The Victorian Labour Hire Maintenance Workers' Strike of 1997

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Abstract

The trend towards outsourcing maintenance functions to labour hire firms raises questions about the capacity of unions to maintain membership levels and employment standards amongst an increasingly casualised labour hire workforce. The Victorian manufacturing maintenance sector has experienced substantial outsourcing to labour hire firms, but unions in this sector have maintained membership levels and established enterprise agreements to govern employment of labour hire workers. In 1997, labour hire workers in this sector struck for almost 7 weeks in support of a wage claim. This paper outlines the nature of employment regulation of labour hire firms in Victorian manufacturing maintenance and the factors leading to the 1997 dispute. It analyses how the union organised industrial action and how the employers responded. The conclusion explores some questions about collective action by labour hire workers, and highlights some problems of dispute resolution under the current regulatory regime.

Introduction

This article discusses an extended strike by Victorian maintenance workers employed by labour hire firms. The dispute was remarkable mainly because of the kind of workers involved – a group usually considered incapable of any industrial action, let alone lengthy strike action. For this reason, the dispute merits close attention. Let us begin by outlining the salient features

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of the industry in which it occurred. Outsourcing maintenance work has become increasingly common in Australian industry. Often this work is outsourced to labour hire firms which specialise in the supply of tradespersons. Whilst the extent of maintenance outsourcing cannot be estimated accurately, anecdotal evidence suggests that manufacturers employing their own maintenance workers are becoming uncommon. A recent survey of labour hire firms supplying trade-based workers indicated that 19 per cent of respondents found most of their clients in manufacturing. This level of usage was matched only by construction (KPMG, 1998, 19). Labour hire firms' activities extend from providing temporary maintenance workers to annual maintenance shut-downs and re-fits, through to responsibility for the whole maintenance function.

This trend to outsourcing appears to have facilitated the growth of a large number of labour hire firms. One of the largest of these, Skilled Engineering, employs over 10,000 workers. In Victoria alone, there are estimated to be approximately 3,000 maintenance tradespersons employed by just over forty labour hire firms operating in the unionised sector of manufacturing. Another seventy or so labour hire firms operate in the non-unionised sector (Interviews, AMWU Organiser, 2nd December 1998 and MTIA Industrial Officer, 8th December 1998).

Since the 1980s, the union with the largest membership amongst maintenance tradespersons, the Australian Manufacturing Workers' Union (AMWU), has developed policies and practices to accommodate and regulate the employment of workers hired under outsourced maintenance arrangements. In Victoria, the major labour hire firms have in turn developed a working relationship with the union, accepting their continued representation of labour hire maintenance workers. But in 1997, this relationship was ruptured by a major dispute over wages and working conditions. The dispute arose out of enterprise bargaining over pay. It resulted in a seven week strike by more than 2,500 labour hire workers employed by forty-three labour hire firms. This article examines that dispute. It begins with a description of labour hire employment practices and regulation amongst labour hire firms in manufacturing maintenance, including a brief history of their collective agreements. The story of the 1997 dispute is then presented, followed by an analysis of how the union organised industrial action and how the employers responded. The conclusion explores some questions about collective action by labour hire workers, and highlights some problems of dispute resolution under the current regulatory regime.

How labour hire works in Victorian manufacturing maintenance

Labour hire firms supply labour to another company, their client, instead of such businesses hiring employees of their own. Most workers employed by labour hire firms are paid an hourly rate and hired on a casual basis. Such employment is typically characterised by impermanence and by poorer terms and conditions of employment than are found among comparable direct hire employees (Quinlan, 1998). Such impermanence is also inherently antithetical to unionism. But not all labour hire firms operate in the same manner with respect to employment conditions and unionisation. Two modes of labour hire can be found governing the hire of tradespersons in manufacturing. The first is found only in non-union manufacturing, while the second operates in both the unionised and non-unionised firms.

