

Wednesday, 30 August 2000

The Secretary: John Carter
The Senate
Parliament House
Canberra ACT 2600

Dear John

I am making a submission into the secret ballot legislation in light of our recent experience for a secret ballot application in AIRC.

Denso Manufacturing Australia Pty Ltd lodged an application pursuant to section 135-(2b) and/or section 135 (1) of the Workplace Relation Act on the 16th August 2000.

The application was made in relation to our present negotiations with the AMWU Victorian Branch for a new enterprise agreement, under the shadow of Campaign 2000. The purpose on the application was to encourage a secret ballot amongst our employees for a company proposal to settle our enterprise bargaining negotiations for the making of a new agreement. The thrust of the secret ballot was also to measure the resolve and view of our employees to the company proposal.

During our negotiations, the union has refused to engage in a secret ballot of their members preferring to use a show of hands when voting. The show of hands approach can be intimidating to employees that may wish to view their opinion in favour of the company proposal or against a union position. It is this form of intimidation that prevents people from voicing their true opinion at union mass meetings. Unions do not prefer secret ballots because it may limit their psychological influence when key decisions are being voted on.

The company was unable to secure a direction from the AIRC for a secret ballot. The informal reason, or my opinion, for this outcome is that commissioners of the AIRC view secret ballots as a last resort, to be used in assisting in the resolution of a protracted and lengthy dispute. A good example of this was the Toyota dispute of 1999. Only, after approximately 3 weeks of bans and strike action did the commissioner grant a secret ballot to vote on a company proposal for the making of a new enterprise agreement. Just scepticism in the way unions conduct their meetings and voting on particular matters is not enough evidence that a secret ballot is warranted. However, the commission's reasons for not granting a secret ballot go beyond just scepticism, in that the possibility or the threatening of industrial action by unions is also not always sufficient reason.

This is where I draw the weaknesses of the legislative provisions for secret ballot. Commissioners are “in law” not provided with enough security or strength to use these provisions more creatively or with greater effect. There are three areas where this may assist as follows:

- To prevent possible or threatened industrial action occurring
- Where an employer believes intimidation could be occurring during voting by unions on key matters
- Whilst bans or strike action is in place, no protected action is available whilst an application for secret ballot has been lodged

A key matter could be to decide on a company proposal for the making of a new agreement or to prevent strike action during the negotiation of an enterprise agreement. This usually occurs during protected action.

Perhaps one way of ensuring secret ballots can be more effective is to include wording in the Workplace Relations Act that allows companies to have access to one secret ballot during protected action, to vote on the making of a new agreement. This way it is specific and not subject to challenge by union or to interpretation by commissioners. The secret ballot provisions also need to be stronger as a preventative tool rather than reactionary. That is, a tool that can assist in the prevention of possible or threatened disputes rather than being seen as a last resort during protracted industrial action.

Companies should not have to undergo serious pain and disruption to its operations before relief can be sought realistically in the AIRC, through the granting of secret ballot provisions. There are instances where testing the view of employees early in the negotiation phase for an enterprise agreement may prevent a serious dispute occurring in the first place. By testing the resolve of its employees, companies can also modify their proposal or views to settle an enterprise agreement more readily.

Yours sincerely

Anthony Ranieri
Human Resources Manager