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A DECADE OF EXPERIENCE

Life under WA Workplace Agreements.
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July 2005

LHMU members at Swan Districts Hospital campaign against workplace agreements and contracting out during the WA "3rd wave campaign", 1997

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A DECADE OF EXPERIENCE WITH WORKPLACE AGREEMENTS

In the decade following the passing of the Court Government's Workplace Agreements Act in December 1993, members of the Miscellaneous Workers' Union in WA bore the brunt of this legislation.

This document pulls together the experience of workers across a range of industries and clearly demonstrates the impact of workplace agreements which in the experience of our members was overwhelmingly :

- to reduce wages and conditions
- to de-unionise a workforce

In W.A. individual contracts were secret documents that legally only had to comply with the Minimum Conditions of Employment Act. The provisions of the W.A. Act were significantly inferior to those contained in the major awards which applied in W.A. For example :

- standard full-time working hours were increased from 38 to 40 despite the acceptance by the AIRC of 38 hours as the standard since 1983;
- the accepted minimum casual loading of 20% was reduced to 15% (where the 15% loading was paid there was no obligation on the employer to meet any other "minimum conditions" of the Act)
- junior rates applied up to the age of 21 years of age
- the accrual of unused sick leave from year to year was removed
- penalty loadings for weekend or shiftwork did not exist

and the minimum award wage was set by the Minister not the Industrial Relations Commission. (The Labor Government has subsequently increased the minimum wage by 33% or almost $100 per week – to bring it into line with the minimum set by the AIRC).

CHOICE – Workplace Agreements are voluntary

Graham Kierath, the Minister for Industrial Relations who was responsible for the waves of industrial relations changes was a guest at the LHMU State Council in October 1993. In response to a question about choice, he gave the following assurance :

> *The first thing is : workplace agreements are voluntary, I guarantee you that. The fact that no one can be forced into an agreement. If anyone finds a loophole around it we will ensure that it is fixed. The agreement is worked out between the employee and the employer and it gives the employee a say in*

determining their future. If an agreement can't be reached the Award continues to apply.

The only way you can escape the jurisdiction of the award system is by a registered workplace agreement. Not a signed one, a registered one where it's been through the registering process.

And actually it has three tests. You have to genuinely want to have the agreement, you must not have been threatened, coerced or intimidated and more importantly, which doesn't occur now and is going to be a barrier to some people, you need to understand the rights and obligations of that agreement.

One of the Union's earliest experiences involved the RSL Aged Persons Hostel in Geraldton, an experience which demonstrated not only the lack of choice, but the failure of the Minister's "three tests" to apply.

The RSL War Veterans Homes in Geraldton was a frail aged hostel which provides care and accommodation to senior citizens. The home employed four permanent and one relief member of staff, to provide domestic and personal care services to the residents. During a routine visit to Geraldton in June 1994 the Manager raised some draft workplace agreement proposals he was considering. The Union's position was for an Enterprise Agreement to facilitate flexibilities. Subsequently, the Organiser was contacted by a number of members employed by the RSL who were concerned their employer was seeking to get them to enter into a Workplace Agreement. The Workplace Agreement contained conditions which were far and away inferior to those contained in the existing Aged and Disabled Persons Hostels Award. The employees were most concerned at the proposal to work twenty-four or forty-eight hour shifts and for a flat rate of pay without provision for shift penalties or overtime to apply.

These concerns continued to be raised over the following months and when it became clear that the employer was persisting with his requests that employees sign a workplace agreement despite the fact that they had clearly said they wished to stay under the Award, the Union notified a dispute to the Australian Industrial Relations Commission.

Subsequent to that the Union received a facsimile from employees at the hostel indicting that they now wished to sign the Workplace Agreement. The facsimile contained no reasons for the change of mind.

However, proceedings in the AIRC continued. During the hearing it became apparent that while the workers were sure that they were going

to be better off than under the Award, the questioning demonstrated that what they had believed was the true intent of the Agreement or what their employer had told them verbally was different to what the Agreement actually said. Some examples included:

- entitlement to pay increases with CPI movements
- continuation of payments to their existing superannuation scheme
- procedure for settling disputes over the new roster
- termination of the Agreement if the workers wanted to.

An Interim Award setting out that the provisions of the Award would continue to apply issued in September 1994.

The Union continued to pursue this matter of choice and referred the standard offer of employment letter that was being used by one the nation's largest private employers which said :

> *"This offer of employment is conditional upon you becoming a party to the Agreement by signing it off your own free will referring to a W.A. workplace agreement."*

to the W.A. Commissioner of Workplace Agreements asking whether he viewed such an approach as constituting intimidation to enter the Agreement and if not, why he believed this to be the case. He answered as follows :

> *"The circumstances to which you are concerned do not contain any suggestion of the use of threats or violence, the feature of the action is better described as an inducement. Although the employer sought to induce the prospective employee to enter into a workplace agreement and that the inducement offered was a strong one, because it did not in any way reduce the existing legal rights of the prospective employee and in no way threatened the prospective employee's enjoyment of his or her existing rights, I do not believe that the terms upon which the workplace agreement was offered constituted a threat or intimidation designed to persuade the prospective employee to enter into a workplace agreement."*

In most cases, the coercion exercised by an employer on his/her employees or prospective employees was difficult to prove. However, in the case of 2 cleaners employed by the State Department of Sport and Recreation, the threat was put in writing. Initially the cleaners were asked to sign workplace agreements and they declined to do so,

indicating a preference to remain on the Award. An organiser from the LHMU intervening on the worker's behalf, was told by the Department's HR Manager that they were casual employees (even though they had worked for 14 and 12 years) and if they didn't sign "they might not be offered any further work." Subsequently the workers received a letter confirming that they would be given the sack on Friday, 7th April, 2000 if they did not sign the Workplace Agreements.