The first model of labour hire firms involves the labour hire firm contracting with self-employed workers who are then hired to the client. This model was adopted by the firm Troubleshooters Available in the early 1990s (Fenwick, 1992; Underhill and Kelly, 1993). Clients paid an hourly rate for labour to Troubleshooters Available who then, after deducting their commission, paid workers an hourly 'all-in' rate. This model requires workers to be responsible for their own taxation and workers compensation liabilities (Fenwick, 1992). Being self-employed, these workers' terms and conditions of employment are not regulated by awards, enabling the labour hire firms to undercut employee wages and conditions and avoid the regulatory protection offered to workers under a contract of employment. This model of labour hire is opposed by unions who are concerned about the general threat it poses to employment conditions, claiming these workers are employees 'disguised' as self-employed for the purpose of avoiding employment regulation and other legal obligations such as income and payroll tax (Underhill and Kelly, 1993; ILO, 1997). Firms operating under this model tend to work on the fringes of manufacturing, supplying supplementary rather than full maintenance functions. They are also more likely to supply non-tradespersons. This type of contracting is more common in parts of the economy where unions encounter most difficulty maintaining employment regulation – especially small businesses.

The second and more common form of labour hire in manufacturing maintenance involves labour hire firms who employ employees rather than contracting with so called 'self-employed' workers. Their employees are then sent to client firms with whom the labour hire firm has a commercial contract. Employees are paid an hourly rate by the labour hire firm but work under the direction of the client firm, on the client's premises. Most

employees are supplied to the client on a temporary basis. They contact the labour hire firm daily to determine availability of work. A labour hire worker seeking an income equivalent to a full-time job will usually register with a number of labour hire firms to ensure a full weeks' work. They move from workplace to workplace, and from one labour hire company to the next to earn a regular income. The majority of employees are hired on a casual basis by labour hire firms who consider the uncertainty of client contracts to be an inherent impediment to permanent hire (Interviews, AMWU Organiser 2nd December 1998 and Industrial Relations Managers, 18th and 21st December 1998, 1st February 1999).

However, the trend towards outsourcing full responsibility for maintenance has also enabled some permanent hire by labour hire companies. When a unionised maintenance workshop is outsourced, the labour hire company may replace the existing workforce with their own employees, but often chooses to re-hire those workers. The workers will then be offered either a probationary period before being offered permanent employment, or hired on a casual basis (subject to the policy of the particular labour hire company) (Benson and Ieronimo, 1996; KPMG, 1998; Interviews, AMWU Organiser, 2nd December 1998 and Industrial Relations Managers, 18th and 21st December 1998, and 1st February 1999). An estimated 20 per cent of labour hire workers in manufacturing maintenance have permanent status. They receive a lower hourly rate when a lack of work results in them being on 'stand-by', but stand-by days often coincide with rostered days off so in practice the lower stand-by rate is rarely paid. There are also some permanent workers who move from workplace to workplace, remaining on stand-by between jobs. But this type of permanent employee is least common given the additional costs associated with their payment for non-working time. Most permanent employees work in large maintenance workshops where the labour hire firm has a contract for the full maintenance function (Interviews, AMWU Organiser 2nd December 1998 and Industrial Relations Managers, 21st December 1998 and 1st February 1999). Hence, the expansion of full maintenance outsourcing has been accompanied by the development of a small permanent labour hire workforce, with a semi-permanent workplace. These workers attend the same workplace continually, as they would if they were employees of the client company.

This second model of labour hire exists in both unionised and non-unionised manufacturing firms. But major differences exist in the way labour hire employment practices are regulated between these two sectors.

Regulating labour hire employment in Victorian manufacturing

Employment regulation amongst labour hire companies in Victorian manufacturing maintenance is governed by the Metal Industry Award 1984. Establishing award respondency has not been difficult for the larger labour hire firms. However barriers to entry in the industry are low and smaller 'fly-by-night' firms operate award free or simply ignore legal obligations towards their employees (KPMG, 1998). The Workplace Relations Act 1996, Schedule 1A, provides basic minimum terms and conditions of employment for companies not respondent to the Federal award. This 'safety net' provides terms and conditions considerably lower than the Metal Industry Award. But 75-80 per cent of the estimated 3,000 workers in the unionised sector are thought to be casual employees (Interviews, AMWU Organiser 2nd December 1998 and MTIA Industrial Officer, 8th December 1998). Such workers do not benefit from many award provisions. Union attempts to lift labour hire employment standards above the award minimum reflect this fact. Initially unions focused solely on pay, although in the 1990s, they began to seek provisions tailored to the casual status of labour hire workers.

