

## ACTU SUBMISSION INQUIRY INTO APS MATTERS

### 1. INTRODUCTION

- 1.1 The Australian Council of Trade Unions (ACTU) has as members a range of trade unions which represent employees in all occupational areas of the Australian Public Service (APS).
- 1.2 The ACTU has represented unions in their negotiations on behalf of employees in the APS in areas such as salary levels, employment conditions, working hours, job security and development of career structures.
- 1.3 The ACTU supports the development of an independent, highly skilled, responsive and efficient public sector which meets the needs of the Australian community for the wide range of services provided by the government.
- 1.4 One of the important factors which helps to determine the living standards of Australians is the quality of the public service. In areas such as social security, defence, customs, industry development, education and training, law and order, communications, transport and industrial relations the delivery of service in all of its forms provides an essential element in ensuring that :
  - i) there is a positive contribution to national economic activity from the services provided by government
  - ii) ordinary citizens have their entitlements met and their rights respected
  - iii) governments receive timely and valuable advice regarding developments which can affect the communities' wellbeing
  - iv) the national interest is maintained in terms of our defence preparedness and the maintenance of law and order

- 1.5 Australia has been fortunate during the whole of this century in that it has had a public service which has been highly competent, which had high levels of integrity and which operated efficiently. Within our region there would not be a public service of comparable size which enjoys such a deserved reputation for consistent and high standards of performance.
- 1.6 Public Sector employment should, in the opinion of the ACTU, be free from political interference from the government of the day. If the employment arrangements of public servants are subject to the whims and fashion of government Ministers there will be ongoing instability with clear negative consequences on the motivation, morale and commitment of public sector employees.
- 1.7 The Australian Public Service is made up of over one hundred thousand public servants. It is the belief of the ACTU that public sector employees should have a right to employment arrangements which reflect progressive community standards in areas such as :
- i) Employment security
  - ii) Career structures and wage levels which are similar throughout the APS
  - iii) Access to education and training opportunities
  - iv) Generate employment conditions
  - v) The right to join trade unions and have those unions represent their collective and individual interests
- 1.8 In return the community should expect and obtain high standards of performance from the public sector.
- 1.9 The ACTU has serious concerns that a number of the policy changes to the APS introduced by the present Australian government since 1996 have adversely affected the rights of public servants. In our judgement the APS has been used by a number of Ministers as a vehicle to advance its discriminatory and unbalanced industrial relations agenda.

1.10 The evidence of the effect of government policy on the APS has seen :

- i) Bargaining for employment conditions has not been undertaken in the same manner as the private sector
- ii) Centralised restrictions have been imposed on the outcome of negotiations at agency level
- iii) There has been political pressure to enter into non-union agreements
- iv) The use of Australian Workplace Agreements has been promoted for political purposes.

## 2. DEWRSB

2.1 DEWRSB appears to be more interested in proclaiming the results of the Government's political preferences for s170LK agreements and AWAs than in presenting any serious analysis of the real benefits and achievements of agency agreements against their stated objectives.

2.2 Through its consultancy arm, called Workplace Partners, DEWRSB provides training and advice on a user-pays basis to APS agencies on all aspects of agreement-making. This material has a very political flavour to it, drawing exaggerated distinctions between the pre-1996 era of "industrial relations" and the new age of "workplace relations": V12

"There is a general recognition that industrial relations equates with industrial action and conflict. Most people would agree that we need to conduct our relationships at work in an harmonious manner."

[*Workplace Partners Training Services Participants' Manual 1999*]

2.3 The ACTU is appalled at the content of the Workplace Partners training material on tactics in negotiation which could easily have come from an extreme political manifesto to promote strife through disinformation. These include :

"Make false demands ..... when you have many demands, introduce a few false issues."

"Withdrawal/walkout ..... if you are bluffing, be careful to explain your reasons and leave an opening available so that negotiation can be re-commenced it appropriate."

“Inundate with information”

“Give a biased sample .... provide statistical (mis)information.”

“Act aggressively”

“Act inscrutable”

“Make threats”

[*Workplace Partners – Training Services Participants’ Manual 1999*]

The relevant extracts from the Workplace Partners Manual are at Attachment 1

### 3. CENTRALISED BARGAINING

- 3.1 The Government is pursuing a bargaining framework for the Australian Public Service which retains centralised control of the outcomes and requires the agencies to follow a political agenda in terms of what is in agreements and how they are framed.
- 3.2 During 1998 the ACTU provided a detailed assessment of the centralised bargaining parameters and DEWRSB’s involvement in applying them. Copies of our correspondence are attached. (Attachment 2)
- 3.3 Areas where government policy is applied to agency management in the bargaining process include :
- i) Restrictions on the right of collective representation through a recognised union to undertake enterprise bargaining
  - ii) Insistence that clauses facilitating AWA’s are included in collective agreements
  - iii) The requirement that agency management pursue non-union agreements with employees
- 3.4 A bad example of the insistence by agency management that negotiations would not be undertaken through the union relates to the Commonwealth Employment Service.