The Union sought an injunction in the Supreme Court to prevent the Government from dismissing these two members for refusing to sign a Workplace Agreement. This application successfully resulted in the Government giving undertakings to the Court that the members involved would not be dismissed or in any way disadvantaged for not signing the Workplace Agreement.

As the legislation stated that it was an offence to force a person to sign a Workplace Agreement, the Union lodged a complaint with the Commissioner for Public Sector Management over concerns that the Department was in breach of the Workplace Agreements Act and the Public Sector Management Act and also made an application to prosecute the Government for breaching the Act. The Government subsequently pleaded guilty in the Industrial Magistrates Court and was fined $5000. The Union also pursued the Government for long service leave entitlements on behalf of the two workers.

Furthermore, in the Government's own role as an employer it clearly did not provide choice for workers. In March 1998, a directive from DOPLR (Department of Productivity and labour Relations) was circulated to State Departments. It included the following provisions :

(a) *Agencies are to be proactive in the negotiation of State workplace agreements. Industrial agreements and certified agreements are to be negotiated only in response to a union approach;*
(b) *The negotiation of a State workplace agreement is to exclude third parties unless a bargaining agent is specifically appointed by employees;*
(c) *The Cabinet Standing Committee on Labour Relations will only endorse a certified or Industrial agreement where employees are also provided with the choice of a State Workplace agreement;*
(d) *All agencies are required to have available State workplace agreements for offer to employees by 30 June 1998;*
(e) *Employees presently within the Federal jurisdiction and covered by a certified agreement are to be offered a State workplace agreement prior to the expiry of the certified agreement;*

(f) Agencies which are required to negotiate certified agreements in the Federal jurisdiction can only do so on the basis that they contain a scope clause. The purpose of a scope clause is to enable a State workplace or industrial agreement to continue or come into effect; and

(g) All Government positions advertised external to the public sector are to be advertised as a subject to a State Workplace Agreement only. To do this for employees under a Federal certified agreement it will be necessary for the agreement to contain a scope clause.

CASUAL EMPLOYMENT

Given the increasing casualisation of the workforce – or precarious employment as it is often referred to, the question of who has the power to determine a workers' status is a pertinent issue.

The trend to convert permanent employment into casual status by way of a Workplace Agreement was one of the most obvious impacts of their introduction in W.A. Under the legislation, an employee could be regarded as a "casual" even if their workplace agreement was for a permanent 40 hours per week or more and the legal minimums such as annual leave and sick leave could be traded off for a 15% loading.

The Union also saw a number of examples where the prospect of permanent versus casual employment was used to encourage workers to "choose" a Workplace Agreement. For example at the fertilizer factory, CSBP, casuals were given a choice – seasonal work under the Award or 5 years employment under a workplace agreement. Not surprisingly, all of those casuals chose a workplace agreement.

At the Morley Ale House workers were given a document entitled "Casual Employees Offer of part-time employment." The document said that the Hotel was prepared to offer staff part-time positions for those who were prepared to sign a Workplace Agreement. The implication was that, should the existing workers not sign the agreement, they would be regarded as "true casual" workers, with "informal, irregular and uncertain" employment.

There was little information available in WA about the number of workers employed on workplace agreements who were defined as casual. In February, 1996 the Commissioner of Workplace Agreements advised the TLC that he "expected to be able to compile and publish this information ..... next month." When the report was published some 4 months later that information was not included. In addition, the

Commissioner stated that "it is not the role of the Commissioner of Workplace Agreements to make an interpretation of whether an employee is casual or not" but suggested that employees should pursue such concerns through the Dispute Settlement Procedure in their agreement or the Magistrates Court.

In 1999, DOPLR undertook what they called a "routine visits program" of the security industry. While that study found a number of breaches (none of which resulted in action by the Department to prosecute an employer); it also revealed the way in which Workplace Agreements had been used to casualise the industry by providing the following figures :

Number of full-time employees bound by WPA's	120
Number of part-time employees bound by WPA's	Nil
Number of casual employees bound by WPA's	572
Number of full-time employees bound by AWA's	2
Number of part-time employees bound by AWA's	Nil
Number of casual employees bound by AWA's	44

After the legislation was passed (December, 1993), the Union predicted that once certain employers in an industry started cutting costs by putting employees on individual contracts, the employers who had not done so would find it difficult to compete economically and would in the end, have no "choice" but be forced to put employees on contracts. This downward spiral of wages and conditions started almost immediately in industries like the security industry where companies like Wormalds began offering workplace agreements "in order to maintain our competitiveness" during 1994.

In the contract cleaning industry, the employers, through both their industry association, the Master Cleaner's Guild and in meetings between the Union and key employers, assured the Union that it was critical to their businesses that a level playing field (i.e. the Contract Cleaner's Award) be maintained.

Linfoot Cleaning Services was the first to break ranks. In 1995 the State Government privatised cleaning in TAFE Colleges. The successful Linfoot tender was based on paying staff according to the terms and conditions of the Award. After gaining the contracts, Linfoots moved immediately to put their cleaners under Workplace Agreements which undercut the Award.

Workers were being paid on casual rates of $11.10 per hour compared to $12.42 per hour under their Award. Penalty rates were also cut, meaning a cut in pay of $3.19 per hour. These wage differences may

not seem like much, but to the cleaners involved it meant a loss in income of between $40 and $50 per week. In addition, the Workplace Agreement had no provision for such basic entitlements as maternity leave, sick leave, annual leave and contained restrictions on superannuation.

The Union's response of securing an interim Federal Award was successful in the first instance, as the Commission found that "it was desirable to make an interim Award to ensure the employees of the company have their basic Award terms and conditions protected and that an appropriate safety net is established for them and all future employees of the company." However the members suffered because the company responded to the Award by cutting the hours of their employees.