Unions generally find casual employees difficult to recruit (Peetz, 1998). These problems are compounded in the labour hire industry by the absence of a regular workplace and the tendency for workers to be scattered in small numbers among many employers. Reaching enterprise agreements with labour hire firms can also be difficult. Unions have little bargaining power in labour hire firms because of low membership levels, and because the casual status of employees leaves them vulnerable to loss of future work should they participate in union activities. Hence, wage levels tend to be lower in labour hire firms than in direct hire employment where awards can be enforced and where collective agreements supplement award wage rates. Nevertheless, since the mid-1980s, the AMWU, which represents approximately 85 per cent of workers in the unionised maintenance labour hire sector, has successfully developed agreements with the major labour hire companies.

AMWU policy favours direct hire over labour hire. Traditional union opposition to labour hire companies mellowed to conditional acceptance during the 1980s, when it became apparent that labour hire companies were establishing a foothold in the industry. In the 1980s, when labour hire firms contracted with companies employing a unionised workforce, they had to abide by the Metal Industry Award 1984. If the client was paying above the award rate to their own maintenance workers, then the labour hire worker

working alongside the clients' workforce also had to be paid the over award amount (Interviews, AMWU Organisers, 1st July and 2nd December 1998).

Skilled Engineering, the largest labour hire firm in the industry, was the first to reach an agreement with the AMWU. From its earliest days, Skilled Engineering held a policy of hiring employees on award rates of pay, and of entering into agreements with unions. This enabled it to expand its operation into workplaces where unions had previously opposed the use of labour hire firms (Hargrave, 1992). As it grew during the 1980s, Skilled Engineering hired employees on award rates of pay, providing client firms a temporary workforce with minimal union resistance. Thus Skilled Engineering found a foothold in the unionised sectors of construction and manufacturing. As labour hire firms, such as Troubleshooters Available, with self-employed non-award workers were driven off building sites by unions, Skilled Engineering was signing, with the same unions, the first labour hire – union agreements (Australian Business, 1991; Underhill and Kelly, 1993). Other labour hire firms have since adopted similar employment practices and union agreements.

With the advent of enterprise bargaining, the basis for AMWU acceptance of labour hire firms changed. Labour hire firms are no longer expected to pay award rates of pay. Instead, they are required to have an enterprise agreement. Since the early 1990s, a general agreement has been negotiated between the AMWU and the 'Labour Hire Contractors' Group', a subgroup of the Metal Trades Industry Association (MTIA – now the Australian Industry Group). The agreement is then certified on a company by company basis before the Australian Industrial Relations Commission (AIRC). The pay and conditions in these agreements are reproduced in the unregistered 'Victorian Labour Hire Agreement', an agreement often referred to in the enterprise agreements of manufacturing firms as a condition for utilising labour hire firms for occasional supplementary workers. Labour hire companies supplying workers in unionised manufacturing firms are expected to abide by the Victorian labour hire agreement if they do not already have an enterprise agreement with the AMWU.

The AMWU's approach to employment regulation of labour hire workers has a two-fold effect. Firstly it ensures their labour hire members are protected from inferior wage levels and receive some leave provisions. Secondly it ensures that labour hire employees do not undercut direct hire members at the workplace. Hence it also provides some disincentive to employers considering drawing upon labour hire workers at the expense of direct employees. Labour hire workers entering unionised workplaces are also expected to be union members, giving the AMWU a basis for continued

negotiation with labour hire firms. This has resulted in relatively high levels of union membership for labour hire workers in manufacturing maintenance, at least among the larger labour hire companies (Interviews, AMWU Organiser, 2nd December 1998 and Industrial Relations Managers, 18th and 21st December 1998, and 1st February 1999).