3.5 In late 1997 union members in the then Commonwealth Employment Service voted for a claim for an enterprise agreement covering the CES. Employees lodged petitions with several thousand signatures calling for a union agreement to be negotiated with CPSU covering current (CES) and future (Employment National) employment conditions. The CES was a highly unionised agency. The Secretary of DEETYA ignored employee views and announced his intention to reach a non-union agreement under s170LK of the Act. He refused to negotiate with the union and paid several thousand dollars for the Australian Electoral Commission to conduct a ballot for 8 'staff representatives'. The CPSU team of delegates and officials won all 8 positions in the staff ballot with over 85% of the votes and an explicit mandate to seek a union agreement. The employer again refused to recognise the wishes of employees to make a union agreement under s170LKJ and insisted on a non-union agreement under s170LK.

3.6 The ACTU considers the actions of some agency management in complying with the government policy "line" to be an undemocratic and arrogant denial of the rights of employees to be represented collectively by their union.

3.7 In a range of Commonwealth agencies management is insisting that AWA's are the only means by which staff can negotiate their employment arrangements. These include :

- i) DETYA using AWA's for graduate trainees
- ii) DOFA indicating that it will not continue with collective bargaining
- iii) AWA coverage being extended in a range of agencies to lower level management and professional grades

3.8 In addition to matters concerning the form of agreement the Federal government also prescribes to agency management what can or cannot be included in agreements. This prescription extends to the following matters, amongst others :

- i) Mandatory linkage of pay advancement to performance assessment outcomes
- ii) Restriction of the extent of retrospectivity of pay increases

- iii) Mandatory inclusion of a provision allowing AWA's to be made to the exclusion of a collective settlement
- iv) Prohibition of employer undertakings to avoid compulsory retrenchment or redeployment
- v) No enhancement of the right of entry provisions available to unions under the Workplace Relations Act
- vi) Retention of junior rates of pay
- vii) Displacement of award clauses requiring consultation with unions

3.9 A further area of concern is the move to break down the bargaining in the APS to an agency level with no compatibility between agencies regarding salary levels and employment conditions. The ACTU agrees with the CPSU submission (pp.9-10) where it is stated that :

“The existence of diverse pay rates, classification structures and employment conditions between, and even in some cases within, agencies created significant barriers to the mobility of employees. In some instances, the finalisation of Administrative Arrangements changes was substantially delayed because of this problem.

Movement of employees from one agency to another has resulted in the loss of entitlements under agency agreements. CPSU regards this outcome as unacceptable. It is contrary to the scheme of the Workplace Relations Act that employees can enter binding agreements with their employers, and then lose rights and entitlements because of inter-agency movements totally outside their control, even though their work has not changed.”

#### 4. PERFORMANCE PAY

4.1 The ACTU suggests that the Committee should insist that the evidence to support the introduction of performance pay is clearly established. We believe that its introduction has been the result of centralised direction rather than rational agency management decision.

4.2 A Parliamentary report on the first, abortive attempt to introduce performance pay arrangements into the APS for SES and Senior Officer employees highlighted a number of fundamental problems with their operation in a public sector work environment [*Report of Senate Standing Committee on Finance and Public Administration – Performance Pay in the Australian Public Service (December*

1993)]. Most of the criticisms of the concept of performance pay made in that report remain valid and relevant to the performance management schemes recently introduced in APS agencies.

4.3 Whilst a number of performance pay arrangements are of questionable value the ACTU believes they should be introduced as part of a collective bargaining process having regard for the needs of particular agencies and the features of performance pay arrangements.

5. SENIOR EXECUTIVE SERVICE

5.1 The ACTU wishes to adopt the submissions made by the CPSU to the Committee on this matter.

October 1999



**WORKPLACE PARTNERS**  
*Partnering for High Performance*

## Participants' Manual

**ARPANSA Agreement**  
**Making 30 June 1999**



# What Do We Mean By Workplace Relations?

The Federal Government's *Workplace Relations Act 1996* changed the way industrial relations is conducted in this country. A key spin-off from the Act is the appreciation that the term industrial relations reflects the historical adversarial system which we adopted from the early part of this century. There is a general recognition that industrial relations equates with industrial action and conflict. Most people would agree that we need to conduct our relationships at work in a harmonious manner.