Subsequently the Union commenced negotiations with the industry and applied for, a Federal Award covering contract cleaning. In the meantime small companies continued to win contracts from the major operators by tendering on the basis of workplace agreements. For example, in 1997, a Queensland based company, Biniris won the contract for the Commonwealth Bank and offered state workplace agreements to workers. That agreement provided for a flat hourly rate of $9.50 per hour which compared to the award provisions of an ordinary rate of $10.23, Saturday work of $15.34, casuals with a 20% loading and the rate for casuals on a Sunday of $24.54.

During 1997 and 1998 negotiations with the industry continued but concerns were growing in the Union that the employers were deliberately stalling the negotiations, so that workplace agreements, based on flat hourly rates could spread throughout the industry. By the end of the nineties, most workers in the contract cleaning industry were employed on Workplace Agreements, even those employed by companies which had agreements with the Union not to introduce such contracts.

The spread of Workplace Agreements in the industry was so significant, that while that the cleaning services/building services sector had never been reported by the Workplace Agreements Commissioner as a significant industry sector for the registration of Workplace Agreements, in his report issued May 1999, the Workplace Agreements Commissioner even noted the rapid increase in Workplace Agreements in this industry. The report indicated that cleaning accounted for twenty percent of all Workplace Agreements registered in the six (6) months prior to May 1999.

WAGE RATES ARE HIGHER UNDER WORKPLACE AGREEMENTS

A report published by the W.A. Commissioner of Workplace Agreements in July 1996 provided detailed analysis of the agreements that had been registered. It showed for example, that for 83.05% of workers covered by workplace agreements there had been an increase in wage rates. However what the statistics also revealed was

- *for 50.54% of employees covered by workplace agreements hours had increased and for a further 17.56% hours were not fixed.*
- *for 54.33% of employees covered by workplace agreements penalty rates for ordinary hours had been eliminated and for a further 9.19% decreased.*
- *for 40.49% of employees covered by workplace agreements overtime had been decreased.*
- *for 67.07% of employees covered by workplace agreements annual leave loading had been eliminated.*

In other words, wage rates cannot been seen in isolation from the range of other conditions in awards.

The ACIRRT (Australian Centre for Industrial Relations Research and Training) undertook a study of WA workplace agreements which was published in February 1996 and concluded :

> *"A superficial comparison of wage rates tends to indicate that wages in individual contracts are the same as or sometimes even slightly higher than base rates contained in awards. This does not mean, however, that workers employed on the basis of individual contracts are necessarily better off in terms of pay. Awards are comprehensive documents that provide a wide range of entitlements and protections for employees. Individual employment contracts either left out or significantly reduced most additional entitlements."*

It identified the most profound difference between the individual contracts studied and the relevant award provisions as the approaches to regulating the working times of employees. The research concluded :

> *"Many contracts do not reward work done on weekends, at night or on public holidays any differently to work performed during daylight hours Monday to Friday. In addition, where individual contracts contain penalty rates for working 'non-standard' hours, such penalties are usually paid at a single rate which is lower than*

that contained in the relevant award. Some people may argue that such arrangements reflect the informed agreement of the parties to mutually beneficial 'flexibility'. Most of the agreements studied, however, came from the retail, hospitality and contract cleaning industries. These are industries where wages are already relatively low and in which workers traditionally have had little or no bargaining power given the high levels of unemployment and the unskilled nature of the work. In such circumstances the flexibility is likely to result in a better matching of labour requirements to the needs of employers and not necessarily a better matching of the work and family responsibilities of employees."

NO-ONE WILL BE WORSE OFF

The much vaunted guarantee of the Prime Minister that no worker would be worse off simply did not happen, despite Mr Howard's subsequent reassurances that "There is no backing away from the rock solid guarantee" on the Coalition's election commitment that take-home pay would not be cut under its industrial relations reforms, as reported in the Australian dated 10/7/97.

The supposed protection for this was that an AWA was based on the relevant award. However, in the "AWA filing and assessment procedures and guidelines" document released by the Office of the Employment Advocate in July 1997, reference is made to the factors to consider in selecting the designated award and the following guidance is given :

> "regard should be had to the role of awards under the Act, namely to provide a safety net of fair minimum wages and conditions of employment."

So who has the power to determine which Award should apply? The employer, certainly not the workers. Another experience in W.A. involving an aged hostel clearly illustrates this.

Wearne Hostel is an aged facility in Cottesloe covered under the Union's Federal Aged and Disabled Hostels (Interim) Award where the employer chose to introduce contract caterers. After negotiations with the Union the contract caterer agreed to continue to pay the employees under the hostels award rather than move them to a State Liquor Trades Award (The Restaurant, Tearoom and Catering Workers Award). The Union sought to maintain the existing award coverage because the restaurants award was greatly inferior to the hostels award. Unfortunately after 12 months the hostel re-tendered the catering contract and entered into a

contract with SHRM Australia Pty. Ltd. SHRM had apparently entered a lower tender based on employing people on the Restaurants award and they offered employment conditional upon signing an Australian Workplace Agreement.

Our members obviously were not too impressed by the company's actions and authorised the Union to be their bargaining agent. The Union took action in the Federal Court alleging breaches of the Workplace Relations Act in the way that the AWA's had been offered and also action in the Australian Industrial Relations Commission. The upshot of the various proceedings was that SHRM agreed that they would not offer any new Workplace Agreements and that they would only employ persons on Workplace Agreements for the first 12 months after which they would go back to paying people under the conditions in the Hostels award. Our members chose not to work for the new contractor given what had happened and we negotiated employment with them through the old contractor. SHRM also agreed to pay a small amount of compensation to each of the individuals who had in fact lost their employment for refusing to sign the AWA.