The effectiveness of the AMWU approach is contingent upon both shop stewards and organisers ensuring that agreements are observed. Two groups of shop stewards are important in the regulated labour hire sector – those shop stewards working for the clients of the labour hire firms and the shop stewards of the labour hire companies themselves. Shop stewards employed by the client are essential to the enforcement of agreements reached with labour hire companies. They have a motive to do so (to prevent their jobs being undercut) and bargaining power sourced in their own job permanence. Shop stewards employed by labour hire firms are in a much weaker position, and developing a shop steward network in labour hire firms has proven extremely difficult. Two main impediments confront 'would-be' shop stewards in the labour hire sector. First, the high rate of casual employment leaves an active steward vulnerable to not being offered regular work. Shop stewards therefore tend to be permanent employees, of whom there are few. Second, the very nature of the industry – supplying temporary workers on call – means the stewards' tasks of locating, recruiting and communicating with fellow members are logistically difficult (Interviews, AMWU Organisers, 1st July and 8th December 1998). Enterprise agreements provide some remedy for this, allowing shop stewards to spend one day per month visiting members at the clients workplace (Victorian Labour Hire Agreement, Clause 21). Communication between the union and members is thus facilitated by the steward, on 'stand-by' as a permanent employee, accompanying the delivery of clean uniforms and pick-up of timesheets to a number of workplaces where members are employed. But even the large labour hire firms have few shop stewards, rendering these provisions largely inoperable (Interviews, AMWU Organiser 8th December and Industrial Relations Managers, 18th and 21st December 1998).

Manufacturing firms with few or no union members are more likely to draw contract workers from labour hire firms which do not recognise the Victorian labour hire agreement nor have an enterprise agreement with the AMWU. Whilst approximately 40–50 companies recognise the Victorian agreement, an estimated 70–80 operate outside this framework (C. No. 36029, Transcript). These firms may pay award rates, but they may also operate under Schedule 1 of the Workplace Relations Act. The wage rates they offer to tradespersons are subject only to the willingness of workers to

accept the offer. Larger labour hire firms are vulnerable to being undercut by these non-union and unregulated labour hire companies, and have expressed concern about the employment practices associated with these 'fringe' companies (KPMG, 1998). The labour hire industry is extremely competitive and fluid. Firms come and go on a regular basis. In some instances, labour hire firms are undercut by their own employees who set up their own companies and continue performing the same work, for the same client, which they previously performed as employees of the labour hire firm (C. No. 36029, Transcript). The enterprise agreements in the unionised sector of labour hire place a floor under wage competition in that sector, minimising such practices. The effective policing of these agreements assists in protecting unionised labour hire firms from being undercut by their potential non-unionised competitors.

The 1997 Labour Hire Dispute

Since enterprise bargaining was introduced in 1991, certified agreements have been negotiated biennially between the AMWU and a growing number of labour hire companies organised within the MTIA under the auspices of the Labour Hire Contractors' Group. Underpinned by the Metal Industry Award 1984, initially the agreements dealt mainly with wage rates, skill and travel allowances, and a flat rate payment for superannuation irrespective of the number of days worked per week (for example, see S0297 and S1060, Skilled Engineering Limited Labour Hire Division (Victorian Branch) Certified Agreement, 1992 and 1995 respectively). The first two rounds of negotiations resulted in wage adjustments similar to those applying more generally across metal manufacturing. Negotiations were completed without industrial action. In 1995, the AMWU negotiated redundancy provisions, which were traded-off against a wage increase. Until then, the casual status of labour hire workers meant few were eligible for redundancy payments under the Metal Industry Award 1984. The 1995 agreements overcame this by providing for weekly redundancy payments, calculated according to the number of days worked, to be paid into a central fund on behalf of all workers (Skilled Engineering Limited Labour Hire Division (Victorian Branch) Certified Agreement 1995, Clause 30). This approach to redundancy compensation replicated that already established in the building and construction industry where the itinerant nature of employment also impedes accrual of redundancy entitlements (Underhill and Worland, 1998).

During 1996, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union negotiated a 19 per cent wage increase and substantial improvements in superannuation and severance pay for electricians employed by labour hire firms, setting the stage for the next round of negotiations for other tradespersons working for labour hire firms (C. No. 36029, Transcript). Electricians and other tradespersons often work closely together, facilitating easy comparison of wage disparities, notwithstanding any enterprise bargaining policy objectives to do otherwise (Green, 1996). When the 1995 AMWU labour hire agreements expired in May 1997, its' members' expectations had been raised. Because of the slippage in wage rates from the 1995 agreements (due to the trade-off for redundancy payments) and the 19 per cent increase already received by electricians, tradepersons working under the AMWU agreements were now earning substantially less than electricians. The AMWU organiser responsible for the labour hire sector at the time entered negotiations for the 1997 agreement arguing that "we are not going to be able to convince our people they should take a second grade position compared to electricians when they have always been paid the same amount" (Australian Financial Review, 12 September 1997, 3). A log of claims was issued upon the major labour hire companies in early July 1997, demanding a 22 per cent wage increase (over two years), plus other minor claims. The employers responded with an offer of 15 per cent over three years, the average amount being paid in enterprise agreements in the metal manufacturing industry at that time.

