to maintain a competitive edge. An article in the *Australian Financial Review* last weekend summed up Rio Tinto's advantages over BHP as follows: “In short, at Hamersley managers had unfettered prerogative. They could introduce whatever changes they saw fit to meet the needs of the business without having to negotiate with anyone.”

The ACTU has responded to the Federal Court decision with a good deal of empty bluster. An ACTU spokesman said the unions “were adamant that the battle for a collective agreement at the Pilbara will now resume”. Any campaign that is launched will have nothing to do with defending the jobs and conditions of workers but will be aimed at securing a continuing role for the trade unions in enforcing the demands of management.



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