INDIVIDUAL WORKERS NEGOTIATING THEIR OWN CONDITIONS

In correspondence to the LHMU dated 25 March 1996, Graham Kierath, the then Minister for Labour Relations stated that :

> *"Individual workplace agreements have actually been used to allow for more precise tailoring of agreements to suit an employee's and an employer's needs. Direct employee input to workplace agreement negotiations is a feature of this system."*

A month before (February 1996) ACIRRT published the findings of their study comparing workplace agreements with relevant award entitlements and they concluded :

> *"Fourth, and most importantly, the very fact that many individual contracts in industries are so similar indicates that 'pattern bargaining' and 'comparative wage justice' are not simply products of awards and unions. Employers themselves appear to have a strong sense of what they feel should be the employment conditions and the forms of 'flexibility' they desire. On the basis of the individual contracts studied, it appears that deregulation may simply result in reduced accountability in the settlement of wages and working conditions and not the development of dynamic,*

innovative agreements that meet the peculiar needs of the individual parties involved."

In most W.A. workplaces where individual contracts have been negotiated, the same contract has been offered to all the workers on a take it or leave it basis. The CCI of W.A. provided standard contracts for their employer members, as did DOPLAR, the State Department for Labour.

The LHMU's experience has been one of no negotiation with employees about the terms of their workplace agreement. Most attempts to do so were along the lines of "take it or leave it." In one situation, an Enrolled Nurse, working for Silver Chain who was presented with a "Standard" Workplace Agreement, decided that she wanted to make changes to suit her needs, as she didn't want to work weekends. She changed the relevant clause, signed the agreement and sent it back to her employer. Silver Chain simply refused to make the change, claiming it was "illegal" to alter the Agreement.

On some occasions the reaction from the employer was more extreme, such as from a company known as Solid Concepts a private company that makes resin models or prototypes. In November 1998, Solid Concepts sought to introduce workplace agreements on its industrial agents' advice. Two workers questioned the contents of the agreements and after talking with their Union Organiser, the 2 workers discussed their respective workplace agreements with their boss. He did not welcome these workers' "attitude" and proceeded to apply pressure on them. He told them that they would either sign the agreement with no amendments, or they would be transferred to a labour-hire company.

Although labelled as casual employees, they had been working on consistent rosters and hours over a period of 2 and 3 years respectively. The 2 workers insisted that they wanted some amendments to be introduced in their agreements before they could consider signing them. The boss would not have that. Despite (or perhaps because of) the Union intervention to address this dispute, he unilaterally decided to transfer their employment to a labour-hire company in the middle of December 1998.

The Union took the matter to the WA Industrial Relations Commission, which found, among other things, that Solid Concepts had unfairly dismissed the two workers as a "consequence of their refusal to sign the offered workplace agreements." The sums of $16,431.18 for one worker and $16,007.00 for the other were awarded by way of compensation.

The employer then took the matter to the Full Bench of the WAIRC and appealed the decision. This hearing took place in March 2000. The Full Bench dismissed the employer's arguments. The Full Bench confirmed that the employer unfairly dismissed both workers and confirmed that the amount of compensation awarded was just and fair.

A similar situation occurred at the Morley Ale House several years later (mid 2000) when a worker was dismissed for expressing her dissatisfaction with the workplace agreement being offered to existing workers. Again, compensation was paid after the Union filed complaints in the Industrial Magistrate's Court.

FLEXIBILITY

Flexibility is often touted by employers as the reason they prefer workplace agreements.

In many cases, however, it is quite blatant that the flexibility is all one-way-to the advantage of the employer.

In the Shelf Security Workplace Agreement, three objects were identified, the first of which was to "ensure our work arrangements are flexible to meet customer demands and your personal needs." However, the only form of work offered under the Agreement was as a casual employee. The hours clause reads:

> *"As your employment is casual, the number of hours that you may be required to work each week and the days which you work will vary depending on Shelf Security or when working on site, the hours of work shall be subject to the requirements of our client.*
>
> *Additional hours may be required during busy periods or during shutdowns. Additional hours will be determined between Shelf Security and their client."*

Similar flexibilities were provided for part-time workers in the hospitality industry in a Workplace Agreement which was touted around suburban Perth pubs by a consultant. The Hours of Work Clause contained the following:

> *"7.1 (a) There are no set hours per week. The hours are based on the needs of the business, and it's clients, and shall be negotiated between the parties to this agreement.*

(b) *The rostered hours shall be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the employer to meet the needs of the business."*

"7.2 (a) *Additional hours shall mean all work performed outside of the ordinary hours of work at the direction of the management.*

(b) *Additional hours shall be paid at a flat rate, being the actual hourly rate for the classification of the employee.*

(c) *The employer may require the employee to work reasonable additional hours."*

The LHMU obtained a copy of this agreement from a worker who refused to sign this Agreement and was told her job (in the laundry) would be contracted out.

The WA Commissioner of Workplace Agreements used a 9 question, one page proforma as a basis of the information it collected to determine whether an agreement should be registered. Question 9 on the proforma asked the parties to "briefly describe the overall benefit or result which has been achieved for both parties." What one cleaning employer described as "increased flexibility in rostering, ability to increase staffing hours," was in terms of the existing award conditions removal of any entitlement to set hours of work or payment of overtime as the employer can employ staff for one hour or up to 50 hours in any one week and can change this at any time.

The pretense that workplace agreements provide greater flexibility was also challenged by what occurred at the Western Australian Mint, which had been employing all new staff on workplace agreements since late 1994. These agreements generally had much lower rates of pay than the relevant awards, and had no penalty rates at all for night or weekend work.

In September 1995 the Mint paid a special one off bonus payment of 2.5% of annual salary or wage to all staff on workplace agreements. The Mint said they had had a good year financially, and wanted to reward employees for their hard work.