In early July, negotiations began involving the AMWU, the Construction, Forestry, Mining and Energy Union (FEDFA Division) (FEDFA) and the Australian Workers' Union (AWU) and for the employers, the Labour Hire Contractors' Group. The latter two unions covered an estimated 15 – 20 per cent of workers employed by the relevant labour hire firms. Four meetings took place over July and August but little progress was made towards agreement. Employers, on the one hand, considered the wage claim to be unaffordable. Clients were thought to be unwilling to accept such a cost increase and could turn to labour hire firms without union agreements, or possibly revert to direct hire employment (C. No.36029, Transcript). The unions, on the other hand, were determined to regain parity with electricians. At the time, the Victorian AMWU leadership were under challenge from a left-wing group within the union, a member of which had already negotiated a favourable agreement for labour hire workers in a regional centre. The AMWU was not in a position to give ground easily in these negotiations.

An agreed 3 month moratorium on industrial action expired at the end of August, and a mass meeting of approximately 600 workers voted for a 48 hour strike from 1st September. Approximately 2,500 workers withdrew their labour (the casual status of employees prevents an accurate measure of the number of workers and workplaces affected by the strike) (Australian Financial Review, 12 September, 3). Four days later, on the 4th September, a second mass meeting voted for an indefinite strike with the next report back session planned for five days later. The Labour Hire Contractors' Group responded to the indefinite industrial action by immediately applying to the AIRC for a certificate under s.166A to enable actions in tort to be taken against the three unions. Under s.166A(6) (c), the Commission must issue a certificate stating that the conduct (in this case strike action) is unlikely to be stopped if the Commission has not stopped the conduct by the end of 72 hours following notification by the employer of the intention to take tort action. Two conciliation sessions were held. The first was called on a Friday afternoon, the day of the application for the certificate, and the second on the following Monday morning. Legal counsel represented employers in the early stages of conciliation, but was asked to leave so that frank discussion could occur. On Monday afternoon, 72 hours after the notification by employers, the Commission issued a certificate stating that it had not stopped the industrial action. The three unions were absent from the hearing determining the issuance of the certificate. They had refused to participate in formal hearings involving transcript because it required them to cross another unions' picket line (C. No. 35687, Transcript).

The employers applied to the Practice Court of the Supreme Court of Victoria for an injunction against the three unions under s. 170MM of the Workplace Relations Act. They argued that since the FEDFA and the AWU had not issued bargaining nor protected action notices, their industrial action was unprotected action. The AMWU had acted in accordance with legislative requirements under the Workplace Relations Act for bargaining notice and protected industrial action, but was now participating in strike action in concert with unions involved in unprotected action. The Practice Court found that the FEDFA and AWU were not protected persons, and that the AMWU had fulfilled its legislative obligations save for taking action in concert with organisations which were not protected. As the AMWU had no knowledge of the other two unions' failure to issue relevant notices, injunctions were only issued against the FEDFA and AWU. Section 170 MM was held not to apply to the AMWU as the industrial action was not a secondary boycott, and a general right to strike was held to exist (National Workforce Pty. Ltd. and Ors, Harper, J). Subsequently the

FEDFA and the AWU withdrew from the strike, whilst the AMWU workers remained on strike. The AMWU then notified the AIRC of an industrial dispute under s.99 of the Workplace Relations Act and conciliation recommenced notwithstanding a request by the Labour Hire Contractors' Group to the AIRC that such proceedings be adjourned whilst industrial action continued. Two further conciliation sessions were held but to no avail. In the meantime, the employers commenced an appeal against the Supreme Court decision in order to include the AMWU in the injunction, and took action under s.127 of the Workplace Relations Act for an order by the Commission to stop the industrial action. A number of major clients of the labour hire companies were threatening to cancel contracts unless the dispute was quickly settled. In the fourth week of the strike, an urgent request for an appeal hearing before the Supreme Court was heard on a Tuesday, with the application being adjourned until the Thursday. On the Wednesday afternoon proceedings before the Commission were scheduled under s. 127, to be followed by the final Commission hearing on the Friday. An unsuccessful conciliation meeting was slotted into the Wednesday morning (C. No. 36029, Transcript). However, the Commission decided that conciliation had come to an end, and issued an order for the stopping of industrial action for 12 months, to come into effect at midnight the next day, October 4 (C. No. 36039, Decision). Industrial action continued. The Supreme Court Appeal was upheld and on October 6, an injunction was issued against the AMWU (National Workforce Pty. Ltd. and Ors, 3 V.R. 242).