A key principle which underpins the *Workplace Relations Act 1996* is ensuring that the primary responsibility for determining matters in the workplace rests directly with the employer and employees in the workplace or enterprise level. Third party intervention from tribunals and institutions can still be accessed if required, but the focal point of our new system rests mainly with the employer and its employees. In other words, we have moved towards workplace or employee relations.

In his guide to the Victorian *Employee Relations Act 1992*, Graeme Watson offers the following as a definition of employee relations:

*"... employee relations assumes that employers and employees have much more in common than they have differences. In this world, the approach should be the provision of a legislative framework that establishes a well understood process in which relationships at work are determined. Within that framework, employee relations would cover all aspects of the relationship between people working together".*

A distinctive feature of the Australian approach to workplace relations has been the system of third-party intervention through a wide range of industrial tribunals set up by both Federal and State governments. These tribunals have traditionally provided a forum for trade unions, employers and governments to pursue their respective and/or mutual goals.

With the advent of the *Workplace Relations Act 1996*, the role of the tribunals has been redefined, with greater emphasis being placed on the individual parties resolving issues at workplace level.

# Negotiation Tactics

The outcome of negotiation depends not only on the relative strengths of the parties, but also on their perceived strengths, and these can be significantly affected by the negotiator's choice of tactics.

Tactics should not be confused with grand strategy, or the overall plan of approach to a negotiation. Rather, negotiation tactics are a component of strategy. They fine-tune mechanisms which assist the implementation of strategy; they help provide the leverage necessary to accomplish negotiation objectives.

Used effectively, on a timely basis, the correctly chosen tactic can be a major source of power. But if they are used poorly, they become counterproductive.

NEGOTIATION TACTICS HAVE TWO MAIN PURPOSES:

1. TO CHANGE THE OTHER PARTY'S POSITION by proving that other party's case has lower value; and
2. TO RESIST CHANGE TO YOUR OWN POSITION

In resisting change to your position, always ask:  
What is other party attempting to do?  
What tactic is being used?

*Note: Once the negotiation tactics being used are perceived by the other party, they lose their power.*

The tactics listed in this manual are examples of some of the main tactics that have been found to be effective in negotiation. The listing is not an exhaustive one, nor is it meant to be an endorsement of all the tactics included. Some may be regarded as being ethically dubious. However, it is important to be able to recognise a particular tactic (ethical or otherwise) when it is being used, in order to counter it successfully.

For ease of reference, negotiation tactics are presented under the following five headings:

1. PREPARATORY TACTICS
2. OPENING TACTICS

3. GENERAL TACTICS
4. MAKING AND GETTING CONCESSIONS
5. BREAKING NEGOTIATION DEADLOCKS

## 1. PREPARATORY TACTICS

Certain aspects of preparation for negotiation can be viewed as preparatory tactics which require decisions to be made prior to actually entering into negotiation.

Decide:

1. Who is going to negotiate : Individual or Team
2. Where to negotiate : Setting
3. What to negotiate : Facts

A mutual fact finding session prior to negotiation can be a very useful tactic. Not only does it allow joint evaluation of facts and validation of assumptions, but the exchange of information helps promote a climate of trust. It also may remove some items from the actual formal negotiation later.

### 4. When to Negotiate: Timing

There is no 'right' time to commence negotiation. Each situation is different. Careful selection of the right time (hour, day, week, month) can be a powerful influencing factor on the outcome of negotiation.

### 5. How to Negotiate: Agenda

Careful attention to considering how the negotiation issues are presented is an important preparatory tactic. Consider the preparation of the agenda as seriously as diplomats do, for it has the ability to shape the negotiation. It reflects the importance of issues and the power of the parties. Do not become bound by the assumed 'legitimacy' of a printed document. The agenda always remains a negotiable item.

### Advantages of Preparing an Agenda

- Focuses on or hides important issues
- Introduces imaginary issues (all issues have trading value)
- Coordinates agenda with other tactics
- Establishes limits, set discussion rules, define terms
- Can be used to divide issues to suit your situation
- Places issues in order that best suits you

## Disadvantages of Preparing Agenda

- Reveals your position (and assumptions) before you know those of other party
- Allows other party time to prepare arguments and counters
- Either party (or both) may prepare an agenda, but it is generally better if you can prepare it and have other party accept your agenda. However you should note that there is always the possibility of hidden agendas (both yours and the other party's).