The memo stated *"The Group's profit for 1994/5 has exceeded budget as a result of a number of factors including unbudgeted Treasury profits from currency hedging and metal trading, benefits accruing from the closure of AGR-Kalgoorlie and better than expected medallion sales."*

The memo went on to state *"The Board of Directors has approved management's proposal to pay an ex gratia bonus to eligible staff in appreciation of their commitment and the results achieved in the past year."* The "eligible" staff were those on Workplace Agreements and the Mint said in its memo to all staff who got the bonus, that *"award staff are not eligible because of the inflexibility of the award system."*

Not surprisingly, the union members on site, who worked under the award system, were outraged when they found out about this. The security officer members were particularly unhappy, because they had negotiated and agreed to a number of flexible work arrangements at the Mint that benefited both management and employees. The LHMU with the other Unions on site took the matter to the Industrial Relations Commission claiming the payment unfairly discriminated against Award employees. The Commission in Court Session agreed with the Unions claim stating *"It is difficult to see how a group of employees can be excluded from a bonus paid as a result of a Group profit when there is nothing before the Commission to show the contribution or otherwise of Western Australian Mint to the Group profit as a whole."*

During the case the Commission conducted an inspection of the Mint and were interested in the fact that two workers could be working along side each other, doing exactly the same work but one was paid under a WPA and had received the bonus and the Award person hadn't. The Commission also found that the decision to pay or not pay the bonus was not based on an individual's performance or productivity and that there was no reason to discriminate between employees solely on the basis of whether or not they had signed a WPA or remained under the Award.

The Commission ordered the Mint to backpay Award employees the same bonus that WPA staff received.

This issue about negotiating your own contract of employment must also take note of the inequities of bargaining power between employers and employees which is exacerbated where more vulnerable employees are concerned. For example, the Union came across a situation at Bullfinch Childcare Centre where a fourteen year old young woman was offered a Workplace Agreement which undercut the current Award for child care workers. She was not given the opportunity to have an independent adult witness present when she was "forced" to sign. After intervention by the Union, the Workplace Agreement was withdrawn by the employer.

The Union also became involved in a number of situations involving sponsored workers, particularly Asian workers in the restaurant industry where employers had blatantly ignored their obligations under the various Acts which cover these workers. In many cases, the employer unlawfully withheld the passport of the sponsored worker or workers. This then acted as a form of control ensuring the worker did not complain to anyone for fear of breaking the law. The sponsored worker was left in the dark about their rights as information sent to them through the mail by the various overseeing government departments was usually sent to the workplace, or the employer's home address and often withheld from the worker.

With the support of the Buddhist Society the Union took a case to the Industrial Magistrates Court involving a Thai couple, who came to Australia under a sponsored arrangement. The workers were given individual workplace agreements to sign, which were written in English. The only concession to the non-English speaking Thai workers were that the headings of some clauses were written in Thai. As the workers could not read or speak English they relied upon their employer's honesty and integrity in protecting them and providing them with a fair wage. The Union believes the Employer took advantage of their non-English speaking background and treated them unfairly. The WPA had no penalty rates, no overtime clauses, no set hours of work, and no breaks between shifts. For example it was common for these workers to work across seven days in the week with no provision for days off duty.

ALL WORKPLACE AGREEMENTS MUST BE REGISTERED

According to the Minister in his second reading speech introducing the Workplace Agreements Bill 1993 *"to come into effect, all workplace agreements must be registered with the Commissioner for Workplace Agreements."*

While this sounds straightforward, again the reality did not match the rhetoric.

Given the secrecy provisions surrounding agreements and the lack of any requirements to publish the names of employers who have registered agreements, unscrupulous employers could purport to have a registered agreement when there was no way of verifying whether this was the case. In February 1996, the Union wrote to the Commissioner of Workplace Agreements and asked if an agreement had not been registered could he *"outline what action can be taken against an employer who purports to have a registered agreement."* What became clear from his response was that the Commissioner of Workplace

Agreements, even if his office was interested in doing so, had no power to take action against an employer who purported to have a WPA in place but did not.

In one example, involving some car park attendants, the workers were presented with four successive workplace agreements, none of which had been registered as they did not comply with the legislation. Each time the Union prosecuted the employer and won back pay. The Commissioner of Workplace Agreements was aware of the situation but had no power to take any action against the employer.

One of the most blatant abuses brought to the Union's attention was in a letter dated 25 July 1997 dismissing a worker in a child care centre which read :

> *"Furthermore your request of being paid on the Private Children Services Award instead of the signed workplace agreement because the agreement was not registered is acknowledged by the management, but regrettably these conditions cannot be met for any future agreement for the good feasibility of the centre.*
>
> *In view of these facts, we are hereby giving you notice to cease your employment on Friday 8/8/97. Your last 2 weeks wages will be based on the award wage i.e. $338.30 gross. The difference in your net wages is $64 per week and from the 19th May to the 25th July represents 10 weeks i.e. $640 and will be settled at the end of your employment."*

In 1999, the Union represented a member who had been employed as a security guard under a "verbal workplace agreement" on a flat hourly rate of $11.77. The Union requested time and wages records from the employer to start the relevant calculations for a prosecution against the employer for underpayment of wages. As the employer denied having any time and wages records, the underpayments were calculated based on the member's own records which his wife had kept at the time of his employment.

The LHMU approached the employer with an estimate of the underpayment ($5,224.00) and offered to settle for that amount. The employer replied by letter that "there was a verbal workplace agreement", that the member had not honoured it and that his counter offer would be $2,000.00 to be paid in four $500.00 monthly instalments. This was rejected and the Union proceeded with the complaint in the Magistrate's Court.

In all there were 6 complaints which included failure to pay for public holidays, night and afternoon shifts, weekend rates, overtime rates, call back payments and failure to keep appropriate time and wages records (187 breaches in total). Proceedings before the Magistrate's Court resulted in the employer agreeing to pay the $5,500.00 underpayment to the member and $1,500.00 to the Union for the expenses incurred in enforcing the award.

