

Old world industrial relations still rule in Australia. By Michael Angwin, The Australian. 24 December 2014.

If ever you wanted evidence about the obsolescence of Australia's workplace relations laws, you need go no further than the Fair Work Commission's decision in a recent case involving the AFL. The decision is a triumph of union membership coverage rules over the organisation of a business, a victory for collective bargaining over an employer's reasonable human resource principles and a win for the ancient assumptions of "industrial relations" over modern technology.

The case revolved around the journalists union's attempt to force the AFL to bargain with it collectively. In the arcane world of the Fair Work Act, to decide whether the union succeeded depended on whether the employees who had signed a petition that they wanted to bargain collectively and who would be covered by a subsequent agreement had been "fairly chosen" in the making of the petition; and were "geographically, operationally or organisationally distinct" from the rest of the AFL. What this amounted to was whether the employees concerned were employed in occupations that the union was coincidentally entitled to enrol as members.

The language may be different from the demarcation cases of much earlier days, but the essence is the same. So, much of the evidence and argument was about the work the employees were doing and whether it was work that the journalists do. The union argued it was and, as it was, the work was distinct from the rest of the work of AFL Media. Accordingly, the union should be issued with an authority to bargain with the AFL. That is what the commission decided. It accepted the employees who signed the petition were occupationally engaged in "editorial" work.

The commission rejected all the AFL's arguments. Its case was largely framed around its needs and priorities as a sporting enterprise with a specific business model for its media activities and an enterprise-based platform for its employment relationships.

The commission rejected the AFL's argument that its media work was related to the sporting cycle of a sporting organisation it is and not the media cycle. Surely, the AFL would know this, being the country's major sporting organisation? No. It was wrong, said the commissioner, failing to grasp at all what is unique about the AFL.

Using modern technology, the AFL — regarding itself as a sporting organisation — had set up an internal media function. Apparently it does not wish to rely on the work of external media organisations as conduits for its message. The commission is undoing this business model; it agreed with the union that the work done by employees able to join the journalists union is a more important driver of the AFL's technological and organisational investments than its business model.

The commission appears to have overlooked that the AFL is a sporting enterprise employing many occupations and not a media organisation employing mainly journalists. Isn't the enterprise supposed to be the focus of the workplace relations system? And aren't the needs of the enterprise meant to be paramount, even within a collective bargaining system? Not according to the commission. To be fair, the law gives it a pretty strong signal to head in that direction.

The commission seems to be given licence by law to reject an enterprise's human resources principles and practices in favour of the higher priority of collective bargaining on an occupation-by-occupation basis within enterprises. The AFL gave evidence of its approach to its employment relationships including its One Team platform and on individual contracts pertaining to staff.

The commission dismissed the AFL's arguments in one paragraph. Apparently there is no need to examine the AFL's submissions in any depth, no need to comment on the idea of individual contracts or to discuss the conclusion that collective bargaining will not negatively affect the AFL's One Team platform. Again, the act made the commissioner's options clear and they didn't offer the AFL much hope.

And that's the point. The ancient world of industrial relations is very much in evidence.

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