Australia: Unions to police Labor's new, employer-friendly industrial laws

Terry Cook
29 April 2009

Amid a wave of retrenchments, closures and imposition of short-time working, the Rudd Labor government's Fair Work Act was pushed through parliament last month and will come into operation on July 1.

Refined over many months in closed-door consultations with leading employer associations, the laws will be used by the government, employers and unions in an escalating attack on jobs, wages and working conditions as the global economic crisis worsens.

Far from dismantling the Howard government's hated "Work Choices" laws, which became a major factor in Howard's defeat at the 2007 federal election, the Fair Work Act enshrines all their core elements. These include provisions that outlaw strikes and every other form of industrial action, except during a limited bargaining period, over the terms of new agreements at individual enterprises.

Under Labor's laws, workers who take action over job cuts, shut-downs and attacks on social conditions as the recession deepens will face harsh disciplinary and legal action. Even in the case of legal (or "protected") action over new enterprise agreements, workers will be forced go through a protracted process, including holding a secret ballot with 50 percent or more voting in favor.

Also retained are the notorious secondary boycott provisions that prohibit workers taking solidarity action. Breaches of these provisions carry jail terms and massive fines for both unions and individual workers.

The new laws will enable the government to block even "protected" industrial action in what it deems "essential services" and also empower its newly-formed Fair Work Australia (FWA) to do likewise on a broad range of pretexts, including "threatening to cause significant industrial harm to the employer" and "significant damage to the Australian economy". Industries such as mining, aviation, power generation and transport are likely to be considered "essential industries".

Workplace Relations Minister Julia Gillard has already signalled the government's readiness to use the laws to back employers. When transport unions recently raised the possibility of preventing the movement of machinery from plants being shut down by garment maker Pacific Brands, Gillard declared the action would be "illegal" under Labor's laws and that the unions concerned would face hefty penalties.

Also preserved until 2010 is the Australian Building and Construction Commission (ABCC), the Howard government's building industry policing agency, with its extensive powers to crack down on industrial action and to harass and penalise building workers.

After 2010 the ABCC's punitive powers will be handed to a specialist division of FWA for at least five years. These include the right to haul workers in for closed-door interrogations where they can be forced to give information under threat of imprisonment. While penalties for "unlawful" industrial action in cases brought by ABCC will be eased, building workers will still face fines of $6,600 and unions $33,000.

Some sections of employers raised concerns that provisions allowing the FWA to intervene in disputes and impose binding "workplace determinations" could mean a return to "last resort arbitration", which used to operate through federal and state industrial courts. The system legally enshrined unions as labour bargaining agencies

and sometimes involved lengthy procedures before the unions could impose a court-ordered "settlement" on workers in dispute.

The legislation makes clear, however, that the FWA will use its determination powers to end "protected industrial action" that has become protracted or is having a "particularly negative or dangerous impact" on a company or enterprise.

Also triggering employer complaints were Fair Work Act provisions allowing low-paid workers to engage in multi-employer bargaining. Their concern was that the measures could open the way for wider moves to establish industry-wide agreements, thus undermining the system of enterprise bargaining.

Enterprise bargaining was introduced by the Keating Labor government in the 1990s, with the support of the Australian Council of Trade Unions (ACTU), to put an end to industry-wide bargaining and nationally-coordinated industrial action. As part of the Labor-ACTU program to "make Australia internationally competitive", workers were reduced to negotiating on a plant-by-plant basis, pitting them against each other in an endless cycle of cost cutting.

Gillard reassured employers that Labor would "crack down" on any move to undermine the enterprise bargaining system and emphasised that the new laws will prohibit low-paid workers from taking any kind of industrial action whatsoever.

Another bone of contention for employers was the abolition of the Howard government's Australian Workplace Agreements (AWAs)—non-union individual work agreements—which were used to dismantle longstanding core conditions such as penalty rates and shift allowances.

Gillard addressed these fears by permitting existing AWAs to operate until December 31, 2012. Workers can also be forced onto Individual Transitional Employment Agreements and common law contracts that strip away basic conditions, including penalty rates and travel allowances.

The Fair Work Act attacks workers' ability to challenge unfair dismissals, giving employers with fewer than 15 employees the right to sack them with impunity within 12 months of hiring.

The Rudd government has promised to continue to refashion its laws to suit the changing requirements of big business. Last week, when an OECD report claimed that ending Work Choices may lead to "higher entry wages" for unskilled young workers, Gillard's spokesperson said Labor had retained the system of paying youth wages well below adult rates of pay and "was committed to a review the effects of its [workplace] laws every two years".

Provisions in the Fair Work Act shifting the emphasis to collective and "good faith" bargaining have been heralded by the ACTU as an "historic moment in restoring workers' rights". Their real purpose is to return the unions back into the very centre of industrial relations as the system's key enforcers—reprising the treacherous role they played under the Hawke and Keating Labor governments from 1983 to 1996.

The unions proved their readiness to act as Rudd's industrial police force in April 2007, when they voted for the new workplace regime's anti-strike provisions at Labor's national conference. In return, Rudd and Gillard made slight modifications to restrictions on their right to enter workplaces. Union officials can now enter sites where workers are eligible for union membership and ask to view wage records, but only if there is a suspected "contravention of a workplace agreement, award or the Act". But they must still apply for a permit and give extensive notice to employers. Moreover, they cannot discuss with contractors, and will face heavy penalties if they divulge any information obtained during entry.