In a more recent example (2000) involving an aged care facility Union officials discovered that although employees who were employed at the time the facility opened were employed on properly registered WPA's, since that time staff subsequently employed had also been paid in accordance with the WPA, although not one had been registered.

Further evidence of this came to light during 2003, when the LHMU was negotiating with employers in the aged and disability sector to introduce a common rule award covering home and community care services. In the course of those discussions, the LHMU was advised that the Disability Services Commission had costed the provisions of the proposed Award for the agencies they funded. Included in those costings was an amount of over $2 million to enable agencies to pay in accordance with the existing Minimum Conditions of Employment Act. In other words, the DSC was aware that agencies funded by it were not paying in accordance with Minimum Conditions. Presumably such employment arrangements were by way of unregistered workplace agreements, given that in order to be registered, the minimum conditions apply.

Another problem the Union encountered was that workplace agreements could be registered without necessarily specifying that all the minimum conditions did apply. In response to one example involving a Hot Bread shop where the Workplace agreement provided for unpaid leave rather than annual leave, sick leave and bereavement leave (and came to the Union's attention because the worker had refused to sign the workplace agreement and had been sacked), the Minister replied (correspondence dated 25/3/96) :

> *"You refer to one particular workplace agreement which omitted part of the minimum conditions of employment. As you point out, they do not have to be written into the workplace agreement, but to help satisfy the Commissioner and his delegated officers that all parties understand their rights and obligations under the workplace agreement, those drafting agreements are encouraged to include all relevant conditions in the agreement. If they are found to be incorrect or misleading, the parties are requested to*

amend the agreements to reflect the true entitlements. In the majority of cases, this is done willingly. If the parties decide not to amend the provision, and the Commissioner's office is satisfied they understand their true entitlement, the Act does not prevent registration. Employees are also informed of entitlements in official correspondence from the Commissioner's office."

TRYING TO BREAK THE UNION

The Union has witnessed some very concerted attempts by employers to use Workplace Agreements to undermine the collective organization of workers at their workplace.

On a number of occasions, in unionized workplaces negotiations for enterprise bargaining agreements have broken down (or more often were frustrated by the employer) and the employer resorted to the introduction of workplace agreements.

Mandurah Hospital was a public hospital privatized by the State Government in 1997. Health Solutions (WA) Pty. Ltd. took over from 1 September. Despite efforts by the Union to negotiate an agreement to secure the conditions of employees who chose to work with the private employer, the company refused to conclude an agreement prior to signing the contract. Until then the company had indicated that they would accept Government conditions. It was not until they actually signed the contract with the State Government that they informed the Union that they now wished to pursue private sector conditions. When this was not accepted by the Union the company then indicated that employment with them would be conditional upon workers signing an Australian Workplace Agreement. The proposed AWA's saw reductions in annual leave, and a completely deregulated hours arrangement where workers would work as required for as long as required without even the protection of a roster. The company believed that what they were doing was legal under the Workplace Relations Act because as new employees they weren't required to give them a choice between working under the award or working under a Workplace Agreement. They were able to present the AWA on a take it or leave it basis. The AWA's were also offered despite the Government's promises to the workers in a Human Resources Plan that they would be able to pursue employment with a private employer on the basis of an award.

In response to the employers actions the Union made an application in the Federal Court in an effort to show that under the transition of business provisions in the Federal Act the public sector awards continued to apply to the new private employer and also pursued an

application in the Industrial Relations Commission for an interim award which would have required the private employer to pay Government rates of pay. In addition it would have required them to make offers of employment based upon the award conditions. Prior to the hearing the employer sought further negotiations and a certified agreement was negotiated and the AWA's withdrawn.

A second example involves the Activ Foundation which is a large employer in the disability sector with whom the Union had been in protracted and difficult negotiations around a new Enterprise Bargaining Agreement.

The background to the dispute centered on the issue of salary packaging which had been included in an earlier EBA. It was introduced in 1995 on a voluntary basis for existing employees, but compulsory for all those employed after that date and included in a rollover EBA in 1997, in which salary packaging was based on 1995 award rates of pay. While the introduction of salary packaging did result in a significant increase in the take home pay at the beginning, by 1999 with an additional $44 per week's worth of Arbitrated Safety Net Adjustments ("ASNA") to the relevant awards, salary packaging was less attractive. The members position in the negotiations in the EBA was for optional salary packaging for everyone (which Activ agreed to) but at the full current award rate of pay and with a commitment to further living wage increases during the life of the new EBA as they became available. Activ agreed to go some of the way to increasing the base to be used for salary packaging (effective up to $28 per week, but this was still short of the award rate), but not the whole way. The Union offered to phase in the increases and to extend the life of the EBA to spread the impact, but neither of these options were acceptable.

By the end of February 2000, the union withdrew as a party to the by then out-of-term 1997 EBA, thus ensuring members were paid award rates and made an application to the WAIRC to vary the awards to insert the two provisions that were in the EBA but not the awards (optional salary packaging and a redundancy clause).

Before the matter was dealt with by the Industrial Relations Commission, Activ advised that due to a request from "head office employees", they would be offering workplace agreements. The terms of the workplace agreement were exactly those that the union negotiations had reached prior to the breakdown in the process. The draft workplace agreements contained none of the cuts to conditions that Activ originally proposed in the union negotiations. Activ also told employees that whatever the outcome of the Commission those on

workplace agreements would not be disadvantaged. Awards were finally issued by the Commission in August 2000 and although Activ continued to issue AWA's the vast majority of LHMU members were employed in accordance with the Award.

Another situation frequently faced by LHMU members was when a change of contract was used as the pretext by an employer to move to Workplace Agreements.