## Selection of Negotiator

*18th Century Manuals of Diplomacy suggest that:*

*'The complete negotiator should have a quick mind but unlimited patience, know how to dissemble without being a liar, inspire trust without trusting others, be modest but assertive, charm others without succumbing to their charm, and possess plenty of money and a beautiful (spouse)'*

In choosing a negotiator, important considerations are:

- The individual's reputation
- Prior negotiation experience (on the issues in conflict)
- Position in hierarchy (if they are representing an organisation)
  - Personal specifications of:
    - High aspiration level, confidence
    - Ability to resist persuasion (evidenced by high self-esteem)
    - High creativity, inventiveness, lateral thinking ability
    - High degree of awareness/ attentiveness (listening skills)
    - Superior communication (presentation) skills

## Individual vs Team Negotiation

There are advantages and disadvantages in using a single negotiator as opposed to using a team of negotiators. These should be reconsidered with every negotiation.

### Single Negotiator

- Vests responsibility in one person preventing divided opinion.
- Can make on-the-spot decisions to gain concessions.

- May be used to signify that the negotiation is not considered important.
- Requires one person learning all aspects of the case (legal, technical)
- Can have backup team.

### Team Negotiation

- Provides wide expertise, skills, better fact-finding.
- Allows pooled judgement in decision-making and idea-generating
- Presents larger opposition (for political, PR, surprise effects)
- Allows larger participation (e.g. useful for training)
- Allows use of subteams to concentrate on specific issues.
- There is a danger of disagreement amongst team members (this can be overcome by appointing a Chief Spokesperson, and giving each team member a specific function to perform.)

To create divided opinion in the other party's team:

Aim questions at their weakest member

Ask for everyone's opinion

Seek to get them talking out of turn (to vent emotions)

## 2. OPENING TACTICS

The opening moves in a negotiation are important, as they:

Convey information about each party's attitude, aspirations, intentions, and perceptions of the other.

May be used to explore the other party's overall posture before deciding on your own.

Establish each party's outer limits in the negotiating range.

Shape the negotiation climate that may prevail for the entire negotiation - the 'lock-in effect'. For example early initiation of

collaborative behaviour tends to promote trust while competitive behaviour tends to promote suspicion.

### 1. Designate a Demand as a Pre-condition

If the other party initiates the negotiation or is anxious to commence, you have an opportunity to specify a precondition before you will enter discussions (a specific demand or course of action). Agreement by the other party gives you a psychological advantage, a substantial gain and fewer items on which to negotiate.

### 2. Make Other party Tender First Offer

It is to your advantage to have the other party state their opening offer first (particularly when she/he has a strong case) as it

- avoids your serious miscalculation (the offer may be better than you expected)
- makes the other party concede he/she wants to settle
- allows you to, for example, declare shock or demand more...

To provoke the other party into tendering their offer first:

(i) Ask (e.g. *'why don't we start by you giving me a realistic idea of your position?'*)

(ii) Remain Silent.

### 3. Make Your First Demand High

Research indicates that more favourable outcomes are achieved by those making extreme (even unreasonable) initial demands rather than more moderate ones. Some advantages are:

it avoids miscalculation

- subsequent (almost as high) demands seem more reasonable
- communicates your expectations (eg. not going to be exploited)
- gives you more time to ascertain the other party's aspirations.  
(*Note: It is advisable to temper extreme demands with some 'logical' reason to show other party you are serious and to prevent them withdrawing from negotiations*)

#### 4. Make Major Demands at the Beginning (And at the End)

Place your major items of interest at the beginning of negotiation, because:

- compromises are often made more freely early in negotiation (during the 'honeymoon period' before positions are firmed up)
- there is no use wasting time on minor issues, if you cannot resolve major issues
- minor issues are best kept as options for later trade-offs
- minor issues tend to fall into place when the major issues are settled.

Where possible, structure your demands so that those which the other party will find easiest to concede are first. This will help generate a climate of success, goodwill and co-operation, and may perhaps condition the other party into agreeing to later demands.

Conversely, it is sometimes possible to obtain major concessions at the end of a negotiation after the other party has invested many hours (and thus expense) and wants settlement to obtain return on its investment.

#### 5. Lock Yourself In

Make opening offer on the basis of it being your 'first and final offer'. Usually, you base your position on extensive research. The offer is made on the understanding that it is fair (and firm) and that you are not holding anything back for further negotiation.

This tactic suffers from the problem of credibility. You need a reputation or some means to prove you are not bluffing (e.g. give it prominence by making a public announcement). (Note: This tactic does not recognise importance of other party's esteem needs.)

### 3. GENERAL TACTICS

The following examples of general negotiation tactics should not be regarded as absolutes to be used in isolation. They may be combined in numerous ways and used in many different formats. It is important to camouflage your tactics so that they are not readily

recognisable as such by the other party (and thereby lose their power).

In using any tactic, always give serious consideration as to whether or not the timing is right. Test the efficacy of the moment. Have regard to the overall pacing of the negotiation.

