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ARTICLES

LEGISLATION AND DECISIONS AFFECTING INDUSTRIAL RELATIONS

INDUSTRIAL ARBITRATION ACT (N.S.W.)

"ADVOCATUS"

Sydney

A NUMBER of significant amendments to the abovementioned Act were made by the Industrial Arbitration (Amendment) Act 1964, assented to on 16th October, 1964.[1] The most important amendments, directed to matters concerning the basic wage, the effects of automation, and the procedures to be adopted when employees are on strike, are noted below.

BASIC WAGE

New South Wales has now abandoned the system of quarterly adjustments to the basic wage based upon the movement of the Consumer Price Index numbers.[2] The basic wage for adult male employees under State Awards and industrial agreements is now fixed by the Act at £15/15/-, bringing it into line with the Federal Basic Wage for Sydney, and no further adjustments are to be made in accordance with fluctuations in the Consumer Price Index numbers. The Act provides that whenever the Commonwealth Conciliation and Arbitration Commission varies the Federal Basic Wage for Sydney, that variation will take effect, as from the same date, in State awards and agreements.

Appropriate provisions are made for the alteration in like manner of the basic wage for adult females which is calculated at seventy-five per cent of the basic wage for adult males. As a result of earlier amendments in 1958 relating to equal pay for the sexes, many female employees are already entitled to receive the adult male basic wage.

This brings to an end the chapter which commenced in 1955, some two years after the Commonwealth Conciliation and Arbitration Commission abandoned quarterly adjustments of the basic wage. When the Commonwealth Commission took this course in 1953,[3] the N.S.W. basic wage was directly related to the Federal basic wage and quarterly adjustments were also discontinued in N.S.W. In 1955, the N.S.W. Act was amended to increase the State basic wage to the level which it would have reached had the quarterly adjustments continued, and to provide for future adjustment at quarterly intervals in accordance with movements in the C Series Retail Price Index numbers.[4] When the Commonwealth Statistician ceased to provide that index in 1961, the Act was further amended to provide for quarterly adjustment of the basic wage in accordance with movements in the Consumer Price Index numbers.

It is interesting to note the way in which the N.S.W. basic wage, which was adjusted quarterly in respect of price index movements only, tended to move in comparison with the Federal basic wage for Sydney, which was adjusted at longer intervals in accordance with the decisions of the Commonwealth Conciliation and Arbitration Commission. The N.S.W. basic wage was 10/- ahead of the Federal basic wage for Sydney in November, 1955, and remained 10/- or more ahead until August, 1957, with a

peak in November, 1956, when it was 21/- ahead. From August, 1957, until June, 1959, it remained ahead, but by less than 10/-. From June, 1959, until February, 1960, it was less than the Federal figure, but drew level again in February, 1960. From May, 1960, until June, 1964, it was ahead of the Federal figure, but in only three of the seventeen quarters over that period was it more than 10/- ahead.

The present amendments relating to basic wage were given retrospective operation to the date upon which the Commonwealth Commission granted a £1 increase in the Federal basic wage, that is, the commencement of the first pay period in June, 1964, and resulted in an increase of 10/- in the State basic wage in force at that time.

In accordance with these amendments, the decision in the forthcoming Federal Basic Wage Case, due to commence in March, 1965, will be applied, by virtue of the provisions of the N.S.W. Act to the basic wages in N.S.W. awards and industrial agreements.

AUTOMATION

The amendments include a new section 88G which requires that provisions relating to certain matters shall be inserted in an award or industrial agreement whenever application is made to the Commission, a Conciliation Committee or an Apprenticeship Council for their insertion. Except as noted below, the tribunal has a discretionary power to decide what provisions are appropriate to be inserted but has no discretion to refrain from inserting provisions relating to those matters.

The matters for which the tribunal must provide, on application being made, are as follows:—

(i) the obligations, duties and responsibilities of an employer upon the introduction of mechanization or technological changes;

(ii) the employees to whom notices of termination of employment are to be given in that event and the form, effect and consequences of such notices. (Those employees are to be entitled to receive not less than three months' notice and to be paid their ordinary rate of pay for the whole of the period of notice; and the period of the notice is to be counted as service for the purposes of long service leave and annual holidays);

(iii) the notifications to be given the Industrial Registrar, the Vocational Guidance Bureau and the Director of Technical Education;

(iv) such other matters as the tribunal deems relevant to or consequential upon the above matters.

The ultimate effect of these provisions will depend in large measure upon the meaning given to the words "mechanization or other technological changes," which are not defined in the Act. On one view, those words are capable of including the adoption of almost any labour-saving device or improved method of work, in which case they would cover a very wide field. On the other hand, it is clear that the provisions are intended to have a much wider application than that which might have been indicated by the word "automation" with its connotation of automaticity or the automatic performance of functions.

Different problems will also arise according to whether applications under the section are made in general terms to cover future mechanization or technological change introduced by any employer in the industry covered by the award or in specific terms in relation to particular changes or proposed changes as they occur. The determination of applications of the former kind will require a high degree of foresight.

