Getting to grips with non-union agreements

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Employers in the library and information sector are starting to show greater interest in non-union agreements. Recently, ALIA's industrial advisory service has been receiving regular management requests for help with new agreements negotiated directly with staff. This trend is expected to accelerate, especially if the Howard government loses the federal election due later this year.

Under current labour law, there has been something of a competition since 1997 between collective agreements — usually negotiated by trade unions — and individual workplace agreements [AWAs], few of which have involved unions. And while there has been much public debate about the relative merits of collective and individual negotiation, a closer look at individual mechanisms suggests the real attraction for many employers has been the chance to take unions out of the picture.

Federal law also provides for collective agreements that do not involve trade unions, known as section 170LK agreements. As ALIA's experience confirms, employer interest in them is growing. Yet they are still relatively rare. In 1997 170LK agreements made up only five per cent of all registered agreements. This rose to eleven per cent in 1998 and is currently running at around fourteen per cent. Federal ALP policy is committed, however, to abolishing individual agreements [AWAs]. If there is a change of government and this occurs, the only avenue for employers wishing to have registered employment arrangements without involvement of trade unions will be section 170LK collective non-union agreements. So we could expect to see employers make a great deal more use of them. The contest would then become not one supposedly of collective versus individual, but, more transparently, one of union versus non-union.

ALIA has no problem at all with collective non-union agreements. Indeed, our own enterprise agreement [*Australian Library and Information Association — national office staff — Enterprise Agreement 2000* http://www.alia.org.au/staff/enterprise.agreements/2000/] is a section 170LK registered agreement. It is a myth that non-union agreements cannot adequately protect the rights of workers. They have consistently provided wage outcomes equal or close to those achieved in union-negotiated agreements, and well ahead of those in individual AWAs. For example, average annual wage increases in agreements during 2000 were: Union 3.9 per cent; non-union 3.8 per cent; AWAs 3.0 per cent [*Source: Agreements Database & Monitor 2000, ACIRRT, University of Sydney*]. In other words, at present significant differences in benefits are more likely to be found between collective and individual forms of bargaining, than between union and non-union collective bargaining.

In advising library employers on non-union agreements ALIA does, however, emphasise strongly that these are not unregulated avenues for easy abandonment of conditions of employment and community standards. Under current legislation they are firmly monitored by the Australian Industrial Relations Commission [AIRC]. A number of demanding tests must be met before a section 170LK agreement will be certified. Any future Labor Government will almost certainly extend both the controls over non-union agreements and the powers of the AIRC in relation to them. But no reasonable employer need fear that unduly.

Now and in the foreseeable future, employers subject to corporations law are quite free to make an agreement directly with their staff, providing a valid majority agrees. In doing so, employers are required to inform any union members that they may ask the union to represent them in negotiations. If staff do so, the union must be given reasonable opportunity to meet and confer with the employer about the agreement before it is formally made. Any employee who will be covered by the proposed agreement must be given at least fourteen days to study it; and its contents must be fully explained to all employees before their agreement is sought.

All agreements must contain certain provisions, including an expiry date which cannot be more than three years from its commencement, an anti-discrimination clause and a dispute-prevention and settlement procedure. In securing staff approval, employers should bear in mind that the AIRC is required to satisfy itself that agreement has been genuine. There must be no duress either directly or in the form of subtle hints about negative consequences from refusing to sign the agreement. It is probably a good idea to conduct a secret ballot so as to be able to demonstrate to the AIRC that a reasonable process has been followed. When agreement of the majority has been secured, application for certification by the AIRC must be made within twenty-one days.

Before certifying an agreement, industrial commissioners are required to subject it to a rigorous 'no disadvantage test'. This means that an award previously regulating the work, or an award specified by the AIRC if there was no coverage, will be used as a basis for assessing the employment conditions provided by the proposed agreement. The employer will be required to show clearly that the conditions contained in the agreement are at least as favourable, *in totality*, as those of the award. This means that existing conditions may be changed or completely dispensed with, but compensating benefits must be included to make the overall package equivalent to standards currently applying. Only when fully satisfied that no staff disadvantage would accrue can a commissioner certify a new agreement.

Non-union agreements made directly with staff are clearly going to become more common in the sector. There is no reason why employers and their workforces cannot use them to develop mutually satisfactory employment conditions if proper processes are adhered to. If they are not, trouble will surely follow. Members, whether institutional or individual, who need advice about practical and legal aspects of these agreements should contact me at the ALIA national office. ■

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