Seek to introduce the tactic at the time when its effect will be to your maximum advantage.

### **Be confident**

Use your chosen tactic with confidence. Think positively. Believe in your ability to be an effective negotiator. Enter each negotiation with all the self-confidence you can muster.

### **Request Participation**

Ask the other party to participate with you in resolving the issue. Seek the advice of the other party as to how you can comply with the demand. Ask for their help. This is a very useful tactic when deadlocked, or to change from competitive to cooperative negotiation. (In a team negotiation, you can delegate one member from each side to work out any difficulties and report back.)


### **Nibble**

Approach your negotiation objective piece by piece. Make demands a slice at a time until you possess whole pie. This is a useful tactic when the situation has many elements that can be looked at separately.

### **Ask Hypothetical Questions**

Make a prospective offer (sometimes known as 'kiteflying') to test your opponent's reaction, e.g. "What if...?" "Suppose that I...?" If the response is favourable, make a firm offer. This is a useful tactic when deadlocked.

### **Make False Demands**

 When you have many demands, introduce a few false issues. This disguises your serious interests and allows you to make concessions thus giving the other party sense of gain. Similar tactics are Bluffing (presenting false material), Brer Rabbit (getting the other party to do something by pretending you do not want it done) and Feinting



(apparent move in one direction to divert attention from real goal, or giving impression have you more information than you actually do).

### **Stall For Time**

Call adjournment, caucus, reserve answer until later, request cooling-off period, etc. in order to relieve tension, give you time to think or obtain more material. A similar tactic is to Do Nothing. Think carefully before reacting. Sometimes doing nothing is a positive response.

### **Withdrawal/Walkout**

This is where you refuse to negotiate further. If you are bluffing, be careful to explain your reasons and leave opening available so that negotiation can be recommenced if appropriate. A similar tactic is Apparent Withdrawal when you pretend to have withdrawn, but are really still available, or are maintaining control behind the scenes.

### **Set Limits**

Many different kinds of limits may be established in negotiation. These include communication limits (both as to subject, or to whom may speak), geographical limits, financial limits, and natural time limits (e.g. weekend) or Setting Deadlines (a useful tactic whereby concessions often made as time limit pressures increase).

### **Give Ultimatum**

State your final offer on a clear 'take it or leave it basis' (but be wary of sounding offensive). This tactic requires credibility and prominence. Use it sparingly.

### **Invoke Competition**

Play off the (usually stronger) other party against a second real or imaginary opponent. Having competition strengthens your position as it generates options.

### **Appeal to Authority**

Other parties are often impressed by the citation of an authority that supports your case (e.g. industry practice, legal view, company policy, public mores, quotation etc.). Continue to quote the authority if you obtain a favourable response. A similar tactic is to Use A Third Party where you get other people (usually experts)

involved. In certain situations a mediator or arbitrator may be usefully introduced, particularly when negotiations are deadlocked.

### **Promote Your Awareness**

Cite your excellent past achievements. Act shocked if the other party dares to question your reputation/integrity. A similar tactic is to Top Any Point made by the other party by stating that you are better. This is a useful tactic to put the competitive other party on the defensive.

### **Promote Positive Benefits For Other Party**

Associate your proposed settlement with positive benefits for the other party (e.g. more prestige, increased business).

### **Discredit Associations**

Associate the other party/other party's case with some unsavoury connection.

### **Make Negative Comments**

Put the other party on the defensive by negatively commenting on, or questioning about, for example, position, condition and operation. Use for brief periods only, as this tactic can cause antagonism and make the other party dig in.

### **Combine or Divide Demands**

Rather than trying to get agreement on a difficult issue, combine it with another demand, or make two (or more) related demands that will approximate your objective. A similar tactic is Bracketing, in which you just aim in the general target area (rather than seeking complete accuracy), and thereafter cut down the degree of error.

### **Shift Levels**

Change involvement in the problem to a higher or lower level (make it personal, organisational or national). Redefine the issue in some other way. A similar tactic is to make a Sudden Shift in overall method, argument and approach, in order to surprise other party and put it off balance. Do the unexpected. Another alternative is to Change the Negotiator or Change the Time/Place of negotiation.

## Reversal

Act the opposite to what other party may consider appropriate, usual or expected. Just considering a reversal assists thinking of new alternatives. Be creative. A related tactic is to Send Two Demands forcing opponent to act (presumably by accepting the less onerous one).

## Split The Difference

This is a useful tactic for closing the gap quickly, or to test other party's reaction. It is often suggested when negotiations are near final settlement (but note that its intrinsic appeal to fairness is not really rational). It is advisable to extrapolate what splitting the difference will mean to you several moves ahead.

