“Fair Work Australia”: A union-enforced straitjacket on workers

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It is nearly two years since former Prime Minister John Howard’s government was defeated in an electoral landslide, in no small part due to opposition to its hated “Work Choices” laws, which helped employers impose individual contracts on workers.

Workers were led to believe—or at least hope—by their unions that “your rights at work” would be restored by electing a Labor government. However, they are beginning to discover, to their shock, that as soon as they try to exercise their basic right to strike, the unions are now enforcing legislation that goes far beyond Howard’s in outlawing virtually all strikes.

* Striking Melbourne Westgate Bridge construction workers were betrayed by their unions amid threats of massive fines and slanderous accusations of thuggery by Deputy Prime Minister Julia Gillard (see “West Gate employer uses Rudd government’s new laws to attack workers”).
* Western Sydney bus drivers who walked off the job to fight new timetables found themselves under immediate attack by the mass media, the industrial courts and their union, which pushed them back to work within six hours (see “Union, courts and media team up against bus drivers’ strike”).
* Victorian paramedics attempted to fight an enterprise agreement sell-out by their union, only to discover that even resigning from their positions was “unprotected industrial action” that could trigger massive fines (see “Ambulance union sells out MICA paramedics’ campaign”)
* University staff who joined “day of action” stoppages on September 16 were instructed by their union not to ask other workers to honour their picket lines, so as not to infringe the Rudd government’s laws (see “Behind the ‘day of action’: Australian university union enforces government agenda”).

Now, 34,000 Australia Post workers have been told that they cannot vote on taking industrial action, even after their management stalled negotiations on an enterprise agreement for more than 18 months by refusing to budge on cuts to penalty rates, loss of take home pay, full-time jobs cuts and unsafe work practices.

On September 7, the Rudd government’s new national industrial tribunal—Fair Work Australia (FWA)—cancelled a proposed national ballot of Australia Post workers. It ruled that the Communications Electrical Plumbing Union (CEPU) had not been “genuinely trying to reach agreement” as required by the new Fair Work Australia Act, which came into operation on July 1.

Although FWA has not yet published the reasons for its decision, Australia Post won the case by simply citing a union resolution that said further negotiations with the company would not be productive. The management pointed out that the “good faith bargaining” provisions of the Fair Work Act required parties to meet and attend meetings at reasonable times.

The CEPU response to the FWA ruling typified the role played by the unions. There was not the slightest protest by the union, or any other section of the union movement. Instead, CEPU national president Ed Husic said the union was considering its legal options. Then, without consulting its members, the union presented Australia Post with a revised draft agreement—the details of which workers have not been told—and appealed for immediate negotiations.

The FWA ruling demonstrates the immense legal obstacles that the Labor government, with the full backing of the unions, has erected to prevent workers from exercising their fundamental democratic right to strike. Even after a workplace agreement has expired, workers must apply to FWA for a postal ballot, and the tribunal can easily refuse.

The union leaders all voted at Labor Party and Australian Council of Trade Unions (ACTU) congresses for the “Fair Work” laws. The overriding aim of the laws, to which the unions have subscribed, is to suppress all industrial action and tie workers completely to the profit and productivity requirements of the big business.

Section 3 of the 652-page Fair Work Act states that its object is “to provide a balanced framework for cooperative and productive workplace relations that promote national economic prosperity and social inclusion for all Australians”. Alongside lip service paid to “fairness,” the Act’s criteria are “flexible for businesses, promote productivity and economic growth”.

Industrial action outlawed

Industrial action—which includes partial stoppages, go-slows, overtime bans, work-to-rules and, as the paramedics found, even mass resignations—is banned except during limited bargaining periods for enterprise agreements. This prohibition is not new—it was first introduced under the last Labor government, that of Paul Keating, in 1993.

What is new is that workers cannot take any action, even for the most pressing or long-overdue claims, unless they first prove to FWA that they have participated in “good faith bargaining”. This requirement not only outlaws independent (so-called “wildcat”) action by workers. It bolsters

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the positions of the unions, which have official FWA status as bargaining agents, and reinforces the role of FWA, which has far-reaching powers to block or halt industrial action.

Among other things, workers or unions must participate in meetings with management, disclose relevant information, give reasons for rejecting management demands and refrain from "capricious or unfair conduct". Then they must give the employer notice of an application for a postal ballot, usually conducted by the Australian Electoral Commission, a complex process that may take several weeks.

To get a ballot, workers must prove that they are seeking an industrial agreement covering only "permitted matters" relating directly to their employment. They cannot pursue demarcation disputes or rights in a new ("greenfields") workplace or engage in "pattern bargaining" ("seeking common terms to be included in two or more enterprise agreements").

Action in solidarity with other workers, or over broader economic, social or political issues, is prohibited. Qantas workers cannot strike over the multi-million dollar salary and retirement packages enjoyed by their bosses, electricity workers cannot fight privatisation and no-one can black ban supplies to the war in Afghanistan. There can be no walkouts against budget cuts, mass sackings or police attacks on workers. It is also unlawful to demand strike pay.