For example, when the Education Department awarded the contract for security services to a new contractor, F.A.L. Security, in February 1996, FAL initially advised all security officers that they must sign individual Workplace Agreements to obtain employment, rather than stay on the award.

At a Conference at the Australian Industrial Relations Commission some progress appeared to have been made in that FAL agreed that Union representation and negotiation was acceptable and would not be prevented. FAL also agreed to engage employees under the existing state award, or to negotiate a federally registered enterprise agreement. However, when the Union contacted FAL to begin negotiations, discussions again broke down. FAL refused to allow any Union representatives or shop stewards to attend the meetings, insisting that only Union officials attend any such meetings. While the remaining workers secured their existing conditions, as people left those replacing them were employed on W.P.A's.

Similarly, the Union's officials were involved in discussions with a major national company in relation to an airport services contract, which was being re-tendered. The particular company had held the contract for 12 years and approached their employees who were then employed under the terms and conditions of the Contract Cleaners Award, to sign a Workplace Agreement which reduced their wages and conditions. In particular it removed night and Saturday penalties, all allowances, annual leave loading, and reduced Sunday and public holiday penalties. This meant a loss of $170 per fortnight for a permanent night shift worker. The base rate for these workers was $11.17 per hour.

Employees were asked to sign the agreement on the basis that another company who utilized workplace agreements was likely to win the tender if the particular company did not reduce their tender price. They threatened to withdraw from the tender if a single employee did not sign. Because of this threat and because the employees were fearful of a worse outcome if they did not sign, they all signed. None of the cleaners were better off under the workplace agreement.

AN INDIVIDUAL STORY

All of the situations described in this paper have impacted on individual workers and their families in a myriad of different ways. Here is the story of one of those workers, Katica who had worked at Mirrabooka Shopping Centre as a contract cleaner for the same firm for three years. Then in November 1998 the contract changed hands - her employer lost the contract when another company undercut them. The new company offered the existing staff at Mirrabooka continued employment. But it was the offer from hell - "sign an individual contact - a Workplace Agreement with lower wages - or leave." Six of the 25 cleaners who were offered the agreement signed; the rest left. Katica was one of the six who signed, and this is what happened to her pay and conditions.

BEFORE	AFTER
Under State Award	Under a Workplace Agreement:
$11.22 per hour (Mon-Fri)	$10.75 per hour (Mon-Fri)
Penalty rates :	Penalty rates :
$16.83 per hour (Saturdays)	No penalty rates for Saturdays
$22.44 per hour (Sundays)	$16.40 per hour (Sundays
$28.05 (Public Holidays)	$16.40 per hour (Public Holidays)
4 weeks paid annual leave	Unpaid annual leave
17.5% loading	

When asked why she signed the agreement, Katica said, "well I thought it's close to my home, I was happy with my hours as they were, and I didn't want to change jobs." After signing the agreement, Katica said she was annoyed that she had to get a new police clearance, and a new identification photograph at her expense. But that was only the beginning of her troubles. Katica found that job insecurity, uncertainty about her hours, and mistreatment by supervisors were unwritten parts of the new Workplace Agreement - and she wasn't alone. Two of the six staff who'd come from the previous contractor left within two weeks. Katica said she was working as hard as ever, but the stress was affecting her health.

Finally, she awoke in the middle of the night feeling unable to breathe. She was hyperventilating, having chest pains, and extreme pain all down one side of her body. She drove herself to hospital, and was diagnosed as having suffered a stress attack. She was prescribed sleeping pills and told to take time off work.

She never went back. She said the company was glad to be rid of her, not because she was a bad worker, but because they were keen to shed the old staff and take on new staff who wouldn't complain about the reduced pay and conditions.

In another situation, Workplace Agreements were offered following the takeover of one child care centre by another. This involved the Lady Gowrie and Tomato Lake centres.

The Tomato Lake Child Care Centre closed on Christmas Eve 1999. The centre was a community based centre and lost the struggle to survive government funding cuts in children's services. The centre became insolvent and the five employees missed out on their accrued entitlements (eg. annual leave, long service leave), they received no redundancy payment and were even underpaid their ordinary wages.

The centre was re-opened as a new business sponsored by the Lady Gowrie Child Care Centre. Not all of the existing employees were offered employment with the new service. Despite a lengthy and positive relationship between the Union and the Lady Gowrie, the offers of employment made to staff were on the basis of Workplace Agreements. The Union met with the Director of the Lady Gowrie Centre to discuss this issue and as a result a collective Agreement was negotiated and the Workplace Agreements were withdrawn.

Restructuring also gave employers the opportunity to introduce workplace agreements. For example in the recreation camps operated by the Department of Sport and Recreation members of the LHMU were employed as camp wardens. There had been significant restructuring and a change of management, and most of the existing positions were made redundant. While the majority of members opted for redundancy a number elected to remain. Those members had their positions restructured and offered Workplace Agreements. These new positions were being titled "Assistant Manager" and hence regarded as promotional positions. Workers were informed by their employer that they could transfer to these positions under a workplace agreement, but could not be redeployed under the relevant award.

Workplace agreements providing better conditions than the Award, have also been offered to LHMU members - on one occasion!!. That situation involved SCM Chemicals, who introduced workplace agreements which offered significant improvements in superannuation to those who signed up and were designed to get workers off the award and so out of the union. While many employees were unable to resist the improvements

in superannuation and so accepted the change in hours associated with the workplace agreement, the view was also presented to members that they must resign their union membership as a consequence of signing the Workplace Agreement.

In addition to situations such as those described above, some employers took what could only be described as a blatant anti-Union attitude. Two examples are provided below to illustrate this point.

The first concerns CSBP, which is part of the Wesfarmers group with its main operations in Kwinana but some country depots as well. Its workforce of approx 1100 was predominantly male, well unionised and traditionally seen as militant.