A further mass meeting of AMWU members then resolved for the strike to end, almost seven weeks after it began, and the union returned to negotiations with its bargaining power substantially curtailed. A wage increase of 18 per cent over three years was ultimately agreed to, but superannuation payments were adjusted to reflect the number of days worked, and the conditions under which casuals could be hired was eased. Given the high level of casuals hired in the industry prior to this agreement, this last provision was largely superfluous. The major impact of the agreement appears to relate to the cost saving associated with pro-rata superannuation. Formerly, a casual employee was entitled to a $50 per week superannuation contribution irrespective of days worked. Now that payment can be as little as $10 per week if they work only one day (Victorian Labour Hire Agreement 1997/2000). This agreement clearly fell short of union demands, leaving a significant disparity in pay and conditions between AMWU members and electricians.

Two aspects of this dispute merit further discussion. The first, and most unique aspect, is that labour hire casual employees participated in collective industrial action. The second is the response of employers to that industrial action, raising questions about the processes of dispute settlement under the current regulatory framework. These issues are explored in the following sections.

Industrial action by labour hire workers

Like their direct hire counterparts, labour hire manufacturing maintenance workers are located in strategic positions in industry. Strikes by maintenance workers can dislocate manufacturing production. Potentially, labour hire maintenance workers have a strong bargaining position, but implementing strike action in labour hire maintenance is inherently problematic. Firstly, there are few shop stewards to directly guide or communicate with members. Secondly, casual labour hire workers do not have a permanent workplace. Typically the employee rings the labour hire firm and is sent, perhaps individually or as part of a group, to a client's workplace. Under such circumstances, the basic elements of strike action are difficult. How does the union know where the worker is expected to be, and whether the casual worker is on strike? How does a casual worker know whether or not other casual workers are also on strike (therefore lessening the chances of the worker being singled out)? Thirdly, the client of the labour hire firm is directly affected by the strike, but is not the employer of the workers. Hence, the client can hire their own employees to replace striking workers without displacing striking workers of their own. On the one hand this leaves the labour hire firm vulnerable because of the potential for lost contracts, but it also places pressure upon the labour hire companies' workforce whose jobs are directly at risk. For these reasons, strikes are hard to organise in this sector.

How did the AMWU overcome these impediments? Firstly, prior to taking industrial action, the union communicated with its members by requiring employers to notify individual employees of the first mass meeting. This was consistent with the consultative processes included in enterprise agreements, as well as the need for employees to be consulted during the process of negotiating an enterprise agreement. Once the strike began, communication was maintained through weekly mass meetings held at Trades Hall. These meetings were well attended with approximately 400-600 workers attending regularly. Employers played a role in this by actively encouraging their employees to attend the meetings so as to vote against

the claim. Having explained to employees the likely employment effects of an overall 30 per cent cost increase, they felt their own employees were being outvoted by non-labour hire employees. Surely, if their labour hire workers attended they would vote to end the strike? These meetings were the major form of communication with striking workers once the strike began (Interview, AMWU Organiser, 2nd December 1998; C. No. 36029 Transcript).

Secondly, in the early stages of the dispute, organisers of the union visited worksites known to have labour hire workers to inform members of the mass meeting's resolution to take industrial action, thus performing the role otherwise expected of shop stewards (C. No. 36029 Transcript). Thirdly, the role of shop stewards and union members employed by the clients of labour hire firms was important in sustaining industrial action. Direct hire shop stewards regularly communicated with the union about labour hire workers at their workplace. They advised their own employers of their support for the labour hire workers' collective action, and were unwilling to co-operate or work with labour hire workers who broke ranks with the strikers (Interview, AMWU Organiser 2nd December 1998). Hence, casual employees who might have otherwise considered working through the strike, could not do so.