While these matters are not "permitted," all enterprise agreements must contain an "individual flexibility arrangements" clause. That is, workers cannot strike without also agreeing to adopt a clause designed to deliver employers the kind of "flexibility" they were promised by "Work Choices"—the power to deal with workers individually to scrap basic conditions.

If no agreement is struck, FWA can issue "bargaining orders" to force workers to negotiate further, or it can make binding "workplace determinations"—a form of compulsory arbitration.

Even if a ballot is permitted, and more than half the eligible workers vote, by a margin of more than 50 percent, for specified industrial action, this mandate lasts only for 30 days, unless industrial action actually occurs during that period.

FWA has extensive powers to block or terminate industrial action, either to impose a "cooling off" period or if the action could:

* cause "significant economic harm to the employer"
* "threaten the life, safety, health or welfare" of a part of the population
* "cause significant damage to the Australian economy or part of it"
* do "significant harm to a third party" (for example disrupt supplies or cause economic loss to another company)

These provisions can halt strikes that in any way disrupt production, affect the wider profitability of the Australian corporate elite or inconvenience a member of the public.

If FWA does not intervene quickly enough, the Workplace Relations Minister, currently Julia Gillard, can exercise the same powers via a Ministerial Declaration. She can also direct workers to perform nominated tasks.

Although labelled a tribunal, FWA is more like an industrial court, combining the powers of the Workplace Authority, Australian Industrial Relations Commission and Australian Fair Pay Commission. Breaches of its orders can lead to fines of up to $6,600 for individual workers or $33,000 for unions.

Both the Federal Court and the Federal Magistrates Court can also issue orders and injunctions, breaches of which could see workers jailed for contempt of court. Each court is setting up a specialist Fair Work Division.

These punitive provisions extend to organisations or political parties that advocate industrial action, even if part of a political campaign. It is an offence to "advise, encourage, incite or coerce" or "aid, abet, counsel, procure, induce, conspire" or be "knowingly concerned with" breaches of the Act.

The union bureaucrats have welcomed the fact that the legislation officially re-entrenches their role as industrial policemen over the working class, backed by a partial return to compulsory arbitration, a system that was used in Australia throughout the twentieth century to suppress independent working class struggle.

Union membership has crumbled to 14 percent of private sector employees (down from around 50 percent in the 1970s), primarily because of decades of cooperation with employers and governments in the destruction of the jobs and conditions of their members.

The Fair Work Act, however, specifies that workers who are still union members will automatically be represented by their union, unless they revoke the union's status as their representative. Unions are also given expanded "entry rights" to visit workplaces to sign up members.

In other recent decisions, FWA has confirmed that employers can by-pass unions and impose agreements directly on workers in non-union workplaces. But many large companies, including Telstra and the banks, have drawn the conclusion that it is more fruitful to utilise the services of the unions.

Hawke and Keating's legacy

Rudd's union-enforced laws are the culmination of a protracted process involving mounting attacks by Labor and the unions against the basic democratic rights and social position of workers. During the ACTU's prices and incomes Accords with the Hawke and Keating governments from 1983 to 1996, the unions actively broke strikes, quashed resistance to punitive fines, removed recalcitrant union delegates and dismantled shop committees.

Like unions around the world, confronted by the globalisation of production, their role was transformed from seeking to extract concessions from employers within the framework of a nationally-regulated economy to one of imposing the demands of employers on their members in order to make Australian corporations "internationally competitive". The ACTU's blueprint, titled *Australia Reconstructed,* was adopted in 1987.

This pro-business agenda required the crushing of all resistance by workers. The record includes the ACTU's collaboration in the imposition of massive fines and legal costs against the meat workers union in the 1985 Mudginberri abattoir dispute, the 1986 de-registration and smashing

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of the Builders Labourers Federation, the use of the military to break the 1989 pilots' strike, the sellout of the 1993 APPM strike and the betrayal of the 1998 waterfront dispute, which resulted in the elimination of hundreds of jobs.

Now, amid a new wave of job destruction, cuts to hours and conditions, casualisation and social spending cuts produced by the greatest global economic breakdown since the 1930s, the Fair Work Act has formalised and cemented the part assigned to the trade union leaderships.

The experiences of the Westgate workers, bus drivers, paramedics, university staff and Australia Post workers have already demonstrated that as workers come into conflict with this "Fair Work" straitjacket—as they inevitably will—they will be confronted immediately with the necessity for not just industrial action but a political struggle against the Labor government and the unions.

The defence of the most elementary rights of the working class for jobs, decent working conditions and living standards now raises the necessity of a rebellion against the Labor and union apparatuses. Such a struggle can only be based on an opposed perspective—the socialist reorganisation of society on the basis of social need not capitalist profit.

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