At the beginning of the 1990's CSBP was typical of many manufacturing areas. The Award contained very prescriptive conditions, fixed start and stop times, overtime paid outside 7.30 – 4.00 pm, overtime paid for working through meal breaks, 8 hour shift system, task based wage structure eg. fitter, electrician, leading hand operator, service pay, special rates and numerous allowances eg. confined space, dirt money, leading hand rates. Wage increases reflected state wage decisions and demarcations existed between trade and non trade and tradespersons themselves. In 1990, a corporate decision was made to implement a restructuring process and increase the productivity of the enterprise in order to remain viable and continue into the future. This was started off by a change in senior management and a threat of forced redundancies which was taken on by the unions and resulted in the setting up of a project team consisting of equal numbers of wages and management representatives.

Subsequently in November 1991 an enterprise agreement was ratified in the State Industrial Commission which resulted in a range of productivity improvements such as:

- No demarcations/total flexibility,
- Annualised hours with guidelines on rostering Monday to Friday,
- An all inclusive weekly salary,
- Overtime paid only at weekends or outside 0600 – 1800 hours,
- Skills based level of remuneration
- Pay rise by accumulating skills or competencies.

While this agreement worked well and productivity improved, CSBP continued to develop its team concept and in December 1992 a new agreement was accepted, which resulted in further changes such as:

- Team work concept/team co-ordinator employees accepting more accountability and responsibility.

- All hours worked on annual clock - no overtime
- Monthly salaries paid on 15th of each month.
- Matrix pay structure based on competency in core modules.
- Upgrading standards especially core modules.
- Implementation of a gain sharing plan.
- Substantial movement towards a single set of conditions for staff and award employees ie. removal of "them" and "us".

By this time, the size of the workforce had been reduced by approximately 45%: to 650 employees and the Company and Unions jointly applied for and were awarded a Best Practice grant in recognition of their achievements.

In 1993, for the first time negotiations reached a stalemate in particular about two issues, firstly the development of a career structure and later a claim for workers compensation journey cover.

In 1994 CSBP in concert with the AWU tried to use the Tasmanian Fertilisers Award to impose a Federal EBA which downgraded conditions (and applied AWU membership) on the workers. Having failed to do so, on the 26/27 March 1994 employees received copies of a workplace agreement at their homes. These agreements offered a pay increase but did not include a figure for annualised hours, blanket acceptance of all the company's policies and removal of deduction of union fees.

Included in the package delivered by courier to their home was a video presentation by the company's lawyer. While promoted by the Managing Director as independent advice, the lawyer, since promoted to partner in the Law firm used by the company was anything but impartial. The video was the subject of proceedings in the AIRC before Deputy President Drake (from Jan 1995 – May 96) who described the behaviour as "conduct unbecoming" and made the following observation in her decision:

> *"The employer used memoranda issued to employees and information sessions to further their deliberate campaign to eliminate the applicant Union from their workplace. This conduct which I consider to be a deliberate deception of the workers involved."*

Subsequent to that decision, the company's senior management changed and the Union succeeded in negotiating an EBA. Importantly, the Second EBA provided for:

- *New employees will be introduced to Union delegates and allowed time to speak about Union Enterprise Agreements versus Workplace Agreements.*
- *New employees will be given 14 days to choose between workplace agreements and Union Enterprise Agreement. (ie. the choice is offered after the formal offer of employment has been made.*
- *Those who commenced employment with the company after the initial WPA's were introduced in March 1994 were also given a choice of which instrument they will be employed under.*

This resulted in significant numbers of workers choosing the Award.

The second involves the Burswood Casino which, from when it opened until October 1999, used a collective agreement to regulate employment conditions. During that time the former Liquor Trades Union had negotiated a range of flexibilities that were the envy of Casino management in other parts of Australia, such as multi-hiring and roster arrangements. In 1999, a Union negotiated agreement was put out to a ballot of the employees. The company gave an undertaking in literature distributed with the ballot that if the agreement was approved by a majority, the Burswood would support it being registered.

However, despite being endorsed by a majority of its employees who voted, the Burswood then refused to sign the agreement and instead offered Workplace Agreements in similar terms and conditions - to get the pay rise workers had to sign an AWA. The AWA significantly reduced Union rights. It removed:

- right of entry for Union officials
- recognition to inspect time and wages records
- the right for employees to be represented by a Union delegate in disciplinary matters.

The Union took the matter to the WA Industrial Relations Commission and ultimately forced the Casino to sign the new collective agreement, but not before almost half the workforce had signed the AWA believing it was their only chance to get a pay rise.

Since October 1999 the Casino has also had a policy of requiring all new starters to sign the AWA.

The Collective Agreement was due to be re-negotiated prior to June 2001, but the Casino refused to commence discussions with the LHMU. The Union took the issue to the WAIRC in the form of applications for new awards to cover Burswood and a new company it created covering

catering and entertainment employees and in more recent years has been successful in encouraging workers to sign back onto Union awards when their AWA's came to an end.

In February 2005, the Union signed a Memorandum of Understanding with the new owners of the Casino which included the acknowledgement that the company no longer wished to employ employees on individual workplace agreements and provided for employees currently employed on AWA's to terminate them prior to the expiry date and revert to the relevant award.

CONCLUSION

In 1995, John Howard in an article titled "*WA is our model*" was quoted as saying: "*I would like to see throughout Australia an industrial relations system that is largely similar to what the Coalition Government has implemented in Western Australia.*" The legislation he announced in his speech to the Parliament on 26 May, 2005 demonstrates that to a large extent he will achieve that goal he identified some 10 years earlier. The experiences of a Union like the LHMU, which are documented in this paper, provide a very real and tangible understanding of what those changes are likely to mean for working people across a range of industries.

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