Workers, employers mobilising for war

Get ready for the next union onslaught, warns **Alan Kohler**. At stake are not just the enterprise bargaining system, but also the health of the economy.

There are now just 38 days to go until Campaign 2000 bursts upon the Victorian manufacturing industry. Don't be lulled by the lack of an obvious build-up and the fact that the only sound so far has been the rattling of sabres.

This is an industrial war that will start on July 1 and no earlier. After two years of careful planning by the manufacturing union, led by Doug Cameron and the apparently re-elected Craig Johnston, most enterprise agreements in the Victorian manufacturing industry have a common expiry date of June 30, 2000. Industrial action before that date would be unprotected and therefore unlawful. After that date it is likely that there will be industry-wide strikes and bans.

For the rest of the country the relevant date is June 30, 2001, so the next 12 months in Victoria will be a precursor to a national manufacturing industry campaign.

In Victoria the industry log of claims has been with the Australian Industry Group, representing manufacturers, for a few months, but it has refused to negotiate. Thus the rules of engagement have been set and tension is rising. The parties are using the quiet before battle to clean weapons and drill troops.

It is difficult to overstate the importance of the struggle that is now a bit more than a month away. Not only is the enterprise bargaining system at stake, but also low inflation and, as a result, the health of the economy.

Industry-wide – as opposed to enterprise – bargaining generally involves fewer productivity trade-offs and more straight-out muscle, which means wage rises tend to flow more directly to costs and prices.

The combination of GST and Campaign 2000-2001 over the next 12 months will be very dangerous indeed for the economy.

The Federal Government's preparation involves a new IR bill introduced by the Workplace Relations Minister, Peter Reith, a week and a half ago. This is a watered down version of the "More Jobs Better Pay" bill – the so-called "second wave" IR legislation that was knocked back by the Senate. The new one looks like getting through the Senate before the crucial date of July 1.

One of the basic problems has been the failure of Section 127 in Peter Reith's IR reforms of 1996 to fully protect companies from illegal industrial action – that is, action outside the protected period for negotiating an enterprise agreement.

Section 127 gave the Industrial Relations Commission power to make orders stopping an action and the Federal Court could enforce them by injunction, theoretically putting a union official who defied the orders in contempt of court.

But in a paper published two weeks ago, barrister Stuart Wood QC says these reforms have been largely unsuccessful for two reasons: the attitude of the unions and the attitude of the Federal Court. Essentially Wood argues that unions have simply defied section 127 orders and got away with it, and the Federal Court has, in several ways, subverted the effect of the law – especially in Victoria.

According to Wood, those include such things as the distinct reluctance of a few judges in the Federal Court to grant interim relief, an overly technical approach, dealing with applications slowly, accepting unions' assurances that they will take protected action in future and giving primary consideration to the unions' bargaining position when considering the balance of convenience.

Testing times ahead . . . It's more than likely that a union-led industrial war will erupt after July 1. Photo: STEVEN SIEWERT

Eighteen months ago employers reacted to all this by trying to move cases to the Victorian Supreme Court and seek relief under common law, or economic tort. The unions responded with "anti-suit" injunctions in the Federal Court, with the court using "accrued jurisdiction" to override the Supreme Court's power.

The unions have won seven anti-suit injunctions, starting with the CEPU v Telstra in August 1998. The process reached a high-water mark on February 22 this year in the building industry dispute between the construction union and Mirvac.

On that morning, three construction firms got an injunction from Mr Justice Beach in the Victorian Supreme Court prohibiting an unlawful strike. Just six hours later the unions obtained, without evidence, an *ex parte* stay of that order from Justice Marshall in the Federal Court.

Justice Beach was so affected by this, apparently, that just a week ago he simply refused to make a similar order for Gordon & Gotch.

An important part of Peter Reith's new IR bill, tabled the week before last, is called an "anti-anti-suit" provision, and provides legislative protection for companies to take action in the Supreme Court under common law. But the key provisions in the bill give greater powers to the Industrial Relations Commission to deal with pattern bargaining. If the bill becomes law, the commission will have the power to declare industrial action in support of pattern bargaining illegal. It can order a cooling-off period and it must deal with applications concerning unprotected action within 48 hours.

In essence, Reith has expanded the definition of illegal action to include pattern bargaining (as defined by the commission) while preserving the right of employers to go to the Supreme Court to get common law damages.

Despite it all, it will be a testing time for manufacturing executives and owners and the AIG. The new laws will probably help, but Campaign 2000 will be won or lost in the field and the unions have prepared well.