## Argue Special Case

Argue that the issue is a special case deserving of more favourable response.

## Inundate With Information

Inundate the other party with a lot of information covering a wide area so as to end arguments before they begin, or to provide a better chance for a breakthrough in one or more places.

## Give a Biased Sample

Provide statistical (mis)information. Support your case by selecting the most favourable (biased) sample.

## Pretend Ignorance

To delay proceedings, or to put other party off guard, act ill informed and ask advice. Similar tactic is Purposely Misunderstand. Either deliberately misinterpret other party and behave as if misinterpretation was fact, or pretend you don't understand. At the appropriate moment, discover your misunderstanding. A useful tactic to make your opponent re-examine their thinking.

## Two Negotiators Playing Different Roles

Feign internal dispute; one negotiator acts as the 'bad guy' (hardline, no concessions, behaves emotionally) while the other plays the 'good guy' (reasonable, wanting to compromise, quiet profile). This tactic seeks to unsettle your opponent to make them grasp at small

concessions as they seem large compared to the "hardline". This is a useful tactic to speed up proceedings.

### **Reopen Previously Settled Issues**

Back track and raise some additional demands, or reopen supposedly settled issues for further discussion. This is an effective tactic. It tends to reduce total concessions as the other party wants to conclude more quickly before you stiffen your position further. A similar tactic is Low/High Balling where you make an unrealistic offer to lure opponent into accepting. At the last moment find reason to reverse or change the offer.



### **Use Agent With Limited Authority**

Negotiator acts as the agent for a principal from whom he/she has to obtain final approval for settlement. This tactic seeks to obtain last minute concessions from the other party who has become psychologically committed to settling. Other advantages of this tactic are that it blunts the effectiveness of the other party's persuasion, deflects anger from the 'reasonable' negotiator, delays proceedings so a stronger response can be formulated or ensure that there are no errors in the final settlement.



### **Fait Accompli**

Act and achieve your goal, then wait and see if your opponent does anything about it. It is important to ascertain the likely consequences before taking action. If the other party complains politely then withdraw, feign innocence or ignorance and place the burden of proving your guilt on other party.

### **Admit Error**

If you are caught in a difficult situation, you can admit wrongdoings and accept responsibility for error. Indicate that you have implemented corrective action (hoping that the other party will respect your honesty and respond helpfully).



### **Signal Surrender**

When you are in a weak position, signal surrender and indicate that you trust other party to have pity on you and not drive a hard bargain. This tactic works best when there is a strong ethical or moral inhibition present (which can be fostered by an effective invocation). Plead for leniency.

## **Make Other Party Appear Unreasonable**

During the negotiation make a number of minor concessions, and then claim that the other party lacks goodwill or sincerity if it fails to concede to your demands on an important issue.

## **Feign Anger (Or Real)**

A convincing display of anger can be used as a bluff or to signal that you regard the situation seriously. This can cause an emotional response in other parties which is sufficient to intimidate them, or cause them to doubt the reasonableness of their position.

## **Appear Irrational**

Acting in an irrational manner can sometimes be a very successful tactic to throw the other party off balance. This can be a rather dangerous tactic as it can easily backfire.



## **Act Aggressively**

It is doubtful that any long term advantages can be achieved by acting aggressively. You may achieve a short term concession, but it often strengthens the other party's resolve to hold out.

## **Act Inscrutably**

The ability to disguise your reactions to an opponent's demands or concessions (remain poker faced, and hide your nonverbal reactions) is important. Acting inscrutably means not responding, remaining silent or avoiding excessive talking. Silences are hard to tolerate and sometimes cause increasing anxiety. If inexperienced, the other party may not wait for an answer but will offer it, or will reveal more than it wants to.

## **Make Emotional Appeal**

Appealing to particular emotions such as patriotism, brotherhood or neighbourliness can be an effective tactic.

## **Use Humour**

An often forgotten tactic is the ability to use humour to lighten the tension or to reduce the seriousness of the matter. Recount an amusing story or tell a joke to create laughter.

### **Make Threat**

Express your intention to behave in a way that will be detrimental to the other party's interests unless the other party makes a concession. The danger of being forced to impose threat can be reduced if you imply a threat, rather than state it openly. Be wary of making threats you don't wish to impose.

The effect of a threat depends on the:

- relative ability to inflict without retaliation
- credibility of the threat or commitment to act
- size of the threat (massive threats tend to be blocked out).

### **Make Promise**

Promise further rewards at a later date if other party concedes now. This is a useful tactic for getting compromises towards the end of negotiation.

Note that promises or threats are often used when the other party has a strong need for a result, or when it believes that it cannot exert other pressures.