Fourthly, the small core of permanent employees of labour hire firms appear to have provided the 'backbone' of support for the unions' strike action. These employees more closely resemble direct hire employees, with a regular workplace, familiar workmates and steady work tasks. In some instances, where such permanent employees were still located in the same maintenance workshops they had worked prior to being outsourced, their willingness to remain on strike over such a protracted period stemmed from a lingering sense of embitterment about outsourcing (Interviews, AMWU Organiser 2nd December 1998 and MTIA Industrial Officer, 8th December 1998).

Finally, some casual labour hire employees worked during the strike, but mainly in the non-unionised sector and on lower rates of pay. In some instances, they were also hired as direct employees of the client who would normally hire them through the labour hire firm (Interviews, AMWU Organiser 2nd December 1998 and MTIA Industrial Officer, 8th December 1998). This created a rather odd dilemma for the AMWU. On the one hand, it resulted in these workers becoming direct hire employees – consistent with the union's labour hire policy preference. It also contributed to the loss of clients and put economic pressure on the labour hire firms to compromise in negotiations. On the other hand, these workers were weakening the

strikers' bargaining position by taking their jobs. Industrial action by labour hire workers is confounded by the numerous courses of action open to workers, and by confused loyalties.

The Employers' response to the dispute

The Full Bench of the Supreme Court aptly described firms belonging to the Labour Hire Contractors' Group as being "peculiarly vulnerable" during a period of industrial action (National Workforce Pty. Ltd. and Ors, 3 V.R. 242, 271). Firstly, they do not represent the whole of the labour hire industry and are subject to intense competition from businesses "outside the members of their own group" (National Workforce Pty. Ltd. and Ors, 3 V.R. 242, 271). Secondly, the labour hire companies were in breach of commercial contracts to supply labour. Some clients threatened to cancel contracts whilst others hinted at potential damages claims. Thirdly, there was a risk that the client companies would revert to hiring their own employees during the strike and retain direct hire after the strike had ended (National Workforce Pty. Ltd. and Ors, 3 V.R. 242, 271). For example, one client company hired its own casual workers during the strike and continued to use the labour hire companies equipment which had been left on site at the beginning of the strike. Other clients advised labour hire companies of the imminent stand-down of large numbers of production workers if the strike was not brought to an end quickly (C. No. 36029, Transcript).

Clearly, the labour hire companies were vulnerable and concerned about lost revenue and also about the loss of long-term contracts which could be cancelled at short notice because of non-performance (Interview, Industrial Relations Manager, 18th December 1998). Yet only a few labour hire firms paid the full union claim during the strike, to enable the retention of volatile clients. Most employers held ranks. How did forty-three labour hire firms remain so united over almost seven weeks?

Firstly, the employers insisted that the size of the union claim made it unrealistic for any of the member firms to pay it. The labour hire industry is extremely price-competitive. Any individual employer breaking ranks could not expect to maintain a client base. The potential for clients to seek maintenance labour elsewhere provided an incentive for labour hire firms to not concede. Secondly, the clients of the labour hire firms in manufacturing maintenance tend to be members of the same employer association, the MTIA, which helped the two groups to act in unison. The Labour Hire Contractors' Group, through the MTIA, kept existing and potential clients informed of the progress of the dispute and why it was necessary to not give

in to the claim. Thirdly, many clients, aware of the potential impact upon their own costs should the labour hire companies give ground, encouraged the labour hire firms not to give in, and supported them by delaying hiring an alternate workforce. Fourthly, employers have suggested that the industrial action was not sufficiently extensive to undermine their operations, and hence resolution of the dispute was not so pressing (Interviews, MTIA Industrial Officer, 8th December 1998 and Industrial Relations Managers, 18th and 21st December 1998 and 1st February 1999). Estimates vary on the proportion of workers participating in the strike action, but in the early stages it appears that 30–50 per cent of workers hired by the major companies were on strike (Interviews, Industrial Relations Managers, 18th and 21st December 1998, and 1st February 1999; C. No. 36029, Transcript). This is a substantial achievement for a group of workers reputed to be industrially passive, but it is a small proportion relative to what one would regard as necessary to place acute bargaining pressure on employers. Whilst these four factors go some way to explaining employer solidarity, there were exceptions. At least one major labour hire company with a significant number of permanent employees was alleged to have lost clients who hired their own employees during the strike and retained them after the strike ended. Their permanent employees were then placed on 'stand-by' for several months after the dispute ended (Interviews, AMWU Organisers, 1st July and 2nd December 1998).