Procedure Where Employees Are On Strike

Throughout the history of industrial arbitration in this country, consideration has been given to the question whether either party to an industrial dispute is entitled to seek an arbitrated decision in its favour whilst that party is endeavouring to force a settlement by trial of strength in the form of a strike or lockout. Some members of the various tribunals have adopted the view that "direct action" is incompatible with the processes of arbitration and that a resumption of normal employer-employee relations is a condition precedent to the taking of steps to settle the dispute. Other members have adopted the view that if there is a dispute, it ought to be settled, strike or no strike. In the main, however, the tribunals have tended to adopt a more flexible approach, urging and often requiring a return to work in order that the processes of conciliation and arbitration may be brought into action, but nevertheless being prepared to investigate and deal with major issues if that be necessary to procure a resumption of work. The Industrial Arbitration Act (N.S.W.), has now been amended so as to require an investigation of the merits of the dispute irrespective of whether or not the employees concerned in the dispute may be on strike.[5]

This requirement is reinforced by a provision which forbids the making of an interim order or award, even to preserve the status quo, unless the causes of and the circumstances appertaining to the dispute have been investigated and the tribunal is satisfied that all reasonable steps have been taken to effect an amicable settlement.[6]

A similar concept is involved in the amendments relating to the institution of proceedings under section 100 of the Act for a penalty to be imposed on a union whose members are taking part in an illegal strike. Such proceedings cannot now be commenced without the leave of the Industrial Commission of N.S.W. and leave is not to be granted unless the Commission is satisfied that the employer has not taken part in any lockout which has given rise to the strike, has notified the dispute to the Industrial Registrar, and has made a bona fide attempt to negotiate a settlement of the issue. Furthermore, leave is not to be granted unless the causes of and circumstances relating to the dispute have been investigated or adjudicated upon by the Commission or by another tribunal.[7]

On the other hand, it is no longer necessary for proceedings under section 100 to be instituted while the strike is actually in progress. An application may now be made within fourteen days after the cessation of the strike.[8] On occasions in the past, it has sometimes been necessary to open the office of the Industrial Registrar on a Saturday to receive such applications.

A further amendment provides that costs shall not be awarded in this type of proceeding.[9] Orders for costs have usually been made in the past and the amount of the costs has sometimes formed a substantial part of the total detriment suffered by a union upon conviction. Although this has, no doubt, been taken into account in assessing the amount of the penalty, it will now be possible to assess the appropriate penalty in a more direct fashion.

FOOTNOTES

1. Act No. 37, 1964 (N.S.W.).
2. *Ibid.*, new sections 61Y, 61Z, 61AA and 61AB.
3. Basic Wage and Standard Hours Inquiry, 77 Commonwealth Arbitration Reports 477.
4. Act No. 34, 1955 (N.S.W.).
5. Act No. 37, 1964 (N.S.W.), new section 25 (3A).
6. *Ibid.*, new section 25 (5A).
7. *Ibid.*, new section 101 (1).
8. *Ibid.*, new section 101 (2).
9. *Ibid.*, new section 101 B.

AUSTRALIAN TRADE UNIONISM, 1964[1]

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THE number of strikes occurring during the first nine months of 1964 was higher (12 per cent) than in the corresponding period of 1963, there being even greater increases in both the number of workers directly involved (72 per cent) and the number of working days lost (38 per cent). If this trend continued into the December quarter (the figures for which were not available at the time of writing), 1964 is likely to rank among the more notable post-war years in this respect, if only because of the number of workers directly involved in strikes which, for a nine-month period, was already greater than the corresponding *annual* figures for all but three years (1952, 1953, 1960) since 1945. In any event, 1964 is almost certain to turn out, in terms of all three categories, as being the industrially most disturbed year since 1960 at least. At the risk of appearing to oversimplify a complex pattern of events, it may be said that there were certain factors which were of more general importance than others in producing this situation.

In the first place, the economy was more buoyant than at any time since 1960; unemployment was low and there were serious labour shortages in many industries. The pressures on union leaderships to take advantage of these favourable circumstances for hard bargaining were intensified by events following the basic wage decision in June when the Commonwealth Arbitration Commission, which also rejected an employers' application for "total wage" hearings, awarded an increase of 20s. on the casting vote of the president.[2] Some price increases followed almost immediately, though they could not have materially affected the Consumer Price Index figures for the June quarter, which in any case showed an increase in the Australian average weekly cost-of-living of about 3s., the highest since the September quarter preceding the "credit squeeze" of November, 1960. Apart from widespread increases decided on by private concerns, the Commonwealth and, most notably at the state level, the Victorian budgets increased taxes and other charges in August and September. The all-capitals average of the Consumer Price Index for the September quarter rose about 4s. per week, the cost-of-living rise during April-September being greater than in any six-month period since 1956. Early in July, the Australian Council of Trade Unions called for Commonwealth action to stop "unwarranted" price increases, and threatened consumer boycotts, with the subsequent backing of the Australian Council of Salaried and Professional Associations (A.C.S.P.A.) and the High Council of Commonwealth Public Service Organisations (H.C.C.P.S.O.); and in September decided to apply for a compensating federal basic wage increase early in 1965, in response to which the National Employers' Policy Committee in December decided to make a fresh application on the "total wage" question.[2] In September also, there were two unusually large demonstrations, the first involving 4,000 and the second 15,000 unionists, outside the Victorian Parliament in protest against price rises sponsored by the state government. The numbers involved testified not only to left-wing organisational skills (important as these undoubtedly were) but also to the existence of a genuinely felt grievance about the swift erosion of the basic wage rise.