Careful observation of the frequency, intensity and timing of promises or threats can give you a very good indication of the other party's needs, and their perception of you.

### **Summarise Position**

A brief yet comprehensive summary of current status of situation (or a listing of points for and against) can be a useful tactic in lengthy negotiations or where an issue is becoming difficult to resolve.

### **Be Persistent (And Patient)**

Keep on pushing your demands. Be determined; persevere; don't give up. Negotiation requires stamina and optimism but the persistent party who keeps on trying generally obtains a more favourable outcome in the long run. But don't be stubborn; know when to stop.



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2 December, 1998

Mr B Yates  
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**CANBERRA ACT 2601**

Dear Bernie,

I refer to your letter of 9 November 1998 inviting the ACTU and its Australian Public Service affiliates to make input to the Federal Government's review of Policy Parameters for APS agreement-making.

***Context of Union Position***

We make the following comments on the content of policy parameters, based on our experience with the agreement-making process in APS agencies over the past 18 months, and our views of significant issues likely to arise in future bargaining.

In doing so, we should not be taken to be endorsing the Government's policy preference for the continuation of agreement-making at the agency, sub-agency or individual employee level in the APS. The unions adhere to our position that the APS is a single employer. Consistent terms and conditions of employment necessary to maintain the career service should be set by collective bargaining on a Service-wide basis.

The extent of the industrial mess which has resulted from the recent Administrative Arrangements changes affecting a significant number of APS agencies is a very good argument in support of the union position. It is unfortunate that the Government's drive to fragment and dismember public sector employment standards prevents it being open to such considerations.

Predicated on the continuation of agency-level agreement-making and a Government policy framework, the specific points we wish to put forward are the following:

### ***Transparency of Policy***

Parties should be as free to bargain in the APS within the framework of the Workplace Relations Act as anywhere else in the community. The Department, in applying Government workplace relations and wages policies, has imposed significant constraints on the terms of certified agreements which the direct parties to negotiations have been otherwise prepared and able to make. This approach has amounted to pattern-bargaining by an employer who at the same time is expounding the virtues of decentralised agreement-making. If the Government wishes to impose such constraints, then the direct parties are entitled to transparency through full disclosure of policy detail at the outset of the process. Advices issued from time to time by the Department do not meet that requirement.

### ***Legislation-based Conditions***

The unions note that the Government has announced its intention to pursue amendments to certain legislation which prescribes important employment conditions for our members in the APS. The Government should not use its unique position as legislator and employer to change these conditions unilaterally through the Parliament. In most other industries, the equivalent conditions are set by awards or agreements, but the Workplace Relations Act precludes this for APS employees. If the Government has a legislative change agenda, there should be full negotiation and resolution of employee interests before any legislation is submitted to the Parliament.

### ***Pay Retrospectively***

Retrospectively of pay increases has been a frequent matter where the Department has required a change to the position of the direct parties. The device of a one-off bonus on certification has been used to circumvent the real issue. If the parties are able to agree to retrospective pay adjustments within the funding constraints, then prima facie there are sufficient productivity/efficiency gains to sustain this, and they should be able to do so. This is particularly the case where negotiations have been protracted.

### ***Budget Imposts on Bargaining***

The Government must desist from the recurrent practice of imposing efficiency dividends and other arbitrary productivity measures on APS agencies through the Budget processes. Such practice is inconsistent with a true productivity bargaining system, and renders the task of agreement-making even more difficult than it already is in the public sector. It also makes a mockery of the cost-neutrality parameter, in that agencies are required to return financial savings to the Budget before any funding can be allocated to bargaining outcomes. In the current Cenrelink bargaining process, the substantial arbitrary staffing cuts are a major factor in the disputation occurring.



### ***Freedom of Association***

The Department has displayed an excessive pre-occupation with provisions in agreements going to the role of unions as representatives of their members. This has gone well beyond the Freedom of Association requirements of the Act. There can be no objection on FOA grounds to provisions explicitly referring to a representative role for unions, encouraging union membership, leave and facilities arrangements for employees acting in a union capacity if such provisions are not exclusive to unions. A recent decision by a senior Presidential member of the Industrial Relations Commission is instructive on this point [see Print Q7710 – Clout Engineering Pty Ltd Certified Agreement].

### ***Inter-agency Mobility***

In view of the general union position stated above, we would support measures which preserve and facilitate mobility between APS agencies, including annual and sick leave entitlements. The reference to sick leave should be broadened to encompass personal leave, as the latter has generally subsumed the former in agency agreements. We note the Government's foreshadowed change to allow varying standards for Long Service Leave would be another factor inhibiting the operation of mobility. We are not in a position to respond any further on the issue of LSL until the detail of the Government proposal is known.