This explanation for employer solidarity suggests, in combination with the rationale for union determination, why the dispute lasted so long. The employers could not afford the claim whilst the AMWU was determined to restore relativities with electricians, and both were sufficiently well organised to sustain a prolonged fight. But equally, the absence of an appropriate forum within which to settle the dispute may also have contributed to its seven week duration. At issue here is the displacement of the traditional processes of conciliation and arbitration by more antagonistic legal tactics. Immediately following the commencement of the first 48 hour stoppage, the employers appeared set on a path which would lead them away from dispute resolution towards legal proceedings to undermine the bargaining power of the union. The first conciliation proceedings were conducted in the presence of legal counsel, and were held under the threat of tort action against the unions if they did not reach an agreement with the employers. Once court action commenced, negotiations came to a standstill (Interviews, AMWU Organiser, 2nd December 1998 and Industrial Relations Manager 18th December 1998). The fourth and final conciliation session coincided with both a Supreme Court Appeal and AIRC proceedings to stop

industrial action. It is little wonder that the union argued in vain before the AIRC that it believed conciliation had not been exhausted; it had hardly been tried (C. No. 36029, Transcript). The nature of legal proceedings is likely to have compounded the hostility and determination of workers, as well as impeded negotiations. Proceedings went back and forth between the Courts and the AIRC, leaving little time or inclination for negotiation. This is not the place to recount in detail how the dispute settlement powers of the AIRC have been emasculated and access to legalistic methods widened. It is merely appropriate to note the consequences in this case – a seven week stoppage.

Conclusion

The 1997 labour hire dispute demonstrates that labour hire workers cannot be assumed to be industrially passive. In some firms they were unionised. They did not lose a sense of comparative wage justice, and were willing to participate in industrial action when sufficiently aggrieved. The dispute also illustrates how the effectiveness of their industrial action rests upon a number of factors. First is the critical role played by direct hire shop stewards in workplaces utilising temporary labour hire workers. Without their vigilance, labour hire workers could easily have worked through the strike. Second is the capacity of organisers to visit a wide range of work-shops during the dispute – filling the void created by the absence of shop stewards in many labour hire firms. Third, permanent labour hire workers and their delegates showed disciplined organisation – characteristics more commonly associated with direct hire employees. Yet despite these factors, the ease with which industrial action was sustained can be overstated. Some casual employees worked as direct hire employees, and more than half of the affected workforce did not participate in the strike. Weak links in the chain of labour hire unionism are apparent. Lastly, the final outcome of this dispute was influenced by the failure of two unions to act during the dispute in accordance with the Workplace Relations Act. This is not a problem unique to this dispute (see also Australian Petroleum Pty. Ltd. v. AMWU and Ors (1988) 43 AILR). It highlights the difficulties encountered by striking unions under current federal law.

Despite these qualifications on solidarity and the disappointing final outcome for the AMWU, the dispute was a momentous one, demonstrating the possibility for disciplined and effective union organisation and action in conditions where it would normally be deemed impossible. The final outcome in this dispute appears to also owe much to the employers' legal

tactics. These were permitted by the dispute settlement provisions of the Workplace Relations Act which limit the scope for conciliation and arbitration whilst opening avenues for extreme and inflammatory legal tactics. Eighteen months after the dispute, relations between the AMWU and the labour hire firms are still strained and have not returned to the mutual acceptance existing prior to the dispute. Would the pre-1996 laws have allowed such an outcome?

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Interviews were held during July and December 1998, and February 1999 with:
Len Plaxton, former Industrial Officer, Metal Trades Industry Association;
Maurice Addison and Laurie Phelan, Organisers,
Australian Manufacturing Workers' Union;
Industrial Relations Managers of the following labour hire firms:
Chelgrave Contracting Australia Proprietary Limited;
National Workforce Proprietary Limited; and
Skilled Engineering Proprietary Limited.
These managers were members of the Labour Hire Contractors' Group negotiating team. Their comments have been referenced as 'Industrial Relations Manager' for purposes of anonymity.