### ***Redundancy Provisions***

The substantial reduction in award prescription of redundancy processes means that agreements will have a more important role to play in the continued availability of retention and redeployment provisions for excess staff. It should be noted here that CPSU and AMWU are still awaiting a response to their written requests in October for consultation with PSMPC on the terms of a proposed advice to APS agencies on future redundancy arrangements. We note again that the Government has foreshadowed a more flexible approach on this issue in agreement-making. The union position is that the protection available for our members not accepting voluntary retrenchment is an essential component of the redundancy package in the APS.

### ***Pay Base for Bargaining***

Although it was not included in the policy parameters, the Government did adopt a position at the outset of the bargaining round that pay rates applying under the 95/96 APS Agreement would be the starting point for the negotiation of agency agreements, notwithstanding the terms of the no-disadvantage test. We consider that this position should be reiterated in respect of pay rates which have applied under the first round agency agreements. Furthermore, agreements should not be made on the basis that the interests of employees in minority classifications or work situations are detrimentally affected.

### *Classification Change*

The unions do not challenge the merit of properly-motivated classification reform. However, such reform should not be used as a pretext for the introduction of performance pay. The issues should be considered separately. Parties to agency agreements should be allowed the discretion to determine the pay advancement arrangements best suited to their needs, rather than having one approach imposed on them.

### *Comprehensive Agreements*

“*Comprehensiveness*” has been a feature of the majority of agency agreements, although this is an illusion in view of the effect of S170LZ of the Workplace Relations Act. The unions can understand the sense of displacing all previous agreements applying to an agency when making a new agreement. However, the practical effect of displacing awards has been to make agreements much longer than they need be. If the Government is genuine in its desire to make terms and conditions more accessible and comprehensible to employees, then it would encourage the use of employment handbooks in each agency covering all conditions, regardless of their source. This cannot be done through agreements. Perhaps the Department could assist with an appropriate handbook template.

### *Australian Workplace Agreements*

In no case has an APS agency failed to make a certified agreement as the outcome of bargaining. Australian Workplace Agreements have had only limited application, generally in senior management levels. Even very small agencies with less than 50 staff have preferred to conduct their industrial business through collective processes rather than with individual employees. The union position is that collectively negotiated settlements which have been accepted by a majority of employees and certified by the IRC should operate for their specified duration to the exclusion of AWAs. If the Government continues to insist on AWA facilitation clauses, then such provisions should identify the classes of employees which may be covered by AWAs rather than be in general terms.

### *Form of Agreements*

In many agencies, the form of certified agreement to be made has been a matter of some controversy at the outset of the bargaining process, particularly where an Agency Head has had a strong predisposition to a S170LK agreement regardless of the views of employees. The unions consider that, consistent with Object 3(c) of the Workplace Relations Act, there should be an agreed mechanism in such situations allowing employees to have a meaningful say in the form of agreement to be made in their agency. Where the agreement-making process is occurring under S170LK, there should be an open, democratic process for the election and accountability of employee representatives. Employer or self appointment to this role should not be permitted.

### *Integrity of Valid Majority*

The establishment of majority employee support for a proposed agreement is the key event prior to certification. The actual and perceived integrity of this process is of crucial importance, and in cases of a narrow valid majority could determine if an agreement is certified. The unions express concern that in one major APS agency the votes on two agreements were conducted through the in-house electronic mail system, which had the potential for management monitoring of voting behavior of individuals and localised workplaces. This should be declared to be unacceptable. Voting arrangements should guarantee complete anonymity and privacy as to whether, when and how an employee votes on a proposed agreement.

### *Administrative Arrangements Changes*

Most of the problems that the parties have had to deal with in sorting out the industrial consequences of the AA changes stem from the view held by the Department that agency agreements generally do not transmit between agencies. Setting aside the legal debate over this view, the unions wish to establish whether there is a mutual interest in avoiding a recurrence of this situation in the future. It should be possible to devise suitable wording for "*parties bound*" clauses in future agreements which would focus on functions performed or legislation administered rather than merely the name of the agency. This would ensure that there is some security for employees' entitlements under agreements, rather than having them removed at the administrative whim of the Government. Such clauses could include a commitment that in the event of AA changes involving a shift of agency, the intention is to rationalise agreements as soon as possible after the change to achieve fair and consistent employment standards within agencies.

The unions are prepared to elaborate on and discuss the above views at our meeting with the Department on 8 December. We would expect to receive prior to that date information on the Government's proposed amendments to the policy parameters and any other changes affecting agreement-making in the APS, so that these can also be discussed at the meeting.

Yours sincerely,



**TIM PALLAS**  
*Assistant Secretary*